UNIVERSITY OF SOUTHAMPTON

A COMPARISON AND CONTRAST OF EXAMINATIONS IN PUBLIC OF STRUCTURE PLANS AND PUBLIC LOCAL INQUIRIES INTO LOCAL PLANS

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ABSTRACT

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A comparison and contrast of Examinations in Public of Structure Plans and Public Local Inquiries into Local Plans.

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The 1972 Town and Country Planning (Amendment) Act created a completely new apparatus to deal with the new Structure Plans and replace the traditional Public Inquiry into a Development Plan. The first half of this thesis examines the opportunities, risks and failures involved in the statutory creation of this new procedural model, which represents the first attempt at producing a 'custom-built' model. The analysis of the EIP is split into three elements; the intended functions of the EIP, the theory of the procedure created and the reality of the EIP in action. The disparities between intended functions and procedural nature and secondly between theoretical procedure and practical application in reality are treated in detail.

The lessons drawn from this study of an attempt to create a new model are utilised in the second half of the thesis with the aim of proposing reform of public local inquiries into local plans in accordance with perceived need, while avoiding the mistakes made in instituting the EIP. A contrasting style of approach is adopted, with pre-determined priorities of function and a procedural framework is constructed, with due regard to the relationship between the functions and the nature of the inquiry model. This relationship is comparable to that identified in the Structure Plan EIP and so is informed (inter alia) by the deficiencies described in the first part of the thesis. In addition to the procedural framework which is advocated individual factors which are peculiar to the public local inquiry and thus to its reform (as contrasted with the EIP) are discussed and their importance related to the reforms proposed.

The purposes which the research is intended to achieve are two-fold. It has been intended to produce a satisfactory reform of local plan inquiries, especially, but not exclusively, by applying the lessons learnt from Structure Plan EIPs. It has also been intended to highlight areas of public local inquiries into local plans which are largely unexplored and to draw attention to those aspects which most warrant a fuller understanding.

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PREFACE

What I have Tried to do in this Thesis

The criteria by which I would like this thesis to be judged (substantively, not as an academic product) are those targets which I set myself when I began. I sought to analyse the Structure Plan EIP to see what happens in reality when functions are muddled and their relationship to procedural nature misconceived. I then endeavoured to define the functions of local plan inquiries as I saw them in order of priority and selected a decision-making model for an ideal inquiry. I then discussed a proposed ideal inquiry model in the light of lessons learnt chiefly from three sources: from the failures of the EIP to get basic definitions and relationships right, from the failures of the attempted prototype at Lewes and from the expressed views about Lawyers and inquiries from the Portsmouth CPO inquiries. Finally, I have identified and discussed three aspects of local plan inquiries (inter alia) which are insufficiently understood and of which much greater understanding should and of which much greater understanding should be gained in any future reform or refusal of reform, namely Programme Officers, the Inquiry Environment and Inspectors. My aim throughout has been to highlight the dynamic areas of the EIP and the local plan inquiry where stresses exist and changes are developing or are likely. I have also tried to give due emphasis to features of local plan inquiries which are sometimes considered peripheral or ignored completely but which often have an important effect on the actual course of the hearing.

What I have not Tried to do in this Thesis

Because my real concern was with local plan inquiries, where there is a complete gap in procedural legislation, I have produced no alternative to the EIP. This is not because it is unimportant, indeed local planning may yet be rendered impossibly difficult by failures at strategic level, but because I simply lacked the time and resources to undertake studies along the lines of Sheffield University's Research Projects, which are needed for proper conclusions in this area. I also felt that there was a greater challenge in suggesting constructive reform in an area where it has never been seriously attempted.

I have not gone very deeply into ways in which the present inquiry system could be patched up. I have proposed a new decision-making model and advocated councillors being present to replace council officials and I have introduced new officers to the inquiry. I have not deliberately put forward any suggestion because it would lengthen the life of the traditional quasi-judicial inquiry in local planning, although I am conscious of my own stated belief that it could be ameliorated and improved simply by greater understanding of the areas upon which I have focussed, even if all my proposals for reform are rejected. Finally, I have not introduced any of my cherished proposals for reform of local planning itself, which could not be related to the legal and social position which obtains at present; all of my discussion has been conducted with contemporary conditions and attitudes in mind. Thus nothing has been proposed which I regard as impractical given the will of Parliament and the allocation of funds subservient to that will.

INTRODUCTION

DIFFERENCES BETWEEN TYPES OF INQUIRY

Generalisations must always be undertaken carefully. This is especially true when the species which it is sought to include under a generic heading have obvious differences. Generalisation is more dangerous still when there are deceptive similarities as well as differences. This is the nettle which must be grasped by anyone writing about public inquiries within the planning system. Any statement which purports to be equally true of inquiries into planning permission appeals, local plan inquiries and compulsory purchase order inquiries will either tend to be superficial or will have to be so qualified as to render its value nugatory. It was nevertheless the usual way of discussing planning inquiries until comparatively recently.

My historical introduction to the theory of planning inquiries falls repeatedly into this trap. I make no apology for this because it is a failing which it shares with most or all of the sources from which it is drawn. I simply point out that generalisation about public inquiries in previous decades are permissible, because they reflect contemporary thought, but no more accurate than if they purported to describe the inquiries of today.

I have chosen the 1972 Town and Country Planning (Amendment) Act as the starting point of my thesis and the introduction is intended to set the scene by sketching some aspects of the development of the theoretical under-pinning of inquiries and outlining my approach. Before 1972 there had never been legislation which recognised the need for radically different kinds of procedural models for different kinds of inquiry. 1968 and the legislation of that year would be a popular starting-point for many studies of changes in modern planning, but I choose 1972 as the year in which formal recognition was made of differences between structure planning and development control at the inquiry stage. Certainly many people had recognised this for some time before, but the translation of this recognition into action is the most important step.

As soon as the 'broad brush-strokes' of the historical introduction are over, any generalisation of the kind which I described above

should be regarded as of limited value. Such generalisations have usually only been made where a common feature has been identified in more than one type of inquiry.

I discuss Structure Plan Examinations in Public (EIP's) and relate their procedural nature to their functions, (see below in the Historical Introduction where I define these terms and explain their importance). When later I come to look closely at local plan inquiries I shall draw on the experience of EIP's not by trying to get the two types of hearing under an umbrella of generalisation, but by considering differences and similarities without seeking the easy option of the comprehensive explanation. While I would not agree with Evelyn Waugh's famous character that "Comparisons are odious", I believe that they should only be attempted in the full knowledge of the differences of the two objects of comparison. For example, it is useless, worse, it is misleading, to say that because legal aid should be available at local plan inquiries that legal aid should ergo be available to participants at Structure Plan EIP's as well. This would be to ignore the differences between the people taking part and the functions of the respective hearings. Blanket phrases about the need for public participation which fail to make such a distinction are counter-productive in that they prevent concentration of attention on specific areas of need where special justification exists for action to be taken.

I hope then to have learnt lessons from all of the different kinds of hearing which I have attended and studied.[1] I hope comparisons and contrasts alike will be instructive and that through an awareness of the relationship between function and nature of the EIP an understanding of this relationship in each individual type of inquiry may be formulated and especially the local plan inquiry with which I am particularly concerned.

HISTORICAL INTRODUCTION

Franks Committee

In 1957 the Franks Committee described the conflict of opinion as to the nature of a public inquiry, their conclusion being that the nature was neither purely administrative nor purely judicial. At the time

when the Committee's report was made, the controversy was a fairly simple one. As Telling notes, one school of thought regarded them "simply as part of the machinery by which the Minister collects information and opinion to enable him to make his decisions".[2] This was the 'administrative' view. The other school of thought held that a planning inquiry was a dispute between the local Authority and the objector with a subsequent decision based solely upon evidence presented at the inquiry. This was the 'judicial' view. If the 'administrative' view was the thesis before the Crichel Down Affair,[3] and the 'judicial' view the antithesis offered as a more satisfactory explanation of the nature of the inquiry, the Franks Committee Report was the synthetic reconciliation of the two schools of thought.[4]

"Out general conclusion is that these procedures cannot be classified as purely administrative or purely judicial. They are not purely administrative because of the provision for a special procedure preliminary to the decision - a feature not to be found in the ordinary course of administration - and because this procedure as we have shown, involves the testing of an issue, often partly in public. They are not, on the other hand purely judicial, because the final decision cannot be reached by the application of rules and must allow the exercise of a wide discretion in the balancing of public and private interest. Neither view at its extreme is tenable, nor should either be emphasised at the expense of the other."

The Franks Committee Report is important for two reasons, ironically, clearly contradictory. The Report is a land-mark in the development of the planning system. Never again would a 'pure theory' of the function of inquiries be given credence. The justification for their existence must always be seen as a composite process. At least two aspects, the administrative and the judicial, have to be considered in every appraisal of the function (and I shall suggest later that several other important functions should now be taken into account).

Yet the Report also signals the beginning of a judicialisation of inquiries. The desirability of importing the principles of openness, fairness and impartiality is specifically dealt with[5] immediately

after the decision by the Committee[6] that "tribunals should properly be regarded as machinery provided by Parliament for adjudication rather than as a part of the machinery of administration". There is a clear link between adjudication which suggests the judicial model, and these three principles. The almost inevitable result of these findings was that attempts would be made to satisfy these criteria by closer adherence to the legal model in which they are present.

So the Franks Committee Report, impeccably reasoned through, led to a quite illogical result. It was no longer acceptable to regard the planning inquiry as purely judicial (or purely anything) yet those non-judicial elements in it had to be expunged so that it most closely resembled the judicial example.

This can be explained as follows. In discussing inquiries insufficient attention is given to the distinction between the concepts of 'nature' and 'function'. The function of a planning inquiry has to be seen in the context of post-inquiry decision making, as an entity. Here there is no doubt that both administrative and judicial functions are present; the Minister adduces many policy and political elements which could not possibly be part of a judicial process. The hybrid <u>function</u> of the inquiry system must thus be regarded as established. Yet the nature of a planning inquiry must be completely separate, if Franks conclusions are right. It need not reflect the function of the actual hearing within the inquiry system. The inquiry may by the <u>nature</u> of its procedure and composition be wholly judicial or wholly administrative without either affecting or being affected by the function. Thus the Franks Committee could technically come to the conclusion that wholly judicial type procedure was most desirable for inquiries, while recognising that it was not fulfilling a wholly judicial role. That is a possible conclusion. Whether the lack of correlation is a reality or not is one of the central concerns of this thesis. This is neither a quibble nor an ex post facto attempt at rationalising a seemingly irrational conclusion by the Franks Committee. The relationship between nature and function is crucial to an understanding of how public inquiries and hearings of all kinds work and how they don't

work. This relationship must be grasped by anyone attempting to change the inquiry system or to introduce a new model like the examination in public. It should equally be understood by someone who wishes to resist change or even hankers after regression.

Function

This thesis is concerned to decide how the function of a planning hearing by which is meant an inquiry or an examination in public, can be fulfilled by changing its nature. To achieve this it is necessary first to define a set of functions. This is in itself a task fraught with difficulties because none of the participants share the same view as to what the function of the inquiry is. To decide whose view is to be adopted as the true function of an inquiry is a value judgment of daunting magnitude. Anyone professing objectivity must choose the much thornier path of producing a model which can satisfy to some extent at least the views as to function of all participants.

Nature

Having defined the functions to be fulfilled, the individual procedural and other tools available to achieve each one and ways of linking, modifying and balancing them so as to avoid conflict between them have to be examined. This is what is meant by the 'nature' of a hearing.

If, as I believe is now the case, far too little attention is paid to the 'nature' of an inquiry, some functions are unsatisfactorily fulfilled and others not at all, sometimes to enable opposing functions to be fulfilled and sometimes for no reason at all. However, as was suggested in referring to the Franks Committee, correlation is not total. A seemingly appropriate change in the nature of an inquiry may have no effect at all in fulfilling the function or an unexpected one in upsetting other important functions. The operation of the cause and effect between nature and function is imperfectly understood and unsurprisingly the imperfection of understanding manifests itself in an imperfect system. The reasons for this are readily found. It must have been tacitly assumed

in the post war period that the planning inquiry system would evolve in a way suitable to its function, rather as the court system had done over the centuries. This is the only explanation for the largely laissez-faire attitude adopted towards the inquiry model until the Structure Plan EIP was introduced. The false basis of this assumption is that a single agreed function or set of functions has ever existed and the second one is that the nature of planning inquiries can somehow be determined by their function. This laissez-faire attitude was common in all areas of public administration until a welling-up of informed opinion (of which the Crichel Down affair was only a tiny but eventually important part) enforced the realisation that actions would have to be taken to control this haphazard evolutionary process.

The subsequent judicialisation of inquiries represents an attempt to fulfil certain functions by altering the nature of inquiries. Too much should not be made of the achievement of Franks in this area. It was the first and was for some time the only attempt in modern times to fulfil a specific function by changing the nature of an inquiry, but it was very limited. Wraith and Lamb even assert that "The Franks Report had little to say about procedure during an inquiry"[7] which is a rather misleading emphasis but strictly speaking correct. What the Franks Committee did was to recommend adoption of principles associated with the judicial model and this was consequently adhered to much more closely than before, the main function of this being a public display of unexceptionable criteria of administration, to allay fears of widespread maladministration following Crichel Down.

Neal Roberts[8] has sought to explain the effects of the Franks Committee Report as a development of "the public inquiry into a forum for decision making in its own right". This is too simplistic an analysis. The proposals of the Franks Committee never changed the function of the public inquiry; the influences were on the nature of the inquiry and were more subtle than a sudden change. The Council on Tribunals for example which was given so much kudos in its infancy was never as inherently important as the effects which the permanent presence of review had on the conduct of

inquiries themselves. But more simply, the tenor of thought engendered by Franks was more influential than any of his specific recommendations. The reason for this is not difficult to explain. Particular checks or opportunities for scrutiny are only decisive in the particular instances where they are invoked. There may be grave inadequacies in a system but if no one reports them for review then they remain unacknowledged officially. The Council on Tribunals is laughably small for full scale monitoring. "Its senior legally qualified members comprise the Secretary, two senior legal assistants and one legal assistant" and eight other administrative members.[9] Similarly, the Parliamentary Commissioner for example can only act if he is informed of maladministration and the High Court requires an initiative by a litigent before it can intervene. Thus it is the presence of the Council on Tribunals and the Parliamentary Commissioner rather than any action by them which is effective in influencing the nature of inquiries.

By contrast, a prevailing trend of thought at any given time pervades every inquiry through the attitudes and priorities of the personnel involved. Hence it is not official action like the setting up of the Council on Tribunals which determines the nature of inquiries but modes of thought among the participants (in its widest sense). This must be borne in mind throughout this discussion, that legislation has not achieved very much in changing the nature of public inquiries.

It is a measure of the lack of communication between legislators and people operating the inquiry system at ground level that public participation at the inquiry stage of planning advanced so little in the 1960's. As Professor McAuslan says[10] "Public participation in planning is part of a much wider phenomenon covering regional devolution, industrial relations, management, local government in general, university government, arguably even the women's liberation movement; in all these contexts, people have been seeking a greater say and greater control over decisions that affect their immediate environment." The demand for a greater say was not met by legislative response in the area of public inquiries. Typically, it was administrative efficiency which persuaded government to accept

some reforms of plan-making recommended by the Planning Advisory Group. Public participation at public inquiries was neglected but structure planning was born to try to solve the problems of over-loaded administration.

