

Planning and the People Problem (2)

Robert Evans

Introduction

This is one of two papers at this year's conference that explore aspects of democratic accountability and public participation within the planning system. The issues are topical: the Government has recently published a new PPS12 (June 4, 2008) with the express intent of better connecting our planning system and local communities; and a White Paper, *Communities in control: real people, real power* (July 9, 2008). Launching the new PPS, Caroline Flint, Minister for Housing, explained that the Government aims to deliver:

“...A system which gives local communities a fair chance to speak up and have their say. Including the many people who aren't currently engaged in the planning process, who may not appreciate the jobs and opportunities that may come with development. Including the many people who are in need of affordable housing, who are stuck on waiting lists - who is speaking up for them?”

“[The PPS changes] are about helping to create a fairer, more streamlined, more transparent process. These changes cut out some of the unnecessary hoops that needed to be jumped. Not because we want to railroad plans through, but because we want to make sure that common sense is always the guiding principle.”

The Minister also referred to the current Killian Pretty Review of the planning system, stating that:

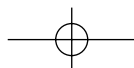
“...I hope the current end-to-end review we're undertaking will help identify more of these very practical changes. Helping make the system much more accessible for the people and businesses frustrated by the way things work now.”

Killian Pretty is the latest in a long line of such reviews, aimed at delivering a faster, more responsive system. The vast majority of people who use the system (myself included) would strongly support the principles of “cutting out of unnecessary hoops” and the delivery of a “more streamlined” system. But measures to achieve these objectives tend to become controversial and highlight tensions with other objectives stated by the Minister: namely, a more transparent, fairer, more accessible system. The Minister presents these two sets of objectives as entirely compatible, happy bed fellows. Not everyone sees it the same way. Many commentators have pointed to an inevitable tension between a desire to speed up the system and the desire for full(er) public participation.

The “people problem” has characterised much of the planning reform over the last 10 years. In 2001, Government consultation papers¹ similarly criticised the planning system for its complexity, lack of speed, unpredictability and failure to engage with communities and proposed a new system for plan-making including greater community involvement in the process.

This paper discusses three linked aspects of the “people problem”. First, it reviews the programme of community consultation and engagement on one particular, high profile regeneration scheme,

¹ Including the Green Paper, *Planning: Delivering a Fundamental Change*. See, for example, para.2.5.



the King's Cross Central project in Central London, led by Argent and its development partners. The project's "journey" through the planning system matches the recent period of planning reform (2001–2008) and the paper evaluates some of the benefits achieved, draw-backs encountered and lessons learnt.

Secondly, the paper explores linked issues around member (councillor) involvement in major planning applications. It argues that if major planning applications are to be determined locally by elected members, then their early and structured involvement is essential. It considers how Councillor involvement can operate in a fair and transparent way, for example as far as third parties are concerned, to avoid any perception that deals are done in (what used to be) smoke-filled rooms.

Thirdly, the paper discusses member training.

Again, the Housing Minister, Caroline Flint, has touched upon these issues recently. In evidence² to the Communities and Local Government Select Committee of the House of Commons, the Minister stressed in particular the importance of elected council members making decisions from a "lay" perspective:

"I think what is important here again is the relationship of the professionals within the organisation to those lay members and councillors, and the advice they give to them, and the way in which that advice is given. Then I think the particular, if you like, role that an elected person brings to that function, which is not to be the professional, I think it is somewhat different."

"...There is obviously a basic sense of what your role is and your legal role and quasi legal role, but ultimately, on a day-to-day basis, when you are faced with different applications, I think that is where you need the good advice from within your local authority from good staff, and then you have to make a judgment, just as Ministers have to make a judgment."

Within an effective planning system, such judgments should represent high quality decisions, about high quality schemes. This paper considers, from the author's experience, the extent to which community engagement and consultation and member involvement on major applications (can best) contribute to achieving those objectives.

The paper draws upon background research by Harry Spurr of Lovells and I would like to express my thanks for his kind assistance.

Community Engagement and Consultation

It is now reasonably common for developers, such as Argent, to consult and engage with local communities on a pre-application basis, to inform their major development proposals. Such consultation and engagement is regarded as good practice and many local planning authorities expect it, for example through their Statement of Community Involvement (SCI).

There is, however, no legal requirement for such consultation or engagement. Nor is it a key feature of national planning policy. PPS1 (2005) includes a section on "community involvement" but its focus is on the involvement of communities in plan-making; encouraging pre-application discussions between local authorities and developers; and how local authorities should consult communities, once an application is made.

² 19 May 2008. <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmcomloc/uc517-iv/uc51702.htm> [Accessed 14/10/2008]

Paragraph 11 states that community involvement is most effective where:

“...there is early engagement of all the stakeholders in the process of plan making and bringing forward development proposals. This helps to identify issues and problems at an early stage and allows dialogue and discussion of the options to take place before proposals are too far advanced.”

Paragraphs 40–44 set out criteria for effective community involvement, within the plan-making process:

“...Local communities should be given the opportunity to participate fully in the process for drawing up specific plans or policies and to be consulted on proposals for development.”

