PREM 19/2761

PART 6.

MT.

Confidential Filing

Correspondence from Sir John Sainsbury on Planning Controls.

General Planning Enquiries.

LOCAL GOVERNMENT.

Part 1: July 1983.

Part 6: Mar 1989

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
~~1.3.89~~							
~~6.3.89~~							
13.3.89							
~~17/3/89~~							
~~23.3.89~~							
~~2.4.89~~							
~~6.4.89~~							
~~11.4.89~~							
~~13.4.89~~							
~~17.4.89~~							
~~31.5.89~~							
~~16.6.89~~							
~~5.7.89~~							
~~26.7.89~~							
31.8.89							

PART CLOSED

PREM 19/2761

PART 6. ends:-

AT to DHL 31.8.89

PART 7 begins:-

AT to ~~DHL~~ DoE 4.9.89

PRIME MINISTER

PLANNING CASES FOR MINISTERS' CONSTITUENCIES

You will remember that Mr. Ridley, when Secretary of State for the Environment, wrote to you suggesting that guidance should be given on how Ministers should handle planning cases which arose in their constituencies.

He argued that the requirement that any representations made by a Minister in a planning case should be made known to other parties in the case was inconsistent with the advice given in Questions of Procedure for Ministers that

"Ministers should not take part in any public representations (or any deputations) to other Ministers; but they are free to make their views about constituency matters known to the responsible Minister by correspondence or by personal interview provided that this is not given publicity".

Mr. Ridley took the view that the only way to secure adherence both to the principle of collective responsibility and to the principles of administrative law was for Ministers to confine themselves to passing on constituents' representations without expressing a view on them.

The Law Officers, both in Scotland and England, had suggested a rather more liberal line. The Lord Advocate had argued that where a Minister has no planning responsibility there is no legal factor or constitutional convention which prevents him from taking up a planning matter as a constituency M.P. provided that it is made clear that it is in the latter capacity that he is acting.

The Attorney General argued that, as regards a Minister with no planning responsibilities, his potential share in responsibility for any decision that may ultimately be taken by a Ministerial colleague was compatible with an expression of his own opinion on the matter to the local planning

authority or to a planning Minister. He should, however, express and conduct himself in a manner that was appropriate to one who might later have to accept responsibility for an opposed decision, and to one who is a colleague of the deciding Minister, e.g., he must not contend that any decision other than the one he supports would be unreasonable. Nor should his support extend to participation in public demonstrations calculated to bring pressure to bear on his Ministerial colleague, or any participation in public representations or deputations to Ministers. The Attorney General thought that for a Minister to claim that he was debarred from any involvement in planning cases would be seen by his constituents to be unjustified.

The Cabinet Secretary's advice supported Mr. Ridley. He argued that if a representation on a planning matter is to be made available to all the parties, it effectively becomes a public representation and thus fall foul of the guidance in QPM. Sir Robin referred to the advice which the Cabinet Office had given in 1983 to Patrick Jenkin, when Secretary of State for Industry, that he should not give evidence to a road planning inquiry in his constituency.

You took the view that a Minister/M.P., not involved in planning decisions, can place his constituents' representations before the planning Minister, but should not express a view of his own. This was conveyed to Cabinet colleagues in my letter to Mr. Ridley's Office - Flag A.

Since that letter was circulated, I have received representations from the Chancellor's Office and from the Chief Whip - Flag B. Both wondered whether such an absolutist line was justified or necessary. I went to see the Chief Whip, and the following points emerged in the discussion.

I. The doctrine of collective responsibility was not, he argued, the relevant factor since what was at issue was not a collective decision but a judicial decision of an individual Secretary of State. Cabinet colleagues could be expected to

support whatever decision was taken, but need not be debarred from expressing views beforehand. Against this, it can be argued that the relevant consideration is not collective responsibility but a more general principle of solidarity. Ministers should not act in a way which makes an already difficult and politically contentious task even more difficult.

II. No distinction was made between planning cases where the Government was a party and purely private cases. The Chief Whip accepted that it would be more damaging for a Minister to be opposing a proposal by another Government Department to build a road or prison, or construct a nuclear dump. But he did not see problems for purely private sector developments. This dividing line is not, however, a straightforward one. What about other parts of the public sector such as British Coal; or cases where the private sector is investing in a project which has broad Government support, e.g., the Channel Tunnel, an airport extension, or additional housing in the South East?

III. No distinction is made between large and small cases, e.g., a single retail redevelopment versus a whole new rural town.

IV. The Chief Whip argued that it was inconsistent to allow Ministers to make representations on cases affecting themselves but not their constituents. I argued that there is a distinction; if the Minister does not defend his own interests, no one will. In the case of constituents, it is not essential that he express his own view, only that he makes sure that their views are heard.

In view of these concerns, would you like to have a discussion with a wider group of Ministers before anything is written up for Questions of Procedure for Ministers. The group might comprise:

Mr. Patten (who might take a different view from his predecessor)
Mr. Rifkind
Attorney General
Lord Advocate
Chief Whip
Mr. Parkinson
Sir Robin Butler

AT

31 August, 1989.

CCPA

Department of the Environment
2 Marsham Street
London SW1P 3EB
Telephone 01-276 3450

Minister for Housing
Environment and Countryside

DAVID A TRIPPIER RD JP MP

30 August 1989

Dear Malcolm,

PLANNING AND CONSERVATION : LEGISLATIVE PROPOSALS

On 28 July we both published consultation papers setting out proposals for improving the development control system and other planning procedures. Consultation on these proposals was agreed by the Prime Minister in her private secretary's letter of 11 July, in response to Nick Ridley's minute of the 27 June.

Your paper in addition contained a short section on historic buildings and conservation areas, corresponding to Nick's proposals under this heading. Our paper, however, omitted those proposals, because (as you may know) Nick had decided that it would be better to make them the subject of a separate consultation paper, where they could be placed in the context of wider heritage policies.

We have now had an opportunity to review those proposals and, with the exception of one of them, we are happy to go forward to consultation as Nick had intended.

Our only reservation - and it is a serious one - is over the proposal to change the duty to list buildings of historic or architectural interest into a discretionary power. There seem to me to be three compelling reasons for not doing this, or at least for not going to consultation on it at this stage:

(a) Consultation on this provision would be tantamount to a public acknowledgement that we do not believe we have discretion on listing and - given the absence of any definitive rulings by the Courts - reduce such freedom as we have now to exercise discretion.

(b) It is a controversial proposal which will inevitably be seen by the conservation world as a weakening of the protection given by the existing listing provisions. My own statutory advisors (English Heritage) are opposed to the idea and can be expected to lobby strongly against it, even to the point of seeking to defeat it in the Lords, through their Chairman.

Local Govt: Planning
R6

(c) Although the Planning Bill is first reserve there is no guarantee it will find a place in the programme. If we do not have legislation this year, pressing ahead with this proposal would mean at least 18 months of futile disagreement with the conservation world.

Given the present uncertainty, we have decided not to include this proposal in our consultation paper.

I am sorry that this may make us appear to be out of step, but I dare say there will be arguments - as so often - for doing things differently in Scotland.

I am copying this letter to other members of E(LF) Committee.

Yours ever

David

The Secretary of State for Scotland

CONFIDENTIAL

NDPM AF 3/8

PCPU

THE DEPARTMENT OF TRANSPORT

FROM THE SECRETARY OF STATE

2 MARSHAM STREET LONDON SW1P 3EB
TELEPHONE 01-276 3000

Andrew Turnbull Esq
Principal Private Secretary
10 Downing Street
LONDON
SW1A 2AA

My Ref:

Your Ref:

2 AUG 1989

Dear Andrew

PLANNING CASES FOR MINISTERS' CONSTITUENCIES

Thank you for sending me a copy of your letter of 18 July to Roger Bright.

The issue of Ministerial involvement with planning decisions which affect their own constituencies arises equally with highway proposals, especially where my Secretary of State is the proposer of a scheme (which is thus Government policy), but also for local highway proposals where my Secretary of State is the confirming authority. The proposed amendments to "Questions of Procedure for Ministers" reflect the internal practice of this Department, where Ministers take no part in decisions - statutory or otherwise - which affect their constituencies, and confine their activities to passing on constituents' views.

It would therefore be helpful if the amended Questions of Procedure could make clear that highways proposals are also covered, by specifically adding "including any highways proposals where draft orders have been published" after "planning applications and appeals".

I am sending copies of this letter to the Private Secretaries to all members of the Cabinet, to the Legal Secretaries to the Law Officers, and to the Private Secretaries to the Chief Whip and the Minister of State at the Privy Council Office.

Yours

Neil

N T E HOYLE
Private Secretary

CONFIDENTIAL

LOCAL GOV'T : Planning P6

From THE PRIVATE SECRETARY

NBPM

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

1 August 1989

Dear Roger Bright,

ENFORCEMENT PLANNING CONTROL:
REPORT BY ROBERT CARNWATH, QC

The Home Secretary has seen Mr Ridley's minute of 19 July to the Prime Minister about his proposals for legislation based on the recommendations of this report.

The Home Secretary is content that the outstanding detailed points on enforcement should be considered by DOE and Home Office officials.

I am copying this letter to the Private Secretaries to the Prime Minister, the Lord Chancellor, the members of E(LF), and to Sir Robin Butler.

Yours,

Celia Boyle

pp MISS C J BANNISTER

Roger Bright, Esq
Private Secretary
Department of the Environment

local Govt
Planning
Pt 6

c/ Mr Woolley (CO)

Government Chief Whip
12 Downing Street, London SW1A 2AA

22 July 1989

Dear Andrew,

PLANNING CASES FOR MINISTERS CONSTITUENCIES

Considerable concern has been expressed to me about this matter and the Prime Minister's decision that Ministers should refrain from expressing a view in their capacity as constituency MPs on planning applications and planning appeals. I fear that a number of points have been overlooked:

1. I doubt whether in this area the principle of collective responsibility gives one much guidance. If it applied in its full rigour one would not be able to make representations when one's private interests are affected and yet it is conceded that one can. The truth surely is that the Secretary of State is acting in a quasi judicial capacity and cannot share his responsibility with anyone.

2. There cannot possibly be any lack of respect for the principle of administrative law if a Minister like any other citizen expresses a view in a planning appeal provided that any representations made are made known to the other parties. Whether the Minister is expressing his own views or passing on the views of his constituents cannot affect the issue in any way.

3. It is unrealistic to expect a Minister to pass on his constituents representations without expressing his own views and no harm can be done by his expressing his own views provided the principles of administrative law are observed (and his representations are made known to the other parties) and provided he makes plain that the Secretary of State has to judge the matter impartially on the evidence and that he, the Minister making the representations, will accept the verdict of the Secretary of State as the end of the matter. It simply cannot be right to expect Ministers to be mere messenger boys conveying the views of their constituents but steadfastly refusing to lend any support to such views or express any views themselves. I cannot believe that in reality any Minister worthy of his salt would remain silent if asked point blank by the press whether he supported his constituents or not.

4. We really have got ourselves into an absurd position if Ministers can make representations when their private interests are affected, representations which other parties to an appeal can make public to the general embarrassment of the Government, but Ministers must remain silent when their own interests are not affected and they merely want to carry out their duty and look after the interests of others.

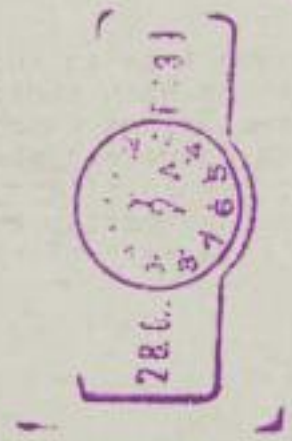
May we discuss.

Yours ever

Jonathan

Andrew Turnbull Esq
10 Downing Street
LONDON SW1

Local Govt - Planning Pl 26.



Prime Minister (2)
cab
27/7

cc PL

2 MARSHAM STREET
LONDON SW1P 3EB
01-276 3000

My ref:

Your ref:

Caroline Slocock
Private Secretary to
The Prime Minister
10 Downing Street
LONDON
SW1A 2AA

27 July 1989

Dear Caroline,

STRATEGIC PLANNING GUIDANCE FOR LONDON

Thank you for your letter of 26 July.

Mr Patten has now studied the Guidance and has confirmed that he is content for it to be issued. Mr Moynihan will therefore be announcing the publication of the Guidance later tonight during the course of the debate on the Consolidated Fund (the Guidance is the sixth subject for debate). Mr Moynihan will also be sending all London MPs a copy of the Guidance tomorrow morning.

I am copying this letter to Colin Waters (Home Office), Clive Norris (Employment), Neil Thornton (Trade and Industry), Neil Hoyle (Transport), Carys Evans (Treasury and Trevor Woolley (Cabinet Office).

Yours

A D RING
Private Secretary

PRIME MINISTER (1)

STRATEGIC PLANNING GUIDANCE FOR LONDON

DOE are planning to announce the attached guidance on planning in London (Flag A) on Thursday in answer to a written PQ and have written to draw this to your attention.

You saw the draft document back in March and approved its issue as a consultation document. Carolyn Sinclair in her commentary on the draft commented that the paper was well written and said nothing new. This is at Flag B, should you wish to refer to it.

The Guidance has not greatly changed since then: I have highlighted changes in the attached. I do not think you need to read through the final version of the document. The main changes appear to be:

- greater emphasis on the need to plan for and take into account transport systems, including emphasis on their role in encouraging economic development; on measures to reduce transport congestion; on investment in railways and underground systems; consideration of alternative ways of carrying freight, such as waterways; improvements in access to airports; and the development of waterways;

- greater emphasis on the need for London to contribute as much as possible to its own mineral needs and mention of a target for London of sand and gravel production;

- consideration of the flooding implications of new development;

- mention of the need to give consideration to the conservation of the built environment;

- mention of the need to consider sport and recreational facilities.

- emphasis on the need for Boroughs to cooperate with each other in the preparation of waste disposal plans and to make proper provision.

Carolyn in commenting on the draft guidance had two detailed points which seem to have been met in the current draft.

Are you content for DOE to go ahead and issue the guidance?

CB

Caroline Slocock
25 July 1989

This must be for Chris Patten to adjudge. If so, he must feel he can truly adopt it as his own. If Thursday is too soon - the paper could quite readily be published a little later

CC/PU.

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

NBPM

Paul Gray Esq
Private Secretary
10 Downing Street
LONDON
SW1A 2AA

26 July 1989

Dear Paul,

ENFORCING PLANNING CONTROL: REPORT BY ROBERT CARNWATH QC

My Secretary of State has seen Nicholas Ridley's minute of 19 July seeking policy approval for enacting the recommendations of the Carnwath report.

He has no objections to implementation of the Carnwath proposals for England and Wales and he intends to invite comments on the report's recommendations from Scottish organisations.

A copy of this minute goes to the Private Secretaries of members of E(LF) Committee, the Lord Chancellor and Sir Robin Butler.

Yours,

David.

DAVID CRAWLEY
Private Secretary

Local Govt

Pt 6.

Planning

10 DOWNING STREET

From the Private Secretary

26 July 1989

Carolyn Sinclair -
Here are my papers
So please return
them
CS
26/7

Dear Alan,

STRATEGIC PLANNING GUIDANCE FOR LONDON

Thank you for your letter of 24 July to Paul Gray, attaching a copy of the guidance which you had planned to issue on Thursday.

The Prime Minister has seen this and, whilst she has raised no objection to the terms of the guidance, has commented that the new Secretary of State for the Environment will clearly wish to consider it himself before it is issued, as he will be carrying this forward. If it is not possible for him to do this before Thursday, she sees no reason why the guidance should not be published in the recess.

I am copying this letter to Colin Walters (Home Office), Clive Norris (Employment), Neil Thornton (Trade and Industry), Neil Hoyle (Transport), Carys Evans (Treasury) and Trevor Woolley (Cabinet Office).

Yours sincerely,

Caroline Slocock

CAROLINE SLOCOCK

A D Ring Esq.
Department of Environment

cc C. Stupart

2 MARSHAM STREET
LONDON SW1P 3EB
01-276 3000

My ref:

Your ref:

Paul Gray Esq
Private Secretary to
The Prime Minister
10 Downing Street
LONDON
SW1A 2AA

24 July 1989

Dear Paul

STRATEGIC PLANNING GUIDANCE FOR LONDON

I attach a copy of strategic planning guidance for London which we intend to issue to the London Boroughs before the Summer Recess. The Prime Minister saw a copy of the consultation draft which was published in March.

The Local Government Act 1985 envisages that such guidance will be provided and the London Boroughs must have regard to it in preparing their Unitary Development Plans, which will replace the now very out-of-date Greater London Development Plan produced by the GLC.

The final guidance follows closely the consultation draft. While we have not been able to satisfy the many respondents who hanker after a prescriptive, centralised 'plan' for London on the lines of the old GLDP, numerous detailed changes have been made in response to the more constructive comments received.

The section on transport has been drafted in close consultation with the Department of Transport.

We propose to announce the guidance on 27 July by means of the attached Written Answer. Copies will also be sent to all London MPs.

I am copying this letter to Colin Walters (Home Office), Clive Norris (Employment), Neil Thornton (DTI), Neil Hoyle (Transport), Carys Evans (Tsy) and Trevor Woolley (Cabinet Office).

A D RING
Private Secretary

DRAFT INSPIRED PQ

Draft Question

[ ] to ask the Secretary of State for the Environment when he will publish his strategic planning guidance for London, and to make a statement?

Draft Answer

I have today published strategic guidance for London which takes account of the comments received in consultation on the draft which I published on 6 March.

The purpose of the guidance is to help the local planning authorities in London to prepare their unitary development plans. It is not intended as a comprehensive 'masterplan' for London, but as a Statement of the Government's policies on those matters relating to the development and use of land which need to be dealt with on a London-wide basis. Within this framework, the guidance allows each borough ~~wide~~ freedom to draw up with the local community the unitary development plan for its area.

The guidance includes policies on business, industrial, retail and tourist development; road and rail infrastructure and the relationship between transport and land use; provision for additional housing for the next decade; protection of the Green Belt, Metropolitan Open Land and other open spaces; conservation of the natural and the built environment; and preservation of fine views and the character of the River Thames.

The guidance marks an important further step away from the cumbersome, centralised planning of the 1960s and 1970s towards the effective and well-focussed development plans London will need as it faces the opportunities of the 1990s.

Copies of the guidance have been sent to all London MPs and placed in the Library of the House.

CONTENTS

1. INTRODUCTION

London in the 1990s

1. London is one of the world's great cities. As the capital, it is of unique importance to the life of the United Kingdom and provides homes and work for one in seven of the population. It has achieved and maintained that position by its ability to adapt to change and take advantage of new opportunities, while respecting and conserving the inheritance from the past. Today London is among the most dynamic and forward looking cities in the world. It is also one of the richest in tradition and in its environmental and cultural heritage. The continuing revival of East London is one of the success stories of the UK and offers unrivalled opportunities to help meet the need for homes for all in London and the South-East.

2. London in the 1990s must be a city where enterprise and local community life can flourish, where prosperity and investment will continue to increase, where areas which had declined will find new roles, where movement will become easier and where the environment will be protected and improved. London's future depends on the initiative and energy of the private sector and individual citizens and effective co-operation between the public and private sectors, not on the imposition of a master plan. The role of the land-use planning process is to facilitate development while protecting the local environment. The effective exercise of planning control requires practical and well prepared development plans. It is for the Government to provide guidance on those matters which must be dealt with on a London-wide basis, so that the boroughs can prepare effective plans for their own areas.

3. One of London's particular strengths is the distinctive identity and character of the many localities and communities which together constitute London. Unitary Development Plans should reflect this local diversity and vitality.

4. The special role of Central London as the seat of Government and as a national and international centre for business, shopping, entertainment, cultural, educational and professional activities should be reflected in Unitary Development Plans.

Role and Scope of the Guidance

5. This guidance is provided by the Secretary of State for the Environment to assist the London boroughs* to prepare their Unitary Development Plans (UDPs).

6. Section 4 and Part 1 of Schedule 1 of the Local Government Act 1985 stipulate that each London borough shall prepare a UDP for its area once commencement orders have been made. DOE Circular 3/88: Unitary Development Plans and the Town and Country Planning (Unitary Development Plans) Regulations 1988 (SI 139) explain the procedures to be followed. The Regulations provide for Part 1 of each UDP, outlining general development and land-use policies, to reflect the Secretary of State's strategic guidance. The London Docklands

---

* Reference to boroughs should be taken to include the Cities of London and Westminster.

Development Corporation should likewise have regard to this guidance in exercising its planning and related functions. The Secretary of State and his Inspectors will have regard to this guidance in dealing with planning applications and appeals. As a material consideration in planning matters, strategic guidance will have a similar status to other national and regional planning guidance set out in Circulars and in PPGs. In general, however, the strategic guidance will assume less importance following UDP adoption since the UDP will have been formulated having regard to it. The UDP will of course be the statutory development plan for the area.

7. The primary purpose of UDPs is to provide a framework for development control. This guidance therefore deals with matters that are directly related to the use and development of land. UDPs should likewise concentrate on such matters. Information on other aspects, however, may be provided as background to those policies, where it is relevant to a full understanding of the policies or provides a context for them, but should not form part of Part I of the UDP or the proposals in Part II. Well prepared development plans, that are practical and realistic, can also assist developers and public services in considering future investment and the allocation of resources. The process of plan preparation enables members of the public and local voluntary groups and business to participate in decisions affecting the future of their areas. The Secretary of State hopes that they will take full advantage of the opportunities for participation that this process affords.

8. The guidance does not deal with aspects that are essentially local and which are best dealt with by the local planning authority in preparing the UDP.

9. In preparing this guidance the Secretary of State has noted the advice given to him by the London Planning Advisory Committee (LPAC) and comments received in consultation on the draft guidance. The Secretary of State appreciates the work done by LPAC and their consultants and is grateful for the assistance they have provided to the Department. As LPAC have made clear, in putting forward their advice on matters related to land-use planning, they have also conveyed the views of their members on certain wider social and economic matters. The Government has taken note of those views.

Objectives of the Guidance

10. The objectives of this guidance, which should be reflected in UDPs, are to

- foster economic growth bearing in mind the importance for the national economy of London's continuing prosperity,

- contribute to revitalising the older urban areas,

- to facilitate the development of transport systems which are safe, efficient and have proper respect for the environment,

- maintain the vitality and character of established town centres,

- sustain and improve the amenity of residential districts,

- allow for a wide range of housing provision,

- give high priority to the environment, maintain the Green Belt and Metropolitan Open Land, preserve fine views, conservation areas, surrounding countryside and the natural heritage.

Some of these objectives may generate diverse pressure. It is a function of this strategic guidance and the planning process to strike the balance between the needs of development and the interests of conservation.

Regional Context

11. Planning issues affecting London should not be viewed in isolation from those applying to the larger region in which it is set. The capital has a complex relationship with surrounding counties which bears upon matters such as housing provision, development generating employment, and transport systems. Issues of this kind are addressed by the local planning authorities of London and the South East, acting jointly through SERPLAN, and in regional guidance issued by the Secretary of State. The present London guidance is consistent with the existing region-wide guidance, which is set out in Planning Policy Guidance Note 9. The Secretary of State has already accepted SERPLAN's proposals for the scale and distribution of housing provision in the South East, during the decade 1991 - 2001, at levels which take into account the latest available population and household formation projections.

12. SERPLAN is currently reviewing the existing South East regional guidance with a view to providing advice for the Secretary of State and suggestions for possible revision of the guidance. The Secretary of State has agreed that this should be done, and he will in due course consider what updating or revision of the regional guidance might be appropriate.

Development Patterns

13. London's economy has undergone significant changes in recent years and will continue to do so. LPAC's studies have confirmed that the total number of jobs in London is rising. It will be important to maintain and strengthen London's international competitiveness. London is well placed to benefit from further advances in information technology, developments such as the Channel Tunnel and the creation of the single market within the European Community in 1992. It is vital that these opportunities should not be lost because of unnecessary planning restrictions.

14. Economic change has led to uneven pressure for development in different parts of London. The City and its fringes, including Docklands, and most of the outer suburbs have experienced rapid growth in service sector employment while some older urban areas in inner and East London have lost population and jobs. The rapid changes in London's economy have been accompanied by other problems relating to skills mismatches, access to housing and pressure on the transport system. In many cases land-use planning policies can make only a limited contribution to alleviating these problems and other measures, such as policies for training, housing and transport may have a greater impact. However UDPs should take account of the effects of such factors on land-use and development, especially the Government's initiatives to encourage regeneration in inner city areas.

15. Current indications are that the following patterns of development are likely to continue for the foreseeable future. There will be:

(i) increasing numbers of small households and strong demand within London for new housing including conversions;

(ii) substantial growth in the business sector to meet demand for office development arising from London's national and international role, especially in connection with the creation of the single European market. Such growth is likely to take place particularly in and around the City of London, including Docklands, the West End, and the South Bank of the Thames facing the City and around the Channel Tunnel termini and in outer and West London;

(iii) increasing interest in business and housing development in East London following the revitalisation of Docklands including the Royal Docks, the expansion of Stansted airport, the opening of the M25, a new rail link and the massive programme of road improvements in the east of the capital;

(iv) pressure for development on the fringe of the metropolitan area;

(v) growth in retail expenditure and demand for large-scale retailing development where sites with good access and ample car parking are available both within existing town centres and outside;

(vi) growing demand for tourist accommodation and facilities.

16. These patterns will need to be monitored carefully. This strategic guidance will be kept under review and updated, in consultation with LPAC, in the light of changing circumstances.

2. BUSINESS AND INDUSTRY

17. The Government's general policies on economic development were most recently set out in Planning Policy Guidance: Industrial and Commercial Development and Small Firms (PPG4). The Secretary of State's Regional Guidance for the South East (PPG9) deals with economic development in the region as a whole.

18. It is important to foster economic growth and development while taking careful account of the impact on the environment and on transport. Boroughs should adopt a positive, flexible and realistic approach to business development throughout London. [deletes "accommodating it where the market wishes to go, unless there are clear planning reasons not to do so."]

19. Development pressures have for many years been stronger in West than East London, but policies aimed at improving the attractiveness of East London can help to redress this imbalance. The regeneration of Docklands, the planned new rail link between Central London and Docklands and the massive programme of road improvements will continue to make the area more attractive for development. UDPs can assist this process by identifying well-serviced, accessible sites for job-creating development. This practical approach is likely to be more effective than policies aimed at channeling major development to particular 'growth points' or centres. In particular there are likely to be development opportunities on large sites in London which were formerly required for public utilities or services but which are no longer needed for these purposes.

20. In central London further land for business development should be made available. As Docklands has shown, development associated with the growth of

the financial sector can help to regenerate and bring new employment to older urban areas. Boroughs surrounding the City of London should make every effort to accommodate such development within the broader planning objectives for their areas. In many areas a mix of residential, business and other uses contributes to the character, vitality and diversity of local communities.

21. UDPs should reflect the changing needs of industry and current or likely future demand for such development. They should provide for flexibility within the business Use Class (B1) of the Use Classes Order 1987, and should not promote policies which distinguish between, say light industrial and other business uses. Where general industry (Use Class B2) continues to be centred in London or wishes to relocate in London, the boroughs concerned should encourage the provision of good quality sites for such use. This is often the best way of preserving or creating new jobs. Boroughs should not reserve land for general industrial use when there is no realistic prospect of such use materialising. Where there is more industrial land available than is likely to be required in the foreseeable future, making some of the land available for other uses will be preferable to keeping the land vacant. In particular suitable vacant or underused land within the built-up area should be made available for housing development.

22. In many areas of London employment growth is likely to be led by small firms either starting up or expanding. Boroughs should make provision in their UDPs for good quality, accessible sites and buildings to meet the accommodation requirements of small and growing businesses.

23. UDPs should include policies providing for the accommodation of warehousing, except where this would lead to the loss of good quality sites for business and industrial development, while having regard to local environmental or traffic implications.

24. LPAC's advice on employment and other topics suggests that "planning gain" should be sought in relation to all major developments. DOE Circular 1/85 on the use of conditions advises that the key criterion is whether planning permission would have to be refused if the condition were not imposed. Any condition should be justified in precise terms and only used in a fair, reasonable and practicable way. This advice is summarised in Planning Policy Guidance: General Policy and Principles (PPG1) as is that on planning gain, which is given in more detail in DOE Circular 22/83. Used correctly, planning agreements under for example, Section 52 of the Town and Country Planning Act 1971 can assist the best use of land and a properly planned environment. But the infrastructure to be provided or financed under such agreements must be related directly to the development in question so that the development ought not to be permitted without it. A local authority is not entitled to treat a developer's application for planning permission as an opportunity to obtain some extraneous benefit or advantage or exact payment for the benefit of the whole community.

3. TRANSPORT

25. The Government recognises the essential contribution that London's transport systems make towards meeting the capital's needs and the beneficial effect they can have on further development and economic growth. The Government has therefore developed a broad strategic approach for improving transport

conditions in London and combating congestion. This approach takes account of the likely impact of rising numbers of jobs and pressure for development. It includes providing through road traffic with good alternative routes around London and wherever possible avoiding the central area; ensuring that London is properly linked to national and international transport networks; making the best possible use of existing roads throughout London, especially those on the Strategic London Road Network; tackling the worst places and causes of congestion and improving conditions in areas where transport problems are particularly severe; and promoting safe, efficient and attractive public transport services, including those which will meet the demand for rail transport to, from and within central London. It acknowledges that rail and underground are the main means of radial movement into central London; that underground, buses, taxis and foot are the main means of travelling in the inner and central areas; and that private cars predominate in outer London. The approach also recognises the potential contribution that the River Thames and other waterways can make.

26. Further information about this approach, and the way in which transport projects, initiatives and policies accord with it, is set out in the succeeding paragraphs of this section and in the Secretary of State for Transport's Statement on Transport in London circulated to boroughs on 26 January 1989. The Statement explains that London's transport systems should respond to demand in ways which are safe and efficient and which have proper respect for the enviroment; It also explains that the Secretary of State believes that all new developments in these systems should reflect the needs of people who are frail, elderly or disabled. Boroughs should take account of this section of the guidance and should refer to the Secretary of State's Statement in developing their framework for development control and the transport aspects of their UDPs.

Public Transport

27. The Government wants London to have safe, good and cost-effective public transport. It sets objectives for the principal operators - British Rail and London Regional Transport - and approves substantial investment. The objectives are subordinate to the fundamental principle, embodied in the law, that the operators are responsible for the safety of their passengers.

28. Most commuter journeys into central London are made on British Rail and London Underground. London Underground has a further important role in distributing incoming traffic within the central and inner areas. Record levels of investment are taking place on British Rail Network South East and London Underground to replace worn-out equipment, improve rail services, reduce costs and provide for increasing demand, which is a feature of recent years and is putting pressure on both networks. Details of some of the committed investment projects, including those being undertaken specifically to relieve overcrowding, are at Annex 1. Investment is an on-going process and further investment is being planned by both operators. For example British Rail is planning further investment in new rail links, including an express link to Heathrow airport in partnership with Heathrow Airport Ltd; infrastructure investment on Kent suburban services to accommodate longer trains; further investment in modern higher capacity rolling stock to improve reliability and relieve overcrowding; and major investment for handling international rail traffic from the Channel Tunnel.

29. Proposals for adding to London's rail network have been made by the Central London Rail Study and the East London Rail Study.

30. The Central London Rail Study has been conducted jointly by British Rail Network South East, London Underground, London Regional Transport and the Department of Transport. Its remit was to develop a strategy to improve services and provide for forecast demand up to the end of the century with particular reference to passenger congestion in the area bounded by the major rail termini and their approaches. The Study report was published on 26 January 1989. It recommended a major upgrading programme to make the best use of the existing network and the construction of two new lines. The study proposed that one of these should be East-West Crossrail - a BR guage tunnel joining Liverpool Street in the East and Paddington and Marylebone in the West. The other should be either North-South Crossrail - a BR guage tunnel joining Euston/King's Cross with Victoria; / or the Chelsea-Hackney Line - a two guage line joining Wimbledon and Hainault via Chelsea and Hackney. The Boroughs and other interested parties have been invited to comment on the Study's proposals and the Government hopes to be in a position to take decisions on the way ahead later this year in the light of the comments received and the further work that remains to be done.

31. The East London Rail Study has been examining the best options for improving access from central London to Docklands and East Thames-side. The Government believes that additional rail infrastructure will be required to supplement the Docklands Light Railway, which is being upgraded and extended with Government support. Subject to the consideration of the Study's findings, and the negotiation of satisfactory contributions from developers and other landowners, the Government would wish to see a Bill for a new line deposited in Autumn 1989.

32. The Government recognises the vital contribution that bus and coach and taxi services make to the social and economic life of London. Bus services generally provide the best way of meeting local public transport needs in outer London, where travel patterns are more varied. They also have an important distributive role in inner and central London. To help buses and taxis overcome congested conditions without further disruption to the general flow of traffic, the Department of Transport has issued guidance on the design of bus lanes and has welcomed a programme which will give buses priority at traffic lights in inner and outer London. Further guidance on bus priority measures is in preparation. It is the Government's intention to extend the deregulation of bus services to London in the early 1990s. This will give London the benefits of greater competition and innovation, and reduced levels of subsidy, that are being achieved elsewhere in the country. The Government has asked London Regional Transport to examine the current and future terminal requirements for express coach services in London. They are considering the options and what short-term improvements might be possible at Victoria Coach Station.

33. Boroughs should consult British Rail Network South East and London Regional Transport in preparing their UDPs. The plans should provide for the operators' committed investment programmes and should refer to their proposals for further investment. In due course they should provide for the outcome of the two major rail studies. Further guidance will be issued as appropriate, in consultation with LPAC, when decisions have been taken on the studies.

London Roads

34. New development and increases in employment in central London and Docklands are bound to lead to some increases in traffic in those areas, despite the implementation of decisions on the CLRS and ELRS, and development growth in other areas is likely to place most of the new transport demands on the road system. Present forecasts indicate that by 2001 the number of cars owned in London could increase by between 22% and 34% bringing the total to some 2.7 to 3 million, and that traffic could grow over this period by the order of 1% to 2% per annum except in the central areas. The Government's aim is to promote the provision of a safe and efficient road system for London within the broad strategic approach described in paragraph 25, which serves the needs of local communities, people wanting to make journeys for a range of purposes, industry and commerce and which caters better for existing and growing levels of traffic, particularly during the working day, and helps to reduce casualties and provide environmental relief. The Government wishes to encourage vehicles to make the fullest possible use of the Strategic London Road Network of trunk and designated roads in preference to seeking alternative routes through unsuitable streets and residential areas. A list of designated roads is included in the Schedule to the Designation of Roads in Greater London Order 1986 (S.I ~~1986 No.~~154). An illustrative map of the Strategic London Road Network is shown in Map 2.

35. The M25 provides a good alternative route for through traffic around London. It is being widened, the Dartford-Thurrock Bridge is being built and consultants have recommended measures for dealing with current and future traffic demands on the motorway. The national trunk road programme in London is aiming to realise the potential capacity of the present network by removing the worst pinch points and by providing environmental relief in inner London, better orbital movement outside central areas, better access to poorly served and developing areas and improved links to the M25 for other parts of the national network. The programme in London includes six schemes added as part of the Government's "Action for Cities" initiative and emphasises comprehensive improvements to the North Circular Road and substantially better access to East London and Docklands. There are 38 schemes in the programme. These are listed at Annex 2. Further London schemes may be added to the programme as a result of regular national reviews, special needs which may arise and the outcome of present studies.

36. The Government is seeking to obtain better use of the existing road system in ways which will improve economic, social and environmental conditions in London and which will lead to improved safety and smoother traffic flows through a series of traffic management measures. These initiatives include small-scale engineering measures on trunk roads for relieving bottlenecks and improving safety, further development of London's urban traffic control and traffic light systems, support to driver information systems, support and encouragement to better parking controls and action to improve conditions for cyclists and pedestrians, who are amongst the most vulnerable road users. The measures have special application to the Strategic Network, where they can provide the opportunity to relieve neighbouring roads of unnecessary traffic, and to central and inner London, where congestion is the worst. The Secretary of State for Transport has issued traffic management guidance to boroughs, in DTp Circular 2/87, and further technical guidance on improvements for cyclists and pedestrians.

37. As well as improving traffic management, parking controls are influential in combating congestion, particularly that caused by car commuting. The Government believes that safer and smoother traffic flows will result from effective on-street parking regimes, from the provision of off-street public car parks, the provision of off-street car parks associated with appropriate new business, retail, hotel and residential developments and from the provision of park-and-ride facilities at suitable railway stations. The Government also recognises that undesirable car commuting traffic will be discouraged, and the congestion it causes minimised, if off-street public car parks are operated on a commercial basis and if limits are imposed on the provision of off-street private non-residential parking spaces associated with new office and shop developments in appropriate areas.

38. Government action to tackle congestion black spots and to improve conditions with severe transport problems includes a series of studies and support to borough road schemes of more than local importance. The principal studies are the London Assessment Studies, studies into improvements to the A4/M4 corridor to Heathrow, and the study of access to Heathrow from other directions and orbital movement in the South West quadrant generally (HASQUAD). The Assessment Study consultants are also considering possible public transport and traffic management schemes. They will take the results of the Central London Rail Study into account in their assessments. Further guidance will be issued as appropriate, in consultation with LPAC, when decisions have been taken on these studies. Borough road schemes receiving Government support through Transport Supplementary Grant include schemes to provide improvements and relief to town centres and better industrial access.

39. In preparing their UDPs and their programmes for improving road conditions in their areas boroughs should take account of the Secretary of State for Transport's aim for London's road system and his traffic management and other technical guidance. The plans should include as proposals all trunk road schemes in the plan area included in the national trunk road programme in London. The plans should also identify the routes of the proposed new highways, as notified by the Department of Transport, where they fall within the scope of article 15(1)(b) of the Town and Country Planning General Development Order 1988. They should accord additions to the programme similar treatment.

40. UDPs should describe the boroughs' road improvements programmes, traffic management measures and parking arrangements. The road programmes should be classified in accordance with the boroughs' local hierarchy of primary, secondary, local distributory and local access roads. This hierarchy should be developed in relation to the Strategic London Road Network. Where appropriate, boroughs should consult neighbouring authorities in order to ensure consistency across borough boundaries. They should also consider the traffic implications of proposed developments and where necessary take steps, through traffic management measures and road improvements to accommodate the traffic suitably. They may want to consider seeking contributions from the developers towards the cost of highway works under section 52 of the Town and Country Planning Act 1971 or section 278 of the Highways Act 1980. Account must be taken of DTp Circular 4/88 and the advice at paragraph 24 above.

41. More generally, boroughs are also recommended to take such traffic management measures as may be necessary, including cycling safety initiatives, action to improve the convenience and safety of pedestrians, vehicle restriction, loading, waiting and signing arrangements and traffic calming measures. These measures should also be developed in relation to the Strategic London Road Network.

42. The principle of a strategic cycle route network as developed by LPAC and the London Cycling Forum is welcomed. In developing a network of strategic and local feeder cycle routes, boroughs should refer to the body of guidance on planning and designing facilities and routes for cyclists contained in Local Transport Notes 1/86, 2/86, 2/87 and 1/89. Traffic calming measures, which provide self-enforcing ways of controlling traffic speeds in suitable streets and particularly in residential areas, can be used as part of area-wide traffic management schemes. Boroughs should give attention to the need for complementary measures outside the calmed areas for handling displaced traffic.

43. Section 122 of the Road Traffic Regulation Act 1984 places duties on boroughs to exercise their functions under that Act so as to provide suitable and adequate on- and off-street parking. When considering on-street parking controls and off-street parking provision boroughs should balance local needs with the need to facilitate the movement of traffic, especially on the Strategic London Road Network. They should consider the need for suitable parking arrangements for coaches, which provide a valuable contribution to London's transport system and economy but which can cause problems for other traffic and local residents. They should keep yellow lines, on-street parking spaces and waiting and loading restrictions under continuous review. They should continue to regard the normal maximum parking provision for new business and retail development as 1 space for 12,000 square feet of floor space in the central area (defined as the Central Statistical Area) and 1 space per 8,000 square feet of floor space in inner London. Boroughs with responsibilities in outer areas may vary the existing standards of 1 space for 5,000 square feet of floor space in the more important town centres and 1 space for 2,000 square feet of floor space more generally in order to suit the requirements of their areas.

Freight

44. Air, rail, waterways and roads all have a role to play in meeting London's demand for freight traffic. The Government recognises that rail and waterways are particularly suitable for meeting customers' demands for certain types of traffic and that in some cases they can have environmental advantages over road freight. Government grants are therefore available for investments which transfer particular freight flows to rail and water where they will remove heavy lorries from unsuitable roads. However, the largest part of goods movements within London is door-to-door or movements which bring goods into the area for use or consumption. Except for major users with their own rail sidings or river or canal wharves, rail and water freight will involve transhipment for delivery by road, and the net environmental gain from the greater use of rail or water may be limited. So road freight is crucial to business, industrial and retail activity in London.

45. Selective traffic management measures on the least suitable roads, where alternative routes are available, can help to lessen the impact of heavy lorries. These measures should be cost effective, as explained in DTp Circular 2/82. To assist local authorities in planning lorry management measures, the Secretary of State for Transport is co-sponsoring a lorry management study with the Civic Trust and the County Surveyors Society. The study is aiming to identify suitable low-cost measures. On completion it will be accompanied by a manual of good practice and the recommendations are expected to have relevance to London.

Airports

46. London has within its boundaries Heathrow, which is the busiest international airport in the world and which handles over half the cargo handled by UK airports; and the London City Airport, which was opened in October 1989 and is making an increasing contribution to air services from London, particularly for business travellers. Access to both airports is being improved. Heathrow will benefit from investment in surface access infrastructure arising from the plans and studies described in paragraphs 28 and 38 and from improvements in the M25. London City Airport will benefit from the infrastructure improvements in Docklands, British Rail's improvements to services on the North London Line and the dedicated riverbus service from Charing Cross.

47. In preparing their UDPs, boroughs should take account of DOE Circular 39/81. This sets out the circumstances under which the advice of the Civil Aviation Authority should be sought under the Town and Country Planning (Aerodromes) Direction 1981 on planning applications for sites falling within the safeguarded areas and Public Safety Zones near airports. Safeguarding seeks to control the height of buildings near an airport, while Public Safety Zones are aimed at protecting people on the ground by controlling development at the end of runways. Safeways and public safety zones apply at both Heathrow and London City airports.

Water Transport

48. Rivers and canals in London offer uncongested routes for both freight and passenger traffic and have the potential to relieve road traffic and provide services which customers want. The River Thames handles substantial freight tonnage and provides the opportunity for riverbus services. Boroughs should recognise the potential contribution of London's rivers and canals to the capital's transport systems. UDPs should provide for piers and wharves where appropriate. Boroughs should consider when new or enhanced facilities, with suitable access arrangements should be encouraged. When considering planning issues they should balance the waterways transport potential with other demand for riparian development and amenities alongside the waterways.

4. HOUSING

49. Advice on the Government's general policies on the provision of housing land is given in Planning Policy Guidance: Land for Housing (PPG3). Policies for London and the South East were set out in the Secretary of State's Regional Strategic Guidance (PPG9). This stated that local planning authorities should ensure that their policies are sufficiently flexible to allow the market to respond to changes in the pattern of demand for housing, particularly as the number of smaller households increases. Suitable accommodation is expected to be provided increasingly through the conversion and sub-division of the existing housing stock and the construction of new dwellings on under-used and recycled urban land. This will assist the preservation of Green Belt and Metropolitan Open Land and make the best use of existing infrastructure. Provision for additional housing should respect established conservation policies and the interests of existing communities, while recognising that change and growth are inevitable and must be accommodated.

50. The Secretary of State, taking account of LPAC's advice, considers that it would be reasonable to make provision in UDPs for an estimated total of 260,000 additional dwellings for the period 1987-2001. This figure is based chiefly on an assessment (as at August 1988) of boroughs' capacity over the period for new dwellings, including conversions, taking account of local policies on densities and protection of the environment. It is consistent with assumptions adopted in estimating the requirements for the South East region as a whole. With the Secretary of State's agreement SERPLAN have produced proposals for distributing an estimated overall requirement of 570,000 extra dwellings over the period 1991 to 2001. The corresponding figure for London for this period is 175,000. The achievement of this level of provision will depend on maintaining present rates of new construction and conversions in the private sector and the continuing buoyancy of demand. The factors underlying the supply and demand for new housing will need to be monitored on a regular basis, particularly with respect to the contribution of conversions and 'windfall' sites.

51. The number of additional dwellings each borough should provide, taking account of LPAC's advice on their capacity, is set out in Table 1. UDPs should provide for net dwelling completions (new build, conversions and change of use) between 1 January 1987 and 31 December 2001 as specified in the Table. In doing so, boroughs should also have regard to the objectives of national guidance on housing land supply given in PPG3. However, in view of the complex factors affecting land availability for housing in London, the requirement in the national guidance to identify a five year supply of sites for housing does not apply in London.

52. Building new dwellings will not be effective in meeting the growth in housing requirements if the current stock is diminished without replacement. A borough may include in its UDP a general presumption against the loss to other uses of existing sites and buildings in residential use, but in doing so it should take account of the need to make reasonable provision for business development within its area, and demonstrate in the UDP that it has made such provision.

53. In preparing UDPs, boroughs should have regard to the guidance on development plan policies for the protection of the character of established residential areas given in Planning Policy Guidance: Local Plans (PPG12). Provision for housing development must respect the framework of borough policies for conservation of the environment and for the protection of Green Belt and Metropolitan Open Land.

DWELLING PROVISION (1987-2001) BY BOROUGH TABLE 1

BOROUGH	ADDITIONAL DWELLINGS
City of London	200
Barking and Dagenham	10,000
Barnet	8,000
Bexley	7,500
Brent	9,000
Bromley	8,000
Camden	8,000
Croydon	10,000
Ealing	9,000
Enfield	7,000
Greenwich	11,000
Hackney	6,000
Hammersmith and Fulham	9,500
Haringey	8,000
Harrow	4,500
Havering	5,250
Hillingdon	8,000
Hounslow	6,500
Islington	9,000
Kensington and Chelsea	11,550
Kingston-upon-Thames	3,750
Lambeth	10,500
Lewisham	10,000
Merton	5,500
Newham	14,000
Redbridge	6,000
Richmond-upon-Thames	4,000
Southwark	6,000
Sutton	4,750
Tower Hamlets	10,000
Waltham Forest	6,000
Wandsworth	10,250
Westminster	13,250
TOTAL	260,000

54. Planning authorities should take into account the fact that conversions provide an important contribution to the increase in London's housing stock. They can also provide a valuable source of lower-cost housing and are well-suited to the growing number of small households. Boroughs should take account of these benefits and the demand for conversions in their UDP policies.

55. The standards of housing density appropriate in different localities in London vary widely. The Secretary of State does not consider that it would be helpful to set London-wide guidelines on this matter. Each borough is responsible for setting its own general guidelines on densities for its area as appropriate in the light of local circumstances, taking into account the requirement for additional housing in the borough referred to in paragraph 50. Such guidelines should identify any areas where additional residential development is favoured at higher or lower densities than the normal range for the borough and in each case the reasons for such exceptions should be given. Boroughs should bear in mind that one of the best means of ensuring that housing development can be accommodated without detriment to the local environment is to indicate suitable locations, densities and standards of parking in their UDPs.

56. The Government recognises the importance of providing housing for lower and middle income households in London. It has undertaken a range of initiatives to alleviate problems of access to affordable housing. The planning system can play a part by ensuring that there is an adequate and continuing supply of land for new housing; and that local policies allow for conversions of existing houses into smaller units and for redevelopment at higher densities where appropriate. Planning policies must make adequate provision for general housing needs and the wide variety of market demand, together with allowance for special needs housing, such as housing for disabled people, elderly or single parent families.

