

Rethinking regulation: the mundane turn in planning

Introduction

The regulatory aspects of planning in the UK are often considered secondary to the more visionary, utopian, forward thinking strategies and concepts associated with plan and policy making. Regulation, development control or development management, and the various legislation, Acts, Orders, and tools which comprise the UK's planning systems are arguably overlooked by planning researchers and commentators; dismissed as mere 'process', identified as a barrier to effective implementation, caricatured as monotonous, and identified as low skilled politically influenced bureaucracy.

However, these aspects often have more direct impact on the outputs of the planning system, than the any statement of vision, policy, aspiration, or design intent. They are the very heart of the UK's discretionary planning system, defining the scope of control and creating the process and approaches which underpin decision making, planning implementation, and outcome success. Critically, it is within this regulatory space that binding planning decisions are formally made. Through both Development Orders and discretionary planning decision making, permission is conferred which shapes our environment, creating the actual reality of place. The lack of attention paid to these aspects of planning practice and regulatory constructs, in parallel with their relationship to the plan/policy space, is therefore considered problematic.

By focusing greater critical attention on aspects of the 'mundane' regulatory and structural aspects of planning, we aim not only to understand this under-researched area more fully, but to also, and through this process, address key questions and concerns about the purpose, priorities and possibilities of planning. Central to this is the exploration of the relationship between the aspirations of planning and the implications of its construct, mindful too of the positioning of planning within a political and theoretical context. It is the gap, the prior lack of attention to this, that this special issue begins to address.

This introduction will first set out some of the issues, brought into sharp relief by the recent publication of a White Paper 'Planning for the Future' on planning reform (MCHLG, 2020), within the wider context of the Covid-19 crisis and talk of a 'great reset', as to why regulations, constructs, and decision making approaches matter in practice. It will then reflect very briefly on how these questions open up under-examined ways of thinking about the wider purpose of planning as both an activity and an idea (Campbell, 2012). To finish, we outline the contributions to this special issue, indicating how together these papers represent a considerable contribution to the debate in both theory and practice in planning regulation.

Planning for the future or a future without planning?

The current context is one of great uncertainty; of hitherto unprecedented (in our lifetimes, at least) opportunity and threat. The social, political, and economic impacts of Covid-19 are still unravelling, and likely to produce lasting impacts passing into future generations. This has provoked much interesting speculation and reflection (see for example, EURA, 2020) on the future of our societies and the urban (and rural) environments we live in. Areas of focus within these discourses includes how to

harness some of the perceived positives such as sustainable mobilities (increased cycling and walking for example), social and health (physical and mental) infrastructure, neighbourliness and community support mechanisms, and urban temporariness and experimentation. Unsurprisingly, narratives have rarely included discussion of the more regulatory mechanisms needed to achieve these desired outcomes, but instead focus upon showing planning's appetite and potential to achieve positive, lasting change. The link between these aspirations and their then implementation is one of the key themes of this special issue.

The context of Covid is compounded from a UK perspective by a wider context. The environmental impacts of accelerating climate change will frame any future trajectories of global development and (in)justices, whilst the ramifications of 'Getting Brexit Done' are yet to be felt in terms of economic impact, trade, travel, food pricing, environmental regulations and much more. Within this possible 'perfect storm' emerges the spectre of Planning Reform in the guise of the government's White Paper: Planning for the Future (MHCLG, 2020). Unlike the responses provoked by the pandemic, the focus of change for planning is highly regulatory and structural. Given this, it is notable that the White Paper lacks clear vision of (a) better future(s) aside from the ill-defined and political dubious notion of 'beauty' (BBC, 2020), and moreover lacks detail and clarity whilst offering and complexity and confusion (Vickery, 2020). The document is based on a premise that the planning system in England at present does not work- it invokes ideas of broken machinery which requires intervention based upon specific 'fixes', focused mainly around a more prescribed, controlled, exclusionary system and processes. What is missing is the effective consideration of the holistic aims and purpose of planning, or further a consideration of the linkage between vision and implementation. Critically absent, therefore, is the proposition of a regulatory response to an actual context and intent, informed by stated aspirations. Instead we find a rhetoric of fundamental change cloaking a crude [and flawed] adaptation of existing frameworks and structures with inbuilt exclusion, limitations upon local state intervention/oversight, and restrictions upon a participation (Vickery, 2020). Although many commentators from across the political spectrum agree with the headline claim that the planning system, as currently operating, is not achieving its intended outcomes, the diagnosis of the problems, and suggestions to remedy this differ widely (Booth et al, 2020, Beebeejaun et al, 2020).

