

The Raynsford Review: what does it have to say on consultation in planning?

Problems with the current system:

- The suggestion that the future physical form of urban and rural society should be determined without reference to the people who currently – and who will in the future – live in it is simply **incompatible with the basic principles of democracy**.
- **Blanket descriptions of the ‘public’ or ‘community’** can mask the diverse and sometimes competing needs and aspirations of complex social groups.
- There are significant consequences of applying such preconceptions when reviewing the planning system, [as being one in which] **people’s involvement in planning is no longer characterised as due process but as ‘delay’**. This has been a major watchword in the reform of planning, but none of the reviews of the last 20 years have defined what ‘delay’ means or how ‘unreasonable delay’ can be distinguished from the exercise of legitimate community right.
- The case for planning was founded on two primary factors: first, that **land is a public good** and an unregulated market tends to produce at best only partial benefits and at worst unsatisfactory or poor outcomes both for people’s personal welfare and the environment and for the economic efficiency of society; and, second, the positive desire to create high-quality environments to promote health and happiness in society. Neither of these two assumptions appear to have underpinned recent planning reform.
- [On the 2018 NPPF and Local Plans]: In short, local planning authorities will be required, as a minimum, to set out their strategic priorities in a strategic plan covering a small set of high-level issues set out in paragraphs 20 and 21 of the NPPF. The legal requirement for a strategic plan was set out in the 2017 Neighbourhood Planning Act. The non-strategic policy currently contained in Local Plans, as they are now understood, will be discretionary. The NPPF makes clear that Neighbourhood Plans could implement some of the detailed policy currently in Local Plans. Paragraph 18 of the NPPF is the crucial policy, but it is not easy to interpret, ‘Policies to address non-strategic matters should be included in local plans that contain both strategic and non-strategic policies and/or in local or neighbourhood plans that contain just non-strategic policies.’

Specific responses in relation to community involvement in planning

- There are four important questions which emerge from Grenfell Tower for a review of planning: [one being] **How far are people most affected by a planning decision being allowed to meaningfully participate in that decision?**
- [There was a] strong call from a significant number of respondents for a refocusing on a much **more positive, ‘people-centred’ and ‘sociable’ planning system**. This was a view which tended to be expressed by some politicians, younger participants, some planning consultancies, architects, and some community organisations. It was reinforced by the way that the Grenfell Tower tragedy had refocused people’s

minds on basic issues around the safety and wellbeing of individuals and the question of whether communities were being respected and listened to in the decisions that shaped their lives.

- There were equally strong views from the development sector that **Neighbourhood Plans were 'NIMBY charters'** and made necessary development even more difficult. In addition, there were concerns about the contents of such plans in relation to key issues such as climate change and health; about the lack of accountability of neighbourhood forums; and about the variable uptake of such plans, particularly in poorer areas and in complex urban environments.
- The preparation of local development plans also presents a mixed picture of success, with the level of plans adopted post-NPPF standing at 43% after six years of implementation. From the existing evidence it appears that in general Local Plans have reduced their policy scope – a reflection of the clear national priority to allocate sites for housing. There is no comprehensive evidence on whether Local Plan policies are being implemented as a whole. Where research does exist on issues such as affordable homes, it is clear that there are widespread failures to achieve the targets in plan policy and as a result to meet the need for genuinely affordable homes.
- **'We just don't have the time to engage with the people we are planning for'** - graduate public sector planner from a southern district council.
- 'The answer to the problems of planning is simple. Take it out of the hands of local politicians who often know nothing about the development needs of their areas' - private sector developer.
- 'I'm proud of my town but I don't think anyone outside cares about it. I don't think anyone outside [cares much] about any of us' - 15-year-old resident of a town in the North West, recorded at a training event.
- [On reaching communities]: The responses among groups that were not part of established NGO networks could best be described as **bewilderment**. The position was stark in excluded communities, but even in middle-income areas there was a general **lack of awareness** of who made planning decisions, what **rights people had to be involved**, and how they could access proposals. The loss of other community support infrastructure such as libraries meant there was, in some communities, nowhere to view plans or use a photocopier. This was a particular problem for those with no internet access. The resources for organisations such as Planning Aid for London were clearly inadequate to meet this challenge – a problem compounded by the **lack of public sector planners who had time to help enable communities** to meaningfully engage in the process. The result was a sense of **anger about and mistrust of the planning system, which is plainly a barrier to meaningful debate about the future of communities**.
- Responses cited a real problem of **community apathy**, which often seemed to relate not to being consulted too much (although there were examples of this) but to the **perception that such consultation did not lead to any real tangible change for the better**. Plans were seen as pointless when either their contents were not delivered or decisions were made against plan policy. As one politician reflected, 'people don't have time to waste looking at plans that never seem to make any bloody difference'. This was a particular problem in low-demand areas, where local authorities often had no effective means to implement the policy they had written into plans.