Skeffington Committee

The 1968 Town and Country Planning Act was passed and the well rehearsed major changes in plan-making achieved. The participation provisions of that Act were entrusted to the Skeffington Committee and its mandate was "to consider and report on the best methods, including publicity, of securing the participation of the public at the formative stage in the making of development plans for their area".[11]

This was in some respects a more constructive approach to the criticisms of the planning process; that it was anti-democratic and gave no proper opportunity for individuals voices to be heard and listened to. The idea was one of prophylaxis. If the defects of the system mainly appeared at the inquiry stage then the element of public participation necessary to satisfy the public demand must be injected at an earlier stage. In the event, the Skeffington Committee's proposals for "community development officers" and "forums" were never implemented but in theory at least, participation at the pre-inquiry stage in a highly developed form would have helped.

However, with perfect justice, the encouraging beginning of Skeffington's approach has been lost amongst its catalogue of failures. It must be said that these failures derive largely from the limits of its brief but what the Committee omitted to propose is more significant in this field than its actual proposals. Only development plans were to be preceded by the recommended participation and publicity, public involvement at development control level presumably being supposed to be served by the inquiry system which had failed signally here and elsewhere.

Much more importantly, the Skeffington Committee was not tasked with reforming the public inquiry or even of examining the desirability of doing so. Effectively, it was trying to combat the

deficiencies of inquiries without touching the inquiries themselves. Certainly, if the participation was wholly successful and the planning authority were responsive to requests and demands a plan might antagonise public opinion less. Yet if the public inquiry system's function is to allow people to have their say and they feel that it is unsuitable for this, then to encourage public involvement is no solution. I say no solution rather than a partial solution because if planning inquiries are proving unsuitable per se for their perceived function, satisfying some requests in advance is only a quantitative improvement and only for those whose requests are satisfied. For those who are not or cannot be satisfied by provisions in a draft plan, the public inquiry system could not be improved one iota by the fullest implementation of Skeffington in the unlikely event that such an implementation would occur.[12]

This is not the end of the shortcomings of the Skeffington approach. The suggestion by Roberts (see above) that the public inquiry after Franks had become a "forum for decision-making in its own right" is an exaggeration perhaps but it does achieve a perspective completely missed by Skeffington. Nowadays Inspectors can even decide some cases entirely themselves, but the Report of the Inspector, compiled in the light of events at the inquiry has always been of paramount importance in determining the eventual outcome.

If the real decision is made at the inquiry or rather as a result of the inquiry, it is no answer to improve pre-inquiry procedure. There is no substitute for a purpose-built inquiry; in the terms which I have used the function should be reflected in the nature, insofar as the nature can help to fulfil the function.

The Inquiry in Context and in Isolation

When I described below short-comings at particular inquiries which I have attended, I am reminded that they have all been explained away to me by the local authority officers to whom I have outlined them as being unimportant in the context of the process as a whole. This is a favourite resort of the planner and other council officers; one should not concentrate one's attention too closely on

the defects of the inquiry, one should see it only as a part of the whole. It is contented that one cannot concentrate too closely on the public hearing stage of the planning process and that its defects should be unsparingly exposed and discussed. Since the inquiry, the hearing itself is always a fundamental part of the decision-making process and may even sometimes be, as Roberts suggests, "a forum for decision-making in its own right"[13] to concentrate on the secondary dependent pre-inquiry element as Skeffington did, is to misunderstand the relationship between the elements. In fact, no tinkering with the input to the hearing stage will alter its function or its suitability for that function. Only the available information will be changed and the processing and utilisation of that information will be the same as if pre-inquiry participation had never been heard of. The Skeffington Committee, like the Planning Advisory Group before it, walked away from any deficiencies in the public inquiry, in the former's case because it was outside its narrowly conceived interest and in the latter's case because the plan-making system was more susceptible to change and represented an easier option.

My view of the 1960's is of a decade of lost opportunities for the examination of the case for reform of the public inquiry. From 1958 until the passage of the 1972 Town and Country Planning (Amendment) Act experimentation with changes in procedure and consideration of new models was depressingly small, in the light of considerable concern about improved opportunities for public participation in planning. I must here comment on McAuslan's ambiguous statement[14] concerning the public local inquiry; "It has undergone far reaching changes in response to public concern about its usefulness and its procedures in the last fifteen to twenty years". It is true that the nature of public local inquiries has been affected by the changing attitudes and aspirations of those attending them, but it should not be supposed that there exists a finely tuned mechanism for reflecting changes in public opinion and accommodating new requirements. Indeed the changes in the nature of the public local inquiry have been far from accurate or punctual in accord with changes in what the participants want. Where fairness

was wanted, the change effected tended to excessive formality, where more speed was wanted, a change brought about complaints of lack of participation and the demand for public participation has caused a change which some say slows the process down. While I accept Professor McAuslan's identification of the causal connection between pressure and change, I would not want to see the public local inquiry (or any public planning inquiry) accepted as suitable for reflecting subtle shifts in popular thought. We should not assume that the changes in nature achieved by the changes in function demanded by the participants will be appropriate either in kind or degree. An inquiry is a form of social interaction and it is misguided to assume that the effect achieved by the conflict of perceived functions will be an ideal fusion of the differing aspirations.

Movements for Change

This is all the more true since public inquiries in the planning system still adhere closely in most respects to the legal model which is notoriously unresponsive to change. When I have described the experiment by Lewes District Council, I hope that my strictures on complacency about adaptability will be seen to be not unreasonable. I hope also that I may be excused if I am sceptical of the way the public is supposed to be able to effect these changes almost of its own volition. Some of the aspects of public inquiries, like the role of lawyers, have changed little, if at all in twenty years and one doubts whether the public image is of an element which is so perfect that it requires no change. The lawyer's role, as the Lewes inquiry showed, is an element of the public inquiry which is unequivocally resistant to change, particularly change induced in the way described by McAuslan.

If this thesis tries to point out aspects of the public inquiry system which should be scrutinised and analysed more closely, with a possible view to reform, it does not expect that reform to happen as a result of spontaneous responses in the inquiry system to current movements of thought. Representative democracy may let its supporters down frequently, but any reform of a centralised inquiry

system can only properly be attempted through the legislature. If the nature of a public inquiry is to be left to be changed directly by the participants and their views of the inquiries function, it will be a process of reform partially random and partially determined by the strongest and best organised sectional interest.

The 1972 Town and Country Planning (Amendment) Act tried to create a new model to fulfil a new function. Parliament defined the function and the procedure was designed accordingly. I begin my discussion below at this point, because here for the first time was a new model being introduced to fulfil a changed function, which the previous model could not be adopted to do.

I shall briefly refer to Planning Inquiry Commissions and other alternative proposals which have never achieved widespread adoption in a separate section, but the introduction of the Examination in Public is the first example of a model, designed for its purpose rather than filched from another discipline, which recognised that a pre-defined set of functions and an appropriate procedure were the minimum criteria for an efficient public hearing. I propose to examine the success of the Structure Plan Examination in producing a hearing where there is close correspondence between nature and function. From this review, I shall move to the public inquiry and see whether substantial procedural reform in the same or a different direction would fulfil some or all of the many functions of different kinds of public inquiry. The experience of the Examination in Public will be useful in assessing how change might be attempted. The instruments of reform are not necessarily confined to legislation, although the initiative for reform should come from the legislature if Parliamentary democracy is to be protected. The wide variety of means by which the hearing stage can be influenced, such as making provision altering, excluding or institutionalising legal representation makes it all the more important for Parliament to take control. The unfortunate Lewes inquiry described in the section of this thesis dealing with local plan inquiries was the result of the means of reform being readily available to a local authority. The section of the setting of local plan inquiries (sub-section on Inspectors) shows to what extent

Inspectors have control of the nature of inquiries.
Some of the factors influencing the nature of inquiries are so frequently ignored as not to be properly understood, much less be available for purposeful use by Parliament and I have endeavoured to highlight some of these in the latter stages of this thesis, particularly the section on the setting of local plan inquiries.

Apology for Democracy

Thus it is regarded as established that the choice is between risking unilateral interference and attempts at reform by one or more of the participants in public inquiries (Inspectors, local government officers, objectors or lawyers) and having legislated change or consolidation as with the 1972 Town and Country Planning (Amendment) Act. The criticisms which I go on to make below of change produced by Inspectors, local government officers, lawyers or objectors is largely centred on a distrust of what is undemocratic and unrepresentative. All these possible sources of pressure for change are sectional interests, with advantage to be gained from change in any given direction.
If Planning Inspectors were like Professor Dworkin's super-judge Hercules, (described in 'Hard Cases' 1975 Harvard Law Review) they could be entrusted with the task of reform and even with the very large degree of discretion which present legislation confers on them. Hercules the Inspector would be able to assimilate the interests and requirements of all the participants in the process and throw in traditions of the community for good measure before producing an ideal solution. Inevitably the own Inspectors more closely resemble Dworkin's Herbert and are quite unsuited to such a calculation.

Parliamentary Control

The substitute for Hercules which must be an advocate because of an absence of any suitable alternative is Parliament. Parliament is often deaf to the opinions of sections of the public and somewhat slow in responding to them, but it can claim a unique representative authority in controlling public life. No other institution can claim to represent such a gamut of opinion and no institution

claim widespread consent to its considered opinion in the same way as the British Parliament can. The emptiness of the mandate and the degree of participation by members in subordinate legislation cannot be discussed here. It is understood and accepted that Parliament has proved a far from impressive method of maintaining scrutiny to attempt reform, indeed the Structure Plan EIP is a good example. However, although this thesis does not purport to tell Parliament how to go about legislation, it would be perfectly possible for an effective review body to be created by statute. With all its defects, especially those related to efficiency, Parliament is a much safer repository for the power to control public inquiry procedure than any of the participants, who individually comprise the alternatives.

I proceed on the assumption that Parliament should be in firm control of changes in the planning inquiry system as in any area of public administration and that any reform should emanate solely from that source.

My stand point is that for structure plans and local plans particularly, but also for Compulsory Purchase Order Inquiries and Planning Permission Appeals, an individual procedural model should be developed. Parliament would legislate the provisions as specifically as was considered desirable leaving as few factors as possible as prey to uncontrolled influences at the inquiry. Wide scale scrutiny and monitoring would be undertaken and legislation changed as frequently as necessary to meet changing perceptions of functions filtering through to Parliament and changing conditions and problems experienced in the field. I would draw an analogy with the Finance Acts, where frequent consideration is given to new political goals and changed circumstances and effective vehicles are provided for the achievement of the goals in the light of the circumstances. The same vehicles would usually be preserved and minor adjustments made in the planning process, just as the same basic taxes are regulated to meet new demands. New procedural models would only be produced when the current machinery was completely outdated and incapable of further modification to meet new challenges.[15]

More legislation and more Parliamentary scrutiny does not necessarily mean greater formality; it is perfectly possible to create a legal framework within which greater informality than at present could be achieved.[16] If central government has interfered too much in some areas of public life (on which I pass no judgment) it has certainly interfered too little and has shown too little interest in the public inquiries held in the planning system. It is surely inevitable that any reform emanating from a source other than Parliament will be open to the charge of being undemocratic and based on interest and inevitable that Parliament alone is capable of creating a completely new model as opposed to making changes in the present one. No other body has the power to wipe away the old model and impose a new one.

Non-Parliamentary Review and Reform

I find little comfort in the assurance of a member of the Inspectorate of the Department of the Environment that "all these matters are constantly under review". Even if the efficient review claimed is present, Inspector's perceptions of what the function of a public inquiry is and what its nature should be are not the only perceptions which need to be taken into account. Any changes which the Inspectorate undertakes (by advising Inspectors to conduct inquiries differently) are unlikely to meet the aspirations of all parties. Only those aspirations regarded by the Inspectorate as legitimate will be accommodated by procedural change and the Inspectorate is a bureaucratic body not a democratic one.

Neither am I hopeful that local councils and their officers can effect necessary changes. There are several reasons for this; one is that like Inspectors they must be expected to have their own priorities which do not correspond to those of other participants. Another reason is that Inspectors are unlikely to allow procedural changes to be made independently of their authority at the inquiry.

The infamous conservatism of the legal profession and its vested interest, aside from doubts about the very presence of lawyers at inquiries, make this too a quite unsuitable force for changing their

procedural nature. Once again the inability of private persons to influence the legal profession through democratic processes is a powerfully persuasive argument.

This thesis is intended to highlight an area of concern. Its conclusions are in a way of secondary importance. It may well be, notwithstanding my evidence to the contrary, that the nature of public inquiries is as perfectly in accord with the functions required by different parties as members of the Inspectorate seem to believe. If Parliament concluded that, and provided legislation to ensure that the procedural nature would be constant until a review suggested the need for new legislation, a great achievement would have been made and an important principle established. My call for reform, and all other pressures for change, would be directed to Parliament as the sole author of procedural innovation.

Instead, initiatives for new procedures at inquiries come from local government officers and from objectors. The counter-influences of Inspectors and lawyers make the eventual procedure (never mind the outcome) of some inquiries quite incalculable. Procedure should be reliable constant against which the fluctuations of substantive material can be examined. Whether or not I am right that large-scale reform is desirable, let legislation be the only means by which it or any procedural change can be initiated. Other methods than rules may be used for achieving changes in the nature of inquiries, but they should not be available to persons who are not democratically accountable for their use. The Town and Country Planning (Inquiries Procedure) Rules 1969[17] do give a clear indication of the procedural model at planning permission appeals but even these are substantially deficient in precise definitions of functions and roles. As Rule 10 makes clear "the procedure at the inquiry shall be such as the appointed person shall in his discretion determine" and the following exceptions are all diluted to a greater or lesser extent by the "appointed person's discretion". Deficiencies in guidance issued in Department of the Environment handbooks for local plan inquiries and Structure Plan Examinations in Public are greater still and will be discussed in the relevant sections below. The pattern is the same throughout the planning system. The

legislature is content to lay down the guide-lines which confer the widest discretion on Inspectors or to suffer 'advice' to be given by the Department of the Environment. The prevailing attitude is that no-one can decide on precise procedural matters better than the people who operate the system at ground level; the Inspectors are widely experienced in inquiries and they can be relied upon to determine the appropriate procedure at the individual inquiry. This ignores the fact that Inspectors are one of several sectional interests within the public inquiry system and as such are wholly inappropriate to the task of making these decisions. The laissez-faire mentality is often justified on the grounds of flexibility; if the guide-lines are sufficiently elastic, on the spot improvisations can be made when the need is perceived. This, of course, begs the question; when is the need perceived and by whom? Surely it is better to construct a model sympathetic to current problems and capable of rapid reconstruction when Parliament wills it, than to give the appointed person (or the local authority or the objectors) a blank cheque to work something out on the spot. In practice this leads to greater rigidity, because the 'appointed persons' merely develop or adopt a model to suit their needs and their perceptions of tother people's needs. This quasi-judicial model is often not modified at all by Inspectors to suit any particular problem. So Parliament leaves the modification to the Inspectors who either undertake it undemocratically and from a subjective view-point (as they are bound to by the very nature of their role) or adopt the traditional all-purpose convenience model which can be applied with a minimum of thought or effort.

This is not intended as a personal attack on Inspectors. They are victims of circumstances. The Inspectors cannot make an objective choice of procedure since his job will be affected by the model chosen. Neither can he be expected, with little prior knowledge of substantive matters, to tailor procedure to suit individual inquiries. To conduct an inquiry with a good chance of avoiding complaint he relies on a model which has at least connotations of impartiality.

Whether Inspectors slavishly follow the quasi-judicial model or use

their discretion to produce their own version, neither alternative is an acceptable substitute for a model produced by Parliament to take into account all aspirations which Parliament feels to be valid. The flexibility would be present in frequent review and would be real flexibility, not another name for neglect to ensure sympathetic and modern procedure.

[1] For a list of inquiries attended in the course of this research with brief descriptions see Appendix A post.

