

David Keene



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The Hon Mr Justice Keene is a judge in the Queen's Bench Division, and chairman of the Planning and Environmental Law Reform Working Group of the Society for Advanced Legal Studies, which has just published a *Report on planning obligations* – the first such document the group has produced (for a summary see 'SALS News' at page 22 of this issue). He spoke about his interest in the subject and the future plans of the working group to Julian Harris.

When Mr Justice Keene started at the Bar, he had already decided in which area he wanted to practise and joined a set of chambers specialising in planning law. The head of chambers was Sir Douglas Frank, who later became President of the Lands Tribunal, and Mr Justice Keene stayed in the same chambers throughout his career at the Bar. By the time he took silk in 1980 he was specialising in planning and public law, backed up by some commercial experience gained as a young barrister.

He has always found planning and environmental issues absorbing, although as a High Court judge he undertakes a varied caseload that includes a considerable amount of criminal work. He has recently been appointed as one of the three judges hearing the appeal of the McDonald's libel case, and his contact with planning issues is largely maintained through handling judicial review cases involving relevant areas of law.

The SALS working group is looking at a number of different areas within planning and environmental law, including the vexed issue of compulsory purchase and compensation. Mr Justice Keene regards this as a long-term project, but he also hopes that the group will be able to make suggestions for simplifying the planning system.

'All of us on the working group are very conscious that a system has grown up over the years for controlling forms of development or activity. This has resulted in a series of layers of controls, such as those over listed buildings and conservation areas, as well as planning controls in the conventional sense. There are also the building regulations to be considered, all of which mean that the system is far too complex for the ordinary citizen to understand and involves vast amounts of paperwork.'

It is very difficult to separate planning and environmental issues because environmental concerns have always existed in planning. For example, when you talk about visual impact you are raising an environmental matter, as there is with the question of road traffic. What we are seeking to do is to put forward ideas on how all this could be reduced to a form of "one-stop shop". I visited Sydney on holiday this year, and the city planning department there have something along the

lines I am talking about whereby you can go in and make one application to obtain all the permissions, licences and consents you need.

Finally, we are looking at the legal aspects of nature conservation, which is a matter of topical interest with concern currently being voiced in the press over the future of the bumble bee, various butterflies and the water vole, for example. This area is also the subject of attention from the government'.

Planning and the environment are intensely political issues, and Mr Justice Keene is aware that the group must tread warily:

'We have to be careful because we are trying to adopt a politically neutral stance. We are not there to argue policy concerns, but principally as lawyers to make sure the system works efficiently and with clarity. Those are our objectives – we have no particular stance otherwise on the content of the laws. That is for the government and not for us'.

As far as future reforms are concerned, Mr Justice Keene sees the planning inquiry system as an area where change is likely to occur. He feels that government should do more in major inquiries, such as the fifth terminal at Heathrow, to set guidelines more clearly and firmly, avoiding the situation where senior civil servants find themselves appearing at inquiries in order to be examined on policy issues. However, his concern centres around the major, highly-publicised and strongly political inquiries, such as those involving the siting of nuclear power stations.

'I hope that any process of reform along the lines suggested does not descend to the more conventional planning inquiry, because I think the ordinary planning inquiry system works extremely well. The planning inspectorate are a highly trained and respected body of people. They are selected very carefully and are extremely good at what they do. What is more, they are people of integrity and I have never heard any whisper of corruption in connection with them. That is a matter of fundamental importance.'

Julian Harris

Senior Information Officer, IALS

CURRICULUM VITAE

David Keene was educated at Hampton Grammar School and Balliol College, Oxford, where he became Winter Williams Prize winner and obtained a first class degree in law followed by a BCL. He was called to the Bar (Inner Temple) in 1964, becoming a bencher in 1987. He took silk in 1980, and served as a Recorder from 1989-94 and a Deputy High Court Judge from 1993-94, before being appointed to the Queen's Bench Division in 1994. In 1980 he was Chairman of Panel, Cumbria Structure Plan Examination in Public, and conducted the County Hall, London Inquiry, in 1987. He was Vice-Chairman of the Planning Bar Association from 1990-94 and became Chairman for a brief period in 1994 before his appointment to the High Court bench. Since 1995 David Keene has been the Visitor at Brunel University and, more recently, he has become chairman of the Equal Treatment Advisory Committee of the Judicial Studies Board.