PRIME MINISTER

**PLANNING POLICY**

I have seen Kenneth Baker's encouraging minute of 2 December, and David Young's minute of 6 December. It might be helpful If I mention in advance a couple of points which I should like to raise at our meeting, in the light of my own experience as a planning lawyer.

2. The first concerns one of the starting points of current planning policy, DOE circular 75/76, which includes an obligation:

> "to ensure that, as far as possible, land of a higher grade agricultural quality is not taken for development where land of a lower quality is available and that the amount of land taken is no greater than is reasonably required for carrying out the development in accordance with proper standards".

3. In correspondence between Patrick Jenkin, Michael Jopling and Norman Tebbit in March and April of this year, it was agreed that there should be a review of present procedures regarding conflicts between different Departments' objectives in the planning process. The details of the case, which concerned an application by Dupont, need not concern us here. What was, and is, important is that the presumption in favour of prime agricultural land inevitably colours the way in which the planning process operates, and to some extent limits the impact of the "presumption in favour of development" which we have recently re-endorsed. It remains most important that the interested Departments do get down to looking at the relationship between agricultural and other economic objectives in the planning process, taking into account the declining importance of agriculture in the national economy, and the objective we all share of minimising the curbs on commercial activity in the economy

4. I understand that this may not be a point to raise with the Sainsbury Group themselves, since they do not seem to have challenged circular 75/76, and the intention to have a review of these matters is,for the moment, an internal one.

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But it is important that we recognise the existence of this starting point when considering amongst ourselves whether we have gone far enough in deregulating the planning process.

5. My second point relates to the issue of costs. I understand that the intention behind the review which is currently underway is that it should in future be for Inspectors to decide on the award of costs - as well as that the award of costs should be possible for appeals going through the written procedure. My own experience suggests that Inspectors tend to be less robust about matters of this sort than might be desirable. Further than that, my personal view is that the present guidelines on the award of costs are unecessarily restrictive in their reliance on vexatiousness or other unreasonable conduct. It seems to me there is something to be said for introducing into planning procedures the principle that applies in the civil Courts, that costs should follow the result, with the unsuccessful party paying both his own costs and those of the opposition (be it appellant or planning authority). This would obviously apply only to appeals, since the initial planning process is, unlike recourse to the courts, non-optional. It does seem to me, however, that local authorities might think twice about refusing permission on dubious grounds if it were clear to them that there was a real possibility of costs being awarded against them in the event of an appeal being upheld.

6. I recognise, of course, that such a course would have implications for the willingness of developers to go to appeal - bearing in mind that only one third of appeals are successful - in a way which might act against those with smaller financial resources, or potentially less profitable developments. This would to some extent be underlining the market signal, but we should obviously need to consider whether such a course would on balance bring benefits to developers, or would place greater weight on, as it were, the court of first sentence than would be desirable. One might also look at whether such a test would run only for the larger developments, where the financial burdens would be less worrying, and the developer can be assumed to be going into an appeal with his eyes open, on the basis of good professional advice. I hope Kenneth Baker will think this idea worth looking at again, with David Young and my Department.



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7. I am sending copies of this letter to Kenneth Baker David Young and David Trippier.

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