“Effective community involvement requires an approach which:

- tells communities about emerging policies and proposals in good time;
- enables communities to put forward ideas and suggestions and participate in developing proposals and options. It is not sufficient to invite them to simply comment once these have been worked-up;
- consults on formal proposals;
- ensures that consultation takes place in locations that are widely accessible;
- provides and seeks feedback.”

“...Guidance on Statements of Community Involvement, together with details of the Government’s overall approach to community involvement, is set out in more detail in “Community Involvement in Planning: The Government’s Objectives.”

Community Involvement in Planning: The Government’s Objectives was published in 2004. It provided guidance to local planning authorities on SCIs:

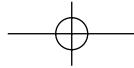
“We would expect the SCI to encourage developers to undertake pre-application discussions and early community consultation on significant applications, but the SCI cannot prescribe that this is done.

A local authority could not refuse to accept a valid application because it disagrees with the way in which a developer has consulted the community, but failure by the developer to consult could lead to objections being made which could be material to the determination. The aim of the process should be to encourage discussion before a formal application is made and therefore to avoid unnecessary objections being made at a later stage.

There is a tension between the need to meet best value targets for handling major planning applications, while allowing for community involvement. An effective pre-application process is the best way to resolve these tensions.” (p.14)

King’s Cross Central

PPS1, paras 40–44 and “Community Involvement in Planning: The Government’s Objectives” neatly capture the logic that underpinned an extensive programme of community consultation and engagement on the King’s Cross Central project, which involves the ongoing comprehensive redevelopment of some 67 acres of former railway land in Camden (64.5 acres) and Islington (2.5 acres).



Five years on, that logic looks a little naïve. As I explain below, the community consultation and engagement at King's Cross has contributed to local, plan-led decision-making dealing successfully with the complex regeneration of a nationally significant part of London. But it has not avoided unnecessary objections being made at a later stage; nor has it saved any time.

Background

There has been a planning policy impetus for large-scale development on a strategic basis at the King's Cross "railway lands" for over 30 years. Despite this, major development and regeneration failed to happen, until 2007, in part for economic reasons but also because of uncertainty over the alignment and delivery of transport projects.

The brief history is as follows. British Rail submitted the first scheme before the 1960s but this was not progressed. In 1987, four developers were invited to submit plans to comply with requirements identified by British Rail. This eventually led to an outline planning application for comprehensive development in April 1989. However, this planning application faced substantial opposition and was soon withdrawn. A second application was made in October 1989, providing further/revised proposals. Meanwhile, local groups prepared and submitted their own plans.

Protracted negotiations over the content of the scheme for the former railway lands then continued. In 1992 Camden Council resolved that it was "minded to grant" planning permission for revised proposals, on certain conditions. However, by that time the recession was beginning to bite. The planning application was eventually withdrawn, in 1994, in the face of the poor economic conditions and a Government decision to change the Channel Tunnel Rail Link (CTRL) scheme in favour of the one we see (built) today. London and Continental Railways (LCR) was awarded the contract to deliver the CTRL in 1996. The CTRL Act was passed later that year. In 2000, LCR and Exel selected Argent to be their partner for the redevelopment of the King's Cross railway lands. Works started on Section 2 of the CTRL, into St Pancras International, the following year (July 2001).

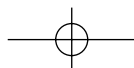
Against this background, Argent and the principal local planning authority, Camden, carried out extensive pre-application consultation and engagement between 2001 and 2004, leading up to the submission of comprehensive planning, listed building and conservation area consent applications in May 2004. Revised proposals were submitted in September 2005, following further consultation by the local planning authority. Planning, listed building and conservation consents were granted in December 2006. Development commenced in June 2007.

Pre-Application Consultation

The initial pre-application consultation revolved around three documents, "Principles for a Human City", "Parameters for Regeneration" and "A Framework for Regeneration" published in July 2001, January 2002 and September 2002 respectively.

"Principles for a Human City" (July 2001) stated an objective to "devise and then deliver over the next 15 or so years, an exciting and successful mixed use development; one that will shape a dense, vibrant and distinctive quarter, bring local benefits and make a lasting contribution to London." It set out 10 principles which, it was suggested, should guide the development and regeneration. The ten principles codified and amplified our development objectives for King's Cross and provided the basis to test emerging ideas.

"Parameters for Regeneration" (January 2002) provided information about, and commented upon, the site conditions and emerging policy aspirations. Following some 18 months of research, various



parameters were identified to inform future development proposals and contribute positively towards Camden's ongoing review of the planning policies and planning brief for the site.

"A Framework for Regeneration" (September 2002) set out initial ideas and opportunities for King's Cross. It described an emerging framework of new public routes and places, presenting a range of development ideas for each part of the proposed framework. Its purpose was to attract comment. The document:

- Set out the scale of opportunity at King's Cross and its major challenge—a fragmented and disconnected city;
- Described and presented a framework of new public routes and spaces which we believed could help join up the city; integrate King's Cross with existing neighbourhoods and communities in Camden and Islington; and provide the template, over time, for the introduction of new buildings, land uses and activities;
- Included a range of development ideas and emerging thinking about sustainable development, heat and power, water resources, transport, social and economic integration and the draft scope for the Environment Impact Assessment; and
- Asked questions, at regular intervals.