- Overall, the evidence revealed a range of concerns about **barriers to community participation in the local planning process**:
 - the power of developers to exploit and dominate the planning system – particularly the unequal access to professional expertise to help explain the impacts of development;
 - the **complex language** and procedures that shape planning decisions, which were often completely **unintelligible to members of the public** – such language, it was suggested, was deliberately deployed to exclude non-professional input;
 - **a lack of support services** in responding to planning applications and a repeated question about why government funded support for neighbourhood planning but no other form of community support;
 - **a lack of community engagement skills** among planners;
 - unequal legal rights in the decision-making process, which reinforced the **perception of a system constructed to benefit applicants**;
 - anger that **decisions seemed to ignore community concerns** about heritage and the environment – particularly when such concerns were not about national designations but about small-scale community green space or streetscapes which were important to people’s lives;
 - viability testing and the resulting loss of policy on issues such as climate change and affordable homes;
 - confusion over why elected members can or cannot offer support to communities, and a feeling that **elected members could no longer represent the views of those who had elected** them in planning decisions;
 - **difficulty in engaging with plan preparation processes**, and **anger that consultation responses are not taken seriously** – the way that such responses were summarised by officers was often felt to be dismissive;
 - concern about the quality and design of development, and particularly over why new housing ‘all looks the same from Bristol to Bradford’ and lacked proper supporting social facilities for health and education;
 - anger that Neighbourhood Plan policy can be easily overturned by the Planning Inspectorate;
 - anger that some new strategic plans had no effective accountability to the public at all;
 - frustration at the lack of enforcement action on conditions relating to working hours, and a failure to check that what is built is actually what has been approved;
 - **concern about making the voice of the public heard in the Nationally Significant Infrastructure Projects process**; and
 - anger at the perceived ‘purchase of planning permission’ through Section 106 agreements.
- Attitudes to the National Significant Infrastructure Planning (NSIP) regime were divided, with the private sector keen to use the **NSIP** consent regime as a model with much broader applicability, while **communities appeared to find the process even more remote**.
- There was **little evidence to suggest that the public are aware of or are encouraged to have a meaningful say in the preparation National Policy Statements**, despite their determinative weight in decision-making. There was no

attempt to follow the example of the Welsh Government in promoting a 'national conversation' on development priorities, which remains an insightful case study. The Review noted the conclusion of the ESRC-funded research conducted by University College London¹⁰³ into the process of approving major renewable energy projects through the NSIP regime. The research found **real public concern about meaningful participation in decision-making and recommended, among other things, funding support for communities who were trying to participate in decisions.**

- Regarding HS2:
 - **bewilderment** over how communities were meant to understand the process of petitioning Parliament and a lack of any resources to support them in doing so;
 - the failure of the HS2 company to organise sufficiently fine-grain consultation events;
 - the **lack of any real meaningful conversation** about the merits of HS2 – 'It's just assumed that it's good for us' was the view of one community respondent; and
 - the widespread use of confidentiality agreements by the HS2 company with the local authorities along the route – these **agreements not to disclose information to the public on a broad range of issues** may serve a legitimate purpose in the eyes of those charged with the delivery of the project, but they have created real anger among local politicians and even more resentment from affected communities when they have discovered their existence.
- One leader of a local authority who had signed such a confidentiality agreement stated to the Review team that they exemplified 'a failure to approach participation in an open and inclusive way which might build some trust. Instead they create a **sense that the public are a constituency to be kept in the dark until such a time as their voice is effectively meaningless.** Whatever the commercial benefits of such agreements they are absolutely not in the public interest.
- [On Neighbourhood Planning]: While there were mixed views on neighbourhood planning, it was clear that some respondents regarded this process with genuine enthusiasm. There is no doubt that the drive towards Neighbourhood Plans was regarded by the community sector as the core positive outcome of the planning reform process.
- [There were views from the development sector that] **well-resourced campaign groups distorted information** and created 'a toxic political environment where it was impossible to make any real progress'. At its worst this could lead to single-issue groups taking control of local authorities with an 'unthinking anti-development attitude'.
- On the whole, **the development sector is far better resourced than communities to engage in the planning process**, and this leads to systemic feelings of 'unfairness'. There is a related and important issue that communities often do not see their planning authority as capable of defending them by upholding the wider public interest. This relates to the perceived dominance of national planning policy and the limited local government resources available to support communities.
- The English planning system is defined by deep-seated mistrust and conflict between the key players. It was best described to us by one senior local

government politician as ‘at best bad tempered and ill-mannered and at worst like a pub brawl’. This problem is long-standing and deeply rooted in the culture of local politics. It is also a crucial barrier to investment, good governance and the achievement of sustainable development. Rebuilding trust in planning among all the sectors is a vital objective for future planning reform, with multiple benefits for everyone.