5. GREEN BELT, OPEN LAND AND THE NATURAL ENVIRONMENT

Green Belt

57. National policies on Green Belts are restated in Planning Policy Guidance: Green Belts (PPG2). In relation to London, the Green Belt has three main purposes:

- to check the unrestricted sprawl of the built up area;
- to safeguard the surrounding countryside from further encroachment;
- to prevent London from merging with neighbouring towns;
- to assist in urban regeneration.

The Green Belt also plays a positive role in providing access to open countryside for London's population for recreation and other pursuits.

58. The permanence of the Green Belt must be maintained as far as can be seen ahead. The Secretary of State will only be prepared to endorse any change in the boundaries of the established Green Belt in exceptional circumstances in accordance with the principles stated in PPG2. The general extent of the approved Green Belt is shown in map 1 and is set out in detail in earlier development plans. UDPs should show approved boundaries precisely. Where exceptionally boundaries need to be revised, proposed changes should be clearly identified and justified, and the written statement should explain the exceptional circumstances behind any proposed change.

59. Although the Green Belt contains areas of attractive landscape, it should be borne in mind that the quality of the landscape is not a material factor in its designation and continued protection. But there is scope for improving the Green Belt and, where appropriate, UDPs should contain land use policies to assist this. The Countryside Commission's 'Planning for countryside in metropolitan areas' contains helpful advice on safeguarding and managing the Green Belt for open-air recreation, conserving wildlife and enhancing the landscape. (See also paragraph 65 on Nature Conservation).

Metropolitan Open Land

60. Some open land within the built-up area has a wider than borough significance which justifies its designation as Metropolitan Open Land (MOL). This concept was endorsed by the Secretary of State in approving the Greater London Development Plan in 1976 and remains valid. MOL is any strategic open land within the urban area which is significant to London as a whole, or to part of London stretching across several boroughs. For example, it may:

i. contribute to the physical structure or character of London by providing attractive breaks in the built up area;

ii. include open air facilities (especially for leisure, recreation and sport) for the people of the whole or part of London;

iii. contain features or landscape of historic, recreational, nature conservation or scientific interest worthy of protection on account of their value nationally or to the whole or part of London.

61. The presumption against development in the Green Belt applies equally to MOL. Boroughs should reaffirm the accepted uses on and status of areas of MOL and define the detailed boundaries in their UDPs.

Other Open Land

62. There are many other open spaces which are a valuable amenity and are part of the urban structure and provide breaks in the built-up area, but which are of local rather than wider significance. These help to maintain and improve the environmental quality of urban areas, provide space for recreation for residents and assist nature conservation. It is for each borough to decide the appropriate provision of local open space and to identify and make proposals in the UDP for such spaces, consulting with neighbouring planning authorities as appropriate.

Green Chains

63. In some cases areas of open land link together across borough boundaries to form 'green chains'. These can play a useful part in the urban environment by providing extended pathways for the public and wildlife corridors in natural surroundings. In preparing open land policies, boroughs are urged to consider the valuable role of green chains, consulting with neighbouring planning authorities as appropriate.

Minerals

64. Demand for minerals is likely to remain high, and in line with national guidance, it is important that London contributes as much as possible to its own needs. UDPs should take account of Minerals Planning Guidance: Guidelines for Aggregates Provision in England and Wales (MPG 6). They should identify areas for mineral working or where mineral resources are to be safeguarded against surface development, and should set out the development control criteria against which mineral proposals will be assessed. Local authorities should consider a joint approach to minerals planning, in order to monitor the need for import facilities in the capital and to take account of regional proposals adopted to establish annual production in London and to maintain a landbank of sand and gravel of at least 10 years. Boroughs considering minerals extraction should have regard to a level of production of sand and gravel of 1 million tonnes per annum which it is expected London could maintain during the period up to 2006 to meet the supply policy expressed in national and regional guidance. Mineral extraction need not be incompatible with policies for the Green Belt or Metropolitan Open Land provided that high environmental standards are maintained and sites are well restored to appropriate land uses. UDPs should specify high standards of restoration in those areas where minerals are to be worked and identify the scope for restoration and rehabilitation of land already damaged by mineral working. There should be a presumption that existing transhipment facilities, particular riverside wharves, should not be passed into other planning uses unless adequate alternative facilities exist nearby.

65. In recent years there has been a marked increase in on-shore oil exploration covering the southern and south western fringes of London. Guidance on oil and gas development policies is contained in DOE Circular 2/85: Planning Control Over Oil and Gas Operations.

Nature Conservation

66. Boroughs should have regard to the national policies on nature conservation and development planning set out in DOE Circular 27/87: Nature Conservation. They should include in UDPs land-use policies on nature conservation and ensure that nature conservation is given full consideration before planning policies are drawn up which could affect SSSIs and other types of protected site. Boroughs will wish to refer to the Nature Conservancy Council's document: 'Planning for wildlife in metropolitan areas' and the Ecology Handbooks published by the London Ecology Unit.

Agricultural Land

67. There are significant areas of high quality agricultural land in some of the boroughs. The best land is a national resource which, in accordance with Government policy set out in Planning Policy Guidance: Rural Enterprise and Development (PPG7) should be protected from irreversible development. Viable agriculture in these areas, supported by appropriate farm diversification, can make an important contribution to maintaining open areas and the Green Belt.

Flooding and Surface Water Drainage

68. Unless carefully sited and designed, new development can exacerbate problems of flooding in areas downstream through an increase in run-off from additional roofs and paved surfaces. Where appropriate, boroughs should in consultation with Thames Water Authority take into account in their UDPs the

surface drainage consequences of new development, including the need to protect the flood plain and urban washlands.

6. THE BUILT ENVIRONMENT

Conservation of the built environment

69. London contains many of the country's best-known buildings. Often these are important as a focus for tourism as well as for their intrinsic interest. Many boroughs also contain areas of distinctive architectural character and historic interest, which should be identified in UDPs and conserved. These areas contribute to London's diversity and vitality; many may be designated conservation areas. The Government's policies for such areas and for buildings of special architectural and historic importance are set out in DOE Circular 8/87: Historic Buildings and Conservation Areas. Boroughs should apply these policies in order to protect the built heritage in a sympathetic way through conservation of old buildings and judging when it is appropriate for the architectural heritage to accommodate changes of use and new buildings nearby.

Important Views

70. Strategic views of St Paul's Cathedral and the Palace of Westminster are of historic importance and must be protected from obtrusive development. The Secretary of State intends to issue further guidance on the protection of strategic views. Boroughs should include in their UDPs policies to protect their local views as appropriate.

Archaeology

71. Boroughs should also take account of the desirability of preserving ancient monuments and their settings. They may wish to draw developers' attention to the Code of Practice drawn up by the British Archaeologists and Developers Liaison Group when considering developments which will affect known or presumed archaeological remains. The Department is currently preparing comprehensive guidance on archaeology and development, which boroughs will also wish to take into account.

7. RETAILING

72. Existing town centres should continue to be the main focus for the provision of shopping facilities. Planning policies can help to promote the modernisation and refurbishment of town centres, particularly in areas of inner London where this can assist regeneration and job creation, in ways that improve the environment and enhance the attractiveness of the centre. For example, consideration should be given to the possibility of pedestrianisation, to the provision of additional car parking and traffic management measures, and to the importance of public transport. Despite greatly increased car ownership, not every household has the use of a car; many depend on public transport or walking. The needs of such shoppers should be met by shops which are easily accessible.

73. The Government's policies for major retail development are set out in Planning Policy Guidance: Major Retail Development (PPG6). The guidance recognises that in considering proposals for major retail development it will be necessary in exceptional circumstances to take account of the cumulative effects of other recent and proposed large-scale retail developments in the locality and to consider whether their scale and kind is such that they could affect seriously the vitality and viability of a nearby town centre as a whole.

74. The Secretary of State recognises the concern of outer London boroughs about the impact on their town centres of proposals for new free standing shopping centres outside the London boundary. He reaffirms that there is no place for major retail development either in the Green Belt or on Metropolitan Open Land. The impact on existing town centres of any other proposals which come forward will be taken into account according to the policy guidance in PPG6.

8. TOURISM AND SPORT AND RECREATION

75. Tourism is one of London's major industries and employers, as well as being of benefit to the country's balance of payments. London has traditionally been a tourist city and acts as a gateway to tourist attractions in the rest of the country. For these reasons, it is important that boroughs' policies should positively encourage the development of tourism. His letter of 24 July 1986 to the boroughs said that he attached considerable importance to the provision of suitable hotel accommodation and asked boroughs to bear in mind the benefits of tourism and of hotel development in particular. This advice is reaffirmed.

76. The Secretary of State accepts however, that further hotel and tourism development in some primarily residential areas of Westminster and Kensington and Chelsea, where there is already substantial hotel capacity, might place undue strain on the local environment and services of those areas. UDPs for these boroughs should specify the criteria whereby proposals for additional hotel and tourism development will be assessed, and identify any areas where such development would or would not be appropriate.

77. The development of Waterloo as a terminal for traffic using the Channel Tunnel will undoubtedly create demand for hotels in the surrounding locality. A positive approach to hotel development and mixed developments with tourism and leisure facilities should be followed in the areas of Lambeth and Southwark adjacent to or having reasonable access to the terminal.

78. Outside the areas specified in paragraphs 76 and 77, the Secretary of State favours the development of new hotel accommodation, tourist facilities and attractions in appropriate locations, especially those with good transport links to central London, the M25 and the airports; and which could help to reduce the current shortage of medium-and low-priced hotel accommodation as well as encourage more tourists to stay and to travel outside the central areas. Boroughs are urged to make provision in their UDPs for hotel and tourist-related development where appropriate, taking into account their general planning objectives for the area. In particular, hotel and other tourist-related development should have regard to the surrounding environment and should make appropriate provision for coaches.

79. Boroughs should take account of the importance of sport and recreational facilities, including playing fields, and include appropriate land-use policies in their UDPs. They will wish to refer to the London Council for Sport and Recreation's Regional Recreation Strategy ('A Capital Prospect'). The appropriate UDPs should also take account of the valuable role played by the Lee Valley Regional Park in the provision of leisure and recreational facilities.

9. THE RIVER THAMES

80. The River Thames is one of London's greatest assets. Boroughs should give particular attention to the character of any development proposed on or near the River and its effect on the long-distance and local views and skylines; and to the value of the River and its shoreline for wildlife.

81. Boroughs should also aim to maintain and where possible improve public access alongside the River in considering development proposals. Where appropriate, boroughs should bear in mind the Countryside Commission's proposed Thames Path when preparing their UDPs. They should ensure that UDP policies take account of the needs of commercial, recreational and transport uses of the River.

10. WASTE DISPOSAL

82. Boroughs should take into account the 'Guidelines for Waste Disposal Planning in the South East' (RPC 988) published by SERPLAN and endorsed by the Secretary of State in his letter of 20 January 1988 to the Chairman of SERPLAN. Boroughs should co-operate closely with each other in the preparation of their waste disposal plans. Although most solid waste generated in London is disposed of outside its boundaries, boroughs should make full use of such opportunities as exist for land-fill within London, and make appropriate provision in their UDPs for facilities such as incinerators, recycling plants and transfer stations.

11. MONITORING AND REVIEW

83. It will be important to monitor the changing pattern of economic activity and development in London. The Secretary of State anticipates that LPAC will wish to ensure that they have adequate arrangements for doing this. A feasibility study for a development monitoring system will be undertaken, funded jointly by the Department and LPAC. Boroughs are urged to supply the information required. This will not only assist the Secretary of State and LPAC but will also enable boroughs to receive up-to-date information on trends in London as a whole and those affecting their own and adjoining areas. The feasibility study will also help to establish the costs to local planning authorities of providing information for the monitoring system.

84. The Secretary of State will keep his guidance under review, in consultation with LPAC, and will issue further guidance as and when necessary.

CURRENT COMMITTED INVESTMENT ON BRITISH RAIL NETWORK SOUTH EAST AND LONDON UNDERGROUND

1. NETWORK SOUTH EAST

PROJECT	DATE INVESTMENT ENTERS INTO SERVICE
46 new four car EMU sets for the Great Eastern services to Cambridge, Hertford and Essex*	Summer 1988
14 extra four car units for Thameslink services*	End 1988
Bethnal Green - Shenfield - Southend resignalling	March 1989 - March 1991
24 new two car units for suburban Waterloo services, with a cascade of 16 four ar units to relieve other services*	October 1989
Waterloo resignalling	October 1989
Chiltern Line resignalling	1990
77 Class 165 Networker Diesel vehicles for Chiltern Line, out of Marylebone	October 1990
Stansted Rail Link	January 1991
81 new four car EMU sets for services North of the Thames, on Northern and Anglian routes*	1991
Refurbishment of Class 423 Electrical Multiple Units (EMUs) for Kent services	Complete 1992
Heathrow Express rail link	1993

(* Platform and train lengthening proposals, particularly on the North East Kent lines are also under consideration.)

2. LONDON UNDERGROUND

Underground Ticketing system	March 1989
New workshop at Acton	1990
Reconstruction of Angel Station*	1992
Enlarged ticket hall and additional escalators at Liverpool Street Station*	1993
Central Line modernisation	1996

London Underground's investment programme also includes the following continuing major projects:

Specific safety measures arising out of the King's Cross Station Fire Inquiry

Renewal of track, structures, signalling, lifts and escalators

Improvements to passenger security

Improvements to passenger information

Station modernisation

Note: Items marked * are investments being undertaken specifically to relieve over-crowding. Other projects on the Underground to relieve station congestion and improve train service capacity and performance are being implemented as quickly as practicable over the next few years. Service improvements, currently being made, resulting from the purchase of 16 new trains will be complete by late 1989.

NATIONAL TRUNK ROAD PROGRAMME IN LONDON

DESCRIPTION OF SCHEME	PROJECTED COMPLETION DATE
ORBITAL ROADS - NORTH CIRCULAR (A406)	
Popes Lane - Western Avenue	1995
Hanger Lane - Harrow Road	1992
Golders Green Road Junction Improvement	1996
Regents Park Road Junction Improvement	1994
Falloden Way - Finchley High Road	1993
Bounds Green - Green Lanes Improvement	1996
Great Cambridge Road (A10) Junction Improvement	1989
East of Silver Street - A1010	1994
Dysons Road - Hall Lane	1994
Chingford Road - Hale End Road	1992
East London River Crossing	Mid 1990s
ORBITAL ROADS - SOUTH CIRCULAR (A205)	
Catford Town Centre Improvement	1991
ROADS SERVING EAST LONDON AND DOCKLANDS	
A13 Wennington - Mar Dyke	1993
A13 Thames Avenue - Wennington	1995
A13 Junction Improvements with A1240 and B178	1995
A12-A117 Junction Improvement	1995
A12 Hackney Wick - M11 Link	1994
Six schemes on A13 added to programme as part of "Action for Cities" initiative:	
Movers Lane Junction	Late 1990s
Prince Regent Lane Junction	1995
Ironbridge Widening	1993
Leamouth Road Junction	1996
Blackwall Tunnel and Cotton St Junctions	1991
West India Dock Road Junction	1991
ENVIRONMENTAL ROAD SCHEMES	
Western Environmental Improvement Route	1999
ROAD LINKS TO M25	
A4/A312 Waggoners Corner Junction Improvement	Late 1990s
M4 Junction 4 Improvement	Late 1990s
A40 Long Lane Junction Improvement	1992
A40 Western Circus Junction Improvement	1994
A40 Gipsy Corner Junction Improvement	1994
A40 Swakeleys Road Junction Improvement	1990
M1-A1 Scratchwood Link	Late 1990s
(including M1 Junction 1 Improvement)	1992
M11 North Facing Slip Roads at Junction 5	Mid 1990s
A23 Waddon Marsh Bridge	1990
A23 Coulsdon Inner Relief Road	1996
A3 Hook Interchange Improvement	Late 1990s
A3 Robin Hood Gate Junction - Roehampton Vale Improvement	Late 1990s
A4/A30 Henly's Corner Junction Improvement	Late 1990s
Archway (In abeyance)	-

PRIME MINISTER (1)

ENFORCING PLANNING CONTROL

Mr Ridley (Flag A) has written seeking policy approval for a number of measures which will strengthen the enforcement provisions of the Town and Country Planning Act 1971. This follows consultation by DOE on a report by Robert Carnworth. Mr Ridley makes it clear that on the whole the proposals have been very well received.

They are likely to be particularly valuable in addressing the sort of problems set out in Mr Baker's recent letter to Mr Ridley (Flag B) - particularly in dealing with gypsies. Mr Ridley's reply emphasising this is at Flag C.

Carolyn Sinclair, in a very helpful note at Flag D, confirms that the Carnworth proposals ought to meet Mr Baker's concerns and supports them herself.

I do not think you need to plough through all the attachments to Mr Ridley's minute at Flag A. But it is perhaps worth noting that - as Mr Ridley points out - some of those consulted questioned the proposal to grant immunity from enforcement action to developments which do not have planning permission, after a period of either four or 10 years. Some saw this proposal as either too generous, and some others as unfair.

However, the intention to do this has already been announced as a useful deregulatory measure in the White Paper, "Releasing Enterprise." Mr Ridley believes the proposal is counterbalanced by the fact that the more effective enforcement powers which will be introduced will reduce unlawful development.

There are also some Home Office misgivings about certain detailed aspects of the penalties and financial arrangements for enforcement notices. But Mr Ridley believes these can be resolved between officials.

Are you content to give policy approval to Mr Ridley's proposals, subject to any further points raised by colleagues?

CB

Caroline Slocock
21 July 1989

Am not very happy about immunity from enforcement after such a short time as 4 years

MT

CS.

10 DOWNING STREET

From the Private Secretary

24 July 1989

Dear Roger,

"ENFORCING PLANNING CONTROL": REPORT BY ROBERT CARNWATH QC

The Prime Minister was grateful for your Secretary of State's minute of 19 July. She has also seen and noted the Secretary of State for Education's letter of 11 July to your Secretary of State and his reply of 21 July.

The Prime Minister is generally content with the provisions Mr Ridley suggests for enacting the Carnwath report's recommendations. However, she is not very happy about the proposal to grant immunity from enforcement after such a short time as 4 years for "operational development." I would be grateful if your Secretary of State could give further consideration to this point.

I am copying this letter to the private secretaries of members of E (LF), Paul Stockton (Lord Chancellor's Office) and Trevor Woolley (Cabinet Office).

Yours sincerely,

Caroline Slocock

CAROLINE SLOCOCK

Roger Bright Esq.
Department of Environment

Mag C cc PH.

2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref:

Your ref.

21 JUL 1988

The Rt Hon Kenneth Baker MP
House of Commons
London SW1A 0AA

Dear Kenneth

ENFORCEMENT OF PLANNING CONTROL

Thank you for your letter of 11 July about the need to amend the provisions, in the Town and Country Planning Act 1971, enabling local planning authorities to enforce planning control when unlawful development occurs.

Because I share your concern, and the concern of many of our supporters in the Home Counties and elsewhere, that planning control should not be brought into disrepute, I appointed Robert Carnwath QC, last July, to examine the operation of the present provisions in the 1971 Act and report to me with recommendations. I announced the publication of Mr Carnwath's report in a Written Answer on 5 April. Meantime, the report's recommendations have been widely welcomed by the range of organisations whose comments my Department invited. I hope to have a legislative opportunity, in the coming Session and I have just written to colleagues seeking policy approval, following the consultation, for what is effectively the Carnwath package.

Three of the report's recommendations are particularly apt for dealing with the problems you describe. First, in Recommendation No.10(ii), Mr Carnwath suggests that the present exclusion of residential caravan site uses from the operation of the "stop notice" procedure be repealed. This would enable planning authorities to use stop notices to deal effectively with the situation described in the fourth paragraph of your letter. Secondly, Recommendation No.11 proposes a wider injunctive power for planning authorities, so that they would be able to seek an injunction "to restrain any threatened or actual breach of planning control (whether or not an enforcement or stop notice has been served), ..." While injunctions must always remain a last resort, for obvious reasons, a specific power on these lines would provide a more effective deterrent than the present general injunctive power in section 222 of the Local Government Act 1971, and be available for immediate use against those who flagrantly or persistently carry out lawful development. Thirdly, Recommendation No.8 suggests a procedure for summary enforcement of a breach of a condition imposed by the planning authority on a grant of planning permission. This should deal with the situation, which is especially irritating to elected members,

unlawful.

where they grant permission subject to essential safe-guarding conditions and those conditions are immediately disregarded. Finally, there are other recommendations which will generally tighten the enforcement process and encourage planning authorities to take swift and effective action when a breach of control first occurs. I hope I may therefore count on your own and my colleagues' support for early legislation to implement the report's recommendations, subject to any essential modifications.

A copy of this letter goes to the recipients of your letter and James Mackay.

Yours ever

Nicholas

NICHOLAS RIDLEY

PRIME MINISTER

"ENFORCING PLANNING CONTROL": REPORT BY ROBERT CARNWATH QC

I announced, in a Written Answer to John Heddle, on 5 April, my intention of consulting widely about the recommendations in this report which I commissioned last July. A copy of my Answer is attached to this letter as Annex A. The consultation exercise has involved officials in other Government Departments with a responsibility for, or interest in, the provisions in the Town and Country Planning Act 1971 for enforcement of planning control.

We have now reviewed the response to the report's recommendations. Regardless of their particular interest, the majority of the organisations we consulted welcome the proposals as essential for strengthening the enforcement provisions in the 1971 Act and enabling them to operate more effectively in practice. It is significant that the majority of respondents see the recommendations as a coherent "package", which will remedy most of the acknowledged defects in the present provisions. While some respondents have slight misgivings, depending upon their particular standpoint, the majority reaction is that the "package" holds together well. I commissioned this report to meet the widespread concern about ineffective enforcement. Kenneth Baker's letter of 11 July to me, which he circulated to you and colleagues in E(LF) Committee, emphasises how seriously these matters are regarded in the Home Counties, and I share Kenneth's view that the amending provisions are urgently needed to strengthen the enforcement system.

The one area of difficulty is with the report's recommendation that development which can now become "immune" from enforcement action - that is, after four years in the case of "operational development", and after ten years (which is recommended in the report) for a material change of use - should in future be treated as "lawful". In other words, after a relatively short time, previously unlawful development would have the same status as development for which

planing permission is granted. This is seen by some organisations as too generous to those who have gone ahead with the development without planning permission and as unfair to others who have observed the requirement to seek permission. However, as the report recognises, this intention has already been stated in the third deregulation White Paper ("Releasing Enterprise", Cmd 512), of which the relevant paragraph 6.2.9 is attached as Annex B to this letter. While I acknowledge that acceptance of this recommendation involves some slight risk of encouraging unlawful development with the added bonus that it can become lawful if not enforced against, I think it is more than adequately countered by the improved investigatory and "contravention notice" powers planning authorities would obtain by enactment of other recommendations in the report. I do, however, accept that some simplified certificating process is necessary to provide satisfactory evidence, for conveyancing and other purposes, that such development has become lawful with the passage of time. My officials are working on the details of a certificating procedure and will consult officials in other Departments shortly.

I understand that Douglas Hurd's officials have some misgivings about the level proposed for the statutory maximum penalty for enforcement offences, and about the suggested procedure for enabling planning authorities to submit their estimate of the financial benefit derived from an enforcement offence which would be binding on the Court, in sentencing, unless disproved because this involves a shift in the burden of proof in criminal proceedings. I hope that these are matters which officials can resolve but if necessary, I will take them up with Douglas separately.

On this basis, I nowseek policy approval for provisions enacting the Carnwath report's recommendations on the lines indicated in this letter, and subject to the agreed resolution of outstanding matters between officials. For ease of reference, a summary of the recommendations is attached at Annex C. As you know, I hope very much to be able to include these matters in a Planning Bill next session.

A copy of this minute and enclosures go to the members of E(LF) Committee, the Lord Chancellor and Sir Robin Butler.

PP NR
7 July 1989

(Approved by the Secretary of State
and Signed in his Absence)

Annex A

Attachment to R Day minute of 19 July on Carnwath report (circ)

HOUSE OF COMMONS

Mr John Heddle (Con - Mid-Staffordshire):

75 To ask the Secretary of State for the Environment, when he expects to publish the report by Mr Robert Carnwath, QC, on his examination of the scope and effectiveness of the Town and Country Planning Act 1971, relating to the enforcement of the planning control.

MR NICHOLAS RIDLEY

Mr Robert Carnwath QC has recently submitted his report on the review I announced last July of local authorities' planning enforcement powers. Mr Carnwath's report is being published today and a copy will be placed in the Libraries of both Houses.

I generally welcome the report's recommendations as a constructive contribution to strengthening the present provisions, in the Town and Country Planning Act 1971, for planning enforcement. Before deciding whether to implement the recommendations, I intend to consult widely amongst organisations with a responsibility for, or interest in, planning control. My Department is inviting comments on the report's recommendations by the end of May.

Wednesday 5 April 1989
Department of the Environment

2733/88/89
(25)

PART TWO: THE WAY AHEAD

6: The Plan of Work

6.1.1 This part of the Report sets out the action the Government propose for deregulation activity over the coming year.

Planning and the Environment

6.2.1 The Department of the Environment (DoE) has many responsibilities which affect business. These include planning and land use policy; environmental protection (including pollution control, water and sewage); the construction industry (including building regulations); local government and housing. They range from areas where regulations can be simplified and streamlined to those where systems of control are essential to safeguard human life and the environment. In all areas the Department aims to ensure that the system of regulation is developed in full consultation with businesses concerned, and that it is as simple, efficient and effective as possible.

6.2.2 Priorities for relieving the burden of regulations include developing an approach to pollution control which will streamline the regulatory system for all aspects of the environment, and examining the case for extending permitted development rights through amendment to the General Development Order.

6.2.3 Changes to the town and country planning system have made a substantial contribution to the Government's deregulation initiative. By simplifying the system and improving its efficiency, whilst ensuring that effective control can be maintained where it is warranted, the Government look to strike a balance between the needs of development and the interests of conservation.

Planning Conditions

6.2.4 The use of planning conditions may enable development to proceed which would otherwise be refused. But their over-use can impose unnecessary and costly requirements on developers or discourage useful development altogether. Conditions should therefore be imposed only where they are necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable. This has been made clear in planning guidance to local authorities. The Government are, however, considering whether to give statutory force to those aspects of these principles which are matters of policy rather than already established in case law.

Planning Gain

6.2.5 Guidance has been given on the circumstances in which developers may reasonably be required to enter into agreements affecting the development or use of land, as in effect a pre-condition of the grant of planning permission for a particular development. But there is evidence that such agreements are sometimes required where they are not necessary for the development to proceed,

and the Government are considering the issue of further policy guidance to curtail abuse of these powers.

Permitted Development Rights

6.2.6 At present, the General Development Order gives permitted development rights for extensions only to dwelling houses, factories and warehouses. The Government intend to consult on proposals to give rights also to make small extensions and developments within the curtilage of hotels, restaurants and public houses, and at the rear of offices, shops, schools and nursing homes.

Uses of Open Land

6.2.7 To enable diversification of the rural economy, there is already some freedom to make use of land for purposes that do not involve new buildings without specific planning permission. We will take action to make sure that these rights are clearly explained and properly publicised. In addition, the Government are looking into the scope for granting permitted development rights for a number of other environmentally acceptable uses of open land and existing buildings, compatible with rural areas. If the Government were to conclude that there might be scope, we would consult widely with all interested parties.

Local Plans

6.2.8 A new Planning Policy Guidance Note will be issued before the end of the year, encouraging local planning authorities to make rapid progress with the preparation of local plans, particularly where there is pressure for new development. Such plans would give developers greater certainty as to where development of different types is likely to be permitted.

Long-Standing Planning Uses

6.2.9 The Government are considering legitimizing certain long-standing uses of land which have neither planning permission nor 'established use rights' but have not been the subject of enforcement proceedings. It can reasonably be assumed that such long-standing uses have proved not to be a source of planning difficulties and there is no reason why they should not therefore be given the security of legitimacy.

Standard Application Form

6.2.10 Although the Government do not wish to impose uniformity for its own sake, we are considering whether to use existing powers to prescribe a standard form for planning applications. At present, local authorities devise their own or use proprietary versions. A standard form could particularly help those businesses and other users who make frequent planning applications to different planning authorities. A consultation paper will be issued.

Use Classes Order

6.2.11 The Scottish Use Classes Order has been the subject of a wide-ranging consultation exercise. The review aims to reduce the number of circumstances in which planning permission is required to change the use of buildings or land, and to ensure that the scope of each class includes those changes of use which do not need to be subject to specific control.

Consolidation

6.2.12 The Law Commission is well advanced in the preparation of a consolidation of all the Planning Acts which we hope to bring before Parliament next year. A consolidation of the Scottish legislation is also being prepared.

Building Regulations Developments

6.2.13 A survey of user reactions has confirmed that the changes made to the Building Regulations in 1985, to make them simpler in form and more flexible in operation, have been widely welcomed. Stage two of the review is now being undertaken covering technical aspects of the Regulations. The aim is to ensure that the legal requirements are easy to understand and do not go beyond what is

clearly necessary, particularly for health and safety reasons, and that the guidance provided on methods of compliance is clear, simple and accurate. One specific objective is to eliminate unnecessary differences between technical requirements in different parts of the United Kingdom. Business and other interests are being widely consulted on the proposals. Revision of most parts of the Regulations is due to be completed by the end of 1989.

Scottish Building Standards Regulations

6.2.14 These Regulations have been reformed to produce fewer, simpler regulations and so reduced from 200 to 50. The new regulations will be expressed in functional terms, with the detailed standards set out in a Supporting Technical Memorandum designed to be more user-friendly. Other aims are to harmonise technical standards North and South of the border, and improve forms and procedures. This work is being done concurrently with the changes to the building standards.

Pollution Inspection

6.2.15 This is an area where some regulation is essential to safeguard human health and the environment. This is recognised by the broad support which industry gave to the establishment of Her Majesty's Inspectorate of Pollution (HMIP). Industry's views have been sought on proposals to develop an integrated system for regulating industrial processes which make significant discharges of waste to air, water and land. This would involve providing industry with a single contact point with HMIP who would be responsible for authorising the process and all emissions from it, taking account of factors such as the impact on the environment as a whole, the current state of technology and the costs. Preparations are also being made to update the air pollution control system, with the first changes to be made later this year. Review of the organisation of HMIP includes plans to deploy Inspectors to integrated regional offices. This will further assist communication between industry and HMIP.

Customs and Excise

6.3.1 The need to protect and control revenue and to ensure fairness of treatment must be balanced against the demands and burdens that Customs' requirements place on business. Customs' aim is to place the minimum requirements on business, to allow businesses to use the systems most suited to their needs.

Bad Debt Relief

6.3.2 A frequent complaint from business is that they have to account for VAT despite not having been paid by bad customers. The introduction of the cash accounting system was a significant step in providing automatic bad debt relief for those joining the scheme. Otherwise relief from VAT on bad debts is available only where a debtor becomes formally insolvent and in certain analogous circumstances. Customs are now undertaking a review of the way in which the current arrangements operate and the case for extending them.

Default Surcharge

6.3.3 Once registered for VAT, businesses are naturally concerned about the penalties for failing to pay the amounts due. Sufficient experience of the operation of the surcharge, introduced in 1986, has now been gained to enable a full review to be conducted and that has begun.

Annex C

DEPARTMENT OF THE ENVIRONMENT

"ENFORCING PLANNING CONTROL": SUMMARY OF RECOMMENDATIONS BY ROBERT CARNWATH QC

1. The legislation should be amended to allow entry on any land at all reasonable hours on production of appropriate authority, for the purposes of investigating any alleged breach of planning control on that land or on immediately adjoining land, for determining the nature of any remedial action, or generally for the purpose of the authority's enforcement functions.

2. Provision be made for a new optional statutory procedure (to be known as a "contravention notice") to enable authorities to obtain information and to secure co-operation without recourse to enforcement action.

3. That amendments be made to section 87* (enforcement action) to the effect:-

(i) that the general period of immunity from enforcement should be amended to a period of 10 years prior to the issue of an enforcement notice (or service of a contravention notice if Recommendation (2) is adopted);

(ii) that the "four-year rule" be revoked for breach of a condition imposed on permission for "operational development";

(iii) that, where development has become immune from enforcement action, planning permission should be deemed to have been granted immediately prior to commencement.

4. The provisions for the drafting and service of enforcement notices should be altered -

(i) by amending section 87 to emphasise the flexibility of the power and reduce technicality;

(ii) by confirming that the power (in the 1971 Act) to serve a notice is without prejudice to the general powers for the service of notices under section 233 of the Local Government Act 1972.

5. Sections 88, 88A and 88B (the right to appeal) should be amended, in particular, to extend the present power of the Secretary of State to correct or vary notices on appeal.

---

* All references to sections are to sections of the Town and Country Planning Act 1971.

6. Section 246 (appeal to High Court) should be amended to provide:-

(i) that an appeal requires leave of the Court;

(ii) that, where the Court allows an appeal, it shall have power to give directions as to the operation of the notice in the period prior to any further decision of the Secretary of State and as to the effect of any proceedings previously taken pursuant to the notice.

7. That the provisions for deciding whether planning permission is needed, and obtaining "established use" certificates, be repealed and replaced by a single procedure whereby the authority could issue a certificate that any specified use or operation can be carried on without planning permission. Provision should be made to enable a use of land to be described by reference to a Class of Use in the Use Classes Order, and to enable the GDO to regulate the form of application and the supporting evidence required. There would be a right of appeal to the Secretary of State.

8. That provision be made for a new procedure for summary enforcement of breaches of condition, comprising the serving of a written notice and the institution of prosecution proceedings if the breach continues at the end of a specified period (eg 28 days).

9. Section 177 (stop notice compensation) should be amended so that:-

(i) no compensation is to be awarded in respect of any use or operation which was or would have been in breach of planning control;

(ii) Subsection (6) is amended to clarify the duty of the Lands Tribunal in cases where there has been a failure to respond adequately to a preliminary information notice.

10. Section 90 (stop notices) be amended:-

(i) to extend the time-limit for serving stop notices in respect of uses from 12 months to 4 years, and to leave out of account any period covered by a planning permission;

(ii) to repeal the exception in section 90(2)(b) in respect of residential caravans;

(ii) to allow immediate effect in special cases.

11. That there be an express power for authorities exercising planning functions to apply to the High Court or County Court for an injunction to restrain any threatened or actual breach of planning control, where they consider it necessary or expedient in order to prevent serious damage to amenity or otherwise to supplement the powers available under the Act.

12. The power (section 91) for the authority to carry out the remedial works should be strengthened by making it available for any steps required to be carried out by an effective enforcement notice.

13. Section 89 (penalties for non-compliance) should be reviewed and amended, in particular so that:-

(i) maximum penalties are increased and financial benefit can be taken into account in assessing penalties;

(ii) the range of potential defendants is extended;

(iii) the date when an offence arises following first conviction is clarified, and it is made clear that there may be further continuing offences following a second conviction.

14. The Department's policy guidance should be revised, and consideration given to the preparation of a practice manual for authorities on all aspects of enforcement work.

Planning & Development Control Directorate,
Department of the Environment

5 April 1989

CONFIDENTIAL

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

18 July, 1989.

Dear Roger

PLANNING CASES FOR MINISTERS CONSTITUENCIES

Questions of Procedure for Ministers (QPM) (paragraph 97) states that:

> 'Ministers should not take part in any public representations (or in deputations) to other Ministers; but they are free to make their views about constituency matters known to the responsible Minister by correspondence or by personal interview provided that this is not given publicity.'

The submission by Ministers of views on constituency matters to the responsible Minister in private raises peculiar difficulties in planning and other cases where all evidence material to the decision which the decision-maker takes into account must be available to all parties with an interest in the decision: representations in private cannot be taken into account.

The Prime Minister has therefore decided that, in order both to uphold the principle of the collective responsibility of Ministers (as set out at paragraph 97 of QPM), and to respect the principles of administrative law applying to planning inquiries, Ministers, whether they have planning responsibilities or not, should refrain from expressing a view in their capacity as a constituency MP on planning applications or planning appeals. She wishes Ministers to confine themselves to passing on their constituents' representations to the Ministers concerned. This applies equally to other questions where, as a matter of law, representations made by Ministers have to be shared with other parties and hence made public. In other cases, where these statutory procedures do not apply, the Prime Minister is content that Ministers may make representations on behalf of their constituents, provided that this is done privately and that they themselves are not involved in making the ultimate decision.

CONFIDENTIAL

Where Ministers' private interests are affected by a planning application on appeal, the guidance above does not prevent them from making representations in their private capacity. Where such representations are made to the responsible Minister they will be shared with the parties and hence made public.

QPM will be amended in due course to reflect this guidance.

I am copying this letter to the Private Secretaries to all members of the Cabinet, to the Legal Secretaries to the Law Officers, and to the Private Secretaries to the Chief Whip and the Minister of State, Privy Council Office.

Yours sincerely

Andrew Turnbull

Andrew Turnbull

Roger Bright, Esq.,
Department of the Environment.

Prime Minister
To be aware
AT 17/7

GR
Pl type on letter
AT

Ref. A089/1907

17 July 1989

MR TURNBULL

Planning Cases for Ministers Constituencies

Thank you for copying to me your letter of 9 June to Roger Bright.

2. I think it would be helpful to reflect the Prime Minister's decision on this in the next edition of Questions of Procedure for Ministers (QPM), and I shall arrange for this to be done. However, as we would not expect to reissue QPM until after the next general election, it may be helpful if you were to promulgate the Prime Minister's views by means of a letter along the lines of the attached draft which has been cleared with offices of the Secretary of State for the Environment and the Attorney General.

F.E.R.B.

ROBIN BUTLER

17 July 1989

AJM

Roger Bright
DOE

Planning Cases for Ministers Constituencies

Questions of Procedure for Ministers (QPM) (paragraph 97) states that:

> 'Ministers should not take part in any public representations (or in deputations) to other Ministers; but they are free to make their views about constituency matters known to the responsible Minister by correspondence or by personal interview provided that this is not given publicity.'

2. The submission by Ministers of views on constituency matters to the responsible Minister in private raises peculiar difficulties in planning and other cases where all evidence material to the decision which the decision-maker takes into account must be available to all parties with an interest in the decision: representations in private cannot be taken into account.

3. The Prime Minister has therefore decided that, in order both to uphold the principle of the collective responsibility of Ministers (as set out at paragraph 97 of QPM), and to respect the principles of administrative law applying to planning inquiries, Ministers, whether they have planning responsibilities or not, should refrain from expressing a view in their capacity as a constituency MP on planning applications or planning appeals. She wishes Ministers to confine themselves to passing on their constituents' representations to the Ministers concerned. This applies equally to other questions where, as a matter of law, representations made by Ministers have to be shared with other parties and hence made public. In other cases, where these statutory procedures do not apply, the Prime Minister is content that Ministers may make representations on behalf of their constituents, provided that this is done privately and that they themselves are not involved in making the ultimate decision.

4. Where Ministers' private interests are affected by a planning application on appeal, the guidance above does not prevent them from making representations in their private capacity. Where such representations are

made to the responsible Minister they will be shared with the parties and hence made public.

5. QPM will be amended in due course to reflect paragraph 3 above.

6. I am copying this letter to the Private Secretaries to all members of the Cabinet, to the Legal Secretaries to the Law Officers, and to the Private Secretaries to the Chief Whip and the Minister of State, Privy Council Office.

A TURNBULL

LOCAL GOVT: PLANNING PTG

17 JUL 1989

SWYDDFA GYMREIG
GWYDYR HOUSE
WHITEHALL LONDON SW1A 2ER
Tel. 01-270 3000 (Switsfwrdd)
01-270 0538 (Llinell Union)
Oddi wrth Ysgrifennydd Gwladol Cymru

The Rt Hon Peter Walker MBE MP

WELSH OFFICE
GWYDYR HOUSE
WHITEHALL LONDON SW1A 2ER
Tel. 01-270 3000 (Switchboard)
01-270 0538 (Direct Line)
From The Secretary of State for Wales

CT/2094/89

13 July 1989

NBPM

Thank you for copying to me your minute of ~~27~~ June to the Prime Minister about proposals which you would like to see included in the proposed Planning Bill.

You enclosed 2 notes describing various miscellaneous and planning compensation items. I agree that the former are not of particular significance but should, nevertheless, contribute to our overall aim of continued improvement and simplification of the planning system.

Of the 4 compensation proposals, I note that, with the exception of item "d: interest to be payable on planning compensation", you are sticking to the proposals as contained in the 1986 consultation paper. In the light of last year's review of land compensation, the different line you propose to take in respect of "d" is, of course, fully justified.

I am content to proceed as you suggest and will instruct my officials to liaise closely with yours as regards the issue of the consultation paper (covering the items in Note A) to relevant English and Welsh interests.

A copy of this letter goes to the Prime Minister, other members of E(LF) Committee, Patrick Mayhew and Sir Robin Butler.

The Rt Hon Nicholas Ridley MP
Secretary of State for the Environment
2 Marsham Street
LONDON SW10 3EB

LOCAL GOVT - Planning PTG

13 JUL 1988

Flag O

MISS SLOCOCK

12 July 1989

PLANNING BILL AND GYPSIES

Kenneth Baker has written to Nicholas Ridley asking if the Planning Bill can include a power to stop people acting in defiance of planning law. He cites the example of gypsies in his constituency who have been illegally settled for four years despite being taken to Court on several occasions by the local authority.

Nicholas Ridley intends that the Planning Bill should include improved enforcement powers based on the fourteen recommendations of the Carnwath Report (see Annex A). He will be seeking colleagues' agreement to this shortly.

Three of the Carnwath recommendations could help with the kind of case Kenneth Baker mentions:

Recommendation 10

Allowing stop notice procedures to be applied to residential caravans (at present they are exempt). Ann Widdicombe recently proposed a Bill which would have had exactly the same effect.

Recommendation 11

Providing an express power for a planning authority to apply to a County or High Court for an injunction in respect of a breach, or threatened breach, of planning control. Such an injunction could be against "persons unknown" - helpful where gypsies muddy ownership.

Recommendation 13

Increased penalties for non-compliance.

It is not clear that Kenneth Baker is aware of these proposals. They would provide effective legal remedies for local authorities who were prepared to use them. That, of course, is the key.

Officials in the Home Office and the Lord Chancellor's Department have some doubts about Recommendation 11. They are concerned about allowing an injunction in the case of threatened breach of the law. But such a power would be very useful in stopping illegal development before it got underway.

RECOMMENDATION

There is no need for the Prime Minister to intervene at this stage. Nicholas Ridley will reply to Kenneth Baker explaining his proposals.

CAROLYN SINCLAIR

SS04JLL1

ELIZABETH HOUSE
YORK ROAD
LONDON SE1 7PH
01-934 9000

The Rt Hon Nicholas Ridley MP
Secretary of State for the Environment
Department of the Environment
2 Marsham Street
London
SW1P 3EB

11 July 1989

Dear Nick,

I have seen various proposals for the Planning Bill for the next session. I wonder if you could consider one other thing?

I have long believed that local authorities require a power to stop certain developers acting in flagrant and determined defiance of the planning laws. An effective stop power would be used to stop someone building something for which they do not have planning permission or, which is at variance to the planning permission they do have.

I remember discussing this when I held your Office. The Department was, on the whole, rather cool about it. They said it was not really necessary and the system could eventually stop the wrong doers.

I was never really convinced of this argument and I must say some recent events in some of the Home Counties have rather supported my view. The particular case I have in mind is where gypsies buy land, maybe an acre or two, and then set up in a matter of two or three days a totally illegal home for their caravans. Such sites are elaborately arranged involving the laying on of electricity and telephones. This has happened in several places in Surrey. It is a complete contravention of all planning law. It is illegal.

Four years ago in my own constituency a gypsy family did exactly this. The Council has refused them planning permission and has patiently taken the gypsies to Court on several occasions. Today they are still there in spite of the fact that this contravenes all planning law.

I think it likely that this practice will continue and extend as the whole process of stopping it is so protracted. The gypsies, moreover, are becoming very clever. They transfer ownership from one branch of the family to another and they are ingenious in moving their caravans from one part of the site to another. In this case the whole process could start again if they were to move to another half acre.

I very much hope you are going to address this sort of problem in the Planning Bill. Whether or not a stop power will effectively do this I am sure your lawyers will advise. I am quite sure, however, something should be done.

Yours ever

Ken

* Copied to the Prime Minister, other members of E(LF), Patrick Mayhew and Sir Robin Butler.

file

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

11 July 1989

RESTRICTED

Dear Roger.

MISCELLANEOUS ITEMS FOR THE PROPOSED PLANNING BILL

The Prime Minister has seen your Secretary of State's minute of 27 June and the comments on it from Mr MacGregor and Mr Newton of 10 July. She is content for your Secretary of State to issue the consultation document at Note A of his minute and for him to include in the Planning Bill the proposals set out in Note B.

I am copying this to the private secretaries of the members of E (LF) Committee, to Michael Saunders in the Attorney General's office and to Patrick Turner in Cabinet Office.

Yours sincerely,

Caroline Slocock

CAROLINE SLOCOCK

Roger Bright Esq.
Department of Environment

PRIME MINISTER (1)

MISCELLANEOUS ITEMS FOR THE PROPOSED PLANNING BILL

You may recall seeing the attached note from Mr Ridley in your Sainsbury Group papers.

Richard Wilson suggests in your ELF brief that you ask colleagues to comment on it when planning issues are taken tomorrow.

We have today received comments from Mr Newton and Mr MacGregor and this is likely to be all. Both are happy for Mr Ridley to go out to consultation, although Mr Newton has a number of worries on a three very detailed points about the potential burdens on business. They are also happy with the proposals on which Mr Ridley has already consulted and which he intends to include in the Planning Bill. Mr Newton's letter is attached, although I do not think you need to read it.

Carolyn's advice was that you agree to what Mr Ridley proposes, subject to DTI views in particular.

There is already a long list of matters to cover on planning on tomorrow's ELF agenda. Rather than raising it there, do you now agree to:

Yes

- Mr Ridley issuing the consultation document at Note A of his minute;
- and to his including in the Planning Bill the proposals set out in his Note B? Yes

CMS

Caroline Slocock
10 July 1989

dti

the department for Enterprise

The Rt. Hon. Tony Newton OBE, MP
Chancellor of the Duchy of Lancaster and
Minister of Trade and Industry

Rt Hon Nicholas Ridley MP
Secretary of State
Department of Environment
2 Marsham Street
LONDON
SW1P 3ES

Department of Trade and Industry

1-19 Victoria Street
London SW1H 0ET

Enquiries
01-215 5000

Telex 8811074/5 DTHQ G
Fax 01-222 2629

Direct line 215 5147
Our ref
Your ref
Date 10 July 1989

Dear Nick,

MISCELLANEOUS ITEMS FOR THE PROPOSED PLANNING BILL

Thank you for copying to me your minute of 27 June to the Prime Minister, in which you gave details of the further measures you have earmarked for inclusion in the Planning Bill.

I am content for you to go out to consultation on the measures listed in your Note A but should like to reserve my position pending the responses you receive from business. In particular, I have reservations about three of your proposals. On the re-definition of commencement of development (III), I am concerned that the thresholds you have set (five years and 10% of the total cost) may be unduly onerous for certain industries. I have in mind the minerals industry, whose fortunes are very much tied to the level of world prices; for example a development which may have been profitable at the time planning permission was applied for, may through circumstances beyond the company's control have become unprofitable either by the time permission was obtained or soon after work started. In such circumstances, the company could hardly be expected to continue with the development, and since it may be some years before prices return above break-even level, I do not believe it would be fair to expect the company to go through the full planning process once again. I therefore hope that you will be able to respond positively to any representations you receive from the minerals and other industry about these thresholds.