A widely acknowledged misconception which is identified by much of the critical commentary on the White Paper is that planning itself, or regulatory processes in general, slows up the market and delivery, and therefore harms the national interest. This leads to the presentation of the solution as being deregulation, even when the execution of this is, somewhat ironically, via potentially complex re-regulation. This brings to mind a favourite quote from the 1990s classic, Bridget Jones' Diary:

"I looked at him nonplussed. I realized that I have spent so many years being on a diet that the idea that you might actually need calories to survive has been completely wiped out of my consciousness. Have reached point where believe nutritional ideal is to eat nothing at all, and that the only reason people eat is because they are so greedy they cannot stop themselves from breaking out and ruining their diets." (Fielding, 2013, p155)

The narrative of planning reform over the past four decades, if not more, has been about trying to 'diet out' the 'bad red-tape calories' from the planning system (Orders, restrictions, regulations etc) instead of thinking why we regulate, what we regulate for, and what regulations do we actually need

to effectively run a planning system that meets our holistic aims and aspirations. Reframing the questions so necessarily asks us to engage with both the micro and macro simultaneously. We need to know *what* a planning system is there to achieve to be able to think about *how* we can go about achieving this. In turn, we need to reflect on those tools of 'how' to see if they are, actually in practice, bringing about the desired 'what'. These questions have been brought into sharp relief in England at present, but resonate, we would argue, in all planning contexts globally in varying forms and extents. They raise issues about (local) democratic control of decision making, freedom and property rights and the relative roles of the state, the market, individuals and communities. They also raise questions about understanding, language, and terminology in the context of the characteristics and requirements of system types; the recent White Paper for example suggests it can bring more certainty and efficiency via a more regulatory approach, yet also emphasises the importance of 'beauty', a subjective matter inherently challenged by the demands of codification. By offering an opportunity to explore more fundamental questions of the regulatory characteristics of planning systems and the implications of this upon place, the SI hopes to raise questions which will resonate in contexts beyond our own.

The purpose of control: utopia and power

Beyond the political struggle for more progressive- or even just more effective- planning, are deeper questions of purpose. These are well-versed in most planning theory texts and questions of ethics, justice, and the public interest are a part of planning education and inherent within professional institutes definitions of their role (RTPI, 2012 and APA, 2021). However, direct discussion which links questions of ethics to questions of regulation, Development Orders, use classes and planning rules more generally are notably absent.

This is puzzling and problematic on two distinct grounds. First is with regards to the legitimacy and scope of state intervention. Core to discussion on regulation are questions of why such regulation is necessary or desirable. These are fundamentally ethical questions. If the legitimacy of the state intervention is in enabling the (necessary) balance between the public and private interest, then the characteristics and form of the regulatory construct is critical because it ultimately defines the scope of such intervention. However, it is rare to find discussion which will extend the debate of ethics to the tools of regulation, rather than just the concept of state controls. Regulation is often seen and presented through a negative lens, something to 'minimise' to enable efficiency and delivery, rather than as an enabling device to enact opportunity for the important and legitimate practice of participative and accountable planning; this is enormously important to the discourse of regulation, the question of the scope of intervention, the *necessity* and justification of intervention and regulation, and all of the ethical questions surrounding this. Secondly, and in a sense much more basically, simply because this is the area which actually guides what does and does not happen on the ground, we feel it warrants more considered critical analysis. Planning regulations provide the tools which are used to translate, implement, and legislate for the grand claims of policy guidance. Their aim should be to enable and operationalise the desired and expressed changes in any area of policy through the regulation of building or the use of space. Without considering whether policy goals can be achieved through the mechanism offered within any given planning system, it becomes academic to look at and judge the context of these goals, visions or ideals.

This SI is coming out in a moment of critical change and decision making, and one where it is vital that we understand the full implications of the construct we create; this can include the scope of control, matters of interpretation, power, influence, participation, and politics. It aims not to comment directly on the planning reform agenda in England, nor the role of a post-Covid world. Instead, it turns to the issue of how regulation has developed within today's system, and what the implications and opportunities emerging from such detailed critical commentary may be mindful of our uncertain and dynamic future.