[2] Telling 5th Edition 1977 p.40. **Planning Law and Procedure.**

[3] Professor Wade "Administrative Law" 3rd Edition p.264-265 summarises the effect of the Crichel Down Affair in the commission of the Franks Committee thus; "The Committee ...was commissioned ...as an immediate (though illogical) result of the Crichel Down case of 1954. That case really had nothing to do with tribunals and inquiries, but was a manifestation of public concern over the way in which government departments had handled a landowner's request (based on no legal right) to have land which had been compulsorily acquired returned after the war. This was a purely departmental matter. It was what might be called, with due apology to the civil service, ordinary maladministration. The current remedy for this was the ombudsman, but the ground for him had not yet been prepared. Meanwhile the Public outcry was to some appeased by commissioning the review of tribunals and inquiries." A statutory inquiry was not involved in the Crichel Down case, hence Franks conclusion (Report, paragraph 16) "that the celebrated case of Crichel Down, which is widely regarded as a principal reason for our appointment itself in fact falls outside

the subjects with which we have been asked to deal".

4 Franks Committee Report command 218 1957 paragraph 272.

5 Paragraph 41, Franks Committee Report

6 Paragraph 40 ibid

7 p.167 Public Inquiries as an Instrument of Government

8 The Reform of Planning Law

9 Wraith and Lamb op.cit. p.239.

10 McAuslan Land, Law and Planning 1st Edition 1975 p.98.

11 People and Planning; The Skeffington Report MHLG 1969 HMSO.

12 The proposed model for the hearing of objections to local plans which I put forward in the second part of this thesis does purport to regulate and utilise pre-inquiry procedure so as to further fulfillment of the perceived functions of the system. However, it does so in the knowledge that this would be useless if the hearing stage were not properly thought out. To achieve a correct emphasis, it can be said that once the hearing model has been fully formed, complementary pre-inquiry procedure can be devised to assist it in performing its tasks.

13 it is going too far to state this as a universally applicable truth as Roberts does

14 Land, Law and Planning p.9

15 It is not, of course, suggested that the review by Parliament of planning inquiries should be given equal priority with the Finance Acts. It is the idea of regular review coupled with the preservation of basic structures with any required adjustments which made the comparison appropriate.

16 This is what has been attempted in the 'proposed model' for local plan inquiries. By providing certain procedural safeguards against the possibility of chaos (such as the Inquiry Advocate) it has been made less of a risk for Inspectors and other participants wishing to try informal discussion and questioning.

17 now the Town and Country Planning (Inquiries Procedure) Rules, 1974,

STRUCTURE PLAN EXAMINATIONS IN PUBLIC

1. FUNCTIONS

Even as late as 1971 when the Town and Country Planning Act consolidated the changes effected in land use planning by the 1968 Act, it was still assumed that the traditional form of public inquiry would be used to hear objections to the proposals in the structure and local plans as in development control, s.9 (3) c of the 1971 Act refers simply to "a local inquiry or other hearing". Indeed while on p.63 of the 1971 December Journal of Planning Law, Sir Desmond Heap says that the new Bill (as the 1972 Act then was) "avoids the word 'inquiry'" on p.676 of the same issue Christopher Whybrow is saying that although the (1968) Act "provides for either a hearing or an inquiry, the Secretary of State has indicated that he will normally arrange a public local inquiry". That Whybrow relies for his information on Department of the Environment Circular 44/71 paragraph 74 emphasises the extent to which central government and thus local government believed that the old style inquiry would endure throughout the changes of plan making. Presumably it was believed that the public inquiry was entrenched in the development control area. Roberts justly remarks that the Planning Advisory Group was ham-strung because this area "could not be much interfered with without throwing a great deal of the system away"[1] and since it was appropriate for objections here it was appropriate for objections anywhere. The idea of uniformity throughout the system has certain superficial attractions and perhaps some more substantial ones. The transfer from an inquiry into a planning permission appeal to a local plan inquiry is effortless for Inspectors and Local Government Officers and objectors with experience of one inquiry can draw upon it if they become involved at another.

Perceptions of Functions in Parliament

Yet the idea that all hearing of objections could be done in some way was at least three years out of date when the

circular went out from the Department of the Environment (DoE). The 1968 Town and Country Planning (TCP) Act had provided for the setting up of planning inquiry commissions ss.47-49, of which more anon. In the House of Commons, Mr. Anthony Greenwood, the Minister for Housing and Local Government (HLG) said that "The essential difficulty is that the local inquiry method is not suitable for ...big and complex cases"[2] and went on to list the problems which arose from this unsuitability. This leaves no doubt that there was dissatisfaction with the traditional public inquiry model in certain areas of its operation at least. The murmur of disquiet became a roar as the duration and cost of the Greater London Development Plan Inquiry grew and grew. In accordance with the requirements set out by the then Secretary of State for Local Government, Mr. Anthony Crosland[3] this was a slightly modified version of the public inquiry with an independent chairman and expert assessors, but the complainants took the line that the whole model was wrong and that such large-scale matter had to be treated differently.

The period 1968-72, then was far from being one of contentment with the public inquiry. The 1968 TCP Act had been intended to achieve four aims as Mr. Greenwood outlined[4],

(i) "quicker decisions"

(ii) "more effective so that we get the quality of results we all want"

(iii) "fairness"

(iv) "more real public participation"

and (i) and (iv) especially were not felt to be adequately served at all levels by the public inquiry. The 1972 Town and Country Planning Act should not be seen as a sudden initiative on the part of central government to effect changes. It was a measured response to a need which had been foreseen for at least four years and which had become more acute as the two years of the Greater London Development Plan (GLDP). This is the context in which the advent of the 1972 TCP (Amendment) Act must be seen.

The Minister for Local Government and Development (LGD) Mr. Graham Page moving the second reading of the TCP (Amendment) Bill 1972[5] explained the plan-making changes brought in by "the new 1968 system" and went on to explain that these "far-reaching changes were not accompanied by changes in the provisions for public local inquiries into objections "since" the 1968 Act just provided for an inquiry into structure and local plans on the sort of litigation basis on which inquiries are held at present".

The defects in the inquiry system were described when Mr. Page had said that he was prepared to "go as far as saying that that omission to devise an appropriate kind of inquiry for a structure plan could be fatal to the whole system we set up under the 1968 Act". This catalogue of defects is not important merely because it suggests possible areas which are unsatisfactory within the unchanged part of the inquiry system, although it is certainly informs my later discussion of this. The analysis of weaknesses is important because it shows the function of the new procedural model brought forward in the 1972 TCP (Amendment) Act and what changes in the nature of the model were supposed to enable this function to be fulfilled. If the Minister had been able accurately to define the functions required of the model and had understood the relationship between procedural nature and fulfillment of function he could theoretically have designed a kind of inquiry which would be as near to perfection as could be attained.

In fact Structure Plan EIP's are vulnerable to some of the Minister's criticisms of their predecessors the public inquiries and also to some new criticisms, Mr. Page's criticisms of the old system were "The delay, the blight, the failure to probe and decide the real issues, the loss of sight of the wood for the trees" and he therefore sought "to evolve ...a more relevant means of publicly examining the key issues".

With such a woolly definition of the functions as a starting point, it is unsurprising that the Examination in Public is not that perfect translation of function into procedural nature

which I posited above. The improvements which the Minister intended should be made on the traditional inquiry as he describes them in his speech can be condensed into two headings; speed (which includes prevention of blight) and fuller discussion of the mysterious category of "real issues". This category cannot be co-extensive with the "aspects which have been seriously contested or give rise to objections" mentioned later in the Minister's speech since these by definition would have been dealt with by a traditional inquiry. The most generous and reasonable assumption is that the Minister's earlier reference to the 1972 Act carrying on the work of the 1968 Act implies that the 1972 Act shares the same aims as those forwarded by the Minister for HLG in 1968;

(i) speed
(ii) effectiveness
(iii) fairness
(iv) more real public participation.

A more realistic analysis of the intended functions of the Structure Plan EIP will take both of these ministerial pronouncements into consideration in deciding what was supposed to be achieved by the new model. If both are borne in mind the original intention of the progenitors of the EIP is probably understood. To find one vital reason why this intention has not been fully enshrined in the procedure at each Structure Plan EIP one need only look a little further in the speech of the Minister responsible for its inauguration Mr. Page "The Bill does not itself make any detailed provisions relating to the public examination". The procedure it is promised "will be evolved in consultation with those concerned" and Mr. Page concludes hopefully "we shall find the best procedure to put into regulations eventually". As Bridges and Vielba[6] noted in 1976 "No such regulations have been made to date". This remains true today.

Perceptions of Functions in the DoE Handbook

Instead, in 1973, the DoE produced a non-statutory Code of

Practice in a booklet entitled "Structure Plans; The Examination in Public". This is introduced at least nominally by Mr. Geoffrey Rippon, the then Secretary of State for the Environment and does not correspond at all exactly to the statements of proposed functions by his two predecessors. Mr. Page in 1972 in supporting the TCP (Amendment) Bill and Mr. Greenwood in 1968 in introducing the structure planning process. According to Section 1.3[7] the EIP "is designed to investigate those matters arising on structure plans which the Secretary of State selects as calling for examination in public; and to do so by way of a probing discussion, covering not only arguments critical of the plan, but also representations supporting it, instead of the formalised procedures of the traditional inquiry into objections. Section 2.8 describes the provisions for public participation at the pre-examination stage. It can be inferred from this that the requirement of Mr. Greenwood that there should be "real public participation" following his 1968 Act is met largely and even solely at the pre-inquiry stage. Certainly it is not stated anywhere in the booklet that the fostering of "real public participation" is one of the functions of the examination itself. There are provisions which might be construed as conducing towards public participation or intending to do so, but this is not one of the stated functions. Sections 2.10 to 2.12 essay another explanation of the improvements sought by replacing the inquiry with the EIP: "The traditional form of inquiry, which has come to involve many formalities of a kind apt for dealing with detailed property matter, has only rarely proved suitable for exploring also the policy issues inherent in major development plan submissions"[8] "retaining the traditional form of inquiry would mean the duplication of proceedings at structure plan and local plan level. A great deal of time would inevitably be taken up with detailed objections to both types of plan[9] "not enough importance has in the past been paid to the need for reasonable speed"[10]. This critique of the failings of the traditional inquiry subdivides into;

(i) exclusion of policy issues[11] and

(ii) lack of speed[12].

The statement in s.13 amounts to the aim of replacing the objection basis of the hearing, which could be held to include both sub-aims (i) and (ii) in Sections 2.10 - 2.12. Yet here again there is an example of the most fundamental failure to establish the functions to be achieved before exploring the suitability of the methods. Lack of speed and inability to include policy considerations are diagnosed as two maladies to be cured. These are both attributed to the objection-based nature of inquiries and the function of the EIP is the examination of the Structure Plan without the presence of objections. This is a complete confusion of function and nature, but a wholly natural one in view of the omission of all Ministers involved to provide a simple list of their aims.

Section 3 the "Code of Practice" begins promisingly "The primary purpose of the examination in public is to provide the Secretary of State with the information and arguments he needs ...to enable him to reach a decision on the plan". If this established the function of the EIP as an administrative, information-gathering one, it would be helpful in deciding the best procedural tools to adopt to undertake this task and 3.2 does refer to the idea that "one aim must be to reduce substantially the time it took for decisions to be reached on plans under the old system". Yet this can hardly be an exhaustive list. If the functions of the EIP are:

(i) to gather information for the Secretary of State

(ii) as quickly as possible one wonders why Mr. Page thought that it would parallel the achievements of the 1968 Town and Country Planning Act in plan-making.

Surely this merely harks back to the 'purely administrative' theory of the pre-Franks era. Are we to believe that Sections 3.1 and 3.2 of the DoE Code of Practice define what the function of the EIP is to be? Unhelpfully headed "The Nature of the Examination", Section 3.45 says that the "aim will be to secure a satisfactory examination of those matters which the

Secretary of State has selected" and viewed in conjunction with Section 3.47 "A primary aim is to ensure that the examination investigates the selected matters in public and in such depth that there should be no need to re-open the examination later", may or may not represent another function intended to be fulfilled by the EIP; that of ensuring that the public or Secretary of State finds the proceedings "Satisfactory" and does not want them re-opened". This may be difficult to divorce from the requirement of speed, in any case.

To simplify the foregoing catalogue of attempts to define what the EIP was intended to do when it replaced the Structure Plan Inquiry of the 1968 TCP Act, I have tried to summarise the different stand-points. Mr. Graham Page in his speech in 1972 moving the 2nd reading of the TCP (Amendment) Bill intended that EIP's should eliminate delay, blight and failure to probe and decide "the real issues". He also saw them as necessary to what "we want to achieve under the new (1968) planning system" Mr. Greenwood's definition in 1968 of what the legislation of that year was intended to achieve is;

(i) speed
(ii) effectiveness
(iii) fairness
(iv) participation.

The booklet issued by Geoffrey Rippon's DoE emphasises

(i) the administrative function
(ii) speed
(iii) finality, while the foreword by the Secretary of State himself states that "The aim has been to produce a Code that will work - which means that it must be both <u>effective</u> and <u>fair</u>" (underlining mine).

I am not trying to confuse the aims of those responsible for the introduction of the EIP. Such an effort on my part would be superfluous; I am content to present instances of attempts to define the function of the EIP as compared and contrasted with its predecessor the inquiry and to suppose the confusion to be self-evident.

If no coherent definition of aims comes out of the statements of the political creators of the EIP one salutory lesson clearly does. Before any purposeful procedural change can be attempted the purposes of the change must be described in the simplest possible manner and preferably in an agreed list form in which there are no duplications and no necessity for inference or even interpretation. Sir Derek Walker-Smith's speech in the Commons debate[13] is filled with vague optimism, but one feels that his most meaningless contribution was his detection of "an augury of success in that the solutions have been fashioned to meet the situation and the problems as experienced has defined them". Since there are different definitions with different orders of priority of the "situation" and "the problems" the "solutions" constructed on such a shifting foundation seem to presage disaster rather than success.

Perceptions of Functions in the Bridges and Vielba Study

Although it is somewhat late in the day, seven years and many Structure Plans after the introduction of the EIP in 1972, I propose to discuss the intention of the legislators in introducing the EIP and its Code of Practice. I have found Bridges and Vielba[14] quite helpful with this, but as I wish to relate individual elements of the EIP to initial aims I must go further and produce the kind of list, with justifications, the absence of which I regretted above. Bridges and Vielba are also aware of "ambiguities relating to the general purposes and score of the examination in public". They usefully trace the history of the development plan inquiry and its changes in functions. It is scarcely necessary to add that no procedural innovation was used to effect these changes; they were allowed to evolve in a quite haphazard way. The initial function of the defelopment plan inquiry was "as a vehicle for the general participation of the public in the planning process and Lewis Silkin, introducing the 1947 TCP Bill is invoked as authority that its function was providing "People whose surroundings are being planned (with a) chance to take an active

part in the planning process".[15]

The new functions ascribed by Bridges and Vielba[16] to the development plan inquiry were "a forum for the legalistic determination of detailed property rights", and "a mechanism for the co-ordination of plans between different local authorities and the various levels of government".

In turning to the EIP, Bridges and Vielba note that at least two of these three functions of the development plan inquiry are superfluous to a definition of the function of the new procedure. By the 1968 (now 1971) TCP Act, "questions of detailed land use and individual property rights were assigned to the local plan and development control levels"[17] they imply by their assertion that "Public participation was to take place at the earlier stage of plan preparation" that this was no longer a function of the hearing itself.

In addition, their study makes a more general assumption that "the examination in public retains the traditional purpose of providing the Secretary of State with the information ...he needs ...to reach a decision on the plan". This is an expression of the purely administrative function which dominated the theoretical underpinning of public inquiries until Franks finally enunciated the truth that the administrative function is not the only one.

