

Some lessons from development negotiations in England

Article

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some lessons from development negotiations in england

Tessa Lynn, Mark Dobson and Gavin Parker present some examples of community engagement in planning across England in which parties have been willing to co-develop development proposals – and highlight some possible research needs on deliberative spaces emanating from proposed reinvention of the planning system

The future of community participation in the planning system is currently under national debate. Opportunities for interested parties to influence decisions at different stages of planning is a key feature of the democratic process in the English system. It is claimed that the reforms proposed in the recent Planning White Paper for England stem from a desire ‘to support local authorities to radically rethink how they produce their Local Plans, and profoundly re-invent the ambition, depth and breadth with which they engage with communities’.¹ On the face of it this is a welcome ambition and could build on community empowerment experience enabled through national policy and local practice over time.

While we agree that there is a need to review how communities get involved in planning, there is also a danger of throwing the baby out with the bathwater when attempting to ‘radically reform’ the existing system. There is a possible loss of existing soft infrastructures involved here which would form part of the ‘exit costs’ of reform, and, where such mechanisms or spaces are lost, opportunities for learning and re-application could be foregone. As such our purpose here is to reflect on some of the lessons and remaining questions from existing practice developed by policy-makers and practitioners during the early stages of development proposals. In doing this we highlight some possible research needs emanating from this situation – both to indicate where deliberative spaces could be retained in the current system, but, also where they may be lost, to outline lessons for how these features can be applied into a new system.

In 2018 the Final Report of the Raynsford Review of Planning in England emphasised the need for democratic solutions at the heart of future reforms. It highlighted a ‘planning

system which has been subject to a bewildering scale of change [...] not always well understood by the wider public', and argued that:

*'England is now increasingly 'un-planned' [a situation which] should be the subject of national debate, because the future of our communities depends on effective and fair organisation. It is no overstatement to say that the simple choice between planning and non-planning, between chaos and fairness, is a defining test of our democracy.'*²

The 2020 White Paper has taken a rather different approach that would extend deregulation and limit formal public engagement to specific upfront times/spaces in line with a zoning/design code system aimed at promoting certainty. In this projection, government has fixated on shortening Local Plan production times and increasing digital-technology-based means to engage. While the latter is important and generally welcome, the White Paper somewhat underplays the bigger picture surrounding the complex of issues, considerations, politics and indeed stakes involved in planning as an activity in delivering sustainable development (i.e. it carries costs but it also adds value).³

As such it is not surprising that government has focused on the earliest stages of the development process for external consultation and inputs. This 'front-loading' agenda has a number of claimed benefits for raising issues early in the development process before too much time and resource has been put into a scheme where the costs of change are higher to developers. We agree that the inception of a development concept and scheme for a site is also a particularly fertile time and space to discuss and shape ideas between interested parties. It is a stage at which views can be focussed and open deliberation between stakeholders can potentially have the most impact on shaping the path that a scheme takes, from the developers' drawing board to an outline planning application.

It is entirely reasonable to say that the opening stages of a development proposal is a critical time to shape and finesse a development. Apart from consultation on plans, pre-application (pre-app) discussions are the primary form of 'front-loading' development discussions between local planning authorities and developers in the current system, with a range practices found across the country. However, such upfront discussions are typically held only between the planning authority and developer, with the local community absent from this important formative stage.

Drawing on research exploring the uses of pre-apps in England,⁴ we present here three examples from existing practice that highlight different formulations of public participation spaces which feature at least three-way (i.e. planning authority, developer, community) or

multi-partite discussions, and which offer the promise of meeting the needs of a range of interests and fostering greater trust in the future system. What we have learned so far is that the tools and spaces for negotiation between communities, local planning authorities and developers are crucial at the earliest stages of plan formulation or a development proposal. It seems to us that there are useful lessons, and remaining questions from the current system, which can be developed into the latest reforms and the associated front-loading (certainty) agenda.

Codified systems and real-world contingency

This article is written in a context in which the future of the planning system, and particularly its discretionary case-by-case approach, based on professional judgment and political elected representative decision-making, is being questioned as introducing too much political risk and too great a level of uncertainty costs into the planning process. However, we argue that this ‘certainty’ is viewed only from the developer perspective in government reforms, and not from the community or planner’s perspectives.

