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## Articles

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# The New Decision-Making Process within Local Government

Janice Morphet

### Introduction

Over the last ten years planning has seen a series of changes, whether brought about by reviews, legislation or key decisions. These changes, such as the new Local Development Framework (LDF) system introduced in 2004, are still working their way through the planning system, whilst other changes, foreshadowed in the recent Planning White Paper, *Planning for a Sustainable Future*<sup>1</sup>, are yet to be implemented.

Planning has also been the subject of much criticism during this period and many attempts have been made to make it work faster, more efficiently and more effectively, including closer management of planning performance, ONEAPP<sup>2</sup>, the Householder Consent Review and e-planning processes.

There have also been significant changes in the local authority process of local decision making for planning applications. In the Local Government Act 2000, planning decisions were separated from other considerations of planning matters, and this has separated the quasi judicial processes of planning application determination from the local authority's executive role as promoter in their area. All this has served to encourage planners and those engaged in the system to be absorbed in the way in which the planning system works within its traditional professional boundaries.

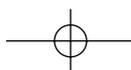
However, in parallel with these changes within the planning system, there have also been significant changes in local government decision making processes which provide the context within which planning operates. These are continuing to the point where much of the Planning White Paper published in 2007 is reliant on the Local Government White Paper published in 2006.

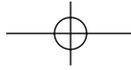
The implementation of the LDF process is also proving challenging because planners engaged in developing these at the local level are not aware of the implications of the changes in their local authority structures and decision making apparatus for the planning system. For those wanting to use the planning system to promote development, this lack of understanding of the changing contextual requirements of local government processes on the operation of the planning system is leading to misunderstandings of how and when to engage.

There have also been changes in the Members Code of Conduct which have effects both on the operation of local authorities and the planning system within it. The most recent version of the Code

<sup>1</sup> CLG 2007.

<sup>2</sup> A new approach to unifying planning application forms promoted by CLG.





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(May 2007) further separates the decision making process from any councillors with an interest in the application which could be perceived as being prejudicial by a reasonable individual.

This paper reviews these changes in the processes of local authority decision making since 1997 and the implications of these for the planning system. What it will demonstrate is that it is now very difficult for planning policy and decisions to be seen in an isolated context without any reference to the local authority decision making process and wider governmental structure within which local government sits as it operates its local leadership role. This process of change is set to continue further and some indications of the implications for planning are discussed towards the end of the paper.

### **The changing structure of local authority decision making since 2000<sup>3</sup>**

The new constitutional arrangements which have been introduced for much of the governmental structure of the UK since 1997<sup>4</sup> have included changes in the process of decision making in local government. Before the Local Government Act 2000, local authority powers were vested in the full council of elected members with responsibilities being delegated to council committees, groups of councillors or officers. The scheme of delegation was the major “constitutional” apparatus of any local authority and the means through which decision making was organised.

The Local Government Act 2000 fundamentally changed this structure to one which is now based on a separation of powers and associated checks and balances between the parts of the local authority<sup>5</sup>. The best analogy for the post-2000 structure of local government is a three-legged stool, with each of the three components having power which cannot be transferred between them. The new components are the council, the executive and scrutiny, which also include regulation. The whole of this arrangement can vary within the parameters set out in the Act but must be contained in a written constitution prepared by each local authority, which is expected to be reviewed every five years.

The council’s responsibility is to set major policy and the local authority’s budget. The council can undertake its responsibilities in a variety of ways from holding traditional meetings, similar to those before 2000, to more varied forms such as single issue policy debates, visioning discussions, and open town meetings, all of which can inform this overall decision making process. The Council is responsible for approving the key policy plans of the local authority, of which 12 were initially identified. This list has not been reviewed since 2000 but, increasingly, three key plans are emerging as the main ones for each local authority—the Sustainable Community Strategy, the Local Area Agreement, and the Local Development Framework. The Council is responsible for approving all three.