The three documents were prepared and published (10,000 copies of "Framework" were made available) against a backdrop of informal discussion and consultation. In particular, we worked with a company called FLUID (name of local company), during the early part of 2002, to get the views of children and young people. Some 200 young people from four schools and three youth clubs/groups, in Camden and Islington, undertook "mind map" and "hot spot" exercises, completed canvas cards, took part in daily diary, camera and video projects and interviewed local stakeholders.

We built on this experience, to consult as many people as possible about the "Framework" proposals and ideas. We used a range of techniques to encourage people to respond. For example, we ran "vox pop" video projects to capture initial reactions and compiled short films from the results. We held workshop events with external contributors and chairpersons and we visited schools, markets, festivals, community centres and other public buildings with a roadshow. The results were encouraging. By mid March 2003, we had received over 110,000 words of comment, criticism and encouragement via the vox pops, workshops and written representations (the latter via the web, email and "hard copy" returns to a freepost address).

By June 2003, we had talked with, presented and listened to, over 4,000 people, including representatives of over 150 community, business and other organisations. We also ran some of the events described above for members of our professional teams, comprising architects, planners, engineers, lawyers and other consultants.

"Framework Findings" (June 2003) presented an interim analysis of the consultation findings. The analysis was undertaken by FLUID. Steve McAdam of FLUID wrote in the Foreword:

"...we feel [it] has been an extensive, deep and successful process of dialogue... the painful experiences of prior regeneration projects at King's Cross has produced a mature set of community representatives and organisations, many of whom take their responsibilities for helping to shape and deliver a very special part of London very seriously... Argent... has put consultation at the centre of its project and evidently takes seriously both the process and its findings."

Some people were highly critical in their responses; but many more were supportive of the Framework proposals and ideas. At the same time, they raised questions, queries, concerns and doubts; and/or highlighted areas where the proposals could go further. The key issues included: delivery and its importance; making King's Cross clean and safe; community access to facilities and services; the character of the new development; and the future of historic buildings and structures, in particular the listed gas holders standing/stored on site.

I particularly recall the apprehension that a "cappuccino culture" would mean that "the real character of the area is not recognised" and the idea that re-erection of the gas holder structures "could have the Bilbao effect for King's Cross". Some people, fed up with the blight and battles, asked simply for "a commitment please...to get on with it". Others highlighted the importance of vision, leadership, momentum and long-term thinking:

"...avoid trying to keep everyone happy; this needs clear vision and leadership"

"...take a long-term view rather than the usual short-termism"

"...prepare a good plan and stick to it with proper supervision"

"it seems it will take forever; could it lose momentum or be diluted"

The consultation also flagged up more immediate concerns:

"York Way needs to be pedestrian friendly now"

"What happens in the meantime?"

Informing the Proposals

The depth and sophistication of the consultation and engagement results impressed and probably surprised our professional team. It led to some important discussions and ideas which helped shape the emerging proposals. Of course, there were other influences, but the consultation findings were important. During 2001 and 2002 and leading up to the "Framework" document, the emerging scheme evolved (changed) significantly, for example in relation to:

- The townscape and grain of the development south the Regent's Canal and its relationship with retained historic buildings;
- The retention and refurbishment of the listed Great Northern Hotel;
- The layout, geometry and alignment of new buildings to the north of the Regent's Canal and the historic Goods Yard buildings;
- The way the master plan sought to respond to the Channel Tunnel Rail Link embankment and the existing York Way; and
- The accommodation of a principal park at the centre of the scheme.

Thereafter, the later stages of consultation and the "Framework Findings" informed the outline planning application scheme, submitted in May 2004. There were significant changes between the "Framework" document scheme and the applications. For example, the application scheme retained (and reused) the listed gas holders and many more of the historic Goods Yard buildings located to the north of the Regent's Canal. It also provided for 75,765sq m of community, health, education and cultural facilities and up to 31,550sq m of assembly and leisure uses. We prepared and submitted an Implementation Strategy to address long-term delivery and a Public Realm Strategy to respond to aspirations for world class public realm. One telling observation called for "a real commitment to

creating [sic] new spaces unlike those we already have in London". Another made the link between uses and safety: "uses must support levels of footfall necessary for safety". Overall, "safe" and "clean" topped the poll, being the clear leaders in FLUID's word count analysis.

Camden Consultation

During this period (2001–2004), Camden was also consulting the same communities and groups about new Unitary Development Plan (UDP) policies and a planning brief for the "King's Cross Opportunity Area" (the latter prepared jointly with Islington).

Camden's outreach exercises aimed to talk to "100 groups", including schools, black and ethnic minority groups and non-English speaking groups. Over 40 sessions were held and the Council supported meetings with an interpreter, translation services and crèche facilities.

