

The Raynsford Review of Planning

Provocation Paper 2: People and planning

[June 2017 for the July Thematic Roundtable]

Introduction

The objective of the Raynsford Review is to examine the problems confronting the current planning framework in England and produce comprehensive and positive proposals to deliver a system which is fair, effective and focused on achieving sustainable development. The **Terms of Reference** and the emerging **Background Papers**, in addition to these **Provocation Papers**, can be found on the review webpage: www.tcpa.org.uk/raynsford-review. As part of the review, the TCPA is organising a series of engagement activities to examine particular questions which are crucial to the success of the review.

The aim of this paper is to provide a brief introduction to one the most important issues facing the planning system: the role of people and communities in planning decisions. The paper concludes by raising some questions which might help inform the debate.

The review team are particularly keen to hear from communities and individuals who have experience engaging with the planning system. Please submit your views in our survey¹ and publicise widely to your networks. For other ways to submit your views please go to www.tcpa.org.uk/raynsford-review.

Why does this matter?

Planning remains one of the most controversial aspects of local life, generating more political heat than almost any other local policy issue. While there is an absence of systematic data on the public's views of planning, there are undoubtedly strong concerns in some communities that planning has become out of touch with ordinary people². This has major consequences for the health of our democracy and economy, because if public legitimacy in planning breaks down, people will go outside the system through campaigns, direct action and legal challenges.

Equally, there are major positive benefits of effective public participation: for social cohesion, by genuinely reflecting local aspirations and local knowledge, and by empowering communities to deal with the challenges that face them.

BOX 1 The language of participation

There is a lot of confusion in the language of public participation. Words like 'engagement' and 'involvement', which regularly feature in planning policy documents, do not appear to have any practical meaning. The wider literature on the people-and-planning question is clear that consultation is a passive process of asking people their views on options already defined by local or national Government. Consultation does not imply any sharing of power, and communities are expected to respond to an agenda which has already been set. By contrast 'participation' means a genuine exchange of ideas and learning, with communities playing an active part in framing decisions and having at least some real power to effect change.

Background

There is a wealth of literature on the relationship between people and planning, but for this very short summary it is possible to distil a number of major themes in this long running debate:

¹ www.surveymonkey.co.uk/r/RaynsfordPeoplePlanning

² There is a wealth of academic research which highlights the disconnect between people and the planning process.

1947 planning system

Background Paper 2³ makes clear that the 1947 planning system gave the majority of decision-making powers to local councils, and so the extent of the public's influence in planning decisions could be directly linked with how often people engaged with local Government. This implies that the degree to which communities have a say depends on whether local authorities have any real power over local outcomes, and this in turn depends on a degree of central-Government control. It is clear that the question of 'people and planning' raises much wider issues on the nature of citizenship and power relationships between central and local Government, and between the public and private sectors.

The relationship between people and planning has changed over time. In 1947 there was a 'right to be heard' in the testing of local plans and rights to appear at public inquiries into major development projects. The public could also object in writing to planning applications. There was a much greater level of engagement in local elections, with representative democracy being the key way that people exercised control over decisions. One crucial inequality which was enshrined in the system was that, while applicants had a right of appeal against the local planning authority's decision, the public did not. This appeal was not limited to procedural issues but could revisit the principles of the decision. The only redress communities had was to challenge the decision in High Court which was, and remains, a complex and expensive process.

Skeffington 1969

By the mid-1960s there was widespread disillusionment with professional planners, who were seen as out of touch and technocratic. Consecutive high-profile cases on slum clearances and major urban motorways only helped reinforce this unease.

A report published in 1969 by the MP Arthur Skeffington⁴ argued that the public should be given greater control over the planning system. During this period, many support organisations such as Planning Aid were founded to facilitate direct community participation. Planning authorities pioneered community participation through models such as 'Planning for Real', which proved that effective participation with people was possible and effective.

1980s

By the mid-1980s disaffection with the existing governance of the planning system spilled over into an intense period of direct action on major road schemes, opencast coal and waste disposal sites. At the same time the NGO community became much more involved with planning issues.