- If capacity was a dominant concern in the evidence, there was also feedback about **planners’ skills**. These issues were raised by the private and public sectors and were focused on matters such as viability testing, strategic planning, large-scale new and extended settlements, climate change, new energy systems, retail planning, and **community participation**.
- The evidence also featured concern, expressed by both public and private sector planners, that **social media had ‘got in the way’ of sensible debate** on planning issues by allowing unmediated and often misleading information about planning decisions to be widely and speedily circulated. Understandably, activists often took a different view and believed that such tools helped to rebalance the perceived dominance of applicants in the planning process. The problem of ‘fake news’ relates to a much wider debate about the role of social media in our governance, but it illustrates a problem that **all information platforms, from virtual-reality visualisations of urban development to a Facebook campaign, are capable of distortion**.
- There are strong **concerns about the limitations of Neighbourhood Plans in influencing local decisions, and about the lack of take-up by socially excluded groups**.
- The Review team noted the starkly **unequal civil rights in the planning process**, coupled with a striking imbalance in access to planning expertise, particularly in excluded communities. This problem is compounded by a **lack of support services for communities** on planning applications and Local Plans. Crucially, a lack of resources and legal powers means that local councils are no longer perceived to protect the public interest. Put simply, there is no real trust that the planning process will reflect the concerns of communities

What needs to change?

- The Review received some interesting and positive **examples of how university planning schools could use their resources to support community planning**. Several planning schools have already developed or are developing ‘live projects’ that involve students working with communities as clients (for example University College London’s work with Just Space in London, and Newcastle University’s involvement with Newcastle City Futures), but such initiatives are not currently a mandatory element of planning education.
- There is no doubt that **new digital tools could prove very powerful in the planning process**. However, like all tools they are value-neutral and capable of being applied in ways which illuminate or distort planning decisions. Their application in planning should not be seen as a panacea and is not a replacement for answering the fundamental question about the relationship of people, planning and power. The greatest opportunity lies in using such tools for a longer-term culture change in awareness of planning issues and to build greater community understanding of long-term planning challenges. This still requires trust to be built

between local authorities and communities and for data sources to have a pedigree of independence.

- Planning requires sufficient regulatory powers to deal with problems where they are found. This means, for example, the control of changes to both urban and rural areas which may play a crucial role in creating cohesive communities and building resilience to climate change. To be effective, these powers must be comprehensive and should relate, with minor exceptions, to the use and development of all land and property. This requires, for the first time, the achievement of a genuinely planned system which can deliver co-ordination and certainty to developers and communities. It also requires the restoration of development management powers over the conversion of buildings to homes under permitted development.
- A **policy statement setting out the government's policy on people and planning.**
- There are **four dimensions to reconnecting people and planning:**
 - Clarity over the role of different **democratic models:** This issue is typified by the relationship between direct democracy through referendums on Neighbourhood Plans and the representative role of councillors on planning committees. Above all, this requires the development of a genuine participative democratic model, giving communities ongoing responsibilities and powers over local decision-making. The question remains as to which system of democracy is most appropriate for strategic and national planning.
 - Clear **civil rights:** The most obvious framework of civil rights in decision-making is set out in the Aarhus Convention, which requires rights of access to information, participation and challenge. Some aspects of the convention are already implemented in planning; others need to be clarified, such as qualified third-party rights of appeal. As a starting point, the convention offers a simple set of rights which can be applied throughout the planning framework.
 - **Community support** and empowerment: If genuine community participation that supports social equity is to be secured, resources for educating the public will need to be transformed. Awareness of planning and the opportunities it creates is at a low ebb and no longer part of mainstream education. A priority target for resources should be those excluded communities who have traditionally not participated in planning. New technology should play a leading role in creating greater accessibility and transparency for communities in planning decision-making.
 - **Planning culture:** Bridging the gap between planning and people requires changes to the culture and management of the planning service. For example, targets relating to performance must not focus solely on processing times but should also reflect the need for building community participation and quality outcomes to secure people's wellbeing. Similarly, planning education must ensure that planners are skilled at communicating, listening and mediating in planning decisions and can set out possibilities for how communities can develop.
- **A new covenant for community participation:** To be effective, planning must have public legitimacy. This legitimacy is under intense strain, with a broad disconnect between people and the wider planning system. Restoring legitimacy is

a long-term project, requiring clarity on how far the citizen can positively participate in decisions. This, in turn, is based on action in four areas:

