PRIME MINISTER

SAINSBURY GROUP PROPOSALS

The Environment Secretary has now submitted to you the Sainsbury Group Report (Mr. Jenkins' covering minute at Flag A, Report at Flag B). You asked that the Report should be submitted in time for a further meeting with the Group, under your Chairmanship, before the end of this month.

It would be very difficult to fit this meeting into your diary before you leave for the Far East. I am sure most of the industrialists involved would find themselves in the same position.

There is at this stage no pressing reason for a meeting before Easter. Sir John Sainsbury and his Group are, we understand, content with the Report. The draft circular at Annex A, which is the key document, looks to be very much along the right lines, with its emphasis on a presumption in favour of planning permission. Mr. Jenkin however does not wish to publish the circular until after the County Council Elections on 2 May. So a meeting in the third week in April would not delay matters there.

If you agree, we will therefore arrange a meeting of the Group as soon as possible after you return from overseas. If you are content with that timing, you do not need to study the attached papers at this stage. Thankyou!

Content to have the meeting after Easter?

Mark Addison

Yes ms

Wed 17 10.00 (2½)

Mon 22 10.00 (2hrs.)

Chas.

Mark Addison
20 March 1985

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SECRETARY OF STATE FOR THE ENVIRONMENT

CC NO A

Prime Minister

The Planning System: Sainsbury Group's Proposals

1. On 10 December you held a meeting with Sir John Sainsbury and the group that he had convened to put forward proposals for improvements to the planning system. At the conclusion of that meeting you asked me to arrange for the group's proposals to be considered jointly by members of the group and officials of my Department and other interested Departments. The aim was to report progress in time for you to have a further meeting with the group before the end of this month.

2. I now enclose a report on the discussions that have been held with the group. I had a meeting with Sir John Sainsbury and other members of the group last Friday, and they expressed themselves very well satisfied with the results of those discussions and with the report which has been agreed with the group.

3. You will see that the Department was able to respond positively to all the proposals which the group wanted to pursue, and that the group decided not to take forward those few items on which the group themselves had some reservations and which seemed likely to prove counter-productive. The discussions also covered some other topics which are dealt with in this report together with some additional points which were not considered in detail but which it was agreed should be followed up without delaying the submission of the report.

4. The group's two main concerns were firstly the general policy stance on planning and development, and secondly the efficiency of the appeal process as a means of policy implementation.

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5. They have made a number of useful suggestions on speeding up appeals and have said that major developers such as themselves would be prepared to accept a tightening up of the process in terms of time limits, procedure at public inquiries etc. This is helpful in view of the changes in the Inquiry Rules that we will be introducing following recent discussion in H Committee.

6. As to the policy stance, they attach the greatest importance to reaffirming what is already the underlying principle of planning control but which is too often forgotten by local planning authorities and those who think that the sole purpose of the planning system is to prevent development: that is, that there should be a presumption in favour allowing applications for development unless that development would cause demonstrable harm to interests of acknowledged importance. This principle was stated in precisely those terms in a circular issued in 1953 but which was cancelled in 1979 because parts of it were obsolete. It is well worth restating. The group also suggested that it should be made clear that all applications must be dealt with promptly, that clear, relevant and specific reasons should be given for any refusals, and that structure plans should be treated as one, but only one, of the factors to be considered in deciding planning applications and appeals. A draft "one page" circular prepared by the Department and embodying these principles is annexed to the report (Annex A).

7. The group clearly regard the publication of this circular as the most positive response that we could make to their concerns. I agree, but I have told the group that in my view, although what the circular says is essentially a forceful restatement of existing policy, it will be much more effective if it is seen to be issued as part of the wide range of initiatives that the Government is taking on enterprise, jobs and deregulation, and that it will also be best to publish it after, rather than shortly before, the County Council elections on 2 May. There is no doubt that

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it will prove controversial, despite the fact that it also reaffirms our commitment to the green belt and other conservation objectives. It will need careful preparation and presentation.

8. Sir John Sainsbury was concerned that the discussions should be carried forward quickly and in strict confidence. For that reason they were limited to the members of the group and a few of my senior officials. Other Departments principally concerned, including those whose Ministers were present at your meeting with the group (David Young and David Trippier) together with SDD, the Welsh Office and the Lord Chancellor's Department, were kept in touch with progress and received the minutes of the meetings. Following your next meeting with the group, however, we will need to consult more widely on the detailed proposals and with other Departments that have an interest (eg. MAFF, DTp, etc). In particular, it will be necessary to consult Cabinet colleagues on the proposed circular.