RC6AAC

dti

the department for Enterprise

My other comments concern the conclusion you have reached on planning conditions (V) and your proposal to extend the power to impose after-care conditions (XII). I assume that, although you are not now contemplating any legislation on the first item, you will still be including it in your consultation paper; as you know, there is considerable unhappiness at the way in which local authorities seek to impose planning conditions, and I believe that business would have welcomed legislation to regulate their use. I hope that if consultation reveals a strong degree of support for such legislation, you will be prepared to reconsider your position. As for the power to impose after-care conditions on planning permissions for the tipping of non-mineral waste, I am concerned that this does not result in the imposition of undue burdens on bona fide site operators.

I have no comments on the amendments you are preparing to the planning compensations provisions. While I note that some of the amendments are likely to be opposed by business, since certain long standing rights to compensation will be withdrawn as a result, I accept your point that the law in this area, which has remained largely unchanged for 50 years, needs to be simplified and brought up-to-date.

I am copying this letter to the Prime Minister, other members of E(LF) Committee, Patrick Mayhew and Sir Robin Butler.

Yours ever.
Tony

TONY NEWTON

RC6AAC

NBPM

Ministry of Agriculture, Fisheries and Food
Whitehall Place, London SW1A 2HH

From the Minister
RESTRICTED

The Rt Hon Nicholas Ridley AMICE MP
Secretary of State for the Environment
Department of the Environment
2 Marsham Street
London
SW1P 3EB

10 July 1989

Dear Nicholas,

MISCELLANEOUS ITEMS FOR THE PROPOSED PLANNING BILL

Thank you for sending me a copy of your minute and note of 27 June to the Prime Minister, in which you invited colleagues to approve a number of proposals you intend as candidates for your proposed Planning Bill. My officials have already consulted with yours and our views have been taken on board.

I am happy to confirm that I am content with your proposals.

I am copying this letter to the Prime Minister and other members of E(LF), Patrick Mayhew and to Sir Robin Butler.

Yours ever,

JOHN MacGREGOR

file

PRIME MINISTER

MEETING OF THE SAINSBURY GROUP, 10 JULY

On Monday, you are having your annual meeting with the Sainsbury Group. As usual, the meeting comes in two parts: a meeting of Ministers between 4.00 and 4.30 and full meeting of the Group between 4.30 and 5.30.

I attach at Flag A a handling brief from Carolyn Sinclair and a minute from Mr Ridley (Flag B) which sets out the main issues for discussion. Carolyn's brief covers the same subjects as Mr Ridley's but in a slightly different order. Carolyn's order seems more logical to me and would I think form a better agenda, except that you ought to note that Mr Ridley at the end of his minute suggests you might raise Development Trusts. Overall, you may think the agenda rather thin. Certainly the Sainsbury Group and DOE seem broadly in agreement with how to proceed and in view of this you may wonder whether you need to hold further meetings of this Group.

The issue of charging for planning appeals is to be covered in Tuesday's ELF and the papers are in your weekend box. One of the reasons why Mr Walker and Mr Rifkind oppose the introduction of charges is that they fear that they will put off homeowners and businessmen. This appears not to be the view of the Sainsbury Group and it may be worth exploring why this is as well as getting a steer from them on the appropriate levels for charges.

NB. You have not yet seen this.

You will also want to take a look at the minute from Mr Ridley of 27 June about miscellaneous items for the proposed Planning Bill at Flag C. As you will see from my note on it, Carolyn sees no reason to object to this, subject to the views of your colleagues, but some of the proposals may well be raised by the Sainsbury Group.

The following will be present:

Lord Sainsbury
Sir Nigel Mobbs
Sir Clifford Chetwood
Mr John Taylor

Mr Ridley
Mr Howard
Mr Chope

Lord Young is unable to attend because of his statement on Beer.

CAS

Caroline Slocock
7 July 1989

PRIME MINISTER P 03502

THE PLANNING APPEALS WORKLOAD AND THE INTRODUCTION OF CHARGES

[Minutes of 11 May and 4 July from Mr Ridley;
Letters to Mr Ridley from Mr Major (dated 8 June),
Mr Newton (dated 12 June) and Mr Walker (dated 15 June)]

DECISIONS

Mr Ridley seeks agreement to proposals for speeding up the handling of planning applications and appeals. He wishes to go out to consultation and include them in a Planning Bill in the next Parliamentary Session.

2. The main proposals on which points are outstanding are:

i. charging for planning appeals. Colleagues have largely endorsed Mr Ridley's proposals to charge for appeals in England. But Mr Walker and Mr Rifkind oppose the introduction of charges in Wales or Scotland. You will wish to decide whether it would be acceptable to go ahead in England alone;

ii. increased fees for planning applications to cover 100% of local authority costs rather than the present target of 50%. Mr Walker has reservations about this, and Mr Newton has argued that the increase should be phased in;

iii. deemed permission for householder development. Mr Walker fears that this might have the wrong results;

iv. Local Development Orders. Mr Walker and Mr Newton are concerned that a proliferation of such orders might lead to confusion;

v. powers for the Secretary of State to decide whether to hold an inquiry on an appeal. Mr Walker is concerned that

this will be controversial.

3. As the next step you may want to ask Mr Ridley to circulate a draft consultation paper for clearance in correspondence.

MAIN ISSUES

Charging for planning appeals

4. The number of planning appeals in England has more than doubled since 1983, to 28,500 in 1988-89. Further substantial increases are forecast. The additional workload on the Planning Inspectorate has defeated measures designed to speed up decisions. Mr Ridley wishes to respond by introducing charges to cover the full cost of processing appeals, and use the receipts to improve the Inspectorate's performance. He proposes a scale of fees from £100 for householder development up to £4,000 for major development, with additional charges where there are informal hearings or inquiries. The Chief Secretary has agreed that these charges should make it possible to exempt the Inspectorate from gross running costs control, subject to certain conditions about financial reporting and controls.

5. You earlier welcomed the revised scale of charges proposed by Mr Ridley. You were however concerned that the introduction of charges should be matched by clear improvements in the service for developers. Mr Ridley says that he will cover this in his consultation paper. You may wish to ask what can be achieved.

6. The main outstanding question is whether charges should be extended to Wales and Scotland. Mr Ridley clearly feels that he would be in a difficult position if charges applied only in England. He also argues that there is a clear case for charging users of the appeal system with its costs. But Mr Walker and Mr Rifkind do not wish to introduce charges. They fear that charges will act as a disincentive to enterprise for both homeowners and businesses. They do not believe that charges will in themselves improve their Departments' handling of appeals. They believe that

charges will be seen as an unjustified additional burden on developers in Wales and Scotland. You will wish to decide whether to go ahead with the introduction of charges in England alone, or to extend them also to Wales and Scotland.

Increased fees for planning applications

7. The present target is that fees for planning applications to local authorities should cover 50% of costs. Mr Ridley proposes to increase fees to cover full costs. He believes this will help authorities overcome difficulties with recruiting and retaining staff to deal with applications. But Mr Walker argues that increased fees would be unpopular with applicants, and that there is no guarantee that authorities would use the income to improve the service. Mr Newton has suggested that any increase in fees should be phased in. You will wish to decide whether fees for planning applications to local authorities should be raised to 100% of costs, possibly subject to some phasing.

Deemed permission for householder development

8. Mr Ridley proposes that where householders apply for planning permission (eg for an extension or a garage) it should be deemed to be granted if the local planning authority has not issued a decision within (say) 4 weeks. This might cut the pressure on the planning system, and would be significant deregulation. It is supported by Mr Newton. Mr Walker agrees that there is a lot to be said for it. But he is concerned that it might lead hard-pressed authorities to defer major applications to meet the timetable for householder development; or to issue refusals where they might have granted permission given more time. You will wish to consider whether deemed permission for householder development should be introduced.

Local Development Orders

9. Mr Ridley proposes to give local authorities the power to give general permission for types of development, additional to those permitted nationally in the General Development Order.

This could also be a useful deregulation measure. But Mr Newton and Mr Walker think that it might lead to confusion, and run counter to the need of businesses for certainty and consistency in their dealings with the planning system. Mr Ridley counters that a Local Development Order could only help businesses: they would simply be told that they did not need to make a planning application for a particular project. You will want to decide whether to proceed with new powers for authorities to make Local Development Orders.

Power to decide whether to hold an inquiry on an appeal

10. Mr Ridley proposes to take power to refuse to hold an inquiry where one of the parties to an appeal insists on an inquiry although the case can be dealt with as well and more expeditiously in writing. Mr Newton welcomes this because it will allow the Secretary of State to refuse an inquiry where a local authority appears to be acting unreasonably. But Mr Walker fears it will be controversial because it takes away the basic right to be heard in person. You will want to decide whether the Secretary of State should have the power to refuse an inquiry.

Miscellaneous items

11. Mr Ridley minuted you on 27 June seeking approval for a number of minor proposals for legislation.* There do not appear to raise any obvious problems. You will probably want to ask other Ministers to let Mr Ridley have any comments in writing as soon as possible.

Lord Young and John MacGregor have now commented CAS 10/7

* See papers in weekend box CAS 7/7

R T J WILSON
Cabinet Office
7 July 1989

PRIME MINISTER

MEETING OF E(LF): TUESDAY 11 JULY

There are three items for E(LF) next Tuesday. I am afraid there is rather a weight of paper in the folder, but this minute is designed to guide you through it. Material on item 2 has kindly been provided by Caroline.

1. Homelessness

This is the third of the discussions you have had over the last six months or so on homelessness. The papers are:

Flag A - main paper by Nicholas Ridley

Flag B - Cabinet Office handling brief

Flag C - note from the Policy Unit, suggesting it is important not only to address the issues covered by Nicholas Ridley but also the problem of rootless youngsters.

2. Planning Appeals and Charges

The main papers are:

Flag D - latest minute from Nicholas Ridley

Flag E - Cabinet Office brief

Flag F - Carolyn Sinclair's very succinct and clear brief.

At the back of the divider are also some contributions from other Ministers, which you probably do not need to refer to.

The main issue is whether charging for appeals should be introduced solely in England or also in Scotland and Wales. There seems no reason why charging should not be introduced in England alone but it may be that Scotland and Wales can be persuaded to follow suit. The main stumbling blocks for

Mr. Walker and Mr. Rifkind appear to be concerns that the Treasury will not allow charges to be used by the Planning Inspectorates to improve service; and that charging will be a disincentive to businesses and homeowners.

On the first, the Treasury have been positive in discussions for the Planning Inspectorate in England. On the second, the Sainsbury Group have responded positively to proposals to introduce charging provided they are linked to positive improvements in performance. You might wish to explore the feeling on this at Monday's separate Sainsbury Group meeting; and to press in E(LF) on Tuesday for a clear commitment to the linking of charges to positive improvements in the performance of the Planning Inspectorate. A potential area of compromise is on the scale of the charging. Mr. Ridley wishes to cover the full cost of processing appeals.

Mr. Ridley wants to see the Planning Bill in the next Session. I believe it is still first reserve.

3. Standard Community Charge

You saw some of the papers on this subject last weekend, and decided it should be added to the E(LF) agenda.

The main papers are:

Flag G - Cabinet Office brief, which very helpfully details the main issues from the mass of ministerial exchanges.

Flag H - John Mills' note, which you saw last weekend.

At the back of the divider are the various ministerial exchanges, but these are very hard work to plough through, and I do not think you need bother with them; the two briefs at G and H should suffice.

Patrick A. Parkin

PAUL GRAY
7 July 1989

Cite ...

PRIME MINISTER

Amanda has shown me the attached letter to you from the Reverend Paul Hulme - essentially about whether you will go to a reception but it also mentions the state of play on the Benson Building. He bears out what I heard from DOE today - namely that negotiations on English Heritage's compromise propose for the building had come to nought. (English Heritage's architect had proposed a scheme to preserve the Benson Building but with a mansard roof to provide some of the extra space that the Wesley's Chapel were looking for for their community centre. But the Chapel have concluded - not unreasonably - that the cost/space ratio simply won't work for them). This will go now to the English Heritage full board this Friday. I fear that there is a very strong probability that English Heritage will reject the Chapel's original application. It is open thereafter to the Chapel to appeal to Nicholas Ridley and Environment expect them to do so. DOE know you are concerned that the Chapel get a quick decision one way or the other.

As to the reception in late November, you already have evening engagements most week-days at that time and I attach a draft reply suggesting looking at something for next year.

Dominic Morris

5 July 1989

MJ2DVM

file action has been taken on a photocopy

CONFIDENTIAL

PRIME MINISTER

THE PLANNING APPEALS WORKLOAD AND THE INTRODUCTION OF CHARGES

At the E(LF) meeting on 11 July we are to discuss my proposals to introduce charges for planning appeals, and other legislative measures to deal with the growing volume of planning applications and appeals. I minuted you about these issues on 19 May and three colleagues have written about them - the Secretary of State for Wales (15 June), the Chief Secretary, Treasury (8 June), and the Chancellor of the Duchy of Lancaster (12 June). In the light of these exchanges this minute sets out the issues we shall need to discuss.

file with A

Charges for Planning Appeals

I circulated my full proposals to H Committee on 28 March. For convenience, the main features are summarised in the note at Annex A. The key issues are the principle of charging, whether it is appropriate in Wales and Scotland as well as England, and whether it will lead to an improved service for appellants.

The background is the huge increase in the volume of planning appeals submitted to my Department. In 1983 the Department received 13,700 appeals; by 1988/89 the number had more than doubled to 28,500. On present indications, we are likely to see continuing increases of as much as 30% per annum in the short term, which would mean 37,000 appeals in 1989/90 and 45,000 in 1990/91. These levels of increase pose severe problems for my Department's Planning Inspectorate, and have vitiated the measures we have been taking to speed up decisions.

Against this background I see charges - set at levels which overall recover the full cost of processing - as vital to maintaining and improving our performance. Planning appeals are matters of judgment, as are planning applications for which we

Against this background I see charges - set at levels which overall recover the full cost of processing - as vital to maintaining and improving our performance. Planning appeals are matters of judgment, as are planning applications for which we introduced charges in 1981, and I do not see that any new principle is involved. It is both logical and sensible to ensure that the users of the appeals system bear its costs. With charges, provided they can be put to use in the Inspectorate, we can reap the full benefit of the Next Steps agency status planned for it and other improvements in train to provide a better service. Without it, it must be very doubtful whether I can maintain, let alone improve, service in the face of the rising workload I have mentioned. The issue of using the receipts was commented on by John Major in his letter of 8 June and, following discussions between his and my officials, I understand that there should not be any difficulty in agreeing arrangements to provide for this. It is most important that this should be so.

Peter Walker has expressed strong reservations about the principle of charges for appeals. Although he says that appeals have increased substantially in Wales in recent months, it is clear that the scale of the problem is quite different from that in England: first, there were only 1,233 appeals in Wales in 1988/89, compared with 28,500 in England; secondly, the rate of increase has been much less - 66% since 1983, compared with a 108% increase in England over the same period. It may have been easier to re-allocate resources in the Welsh Office to accommodate these levels of change than to find resources to deal with the increases we have experienced in England, but the principles are surely the same. There is a clear argument for charging users of the system and for employing the income to maintain as good a service as possible.

Increasing Planning Application Fees

My Department's agreement with the Treasury is that planning application fees should recover 50% of local authorities' costs. However, there is no logic in stopping at 50% if we adopt 100% recovery of appeal costs. I therefore favour 100% recovery for

applications too. Quite apart from the comparison with appeals, there is increasing evidence (most recently in a report from the Audit Commission) that a number of local authorities are experiencing serious difficulty in recruiting and retaining professional staff to deal with planning work - increased income from fees would give them more flexibility to match staff to workloads. We have had representations from Home County local authorities and the City of Westminster, as well as from a number of business interests (most recently from the Association of Independent Businesses), in favour of increased fees.

Peter Walker is concerned that the extra income would not in fact be used to provide an improved service. I am doubtful whether this would prove to be a serious problem, but if fees were set at a level to recover 100% of costs local authorities would find it much less easy to excuse poor performance.

Tony Newton suggests a phased introduction of the increase. I am doubtful of the need for extended phasing given the support which business organisations have expressed for the idea, but clearly it is something we could consider.

Deemed permission for householder development

This is my proposition for a simplified procedure for the householder development (garages, extensions, etc) which should be much less onerous for authorities. (At present there are over 200,000 such applications a year, over 90% of which are granted). Clearly there is some risk that local authorities would refuse applications rather than let them obtain deemed consent, as Peter Walker comments, but I do not think we should let that inhibit us from pressing ahead with what could be a most significant de-regulatory measure. The initial proposal is that the scheme should apply only to householder development. If it does work well it may be capable of extension later.

Local Development Orders

This is another attractive de-regulatory measure. Both Tony Newton and Peter Walker are concerned that it might be confusing for businesses if there were a more liberal regime in one area than another. The basis for the suggestion is that some forms of development for which we could not provide a general permission in the General Development Order, because they would not be acceptable in many circumstances, might nevertheless be uncontentious and perfectly acceptable in particular locations. I cannot see any real disadvantage to the would-be developer who is informed that a local decision has made it unnecesary to apply for planning permission for his work.

Power to turn away repetitive applications and appeals

Colleagues seem to agree that this would be a worthwhile measure.

Power for the Secretary of State to decide whether to hold an inquiry on an appeal.

I am not persuaded that this will be as controversial as Peter Walker suggests. I think most appellants will be convinced by the argument that simpler cases should be dealt with by written representations rather than by inquiry. Apart from releasing inspector resources which might otherwise be tied up in inquiries, such a power would offer the prospect of a speedier decision where one of the parties was insisting without good cause on the case being dealt with by inquiry.

If you and colleagues are content for me to consult about the proposal to charge for appeals and about these other measures for streamlining the development control system, I propose to issue a single consultation paper, in the next week or so, to cover both aspects (together with some of the items in the note attached to my recent minute of 27 June). The proposal to charge for appeals would be covered in considerably less detail than in the draft I circulated on 28 March, but it would include reference to the Planning Inspectorate's performance and a compliance cost assessment, as proposed in Tony Newton's letter of 12 June.

SECRETARY OF STATE FOR THE ENVIRONMENT

I am copying this as before to members of E(LF), Patrick Mayhew and Sir Robin Butler.

pp NR

(Approved by the Secretary of State & signed on his behalf)

4 JUL 1989

ANNEX A

CHARGING FOR APPEALS: PROPOSALS BY THE SECRETARY OF STATE FOR THE ENVIRONMENT

The cost of handling planning appeals

1. In 1988/89 over 28,500 planning appeals were submitted to the Department of the Environment, an increase of 27% over the preceding year and of 108% since 1983. The cost to the Department of handling appeals last year was estimated to be about £16 million. 37,000 appeals are forecast for 1989/90.

2. The proposed charges are intended to recover the total cost to the Department of processing appeals. It is fairer that the cost should fall on the appellant rather than the taxpayer, the existence of a fee will have some deterrent effect on frivolous appeals but, above all, a system of charges is intended to enable the Planning Inspectorate (which is proposed to become an executive Agency) to adjust its resources flexibly to respond to charges in workload and thereby to improve its service.

Proposed charges

3. The cost to the Department of handling appeals depends on the method of determination. The cost of processing an appeal which goes to a public local inquiry is about twice the cost of processing an appeal dealt with on the basis of an exchange of written representations.

4. The proposed fee scheme reflects this, but for reasons of equity the scale rises according to the size of development proposal:

- £100 for development by householders
- £200 for change of use or conditions
- A graduated scale of £200-£800 for minor development (1-10 houses or less than one hectare)
- Up to a maximum of £4,000 for 50+ houses or 5+ hectares.

These amounts relate to written representations cases. Inquiry cases would be charged at twice these amounts, cases dealt with

by informal hearing would be charged 1.6 times the written representations fee, and there would be a supplement of £350 per day for the small proportion of inquiry cases which last more than 2 days.

Appeals against non-determination

5. If a planning application has not been determined by the local authority 8 weeks after it was lodged, the applicant can appeal to the Secretary of State on the ground of non-determination. It is proposed that the full fee should be payable for such appeals. In cases where the local authority is judged to have acted unreasonably, costs may be awarded against the authority in favour of the applicant.

Listed building consent appeals

6. There is no charge for applications for listed building consent. Accordingly, it is not proposed to charge for listed building appeals. Many listed building appeals are in fact linked with an ordinary planning appeal (for which fees will be payable).

Enforcement appeals and other specialist appeals

7. In most cases the scale of charges for ordinary planning appeals will be payable, but no fee will be charged in cases where the enforcement or other specialist appeal is made on legal, rather than planning grounds.

Development Control Policy Division
Department of the Environment

3 July 1989

LOCAL GOVT: Planning Pts ...

CONFIDENTIAL

PRIME MINISTER

THE PLANNING APPEALS WORKLOAD AND THE INTRODUCTION OF CHARGES

At the E(LF) meeting on 11 July we are to discuss my proposals to introduce charges for planning appeals, and other legislative measures to deal with the growing volume of planning applications and appeals. I minuted you about these issues on 19 May and three colleagues have written about them - the Secretary of State for Wales (15 June), the Chief Secretary, Treasury (8 June), and the Chancellor of the Duchy of Lancaster (12 June). In the light of these exchanges this minute sets out the issues we shall need to discuss.

Charges for Planning Appeals

I circulated my full proposals to H Committee on 28 March. For convenience, the main features are summarised in the note at Annex A. The key issues are the principle of charging, whether it is appropriate in Wales and Scotland as well as England, and whether it will lead to an improved service for appellants.

The background is the huge increase in the volume of planning appeals submitted to my Department. In 1983 the Department received 13,700 appeals; by 1988/89 the number had more than doubled to 28,500. On present indications, we are likely to see continuing increases of as much as 30% per annum in the short term, which would mean 37,000 appeals in 1989/90 and 45,000 in 1990/91. These levels of increase pose severe problems for my Department's Planning Inspectorate, and have vitiated the measures we have been taking to speed up decisions.

Against this background I see charges - set at levels which overall recover the full cost of processing - as vital to maintaining and improving our performance. Planning appeals are matters of judgment, as are planning applications for which we

Against this background I see charges - set at levels which overall recover the full cost of processing - as vital to maintaining and improving our performance. Planning appeals are matters of judgment, as are planning applications for which we introduced charges in 1981, and I do not see that any new principle is involved. It is both logical and sensible to ensure that the users of the appeals system bear its costs. With charges, provided they can be put to use in the Inspectorate, we can reap the full benefit of the Next Steps agency status planned for it and other improvements in train to provide a better service. Without it, it must be very doubtful whether I can maintain, let alone improve, service in the face of the rising workload I have mentioned. The issue of using the receipts was commented on by John Major in his letter of 8 June and, following discussions between his and my officials, I understand that there should not be any difficulty in agreeing arrangements to provide for this. It is most important that this should be so.

Peter Walker has expressed strong reservations about the principle of charges for appeals. Although he says that appeals have increased substantially in Wales in recent months, it is clear that the scale of the problem is quite different from that in England: first, there were only 1,233 appeals in Wales in 1988/89, compared with 28,500 in England; secondly, the rate of increase has been much less - 66% since 1983, compared with a 108% increase in England over the same period. It may have been easier to re-allocate resources in the Welsh Office to accommodate these levels of change than to find resources to deal with the increases we have experienced in England, but the principles are surely the same. There is a clear argument for charging users of the system and for employing the income to maintain as good a service as possible.

smaller popn

100%

Increasing Planning Application Fees

My Department's agreement with the Treasury is that planning application fees should recover 50% of local authorities' costs. However, there is no logic in stopping at 50% if we adopt 100% recovery of appeal costs. I therefore favour 100% recovery for

applications too. Quite apart from the comparison with appeals, there is increasing evidence (most recently in a report from the Audit Commission) that a number of local authorities are experiencing serious difficulty in recruiting and retaining professional staff to deal with planning work - increased income from fees would give them more flexibility to match staff to workloads. We have had representations from Home County local authorities and the City of Westminster, as well as from a number of business interests (most recently from the Association of Independent Businesses), in favour of increased fees.

Peter Walker is concerned that the extra income would not in fact be used to provide an improved service. I am doubtful whether this would prove to be a serious problem, but if fees were set at a level to recover 100% of costs local authorities would find it much less easy to excuse poor performance.

Tony Newton suggests a phased introduction of the increase. I am doubtful of the need for extended phasing given the support which business organisations have expressed for the idea, but clearly it is something we could consider.

Deemed permission for householder development

This is my proposition for a simplified procedure for the householder development (garages, extensions, etc) which should be much less onerous for authorities. (At present there are over 200,000 such applications a year, over 90% of which are granted). Clearly there is some risk that local authorities would refuse applications rather than let them obtain deemed consent, as Peter Walker comments, but I do not think we should let that inhibit us from pressing ahead with what could be a most significant de-regulatory measure. The initial proposal is that the scheme should apply only to householder development. If it does work well it may be capable of extension later.

Local Development Orders

This is another attractive de-regulatory measure. Both Tony Newton and Peter Walker are concerned that it might be confusing for businesses if there were a more liberal regime in one area than another. The basis for the suggestion is that some forms of development for which we could not provide a general permission in the General Development Order, because they would not be acceptable in many circumstances, might nevertheless be uncontentious and perfectly acceptable in particular locations. I cannot see any real disadvantage to the would-be developer who is informed that a local decision has made it unnecesary to apply for planning permission for his work.

Power to turn away repetitive applications and appeals

Colleagues seem to agree that this would be a worthwhile measure.

Power for the Secretary of State to decide whether to hold an inquiry on an appeal.

I am not persuaded that this will be as controversial as Peter Walker suggests. I think most appellants will be convinced by the argument that simpler cases should be dealt with by written representations rather than by inquiry. Apart from releasing inspector resources which might otherwise be tied up in inquiries, such a power would offer the prospect of a speedier decision where one of the parties was insisting without good cause on the case being dealt with by inquiry.

If you and colleagues are content for me to consult about the proposal to charge for appeals and about these other measures for streamlining the development control system, I propose to issue a single consultation paper, in the next week or so, to cover both aspects (together with some of the items in the note attached to my recent minute of 27 June). The proposal to charge for appeals would be covered in considerably less detail than in the draft I circulated on 28 March, but it would include reference to the Planning Inspectorate's performance and a compliance cost assessment, as proposed in Tony Newton's letter of 12 June.

I am copying this as before to members of E(LF), Patrick Mayhew and Sir Robin Butler.

pp NR

(Approved by the Secretary of State and signed on his behalf)

4 JUL 1989

ANNEX A

CHARGING FOR APPEALS: PROPOSALS BY THE SECRETARY OF STATE FOR THE ENVIRONMENT

The cost of handling planning appeals

1. In 1988/89 over 28,500 planning appeals were submitted to the Department of the Environment, an increase of 27% over the preceding year and of 108% since 1983. The cost to the Department of handling appeals last year was estimated to be about £16 million. 37,000 appeals are forecast for 1989/90.

2. The proposed charges are intended to recover the total cost to the Department of processing appeals. It is fairer that the cost should fall on the appellant rather than the taxpayer, the existence of a fee will have some deterrent effect on frivolous appeals but, above all, a system of charges is intended to enable the Planning Inspectorate (which is proposed to become an executive Agency) to adjust its resources flexibly to respond to charges in workload and thereby to improve its service.

Proposed charges

3. The cost to the Department of handling appeals depends on the method of determination. The cost of processing an appeal which goes to a public local inquiry is about twice the cost of processing an appeal dealt with on the basis of an exchange of written representations.

4. The proposed fee scheme reflects this, but for reasons of equity the scale rises according to the size of development proposal:

- £100 for development by householders
- £200 for change of use or conditions
- A graduated scale of £200-£800 for minor development (1-10 houses or less than one hectare)
- Up to a maximum of £4,000 for 50+ houses or 5+ hectares.

These amounts relate to written representations cases. Inquiry cases would be charged at twice these amounts, cases dealt with

by informal hearing would be charged 1.6 times the written representations fee, and there would be a supplement of £350 per day for the small proportion of inquiry cases which last more than 2 days.

Appeals against non-determination

5. If a planning application has not been determined by the local authority 8 weeks after it was lodged, the applicant can appeal to the Secretary of State on the ground of non-determination. It is proposed that the full fee should be payable for such appeals. In cases where the local authority is judged to have acted unreasonably, costs may be awarded against the authority in favour of the applicant.

Listed building consent appeals

6. There is no charge for applications for listed building consent. Accordingly, it is not proposed to charge for listed building appeals. Many listed building appeals are in fact linked with an ordinary planning appeal (for which fees will be payable).

Enforcement appeals and other specialist appeals

7. In most cases the scale of charges for ordinary planning appeals will be payable, but no fee will be charged in cases where the enforcement or other specialist appeal is made on legal, rather than planning grounds.

Development Control Policy Division
Department of the Environment

3 July 1989

F

PRIME MINISTER 29 June 1989

E(LF) 11 JULY: CHARGING FOR PLANNING APPEALS

Nicholas Ridley wants to introduce charges for planning appeals. Malcolm Rifkind and Peter Walker do not want to introduce such charges in Scotland and Wales.

You thought E(LF) should consider whether it was feasible to go ahead with charging in England alone.

BACKGROUND

The planning systems in England, Wales and Scotland operate on broadly similar lines. But Malcolm Rifkind and Peter Walker have less difficulty in coping with appeals.

Charging for appeals has two aims:

(i) it might discourage frivolous appeals, thus reducing demand and speeding up decisions;

(ii) it would produce money which could be spent on paying for more and better planning inspectors to handle appeals.

Both DOE and the Sainsbury Group put most weight on (ii). This in turn depends on the Treasury agreeing to a system which allows DOE to keep the money raised by charges to finance a better system. This should be possible, but it will be important to encourage the Treasury to be flexible.

There is reason to believe that the Scots might come along too if the Treasury agrees to a reasonably attractive regime. What they oppose is a system of charging which puts the money straight into the Consolidated Fund.

ARGUMENTS FOR CHARGING

- It sits well with agency status for the Planning Inspectorate. There are already charges for planning applications (Nicholas Ridley wants to increase these from 50% to 100% of actual costs).

- Given the profits to be made from development, no developer is going to be seriously deterred by the prospect of paying a few hundred pounds.

- Many developers would gladly pay for a speedier service. This means that charging must be linked to concrete proposals to speed up planning decisions.

- Nervousness about introducing charging is sometimes misplaced. The recent decision by the Charity Commission to charge charities for registration has not caused any fuss. Some charities have said the charges should be higher!

CONCLUSION

- There are good arguments for charging for appeals. But charges should be clearly linked to proposals for a better service.

- Any charging regime should allow the money raised to be spent on improving the service. This must be visible.

- It would be better to introduce charging simultaneously throughout Great Britain.

CAROLYN SINCLAIR

RESTRICTED

Prime Minister

Carolyn Sinclair advises (see flag) that there is nothing here to object to. She suggests you wait for DOT comments (which have not yet arrived) before commenting.
Richard Wilson suggests you might ask colleagues to comment when clearing up for planning appeals is raised at GLF.
Content to approve proposals, subject to Ministerial views?
CAS 7/7

PRIME MINISTER

MISCELLANEOUS ITEMS FOR THE PROPOSED PLANNING BILL

In my minute of 19 May about the planning appeals workload and introduction of charges, I said that I would write separately about a number of the other minor proposals that I have mentioned as candidates for my proposed Planning Bill.

The enclosed note (A) describes the proposals on which I intend to invite public comments. Items (xiii) and (xiv) have been discussed with and are supported by the Sainsbury group. Although none of the other items is of great significance in itself, all are intended to improve the efficiency of existing procedures, making the development control system more effective and simpler to operate. I would like to consult about them as soon as possible.

In additional colleagues may recall that in 1986 we issued a consultation paper inviting comments on proposed amendments to the planning compensation provisions in the Town and Country Planning Acts. (Planning compensation is the compensation payable in certain circumstances when planning permission is withheld; it is quite separate to compensation for acquisition of land which we have discussed separately). I have now considered in detail the responses received and subsequent representations. Note B attached summarises the specific measures which I propose to take forward. These should be legislatively quite simple provisions but very worthwhile as both rationalisation and a simplification of planning law and as a measure of deregulation. They will also be welcomed by many of our supporters. I commend them to colleagues. As noted I have already consulted on these proposals and would not propose to say anything further until the Bill is published.

RESTRICTED

I should be grateful for policy approval to these proposals. I am copying this letter and the note to members of E(LF) Committee, Patrick Mayhew and Sir Robin Butler.

PP N R

27 June 1989

(Approved by the Secretary of State
and Signed in his Absence)

A

RESTRICTED

TOWN AND COUNTRY PLANNING: MISCELLANEOUS LEGISLATIVE PROPOSALS

List of Contents

Note A

I DEVELOPMENT CONTROL AND PLANNING APPLICATIONS PROCEDURES

(i) Procedures for notification of owners and others (s.27)

1. Section 27 of the 1971 Act requires applicants for planning permission to notify owners and other individuals with specified interests in the application site and to certify that they have done so. The local planning authority cannot entertain an application unless it is accompanied by the appropriate certificate. The section defines the interests to be notified, sets out the procedure to be followed, makes it an offence deliberately or recklessly to give false certificates, and provides for forms to be prescribed by order. Prosecution of offences is subject to a six-month limitation under s.127 of the Magistrates Courts Act 1980. It is proposed to remove this limitation, since there is evidence that six months is too short a period for offences to come to light. In addition the legislation cannot be readily amended in response to circumstances which may arise, and so it is proposed to amend s.27 so that the definition of interests to be notified, the certification required, and procedures to be followed can be prescribed by order.

(ii) Fees for Planning Applications

2. Section 87 of the Local Government, Planning and Land Act 1980 enables the Secretary of State to prescribe, by Regulations, fees for planning applications made to local planning authorities and for applications deemed to be made to him under the planning enactments. Since the regime of fees has now been in operation for 8 years and is generally accepted as part of the planning framework, it is proposed to amend section 87 so that Regulations would be subject to negative, rather than affirmative, resolution procedure.

(iii) Definition of commencement of development

3. The present definition of commencement of development in section 43 of the Act was introduced for taxation purposes by the Land Commission Act 1967. It is not appropriate for practical purposes of development control. A planning permission can be kept alive by satisfying any one of the criteria before the expiry of the time limit for implementation of the permission (usually 5 years). The courts have held that very minor works can satisfy these criteria - for example digging a trench or marking out a road with pegs. A trench dug twenty years previously could justify development on land intended in a subsequent development plan to remain as open countryside. It is important for the efficient running of the planning system and for environmental considerations that unimplemented permissions should not be kept alive indefinitely. It is therefore proposed to re-define commencement of development so that it will be necessary for developers to have completed work to the value of 10% of the total cost of the development, as at the expiry of the time limit for commencement, in order to keep a planning permission alive.

(iv) Powers to rationalise subordinate legislation

4. Section 25 of the 1971 Act requires the procedure for making a planning application to the local planning authority to be prescribed in free-standing regulations. It is proposed to amend section 25 to permit the applications procedure to be prescribed by order, enabling these short regulations to be included in the General Development Order with the other procedural requirements. Elsewhere in the Act, there are provisions for procedures to be specified in a development order, with the effect that the General Development Order is a lengthy document containing many, but not all, of the procedures for dealing with planning applications and appeals. In addition some other procedures (for example the requirements for advertising "bad neighbour"

developments under section 26 of the Act) are spelt out in detail on the face of the Act whereas it would be preferable for the procedures to be set out in regulations. It may be that the procedures can be made more accessible and comprehensible to users if they are set out in a number of separate instruments covering different aspects.

II CONDITIONS

(v) Planning conditions - general criteria

5. The power to impose conditions on planning permissions can enable development to proceed where otherwise it would be necessary to refuse permission. The Courts have laid down that conditions should only be imposed where they are necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable. The White Paper "Releasing Enterprise" stated that the Government were considering whether to give statutory force to those principles. However, DoE Ministers have concluded that this proposal should not be pursued since it might prove unduly rigid as well as restricting the ability of local planning authorities to moderate the grant of planning permission (for example to meet concerns expressed by third parties) where the alternative to a conditional permission might be refusal. Even more importantly, the Courts' interpretation of such a statutory provision would be uncertain and might differ significantly from the present broadly satisfactory and well understood interpretation established by case law.

III PLANNING APPEALS

(vi) Local planning authority jurisdiction following an appeal against non-determination

6. An applicant is entitled to appeal to the Secretary of State under s.37 of the 1971 Act if the local planning authority fails

to issue a decision within eight weeks (or any longer period agreed by the applicant). At present, lodging an appeal removes the application from the jurisdiction of the local authority. Many developers therefore submit two identical applications for the same proposal, so that if the local authority fails to issue a decision within the statutory period, they can appeal on one application while continuing to negotiate on the other. It is proposed to amend the legislation to allow an additional period after the expiry of the 8 weeks when the local authority may determine an application even if a s.37 appeal has been lodged so that as many cases as possible can be resolved locally.

(vii) Summary dismissal of appeals where appellant delays unreasonably

7. A small proportion of appeals are submitted for tactical reasons and are not actions of last resort. In these cases the appellant may have little interest in progressing his appeal but may wish it to lie on the table while negotiations with the local planning authority continue. Such tactics seem to be an unreasonable use of the appeals system. Accordingly, it is proposed to empower the Secretary of State, where an appellant is responsible for the dormant state of an appeal and is not prepared to proceed after a predetermined period of notice, summarily to dismiss the appeal.

IV ADVERTISEMENTS

(viii) Statutory Definition (section 290(1))

8. The definition of an "advertisement" in section 290(1) of the 1971 Act has remained largely unchanged since 1948. Some minor amendment is now proposed to remove any doubt that certain modern forms of outdoor advertising (for example, rotating poster-panels and advertisements on permanently fixed blinds or canopies on business premises) come within the definition.

(ix) "Compensation" provision (section 176)

9. A person who is required by the local planning authority's discontinuance notice to remove an advertisement being displayed on 1 August 1948 may claim from the authority expense reasonably incurred in carrying out the required works. An amendment to the Control of Advertisements Regulations has substituted 1 April 1974 for 1 August 1948 as the relevant date for the purpose of "deemed consent" for long-standing advertisements, and it is proposed that the Secretary of State should have a regulation-making power enabling him to prescribe, in the Regulations, a later date than 1 August 1948 from which any expenses may be claimed from the authority, following their effective discontinuance action. As a result, there may be some marginal increase in aggregate costs to local planning authorities.

VII NEW STREET BYE-LAWS

(x) Repeal of Part X of the Highways Act 1980

10. Part X of the Highways Act 1980 is derived from legislation predating general planning control. It provides for byelaw control to be exercised by the highway authority over the layout, width, construction and sewerage provision of new streets. Planning controls can now be used to control the layout of new streets with greater flexibility than byelaws, and other highways powers can be used to control their construction. The byelaws themselves have been retained only in some counties. It is proposed to abolish Part X of the Act and to make transitional arrangements for authorities who still rely on new street orders and have not included conditions in current outline planning permissions.

VI MINERALS

(xi) Definition of "winning and working of minerals"

11. Although there are several references to the "winning and working of minerals" in the 1971 Act, the legislation contains no definition. It is proposed to introduce a statutory definition, drawing on a decision in the Court of Appeal, and making clear that the winning and working of minerals includes the deposit of waste arising from minerals workings. This will make clear that local authorities' powers to review mineral working operations and to impose orders updating those operations extends to the tipping of minerals wastes as well as the extraction of minerals.

(xii) Extending the power to impose after-care conditions

12. At present, when non-mineral waste is tipped in minerals voids aftercare powers are only available if the permission is part of a permission for winning and working minerals. It is proposed that the existing powers of Section 30A of the 1971 Act should be extended to enable local authorities to impose aftercare conditions on planning permissions for the tipping of non-mineral wastes (household, industrial and commercial) in mineral voids, regardless of whether the tipping forms part of a permission for the winning and working of minerals.

V HISTORIC BUILDINGS AND CONSERVATION

(xiii) Designation of conservation areas (section 277)

13. The recent White Paper "The Future of Development Plans" said that the Government's proposals for district-wide development plans will also give an opportunity to integrate the designation of conservation areas with the plan-making and review process. This will also ensure that needs for conservation are fully addressed by local planning authorities in the context of

their area as a whole. It is proposed that designations, variations and cancellations of conservation areas should in future be considered only in the context of the development plans process, thus providing a formal opportunity for public involvement when conservation areas are considered and when changes to existing areas are proposed.

(xiv) Power to list buildings of special architectural and historic interest (section 54)

14. The National resurvey of listed buildings, started in 1970, is nearing completion. Subject to the revision of some older lists for particular areas, which the Historic Buildings and Monuments Commission (English Heritage) have in hand, by 1992 there will be a comprehensive record of buildings in England which are of special architectural or historic interest, and it will not be necessary for the Secretary of State to continue to list substantial numbers of buildings. There will however continue to be exceptional cases when the Secretary of State will wish to consider "spot listing" individual buildings or groups of buildings. At present the duty to list does not permit the Secretary of State to take into account factors other than special architectural or historic interest. For example, planning permission may already have been granted (with appropriate publicity) for development involving demolition or alteration of the buildings in question; or the buildings may be beyond economic repair. To provide greater flexibility in these relatively infrequent cases, it is proposed to amend S54 of the 1971 Act so that the Secretary of State has a discretionary power to list buildings which he considers to be of special architectural or historic interest, rather than a duty to do so. This would bring listing procedure into line with the Secretary of State's discretionary power to schedule ancient monuments.

(xv) Revocation procedure for listed building consent

15. Revocation orders for listed building consent under Part II of Schedule 11 to the 1971 Act take effect only when finally confirmed, after they have been advertised for 28 days and an inquiry held into any objections. Where the consent in question relates to the demolition of a listed building, this delay may well be counter-productive. It is proposed to provide that once a revocation order has been served no further work may be carried out under a listed building consent until such time as the order is either confirmed or rejected.

(xvi) Development affecting listed buildings (amendment of section 56(3))

16. Section 56(3) requires the local planning authority, or the Secretary of State, to have special regard to the desirability of preserving a listed building or its setting when considering planning applications which affect that building or its setting. It is proposed to extend the provision to require consideration of the desirability of preserving a scheduled monument or its setting.

(xvii) Power for HBMC to prosecute and obtain injunctions

17. The right of the Historic Buildings and Monuments Commission (English Heritage) to prosecute offences and obtain injunctions in respect of breaches of listed building control was called into question in 1987, when they were refused leave to seek an injunction to halt unauthorised works to a listed building on the basis that they had no locus. This contrasts with the right of local planning authorities and indeed private individuals to initiate such action. It is proposed to give HBMC the express power to initiate such action.

(xviii) Power for HBMC to serve repairs notices (section 101)

18. The Historic Buildings and Monuments Commission currently have the power to serve notices under section 101 on listed buildings in London. Outside London they can at present act only if authorised by the Secretary of State, if it appears to him that works are urgently necessary for the preservation of a listed building. Following the Government's response to the Select Committee on the Environment's 1987 Report on Historic Buildings and Ancient Monuments, it is proposed to extend this power to serve notices under section 101 on listed buildings outside London subject to the agreement of the Secretary of State. As a consequence, it is also proposed to amend S284 of the Act to give the Commission power to require information about the owners or occupiers of a building which they may need before serving statutory notices under the Act. At present, this power is confined to the Secretary of State or local planning authorities.

RESTRICTED

Note B

PLANNING COMPENSATION

The principles which underly (ie) the planning compensation proposals are -

a) planning permission should normally be granted unless there are sound, relevant and clearly stated reasons why it should not be;

b) since the Town and Country Planning act 1947, all development as defined in the Act has been subject to planning control; with the lapse of time since the introduction of the system, it is now practicable to operate on the general principle for all forms of development that compensation should not be payable when permission to undertake development is refused or when general permission is rescinded (apart from cases in the pipeline when the change is made);

c) where planning permission has been given for a development either generally or upon application, compensation should be paid if permission is taken away in particular case but not generally.

These were generally agreed by respondents. While there was some disagreement from some quarters to some of the detailed proposals, the indications were that the broad package was on the right lines. The specific proposals are:

a. repeal of section 169 of the 1971 Act.

This would end the remaining possibility of compensation for refusal of permission for the classes of development listed in Part II of schedule 8 to the 1971 Act, Our consultation proposal was that, as a quid pro quo, the permitted development provisions in the General Development Order should be extended to include those categories of development in schedule 8 which do not already have such rights, including in particular the extension of offices, shops and hotels built before 1 July 1948. As indicated in the last deregulation White Paper 'Releasing Enterprise', The Secretary of State will shortly be bringing forward proposals for some extensions of permitted development rights in this area which would subsume this proposal.

The proposal to repeal section 169 was generally supported by local authority interests and opposed by property interests, while the proposed GDO changes were disliked by authorities and favoured by property interests. However, the balance of the representations made suggests that the package is about right. We have since received a number of representations from the Leader of Kensington and Chelsea in particular, which indicate that unacceptable planning applications designed to exploit the right to compensation under section 169 continue to be a matter of concern in those parts of central London where property prices are exceptionally high.

RESTRICTED

b. repeal of section 171 of the 1971 Act.

Under section 171 compensation is payable when listed building consent is refused for development (other than demolition of a listed building) which does not require planning permission because it is permitted by the GDO or because it is not 'development'. Since listed building consent is intended to provide a stricter regime for listed buildings, it is illogical to frustrate that stricter regime by providing an entitlement to compensation when consent is refused. In some instances (of which County Hall could have been one) the provision effectively thwarts the conservation of important buildings. The proposed repeal was opposed by some development and property interests but was welcomed by local authorities and conservationists.

c. repeal of Part VII and section 167 of the 1971 Act.

These provisions are a survival from the introduction of planning control in 1947. Under them compensation is payable for the 'unexpended balance of development value' (UXB) when planning permission is refused in certain circumstances, although that compensation is repayable if a permission is subsequently given for the land. The amount of UXB is fixed under legislation of 1954 by reference to the circumstances of the time, so the compensation payable has not increased since then in spite of increases in land values. As a result these provisions have largely fallen into disuse. However, the Department is still obliged to employ staff to secure recovery after planning permission has been given and such recovery action also gives rise to unproductive work for landowners and their advisers. It is likely that the total cost of this activity exceeds the sums that can be recovered. The proposal to repeal these provisions was therefore generally welcomed.

d. interest to be payable on planning compensation.

The consultation paper proposed no change to the current position that no interest is payable on planning compensation claims. However, in last year's review of land compensation we concluded that the reasons for not paying interest on certain types of compensation while doing so for others do not hold good. The package of measures already agreed by E(A) therefore includes a proposal to make interest available for all types of compensation including planning compensation. The proposal has been included in the consultation paper on land compensation issues published on 7 March and has been generally welcomed by respondents.

Department of the Environment

June 1989

DOC260JL

LOCAL GOVT:
Planning Pte.

NBPM

cc PK

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

27 June 1989

Dear Nick

PLANNING AGREEMENTS — file with PS

Thank you for your letter of 6 June seeking H Committee's agreement to the publication of your proposed consultation paper on planning agreements.

Douglas Hurd, Tony Newton, Kenneth Clarke, John Major, Malcolm Rifkind, Peter Walker and Paul Channon wrote indicating that they were content for the draft consultation paper to issue. Paul asked for the paper to be amended to indicate that a developer might be expected to contribute to the cost of a road or road improvement related to his development and that he might also be expected to contribute to the cost of subsequent maintenance of a road provided wholly or in part to serve his development. I understand that you have taken these points on board. I understand also that paragraph 5 has been redrafted along the lines suggested by John Major. Tony Newton asked you to consider legislating to prevent the inclusion in a section 52 agreement of matters which should be dealt with by means of a planning condition, if the consultation exercise revealed a significant degree of support for such a measure. He also asked you to be ready to respond to any requests for clarification of the draft guidance annexed to the consultation paper which might emerge in the course of the consultation exercise, and to consult his officials to ensure that there was the widest consultation with business on your proposals and that his Department was aware of the responses received from business. Peter Walker indicated that he would be undertaking similar consultations in Wales.

No other colleague commented and you may take it, therefore, that you have H Committee's agreement to the publication of your consultation paper, subject to the points mentioned above.

