Between a rock and a hard place: impact of localism and planning reform on the Planning Inspectorate in England

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January 2017
Seminar Structure

- Some conceptual thoughts on localism
- Planning reform
- Why is England’s Planning Inspectorate interesting?
- Evidence of challenge to PINS
  - Actions and cases
  - Views from those close to the system
- What does all this tell us?
Localism - some thoughts

“Contemporary localism makes for a complicated picture” (Clarke and Cochrane, 2013)

● What is localism?
  ○ A shift in the balance of power in favour of the local - a spatial redistribution of power
  ○ A shift in governance towards a focus on places
  ○ Autonomy for the institutions of a locality

● But rhetoric is contested and debated
  ○ Theorised variously as progressive (MacKinnon, Healey), conditional (Hildreth), nuanced (Clarke and Cochrane), empty (Ludwig et al), flawed (Hickson)
  ○ Rules defined by rationality (Flyvberg) and responsibility (Williams)
  ○ Outcomes and realities of localism context and situation specific
  ○ Dangers of fragmentation and parochalism
Why look at planning reform?

“Greg Clark will be likely to consolidate localism and leave a question mark over strategic planning” (Planning Resource, 2015)

Sajid Javid - smoke and mirrors over White Paper

Planning is a political ‘football’ offering a mirror on latest political discourse

- Constant flux, but recent reform has resulted in fundamental shifts in the planning system articulated as a direct manifestation of localism:
  - abolition of strategic planning and top down housing targets, with primacy given to local authority plans
  - but new NPPF with tensions between a) presumption in favour of sustainable development and b) local determination
  - and new requirements around ‘objectively assessed need’, ‘market signals’, ‘duty to co-operate’ with housing numbers the key focus
  - and a forthcoming Housing White Paper

- In prosperous Southern England localism largely = resistance to development
PINS’ role constitution and status

- Key part of the ‘machinery of the planning system’ (Cullingworth and Nadin)
- Executive Agency of DCLG, accountable to Ministers and Parliament
- Powers delegated under legislation - decision maker on controversial and valuable development
- ‘Independent?’ arbiter of planning appeals, charged with examining local plans for soundness, recommendations on nationally strategic infrastructure projects
- Quasi-judicial function - boundary at which policy and law meet
- Staff of 730, [plus contractors], 2015/16 expenditure of £41.3m.
- One of the few parts of the Civil Service to have grown during the period 2010 - 2015, with a clear mandate to deliver planning policy reform?
- Core values of fairness, openness and impartiality
Planning reform - impact on PINS?

Core work remains the same - business as usual surely?

**But** fundamental shifts in structure of planning system - shifting context of local plan policy, material conditions, and planning guidance:

PINS is now:

- charged with deciding if local authorities have acted responsibly in relation to plan making
- testing the evidence on ‘objectively assessed need’ - five year land supply and market signals
- arbitrating the tensions between localism and presumption in favour of sustainable development
- assessing evidence in relation to the Duty to Cooperate
PINS

DECC

CLG (Parent)

DFT

Cabinet and PM

Treasury (Growth)

Parliament: MPs, Select Committees etc

Developers

Communities

Local Authorities

Law and the courts

Accountability upwards, yet ‘customers’ are downstream

New Political Governance?

Civil Service Reform?
What is the evidence of challenge

- Wave of vocal criticism - at the local level - by councillors and the media
- Wave of vocal criticism - at the central level - by MPs (including proposed abolition)
- Unprecedented (?) levels of ministerial intervention: letters, call-ins, ministerial statements
- Hard hitting legal challenges providing clarity - or impacting confidence?
- Direct experiences
Local level criticism …

“Harrogate goes to war over planning inspector’s housing ruling” (Yorkshire Post 2014)

“Kirklees Council leader unhappy that Government inspector could order our area to increase housebuilding targets by 50%” (Douglas 2013)

“Inspector savages Durham local plan” (Donnelly 2015)

“Council threatens legal action over inspector's local plan torpedo” (Pitcher 2015).

“Inspector blight’s arrival puts the wind up locals over turbine” (Phelvin 2015).

“Planning inspectors completely undermine local plans and act as if under a directive to assume developers are right and local authorities are wrong” (Proctor 2015).
Criticism by MPS …

“Localism can be undermined, especially by decisions of the Planning Inspectorate” (Nick Herbert MP)

“It is immensely discouraging to communities … when their wishes are ridden over roughshod by the Planning Inspectorate” (Sir Nicholas Soames, MP).

“the inspectorate is rewriting local plans. It is raising housing numbers in my constituency to beyond the level set out in the south-east plan, and it is causing delay at a time when responsible authorities are planning for a great number of houses (Nick Hebert MP, .

“the inspectorate is not taking sufficient account of local feelings in the judgements it makes” (Andrew Mitchell, MP).

(All quoted in Hansard).
Unprecedented intervention?

“He [Boles] has been careful not to let planning inspectors give the impression that central government is directing allocations, however necessary its policies may make them” (Garlick 2014).

- **Formal pressures**
  - Ministerial letter’s (2014)
  - Recovered appeals (wind farms and gypsy and traveller sites)
  - SoS local plan call-in, Maldon, North Somerset, Birmingham and Bradford
  - Brandon Lewis’ communications to PINS
  - Gavin Barwell, neighbourhood plan mandate?