9. I think that this exercise has been well worth while. It has been helpful to my Department to have the views of these leading "users" of the planning system, and I know that the group themselves have been pleased with the positive response that they have had from the Department. I will ensure that all these proposals are carried forward promptly along with the large number of other specific changes and improvements which are now in hand.

10. I have agreed with Sir John that his group should have further informal meetings with my officials from time to time, and that they should meet again in September to review progress.

11. I am sending copies of this minute and the report to David Young and David Trippier, and to Sir Robert Armstrong. I am also arranging for copies to be sent to the Departments who were consulted

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during discussions with the Group (SDD, Welsh Office and Lord Chancellor's Department).

PJ

P J

19 March 1985

12.

THE PLANNING SYSTEM

Note by the Department of the Environment

INTRODUCTION

1. This note reports the outcome of discussions between the Group convened by Sir John Sainsbury and officials of the Department of the Environment following the Prime Minister's meeting with the Group on 10 December 1984 (see Mr Barclay's letter of 11 December). The Group's report "The Town and Country Planning System: comments on Defects and Suggestions for Improvements" formed the basis of these discussions, together with further papers prepared by the Group and the Department. Four meetings were held.

2. The Department also consulted other Departments concerned, including those whose Ministers were present at the Prime Minister's meeting (DTI and the Enterprise Unit), the Welsh Office and the Scottish Development Department (who also have responsibility for the planning system), and the Lord Chancellor's Department (who are responsible for the Council on Tribunals and related matters). Minutes of the meetings were circulated to those Departments. Other Departments (eg. MAFF, DTp, D. En) have an interest in planning procedures and will need to be consulted on some of the proposals discussed if they are to be carried forward; so too will the Local Authority Associations, the Law Society and other interests.

THE MAIN ISSUES

3. The Group's main areas of concern, and their specific proposals, fall into three groups:

Planning Policy: The Group wish to see a positive statement of the "Presumption in favour of Development", and a requirement on local planning authorities to give precise reasons for refusal of planning permission or for conditions attached to permission, and a full explanation for such decisions based on clear, relevant and contemporary policies, (proposals (a), (b) and (c)).

Planning Applications: The Group wish to see measures taken to ensure that local planning authorities administer planning

applications in an expeditions manner (proposals (d), (e), (f), (g)).

Planning Appeals: The Group wish to see measures taken to improve the efficiency of the appeals system, and to maintain and enhance the quality of the Inspectorate (proposals (h), (i), (j), (k), (l), (m), (n), (o), (p)).

4. The Department confirmed that DOE Ministers fully shared the Group's concern that the planning system should operate efficiently and that it should serve to facilitate development while also showing sensitivity to legitimate environmental interests. There was therefore no difference on matters of principle and the discussions concentrated on the measures that could usefully be taken to clarify policy and improve performance.

5. The following paragraphs report the conclusions reached in discussions with the Group, taking account of each of the Group's proposals and also of other actions being taken by the Department that are relevant to the Group's main areas of concern (the Group's proposals are shown in single spacing). Other matters that were raised in dicussions with the Group, including Structure Plans and Simplified Planning Zones, are referred to in paras 45-51. Finally paragraph 52 draws attention to the key points that the Group wish to emphasise.

PLANNING POLICY

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

(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.

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

6. The Department confirmed that planning permission should always be granted unless there are sound, clear and relevant reasons to the contrary. This presumption had been upheld by the Courts, and had been incorporated in DOE Circulars 22/80 and 16/84. But it was well worth restating and in a form that would have a strong impact on local planning authorities.

7. The Group welcomed the Department's proposal to publish a "one page" circular dealing with these policy items. It would restore the clear directions given to local planning authorities in MHLG Circular 63/1953, to which the Group's report had drawn attention but which had been cancelled in 1979 (along with many other obsolete circulars) because parts of it were out of date.

8. A draft of such a circular is at Annex A and has been warmly endorsed by the Group.

9. The Group also welcome the Department's proposal that, if Ministers approve the issue of such a circular, it should be reproduced at the front of future editions of the Department's booklet "Planning permission - a Guide for Industry".

