CONFIDENTIAL

PRIME MINISTER

PLANNING SYSTEM

As you know, the group convened by Sir John Sainsbury has prepared a report on "The Town and Country Planning System: Comments on Defects and Suggestions for Improvement". You have said that you would be glad to discuss the report's proposals with the group and I would find it very useful to hear their views.

This would help carry forward the discussion that we have had recently on the future of the planning system. Following those discussions, and before we received the report from John Sainsbury's group, I had put in hand the preparation of a paper summarising the policies that we have been pursuing over the past five years and the progress that has been made in reforming the planning system, together with proposals for further change. This is based on discussions that I have had with my colleagues in DOE, and in particular with Kenneth Baker who shares my concern as an "ex-DTI" Minister to ensure that the planning system facilitates industrial development and economic activity, while taking proper account of our concern for the environment and conservation of the countryside. I enclose a copy of that paper which I hope can form the basis of further discussions with colleagues - perhaps in E(A) - as well as providing a broader policy basis for our talk with John Sainsbury's group.

As to the group's report, they have concentrated their attention on what might be done within the present system to simplify it and improve its efficiency, and to ensure that those who operate it do so in ways consistent with government policy. This is entirely in line with the approach that we have followed over the past five years. My own paper suggests how this policy can be carried forward, and in doing so we can take full account of the group's proposals.

Broadly speaking their recommendations can be grouped under three main heads (references are to the summary of recommendations in section 2 of the report):

(1) Policy (2.4, 2.5 and 2.6 items (a)-(b)): they are looking to us to reaffirm the policy statement that our predecessors published in 1953 that "Development should always be encouraged unless it will cause demonstrable harm to an interest of acknowledged importance". We have in fact restated this principle on a number of occasions and we can certainly do so again. In doing so, we will need to make it clear that there are other interests that are of acknowledged importance, including those of home owners who are concerned for their local environment and the much wider interest in the conservation of countryside.

(2) Planning control (2.6 items (c)-(g)): they make a number of proposals that are intended to ensure that this policy is effectively applied by local authorities in the day-to-day operation of planning control. Much of what they recommend is in line with existing "best practice" and with guidance that has been given to local planning authorities. The group would like to find ways of making this legally enforceable but that is hardly practicable when one is dealing with a system operated by some 350 local authorities and handling around 450,000 planning applications a year. What we can do is to make it quite clear how we intend that the system should function and to back that up in the way that planning appeals are dealt with and in the award of costs.

(3) Planning appeals (2.6 items (h)-(p)): there is a set of recommendations (items (i) to (m)) that suggest possible changes in the way in which planning appeals are dealt with, including changes in the composition of the Planning Inspectorate and the possibility of establishing local tribunals to deal with the large number of relatively minor planning appeals, leaving only those of major importance to be dealt with by the present system of Ministerial jurisdiction. This part of the report is not entirely clear and it will be helpful to discuss it with the group. I am not at all sure that the particular proposals that they make would improve the efficiency of the system or the quality of decisions: some could introduce further delays and

tend to make the whole process too legalistic. But I believe that we should give further thought to the present structure of the Inspectorate and the extent of Ministerial jurisdiction. There are problems with the volume of work that the Inspectorate has to handle, and the possibility of a more local type of tribunal to handle minor cases and a reconstituted Inspectorate, perhaps under a new form of management and direction, is well worth considering. This would certainly require legislation and might encounter considerable opposition if it were thought to detract from the rights of individuals or the independence of the Inspectorate. We would have to approach the possibility of change with considerable care, and it may be that the initiative in opening up these matters for wider public debate could be taken by John Sainsbury's group or perhaps by the legal member of the group, Roger Suddards, who is well know and respected as a practising planning lawyer.

This third aspect of the report (planning appeals) raises issues that we may need to consider along with the question of alternatives to the present system of major public inquiries, on which I will be circulating a paper for H Committee shortly, following their consideration earlier this year of the problems encountered at the Archway inquiry, and the concern which you expressed about the costs and delays involved in some major inquiries such as those on Stansted and Sizewell. It could be that this is an area of the planning system that would warrant a comprehensive review, and one which could be tackled without calling in question the broad objectives of the planning system which undoubtedly command a wide measure of public support. It is over 25 years since the Franks Committee looked at this aspect of the system and a new review might be generally welcomed. I think it would need to be conducted by a body similar to the Franks Committee that would command public confidence.

You may not wish to get into too great a degree of detail in discussion with the group, since many of their specific proposals raise legal and enforcement issues that require detailed analysis. I would be glad to arrange for their proposals to be examined in detail

by officials, pehaps in consultation with Mr Suddards, after we have had a more general disussion with the group.

PJ

PJ

30 October 1984

JJ

THE PLANNING SYSTEM

Note by the Secretary of State for the Environment

INTRODUCTION

1. This paper is in three parts. Part 1 explains very briefly the main features of the planning system, its purpose, how it works and the factors that influence the way it works. Part 2 summarises the action that we have taken since 1979 to simplify the system and improve its efficiency, together with figures that show how its performance has improved. Part 3 outlines the further changes that we have in hand and how this continuing reform can be carried forward.

1. MAIN FEATURES

(i) Purpose

2. The purpose of the planning system is to ensure economy, efficiency and amenity in the use and development of land. Economy because land is a finite resource that should not be used wastefully. Efficiency because totally unplanned development can impose unnecessary costs both on developers and investors, whose interests may be affected by incompatible development, and in terms of public utilities, roads, transport, etc. Amenity because the way in which land is used or developed can be injurious to private property owners, the local environment and the countryside. The system itself is certainly capable of improvement and adaptation but there is no doubt that these objectives command very substantial popular support.

(ii) Components

3. The system that we now have is the same in its essentials as that established in 1947, except for the confiscatory "betterment" provisions that were discarded by our predecessors in 1953. The key components are:

(a) development control: nearly all types of development and change in the use of land or buildings require planning permission. Some minor types are given general permission by Regulations but most require specific permission and this discretionary power of control is exercised by local planning authorities - normally the District Council.

(b) development plans: since the power of control is almost wholly discretionary, local planning authorities are required to prepare plans that show how they expect the area to develop over the next 5-10 years and how they intend to use their powers to influence the shape and pace of development over that period. The plans are of two types - broad structure plans prepared by the County Councils and more detailed local plans prepared by the Districts. The development plans are an essential part of the system since without them there would be no check on the arbitrary and unpredictable use of planning control. Since the plans are subject to a process of public consultation, they also enable local people and others to have a say in how the area should develop in future and thus in how the system works.

(c) jurisdiction - the operation of the system is under the jurisdiction of the Secretary of State. Applicants who are refused planning permission can appeal to him; he approves the structure plans and can modify local plans; and there is a whole battery of reserve powers that enable him to intervene in the local planning process, and to call in applications for his own decision.

