

SUMMARY

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It would be impertinent for a Summary, even when reduced to this written form, not to begin with a word of thanks to those who have made this Conference such a success. Lucinda Howe and her team have, as ever, organised this gathering with supreme efficiency. The staff at New College, Oxford have made us comfortable and welcome, as always. Finally, I thank the Committee for their invitation to present a summary of what has been an outstanding conference, with a series of superb papers which have admirably fulfilled the Conference's function of keeping practitioners fully informed of developments at the leading edge of our profession.

The first speaker was Janice Morpeth who produced a paper outlining developments of profound importance. She firstly reminded us of the importance of the "new" system of local council administration, introduced by the Local Government Act 2000, with its division of local authorities into full Council, executive and scrutiny. More startling, however, was her revelation about the extent to which the necessary division of functions was being misunderstood and misapplied by authorities even today. There is without doubt scope for practitioners, contemplating challenges to planning decisions, in the examination of whether or not the new arrangements—with their rigid division between those members who are permitted to be involved with development control decisions and those members who are permitted to be involved with LDF decisions—have been properly applied by any particular authority.

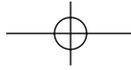
The second element of Janice's paper was her explanation of the importance of the Sustainable Community Strategy (SCS) and the Local Area Agreement (LAA) as the key drivers of an authority's policy. In her own words, the LDF is to become the "spatial expression of the SCS". The LDF and SCS are to share a common evidence base. Furthermore, the LAA is to be the fundamental document for drawing together various public sector agencies. It is designed to achieve nothing less than a situation where, to quote Janice again, "planning [is to be] the new delivery arm of local public sector investment".

These developments raise fundamental issues for planning practitioners. We must learn a new way of thinking: who have imagined that one would be viewing the Leader of a Council as a "promoter" of a scheme to a development control committee of his/her own authority? For those seeking to promote development, the identification of who will be involved with which decisions and at what point of the process will become even more important than it is now. Furthermore, the reliance upon the SCS as the driver for the LDF will place even more importance on the "frontloading" of the consultation process, with a requirement for involvement by scheme promoters at an even earlier stage that we have become accustomed to through the LDF process.

The new system as laid out in Janice's paper therefore raises serious questions. What is to be the role of the market and the freedom of private enterprise? We were reminded that it is the government's intention that "the private sector is in the driving seat". The system as laid out by Janice faces a real

¹ 4/5 Gray's Inn Square. This text is a reconstitution of what was originally presented from notes. Its content is likely to be slightly more coherent than that which was delivered. Asides and other rhetorical aspects have been excluded.





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challenge in making that aspiration a reality. There are also very real issues about the transparency of the process and the role of genuine consultation.

These issues of consultation and transparency were at the heart of the papers presented by Robbie Owen and Ian Dove Q.C. Ian Dove's paper on recent legal developments was for many a highlight of the conference, both in terms of its content and its colourful presentation. He took us, as one might expect, to the *Barker* decision and showed us that it was not a charter to allow developers to use the Reserved Matters stage as a way to repair an inadequate Environmental Statement. His analysis of *Barker* made quite clear that it is only if the new matters were unforeseeable at the stage of initial environmental assessment that further assessments at the Reserved Matters stage become permissible.

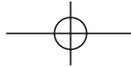
The heart of Ian's paper, however, was on the issues of consultation. He illustrated for us clearly how a duty to consult arises, drawing out of the *Greenpeace* case the new European aspect to a duty to consult which arises out of the Aarhus Convention. He also illustrated to us, through recent cases, how "fact-sensitive" has become the issue of whether or not a legitimate expectation arises. Of fundamental importance also were the cases he presented to us on "staged" consultations. If we are indeed moving towards a system where the Sustainable Community Strategy is the driving force behind the LDF process, the issues of consultation at that earlier stage, and the extent to which options chosen by the SCS rule out other options later in the process, will become an issue of vital importance. Lawful consultation in the light of the Court's approach to staged consultations will be vital, both for the proper functioning of the new system and its ability to sustain itself against legal challenges.

The issues of consultation and democratic participation were also at the heart of Paul Hudson's and Howard Bassford's papers. It is a privilege of the Oxford Conference that practitioners are able to hear from the very highest authorities within government as to the intentions of government in forthcoming reforms. Whilst it is undoubtedly the case that Paul's paper sets out the aspirations of government as further reform of the planning system is contemplated, there is always enormous benefit, when working with a new system, to understanding the intentions of those who created it.

Howard Bassford presented us with a compelling analysis of one aspect—major infrastructure projects—of the proposed new system. Once again issues of transparency and participation were to the fore. If we are indeed to have an independent Infrastructure Projects Commission, with decisions being reached without Inquiries as we have known them, being guided by National Policy Statements and running a single consent regime, several issues, illustrated by Howard's paper, come to the fore. First, any assessment of the reforms must be undertaken in the context of a proper and informed analysis of the existing system. Howard's illustration of the strengths as well as the weaknesses of the existing system in its historical and practical context repays very careful consideration indeed. Second, there must be transparency and open-minded consultation, at a time early enough to have a real influence on eventual decisions. Third, there must be a consideration of whether or not proper scrutiny can be given through the new system. Most practitioners will be aware of the concerns which exist as to the level of scrutiny provided by the new LDF process and lessons must be learnt from those experiences when planning for major infrastructure projects.

The conference was treated to a genuine *tour de force* from Robbie Owen on the Habitats Directive and Habitats Regulations. No summary could do justice to this paper, which will surely stand as an invaluable reference tool for practitioners for its concise but comprehensive treatment of an area which is difficult for many of us. This summary wishes only to illustrate three particular points.





The first is to understand how wide has become the definition of “plans and projects” which may be caught by the need for appropriate assessment. The second is to understand, as a corollary, that small projects as well as large can be caught in this assessment regime. Anyone operating in the vicinity of a European Site needs to have the requirements of the Regulations firmly in mind. We were provided with the very clear practical illustration of small developments in the Thames Basin Heath SPA area which were being frustrated by reliance upon these Regulations. Finally, we were reminded that an assessment is determinative. It is not merely, as in the case of the environmental impact assessment regulations, a matter of ensuring that the decision-maker has full information. Instead, if a plan or project has a significant adverse effect on the integrity of European site, then permission must be refused unless the overwhelming importance of the project in the public interest and the absence of alternatives can be established.

Finally, we heard the paper of Andrew Whitaker, from the housebuilders’ point of view. Perhaps surprisingly, given all the challenges which are now faced by developers, it was a message primarily of hope and it is right to end this Summary on that note. For all the intellectual challenges posed by planning law, one must never lose sight of the fact that the result of any system is real houses and real jobs for real people. It is well to end this superb conference with the recollection of the message of hope that things can be achieved.

Finally, reflecting on the question posed by this conference—“Planning—Still Sexy at 60?”—your summariser, on the basis of observation of the attendees of the conference, and having considered the planning profession as encountered over years of practice at the Bar, feels in no position to offer any opinion whatsoever!