Our view about system efficiencies appears contrary to recent reports from Policy Exchange and the Centre for Cities,⁵ who have identified the discretionary nature of the UK planning system as a main cause of uncertainty and hence the speed and cost of development activity in England. The proposed solution from this interpretation is the shift to a more codified zoning system, which, it is argued, will solve a number of issues, not least to ‘fix the housing crisis’. This would require all land use decisions to be made before the adoption of the Local Plan and would lock in codified rules for development, effectively restricting any further community or councillor input from this point onwards and, in that visualisation, removing ‘political risk’.

We argue that this is clearly a developer-orientated interpretation that seeks to remove and limit democratic politics as a burden, without acknowledging the benefits of a discretionary system with built-in checks, balances, and flexibilities. While international zoning systems may produce more developable units per annum, this does not mean that public trust is fostered, or that communities are well disposed towards the outcomes. What we need is a system that can do both – and better than is currently achieved.

The concerns with the White Paper suggestions are that front-loading of participation will not be enough to deal with complex schemes and provide communities with a meaningful say over development; and that codes will be unable to account for all circumstances or absorb change in a contingent environment.

Necessary flexibility that context, change and complexity imply has meant that there is widespread agreement that workable systems need middle ground or spaces for *deliberation*. Indeed, in countries where a zoning system is already operated as a means to regulate land use and development, such as Germany, Japan and the USA, such systems have attempted to lever in flexibility to their codified rules-based approaches. This convergence of discretionary and codified zoning systems can be argued both ways by government and developers; either as featuring too much discretion or as a straitjacket on growth – raising questions over certainty for whom and at what cost.

The question then becomes: ‘how do we get developments that are fully rounded when codes will not accommodate the granularity of local contexts and sites’. International experience indicates that a codified logical endpoint would be a very heavy layering of ‘codified’ rules which could be burdensome, rigid, and still opaque for users. While we are strong advocates of front-loading engagement, we do not subscribe to the current thinking that all participation should be confined to the early stages of plan-making alone. It is far better, we think, to encourage both front-loading of meaningful participation *and* to allow spaces for multi-partite negotiations over detail and specifics. In sum, front-loading is important and necessary but not sufficient for democratic input.

Given the timing of such national debate, we highlight some good examples across England in which parties have been willing to co-develop development proposals. These present useful lessons for policy-makers and practitioners in facilitating co-production in a newly streamlined approach to planning which delivers enhanced trust as well as certainty.

Models of engagement – questions and lessons from the current system

The intention here is not to present a comprehensive overview of such examples, but rather to highlight some of the best features of the system that could be maintained or developed within the latest set of planning reforms. We set out three case examples in Boxes 1-3 to highlight some existing multi-party community engagement practices that could be lost under the proposed reforms. These are structured in order to highlight the way in which different actors were involved, why they were involved, and what value was added. We also peg them using three labels of community *observation*, *input* and *options* for engagement.

These examples are not exhaustive but serve to highlight the range of community engagement practices that have developed in the current system since 2010. There are numerous other aspects of good practice in the current system that are beyond the scope of this short article.

Box 1

‘Community observation’ model – East Hampshire District Council and Havant Borough Council shared management team

East Hampshire District Council (EHDC) hosts ‘development consultation forums’ (DCFs) for significant applications and for major or contentious sites to improve councillor, stakeholder and public involvement in the pre-application process. The DCFs have been held for approximately eight years, involving around 50 meetings. Forums enable the developer to explain development proposals directly to councillors, the public and key stakeholders at an early stage and identify any issues that may be considered in any formal application. It was found that ‘developer forums work very well, where questions are filtered through the chair who is a representative from the council’. They are used to inform officers’ pre-application discussions with the developer and they enable the developer to shape an application to address community issues.

In terms of publicity, the pre-application information is not available on the local planning authority’s public access system, but there is a dedicated webpage for DCFs on which developer’s proposals are uploaded, including their presentations. Awareness is raised through the council’s communications team and social media pages. In the office, council officers identify interested parties, including residents associations, and invite them either to speak or to provide written comments. Residents living adjacent to the application site and those on connecting streets or in the wider area are often invited to attend.

