

Planning Law

Fifty years of planning

by Richard Harwood



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The first comprehensive planning legislation was the *Town and Country Planning Act 1947*. To mark its fiftieth jubilee the Institute of Advanced Legal Studies held a one-day conference on 7 July 1997 to consider the planning system and its future in this historical context. Did Britain, as the framers of the Act intended, begin 'a new era in which human happiness, beauty, and culture will play a greater part in its social and economic life than they have ever done before'?

CONTRIBUTIONS

Lord Woolf, the Master of the Rolls, gave the keynote address. He noted the limited policy impact of the judiciary on planning but suggested that there may be a more developed approach, particularly following the European case of *Francovich v Italy* (Case C-479/93) [1996] CEC 441; [1995] ECR I-3843. The environmental expertise of the High Court could be consolidated. Pill LJ sat on all environmental cases in the Court of Appeal and he wanted to see a similar system at first instance. Major public inquiries needed a relook and there may be merit in allowing inspectors to refer procedural points to the High Court during inquiries.

Garry Hart of Herbert Smith considered the role of development plans. He noted that planners:

'... have discovered time and time again that plans have taken too long to prepare and process through to adoption and that when that day comes the plans are often out of date.'

Beneficial changes amounted to:

'... no more than tuning the piano rather than discovering another instrument.'

Changes in planning policy, facilitated by the framework nature of the legislation, were described by former Chief Planning Inspector Professor Stephen Crow. Whilst some things were unaltered, such as a preoccupation with the colour of telephone kiosks, planning had changed from a design process to a control process.

Martin Wood, barrister, looked at the involvement of lawyers and the courts in the planning system. The number of challenges in the High Court under the Planning Acts had increased from 1 in 1950 (which was withdrawn) to 131 in 1983 and over 200 now. Despite this increase, it was important to keep planning and environmental cases in the central ground of the High Court. Lawyers had written reports on the planning system, provided inspectors for some of the more complex inquiries and the team of barrister and solicitor had performed well in planning inquiries without any rules of audience. Academic lawyers had made a contribution of incalculable value to development of practice.

Professor Malcolm Grant placed the present controversies over planning obligations and planning gain in the context of land value and its taxation. Tackling the betterment/compensation problem was seen as the key to the success of comprehensive development control in 1947. However, regimes of capital taxation are largely discredited. Whilst planning gain has enormous advantages as a land taxation tool, it requires significant development to provide a collective base for the assessment to liability on an open and transparent basis.

PROPOSED CHANGES

Lionel Read QC compared the length of major development inquiries with the speed of ad hoc inquiries in major disasters and the like. Whilst the complexity of the evidence at planning inquiries and the number of principal parties and objectors caused long inquiries, the system could be improved. Strong ministerial pressure should be applied to move the inquiry on. The quality of inspectors was crucial, with judges being ideal for the biggest. Far more clerical and administrative assistance should be given to inspectors. Finally, the Secretary of State's decisions should be issued much more quickly after the inspector's report is received.

NEW ERA

Did Britain begin a 'new era in which human happiness, beauty and culture will play a greater part in its social and economic life than they have ever done before'?

The effectiveness of the planning system in protecting the natural and historic environment was examined by Pat Thomas of S J Berwin. The 1947 Act was directed towards regulating built and operational development, and also providing the means to secure such development in order to provide for a beneficial built environment. It now focused on the natural environment. The bolting on of this protection and provisions for the historic environment was not sufficient or efficient. A comprehensive review of the legislation was now required.

These topics were picked up by senior solicitors, barristers and academics in the audience during questions and the panel discussion. The conference was the start of a major programme of planning law work by the Institute. 🇬🇧

Richard Harwood

Barrister, Conference Co-Chairman