(iii) Operation

4. These are the basic components of the system. In its essentials it is simple, flexible and can be used effectively. The system itself is neutral in the sense that it can be used to facilitate development or to prevent it. The problems arise where it is used in ways that run counter to national policies, particularly in ways that are detrimental to economic development, competition and the market demand for housing. It can be used to exercise very detailed and vexatious control. It can reflect very restrictive attitudes towards development and resistance to change. Despite the powers of Ministerial intervention, it is not easy to ensure that in its day to day working it operates in accordance with government policy. But this often means that it reflects strongly held local attitudes and interests that are not easily overridden.

5. The broad objectives that the system is intended to serve clearly command very widespread support, including the great majority of our own supporters - especially as regards their local environment and the protection of the countryside. Proposals to modify the system are liable to be misrepresented as a threat to those objectives. The system is now deeply entrenched in property law and property values. Those who want to retain it, and indeed reinforce it, far outnumber those who resent the way in which it can frustrate or delay development. We are under pressure to extend planning control over some types of agricultural development, and we are committed to establishing more control over intensive livestock units. This is the political reality and we should not underrate it.

6. In view of the widespread support for those objectives, and the diverse interests involved, we have concentrated on ways of modifying and improving the system that will not be misunderstood as a threat to its basic structure. This approach was well summarised in the 5 Year Forward Look shortly before the General Election:

> "What is needed is not the dismantling of the system but reaffirmation of basic objectives and simplification of machinery and procedures; less detailed control at the local level and less involvement by central government in what are purely local issues, while retaining effective policies on matters that are of more than local significance".

7. The 5 Year Forward Look also made the point that planning has only a limited role in the development process and that other measures are needed to promote development, urban renewal and the re-use of derelict land, particularly where local authorities and other public bodies are withholding unused land from the market. This aspect is to be considered by EDL . We have done much to encourage this through Enterprise Zones, Derelict Land Grant, Land Registers, innovations in housing policy, the Urban Programme, Urban Development Grant and the Urban Development Corporations. Our policy has been to use limited amounts of public money to stimulate far larger private investment in development, redevelopment and renewal. It is important to stress this positive approach since it reinforces our wish to see the planning system used in ways that facilitate economic development as well as to protect the environment. We said in our manifesto last year "In our crowded country the planning system has to strike a delicate balance. It must provide for the homes and workplaces we need. It must protect the environment in which we live".

2. CHANGING THE SYSTEM: PROGRESS TO DATE

Main Changes

8. Annex A to this paper lists the main changes that we have made to the system and the way it operates since 1979. It represents a very substantial process of incremental change in the system. The action taken includes extensions of the range of permitted development (ie for which separate planning applications are not required), simplified procedures and a sustained drive to reduce the time taken to deal with development plans, planning applications and planning appeals.

Performance

9. These measures, plus a series of major policy statements on how the system should and should not be used, have improved performance and reduced delays.

10. Details are given in the Annex but a few key indicators prove the point: we cannot be satisfied with the present performance but it does show a marked improvement:

Planning applications - in 1983 70% of planning applications were decided within 8 weeks compared to 60% in 1979. 87% of all applications are approved. Of those that go to appeal about a third are approved, so the total approval rate is over 90%.

Planning appeals - the great majority of cases are now decided by Inspectors, which is by far the faster route as compared to those where they report with recommendations to Ministers, and most are decided on the basis of written representations rather than involving a public inquiry. The comparison with 10 years ago is striking (see also diagrams at Annex C).

	1974	1983
Appeals received	13,324	13,699
In hand at start of year	16,681	13,699
Decided by Inspectors	73%	95%
Time taken (start to decision): weeks		
inquiry cases	65	26
written cases	38	19

Development plans - by April 1979 only 25 structure plans had been approved and there was a huge backlog of plans awaiting approval that had accumulated since structure plans were introduced in the 1968 Act. All except one have now been approved, usually with modifications to allow more land for development. The exception is Avon where the plan was withdrawn and resubmitted: it will soon be completed.

Main types of development

11. It is useful to see how some of the main types of development are affected by planning control:

(i) Industry: local planning authorities have been told to give priority to proposals for industrial development. 90% of applications for major industrial development are approved and over 90% of minor developments. Research has shown that planning control is not generally seen by small firms as a major impediment to their business.

(ii) Housing: private house builders make the biggest demands on land and they naturally tend to go for easily developed sites in attractive locations where the market demand is strong but where local opposition to new development is also strong. Fewer of their applications get approved but the success rate for large sites of more than 10 houses has increased from 62% in 1980 to 79% last year, and for smaller sites from 66% in 1980 to 76% last year.

(iii) Superstores: very large retail stores, of over 50,000 sq ft gross, usually with large surface car parks, are a relatively new form of development in this country and one for which existing plans generally made no provision. Despite this, the published figures show that 279 superstores had been built by the end of 1983, compared with only 45 in 1973, and planning permission had been given for 48 more by the end of last year (see also diagram at Annex C). The market view is that saturation point would be reached at about 500 such stores. The figures show that the planning system has not operated to prevent this new trend in retailing and has probably helped to steer new superstores to sites where they can develop successfully without arousing undue opposition from neighbouring residents.

12. Where the system works well and promptly it can facilitate development and help to resolve the conflicts of interest that often arise in the development and use of land. If all local planning authorities performed as well as the best do now, there

would not be much ground for complaint. But there is a long way to go before all authorities reach even today's average level, and there are some features of the present control mechanism that impede progress towards a simpler and more efficient system. Further changes are in hand or in prospect, and there is also scope for more far reaching changes if we judged that those would yield substantial benefits. I deal with these in the next part of the paper.

3. CHANGING THE SYSTEM: THE NEXT STAGE

13. When MISC 14 reviewed the planning system and its impact on industrial development in May last year, they concluded that it would not be appropriate to establish a fundamental enquiry into the planning system and that the aim should be to continue to improve the efficiency of the system and to change the attitudes of those who operate it (MISC 14(83) 3rd). At that time the Committee had a paper by my predecessor setting out the further measures then in hand to improve the system (MISC 14(83) 4 Annex C); all of those have now been implemented or are well advanced.

New measures now in hand

14. At Annex B is a further list of measures now in hand, some of which are being worked up with a view to possible legislation in 1985/86. The more substantial items include

(a) Simplified Planning Zones - this would make available in other areas the type of simplified planning regime that has been successfully introduced in Enterprise Zones. Instead of requiring developers to apply for planning permission, the scheme sets out the types of development acceptable in the zone and, if they can comply with those basic requirements, developers can go ahead with their projects without the need for a planning application or the fee that goes with it. We published a consultation paper on this proposal earlier this year: it has had a varied response but by no means wholly hostile. It seems well worth pursuing. It would require main legislation.

