

IS PLANNING BECOMING AN INVERTEBRATE? THE NEED FOR EFFECTIVE PLANNING ENFORCEMENT

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Abstract

Enforcement matters are frequently high-profile, and yet there has been relatively little practice/academic discussion and debate in comparison with many other areas of planning. Drawing partly upon recent research undertaken by the University of the West of England, Bristol, this paper investigates and concludes upon the vulnerable position of planning enforcement in England today and the potential impact of this upon the provision of a fair, just, ethical, pro-active, robust, effective, efficient, and delivery enabled planning approach.

As the backbone of the planning system enforcement supports and underpins; it ensures adherence to policy and regulation and plays an important role in the effective delivery of post-decision project management. It also provides the certainty and legitimacy required for effective governmental intervention into development delivery and place shaping. And yet today, despite the optimism brought about through spatial planning, planning enforcement is at risk of becoming a victim of the state of the profession in the current political and economic climate.

This paper will specifically explore enforcement within the context of planning's role in the successful management of the built and natural environment, the balancing of public interest and matters of social justice, and the adequacy of the current and potential legal mechanisms necessary for the operation of a fit for purpose planning system. The work will consider the risks facing planning enforcement and the associated implications upon the wider planning system, society and the environment.

1. Introduction

The modern English planning system has its roots firmly in the welfare reforms of the mid – late 19th century. The Industrial Revolution had resulted in the rapid growth of densely populated urban areas, the majority of which offered extremely poor living conditions and little, if any, form of sanitation. Nonetheless, a flood of economically driven migration to England's burgeoning industrial towns saw the country's population reject a traditional agricultural existence, creating a new (urban) working class (Rydin 1993).

The exceptionally high mortality rates, spread of disease and squalor prevalent in these new industrial centres led to increasing pressure on the ruling political class for fundamental welfare reform. Resultantly, the second half of the 19th century saw a stream of state interventions in the form of new legislation, which was to eventually lead to the first planning act, 'The Housing, Town Planning etc. Act 1909'.

In effect, the welfare reforms of the 19th century represented a movement to affect social justice. These were reformations borne out of the basic human instinct to protect and nurture. It is this guttural and emotional response to society's most challenging problems, which is largely absent from the current planning system. Issues of social justice, related to human emotion and a sense of fairness, do still resonate, however, within the sphere of planning enforcement (hereafter referred to as enforcement).

The historic treatment of enforcement, as a discipline somehow removed from forward planning and development management has acted to insulate the activity from ideologies that have transformed planning into a system for facilitating economic growth. The position of enforcement is therefore unique within planning. It is the only truly remaining vehicle for the delivery of the form of social justice from which the system originally grew.

2. Planning, enforcement and social justice

The history of planning is often told as a simple, linear journey in which the vision of delivering social justice was aborted in the face of harsh environmental impacts and political philosophies following the end of the Second World War. The timing of this abandonment could not have been more ironic, given the utopian vision of the 1947 Act. Nonetheless, in the decades that followed, the theories and politics that shaped the English planning system became discernibly less people-centric. This shift can be traced, in part, to the rise of a neo-liberal approach to socio-economic politics that have dominated the policies of successive British governments. This has transformed the purpose of planning into a means of wealth creation, both for the individual and the nation, and has led to the commoditising of planning, whereby decisions are made on economic grounds, as opposed to imparting any value led judgement. (Taylor 1980).

As the planning system has continued to evolve, new terms such as place shaping and sustainability have come to define its objectives. At the same time, the premise of delivering social justice has all but vanished from the agenda. This is surprising, given that planning has at its disposal many of the tools necessary to help address some of the most challenging and debilitating issues facing society. Tackling wealth and health inequalities, facilitating equality of opportunity and combating the threat of climate change, are issues that should be central to the planning objective. To which extent they are, is open to conjecture based upon the current direction of travel. This raises two very fundamental issues; to what extent is social justice a conscious consideration for key actors in the planning system and who or what are the barriers that prevent its delivery?

Through its pursuit of wealth creation the idea of place has come to dominate the planning landscape, often to the detriment of people. There is perhaps no better example of this than the revanchist tide that has washed over many of England's major city centers transforming them into shopping, leisure and entertainment destinations for out of town day trippers (Macleod, G 2002). In some cases these areas are within a stone's throw from several of the poorest and most deprived areas in the country. Furthermore, it is now approaching half a century since the Skeffington Report was published, providing evidence, if it were needed, that a clear disconnection between people and planning does exist (Ellis, H and Henderson, K. 2014).

Despite planning's changing relationship with people enforcement has remained the one area in which issues of social justice, equality and fairness, have been ever present. It is often the impact of unauthorised development upon a citizen's sense of well-being and their perceptions of justice that lead them to complain in the first instance. These concerns relate not only to the most basic and vital aspects of social justice but also the human condition. How enforcement has found itself in this space, however, is more through chance than design.