It is perhaps somewhat surprising that Bridges and Vielba have not taken this potentially most informative analysis of function further, especially considering the exclusiveness of their area of study. There is a hint of the underlying functions of the introduction of the EIP in the acknowledgment that "Following the GLDP Inquiry, the concept of the examination in public was introduced in the Town and Country Planning (Amendment) Act 1972, the aim being to bring the inquiry procedure at the structure plan level into line with the earlier reform of the planning system". This inevitably necessitates an understanding of what this earlier reform was supposed to achieve, to understand what is implied when it is stated that the 1972 Act brought inquiry procedure "into line".

The speech of Mr. Greenwood in introducing the 1968 TCP Bill should not be underestimated as a source of insight into the intended functions of the 1972 TCP (Amendment) Act.

Perceptions of Functions - An Overview

What were the functions of the EIP intended to be? Bridges and Vielba are right that there is an element of administrative function. A distinction can be drawn to indicate this between the Structure Plan EIP and the Local Plan public inquiry. To fulfill the administrative element of the function, provision is made in the EIP for report by the Panel to the Secretary of State. The role of the Panel is partly that of an information gatherer and reporter and the report stage represents a procedural device fulfilling a pre-ordained function. There is no such administrative element in the function of the public inquiry into a local plan. The Inspector reports to the local authority and while what this is trying to achieve will be discussed in the appropriate section below (see Public Inquiries into Local Plans) it is clear that it is a different function from the EIP.

There is a very strong desire for speed amongst those who set up the machines of the EIP. The GLDP became something of a 'bete noir' to politicians and the planners, because it went on for some two years and cost a great deal of money. In the debate on the 1972 TCP (Amendment) Bill 2nd Reading (Hansard 829 1489) Mr. John Silkin reminded the House of Commons of "the awful warning of the Greater London Development Plan" and the humorous possibility of the GLDP inquiry outrunning the Mousetrap as London's longest running show was canvassed. Derek Senior, somewhat more trenchantly described the inquiry as "a self-defeating charade".[18] Because Senior's article, typical of the general condemnation of the GLDP inquiry, calls for greater speed and the whole movement of thought of the past GLDP commentators was in favour of a streamlining of the process, it became tacitly assumed that this was one of the new functions of the EIP. It is clear that it is one of the ways

in which the 1972 TCP (Amendment) Act was supposed to ensure conformity of procedural criteria with the general criteria of the 1968 legislation, where the need for speed was expressed by the Minister of HLG, Mr. Greenwood[19] "I want quicker decisions. The Bill provides for alterations in levels of responsibility which will speed things up, as well as a number of other changes which will cut red tape".

In fact the idea of speed was thought by most of those who hankered after the pre 1972 development plan inquiry to be one of the main strengths and primary functions of the legal model. An Inspector explained to me that concentration on detailed site specific, property rights is far more effective in time than exploration of alternative strategies and their merits and demerits. The much abused GLDP Inquiry was actually designed with achieving the maximum dispatch as an explicitly intended function. Mr. Anthony Crosland, the late Secretary of State for Local Government, proposed[20] that the chairman should be assisted by "sufficient Ministry Inspectors and others to enable the inquiry to be conducted efficiently, expertly and expeditiously" (underlining mine). This being the case, it should be understood that the achievement of speed in the hearing was not a new function expected of the EIP. The function was not different from that of the development plan inquiry; only the means of fulfilling the function were different. It is important to remember that there are two possible interpretations of this continuity of function between development plan inquiries and EIP's. Either the function of the old inquiry of achieving speed was not being fulfilled by the procedure chosen, or else it was discharging its task of achieving speed but a different kind of speed was called for as one of the functions of the EIP. The latter seems much the most likely of the two alternatives. If the extreme example, the GLDP inquiry is taken, this choice is reinforced. A kind of mythology has grown up about this inquiry which has enabled reformers to invoke it as an undeniable evil to be avoided at all costs. Rather as English mothers had only to mention what 'Boney' did to bad children to ensure obedience, it is

unnecessary to do more than refer to the GLDP to effect a complete justification of any change or proposed change.
In fact the GLDP inquiry in no way gave an accurate impression of the speed achieved in the inquiry system generally. The much quoted two years duration of the inquiry is wholly misleading. The special circumstances of having expert witnesses called by the Panel in addition to those called by all the other parties was, as Sir Frank Layfield said "unique"[21]. Of the two years nominally taken up there were sittings on only 237 days, a proportion which could scarcely be described as typical for any inquiry. One of the factors which led to this was the necessity of several trips to the continent to study traffic management schemes in major European cities and make other comparisons with continental solutions to urban problems. Nor was the large number of objections which duplicated and overlapped an invariable problem elsewhere.
At the development plan inquiry for Derbyshire in 1961, the transcript of which was chosen at random as a spot-check on the representativeness of the GLDP Inquiry, there were 40 objectives lodged, of which 31 were withdrawn or agreed with the County Council, one was deferred to a later inquiry and one relied on a written statement leaving seven objections which were heard, to borrow Harold Wilson's famous phrase "in weeks rather than months". If the Derbyshire inquiry were typical, the timescale for a development plan inquiry would not differ substantially from the 3-6 weeks of the current EIP's, although doubtless there would be exceptions.
The GLDP inquiry, with all its special circumstances and the unique nature of the London area, does not prove that the development plan inquiries were not achieving that expedition which was their function. It is possible that those who created the EIP were deceived into thinking that the inquiry stage was excessively long in development planning, but a better view is the second of my alternatives namely that a different kind of speed was required as one of the functions of the EIP. The kind of speed which I think the EIP was intended

to achieve consists in the ability to become immediately involved in fairly profound discussion. This will not necessarily involve an early end to the EIP. The discussion of alternatives at strategic levels is the element which is separated by the 1968 TCP Act for treatment in the structure plan and it is speed in skimming over detail and non-contentious matter which is the function of the EIP rather than the shortening of the whole hearing to the shortest possible time. The techniques for elimination of time wasting will be discussed in the second half of the section on structure plan EIP's nature.

In the critique (above) of other attempts to draw up a set of functions for the EIP reference was made to Mr. Page's comment that the development plan inquiry had failed "to probe and decide the real issues". One can hardly accept this in its present form as a function of the EIP, since every hearing or inquiry is by definition concerned with 'real issues'. If one interprets what Mr. Page said however, in the light of paragraphs 1.3 and 2.10 of the DoE booklet[22], one can discern a new function intended for the EIP which had never been one of the functions of the development plan inquiry. Paragraph 1.3 says that the EIP is intended to "investigate those matters ... which the Secretary of State selects" and paragraph 2.10 says that the old type of inquiry was rarely suitable "for exploring also the policy issues". The function of the EIP which this appears to connote is the inclusion of preferred strategies and discussions of preferred alternatives not susceptible of proof even in the empty sense of Cost Benefit Analysis but capable of adoption or rejection on purely political, value-laden grounds. These are Mr. Page's 'real issues' and the mechanisms for admitting them will be described in the second half of the section on EIP's.

The natural sequiter to discussion of alternative strategies is public participation. There can be no doubt that the encouragement of public participation was one of the functions of the 1972 TCP (Amentment) Act. Mr. Arthur Blenkinsop[23] was

hopeful that "we may succeed in interesting a steadily wider range of people in the longer term strategic and structure plans with which the Bill is concerned" and certainly public participation was well to the front of Mr. Greenwood's mind when the 1968 legislation, of which the 1972 TCP (Amendment) Act is supposed to be the logical corollary was first introduced[24].

Yet the provisions of the 1968 (now 1971) TCP Act purports to lay down all the requirements for public participation in structure planning. S.8 1971 TCP Act requires the local authority to give adequate publicity[25] and to supply the Secretary of State with particulars of steps taken to comply with the publicity requirements[26] and of consultations with an considerations of views of other people[27]. One might be in some doubt as to whether these provisions, tacked on to the EIP, satisfy the requirements for participation envisaged by the legislators, or whether it is another of the functions of the EIP to complete the process of public participation enacted at the pre-inquiry stage by the 1968 (1971) legislation.

Mr. Page's statements on the subject in the Commons debate on the TCP (Amendment) Bill 1972 increase these doubts because he first discusses "the statement which the planning authority has to make on the outcome of the public participation which it has carried out" and then refers, almost as if making a distinction between the stages to "the examination itself". The view that a structure plan EIP comes after the stages of public participation and is not itself intended to be a vehicle for public participation is not necessarily inconsistent with the view expressed by Mr. Blenkinsop that it was desirable to interest "a steadily wider range of people ... in the plans ... with which the Bill is concerned". This merely amounts to an improvement in information and consultation (two of Arnstein's degrees of tokenism). If however, the EIP is seen as having the function of playing a part in the decision-making itself, then participation would only have any meaning if it involved the public in that decision-making (one of

Arnstein's degrees of citizen control) and if that involvement was a democratic right and not a discretionary privilege. Mr. Page's Commons speech is able to resolve this uncertainty. "The criticism has been focused mainly on what is thought of as the loss of objectors right to be heard. In this connection I emphasise again that there will already have been ample opportunity for public participation." In other words, the disappearance of the right to appear at the EIP when the decision-making stage begins it is to be compensated for at the information and consultation stages. It can thus be stated without reserve that public participation is not one of the intended functions of the EIP. This conclusion will present a difficulty in explaining the rationale of some of the procedural qualities of the EIP which could be seen as conducive towards public participation such as the disappearance of lawyers, the informal discussion and the 'round table' and its variations. The significance of these will be considered in a discussion of the nature of the EIP in the second part of this analysis, but it should be made clear here that one of the functions of the EIP is seen as a public relations exercise, with several aspects of the nature of the examination appearing to move towards public participation in decision-making but no serious attempt to make this a reality. A tenable alternative view to this one is that these procedural devices fail to achieve their function, which is genuinely to create such public participation in the decision-making process. It is true that there will be adduced several examples of failure to fulfil a function through a misconceived choice of procedural technique or a misunderstanding of cause and effect in inquiry procedure, but in this case the discussion of the procedural nature of the EIP will show that the intended function of these 'aids to participation' is a cosmetic one and not a substantial one.

This idea of the examination as having functions deriving from a projected image of it, can be continued in another area. Mr. Greenwood[28] in support of the 1968 legislation left no

room for manoeuvre by his successors when he said "These improvements, however desirable, would not be of much use if the system were to lose its fairness". Thus one of the functions of any inquiry model would appear, at least prima facie, to be the achievement of 'fairness', meaning some notion of equal treatment and openness of the kind advocated by Franks and supposedly guarded by the Council on Tribunals. The qualification 'prima facie' is added because these words should not be taken at their face value. Mr. Greenwood separated his requirement of "the quality of results we all want" from this requirement of "fairness". This demonstrates that fairness is not sought because it produces a better quality of result (if results of planning inquiries can ever be given labels like 'good' or 'better' with any objective meaning). The point of achieving fairness is the impression which is created amongst those members of the public who require it. It is by no means a necessary function of the EIP that it should produce just decisions but clearly it needs to produce decisions which seem to have been arrived at in a manner which conforms to the ideals of justice and impartiality. The age old truisms about the need that 'justice should also be seen to be done' omits the important caveat that this is the only requirement. If the spectators and participants believe that justice is being done or do not care, whether this is an illusion or not will not endanger the effectiveness of the procedure. Mr. Greenwood's words really mean "These improvements, however desirable would not be of much use if the system were seen to lose its fairness". The change thereby laid upon the future reformers of the inquiry system should be interpreted accordingly. Mr. Page's task was to produce a model which would give the impression of being conducted 'justly' and this has only to be the same as producing a just procedure insofar as was necessary to be convincing; so far and no further. I do not infer from this that a gigantic conspiracy to hoodwink the nation has ever existed. I merely note that when politicians have talked about fairness in this

context they mean the perception of fairness in procedure and are not referring to the substantive decision. The emphasis will always be on the image rather than the reality. All the schemes for public participation and consensus planning will come to nothing if public confidence in the decision-making system falls below a minimum standard.

Mention of public satisfaction leads logically to one final function of the structure plan EIP. This seems to be articulated only in the DoE handbook[29] at paragraph 3.47 although it may have been considered so obvious as to be unnecessary to state in the Parliamentary Debates "A primary aim is to ensure that the examination investigates the selected matters in public and in such depth that there should be no need to re-open the examination later". This is a rather diffuse function and the difficulty of providing specific procedural safeguards to ensure its fulfillment will be seen in the discussion of the nature of EIP's below. However, such unequivocal language as "a primary aim" admits of no argument and this must rank as one of the most emphatically stated of the functions of the EIP.

A brief departure will now be made from those functions which an EIP <u>is</u> intended to fulfil to one which it is not. It is not intended to be a platform for the expression of discontent with any particular aspect of the system or political protest generally. Some people would argue that it should be. At the Warwickshire Structure Plan EIP one group of the objectors said that they felt the uselessness of "speaking into a great void" and a walk-out was staged. There is the precedent of John Tyme at Highway Inquiries as an encouragement to similar activity at EIP's. Frank Sharman[30] suggests that whereas the change of procedure at inquiries into planning took 20 years (up to the 1972 TCP (Amendment) Act) the 1976 Highways (Inquiries Procedure) Rules are an indication that "John Tyme may have condensed this period to two years". At the Westminster City Council's Inquiry into a local plan attended in the course of this research a Mr. Goodman, claiming to

represent the Greater London Development Plan Inquiry Action Group, adopted what Frank Sharman calls Mr. Tyme's "other tactic" (besides physical disruption) by asking the Inspectors to postpone the Inquiry, which, he said, was illegal because publicity requirements had not been complied with. With the sparse attempts which some local authorities have made at public participation in Structure Planning it is not inconceivable that a similar objection should be attempted. While it is quite possible to believe that these objections and complaints are partly or completely justified, it cannot be accepted that the hearing of such protests was intended to be the function of the EIP. In the debate on the 1972 TCP (Amendment) Bill Mr. Kenneth Marks (Manchester Gorton) did not conclude that unconventional protests like sitting down on motorways should be dealt with or had been dealt with by the legislation before the House. He thought that such protests "should make us pause to consider whether ... we could not get more participation than we do" but this should be "at the early stages of dealing with structure plans". In other words Parliament's solution to the growth of 'extra-formal' protest would be at consultation and plan-making level. The EIP was never envisaged as a suitable medium for such activity.
This discussion of the functions of Structure Plan EIP's will conclude with the kind of simplified list which was respectfully commended to those who wish to legislate procedural change. In the second part of this analysis of EIP's, this list will be used in treating each function in turn and relating it to procedural and other devices for fulfilling these functions.