I am copying this letter to the Prime Minister, members of H Committee, David Young, Patrick Mayhew and Sir Robin Butler.

Yours ever

JOHN WAKEHAM

The Rt Hon Nicholas Ridley MP
Secretary of State for the Environment
Department of the Environment
2 Marsham Street
LONDON
SW1P 3EB

SWYDDFA GYMREIG
GWYDYR HOUSE
WHITEHALL LONDON SW1A 2ER
Tel. 01-270 3000 (Switsfwrdd)
01-270 (Llinell Union)

Oddi wrth Ysgrifennydd Gwladol Cymru

WELSH OFFICE
GWYDYR HOUSE
WHITEHALL LONDON SW1A 2ER
Tel. 01-270 3000 (Switchboard)
01-270 (Direct Line)

From The Secretary of State for Wales

The Rt Hon Peter Walker MBE MP

NBPM

26 June 1989

Dear Secretary of State

PLANNING AGREEMENTS

Thank you for copying to me your letter of 6 June to John Wakeham enclosing a draft of a consultation paper you propose to issue on the subject of planning agreements.

I think that the issue of a circular on planning gain is timely and that your proposals for legislation would be useful. Clearly they should both be the subject of a consultation paper and I propose to undertake consultations along similar lines in Wales.

Copies of this go to John Wakeham, other memebrs of 'H' committee, the Prime Minister, David Young, Patrick Mayhew and to Sir Robin Butler.

Yours sincerely

Approved by the Secretary of State
and signed in his absence

Rt Hon Nicholas Ridley MP
Secretary of State for the Environment
2 Marsham Street
London SW1P 3EB

NBPM

From: The Private Secretary

Home Office
Queen Anne's Gate
London SWIH 9AT

16 June 1988

Dear Roger

PLANNING AGREEMENTS

The Home Secretary was grateful for sight of your Secretary of State's letter of ~~6~~ June to the Lord President, seeking approval for the issue of a consultation paper on planning agreements.

The main interest for the Home Office arises from negotiations with local authorities on sites for new prison establishments. From that standpoint, we see no difficulties in these proposals.

I am sending a copy of this letter to the Private Secretaries to the recipients of your Secretary of State's letter.

Yours

Catherine Bannister

MISS C J BANNISTER

R F M Bright, Esq.

LOCAL GOVT: Planning PTL

File

CABINET OFFICE

R.T.J. Wilson

CMS

Mr Gray

Mrs Shorrock.

PLANNING BILL

You will see from the attached that it looks as though, with luck, charging for planning appeals will be the only outstanding issue for Mr Ridley's Bill which will have to come to E(LF).

RJ 6/6

CONFIDENTIAL

F0467

MR WILSON
(through Mr Monger)

cc - Mr Mawer

TOWN AND COUNTRY PLANNING BILL

You asked about policy clearance for the topics which Mr Ridley would hope to include in a Town and Country Planning Bill.

2. The attached list of topics was annexed to Alan Ring's letter of 25 May to John Fuller. The latest position on those items which do not have full policy clearance is as follows:

i. Item 3, enforcement of planning controls. Consultation on these proposals has just closed. The responses need to be assessed within DOE. Officials expect Mr Ridley to write to members of H Committee in early July seeking clearance in correspondence;

ii. Item 4, charging for planning appeals. Mr Ridley minuted the Prime Minister on 19 May. It has been agreed that the issues should be discussed at E(LF). This will probably take place on Tuesday 11 July (although there may be some difficulty in securing the attendance of all the necessary Ministers, eg Mr Walker);

If he wants to argue he will have to come or be represented. His engagement are only in brackets. Agf.

iii. Item 5, planning agreements. Mr Ridley wrote to the Lord President and other members of H Committee on 31 May, seeking clearance in correspondence;

iv. Items 6 and 7, conservation, listing and minor provisions. Mr Ridley will minute the Prime Minister, copied to E(LF) members, seeking clearance in correspondence. A draft is with DOE Ministers, and should issue early next week.

Andrew Wells

ANDREW WELLS

14 June 1989

CONFIDENTIAL

Annex B

TOWN AND COUNTRY PLANNING BILL

Main Items	Policy clearance with colleagues	Instructions to Counsel
1. Land Compensation	Obtained. Consultation completed.	
2. Development Plans	Obtained. White Paper published.	
3. Enforcement of planning control.	Carnwath Report published and under consultation. Final policy clearance June/July from H.	Notwithstanding the Bill's position as "first reserve" drafting authority has now been sought. Instructions on (2) will be ready in June and on most other items in July. (Item (3) is likely to be September).
4. Charging for appeals, and other improvements to reduce the burden of applications and appeals.	Being obtained. Secretary of State's minute of 19 May to the Prime Minister and E(LF) members.	
5. Planning agreements.	Imminent (June) from H or E(LF).	
6. Conservation and listing.	Imminent (June) from ~~H~~ E(LF).	
7. Minor provisions.	Either obtained or imminent from H or E(LF).	

CONFIDENTIAL

NBPM

Y SWYDDFA GYMREIG
GWYDYR HOUSE
WHITEHALL LONDON SW1A 2ER
Tel. 01-270 3000 (Switsfwrdd)
01-270 (Llinell Union)

Oddi wrth Ysgrifennydd Gwladol Cymru

WELSH OFFICE
GWYDYR HOUSE
WHITEHALL LONDON SW1A 2ER
Tel. 01-270 3000 (Switchboard)
01-270 (Direct Line)

From The Secretary of State for Wales

The Rt Hon Peter Walker MBE MP

15 June 1989

Dear Secretary of State

THE PLANNING APPEALS WORKLOAD AND THE INTRODUCTION OF CHARGES

I have seen your minute of 19 May to the Prime Minister and her Private Secretary's response of 31 May from which I note that we will discuss the matters which you raise at a future meeting of E(LF).

I thought nonetheless that it would be helpful to respond briefly to some of the points which you raise. First of all, I confirm that my view about charging for planning appeals has not changed. It is not that I do not suffer pressures on the appeal system - our intake for the first 5 months of this year was 37% greater than that for the first 5 months in 1988 - but I believe that charging for appeals will not produce any lessening of the numbers of appeals in the long term or help me to process them more quickly. Despite the growing numbers I am, by redeployment of the resources of my Department and with the co-operation of the Inspectorate, producing a gradual improvement in handling times.

On the 5 measures set out at (i) to (v) of your minute:

i. Increased fees would certainly give more opportunity to local planning authorities to increase their staffs and hence less excuse for the greater delays which are now taking place in handling applications. But they would not be very popular with applicants; there would be no guarantee that the authorities would use the extra revenue for this purpose, and their long term effect on the numbers of applications is not likely to be great;

/ii. there is a lot...

The Rt Hon Nicholas Ridley MP
Secretary of State for the Environment
2 Marsham Street
LONDON SW1O 3EB

ii. there is a lot to be said for this idea but I fear that hard-pressed authorities would either have to defer major applications in order to meet the timetable for householder development or issue refusals where they might, given a greater time to make up their minds, have been able to give permission - thus of course increasing the number of appeals;

iii. I do not much like the idea of a proliferation of local development orders. We have been trying to simplify the planning system over the last few years and the more local variations we allow from the national system the more confusing it becomes;

iv. this seems reasonable;

v. the number of cases where this will be any use will, as you say, be very small. But it will be a controversial proposal in that it will seek to take away what many people regard as a basic right within the planning system - the right to be heard in person. I doubt that the degree of controversy which this will arouse will justify our proceeding with it.

I am copying this letter to members of E(LF), Patrick Mayhew and to Sir Robin Butler.

Yours sincerely

Approved by the Secretary of State
and signed in his absence

Local Pair: Plaing
A6

1588A

DEPARTMENT OF HEALTH AND SOCIAL SECURITY
Richmond House, 79 Whitehall, London SW1A 2NS
Telephone 01-210 3000

From the Secretary of State for ~~XXXXXXXXXX~~ Health

NBPM

The Rt Hon John Wakeham MP
Lord President of the Council
Privy Council Office
Whitehall
LONDON SW1

15 June 1989

Dear John.

PLANNING ARRANGEMENTS

I have read Nicholas Ridley's letter of 6 June and I am writing to say that I welcome his proposals to amend Section 1 of the Town and Country Planning Act 1984 so as to enable Government Departments to enter into Section 52 Agreements in appropriate circumstances and to give a unilateral undertaking in connection with a planning application.

I believe that the most effective development of surplus NHS land may at times be constrained by the Crown's inability to enter into Section 52 Agreements. The change proposed by Nicholas Ridley should certainly enhance the possibilities for obtaining the most advantageous price for our surplus property.

I should be very happy for the consultation paper to be issued as drafted.

I am sending copies of this letter to other members of H Committee, the Prime Minister, David Young, Patrick Mayhew and to Sir Robin Butler.

KENNETH CLARKE

LOCAL 94 17: Army
A6

NPPM

dti

the department for Enterprise

The Rt. Hon. Tony Newton OBE, MP
Chancellor of the Duchy of Lancaster and
Minister of Trade and Industry

Rt Hon Nicholas Ridley MP
Secretary of State for
the Environment
Department of the Environment
2 Marsham Street
LONDON
SW1P 3EB

Department of Trade and Industry

1-19 Victoria Street
London SW1H 0ET

Enquiries
01-215 5000

Telex 8811074/5 DTHQ G
Fax 01-222 2629

Direct line 215 5147
Our ref
Your ref
Date 15 June 1989

Dear Nick.

PLANNING AGREEMENTS

Thank you for copying to me your letter of 6 June to John Wakeham, enclosing the draft of the consultation paper you propose to issue on the subject of planning agreements.

I am content for you to go out to consultation on both the revised guidance and the three legislative measures you are proposing. Although business recognizes that Section 52 agreements can, on occasion, be useful in facilitating development which might not otherwise have gone ahead, there is growing concern that some local authorities are using such agreements to extract benefits that are not related to the proposed development. In practice some local authorities appear to be trying to use these agreements to finance work (eg highway improvements), which is often remote from the actual development, as a substitute for orthodox funding. In these circumstances, developers are confronted with the choice of paying up or having their applications delayed while they go to appeal, which itself is a lengthy and costly process. I am therefore sure business will welcome both your intention to issue revised guidance on "planning gain" and the three new measures you have in mind, particularly the proposal to enable a developer to give a unilateral undertaking.

SB6ABY

dti

the department for Enterprise

However, I suspect that business will be disappointed that you are not intending to legislate to prevent matters which should be dealt with by means of a planning condition, being included in a Section 52 agreement. I know that the Sainsbury Group have been pressing for Section 52 provisions to be appealable, whilst the planning permission stands undisturbed. It seems anomalous, if a Section 52 agreement has to be related in scale and kind to the development proposal, that it is not subject to appeal in the same way as the development proposal itself. If the consultation exercise reveals a significant degree of support for such a measure, I hope that you would be willing to look again at the possibility of legislating: if Section 52 provisions were put on the same footing as planning conditions, local planning authorities might have less of an incentive to seek to impose planning agreements rather than planning conditions.

My other concern is whether the advice in the guidance is sufficiently detailed for developers and planning authorities to be clear about what is reasonable and what is unreasonable in this context. I note for example that the earlier circular had a paragraph on mineral developments and paragraph 8 might perhaps be supplemented by a few examples of what is regarded as reasonable practice. I realise that balance needs to be struck between flexibility and precision but I hope that you will be able to respond positively to any requests for clarification that may emerge from the consultation exercise.

Given these points, I believe it is important that there should be the widest possible consultation with business on your proposals. I should be grateful if your officials could liaise with mine on this point, and in due course ensure that they are informed of the responses you receive from business.

I am copying this letter to the Prime Minister, John Wakeham, other Members of H Committee, David Young, Patrick Mayhew and Sir Robin Butler.

Yours ever,
Tony

TONY NEWTON

SB6ABY

Recycled Paper

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

NBPM

The Rt Hon John Wakeham MP
Lord President of the Council
Privy Council Office
Whitehall
LONDON
SW1

14 June 1989

Dear John,

PLANNING AGREEMENTS

Nicholas Ridley copied to me his letter to you of 6 June. I am content for him to issue the proposed consultation paper. I propose to study the position in Scotland further before deciding whether to follow suit, because there appears to be less need for new guidance on this subject in Scotland and some at least of legislative changes which Nicholas proposes involve matters which would not require legislation in Scotland, because of our different arrangements for registration of title.

I am copying this letter to the members of H Committee, the Prime Minister, David Young, Patrick Mayhew and Sir Robin Butler.

Yours ever,

MALCOLM RIFKIND

LOCAL GOVT: Planning

pr6.

Cc PM

Seen by CS

The Rt Hon Nicholas Ridley MP
Secretary of State for the Environment
Department of the Environment
2 Marsham Street
LONDON
SW1P 3EB

14 JUN 1989

PLANNING AGREEMENTS

WITH PCJ/WLH LEAVES IF REQUIRED

Thank you for sending me a copy of your letter of ~~6 June~~ to John Wakeham about "planning gain" and your proposed consultation paper.

I generally welcome your proposed consultation paper. In particular, I support the proposal to legislate to allow unilateral undertakings by developers as an alternative to section 52 agreements, and also the proposal to enable Government Departments to make section 52 agreements, thus in certain cases making it easier for Crown land to be developed.

I agree that it would be timely to update the current guidance on the extent to which, and the manner in which, planning authorities should seek to secure - either in cash or kind - contributions from developers when they are granted planning permissions. I agree broadly with the proposed general restatement of policy. But I have two reservations of substance.

My first reservation is that it is reasonable in some cases that the developer should contribute not only to provision of an adequate access to the site, but also to the cost of a related road or road improvements. We find that developers are increasingly willing to consider funding of major road works which help their schemes; and indeed it is an essential element of our policies for private financing of roads to encourage this in appropriate cases. In this respect the draft consultation paper seems too restrictive.

My second reservation relates to paragraph 8 of your draft, in which you seek to rule out securing contributions towards the costs of subsequent maintenance. I take the view that in general it is reasonable to expect the developer to contribute to the costs of subsequent maintenance of a road provided wholly or in part to serve his development.

You may recollect that earlier this year we published a Guidance Note on the use of section 278 of the Highways Act 1980 for the purposes of financing trunk road schemes. Contributions by developers under section 278 are an important source of private finance for roads. Our Guidance Note, which was cleared with your Department, indicates specifically that we will normally expect contributions from developers to cover the costs of subsequent maintenance as well.

I suggest, therefore, that my officials get together quickly with yours to agree appropriate amendments to the draft consultation paper, to take account of these two reservations and to make specific reference to section 278 of the Highways Act 1980 and the Guidance Note.

I am sending copies of this letter to the Prime Minister, to colleagues on "H" Committee, and to David Young, Patrick Mayhew and Sir Robin Butler.

PAUL CHANNON

FILE KK

cc C Sinclair

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

14 June 1989

PLANNING: THE SAINSBURY GROUP

The Prime Minister was grateful for your Secretary of State's note of 25 May reporting on his further discussions with the Sainsbury Group. She notes the importance which he and the Group attach to early legislation.

She was also grateful for a copy of your Secretary of State's letter of 6 June to the Lord President. She has noted without comment your Secretary of State's plans to issue a consultation paper.

(CAROLINE SLOCOCK)

Roger Bright, Esq.,
Department of the Environment.

dti

the department for Enterprise

NBPM

CONFIDENTIAL

The Rt. Hon. Tony Newton OBE, MP
Chancellor of the Duchy of Lancaster and
Minister of Trade and Industry

Rt Hon Nicholas Ridley MP
Secretary of State
Department of the Environment
2 Marsham Street
LONDON
SW1P 3EB

Department of Trade and Industry

1-19 Victoria Street
London SW1H 0ET

Enquiries
01-215 5000

Telex 8811074/5 DTHQ G
Fax 01-222 2629

Direct line 215 5147
Our ref
Your ref
Date 12 June 1989

Dear Mark,

THE PLANNING APPEALS WORKLOAD AND THE INTRODUCTION OF CHARGES

Thank you for copying to me your minute of ~~19~~ May to the Prime Minister. I have also seen the letter dated 31 May from 10 Downing Street. Although we will be discussing your proposal to introduce charges at E(LF) later this month, I understand you are keen to have responses to your minute in the meantime.

My main concern remains the absence of a direct link between the introduction of charging and the provision of a better service for appellants. I believe we must hold out to business the prospect of quicker decision times, especially if charging is introduced in England alone.

I am sure it would be helpful, as you suggest, to include in your consultation paper proposals about performance levels for the Planning Inspectorate eg. average length of time taken to decide appeals, productivity per Inspector, and the cost per case. I also share your views about the importance of the Inspectorate being able as an agency to use its receipts in order to increase the resources it has available and thereby improve the level of its performance. Companies House, which in many ways seems to me analogous to the Inspectorate, operates on this basis. More generally, I see the opportunity it provides for improving quality of service to the public as one of the principal benefits of establishing an executive agency. In the case of Companies House, David Young and I - and the private

SB8AAW

Recycled Paper

sector members of the steering board - attach as much importance to this as to improving productivity and reducing unit costs. I would expect the Planning Inspectorate to benefit from a similar balance between quality of service and productivity targets.

As far as the Compliance Cost Assessment (CCA) is concerned, I agree that in your consultation paper you should include a paragraph broadly along the lines you propose. It would be helpful, however, if compliance costs could be given for all sizes of business, not just small businesses, and the numbers could be multiplied out so that the total cost on business of the proposed charges was aggregated. Perhaps your officials could agree a revised paragraph with my Department's Enterprise and Deregulation Unit.

As for appeals against non-determination, I shall not press my suggestion that they should remain free of charge. However, I remain concerned that under the proposed system appellants may find themselves financially penalised by having to take cases to appeal because planning authorities have either failed to decide on their applications within the required time or acted unreasonably in rejecting their applications. At present, appellants can claim back their costs, only if the appeal has been decided following a public inquiry: however, I understand that there is a provision (not yet enacted) to award costs in cases decided by written representation. While I appreciate that there would be serious resource problems in using this power now, I hope that it may be possible to do so when the Inspectorate becomes an agency. The knowledge that costs will be awarded for unreasonable behaviour in appeal cases, whether they are considered at an inquiry or by means of written representation, might well provide an additional discipline and stem the number of unnecessary appeals.

Finally, I believe you are right to look at ways of improving the operation of the development control system both at the application and appeal stage, even if the impact on the number of appeals may well be relatively small. As you say, the whole system is under severe strain and I believe business will welcome any initiative that produces swifter decision times.

Of the five measures you suggest, I very much welcome the proposals to introduce deemed permission for householder development and to give you the power to decide whether an appeal needs to be heard at an inquiry. However, I have reservations about the proposals to double planning application fees and to allow local authorities to give general permission for particular types of development. The former may discourage some small business from proceeding with proposals to expand their operations, even though they will bring long-term

SB8AAW

dti

the department for Enterprise

benefits. I would therefore hope that you could consider the possibility of phasing in full cost recovery. As for the proposal to allow local authorities to give general permission, I am concerned that this may lead to a proliferation of different planning arrangements in neighbouring authorities. Business requires a degree of certainty and consistency in its dealings with the planning system and may be confused rather than helped by such an arrangement. It might be preferable for any deregulatory steps of this nature to be introduced on a national basis.

I am copying this letter to the Prime Minister, other members of E(LF), the Attorney General and Sir Robin Butler.

Yours ever.

Tony

TONY NEWTON

SB8AAW

Recycled Paper

LOCAL GOV: Planning PTG

CONFIDENTIAL RLi SRW

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

9 June 1989

Dear Roger,

PLANNING CASES FOR MINISTERS CONSTITUENCIES

The Prime Minister has seen your Secretary of State's minute of 27 April and the Attorney General's views as set out in his minute of 26 May.

She has noted that, as a matter of law, any representations made by Ministers in a planning case would have to be made available to all other parties, and hence made public. The issue is therefore whether Ministers should confine themselves to passing on representations made by their constituents without comment of their own, or whether, as the Attorney General has suggested, it is possible for Ministers to make representations in a restrained way which would be consistent with the principle of collective responsibility.

The Prime Minister took the view that while such low key representations might be permissible as a matter of law, it would be very difficult to put this into practice in a way which did not create political difficulties for the Government. She therefore concluded that Ministers, whether having planning responsibilities or not, should refrain from expressing a view on planning applications or planning appeals, other than when their personal interests are involved. She wishes Ministers to confine themselves to passing on their constituents' representations to the Ministers concerned.

On matters where representations made by Ministers do not, as a matter of law, have to be shared with other parties and hence made public, the Prime Minister agreed with the Attorney General's views that it should be open to Ministers to make representations provided they are not involved in making the ultimate decision.

Could Sir Robin Butler consider whether any changes are required to "Questions of Procedure for Ministers" or whether any further steps are needed to communicate the Prime Minister's conclusions to Ministers.

I am copying this letter to David Crawley (Scottish Office), Stephen Williams (Welsh Office), Michael Saunders (Law Officers Department) and to Sir Robin Butler.

Yours sincerely,
Andrew Turnbull

(ANDREW TURNBULL)

Roger Bright, Esq.,
Department of the Environment.

CONFIDENTIAL

Box 1.

Please return to planning MO CAB

PRIME MINISTER

PLANNING AND THE SAINSBURY GROUP

Attached are two notes from the Secretary of State for the Environment about planning, with advice from Carolyn Sinclair.

Mr. Ridley's note of 25 May is largely for information, but it also stresses the need for an early Planning Bill (currently in reserve for 1989/90) and sets the agenda for the next meeting in July of the Sainsbury Group. The question of charging for planning appeals (which Scotland and Wales do not wish to adopt) is to be separately discussed at an E(LF) in July.

Mr. Ridley's letter of 6 June sets out more detailed proposals on planning agreements and asks colleagues to agree to his issuing a consultation paper in mid-June.

Carolyn Sinclair advises that Lord Sainsbury is broadly happy with these proposals; and wishes you to know how much his relationship with the Department of the Environment has improved. He confirms the importance the Group attaches to the Planning Bill securing a place in the 1989-90 legislative programme. Carolyn suggests you agree to Mr. Ridley's consultation document.

Are you content for:

- Mr. Ridley's note of 25 May to form the basis of the agenda for the next Sainsbury Group?

- for Mr. Ridley to issue his consultation paper on section 52 planning agreements?

CAB

CAROLINE SLOCOCK
9 June 1989
EL3DNY

Please return to planning file

PRIME MINISTER 9 June 1989

PLANNING AND THE SAINSBURY GROUP

Nicholas Ridley minuted to you reporting on his meeting with the Sainsbury Group on 24 May. You are meeting the Group on 10 July.

He has written separately to John Wakeham enclosing a draft consultation document on "planning gain". He would like to issue this by mid-June. He says that it has the support of the Sainsbury Group.

This note deals with both issues.

Report of Discussion with the Sainsbury Group

Nicholas Ridley's minute suggests a considerable measure of agreement between his Department and the Sainsbury Group. Lord Sainsbury has confirmed this. The Group are very happy with the proposals to streamline the planning system which have been identified by DOE in recent months.

Their main concerns now are:

- that the Planning Bill giving effect to the improvements should secure a place in the 1989-90 legislative programme (it is currently first reserve).

- that the Planning Inspectorate should become a Next Steps Agency with real managerial power. Lord Sainsbury fears that a Treasury stanglehold on pay rates may prevent the agency from offering an efficient service against payment both for applications and appeals.

There are one or two detailed points which Lord Sainsbury will want to raise at his meeting with you. These will be covered in the briefing. At this stage he wanted you to know how much the atmosphere had improved in his relations with the Department of the Environment.

Consultation Document on "Planning Gain"

Agreements made under Section 52 of the Town and Country Planning Act 1971 whereby a developer provides something - such as an access road - which cannot be secured by a planning condition are commonly described as "planning gain".

Nicholas Ridley has concluded that such agreements serve to oil the wheels of planning by giving local communities an incentive to allow development. But it is important to prevent local authorities from using Section 52 to hold developers to ransom. Lord Sainsbury agrees with both points.

The last planning guidance on Section 52 agreements was issued in 1983. Nicholas Ridley proposes to issue a consultation document setting out

(a) revised guidance basically reaffirming the 1983 advice, but with more clarification;

(b) three Section 52 proposals for inclusion in his Planning Bill.

The three proposals for legislation would

(i) enable developers to give a unilateral undertaking to do certain things where agreement with a local authority cannot be reached;

(ii) enable a planning agreement or unilateral undertaking to be discharged when its planning purpose had disappeared;

(iii) enable the Crown to enter into Section 52 agreements.

John Sainsbury strongly supports (i) and (ii).

Conclusions

The proposals on Section 52 look sensible. Revised guidance will serve to remind people how this tool can be used; and should encourage greater conformity of practice by local authorities.

- Agree that Nicholas Ridley should issue his consultation paper on Section 52 planning agreements?

CAROLYN SINCLAIR

cst.ps/15jm7.6/drfts

CONFIDENTIAL

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Nicholas Ridley MP
Secretary of State for the Environment
2 Marsham Street
London
SW1P 3EB

8th June 1989

Dear Nick,

THE PLANNING APPEALS WORKLOAD AND THE INTRODUCTION OF CHARGES

In your minute of 19 May to the Prime Minister, you raised the issue of a link between charges for appeals against planning decisions - which should helpfully moderate demand on the Planning Inspectorate - and the resources to be provided to the Inspectorate.

There are two issues here. First, at present the Inspectorate's running costs are, of course, included within those of your Department for control purposes. The introduction of charges to recover costs would be helpful in meeting the criteria established by E(A) in 1986 for exemption from gross running costs control, if you were minded to pursue that in connection with your intention to launch the Inspectorate as an executive agency in due course. A charging system would need to be supported by robust financial reporting systems and controls, which (inter alia) we should need to be satisfied about in considering an application for exemption. Subject to that, the exemption route would be available, whatever the decision on the second issue, ie the classification of the receipts as revenue or negative public expenditure.

This is the issue I raised in my letter of 17 April. Following further discussion between officials, I understand that the costs to the Inspectorate of dealing with appeals depend essentially on whether the appeal is dealt with in correspondence or by a hearing, and on the length of the latter. The criteria for classification as negative public expenditure require a closer alignment between the costs of dealing with particular categories of appeal and the rate of charge applicable than you propose. If you were able to revert to your original proposals for simple

LOCAL GO[redacted]
Planning PH.6

charges based on the type of appeal and the duration of any hearing, on which the costs depend, I believe that classification as negative public expenditure could be achieved. This would clearly be helpful in dealing with the programme implications of increases in the Inspectorate's workload. But as I say, it is not essential for exemption from gross running costs control, which I think is the nub of your point about a link between charges and resources provided.

I am copying this letter to members of E(LF) Patrick Mayhew and Sir Robin Butler.

Yours Ever, John

JOHN MAJOR

2 MARSHAM STREET
LONDON SW1P 3EB
01-276 3000

My ref:

Your ref:

The Rt Hon John Wakeham MP
Lord President of the Council
Privy Council Office
Whitehall
LONDON
SW1

6 June 1989

Dear Lord President,

PLANNING AGREEMENTS

I wrote to the Prime Minister on 19 May about the planning appeals workload and the introduction of charges. I am writing to you separately about other legislative proposals to improve the working of the development control system. This letter is about the third topic on which I would like to invite public comment as we prepare for planning legislation.

There is much public debate about "planning gain" and "community benefit" and their place in the town and country planning system. Section 52 of the Town and Country Planning Act 1971 empowers local authorities to make agreements with developers "for the purpose of restricting or regulating the development or use of land" in their area. There are similar provisions in other legislation. Their value arises where it is desired that the developer should do something eg contribute infrastructure that cannot be secured by a planning condition. Section 52 agreements are binding on successors in title.

As I have said, planning agreements are most commonly used to provide for a developer to contribute infrastructure - for example car parking, a new access road, open space or sewerage treatment capacity - associated with a development proposal. My Department's policy advice on this subject was last set out in a circular issued in 1983. Its essence is that developers' contributions should be reasonably related in scale and kind to the development proposal. Contributions going beyond what is necessary to secure the development in planing terms are not appropriate to a planning agreement.

There is in practice a considerable diversity of approach to planning agreements among local authorities. In particular some of the matters suggested by authorities or developers for inclusion in planning agreements give rise to suggestion on the one hand that the local authority or community are being "bribed" by the developer or, contrariwise, that the developer is being held to ransom by the authority.

My own view is that the present guidance has it more or less right. I do not want to stand in the way of community benefits freely offered. But there are some important factors to consider. First, a development should be granted or refused permission on its planning merits. It would be quite wrong for permission to be granted to one developer but withheld from another for an identical development because of extraneous benefits that one could offer and the other could not. A planning decision must not be affected by extraneous benefits offered or sought. Secondly, there must be no possibility that, if extraneous benefits were available, a permission which is being delayed or withheld could be accelerated. Thirdly, even where all those involved know that a decision is being taken on planning merits, the mere presence of extraneous benefits may create suspicion among competitors and the public about the nature of the decision process.

These factors indicate that very great care needs to be exercise in relation to offers or invitations to offer extraneous benefits in the context of a planning application, if the operation of the planning system and the repute of those who operate and use it is to be upheld. I conclude that the advice in Circular 22/83 is broadly correct, but that some restatement and clarification would be useful. Accordingly, I invite colleagues' to agree the draft revised guidance which is annexed to the enclosed draft consultation paper.

I also invite colleagues to agree the three legislative proposals described in the draft consultation paper. The first two have been devised following extensive discussions with the Sainsbury Group. One would enable a developer to give a unilateral undertaking to carry out certain works or to do whatever the undertaking may specify. The advantage of this would be to avoid this being held to ransom by the need to reach agreement with an unco-operative local authority. The second proposal would provide for the discharge of a planning agreement or unilateral undertaking when its planning purpose had faded. The third proposition would enable the Crown to enter into Section 52 agreements; it is essentially a tidying up measure.

It has also been suggested to me that I should legislate to prevent matters being dealt with in a planning agreement where they can be dealt with by condition. There is an increasing tendency for authorities to include matters in agreements as well as or as an alternative to conditions when the latter would suffice, partly no doubt because at present conditions can be appealed while agreements cannot. I have concluded, however, that to attempt to legislate to this effect might well be counter-productive. There is inevitably a grey area surrounding what is fit for an agreement or condition which we shall not be able to clear away. However I believe that the legislative measures I am proposing will be equally effective as they will enable developments to resist unreasonable agreements just as they can now resist unreasonable conditions. I shall however restate my present firm advice that agreements should not be used where conditions would suffice.

I would like to issue the enclosed consultation paper by mid-June.

I am sending copies of this letter and the enclosure to members of H Committee, the Prime Minister, David Young, Patrick Mayhew and to Sir Robin Butler.

Yours sincerely

pp NICHOLAS RIDLEY

(Approved by the Secretary of State
and Signed in his Absence)

DRAFT

CONSULTATION PAPER

PLANNING AGREEMENTS

1. This consultation paper invites comments on new draft policy advice on the subject of planning agreements (which are normally made under the powers of Section 52 of the Town and Country Planning Act, 1971, but sometimes under other powers) and on three proposals for legislation.

2. The White Paper, "Releasing Enterprise", published in November 1988, said (paragraph 6.2.5),

> "Guidance has been given on the circumstances in which developers may reasonably be required to enter into agreements affecting the development or use of land, as in effect a pre-condition of the grant of planning permission for a particular development. But there is evidence that such agreements are sometimes required where they are not necessary for the development to proceed, and the Government are considering the issue of further policy guidance to curtail abuse of these powers."

3. The Government now proposes:

(1) To issue new policy guidance on this subject, replacing that in DOE Circular 22/83 (Welsh Office Circular 46/83). A draft of a new guidance is annexed to this paper.

(2) To introduce new statutory provisions, when the legislative opportunity occurs, to amend and supplement those in Section 52 of the Town and Country Planning Act 1971. These proposals are set out in paragraphs 4-8 below.

Unilateral undertakings as an alternative to Section 52 Agreements

4. Section 52 of the Town and Country Planning Act 1971 enables a local planning authority to enter into an agreement with any person interested in land in their area for the purpose of restricting or regulating the development or use of the land. A developer is not obliged to enter into a Section 52 agreement and if a local planning authority hold out for one, he may appeal against non-determination of his application. The Inspector or the Secretary of State may conclude, however, that permission could be given only if the development meets some requirement that cannot be met by imposing a condition. At present, the only alternative to refusal is to suggest that an agreement might be entered into. But this is unsatisfactory since on the one hand the Inspector or Secretary of State cannot specify the terms of such an agreement, which is a matter for negotiation between the parties; and, on the other, the developer may be unable to reach agreement with the local planning authority.

5. Accordingly, it is proposed that there should be statutory provision enabling a developer to give a unilateral undertaking, binding on him and on successors in title, to carry out certain works or to do whatever the undertaking may specify. The advantage of such an undertaking, which would be enforceable by the local authority, is that it would not be necessary for the local planning authority to agree the terms. In considering the related planning application or appeal, the authority or the Secretary of State would be required to have regard to the terms of any unilateral undertaking offered by the developer (or any agreement which he is willing to enter); and the developer would be empowered to give further undertakings (or offer to enter into further agreements) during the course of appeal proceedings.

Power to discharge all or part of Section 52 Agreements or Unilateral Undertakings

6. A party to a Section 52 agreement can apply to the Lands Tribunal for the agreement (or part of it) to be discharged if it is obsolete, but there is no provision for appeal against an agreement which, while not obsolete in legal terms, no longer has utility or validity for planning purposes. For example, an individual may buy land which enjoys planning permission for residential development but is subject

to a Section 52 agreement to maintain access to a community building beyond the site. In the time which has elapsed since the permission was granted and the agreement was made, a different access to the community building has been provided across other land, and the need for the Section 52 agreement in connection with the residential permission has disappeared.

7. Accordingly, the Government proposes to legislate to enable a party to a Section 52 agreement to apply for the agreement (or part of it) to be discharged on the ground that its planning purpose has ended or is no longer relevant, so that the permission would become (to that extent) unencumbered. Comparable applications could be made in respect of all or part of the unilateral undertakings proposed in paragraph 5 above. The power could be similar to Section 31A of the 1971 Act, which enables application to be made to revoke or vary conditions attached to an earlier planning permission. There would be provision for appeal to the Secretary of State against refusal of such an application.

Section 52 Agreements and Crown Land

8. Section 1 of the Town and Country Planning Act 1984 enables planning permission to be obtained for the development of Crown land prior to its disposal. It does not, however, enable a Government Department to enter into an agreement under Section 52 of the 1971 Act (for the purpose of restricting or regulating the development of the land) with the local planning authority. Difficulties have arisen in cases where the local planning authority consider that such an agreement is needed before planning permission can be granted. It is therefore proposed to amend Section 1 of the 1984 Act so as to enable Government departments to enter into Section 52 agreements in appropriate circumstances and to give unilateral undertakings as proposed above.

Responses

[9. Comments to be sent to ....]

12.5.89

DRAFT GUIDANCE: PLANNING AGREEMENTS

1. This guidance gives advice on the proper use of planning agreements (usually made under Section 52 of the Town and Country Planning Act 1971 but sometimes under other powers). It substantially reaffirms, with some amendment, the advice given in Department of the Environment Circular 22/83 (Welsh Office Circular 46/83) which it supersedes, and in PPG1.

Definition

2. The term "planning gain" has no statutory significance and is not to be found in the Planning Acts. The whole planning process is intended to operate in the public interest, in that it is aimed at securing economy, efficiency and amenity in the development and use of land. This is achieved through the normal process of development plan preparation and the exercise of development control. In granting planning permission, or in negotiations with developers and other interests that lead to the grant of planning permission, the local planning authority may seek to secure modifications or improvements to the proposals submitted for their approval. They may attach conditions to the grant of approval, and they may seek to enter into an agreement with the developer regarding the use or development of that land or of other land or buildings.

3. By these means the local planning authority can aim to ensure that new development or redevelopment is facilitated while having regard to the interests of the local environment and other planning considerations. The term "planning gain " has come to be used very loosely to apply both to this normal and legitimate operation of the planning system and also to attempts to extract from developers payments in cash or in kind for purposes that are not directly related to the development proposed but are sought as "the price of planning permission". The Planning Acts do not envisage that planning powers

should be used for such purposes and in this sense attempts to exact "planning gain" are outside the scope of the planning process. Since the term "planning gain" is imprecise and misleading, it is not used in this policy guidance which relates to the role of agreements in the proper exercise of development control. This guidance is not concerned with matters arising from other legislation, e.g. the requisitioning of the provision of a water supply or of a public sewer from the Water Authority under the Water Acts 1945 and 1973, or agreements made under the Public Health Act 1936. Insofar as such arrangements are made in connection with the grant of planning permission, however, this guidance is relevant in those circumstances.*

General Policy

4. The following paragraphs set out the circumstances in which certain types of benefit can reasonably be sought in connection with a grant of planning permission. They are the circumstances to which the Secretaries of State and their inspectors will have regard in determining applications or appeals. They may be briefly stated as those circumstances where the benefit sought is related to the development and necessary to the grant of permission. Whether or not the parties are willing to enter into other agreements unrelated to the development, is a matter for the parties concerned; but local planning authorities should take care to ensure that the presence or absence of such arrangements or extraneous benefits does not influence their decision on the planning application. Authorities should bear in mind that their decision may be challenged in the Courts if it is suspected of having been improperly influenced in this way.

5. Planning applications should be considered on their merits having regard to the provisions of the development plan and any other material considerations and should be refused only when this serves a clear planning purpose. The question of imposing a condition -

---

*Note: The Government has introduced an Amendment to the Water Bill, now before Parliament, which would enable water companies to levy connection charges on new development, and these provisions would supersede the use of S.52/1971 for those purposes.

whether negative or positive in character - or of seeking a related agreement, should arise only where it is considered that it would not be reasonable to grant a permission in the terms sought without such condition or agreement. It follows that an authority should consider the imposition of conditions, or seek agreements, only where it would be unreasonable to grant permission without them.

6. If a planning application is considered in this light it may be reasonable, depending on the circumstances, either to impose conditions on the grant of planning permission, or (where the planning objection cannot be overcome by means of a condition) to seek an agreement with the applicant which would be associated with any permission granted. As with conditions, such agreements should be sought only where they are necessary, relevant to planning, and relevant to the development to be permitted. Unacceptable development should never be permitted because of extraneous benefits offered by the applicant nor should a development that is otherwise acceptable be refused permission simply because the applicant is unwilling to offer such extraneous benefits.

7. The test of the reasonableness of seeking such an agreement by an applicant for planning permission depends on whether what is required:

(1) is needed to enable the development to go ahead, e.g. provision of adequate access, [water supply and sewerage and sewage disposal facilities (advice on the provision of infrastructure is given in Annex A of DOE Circular 22/80 (WO Circular 40/80) and on land drainage in DOE Circular 17/82 (WO Circular 15/82)]; or

(2) in the case of financial payment, will contribute to meeting the cost of providing such facilities in the near future; or

(3) is otherwise so directly related to the proposed development and to the use of the land after its completion, that the development ought not to be permitted without it, e.g. the provision, whether by the applicant or by the authority at

the applicant's expense, of car-parking in or near the development, of reasonable amounts of open space related to the development, or of other public infrastructure the need for which arises from the development.

[Appendix A illustrates the application of these general principles to the provision of car parking.]

Such agreements can therefore relate to land or buildings other than those covered by the planning permission, provided that there is a direct relationship between the two. But they should not be sought where this connection does not exist or is too remote to be considered reasonable.

8. If what is required passes one of the tests set out in the preceding paragraph, a further test has to be applied. This is whether the extent of what is required is fairly and reasonably related in scale and kind to the proposed development. Thus the developer may reasonably be expected to pay for or contribute to the cost of infrastructure which would not have been necessary but for his development, but his payments should be directly related in scale and kind to the benefit which the proposed development will derive from the facilities to be provided. They should be limited to providing what is needed in the first instance. The costs of subsequent maintenance and other recurrent expenditure should normally be borne by the authority or body in which the asset is to be vested, and the planning authority should not attempt to impose commuted maintenance sums when considering the planning aspects of the development. In the case of small areas of open space or landscaping principally of benefit to the development itself rather than to the wider public, the developer can reasonably be expected to make suitable arrangements for subsequent maintenance.

Conclusion

9. This note is intended to provide guidance to local authorities about the proper limits of their statutory development control powers. The Secretary of State will deal with each case coming before him on

its merits but he is unlikely to uphold on appeal demands by local authorities which go beyond the guidelines above. Where a planning authority intends to seek such agreements, or to impose such obligations, on a regular basis in relation to similar types of development, it should set out those requirements in the development plan. If a planning authority seeks to impose unreasonable obligations in connection with a grant of planning permission it is open to the applicant to refuse to accept them; he has the right of appeal to the Secretary of State against a refusal of permission or imposition of a condition, or the non-determination of the application. Such appeals will be considered in the light of the advice given above. Where an appeal has arisen because of what seems to the Secretary of State to be an unreasonable demand on the part of the local planning authority in such a case, and an inquiry has been held, he will consider sympathetically an application which may be made to him for the award of costs.

Cancellation

12. DOE Circular 22/83 (WO Circular 46/83) is cancelled.

LOCAL GOVT : Planning pt 6.

cc Beastall

Ref. A089/1495

MR TURNBULL

Planning Cases in Ministers' Constituencies

You told me that the Prime Minister was minded to hold a meeting with colleagues on the issue covered by the Attorney General's minute of 26 May, commenting on a minute of 27 April from the Secretary of State for the Environment. fyi wd CS

2. I think that the Attorney General's minute fails to dispose of the issue and that a meeting may well be necessary.

3. The Attorney concludes that Ministers can properly make representations on planning matters, provided that they are not themselves the Minister taking the decision. However, it is hard to reconcile this with two other points which the Attorney makes in his minute. The first is that material which the decision-maker takes into account must be made available to all parties with an interest in the decision; and the second is that a Minister should not participate in public representations to colleagues. But if a representation on a planning matter is to be made available to all parties, surely it effectively becomes a public representation? This was the point which the Secretary of State for the Environment was making in his minute of 27 May when he argued that Ministers should not make representations from a constituency standpoint, whether publicly or privately, on matters awaiting planning decisions.

3. This accords with the advice which the Cabinet Office has given in the past. For example, in 1983 Mr Patrick Jenkin, when Secretary of State for Industry, was advised not to give evidence to a road planning enquiry in his constituency.

4. On matters where representations made by a Minister do not have to be made available to other parties and therefore do not become public, I see no objection to the Attorney's view that it should be open to Ministers to make representations provided that they are not involved in making the original decision.

FERB.

ROBIN BUTLER

5 June 1989

Local Govt Plans
P. 6

PRIME MINISTER

PLANNING CASES IN MINISTERS' CONSTITUENCIES

Mr. Ridley's minute - Flag A - of 27 April seeks to tighten up the guidance to Ministers on their involvement in planning cases in their constituencies. It also seeks to extend the same principles to other quasi-judicial decisions of Ministers such as hospital and school closures.

This discussion started in the Scottish Office where Lord Cameron, then the Lord Advocate, set out his own views. These were rather more liberal than those which Mr. Ridley is now proposing. In his advice to the Scottish Office and draft guidance note he produced - Flag B - the Lord Advocate argued that:

(i) where a Minister has no planning responsibilities there is no legal requirement preventing him from taking up a planning matter as a constituency MP, provided he makes clear that he is acting as such. Where the matter before the Secretary of State is likely to become so, his involvement should be confined to correspondence or personal interviews, both without publicity. Where the matter was not thought likely to go to appeal, Ministers may make public representations to the planning authority.

(ii) for Ministers with planning responsibilities, a Minister could be involved provided that when an issue came to the Secretary of State on appeal, the Minister in question stood aside.

Mr. Ridley wishes to take a more restrictive view. Combining the two principles of collective responsibility and the requirement of unbiased judgement, he arrives at the conclusion that even Ministers without planning responsibilities should not express views on local planning issues. He sees no vote for privately expressed views as

these cn play no part in the decisions. He also wishes to extend this to other quasi-judicial decisions.

Sir Robin Butler - Flag C - shares Mr. Ridley's view that Ministers should not make any representations in their role as constituency MP on matters relating to planning enquiries. He does, however, question whether this principle should be applied beyond the planning field.

The Attorney General has now considered the papers. His conclusions - Flag D - are similar to those of Lord Cameron:

(i) no Minister with planning responsibilities should decide any planning matter with which he has previously been associated, nor should he do anything to influence any such decisions. This clearly constrains the position of the Secretary of State

(ii) Junior Ministers with planning responsibilities should not be prevented from making representations on planning cases, but if they do they must avoid becoming involved in any subsequent appeal to the Secretary of State.

(iii) Ministers without planning responsibilities can express opinions to the planning authority or to a planning Minister provided they do so responsibly and with restraint. He differs from the Lord Advocate in allowing any representations to be made known publicly, as they have to be if the Ministers deciding the Appeal is to be able to take them into account.

(iv) Decisions of a quasi-judicial character beyond planning should be subject to the same guidance.

In coming to conclusions you could either:

(i) agree with the Attorney General and the Lord Advocate that Ministers may, within certain bounds, make representations on planning questions, or

(ii) agree with Mr. Ridley and Sir Robin Butler that while the Attorney General and the Lord Advocate may describe the law accurately, there is a political imperative demanding a more rigorous approach on the part of Ministers.

My own view is that in addition to the two principles set out by the Attorney General (collective responsibility and independent decision-making) there is a third desideratum, possibly even a principle, that Ministers are still MPs and their constituents should not be unnecessarily disadvantaged when their MP joins the Government. Mr. Ridley's position makes no concessions to this while the Attorney General/Lord Advocate position allows the Minister to continue, within limits, to serve his constituents. If, however, Ministers are to be allowed to make representations on behalf of constituents, Questions of Procedure will need amending since it permits private representations which are inconsistent with the process of hearing an appeal.

What view do you take?

AT

The view which I have taken is that a Minister M.P. (not involved in planning decision) can place his constituents' representations before the Planning Minister but should not express a view of his own. I should like to discuss it with him & three other colleagues before deciding. AT

ANDREW TURNBULL

31 May 1989

CONFIDENTIAL

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

31 May 1989

Dear Roger

THE PLANNING APPEALS WORKLOAD AND THE INTRODUCTION OF CHARGES

The Prime Minister was grateful for your Secretary of State's minute of 19 May. She has noted that the Secretaries of State for Scotland and Wales do not at present see the need to follow the approach proposed by your Secretary of State. She recognises your Secretary of State's concerns whether it would be right in England alone and agrees that the best way forward would be to have a meeting. Cabinet Office will be in touch in due course with the date for an appropriate E(LF) meeting at which the subject can be discussed.

I am copying this letter to the Private Secretaries to Members of E(LF), to Michael Saunders (Attorney General's Office) and to Trevor Woolley (Cabinet Office).

Yours ever

Dominic

(DOMINIC MORRIS)

Roger Bright, Esq.,
Department of the Environment.

CONFIDENTIAL

A

cc Lobbs
A

PRIME MINISTER

PLANNING CASES IN MINISTERS' CONSTITUENCIES

1. You seek my views on the minute of 27 April 1989 from Nicholas Ridley and, in particular, in respect of two points:

(i) Nicholas' opinion that Ministers should refrain entirely from expressing a view, whether publicly or privately, on planning cases, other than those which may affect them personally;

(ii) whether the practice in planning cases should extend to all other matters that may become subject to Ministerial decision; and if not, where the line should be drawn.

2. These issues have come to the fore because the Scottish Secretary's Office propose to submit advice upon them to their Ministers. They have taken the opinion of Kenny Cameron, when he was Lord Advocate, as to Ministerial involvement in planning matters. Kenny Cameron rightly said that there should be no divergence in practice as between one side of the Border and the other. In my view there need be none.