10. It is suggested that it would be helpful if the new circular were issued as part of any general initiatives that the Government may be planning to announce shortly to encourage enterprise and employment. It is likely to be better received if it is issued in that context than if published separately. The Group also suggests that, if the Secretary of State intended to provide press briefing on the circular, he could emphasise that it is often not the planning system as such that causes problems (since about 90% of all planning applications are approved) but the delay caused by inefficient administration of the system: "Time costs money".

11. The Group would regard the publication of a circular on these lines as the most positive and immediate intiative that could be taken in response to their main concern about the planning system.

12. The Group endorse the Department's proposal that Section 29 of the Planning Act 1971 should be amended so as to require local planning authorities to give specific reasons for any refusal of planning permission or the imposition of conditions. Such an amendment could be included with other proposals for amendment of planning legislation which the Department published last year with a view to possible legislation in 1985/86 if the Parliamentary timetable permits.

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

13. The Group's concern was to ensure that planning decisions were taken openly and solely on proper planning grounds. The Department was able to inform the Group that Mr Robin Squire's Private Member's Bill on freedom of information in local government would, if enacted, meet this point since it provides both for sub-committee meetings, as well as committee and council meetings, to be open to the public, and for their right to see papers prepared by officers for those meetings. The Bill received a Second Reading on 1 February, with Government support.

14. The question of the responsibilities of officers, and relations between members and officers, is also likely to be one of the topics to be considered by the Committee of Inquiry into the practices and procedures in which the Government announced last year and whose Chairmanship and terms of reference were announced on 6 February.

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

15. The Department agree that this aspect of planning procedures warrants examination. At present the General Development Order prescribes 15 consultees and consultations with a further 14 may be required, although very few planning applications would involve consultation with all of these. The Department will examine whether all the present consultations need to be prescribed by regulation and whether the full list can be reduced. The Department will at the same time follow up the Group's suggestion that the developer should be able to clear consultation with the relevant bodies prior to making his planning application: this would certainly be an advantage if it proves to be practicable. Prior consultation would be at the developer's option and not compulsory. The question of reinforcing the time limits for consultation will also be considered.

16. The Department will undertake to pursue these proposals with the statutory consultees (which include MAFF, DTp, other Departments

and statutory undertakers), the Local Authority Associations and other interests involved. If necessary, amendments can be made to the General Development Order.

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

17. The Group acknowledge that the main drawback to this proposal is that it could well result in local planning authorities issuing automatic refusals to keep within the 8 week limit. While this could attract the award of costs if the matter went to appeal and there were no good reasons for the refusal, this would delay development and overload the appeal system. Large and complex applications, and those requiring to be advertised, can reasonably take longer than 8 weeks to complete. Applicants have the right to appeal if their case is not decided within eight weeks but can agree to an extension of time. Planning application fees make a significant contribution to the cost of administering the development control system (current yield about £30m a year) and the proceeds are taken into account in fixing the Rate Support Grant.

18. For these reasons the Department could not support this proposal and the Group would not wish to press it. The award of costs provides a remedy in some cases where delay occurs at the appeal stage (see paras 21-24 below).

19. The Department will, however, undertake to discuss with the Local Authority Associations and other interests the preparation of a Code of Practice for dealing with planning applications, which will draw on the best practice of those authorities who consistently clear a high proportion of planning applications within the 8 week period. This Code of Practice would also deal with other aspects of planning control, including the Group's proposals (e) and (g) - see paras 16 and 20. A further point to be covered by the Code is the need to afford developers full opportunity to explain their proposals, and to negotiate possible modifications, before any decision is reached to refuse permission or to impose conditions: the Group attach particular importance to this, especially in the case of large projects involving substantial investment.

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

20. Delegation to officers of routine and minor cases is widely practised in local government and is encouraged in DOE Circular 22/80, and will be one of the matters to be taken up in the proposed Code of Practice (see para 19 above).The Secretary of State, however, has no power to issue directions to that effect and it would be wrong to circumscribe a local councillor's freedom to raise any matter with an officer. The Audit Commission recommend the use of delegation in their recent report on development control and the Commission are pressing it in their examinations of individual authorities. It is also likely to feature in the work of the Committee of Inquiry into local government procedures (see para 14 above).