Although the DCF meeting is held in public, only those who are invited to speak on behalf of stakeholder groups can raise issues. However, the chair may hold a question and answer session at his or her discretion if time allows. All borough councillors are invited, with over half usually attending. Public comments are collated and fed back to the developer – with no names or addresses given. The public can write to the council, leave a comment on the night or email, but usually the opportunity to comment is open only for a week. A representative from the council said that ‘developers are encouraging and positive about the process and think it is worth doing at the pre-app stage’.

[End Box]

[Box]

Box 2

‘Community input’ model – Cornwall Council and PACE forums

Cornwall Council offers three levels of pre-application community engagement (PACE). As part of this approach it created PACE forums as public meetings at which development proposals are presented to elected members, council officers, and local residents. PACE forums are encouraged at an early stage in the production of the development proposal and is designed to discuss issues, reduce delay, and inform development proposals using local knowledge. Additional fees are paid by the developer to cover the costs of hosting or facilitating the forums. The three levels involve:

- o strategic major schemes that are considered by the Strategic Planning Committee;
- o items that would likely be considered by an Area Planning Committee or contentious smaller schemes; and
- o community engagement facilitated by the council where the case officer recommends this approach and the developer requests the council to facilitate an event.

All attendees can speak at the forums, with a maximum of three minutes offered to each speaker. Written feedback can also be provided. The council has produced various guidance, available on its website, to assist groups and Parish/Town Councils in engaging with PACE forums. It also provides training to parish councillors on how to engage with developers so that they are able to give feedback on their schemes.

It is expected that any PACE meeting must meet the following expectations:

- o The venue is convenient and accessible in the community.
- o There is sufficient and timely publicity within the community and directed at all likely interested parties. The timing of the meeting should be such as to allow as wide a range of people as possible to attend.
- o There is genuine open-mindedness and willingness to adapt plans in response to community feedback.

The developer meets all reasonable costs for the hosting of the public meeting, including the provision of large-scale paper plans for display purposes.

[End Box]

[Box]

Box 3

‘Community options’ model – Bristol City Council and the network of micro-neighbourhood planning groups

Bristol Council holds that developers should contact the Bristol Neighbourhood Planning Network (NPN) at the earliest stage of forming a development proposal. The NPN has over 45 members, including the Bristol Civic Society, which has been working with the council on planning matters for 14 years. The NPN is regarded as an ideal model to support local communities in engaging with the planning process in the long term, offering a support structure to help planning forums to establish across Bristol – providing a consultation base for early engagement across the city area, and securing a local consultation framework that is based on the characteristics of each individual community.

It is recognised that there may be a lack of willingness and/or ability among local people to engage, and so, to achieve good-quality engagement, groups in the network are embedded within their communities and thus have a direct understanding of how to reach that community, what the community needs (or doesn’t need), and how development can assist in responding to those needs.

Since 2008, consultation is expected at pre-application stage for major applications, namely 10 residential units or more, or 1,000 square metres of commercial space. Local ward councillors and Bristol City Council Neighbourhood Partnership co-ordinators are also invited to participate. They all provide details of those who should be involved.

This process ensures that the appropriate local planning groups are contacted when the pre-application consultation starts. They are invited to participate on major development proposals. The impact of community engagement depends on the receptiveness of the developer – whether they and their team are genuinely having a dialogue and eager to listen to suggested improvements. This varies from developer to developer. The developer provides a Community Involvement Statement after engaging with this process, which should include all points made by the community and the changes made by the developer to accommodate these points, and should, where the developer has been unable or unwilling to respond to them, set out reasons why. This is then signed by both parties; otherwise, separate statements are submitted.

Based on experience of using online consultation mechanisms, the NPN has submitted a statement in response to the Planning White Paper, which the groups deem to be ineffective because it is not responsive and does not allow for ‘a better design solution to come out of a quasi-negotiation process’.

[End Box]

Each of the local planning authorities in the three boxed examples presented here have approached community engagement over development proposals in a different way, to promote greater transparency, legitimacy and/or opportunities for the public to get involved. What emerges is that there is a mix of intentions involved in these community mobilisation and participatory spaces, with some being more about demonstrating public *accountability* and *transparency* in decision-making and others being about the type and inputs of *local knowledge* into different parts of the planning and development process. The former may be concerned with building public trust in the system, such that decisions are not being made ‘behind closed doors’; and the latter may be more about legitimising forms of decision-making and knowledge.