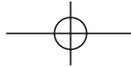
The role of the executive has probably received most public debate and attention. It can take a variety of forms, from a cabinet system to a version of the former committee system in smaller district councils. In some authorities, the executive comprises of a directly elected mayor. The mayor can exercise power with a cabinet that the mayor has selected or with a Chief Executive as the council’s manager. Where the executive is a Cabinet model, there can be up to 10 councillors, including the Leader, in a Cabinet. Members of the executive can be allowed to make decisions on their

<sup>3</sup> Further discussion on the changes in Local Government can be found in *Modern Local Government* by Janice Morphet, Sage 2007 forthcoming.

<sup>4</sup> See *The Governance of Britain*, CM7170, July 2007 Ministry of Justice.

<sup>5</sup> Stephen Cirrell discussed some of the early implications of these changes in his paper to the Joint Planning Conference in September 2003, *The Modernisation of Local Government and its impact on planning*.





own or with others. The extent of this power of determination will sit in each local constitution. In many local authorities, the executive system has reverted to be similar to the pre-2000 system with committees to support the executive members, although these committees serve in an advisory function rather than taking decisions. The local authority's executive is established to be the promoter of the council's actions—whether through development, partnership or other activity.

In the recent Local Government White Paper 2006<sup>6</sup>, it is proposed to review the executive approach in local authorities without a mayor to establish the role of leader for a four year fixed period in each local authority to coincide with the electoral cycle. Although the leader will not be a mayor, there are obvious parallels in the creation of a single figure who can be identified with the leadership of the council and decisions taken. Much of this thinking has been informed by the economic performance of European cities where those with identified leaders or mayors perform better than those with other governance arrangements. This emphasis on economic performance of places and local authorities is now emerging as a central feature of Government policy and expenditure.

The third component of governance introduced into local authorities in 2000 is that of scrutiny and regulation. This part of the local authority has a two-fold role. First, it is intended to hold the executive of the council to account through scrutiny. The best comparator for this role is the Select Committee system in Parliament. The systems and training used for those operating both systems is now undertaken together through the Centre for Public Scrutiny.

The responsibilities of the scrutiny role have been extended to include health in the Local Government Act 2003 and are due to be extended further in the current Local Government and Public Involvement in Health Bill going through Parliament. The local authority's scrutiny function is also charged with reviewing the council's performance and in some local authority constitutions it has a role in reviewing decisions which specific numbers of councillors have challenged. In some local authorities, this extends to reviewing decisions made on planning applications, although decisions cannot be made twice.

Scrutiny reviews can be undertaken at any point in the process of policy formulation, delivery, and outcome. Scrutiny committees can review any issue which has a relationship to the well-being of the local authority's area and can invite anyone or any organisation before it to give evidence or make submissions. The recommendations of the scrutiny committee can be made to the council or to the executive and although there is no requirement of either to take action on any recommendations made, the effectiveness of the scrutiny role inside the local authority is considered as part of Audit and local authority Comprehensive Performance Assessment judgements made by the Audit Commission.

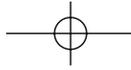
The second role for this group is that of licensing and regulation. As with other parts of the legal system, local authorities have been required to separate out quasi judicial processes from the executive. Thus, since the Local Government Act 2000<sup>7</sup>, no executive council member has been allowed to take a decision on a planning application although they and other councillors can speak to planning applications at the Planning and Licensing Committees.

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<sup>6</sup> *Strong and Prosperous Communities, The Local Government White Paper*, Cm6939-1 and Cm6939-2, October 2006, CLG.

<sup>7</sup> See Local Government Act 2000, s.13(3) and the accompanying reg.2853. The accompanying Guidance issued with the Act stated "By virtue of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, development control decisions will not be the responsibility of the Executive". (para.5.17). It also goes on to say that the Exec should also have nothing to do with the council's land interests apart from CPO situations (para.5.20).