PLANNING APPEALS

21. The Group's main concern was with time taken to deal with planning appeals. Despite the marked improvement in decision times over the past ten years, there had been a deterioration in 1982 and 1983 for appeals recovered for Secretary of State decision on both inquiry and written representation cases. These now represented only 5% of all appeals but those included many of the largest developments involving major investment. The Group's proposals were directed at relieving pressure on the appeal system and improving its efficiency. The Department fully shares the Group's concern and sees the improvement of appeals performance as first priority in the operation of the system.

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

22. The Department explained that present practice on the award of costs in planning cases was based on the 1964 Report of the Council on Tribunals on the Award of Costs at Statutory Inquiries (Cmnd 2471). This recommended that costs should normally be awarded against a party who behaves unreasonably, vexatiously or frivolously and whose unreasonable behaviour has put another party to unnecessary expense. The report gave examples of the circumstances in which costs might be awarded, including cases where the matter should never have come to appeal, cases where reasons for refusal of planning permission were introduced at a late stage or dropped

in the course of proceedings, and cases where one party was responsible for the Inquiry having to be adjourned or postponed. The grounds on which costs may be awarded are thus quite wide but in practice only about 300 applications for costs are received each year and awards are made in less than a third of such cases. Awards of costs can be made only on appeals dealt with at a public inquiry and not in the case of written representations which now account for 85% of all appeals.

23. The Department agrees with the Group that the costs regime should be clarified and reinforced. The present circular on the subject dates from 1965 and is unsatisfactory in that it does not spell out the grounds on which award of costs can be claimed or awarded. The Group endorse the Department's proposal to issue a new circular on this subject.

24. The Group also endorse the Department's proposals for legislative change to enable costs to be awarded in cases dealt with on written representations and also to enable awards in transferred cases to be made by the Inspector who decides the appeal (the actual amount of costs is settled by agreement between the parties or in default of a High Court Taxing Master).

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

(j) The Inspectors should be administered by the Lord Chancellor Department.

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

25. The Group's main concern in these three related proposals is to maintain and enhance the performance and quality of the Inspectorate.

26. The Department have no reason to doubt the general competence of the Inspectorate and have received very few complaints about Inspectors' conduct of inquiries or their decisions on appeals. Inspectors now decide 96% of all appeals, with only 4% retained for the Secretary of State's decision. The great majority of appellants appear to be satisfied with the way in which Inspectors

carry out their work and, in the case of inquiries, are content that their appeal should be decided by the person who hears their case and visits the site. The Group's concern, however, was with the relatively few large and complex cases which call for a high calibre of Inspector and where the existing core of experienced Inspectors is hard-pressed.

27. The Department provided a detailed analysis of the background experience and professional qualifications of the Inspectorate. It was apparent that the great majority came from a career in local government or the public service and only 6 of the 156 full-time Inspectors joined the Inspectorate direct from private practice, although about a third have had previous private sector experience. In terms of professional qualifications 78 were land-use planners, 28 architects and 23 engineers; only 20 were chartered surveyors and 11 had legal qualifications (some have dual qualifications).

28. The Group did not wish to imply that there was any widespread dissatisfaction with the Inspectorate, but they considered that the information provided on professional background and experience showed that there was scope for broadening the range of experience and expertise represented among the Inspectorate, particularly in the fields of estate surveyors and private practice. The Department undertook to take account of this in future recruitment policy and training.

29. The Group felt that similar considerations applied to the corps of "ad hoc" or part-time Inspectors and wished to see greater use made of these in order to broaden the range of experience represented and to help relieve the case-load on the full-time Inspectors. The Department agreed with this, and it was noted that 84 part-time Inspectors are in use at present, including 45 professional people in private practice. In 1984 they handled about 4770 cases which was roughly one quarter of all appeals decided (but a smaller proportion in terms of total workload since they handle only minor cases, householder appeals etc., dealt with on written representations - see para 43 below).

30. The Group considered that the rates of pay offered to Inspectors (ranging from £13739 to £23076 according to grade and length of service) were insufficient to attract an adequate proportion of the most able professional candidates. The Group also considered

that the day-rates paid for "ad hoc" Inspectors would be wholly inadequate if such Inspectors were to be appointed to deal with major cases, including those involving very large private investment. The Group have provided information on fees currently paid for similar types of work (see Annex B). The Department has undertaken to consider this information and acknowledges the need to ensure that the remuneration offered is fully adequate to attract able people to this demanding work.