(b) Major public inquiries - I will be circulating to H Committee shortly a paper on possible changes in the procedures for major public inquiries, and alternative procedures. There is widespread concern at the heavy costs and delays that the present system imposes. It will also deal with the problems of disruption that were vividly illustrated at the Archway inquiry.

(c) Permitted development - major reviews are in progress of the General Development Order, the Use Classes Order and the Advertisement Regulations, including the scope for extending the range of development that does not require specific permission and for allowing greater flexibility in the use and adaptation of existing buildings. This is particularly relevant to high tech. industries where the traditional distinctions between office, manufacturing and laboratory uses are no longer relevant.

(d) policyguidance - following the major restatements of policy issued over the past year on land for housing, green belts, land for industry, and planning gain (ie the practice of demanding financial or other benefits as the price of planning permission - which we have virtually outlawed), further important policy guidance will be issued shortly on planning conditions aimed at preventing the attachment of onerous or unnecessary conditions to the grant of planning permission, and on superstores. This will make it quite clear that planning control is not to be used to restrain market competition or innovation in retailing methods.

15. As Annex B shows, there is a large number of minor modifications that could usefully be made to the system, many of which would remove unnecessary restrictions, simplify procedures or improve performance.

16. The cumulative effect of the changes made since 1979 and those now in hand or in prospect represent a major overhaul of the system which is still continuing, combined with sustained pressure on local authorities to improve their performance.

The Sainsbury Report

17. The report of Sir John Sainsbury's group, which we received earlier this month, is broadly consistent with the approach that we have been taking. It does not propose any fundamental change in the structure of the system or its objectives. It seeks reaffirmation of the principle that "Development should always be encouraged unless it will cause demonstrable harm to an interest of acknowledged importance". This is another way of stating the principle that the developer is entitled to get planning permission unless there are sound planning reasons why he should not. What it means is that a local planning authority cannot refuse permission for arbitrary or irrelevant reasons. The Courts have always upheld this principle and we have re-stated it unequivocally. It is the basis of planningadministration and it is well worth repeating it.

18. When it comes to specific proposals the report concentrates on changes within the present system, and is limited to changes in the methods of dealing with planning applications and planning appeals. The proposals are aimed at improving efficiency and

ensuring clarity of decision. I will be circulating a separate commentary on the detailed proposals, and we will need to consider each of them very carefully to see whether they would in fact help to secure those objectives. Some would almost certainly prove counter-productive but others are well worth considering.

19. The most interesting aspect is the set of proposals that would, in effect, separate the minor types of development from the major development projects. The minor applications would be dealt with at officer level, and appeals against refusal would be dealt with by a local form of tribunal rather than by the Secretary of State or his Inspectors. The thought is that this could avoid the system being overburdened with minor matters and allow major proposals to be dealt with more expeditiously and improve the quality of decisions. This would be a major change of jurisdiction and might not be acceptable to public opinion; but it is an important proposal that we will want to consider.

Long-term changes

20. Beyond the proposals put forward in the Sainsbury report, it is possible to speculate about entirely different alternatives to the present system. For example, a reversion to the "zoning" system of the 1930's or to reliance on restrictive covenants. Zoning systems are still used in many countries but they involve a different set of rigidities and seem to work best where there is no particular concern to limit the rate at which land is consumed by development or to conserve agricultural land. As to restrictive covenants, the Law Commission have recently completed a report on this subject which proposes a new system of "land obligations" between adjoining owners but which does not purport to replace the planning system with its broader and more varied objectives.

21. There could be advantages in stimulating a wider public debate about the objectives of planning, the efficacy of the present planning system, and possible alternatives or improvements. Publication of the Sainsbury report could provide such a stimulus. In addition, the Nuffield Foundation have set up a high powered commission of enquiry on planning which has been at work for over a year and aims to publish a report within the next year. They have found it heavy going but the results of their efforts could provide a useful basis for opening up the debate.

CONCLUSION

22. It is clear that there is at present no substantial pressure for reforms of a radical kind in the planning system or any general agreement as to what those reforms should be. The present system, because of the protection it affords to householders and other landowners, attracts a wide measure of public support; it is seen as the means of conserving the best of our towns and our countryside. On each occasion when the scope for radical change has been considered (by MISC 14 in 1983 and also in 1980) it has been concluded that the right course is to continue to seek changes which will simplify and improve the system, and to change the attitudes of those who operate it. The report of the Nuffield enquiry, which they hope to publish by about the middle of next year, may provide an opportunity for testing public opinion on the case for more radical changes and what those changes might be.

23. I therefore conclude that we should maintain the approach that we have followed over the past five years in the progressive overhaul of the system, simplifying its machinery, improving its efficiency, and giving clear policy direction on how we intend it should operate. This approach has already yielded substantial results and there is still plenty of scope for further improvement and constructive change within the system and consistent with our broader policies for encouraging both economic activity and conservation.

ANNEX A

MEASURES TAKEN TO IMPROVE AND STREAMLINE THE PLANNING SYSTEM SINCE 1979

Legislative measures:

1. Local Government Planning and Land Act 1980

- concentrated development control functions with district councils (except minerals and waste disposal development), removing overlap with counties and counties' power to direct refusal of applications made to districts;

- simplified development plan procedures to enable more rapid progress and flexibility (particularly by simplifying form and content of structure plans and introducing expedited procedures for local plans)

- introduced fees for applications, to offset local authorities' handling costs (and thereby discouraging frivolous applications).

2. Amendments to the General Development Order (GDO) in 1981 to increase the range of development permitted without a specific planning application:-

- factory extensions can now be 20% instead of 10% of original building size, (limit 750 sq metres).

- permitted home extensions were also increased from 10% to 15%

- permitted changes of use extended, eg to allow small warehouses to be used for light industry, and small light and general industrial buildings to be used as warehouses. This added to the right to use any general industrial building for light industry.

These changes served both to stimulate construction and to reduce the total number of planning applications being made so as to speed up decision-making on the more major ones.

3. Enterprise Zones created, in which the normal planning regime is reversed: except for some specified development (very large, or potentially hazardous etc) no planning application is needed. Although the main attractions of EZs are financial (rates and tax allowances) a major report commissioned by DOE and published on 24 January commented that the simplified planning regime has been welcomed by developers for the certainty it produces and has worked well (4,000 new jobs in new firms in the first 11 zones).

4. Local Government and Planning (Amendment) Act 1981 - Private Member's Bill with Government support. Revised procedures applying to enforcement appeals and gave Secretary of State more discretionary powers to dismiss enforcement appeals or quash enforcement notices if appellant or local planning authority fail to comply with relevant requirements of Regulations, with aim of reducing time taken to process and determine appeals.