In late 2002, Camden set up the King's Cross Development Forum. The Forum became the central focus for Camden community consultation on the applications. By 2004, the group had some 160 member representatives of local communities and community groups.

Camden also worked with the King's Cross Community Development Trust to train black and ethnic minority community representatives as facilitators for community consultation. The programme also included work with youth groups and youth services, local schools, groups supporting the older generation and the Borough mobility forum.

Once the applications were submitted, Camden's consultation programme included:

- A mail out to 30,000 households and businesses within 1km of the application sites, across Camden and Islington;
- Poster campaigns in community centres, local shops, businesses and bus shelters across Camden and Islington;
- Flyer campaign targeting commuters using King's Cross and St Pancras stations;
- Static exhibitions at the Town Halls and road show exhibitions at local public buildings, public spaces and festivals; and
- Community group representatives working through the King's Cross Development Forum.

Camden engaged Planning Aid for London (PAL) to support the process. PAL held workshops and events for the Forum and helped it formulate its representations to Camden. PAL also prepared workshops for a citizens' jury ("Camden Talks").

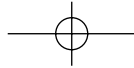
During the course of 2004, Camden estimate that its officers met with over 3000 people in over 300 meetings, of various kinds. This significant programme helped yield some 268 written representations on the applications, from a wide range of individuals and organisations.

Camden Consultation on the Scheme Revisions

In September 2005, we submitted revised applications to Camden and Islington. The revisions reflected discussions with Camden, Islington and statutory consultees; further work by the design team and written representations received by those authorities during formal consultation.

The revisions addressed a number of points raised in Camden's consultation:

- the removal of some pavilion buildings and revised landscape proposals including additional greenspace;



- reduced maximum building heights in some development zones;
- changes to access and circulation within the scheme, with general traffic removed from a number of areas to increase pedestrian priority;
- additional detail about the re-use of historic buildings and the provision of schools, sports and leisure facilities, affordable housing and other community benefits; and
- energy proposals for a site-wide combined heat and power (CHP) system and renewables including wind turbines, photovoltaics, solar water heating and ground source heat pumps.

Camden and Islington then went back out to consultation, seeking views on the scheme revisions. The second round of consultation included 27,000 consultation letters; eight further workshops, again supported by Planning Aid for London; and meetings with an Accessibility Forum. Camden helped train a further 15 black and ethnic minority community facilitators and attended local meetings on request. Some 177 further written representations were received, again from a wide range of individuals and organisations.

Determination and Implementation

In March 2006 Camden resolved to grant planning permission for the Main Site and the Triangle Site, subject to (inter alia) the completion of s.106 Agreements.

Planning permission for the Main Site was granted in December 2006, following the completion of the s.106 Agreement and a further committee resolution. In February 2007, the King's Cross Railway Lands Group launched a legal challenge to Camden's decision (judicial review) and this was heard and dismissed in May 2007. Enabling works then began immediately (June 2007). The first building works commenced in May 2008 with the first occupiers programmed to move in during 2011. The scheme may be complete by 2020.

On the Triangle Site, Islington initially resolved to grant planning permission (April 2006) but its West Area Planning Committee subsequently refused on affordable housing and PPS3 grounds (July 2007). This was against officer and Counsel advice but very definitely the outcome sought in vocal representations by those who had launched the failed judicial review of the Main Site permission. I have been to many planning committee meetings, but Islington West Area's handling of the Triangle Site was particularly surreal: I saw plenty of parochial politics but very little regard (if any) to consistency in decision making or indeed the Development Plan. The resulting refusal led to our lodging of two appeals. A local public inquiry was held earlier this year. On July 22, 2008 the Secretary of State accepted the recommendation of her Inspector to allow the appeals and granted outline planning permission.

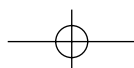
In allowing the appeals, the Secretary of State agreed with the Inspector that Argent and its partners:

“...have gone to considerable efforts to discuss the appropriate housing mix with the Councils and the local communities, and that they have produced a range of provision that, especially with regard to the intermediate housing sector, fully reflects the principles advanced in PPS3 and its daughter document *Delivering Affordable Housing*.”³

Evaluating the Consultation Outcomes

I referred earlier to the 2004 document “Community Involvement in Planning: The Government's Objectives”. This made two principal arguments for early consultation:

³ Paragraph 19 of the decision letter dated July 22, 2008. Appeal references APP/V5570/A/07/2051902 and APP/X5210/A/07/2051898.



- consultation provides a means to avoid unnecessary objections at a later stage; and
- such “front loading” enables applications to be determined in a more timely fashion.

Having regard to (i) the scale of the King’s Cross Central development and (ii) the extent of public consultation undertaken, the project might be viewed as a useful barometer of the extent to which these arguments are borne out in practice—a “test case” of sorts.

There is no evidence that the extensive consultation undertaken at King’s Cross produced either benefit. The applications still attracted vociferous objections, notably from the King’s Cross Railway Lands Group and others committed to a very different development outcome from the start. Other objections and objectors only emerged once the applications had been formally submitted.

