

planning transparency and public involvement in pre-application discussions

A revision to pre-application discussions could provide a way of securing meaningful community input to consideration of development proposals, as experience from Tokyo and New York illustrates, say [Gavin Parker](#) and [Tomokazu Arita](#)

This article highlights a particular iteration of an existing mechanism that could be usefully amended to aid deeper community involvement and improve accountability and transparency in the planning system in England. In particular, our attention is directed towards pre-application discussions and ensuring that community and the wider public interest are manifest in early stages of preparing development proposals.

We argue that oversight in deliberations over planning gain and other planning matters considered by local authorities, in collaboration with developers, could benefit from the scrutiny of community interest representatives. We draw inspiration from both Tokyo and New York to challenge government nationally and locally to more fully embrace the possibilities that localism invites and which the currently imbalanced planning landscape demands.

Developer negotiation and 'public interest'

For good or for ill, much of the debate over citizen participation in planning in England in the past decade has been dominated by neighbourhood planning, and within that debate much attention has been paid to the process and tools used to deliver on the promise of localism and community empowerment with respect to planning policy and decision-making.

Localism and the rhetoric of ceding some control to communities is one impetus here. A second prompt emanates from aspects of recent planning practice that have caused significant critical attention, i.e. the use of development viability assessments and the impact that they have had on negotiations with local planning authorities. This has had such a pronounced effect in some areas that steps to curb their influence have been made in national policy and, if we are in need of silver linings, the experience has acted to highlight wider longer-run weaknesses in the system.

Such shortcomings and concerns over Section 106 negotiations and their opacity were expressed in the Raynsford Report recently published by the TCPA,¹ which identified public trust as critical in planning and specifically argued (on p.110) that: *'there are ... real problems in the complexity and transaction costs of Section 106 agreements and their public acceptability. It is a system that is seen as lacking transparency to the public and fuelling community suspicion about the 'purchase of planning permission'.'*

If we accept that this is an issue, then it is more than possible that the public interest has not been well served, and it is pretty certain that it has not been *seen* to be well served in our decision-making.



Tokyo street scene - in Japan locally developed informal processes seek to negotiate where there is possible conflict

A long-running basic condition for much public policy and decision-making is that of transparency of process. The Raynsford Report also stresses (on p.94) principles to be applied to improve the system in this respect:

'Developing a strong democratic and legitimate governance framework for planning requires three interlocking components:

- *a transparent process of democratic accountability in all decisions, making clear whether this is based on representative, direct, or participative democratic models;*
- *clear citizens' rights; and*
- *support for communities to participate meaningfully in decisions.'*¹

We, too, argue that to actively involve communities in as many aspects of planning as possible is a starting point and from which justified departure needs to be made.

Some efforts to improve transparency have been made in the relatively recent past, including publishing Section 106 agreements ex-post and now through recent policy alterations in the recently revised National Planning Policy Framework (NPPF) to make viability more open to scrutiny in England. However, the stage at which such transparency is

required comes much too late to aid public trust and hold powerful actors to account.

Three aspects are germane here: the *form*, *process* and *timing* of engagement. The first relates to how various formulations of citizen panels and juries have been recognised as useful tools for at least four decades – as such there is precedence for the *form* of engagement we iterate below. Secondly, over the past two decades or so design review has been deployed in the UK and in other countries,² and so the basis of a *process* has already been established (this arena has had notably little public input, it being almost exclusively the preserve of experts). Thirdly, given the increasing emphasis placed on pre-application discussions or 'pre-apps', they are specifically held up for scrutiny here, and we suggest that they are spaces which could be usefully iterated to assist with local empowerment and aid public confidence at an *early stage*.

The Localism Act 2011 (in Section 25) already makes some reference to bringing other actors into pre-applications discussions. It is an issue that has been given some consideration, of course, with the Local Government Association, the British Property Federation and others publishing a best practice pamphlet in 2014, in which they acknowledged that the issues of *when* to engage communities in pre-

application discussion and *what* information should be disclosed are difficult. They argued that:

'the advantages of early engagement with communities need to be balanced against any adverse effects that disclosure may cause – not least of which is that commercial confidentiality may dissuade developers from seeking pre-application guidance'.³

This, of course, highlights the need to look again at the basis of pre-apps as it is clear that this type of excuse can be deployed to suit the developer or the local planning authority. In short, the rules of the game need to be changed.