5. Experimental use of Special Development Orders to control development of particular kinds without planning control - particularly to permit laying of communications equipment along British Rail land by Mercury Communications.

6. Further GDO amendments (1983) to strengthen planning controls over hazardous development.

7. Control of Advertisment Regulations amended and consolidated (1984) giving deemed consent for poster hoardings round construction sites for up to 2 years; advertisments on captive balloons also brought into control.

8. Town and Country Planning Act 1984 provided a formal statutory procedure for obtaining planning permission for the development of Crown land prior to disposal of a Crown interest, thus removing uncertainty about the future use of Crown land (notably surplus hospital sites) and helping ensure best price on the sale.

Other measures

9. DOE Circular 22/80 set out Government policy on development control with the emphasis on the economic benefits of encouraging, not obstructing development, and avoiding delay:-

- there should be a general presumption in favour of development

- delays in handling applications can cost jobs and delay investment

- lpa's must recognise the role of businesses in economic regeneration and adopt a positive helpful approach, giving priority to applications representing most in terms of growth and jobs

- they can help identify premises for small firms and encourage the re-use of redundant farm buildings etc

- they should avoid rigid 'zoning' policies which eg. exclude all industry

- they should not take enforcement action except as a last resort

- they should always give planning permission if there are no insuperable planning reasons for refusal.

10. Measures to speed up appeals:

a. the transfer of more cases to Inspectors. In 1983, 95% were transferred to Inspectors for decision. This reduced substantially the time taken to issue decisions.

b. the introduction of informal hearings as an easier, cheaper inquiry system for simple cases;

c. the introduction of "instant decisions", which are now issued on around a quarter of inquiry cases;

d. engaging part-time planning consultant inspectors from private practice;

e. seeking the agreement of planning authorities to increase their capacity to deal with appeals more speedily;

f. the provision of better information about the appeals system by publishing performance statistics, Circular 38/81, new appellants' guide and the Chief Inspector's Annual Report;

g. the introduction of computer technology for forecast workload and improve management statistics.

Results of appeal measures:

In 1983 median time to determine the 77% of appeals that Inspectors decided by written representations was 19 weeks - 4 weeks less than 1979. Some major appeals inevitably take longer - the median time for determining Secretary of State inquiry cases was 48 weeks in 1983, as against 49 weeks in 1979. But because of the transfer of most cases to Inspectors, Secretary of State inquiry cases now represent only a very small proportion of the total (30% in 1983 as against 10% in 1979).

11. Planning Gain. Circular 22/83 gives guidance about the circumstances in which local planning authorities can seek additional benefits from developers by imposing obligations when granting planning permission.

12. Code of Practice for handling planning applications. A voluntary code of practice was set out in Circular 28/83, to provide a consistent basis for the quarterly local publication of information by local authorities on the handling of planning applications. It came into effect in April 1984.

The Department also collects and publishes a quarterly 'league table of local authorities' performance on development control, with direct Ministerial approaches to the laggards.

Performance

There has been a very real improvement in the handling of planning

applications by local authorities. The latest figures (quarter October - December 1983) show that the overall steady improvement in the proportion of application decided within 8 weeks since 1979 has been maintained - 70% compared with 60% in 1979, varying from 80% in the Northern region to 63% in the South East and 50% in London. The approval rate for all applications is still consistently high at 87%, ranging from 92% in the Northern region to 85% in the SE and SW regions and 86% in London. The approval rate for major manufacturing applications (1000 sq metres and over) was 90% and 93% for householder applications.

13. Green Belt Circular 14/84, reaffirms Government policy on the importance of Green Belt, its relationship with urban renewal, and gives detailed advice on definition of long term boundaries in local plans.

14. Land for Housing Circular 15/84 reemphasises importance of providing an adequate and continuing supply of land for housing.

15. Industrial Development Circular 16/84 - expands the message of 22/80 in the specific context of manufacturing industry and high technology. Like 22/80, it emphasises the importance of LPA's attitudes to industry and their role in facilitating development. It gives specific advice on handling applications and helping applicants; on making adequate provisions for industry in development plans; on the special needs and problems of high tech; and on the scope for allowing more industry including small firms - in residential and rural areas.

A newly revised booklet - 'Planning Permission - a Guide for Industry' gives practical advice to industrialists on the planning system, how it works, and how to use it.

16. Memorandum on Structure and Local Plans Circular 22/84, a major consolidation exercise, updates and clarifies the advice to local planning authorities on their operation of Development Plans system, and in particular urges that structure plans are kept up to date.

The Department has also striven to speed up the processing of development plans: 72 structure plans have now been approved since May 1979 (compared with 25 beforehand) and 262 local plans adopted (compared with 19 beforehand).

ANNEX B

MEASURES IN HAND FOR FURTHER IMPROVEMENTS TO THE SYSTEM

A. Proposals which would need legislation.

1. Further controls over hazardous substances by requiring specific consent from the local planning authority before land may be used for a purpose involving specified quantities of a hazardous substance. Drafting is taking place on these proposals so that the legislation could be offered to a Private Member.

2. Consultation in train on concept of Simplified Planning Zones, which would enable local authorities to liberalise planning control in parts of their areas by granting permission for any, or certain kinds of, development.

3. Consultation in train on miscellaneous improvements and amendments to the planning system, for inclusion in a Miscellaneous Planning and Land Bill with a view to future consolidation of planning legislation. Proposals include:

- allowing award of costs in written representation cases; power for inspectors to award costs in 'their' cases; and simplifying procedures for costs for successful objectors to CPOs.

- increasing penalties for offences against planning legislation not covered by recent Home Office order

- abolition of right to apply for established use certificate

- improvements to existing provisions to secure proper maintenance of waste land

- freedom to change use between office and industrial use where original permission granted for either alternative - to help 'hi-tech' industry

- relaxing consultation arrangements on some overhead powerlines (only district councils to be consulted)

- removal of listed building control from post-1948 free - standing buildings in curtilage of listed building

- relaxing procedure for demolition of listed buildings.

4. Work in hand on proposals for streamlining development plan procedures: consultation paper being prepared, proposing provisions for keeping development plans up to date and greater flexibility in local plan procedures.

5. Compensation - proposals are in front of Ministers to restrict rights of compensation under the Act which would deal with penthouse flat cases, and where desirable changes in the General Development are introduced.

6. Preparation of Minerals Workings Bill to wind up Ironstone Restoration Fund established since 1951 and transfer assets to British Steel Corporation (fund is obsolete now that minerals planning authorities can impose conditions requiring aftercare in planning permissions) and introducing powers for lpas to require information about abandoned mines. Public consultation complete: Bill to be introduced next Session.

