

# Foreword

## Trudi Elliott CBE

The 46th Joint Annual Planning Law Conference was dedicated to the memory of Sir Andrew Gilbert QC, a staunch supporter of the Conference and a Great of the Planning Bar.

This year's Conference was entitled "Coming up for Air", as we wanted the Conference to give participants space both to draw breath and to take stock. This when the wider context in which planning operates has rarely been so challenged and uncertain, politically, economically and environmentally, both within the UK and globally. Important also at a time when we so often fail adequately to learn from what has gone before.

The choice of subjects was heavily influenced by feedback from last year's participants. We wanted to focus on issues which for practitioners are increasingly demanding our attention, interest, or both. Despite Brexit and what it might bring for the sector featuring large in many conversations at Conference, we were clear that this year was also going to give participants a Brexit-free zone in terms of specific presentations. Last year's Brexit paper by Professor Janice Morphet is, of course, still available.

The Conference kicked off on Friday evening with Dr Roberta Blackman-Woods, MP for the City of Durham and the Labour Party Shadow Minister for Planning and Local Government. She outlined the thinking behind the launch of Party's planning commission, which she subsequently launched at the Labour Party Conference. Her position was that planning was not working, particularly for communities. Roberta argued that a new approach was needed which the commission would seek to identify and urged delegates to engage in with the commission.

Some issues permeated many conversations and reflections over the weekend. An underlying question was, do we really need more radical change to the planning system(s) or do we need to use the existing system(s) more creatively and effectively and resource them adequately? How to avoid the sense of planning being "done to" people was another recurring theme in several papers and many questions from the floor. This linked to arguments for more front loading of effort and engagement.

The keynote address came from Sir Terry Farrell CBE, RTPI gold medal winner, and one of the foremost planner-architects and urban thinkers of his generation. Under the title "City Making: Many Hands, Over Time", Sir Terry explained how in his view, the city was humankind's greatest creative achievement and the current growth of cities internationally was the phenomenon of our time. He addressed both the planned and the organic and argued persuasively that heritage and progress were not "either-or". He championed the need to really engage and promote liveability and making the ordinary better. He stressed the need to focus on place, and place was another recurring theme of the Conference.

This international context and place-based presentation was followed by Jo Negrini, the Chief Executive of Croydon Council, who explored what makes for truly successful regeneration. Jo drew on her years of experience as a planner, of driving regeneration, place shaping, and working with communities, and how this informed her role at Croydon delivering its ambitious agenda. She made it clear the task is harder than ever, but was passionate about the critical leadership role she saw for local government and its role as a convener of a genuine multi-agency and partner, total-place approach. We will not forget her visual interpretation of total place: a fuel company and a fish!

Next, we considered one of the issues rising rapidly up the planning agenda: air quality. Who better to explore the issue with than Katie Nield, UK Clean Air Lawyer with Client Earth and one of our youngest ever speakers. Katie took us through why air pollution is a problem in the UK and globally. Those of us who thought we understood the extent of the problem and its implications realised we did not. She set out the complexity of the legal frameworks and dispersed responsibility, and argued powerfully that effective regulatory frameworks were critical to ensuring the air we breathe is clean and safe. Clients Earth's

litigation has, through court interpretation, cast light on the proper requirements of air quality plans: the determining consideration has to be the efficacy of the measure (i.e. mitigation) and not their cost. Katie explores in her paper in more detail the role of local government, the National Planning Policy Framework (“NPPF”), informal air quality guidance, implications for plans, development control and nationally significant infrastructure, and what to look out for. The level of questions from the floor vindicated the choice of topic. The inevitable question “does this mean we should just stop developing?” came last. The answer was no, clean air and critical development such as homes cannot be mutually exclusive, but we need to do it better.

Christine Thorby, a very experienced Planning Inspector from the Planning Inspectorate for England and Wales, took us into the practical “dos” and “don’ts” of the appeal process. Christine had engaged her fellow experienced inspectors in drawing up some beautifully delivered advice on what practitioners could do to improve the performance of the appeal process, whether as advocate or witness.

She helpfully outlined the range and extent of the Inspectorate’s workload. The importance of pre-event preparation was stressed, as was the need to focus on what the Inspector would require to come to a determination. Christine acknowledged that cross examination was where advocates were happiest, but pointed out that perhaps less might sometimes, or even usually, be more.

On Saturday night, John Rhodes OBE, founder of Quod and one of the architects of the NPPF, gave an hilarious speech drawing on his experiences of working in the sector. He was self-deprecating and perceptive, and used humour both to underline some serious points and to make us laugh with recognition. Amidst much talk of complexity, John argued that planning is not really that complicated but that we should not underestimate the importance of doing the right thing.

Sunday morning started with a look at the 2008 Planning Act and whether the regime has worked. Angus Walker of Bircham Dyson Bell and current Chair of the National Infrastructure Planning Association took us through the history leading up to the introduction of this regime for nationally significant infrastructure. He then posed the question of whether this relatively new system has worked in terms of stability, certainty, attractiveness, timings, validity, participation, and crucially, delivery. In a detailed analysis of how the regime has functioned, he concluded that whilst it has been effective as measured against the first seven tests and delivered consents, not enough of these have yet been converted into operational projects. Why this is, he argued, warrants more detailed work by Government and was clear practitioners would be willing to assist the analysis.

There have been over 200 planning cases in the last year, so the challenge for Christopher Young QC was deciding where to focus this year’s much awaited legal update. He focused on the practical effect of the case law for practitioners. The key case of the year was the *Suffolk*<sup>1</sup> case, and Christopher explained that all the cases since have sought to reflect 10 key observations from the Supreme Court in the judgment of May 2017. He explained that the case firmly rejected an overly legalistic interpretation and urged greater respect for and less criticism of Planning Inspectors. The paper identified some key topics from this year’s cases which clearly mirrored practitioner experience: consistency in decision making, interpretation of policy, directly challenging the content of policy, heritage impact, ecology, planning obligations, planning conditions reasons, and the public sector equality duty. For all these topics and more besides, this paper will be an essential reference document for practitioners across all disciplines in the coming year.

This year’s questions from the floor were as insightful as ever and are an essential element of the reflective benefits of attending. What encouraged me as Chair this year was not only the increase in first-time attendees, but their willingness to fully engage from the off.

The conference not only gave us the opportunity to reflect, but also gave participants renewed motivation to make a difference through their practice.

<sup>1</sup> *Secretary of State for Communities and Local Government v Hopkins Homes Ltd* [2017] UKSC 37; [2017] 1 W.L.R. 1865; [2017] J.P.L. 1084.