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These contributions to the consideration of planning applications are subject to the normal Code of Conduct principles of declaration but are not excluded from the process<sup>8</sup>

. However, discussion of a planning application at a party or pre-meeting for elected members could be seen as predetermination which is not permitted. The same would also apply to meetings or phone calls with applicants or their agents that could be interpreted as potentially supporting a “bias” in the consideration of the issue when determined.

These changes in who may take a planning decision inside a local authority have not been well understood at any level and may offer grounds for challenge in specific cases.

#### **How has this influenced the consideration of planning issues within the local authority?**

The effect of separating the decision making process from other considerations of planning matters inside the local authority e.g. approval of the Local Development Framework (LDF) or the promotion of the Council’s own proposals for regeneration, have had considerable unanticipated consequences. As a result, the Local Government White Paper 2006 has recommended that this be reviewed and reversed. In addition, the changes implemented in 2000 have had the perceived effect of down grading planning inside the local authority as planning policy and the LDF process no longer seem to have a natural home inside the new system.

The planning promoter role of the executive was not clearly identified at the time when new council constitutions were being established and this has also frequently led to a failure on the part of the local authority to understand the issues created by this displacement of planning consideration as part of its business. The proposed changes in the Local Government White Paper 2006 are seen to be as much about improving the status of planning within the local authority as about any administrative failure brought about by the separation of these functions.

In addition to the separation of powers within the local authority between the council, the executive and scrutiny/regulation, there were also other key changes for local authorities that were brought about in the 2000 Act. First, each local authority now has a duty to promote economic, social and environmental well being. This power is not a general power of competence for local authorities, as it has three specific exclusions—the power to trade, to set fees and charges and to set taxation—but is very close to it and has been constructed to be strong enough to support a CPO, for example. In 2000 the Government also stated that it would be addressing these three excluded areas and this has now almost been completed. Trading Regulations were implemented following the Local Government Act 2003, fees and charges control remain but for some services there are proposals to remove central control, e.g. as in freedom to set planning fees as described in the Planning White Paper 2007. On local taxation, proposals in the recent Lyons Review<sup>9</sup> and the White Paper on waste, taxation opportunities at the local level are being proposed.

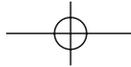
The new written constitution for the United Kingdom, as proposed in *The Governance of Britain* (2007) may enshrine the role of local government in the constitution and conclude this journey to change its constitutional status including a mandate for self determination as exists in the majority of

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<sup>8</sup> Prejudicial interests—Member Code of Conduct 2007, para.10: “When a personal interest ‘is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member’s judgement of the public interest’”. See also recent guidance from the Standards Board for England, Occasional Paper August 1, 2007, *Predisposition, predetermination or bias, and the code*, and the advice of Philip Sales Q.C., Treasury Counsel available from the Standards Board for England, [www.standardsboard.gov.uk](http://www.standardsboard.gov.uk).

<sup>9</sup> *Place Shaping: A shared ambition for the future of local government*, The Lyons Inquiry into Local Government, March 2007; *The Energy White Paper Meeting the Energy Challenge*, 2007 DEBR.





European states. The aporia of local legislation in England, which does not yet have an analogous status to that of Scotland, Wales and Northern Ireland, has yet to be addressed (through an English Parliament?) and remains an unfinished element of the constitutional apparatus. However, experience of the policy fugue between the four constituent administrations of the United Kingdom suggests that this constitutional gap will be closed at some point in the future.

### **The emergent local public sector architecture and its implications**

The Local Government Act 2000 also placed a duty on all local authorities to prepare a Community Strategy, which post the Local Government White Paper 2006, is now called the Sustainable Community Strategy. Although the Government has issued guidance on the role and content of Community Strategies following the 2000 Act,<sup>10</sup> there has been no “approval” or testing processes for Community Strategies and their form has been determined at the local level.