In English planning practice pre-application discussions between local planning authorities and developers can voluntarily take place prior to a formal planning application being submitted for decision. Many regard pre-applications as useful as they may clean up proposals that could clog up the system due to their lack of consideration of policy, or due to their complexity or to nuanced circumstances that need deliberation. Pre-apps are notable as they are usually conducted without community input.⁴

'Pre-apps remain an entirely voluntary process initiated by developers and usually responded to by local planning authority officers only. More could be done to put pre-apps on a firmer footing in terms of how and why they are triggered and who is involved'

National Planning Guidance for England, issued in support of the NPPF, notes that the local planning authority 'has a key role to play in encouraging other parties to take maximum advantage of the pre-application stage',⁵ and says of elected members' involvement at pre-application stage: 'Democratically elected members are strongly encouraged to participate at the pre-application stage, where it is appropriate and beneficial for them to do so'.⁶ It also mentions community involvement: 'Pre-application engagement with the community is encouraged where it will add value to the process and the outcome'⁷ – the extent of such involvement from parties other than the local planning authority and the developer is not clear.

Pre-apps remain an entirely voluntary process initiated by developers and usually responded to by

local planning authority officers only. We think more could be done to put pre-apps on a firmer footing in terms of how and why they are triggered and who is involved. It has become clear that more research looking at their use is needed, to understand the dynamics involved and the practices adopted since at least 2012.

So we are really talking about enhancing spaces for deliberation that involve local people, and are considering the stages where this might usefully feature, as well as being mindful of the ends or gains to be achieved. In doing so, issues of public involvement, trust and lay inputs to questions of design, negotiations over public benefits and oversight are brought into focus, to ensure that public and private actors operate with probity and diligence.

This is why we focus specifically on the pre-application stage here in looking to add transparency and improve community trust and to aid the maintenance of public interest in a system in which short-term market needs and client interest has become overly dominant. Our argument is that if it is satisfactory to manufacture numerous iterations to practice and policy designed to deregulate planning and to strengthen market confidence, then it must be legitimate to discuss and possibly introduce measures which counter-balance such reforms. This can be aided by improving the negotiating positions of the community and the local authority and iterating logical progressions of the wider localism agenda.

The following section highlights lessons emerging from innovation in early community involvement in the Japan and the US, where efforts to ensure community involvement have been hard-wired into the system of examining development proposals through community bodies. In both Japan and the US such practices are often seen as necessary to round out what can be quite rigid or inflexible zoning/building code systems. As such, it is perhaps ironic that, in a UK system that has hitherto prided itself on operating through discretion and negotiation, we should look towards codified systems for lesson-drawing.

Jōrei and informal discussions in Ginza, Tokyo

Japan operates a codified planning system that rests on tools such as percentage floor area ratios, zoning, and height restrictions. While there has been some reform to nuance this approach over time, it remains a centralised system which is partnered by locally developed informal tools and processes, enabled by a culture that seeks to negotiate where there is possible conflict.

One such feature is the use of local ordinances or *Jōrei* which can be created by the municipality in association with the community. They have multiple uses; they look somewhat like Supplementary

Box 1 Ginza, Tokyo

Ginza is a busy retail hub in Central Tokyo, covering an area of 84 hectares. Local businesses and residents formed an association in 2001 and with the local authority (Chuo Ward) set up Ginza Design Council, to apply a set of 'Ginza Design Rules' (a local design guide plus process rules), initiated in 2006. These aim to assist the community in negotiating over pre-application development sites of over 100 square metres. This process was prompted by a particularly ambitious and locally unpopular proposal for a large-scale redevelopment in 2003 which the codified system found difficult to reject.

Ginza Design Council comprises a panel of eight community members plus a group of invited advisors (typically academics and architects) and association staff. In 2017 the review process considered just over 300 cases at monthly meetings. After each meeting the panel produces a report to the local planning authority, explaining the outcome of the deliberations over the cases considered. There have been very few instances of developers refusing to comply with the outcomes produced through the Design Council.

For further information, see *Ginza Design Panel and Design Rules*. Ginza Street Association, Tokyo, 2015. www.ginza-machidukuri.jp/rule/images/rule_council.pdf

Box 2 Community Boards in New York City

Community Boards have a wide role in helping communities to consult, assist, and advise elected government officials in relation to 'the welfare of the district', and residents act to screen and comment on larger development proposals and submit a statement of opinion to the New York City Planning Department. They form part of the Uniform Land Use Review Procedure (ULURP) process, which also governs the quorum, vote and content for a Community Board recommendation.

The process involves the City Planning Department initially receiving and checking the application to ensure it is complete and then certifying it. The application is then forwarded within five days to the Community Board (and Borough and City Council). The Community Board then notifies the public and holds a public hearing, after which a recommendation to the City Planning Commission and Borough Council is submitted. The Community Board usually reviews items where property owners are seeking approval to use, develop or otherwise modify a property in a way that would not automatically be allowable under the zoning system.

If a Community Board fails to act within this time limit or waives its right to act, the application proceeds to the next level of review. By 2018 there were 59 such Community Boards operating across New York City.