- **democratic accountability, including clarity about the role of representative and direct democracy in national and regional planning and greater encouragement for participative democracy in the process of planning decision-making;**
 - **clear citizen rights, based on the provisions of the Aarhus Convention, so that people have a right to information, a right to participation, and a right to challenge – this will include exploring how civil rights in planning can be more evenly distributed;**
 - **a significant new approach to helping communities to engage in the planning process, with a focus on engaging groups who do not currently have a voice, such as children and young people; and**
 - **a new professional culture and skills set directed at engaging communities.**
- What are the basic outcomes that people can expect from the planning process? Increasing people's participation in decisions which shape their lives is a fundamental aspect of securing our democracy. However, real concern was expressed in the Review evidence that **new rights to participation might be exploited by those with an interest to protect, to help them override the legitimate and basic requirements of those in greatest need** of a decent home. The task of securing high-quality and genuinely affordable homes in an environment which supports safety and wellbeing requires greater use of minimum standards. Some of these should be located in building regulations, but there remain some issues currently dealt with in permissive national standards which need to be reflected in a mandatory code. These design issues, on space, resilience and accessibility, are vital to people's life chances and should be non-negotiable matters in the development process. As a result, Proposition 5 seeks to secure decent minimum standards for all sections of our society.
 - **A new commitment to meeting people's basic needs:** While measures to increase public participation would improve the process of planning, they need to be accompanied by rights to basic outcomes which reflect the minimum standards that people can expect from planning. These outcome rights are an important balancing measure to ensure that the needs of those who may not have a voice in the planning process, including future generations, are reflected in the outcomes of decisions. These rights include:
 - a duty on local authorities to provide genuinely affordable homes;
 - a right to basic living conditions to support people's health and wellbeing, secured through minimum national design standards which meet people's needs throughout their lifetime; and
 - a legal obligation to plan for the needs of future generations, by, for example, the consideration of resource use.
 - **A cross-sector compact on the values of planning:** ...There is an urgent need for a long-term 'conversation' between the development sector, government, professional bodies and civil society groups to work out areas of common ground and improve the level of dialogue on planning reform, and crucially to rebuild trust in democratic planning.
 - **Community powers to plan effectively:** Communities and the local authorities who represent them must have the powers they need to positively plan for the

future. These powers must enable communities to shape developments (including the change of use of buildings) which have a real impact on people's safety, health and wellbeing. Strengthening the development plan will help in this, but there is also a need to return to the local level powers that have been centralised. Of all of such issues, it is restoring basic controls over the conversion of office and commercial buildings to housing units which is the most urgent.

- **Increased accountability and community participation:** Planning is an important part of our democracy, but clear accountability is often perceived to be missing and consultation is often considered tokenistic. The planning system now includes referendums on Neighbourhood Plans, but for no other part of planning; and there is no clear accountability for the strategic plans of the new devolved partnerships, such as the combined authorities, which exist outside of Greater London. Developing a strong democratic and legitimate governance framework for planning requires three interlocking components:
 - a transparent process of democratic accountability in all decisions, making clear whether this is based on representative, direct, or participative democratic models;
 - clear citizens' rights; and
 - support for communities to participate meaningfully in decisions.
- **The single greatest democratic deficit lies in strategic planning.** The current position of a fully accountable process for strategic planning in London, but in no other part of England, is neither fair nor sustainable. As Section 4 made clear, the highly variable arrangements that have emerged from devolution mean that some strategic planning documents have no direct accountability and little meaningful public participation. Whatever the technical merits of the plans, they are unlikely to have lasting influence without direct accountability. As a matter of basic democratic logic, powerful strategic plans outside London should be prepared by a body which is directly accountable to the public. The problem is that this would require directly elected strategic bodies, as well as elected mayors. The adoption of the London model in other parts of England would require the rethinking of devolution on a scale which appears politically inconceivable. In this context, we can only recommend measures to secure the 'least worst' outcome by ensuring that regional and sub-regional strategic plans:
 - do not carry the status of a development plan;
 - are subject to independent examination which provides a right to be heard for the public; and
 - must be agreed by a formal resolution of all the constituent local planning authorities.
- **A new legal duty to promote the Aarhus Convention rights:** The 1998 Aarhus Convention sets out a framework of rights that should guide people's opportunities to shape decisions which affect them. This framework should apply to all aspects of the planning endeavour, from neighbourhood planning to the NPPF, and from the local control of development to decision-making on national infrastructure. The Aarhus Convention consists of three primary objectives on access to information, a right to participate, and a right to challenge. A new duty on both government and local authorities should make clear that this framework has direct effect on all forms of planning decision-making. The government has signalled its support for such a move by enshrining the Aarhus Convention rights as part of the environmental principles adopted in the European Union (Withdrawal) Act 2018. At