Each local authority now has a Sustainable Community Strategy (SCS) although they have not been recognised as having a significant role. However, Sustainable Community Strategies together with Local Strategic Partnerships, also introduced in 2000 although on a non-statutory basis, have been emerging as the main “holders” of local authority objectives, policies and investment programmes. These roles are due to increase further in the future in an emergent restructuring of the local public sector.

Public sector reform, which initially focused on joining up public services around people, has a number of drivers. First, Government has expressed concern about the effectiveness of expenditure to achieve the ends initially identified through Polity Action Teams, and then through subsequent Spending Reviews in 2000, 2002, 2004 (which incorporated the Gershon Efficiency requirements) and 2007.

The Spending Reviews are delivery contracts between individual Government Departments and the Treasury and are set out as specific targets to be met, whether these are to be delivered directly through Government Departments or through the means of agency including local government. Pressure to achieve these targets has made ministers increasingly interested in “handcuff”, “passporting” or “sweetheart” funding arrangements to ensure that local authorities, amongst others, deliver their spending review targets. However, these approaches, although seen to have some success, such as in pupil achievement at different key stages, have had other consequences. Allegedly, there have been between 7 and 24 targets for teenage pregnancy across different government departments and agencies. Many of the targets are standardised and do not relate to local priorities—the police, for example, may have targets for reducing business burglaries where local priorities would suggest that car crime should receive more attention. There have also been criticisms of the wastefulness of holding public funding within many individual budgets, each with their own overheads for delivery.

Targets for the coming Spending Review in Autumn 2007 are likely to be more mutually reinforcing than in previous years, to ensure Government Departments work together more to improve effective delivery around people and places.

This joined up approach to policy and expenditure has also had a new expression at local level through Local Area Agreements (LAAs). From 2008, LAAs will be developed into clusters called Multi Area Agreements (MAAs) covering sub-regions comprising of cities or more rural areas<sup>11</sup>.

<sup>10</sup> *Preparing Community Strategies: government guidance to local authorities*, 2001 [www.communities.gov.uk](http://www.communities.gov.uk).

<sup>11</sup> *Review of sub-national economic development and regeneration*, 2007 HM Treasury.





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In their current format, LAAs apply to upper tier authorities—counties, metropolitan and unitary authorities and London Boroughs and currently include approximately 40 per cent of local authority expenditure, covering primarily people based services for children and vulnerable adults. In some local authorities some 70–80 per cent of expenditure on children is covered by the LAA.

In the coming six years, LAAs are to be expanded through two three-year cycles. These will extend LAAs to include a far greater proportion of the local authority's budget and include capital programmes—for regeneration, highways, environmental management and housing. The new Planning and Housing Delivery Grant, which will be introduced from 2008,<sup>12</sup> is expected to be part of the newly focused LAA.

The LAA will also include Primary Care Trust (PCT) expenditure and further development of the LAA structure can be expected to take in other central government expenditure applied locally in due course. MAAs may be the next example of this for funding on regeneration and economic development. The current Sustainable Communities Bill, which is Opposition promoted and Government supported, will enable any locality to know how much government funding is being spent in their area.

This expanded LAA will be managed by the Local Strategic Partnership (LSP), which will be translated into a legal entity as part of the current Local Government and Public Involvement in Health Bill. The LSP will now be within the management of the local authority, which is described as the convenor. The LSP will have the responsibility for managing the development of the Sustainable Community Strategy, which in turn forms the priorities for expenditure in the Local Area Agreement.<sup>13</sup>

### **How does the LDF fit with the new local governance architecture?**

The LDF is the spatial expression of the Sustainable Community Strategy, and the social, environmental and economic infrastructure required by the local authority area, as set out through these processes, will be delivered through development control—or development management as it is now increasingly called.

The establishment of any priorities for the SCS and LDF Core Strategy must now be set within a common evidence base which needs to inform both processes and which has to be brought forward prior to submission of the Core Strategy. Further evidence cannot be produced by either side subsequently—a position that has recently been confirmed by PINS<sup>14</sup>.