Secondly, I cannot say that the pre-application process saved time. It still took more than two and a half years from making an application to the formal grant of planning permission on the Main Site. That was followed by a judicial review (which occupied some six months) and then a public local inquiry on the Triangle Site. The Secretary of State’s welcome decision to grant permission for the Triangle Site marked four years and two months since the applications were first submitted.

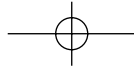
If anything, there is a reasonable argument that the considerable time spent consulting and refining the scheme created a “window” for committed opponents to better organise themselves, leading to the time delays experienced subsequently.

On projects like King’s Cross, I suspect there will always be those who push it to the last, whatever steps you have taken to reach a broad consensus. In that context, it is interesting to contrast the criticisms of the local decision-making process levelled by representatives of the Railway Lands Group (and associated groups), with their promotion of an inquiry or High Court hearing, as a fairer or more appropriate mechanism for their case to be heard, even if the adjudicator found against them on each occasion. There is perhaps a broader point here about the need to strengthen the standing of local decision making. It’s a point I return to below in relation to member training.

It is also inevitable that perceptions of the consultation reflect perceptions of the scheme and its acceptability. The consultation programme was extensive, expensive and absorbed a lot of resources. It was meaningful and as such won some plaudits and awards. But those outside the broad consensus achieved remain highly critical. Their alternative view is that the consultation went through the motions and was widely experienced as manipulative, on the basis that we/Camden did not defer to their strong objections. Of course, consultation can itself raise expectations that (all) the views stated will be acted upon, leading to disappointment and antagonism in some quarters.

These negative outcomes must be set beside other significant benefits. Many people took a great deal of time and trouble to take part in the process, and their responses demonstrated depth and sophistication. The experience significantly improved our knowledge of the site, its surroundings and communities and contributed positively to the evolution of the scheme. It also informed and improved the Environmental Impact Assessment (EIA), particularly with regard to socio-economic issues. The process was informative and (generally) enjoyable.

Importantly, the consultation process helped build confidence within the planning and political structures of Camden and the Greater London Authority (GLA) and within key consultees, such as English Heritage, CABE and the London Wildlife Trust. For example, the project recently won the Mayor of London’s Award for Planning Excellence. The awards are run jointly by the GLA, RTPI and London First. This followed CABE awards in 2002 and 2003:



“...work to date has pulled off the difficult task of setting a clear design vision... while taking local communities and other key consultees with them”

“The Argent Group has shown real commitment to public consultation and community involvement, especially with young people.”

The “front loading” also ensured that the representations received by Camden generally demonstrated a high level of understanding, despite the undoubted complexity of the applications. This was particularly true of representations that objected to that complexity! As a promoter, it is hard to see better informed objections as a good thing, but they are; and overall it was very important to secure a high quality, local decision. The consultation process played its part, therefore, in demonstrating how plan-led, local decision-making can deal successfully with projects like King’s Cross.

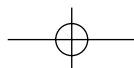
The King’s Cross experience also suggests some wider lessons. First, despite a clear focus on reaching “hard to reach” groups—such as black and ethnic minorities, older people and young people—the process can become dominated by a small group of determined objectors and the other “usual suspects”. The long timescales of major projects tend to exacerbate this problem. Over time, the most experienced and vocal campaigners tend to project their (strong) views as those of “the community” and others are turned off or drift away. This is a particular risk with formal, set-piece consultation structures. The more incidental, low-key and informal mechanisms, including many hundreds of one-to-one discussions (if need be), are much better at drawing out the plurality and richness of views, but they sound less impressive when you write up the process afterwards.

Secondly, it can be very difficult to engage businesses. The structures and networks to facilitate engagement may not exist and many businesses do not see “getting involved” as a priority, unless proposals directly affect their premises. Equally, consultation programmes tend to be geared towards the residential constituency and its concerns. The result is that the business voice, broadly “for” inward investment and economic growth, can be under-represented or just go missing. At King’s Cross, a local Business Forum was established, to give local firms a voice and promote local business-to-business networking and marketing.

Thirdly, it is important not to think in terms of “the community”. Rather, in places such as King’s Cross (and possibly everywhere), there are many communities, each with different aspirations and perspectives. We developed a “martini” principle (any time, any place, anywhere) and learnt that different tools and techniques work for different groups in different places. For example, some groups and individuals called for sophisticated computer generated images (CGIs); others reacted unfavourably to the detail which, they suggested, implied that everything had already been designed and decided. Be prepared to try lots of different techniques and events, in the knowledge that some will work spectacularly well; and others will be a resounding flop.

Fourthly, there is a danger of “consultation fatigue” on these long-running projects. We began to hear this complaint on King’s Cross, in part because Camden LBC and ourselves duplicated effort. We carried out similar or over-lapping consultation, talking to the same groups about essentially the same things, at various stages of the project.

