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WHERE IS PLANNING GOING? THE SYSTEM IS BROKEN - BUT IT CAN BE MENDED

KEY POINTS

- Three levels of development should be considered: Outline, Full and Approved for construction
- Compliance could be certified by an 'Approved Agent' who would also confirm compliance on completion of development
- All objective, measurable issues should be removed from planning to building regulation control and simply require compliance
- Approved Agents or planning authority officers would have authority to assess the impacts of proposals: only where these may harm other owners would they be obliged to follow a consultation procedure
- Only major strategic decisions and clearly non-compliant applications should be put before elected members
- Local development plans should not be allowed to duplicate matters covered by other legislation
- The General Permitted Development Order should be simplified and allowed to deal only with measurable impacts, not detailed dimensional criteria

We believe these proposals can change the planning system from a negative to a positive one, releasing skills and resources for a new injection of vision.

WHERE WE'VE BEEN

1 When planning and development controls were first introduced it was the rights of those wishing to develop their land that were removed. There continues to be an on-going conflict between central and local government over the control of planning and housing, with an unresolved dilemma that often pitches community involvement against formal national, regional and local policy.

2 "There is no legal or constitutional principle that requires administration [of the planning system] at local level to be conducted through democratically elected bodies... all planning applications could be determined by officers under delegated powers... planning would no longer need to be dealt with under the auspices of local authorities at all, and the entire system could be invested in an independent regionally-based agency" *RTPI blog by Martin Goodall*. But the government has already abolished effective regional spatial strategy.

3 Governments have, over many years, promised a simpler, speedier system based on a hierarchy of decision making. From the 1997 White Paper *Modernising Planning* through the 2001 Green Paper *Delivering a Fundamental Change* to the 2020 White Paper *Planning for the Future*, promises abound to tackle complexity, speed and predictability. The revised Development Plan system that was part of the 2004 Planning and Compulsory Purchase Act proved to be just as slow as before. The Killian-Prety Review was set up in April 2008 to report on how this Gordian Knot might be cut, but was mostly ignored.

4 "Under the guise of speeding up the planning system we have managed to make it far more convoluted. The plan-led system is excellent in principle but not when it takes several years to make the plan. There is far too much detail. Surely a plan is meant to protect some areas and promote development in others. I cannot see why we cannot treat these matters fairly simply" *Christopher Katkowski QC, of Landmark Chambers, writing in Planning magazine*. That is what the latest White Paper aims for, but reform is still on hold.

5 The coalition government set out its desire for change with the Green Paper *Open Source Planning* and followed it with the Localism Act of 2011. This set out a new, simpler system of Core Strategy and Local Development Plans, expected to be quicker and more straightforward, and replaced Labour's abortive Planning Act of 2008. It set up a system for Neighbourhood Planning that was designed to "return power to local communities", but this is seen by many as a NIMBY charter and is unnecessarily complex. It was followed by the Infrastructure Act 2015 that actually changed little.

6 LEPs, Brownfield Registers, BIDs and allowing new-development business rates to stay with the local authority all demonstrate planning support for the local community (against NIMBYs). Government "proposes that local communities (for which read 'business-run neighbourhoods') could go further and grant themselves further relaxations in the planning system ... [and] through this process, completely remove planning control over [for example] change of use" *Chris Brown, 2011*. And in fact control over much change of use, specifically, has now been removed by Government itself through permitted development procedures. But at the 'coal face' of development control, little else has changed.

WHERE WE ARE

7 The 2004 Planning Act scrapped the old, lengthy, development plans - just when they finally achieved national coverage - to introduce new, concise policy plans in modular form (that were supposed to allow easy, quick updating), examined by a PINS Inspector - whose judgement would be binding. The tests of soundness (ie evidence-based, properly consulted upon and in line with central Government policies) are tough - and many of the

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first examples failed. The 'plan-led' regime is retained but has been overtaken by the National Planning Policy Framework and National Policy Guidance which set out Government aims for a proactive planning system based on principles of sustainability. The NPPF supersedes local plans that are not up to date and is reinforced by the National Design Guide and emerging local guidance based on the National Model Design Code.

8 The Treasury is committed long-term to freeing up the planning system to boost the economy. Economist Kate Barker, appointed by the government in 2003 to conduct an independent review of housing supply, advised that the planning system was the main restraint on achieving a balance between supply and demand and should become more sensitive to market signals. A new development land tax (planning gain supplement) would capture land value uplift, allowing local authorities to collect the proceeds for infrastructure and as an incentive to resist the NIMBY tendency and this is currently being considered as a replacement of the Community Infrastructure Levy (CIL) - condemned as unfit for purpose by Liz Peace when, as Chief Executive of the British Property Federation, she was charged with examining the operation of, and possible alternatives to, CIL.

9 An Audit Commission report recommended the planning system should make better use of resources (informed by its Best Value regime and additional research) and proposed more joint venturing, sharing of staff and greater use of the private sector. Meanwhile the Government's New Homes Bonus and similar funding initiatives ostensibly designed to pump cash into construction, housing and planning departments to boost the stagnant economy are distorting the system by bribing authorities to make sure more housing is actually permitted – while larger housing scheme priority is also skewing the appeal system.

10 Some years ago the Householder Development Consents Review – a working party on the many small planning applications (which make up 80 per cent of the total) - recommended rewriting the complex General Permitted Development Order (GPDO) to widen and simplify it, to base it on impacts rather than on rules and measurements, and to allow 'Approved Agents' to certify lawfulness of proposals under a wider scope of regime that would (eventually) merge planning and building control. Revised GPDOs that have come into force regularly since October 2008 did none of these things, but instead made the permitted development system so convoluted that a 47-page explanatory document followed six months later. Nowadays permitted development rights are so wide-ranging and complicated as to be both incomprehensible to the public and hated by local authorities as they lose more and more planning controls.