3. I will deal first with planning cases.

4. Two principles should guide Ministers. One is legal in character, the other political. They are, respectively, that any Minister exercising a quasi-judicial function in relation to a planning matter must be seen to act fairly by bringing an unbiased, properly directed and independent mind to his consideration of the matter; and that any Minister, while he remains a member of the Government, shares in the responsibility for any decision of a colleague and must be loyal to any such decision.

5. For Ministers with quasi-judicial responsibilities the duty to be seen to act fairly imposes the duty to follow such procedures as may have been laid down by legislation or promulgated by Ministers. Thus, as Nicholas rightly says, all evidence which is material to any decision which has been the subject of a planning inquiry, and which the decision-maker ultimately takes into account, must be made available to all parties with an interest in the decision. Privately made representations may not be taken into account. This derives from legislation which is special to planning inquiries.

6. Secondly, the Ministerial duty to act fairly requires a Minister, in arriving at his decision, to exclude from the matters affecting his decision any consideration of advantage to his own interest, whether purely personal or as the Member of Parliament for his constituency. He must limit his consideration to matters which are relevant to the exercise of the discretion conferred upon him by the legislature.

7. From this it follows that a Minister with planning responsibilities who had previously actively intervened as a Member of Parliament in any planning matter which ultimately had been decided by him would find it impossible to rebut an assertion that he had discharged his quasi-judicial function unfairly. Accordingly, and regardless of any consideration deriving from the convention of shared Ministerial responsibility, no Minister with planning responsibilities should decide any planning matter with which he has been previously associated, nor should he do anything calculated to influence any such decision.

8. I do not, however, think that proper practice requires any Minister, whether with planning responsibilities or not, to forgo all intervention as a Member of Parliament in any planning matter.

9. As regards a Minister with no planning responsibilities, his potential share in responsibility for any decision that may ultimately be taken by a Ministerial colleague is, in my view, quite compatible with an expression of his own opinion on the matter to the local planning authority, or to a planning Minister. He must, of course, express and conduct himself in a manner that is appropriate to

one who may later have to accept responsibility for an opposed decision, and to one who is a colleague of the deciding Minister. For example, he must not contend that any decision other than the one he supports would be unreasonable. Nor should his support extend to participation in public demonstrations calculated to bring pressure to bear (for example by weight of numbers) on his Ministerial colleague, or in participation in public representations or deputations to Ministers. It is now common for a Member of Parliament to concern himself with a wide variety of topics outside his strict Parliamentary responsibilities, and to be expected to do so, and I do not consider that, subject to the provisos I have mentioned, Ministerial office need generally shut off a Member of Parliament from this practice, so far as planning matters are concerned. I think that for a Minister to claim otherwise would be rightly seen by his constituents to be unjustified.

10. As regards junior Ministers with planning responsibilities, I agree with Kenny Cameron that they too are not shut off from such intervention, though they must, as I have indicated, of course take no part in any subsequent Ministerial decision. In their case particular care will need to be taken not to give to a local planning authority any impression of wielding Ministerial influence.

11. I regard the foregoing considerations as applying also to Ministerial decisions of a quasi judicial character in areas other than planning, such as the closing of a hospital or school, subject to the provisions of any legislation that may particularly apply to them.

12. I am copying this minute to the Secretaries of State for the Environment, Scotland and Wales and to Sir Robin Butler.

P. M.

26 May 1989

EAMAWD

PRIME MINISTER

You had agreed to Mr Ridley's proposals on charging for planning appeals but in subsequent correspondence with colleagues it became clear that Scotland and Wales did not want to follow him down this road. His attached minute (Flag A) makes clear that he prefers not to go alone in England and asks for a meeting to resolve the matter.

It seems a pity to have to devote some or all of an E(LF) meeting to this when colleagues have not otherwise reacted to his specific proposals (a minute from Carolyn Sinclair supporting his other proposals is at Flag B). There is also the pressure on your diary between now and the Summer Recess. The E(LF) meeting in June is the first of what may be several on Rate Support Grant. So this planning appeal question would need to wait until July at the earliest.

In the circumstances, agree I should minute out asking Mr Ridley whether, on reflection, he would be prepared to go ahead in England alone?

I think we shall have to discuss it. It may be the size of the cake rather than the charge that is the stumbling block. On the other hand it is not worth a colossal row to save only a few million £'s.

DOMINIC MORRIS
26 May 1989

CONFIDENTIAL

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

25 May 1989

Dear Nick

TOWN AND COUNTRY PLANNING BILL

Thank you for your letter of 22 May seeking drafting authority in respect of this Bill. As you recognise, the Bill does not have a place in the provisional legislative programme for next Session, although the Cabinet has certainly identified it as a candidate for inclusion in the programme, should opportunity afford. The resources of Parliamentary draftsmen are inevitably devoted at present to those Bills which do have a firm place, and I am afraid that they do not have any spare capacity which could be devoted to the Planning Bill. I cannot, therefore, give the authority you seek. Nevertheless, I am well aware of the potential importance of the Bill and if the position should alter in any respect, I will of course let you know at once.

I am copying this letter to members of QL, the Prime Minister, Sir Robin Butler and First Parliamentary Counsel.

Yours ever

JOHN WAKEHAM

The Rt Hon Nicholas Ridley MP
Secretary of State for the Environment
Department of the Environment
2 Marsham Street
LONDON
SW1P 3EB

CONFIDENTIAL

Local Govt : Planning
R6

PRIME MINISTER

24 May 1989

THE PLANNING APPEALS WORKLOAD AND THE INTRODUCTION OF CHARGES

Nicholas Ridley has minuted to you again about his proposal to introduce charges for planning appeals. This is because Malcolm Rifkind and Peter Walker have said that they do not want to introduce such charges in Scotland and Wales. Nicholas Ridley questions whether it would be acceptable to introduce charges in England alone; and suggests a meeting chaired by you to resolve the issue.

Charging for appeals in England only

Malcolm Rifkind and Peter Walker do not want to charge for planning appeals because it will be unpopular. There is clearly not the same pressure on the system in Scotland and Wales as there is in England. Pressure in the latter has led business developers such as John Sainsbury to argue that they would willingly pay to obtain a speedier service.

The planning systems in England, Wales and Scotland operate on broadly similar lines. To justify charging for appeals in England alone, we need to be able to demonstrate that charging would lead to a better service than would otherwise be possible.

It would then be open to Scotland and Wales to decide to follow suit later. It does not seem sensible to force them into a Procrustean bed now.

Improving the planning system

In commenting on Nicholas Ridley's original proposal, you said that the consultation paper on charging for appeals should also mention the steps, such as agency status and computerisation, which are being taken to improve the service. Tony Newton made a similar point.

Nicholas Ridley says that he would be willing to include something on these lines. But he does not want to commit himself to any particular level of performance. He sees charging primarily as a way of preventing further deterioration (appeals are projected to increase at more than 20% per annum).

The heart of the problem is lack of qualified staff to handle planning appeals. More money - to employ more inspectors and pay them more - will help. But the problem is not simply money. There was a run-down in the number of students studying planning in the early 1980s. It takes time for market signals to work back through the education system.

DOE officials have been slow in working out arrangements with the Treasury which will allow them to keep the money raised by charging. Such arrangements are possible, though they may require some changes to the scale of fees proposed. This should be sorted out as quickly as possible.

Nicholas Ridley needs to be pressed to reach agreement with the Treasury on a sensible charging regime which will enable DOE to use the extra funds to finance a better planning service. The Treasury need to be pressed to allow the Planning Inspectorate freedom, once it becomes an agency, to set the pay rates it needs to attract and keep qualified staff. You expressed concern at Treasury reluctance to cede control over agencies at the recent Value for Money discussion with Nigel Lawson.

Further proposals to streamline/speed up planning

In addition to raising more money to pay for more DOE staff, Nicholas Ridley now puts forward five other proposals:

(i) Increased fees for planning applications (the increase from 50% to 100% of costs was trailed in his earlier minute).

(ii) "Deemed permission" for householder development where the local authority has not issued a decision within four weeks.

(iii) Power for local authorities to extend the definition of development which can be carried out without planning permission.

(iv) Power to prevent similar applications or appeals within a specified time following an unsuccessful appeal.

(v) Power for the Secretary of State to decide whether an appeal should involve an inquiry.

Nicholas Ridley says that he has discussed these proposals with John Sainsbury and his colleagues and that they support them. This is so. The proposals are welcome. Over time they should contribute to reducing the workload on both local planning authorities and the DOE, allowing them to offer a quicker service.

At present DOE officials seem to be thinking of issuing a separate consultation paper on proposals (ii)-(v) at around the same time as the paper on charging for appeals. There is a lot to be said for rolling them into one consultation document, so that the proposals on charging are clearly linked in people's minds with proposals for speeding up planning.

Conclusions and Recommendations

- Nicholas Ridley should reconsider whether it would be unacceptable to introduce charging for appeals in England alone.

- Such an approach depends on being able to promise that charging will lead to a better service than would exist otherwise.

- With this in mind, Nicholas Ridley should produce a single consultation document covering the proposals on charging, and the further changes (ii)-(v) proposed in his latest minute. The document should mention agency status for the planning inspectorate and the proposals for computerisation. There should be a clear link between charges and improved service.

- Once the Planning Inspectorate becomes an agency it should have maximum freedom to take the steps its management deems necessary to make the planning system work more efficiently. Otherwise it will be difficult to justify charging for appeals.

CAROLYN SINCLAIR

Local Govt - Planning 1976

B/F with LP's papers dated 6 June re legislative programme.

CC(89)

2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref:

Your ref:

CONFIDENTIAL

The Rt Hon John Wakeham MP
Lord President of the Council
Privy Council Office
68 Whitehall
London SW1A 2AT

22 May 1989

Dear Lord President,

TOWN AND COUNTRY PLANNING BILL

When Cabinet discussed the legislative programme for next session (CC(89)9th Conclusions, item 5) the Prime Minister, summing up the discussion, said that if circumstances dictated any change in the provisionally approved programme then the possibility of including the Town and Country Planning Bill should be reconsidered since this was a most valuable measure.

In the light of this conclusion, I instructed my officials to keep up the momentum on preparing the Bill. Otherwise we could not be ready to introduce it early in the 1989/90 session even if the circumstances envisaged by Cabinet arose. We had, of course, published our proposals on land compensation and on changes to the development plan system before the meeting. Subsequently we have published Robert Carnwath, Q.C's report on enforcing planning control and I am in correspondence with colleagues about my proposals on charging for appeals and on other legislative action to address the problems created by the high and growing levels of applications and appeals.

In parallel my officials have been getting ahead with the preparation of instructions to counsel. We are moving to the stage where it will soon be important to start undertaking drafting if the Bill is to be ready against the contingency Cabinet envisaged. I realise that the Bills provisionally approved by Cabinet for 1989/90 must have the priority claim on Parliamentary Counsel's time but I am also sure that it would be sensible for work to be proceeding on this Bill as the next priorty for that session as and when it can. I am therefore writing to seek your formal agreement to drafting authority for this bill on the basis I have just described.

cont.../

CONFIDENTIAL

I am sending copies of this letter to members of QL, the Prime Minister, Sir Robin Butler and First Parliamentary Counsel.

Yours sincerely

pp

NICHOLAS RIDLEY
(Approved by the Secretary of State and signed in his absence)

CONFIDENTIAL

PRIME MINISTER

THE PLANNING APPEALS WORKLOAD AND THE INTRODUCTION OF CHARGES

A number of colleagues had anxieties about the proposal in my letter of 28 March for the introduction of charges for planning appeals. This letter responds to the points made by colleagues, sets the proposals in a wider context and sets out some other proposals for dealing with the situation. I should emphasise, however, that I do not see these other proposals as a substitute for the introduction of charges. They are complementary.

The context is that the number of planning appeals in England has more than doubled since 1983 from 13,700 appeals to 28,500 in 1988/89. On present projections the number of appeals seems likely to continue to rise at more than 20% per annum. Following various reviews in recent years we have taken measures to increase the efficiency of appeal handling and have also deployed increased resources. The number of staff in the Inspectorate has risen by slightly less than 50% since 1983 and we have made increased use of contract Inspectors; on performance we issued 17% more decisions per Inspector in 1988/89 than in 1984/85. These improvements are significant. Our intention was that they would lead to improved handling times. In fact the increase in the number of appeals has meant that the increased numbers and improved performance have just enabled us to hold our own so far in terms of handling times. Without further action we shall not do that in the years ahead.

I have given considerable thought to ways in which we might tackle this problem and deliver a better service to would-be developers. All the solutions which would be likely to have any

significant impact would require primary legislation - as, of course, would the introduction of charging. I discuss some of the possibilities below. For the immediate future I am therefore faced with the prospect of having to find further significant increases in the Inspectorate's administrative resources and I shall be discussing this with John Major in the PES round.

My concern runs wider than the question of how to deal with the growing number of planning appeals. The development control system more generally is under great pressure with increased numbers of planning applications causing problems for local authorities and contributing to delays and costs for developers (this is, of course, one of the elements fuelling the increase in appeal numbers). I have therefore been looking for measures which could help to improve the performance of a number of different components of the system either by reducing the workload or by streamlining the mechanisms for handling it. My search has gone wide including, for example, removing the right of appeal for the most minor development or establishing local tribunals to hear them; establishing administrative arrangements for development control separate from the political control of the local authorities, so that there would be more certainty attaching to decisions on planning applications and less incentive to appeal; and modifying the relationship between development plans and planning applications so that the plan would largely determine the acceptability of any particular development proposal. Some of the ideas I have just mentioned would be likely to produce at least part of the improvement we are looking for, but I doubt that any of them would command a wide measure of support. I have, however, identified several other ideas that would, I believe, be well worth pursuing. They are:-

(i) increased fees and a simplified scale for planning applications. (I referred to this in my letter of 28 March.) Fees were increased by 15% from 14 March and are now near the target of 50% cost recovery. Many

local authorities complain that they are unable to cope with increased numbers of planning applications; full cost recovery would put them in a better position to staff their planning departments adequately or to employ consultants.

(ii) deemed permission for householder development (house extensions, garages, etc) This is an idea which has been much discussed over the years. The proposition is that permission would be deemed to be granted if the local planning authority have not issued a decision (say) 4 weeks after an application had been submitted. I believe the time has come to implement it. Approximately 40% of all planning applications involve householder development and over 90% of these are granted. Potentially a 'deemed permission' provision could significantly reduce local authorities' workload although, at least initially, local authorities might tend to refuse some applications rather than allow them to gain permission through the deemed consent procedure. The impact on the appeals workload would be less significant - householder appeals account for only 11% of all appeals. If the deemed consent mechanism worked well for householder applications we could in due course consider extending it to other forms of minor development.

(iii) power for local authorities to extend the definition of development which can be carried out without planning permission This could be a valuable mechanism enabling local authorities to give general permissions for types of development additional to these prescribed nationally in the General Development Order. However it would probably take some time to have a significant impact on the number of planning applications.

(iv) power not to decide repetitive applications or appeals The proposition would be that repeat or substantially similar applications or appeals would be prevented within a specified time following an unsuccessful appeal. This would reduce the number of vexatious applications and appeals and meet a common concern that some developers seek to exhaust local authorities and local opposition by repetitive applications.

(v) power for the Secretary of State to decide whether to hold an inquiry on an appeal This provision would bite on the small number of cases where one of the parties to an appeal insists on an inquiry although the case can be dealt with as well and more expeditiously by the written representations procedure. It would provide some modest help in ensuring the most effective utilisation of the Planning Inspectorate's resources.

These are all proposals which I would like to include in my proposed Planning Bill as soon as opportunity arises. I would like to consult on them as soon as possible (along with some other lesser proposals on which I shall be writing to colleagues separately).

Although the measures I have outlined above would produce worthwhile benefits in terms of simplifying the planning system and lessening the workload and speeding the processing of applications, they will have only a relatively small impact on the workload of planning appeals. For the foreseeable future therefore I shall have the problem of securing sufficient resources to ensure that the appeals process can operate effectively. That brings me back to my proposal to introduce charges for planning appeals which I regard as vital to maintaining, let alone improving, appeal performance. I note that neither Peter Walker nor Malcolm Rifkind propose to go down

the same road. I am glad for them that they do not suffer from the pressures on the appeals system that bear upon me, but I equally question whether it would be acceptable for us to go forward in England alone. I believe we shall need to discuss what is the best approach.

A number of colleagues have expressed concern that the proposal to introduce charges is not linked to a commitment to improve the service. I share the concern that the performance of the appeals system should be improved; indeed, that was one of the important motivations underlying the proposal for charges. Given the scale of increases in appeal numbers and the constraints on departmental expenditure, I see little prospect of being able to provide the Inspectorate with the resources to cope with existing workloads, let alone improve its performance. The proposed charges would deliver resources commensurate with workload. Coupled with my proposal to establish the Inspectorate as a 'Next Steps' agency this would give the opportunity for the appeals process to be independently funded and provide the Inspectorate with the capacity and the flexibility to respond to changes in workload and to improve the performance of the system. It would defeat that objective to introduce charges on the basis implied by John Major's letter (that is, that the receipts would be classified as revenue); it would not be acceptable to proceed other than on the basis that the receipts would be used to provide the Inspectorate with the resources needed to carry out its tasks. Because of the uncertainties of future workloads I would not want to be committed to promising any particular level of performance but if colleagues feel it would be helpful, I would certainly be willing to include in the consultation paper something on these lines.

I should also respond to the points raised by Tony Newton in his letter of 13 April. His point on paragraph 16 of the consultation paper is met by my proposal at item (v) above. The issue of how to charge for section 37 appeals (against a local authority's

failure to determine an application) is finely balanced, and I considered carefully whether the right answer would be to require the local authority to refund the application fee in the event of an appeal against non-determination succeeding. Many non-determination appeals result from the growing practice of developers submitting two applications in order to appeal one as soon as the statutory 8 week period has expired. In fact, one third of non-determination appeals are withdrawn, often late in the process when the developer has succeeded in negotiating agreement with the local authority but when the Inspectorate will have incurred significant costs in handling the appeal. Most non-determination appeals involve major development, and 40% are dealt with by inquiry. Developers can and do claim their costs where the local authority's failure to determine the case has been unreasonable. It seems to me that the proposals set out in the consultation paper strike the right balance on this issue.

In his letter Tony also suggests that the consultation paper should include a Compliance Cost Assessment. I well understand the need for these proposals to take account of the additional costs they would impose on businesses, but I do not consider that a Compliance Cost Assessment would be an appropriate means of doing this. The proposal is not in itself regulatory, rather it seeks to charge users the cost of a system which has been in operation for many years. I think the point would be best met by including a paragraph on the following lines in the consultation paper:

> "With the exception of those in the construction sector, small businesses rarely have any contact with the appeals system: only 0.5% of small businesses submit a planning appeal in any year. On average a small business with a turnover of £1million or less makes a planning application every eight years or so; 85% of such applications are granted by the local authority. Research shows that of those which are refused, a significant proportion are re-submitted with

8

modifications and gain permission; less than one in three refusals goes to appeal. Almost all appeals by small businesses are for minor development or changes of use, and the majority will involve development of less than 75 square metres and so be subject to the minimum charge of £200."

As the opening sentence makes clear this paragraph does not cover the position of housebuilders or of other construction businesses. The majority of appeals involve residential development, mainly for small developments of one or two dwellings. I do not think the same considerations apply to these cases as, for example, to a business which needs permission in order to expand or to make use of new premises. The success rate for minor residential development appeals is the lowest of any category - less than 30% - reflecting the very large gains to be made from obtaining a residential planning permission and the speculative nature of many of the proposals. The increased costs to housebuilders implied by the charges proposed are unlikely to be significant for house prices or for developers' profit margins.

John Sainsbury and his colleagues have been very supportive of the need to introduce charges for appeals in order to ensure that the Inspectorate is properly resourced. They have also indicated their support for the other measures I have outlined above.

I hope that my explanation of the wider context will enable you and colleagues to agree my proposals for charging for appeals and the other measures set out at (i) - (v) above.

I am copying this to members of E(LF) Committee, Patrick Mayhew and Sir Robin Butler.

PP N R

19 May 1989

RESTRICTED

2 MARSHAM STREET
LONDON SW1P 3EB
01-276 3000

My ref

Your ref

The Rt Hon John Wakeham MP
Lord President of the Council
Privy Council Office
68 Whitehall
LONDON
SW1

28 March 1989

Dear Lord President,

I wrote to you on 6 June last year about my proposal to charge for the processing of planning appeals. Your reply of 28 July conveyed H Committee's agreement to my preparing a consultation paper which should be cleared with colleagues before issue. That consultation paper is now enclosed. I would like to issue it before the end of April and would be grateful for colleagues' comments by 14 April.

Since the summer, officials have analysed the costs of appeals and have kept their Scottish and Welsh counter-parts in close touch with their work. My conclusions are:-

i. at current prices the annual cost to the Department of processing planning appeals is in the region of £16m. The main component of this is the Planning Inspectorate; remaining parts are the nine Regional Offices and central support services (eg lawyers, personnel management). The figure includes full staff costs, overheads and accommodation;

ii. the cost to the Department of processing an appeal depends only to a small extent on the size of the development proposal and primarily on the procedure used: a typical appeal dealt with by written representations costs about half as much to process as a typical case determined following a public inquiry;

iii. it would therefore be a reasonably accurate reflection of the way costs fall to make a flat-rate charge of (on present costs) about £500 for written representations appeals, about £800 for an informal hearing and about £1,000 for any inquiry appeal (with a supplementary fee for any inquiry case which exceeds 2 days) without differentation by the nature or scale of the development. Such an approach would, however, be perceived to bear heavily on the householder and the small businessman, while being scarcely significant to the large developer;

iv. I have concluded therefore that the best fee scale will be one that reflects the type of procedure but is also clearly related to the scale of the proposed development. An illustrative tariff of charges on this basis is shown in

8

paragraph 14 of the draft consultation paper enclosed. It would entail, for written representations cases, a £100 fee for householder development, £200 for development involving one house, and then a scale for groups of units of development - up to a maximum of £4,000 for development involving 51 or more houses, or more than 1,125 sq metres floorspace, or 5 hectares of land.

Colleagues or their officials have raised some points in correspondence since my 6 June letter. It seems to me to be right to go for full cost recovery for reasons of accountability and sound public administration; the level of fee, even at the top of the scale, will not be large in relation to the overall cost of the development in question. As a consequence I would not expect the fees to result in a significantly lower number of appeals. They will, however, make the would-be appellant think a little more carefully before embarking on an appeal and should therefore have at least some effect on numbers. I appreciate that a local planning authority may insist on an inquiry being held when the appellant would prefer to follow the written representations procedure, but I believe that the appellant should nevertheless pay the inquiry fee, since the costs result from his taking his proposal to appeal. He will, however, be able to obtain an award of costs against the authority if it has been unreasonable in insisting upon an inquiry.

There may be some concern that the proposal could be seen as "charging for justice". To my mind, however, there is a most important distinction to be made between planning appeals and litigation in the Courts, which justifies different treatment. In Court litigation the decision rests solely on matters of fact or law; with planning appeals an assessment of the planning merits of the proposal is also involved. This is a matter of judgement additional to facts and law on a par with the initial application, for which charging has been in place since 1981 and is now widely accepted. The basis of my proposals - full recovery of the costs of processing appeals - will transfer the cost of the appeals process from the general taxpayer to the user of the service. My Department is pursuing other measures further to improve efficiency and effectiveness and to enhance the quality of the service.

In my letter of 6 June I mentioned that I intended to accompany proposals to charge for appeals with a major simplification of the scale of fees for planning applications and of the arrangements for increasing those fees annually, but did not propose to increase application fees' cost recovery beyond the present target of 50% of total costs. Since we are proposing 100% cost recovery for planning appeal charges, it seems unjustifiable any longer to retain 50% recovery for application fees. Several MPs and local authorities have argued that authorities should be able to recover more of their costs and, contrary to my view last June, I now think they are right and that, even though we have said in the past that application fees are intended only to contribute to the costs of handling, I believe a simpler scale and 100% recovery are wholly justifiable goals. Accordingly, paragraph 5 of the draft consultation paper contains a passage trailing such an option.

I am sending copies of this letter to the Prime Minister, other members of H Committee, Patrick Mayhew, David Young and Sir Robin Butler.

Yours sincerely

NICHOLAS RIDLEY
(Approved by the Secretary of State and signed in his absence)

RESTRICTED

CHARGING FOR PLANNING APPEALS

1. This consultation paper invites views on the proposition that the Department of the Environment should charge appellants for the processing of planning appeals. It relates primarily to appeals under Section 36 of the Town and Country Planning Act 1971 but reference is also made to appeals against refusal of listed building consent (paragraphs 22-26) and against enforcement notices and certain other kinds of planning appeal (paragraphs 27-37).

The development control system and planning appeals[1]

2. Nearly 500,000 planning applications a year are dealt with by local planning authorities in England. About 83% of local planning authority decisions result in planning permission being granted. Of those applicants refused permission only about 30% appeal to the Secretary of State; the other 70% may choose to amend their proposals and resubmit a modified scheme to the local planning authority, or to adopt an alternative proposal (having perhaps submitted applications for several different schemes) or they may simply abandon their proposals.

3. The Government believes that local authorities should have the primary responsibility for development control decisions. 98% of all planning permissions are granted by local planning authorities and less than 2% by the Secretary of State or his

---

[1] In this paragraph and in the remainder of the paper "planning appeals" refers to appeals under section 36 of the 1971 Act against a local planning authority refusal of planning permission; and includes appeals under section 37 resulting from a local planning authority failing to decide an application within the statutory period.

Inspectors following an appeal. There are often benefits to both the applicant and the local authority in negotiating modifications to a scheme which would make it acceptable rather than resolving the matter at appeal. The Government wishes to encourage developers and local planning authorities to resolve their differences by negotiation whenever that is possible: only where there is no prospect of differences being resolved should an applicant need to resort to appeal.

4. A proportion of planning applications raise complex issues requiring detailed investigation and consideration and involving substantial expenditure of time and resources by local planning authorities. More than 40% of all applications are for development by householders, however, and all but about 5% are for other types of minor development. It will often be possible for local planning authorities to establish policies or guidelines for dealing with similar types of development proposal within their area. Not surprisingly the proportion of appeals involving larger or more complex developments is higher: householder development accounts for only about 11%, and almost 15% of appeals involve major development. By contrast with local authorities' procedures for dealing with the more routine types of planning application, each appeal to the Secretary of State not only entails a comprehensive assessment of the circumstances but also must be conducted according to a strict set of rules and procedures which are defined by statute. For these reasons the appeals procedure tends to be more elaborate and costly.

Charges

5. The principle of a charge for the processing of a proposal to develop or use land was established in 1981 with the introduction of fees for planning applications. The Government is considering bringing forward new proposals to simplify the scale of fees for planning applications and to increase the proportion of local authorities' costs recovered through fees.

6. In 1987/88 the Department of the Environment received some 22,500 planning appeals. This was 8,800 more than in 1983, an increase of 64%. About 18,500 appeal decisions were issued last year, an increase of 65% over 1983. 3,173 appeals were withdrawn before a decision was issued. The increased volume of appeals represents a considerable burden on the taxpayer.

7. There is a significant public expenditure cost in processing planning appeals. At current prices the annual cost to the Department of the Environment is in the region of £16 million. The Government attaches considerable importance to the efficient handling of appeals, and believes that this expenditure should be financed by those who use the service provided. This will introduce an element of market discipline on both the appellant and the Department.

8. It has sometimes been suggested that the costs incurred in an appeal should "follow the event", as normally happens in litigation in the Courts. But planning appeals which generally turn on an assessment of the planning merits of development on a particular site are not closely comparable to litigation where the judgement relates to matters of fact and law. The justification for costs following the event in the Court is that a party who has been compelled to litigate in order to enforce a legal entitlement, or to defend himself against a claim which is wrong in law, should be able to obtain his reasonable costs from the unsuccessful party. The Government has therefore concluded that costs in planning appeals should continue to be awarded only when one party has behaved "unreasonably" in the appeal proceedings, and the other party has incurred expenditure unnecessarily as a result of that unreasonable behaviour, and that fees should be charged to recover the costs to the Department in dealing with planning appeals.

Appeal procedure

9. Most planning appeals (97%) are determined by an Inspector appointed by the Secretary of STate for the Environment. A small proportion (3%) are decided, on the basis of an Inspector's report, by the Secretary of State.

10. An appeal which is to be decided by an Inspector is determined either following an exchange of written representations by the parties (appellant, local planning authority, third parties - eg residents or amenity groups) or following a public local inquiry. In some cases, by agreement with the principal parties, the inquiry may take the form of an informal hearing. The overwhelming majority of all appeals (86%) are decided by an Inspector on the basis of a site visit and an exchange of written representations. Appeals decided by the Secretary of State follow the written representations or inquiry procedures; informal hearings are only used where the case is to be decided by an Inspector.

Departmental resources involved in handling planning appeals

11. The Government proposes that charges for planning appeals should aim to cover the full cost to the Department of administering the appeals system. The main component of that cost is the input of the Planning Inspectorate. Additional costs are attributable to the processing of "Secretary of State" appeal cases in the nine Regional Offices of the Department and to central support services (lawyers; accountancy; personnel management etc). The £16 million quoted in paragraph 7 above includes full staff costs, overheads and accommodation.

Processing costs

12. The present scale of fees for planning applications has a relationship with the cost to a local authority of processing

applications, although it recovers only towards 50% of those costs. It is linked to the size of the development proposed, with the fee for major residential development (10 or more houses) being substantially more than that for a "householder" or change of use application.

13. In the case of planning appeals, as well as the complexity of the proposal, a major cost factor is the procedure for determining the appeal: that is, whether the appeal is determined following an exchange of written representations or following an inquiry. Appeals on development proposals which are dealt with by written representations are cheaper to process than cases determined following a public local inquiry. Processing a typical inquiry case costs approximately twice as much as a typical written representations appeal. Approximately 75% of inquiries last for one day only, and all but 10% last two days or less. On the other hand in some complex cases inquiries may last for several days or even weeks. Each additional inquiry day adds significantly to the cost of handling the appeal.

Proposed charges for Section 36 appeals

14. Accordingly, in devising a basis of charging for appeals to cover the full cost of processing the Government believes that it would be equitable to follow the broad approach of the present fees for planning applications, ie a scale related to the size of development proposal, but with a differential between written representations and inquiry cases, and a supplement for longer inquiries. The Government proposes the following illustrative tariff of charges for appeals:

Residential development	Written representation fee £	Non-Residential development
Householder development	100	

One unit (or up to 0.1ha);	200	Change of use; conditions; development up to 75 sq m or up to 0.1ha
2-5 units (or 0.2-0.5ha)	400	development 76-150 sq m or 0.2-0.5ha
6-10 units (or 0.6-1.0ha)	800	development 151-225 sq m or 0.6-1.0ha
11-20 units (or 1.1-2ha)	1,600	226 sqm-450 sqm or 1.1-2ha
21-50 units (or 2.1-5ha)	2,400	451 sqm-1,125 sqm or 2.1-5ha
Over 50 units (over 5ha)	4,000 maximum	Over 1,125 sqm or over 5ha

Hearings add 0.6 times basic fee

Inquiries add 1.0 times basic fee

each additional inquiry day after 2 add £350

Refunds 75% of inquiry supplement where an inquiry appeal is withdrawn before the inquiry takes place.

If the proposal is proceeded with, the actual tariff will be calculated at the time using the same approach following enactment of the necessary legislation.

15. About one third of appeals which are to be dealt with under the inquiry procedure are withdrawn. The Government has considered whether the additional fee should be refunded in such cases. But withdrawal frequently happens shortly before the inquiry is due to open. In these cases the Inspectorate will have incurred significant costs, and it may prove difficult or impossible to allocate the Inspector concerned to alternative work. Accordingly, it is proposed that consideration might be

given to refunding some part only of the difference between the written representations charge and the inquiry charge if an inquiry appeal is withdrawn at a sufficiently early stage.

16. The written representations procedure is generally less onerous for the appellant and for the local planning authority and it normally leads to a more rapid decision. A case may only proceed by written representations, however, if the principal parties and the Secretary of State agree that this is appropriate. In the few (less than 10%) cases where the appellant wishes to proceed by written representations but the local planning authority consider that an inquiry should be held, the appellant would nevertheless be required to pay the full charge, reflecting the significance of the proposal which had led to that outcome. A local authority which insisted unreasonably on an appeal being heard by inquiry could have costs awarded against it. (The regime for awarding costs is described in DoE Circular 2/87.)

17. Legislation would need to provide that an appeal would be invalid unless accompanied by the correct payment. Supplementary charges for additional inquiry days (see paragraph 14 above) could only be collected after the inquiry had closed and it was clear how many days' payment was entailed, but the additional charge would need to be paid before the decision could issue.

Section 37 Appeals against failure to determine an application

18. Local planning authorities decided some 470,000 planning applications in 1987/88. That was an increase of 16% on the previous year.

19. Only 53% of applications were decided within 8 weeks, however, compared with the Government's target of 80%. Ministers have urged and will continue to exhort local authorities to improve their performance.

20. In 1987/88 the Department received some 1,800 appeals made under Section 37 of the 1971 Act (where an appeal is made because the local authority has failed to determine the planning application within the statutory period of 8 weeks, or any longer period agreed with the applicant). About one third of Section 37 appeals are subsequently withdrawn, often because appellants have reached agreement with the authority on a parallel application.

21. The cost of processing "section 37" appeals is the same as the cost of processing other appeals, and the Government believes that they should be subject to the same charge and that this charge should be paid by the appellant. . Where the local planning authority has acted unreasonably and the appeal is dealt with by inquiry the appellant will be able to seek an award of costs against the authority.

Appeals against refusal of listed building consent

22. Appeals under section 56 of the 1971 Act against the refusal or non-determination by a local planning authority of listed building consent applications under section 55 of the 1971 Act are made under paragraphs 8 or 9 respectively of Schedule 11 to the 1971 Act.

23. Listed building consent is required to demolish a listed building or to alter or extend it in any manner which would affect its character as a building of special architectural or historic interest. Listed building consent applications can be divided into two categories:-

(i) those for works for which planning permission is required in addition to listed building consent; and

(ii) those applications for which specific planning permission is not required eg internal works or development covered by the General Development Order.

In nearly every case where the alteration or demolition of a listed building would bring development benefit to the owner, there would be a requirement to obtain planning permission.

24. When charges were introduced for planning applications, listed building consent applications were deliberately excluded because the listing of buildings imposes a special liability on owners (the listed building control system) in the interests of the heritage as a whole. It was concluded that the liability ought not to be made more onerous by charging for applications for listed building consent.

25. The procedure for handling listed building consent appeals is substantially similar to that for planning appeals. Many listed building consent appeals are in fact linked to (and processed simultaneously with) section 36 planning appeals. In 1987/88 there were 396 such linked appeals and 408 free-standing listed building consent appeals.

26. It is not proposed to charge twice for a listed building consent appeal which is associated with a planning appeal under section 36. An appeal fee would be payable for those cases on the basis in paragraph 14 above. Since there is no application fee when listed building consent does not also entail planning permission, the Government proposes that no appeal charge should be made in those cases.

Specialist Planning Appeals

27. The Department and the Planning Inspectorate deal with five other categories of appeal. Paragraphs 28 to 36 of this paper explain the proposed charging arrangements for these appeals. Paragraph 37 explains the basis for charges where a planning appeal is "linked" administratively to one or more of the specialist appeals.

Enforcement appeals (Section 88 of the 1971 Act)

28. Since April 1981 a fee has been payable to the Department for the "deemed planning application" arising, under section 88B(3) of the 1971 Act, from any appeal against an enforcement notice issued by a local planning authority (LPA). These fees ensure that the person who appeals against an enforcement notice (who will not usually have paid the appropriate planning application fee to the LPA for the allegedly unlawful development) pays an equivalent application fee to the Department. Without these fee-paying arrangements, there would be a financial incentive not to apply for planning permission. Fees for "deemed planning applications" are therefore assessed on the same scale as LPAs use for planning application fees and the amount due must be paid to the Department during every enforcement appeal. When an enforcement appeal succeeds on one of the "legal grounds" in paragraphs (b) to (f) in section 88(2) of the 1971 Act, so that the Secretary of state or a Planning Inspector does not normally determine the deemed planning application (or the appeal on ground (a) in section 88(2)), the Department refunds the deemed planning application fee after issuing the decision. These provisions effectively ensure that the recipient of an enforcement notice does not pay for an appeal against it on any of the "legal grounds" in section 88(2): the fee is paid only for consideration of the planning merits.

29. It is proposed to adapt these arrangements so as to incorporate into enforcement appeals the charges proposed for ordinary planning appeals made under section 36 of the 1971 Act. On average, some 4,500 to 5,000 enforcemen t appeals are submitted annually to the Department, of which 40% are usually withdrawn before a decision is issued. Of some 2,500 to 3,000 appeals decided annually, approximately one-half are dealt with by the written representations procedure. The fee now paid for the deemed planning application arising from an enforcement appeal will continue and it is proposed also to make an appeal charge for any enforcement appeal which includes ground (a), in section 88(2) of the 1971 Act. This additional appeal charge is intended (as with the deemed planning application fee) to reflect only the cost to the Department of considering the planning merits of the enforcement appeal and the charge will therefore be the same as for ordinary planning appeals, (as in paragraph 14 above). The remaining 50% of decided enforcement appeals involve a public local inquiry, quite often at the Department's direction, to establish the facts by examining witnesses. There would be no additional charge at the differential inquiry appeal rate (paragraph 14 above) when the inquiry is held at the Department's direction. When an inquiry is held at the
X appellant's request, but the Department considers that the written representations procedure would have sufficed, it is proposed to make a differential charge at the inquiry rate, with a supplement for longer inquiries. This would correspond to the charging arrangements for ordinary planning appeals (paragraph 14 above), and ensure that the appellant pays both an equivalent sum to the planning application fee due to the LPA and the appeal charge.

30. Some enforcement appeals are made on two or more grounds, including ground (a), but succeed on one of the "legal grounds" (grounds (b) to (f) in section 88(2) of the 1971 Act), so that ground (a) and the deemed planning application are not

considered, because the enforcement notice is quashed by the appeal decision. When this happens in future the appellant will have been complelled to pay an application fee and an appeal charge in order to defend himself against the LPA's allegation, in the enforcement notice, which will have proved incorrect in fact or wrong in law. It is therefore proposed to refund the enforcement appeal charge (as well as the deemed application fee) when the appeal succeeds on any of the grounds (b) to (f) and the enforcement notice is quashed. And, because grounds (g) and (h) in section 88(2) are concerned only with minor matters of reasonableness (that is, the steps required by the LPA to remedy the alleged breach of control and the duration of the compliance period), it is not proposed to make an appeal charge for the very few enforcement appeals confined only to grounds (g) and (h) if it proves unncessary to deal with the deemed planning application.

Established use certificate appeals (Section 95 of the 1971 Act)

31. Established use certificate (EUC) appeals also include a deemed planning application (section 95(6)), for which a similar fee is paid to the Department as for enforcement appeals (see paragraph 29 above). There are some 80 EUC appeals annually, of which approximately one-half are withdrawn before being decided. It is proposed that the appeal charge for EUC appeals should be the same as for enforcemewnt appeals: the charge would thus be confined to the deemed planning application and would be payable in addition to the existing fee. Virtually all EUC appeals which are not withdrawn during the appeal process involve holding a public local inquiry to establish the relevant facts about the historic and current use of the land. As the inquiry is almost always held at the Department's direction, it is not proposed to charge for EUC appeals at the inquiry rate unless (most unusually) the Department considers that the appeal should proceed by way of written representations, but the appellant

insists on an inquiry. The usual charge for an EUC appeal will therefore be at the rate for a written representations appeal - pyable in addition to the deemed planning application fee.

32. When an EUC appeal succeeds at present, so that the Secretary of State grants a certificate and the deemed planning application is not considered, the Department refunds the application fee to the appellant after issuing the decision. This refund is justified because the appellant has had to appeal in order to obtain, from the Secretary of State, the certificate of established use the LPA should have granted. For this reason too, it is proposed to refund the appeal charge to the appellant, when there is no consideration of, or decision on, planning merits in the appeal process.

Proposed development appeals (Section 53 of the 1971 Act)

33. Applications to LPAs and appeals to the Secretary of State, under section 53 of the 1971 Act, involve consideration of whether a proposal involves "development" of the land to which it relates; and, if so, whether an application for planning permission is needed. On average, there are approximately 100 of these appeals annually, of which one-half are withdrawn before the appeal is decided. These applications and appeals turn entirely on legal issues; and planning merits are not considered. For this reason, no application fee is currently payable to the LPA and no deemed application fee is paid to the Secretary of State on appeal. Since section 53 appeals will remain confined to legal issues, it follows that no appeal charge should be made.

Advertisement appeals (section 36 of the 1971 Act, as modified by Regulation 22 of the Control of Advertisements Regulations)

34. Advertisement appeals are similar to ordinary planning appeals, except that decisions are not transferred to Planning

Inspectors. Appeals are processed and decided by one of the Department's Planning and Development Control Divisions, either on the basis of the parties' written representations and (usually, but not invariably) a site-inspection (80% of appeals) or a hearing (5% of appeals). (The remaining 15% of advertisement appeals are withdrawn or declined.) Except in the case of discontinuance notice appeals (see paragraph 35 below), advertisement appeals are concerned solely with the merits of displaying an outdoor advertisement in relation to its likely effect on "amenity" and "public safety". The considerations arising on an advertisement appeal are thus closely comparable to a planning appeal. The average cost to the Department of processing some 1,775 advertisement appeals during 1988/89 is estimated as £110 per appeal, with an additional cost of £80 when a local hearing of the appeal has to be arranged. Accordingly it is proposed to charge £110 for a standard advertisement appeal, with a "hearing supplement" of £80 when a hearing is held at the appellant's request.

35. On average, some 9% of advertisement appeals are against a "discontinuance notice" served by the local planning authority rtequiring the advertiser to remove an advertisement displayed lawfully with "deemed consent", on the ground that it substantially harms amenity or constitutes a danger to the public. The advertiser usually responds to a notice by challenging it, in an appeal to the Secretary of State, on the ground that the advertisement is not harmful, or dangerous, for the reasons the LPA have alleged in the notice. As an appeal to the Secretary of State is the only way an advertiser can contest a discontinuance notice, it seems unreasonable to make an appeal charge if the appeal succeeds on grounds of "amenity" or "public safety", or because the notice is found to be technically defective and is quashed. It is therefore proposed to charge for discontinuance notice appeals (including any hearing supplement) on the same

basis as for ordinary advertisement appeals (paragraph 34 above), but to refund the charge at the end of the appeal if it succeeds on merits or the notice is found to bedefective and quashed.

Listed building enforcement notice appeals (Section 97 of the 1971 Act)

36. Appeals are made, under section 97 of the 1971 Act, against listed building enforcement notices issued by local planning authorities (under section 96) requiring a breach of listed building control to be remedied. On average, there are some 200 such appeals annually, of which approximately one-third are withdrawn before the appeal is decided. No fee is payable for the "deemed listed building consent application" arising on an appeal to the Secretary of State under section 97; this is consistent with the provisions (paragraph 24 above) for listed building consent applications to local planning authorities. Accordingly, and consistently with listed building consent appeals (paragraph 26 above), no charge is proposed for listed building enforcement appeals.

Planning appeals and specialist planning appeals proceeding together

37. When an ordinary planning or listed building consent appeal and a specialist planning appeal involving the same appeal site are proceeding concurrently, the Department's usual administrative practice is to "link" both, or all, the appeals together and arrange for them to be determined, by the Secretary of State or a Planning Inspector, in one decision letter. Because "linked" appeals usually involve consideration of the planning merits of the same development in all the appeals, it seems unreasonable to charge more than once for deciding the same issue in each appeal. (For example, in a "linked" planning appeal and EUC appeal, the same material change of use of the land is likely to be at issue in both appeals.) It is therefore proposed (as with

linked planning and listed building consent appeals, see paragraph 26 above) to make only one charge for any case where there are linked appeals involving consideration of the planning merits of the same development in two or more appeals. An exception to this arrangement would be where an advertisement appeal is linked administratively to another type of appeal: in that case, there would be an additional charge for the advertisement appeal (paragraph 34 above) because it would involve separate consideration of the merits of displaying an outdoor advertisement.

Conclusion

38. Views are invited on the proposals set out in this paper ...

L[redacted] Sainsbury
of Preston Candover
Chairman & Chief Executive

R10/5

J Sainsbury plc
Stamford House
Stamford Street
London SE1 9LL

01-921 6000

Telex 264241

SAINSBURY'S

8th May 1989

Dominic Morris, Esq.
The Private Secretary
10 Downing Street
London SW1A 2AA

Dear Dominic Morris,

Thank you for your letter of 4th May about the time of the meeting on 10th July. I quite understand the reason for the postponement to 4.30 and we will certainly look forward to meeting the Prime Minister at that time.

Yours sincerely,

R Sainsbury.

CF file

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

4 May 1989

Many thanks for your letter of 27 April. As I mentioned to your secretary this morning, I am very sorry that, instead of being able to bring forward the time of the meeting as you had asked, I have to request you to come at 1600 on 10 July and for the full meeting to start at 1630. This is to enable the Government side, one of whom has unavoidable engagements outside London, to be there for it. I do hope this is not too inconvenient to you or colleagues on the Group.

Dominic Morris

The Lord Sainsbury of Preston Candover.

Lila
ADJ. AEM

be. Fert.

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

4 May, 1989.

PLANNING CASES IN MINISTERIAL CONSTITUENCIES

The Secretary of State for the Environment has minuted the Prime Minister on the advice to be given to Ministers on their involvement as constituency MPs in local planning matters. The Secretary of State's office will be sending a copy of this minute to the Attorney General. The Prime Minister would welcome the Attorney General's views, and in particular on two points:

(i) Does he come to the same conclusion as Mr. Ridley that Ministers should refrain entirely from expressing a view, whether publicly or privately, on planning cases, other than those which affect them personally?

(ii) Does he think that the approach taken on planning cases should be extended to all other Ministerial decisions? If not, where does he think the line should be drawn?

NI Could advice be provided in the next week or ten days?

Andrew Turnbull

M.C.L. Carpenter, Esq.,
Law Officers' Department.

KK.

NBPM

cc PL

2 MARSHAM STREET
LONDON SW1P 3EB
01-276 3000

My ref:

Your ref:

Michael Saunders Esq
Private Secretary to
The Rt Hon Sir Patrick Mayhew QC MP
Law Officer's Department
Attorney General's Chambers
Royal Courts of Justice
LONDON
WC2A 2LL

4 May 1989

Dear Michael,

PLANNING CASES IN MINISTERS' CONSTITUENCIES

The Secretary of State has asked me to send you the attached copy of his minute to the Prime Minister last week about Ministerial involvement as constituency MPs in local planning matters. He would welcome any views which the Attorney General may wish to offer on the legal considerations.

I am sending a copy of this letter (but not the attachments) to Andrew Turnbull (No.10), David Crawley (Scottish Office), Stephen Williams (Welsh Office) and Trevor Woolley (Cabinet Office).

Yours

A D RING
Private Secretary

LOCAL GOVT: PLANNING

AG

BF || To ans advice from AG

AT AHS

Ref. A089/1120

MR TURNBULL

Planning Cases in Ministers' Constituencies

The Secretary of State for the Environment minuted the Prime Minister on 27 April about the advice to be given to Ministers on their involvement as constituency MPs in local planning matters.

2. The combination of the injunction on Ministers at paragraph 97 of Questions of Procedures for Ministers (QPM) not to take part in public representations or deputations to Ministers, and the principle of administrative law set out by Mr Ridley that all evidence material to a decision in a planning enquiry which the decision-maker takes into account must be available to all parties with an interest in the decision (and therefore representations made in private cannot be taken into account) points inexorably to the conclusion reached by the Secretary of State for the Environment that Ministers should not make any representations in the role of a constituency MP on matters relating to planning inquiries. That is the advice which this office has given when this question has arisen in the past. The conclusion holds good for planning inquiries, and other instances (on which the Attorney General, to whom I gather you have suggested that Mr Ridley's minute should be copied, will no doubt advise) where all parties with an interest in the decision must know of any representations made to the Minister taking the decision. I do not know whether decisions on hospital closures would fall in this category. But there are clearly many Ministerial "decisions" which do not, and paragraph 97 of QPM specifically recognises the right of Ministers privately to lobby other Ministers on constituency matters. So I do not think that Mr Ridley's conclusions have the universal application which he suggests in the last page of his minute.