Introduction to the papers

This Special Issue therefore aims to begin to fill the gap identified above: bringing to the fore of academic planning debate informed, critical and varied commentaries on different elements of planning regulation. The papers in the SI draw on original research to demonstrate the intricacies and complexities of the relationship between planning aspiration and the tools needed to achieve this in the real-life situation of contemporary planning practice. First, Neil Harris explores the idea of the 'exception' in planning rules. As an almost taken-for-granted turn of phrase in planning practice circles, Harris unpacks the assumptions behind, and implications of 'exceptions', 'exceptional circumstances' and 'exemptions' to demonstrate how these concepts clarify or change established rule, and how they demonstrate the purpose of the rule itself. Next, Ben Clifford and Jessica Firm take an historical look at space standards, demonstrating how this most basic regulation has waned and waxed in terms of political support and as a way of ensuring high(er) quality living standards. They demonstrate how this debate has relevance for both practice and theory today, especially relating to the controversial permitted development relaxation of office to residential conversions. Sheppard and McClymont discuss how claims about planning's role in promoting healthy lifestyles are more complex when the detail of how this is to be put into practice through planning decisions is opened for critical commentary. By seeing health as a substantive public interest goal of the planning system, this paper explores more widely the links between planning's ethical aspirations for *better* and the tools available to implement this. Through a single, small scale case study, Christopher Maidment explores related issues, asking whether there could be space for mutual learning and the development of shared goals in the outcome of a planning decision made within the regulatory confines of the current system. The final paper in the SI also takes an historical perspective. Matthew Kearney and Heather Ritchie focus out attention to Northern Ireland, and the place of developer contributions in the newly established planning system. This piece focused on similar mechanisms from a different context, and in so doing highlights similar issues from a different angle. Richard Bower reflects on the history of lost Plotlands: informal working-class dwellings, often but not always for recreational use and self-built, and inhabited largely between the first and second world wars. He reflects on how this phenomena, its removal post- 1947, and its subsequent being written out of most popular planning histories, gives us a different vantage point on planning regulation; one which cautions against uncritical celebratory accounts of a rose tinted past.

We hope that amidst the hubris and uncertainty of everyday life in 2021, these papers give an opportunity to pause, reflect, rethink, reset.

References

Association of American Planners (2021) *About APA* <https://www.planning.org/aboutapa/>, (accessed 19 January 2021)

BBC (2020) Trump order: New federal buildings must be 'beautiful', <https://www.bbc.co.uk/news/world-us-canada-55407136>, (accessed 19 January 2021)

Beebeejaun, Y., Booth, P., Bradley, Q., Brownill, S., Chapman, K., Clifford, B., Colenutt, B., Crookes, L., Edwards, M., Goode, C., Hickman, H., Horwood, K., Inch, A., Manuel, J., Marshall, T., McClymont, K., Natarajan, L., Odeleye, N., Sheppard, A., Tait, M., Wilson, A., and Wilson, E. *The Right Answer to the Right Questions* [Online], The Town & Country Planning Association, Available from: <https://www.tcpa.org.uk/Handlers/Download.ashx?IDMF=499fbe4f-28b2-431a-bdda-4f593c43bcb2> (Accessed 29th January 2021)

Booth, P., Bradley, Q., Brownill, S., Chapman, K., Clifford, B., Colenutt, B., Edwards, M., Inch, A., Marshall, T., Shepherd, E., Tait, M., Tewdwr-Jones, M., Vigar, G. & Wilson, A. (2020) *The Wrong Answers to the Wrong Questions* [Online], The Town & Country Planning Association, Available from: <https://www.tcpa.org.uk/the-wrong-answers-to-the-wrong-questions> (Accessed: 19 January 2021).

Campbell, H. (2012) 'Planning ethics' and rediscovering the idea of planning', *Planning Theory*, **11**, 379–399

EURA (2020) 'EURA Conversations', <http://eura.org/eura-conversations/#>, (accessed 19 January 2021)

Helen Fielding (2013). *The Bridget Jones Omnibus: The Singleton Years: Bridget Jones's Diary & The Edge of Reason*, Pan Macmillan

RTPI (2012) 'Policy Statement on Initial Planning Education', London, Royal Town Planning Institute

Vickery, D (2020) 'The planning white paper is like a complex and confusing science fiction novel', *The Planner*, <https://www.theplanner.co.uk/opinion/the-planning-white-paper-is-like-a-complex-and-confusing-science-fiction-novel>, (accessed 19 January 2021)