3. The absence of control

The reason for a robust enforcement regime can perhaps best be demonstrated by the story of the 'Plotlanders' movement. In the first four decades of the twentieth century a 'perfect storm' developed that led to a movement characterised by unauthorised development and driven by a quest for arcadia (Hardy, D and Ward, C. 1984).

The economic, social and environmental change witnessed in the run up to, during and after the First World War resulted in a growing quest for home ownership, and increased demand for housing post-war, and a demand for better quality housing. Transport enabled ‘commuting’ was also developing, as was the ability to ‘escape’ from the urban centres and working life on holidays and day-trips. In parallel, land ownership was becoming increasingly fragmented with the decline of Country Estates and the declining fortunes of farms. Importantly, all of this existed within a context of legislative weaknesses.

The manner in which this quest for arcadia manifested itself was in a series of unauthorised settlements which flowered mainly along the south and south east coast, and up the Thames Estuary. The name ‘plotland’ comes from the nature of the development activity; land, typically sold off by farmers and estates and of low quality, was purchased by speculators and resold on a plot by plot basis. These plotlands varied significantly in scale, quality, provision of infrastructure and degree of permanence but all had in common the fact that they were unauthorised. Despite strong opposition from some quarters of society to their existence, the fact was that legislation was weak and the ability of local authorities to remove these developments was limited.

It was only the advent of the Second World War and the subsequent post-war legislation that ultimately led to either the loss or consolidation of the plotlands and for some their evolution into legitimate settlements, albeit ones with a very unique character, appearance and ethos.

4. Emergence and consolidation of an enforcement system

Development such as the plotlands were wholly incompatible with the new plan led system of the post-war planning landscape. This new planning system included provisions to ensure that such developments could be controlled; the introduction of universal control made certain that all new ‘development’ would require permission. In addition, some legal powers existed to address unauthorised development that was undertaken although these were actually quite limited. The planning system that emerged was also designed to manage change through that system, rather than respond to changes that took place outside of it.

With regards to enforcement it was not until the 1990 Town and Country Planning Act that interest and recognition in its importance was truly ignited. That act established greater powers for local planning authorities to tackle unauthorised development and in doing so helped to raise the profile of enforcement. This was underscored by the publication of Planning Policy Guidance 18 in 1991, which among other things alerted LPAs to the consequences of failing to take appropriate action in cases where a harmful breach of planning control had been identified.

The noughties saw further and progressive change for enforcement. The emergence of spatial planning and the development management approach, courtesy of the Planning and Compulsory Purchase Act 2004, brought about a more holistic appreciation of the activity of planning. The development management approach particularly placed greater emphasis on the significance of project management skills and the desire to create a robust system and processes that would facilitate clarity, certainty, public and developer confidence, and deliverability (Shepherd, A. Britnell S. 2013). This succeeded in bringing enforcement into the centre ground of the planning discussion, due to its ability to assist the delivery of an end to end management of development.

In 2011 the Localism Act provided additional new powers for enforcement, including Enforcement Orders, to address issues of concealed breaches of planning control, and the ability for local planning authorities to refuse to consider planning applications for development against which an Enforcement Notice had already been served. These changes appeared to set the scene for a greater appreciation of enforcement, as a discipline in its own right, and within the delivery of a collaborative and solution orientated approach to development. However that has not materialised and the reasons for this may be found in the historic treatment of, and value placed upon, enforcement.

5. Still the ‘Cinderella Service’?

In 2008 the Planning Advisory Service published “Case Study: A Stitch in Time”, which highlighted the history of planning enforcement as a ‘Cinderella service’ that had not received adequate resources or attention. The report also pointed to the vital role that enforcement has in underpinning the whole planning system, within facilitating the development management approach and its positive impact on communities and the built environment.

That enforcement plays a vital role in the planning system cannot reasonably be disputed. It supports the entire system, including the policies and decisions made by local planning authorities. However, the economic and political climate of the past 5 years has already seen degradation in the role of the enforcement officer, as a planning professional, and the profile of enforcement as a professional activity. At some local planning authorities the enforcement service has been subsumed into a wider, generic enforcement team (Britnell, S et al 2014). While no doubt driven by essential financial considerations, these moves are threatening to undermine the positive changes that have been made in enforcement, specifically over the last decade.

The historic perception of enforcement, as a cost negative activity, is likely to play a key role in how local planning authorities choose to deliver planning services over the coming years. It is vital therefore that the success of enforcement is not measured on the balance sheet, but in terms of its ability to deliver social justice, and provide robust protection for the built and natural environment. There is a strong body of local, national and international evidence suggesting that social disturbance and environmental damage are realistic consequences of failing to properly manage development. Such circumstances have resulted in substandard living conditions and environments that fail to deliver social justice, from the extremes of illegal ‘shanty towns’ to the removal of a prominent and protected tree.