B. Other measures

1. Further proposals for consideration of and amendments to GDO: consultation paper issued on 23 January. Proposals include clarification of GDO rights for agricultural operations and control over erection of livestock buildings near residential property; a new GDO right to extend warehouses; new GDO rights for new telecommunications operators following liberalisation of telecommunications policy in the Telecommunications Act: and numerous other relaxations and clarifications. Received Order to be laid as soon as possible - aiming for early next year.

2. Draft Code of Practice on Handling of Major Inquiries issued for consultation in summer 1984.

3. Environmental Assessment Working Party (representatives from industry, local government and environmental interests) set up to consider how to implement draft EC Directive (likely to be adopted soon) to ensure that EA fits in with existing planning system.

4. Circular giving updated advice on use of conditions in granting planning permission to be issued shortly.

5. Draft Development Control Policy Note on planning issues of service uses in shopping areas (amusement centres, take away food shops, building societies, etc) issued for public consultation.

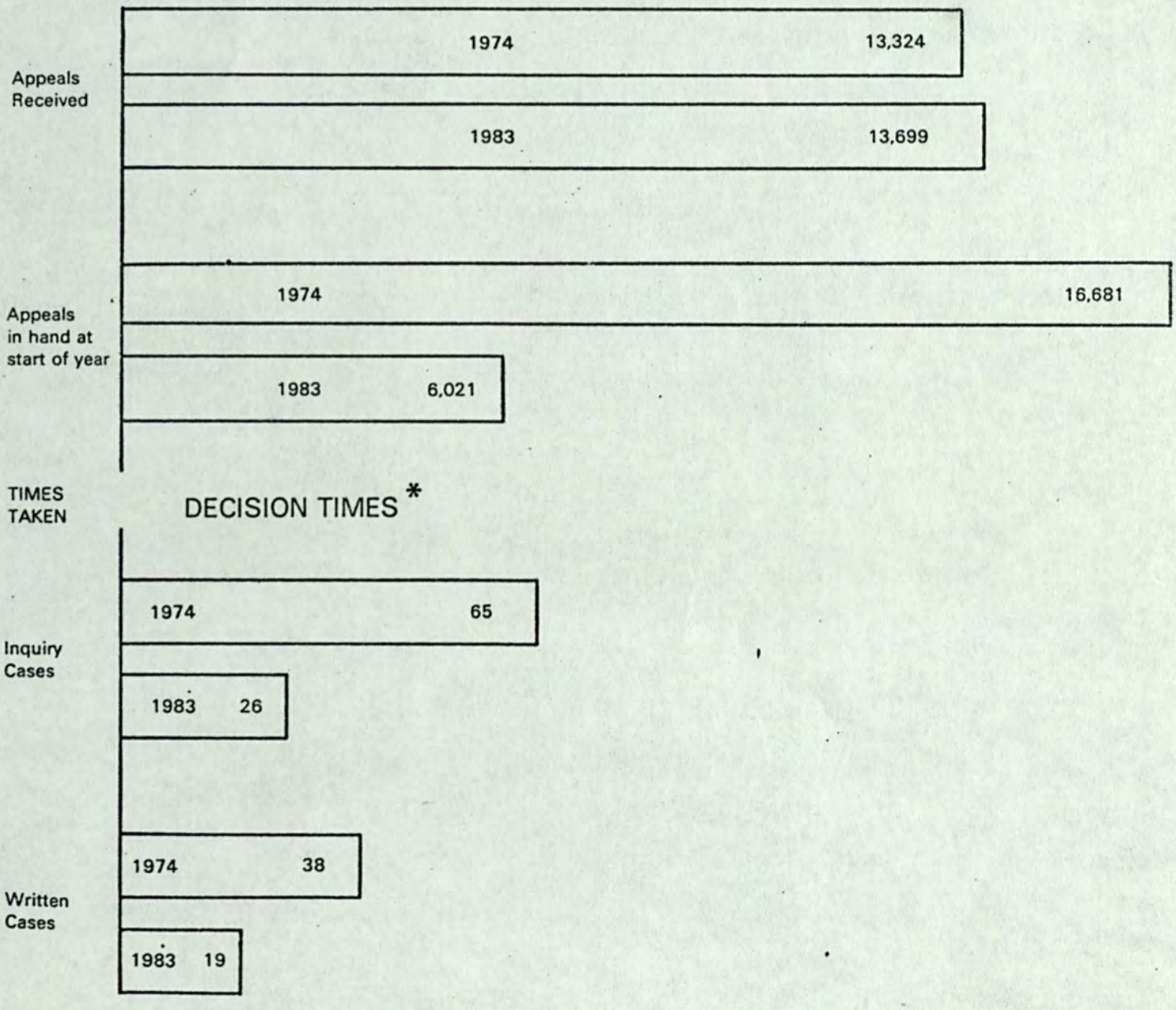
6. Revised DCPN on large new stores in preparation, following consultation with local authorities and retailers about adequacy of present guidance.

7. Discussions in hand with Property Advisory Group on possibility of reviewing Use Classes Order (which lists classes of development within which changes of use do not require specific planning permission).