1990s

By the early 1990s, research was confirming a stark power imbalance between planners, developers and communities, with many people feeling disconnected from the decisions that impacted them. Engagement with local democracy was falling to historically low levels, reflecting a wider disaffection with local Government. For planning decisions, attempts to deal with a small number of high-profile corruption cases culminated in the issuing of a 1995 report by Lord Nolan (the 'Nolan Report'), the first chairman of the Committee on Standards of Public Life, which made recommendations for the conduct of local councillors in planning decisions⁴. These recommendations were widely misunderstood to mean that councillors could not act politically when making planning decisions or express a view to their electorate about how they might act in a committee. While elected members are bound by public law principles, including the need to make reasonable decisions based on planning arguments, their role in decisions was intended to guarantee accountability. One

³ Raynsford Review Background Paper 2: The rise and fall of town planning.

⁴ 'People and Planning: Report of the Committee on Public Participation in Planning' (the Skeffington Report) HMSO 1969

unintended consequence of the Nolan approach was the breakdown of accountability of elected members to the public.

Successive Governments have tried to respond to the growing sense of tension between planning and people. The last Labour Government emphasised community control through a strand of policy called 'new localisation'. This resulted in strong policy statements on the need for community involvement and direct funding for organisations supporting community advice and support.

At the same time that this strand of thinking was being progressed, there was strong lobbying from business that planning resulted in too much delay. The Heathrow Terminal 5 project was seen as the ultimate example of too much public debate, and of the deliberate delaying of planning decisions through legal challenges⁵. This led to questions about limiting community participation and to the development of the 2008 major infrastructure regime. This legislation was significant because it removed the right of communities to appear at an inquiry and cross-examine witnesses, giving much more power to the Planning Inspectorate to define the limits of evidence. At the same time, the failure of the English regional devolution agenda left regional plans with a curious governance lacking in direct democratic accountability and with very limited opportunities for community participation.

2010 coalition Government

Perhaps unsurprisingly, by 2010 the Conservative party had successfully harnessed much of this public disaffection, and in 2011 they abolished regional plans and introduced the neighbourhood planning regime. At the same time, support for many organisations such as Planning Aid has been dramatically reduced, with resources focused solely on the neighbourhood planning process. Outside neighbourhood plans, the focus advancing the idea of participation in planning was replaced with the more passive notion of consultation. This is partly driven by severe resources constraints in local Government, where many planning teams no longer have the staff to effectively talk to communities. This has a disproportionate impact on those who need the greatest level of support to engage in planning.

The degree of community influence over planning has declined as the wider control of local authorities over development has been reduced. Permitted development (PD) is one clear example of this, with no community control over the conversion of many buildings and further proposals to extend PD to some forms of shale gas development. By 2016 the Local Plans Experts Group (LPEG) suggested the removal of the community 'right to be heard' in the plan-making process⁶.

There has been no comprehensive review of the relationship between people and planning for 50 years, despite a growing concern about public disaffection. **There is significant academic literature on public participation, and many organisations champion greater community engagement, but the overall state of the debate on people and planning is confused.** There is no single or simple policy statement on how people can participate in planning, or what rights people may have, or how these relate to the role of elected members. It is a debate marked by a deep confusion about how much power and influence people and communities should have.

How much power do communities have over decision making?

There is a legal basis for some aspects of people's involvement in planning. The Human Rights Act (1998) is capable of being engaged in planning decisions, but the courts have found that the existing

⁵ During this period, 'delay' was not defined so there was no benchmark around what was a reasonable time for due process. The evidence that communities were the prime cause of the delay at Terminal 5 was not persuasive compared to multiple changes to the scheme by the applicant or by ministerial decision making.

⁶ An independent expert group to recommend measures to help ensure efficient and effective production of local plans, publishing its report in March 2016.

opportunities for participation are broadly compliant with Article 6 (right to a fair trial). The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) offers a coherent framework of procedural rights, but again existing UK measures on access to information, participation and justice are often assumed to comply with the Convention.

There is in fact only one legal right for people in planning and that is Section 20 (6) of the 2004 Planning and Compulsory Purchase Act, which guarantees that a person who makes an objection to a local plan must be heard in person at the examination of the plan. Other opportunities to object to planning applications are not enshrined in law but have evolved over time. Opportunities to speak at planning committees are entirely at the discretion of local councils. There are rights to access information on planning applications but with exceptions on confidential commercial documents, which often surround viability testing and Section 106 agreements.

Local Planning Authorities (LPA) are also under obligation to consult on planning applications (the rules here are quite complex) and on local plans. These processes can best be described as minimalist. Timescales for responding to consultations are normally limited to 21 days for planning applications, which interestingly means that parish and town councils, and other community groups who meet monthly, often fail to respond in time. For local plans, there is period of 6 weeks' consultation.

