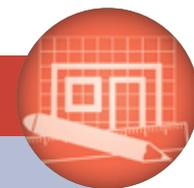


## PLANNING NOTES

## PLANNING POLICY



JOEL GOODMAN/LNP/REX SHUTTERSTOCK

# DÉJÀ VU ALL OVER AGAIN

As he looks ahead to the coming year, Martin Edwards fears that legislators have failed to learn from the lessons of the past, and may be doomed to repeat them

**2016 promises to** be yet another year of change to the planning system, with the provision of infrastructure and housing being the main focus of activity. However, recent history suggests that it is worth asking if the changes will actually achieve their stated purpose or whether another agenda is being pursued.

## Planning reform

Since 2004, successive governments have introduced a number of major changes claimed to radically transform the planning system, which Westminster has perpetually cast as the villain of the piece on the basis that local planning authorities, pandering to the wishes of their electorate, were reluctant to approve controversial vital development. Yet some of these changes have proved problematic.

The Planning and Compulsory Purchase Act 2004, which scrapped old-style development plans and replaced them with local development frameworks, has not met expectations (see *Planning Notes* 4 April 2009 and 12 December 2009) – so much so that new reserve powers are to be given to the secretary of state for communities and local government to intervene in the local plan preparation process in the Housing and Planning Bill currently before parliament.

The Planning Act 2008 introduced the development consent order procedure, which was to be overseen by an independent infrastructure planning commission. That latter aspect was subsequently abandoned when the Localism Act 2011 returned primary political responsibility for decision making to ministers.

In reality, all that has been achieved is to create a system where public participation in the planning process is reduced to little more than a token gesture. Yet the protracted and continuing prevarication over airport expansion suggests that the real blame for the failure to deliver nationally important infrastructure should lie with Westminster (see *Planning Notes* 7

February 2009). After all, the decision on whether or not Heathrow should have a third runway has been put back until later this year, conveniently after the London mayoral election.

## Power failures

And what about power generation? Current reports suggest that the UK's spare generating capacity is at an all time low and that outages are a real possibility. However, this was not an unexpected issue that arose without warning. The country's ageing power plants, and the consequences, have been known about for decades (see *Planning Notes* 9 June 2007) yet Westminster has persistently failed to grasp this nettle. The recent controversy surrounding Chinese involvement in the stalled Hinckley C power plant is symptomatic of this failure.

## The housing crisis

Arguably this pales into insignificance when compared to the increasing shortage of new homes. This is a crisis that Westminster has allowed to develop over the past 25 years and to which it has consistently failed to provide any credible and coherent response (see, for example, *Planning Notes* 15 April 2006).

The Housing and Planning Bill is set to soon become law. While it contains a mishmash of measures, its principal aim is said to be tackling the current housing crisis. Furthermore, the government is already consulting on a review of the National Planning Policy Framework together with some consequential changes to the Planning Practice Guidance.

In March, the Court of Appeal is expected to rule on the question of the lawfulness of the secretary of state's decisions to make alterations to national planning policy in respect of planning obligations for affordable housing and infrastructure in the expedited appeal from Holgate J's robust and thoughtful judgment in *West Berkshire District Council and another v Secretary of State for Communities and Local Government* [2015]

EWHC 2222 (Admin); [2015] PLSCS 242 (see *Planning Notes* 12 September 2015), where the judge held that the decisions were unlawful. This appeal will also be the first real indication of the mettle of the Court of Appeal since the recent retirement of Sullivan LJ.

## Everything old is new again?

Questions are beginning to be asked about the real cause of the national housing crisis. Some argue that the shortfall is the result of a political ideological shift away from social housing provision by the state that began with the sale of council houses in the 1980s and then took root in the 1991 Department of the Environment circular 7/91 "*Planning and affordable housing*".

The circular drew a distinction between "social housing" provided by the state and "affordable housing" to be provided by the private sector. This ideological shift was advocated by Friedrich Hayek in *The Constitution of Liberty* and was in stark contrast to the approach of successive Labour and Conservative administrations through the 1950s and 1960s that undertook large-scale construction of social housing.

During his time as housing minister in the early 1950s, Harold Macmillan committed to the provision of 300,000 new homes a year. So what must the public make of the announcement by prime minister David Cameron on 4 January 2016 that the Conservative government is to step in and directly commission thousands of new affordable homes, which the press announcement described as "a radical new policy shift"? Does this mark a real move away from nearly 30 years of policy based on private sector provision or, to borrow from Yogi Berra, is it a case of *déjà vu* all over again? Time alone may tell, but the omens are not good.

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