31. The question of transferring the Inspectorate to the Lord Chancellor's Department is one for Ministers to consider. The Group recognise, however, that the appeal system is the key component in the planning system and an instrument of policy, and must therefore be under the clear policy direction of the Secretary of State, while maintaining its openness, fairness and impartiality.

(k) The creation of local planning appeal tribunals.

32. The Group's main purpose in suggesting a system of local planning appeal tribunals was to relieve the pressure on the Inspectorate by transferring to local tribunals many of the minor appeals that raise issues of only local interest. They envisaged a new structure of local tribunals of three persons with a legally qualified chairman.

33. The Department explained that this type of appeal was now generally dealt with on written representations, without the need for a local inquiry, and that such appeals could be handled satisfactorily by ad-hoc or part-time Inspectors who now deal with a large proportion of such appeals (see para 29 above). Since this method of handling appeals had proved generally acceptable (as shown by the increasing proportion dealt with in this way), and was economical in cost and manpower, it seemed preferable to concentrate on improving the efficiency of the system rather than setting up an entirely new structure of local tribunals. The Lord Chancellor's Department had also advised that the Lord Chancellor was opposed to creating new specialist jurisdictions with legal Chairman unless to do so was absolutely necessary.

34. The Group concluded that they would not wish to pursue the proposal for local tribunals at present, but considered that it might be necessary for such arrangements to be reconsidered if a substantial improvement in the present system was not achieved over the next year or two.

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

35. Some members of the Group attached greater importance to the proposal for a National Planning Appeals Court. The suggestion was that such a Court should be established to hear appeals on merits (as well as on points of law) from decisions taken by Inspectors. The right of appeal would be limited to the appellant (ie. the developer) and would not extend to the local planning authorities or third parties. Nor would it apply to decisions taken by the Secretary of State as distinct from Inspectors on cases transferred to them.

36. The note of the Group's discussion with the Prime Minister recorded that "doubts were expressed about the merit of adding a further layer to the decision-making process - 'an appeal against the final decision'." It also had to be borne in mind that since 96% of appeals were now decided by Inspectors, of which about a third were allowed, the proposal would introduce a further right of appeal for around 10,000 cases a year (or 15,000 if the right of appeal were extended to local planning authorities).

37. At present there is a right of appeal to the High Court only on a point of law, but in practice the Court has shown itself prepared to accept an application for judicial review on grounds of defective reasoning in the Inspector's (or the Secretary of State's) decision, and it is not uncommon for such cases to be remitted to the Department for redetermination on the grounds that the Inspector (or Secretary of State) had misdirected himself in reaching his decision. On redetermination the merits of the case can be reconsidered as well as the procedural aspects. Where the Court has criticised the manner in which the decision was reached (eg. if the Court had said that a material consideration had been overlooked) the Department would take account of the Court's views in redetermining the appeal. Where the Department has been advised by Treasury Solicitor to submit to judgment, a similar process of redetermination applies.

38. A right of appeal against what are thought to be unreasonable or irrational decisions by Inspectors is therefore already available to those who believe that their case has been badly handled. The Department is not aware of widespread demand for a separate right of appeal in planning cases. It should also be borne in mind that it is open to the unsuccessful appellant to make a further application for planning permission for a revised scheme.

39. Finally, it may be doubted whether, if such a right of further appeal to a new administrative court were introduced, it could in fact be restricted to the original appellant (developer) and not made available to local planning authorities or third parties who may be similarly dissatisfied with Inspectors' decisions that go in favour of the developer.

40. In the light of these considerations the Group concluded that they could not give unqualified support to this proposal. Instead they wished to re-emphasise their concern for improvements in the efficiency and quality of the established planning appeals system.

(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.

41. The Group decided not to pursue this proposal in view of the time-penalty involved which (on the basis of Scottish experience) could add at least 6-8 weeks on average to the time taken to decide an appeal.

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

42. The Group considered that the fullest possible use should be made of the Written Representations (WR) procedure in order to relieve pressure on the inquiry system which should be necessary only in the case of major developments. The greater the efficiency and promptness of the WR process, the more likely it was that appellants would choose to use it.