3. Subject to the views of the Attorney General, which you will no doubt wish to await, I suggest that advice to Ministers on these matters is disseminated by this office and that QPM is amplified to reflect these points in its next edition. The Prime Minister may also wish to agree that Mr Chope should write to backbench MPs in terms proposed by Mr Ridley.

NG Woodhouse
(Private Secretary)

for ROBIN BUTLER

3 May 1989

Local Govt
Planning
P76

10 DOWNING STREET

Note

1. Spoke to Trevor Woolley. Agreed in hand but pending Cab Off advice

2. Spoke to Mr Middleton's office. Asked them to ensure that Attorney General's advice was sought.

To await responses. B/F — weekend

AT
28/4

BF | B/F
4/5

SECRETARY OF STATE FOR THE ENVIRONMENT

cc: Att. Gen 4/5

PRIME MINISTER

PLANNING CASES IN MINISTERS' CONSTITUENCIES

Malcolm Rifkind's office have raised with us in the copy letter attached the issue of what advice should be given to Ministers as to their involvement as constituency MPs in local planning matters. In my view this is a matter where we must follow the same principles throughout the UK. As important issues are raised, and my view of what is strictly proper is rather different to Malcolm's. I believe this is a matter on which you will wish to give guidance yourself.

Current Advice

The only current advice in this area that I am aware of is in "Questions of Procedure for Ministers." This memorandum makes no specific references to planning matters, but two general pieces of advice could have a bearing:-

(i) "Ministers may not take part in public representations or deputations to Ministers" in respect of constituency interests (summary section x);

(ii) "Ministers must so order their affairs that no conflict arises, or appears to arise, between their private interest and their public duty" (summary section ix);

Two general principles of administrative law also have relevance to Ministers' involvement in planning cases. The first is that any Minister in his role as decision-maker must be, and must be seen to be, wholly impartial; in particular he must not have expressed views about a planning matter in such a way as to risk the accusation of having prejudged the issue before fully considering the evidence.

The second general principle, embodied in our rules of procedure for planning inquiries, is that all evidence material to the decision which the decision-making takes into account must be available to all parties with an interest in the decision: representations made in private cannot be taken into account. (The sole exception in the legislation is a tightly restricted one relating to matters of national security and the physical security of property).

Lord Advocate's Advice

In advice to the Scottish Office, the Lord Advocate has taken the view that where a Minister has no planning responsibilities, there is no legal factor or constitutional convention which prevents him from taking up a planning matters as a constituency MP, "provided that it is made clear that it is in the latter capacity that he is acting." On the position of planning Ministers, the Lord Advocate states:- "any such intervention could be used to found allegations of bias in an application for judicial review following his decision on an appeal." However, the Lord Advocate goes on to say that where a planning Minister got involved at an early stage in a constituency case (eg where a planning application was before the local authority), there would be no ground for challenge if the matter subsequently came to the Secretary of State on appeal, so long as the Minister in question made sure that he played no part at all in the appeal procedure. In his view the courts would look behind the formal collective responsibility of the Secretary of State and his colleagues to the issue of fact as to which Minister actually took the decision in question.

para 5 of Lord Advocate's letter

para 7

My View

My view is that in the planning area, we must have strict regard both to the legal and constitutional considerations and to wider considerations of propriety and proper conduct. Similar considerations may arise in other areas comparable to decisions on planning cases, eg hospital or school closures.

First of all, I am concerned that any system whereby Ministers could express views, and be known to have expressed them, in relation to a planning decision erodes the principle of collective responsibility for Government decisions and can cause considerable embarrassment to the Minister responsible for the decision. The principle of collective responsibility is a key component of our system of government with the important corollary that we do not conduct our internal decision-making in public. It is for this reason that "Questions of Procedure" lays down that Ministers must not take part in public representations or deputations to Ministers in respect of constituency interests.

Secondly, however, it is quite wrong in my view for Ministers to make private representations about planning cases. It would not be proper for the decision-making Minister to have regard to such representations - anything he may take into account should be known to the parties to the case - and it would not be understood how a Minister could receive such representations and not be influenced by them. By extension I believe that Ministers should not become involved in cases even at the local planning authority stage. It cannot be known at that stage which cases will come to appeal and there could always be the suspicion, if views are expressed then, that they carried undue weight in any subsequent appeal decision. This is not to say that a Minister may not pass on constituents' views with a request that they be given serious consideration, nor ask that a speedy decision be taken, but he should not in my opinion express himself a substantive view on the case.

In my view, therefore, the strictly proper approach would be one where no Ministers, whether having planning responsibilities or not, would express a view from a constituency standpoint, whether publicly or privately, on either a planning appeal or a planning application. (The only exception to this would be an appeal or an application which affected a Minister's personal interests. In these circumstances it would be wrong to deny Ministers their rights as

private citizens). I do not believe that this in any material way affects the interests of the Ministers' constituents. Planning applications and appeals are decided on the merits of the issues and the views of a Member of Parliament carry no more weight than those of anyone else.

As mentioned above, I believe the same considerations arise in all cases not just planning cases, which involve Ministerial decisions. For instance, I was recently urged by my constituents to oppose plans for a hospital closure in the area. I decided not to do so on the grounds that the matter would have to come to Ken Clarke for decision, and for me to have expressed a view would have been at odds with the principles of Ministerial conduct.

If you agree this approach, which is broadly in line with the advice quoted from "Questions of Procedure for Ministers' in paragraph 2, it will need to be disseminated to all Government Ministers to ensure uniformity of practice.

I believe that part of para 8 above applies to Members of Parliament generally, that is to say that Ministers dealing with planning cases must treat all representations from MPs, whether made publicly or privately, as of equal status, and must refer them to the parties if they are to be taken into account in reaching the decision. I intend to ask Christopher Chope to write to all English backbench MPs accordingly. Territorial colleagues may wish to arrange for similar action.

I am copying this minute to the Secretaries of State for Scotland and Wales and to Sir Robin Butler.

N R

27 April 1989

11-244

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

Roger Bright Esq
Principal Private Secretary
to the Secretary of State
for the Environment
Department of the Environment
2 Marsham Street
LONDON
SW1P 3EB

19 December 1988

Dear Roger,

PLANNING CASES IN MINISTERS' CONSTITUENCIES

Our Ministers are (no doubt like yours) involved from time to time in matters relating to planning cases in their own constituencies. In the light of one or two significant recent cases, our Ministers requested clarification of their position in relation to such cases; and the attached advice has been drawn up by the Scottish Development Department in consultation with the Scottish Law Officers.

In the course of preparing this advice, the Lord Advocate has noted that the legal issues raised are ones which should also be considered by the English Law Officers given that there could be no constitutional justification for a divergence in practice on different sides of the Border. The key point in the Scottish Law Officers' opinion on this matter is in relation to planning matters which are before the planning authority rather than before Ministers. If Ministers take up such a case in their constituency capacity, the essence of their advice is that they should not play any part, publicly or privately, in any subsequent Ministerial consideration of the case if it were submitted to the Secretary of State on appeal. If Ministers may wish to act in their Ministerial capacity on any planning case, they should make no comment about it at all.

If may be helpful to you to have as background the attached exchange of letters between the Solicitor to the Secretary of State for Scotland and the Lord Advocate.

I would be glad to know if your Ministers have any views on the guidance which we propose to put to our Ministers; and similarly if the Law Officers for England and Wales have any views.

I am copying this letter to the Private Secretaries to the Lord Chancellor, the Solicitor General, the Secretary of State for Wales and to Trevor Woolley.

Yours sincerely,

David Crawley

DAVID CRAWLEY
Private Secretary

ENC

Lord Advoc[redacted]bers
Fielden House
10 Great College Street
London SW1P 3SL
Telephone Direct Line 01-212 0515
Switchboard 01-212 7676

R Brodie Esq
Solicitor to the Secretary of State for Scotland
Room 2/59
New St Andrew's House
EDINBURGH
EH1 3TE

31 December 1987

Dear Mr Brodie

1. I refer to the letter of 24th February from your predecessor, and to your letter of 24th March. I have discussed this matter with the Solicitor-General, and this letter represents our joint view.

2. The first question raised in the papers we have been sent is whether it is proper for a Minister, who himself has no responsibilities for planning matters, to become involved in planning applications, arising in his constituency, which might in due course be the subject of an appeal to another Minister. (1)

3. The second question is whether it could ever be proper for a Minister with planning responsibilities to become involved in such an application, particularly in a case where the statute concerned provides for decisions to be made by that Minister or in his name. (2)

4. These questions are posed on both a legal and a quasi-political basis in that, while legal challenge may be avoidable, that does not close the matter. The political and public perception of Ministerial behaviour is equally important.

5. The requirement for Ministers exercising quasi-judicial functions under Acts of Parliament to be seen to be acting reasonably and fairly is amply vouched by the authorities quoted in Mr McMillan's letter. It would clearly be wrong for a Minister who might himself become involved in the planning appeal process to act in a way which might give rise to an inference that he favoured one side or the other. But we do not consider that there is any legal factor or constitutional convention which prevents a Minister who is not involved in any way in the planning process in taking up a planning matter as a constituency MP, provided that it is made clear that it is in the latter capacity that he is acting. Thus, in our view, it would neither be improper, nor would it involve any risk of successful legal challenge, for the Secretary of State for Defence, acting as a constituency MP, to take up a planning matter in his constituency.

6. The answer to the second question is, in our opinion, equally straightforward. No Minister with responsibility for planning matters and appeals should become involved in the merits of individual planning applications. Any such intervention could be used to found allegations of bias in an application for judicial review following his decision on an appeal.

7. On the other hand, so long as any Minister who had become involved in any way at an earlier stage of a planning application did not thereafter take part in the appeal process, there would be no ground on which to found an action for judicial review. The same considerations would in our view apply whether it was the Secretary of State, who has the statutory responsibility for planning matters, or another Minister to whom that responsibility had been delegated, who wished to become involved in a planning matter. The court would in our view look behind the words of the statute to what in fact occurred. Thus it would be difficult to mount a successful challenge against a decision which bore to have been made by the Secretary of State if the actual position was that the question had been considered and the decision made by another Minister.

Your letter of 12th March mentions the case of similar (though not related) planning applications arising in two constituencies, where in one the Secretary of State is acting as arbiter of the issues, while in the other he is actively supporting one of the interested parties. On cases such as this there can be no satisfactory general guidance. It is possible that the Secretary of State, by expressing himself in the latter case in an immoderate and general manner, might leave it open to a court to hold that he had so acted as to justify the inference that he had effectively shut his mind to the sort of issues which he was required to balance in a quasi-judicial manner in the former. On the other hand, it is equally possible that a public attitude in the constituency case which was expressed in temperate terms and limited to the particular circumstances of his constituency could not be said in any way to prejudice the Secretary of State's ability to judge the other matter in an impartial manner. What is necessary is that in any case the Secretary of State - or indeed any other Minister similarly placed - should not put himself into the position where it could be said that he had so committed himself to a particular general view that he could not judge similar questions arising elsewhere in an impartial manner.

While we appreciate that this advice will not provide a satisfactory general guide as to how Ministers should act in all cases, that is a necessary consequence of the nature of the problem. We are of course willing to advise on any particular question which may arise in the future.

In the case of the present Scottish Office Ministers, what would seem to be required would be that the Secretary of State should not become involved in any appeal arising out of a planning matter in which he had expressed an interest as a constituency MP, but should leave any such matter exclusively to the Undersecretary of State with responsibility for Housing and Planning. The same would apply, *mutatis mutandis*, to any planning matter arising in the Undersecretary of State's constituency.

We recognise that the advice we have given departs from the present general rule. In these circumstances it might be best if the matter were referred to the English Law Officers on the legal issues raised. There could be no constitutional justification for a divergence in practice on different sides of the border. We would further suggest consultation with other Ministers having similar responsibilities.

Yours faithfully,

Cameron of Lochbroom

CAMERON OF LOCHBROOM

DRAFT: 8 December 1988

PLANNING CASES

1. This note contains guidance on how Ministers should respond to representations about planning matters.

2. There are two important constraints on Ministers when they are invited to respond to representations about planning matters, such as planning applications, local or structure plans or planning appeals. The first is the general instruction in "Questions of Procedure for Ministers" that Ministers should not take part in any public representations (or in deputations) to other Ministers. The second is the risk, which only applies to Ministers with planning responsibilities, that in commenting on a planning matter they could be held to have prejudged the matter if it subsequently came before them for decision.

Cases before the Secretary of State

3. The instruction in "Questions of Procedure for Ministers" means that no Minister should comment publicly on any planning matter which is before the Secretary of State for decision. If therefore a Minister is invited to comment on a planning matter which is before the Secretary of State, he should decline to do so, on the grounds that it would not be proper for him, as a Minister, to comment publicly on an issue which is before another Minister for decision. The instructions in "Questions of Procedure for Ministers" add that Ministers are free to make their views about constituency matters known to the responsible Minister by correspondence or by personal interview, provided that this is not given publicity. It is therefore open to a Minister to speak or write to the Minister dealing with the planning issue about it, but no publicity should be given to these exchanges.

4. The approach set out in the previous paragraph should also be followed where the planning issue about which a Minister is approached, while not currently before the Secretary of State for decision, is certain, or extremely likely, to come before him for decision in the near future. For example alterations to structure plans require the approval of the

Secretary of State, but are the subject of extensive public consultation before they are formally submitted to him. It would be prudent for Ministers to avoid being drawn into controversy about proposed structure plan alterations during this consultative stage. Equally there is a strong possibility that applications for very large developments, or for substantial developments in sensitive areas such as Sites of Special Scientific Interest, will be called in by the Secretary of State or referred to him for decision, and Ministers should if possible avoid commenting publicly on these applications, even when they are still at the stage of being considered by the planning authority.

Cases not before the Secretary of State

5. In the case of planning matters which are not before the Secretary of State for decision, and not obviously likely to come before him for decision as described in the preceding paragraph, Ministers who do not have planning responsibilities are free to respond as they think fit to representations and can if they wish take up cases with planning authorities on behalf of their constituents. If for any reason the matter in question had subsequently to be referred to the Secretary of State, the procedural guidance in the preceding section of this note would apply and Ministers should then refrain from further public comment on the matter.

6. It is also open to Ministers with planning responsibilities where a planning issue arises in their constituency which is not before them for decision, or likely to come before them, to take up the case with the planning authority on their constituents' behalf and make public statements about the case. If a Planning Minister chooses to take up such an issue, and the case is subsequently referred to the Secretary of State, the Planning Minister would not be able to play any part, publicly or privately, in any Ministerial consideration of the case. He would not, for example, see the official papers relating to the case. It is desirable, to avoid any subsequent allegations of impropriety or bias, for a Planning Minister choosing to take up a case with the planning authority to make it clear from the outset that he would take no part in any Ministerial consideration of the case which might be necessary. In writing to the planning authority, therefore, Planning Ministers might include a sentence on the following lines:-

"I am writing this letter in my capacity as the constituency Member of Parliament, and if for any reason this case is referred to me as Secretary of State/to the Secretary of State for decision, I would take no part in the Ministerial consideration of the case."

7. Where Planning Ministers decide not to take up a planning issue about which they have received representations, they can, if the matter falls into the category described in paragraph 4 above, defend that decision on the basis that the matter is one they might eventually have to consider in their Ministerial capacity. They should not however use that defence where the case is not in fact likely to be referred to them for decision. They would be open to criticism if they willingly took up some planning matters with the planning authority on their constituents' behalf despite their Ministerial responsibilities, but declined to involve themselves in others allegedly because of their Ministerial responsibilities.

Ministerial correspondence

8. In the light of the guidance above, Ministers who receive letters or other representations from constituents about planning matters should consider first whether the issue is currently before the Secretary of State for decision or likely to come before him, as described in paragraph 4. If so, they should decline to comment on it. If not, they may on the one hand take the case up with the planning authority in their constituency capacity, in which case Planning Ministers may wish to use the form of words in paragraph 6 above. On the other hand they may decline to become involved, in which case they should avoid using their Ministerial responsibilities as the reason. Ministers may in many cases be able to reach their own decision on whether to take up a planning issue with the planning authority, without reference to SDD, but where they require further background in order to reach a decision the correspondence should be green foldered for advice from the Department.

Solicitor's Office
New St Andrew's House,
Edinburgh EH1 3TG

Tel: 031-244 5247

The Rt Hon Lord Cameron of Lochbroom QC
Lord Advocate
Fielden House
10 Great College Street
LONDON

24 February 1987

Dear Lord Advocate,

I have been asked by Mr Ancram to refer to you a matter affecting him and his constituency but which may have implications for other Ministers in the Scottish Office and for Ministers in other Departments.

Mr Ancram as you know is the Junior Minister in the Scottish Office with the responsibility for planning under the Secretary of State. Until now the Scottish Development Department has operated on the basis - which Ministers have always accepted - that because of their Ministerial responsibilities the Secretary of State and Mr Ancram are debarred from offering comment or making representations as constituency members on virtually any planning matter. The effect of this is that when a constituent writes to the Secretary of State or Mr Ancram on a planning matter the letter is Green Foldered and sent to the Planning Division to provide a reply for the Minister's signature. Such replies usually state that the Minister can make no comment on individual cases.

The cases which come to the Department fall for the most part into three categories. In the first category are people who are dissatisfied because they have been refused planning permission. In the second category of case are people writing in support of, or more often in opposition to, a development which is the subject of a current planning application and seeking to enlist the Minister's support. The third, and probably the most common, category of case comprises constituents complaining about someone else having been granted planning permission.

The first category of case does not create any problem. The Minister can write to the constituent advising him of the right of appeal and that the Minister cannot comment on the merits of the case for fear of prejudice. It is accepted that there is little scope for relaxing the constraints in this category of case, and from the Minister's point of view it seems to be the least difficult because the Minister at least has something to say to the correspondent and the correspondent has some hope of redress. With regard to the second category of case the Minister on occasion would like to be in the position of being able to write a short letter to the planning authority drawing their attention to the representations which he has received and asking that the planning authority take them into account. The Minister might in fact wish to go further and actually lend some support to the constituent's representations. The third category of case

the least likely to give rise to questions of prejudice although it is a possibility that this could arise if a closely parallel application were subsequently to arise. The Minister would wish to be in a position on occasion to pass on his constituent's complaints to the planning authority and to go further if he wished and express doubts or criticism about the decision taken in the case concerned. In one recent case in Mr Ancram's constituency he had taken the trouble to go and look at the site and had formed his own view and would have liked to have been able to comment to the planning authority.

For your information I attach copies of minutes exchanged between the Department and my officer:-

Graham to Barclay 27 October 1986 (Annex 1)
Barclay to Graham 30 October 1986 (Annex 2)
Graham to Barclay 24 December 1986 (Annex 3)
Barclay to Graham 9 January 1987. (Annex 4)

Also attached is a copy of a Submission Graham to PS/Mr Ancram dated 20 January 1987 (Annex 5)and a minute from PS/Mr Ancram to Graham dated 22 January 1987 (Annex 6).

For your additional information I also enclose a copy of the Opinion of Lord Davidson in the Woodhall Mains Farm case which is referred to in the minutes (Annex 7).

You will note that I have taken the view that while it might be possible in particular cases for a Minister to comment in a way which would not lead to a successful challenge on the basis that the Minister had shown bias, that would be a departure from a long-standing convention and might have the effect of bringing into disrepute the appeal system.

At the present time more than 90% of planning appeals are automatically delegated for the decision of a reporter in terms of the powers contained in Schedule 7 of the Town and Country Planning (Scotland) Act 1972. In practice in most of these cases there is little likelihood of the Secretary of State recalling jurisdiction although the power to do so exists in paragraph 3(1) of Schedule 7.

There are essentially two aspects of the problem although at times the two must necessarily be inter-related. Firstly there is the purely legal question as to the effect of any change in present practice on the need for a Minister who has quasi-judicial functions to be seen to be acting in accordance with the rules of natural justice by bringing an unbiased and independent mind to his consideration of any matter which come before him in that capacity. Secondly there is the more general question of the responsibilities of Ministers and any convention which may fetter them in their actings as constituency Members.

I do not think that it is necessary to refer you to the legal authorities for the proposition that the Minister must act in accordance with the provisions of natural justice nor to the long line of authorities on

comments on ministerial or government policy since what is involved would be not the Minister stating Government policy but commenting on individual planning applications. It is, however, worth keeping in mind what Lord Thankerton says about bias in -

Franklin v Minister of Town and Country Planning [1948] AC 87

"The proper significance of the word "bias" is to denote a departure from the standard of even-handed justice which the law requires from those who occupy judicial office, such as an arbitrator".

I would refer you to what Lord Davidson said at pages 14/15 of his judgement in the Woodhall Mains Farm case and in particular:-

"One can envisage the possibility of a Minister expressing support for a particular policy with such a degree of intransigence and intemperance as to betray a mind not only closed against reasoned argument but unable to weigh up proved facts in a fair way. If subsequently such a Minister were charged with the duty of exercising a quasi-judicial function in relation to an appeal to which that policy related, there would be obvious force in the argument that he had disqualified himself by bias from so acting."

In view of this it has to be accepted that legally it would be possible for the Minister to take steps in certain of the categories of case mentioned above which would not lead to a successful challenge on the basis that the Minister had not come to consider the matter with an unbiased and open mind. For example in the second category of case referred to where the Minister receives from his constituent a letter supporting or opposing a development which is the subject of a planning application and seeking the Minister's support it would be possible for the Minister simply to pass these comments to the planning authority. This of itself should not show bias but if he were to indicate his support for or opposition to the comments a contrary view could be taken. There is a danger, however, that the planning authority to whom the Minister simply passed the comments might read more into his intervention than was intended and that they might assume that his support was implied. Also there is a danger that others may think similarly and assume that support is intended. This is particularly the case if the Minister as is proposed only intervenes in some of the cases referred to him since the mere fact of doing so only in some cases would seem to imply support for the constituent's views. In that context reference is made to a recent case which although dealing with bias as respects a sheriff is of some interest:-

Bradford v McLeod 1986 SLT 244

The Lord Jutice Clerk (Ross) at page 247F indicates that he is "entirely satisfied that what are commonly referred to as the rules of natural justice apply to criminal trials in this country". At G he adopts the words of Eve J in

Law v Chartered Institute of Patent Agents [1919] 2 Ch. 276

> "Each member of the council in adjudicating on a complaint thereunder is performing a judicial duty, and he must bring to the discharge of that duty an unbiased and impartial mind. If he has a bias which renders him otherwise than an impartial judge he is disqualified from performing his duty. Nay, more (so jealous is the policy of our law of the purity of the administration of justice), if there are circumstances so affecting a person acting in a judicial capacity as to be calculated to create in the mind of a reasonable man a suspicion of that person's impartiality, those circumstances are themselves sufficient to disqualify although in fact no bias exists."

The Lord Justice Clerk states that in his opinion this also represents the law in Scotland upon the matter. While the comments in Bradford relate to a person who is acting in a purely judicial manner they could well be applied also to a person who is acting in a quasi-judicial manner.

At page 16 of the Judgement in the Woodhall Mains Farm case you will note that Lord Davidson obviously took account of the above since he put himself in the position of a reasonable man in considering Mr Rifkind's letters and finding no basis for suspecting that Mr Rifkind had disqualified himself from discharging his quasi-judicial function properly and giving a fair consideration to the petitioner's appeal. In view of this and of the Scottish Court's acceptance of what Eve J. says it is clearly relevant to consider how others would look on the intervention of the Minister. It is also worth bearing in mind Lord Thankerton's reference to even-handedness.

The second and non-legal aspect of the matter is the convention that Ministers do not become involved at this level. Clearly it is more difficult to find information or arguments on this. I understand that when Ministers, including Junior Ministers, are appointed they receive some guidance setting out the conduct which is required of them. I do not know what this covers and it may in fact only cover guidance as to financial matters.

Sir Ivor Jennings in the 3rd Edition (1959) of Cabinet Government quotes Prime Minister Attlee on 3 February 1949 (460 H.C. Deb. 1853-4) as having said "... But it is a mistake for Ministers or senior officials to deal with individual cases other than through the regular machinery of the department...".

On the legal aspects it is, as I have suggested, possible to look at individual cases to determine what action the Minister could take as a constituency member without raising the possibility of bias if he is required subsequently to deal with the matter. The danger, however, is that although there might not be bias in the legal sense and a challenge alleging bias could therefore be successfully defended, there may always be a suspicion of bias where the Minister becomes involved in matters for which he has ultimate responsibility.

Clearly in the present case the Minister feels strongly on the matter and one can appreciate the desirability of his being free to some extent to respond constructively to certain important matters arising in his constituency, on which he is likely to be pressed. It is for this reason that I seek your views. Obviously the safest course of action in legal

ms is that which has been followed up till now in that if the Minister does not become involved in the matter there can be no question of or even suspicion of bias. Your advice is requested as to whether current practice should be adhered to, or on the extent to which you would consider it open to Ministers - including those with no direct responsibility for the functions in question - to go further. If you feel able to support some relaxation of the kind desired, you may wish to advise also on any special restrictions which should apply in the case of a Minister responsible for the particular function in question, as is the case here.

I am sending a copy of this letter and the attached papers to the Solicitor General and to the Legal Secretary.

Yours sincerely

A A McMILLAN
Solicitor

R2814

Lord Sainsbury
of Preston Candover
Chairman & Chief Executive

J Sainsbury plc
Stamford House
Stamford Street
London SE1 9LL

01-921 6000

Telex 264241

SAINSBURY'S

27th April, 1989

Dominic Morris Esq.,
10, Downing Street,
London,
SW1A 2AA

Needs running back to 1600

Dear Dominic Morris

Thank you for your letter of 24th April. I was pleased to learn that the Prime Minister would like to see us and that 10th July is possible. I understand all members of the Group will be available to attend on that date. I note that the suggested time for the start of the meeting is 3.30pm. If it were possible to advance the time to 3pm, it would be helpful, but I would not wish to ask for a change of time if it would make it difficult for the Prime Minister's arrangements.

Yours sincerely

Robert Sainsbury.

DTI.

Cle sec
cc DOE

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary 24 April 1989

We spoke a week or two ago about the date of the next meeting of the Sainsbury Group. I have now had a chance to talk to the Prime Minister and she has confirmed that she would very much like another chance to talk to the Group in the summer.

The diary is as ever difficult but the afternoon of 10 July would be possible. If that would be convenient for the Group may I suggest the meeting begin at 1530. We would if you wished arrange for a room to be set aside for half an hour beforehand so that members of the Group could meet to have a prior discussion.

Perhaps you could let me know if this suits you.

(D. C. B. MORRIS)

The Lord Sainsbury of Preston Candover

MBM

RESTRICTED

SCOTTISH OFFICE
WHITEHALL LONDON SW1A 2AU

The Rt Hon John Wakeham MP
Lord President of the Council
Privy Council Office
68 Whitehall
LONDON
SW1A 2AS

19 April 1989

Dear John,

CHARGING FOR PLANNING APPEALS

Nicholas Ridley has copied to me his letter of 28 March, and I have seen the Prime Minister's comments recorded in her Private Secretary's letter of 10 April.

I have to say I remain uneasy about these proposals. Under our present policy an applicant for planning permission pays half the costs of processing his application, and if he is unsuccessful and appeals he is not charged. Nicholas now proposes that the applicant should pay the full costs of processing his application, and if unsuccessful should pay the full costs of processing his appeal, including the extra costs of an inquiry even if he does not request one. If the application is a large one, the proposed scale of charges for appeals, and I assume the higher scale of charges envisaged for applications, will require the applicant to pay rather more than the costs of processing, so that the charges for the smallest applications can be held well below costs. These proposals seem to me to be a substantial shift of policy in the direction of increasing burdens on developers, which needs fuller justification than the draft consultation paper provides. They do not sit comfortably with the principle which we regularly commend to planning authorities that an applicant is entitled to planning permission unless there are good reasons for refusing it. As the Prime Minister has pointed out, they offer no improvement in the appeals system in return, and we are not in any case in a position to offer significant improvement in the processing of applications by local authorities.

In Scotland, because of the smaller size of our appeals system, the unit which is our equivalent of the Planning Inspectorate is not among my early candidates for agency status. Since it will therefore remain subject to a gross running costs regime, I cannot say that the proceeds of charges will be used to speed up the handling of appeals, and I cannot make the link between the introduction of charges and forthcoming improvements in the system which the Prime Minister wishes to see

included in Nicholas's consultation paper. I am in any case reluctant to take any steps which might discourage private housebuilding and other forms of development; the proposals could add up to 2 per cent to the cost of a 2-bedroom house in Glasgow. This leads me to the conclusion that in Scotland we have more to lose than to gain at present from the introduction of charges. The circumstances in England are clearly different, and I am content for Nicholas to proceed to issue his consultation paper.

I am copying this letter to the Prime Minister, to the other members of H Committee, Patrick Mayhew, David Young and Sir Robin Butler.

Yours ever,

Malcolm

MALCOLM RIFKIND

Local Govt - Planning PR 6.

SWYDDFA GYMREIG
GWYDYR HOUSE
WHITEHALL LONDON SW1A 2ER
Tel. 01-270 3000 (Switsfwrdd)
01-270 (Llinell Union)
Oddi wrth Ysgrifennydd Gwladol Cymru

WELSH OFFICE
GWYDYR HOUSE
WHITEHALL LONDON SW1A 2ER
Tel. 01-270 3000 (Switchboard)
01-270 (Direct Line)
From The Secretary of State for Wales

The Rt Hon Peter Walker MBE MP

18 April 1989

CHARGING FOR PLANNING APPEALS

Thank you for copying to me your letter of 28 March to John Wakeham.

As I indicated in my letter of 27 June 1988 I am not convinced of the justification for introducing planning appeal charges in Wales. Your consultation paper does not remove my unease about the merits of charging or the desirability of adding even slightly to the costs of business and industry or the bureaucracy needed to run the scheme.

I have recently taken steps to encourage better planning performance by local authorities in Wales and to improve the efficiency of the Welsh Office in dealing with planning cases. Neither of these will be enhanced by charging for planning appeals.

As I see it, the only reason for charging lies in transferring the cost to the user. This is no doubt a sound general principle elsewhere but I need very strong justification indeed to place additional charges no matter how small on enterprising people - more often than not I suspect Government supporters - who want to better their homes or their business and are prepared to challenge local decisions to secure their ends.

I have concluded therefore that for the present, I shall not issue a parallel consultation paper in Wales.

I am copying this to the Prime Minister, other members of H Committee, Patrick Mayhew, David Young and to Sir Robin Butler.

The Rt Hon Nicholas Ridley MP
Secretary of State for the Environment
2 Marsham Street
LONDON SW1P 3ER

LOCAL GOVT: Planning Pts.

cst.ps/7jm17.4/lets

UNCLASSIFIED

cc PO

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Nicholas Ridley AMICE MP
Secretary of State for the Environment
Department of the Environment
2 Marsham Street
London
SW1P 3EB

17 April 1989

Dear Secretary of State,

CHARGING FOR PLANNING APPEALS

You copied to members of H Committee your letter of ~~28~~ May March to John Wakeham seeking agreement to the issue of a consultation paper on charging for planning appeals.

I agree with you that the level of fees necessary to recover actual costs would be unlikely to have any significant effect on the number of appeals arising. Nevertheless I accept that such a system ought to produce benefits and should lead to a reduction in the time taken to process appeals. I am therefore content for the proposed consultation paper to issue.

On the basis of the proposal it is likely that the receipts would fall to be classified as revenue, but officials will need to investigate the implications of the details.

I am copying this letter to the Prime Minister, other members of H Committee, Patrick Mayhew, David Young, and Sir Robin Butler.

Yours sincerely,

P. Walker

pp JOHN MAJOR

[Approved by the Chief Secretary and signed in his absence.]

LOCAL CAT: Planning Pt6.

R1414

2 MARSHAM STREET
LONDON SW1P 3EB
01-276 3000

My ref:

Your ref:

Dominic Morris Esq
Private Secretary to
The Prime Minister
10 Downing Street
LONDON
SW1A 2AA

14 April 1989

DL

B/F 17/5

B/F wed 31/5

Dear Dominic,

BENSON BUILDING

I attach a note setting out the current state of play here. Contrary to what I had first been led to believe, the HBMC's London Advisory Committee have not rejected the application for listed building consent outright. We now wait to see what happens on 17 April when HBMC will consider the Committee's recommendation.

Yours

A D RING
Private Secretary

BENSON BUILDING

Current Position

The London Advisory Committee (LAC) of HBMC considered the application at their 7 April meeting. They concluded that the application proposals were unacceptable in their present form. Rather than reject the application outright, however, they recommended that it be put into abeyance to see if HBMC officials could work out acceptable proposals with the applicant. This recommendation will need to be ratified by the HBMC itself on 17 April. It is possible, but not usual, for HBMC to take a different view from its LAC.

Subsequent Procedure

1. An applicant may appeal against non-determination of an application after eight weeks (or such longer time as may be agreed with the local planning authority) of the lodging of the application. The appeal should be lodged within 6 months of the end of the 8 week (extended) period.

2. If HBMC direct Islington Council to refuse the application and they are unwilling to accept the direction, Islington can formally notify the Secretary of State of the application. It would then be open to the Secretary of State to require the application to be referred to him for decision. If reference to the Secretary of State was not required, HBMC's direction would stand and Islington would be obliged to notify the applicant accordingly.

3. If Islington accept a direction from HBMC to refuse the application and formally do so, it is again open to the applicant to appeal to the Secretary of State.

4. It is also open to the Secretary of State to direct that any application be referred to him instead of being dealt with by a local planning authority. He would need to have clearly justifiable grounds for doing so.

CC PO

RESTRICTED

dti

the department for Enterprise

The Rt. Hon. Tony Newton OBE, MP
Chancellor of the Duchy of Lancaster and
Minister of Trade and Industry

Rt Hon Nicholas Ridley MP
Secretary of State
Department of the Environment
2 Marsham Street
LONDON
SW1P 3ER

Department of Trade and Industry

1-19 Victoria Street
London SW1H 0ET

Switchboard
01-215 7877

Telex 8811074/5 DTHQ G
Fax 01-222 2629

Direct line 215 5147
Our ref
Your ref
Date 13 April 1989

Dear Nick

file with DM

CHARGING FOR PLANNING APPEALS

Thank you for copying to me your letter of 28 March to John Wakeham enclosing your consultation paper on charging for planning appeals.

I am concerned that the paper does not establish a direct link between the introduction of charging for appeal and an improvement in the delivery of the service to business. As you will recall, both Kenneth Clarke, when he was Chancellor of the Duchy of Lancaster, and David Young made their agreement to the principle of charging conditional on it leading to a substantial reduction in the time taken to process appeals. Indeed I know that John Sainsbury and other members of his Group attach considerable importance to this point.

I appreciate the pressures the Planning Inspectorate is facing at present in keeping pace with the present level of appeals. However, if business is to be reconciled to the principle of charging, it will expect to receive something in return. The consultation paper needs to indicate what that is. Equally, I am surprised that, despite Kenneth Clarke's letter, you are not proposing to circulate a draft Compliance Cost Assessment (CCA)

BRYABL

dti

the department for Enterprise

with the consultation paper, which would seek to weigh the costs and benefits of a charging system, including, of course the contemplated improvements in the quality of service. I would only be content for the paper to issue, if both these points are adequately covered.

I have a number of other comments:

Paragraph 16 - I am concerned that some local planning authorities may seek to abuse their power to call for public enquiries in the hope that the extra cost would deter the appellant. While I note you are proposing to award costs against a local planning authority which has acted unreasonably, I would prefer it if your Department had the power to adjudicate on whether a public inquiry was warranted in such cases, just as you do on the question of whether a planning application needs to be supported by an environmental assessment.

Paragraph 21 - It seems to me to be quite unfair to charge for Section 37 appeals when in most cases they result from failures on the local planning authority's part to consider the planning application in time. The fact that under your proposals local authorities will be able to recover the full cost of handling such applications may well increase the sense of injustice felt by the appellant. I suggest that such appeals should only be charged for, if the planning authority can show that the delay is caused by the applicant.

I have no comments on the proposed scale of charges which seem to strike a fair balance between the need to apportion costs according to how they are incurred and the importance of not penalising the small developer. However, I should like to reserve my position on this and the other points in your paper pending the outcome of consultation and I should be grateful if your officials would keep in touch with mine about the responses from business.

I am copying this letter to the Prime Minister, John Wakeham, other members of H Committee, Patrick Mayhew, David Young and Sir Robin Butler.

Yours ever,
Tony

TONY NEWTON

BRYABL

LOCAL GOVT. Planning Pub.

RESTRICTED

ccPU

DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB
01 276 3000

My ref C/PSO/4630/89

Your ref

The Rt Hon Nicholas Ridley MP
Secretary of State for the Environment
Department of the Environment
2 Marsham Street
LONDON
SW1P 3EB

16pm

11 APR 1989

Dear Nicky.

offlet

Thank you for sending me copies of your letter of 28 March to John Wakeham and your proposed consultation paper on "Charging for Planning Appeals".

I indicated in my letter of 14 July, when you first put your proposal to "H" Committee, that I saw no serious issues arising for my own Department. Having looked at the system of charging, which has now been worked up in some detail in the consultation paper, I have no reason to change my view. For my part, I am content for the paper to be issued.

I am sending copies of this letter to the Prime Minister, John Wakeham and other colleagues on "H" Committee, David Young, Patrick Mayhew and Sir Robin Butler.

Yours

Paul

PAUL CHANNON

RESTRICTED

RESTRICTED

File EAM

dc PU.

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

10 April 1989

Dear Alan

CHARGING FOR PLANNING APPEALS

The Prime Minister has seen a copy of your Secretary of State's letter of 28 March to the Lord President. She welcomes the change in the basis of the fee structure since the question of charging was considered at 'H' Committee last year and is generally content with the consultation document, subject to one addition. Nowhere in the document does there appear to be any indication that full cost recovery will be matched by any improvement in performance in terms of time taken to handle planning appeals. In this respect the document lays itself open to criticism. The Prime Minister recognises that at this stage it may not be right to specify particular targets for performance improvement, but the change to agency status and computerisation are by definition designed to improve efficiency and she feels that something ought to be made of this early on in the section on charging.

I am copying this letter to the Private Secretaries to members of 'H' Committee, Michael Saunders (Law Officers' Department), Neil Thornton (Department of Trade and Industry) and to Sir Robin Butler.

Yours ever

Dominic

DOMINIC MORRIS

Alan Ring, Esq.,
Department of the Environment

RESTRICTED

KIC

DM
How long do you need for this?
I have pencilled in 1530 hrs on Monday 10th July.
Amanda 14/4

PRIME MINISTER

Lord Sainsbury telephoned me to ask when you wanted the next meeting of the Sainsbury Group. Last year you left it that June or July seemed sensible, on the basis that the work on the Planning Bill would by then be at the right stage. The Planning Bill is first reserve for next session's legislative programme so Mr Ridley does not yet have drafting authority.

Prefer to have the next meeting of the Sainsbury Group after the Summer Recess when the Bill's future is clearer?

or

to try and fix a date in June/July as originally planned.

Yes pls

Derek Ken
Duty Clerk

Dominic Morris
10 April 1989

Preston Candover

RESTRICTED

PRIME MINISTER 7 April 1989

CHARGING FOR PLANNING APPEALS

Nicholas Ridley has circulated a consultation paper proposing a scale of charges for planning appeals. He would like to issue this before the end of April.

The Sainsbury Group have argued for a system of charging. They believe that this would help to fund more inspectors and speed up the appeal process.

The Proposals

- The aim is to recover the full cost to the Department of the Environment of processing planning appeals (currently £16m per annum).

- Different charges will apply depending on the appeal procedure. Written appeals will be the cheapest, long inquiries the most expensive.

- The scale of charges will in addition reflect the size of development. Householders adding a granny wing, or small developers building one or two houses, will pay less than a developer building on 5 hectares of land.

Comment

The proposed scale of charges is a reasonable way of recouping the costs of the appeal system. An individual will pay £100 for a written appeal. A small builder will pay £200 for one house, £400 for 2-5 houses. Such charges are not onerous compared with the profit to be made from enlarging or building houses. Relating the charge to the size of development will be widely seen as fair.

RESTRICTED

Although the principle of charging may be attacked by some, charges are already levied for planning applications. Nicholas Ridley is considering increasing these to recover 100% of costs instead of the present 50%. It is difficult to see any real grounds on which charging for applications is acceptable, but charging for appeals is not.

But there is one important respect in which the paper will be criticised by Sir John Sainsbury and others. It says nothing about improvement in the time taken to handle appeals. Kenneth Clarke (in DTI) stressed the importance of linking charges with improvements to the system when he agreed in principle to a consultation paper last June.

Conclusion

The charging proposals require primary legislation. At present the Planning Bill is first reserve for the 1989-90 session, but it may well not become law before the summer of 1991.

Nicholas Ridley announced last December that the Planning Inspectorate was being considered as a possible executive agency. This is likely to have happened by 1991. Most people believe that an agency would operate more efficiently than the present arrangements.

Department of the Environment are planning to computerise large areas of their work, including progress-chasing in the Inspectorate. This is a lengthy project, but some fruits should be beginning to emerge in 1991.

In sum, since the charging proposals are unlikely to come into effect before the summer of 1991, it should be possible to say something in the consultation paper about improvements in the system which will accompany charges.

Recommendation

- Agree the principle of issuing a consultation paper on charging; and the system of fees proposed.

- But ask that the paper say something about proposals to improve the speed with which appeals are handled eg agency status and computerisation.

CAROLYN SINCLAIR

EAMARO

PRIME MINISTER

CHARGING FOR PLANNING APPEALS

Mr Ridley foreshadowed the attached consultation document (Flag A) at last summer's meeting of the Sainsbury Group. At that time he was proposing a flat rate fee structure which you were concerned would bear unduly heavily on the smallest builders and developers.

His revised proposals in the consultation document go a long way to meeting your point. He now proposes to relate the charge to the size of development, starting with a modest £100 for the householder changing their own house, in a sliding scale up to £4,000 for a development involving 51 or more houses. This is welcome.

As Carolyn Sinclair points out in her note (Flag B), however, nowhere in the consultation document is there any indication that full cost recovery will be matched by any improvement in performance. DoE are understandably cautious about what they can deliver on performance improvements but the moves towards agency status and computerisation must produce some improvement. I agree with Carolyn that the document would be less open to criticism if it made something of this.

Agree that Mr Ridley may issue the consultation document later this month, subject to inserting a paragraph early on about the possibilities for improvement in the time taken to handle appeals?

DOMINIC MORRIS
7 April 1989

RESTRICTED

2 MARSHAM STREET
LONDON SW1P 3EB
01-276 3000

My ref:

Your ref

The Rt Hon John Wakeham MP
Lord President of the Council
Privy Council Office
68 Whitehall
LONDON
SW1

28 March 1989

Dear Lord President,

I wrote to you on 6 June last year about my proposal to charge for the processing of planning appeals. Your reply of 28 July conveyed H Committee's agreement to my preparing a consultation paper which should be cleared with colleagues before issue. That consultation paper is now enclosed. I would like to issue it before the end of April and would be grateful for colleagues' comments by 14 April.

Since the summer, officials have analysed the costs of appeals and have kept their Scottish and Welsh counter-parts in close touch with their work. My conclusions are:-

i. at current prices the annual cost to the Department of processing planning appeals is in the region of £16m. The main component of this is the Planning Inspectorate; remaining parts are the nine Regional Offices and central support services (eg lawyers, personnel management). The figure includes full staff costs, overheads and accommodation;

ii. the cost to the Department of processing an appeal depends only to a small extent on the size of the development proposal and primarily on the procedure used: a typical appeal dealt with by written representations costs about half as much to process as a typical case determined following a public inquiry;

iii. it would therefore be a reasonably accurate reflection of the way costs fall to make a flat-rate charge of (on present costs) about £500 for written representations appeals, about £800 for an informal hearing and about £1,000 for any inquiry appeal (with a supplementary fee for any inquiry case which exceeds 2 days) without differentation by the nature or scale of the development. Such an approach would, however, be perceived to bear heavily on the householder and the small businessman, while being scarcely significant to the large developer;

iv. I have concluded therefore that the best fee scale will be one that reflects the type of procedure but is also clearly related to the scale of the proposed development. An illustrative tariff of charges on this basis is shown in

paragraph 14 of the draft consultation paper enclosed. It would entail, for written representations cases, a £100 fee for householder development, £200 for development involving one house, and then a scale for groups of units of development - up to a maximum of £4,000 for development involving 51 or more houses, or more than 1,125 sq metres floorspace, or 5 hectares of land.

Colleagues or their officials have raised some points in correspondence since my 6 June letter. It seems to me to be right to go for full cost recovery for reasons of accountability and sound public administration; the level of fee, even at the top of the scale, will not be large in relation to the overall cost of the development in question. As a consequence I would not expect the fees to result in a significantly lower number of appeals. They will, however, make the would-be appellant think a little more carefully before embarking on an appeal and should therefore have at least some effect on numbers. I appreciate that a local planning authority may insist on an inquiry being held when the appellant would prefer to follow the written representations procedure, but I believe that the appellant should nevertheless pay the inquiry fee, since the costs result from his taking his proposal to appeal. He will, however, be able to obtain an award of costs against the authority if it has been unreasonable in insisting upon an inquiry.

There may be some concern that the proposal could be seen as "charging for justice". To my mind, however, there is a most important distinction to be made between planning appeals and litigation in the Courts, which justifies different treatment. In Court litigation the decision rests solely on matters of fact or law; with planning appeals an assessment of the planning merits of the proposal is also involved. This is a matter of judgement additional to facts and law on a par with the initial application, for which charging has been in place since 1981 and is now widely accepted. The basis of my proposals - full recovery of the costs of processing appeals - will transfer the cost of the appeals process from the general taxpayer to the user of the service. My Department is pursuing other measures further to improve efficiency and effectiveness and to enhance the quality of the service.

In my letter of 6 June I mentioned that I intended to accompany proposals to charge for appeals with a major simplification of the scale of fees for planning applications and of the arrangements for increasing those fees annually, but did not propose to increase application fees' cost recovery beyond the present target of 50% of total costs. Since we are proposing 100% cost recovery for planning appeal charges, it seems unjustifiable any longer to retain 50% recovery for application fees. Several MPs and local authorities have argued that authorities should be able to recover more of their costs and, contrary to my view last June, I now think they are right and that, even though we have said in the past that application fees are intended only to contribute to the costs of handling, I believe a simpler scale and 100% recovery are wholly justifiable goals. Accordingly, paragraph 5 of the draft consultation paper contains a passage trailing such an option.

I am sending copies of this letter to the Prime Minister, other members of H Committee, Patrick Mayhew, David Young and Sir Robin Butler.

Yours sincerely

NICHOLAS RIDLEY
(Approved by the Secretary of State and signed in his absence)

RESTRICTED

CHARGING FOR PLANNING APPEALS

1. This consultation paper invites views on the proposition that the Department of the Environment should charge appellants for the processing of planning appeals. It relates primarily to appeals under Section 36 of the Town and Country Planning Act 1971 but reference is also made to appeals against refusal of listed building consent (paragraphs 22-26) and against enforcement notices and certain other kinds of planning appeal (paragraphs 27-37).