Perversely, it is the historic lack of interest and neglect of enforcement that now presents local planning authorities with the opportunity to deliver innovative and pro-active services. Paragraph 207 of the National Planning Policy Framework (NPPF), the only paragraph dedicated to enforcement, is less prescriptive in its requirements than it is of the forward planning and development management activities. This allows local planning authorities the chance to shape enforcement services in a way that is not afforded to the other planning disciplines. Critically, if local planning authorities can demonstrate the ability of enforcement to close the planning loop, by informing policy and facilitating an end to end approach to development, it may finally achieve parity with the much vaulted other members of the planning trinity.

6. The wider context

The current wider planning landscape is one of constant flux. While changes to regulations and policy affect all professionals within the planning system, it is the enforcement officer, always at the coal face, who is often the first to notice how they are played out on the ground. Keeping abreast of new policies, guidance and processes presents a huge professional and intellectual challenge. Failure to interpret and implement these matters correctly may lead to potentially expensive legal disputes, and could damage the profile of the planning department as a whole.

Despite the obvious challenges the changes imparted upon the planning system in recent years have been all too frequent and fragmented. While the NPPF initially promised consolidation, raising hopes of a period of much needed stability, the intervening years have seen a continuation, if not an acceleration, in changes. It is important to note also that these changes represent some of the most fundamental to the planning system in decades and have been implemented against the backdrop of austerity and biting local authority funding cuts. Not only have local planning authorities reduced staffing levels during this time but they will have also lost senior, experienced officers, who otherwise could have provided a steady hand through this period.

The changes to the General Permitted Development Order (GPDO) demonstrate the complexities of a scattered, incremental approach to regulation and policy. The GPDO now includes a number of new and complex procedures, including Prior Notifications, for issues as disparate as larger than normally permitted domestic extensions, to the conversion of agricultural buildings to residential dwellings. These permitted development rights are subject to a variety of convoluted and voluminous limitations and conditions, presented in a language and structure that is likely to be alien to all but seasoned planning professionals.

If the intention of amending the GPDO was to relieve pressure on local planning authorities, cut red tape and breathe confidence into the development sector, the recent changes appear to have done little to achieve this. They are only likely to result in precious local planning authority resources being expended in responding to queries, which if given concise and accessible regulations, there would simply be no need. Where development is carried out erroneously because of the difficulty in interpreting the regulations, it is likely to be the enforcement officer who is tasked with resolving any issues.

Changes have also been made to the Use Classes Order, the nature of which threatens to undermine the established plan led approach of the planning system, and the ability of local planning authorities to properly forward plan their areas. While Prior Approval processes attached to some permitted changes do provide local planning authorities with opportunities to consider, on limited grounds, the impacts of such development, the uncertainty over future uses is likely to impinge on the ability of authorities to robustly assess the future requirements of an area. Furthermore, local planning authorities who have already produced and adopted Core Strategies or Local Plans risk seeing years of meticulous planning undermined by these changes.

In addition to regulatory changes, the debate regarding devolution of political and economic powers to English cities, including mooted concessions over planning, is introducing a new dynamic that is yet to be played out. While this represents a clear synergy with the localism agenda and can only support the argument that decisions affecting local people should be made at the local level, any suggestion of further fragmentation of the planning system is a very real and fundamental concern.

7. Conclusions

The notion of the human condition is all but absent from the policies that guide the current planning system. Yet underlying key planning notions such as sustainability and place making is the fundamental experience of human existence. For enforcement, the historic view that it is the lesser activity in the planning trinity continues to cause damaging impacts to the profession. Still, addressing clear and harmful breaches of planning control resonates strongly with the notions of fairness and justice that sit behind the origins of the planning system. These issues present a dichotomy for the planning system, which is only likely to be resolved by a fundamental re-alignment that reconnects planning with citizens on a human level.

Changes to regulation, policy and processes continue at pace and the cacophony of constant upheaval in the planning system is threatening to undermine the recent advances in the profile and appreciation of enforcement. There is real concern that this hitherto forgotten service may once again be cast aside. It is vital in these circumstances that the voice of enforcement continues to be heard and that the drive for a progressive and innovative enforcement service is not lost in the noise.

Despite the warning signs the threat to enforcement services from the current political and economic climate has already been played out in some authorities; and with further potential cuts on the horizon, it is a scene set to be repeated over the coming years. Recent research (Britnell, S et al 2014) however, suggests that enforcement is not quite the financial burden it has always been perceived. Some local planning authorities point to the income generated through retrospective planning applications associated with enforcement cases and there does appear to be scope for charging for post-decision monitoring of planning permissions.

It is likely to be the case however that most enforcement services are run at a financial loss. Should that be true, it is a small price to pay for ensuring that the principles and operation of the entire planning system are protected.

While it is clearly hyperbole to suggest that enforcement alone can create a better society, its unique position within the planning regime does enable it to deliver social justice in a most direct and visible form. Furthermore, a planning system that dares to operate without a stable, robust and fully supported enforcement base runs the risk of facilitating both social and environmental harm. To avoid this, the planning system needs to refocus its meaning, from one primarily concerned with wealth creation to a return to the social visions of the original welfare reforms from which it emerged. And enforcement, for so long maligned, may just provide its vital starting point.

8. References

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