On such major schemes, there must be merit in scheme promoters and local planning authorities integrating their consultation, to minimise duplication. The parties could jointly commission consultation. This could be wrapped up as part of extended planning performance agreements and could allow both parties to draw upon the same “core” data and findings and minimise some of the concerns surrounding “consultation fatigue”. PPS12 advocates local planning authorities and



others working together in precisely this way.⁴ There would, of course, be a need for sensitivity when a local planning authority and developer integrated their consultation in this way: it would be important to avoid the perception that the two parties are “in bed” together. Difficult, perhaps, but not impossible.

A more integrated approach could also help to involve and engage those who must ultimately make an informed decision: committee members.

The extent of community engagement and consultation on projects like King’s Cross highlights the need for member involvement to become more similarly “front loaded”, especially in strategic schemes. Scheme promoters are using the long gestation of major projects to consult widely on their plans, with a broad range of stakeholders. It must be logical to (more) fully involve and inform councillors as part of that process. Otherwise there is a risk that the decision-makers are put at a disadvantage.

As I explain below, such member involvement should be encouraged and can operate in a fair and transparent way, to avoid any perception of “backroom deals”. The potential benefits to applicants, boroughs and communities are greater certainty and clarity.

Member Involvement in Major Planning Applications

Ten years on from the Third Report of the Committee on Standards in Public Life,⁵ the name of its Chairman—Lord Nolan—crops up in almost any discussion about the way Council members handle planning applications.

The Committee’s Report found a lack of clarity on standards of conduct and proposed a new Code of Conduct and better conflict practices. Perhaps less well known, it also recommended that training should take place for members on planning procedures and law. I shall return to the topic of member training later.

The Committee’s recommendations informed the July 1998 White Paper, *Modern local government: in touch with the people*, which in turn led to the Local Government Act of 2000. The Act made provision for codes of conduct; standards committees; a Standards Board; monitoring officers; adjudication panels; and the registration of various interests.

I have experienced a number of different interpretations of the “Nolan rules”. They cannot all be right and that concerns me.

The 1997 Report makes interesting reading. The proposed Code of Conduct did include a rule that members and officers should avoid indicating to the applicant or other parties the likely decision on any application. Other suggestions however—for example that members should be excluded from pre-application discussions, prevented from participation unaccompanied by officers and required to register in writing all conversations about the application—were considered and rejected because, *inter alia*, it would be both undemocratic and impractical.

Lord Nolan recognised that:

⁴ For example paras 4.23 and 4.35.

⁵ Published July 1997.

“The planning process puts elected councillors into the position of taking decisions within a legal framework but also being required to exercise their representative role on behalf of their constituents.”

But the notion that members should behave as if they were performing a quasi-judicial function akin to judges or planning inspectors was rejected. It failed to recognise the inherently political nature of the role.

Many of Lord Nolan’s recommendations were accepted and implemented; others were not. Since then, there have been a number of judicial review cases which have turned on the conduct of members in the “position” described by Lord Nolan (above). Indeed, this was an issue in the recent judicial review sought by objectors of the King’s Cross planning permissions.⁶

As a result of such cases, there is a widespread concern about probity and sensitivity about the involvement of members in major applications; and a wide variety of practice in how councillors engage with applicants. The DCLG highlighted the problems in “Councillor Involvement in Planning Decisions”, published January 2007:

“There are a wide variety of approaches to Member involvement at the pre-application stage, from ‘none at all’ to positive encouragement. A considerable volume of good practice guidance is available on this subject. Much of it encourages engagement but also advises caution, and this message of caution has been heeded to such an extent that some authorities (and/or individual Members) are now reluctant to get involved in discussion prior to the Planning Committee meeting.”

The Government Office for London (GOL), London Councils and London First recently commissioned research to look in more detail at the position across London. The research was undertaken by Arup, sponsored by Argent, British Land and London Communications Agency and supported by the Association of London Borough Planning Officers. Twenty-four London boroughs were interviewed as part of the research,⁷ which found:

- Many boroughs are seeking to increase the role of councillors in planning decisions and would welcome clearer guidance as to what is appropriate;
- Concern remains about propriety and the extent to which, and when, councillors can be involved;
- In an increasingly complex and legal planning environment, and with the emphasis on pre-application discussion and consultation, members can be less informed than others on major applications, leading to decisions made on the back of very long committee reports but without engagement with the applicant or a detailed understanding of the scheme and its evolution; and
- There is a case for increased opportunities for councillor involvement with applicants, albeit within clear guidelines governing the expectations which are placed upon all parties. This should be aimed to ensure that, when schemes reach committee for determination, there are “no surprises” for applicant, objector, officer or committee member.

⁶ See *King’s Cross Railway Lands Group v Camden LBC* [2007] EWHC 1515 (Admin).

⁷ Councillor Involvement in Planning, GOL, London Councils and London First, September 2007.

