

COMMENT

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Introduction

The Theme of the Conference is the use of discretion in the town planning process, with the question being asked as “is there now too much discretion?” Although the broad description ‘town planning process’ involves a range of planning activities, I have taken the real issue to be the use of discretion in local authority town planning schemes. And since the organisers of the Conference seem to consider that such schemes have, over the years, developed in a way that includes too much discretion, it will be the direction of my address to dispute that argument. As the Chairperson of the Town Planning Board, which has a statutory vote in making recommendations upon such schemes to the Minister, I must carry some responsibility for the present situation.

The kind of town planning scheme with which we are concerned here are zoning schemes which are usually prepared by a local authority for all of its area. The essence of such schemes lies in their definition of a series of zones, the delineation of those zones over different parts of the scheme area and assignment of uses permitted to otherwise, in each zone. The criteria applied to this assignment is that uses permitted in each particular zone should be *compatible*. In this regard, all zoning schemes include a table which indicate whether or not a particular use is permitted or not in each zone, thus giving a developer or other user a clear indication of which uses may be allowed upon or adjacent to their land.

There is however, another kind of designation used in the process of assigning compatible uses to zones, and this is of course the ‘AA use’ — uses which are not permitted except at the discretion of the local authority, and it is in this area that the element of discretion begins to occur. This element is further increased with another provision common to zoning schemes which allows the local authority to determine a suitable zone for uses which are not specifically mentioned in the zoning table — the table to which I referred earlier. Schemes often, of course, contain other areas of discretion to enable Council to vary or amend specific parts of

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the other provisions of the scheme — development standards for example — but these will not be considered here.

Now within the broad framework I would like to examine different approaches which can be taken to the preparation of a town planning scheme and to discuss the attitude of the Board to these.

It would be theoretically possible to devise a town planning scheme which contains no discretion at all with respect to land use. Such a scheme would deal comprehensively with all anticipated types of use, and by assigning each the category of 'permitted' and 'not permitted' in the individual zones. This would allow the certainty that seems to be considered desirable by the Conference today from the developers point of view, but would also produce a high degree of security for individual residents or landowners — and, it must be said — greatly facilitate the decision making process of the local authority.

As a town planner, however, I find it difficult to support such an approval. It would be very difficult, probably impossible, to identify every single type of use that could be expected to locate in the area. Indeed, during the period of operation of a given scheme it may well be that a new form of land use definition may emerge that has not been anticipated — a classic example of this is the use 'convenience store.' The effect of the omission of a particular use from a scheme will mean that it can not be accommodated without a scheme amendment. Such schemes also tend to be unnecessarily rigid and bind a local authority in a statutory sense. This precludes an ability to make a positive response to a given set of circumstances which may be quite acceptable from a town planning, as well as a community point of view. For example, a use which is not permitted under the terms of the scheme may be made perfectly acceptable in a particular zone through screening, building design, etc. on a one-off basis.

Both of these difficulties could be overcome, should Council wish to do so, through the process of scheme amendment. However, this process is protracted and problems frequently ensue. It is thus expensive in terms of staff resources, Ministerial, Board and Council time, and in holding costs. These are often hard to justify, particularly where only a minor change to the scheme is required. It is my submission that inflexible schemes such as this are of no real benefit to anyone involved.

Neither is the other extreme acceptable. It is of course possible to conceive of a scheme which contains total discretion, in that every use would become a use permitted at the discretion of Council. Clearly, the use of that discretion would be subject to whatever judgement the local authority considers appropriate. At best this would be the subject of some kind of formal statement of policy which would set a context for a decision and which would be relevant in the event of an appeal against the decision.

There could be serious problems in the operation of such a scheme. Firstly, to make each use discretionary would render the use of zones unnecessary, with consequent uncertainty and loss of security to both developers and owners/occupiers alike. This would not be consistent with my own view of the role and purpose of town planning controls. Secondly, it is reasonable to expect a large number of appeals would be generated, in that it is fair to assume that all applicants would have a right of appeal against Council's decision and would in all probability use it. It would be necessary to have a right of appeal not only for the appellant, but for aggrieved adjoining or nearby owners. This would be an unacceptable burden upon the appeal system and result in unnecessary delays in the development process, as well as unwarranted worry and costs to existing land owners and users.

Obviously, the ideal town planning scheme lies, as do so many answers, somewhere in the middle. That ideal is for a balance between certainty and a degree of discretion appropriate for the local authority. The Board has given some consideration to the matter and has set out its own position in a Planning Bulletin numbered 2/83 and issued in June 1983. A few extracts from that Bulletin may best set the Board's position for those not familiar with the Bulletin:-

- When preparing a new town planning scheme, Council should aim to produce a relatively simple, concise and straight forward document, which strikes a balance between excessive complexity and rigidity on the one hand and loose non-directional vagueness on the other.
- A scheme should be capable of being readily understood by councillors and the general public alike.
- In general, the Board and the Minister believe in flexibility in preference to rigidity. Rarely can the inherent inflexibility of rigid schemes be justified from the viewpoint of sound town planning principles.
- A reasonably flexible scheme containing firm guidelines for the development of land, together with a general discretionary clause for Council to modify development standards (which may be qualified), a minimum number of zones and a minimum number of use classes (grouped where possible) is to be encouraged.
- The *inclusion of Policy Statement* to complement a simple and relatively flexible scheme and providing guidelines for consistency in decision making *is supported*.

Conclusion

I have attempted to set out in very broad terms the Town Planning Board's response to the use of discretion in the town planning process.

It most certainly does not favour the use of the rigid, inflexible, town planning schemes that seem to be anticipated by the theme in this conference. Almost all planning decisions relate to issues and the Board takes the view that these decisions should be made by local people.



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