8. Working party of officials set up to review advertisment regulations - first systematic review since 1948.

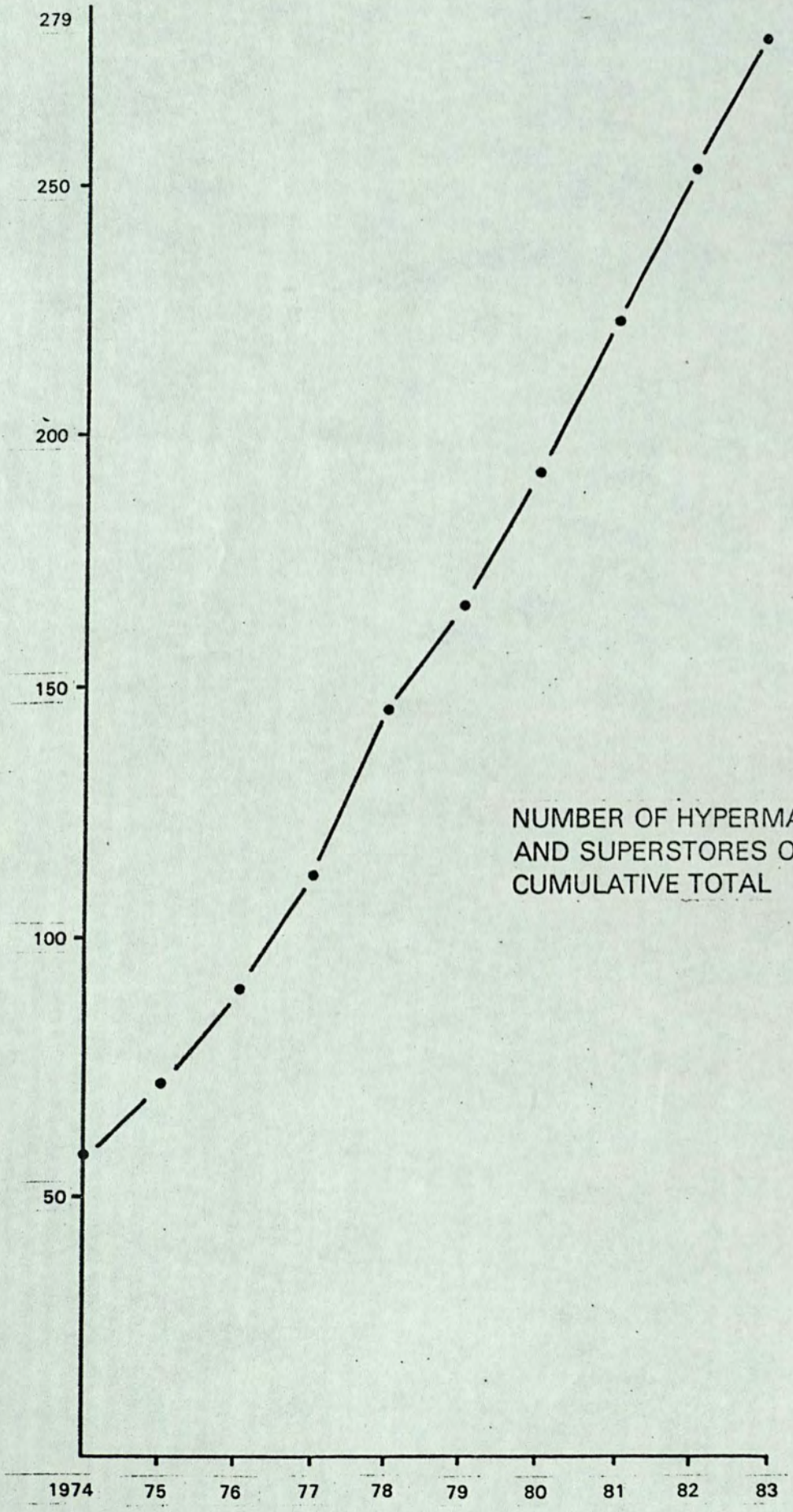
ANNEX C
Fig 1

PLANNING APPEALS: 10 YEAR COMPARISON 1974 and 1983



*. median time in weeks-cases decided by Inspectors

ANNEX C
Fig 2



NUMBER OF HYPERMARKETS
AND SUPERSTORES OPENED:
CUMULATIVE TOTAL

LOCAL GOVT : Planning / Sir J Sainsbury
July '83

178/11

HB

20/11/84

The Sainsbury Papers.

THE TOWN AND COUNTRY PLANNING SYSTEM

COMMENTS ON DEFECTS AND SUGGESTIONS FOR IMPROVEMENT

See Pages 3-5

JULY 1984

CONTENTS

THE TOWN AND COUNTRY PLANNING SYSTEM

1.0 Comments on Defects and Suggestions for Improvement

1.1 Considerable dissatisfaction exists amongst the professions and those in industry with the planning procedures, delays and quality of decisions as they are implemented in the United Kingdom.

Seven senior members drawn from both the professions and industry have held a series of meetings to explore, criticise and offer practical suggestions and measures to assist in remedying the defects as they see them.

The members of the Group were:

Christopher J. Benson
Vice-Chairman and Managing Director
MEPC PLC

Clifford J. Chetwood
Chairman and Chief Executive
George Wimpey PLC

G. Nigel Mobbs
Chairman and Chief Executive
Slough Estates PLC

D. N. Idris Pearce
Managing Partner
Richard Ellis

Sir John Sainsbury
Chairman and Chief Executive
J. Sainsbury PLC

Roger W. Suddards
Senior Partner
Last Suddards Solicitors

John Taylor
Partner
Chapman Taylor Partners

1.2 The main reasons for the dissatisfaction are that the present system has produced an unnecessary bureaucracy which, far from advancing the improvement of the environment and infrastructure of the country, presents barriers to enterprise and change, and is a very real frustration to innovative ideas. Such frustration is costly to the country and presents a burden to commerce and industry with a lack of tangible benefits to the country as a whole who have to bear the largely hidden but very high cost of the system.

1.3 Delays are caused by the use of ambiguous, outdated and irrelevant policies. Delays are also caused by the negative attitude of Planning Authorities involving greatly increased costs to the applicants and slowing down the rejuvenation process of the industrial, commercial and housing stock of the country. This is also detrimental to the creation of employment and companies' prosperity and competitiveness.

1.4 As a consequence, the Government's will to modernise Britain and reduce the burden of regulation is being thwarted.

1.5 We believe that the following words which were used in DoE Circular 61/53 October 1953 are the very essence of what is embodied in this paper:

"Development should always be ENCOURAGED unless it will cause DEMONSTRABLE harm to an interest of acknowledged importance."

2.0 Summary of Recommendations

2.1 The Group welcomes the major review of town planning which the Nuffield Foundation is conducting. However, the Group believes that urgent reform should not be deferred as delay and inefficiency penalizes productive investment and employment.

2.2 Thus we suggest a number of reforms which would not prejudice a long-term reform of the system but would have an immediate effect.

2.3 Some of our prosposed reforms could be effected by administrative action and some would need statutory authority.

2.4 Our proposed reforms are based upon the basic presumption that an applicant is entitled to planning permission and this presumption needs stating authoritively and enforcing firmly.

2.5 We also believe:

(a) Effective planning control should be based on clear, relevant and contemporary policies which should be known to applicants.

(b) Local Planning Authorities have a duty to administer planning applications in an expeditious manner.

(c) Unnecessary delays in considering applications and determining appeals should be eliminated.

(d) There should be simplification of planning controls and an extension of permitted development categories so that more time and expertise is available to determine more important applications and issues.

(e) Small applications and the approval of details should be delegated to officers.

2.6 Our specific proposals are:

(a) There should be positive direction from the Secretary of State of the "Presumption in Favour of Development" (paras 3.1 to 3.4).

(b) A circular should be issued restating this presumption and all decisions should give precise reasons why a refusal has been given and the presumption is not accepted (para 3.4).

(c) When permission is refused, or conditions attached, then a full explanation of all the reasons should be supplied to the appellants (paras 3.7 to 3.10).

(d) Where a Local Authority refuses planning permission they should always make available to applicants the report and recommendations of the Planning Officer (para 3.11).

(e) Applicants for planning permission should be able to obtain approvals from the Consultative bodies prior to making a planning application (paras 4.3 to 4.4).

(f) Local Planning Authorities should be under a duty to deal expeditiously with applications or return the fees (para 4.6).

(g) The Secretary of State should now direct Local Authorities to delegate certain categories of applications to their planning officers (paras 4.7 to 4.8).