For further information, see 'Step 5: Uniform Land Use Review Procedure (ULURP) process', in New York City Planning Department's Applicant Portal, at www1.nyc.gov/site/planning/applicants/applicant-portal/step5-ulurp-process.page

Planning Documents (SPDs), and one form of ordinance sets out procedures for discussions over emerging development proposals between the developer, local residents, and the local authority.

The Ginza case study example set out in Box 1 focuses largely on design matters, with a set process and design guide to act as the broad benchmark for deliberations. The Ginza example highlights the role of the community and of transparent reporting and its effectiveness in frontloading input to specific proposals.

Additionality beyond the current English system of pre-apps lies in the secure place of the community in the activity, in clearly defining the

process to be followed and the associated reporting requirements. The discussion process appears to work effectively. While tangible gains are not easy to delineate, the Ginza community think that the process is effective and are happy with how their system operates.

Community Boards in New York City

The US, too, has a zoning-based approach to planning – which actually claims parenthood over Japan's system. In order to ensure accountability there is a form of direct participation enabled in New York City which allows early community input. Box 2 outlines how 'Community Boards' operate

in relation to screening and commenting on development proposals early in the process.

Conclusion

These international cases highlight how closer attention to widening pre-app negotiations could be a useful iteration in the English system. While we press for more involvement and oversight, there are several issues that need refinement and further consideration. For one thing, we need to look at the appropriate triggers for such discussions – for example of a type already used to require scrutiny of a development proposal by a full planning committee (such as size/scale, conflicts of interest, policy departure).

We also need to think about what kind of guidelines would accompany the process – perhaps an SPD for pre-application discussions that involve any community, or for communities with ‘made’ Neighbourhood Development Plans (this latter qualification was noted by the 2014 Local Government Association/British Property Federation best practice guidance³). It could be that such mechanisms become part of an incentives package for producing Neighbourhood Development Plans; acting to ‘buy’ the neighbourhood a seat at the pre-app discussions and therefore aiding their implementation – which is otherwise an emerging concern.

Lastly, the question of how to report such discussions into ‘formal’ planning mechanisms (i.e. to the planning committee) requires thought, detailing the scope and reasons for advice and how it was applied or not, and where matters of disagreement exist.

Given the above, there are several issues that would need consideration if changes to pre-apps in England were to be considered further:

- **Guidelines:** Such an iteration in approach would need careful criteria and guidelines to ensure responsible behaviour. A community presence could act to keep both parties ‘honest’ and working hard to find mutually acceptable solutions.
- **Conditions – or pre-qualification:** Such a process could be conditional on having a Neighbourhood Development Plan in place and may only be triggered by a larger development.
- **Reporting:** A report concerning the pre-app discussions should be provided to the local planning committee, which should include the way in which issues were raised and reflected in the process, and in the planning proposal set before the committee.
- **Testing or prototyping:** It would be sensible to pilot a beta-process in a few select areas in England to see how the process, rules and reports involving communities work in practice.
- **Research:** Research is needed to understand how the existing system works and where and

if elected members or communities have been involved in pre-apps, and to what effect in the post-NPPF era.

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Notes

- 1 *Planning 2020 – Final Report of the Raynsford Review of Planning in England*. TCPA, Nov. 2018. www.tcpa.org.uk/raynsford-review
- 2 J Punter: *The Vancouver Achievement: Urban Planning and Design*. UBC Press, 2004; and *By Design. Urban Design in the Planning System: Towards Better Practice*. Commission for Architecture and the Built Environment, 2000. www.designcouncil.org.uk/sites/default/files/asset/document/by-design_0.pdf
- 3 *10 Commitments for Effective Pre-application Engagement*. Local Government Association/British Property Federation. Local Government Association, Jan. 2014. www.local.gov.uk/sites/default/files/documents/10-commitments-effective-927.pdf See also *The Pre-application Suite*. Local Government Association, Jun. 2014. www.local.gov.uk/sites/default/files/documents/pre-application-suite-3e1.pdf Notably, no examples of community involvement are given
- 4 There is a wide variation of practice in relation to pre-apps, from quite open practices through to rather secretive approaches. Further work to explore existing practice is, however, needed
- 5 ‘Before submitting an application’. *Planning Practice Guidance*. Ministry of Housing, Communities and Local Government, para.003, revision date 6 Mar. 2014. www.gov.uk/guidance/before-submitting-an-application
- 6 ‘Before submitting an application’. *Planning Practice Guidance*. Ministry of Housing, Communities and Local Government, para.007, revision date 6 Mar. 2014. www.gov.uk/guidance/before-submitting-an-application
- 7 ‘Before submitting an application’. *Planning Practice Guidance*. Ministry of Housing, Communities and Local Government, para.010, revision date 6 Mar. 2014. www.gov.uk/guidance/before-submitting-an-application