The increasing complexity in planning applications and policy makes the early and structured involvement of councillors hugely important, especially in strategic planning applications. Scheme promoters are using the long gestation times of major projects to consult widely on their plans, with a broad range of stakeholders. It must be logical to (more) fully involve and inform councillors as part of that process. The potential benefits to applicants, boroughs and communities are greater certainty and clarity, as noted in the Barker Review of Land Use Planning Final Report (December 2006):

“Research also suggests that it is beneficial to involve council members at this early stage. Although care needs to be taken that this involvement is not prejudicial to the independence of the decision-making, it is appropriate that issues which may arise in committee are aired and discussed at an early stage so that mitigating action can be taken before an application has progressed to its last stage. Addressing such issues at a late stage adds to delays in the system. The Audit Commission identified this as one way in which pre-application discussions could be enhanced.” (Barker, para.5.16)

Consequently, in November 2007, GOL, London Councils and London First (again supported by Argent, British Land and London Communications Agency) published “Connecting Councillors with Strategic Planning Applications: A Good Practice Guide for London”. The guide makes a number of recommendations:

Pre-Application Involvement

- A clear process should be established for keeping councillors well-informed of emerging strategic proposals;
- Councillors can meet applicants to establish the facts of a scheme. This will not disqualify them from voting providing they do not express a view on the scheme’s merits; and
- Indeed contact between councillors and applicants should be encouraged in the pre-application phase and should be supported by a clear code of councillor conduct.

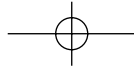
Some of the available mechanisms during this phase include local councillor briefings; a development forum for strategic schemes; planning committee site visits and briefings; and senior member briefings. The formats vary, but typically there is an opportunity for promoters to present their scheme and answer questions. Officers may summarise the policy issues.

Post Submission Involvement

Post-submission, the guide recognises that councillors can be briefed on an application by the applicant during the determination period. Indeed, information-sharing meetings (of various kinds), attended by councillors and officers where the applicant presents and answers factual questions, are an important part of the determination process.

Such member involvement can operate in a fair and transparent way. The available mechanisms include:

- A planning panel: these tend to be formal meetings held between councillors, officers, applicants and third parties. The meeting can take place at or near the proposed development site. Third parties may ask questions, preferably tabled in advance; and
- A planning forum: for strategic cases, a forum might be convened and chaired by the head of planning, shortly after the application has been submitted. Planning committee members are invited with local ward councillors and third parties. Questions are taken by the applicant.



These mechanisms can be co-ordinated with the pre-application meetings held with officers to get their initial, informal advice. The mechanisms are relatively formal and, to an extent, restrictive, in order to avoid any perception of “backroom deals”. There will always be those who regard discussions between applicants and members as inappropriate, but they are free to communicate their concerns directly—in effect to lobby—free of the restrictions faced by applicants.

In practice, securing such member involvement can be difficult. We recently organised a member briefing for the first major office building at King’s Cross and only one member turned up. Councillors have several competing demands on their time. That is one problem. Another is the political/principled stance of some members that to meet applicants directly would be inappropriate or wrong.

Of course, there can also be changes in the constituent members of a committee during the process. We experienced such a change at King’s Cross, following a local election which took place between the resolution to grant and approval of the s.106 agreement. Such change is a fact of life. There is not much that can be done about it and it is certainly not a reason not to engage with councillors. If anything, it reinforces the need for member involvement throughout the life of a major application.

Member Training

Constant change in our elected system is also part of my case for better and more systematic training for councillors. The changing nature of planning and the need for greater involvement by members, before they are asked to absorb lengthy committee reports and decide on complex, strategic development proposals, reinforce the point.

Lord Nolan highlighted the need for better training in 1997. More than 10 years on, that need remains whilst we argue about whether such training should be compulsory. Sir John Egan⁸ faced calls for compulsory councillor training when he conducted his 2004 review of sustainable communities skills. He preferred instead to encourage elected members to take part in training in order to fulfil their elected role. Kate Barker⁹ did come out in favour of mandatory training for councillors, but without the detailed reasoning some were looking for.

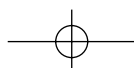
The House of Commons Communities and Local Government Select Committee has also considered the case for mandatory training. It recently received evidence in favour¹⁰ from the British Property Federation (BPF), RICS, TCPA and RTPI, amongst others. It also received contrary evidence from the current Housing Minister. In her evidence, referred to at the start of this paper, Caroline Flint argued against councillor training, in part because of the practicalities of dealing with the change which (in my view) makes such training all the more necessary:

“I am not signed up to it [training] being compulsory mandatory. I think there are—councillors play different roles, and I think certainly all councillors having an understanding as part of their induction into how planning fits into the service provision, what is happening in their communities, regeneration housing, whatever, is a good idea. We are not short of courses out there, I have to say, and training opportunities for that. Likewise, on another level, for those who actually sit on the scrutiny panels or planning committees, there is obviously another

⁸ The Egan Review, April 2004, p74.

⁹ Kate Barker, Review of Land Use Planning, recommendation 21.

¹⁰ Eleventh Report of Session 2007–08: Planning Matters—labour shortages and skills gaps



order there for those people, in terms of what they have to understand as their role, what they can and cannot do and so forth. But I think what I would say is that I do not think it is about a councillor necessarily doing training that is almost like a qualification as a planner or anything like that. . . So as I say, I think it is quite difficult to have “everyone must be trained to this level”, because I am not sure that would work and it would not necessarily work in terms of the turnover you might need when you are actually dealing on the ground with the changes we have in our elected system.”