(h) The Inspector deciding an appeal should award costs against any party who has caused undue delay (para 5.3).

(i) That a higher echelon of inspectors be created at a grade to attract distinguished professional members into the Inspectorate (para 5.4).

(j) The Inspectors should be administered by the Lord Chancellor's Department (paras 5.5 to 5.6).

(k) The creation of local planning appeal tribunals (paras 5.7 to 5.9).

(l) Greater use to be made of "ad hoc" inspectors to relieve the backlog of appeals (para 5.10).

(m) The formation of a competent tribunal to determine appeals (paras 5.11 to 5.12).

(n) Parties to an appeal should have the right to receive the Inspector's report and to agree it as a fair record before the Inspector issues his formal decision (paras 5.13 to 5.17).

(o) There should be mandatory time limits in Written Representation Procedures. Submissions received outside the prescribed limits should be disregarded in deciding an appeal. More encouragement should be given to appellants to use the Written Representation Procedure (paras 5.18 to 5.21).

(p) The Secretary of State should be empowered to direct Local Planning Authorities to enter into a Section 52 agreement binding the Planning Authority (para 6.1).

Argument in Support of Proposed Changes

3.0 Reducing Unpredictability of Decisions and Improving Standards in Reporting Decisions

3.1 Many planning decisions contain an element of subjectivity. The aim must be to lessen the degree to which that element forms an inscrutable determinant in the decision.

3.2 We draw a distinction between expert and lay opinion. In the latter category, we include members of local authorities, it is here that dubious subjective decisions are least capable of analysis and therefore least assailable. Planning is not solely a matter for experts, but we strongly contend that subjective decisions by lay people should play as little a part as possible in decisions on planning applications and appeals. This is not to rule out commonsense, but to rule out decisions expressed in vague terms or the unreasoned influence of local or national pressure groups. Decisions should be based on clear, relevant and positive public policies.

3.3 Such policies are derived from research, public debate and ministerial approval. These policies must be known and understood by both applicants and authorities. They also form the basis of any Principle of Presumption in favour of development. There should be frequent reiteration by the Secretary of State for the Environment of the presumption in favour of development. This presumption frequently given lip service in Departmental Circulars, is prominently absent from Local Authority and Department decisions.

3.4 As soon as possible, the presumption in favour of development should be restated in a Circular, and that the form of notification to an authority of receipt of an appeal should set out the presumption, as should the first paragraph of Inspector's decisions. We commend the following which was used in Circular 61/53, October 1953.

"Development should always be ENCOURAGED unless it will cause DEMONSTRABLE harm to an interest of acknowledged importance."

3.5 This provides a rigorous test for the Inspector to apply positively to the cases presented by each party.

3.6 It is not enough to restate the principle. The major problem is to make sure that it is used as the basic test by Local Authorities and Inspectors. As to the Local Authorities, the only effective enforcement is costs; as to Inspectors, the Secretary of State should personally meet the Inspectors regularly, "en masse", reminding them forcefully that they are exercising his powers and that they are bound by his policies of which "the presumption" is the first.

3.7 Inspectors and Planning Officers should be required to provide clear amplification of the facts of any subjective conclusions reached.

3.8 Examples such as planning committees expressing a general disapproval of particular projects and leaving, to their planning officer, the formulation of plausible "reasons for refusal". These often include such expressions as "injurious to the amenities", "overdevelopment of the site", "alien in architectural form", likely to lead to traffic problems", etc. The rejection of a planning application or of an appeal incorporating these or similar abstract concepts represents a major aspect of "unpredictability".

3.9 To counteract this negative approach, Local Planning Authorities who refuse planning permission should be required to set out an acknowledgement of The Presumption in Favour of Development and clear and comprehensive reasons for refusal. It is not enough to say that a proposal is "contrary to the Structure Plan" or "is premature in advance of a local plan", or "no commerical requirement for the development". The late Chief Planner to the DoE, Sir Wilfred Burns, cited green belt policy "as being used by some planners as a catch-all reason for refusing anything and everything". He referred to the "unthinking use of dogma that has not seriously and rigorously been examined over many decades". Applicants have a right to understand fully the basis for refusal so that they can form a reasoned decision whether or not to appeal.

3.10 Where any refusal of permission includes subjective judgement, the bare expression of opinion should not be considered an adequate basis for the decision, but should be required to be supported by concrete application to the facts and surroundings of the case. If this amplification is not contained in the Council's notice of decision, then, in accepting an appeal, the Secretary of State should immediately require the further information from the Authority. Similarly, Inspectors and Planning Officers should be required, when exercising powers of decision delegated to them by the Secretary of State, to provide clear amplification of any abstract concept to which they refer.

3.11 Local Planning Authorities are generally willing to discuss development projects but, apart from a few, they adopt a negative approach, emphasising objections to proposals rather than suggesting or contributing to solutions to the problems.

Despite pre-consultation with and support from planning officers and compliance with their reasonable requests, applications are often refused by authorities for no objective reasons.

Local Planning Authorities' true reasoning is often concealed until 28 days before the Inquiry, when the appellant has usually already incurred the expense of his own preparation to meet all possible permutations of the Council's so often enigmatic "reasons". When the basis of the Local Planning Authorities' refusal is clear, the appellant would be under a corresponding obligation to declare his own position just as plainly.

To assist in deciding whether to appeal or not, Councils refusing applications should make public and available to applicants the report and recommendation of their advisers to them on the case.

4.0 Delays

4.1 To increase the sense of urgency that is necessary to improve the speed of planning decisions, all the costs of unnecessary delay should be borne by those who cause the delay. Decisions take time, the length of time taken is never a measure of the quality of decision.

4.2 There has been improvement in the time taken for some planning approvals, but there continues to be instances where cases are held up for long periods without explanation or any apparent reason. Greater urgency is required.

4.3 A source of delay is the way in which the consultations necessary in the processing of a planning application are carried out. There is, at present, no effective time limit to which consultees must conform, yet the views of some of them may be crucial to a proper decision (eg. on mining subsidence; on flooding; on agricultural grading of land; on the safeguarding of future road lines). It is not practicable for a Local Planning Authority to proceed on the basis that "late" comment, on matters of that nature, will be ignored.

4.4 If the applicant obtains the approval of a consultee body within the 3 month period prior to making the planning application, this would negate the need for the Local Planning Authority to consult with that body when the planning application is received. Thus reducing the period needed for consideration.