(i) Administrative - Information gathering and reporting
(ii) Achievement of Speed - Streamlining rather than shortening the process
(iii) Inclusion of Policy Matters, Preferred Alternative Strategies, Value Judgments
(iv) Satisfaction of Demands for Public Participation
(v) Satisfaction of Requirements of Fairness

(vi) Achievement of Finality

[1] Roberts Reform of Planning Law
[2] Hansard 757 1366-72
[3] Hansard 793 434-436
[4] Hansard 1361 ff
[5] Hansard 829 1479
[6] Structure Plan Examination in Public - a descriptive analysis p.vi Institute of Judicial Administration, University of Birmingham 1976
[7] p.2
[8] 2.10
[9] 2.11
[10] 2.12.
[11] 2.10
[12] 2.11 and 2.12.
[13] Hansard Vol. 829 1494 ff
[14] op cit; Summary and Conclusions pp 71-73
[15] Vol. 432 963 Hansard.
[16] op. cit. p.71
[17] op. cit. p.72
[18] "Lessons of the GLDP Inquiry", Official Architect and Planner March 1973.
[19] Hansard 757 1361
[20] Hansard Vol. 793 434
[21] GLDP Panel of Inquiry Report (Introduction).
[22] "Structure plans the Examination in public"
[23] Hansard Vol. 29 1520 ff

[24] Hansard 757 1361 ff.
[25] s.8 (1) (a)
[26] s.8 (3) a
[27] s.8 (3) b.
[28] Hansard 757 1361 ff
[29] Structure Plans the Examination in Public
[30] Journal of Planning Law 1977 p.293

2. NATURE

Although no clear definition of the functions of the new EIP model for Structure Plans was ever produced in a way which could be considered remotely adequate, the creators of this new piece of administrative machinery set about incorporating the elements which would achieve general purposes which they saw as desirable. The aim of this second section is to describe the means selected to do the different jobs. An idealised theoretical nature of the Structure Plan EIP is therefore being explored. A description of the real nature of the EIP's which have taken place will be contained in the third section of the Chapter on Structure Plan EIP's and this will allow an opportunity for assessment to be made of the failures of the techniques in Section (2) to fulfil the functions outlined in Section (1). Thus when it is shown in this section on the nature of the EIP how procedural devices were included to do specific jobs, no comment is here being made on their actual effectiveness or even their prima facie fitness for the task. Nor will suggestions be made here of the consequences produced in other areas of the EIP by particular misapplications of appropriate techniques or applications of inappropriate ones. Since the relationship and interaction between procedural devices fulfilling different functions seems not to have been understood at all by those who created the EIP model, it would be futile to read into the ideal nature any consciousness of inter-dependence. This section will show what techniques were instituted and why.

(i) Administrative

By s.9 (i) of the 1971 TCP Act "the Secretary of State may take into account any matters which he thinks are relevant, whether or not they were taken into account in the plan as submitted to him". This was a wise move by the legislators. National issues beyond the scope of the plan but necessarily influential on it must be capable of being fed into the decision-making process and the arrangements for this will be

considered more fully in sub-section (iii); Inclusion of Policy Matters etcetera. But the Secretary of State will also be concerned that local controversies and peculiarities are properly dealt with in the approved plan. If such disparate examples as Crichel Down, Stevenage, Hampstead and Windscale have anything at all in common, it is that a local issue can become a national cause celebre overnight if it is mishandled. The best way for the Secretary of State to get the full facts is hardly to read the draft plan alone. Even if consultation procedures reach a high standard, those points of view necessarily excluded will not be fully or fairly discussed in the Council's document, since they will reasonably support the strategy which they have decided to endorse. The Secretary of State therefore needs two elements to inform himself. He needs a forum for discussion and he needs a two-way link with that forum through which he can both request more information about particular areas of concern and receive back a report aimed at answering those requests.

This information gathering must not be confused with the consideration of written objections. This is entirely separate from the EIP. An objector is only invited to appear because of the contribution which he can make to the forum from which the Secretary of State's information is to be drawn.

The administrative orientation of the EIP is made clearer if one looks at the repeals effected by the 1972 TCP (Amendment) Act s.3 of sub-sections (3) and (4) of s.9 of the 1971 TCP Act. Under s.9 (3) (b) of the 1971 TCP Act the "person appointed" would have had to listen to detailed objections. These have to be satisfied as well and s.3 (3) (a) of the 1972 TCP (Amendment) Act retains the onus on the Secretary of State to "consider any objections to the plan".

However, whereas under the 1971 legislation there was an objection-based inquiry wherever it was wished by "any persons whose objections ... are not withdrawn",[1] under s.3 (3) (b) of the 1972 TCP (Amendment) Act there is a provision aimed at fulfilling the information gathering function of the EIP. The Secretary of State must hold an examination "of such matters affecting his consideration of the plan as he considers ought to be so examined". The purpose of this provision is to take the initiative in providing information via the "appointed person" away from the objectors and to give it to the Secretary of State, who has to make the decision. The giving of discretion to the Secretary of State as to the matters to be discussed is intended to achieve efficiency of information of the Secretary of State. This was not a measure aimed at enabling objectors to have their grievances heard; the objection-based inquiry would have been retained if that were the case. The discussion of selected topics with selected invitees is aimed only at achieving that "ideal", the completely informed Secretary of State. As paragraph 3.28 of DoE guide "Structure Plans the Examination in Public" states, "In selecting participants the basic criterion will be the effectiveness of the contribution which ... they can be expected to make".

The construction of the Panel, too is designed to fulfil the function of administrative efficiency of information gathering. A clear indication of this appears in paragraph 3.48 of the DoE guide. "The Chairman and other members of the panel will take an active part in the examination. An important feature of their role will be to ensure that relevant points of view can be explored." This establishes the general nature of the EIP as inquisitorial, and is deliberate in its purpose. Just as the Secretary of

State is to have the power to choose issues and participants to ensure that he has the necessary control over the information-gathering process, so that the Secretary of State's Panel must have full control over the forum from which information is gathered so that the full gamut of fact and opinion can be available. The 'solecism' of referring to "the Secretary of State's Panel" has here been consciously committed. At the Warwickshire County Structure Plan EIP one of the participants referred in addressing the Chairman Mr. Heaton to "your Department" and was told that "You must not refer to my Department". In that the Chairman is paid a sum for the EIP at which he appears he is independent. The other two members are undeniably salaried officials, one a planning Inspector and one from the DoE or DoT Regional Office. Neither the Chairman nor his colleagues should be regarded as independent of the Secretary of State in any meaningful way. The role of the Panel is not one of adjudication and its members are only an administrative arm of the Secretary of State. Thus the inquisitorial nature of the part played by the Panel is representative only of the Secretary of State's need to inform himself as fully as possible. No greater significance should be attached to the replacement of the adversarial with the inquisitorial in this area than that when the objectors have control over what material is presented to the inquiry, the Secretary of State is necessarily less fully informed. Objectors and their legal representatives only probe insofar as it may serve their narrow interest, whereas the Secretary of State needs probing to be done by a party who has only his maximum information at heart. The Bridges and Vielba study[2] quite accurately describes one of the "main features" of the EIP as "a panel consisting of an independent chairman appointed by the

Secretary of State, a member of the Department of the Environment's Planning Inspectorate and an official drawn from the relevant Regional Office of the DoE". This composition too is a specific device to fulfil the function of gaining the maximum information needed by the Secretary of State, although it also reflects the kind of matters under consideration and will thus be dealt with under sub-section (iii) as well. The presence of the two technical experts reflects the need for the communication channel from the forum (the EIP) back to the decision-maker (the Secretary of State) to be a sophisticated one. Although, as his title suggests the Chairman would control the hearing largely himself, the Secretary of State would require expert appraisal and transmission of the data produced by the "probing discussion". An official from the Department's Regional Office with his special knowledge of regional features and peculiarities would be ideally suited to the former task and the Inspector's experience of writing reports on inquiries would equip him for the latter. This would not be a rigid demarcation at all and both would be able to contribute to both aspects of the task. The experience of the Inspector in particular would also enable him to supplement the Chairman's questioning wherever this appeared necessary.

The nature of the discussion too reveals the information gathering function being applied practically. Thus the DoE handbook[3] paragraph 3.45 goes so far as to say that "The essential feature will be that of a probing discussion, led by the Chairman and other members of the panel". As has already been stated this inquisitorial approach represents a shift of emphasis from the rights of the participants to the needs of the Secretary of State, paragraph 3.45 continues "Throughout, the aim will be to secure a satisfactory

examination of those matters which the Secretary of State has selected so that, by this means, he can obtain the further advice he needs before proceeding to his decision as a whole". This is a fairly guarded admission of the truth which McAuslan states much more pithily[4]: "The public examination is and will remain more of an administrative than a participative institution".

(ii) Achievement of Speed

The need to achieve speed in the whole land use planning process in general, in strategic planning particularly and at the hearing stage especially, is almost an obsession in some circles. To read the Parliamentary Debates on the 1968 reforming legislation, the 1971 consolidating legislation or the 1972 amending legislations is to be struck by the excessive concentration on the desirability of getting the thing over as quickly as possible. It has already been suggested above that this largely derives from the GLDP Inquiry which lasted a 'long time' although as was stated, it is doubtful whether such an expression had any meaning unless it was related to the task undertaken. Two years is a long time to clean a car and a short time to write a history of the world. Thus it should not be supposed that EIP's are supposed to be of short duration. They are rather supposed to move efficiently and expeditiously straight into the business of discussing the matters selected by the Secretary of State. This view might initially seem to require a complete disregard of paragraph 3.41 of the DoE guide-book[5] "The intention is that, in the normal case, an examination should open about 6 to 8 months after the submission of the structure plan, and take 5 to 6 weeks". This would seem to be an attempt to implement the intention of achieving speed in its crudest form. It could be read as a kind of unofficial

maximum duration into which the Structure Plan EIP has to be crammed regardless of the inappropriateness of the time allotted. However, the second part of paragraph 3.41 introduces a vital qualification which lends a new meaning to the first part "The periods are likely to be longer where an examination is being held into a joint plan or into two or more plans, or where the issues raised by a plan have proved notably complex or controversial". This reveals the "3 to 6 weeks" to be an estimate of the likely amount of time taken. The word "intention", like several words in this publication is misleading. Paragraph 3.41 is not prescribing 3 to 6 weeks as a means of achieving speed. No inherent feature of the nature of the EIP is being laid down here. The DoE are merely expressing a hope that the timescale will be similar to that of the development plan inquiry although with a very different standard of achievement within the timescale. When the paragraph 3.41 is reduced to its component parts, it simply says that 'an EIP should normally take 3 to 6 weeks except those which take longer for a variety of reasons', which is almost devoid of meaning. When looking for examples of provisions aimed at fulfilling this function of the EIP, it is essential to bear in mind that there is no absolute against which the total time taken could be judged and therefore that the provisions will relate to efficiency and reduction of wasted time rather than producing a merely shorter process, which could be achieved by allowing no-one to speak for more than two minutes on any topic.

The role of the Chairman is a crucial one if efficiency and speed are the criteria. Having concentrated power in the Chairman's hands by creating an inquisitorial framework, the more precise instructions contained in paragraph 3.49 of the DoE handbook are aimed at cutting out wastage of time "he will chair the

examinations so as to encourage contributions which are constructive, concise and not repetitive". It is important to notice that the last two of those three ideal attributes are not concerned with the actual quality of the contribution but with efficient use of time.

Paragraph 3.51 of the DoE handbook introduces a provision the need for which had long been felt in public inquiries of all kinds but which is hampered by the spectre of rules of evidence. This is the rule that all written material will be provided in advance so that it can be read and then taken as read. This has two advantages and both are concerned with the achievement of speed. There is the advantage of having all that time, in which expert witnesses read proofs and masses of technical data, for use as discussion time. The advantage was well illustrated at the Cumberland and Carlisle Road Compulsory Purchase Order Inquiries, where the impossibility of a situation in which one side or the other is presented with a new document before a session begins and is expected to cross-examine on the (often highly detailed) material in the same session was clearly demonstrated. Not unnaturally since the advocate who has been put in this position is feeling his way as he goes, the quality of the questioning tends to be low. Many blind alleys are explored because the questioner does not realise that the answer is before him and the witness is unable to grasp the purpose of the questioning since initially at least often there is none.

The provision in advance of all documents obviates this danger. The EIP will thus have available time which would have been wasted upon reading the documents and when the discussion begins the Panel will be able to assume (rightly or wrongly) a considerable depth of knowledge of each other's case on the part of all

participants. This will lead to an early identification of the areas of agreement and an isolation of the areas of contention, indeed it may not be going too far to say that the discussion could start on the basis that the areas of contention are known to the participants, in theory at least. With this device included, the EIP is much more quickly ready to begin full exploration of conflicting views of the kind necessary to inform the Secretary of state to the extent which he requires. This in-depth exploration might very well last much longer than the total process of expressing each viewpoint, deciding on disagreements and then discussing them under a Structure Plan hearing with legalistic evidence traditions, but it would be a more efficient use of time and would fulfil the function of speed in the sense which has been explained above.

Paragraph 3.30 is an instance of cursory inspection suggesting a measure designed to fulfil one function and a closer look revealing a quite different one. Like paragraph 3.51 it explains that documents are to be made available along with the plan and its accompanying documents "to make it easier for those with views in common, whether criticising or supporting proposals in a plan, to get together". This laudable aim is justified in terms of making things easier for those making representations, "so that combining arguments with a common basis these can be given greater weight". If this were meant seriously which it cannot be, it would detract considerably from such claims as the EIP might have to be capable of sensible decision-making. It is tantamount to saying that a conglomeration of anmes will add weight to a case. Logically, the celebrated by-election fanatic Air Commodore Boakes would have increased the weight of his case annually as he added successively Democratic Road Safety, Monarchist and White Residents to his

banner. The merits of a case do not improve according to the number of organisations supporting it. Neither is there any reason why these organisations who choose to combine with others should have the unfair advantage of having added weight attached to their cases by comparison with those who do not so choose. This spurious reason can be discarded in favour of the one added almost as a throw away below it in paragraph 3.30. "It will be easier also for the Department to identify those organisations or individuals most likely to be able to contribute effectively to the examination." The whole ability of the EIP to prevent duplication and repitition depends upon the ability to root out those who will not be able to make an original and individual contribution at the pre-examination stage. It would be only half the answer to produce a non-objection based hearing unless there was a detailed provision for eliminating some of the objectors and this is the aim of causing the representations of all parties to be ready at an early stage. The function of expedition can be seen to be unmistakeably expressed in paragraph 3.51 but only less obtrusively in paragraph 3.30.

In the same way, paragraph 3.46 emphasises the need for "alternatives to have been reasonably well developed in advance". This might easily be mistaken for a direction calculated to aid participants since the purpose of this is said to be to enable the representations "to be constructively considered at the examination". In fact, there is no reason, except the length of time which it would take, why the alternatives should not be well developed during the course of the examination. The reality of the phrase would read 'To be expeditiously considered at the examination, alternatives will need to have been reasonably well developed in advance.

It is under the heading of speed too that the highly complex subject of lawyers at inquiries, to which a whole section will be devoted, and many other references, must first be tackled. This subject has been handled so delicately that it is difficult in places to see exactly what procedural change is being effected, but eventually it clearly emerges that a conscious effort to fulfil the functions of improved speed has been made, by altering the nature of the hearing from the lawyer-dominated inquiry to the lawyerless EIP.

The belief that you can achieve greater speed by removing lawyers is a highly subjective one. Although evidence will be offered both in favour of the belief and against it, it is very difficult to prove either way. However, for the narrow terms of reference of this sub-section it is enough to note that the belief existed. After the GLDP Inquiry it was widely believed that the legalistic approach made inevitable by the presence of so many lawyers was responsible for lengthening the proceedings considerably. Sir Frank Layfield and his colleagues must have been almost alone in the conviction which they expressed after the Inquiry. "It is difficult to imagine that the Inquiry could have gone on any longer than in fact it did, yet it would certainly have don so but for the great efforts made by the representatives and the parties."[6] That they may have been right was not a possibility which excited much popular support and the general feeling was that the lawyer's role had to be reviewed.

Those responsible for setting up the procedural machinery of the EIP have been criticised unsparingly for failing to understand how to employ particular techniques to achieve particular ends. In the case of the 'exclusion' of lawyers from the EIP, this must be qualified. Once again doubt is cast as to whether excluding lawyers achieved any of the long-term aims of

the model which were discussed in the sub-section on Functions above. Once again it is questioned whether the various and significant side-effects of the disappearance of lawyers was considered much less understood. But one is compelled to admit that however ill-advised and dubious may have been the reasoning behind the decision to exclude lawyers, once it had been decided upon as a tool to fulfil the function of speed, it was most expertly and subtly implemented. Indeed so covertly was it done that an apologist for the EIP might claim that it was not done at all and that lawyers opted out as a body of the whole process. A careful analysis of statements DoE handbook[7] will reveal that this was not the case.