The development control system and planning appeals[1]

2. Nearly 500,000 planning applications a year are dealt with by local planning authorities in England. About 83% of local planning authority decisions result in planning permission being granted. Of those applicants refused permission only about 30% appeal to the Secretary of State; the other 70% may choose to amend their proposals and resubmit a modified scheme to the local planning authority, or to adopt an alternative proposal (having perhaps submitted applications for several different schemes) or they may simply abandon their proposals.

3. The Government believes that local authorities should have the primary responsibility for development control decisions. 98% of all planning permissions are granted by local planning authorities and less than 2% by the Secretary of State or his

---

[1] In this paragraph and in the remainder of the paper "planning appeals" refers to appeals under section 36 of the 1971 Act against a local planning authority refusal of planning permission; and includes appeals under section 37 resulting from a local planning authority failing to decide an application within the statutory period.

Inspectors following an appeal. There are often benefits to both the applicant and the local authority in negotiating modifications to a scheme which would make it acceptable rather than resolving the matter at appeal. The Government wishes to encourage developers and local planning authorities to resolve their differences by negotiation whenever that is possible: only where there is no prospect of differences being resolved should an applicant need to resort to appeal.

4. A proportion of planning applications raise complex issues requiring detailed investigation and consideration and involving substantial expenditure of time and resources by local planning authorities. More than 40% of all applications are for development by householders, however, and all but about 5% are for other types of minor development. It will often be possible for local planning authorities to establish policies or guidelines for dealing with similar types of development proposal within their area. Not surprisingly the proportion of appeals involving larger or more complex developments is higher: householder development accounts for only about 11%, and almost 15% of appeals involve major development. By contrast with local authorities' procedures for dealing with the more routine types of planning application, each appeal to the Secretary of State not only entails a comprehensive assessment of the circumstances but also must be conducted according to a strict set of rules and procedures which are defined by statute. For these reasons the appeals procedure tends to be more elaborate and costly.

Charges

5. The principle of a charge for the processing of a proposal to develop or use land was established in 1981 with the introduction of fees for planning applications. The Government is considering bringing forward new proposals to simplify the scale of fees for planning applications and to increase the proportion of local authorities' costs recovered through fees.

6. In 1987/88 the Department of the Environment received some 22,500 planning appeals. This was 8,800 more than in 1983, an increase of 64%. About 18,500 appeal decisions were issued last year, an increase of 65% over 1983. 3,173 appeals were withdrawn before a decision was issued. The increased volume of appeals represents a considerable burden on the taxpayer.

7. There is a significant public expenditure cost in processing planning appeals. At current prices the annual cost to the Department of the Environment is in the region of £16 million. The Government attaches considerable importance to the efficient handling of appeals, and believes that this expenditure should be financed by those who use the service provided. This will introduce an element of market discipline on both the appellant and the Department.

8. It has sometimes been suggested that the costs incurred in an appeal should "follow the event", as normally happens in litigation in the Courts. But planning appeals which generally turn on an assessment of the planning merits of development on a particular site are not closely comparable to litigation where the judgement relates to matters of fact and law. The justification for costs following the event in the Court is that a party who has been compelled to litigate in order to enforce a legal entitlement, or to defend himself against a claim which is wrong in law, should be able to obtain his reasonable costs from the unsuccessful party. The Government has therefore concluded that costs in planning appeals should continue to be awarded only when one party has behaved "unreasonably" in the appeal proceedings, and the other party has incurred expenditure unnecessarily as a result of that unreasonable behaviour, and that fees should be charged to recover the costs to the Department in dealing with planning appeals.

Appeal procedure

9. Most planning appeals (97%) are determined by an Inspector appointed by the Secretary of STate for the Environment. A small proportion (3%) are decided, on the basis of an Inspector's report, by the Secretary of State.

10. An appeal which is to be decided by an Inspector is determined either following an exchange of written representations by the parties (appellant, local planning authority, third parties - eg residents or amenity groups) or following a public local inquiry. In some cases, by agreement with the principal parties, the inquiry may take the form of an informal hearing. The overwhelming majority of all appeals (86%) are decided by an Inspector on the basis of a site visit and an exchange of written representations. Appeals decided by the Secretary of State follow the written representations or inquiry procedures; informal hearings are only used where the case is to be decided by an Inspector.

Departmental resources involved in handling planning appeals

11. The Government proposes that charges for planning appeals should aim to cover the full cost to the Department of administering the appeals system. The main component of that cost is the input of the Planning Inspectorate. Additional costs are attributable to the processing of "Secretary of State" appeal cases in the nine Regional Offices of the Department and to central support services (lawyers; accountancy; personnel management etc). The £16 million quoted in paragraph 7 above includes full staff costs, overheads and accommodation.

Processing costs

12. The present scale of fees for planning applications has a relationship with the cost to a local authority of processing

applications, although it recovers only towards 50% of those costs. It is linked to the size of the development proposed, with the fee for major residential development (10 or more houses) being substantially more than that for a "householder" or change of use application.

13. In the case of planning appeals, as well as the complexity of the proposal, a major cost factor is the procedure for determining the appeal: that is, whether the appeal is determined following an exchange of written representations or following an inquiry. Appeals on development proposals which are dealt with by written representations are cheaper to process than cases determined following a public local inquiry. Processing a typical inquiry case costs approximately twice as much as a typical written representations appeal. Approximately 75% of inquiries last for one day only, and all but 10% last two days or less. On the other hand in some complex cases inquiries may last for several days or even weeks. Each additional inquiry day adds significantly to the cost of handling the appeal.

Proposed charges for Section 36 appeals

14. Accordingly, in devising a basis of charging for appeals to cover the full cost of processing the Government believes that it would be equitable to follow the broad approach of the present fees for planning applications, ie a scale related to the size of development proposal, but with a differential between written representations and inquiry cases, and a supplement for longer inquiries. The Government proposes the following illustrative tariff of charges for appeals:

Residential development	Written representation fee £	Non-Residential development
Householder development	100	

One unit (or up to 0.1ha);	200	Change of use; conditions; development up to 75 sq m or up to 0.1ha
2-5 units (or 0.2-0.5ha)	400	development 76-150 sq m or 0.2-0.5ha
6-10 units (or 0.6-1.0ha)	800	development 151-225 sq m or 0.6-1.0ha
11-20 units (or 1.1-2ha)	1,600	226 sqm-450 sqm or 1.1-2ha
21-50 units (or 2.1-5ha)	2,400	451 sqm-1,125 sqm or 2.1-5ha
Over 50 units (over 5ha)	4,000 maximum	Over 1,125 sqm or over 5ha

Hearings add 0.6 times basic fee

Inquiries add 1.0 times basic fee

each additional inquiry day after 2 add £350

Refunds 75% of inquiry supplement where an inquiry appeal is withdrawn before the inquiry takes place.

If the proposal is proceeded with, the actual tariff will be calculated at the time using the same approach following enactment of the necessary legislation.

15. About one third of appeals which are to be dealt with under the inquiry procedure are withdrawn. The Government has considered whether the additional fee should be refunded in such cases. But withdrawal frequently happens shortly before the inquiry is due to open. In these cases the Inspectorate will have incurred significant costs, and it may prove difficult or impossible to allocate the Inspector concerned to alternative work. Accordingly, it is proposed that consideration might be

given to refunding some part only of the difference between the written representations charge and the inquiry charge if an inquiry appeal is withdrawn at a sufficiently early stage.

16. The written representations procedure is generally less onerous for the appellant and for the local planning authority and it normally leads to a more rapid decision. A case may only proceed by written representations, however, if the principal parties and the Secretary of State agree that this is appropriate. In the few (less than 10%) cases where the appellant wishes to proceed by written representations but the local planning authority consider that an inquiry should be held, the appellant would nevertheless be required to pay the full charge, reflecting the significance of the proposal which had led to that outcome. A local authority which insisted unreasonably on an appeal being heard by inquiry could have costs awarded against it. (The regime for awarding costs is described in DoE Circular 2/87.)

17. Legislation would need to provide that an appeal would be invalid unless accompanied by the correct payment. Supplementary charges for additional inquiry days (see paragraph 14 above) could only be collected after the inquiry had closed and it was clear how many days' payment was entailed, but the additional charge would need to be paid before the decision could issue.

Section 37 Appeals against failure to determine an application

18. Local planning authorities decided some 470,000 planning applications in 1987/88. That was an increase of 16% on the previous year.

19. Only 53% of applications were decided within 8 weeks, however, compared with the Government's target of 80%. Ministers have urged and will continue to exhort local authorities to improve their performance.

20. In 1987/88 the Department received some 1,800 appeals made under Section 37 of the 1971 Act (where an appeal is made because the local authority has failed to determine the planning application within the statutory period of 8 weeks, or any longer period agreed with the applicant). About one third of Section 37 appeals are subsequently withdrawn, often because appellants have reached agreement with the authority on a parallel application.

21. The cost of processing "section 37" appeals is the same as the cost of processing other appeals, and the Government believes that they should be subject to the same charge and that this charge should be paid by the appellant. . Where the local planning authority has acted unreasonably and the appeal is dealt with by inquiry the appellant will be able to seek an award of costs against the authority.

Appeals against refusal of listed building consent

22. Appeals under section 56 of the 1971 Act against the refusal or non-determination by a local planning authority of listed building consent applications under section 55 of the 1971 Act are made under paragraphs 8 or 9 respectively of Schedule 11 to the 1971 Act.

23. Listed building consent is required to demolish a listed building or to alter or extend it in any manner which would affect its character as a building of special architectural or historic interest. Listed building consent applications can be divided into two categories:-

(i) those for works for which planning permission is required in addition to listed building consent; and

(ii) those applications for which specific planning permission is not required eg internal works or development covered by the General Development Order.

In nearly every case where the alteration or demolition of a listed building would bring development benefit to the owner, there would be a requirement to obtain planning permission.

24. When charges were introduced for planning applications, listed building consent applications were deliberately excluded because the listing of buildings imposes a special liability on owners (the listed building control system) in the interests of the heritage as a whole. It was concluded that the liability ought not to be made more onerous by charging for applications for listed building consent.

25. The procedure for handling listed building consent appeals is substantially similar to that for planning appeals. Many listed building consent appeals are in fact linked to (and processed simultaneously with) section 36 planning appeals. In 1987/88 there were 396 such linked appeals and 408 free-standing listed building consent appeals.

26. It is not proposed to charge twice for a listed building consent appeal which is associated with a planning appeal under section 36. An appeal fee would be payable for those cases on the basis in paragraph 14 above. Since there is no application fee when listed building consent does not also entail planning permission, the Government proposes that no appeal charge should be made in those cases.

Specialist Planning Appeals

27. The Department and the Planning Inspectorate deal with five other categories of appeal. Paragraphs 28 to 36 of this paper explain the proposed charging arrangements for these appeals. Paragraph 37 explains the basis for charges where a planning appeal is "linked" administratively to one or more of the specialist appeals.

Enforcement appeals (Section 88 of the 1971 Act)

28. Since April 1981 a fee has been payable to the Department for the "deemed planning application" arising, under section 88B(3) of the 1971 Act, from any appeal against an enforcement notice issued by a local planning authority (LPA). These fees ensure that the person who appeals against an enforcement notice (who will not usually have paid the appropriate planning application fee to the LPA for the allegedly unlawful development) pays an equivalent application fee to the Department. Without these fee-paying arrangements, there would be a financial incentive not to apply for planning permission. Fees for "deemed planning applications" are therefore assessed on the same scale as LPAs use for planning application fees and the amount due must be paid to the Department during every enforcement appeal. When an enforcement appeal succeeds on one of the "legal grounds" in paragraphs (b) to (f) in section 88(2) of the 1971 Act, so that the Secretary of state or a Planning Inspector does not normally determine the deemed planning application (or the appeal on ground (a) in section 88(2)), the Department refunds the deemed planning application fee after issuing the decision. These provisions effectively ensure that the recipient of an enforcement notice does not pay for an appeal against it on any of the "legal grounds" in section 88(2): the fee is paid only for consideration of the planning merits.

29. It is proposed to adapt these arrangements so as to incorporate into enforcement appeals the charges proposed for ordinary planning appeals made under section 36 of the 1971 Act. On average, some 4,500 to 5,000 enforcemen t appeals are submitted annually to the Department, of which 40% are usually withdrawn before a decision is issued. Of some 2,500 to 3,000 appeals decided annually, approximately one-half are dealt with by the written representations procedure. The fee now paid for the deemed planning application arising from an enforcement appeal will continue and it is proposed also to make an appeal charge for any enforcement appeal which includes ground (a), in section 88(2) of the 1971 Act. This additional appeal charge is intended (as with the deemed planning application fee) to reflect only the cost to the Department of considering the planning merits of the enforcement appeal and the charge will therefore be the same as for ordinary planning appeals, (as in paragraph 14 above). The remaining 50% of decided enforcement appeals involve a public local inquiry, quite often at the Department's direction, to establish the facts by examining witnesses. There would be no additional charge at the differential inquiry appeal rate (paragraph 14 above) when the inquiry is held at the Department's direction. When an inquiry is held at the
x appellant's request, but the Department considers that the written representations procedure would have sufficed, it is proposed to make a differential charge at the inquiry rate, with a supplement for longer inquiries. This would correspond to the charging arrangements for ordinary planning appeals (paragraph 14 above), and ensure that the appellant pays both an equivalent sum to the planning application fee due to the LPA and the appeal charge.

30. Some enforcement appeals are made on two or more grounds, including ground (a), but succeed on one of the "legal grounds" (grounds (b) to (f) in section 88(2) of the 1971 Act), so that ground (a) and the deemed planning application are not

considered, because the enforcement notice is quashed by the appeal decision. When this happens in future the appellant will have been complelled to pay an application fee and an appeal charge in order to defend himself against the LPA's allegation, in the enforcement notice, which will have proved incorrect in fact or wrong in law. It is therefore proposed to refund the enforcement appeal charge (as well as the deemed application fee) when the appeal succeeds on any of the grounds (b) to (f) and the enforcement notice is quashed. And, because grounds (g) and (h) in section 88(2) are concerned only with minor matters of reasonableness (that is, the steps required by the LPA to remedy the alleged breach of control and the duration of the compliance period), it is not proposed to make an appeal charge for the very few enforcement appeals confined only to grounds (g) and (h) if it proves unncessary to deal with the deemed planning application.

Established use certificate appeals (Section 95 of the 1971 Act)

31. Established use certificate (EUC) appeals also include a deemed planning application (section 95(6)), for which a similar fee is paid to the Department as for enforcement appeals (see paragraph 29 above). There are some 80 EUC appeals annually, of which approximately one-half are withdrawn before being decided. It is proposed that the appeal charge for EUC appeals should be the same as for enforcemewnt appeals: the charge would thus be confined to the deemed planning application and would be payable in addition to the existing fee. Virtually all EUC appeals which are not withdrawn during the appeal process involve holding a public local inquiry to establish the relevant facts about the historic and current use of the land. As the inquiry is almost always held at the Department's direction, it is not proposed to charge for EUC appeals at the inquiry rate unless (most unusually) the Department considers that the appeal should proceed by way of written representations, but the appellant

insists on an inquiry. The usual charge for an EUC appeal will therefore be at the rate for a written representations appeal - pyable in addition to the deemed planning application fee.

32. When an EUC appeal succeeds at present, so that the Secretary of State grants a certificate and the deemed planning application is not considered, the Department refunds the application fee to the appellant after issuing the decision. This refund is justified because the appellant has had to appeal in order to obtain, from the Secretary of State, the certificate of established use the LPA should have granted. For this reason too, it is proposed to refund the appeal charge to the appellant, when there is no consideration of, or decision on, planning merits in the appeal process.

Proposed development appeals (Section 53 of the 1971 Act)

33. Applications to LPAs and appeals to the Secretary of State, under section 53 of the 1971 Act, involve consideration of whether a proposal involves "development" of the land to which it relates; and, if so, whether an application for planning permission is needed. On average, there are approximately 100 of these appeals annually, of which one-half are withdrawn before the appeal is decided. These applications and appeals turn entirely on legal issues; and planning merits are not considered. For this reason, no application fee is currently payable to the LPA and no deemed application fee is paid to the Secretary of State on appeal. Since section 53 appeals will remain confined to legal issues, it follows that no appeal charge should be made.

Advertisement appeals (section 36 of the 1971 Act, as modified by Regulation 22 of the Control of Advertisements Regulations)

34. Advertisement appeals are similar to ordinary planning appeals, except that decisions are not transferred to Planning

Inspectors. Appeals are processed and decided by one of the Department's Planning and Development Control Divisions, either on the basis of the parties' written representations and (usually, but not invariably) a site-inspection (80% of appeals) or a hearing (5% of appeals). (The remaining 15% of advertisement appeals are withdrawn or declined.) Except in the case of discontinuance notice appeals (see paragraph 35 below), advertisement appeals are concerned solely with the merits of displaying an outdoor advertisement in relation to its likely effect on "amenity" and "public safety". The considerations arising on an advertisement appeal are thus closely comparable to a planning appeal. The average cost to the Department of processing some 1,775 advertisement appeals during 1988/89 is estimated as £110 per appeal, with an additional cost of £80 when a local hearing of the appeal has to be arranged. Accordingly it is proposed to charge £110 for a standard advertisement appeal, with a "hearing supplement" of £80 when a hearing is held at the appellant's request.

35. On average, some 9% of advertisement appeals are against a "discontinuance notice" served by the local planning authority rtequiring the advertiser to remove an advertisement displayed lawfully with "deemed consent", on the ground that it substantially harms amenity or constitutes a danger to the public. The advertiser usually responds to a notice by challenging it, in an appeal to the Secretary of State, on the ground that the advertisement is not harmful, or dangerous, for the reasons the LPA have alleged in the notice. As an appeal to the Secretary of State is the only way an advertiser can contest a discontinuance notice, it seems unreasonable to make an appeal charge if the appeal succeeds on grounds of "amenity" or "public safety", or because the notice is found to be technically defective and is quashed. It is therefore proposed to charge for discontinuance notice appeals (including any hearing supplement) on the same

basis as for ordinary advertisement appeals (paragraph 34 above), but to refund the charge at the end of the appeal if it succeeds on merits or the notice is found to bedefective and quashed.

Listed building enforcement notice appeals (Section 97 of the 1971 Act)

36. Appeals are made, under section 97 of the 1971 Act, against listed building enforcement notices issued by local planning authorities (under section 96) requiring a breach of listed building control to be remedied. On average, there are some 200 such appeals annually, of which approximately one-third are withdrawn before the appeal is decided. No fee is payable for the "deemed listed building consent application" arising on an appeal to the Secretary of State under section 97; this is consistent with the provisions (paragraph 24 above) for listed building consent applications to local planning authorities. Accordingly, and consistently with listed building consent appeals (paragraph 26 above), no charge is proposed for listed building enforcement appeals.

Planning appeals and specialist planning appeals proceeding together

37. When an ordinary planning or listed building consent appeal and a specialist planning appeal involving the same appeal site are proceeding concurrently, the Department's usual administrative practice is to "link" both, or all, the appeals together and arrange for them to be determined, by the Secretary of State or a Planning Inspector, in one decision letter. Because "linked" appeals usually involve consideration of the planning merits of the same development in all the appeals, it seems unreasonable to charge more than once for deciding the same issue in each appeal. (For example, in a "linked" planning appeal and EUC appeal, the same material change of use of the land is likely to be at issue in both appeals.) It is therefore proposed (as with

linked planning and listed building consent appeals, see paragraph 26 above) to make only one charge for any case where there are linked appeals involving consideration of the planning merits of the same development in two or more appeals. An exception to this arrangement would be where an advertisement appeal is linked administratively to another type of appeal: in that case, there would be an additional charge for the advertisement appeal (paragraph 34 above) because it would involve separate consideration of the merits of displaying an outdoor advertisement.

Conclusion

38. Views are invited on the proposals set out in this paper ...

LOCAL Ref.: A 6

SRWBWH

PRIME MINISTER

WESLEYAN CHAPEL

I promised you a progress report on the Chapel's application for listed building consent to demolish the Benson Building and extend the Chapel.

Islington Council have at long last provided the formal resolution of their agreement to give listed building consent and have passed this with the necessary papers to English Heritage's London Advisory Committee. The latter had originally planned to consider this application in May but have been persuaded to bring it forward to their next meeting, due to be held on 7 April. It is difficult to divine (without being too obvious about it) which way the Committee will jump, but their officials will be advising in favour of granting listed building consent to the Weslyan Chapel.

If they do grant it, their decision will need to go to the Secretary of State for the Environment for ratification. But Mr. Ridley knows about the case and would expect to be able to endorse the approval very quickly.

If you are content I will let things run their course up to the 7 April meeting and report to you again straight after that has happened.

Yes - thankyou

(DOMINIC MORRIS)
23 March 1989

dti

the department for Enterprise

The Rt. Hon. Tony Newton OBE, MP
Chancellor of the Duchy of Lancaster and
Minister of Trade and Industry

. Rt Hon Nicholas Ridley MP
Secretary of State
Department of the Environment
2 Marsham Street
LONDON
SW1P 3EB

Department of Trade and Industry

1-19 Victoria Street
London SW1H 0ET

Switchboard
01-215 7877

Telex 8811074/5 DTHQ G
Fax 01-222 2629

Direct line 215 5147
Our ref
Your ref
Date 17 March 1989

ENFORCEMENT OF PLANNING CONTROL: REVIEW BY ROBERT CARNWATH QC

Thank you for sending me a copy of your letter of 6 March to John Wakeham, enclosing a copy of the final chapter of the Carnwath report and your draft written Answer.

I am happy for you to publish the report and to invite comments on its recommendations subject to two points. First, whilst I think business is likely to welcome the increased flexibility that the introduction of the "contravention notice" will give to the enforcement notice system, I hope you will be ready to consider shortening the qualifying period for immunity in the light of responses from consultees. Although I understand your reasons for proposing a ten year period, if there is support for a shorter period I would want the case for it to be fully examined. Similarly, if business consultees make any comments about aspects of the enforcement procedures not specifically covered in the Carnwath review, I hope that they can be taken on board.

MA2ACT

dti

the department for Enterprise

Secondly while I support the recommendations on the revision of policy guidance and the preparation of a manual for local authorities, I believe business would welcome some general guidance on the new enforcement procedures, in the form of an updated version of the booklet you issued in 1987. I hope this can be produced in due course.

I am copying this letter to John Wakeham, other members of H Committee, and Sir Robin Butler.

Yours ever.
Tony

TONY NEWTON

MA2ACT

WESLEY'S CHAPEL

49 CITY ROAD, LONDON, EC1Y 1AU

Telephone 01-253 2262

Minister: The Rev. Paul Hulme, B.A.

13 March 1989

Dominic Morris, Esq.
Prime Minister's Private Secretary
10 Downing Street
Westminster
London
SW1

Dear Mr Morris,

How very kind of you to take the trouble to ring me this morning. I am most grateful to you for your help and interest in the scheme to re-develop the ancillary premises at Wesley's Chapel. We are, as you know, most anxious for this work to go ahead with all speed so that the important mission of the church in this part of the City can take place far more effectively than it is doing at the moment. Obviously, all the correct procedures have to be observed at every level but we do not want to have to undergo any further unnecessary delay if we can possibly help it.

Would you kindly convey to the Prime Minister our very grateful thanks for her interest in this matter. We are most touched to think that in the midst of all her massive responsibilities she can find the time to be concerned with our welfare.

Thank you for promising to keep in touch with me over the next few weeks. We will wait with anticipation to see the outcome.

With kind regards and all good wishes.

Yours sincerely,

Paul Hulme

cePU

B/F 167.

2 MARSHAM STREET
LONDON SW1P 3EB
01-276 3000

My ref:

Your ref:

Dominic Morris Esq
Private Secretary to
The Prime Minister
10 Downing Street
LONDON
SW1A 2AA

10 March 1989

Dear Dominic

THE BENSON BUILDING AND WESLEY CHAPEL, ISLINGTON

You asked to be kept informed of developments here following the background note I sent you recently.

I understand that Islington have not yet made a formal decision on the application (although they have indicated informally that they are prepared to grant consent).

The Council is meeting next week to decide the matter. As soon as HBMC have been notified of the Council's formal resolution they can begin their consideration of the matter. (Until then they have no locus). HBMC are aware of the need to deal with it quickly.

Yours

A D RING
Private Secretary

Local Govt Planning Pt 6

cc PJV

Prime Minister

MBR

PREM

7/3

LAND COMPENSATION AND
COMPULSORY ACQUISITION AND COMPENSATION

I have seen Nicholas Ridley's two minutes of ~~25~~ 26 February to you on the above subjects.

I am content with his proposal to make a statement about the continuation of development value compensation. Since the issue has not raised itself in Scotland, I would not feel obliged to make a parallel statement. I am also content with the terms of Nicholas' consultation paper on land compensation. I would propose in due course to consult on parallel proposals for Scotland.

Copies of this minute go to the members of E(A), John Wakeham and Sir Robin Butler.

MR

MALCOLM RIFKIND

HMP061M7.025

Local Govt : Pt 6 General Planning

2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434
My ref:
Your ref:

The Rt Hon John Wakeham MP
Lord President of the Council
Privy Council Office
68 Whitehall
LONDON
SW1

6 March 1989

Dear Lord President,

ENFORCEMENT OF PLANNING CONTROL: REVIEW BY ROBERT CARNWATH QC

Last July, I asked Robert Carnwath QC to review local authorities' powers for enforcing planning control. The review's terms of reference were announced in my Written Answer to Tony Baldry, on 28 July. They were:-

> "To examine the scope and effectiveness of provisions, in Part V and XII of the Town and Country Planning Act 1971, relating to enforcement of planning control, including appeals to the Secretary of State, and to make recommendations for improvements to the present provisions or for alternative provisions."

I have now received Mr Carnwath's report and the purpose of this letter is to seek your agreement to my proposals for taking his recommendations forward. The timescale of the review is widely known and people will be expecting the report to be published in the next few weeks.

Enclosed with this letter is a copy of the final chapter of the report, and a summary of the fourteen recommendations Mr Carnwath has made for improved provisions for enforcing planning control. Most of them would require amendment to the Town and Country Planning Act 1971 if we decide to implement them.

I propose to publish the report immediately before the Easter Recess and, simultaneously, to invite comments on it from the range of outside organisations who are usually consulted about proposed changes in Planning procedures. Publication would be accompanied by a Commons Written Answer. In my view the recommendations look very sensible and I propose to give them a general welcome at the time of publication. Final decisions are for later when we have the response to consultation, and when my

officials and those of the other Departments principally concerned have been able to consider the recommendations in detail. Attached to this letter is a copy of the draft Written Answer.

Copies of this letter go to the members of H Committee and to Sir Robin Butler.

Yours sincerely

PP

NICHOLAS RIDLEY
(Approved by Secretary of State and signed in his absence)

PS/Mr Howard
PS/Mr Chalker
Mr Delyn
Mr Roscoe
Mr Bremner (pps)
Mr Horsman
Mr Sargent
Ms Gutting
[redacted]
TSF · AR

ENFORCEMENT OF PLANNING CONTROL: REVIEW BY ROBERT CARNWATH QC

Draft Written Answer by Secretary of State for the Environment

"Mr Robert Carnwath QC has recently submitted his report on the review I announced last July, in a Written Answer to my hon Friend, the Member for Banbury (Official Report, 28 July 1988, Volume 138, column 441), of local authorities' planning enforcement powers. Mr Carnwath's report is being published [today] [on .. March] and a copy is being placed in the Library of this House and the other place.

I generally welcome the report's recommendations as a constructive contribution to strengthening the present provisions, in the Town and Country Planning Act 1971, for planning enforcement. Before deciding whether to implement the recommendations, I intend to consult widely amongst organisations with a responsibility for, or interest in, planning control. My Department is inviting comments on the report's recommendations by the end of May."

CARNWATH REPORT: RECOMMENDATIONS

1. The legislation should be amended to allow entry on any land at all reasonable hours on production of appropriate authority, for the purposes of investigating any alleged breach of planning control on that land or on immediately adjoining land, for determining the nature of any remedial action, or generally for the purpose of the authority's enforcement functions;

2. Provision be made for a new optional statutory procedure (to be known as a "contravention notice") to enable authorities to obtain information and to secure co-operation without recourse to enforcement action;

3. That amendments be made to Section 87* (enforcement action) to the effect:-

(i) that the general period of immunity from enforcement should be amended to a period of 10 years prior to the issue of an enforcement notice (or service of a contravention notice if Rec (2) is adopted);

(ii) that the "four-year rule" be revoked for breach of a condition imposed on permission for operational development;

(iii) that, where development has become immune from enforcement action, planning permission should be deemed to have been granted immediately prior to commencement;

4. The provisions for the drafting and service of enforcement notices should be altered-

(i) by amending section 87 to emphasise the flexibility of the power and reduce technicality;

* All references to sections are to sections of the Town and Country Planning Act 1971.

(ii) by confirming that the power (in the 1971 Act) to serve a notice is without prejudice to the general powers for the service of notices under section 233 of the Local Government Act 1972;

5. Sections 88, 88A and 88B (the right to appeal) should be amended, in particular to extend the present power of the Secretary of State to correct or vary notices on appeal;

6. Section 246 (appeal to High Court) should be amended to provide:-

(i) that an appeal requires leave of the Court;

(ii) that, where the Court allows an appeal, it shall have power to give directions as to the operation of the notice in the period prior to any further decision of the Secretary of State and as to the effect of any proceedings previously taken pursuant to the notice;

7. That the provisions for deciding whether planning permission is needed, and obtaining established use certificates be repealed and replaced by a single procedure whereby the authority could issue a certificate that any specified use or operation can be carried on without planning permission. Provision should be made to enable a use of land to be described by reference to a Class of Use in the Use Classes Order, and to enable the GDO to regulate the form of application and the supporting evidence required. There would be a right of appeal to the Secretary of State;

8. That provision be made for a new procedure for summary enforcement of breaches of condition comprising the serving of a written notice and the institution of prosecution proceedings if the breach continues at the end of a specified period (e.g. 28 days);

9. Section 177 (stop notice compensation) should be amended so that:-

(i) no compensation is to be awarded in respect of any use or operation which was or would have been in breach of planning control;

(ii) Subsection (6) is amended to clarify the duty of the Lands Tribunal in cases where there has been a failure to respond adequately to a preliminary information notice;

10. Section 90 (stop notices) be amended:-

(i) to extend the time-limit for serving stop notices in respect of uses from 12 months to 4 years, and to leave out of account any period covered by a planning permission;

(ii) to repeal the exception in S.90(2)(b) in respect of residential caravans;

(iii) to allow immediate effect in special cases

11. That there be an express power for authorities exercising planning functions to apply to the High Court or County Court for an injunction to restrain any threatened or actual breach of planning control where they consider it necessary or expedient in order to prevent serious damage to amenity or otherwise to supplement the powers available under the Act;

12. The power for the authority to carry out the remedial works itself should be strengthened by making it available for any steps required to be carried out by an enforcement notice.

13. Section 89 (penalties for non-compliance) should be reviewed and amended in particular so that:-

(i) maximum penalties are increased and financial benefit can be taken into account in assessing penalties;

(ii) the range of potential defendants is extended;

(iii) the date when an offence arises following first conviction is clarified, and it is made clear that there may be further continuing offences following a second conviction.

14. The Department's policy guidance should be revised, and consideration given to the preparation of a practice manual for authorities on all aspects of enforcement work.

CHAPTER 7

7. SPECIFIC CONCLUSIONS AND RECOMMENDATIONS

1. Introduction

1.1 The above analysis, as well as the lack of any consensus in favour of radical change, leads me to the conclusion that the way forward lies in recognising the strengths of the present system and building on them. The analysis also reveals specific areas of weakness which require legislative amendment.

1.2 The basic components of the system need to be seen as an integrated structure. The amendments need to be designed to strengthen their ability to function as such. In particular they need to enable the authority to exercise flexibility and discretion in the early stages of the process without weakening their ability to act urgently and effectively in appropriate cases.

1.3 The main features of the recommended package are:-

(i) Strengthening the powers to obtain information and secure co-operation prior to enforcement action by a new procedure to be known as a "contravention notice"; and linking failure to co-operate in providing information with the stop notice compensation provisions;

(ii) Rationalising the provisions for established uses and other immunities, in particular by providing for changes of use to be legitimised after 10 years without enforcement action;

(iii) Simplifying and adding flexibility to the enforcement notice provisions;

(iv) Clarifying and extending the Secretary of States power's on appeal to amend notices to avoid failure on technical grounds;

(v) Reducing the opportunities for unnecessary legal delay in the Courts;

(vi) Providing a more rational procedure for the determination of the lawful use of land;

(vii) Clarifying and strengthening the stop notice procedure and reducing the risk of compensation;

(viii) Providing a new procedure for summary enforcement of conditions;

(ix) Formalising the use of injunctions as a back-up to the other statutory procedures;

(x) Encouraging the use by the authority of its power to act in default and recover expenses;

(xi) Ensuring that the penalties for contravention reflect the benefit to the offender;

(xii) Revising policy guidance on enforcement in current Circulars and providing an enforcement practice manual for planning authorities.

2. Information and co-operation

2.1 Rights of Entry Section 280 gives the authority power to enter land for the purpose of "surveying" it in connection with proposals to serve notices, including enforcement or stop notices. This has been rightly criticised as too narrow. Enforcement officers need access for the purpose of investigating all aspects of an alleged contravention. The power is also weakened by the requirement to give 24 hours, notice before entering occupied land (s 281(1)). In the case of some uses, that is sufficient for the evidence to have vanished. The corresponding power in the Building Act 1984 is more widely expressed, and I see no reason why the planning powers should not be extended in a similar way.

Recommendation (1) Section 280 should be amended (along the lines of s 95 of the Building Act 1984) to allow entry on any land at all reasonable hours on production of appropriate authority, for the purposes of investigating any alleged breach on that land or on immediately adjoining land, for determining the nature of any remedial action, or generally for the purpose of the exercise of the authority's enforcement functions.

2.2 Information Section 284, as its heading indicates, was originally designed as a "power to obtain information as to interests in land". It gave a general power, for the purpose of any order or notice under the Act, to require information about interests. The Dobry report recommended that, in order to facilitate the use of enforcement and stop notices, it should be extended to enable information to be obtained also as to the current use of land, and the date when any use or activities on the land began. These amendments were made by the 1977 Act.

2.3 In its current form, section 284 enables the demand to be made either to the occupier or to "any person who, either directly or indirectly, receives rent". The time specified for a response must not be less than 21 days. Failure to comply is a summary offence punishable by a fine not exceeding "level 3" (ie under the current scale £400), knowingly mis-stating the facts may lead to fine of up to £1,000 on summary conviction, or on indictment to an unlimited fine or imprisonment for up to two years.

2.4 Also in the 1981 Act, again in line with a Dobry recommendation, the provision for stop notice compensation (s 177) was amended to provide that -

> "In the assessment of compensation under this section, account shall be taken of the extent (if any) to which the claimant's entitlement is attributable to his failure to comply with a notice under section 284 of this Act or any mis-statement made by him in response to such a notice".

2.5 Further powers to obtain information about interests in land were conferred on local authorities (as opposed to local planning authorities) by the Local Government (Miscellaneous Provisions) Act 1976 s 16. The information must relate to the interests in the land or the identities of occupiers (not information about use). In other respects it is wider than section 284 in that it enables notice to be served not only on an occupier or person entitled to the rent, but also on anyone with an interest in the land (including a mortgagee), and a person authorised to manage the land or arrange for letting. The minimum time for response is 14 days (not 21); and the maximum fine for non-compliance or furnishing false information is "level 5" (ie £2,000 on the current scale). Failure to comply does not affect liability to compensation for a stop notice.

2.6 It has been suggested that the categories of interest to which section 284 applies and the penalties should be brought into line with section 16. I agree.

2.7 I also agree with the approach of the Dobry report in seeking to make the link between these information-gathering powers and stop notice compensation. A person who asserts that his activities are lawful should be able and willing to co-operate at the outset in putting the true facts before the authority. It is not unreasonable for his right to compensation on a stop notice to be taken away if he fails to do so. This should give the authority a firmer basis on which to assess the risks of a stop notice. Amendment is however needed to make the link more explicit and effective.

2.8 Changes to these provisions should be considered also in the context of the suggested "Unlawful Development Notice" to which I have referred in Chapter 5. The Efficiency Scrutiny team recommended this as a means of encouraging the resolution of disputes short of formal action. The suggestion is welcomed by many of those who made submissions to me, provided it does not become a mandatory requirement.

2.9 The Scrutiny team noted the number of appeals withdrawn shortly before an appeal hearing, and saw this as evidence that appeals could be avoided if the facts were exchanged at an earlier stage. I am doubtful about the validity of this conclusion. The more likely reason that many appeals are withdrawn shortly before the hearing is that, up to that stage, it is possible to gain time without incurring significant costs. However, I do see merit in a procedure of this kind to strengthen the authority's powers to respond to alleged breaches, short of enforcement.

2.10 I have also commented in Chapter 5 on the "submission notice" procedure, as proposed by the National Development Control Forum. This seeks to impose a mandatory requirement on the recipient to submit an application. The main problem, as I see it, with any such procedure is that it introduces the issue of whether planning permission is in fact needed, and leads to the involvement of some tribunal (they suggest the Magistrates' Court) to determine it. I consider that the most that can be achieved, without overloading the procedure, is encouragement to submit an application, combined with obligations to disclose the basis of the contention that permission is not required. If the dispute as to the need for permission is not resolved, the effective answer for the authority is to serve an enforcement notice. As indicated in Chapter 5, I do not consider that the use of an enforcement notice in such circumstances should be regarded as unreasonable in policy terms.

2.11 Suggestions have also been made that the authority should be empowered to impose permissions on unco-operative developers, subject to such conditions as they think necessary. There are practical problems in this suggestion, first for the

collection of fees, and second in defining the development which is being permitted (and drawing up plans in the case of building operations). Also the recipient of such an imposed permission could still claim that no permission was required (see Mounsdon v Weymouth Corp. [1960] 1 QB 645), and its status would remain unclear. A procedure for imposing conditions does already exist under section 51. Although it is subject to compensation, this would only arise if the authority were wrong in their view of the requirement for permission.

2.12 I envisage a new provision in the enforcement part of the Act, providing for service of a notice, which I would call a "contravention notice". The procedure would be optional. The notice could be served on anyone who appears to the authority to be occupying the land, or to have an interest in it, or to be responsible for managing or letting it (cf s90(5) and LG(MP)A 1976 s 16). It would require a response within 14 days and be subject to penalties for non-compliance without reasonable excuse or for deliberate mis-statement (similar to LG(MP)A s 16). In addition the Magistrates would have power to order the recipient, either forthwith or within a specified time, to comply with any requirement of the notice or to provide further particulars; failure to comply would attract a daily penalty. It would also affect potential rights to compensation for a stop notice (see below). There should also be a continuing obligation on the recipient (for say three months, or if an enforcement notice is issued in that time, until the notice becomes effective, or is withdrawn or quashed) to give notice to the authority of any material changes in the particulars contained in the notice.

2.13 I envisage this procedure superseding the section 284 powers in enforcement cases. Consideration would need to be given to how far there would remain a need to retain section 284 in relation to other parts of the Act (having regard also to its relationship with section 16 of the 1976 Act).

2.14 The standard notice itself would be in four parts (a prescribed form would be desirable):-

(i) Stating that it appears to the authority that there has been a breach of planning control and indicating the nature of the activity, works or default thought to give rise to the breach;

(ii) Requesting information as to interests and occupations (as under s 16 of the 1976 Act);

(iii) Requiring the recipient to state whether or not he disputes the allegation in (i), and if so, stating (so far as within his knowledge) (a) the nature of the activity or works (if any) being carried on on the land, (b) the date when they began, and (c) particulars of the lawful authority (if any) under which they are being carried on;

(iv) Stating a time and place at which the authority will consider any representations the recipient may wish to make in respect of the alleged contravention, and any undertaking he is willing to give for the submission of an application for planning permission or otherwise with respect to the carrying out of works or the future use of the land.

2.15 The authority could decide to delete some of the requirements if not appropriate for the particular case. The notice would also contain a formal warning of the consequences of non-compliance, including the risk of enforcement or stop notice action.

2.16 Such a procedure would have four main objectives. First, it would act as a formal warning of the prospect of an enforcement or stop notice. It appears that section 284 notices are already used by many authorities not simply to gain information but also because of the implicit formal threat they contain of worse to come. There is an element of bluff in this, but the receipt of a formal document does apparently concentrate the mind in some cases and produce results. The proposed notice could make the threat of enforcement or stop notice action more explicit. It would also provide authorities with means of responding immediately to complaints of contravention, without affecting the policy approach that actual enforcement should be "a last resort".

2.17 Secondly, it would require the recipient to confirm at an early stage not only the facts as to what is happening on the land, but also the legal justification, if any. Authorities and Inspectors have emphasised the importance of the section 284 notice in getting some of the basic facts clear at an early stage, and narrowing the issues. I think this function could be improved by a new provision specifically geared to the enforcement powers, rather than (as in the 1981 Act) by further accretion to section 284.

2.18 Thirdly, it would give the authority the opportunity (in cases where the development is broadly acceptable) of encouraging either the submission of a planning application or some other undertaking (which could be the basis of a section 52 agreement). The provision for a "time and place" notice has a precedent in the Housing Act 1985 s 264 (preliminaries to slum clearance orders). For the reasons given above, I do not think it is practicable actually to require the submission of an application. Also the recipient of the notice may not be the appropriate person to make the application, and in any event the form of any application could be a matter for debate.

2.19 Fourthly, the response - or lack of response to the notice - would provide the authority with a firmer basis to decide whether to support the enforcement notice with a stop notice.

Recommendation (2) I recommend that provision be made for a new optional statutory procedure (to be known as a "contravention notice") along the lines indicated above to enable authorities to obtain information and to secure co-operation without recourse to enforcement action.

3. Immunities

3.1 There is a clear need to clarify and rationalise the existing law on immunities from enforcement. Prior to the 1968 Act, there was a 4 year limitation period for enforcement against any breach of planning control. This was changed in 1968 so as to give general immunity for all breaches before a fixed date (the end of 1963). In the case of uses, an established use certificate procedure is available to secure a decision whether immunity has been established.

3.2 In four specific cases, there is immunity four years after the breach (all operations; breaches of conditions "relating to the carrying out of operations"; changes of use to single dwellings; and breaches of a condition prohibiting such a change). The rigour of this, from the authority's point of view, is limited by the fact that in the case of a single operation (such as the building of a house) time does not begin to run until the whole operation is complete (see Ewen Developments v Secretary of State [1980] JPEL 404). The logic behind these exclusions is not entirely clear. Special protection was no doubt thought desirable for peoples' homes. In the case of operations, the governing considerations presumably were the relative ease of detection, the potential costs involved in reinstating the land, and the need to provide certainty for potential purchasers.

3.3 Mineral workings are subject to the same rules, save that, for the purpose of the running of time, "each shovelful" is regarded as a separate breach (see Thomas David (Porthcawl) Ltd v Penybont R.D.C [1972] 1 WLR 1526); and breaches of conditions on mineral working permissions can only be enforced within four years from the date on which non-compliance has come to the knowledge of the authority.

3.4 There are several unsatisfactory features of this system of immunities:-

(i) 1963 is far too long ago to be a sensible or useful date for immunity of uses. Not only is evidence difficult to obtain, but the use is likely to have varied in character and intensity in the meantime. This results in narrow and arbitrary distinctions and correspondingly complicated arguments (see eg Denham Developments v Secretary of State 47 P&CR 498).

(ii) The period of 4 years for specified uses has been criticised as too short in some cases, particularly in rural areas. Its application to breaches of conditions is also obscure (see Peacock Homes Ltd v Secretary of State [1984] JPEL 729, where the Court of Appeal had difficulty deciding whether the 4-year rule covered a breach of a condition requiring the demolition of a building at the end of a fixed period).

(iii) The special rule for enforcement against breaches of mineral conditions is unsatisfactory in that it depends on an inherently imprecise test (The Stevens Committee recommended its revocation, but the Government "preferred not to reach a conclusion at this stage" - Circular 58/78 Annex paragraph 19.11).

(iv) The interaction of the two forms of immunity creates anomalies. For example, a new building will be immune after 4 years, but it cannot be used for its designed purpose without risk of enforcement.

(v) Immunity does not confer lawful status. It creates a "limbo" state described as "unlawful but immune". The distinction between this and a lawful use has certain practical consequences, for example with regard to the ability to take advantage of GDO rights, or to revert after subsequent changes of use (s 23(9)). It also creates

some anomalies, for example when a building which is "unlawful but immune" has an addition which is the subject of a specific permission.

(vi) The status of "unlawful but immune" may also create difficulties in other areas of the law. For example, in Hughes v Doncaster MBC [1988] JPEL 419, the Lands Tribunal was forced to accept the semantic difficulty of holding that an "unlawful but immune use" was not "contrary to law" - in order to avoid the even more unpalatable consequence that such a use could not attract compensation on compulsory purchase (under Land Compensation Act 1961 s 5).

3.5 There are differing views as to how these problems should be met. As far as concerns the 1963 date, there is a consensus that the present position is unsatisfactory. The options suggested are:-

(i) to abolish the immunity except where an established use certificate has been issued, and to wind up the established use certificate procedure after a short period to allow anyone with a claim to such a use to apply; there could be a policy presumption in favour of the grant of permission for a contravening use (even in areas where it would normally be ruled out on policy grounds) after a specified period without enforcement (say 4 years) of that use or a use having similar effects;

(ii) to replace the 1963 date with a rolling limitation period after which immunity would be conferred; periods of 6, 10, 12, or 20 years are suggested by analogy with limitation periods elsewhere in the law.

3.6 Both approaches have their advantages and their supporters. The choice between them is largely a matter of policy. The former approach was proposed by the Government in a consultation paper in 1984 and was recommended by the Efficiency Scrutiny. It has the advantage of getting rid of a potentially time-consuming ground of appeal. The policy presumption should also operate more flexibly than a statutory rule in cases of fluctuating uses.

3.7 From a lawyer's point of view, particularly one advising a purchaser, the second approach is preferable as providing a definite legal test. For this reason, no doubt, it is supported by the Law Society and the Local Government and Planning Bar Association. It also appears to accord better with current Government thinking as expressed in the recent White Paper ("Releasing Enterprise" - paragraph 6.2.9) which speaks of measures to "legitimise certain long-standing uses". I read this as implying something more than a mere policy presumption. A number of enforcement officers made clear, however, that they would dislike such an approach, since they see the problems of "policing" a rolling period (particularly in the case of fluctuating uses) as much greater than the present fixed date.

3.8 There is no consensus, or strong feeling, in favour of major amendments to the 4 year rule, or generally to the categories to which it applies, although there is recognition that the breaches of condition subject to the rule need to be clarified following the Peacock case.

3.9 As to whether immune uses should be made legal, there is a division of view. The lawyers tend to dislike the current position as obscure and difficult to explain to the layman. Planners tend to be more happy with the position, mainly because they are concerned at the prospect of immune uses being able to take advantage of GDO rights.

3.10 One possible approach would be to adopt a single limitation period for enforcement against all categories of unauthorised development. The Association of District Secretaries suggest a period of 6 years in line with the normal limitation period in civil action. It is sufficiently close to the current 4 year period for operations not to create too many transitional problems, although some transitional protection would be needed. The ADS suggest that it would need to be linked to a statutory definition of "intensification".

3.11 The general consensus, however, appears to be in favour of retaining the current distinction between the treatment of operations and uses, for the reasons mentioned in paragraph 3.2 above. Of the two approaches outlined in paragraph 3.5 above, I would favour the rolling period approach, as offering more certainty, and as being in line with the White Paper. As to the period for uses, I consider that twenty years is too long, since it would tend to perpetuate the problems that exist today of obtaining evidence and analysing fluctuations in use over the period. I would propose a period of 10 years (as suggested by the Association of Metropolitan Authorities). This has the merit of being long enough for any offending use of significance to have come to light, and short enough to enable evidence to be obtained without undue difficulty.