4.5 Further causes of delay are the ambiguity, irrelevancy and obsolescence of many planning policies. Such a situation allows councillors to re-debate the issues on new applications to the frustration of the applicant. This can create planning blight so well defined by Ian Mikardo, MP:

> **"Planning blight is almost the most direct and severe example of the perfect being the enemy of the good. Nothing is done because somebody is trying to think out something ..... than anyone is ready, willing and able to do ..... nothing is done in bricks and mortar because so much is being done on bits of paper."**
>
> (Howe G. "Too Much Law" 1977)

4.6 Many authorities use the excuse of lack of staff due to cutbacks for delaying site visits and dealing with Planning Applications. There is a professed lack of capacity in the Department for dealing with Appeals. Applicants are now charged fees for making applications. Local Planning Authorities should be under a duty to deal expeditiously with applications or return the fees.

4.7 At local government level, some delay is attributable to a failure to streamline Committee agenda by classifying Planning Applications in the manner set out in DoE Circular 142/73, paragraph 7 (ii).

4.8 The Secretary of State should give a direction to Local Planning Authorities requiring them to authorise decisions to be taken by their Planning Officers and drawing attention to the advantages in saving time which this offers.

5.0 Appeals

5.1 It is to be regretted that the average time taken by the Secretary of State to determine appeals has reached an unacceptable level and is still increasing. In 1981 it was 44 weeks, it increased to 46 weeks in 1982, and the forthcoming report by the Chief Inspector will indicate that the average time taken last year was 48 weeks.

5.2 An efficient and respected appeals procedure can be no substitute to the provision of proper procedures for the consideration of development applications. However, the current appeals machinery does need to be revised, due to the lack of consistency, the delays and the ambiguity of decisions.

5.3 Where, in the opinion of the Inspector, unreasonable delays have occured, he should award costs against the defaulting party.

5.4 With the diversity in professional background and experience of Inspectors, it is not surprising that a variable standard is achieved. An upper echelon should be encouraged and strengthened by the establishment of a higher grade, to which outstanding Inspectors should be promoted, and to which new distinguished professional members could be attracted.

5.5 The Committee on Administrative Tribunals and Inquiries (The Franks' Committee) in their report in 1955, gave special consideration to the status of Inspectors - whether they should be "departmental" or "independent". The arguments are set out at pages 64 and 65 of the Report. Their recommendation was (para 303):

"..... that Inspectors be placed under the control of a Minister not directly concerned with the subject matter of their work. This would most appropriately be the Lord Chancellor in England and Wales ....."

The Government did not implement the Committee's recommendation, but paradoxically decided not to change the practice in Scotland of appointing persons from outside the public service to conduct their inquiries.

5.6 The independence of Inspectors would be strengthened by their being administered by the Lord Chancellor's Department and that this would largely increase public confidence in their impartiability and, by association and supervision, lead to a raising of the standard of reports and decisions. In those cases where Ministerial decision is appropriate, the responsibility would remain that of the Secretary of State for the Environment.

5.7 In the 1964 Commons debate on Planning Appeals machinery, the Joint Parliamentary Secretary, Mr (now Sir Frederick) Corfield said (Hansard column 1782) "Looking to the future it may well be that we ought to say that at least some of these appeals should go to some tribunal. I certainly do not rule that out." He went on to deal with problems of categorisation.

5.8 Power should be given to the Secretary of State to convene a small committee to deal with planning appeals at the option of either the appellant or the Local Planning Authority. Its scope would not extend to matters of major or national importance.

5.9 The institution of "Local Planning Appeal Tribunals" on a regional basis, and consisting of three part-time members: the Chairman to be legally qualified, a second member to be a surveyor/architect/engineer, a third member from local government.

5.10 Greater use be made of "ad hoc" inspectors to relieve the backlog of appeals.

5.11 Dissatisfaction exists with the quality of decisions reached at appeal stage. The only route then available is to apply to the High Court who can, on a point of law, quash the decision and refer it back to the Secretary of State.

5.12 Consideration should be given to the formation of a competent tribunal where planning appeals may be determined, and where the tribunal will have the authority, not only to quash, but power to substitute its decision and grant or refuse planning permission with or without conditions on a grant. No reopening of the question of fact would take place.

5.13 Inspectors reports and decisions often lack clarity of expression and reasoning.

In seeking to avoid challenge in the Courts, inadequate decision letters are unwittingly encouraged by the use of a protective formula in which the Inspector says that "he has taken account of all points made at the Inquiry", but mentions only those he selects for his conclusions.

5.14 In the past, the Departmental Inspectors prepared the Report of the Public Inquiry with the issue being determined by a Decision Officer. This system was almost entirely superceded on grounds of economy and speed, and not because it did not produce satisfactory results.

It is of some significance that it is still current practice, in "important" cases, for the decisions not to be made by the Inspector who holds the Inquiry.

5.15 We do not wish to press for a return to the old system, but a serious defect of the present arrangement (in which over 90% of cases are decided by Inspectors) is that results can be erratic. The individualistic approach of Inspectors adds a degree of uncertainty as to the outcome, which will certainly deter many would-be developers and will also make the financing of appeals both unnecessarily expensive and risky.

5.16 The parties to an appeal should receive the Inspector's draft report and agree it as a fair record before the Inspector issues his formal decision. A period of 28 days should be allowed for comment. "No comment", would be deemed as an acceptance of the Inspector's Report. This would compel Inspectors to consider more thoroughly the evidence and argument they hear and to show that they have understood and evaluated ALL the points on which each party relied.

5.17 Our suggestion would bring into effect a recommendation of the Franks' Committee (para 345) that "the Parties should have an opportunity if they so desire to propose corrections of fact to what we have described in paragraph 328 as the first part of the Inspector's Report ....."

5.18 Considerable success has been achieved by the Department in persuading appellants and Local Authorities to use the Written Representation Procedure but there remains instances where a council motivated by local politics or even vindictiveness insists upon public inquiry, or drags its feet in its part in Written Representation.

5.19 One of the main causes of delay in planning decisions and determining appeals is the failure of the parties to adhere to target timetables.

Sometimes there are genuine problems to be resolved which may involve very difficult judgements.

However, the appeal system could be tightened up and speeded if an iron discipline on the timetable for Written Representation was introduced and adhered to.

This should only apply to Written Representation appeals (which amount to 76% of all appeals) and normally deals with "small cases".

5.20 Encouragement should be given for more appellants to use the Written Representation Procedure. Associated with this, the Written Representation Timetable should be mandatory.

5.21 The Inspectorate should be instructed that late Representations are to be disregarded. Written appeals will then be decided on the evidence before it.

6.0 Section 52 Agreement

6.1 Not infrequently, it appears that a planning permission could properly be granted subject to a Section 52 Agreement. In some instances, apparently in order to frustrate a permission that the Secretary of State has indicated that he would have granted an appeal, the relevant authority refuses to enter into the Agreement. The Secretary of State should be empowered to direct the Local Planning Authorities to enter into a Section 52 Agreement binding the authority (subject to appeal to the tribunal on reasonableness) and thus "releasing" the permission.

26TH JULY 1984