43. The Department agree with this. Strong encouragement is given to appellants to use WR. Currently some 85% of appeals are dealt with in this way by Inspectors (who make a site visit in each case) and there is probably only limited scope for increasing this proportion. Either party to an appeal can ask for an inquiry to be held and the Secretary of State has no power to enforce the use of WR. The Department will examine the introduction of standard time limits but experience in Scotland, where the statutory provisions are different and where a time limit of 2 months was

introduced in 1981, suggests that the system tends to increase rather than reduce the time taken. In 1983 one quarter of local authority statements were submitted within 2 months in Scotland whereas in England, with no such statutory provision, over 80% of statements were submitted within 2 months.

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

44. This proposal concerns contractual relationships between a developer and a local authority in its capacity as land owner or provider of statutory services rather than as planning authority. It raises some difficult legal issues and the Department will pursue these separately with members of the Group.

OTHER MATTERS

45. The Group's views were sought on two other matters that were not referred to in their specific recommendations but were raised as the meeting with the Prime Minister: Structure Plans and Simplified Planning Zones.

(i) Structure Plans

46. The Group recognised the role of development plans as providing a framework for future development and a safeguard against the arbitrary and uncertain exercise of development control. Their main concern was that structure plans were often first prepared many years ago, were not well related to present economic conditions and employment needs, did not deal adequately with new types of development (eg. modern trends in retailing and high tech. industry), and took too long to revise and keep up to date. In view of this, it was unsatisfactory that the provisions of development plans were often regarded by local planning authorities, and sometimes by Inspectors, as the dominant factor in deciding planning applications, even when those provisions were out of date or irrelevant. The plans should be one factor in reaching decisions but not the only one, and the weight to be attached to them should be judged in the light of their relevance to current conditions and to the individual application.

47. The Department agreed with this view of the relevance of structure plans and the weight to be attached to them in deciding individual applications to appeals. This accorded with the legal provisions and with the Department's published guidance. It would, however, be useful to re-emphasise this point in the proposed new circular on development control (para 8 above) and possibly to clarify the legal position if it were decided to amend Section 29 of the 1971 Act (para 12 above). The Group welcomed these proposals, and paragraph 4 of the draft circular deals with this aspect - see Annex A.

(ii) Simplified Planning Zones (SPZ)

48. The Group were concerned that the SPZ proposals should not introduce a new form of rigidity into the planning system. While it was appreciated that the aim was to extend the type of simplified planning regime introduced in Enterprise Zones, there was a danger that some local planning authorities might use it to impose a set of detailed controls that would be less flexible than the normal development control system. An authority might be unwilling to accept development proposals that did not comply with their "zonal" system.

49. The Department agrees with the Group that, if the SPZ system is introduced, it must be simple to operate and must not constrain developers who wish to apply for planning permission for development of a kind not covered by the SPZ. The intention is that the SPZ would specify those types of development which could be carried out without the need for a planning application, and that the controls within the SPZ should be kept to the absolute minimum. There would certainly be no restriction on applications for other types of development within the area covered by an SPZ. The system appeared to work satisfactorily in Enterprise Zones and the Group recognised its potential value provided that it was kept simple and was applied in the way intended.

(iii) Planning appeals administration

50. In discussion of the detailed administration of planning appeals the Group suggested that consideration should be given to the following:

(i) Parties to an appeal should be offered only one alternative date for an inquiry or site visit if they are not prepared to accept the first date offered, rather than two alternatives as at present.

(ii) Appellants should beioffered the opportunity to provide, or pay for, alternative accommodation for the holding of an inquiry if the local authority is not able to provide such accommodation at the earliest date acceptable to the appellant.

(iii) Stated time limits on procedural stages (eg. submission of written statements prior to the inquiry) should be strictly adhered to: most major developers would be prepared to accept this discipline in the interests of prompter decisions.

(iv) Appeals relating to development involving major investment and employment opportunities should be identified on receipt and given priority at all stages of processing the appeal.

(v) Ministers should be invited to consider reducing the types and numbers of appeal cases that are "recovered" for Secretary of State decision (rather than being decided by Inspectors), many of which are referred to them personally for decision. In particular, it might not be necessary for all cases involving a listed building to be recovered (in 1984 728 cases were recovered, of which 290 involved listed buildings).