Regarded in vacuo, paragraph 3.53 seems an explicit attempt to preserve the position of the lawyer in the EIP "It will be open to participants to be accompanied at the examination by their professional or other advisers" and it even adds the obliging pledge in parenthesis "(to whom they would have easy access"). This is technically the current state of the law. Any person or organisation invited to participate at an EIP would appear to have a right to be represented by a lawyer or other person. This can have done nothing to assuage the fears expressed in an unofficial memorandum circulated amongst politicians and others in 1971 by the National Federation of Building Trade Employers that structure plan EIP's are "likely to be carefully rehearsed arguments between council appearing for powerful interested parties". It is contended that it was never intended that this should be the case, more, it was made fairly sure that this should not be the case. Paragraph 3.50 of the DoE booklet asserts that "The arrangements at the examination, and the conduct of it, will be designed ... to get away from the formalities of the traditional public local inquiry".

By creating a new procedural environment, the creators of the EIP render useless at a stroke all the experience and expertise of the lawyer built up in court or at traditional quasi-judicial public local inquiries. A large part of the weaponry, which lawyers offer to clients who hire them for public hearings thus becomes meaningless. The layman client and the lawyer are placed on equal terms as far as knowledge of formal procedure goes if the formal procedure is taken away. The lawyer, however, could still be seen as an essential by any party who felt his own eloquence to be inadequate to oppose other lawyers who might be encountered during the hearing. Paragraph 3.52 goes as far as it is able to remove that reason for employing a lawyer as well "The panel will not normally have Counsel to assist them. It is important that participants should not feel that unless they are professionally represented they will necessarily be at a disadvantage or their contribution not effectively made". With the cost of employing a lawyer considerable to all and prohibitive to many, this might seem to have assured their non-appearance at EIP's by establishing that they are superfluous. Once more provision remains however to neutralise a possible further fear in those appearing that they will be unable to develop arguments logically, relevantly and coherently, without lawyers. The provision of the inquisitorial chairman and panel is directly intended to negate this possibly perceived need for a lawyer, as it is apparent from paragraph 3.52 "The active part which the panel will be taking means that it they consider that participants (whether a group or an individual) have a relevant point or argument worth pursuing but which the participants cannot themselves develop sufficiently, it will be for the Chairman and panel to take it up and pursue it "Having made clear that it will be totally

unnecessary to expend a large sum of money to engage a lawyer's services and having established this by the end of paragraph 3.52, it is an empty gesture for paragraph 3.53 to begin "It will be open to participants to be accompanied at the examination by their professional or other advisers" and "to have their contribution made on their behalf".

The nature of the EIP cuts the ground from beneath the feet of the lawyers which are so firmly planted in the traditional public inquiry. This is a procedural change intended to achieve speed, based on the assumption that lawyers are responsible for delay and waste of time which can be prevented by their exclusion.

(iii) Inclusion of Policy Matters, Preferred Alternative Strategies and Value Judgments

Paragraph 3.11 of the DoE booklet describes the outer limits of matters on which "the Secretary of State will concentrate" in his consideration of the plan as a whole. These "key issues" set out under five headings (see list below) will contain within them those matters which the Secretary of State selects for discussion at the EIP as the greater contains the lesser; as paragraph 3.12 points out "Not all key issues will throw up matters which need to be selected for reference to the examination in public". The list of issues contained in paragraph 3.11 is as follows:

(i) the future level and distribution of population and employment

(ii) policies and proposals for:
  (a) location of employment
  (b) scale and location of housing
  (c) transportation

(iii) major features, e.g. ports, airfield, major industrial development, green belts, and their effect on areas outside that covered by the plan as well as on the area of the plan

(iv) the implications for the area of the structure plan of problems or proposals in neighbouring areas.

(v) the availability of resources for major proposals

As Dunlop notes in his article "Examination in Public of Structure Plans; An Emerging Procedure"[8] this list was not a final one. A Department of the Environment Circular[9] has begun to clarify and identify the "key issues" referred to in the handbook. For the sake of completeness it is recorded that these are employment, housing and transportation and other, subsiduary issues include recreation and tourism, shopping and land reclamation. The purpose of this thesis is not concerned with the substance of these lists except insofar as they are used to ensure a particular kind and level of discussion. For this is the function which these lists and other provisions in the DoE booklet are intended to fulfil, the inclusion and discussion of material which might be excluded by a legalistic type of inquiry. Throughout the DoE booklet, more particularly the Code of Practices contained in Section 3, may be found examples of a recognition that discussions have to be shaped and pointed in the required direction. As a result of the attempts to achieve this the EIP is hardly freer in the kind of material which it will admit for discussion; it just admits a different kind of material.

The most obvious concern of the legislators is to avoid discussion of detail. This is implemented by a negative method. The real aim is to achieve discussion on a strategic level and a first step towards this is the exclusion of detailed considerations. Paragraph 3.22 of the DoE booklet makes it clear that "It will not be appropriate, or indeed possible, in the context of the examination, or even in the

consideration of the structure plan, to deal with objections which are really directed to detail instead of to structural issues". Similarly the Chairman is tasked with avoiding the danger of "lapsing into a degree of detail not appropriate to a structure plan or to the examination",[10] and to drive home the point the paragraph concludes "This will need to be borne in mind by all participants. The fact that information may be available about the detailed local implications of general proposals in a structure plan does not mean that the examination will be concerned with detail". The authors of the Code of Practice even used one positive part of this negative method of excluding detail. Paragraph 3.56 provided for the carrying on of a more detailed, expert, analysis of certain material ... than could conveniently or usefully be undertaken at the examination itself. The Chairman was therefore empowered "to ask the participants concerned, or their advisers, to pursue them in a separate room, while the main examinations continue". The first stage of achieving the aim of having policy alternatives discussed at a strategic level then is the exclusion of detailed discussion. Some of this is simply to be excluded from the examination by the filter of selection of issues by the Secretary of State and by the Chairman's control over proceedings and some of it is to be siphoned off into an ante-room for discussion of detailed matters simultaneously with the continuation of the EIP proper. All the provisions described above are aimed at ensuring what will <u>not</u> be discussed at the EIP. More positive encouragements to the required kind of discussion are less obvious and less plentiful. The problem, broadly speaking, can be said to have been deposited squarely on the shoulders of the Chairman and (at least nominally) of his Panel. There is a requirement in

paragraph 3.7 of the Code of Practice that the Chairman shall have had "a wide range of relevant experience (in central or local government or in the professions) or in conducting investigations of this kind" and this is clearly aimed at ensuring that he has some experience, if not ability, at promoting discussion. The provision in paragraph 3.8 for the membership of the Panel is designed for distribution of the weight on the Panel's shoulders more evenly so that the Chairman is not too oppressed by this burden We are told that of the two other Panel Members "One will be from the Department of the Environment, normally from the Regional Office concerned. His knowledge of the area of the plan and the issues it raises, of neighbouring areas and of the region, will enable him to promote relevant discussion at the examination; and to see that essential considerations are brought out". Since this part of the section of EIP's is concerned with their ideal, theoretical nature, exposition of the almost total failure of this provision must be reserved until the third sub-section, which deals with the realities of the EIP.

The Secretary of State's selection of issues may have a positive as well as a negative character if it is undertaken sympathetically. While selection of any issues will not ensure that it is discussed from the point of view of constructive alternatives, if all those with a genuine alternative are selected, a certain minimum of constructive discussion can be guaranteed. Dunlop criticises the failure of this means of generating the appropriate kind of discussion, with his examples of alternatives which the Secretary of State failed to select for discussion, when he excluded those participants who exposed them.[11] This too will receive fuller treatment in the sub-section on the realities of EIP's.

Apart from this the DoE is content to describe ways in which it is hoped the Chairman will foster the kind of discussion which the EIP is intended to achieve. These are of a very general type; paragraph 3.48 "The Chairman and other members of the panel will take an active part in the examination. An important feature of their role will be to ensure that relevant points of view can be explored" and paragraph 3.45 "The essential feature will be that of a probing discussion, led by the Chairman and other members of the Panel". With the inimitable gift of official documents for massive understatement of the obvious, paragraph 3.49 begins "The effectiveness of the examination will depend greatly on the judgment of the Chairman". Again the extent of the truth of this truism must wait until the sub-section on the reality of EIP's but this part of the description of means used to implement aims has been unable to avoid showing the paucity of the provisions made for the initiation of discussions taking into account strategic alternatives and political differences. However, the prima facie inadequacy of this motley collection of provisions, can properly be referred to here, since, in this case it is not necessary to look at the results before deprecating the methods chosen. The neglect to do anything significant beyond loading the Chairman with responsibility and discretion means that the aim of achieving a full discussion at structural level of alternative and strategies and policies, and of political considerations, can be presumed to fail ab initio. A Chairman who is able to compensate for the lack of discretion and provision by his own great ability and strength of personality can rebut that presumption, but the seeds of the failure of this function of the EIP are sown by the absence of any useful provision.

(iv) Satisfaction of Demands for Public Participation

It must be borne in mind throughout this element of the sub-section on 'nature' that "satisfaction" is the key word and not "participation". It would strain the credulity if it was suggested that some of the procedural mechanisms adopted are meant to institute fuller public participation in decision-making on structure plans. They are not. There has been for well over a decade now, certainly since before the 1968 TCP Act was passed a widespread belief that decisions in planning, much more than in an area like criminal law, require consent. This consent must be based on wide-spread public confidence in the process by which the decisions are made. But it goes further than this. A comparatively high degree of political education has been achieved in Britain since the war and there is consequent unwillingness among people to have vital decisions imposed upon them without an opportunity to be heard. This does not mean that most or even many people are activists. It merely means that to be accorded legitimacy a decision-making process must contain provisions which satisfy people that the machinery exists for their voice to be heard if they choose to speak.

There is an indefinable but undeniably large amount of comfort in knowing that safe-guards exist, or to be pedantically accurate, in believing that safe-guards exist.

The task of the DoE booklet and the provisions for procedure which it introduces is largely one of trying to reverse the impression created by the 1972 TCP (Amendment) Act. This statute gives the unmistakeable impression that public participation and the public demand for participation is irrelevant to the administrative function of the EIP. S. 3 (5) makes it clear that there is no longer a right to a hearing for

an objector to a strategic proposal: "The Secretary of State shall not be required to secure to any local planning authority or other person a right to be heard" and to reinforce the point "persons who may take part ... shall be such only as he may, whether before or during the course of the examination, in his discretion invite to do so". S.3 (7) in a similar vein "On considering a structure plan the Secretary of State may consult with, or consider the views of, any local planning authority or other persons, but shall not be under any obligation to do so".

This says in effect that power has been concentrated in the hands of the Secretary of State and that while he must consider all objections in writing[12] only those chosen may appear at the hearing. To a layman, this looks like a reversion to that philosophy which prevailed in some government circles before Franks, the purely administrative function unencumbered by the need to secure public acquiescence. It is not calculated to inspire confidence as to its sensitivity to shades of public opinion, since a far-away Minister in Whitehall decides who will be heard and who will not.

The counter balancing task of the provisions of the DoE booklet is a considerable one. It does its best. The major attempt to convince people that the EIP is a medium for public participation is something approaching a trick, although to be on the safe side, it is better to call it a half truth. Section 2 of the DoE booklet is entitled Structure plans and the examination in public. Paragraph 2.8 begins "For the first time, there are now statutory provisions about publicity and public participation". However, contrary to what the casual reader might think, these have nothing to do with the examination in public. The participation provisions are all the pre-hearing stage

and could just as easily have been 'tacked on' to the pre-inquiry stage of the old development plan inquiry. You cannot alter the procedural nature of the EIP by tinkering with the plan-making process. No wonder the supporters of the EIP urge that the plan-making examination decision making stages should all be looked at as a whole:[13] "The examination itself needs to be seen as forming only a part, though a very important part, in the process by which the Secretary of State considers and decides structure plans". If you consider it as a whole you can indubitably point to provisions for public participation. But that does not make each element of the whole a vehicle for participation. To make this point I offer an extreme hypothetical example. If pre-hearing participation existed in its most sophisticated form so that members of the community drew up several alternative plans with the technical help of council officers and if it reached an unparalleled level of thoroughness, how could the 'hearing' stage be considered to be intended for public participation if it consisted of a blind-folded Inspector deleting provisions chosen with a pin? Nor could you make it any more so by inviting some of the initial participants to watch this farcical ritual.

One is left with the belief that the only provisions intended to allow public participation in structure planning come at the plan-making stage[14] but that an attempt is made to blur the distinction between stages so that it is imagined that the EIP is tarred with the same brush, which it is not.

The part of the Code of Practice which deals with Selection of Participants reiterates the more basic provisions of the 1972 TCP (Amentment) Act s.3. Paragraph 3.29 of the Code repeats that "it is not intended that all those who have objected should be

invited to the examination". As has already been remarked in the discussion of the administrative function of the EIP above, the fact that Paragraph 3.28 says that "In selecting participants, the basic criterion will be the effectiveness of the contribution which, from their knowledge or the views they have expressed, they can be expected to make to the discussion of the matters to be examined", is a confirmation that the only sure way to be selected is to be thought useful to the Secretary of State in his information-gathering. This is not only inconsistent with a medium for public participation, it is the antithesis of public participation. Public participation in planning, like other democratic processes only has any meaning if it is participation by the public rather than a privileged elite section of the public. Voting in elections and referenda is a democratic process open to all the public regardless of their understanding of what is involved or their 'suitability'. To make selection for participation dependent upon a criterion of ability to contribute to the needs of a Minister is no less undemocratic than restricting voting to those people who are able to contribute to our better government.

The selection of matters to be discussed and more importantly of participants is the main mechanism by which the EIP is sealed against the intrusion of public participation. What must briefly be considered is the 'window dressing' which is intended to satisfy the demand for public participation in the decision making as well as the plan making process.

The part of the Code of Practice headed "Preliminary session" referring to the "informal preliminary session" which the Chairman will hold; the reason for this is given in general terms at the beginning of paragraph 3.43 "It will be in everyone's interest that

they should know the way in which a particular examination will be conducted". This would prima facie appear to be a provision aimed at making participation easier. In spite of the reference to "a particular examination" Chief Planning Officers can usually draw upon some experience of EIP's of neighbouring authorities or upon commentaries available such as the Bridges and Vielba studies. So this would appear to be an attempt to equalise the disparity in understanding of procedure between some participants and others, and is a gesture at least towards making participation easier. If the reason for this were merely that, then strong evidence of a desire for public participation would exist, if one forgets for a moment that this is disqualified abinitio by the selective admission of participants according to the criterion of "effectiveness of contribution ... which they can be expected to make". But this is not the only reason. The pre-examination outline by the Chairman, is given because it will "contribute to the smooth running of the examination" as well as because it will "help participants concerned with particular matters to limit their attendance to the appropriate days"[15]. It is not meant to suggest that contributing "to the smooth-running of the examination" is at all a sinister motive, indeed in its way it is quite praiseworthy, it is merely suggested that this is the real motive behind early clarification of procedure, ulterior to the ostensible motive which is to "help participants concerned". It is difficult to see anyone who would benefit from the smooth running of the examination more than the Panel, who have a job to do and an indication as to the sort of duration which is considered reasonable, and inevitably the Secretary of State who is conscious of the need to avoid delay if not always very responsive to it. Thus the

Preliminary session should be seen as at most a sop to the need to show concern for the participants, but above all as oil to the administrative machinery, helping easy information-gathering and expediting the hearing process.