Ideally, of course, both can be achieved. For a local planning authority, the aim of public participation may be to gain a mix of local knowledge and views that can be fed back into plan-making and decision-making, but participation can also be used to provide another set of eyes on development discussions. This can foster local trust and understanding that the planning system takes account of (and even works for) all parties. There are undoubtedly a range of other local engagement practices across England that might have a case for retention; however, we argue that any significant policy ‘reinvention’ of community engagement in planning must go further in fostering deliberative negotiations between local planning authorities, developers and communities to achieve best outcomes, rather than relying on inputs to larger-scale comprehensive plans alone.

While we have held up these examples as innovative practice for multi-party negotiations in local development, we still do not know enough to expose the granularity of practices and issues within these forms and cases. For example, we do not know how such multi-partite negotiations slow down or speed up decision-making, what rules of the game are set for each party under the terms of entering into such discussions, or what these mean for the certainty of outcomes through open dialogue. There is likely to be much more to learn from existing practices across England that could be lost under the new reforms. As the policy landscape shifts, there is an opportunity for in-depth localised studies to draw useful lessons from and inform policy reinvention.

Conclusion – a research agenda for planning negotiation in the new system

Under the current reforms any community or councillor intervention at any other stage than pre-local-plan-making is posited as a source of uncertainty and hence a brake on development. We assert that maintaining community and political oversight can provide certainty for developers, improve public trust, and potentially deliver better-quality development in association with other tools.⁶ Furthermore, wider benefits such as improved local design are not factored into the equation when the logics of speed and certainty dominate the policy discourse and are favoured over the logics of democratic process and outcomes.

It is essential that the experiences of the past, appropriate time and spaces to convene and the application of supporting technology must all be coupled together. We should take heart that international zoning systems have sought to converge towards more flexible and deliberative approaches. Spaces and arrangements that aid transparency, build trust and harness local knowledge should feature not only in a front-loaded approach but at key moments throughout the system.

In highlighting a handful of existing cases of multi-partite participation, we have argued, through our research,⁷ that tools and spaces for negotiation and brokerage between communities, local planning authorities and developers are crucial. Despite this, there is much that we still do not know about how such discussions are organised and what their outcomes are in the current system – including developer perspectives. As such, now is the time for targeted research to be undertaken to bring out lessons learned from current practice. The best of what we do now must find a place in the system of the future.

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Notes

1 *Planning for the Future*. White Paper. Ministry of Housing, Communities and Local Government, Aug. 2020, para. 2.46 in the web-accessible version.
www.gov.uk/government/consultations/planning-for-the-future

2 *Planning 2020 – Final Report of the Raynsford Review of Planning in England*. TCPA, Nov. 2018, p.118. www.tcpa.org.uk/Handlers/Download.ashx?IDMF=30864427-d8dc-4b0b-88ed-c6e0f08c0edd

3 *Invest and Prosper. A Business Case for Investing in Planning*. RTPi Research Paper. Royal Town Planning Institute, Oct. 2020. www.rtpi.org.uk/research/2020/october/invest-and-prosper/

4 G Parker and T Arita: 'Planning transparency and public involvement in pre-application discussions'. *Town & Country Planning*, 2019, Vol. 88, Feb., 66-70; and M Dobson, G Parker and T Lynn: 'Pre-application advice practices in the English planning system'. *Town & Country Planning*, 2020, Vol. 89, Jun./July, 196-201

5 J Airey and C Doughty: *Rethinking the Planning System for the 21st Century*. Policy Exchange, Jan. 2020. <https://policyexchange.org.uk/publication/rethinking-the-planning-system-for-the-21st-century/>; and A Breach: *Planning for the Future: How Flexible Zoning Will End the Housing Crisis*. Centre for Cities, Jun. 2020. www.centreforcities.org/publication/planning-for-the-future/

6 For example, design guides, codes and neighbourhood planning, as well as novel techniques and fora such as citizen assemblies and juries

7 Also research in neighbourhood planning, see G Parker *et al.*: *Impacts of Neighbourhood Planning in England*. University of Reading, for Ministry of Housing, Communities and Local Government, May 2020.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/929422/Impacts_of_Neighbourhood_Planning_in_England.pdf