- **Informal pressures?**
- **Is policy leading to decisions by inspectors that Government wants?** Do inspectors know how to act?
- **Possible shift in relationship between PINS and SoS**
- **Specific expression of more general ‘politicisation’ of civil service**
Local plan intervention, s21 powers

S.21A as was …

- North Somerset - wrote to Brandon Lewis, Minister for Housing and Planning, requesting he uses his powers to ‘reconsider the Inspector’s reasoning and conclusions’
- Maldon, traveller site designation

New S.21A ‘direct’ (Section 145(5) of the Housing and Planning Act 2016)

- Birmingham - holding direction to “simply … allow time for proper consideration of the issues”
- Bradford - “sparked a political row”
Local plan call-ins
Policy - NPPF and Planning Guidance

Local plans examinations / appeals
Suspensions - protecting local authorities from JR?

Contradictions

Policy - NPPF & Planning Guidance
Ministerial letters
Policy briefings
Frustration with plan delay

Local Authorities (Localism?)

CLG (Power? Centralism, setting the parameters of ‘responsible / managed’ localism)

DCOs?
It’s not possible to balance compliance with the law with compliance with policy goals” (Lees and Shepherd 2015)

- Legal threat ever present and development industry has the purse.
- In seeking to reconcile competing agendas is threat of judicial review greater?
- Where clarity is absent, court intervention is called on:
  - Direct criticism of named planning inspectors (Solihull)
  - National guidance triumphs (Tewkesbury)
  - But, “body of planning law offering subtly different instructions to planning authorities” (Dacorum)
  - Courts as constrained by evidence in front of them as inspectors
  - So … are courts providing that clarity, or exposing inconsistencies?
- Quasi-judicial function of PINS extremely challenging - inspectors acting at the point planning meets the law
Views from those close to the system (1)

“It’s utterly impossible to be an inspector currently” “Decisions on policy are being made in PINS”

“… there is an atmosphere of challenge in PINS, a greater level of ministerial interference, nudge is ok, public interference is not” “There has been a significant change”

“Conflict is not between PINS and SoS, it is between the SoS and the SoS. Once a policy has been written down, Inspectors will stick to it, PINS is not a policy making organisation…”

“There is democratic illiteracy when it comes to PINS” “Politicians don’t understand inspectors”

“The biggest challenge is ensuring the impartiality of the inspectorate … I don’t think there is the mutual respect that used to exist between civil servants and ministers in the past”

“If things are difficult it makes sense to give them to an arms-length agency- do it at arms-length and blame inspectors”
“Inspectors are agents in ensuring local authorities deliver requirements led by national policy. Tensions arise”

“Sometimes it feels like localism and neighbourhood plans vs the inspectorate. Localism means that Local Authorities will question PINS’ interventions”.

“It’s a myth that top-down targets have been abolished … it’s just that top-down targets are now being imposed by the Inspectorate in a random way without any kind of strategic framework within which they can be sensibly accommodated.”

“inspectors are piggy in the middle” “What does localism actually mean? Does freedom mean responsibility?

“LA’s say ‘why is PINS doing this’? Actually, it’s LA unwillingness to put plans in place with impunity”

“Many inspectors would like to be more pragmatic, but developers will challenge and they are clued up to the holes in the NPPF”
Views from those close to the system (3) - It’s not all bad surely?

“The Inspectorate is one of the best bits of the system”

“Inspectors play by the rules, providing honesty. They are the glue in the system”

“Planning inspectors are trying their best to keep the show on the road”

“What reforms have done is expose PINS as the only mechanism left to deliver reforms for government”

“PINS is the only safeguard in the system”

“Hats off to Inspectors for helping local authorities where they can’t make their own decisions”

“The organisation is generally held in very high regard, and is very respected for the work it does”
Outcome …

- Lack of clarity for inspectors
- Tensions between ‘hard-edged’ planning law and planning policy and ‘balance’ between competing presumptions
- Assumption driven planning versus local aspiration
- Quasi-judicial position almost impossible - ‘reasonable judgement’ insufficient to mask inconsistencies within the NPPF
- Bringing competing presumptions together results in ‘incoherence incompatibility and inconsistency’ (Lees and Shepherd, 2015)
What does this tell us about localism?

- PINS exposes contradictions within the spatial distribution of power under localism.
- PINS is a ‘powerful’ arbitrator of assumption driven planning’ – ‘interpreting’ or ‘making’ policy under conditions of incoherence.
- PINS is a useful ‘foil’ for government deflecting attention away from contradictions within central state strategy, with PINS left attempting to manage tensions putting inspectors in the limelight.
- Simultaneously, PINS is challenged by its state sponsors seeking greater control over outcomes - questioning independence, accountability etc.
- PINS perceived to be partly at least delivering top-down strategic steer, undermining impartiality.
So the Planning Inspectorate is interesting!

1. Planning reform has resulted in an unprecedented level of challenge to PINS placing it between a rock and a hard place mediating the contradictions inherent to the new system …

1. This is challenging the traditional place of the planning inspectorate in policy and governance terms, and …

1. Exposing some of the realities of localism and democracy, with PINS arguably playing an increasing part of the machinery of “governance at a distance” filling the ‘gap’ left by state retreat.
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