This picture of legal rights all relate to the procedural aspects of planning. There are no substantive rights to any basic outcomes of the planning process, such as a basic home or freedom from pollution, unlike some other EU Countries⁷.

The Raynsford Review recognises that a focus on legal and policy rights ignores the clear inequality of resources which play out in many planning decisions. This is a complex issue but communities often struggle with the technical complexity of planning which depends on highly specialised policy and legal language. The development sector can command such resources in ways which communities often cannot. The degree of community engagement clearly reflects wider patterns of power in society, which has important implications for a planning system which was framed with an ambition to promote social equity and inclusion.

Does neighbourhood planning solve the problem?

A neighbourhood plan (NP) is a powerful statement of community aspirations and is ultimately adopted as part of the LPA's development plan. In the majority of rural England, the NP is prepared by parish and town councils. In urban areas, the process is initiated by a hybrid body known as a Neighbourhood Planning Forum (NPF), which is not part of any local Government body and therefore not, is not directly accountable to the wider electorate. NPFs must have 21 members and the LPA must approve proposals for NP.

Because the governance of NPs is so radically different they should be seen as two different kinds of planning body. For parish councils, the preparation of an NP is similar to local plans, including draft, consultation and examination before there is a referendum (if one is required). This is overlaid by the ongoing accountability of the parish or town council to the electorate. For NPFs the process is the same but without the democratic accountability, with the members of the forum not accountable for the process of how the plan is prepared.

There is a growing body of evidence which charts the progress of NPs across the country. From this it is possible to distil some general trends:

⁷ Article 22 of the Dutch constitution creates a high-level duty on local and national authorities to provide for sufficient housing as well as to promote the health and cultural well-being of citizens.

- There are some 2000 NPs under preparation, with 280 in force and a further 300 having passed the referendum⁸.
- The majority of NPs are focused on rural and semi-rural areas and there is growing concern that complex urban areas with less social capital are not taking up the opportunity.
- The contents of plans are highly diverse, ranging from single issues to broad community visions.
- There is growing concern about how much power NP plans actually have. For a start, they must be in conformity with the local plan and national policy, and the increase in PD rights limits what they can control. High levels of successful appeals for sites not in plans are also raising concerns. This debate relates to whether we actually have a genuinely plan-led system, which is the subject of Provocation Paper 2 of the Raynsford Review.

The review is keen to hear views on the effectiveness of neighbourhood planning, particularly whether or not it successfully engages with excluded communities.

Key questions for debate

Unlike many other aspects of the planning system, there appears to be a consensus that planning must command public legitimacy and that this must mean direct democratic accountability. Beyond this foundation, the review faces a challenge to define how much power communities should have as compared with the development industry or national Government. What is the right balance between representative, participative and direct forms of democracy in planning and how can we bring some logic to the confusing patterns of procedural rights in planning? Beyond these broad issues, the review is interested in exploring the following specific questions:

- Are we being clear about how much power communities have in planning their own future?
- How do we strike a sensible and honest balance between encouraging participation and recognising that it has limitations when confronted with national priorities?
- What kind of democratic accountability might work best in planning and how can the role of councillors on planning committees be reinvigorated?
- Is there a coherent and simple model of procedural rights in planning?
- How do we deal with the argument for fair rights of appeal in planning?
- Should there be substantive rights in planning so that the needs of those who have a strong voice in the system don't compromise the rights of those who need a home?
- How can we encourage participation in strategic and infrastructure decisions?
- How can we redress the inequality of resources in the planning process?
- Are their lessons from international projects which demonstrate effective participation?
- How much does the Aarhus Convention provide us with the basis for a coherent model of the rights and responsibilities for people and planning?

Annex: List of supporting background documents

- Background Paper 1: Creating a blueprint for a new planning system in England
- Background Paper 2: The rise and fall of town planning
- Provocation Paper 1: Do we have a plan-led system?
- Provocation Paper 2: People and planning

Further information and contact

Website: www.tcpa.org.uk/raynsford-review

Email: Raynsfordreview@tcpa.org.uk

Survey: www.surveymonkey.co.uk/r/RaynsfordPeoplePlanning

⁸ DCLG Notes on Neighbourhood Planning, March 2017.