(vi) Ministers should consider visiting the site of any appeal referred to them where the decision depended on the assessment of neighbourhood amenity or similar factors. If legal or procedural constraints were thought to prevent this, consideration should be given to removing those constraints so that the Minister could make an informal unaccompanied site visit in order to inform himself of the characteristics of the site and its surroundings. Only if, as a result of such a visit, new factual evidence emerged that was not dealt with in the Inspector's report should it be necessary to refer back to the parties to the appeal.

(vii) In cases where a decision dismissing an appeal was sent back by the High Court for redetermination, the redetermination should not lead to new reasons being given for dismissal that had not been the basis of the original decision. Not only would that be unfair to the appellant but it could lead to a further appeal to the High Court. The same point applies equally where the Department submits to judgement without the case being heard by the Court.

51. The Department agreed that all these suggestions should be considered and undertook to obtain legal advice on them and to seek the views of Ministers in the follow-up to this report.

CONCLUSION

52. In conclusion the Group wish to emphasise the following key points:

A. They hope that the Government will be prepared to issue new policy guidance on the presumption in favour of development, on the lines of the draft circular at Annex A. They stress that this message needs to be constantly repeated and reinforced both at the political level and in the way in which planning appeals are dealt with.

B. They urge the need for early legislation to deal with the points in paras 12 (planning authorities to be required to give reasons for refusal of planning permission), 24 (award of costs) and 49 (SPZ's). Legislation may also be needed to enforce time limits (para 43) and to deal with Section 52 agreements (para 44).

C. They endorse the Department's proposals for a Code of Practice for handling planning applications, including a review of the provisions for consultation (with any necessary amendments to the GDO), and for a new circular on the award of costs in planning appeals.

D. They would not wish to press proposals for alternative forms of jurisdiction, provided that the Department is successful in its efforts to improve the efficiency of the appeals system and to maintain and enhance the quality of the Inspectorate.

March 1985

ANNEX A

DRAFT CIRCULAR

DEVELOPMENT AND EMPLOYMENT

1. New development contributes to economic activity and to the provision of jobs. It is in the national interest to promote and encourage it. The planning system must respond positively and promptly to proposals for development. Delay adds to the costs of development.

2. Development proposals are not always acceptable. There are other important objectives to which the Government is firmly committed: the need to preserve our heritage, to improve the quality of the environment, to protect the green belt and conserve good agricultural land. The planning system, however, fails in its function whenever it prevents, inhibits or delays development which could reasonably have been permitted. There is therefore always a presumption in favour of allowing applications for development, having regard to all material considerations, unless that development would cause demonstrable harm to interests of acknowledged importance*.

3. Authorities are obliged, under Article 7 of the General Development Order 1977, to give reasons whenever they refuse planning permission.** Those reasons must be precise, specific and relevant to the application: they must demonstrate clearly why, in the local planning authority's view, the proposed development cannot be permitted. Without such a clear demonstration the developer will not know whether or how his proposal can be made acceptable, or the grounds on which he can base an appeal against refusal. As a result, valuable investment and new jobs, in construction, in commerce and in industry, may be delayed or lost.

4. In dealing with applications for planning permission, Section 29(1) of the Town and Country Planning Act 1971 requires that

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* Special considerations apply in green belts - see DOE Circular 14/84.

** More detailed advice on the positive operation of development control is given in Circulars 22/80 and 16/84, and in relation to the use of conditions in Circular 1/85.

the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations. Development plans are therefore one, but only one, of the material considerations that must be taken into account in dealing with planning applications. Many structure plans were approved several years ago, often several years after they had been prepared and based on even earlier information. The policies which they contain, and the assumptions on which they were based, may therefore be out of date and not well related to today's conditions. They cannot be adapted rapidly to changing conditions, and they cannot be expected to anticipate every need or opportunity for economic development that may arise. They should not be regarded as overriding other material considerations, especially where the plan does not deal adequately with new types of development or is no longer relevant to today's needs and conditions - particularly the need to encourage employment and to provide the right conditions for economic growth.

5. The Secretary of State and his Inspectors will have regard to the terms of this circular in dealing with planning appeals and with any application that may be made to them for the award of costs.