In the same way, undue weight should not be attached to the provision in paragraph 3.44 of the Code of Practice for a "designated officer" who "can be consulted about points connected with the running of the examination". Of course, it is commendable that participants should be able to get up-to-date information about times of sittings and matters to be considered at them, but this officer cannot be regarded as primarily intended to help participants, although he will undoubtedly do so. Even if there were no participants from outside national or local government, there would still be a need for a co-ordinator to contact the various departments and authorities and to provide liaison between them and the Panel. Also, if one bears in mind that one of the stated functions of the EIP is the achievement of finality[16] the Panel and the Secretary of State have a vested interest in making sure that none of the invitees miss their opportunity to speak and to be heard through administrative mix-ups. If the appointment of an officer who would be necessary in any case in one form or another can obviate the risk of post-examination complaints and possible re-opening of the hearing or the issue of court proceedings, then it is a sensible precaution to take. It becomes even a better idea when it appears as a positive step to aid participation in the examination process.

One provision which can have no other interpretation placed on it is that expresses in paragraph 3.50 "The arrangements at the examination, and the conduct of it, will be designed to create the right atmosphere for intensive discussion but to get away from the

formalities of the traditional public local inquiry. To this end, the intention is that the panel should not sit apart from the participants, but that the panel and the participants should, whenever possible, sit round the same table". Although it is only scratching the surface, this is a recognition that changes in the nature of an EIP can be effected by use of environmental factors, in this case by alteration in the furniture arrangement. In this case, the change which has been sought is towards informality. The most obvious beneficiaries of the achievement of a more relaxed atmosphere would theoretically seem to be the participants from outside the realms of central and local government, although the reality of this will be discussed in the appropriate place. Whereas the procedure at the old style development plan inquiry militated against public participation, the informality of a discussion 'round the table' as the council officers and the Panel would tend to dispel 'inhibition' and to encourage contributions from 'non-expert' participants. Since informality may have (and might be expected to have) dysfunctional effects on speed and clarity, this is an innovation calculated to have no other object than the improvement of the opportunity for those invited to play a fuller part in the discussion. This is the ideal. The reality is different.

(v) Satisfaction of the Demand for Fairness

Just as there must be a widespread perception that the procedures of the EIP give adequate opportunities for public participation, so there is a minimum requirement of fairness to be met, if the decision-making system is to be regarded as a valid and a legitimate one. If anything, it is more important that the EIP should be believed to be fair than that it is designed to facilitate public participation, since the former would cast doubt on the rectitude of the substantive decision

to a much greater extent than the latter. Yet the task is even greater, because the move towards the EIP is a move away from the quasi-judicial model. As was explained above this is positively helpful as far as giving an impression of a readiness for public participation is concerned, since it is a move from formality (anti-participation) to informality (pro-participation). It is exactly the reverse where the move is from the legalistic, which has connotations of fairness and impartiality to something which at best has no connotations at all since it is a new model. The process of selection of participants and issues is one of the hurdles to be overcome. People are generally doubtful, often quite reasonably, about large quantities of discretion being given to anyone. This is even more true when there is a suspicion that the selection conducted nominally by the Secretary of State is in fact done by one or more non-elected bureaucrats behind closed doors. Somewhat mystifyingly, in view of the large discretion which judges are given (some would say, which they arrogate to themselves) there is considerable public confidence in the judicial system and consequently in the judicial model but simultaneous distrust of any proposal which gives as much discretion in another context. The procedural techniques of the EIP in this area are put forward to try to create the same public attitude to the EIP as existed towards the inquiry, which, by virtue of its procedural nature was almost inseparable in the minds of many people from the courts of law.

At this point, the distinction between fairness and the illusion of fairness should be clarified. As can be deduced from their speeches in the Debate on the 1972 TCP (Amendment) Bill, some of the members thought that they had satisfied the fairness requirement by retaining the old objection-based inquiry at local plan

level[17] without the selection processes and with a judge-like Inspector. Whether or not they had produced a total system which together was as fair as the previous one is arguable, largely according to subjective view-point. This is also irrelevant. It is not the fairness or otherwise that matters but the public perception of fairness. The retention of the trusted system at local plan level is a wholly inadequate method of promoting confidence in the EIP. Looked at separately from its actual consequence, this is not a promising move. It suffers from the same fallacy which underlies the pre-inquiry participation provisions that people believe that changes in other areas can somehow change the image of the particular object of attention. The EIP was never likely to seem fairer because the defects of its unfairness were dealt with (or supposed to be dealt with) at local plan level, indeed if anything, one would expect an unfavourable comparison to be made between the two co-existing models.

So how did the DoE's handbook set about repairing the damage? Paragraph 3.7 in describing the composition of the Panel, states that 'The Chairman will be an independent chairman who has had a wide range of relevant experience (in central or local government or in the professions) or in conducting investigations of this kind'. This confers in advance three advantages on the Chairman. He is expected to be independent, experienced and to enjoy a prestige derived from his previous professional background. Of these three undoubtedly the greatest is independence. Here, surely the provision is seriously deficient. It is phrased in the nature of a prediction rather than a prescription. To put it crudely, it is futile to say that "The Chairman will be an independent chairman" if he will not. This provision can be rendered meaningless

if the Chairman is not independent. The problem is exacerbated by the fact that the EIP is concerned with strategic level. An Inspector at an inquiry will not be supposed to have an interest where matters of local land use are being discussed. The DoE policy will be known and that will be as far as DoE involvement will appear to go. The Inspector is rarely seen as a 'DoE man'. At an EIP every strategy that is discussed could be prefixed with the words, 'subject to DoE policy'. Since this is the case, it will be very difficult for the Chairman to appear detached and impartial. The phrase nemo iudex in causa sua springs readily to mind. It was never going to be sufficient for Chairman to insist, as did Chairman Heaton at the Warwickshire Structure Plan Examination "I have no Department"[18]. Here the provision for independence is a flimsy one. The role of the DoE is crucial to the eventually adopted strategy and yet the hearing is conducted by a DoE Inspector, a DoE Regional Office man and chaired by a DoE appointee. Paragraph 3.8 of the DoE booklet does say regarding the Regional Office representatives that it "will not be his role to advocate changes in the plan on behalf of the Department" but this again misses the point that the appearance of fairness has been lost by the selection of a DoE man, although he may well be capable of complying with the direction to play a role temporarily divorced from his Department.

The general mistake that has been made in trying to create an impression of fairness has been insufficient regard to the theory which for centuries informed the position of the judiciary. The judge was expected to have the three qualities with which the Code of Practice has tried to endow the Panel and its Chairman. Experience would be expected to ensure that incompetence would not lead to an inadvertent infringement of fairness, status would be expected to ensure financial

and moral unimpeachability and independence would be expected to ensure lack of prejudice and motives of interest. If equal weight had been given to each of those elements as it is theoretically in the judiciary, then the minimum confidence in the fair-mindedness of the Panel would have been achieved. However, status has been given prominence to the detriment of independence. The DoE is rightly concerned to find men of standing and integrity to conduct the hearings of vital strategic matters, but is pursues this policy by selecting and paying them itself which jeopardises the third quality, that of independence to a potentially fatal degree. This is particularly true at strategic level where the DoE has an obvious interest in every item under discussion at an EIP. It will be less true at public local inquiries. To draw a parallel, it is no use having even Professor Dworkin's Hercules as judge, if his paymasters have a substantial interest in the victory of the plaintiff. The defendant and more importantly, future litigants and spectators will simply not believe that a fair trial is available. Before the demand for fairness can even begin to be met, the quality of independence must be seen to be present in all the Panel members.

It has been shown above how lawyers have been subtly removed from EIP's. While the present outdated legal aid provisions apply, preventing many individuals and organisations from employing legal representation, this is a most important step toward fairness. This is succintly explained in Paragraph 3.52 of the Code of Practice "It is important that participants should not feel that unless they are professionally represented they will necessarily be at a disadvantage or their contribution not effectively made". This is the point of legal aid. It is because people do feel with total justification that they <u>will</u> necessarily be at a

disadvantage unless they are professionally represented that lawyers had to be made available to those who could not afford them, if the legal system was to avoid the image of a rich man's playground, where justice had to be bought dearly. Since there is no legal aid for participants at Structure Plan EIP's (inter alia), unless the lawyers can be removed, quite clearly those who cannot be represented will rightly feel that they are at a disadvantage, because they are not rich enough, rather than through any fault of their own. Thus the provisions which effect the disappearance of lawyers are central to the success of the function of satisfying the demands for fairness.

Paragraph 3.54 contains an important example of a provision designed to meet the requirement of fairness. An impression of fairness has much to do with openness. Thus the announcement that "provision will always be made, within the limits of the accommodation available for the local authorities primarily concerned, members of the public and the Press to hear the discussion". This is well meant and generally calculated to produce the required effect, of making the hearing open and accessible to all. However, one deplores the reservation "within the limits of the accommodation available". This exemplifies the traditional failure to use the environment as a positive factor for fulfilling the functions. Here it is regarded as a constraint, even a possible threat to the provision granting access to press and public and guaranteeing openness. A proper use of the environmental nature of the EIP could in many cases help to fulfil the functions defined for it. If it was mandatory that the building and room should be chosen and arranged to maximise the convenience of press and public a significant step would have been taken in ensuring that this element of fairness was present at every EIP. The environment should be treated as a tool

and not as an opponent which may prove impossible to overcome. Once again the effect is of a hopeful projection that the need for openness (and thus fairness) will be appreciated at ground level by the officers concerned rather than a tightly-drawn requirement that the function of the EIP will be fulfilled by its nature (in this case environmental rather than procedural).

(vi) Achievement of Finality

The achievement of finality is closely linked to the preceding two categories, satisfaction of demand for public participation and satisfaction of demand for fairness. If all the participants and would be participants are satisfied that the hearing gives an opportunity for public participation and is fair then they will be unlikely to press for a re-opening of the EIP or take legal proceedings as a result of it. However, the administrative function must be fulfilled as well if the Secretary of State is to be able to avoid another session of the EIP. This is partly catered for in the post-EIP stage where the Secretary of State is committed to avoiding major modifications except where essential and to publishing a reasoned decision letter which is incorporated as part of the plan. But the real implementation of this function of finality is in the whole inquisitorial aspect of the procedural nature of the EIP. Inspectors under the old quasi-judicial model will be in dange of showing partiality if they carry out probing questioning of one party or another. There is heavy dependence on the cross examination process to reveal information from which the decision can be made. The EIP puts full responsibility on the Panel and gives them wide powers to make sure that no stone is left unturned which may have to be turned at a later date. The TCP (Amendment) Act 1972 has amended s.9 (5) of the TCP Act 1971 so that "the

person or persons holding the examination shall have power, exercisable either before or during the course of the examination to invite additional bodies or persons to take part therein if it appears to him or them desirable to do so". Also Paragraph 3.55 of the Code of Practice is devoted to "Participants from government departments" and describes how "Where the department concerned can make a useful contribution to the discussion, it will be invited to send a participant. He will be there primarily to explain his department's views about the policies and proposals in the plan which concern it, and give appropriate information". These provisions are designed to ensure completeness. All the important information or the means of acquiring it are given to the Panel so that there is a great reduction in the risk of anything coming to light after the EIP or even after the Secretary of State's decision which should have been taken into account. The method of giving full inquisitorial powers and responsibility to the Panel seems likely in theory at least to prove more successful than the more erratic method of cross-examination where the initiative and the responsibilities would rest with the parties and their legal representatives rather than someone over whom the Secretary of State has some control at least through selection and briefing. In the context of finality too there will be great dependence on the Chairman. Here too Paragraph 3.49 of the Code of Practice remains true "The effectiveness of the examination will depend greatly on the judgment of the Chairman". If finality is to be achieved all matters and views must be taken into account so that no move to re-open the EIP comes from the Secretary of State, but even more importantly the aspirations and wishes of the participants must be satisfied at least to such an extent that they are not impelled to seek the re-

opening of the EIP.
Even at the theoretical stage this looks a heavy responsibility.

1 s.9 (3) (b) 1971 TCP Act
2 op. cit
3 ibid.
4 p.233 op. cit
5 ibid.
6 Greater London Development Plan: Panel of Inquiry Report.
7 Structure Plans the Examination in Public
8 1976 J.P.L.
9 DoE Circular No. 98/74
10 Paragraph 3.49
11 Examination in Public of Structure Plans - An Emerging Procedure Part 2 1976 J.P.L.
12 s.3 (3) (a)
13 Paragraph 3.4 of the Code of Practice
14 s.8 T & CP Act 1971
15 Paragraph 3.43.
16 Paragraph 3.47 of the Code of Practice
17 s.4 (2) T & CP (Amendment) Act 1972
18 Warwickshire Structure Plan Examination Transcript.

3. REALITY

Having completed the analysis of the theoretical nature of the EIP, the focus is now switched to the third and final section on EIP's: the reality of the EIP. This will be sub-divided in the same way as the first two sections so that assessment can be made of how far each of the functions of the EIP is being fulfilled and how adequate the provisions which make up the nature of the EIP's are proving. The sources employed in this section will partly be those critics and commentators who have sought to expose the weakness (and some strengths) of the model and partly personal observation of the Surrey and Central/East Berkshire Structure Plan EIP's.

It is now proposed to examine how far the means chosen have succeeded in fulfilling the functions of the EIP which have been identified. This will not unfortunately merely be a simple case of measuring short-fall between aspiration and achievement. The fundamental criticism of the wooly thinking and talking of the politicians at the inception of the EIP is shown to be a just one, since new problems arise and new attempts are made to solve them without reference to a coherent identifiable list of intended functions. Thus the defects of the EIP extend beyond mere inadequacy to meet the list of functions compiled above. Comment will be made on most of the important deficiencies as perceived by several commentators and as appeared as a result of attendance at the Surrey and Central/East Berkshire Structure Plan EIP's. Where there are deficiencies related to functions in the relationship and for the sake of consistency this section will be sub-divided under the six 'function' headings which has been used in previous sections. There is nothing which is not related to function or nature in this section and so all of the material comes properly under the six headings.

The only problem with border-line cases is to decide into which category the particular deficiency should be put but all the decisions taken below on this have been quite clear-cut.

(i) Administrative

Although the impression has been given that this is to be an exposition of the faults of the EIP in reality is largely true, this sub-section opens with an exception. In none of the commentaries currently available on EIP's (mainly on the early ones) has there been any suggestion that the information gathering process is inefficient. The nearest that anyone comes to saying this is Bridges and Vielba's "Structure Plan Examinations in Public, A Descriptive Analysis" which remarks at p.74 that "At Leicestershire, the examination hardly advanced beyond a hearing of objections". In that the actual discussion which takes place is an integral part of the process by which the Panel explores all the points of view, criticisms of the level of discussion might be equated with criticism of the information gathering process. This, however, is a very sweeping equation based on a large assumption. The assumption made is that there is some higher level of strategic thought latent at each EIP, which can only be discovered by a particularly highpowered type of discussion. On p.75 of the Bridges and Vielba report there is a criticism of the house builders organisation at the Leicestershire examination for failing to attempt "a more systematic critique of the plan's locational strategy" and for confining "their arguments to suggestions for incremental additions to the plan's housing land allocations and to demands for flexibility in implementing the plan at the local plan and development control stages". It was also a feature of the Surrey and Berkshire EIP's that most participants showed a surprising and disappointing lack of ambition particularly the National Federation of Building Trade Employers/National Housebuilders Federation representatives who made rather narrow and piece-meal objections. More fundamental and widely conceived challenges to whole strategic systems of

thought produced by local authorities would have been a welcome variation. But it is not a weakness of the EIP that these more sophisticated approaches do not exist. On the contrary, the somewhat pedestrian standard of objection (and it still is mainly objection in the old fashioned, specific sense) is a highly accurate reflection of the parochial approach based on sectional interest of nearly all of the participants. It is not part of the administrative function of the EIP to do people's thinking for them; that would be most dangerously autocratic. Bridges and Vielba's observation and this much more limited research confirms the view that there is a high degree of correlation between the views held by the parties as expressed at the EIP's and the views which the Secretary of State has available when making his decision. That the views are limited to say the least is no criticism of the EIP which does offer opportunities for a much broader approach based on alternative strategies. Bridges and Vielba claim to show that this is impossible because of the power of the County Council to "shout down" wholly new strategies and keep the scale of objection small and limited, but much more evidence of the wider approach which we all commend even being thought of would have to be shown before it was proved that the EIP somehow militates against it. On the available evidence it is rather the position that the Secretary of State is informed most efficiently of the cases which have been presented at the EIP. The full recording of proceedings and the publication of transcripts of each session has undoubtedly been of great value in this. So also has the division of the Panel into a Chairman who leads and directs the questioning and two less active Panel members at least one of whom seems to take notes assiduously. Where a single Inspector at a public

inquiry has to deal with a series of fast-moving exchanges and counter-thrusts he may be torn between putting his own questions and moving in the direction he would like to see, and the simple necessity of writing down what is being said. The division of labour between the Chairman and his colleagues is a very sensible one and must be beneficial to the Secretary of State. To read the published Report of the Panel and the subsequently published Approved Plan with modifications included is to be struck by the detailed appreciation of the subtleties of the respective cases which the Panel and the Secretary of State possess.[1]

It would be wrong to regard the almost total fulfillment of the administrative function as fortuitous. If there was muddle-headed thinking about the means to fulfill other functions, there was none here. The inquisitorial nature of the EIP is designed to ensure that the full information of the Secretary of State is achieved with the maximum of efficiency and it does so. While one is conscious of the ever-present risk of overloading the canvas, it is permissible to go one step further. When all the subsiduary functions are stripped away, the administrative function manifested in some highly efficient procedural machinery is the one that is left, paramount and, insofar as it is the only function properly catered for in every respect alone.