3.12 I would not make any change to the 4 year rule categories, other than to revoke the paragraph dealing with conditions relating to operations. I have not been able to devise any satisfactory line between conditions which should be subject to the rule and those which should not. Accordingly, I think it better to leave it to discretion in particular cases. This would incidentally remove the somewhat anomalous distinction between the position of mining and other conditions.

3.13 I believe strongly that once development is immune from enforcement it should be put on the same footing as a permitted use. The current position is confusing to all but specialists. This can be done by a provision in section 87 that, where development has become immune from enforcement, planning permission should be deemed to have been granted immediately before the commencement of the operation or the change of use.

3.14 The problems for authorities of a shorter period of immunity might be eased if the practical significance of establishing legal immunity were reduced. This might be achieved if greater use were made of orders under section 51 to impose conditions on a use. This section gives wide powers for the authority to control existing uses or operations, in particular by requiring alterations to works, or imposing conditions on the continuance of a use. Breach of the requirements of such an order, or of conditions imposed by it, is an immediate offence (s.108 - no enforcement notice is required). Such an order requires the confirmation of the Secretary of State, and there is a right to compensation for damage resulting from the order (s.170). The use of the power does not depend on whether the existing use is lawful or not, although this may affect the compensation.

3.15 There is, in my view, a case for increased use of section 51 orders in circumstances where a use or operation - whether or not started lawfully - is acceptable in principle, subject to controls. This could be encouraged by introducing a streamlined procedure (as for revocation orders under section 46) for orders to be made by agreement without the need for confirmation by the Secretary of State.

3.16 Furthermore, where the purpose of the order is simply to impose conditions designed to prevent serious damage to the amenities of an area (and this is certified in the order), it would not be unreasonable for the right to compensation to be modified or removed. Some precedent for modifying the compensation requirements already exists in relation to mineral operations (see s.170B, introduced in

1981), and the same principle could be built on to encourage greater use of section 51 orders for other forms of development. In cases of dispute, protection against abuse would continue to be provided by the need for confirmation by the Secretary of State.

3.17 As section 51 is outside my terms of reference, I make no specific recommendation on this matter, but would propose it for further consideration.

Recommendation (3) I recommend that amendments be made to section 87 to the effect:-

(i) that the general period of immunity from enforcement should be amended to a period of 10 years prior to the issue of an enforcement notice (or service of a contravention notice if Recommendation (2) is adopted);

(ii) that section 87(4)(b) be revoked;

(iii) that where development has become immune from enforcement action planning permission should be deemed to have been granted immediately prior to commencement.

4. Enforcement notices - procedure

4.1 I have already commented on the unnecessary complexity of the present provisions relating to the drafting and service of enforcement notices. It is clear that the changes made by the 1981 Act were not sufficient to achieve their desired effect. I believe that it is necessary for the provisions to be substantially amended, in order to give a clear signal to the Courts and others that the more legalistic features of current case-law and practice can be abandoned. While it is not for me to attempt detailed re-drafting, I shall indicate in the following paragraphs the approach which I believe should be adopted.

4.2 Dealing first with section 87 the following points need to be addressed:-

(i) Whatever amendments are proposed in relation to immunities (see above) will need to be incorporated;

(ii) The notice needs to identify the general nature of the alleged breach. However "specify" is too strong a word for something which only needs to "appear" to the authority (see Tidswell v Secretary of State 34 P&CR 152). It should be enough for the notice to "state the substance" of the

matters which appear to the authority to constitute the breach. It should also be made possible for a single notice to allege, in the alternative, unauthorised development or breach of condition, where the facts make either allegation appropriate or where there is doubt.

(iii) The scope of the powers to deal with breaches is now (since the 1981 amendments) much wider than simply to "require a breach to be remedied" (s.87(1)). The 1981 amendments are intended to allow a range of measures to alleviate the effects of a breach, but the drafting introduces them in a somewhat confused way (subsections (9)-(11). There should be a general statement of the scope of the steps that can be required, to show that it is a broad discretionary power to deal with the effects of a breach. Protection against abuse is provided through the appeal system and if necessary by the Courts (Bath City Council v Secretary of State 47 P&CR 663).

(iv) Thus the notice could be required to "specify any steps required by the local planning authority to be carried out for the purpose of remedying (wholly or partly) the breach of planning control, or for removing or alleviating its effects". This should be followed by a list of specific examples as now referred to in subsections (7)-(11) (eg "the steps required by a notice may include ...), but this should be expressed to be "without prejudice to the generality of" the main power. This form would also make clear that "under-enforcement" is possible (cf Copeland BC v Secretary of State 31 P&CR 403).

(v) It would be desirable to include an express power not only to discontinue a use, but also to impose limits within which it may be carried on. This may help to enable a clearer benchmark to be provided in some cases of intensification, or fluctuating uses (for example by reference to numbers of vehicles, noise limits, parts of the site). Lee v Bromley LBC 45 P&CR 342 shows the problems of dealing with such cases by reference to the extent of use at some fixed date in the past.

(vi) It would also be desirable to reduce the significance attached to the definition of an offending use, in cases where the real substance of the breach lies not in the precise nature of the new use but in the mere fact that there has been a change (for example, a change from agriculture to any non-conforming use in a rural area.) This could be achieved by providing expressly that a notice could require the discontinuance of

the use of the land "for any purpose other than (a specified use)". Such a power would also be useful when dealing with cases of fluctuating uses, and help to prevent enforcement action being frustrated by changes in the nature of the non-conforming use after issue of a notice.

(vii) It needs to be stated specifically that the notice shall not be invalid by reason of any mis-description of the breach (in particular whether it involves unauthorised development or breach of condition). This can be done either by a specific provision in section 87 or by amendment to section 243(5).

(viii) The local planning authority should have a general power at any time to withdraw a notice, to waive or relax any of its requirements, or to extend the time for compliance, subject to notice being given to those who were served with the original notice or would be entitled to service of a fresh notice, and the change being recorded in the register. At present there is power to withdraw a notice up to the time when it takes effect (s.87(14)), but not thereafter, and there is also an implied power (s.98(5)) to extend the period for compliance. The general principle is that a notice, once it takes effect, should remain as a permanent encumbrance on the land (subject to the grant of planning permission), but there may be cases where this principle is too rigid, for example where the requirements can sensibly be relaxed in the light of changed circumstances, or where the retention of the notice on the register has ceased to serve any useful purpose. In such cases I see no reason why the authority should not have a more general power to relax or withdraw the notice, subject to proper formalities.

(ix) Sub-section (16) needs to be extended to cover any case of under-enforcement to make clear that permission is deemed to be granted for the works or use as they are left as a result of compliance with the notice.

4.3 Various suggestions have been made for relaxing or amending the requirements for service of enforcement notices. For example, it is suggested that a site notice might be sufficient, together with notice to those occupiers known to the authority, perhaps combined with an obligation for them to notify any other interests known to them. However, I consider that the present provisions represent a reasonable balance, bearing in mind the important consequences of a notice, and the fact that it will be binding on all interests in the land. Section 283 gives the authority a

reasonable range of methods of achieving effective service. Sections 88A(3), 110(2) and 243(2) severely restrict the possibility of any point being taken successfully on service to defeat a notice.

4.4 It should be made clear that section 283 extends, and does not derogate from, the ordinary powers available to local authorities for service of notices under section 233 of the Local Government Act 1972. There is apparently some doubt on this point.

Recommendation (4) the provisions for the drafting and service of enforcement notices should be altered:-

(i) by amending section 87 along the lines suggested in paragraph 4.2 to emphasise the flexibility of the power and reduce technicality;

(ii) by confirming that section 283 is without prejudice to the general powers available to authorities for the service of notices under section 233 of the Local Government Act 1972.

5. Appeal powers

5.1 Under section 88 (notice of appeal), there is scope for a more logical sequence but the advantages of familiarity in this case probably outweigh the case for change. However, generally the following points need to be addressed:-

(i) Ground (a) should be widened so as not to tie it so specifically to the precise allegation in the notice. There should be a more general power to seek a permission (or the discharge or modification of a condition) so far as required to regularise any breach arising from the matters alleged in the notice.

(ii) The relationship of grounds (b) and (c) seems to cause difficulty. The intention is that ground (b) should raise the question whether the factual allegations made in the notice (assuming they are correct) involve a breach of planning control; and ground (c), whether those factual allegations are correct. This could be made clearer if ground (c) were amended to read "that the matters alleged in the notice to constitute a breach of planning control have not taken place".

(iii) Grounds (d) and (e) will need to be amended or revoked, depending on the decision taken in relation to immunities. If my proposal for giving immune uses or operations the status of a deemed permission is adopted, most of these cases will be covered by ground (b).

(iv) Ground (g) is somewhat obscure following the 1981 amendments. A simple ground "that the requirements of the notice should be varied" would be appropriate.

(v) The relevant time for lodging the appeal should be related to the date of posting, rather than the date of receipt (as established by Lenlyn v Secretary of State [1985] JPL 790). It seems to me unaceptable that the validity of a step which may affect criminal liability should depend on something which is outside the control of the appellant. This consideration seems to me to outweigh any inconvenience at the Department's end.

(vi) The effect of a notice should only be suspended up to a date 28 days after the Secretary of State's decision (subject to the power of the Court to suspend it if there is a further appeal) I discuss the reasons for this change below in the context of appeals to the High Court.

(vii) The Regulations should contain provision for anyone who is seeking a determination under section 88B(1)(c) (determination of lawful use) to specify the uses he wishes to be considered, and to provide supporting information. Without such information the provision is a dead letter.

5.2 Section 88A requires substantial amendment to make clear that the Secretary of State (or the Inspector) has the widest possible powers to "get the notice right" on appeal, and that possible injustice should normally be dealt with by adjournment rather than appeal. The following points should be addressed:-

(i) There should be a general power to correct or vary the contents of the notice so far as the Secretary of State considers necessary or expedient to deal with the substance of the matters to which the notice relates. The current limitation to variations that can be made "without injustice" is unnecessary. The law implies a duty to act fairly. The express qualification also seems to have caused uncertainty. Thus in Wealden DC v Secretary of State [1983] JPEL 108, the Court suggested that injustice might be caused by any variation if it altered the nature of

the issues in the appeal. However that kind of injustice can normally be avoided by giving the parties adequate opportunity to deal with the altered issues; it should not require the whole notice to be quashed.

(ii) It needs to be made clear that such a correction or variation can be made whether or nor the matter to which it relates would have been such as to render the original notice ineffective if no appeal had been brought. This should avoid notices being quashed as "nullities" (see Chapter 5), because of a fault in the original notice where it can be readily corrected on appeal. (This would not of course affect the right of a defendant to take the point on a prosecution under the original notice if there has been no appeal. But there is no injustice in his forfeiting the right to take the point if he has affirmed the validity of the notice by appealing).

5.3 Although I do not think that it is necessary to spell out in the Act the steps necessary to avoid injustice, it does need to be borne in mind that the main parties (the appellant and the authority) must be given an adequate opportunity to consider, and comment on, any substantial change which adversely affects their interests, or the case that they might have put. If the change makes the notice more onerous, it may also be necessary to give notice to a person who might have appealed against the original notice, and allow an opportunity for his representations. Clearly it is desirable therefore that any proposed change should be ventilated before the end of the inquiry (if any) or the written procedure. These matters could be dealt with by a provision in the section 88 Regulations or the Inquiries Procedure Rules, requiring the Secretary of State or the Inspector to give directions for notifying the main parties, and receiving comments, in cases where a significant amendment is made after the close of the inquiry or written exchanges.

5.4 Section 88B (planning permission on appeal) requires limited amendment to accord with my earlier recommendations (paragraph 5.1 above):-

(i) In sub-section (1), the Secretary of State should be empowered, so far as he considers necessary or expedient for the purpose of regularising (wholly or partly) the breach of planning control, to grant planning permission or discharge or modify any condition or limitation.

(ii) In sub-section (3), the words "for the development to which the notice relates" should be omitted.

5.5 So far as concerns the procedures on appeal, having regard to the recent Efficiency Scrutiny, I do not propose any further changes, other than to bring the Inquiries Procedure Rules into line with the planning Inquiries Rules, which I understand is intended in any event.

Recommendation (5) Sections 88, 88A and 88B should be amended in accordance with the principles outlined in paragraphs 5.1 to 5.2 above, in particular to extend the power of the Secretary of State to correct or vary notices on appeal.

6. Legal delay in the Courts

6.1 At present there is a right for the authority or the appellant to appeal on a point of law to the High Court (s.246). No leave is required at this stage (although leave is required for an appeal from the High Court to the Court of Appeal). Such an appeal has the effect of further suspending the effect of the notice (R v Kuxhaus [1988] 2 WLR 1005).

6.2 The Court in the latter case made clear that it regarded the position as unsatisfactory. An offender can gain extra time at very little cost, even if his legal grounds for appeal are very tenuous. Although the Courts have been dealing with such cases much more quickly, a substantial period of additional delay still results. The fact that many appeals are withdrawn shortly before hearing suggests that there is considerable room for weeding out unmeritorious cases at an earlier stage and providing some disincentive to such appeals.

6.3 Two changes are required, in my view. First, there should be a requirement for leave for an appeal to the High Court. This would follow the model of the procedure on judicial review, although the time for application would be reduced to 28 days. It has been suggested that this could cause further delay. However, the leave system now operates reasonably efficiently, and I do not think the overall time for decision would be increased materially. The need for leave would itself offer a large measure of disincentive to pursuing an appeal where it is not justified by the merits.

6.4 Secondly, the law in relation to the suspension of a notice should be restored to the position as stated in London Parachuting v Secretary of State 52 P&CR 376, thus reversing the effect of R v Kuxhaus. The effect of the notice should be suspended only up to the time of the Secretary of State's decision, to which I would add a period of 28 days to allow consideration of an appeal. Section 87 would be

amended to this effect. Time for compliance will start running from that point, subject to the power of the Court to stay proceedings arising out of the notice on application in a particular case. The power to stay already exists (see the London Parachuting case).

6.5 It is probably unlikely (even where no stay is granted) that there would be any prosecution for non-compliance while the appeal is pending, but there will be less incentive for unjustified delay if time begins to run for compliance. Where the Court allows an appeal, the matter is remitted to the Secretary of State for reconsideration. The Court would need to be given power to give directions as to the operation of the notice pending the further decision of the Secretary of State, and as to the effect of any proceedings (whether criminal or civil) previously taken pursuant to the notice.

6.6 Although it goes beyond my terms of reference, the opportunity could also be taken to rationalise the provisions for appeal or application to the Court, by assimilating sections 245 and 246. There is no obvious justification for the separation of the provisions. It can give rise to overlap, as where an appeal is brought on ground (a), and there is also a deemed application (see Gill v Secretary of State [1985] JPL 710). There is also an anomaly in that an interested person, such as a member of the public who has appeared at the inquiry, can apparently challenge the grant of a permission under section 245, but not the rejection of an enforcement notice under section 246.

Recommendation (6) Section 246 (appeal to High Court) should be amended to provide:-

(i) that an appeal shall not be brought other than by leave of the Court;

(ii) that, where the Court allows an appeal, it shall have power to give directions as to the operation of the notice in the period prior to any further decision of the Secretary of State and as to the effect of any proceedings previously taken pursuant to the notice.

7. Determining lawful use

7.1 There is a widely expressed view, however, that a single procedure is required to enable the authority to certify that a specified use or operation can be carried on without breach of planning control. An idea of this kind was put forward recently

in a joint paper by the RICS and the Law Society. It has been repeated in many of the submissions to me. The Association of District Councils commented that "a single coherent procedure for establishing planning status would be most welcome".

7.2 Although it is partly outside my terms of reference, I agree with this view. A corollary of a stronger system of enforcement is that land-owners should have a reasonably accessible means of establishing what can be done lawfully with their property. Section 53, which provides a power to determine whether planning permission is required, is inadequate in a number of respects. First, it applies only to proposed uses or operations, not to ones already in existence. Secondly, it confines the authority to consideration of the proposed use or operation, without regard to background factors, such as the legality of the previous use in the light of an earlier permission.

7.3 The RICS, in submissions to me, appears to have changed its stance from the earlier joint paper, and suggests that such a procedure would not be "viable" because "it would inevitably increase the burdens on local planning authorities, most of which have neither the record systems, nor the necessary manpower ..." I understand this concern, but it has not prevented many authorities from supporting the proposal. They already have to deal with many informal enquiries as to the planning status of land. Since the decision in Western Fish Products v Penwith DC [1981] 2 All.E.R. 204, the answers to such inquiries are not generally binding on the authority, but they are likely to be relied on in practice. At present the only procedure for obtaining a binding decision in cases not covered by section 53 is by proceedings in the High court for a declaration.

7.4 I think it desirable therefore for there to be a formal means of confirming the legality of a use or operation. This should present no problem where the position can be clearly established on the evidence or documents provided, or other information already known to the authority. Where the position is less clear, then I do not envisage the authority needing to initiate extensive investigations or legal research. The onus would be on the applicant to establish his case. If the material available to the authority did not establish the right to a certificate, they could refuse it on these grounds. The applicant would be able to pursue the matter by appeal to the Secretary of State, or rest on his right to re-argue the matter if it became necessary in any subsequent enforcement proceedings.

7.5 Such a unified procedure would also provide an effective substitute for the established use certificate procedure, if, as I suggest, a rolling limitation period

is adopted and a permission is deemed to have been granted for uses or operations which have become immune from enforcement.

7.6 In order to ease the burden on authorities, the power would have to relate to uses or operations specified in the application. It would not be practical to seek a general determination of "planning status". However, I see no reason why the application should not define the proposed (or existing) use by reference to a Use Class. It would be appropriate for a fee to be charged for this service. It would also be necessary for the GDO to impose clear requirements as to the information to be provided in support of the application (as it does now for established use certificates).

Recommendation (7) I recommend that sections 53 and 94-95 be repealed and replaced by a single procedure whereby the authority could issue a certificate that any specified use or operation (whether or not instituted before the application) can be carried on without planning permission. Provision should be made to enable a use to be described by reference to a Class of Use in the Use Classes Order, and to enable the GDO to regulate the form of application and the supporting evidence required. There would be a right of appeal to the Secretary of State.

8. Breach of condition notice

8.1 As discussed in Chapter 5, section 3, I believe that the current procedures are ill-adapted to provide a prompt remedy for breaches of certain conditions, particularly those controlling continuing operations or activities. The National Development Control Forum in 1985 proposed a new form of procedure as an alternative to normal enforcement action. This has been supported by the Association of District Councils and others in submissions to me.

8.2 The proposal was described by the Forum in the following terms:-

> "This is envisaged as a two-stage procedure whereby a written notice is presented to those contravening a condition advising them of the breach and indicating that, if non-compliance persists for a further specified period (for example 28 days) proceedings will be instituted. No right of appeal against a notice is proposed because an opportunity already exists for conditions to be challenged. For this reason the procedure is likely to be swifter and more effective than conventional enforcement procedures.

It is envisaged that this approach would be appropriate in enforcing compliance with conditions on, for example, landscaping, access or drainage. It could also be used to secure compliance with conditions regulating hours of operation, enforcing time-limited permissions and tree protection conditions."

8.3 I believe that such a procedure would be workable. The issues for the Magistrates would usually be relatively clear cut, since the developer would implicitly have accepted the conditions by implementing the permission. The developer would still have the right (under section 31A or 32) to seek to vary the conditions, but in principle, if he wishes to take advantage of the permission, he should be prepared to accept the conditions pending review. I envisage the procedure giving the Magistrates, Court power not only to impose penalties but also to order compliance (along the lines of the Abatement Notice procedure in Part III of the Public Health Act 1936).

8.4 Although the Forum envisage the procedure as being useful for particular types of condition, I do not think it necessary to spell this out in the Act. It would be available as an alternative to the ordinary enforcement procedure, and it would be a matter for the discretion of the authority (subject to guidance from the Secretary of State) to decide when to use it.

Recommendation (8) I recommended that provision be made for a new procedure for summary enforcement of breaches of condition along the lines discussed in paragraphs 8.1 to 8.4 above.

9. Stop notices

9.1 The failure to use the stop notice procedure effectively is one of the main reasons for criticism of the present system, since it offers the authority the best means of urgent action where this is justified. The MVA report and the subsequent Circular have shown the way to improved performance.

9.2 A number of amendments could usefully be made. First, and most importantly, the position in respect of compensation needs to be clarified and improved. There is still widespread misunderstanding of the position. The effect of the provisions should be that, even where a claim to compensation arises, the assessment will exclude any use or operation which is in breach of planning control. This is not clearly spelt out at present.

9.3 The problem arises where the stop notice fails without a clear finding on appeal as to whether the use or operation was lawful or not. This may arise where it is withdrawn, or where the supporting enforcement notice fails on a technicality. In such cases section 177 gives a prima facie right to compensation for loss attributable to the service of the stop notice. But it does not make clear to what extent the Lands Tribunal, in assessing compensation, can re-open the question of the lawfulness of the use or operation.

9.4 There is no general principle in the law of compensation that unlawful uses cannot be taken into account. Section 5(4) of the Land Compensation Act 1961 contains specific provision for the exclusion of increases in value due to unlawful uses in cases to which it applies. However, although section 178 of the Town and Country Planning Act 1971 incorporates section 5 of the 1961 Act for certain purposes, it does not do so for the purpose of compensation for stop notices.

9.5 Thus the law remains at best uncertain. If the Act made clear that compensation will not in any circumstances be payable for a use or operation which is in breach of planning control, there would be less concern at the risks of a notice failing on a technicality, and the use of stop notices in appropriate cases would be encouraged.

9.6 The risks of compensation will be further reduced if the link between the right to compensation and the information provided in response to preliminary notices is more clearly established. Section 177(6) is designed to achieve this, but it does not make clear how the Tribunal is to take account of the inadequacy of the information provided. It also needs to be amended to include a reference to the "contravention notice procedure" suggested in Recommendation (2) above.

9.7 The provision would be clearer if the obligations of the Tribunal were spelt out more specifically. The Tribunal should be required to disallow any claim to compensation, if, or to the extent that, either it depends on information which the claimant failed to provide in response to a preliminary notice, or the service of the stop notice could in the opinion of the Tribunal have been avoided by co-operation in response to such a notice. By a preliminary notice in this context, I refer to a notice under section 284 or section 16 of the 1976 Act, or my suggested "contravention notice" (see paragraphs 2.2ff above).

Recommendation (9) Section 177 (stop notice compensation) should be amended so that:-

(i) no compensation is to be awarded in respect of any use or operation which was or would have been in breach of planning control;

(ii) subsection (6) is amended to clarify the duty of the Lands Tribunal in cases where there has been a failure to respond adequately to a preliminary notice.

9.8 I also propose that section 90 be amended in two ways:-

(i) first, to limit the exceptions in subsection (2);

(ii) to allow immediate effect in special cases;

9.9 With regard to exceptions, experience has shown that there is little risk of the stop notice procedure being over-used by authorities, and the objective should be to remove impediments to action in appropriate cases. The 12 month limitation on stop notices in respect of uses is regarded by many as too short, particularly in view of the difficulty of determining precisely when a change of use occurs in many cases (see eg Backer v Secretary of State 47 P&CR 149). The MVA Consultancy recommended that the period should be lengthened, and I agree. I suggest extension to 4 years. It also needs to be made clear that the period does not include any period when the use was covered by a limited period permission (see Scott Markets v Waltham Forest LBC 38 P&CR 597).

9.10 It has also been suggested by a number of submissions that section 90(2)(b), which provides an exemption for residential caravans, should be repealed. In Runnymede BC v Smith [1986] JPEL 592, it was held that this provided protection even for caravans which had come on to the site with knowledge of the stop notice, and an injunction was refused on these grounds. In my view, this exception is an unnecessary restriction on the use of the power to prevent serious injury to amenity in appropriate cases. The potential damage caused by unlawful caravan sites can be considerable, and the risks of abuse are not significantly greater than in other cases where the stop notice procedure applies, for example where livelihoods are at stake.

9.11 As to the time when the notice takes effect, there is at present a minimum three day delay. There may be cases where this is too long (eg tipping). The authority should have power to serve a notice having immediate effect where they certify in the notice that there are special reasons justifying it and state those reasons in the notice.

Recommendation (10) I recommend that section 90 be amended along the lines explained above:-

(i) to extend the limit for stop notices in respect of uses from 12 months to 4 years, and to leave out of account any period covered by a planning permission;

(ii) to repeal the exception in s.90(2)(b) in respect of residential caravans;

(iii) to allow immediate effect in special cases.

10. Injunctions

10.1 As explained above (Chapter 5, section 2), injunctions have proved a useful back-up to the statutory system in difficult cases. However, there are still doubts about the circumstances in which the remedy is available. In particular, it is unclear to what extent it is available to restrain an actual or threatened breach of planning control before it has become a criminal offence (following service of an enforcement notice or stop notice).

10.2 In my view the authority should be able to apply for an injunction in respect of any breach or threatened breach of planning control, whether or not an enforcement notice or stop notice has been served. There are likely to be two sets of circumstances where it will be especially useful. First, it can provide an urgent remedy in cases where there is a serious threat to amenity, to deal with either a threatened breach (before a stop notice can be served) or an actual breach (for example, where there are problems in preparing an effective enforcement and stop notice in time). Secondly, it can provide a stronger back-up power in cases where the existing remedies have proved, or are thought likely to be, inadequate. The latter function is well recognised in existing case-law, and has a precedent, for example, in section 58(8) of the Control of Pollution Act 1974.

10.3 I think it would be a mistake to attempt to prescribe too closely the circumstances in which the remedy would be available, or the forms of order which could be granted. Experience of decisions over the last few years (see Chapter 5 above) shows that the merit of the remedy is its flexibility and its ability to evolve to meet changing needs. What is required is its recognition in the Act as a normal back-up to the other remedies, and acceptance that it is for the authority to judge (subject to the ordinary judicial review criteria of reasonableness) when its use is appropriate. The Court already has a wide discretion as to the terms on which an order is to be made. In cases where an order is made in advance of an enforcement or stop notice, the terms could include an undertaking by the authority to serve such notices, so that the ordinary procedures would be available for determining the merits and protecting the recipient.

10.4 If such a statutory provision were to be introduced, the opportunity could also be taken to introduce some improvements:-

(i) to make clear that the power is available not only to local authorities, but to any body exercising planning functions (for example, the Development Corporations, National Park authorities). Such bodies may not be within the scope of the powers available under the Local Government Act (see LDDC v Rank Hovis Ltd. 84 LGR 101) (Consideration could also be given at the same time to other bodies exercising functions under the Act, such as English Heritage).

(ii) To allow (subject to Rules of Court) applications to be made to the County Court as well as the High Court. It appears that some County Courts are already prepared to assume jurisdiction, presumably relying on section 22 of the County Courts Act 1984 ("Injunctions and Declarations relating to Land"). However, the position is at best unclear.

(iii) To allow the remedy to be obtained in cases where there are problems in ascertaining the identity of those concerned. I have in mind a procedure along the lines of Rule 113 of the Rules of the Supreme Court, which allows orders for the possession of land to be obtained against "persons unknown". Again the detail would be a matter for Rules of Court.

Recommendation (11) I recommend that there be an express power for authorities exercising planning functions to apply to the High Court or County Court for an injunction to restrain any threatened or actual breach of planning control (whether

or not an enforcement or stop notice has been served), where they consider it necessary or expedient in order to prevent serious damage to amenity or otherwise to supplement the powers available under the Act. Provision should be made for the other matters mentioned in paragraph 10.4.

11. Default action

11.1 The power for the authority to carry out the works itself is in principle a powerful weapon. It is little used in practice, mainly because of the natural reluctance of the authority (and of contractors) to get involved in works on private land against the wishes of the owner. There are also doubts about the ability to recover expenses.

11.2 Although this will never be more than a last resort power, it could be strengthened by making it available for any steps required to be carried out under an enforcement notice. At present it does not extend to works under section 87(7)(b) (for example works for alleviating injury to amenity), nor does it extend to the discontinuance of a use. I do not see any real need for these exclusions. The remedy of judicial review is available to prevent abuse (see R v Greenwich BC ex parte Patel [1985] JPL 851).

11.3 To protect those involved in carrying out the work, these should also be an offence of wilfully obstructing the exercise of the power (along the lines of s.281(2)). The opportunity should also be taken to make regulations under section 91(5) for making the expenses a charge on land.

Recommendation (12) I recommend that section 91 be amended as suggested above: and that the appropriate regulations be made under subsection (5) to enable expenses to be made a charge on the land.

12. Criminal penalties

12.1 The most important change here is to give the Courts the powers to impose penalties which will be a real deterrent. It is not possible by legislation to ensure that the powers are used, but the legislation can give a clear lead.

12.2 As suggested above (Chapter 5, section 4), the maximum penalty for a first offence should be drastically increased, to enable the Magistrates in appropriate cases to impose fines which bear some relation to the economic benefits from the offence. A maximum figure of £20,000 would not be excessive in my view. The maximum daily penalty for subsequent offences should be increased correspondingly.

12.3 Section 89 should also be amended to require the sentencing Court to take into account the financial benefit which has accrued to the offender by reason of the contravention. Such a provision would be in line with section 55(5), and the principle of this change has already been accepted by the Government in the Efficiency Scrutiny Action Plan.

12.4 To make it effective the provision needs to make clear that it is concerned not only with direct benefit, but also indirect benefit, for example through an associated company. There should also be provision to enable the authority to establish the extent of the financial benefit (see Chapter 5, section 4). I would suggest that where the prosecution is intending to rely on this provision it should be enabled to serve on the defendant, not less than (say) 28 days before the hearing, a notice containing an estimate of the financial benefit which they believe to have accrued to him (directly or indirectly). If he wishes to dispute it he should give 14 days, notice of his contention. At the hearing the authority's estimate would be binding except to the extent that it is shown to be wrong.

12.5 Similar changes should be made in respect of stop notice prosecutions (s 90(7)).

12.6 Apart from the level of fines there is a need for a general review of section 89, which has grown by accretion from the original provision in the 1947 Act. The division between discontinuance of uses and other breaches can lead to artificial distinctions between works which are part of the process of discontinuing a use, and other works (see R v Jefford [1986] JPEL 912.)

12.7 Furthermore, the range of persons who can be charged under section 89(1) should be extended. The limitation to the owner at the time of service of the original notice seems anomalous, since the real offence arises at the time of compliance. The need to prove that the defendant was the owner at the time of service can complicate unnecessarily the task of the prosecution (see Marshall v Ruttle CA The Times 20/7/88). Furthermore the provisions to enable the original owner to bring in a subsequent owner are cumbersome, and in any event the

limitation to subsequent "owners", as opposed to other persons who may have responsibility, seems unnecessarily restrictive (cf Food Act 984). The general principle should be that anyone with an interest in the land, or an occupier, should be held responsible for doing all in his power to secure compliance (s.100).

12.8 There is still some confusion as to the position following a first conviction, in the light of a Hodgetts v Chiltern DC [1983] 2 AC 120. That case established that the first and any subsequent offence are single offences, although the penalty for a second offence is assessed on a daily basis. It still needs to be made clear, however, that there can be further convictions after the second offence, and further, that the days taken into account in fixing the penalty can start from the last date taken into account on the previous conviction (rather than the date of the conviction itself).

12.9 The words "as soon as practicable" in section 89(4) should be deleted. They leave it uncertain as to when the offence arises. They are also unnecessary since the obligation is limited by the words "everything in his power".

Recommendation (13) Section 89 should be reviewed generally along the lines indicated above, and amended in particular so that:-

(i) Maximum penalties are increased and financial benefit is taken into account in assessing penalties, provision being made for the prosecution's estimates of such benefit to be binding unless disproved;

(ii) The range of potential defendants is extended;

(iii) The date when an offence arises following first conviction is clarified, and it is made clear that there may be further offences following a second conviction.

Other matters

13. Miscellaneous amendments

13.1 I have not dealt expressly with various detailed matters which have been drawn to my attention in submissions, and in respect of which change is thought desirable by some. Suggestions have been made, for example, in respect of the division of responsibility between County and District, the provisions for Crown Land, and other matters.

13.2 I have deliberately limited my suggested changes to those areas where I believe there to be significant weaknesses in the present system. This is not to say that there are not other matters which could be improved. However, generally, where the system is working tolerably well, I have thought it better to leave it alone. Changes tend inevitably to throw up their own problems.

13.3 Accordingly, where I have not mentioned a particular proposal, it can be taken that a sufficient case is not made out in my view to justify legislative amendment.

14. Minerals and Waste Disposal

14.1 I have given special consideration to whether any particular changes are needed in relation to mineral working or waste disposal. I have had particularly use-ful representations from the minerals industry and from minerals planning authorities and their representatfve bodies (in particular, the County Planning Officers' Society). I have taken them into account in my general recommendations.

14.2 A comprehensive review of planning as it affects minerals was carried out following the Stevens Committee's report. Although recommendations for change were made, in the event, none were specifically adopted. My review does not lead me to suggest any special amendments to the enforcement code to deal with minerals.

15. Guidance

15.1 Last - and very importantly - it is clear that many of the perceived weaknesses of the system arise not from legislative shortcomings but lack of experience or knowledge of how to work it. Once any amendments have been finalised, it is of the greatest importance that they are backed up by adequate guidance to authorities on its practical working.

15.2 There is a need for a Circular or Policy Guidance note explaining the workings of the system and the Departmental policies (similar to the Historic Buildings Circular). There is also a need for the development of a manual for authorities dealing with all aspect of enforcement practice. This should cover best practice with regard to investigation, negotiation, drafting and procedure, appeals, prosecution, stop notices, injunctions, default action and all other aspects of the system.

15.3 While the Department should provide the lead, such a manual would need input from other bodies such as the local authority Associations, the Law Society and the RTPI. (The latter already produce "PANs" or planning advice notes). It is a major task, but it would do much to achieve a more efficient and consistent use of the system. It would also help to counter the problems, to which I referred at the outset, of attracting suitably qualified staff to administer the system.

15.4 It would be very useful if any guidance issued by the Department could include examples from actual cases. The DOE publication "Selected Enforcement and Allied Appeals" (1977) was a valuable exercise of this kind, but is now out of date. It is particularly important now that most decisions are taken by Inspectors. Although they should reflect Departmental policies and practice, they do not always do so. Planning decisions are widely reported in a number of publications, but there are always dangers in treating cases on individual facts as offering general guidance. A selection of cases which illustrated the Department's views would carry great weight, and would also help to illustrate the strengths of the system.

15.5 I have already discussed (Chapter 5, section 5) the policy issues which I consider should be addressed in any new policy guidance.

Recommendation (14) I recommend that the policy guidance in current Circulars should be revised taking into account the points expressed above and in Chapter 5, and that consideration should be given to the preparation of a practice manual for authorities on all aspects of enforcement work.

MRM

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

6 March 1989

Dear Alan

DRAPT STRATEGIC PLANNING GUIDANCE FOR LONDON

The Prime Minister has seen your Secretary of State's minute of 24 February. She is content that the draft guidance should be published.

I am copying this letter to Gareth Jones (Department of Trade and Industry), Liz Smith (Department of Employment), Catherine Bannister (Home Office), Carys Evans (Chief Secretary's Office), Neil Hoyle (Department of Transport) and to Trevor Woolley (Cabinet Office).

Yours

Dominic

DOMINIC MORRIS

Alan D. Ring, Esq.,
Department of the Environment

MAFF

Ministry of Agriculture, Fisheries and Food
Whitehall Place, London SW1A 2HH

From the Minister

The Rt Hon Nicholas Ridley MP
Secretary of State for the Environment
Department of Environment
2 Marsham Street
LONDON
SW1P 3EB

6 March 1989

Dear Nicky,

LAND COMPENSATION: COMPULSORY ACQUISITION AND COMPENSATION

I am grateful to you for sending me copies of your two minutes of 28 February to the Prime Minister on the proposed consultation paper on land compensation and compulsory purchase and the proposal to make an early announcement of the Government's conclusions on development value compensation.

I am content with the draft consultation paper and would support strongly the early announcement of development value compensation as I know that farming and landowning interests are keen to know the Government's conclusions on this matter. I am content with your draft statement and accept that, in the circumstances, it is as far as we can go.

Copies of this letter go to the Prime Minister, members of E(A), John Wakeham and Sir Robin Butler.

Yours ever,

JOHN MacGREGOR

CC PM

2 MARSHAM STREET
LONDON SW1P 3EB
01-276 3000

My ref:

Your ref:

Paul Gray Esq
Private Secretary to
The Prime Minister
10 Downing Street
LONDON
SW1A 2AA

6 March 1989

1. PAB - hard
2. CF pc.

Dear Paul

LAND COMPENSATION AND COMPULSORY ACQUISITION

Thank you for your letter earlier today.

This is just to confirm that the statement on compulsory acquisition and compensation will be made tomorrow (Tuesday), when we will also be publishing the consultation paper on land compensation. Both will be the subject of Answers to Written PQs.

I am copying this letter to private secretaries to the members of E(A), the Lord President, and to Sir Robin Butler.

Yours

A D RING
Private Secretary

Transport - Channel Tunnel.

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

6 March 1989

Dear Roger,

LAND COMPENSATION AND COMPULSORY ACQUISITION

The Prime Minister was grateful for your Secretary of State's two minutes of 28 February, the first entitled Compulsory Acquisition and Compensation and the second, Land Compensation.

On the first paper, she is content for your Secretary of State to proceed with the proposed PQ answer. On the second, she is content for the proposed consultation paper to be published, but suggests that some minor presentational changes are made in the document to make it easier to single out the proposals on wider and earlier acquisition of property from the other detailed points; a clear heading and perhaps some reorganisation of the material might help.

I am copying this letter to members of E(A), Stephen Catling (Lord President's Office) and Trevor Woolley (Cabinet Office).

Yours,
Paul

PAUL GRAY

Roger Bright, Esq.,
Department of the Environment.

cst.ps/12ajm3.2/drfts

FROM: CHIEF SECRETARY
DATE: 6 March 1989

PRIME MINISTER

LAND COMPENSATION AND COMPULSORY ACQUISITION

I have seen copies of Nicholas Ridley's minutes of 28 September to you concerning certain proposals for reducing delays to major construction projects and attaching a draft consultation paper.

2. I indicated in my minute of 6 October that I was content with the Working Group's views on development value and its conclusion that the present compensation code should be retained. I am content with the proposed statement, including the reference to the view that compulsory powers should not be available to acquire land for the purpose of incidental commercial development.

3. I note that the additional costs arising from the various minor proposals set out in the draft consultation paper will amount to approximately £1.75 million. As Nicholas accepts that these additional costs will be met from within existing programmes, I am content for the consultation paper to issue.

4. I agree there are advantages to be gained from publishing this paper in advance of BR's announcement on the Channel Tunnel Link.

5. I am copying this minute to members of E(A), John Wakeham and Sir Robin Butler.

P. Walker

JOHN MAJOR

[Approved by the Chief Secretary and signed in his absence.]

PRIME MINISTER

LAND COMPENSATION AND COMPULSORY ACQUISITION

Nick Ridley has sent in two papers on this subject, both dated 28 February. The first, at Flag A, seeks agreement to an early arranged PQ answer making clear - as agreed last October - that there should be no change to the basis on which compensation for compulsory purchase is calculated. But in the same statement he proposes to respond to your earlier comment and to make clear that the Government's view is that compulsory powers should not be available to acquire land for the purpose of incidental commercial development. Carolyn Sinclair (Flag B) recommends you to agree to the proposed early arranged answer.

Nick Ridley's second minute (Flag C) attaches a consultation paper on the miscellaneous land compensation proposals sanctioned last Spring by E(A). He proposes publishing this next week, so that the paper is available in advance of BR's proposals of a Channel Tunnel Rail Link on 8 March. The intention would be to show that the compensation approach BR are adopting will, in due course, be more widely applied.

Carolyn Sinclair's second note (Flag D) recommends you to agree to the early publication of the consultation paper, subject to bringing out more clearly the proposals on wider and earlier acquisition of property.

One issue you should be aware of is the likely timetable for introducing the legislation set out in the consultation paper. Nick Ridley is keen to have a Planning Bill in the 1989-90 Session. Room has not, however, been found in the latest QL proposals; so the Planning Bill will have to wait until 1990-91. Nick Ridley's first minute (Flag A) argues, however, that he would still wish to press ahead with early publication even if legislation is not possible in 1989-90.

Content:

- to agree the draft arranged PQ answer at Flag A? Yes

- to agree to early publication of the consultation paper at Flag C, subject to the presentational improvement suggested by Carolyn Sinclair? Yes Yes

pp PAUL GRAY
2 March 1989

DS2APS

PRIME MINISTER

2 March 1989

COMPULSORY ACQUISITION AND COMPENSATION

You agreed last October that there should be no change to be basis on which compensation for compulsory purchase is calculated. But you thought that property owners had a legitimate grievance where land is taken for a commercial use incidental to the project for which compulsory purchase powers are exercised. You asked Nicholas Ridley to consider whether there should be a general presumption that Ministers would not approve a compulsory purchase in those circumstances.

Nicholas Ridley has now replied. In essence, he agrees with you. But he is concerned that we should not tie our hands on issues which have not yet arisen. He points out that in future we may want to attract private finance for an infrastructure project by enabling investors to benefit from development values which the project unlocks.

Meanwhile, he sees advantage, against the background of controversy in Kent, in making it clear that the Government's view is that compulsory powers should not be available to acquire land for the purpose of incidental commercial development. He encloses a draft PQ and Answer which he would like to make soon. This sets out the Government's position, which is consistent with your view, but does not bind the hand of Parliament in the future.

Recommendation

Nicholas Ridley's draft statement looks sensible. I recommend that you agree to it.

CAROLYN SINCLAIR

PRIME MINISTER

2 March 1989

LAND COMPENSATION

Nicholas Ridley has minuted to you with the text of a consultation paper covering miscellaneous improvements in the arrangements for Land Compensation.

These were agreed in principle in E(A) last March. The improvements are relatively minor, but they should be generally helpful to the building of the Channel Tunnel link and other major infrastructure projects.

Two points:

(i) the consultation paper trails the possibility of further compensation for owner/occupiers forced to move because of a compulsory purchase order;

(ii) it includes a number of proposals for wider and earlier purchase of property affected by public development.

You agreed to (i) last October. You and colleagues have already decided that owner/occupiers should be given a 10% supplement on market value as soon as the necessary legislation can be passed (the Planning Bill proposed for 1989/90).

(ii) will be particularly helpful to BR. Nicholas Ridley wants to publish his paper before BR announce their proposals on 8 March, to show that the approach adopted by BR has wider application. This is fine. But it is hard to single out the proposals on wider and earlier acquisition of property from the other detailed points covered in the consultation paper. A clear heading, and perhaps some reorganisation of the material, would bring these particular proposals immediately to the eye.

Recommendation

Agree that Nicholas Ridley should go ahead and publish his consultation paper, but ask that the proposals on wider and earlier acquisition of property should be more clearly highlighted.

CAROLYN SINCLAIR

PS/G/11

Department of Employment
Caxton House, Tothill Street, London SW1H 9NF
Telephone 01-273 5803
Telex 915564 Fax 01-273 5821

Secretary of State

The Rt Hon Nicholas Ridley MP
Secretary of State for the Environment
2 Marsham Street
LONDON
SW1P 3EB

Dear Nick.

DRAFT STRATEGIC PLANNING GUIDANCE FOR LONDON

You copied to me your minute of 24 February to the Prime Minister.

I am content with the draft guidance you propose to publish on 3 March.

I am copying this letter to the Prime Minister and the other recipients of your minute.

NORMAN FOWLER

LOCAL GOVT: Planning
pt 6

cst.ps/8ce1.3/lets

cc P.S.

Treasury Chambers, Parliament Street, SW1P 3AG

Roger Bright Esq
Private Secretary to the
Secretary of State for the Environment
Department of the Environment
2 Marsham Street
London
SW1P 3EB

1 March 1989

Dear Roger

DRAFT STRATEGIC PLANNING GUIDANCE FOR LONDON

The Chief Secretary has seen Mr Ridley's letter to the Prime Minister of 24 February.

The Chief Secretary is content with the draft guidance, but suggests two detailed amendments.

In paragraph 11, he suggests deleting "as is London's share of national employment" and adding a new sentence "It will be important to maintain and strengthen London's international competitiveness. London is ....."

In paragraph 16 he suggests deleting "unless there are clear planning reasons not to do so" and adding "wherever possible."

I am copying this letter to Paul Gray.

Yours

Carys Evans

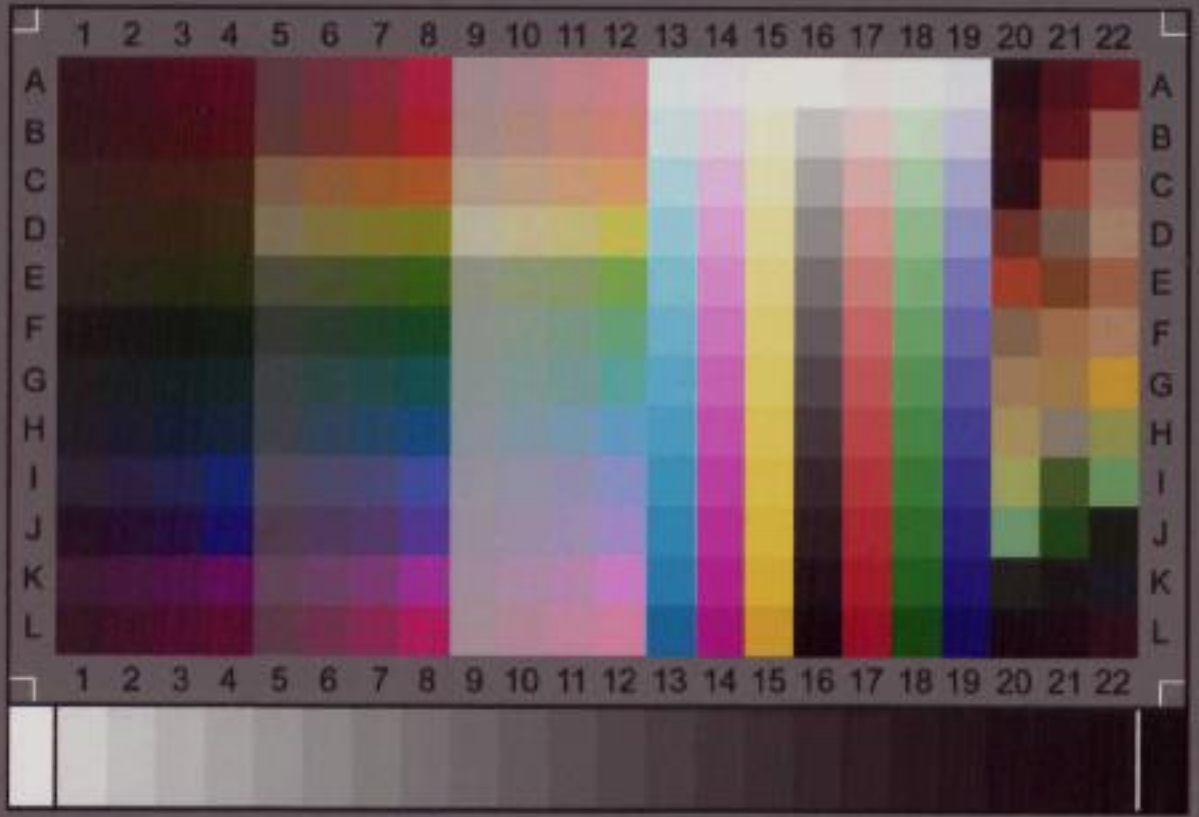
MISS C EVANS
Private Secretary

PART 5. ends:-

SS/Gw to PM 28/2/89.

PART 6. begins:-

PS/CST to PS/DoE 1.3.89


1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22
A B C D E F G H I J K L
IT8.7/2-1993
2009:02
Image Access
IT-8 Target
Printed on Kodak Professional Paper
Charge: R090212