“ . . .you need your good advice from your planners and your lawyers to tell you just what the legal proprieties are, and what is legally right and what is not legally right, and to be honest, I do not think there is a training course per se that could do that for a councillor to cover all eventualities¹¹ .”

The Committee saw an important point here about democratic accountability. Its report quotes Trevor Robert Associates, itself the provider of training courses:

“The Councillor needs to be able to have an appreciation of what is proposed but also to ask difficult questions in order to test the robustness of the recommendation. . . . The system rests on the basis that the technical specialist can be challenged by a non-specialist, so that there are checks and balances and that the decisions being made reflect the needs and desires of the wider community.”

The Committee therefore agreed with the principle that councillors should be as well-informed as they can be in order to perform their tasks freely, fairly and properly. However, the Committee “profoundly disagreed” with the idea that compulsory training is either essential or necessary.

This conclusion begs a rather big question. How do we ensure that councillors are “as well informed as they can be. . .” (or need to be), without mandatory training? The question of compulsory training may well be something of a red herring,¹² if the training is happening. The Select Committee concluded that most councils provide training and most elected members take it. I think that statement is simplistic and masks a wide variety of practice. A significant proportion of councillors do not take the recommended training and the quality of training varies. There is a strong case for more systematic training against a formally agreed core curriculum. At present, it is not systematic and the core curriculum does not exist.

I am not arguing that councillors should become trained professional planners. I am however arguing that better training for *all* councillors would result in better development, better decisions and better committee meetings. It might, perhaps, help avoid episodes like the King’s Cross Triangle Site which, to my mind, are in danger of bringing the system into disrepute. The GOL, London Councils and London First study, referred to above, reflects these conclusions and the resulting “Good Practice Guide for London” states that a commitment to councillor training in the following key areas is considered best practice:

- Planning protocols, codes of conduct, probity and scrutiny;
- Development plans and policy;
- PPS and material considerations;

¹¹ 19 May 2008. <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmcomloc/uc517-iv/uc51702.htm> [Accessed 14/10/2008]

¹² Paragraph 92 of the report.

- Planning law and practice;
- Planning obligations and conditions;
- Development economics and viability;
- Sustainable design; and
- Appeals: their implications and costs.

I agree with London Councils/GOL/London First that training should be provided for new councillors as well as refresher courses for experienced councillors. This should include training in how to engage with applicants to ensure they get the most from the process. Member training is essential if the early and structured involvement of councillors in major schemes—which I have advocated above—is to be achieved. If they are better trained and more involved, councillors will be “as well-informed as they can be in order to perform their tasks freely, fairly and properly”. So I see no conflict with democratic accountability and legitimacy. Quite the reverse. The current system is creaking and losing credibility in part because:

“The change in the nature of planning has left many members behind; they do not understand, nor necessarily want to, the new agenda. . . Without members improving their knowledge and skills the planning process is likely to be unable to deliver the substantial agenda it has been set notwithstanding any officer training/skills development programme”¹³

Higher quality decisions, taken by better trained, more involved councillors would have more legitimacy, not less. It might also help attract and retain high calibre officers.

I accept the point made by the Minister about constant turnover in our elected system. It is a fact of life. But that is not an argument against member training. Rather, it highlights that the need is most acute after local elections. It is an ongoing requirement in any event, especially in an era of seemingly constant planning reform. As London Councils, GOL and London First put it:

“The pace of change is fast expanding the range of subjects with which all councillors, whether on cabinet, the planning committee or as ward councillors, need to be familiar and up-to-date.”

Conclusions

I offer three conclusions.

First, we need to be realistic about the boundaries and limitations of public consultation and engagement. It is a mixed blessing; and the supposed benefits may not be borne out in practice. At King’s Cross, public consultation and engagement has been important to the genesis of a nationally significant project and helped support plan-led, local decision-making. But it did not avoid unnecessary objections being made at a later stage; nor did it save any time or process. As we experienced, there are those who will push it to the last, whatever steps you have taken to achieve a broad consensus.

Secondly, the extent of community consultation and engagement on projects like King’s Cross highlights the need for member involvement to become more similarly “front loaded”. At present, there is confusion over the probity issues and wide variation in custom and practice. I see little sense in consulting widely but leaving the decision-makers at a disadvantage. Greater member involvement

¹³ Planning Officers Society evidence to the Communities and Local Government Committee.

should be encouraged and can operate in a fair and transparent way, to avoid any perception of “backroom deals”. The potential benefits to applicants, boroughs and communities are greater certainty and clarity.

Thirdly, the changing nature of planning and the need for greater involvement by members, before strategic decisions are taken, means that better training for all councillors is essential. This should include training in how to engage with applicants, to ensure both parties get the most from the process. Better trained, more informed councillors would result in better committee meetings, better decisions and better development. In short, a more credible, legitimate planning system.