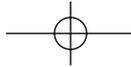
The Local Government White Paper has proposed that the Statement of Community Involvement (SCI) will no longer be examined as part of the process of adopting the LDF. However, it is a requirement that the consultation used in the LDF process is examined as part of the Comprehensive Area Assessment process to be implemented by the Audit Commission in 2009 that will replace the current Comprehensive Performance Assessment process. This means that all consultation undertaken within the local authority can be used as part of the process of preparing the LDF. At the same time, the programming of multiple consultation exercises by different local authority departments at the same time will be discouraged.

<sup>12</sup> *Homes for the future: more affordable, more sustainable*, Housing Green Paper, 2007. CLG.

<sup>13</sup> Some indication of what may be anticipated for LSPs is contained in *Local Strategic Partnerships Shaping the Future A consultation paper*, 2005, CLG.

<sup>14</sup> *Local Development Frameworks: Lessons learnt examining Development Plan Documents*, The Planning Inspectorate, June 2007.





The role of the LDF as the spatial expression of the SCS has been confirmed in numerous Government statements<sup>15</sup> although this relationship is not well understood at the local level. The LDF is also now seen as the major delivery vehicle for investment within the local authority area whether supported through the local authority or PCT capital programmes or generated through planning gain or other tariff systems. The 2007 Budget (Ch.3) sets out the intention to require all local authorities to establish an Investment Plan and delivery programme as part of this role and a recent report has recommended that this be supported by a publicly available register of planning gain to be requested and subsequently delivered which is audited annually.

### **What does this mean for planning?**

A recent study, *Shaping and Delivering Tomorrow's Places*<sup>16</sup> identified the ways in which some local authorities are using the new system to considerable effect in evidencing their requirement for development and supporting facilities which they are translating into delivery both through the capital programmes of local public agencies and also through the identification of specific planning gain requirements. The recent sub-national review of economic development<sup>17</sup> and regeneration has also identified the need for Regional Infrastructure Frameworks (RIFs) which will start to perform this combined role at regional level.

However, this study also demonstrated that a view of planning which is set within a context of planning legislation only is now no longer fit for purpose. A wider understanding of the interconnecting components of the local public sector as an overarching framework is becoming fundamental to an understanding of how the planning system operates at local and, increasingly, regional level.

The implications of a more joined up public sector for the planning process are becoming increasingly clear. Planning is set to be the new delivery arm of local public sector investment and as such it will have a leading role. As local authority leadership moves to being settled in a new four-year post, then the leader's role at promoting the effective place-shaping and investment will grow. The new Code of Conduct for Councillors suggests that those councillors who are taking the "promoter" role for local schemes, whether by the council or by a mix of partners, will need to declare these interests although they may not be prejudicial.

These changes are also significant for planners in all sectors. There is little understanding of the new role that planning is intended to play in the joined-up local public sector and many local authority planners understand the new system by placing it in the context of what has gone before—in a kind of retrofitting exercise. Many local authority planners have also become isolated from the rest of the local authority, know little about LAAs, and have scant regard for the Sustainable Community Strategy, the Local Strategic Partnership, or other consultation activity. It is in these cases, that the failure of the LDF Core Strategy is more likely to occur whilst early involvement of the Chief Executive in the LDF process has been found to be associated with success<sup>18</sup>.

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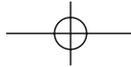
<sup>15</sup> *Planning Together*, 2007 CLG; *Place Matters*, 2007 CLG; *Developing the future arrangements for Local Area Agreements*, CLG 2007 (note the relevant extracts of these documents and others are being put together in a "reader" for ease of access as part of the Planning Advisory Service's forthcoming learning module on spatial planning being prepared by the author.

<sup>16</sup> *Shaping and Delivering Tomorrow's Places Effective Practice in Spatial Planning*, 2007, RTPI.

<sup>17</sup> See above fn.16.

<sup>18</sup> Finding of the Spatial Plans in Practice Project commissioned by CLG.