11 Currently there are moves to allow more building on greenfield sites - or even on the Green Belt - and to continue freeing up permitted development rights, but these have been met with widespread opposition. In any event they only represent tinkering when in our view a wholesale change is needed.

12 "A familiar cry goes up, 'Yes we want more housing; but no to every development – and not in my back yard'. The nations we're competing against don't stand for this kind of paralysis and neither must we. Frankly, I am frustrated by the hoops you have to jump through to get anything done – and I come back to Parliament more determined than ever to cut through the dither that holds this country back" *David Cameron, September 2012.*

13 Michael Heseltine's October 2012 report *No Stone Unturned: In Pursuit of Growth*, as well as challenging development management teams to speed up, suggests that their load could be eased by allowing licensed private sector operators to make certain specific planning-related decisions on matters such as listed building consent, and the government has also consulted on similar proposals. This enthusiasm for involving private agents in decision making stems from the Infrastructure Act's provision for under-performing local authorities to have some planning powers transferred to PINS, and shows that other bodies can make planning decisions (as appeal inspectors do).

WHERE WE COULD GO

14 The ACA's Planning Manifesto has evolved since 2006 and indeed several of our proposed reforms have happened. Planning could look like this:

15 Big things like airports and nuclear power stations are for government White Papers and parliament to decide, while government policy dictates regional things like motorways, housing allocations and national parks. This is effectively the PINS National Infrastructure system which does do this, at least in theory - although at great length.

16 Mayors and local planning authorities make plans and determine locally strategic developments such as major sports stadia, transport interchanges, land releases for housing, green belt developments and new centres (in accordance with the NPPF). The proposed handover of powers, tax and rates income to enlarged metropolitan authorities such as Manchester will do some of this.

17 The GPDO is rewritten as suggested by the Householder Development Consent Review to determine development rights only on the basis of measurable impacts, supported by 'deemed to satisfy' guidance, and the Use Classes Order is greatly simplified by focusing on impacts rather than very specific uses in line with the latest freeing up of many commercial changes of use. The continuing consolidations of the GPDO, whilst helpful, show up its increasing complexity and demonstrate the need for fundamental reform.

18 Development proposals that comply with zoning rules (if introduced), Core Strategies, Local Framework Plans and Design Codes or the NPPF have their compliance reported by an 'Approved Agent' who, as with building control, can be an officer of the local authority or a suitably qualified professional, but is appointed and paid by the applicant.

19 Application must be made to the local planning authority for determination, but even if a proposal does not comply, applicants can still engage an Approved Agent to process the application and submit a report with recommendations and proposed conditions. The authority's decision may be appealed and determined by the Planning Inspectorate as now.

20 Three levels of development will be considered: i] Outline, ii] Full, and iii] Approved for Construction: i] and ii] will generally be subject to conditions which may call for the approval of reserved matters in the subsequent stage(s). Full applications will be able to deal with sustainability issues in principle – performance specifications – but not in detail. Local development plans cannot duplicate matters covered by other legislation (public health, access regulations, building regulations, energy, carbon emissions, fire safety, etc), except where special local conditions apply.

21 'Approved for Construction' proposals will have to satisfy planning and building regulations requirements, both on a 'deemed-to-satisfy' basis which will rely on clear guidance with the option of a determination or appeal in exceptional cases (as now for Building Regulations approvals). This works well in other countries, such as Spain. Moving such policy issues as housing standards into national building regulations and out of [local] plans, to be enforced through Building Control, is a start.

22 Approved Agents assess the impacts of proposals and only where these affect other owners are they obliged to follow a consultation procedure which is modelled on the Party Wall Act (including provision for a 'third surveyor'). No such agreement may override a clear plan policy. Agents deal with planning compliance, building/environmental regulations and party walls in an integrated way, with specialist input as necessary for matters like engineering, traffic impacts and biodiversity.

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23 Only strategic decisions and major non-compliant applications need be considered by elected members, all others being delegated to officers for a decision or certified by Agents if clearly Permitted Development. Planning resources are focused on plan making and keeping adopted policies up to date. There's a long way to go to achieve this but stress in public resources may accelerate the trend.

24 The National Planning Forum has reported that planning and Building Regulation approval might sensibly be amalgamated. It is interesting to note the effective (and probably unforeseen) emergence under modern governments of a three-tier planning system:

- 1] National Infrastructure
- 2] Permitted Development (sometimes subject to Prior Notification), and
- 3] Full planning

which has begun to remove the procedural logjam in planning and reduce the habit of loading taxation such as 'affordable housing subsidy' onto development. But the 'control-freakery' endemic in the present system is fighting a strong rearguard action.

25 When the development has been completed, the Agent, an architect or other delegated professional confirms that it complies with certified proposals (as in effect may be done today) and owners notify the Land Registry with approved, specified information attached to their title deeds.

26 On 1 December 2012, Zac Goldsmith, then MP for Richmond Park, wrote: "I have asked the Minister to consider ... removing bureaucratic hurdles where there are no local objections. If neighbours are happy with a person's plans, there is no sound reason why the authorities should intervene."

27 We believe these proposals would simplify and speed up planning, changing the system from a negative to a positive one, would fit well with the proposed digitisation of the system, and could release scarce skills and resources for a welcome injection of real vision into planning.

Andrew Rogers and Brian Waters, ACA Planning Action Group

ar@awrogers.com & brianwaters1@mac.com