the time of writing, it is not clear whether these principles will apply to the planning system. The forthcoming Environment Bill will clarify the position. In addition, action is needed if all three of the Aarhus Conventions objectives are to be delivered in way that allows for a fair and inclusive planning system, as follows:

- Access to information: While the Freedom of Information Act provides a strong basis for accessing planning information, it still leaves the opportunity for extensive exceptions for commercially confidential information. The government should make clear that it expects an 'open-book' accounting approach to important financial information in the planning process. It should move to outlaw confidentiality agreements between local authorities and other public or private companies such as those used by HS2. These are not in the public interest and reinforce suspicion and mistrust.
- A right to participate: The promotion of active public participation in planning decisions should replace the passive approach of 'consultation'. Participation demands an ongoing sharing of responsibilities and the co-creation of policy. Participation is defined by the sharing of power and responsibility and requires local authorities and planners to be skilled facilitators and enablers.
- A right to challenge: Access to justice in planning is highly restricted. The process of judicial review is complex and can risk significant costs. Reductions in legal aid have made this situation worse, so that challenging planning decisions in the courts is normally the preserve of NGOs, wealthy objectors, developers, and public bodies. Cost capping for 'Aarhus Convention claims' has helped only in part. The Review has noted the uneven distribution of appeal rights in planning. The fact that only applicants have such rights of challenge has long been a source of basic inequality in the governance of planning. We also noted the potential administrative gridlock that could result from trying to have a fair appeal system. A planning system mired in endless challenge and counterchallenge would not be fit for purpose, and we acknowledge that getting the balance right is extremely difficult. Furthermore, this recommendation crucially assumes that Local Plans would be under a statutory duty to be kept up to date and replaced, where necessary, every five years. As result we recommend the adoption of a community right to challenge which would be limited in the following ways:
 - It would apply only to those applications in town and county planning which were defined as departures from the local development plan. These cases are already identified by all local planning authorities.
 - It would apply only to major applications (for example residential development of more than ten homes or applications requiring Environmental Impact Assessment).
 - It would require the Planning Inspectorate to review such appeals to determine if they had merit (for example if there was an arguable breach of Local Plan policy).
 - It would require a fixed number of electors to support the appeal in writing.
 - It would require a fee.

- **Transformed public awareness of planning:** We noted that many communities have little or no knowledge not only of the planning system but of the real opportunities that exist to make better places. Neither do they have access to basic resources to help them respond to planning applications. Empowering people with the skills to make their case has to go hand in hand with enhancing their knowledge of the challenges and opportunities which will shape our future. This Report has made clear that new technology could transform the way that people engage with the built environment, by giving them better access to information and providing new tools to help create and express community visions. We were impressed by the potential of these new tools if they were to be applied in the context of clear citizen rights and robust democratic frameworks. However, capitalising on these new technologies is a major challenge in the context of local authorities no longer having the resources to fund community development activities or local community hubs and knowledge centres such as urban studies centres. Funding has also been reduced for key services designed to offer help to those who cannot afford to pay for advice, such as Planning Aid. Resources for neighbourhood planning do exist, but this is only one part of the planning system. A range of bodies led by government should act to:
 - harness the benefits of new technology in reaching out to the public, by transforming the way that information is presented, providing accessible and engaging visualisations of new proposals, and new platforms for dialogue;
 - redirect resources to general planning advisory services and to developing and supporting the work of Planning Aid;
 - establish a community planning portal to act as a hub of plain English (and plain other languages) community resources on planning;
 - work with the Department of Education to embed planning skills in the national curriculum as a key part of citizenship; and
 - harness the resources of the planning schools to support community understanding and empowerment.

END
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