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Another way of seeing this new relationship of planning within the wider local public sector in contrast with a more traditional pre-2004 view can be illustrated using the definition of spatial planning in PPS1 as seen below.

There are also implications for planners in other sectors. For those advising land owners or developers, there is an increasing need to understand the necessity of early engagement in the process, even if no immediate development is proposed. This should be regarded as part of any company's risk mitigation strategy.

### DEFINING SPATIAL PLANNING—HOW DO YOU SEE IT?<sup>19</sup>

*2004 Act defines spatial planning as:*

“Spatial planning goes beyond traditional land use planning to bring together and integrate policies for the development and use of land with other policies and programmes which influence the nature of places and how they function.” (PPS1)

*What does this mean?*

“Spatial planning goes **beyond** traditional land use planning to **bring together and integrate** policies for the development and use of land with **other policies and programmes** which **influence the nature of places and how they function.**”

*What does this mean to planners?*

“Spatial planning goes **beyond traditional land use planning** to bring together and integrate **policies for the development and use of land** with other policies and programmes which influence the nature of places and how they function.”

Where development is proposed, it is more likely to be seen as part of a wider local public investment programme and understanding of the local authority's LAA contract with government (which represents their delivery programme in three-year cycles) could provide an early means of developing joint proposals or understanding likely planning gain requirements. The SCS or LAA may also present opportunities for development or investment which might otherwise be overlooked. Engaging with the Chief Executive and Leader at an early stage may also be important if joint development is likely in order to engage them in their promoter roles. The recent Housing Green Paper<sup>20</sup> also provides more opportunities for the creation of joint companies and new local delivery vehicles to promote development. Increasingly, local delivery activities are allied to the local planning system but are not totally dependent on it. Early engagement of the local authority on more major developments will allow it to fulfil its place-shaping role and joint promotion of development. The public sector planning process will need to pay a much greater regard to delivery than hitherto and planners advising the private sector will also need to be alert to the implications of these changes.

### Conclusions

This review of the key changes in local authority decision making, together with some indication of how they are expected to develop into the future has identified some of the key issues for the

<sup>19</sup> From Shaping and Delivering Tomorrow's Places, Effective Practice in Spatial Planning, RTPI 2007

<sup>20</sup> See above fn.18 .



operation of the planning system. Much of the reformed system of local governance is not generally understood by the planning officers at the local level and much of the initial failure of LDFs as they are examined against the Tests of Soundness has demonstrated this lack of understanding.

In the future, the growing formal relationship between the Sustainable Community Strategy and the LDF suggests that those engaged in the planning system, including those who test decisions made through it, will need to pay greater attention to these issues than hitherto.

Those with interests in land will need to engage earlier in processes and also they will need to be alert to the requirements to promote economic, environmental and social well-being as set out in the local authority's Sustainable Community Strategy, as they can be expected to be translated into planning gain requirements in any planning application process. The SCS may also identify areas which will receive investment or which are at risk through decline and which might also receive additional attention—either through direct investment or through planning gain requirements.

Where local authorities need to take action to promote the well being of the area, the executive may become a more identifiable scheme promoter and begin to use its own resources and assets in a more proactive way.

The requirements for each local authority to prepare an implementation or investment programme have yet to be finally established but these may be important processes which will serve to structure development in the future including having a much closer relationship with development management. .

When considering when and who will be involved in local decision making, the Local Strategic Partnerships and those managing the implementation of the Local Area Agreement may need to be included in those needing to be informed of the arguments for a development.

Although the ways in which planning policy and decisions are made in local authorities may appear to be similar to those which existed before 2000, they are now substantially different. The relationship between planning and the local public sector context in which it operates is growing increasingly into a more unified and hybrid process. Planning can no longer be seen as a separate activity and failure to take account of its changing operational context is likely both to reduce the maximisation of development opportunities and to increase risk to successful outcomes. Seeing planning as part of the process of integrating and delivering local outcomes may provide a more positive role for planning in the future.