(ii) Achievement of Speed

One of the merits noted by Alec Samuels in his article "Structure Plan Examinations in Public"[2] is that "repetition is largely avoided and the examination is fairly speedily concluded". He cites the EIP which he attended (as a participant as much as an observer) as taking 24 working days. This glosses over the distinction which has been made between speed in getting

down to the important areas of controversy and beginning in-depth examination of them and finishing within a short period of time. It is a distinction which Mr. Samuels appears to understand and explore fully in his article so perhaps the conclusion is merely ambiguously worded. He calls the practice of beginning the day's proceedings with the county planning officer followed by the district council officers "unfortunate" since it will then only be well into the morning session "that the real controversies would emerge". It would almost certainly make no difference at all to the total time taken if the more controversial participation came first and the 24 working days would not be affected at all. But it would be a much more efficient use of time if the controversies were identified and started upon immediately, which is the point Mr. Samuels is making. Bridges and Vielba by contrast are more concerned with amounts of time than with efficient use of it. They recall[3] "that the one unambiguous, and largely uncontroversial objective which lay behind the reform of the planning system in 1968 and the introduction of the examination in public in 1972 was to speed up the process of development plan preparation and approval". While it is worth noting that they produce 'evidence'[4] to show that "it is doubtful whether even this limited objective has been achieved", issue must be taken with the conclusion that the number of months taken show whether speeding up has been achieved or not. The table shows that of the two Structure Plan EIP's which were the objects of their intensive research, Staffordshire took from October-December 1974 while Leicestershire took from December 1974 to January 1975. It is submitted that there is no evidence here to support the view that there is anything wrong with the speed which the EIP's are taking.

What comparison is to be made in reckoning whether there is speeding up? Is the EIP supposed to take fewer days than the old Development Plan Inquiry? It can hardly be looked at as comparable since it is doing completely different jobs in a very different way. The EIP could have been compared with a Structure Plan Inquiry held under the 1968 (1971) Town and Country Planning Act[5] which would have had the same functions and comparable material to deal with, but none were held so that possibility disappears. True, there is criticism[6] of the "considerable delay in the post examination stages of the process". As has been said before that is not a defect of the EIP, it is a malady which affects many forms of administration in all areas of government. With due respect to the authors of this study which is admirable in many places, one cannot see how they can conclude that EIP's are failing to fulfil the functions of speed from the mainly unrelated evidence which they cite. If they purport to write about EIP's then they should confine remarks about them to the examination and not to post-examination procedure. As their contention appears, EIP's have not achieved the task of speeding up (from what? - unknown) because of the dilatory bureaucratic cogs after the EIP is over. It is not necessary to dwell further on this complete non-sequiter. While their comments may well apply to plan preparation and approval stages, it is no excuse for Bridges and Vielba to include the EIP itself if they have no evidence to support it, and one cannot help noticing that the study is supposed to be specifically about EIP's, while the other stages are at most related background information. One is more inclined to agree with Alec Samuel's statement that "there must be more free ranging discussion and at the earliest possible stage"[7]. This is tantamount to saying that the EIP has been something

of a failure as far as the achievement of speed is concerned. Because no firm guidance is given by the Code of Practice as to the order in which Chairman unsurprisingly choose the safe option which is to let the County set the scene and then ask the Districts to fill in some local detail and variation. As Mr. Samuels says "How much better normally to start the session by saying 'What are the representations and objections to the plan on today's issue that the non-official participants wish to make? Let us concentrate on those'". This is the sort of provision which should have been made in a well-ordered Code of Practice and the absence of which is responsible for the present unsatisfactory state of affairs. Again, Mr. Samuels says: "In that way the nub of the issue, the real controversy at once emerges". That is what is meant by speed in this context not the superficial counting of days after which Bridges and Vielba seem to hanker.

At the Surrey Structure Plans EIP in particular, it could be seen that the ideal ethos of informality had been completely forsaken as the council representatives took turns in reading or extemporising a precis of their formal submissions which are supposed to be taken as read. It is rather reminiscent of a ceremony like the Ceremony of Keys in the Tower of London where a guard inquires "Whose keys?" knowing full well that the answer will be "Queen Elizabeth's keys". Both the Chairman and all the assembled Planning Officers know the substance of each council's case[8] but the courtly ritual proceeds sometimes daily as each new topic is approached. Unlike the Ceremony of Keys, the chanted credo of the Planning Officer does not have the excuse of being old or the merit of being quaint. It simply frustrates in considerable measure the second intended function of the EIP, the achievement of speed in getting down to what is controversial[9].

Except for this institutionalised repetition, where Chairmen effectively encourage participants to say what they have already written, there is a very small incidence of repetition and overlap, the twin 'betes noires' of the inquiry system since the GLDP. This is mainly due to the work begun by paragraph 330 of the Code of Practice of encouraging people to associate themselves with the sentiments of other organisations rather than rehearse the identical arguments. Time is not wasted here, as it still seems to be in the public inquiry.

(iii) Inclusion of Policy Matters, Preferred Alternative Strategic and Value Judgment

The main danger foreseen by those who introduced the EIP and the Code of Practice was that is should not lapse "into a degree of detail not appropriate to a structure plan examination". This has not materialised to any great extent, rather the reverse is true. At the Berkshire Structure Plan EIP's, it might have been that Twyford Parish Council and the Hurst Village Society on Proposed Highway Schemes and the Green Belt respectively were to a certain extent strait-jacketed by the perpetual pressure to avoid detail. Institutions like these are likely to be handicapped because they inhabit the twilight world between Structure Plan and Local Plan level. They run the risk of being stopped because they are being too specific at Structure Plan EIP's, but it is too late for them to oppose in principle something which has been accepted in the Structure Plan when they come to Local Plan level. After all, when an organisation with a name like the Hurst Village Society comes forward to participate, it can scarcely be imagined that they wish or pretend to reorientate the County Council's strategy except insofar as it affects Hurst Village.

Not only do they not have the resources or the mandate to adopt a strategic over-view, but they have no wish to do so.

When dealing with the administrative function, it was explained that it was not a fault in the EIP that it reflected the unambitious approach of the participants.

However, the EIP is to be faulted for its obsession with the exclusion of detail. This measure cannot be expected to promote discussion at an exalted level; that will either happen if the participants have the capacity for it, or it will not if they have not, because it is purely negative and in no way constructive of the right kind of discussion. It is significant that Parish Councils attend EIP's so rarely. Can it be that the process of consultation is so perfect that they are all completely satisfied with the contents of the County Council's draft plan? It is much more likely that such organisations are discouraged from appearing at EIP's at all by deterrents like paragraph 3.22 of the Department of the Environment Code of Practice "It will not be appropriate, or indeed possible, in the context of the examination, or even in the consideration of the structure plan, to deal with objections which are really directed to detail instead of to structural issues".

This is not a criticism of the structure planning system; there are elements which are unsuitable for consideration in the context of a structure plan, but the means chosen for achieving the desired level of discussion have been ill-chosen and have proved a failure. By adopting the negative method of filtering out of selection of discouragement at least two of the other intended

functions of the EIP are badly compromised. Unless Parish Councils and Village Societies are actively encouraged by the terms of reference of the EIP to believe that their contribution is likely to be acceptable, the administrative function is going to be in danger of being incompletely fulfilled.

Without participants below the level of District Councils appearing either to object or support the plan, the Secretary of State will be missing the response of that level of popular representation which is at least theoretically closest to the 'grass-roots' of society.[10]

Secondly, one has to ask where the negative formulations against detail, repetition and other unsuitable material leave the function of satisfying the demands for public participation. The individual citizen, the small council and the local organisation are precisely the voices which have to be heard at the EIP, if the impression is to be avoided that the EIP is a battle of the big battalions, which is the very danger to its credibility which the EIP must defeat to fulfil its fourth function (see below). This is a good example of the lack of understanding of the relationship between function and nature which has been the theme of this analysis throughout. The function is percieved, namely to promote discussions of strategic and policy matters. The procedural nature of the EIP is made to reflect this, as was explained above in the section on the nature of the EIP, without any understanding of whether the nature will help to fulfil the function. In this case it will not; as has been said, the competence for attaining the required level of discussion either exists or it will not. It could perhaps be promoted

by positive incentive[11] but it certainly cannot be done by negative provisions designed to exclude the perpetual obsessions detail and duplication. But the elements of procedural nature designed to reflect this function are much worse than useless. Not only are they ineffective in fulfilling the function which they were intended to fulfil, but they quite inadvertently threaten the fulfilment of two other functions, namely the administrative one and that of satisfying demands for public participation.

What then is the nub of the reality of attempts to promote the 'right' sort of discussion at the EIP? Bearing in mind the massive dependence on the Chairman to "encourage contributions which are constructive, concise and not repetitive", it is predictable that it should be the state of affairs described by Dunlop[12]. "The importance of the differences between examinations is that so long as the conduct of an examination is dependent on the judgment of one man it will bear the stamp of his personality and so long as the chairmen are drawn from a variety of backgrounds without any generally received notion as to what constitutes a well-conducted examination, no two examinations will be alike." When all the injunctions and warnings, the exclusions and selection have taken place what <u>actually</u> determines whether or not the examination proceeds in a way, likely to propagate strategic, policy-based discussion are the personal qualities of one man. It is not the absence of many parties but the presence of one that is in fact decisive. It is not what people are prevented from saying, but what the Chairman can encourage them to say which decides whether matters are discussed at an appropriately strategic level.

Again Dunlop summarises the dilemma of the Chairman skilfully[13]. "At Staffordshire the DoE role was

encouraged by the Chairman and the County Council Chairman expressed himself "disturbed" by the way in which the inquiry was conducted". Here the Chairman obviously encouraged the DoE to keep discussions at a national or at least regional level, the kind of over-all strategic view which everyone is continually exhorted to strive for. As it was suggested would often be the case, another function seems to have been sacrificed; this time that of satisfying the demand for fairness. Dunlop continues "At Leicestershire the DoE role was played down and the Chairman seemed interested only in hearing objections. Thus the Secretary of State's purpose in holding an examination was not clear, unless it was solely to hear objections". Here the strategic over-view has been sacrificed, the individual grievances were heard and the requirements of fairness and opportunities for participation to some extent satisfied. This complete discrepancy between two examinations show how flimsy have been any procedural mechanisms intended to promote a particular kind of discussion and how total has been the dependence on the Chairman. Although the Chairman's power and control over proceedings are very great, this hit-or-miss approach can only be partly successful and then only at some examinations. Dunlop[14] encapsulates neatly the dilemma which has been foisted on the Chairman "In practice, either loss of objectivity or depth of focus must be expected of his conduct of an examination". With few procedural institutions or provisions to turn to and none to help him, the Chairman is left trying to achieve not a happy medium, but the lesser of two evils or more probably the least of several.

In the heading of this sub-section allusion has been made to value judgments. It is considered most important that value judgments should play a much

greater part in planning process, but personal observation of structure plan EIP's suggests to me that they are still attacked and their proponents belittled. From the desire of those who introduced structure planning and EIP's to have alternative strategies discussed it can be inferred that there is a move away from an investigative approach designed to find an objectively 'right' answer to a given planning problem or projection. It cannot be that the EIP is just an opportunity for lay participants to show that hard-bitten professionals with enormous technical resources have got their sums wrong. This would not serve the administrative function at all nor would it satisfy the demand for public participation. The administrative function needs accurate information about the whole range of beliefs, hopes and aspirations which exist in a given administrative unit and outside it, so far as that is possible. People will only believe that they have a fair opportunity of participation if their sometimes irrational feelings can be accepted without technical and pseudo-technical evidence to support it. If alternative strategies are to be discussed it is no use having a forum in which the political basis of the proposed alternative is ostentatiously avoided. It was disturbing that at the Berkshire EIP, Eton and Slough Liberal Association felt it necessary to resort to spot-figures and sample studies to justify their points. The responsibility for this rests a little with those conducting the Berkshire EIP and a great deal with those who shaped the process. If we want alternative strategies discussed, let us not look for the preferable alternative amongst figures, the non world of Cost Benefit Analysis. If the EIP is to be an accurate medium of views for the Secretary of State and give the appearance of being a responsive listening-post for lay participants then value judgments must

not only be more freely admitted in EIP's than at present, but they must be encouraged. Let us have the politics out in the open rather than skulking behind lists of carefully (or not so carefully) prepared figures. The 'preferred alternative' may not be the convenient one and may not be defensible on any of the grounds of orthodox resource allocation which the County Council would accept. But if it is the preferred alternative (and the Secretary of State knows how much weight to give to representations by Eton and Slough Liberal Association, or any other organisation) it depends on values. For too long the emphasis is placed on the 'judgment' half of the phrase and it is compared unfavourably with the objective and skilled judgment of the professional experts. The EIP should become an occasion on which values are the strongest backing for a case and the technicians can retire to determining the limits of the possible. At present, meaningful discussion of preferred alternative strategies is obstructed by the necessity of countering all of the County Council's myriad of statistics.

(iv) Satisfaction of Demands for Public Participation

Great care must be taken throughout this section to separate genuine public participation, by which is meant Arnstein's upper-most rungs, from the illusion of public participation. An attempt has been made to show in sub-section (iv) of both the sections on Functions and Nature, there has never been a desire or a serious attempt to implement genuine public participation in the EIP. What there has been is considerable awareness of the demand for opportunities for public involvement in planning generally and particularly for an opportunity to be heard by the decision-makers. If the required legitimacy and public confidence is to be achieved, there has to be at least a colourable imitation of some procedures designed to

aid public participation.

At those EIP's which have been attended and studied in the course of this research, one of the most apparent flaws in this illusion was the absence of individual participants representing themselves. Carol Vielba in "A Survey of Those Taking Part in Two Structure Plan Examinations in Public"[15] states that at the Staffordshire examination 8 "own account individuals" participated while at Leicestershire the number was 5. Unless our society has become a radically different and more formally organised one in the past decade, this would suggest to me very large numbers of people whose opinions are not heard. It is a very short time since the Skeffington Committee even despairingly saw the need to send agents provocateurs into the community to try to get people organised to make representations as a body. One doubts whether the number of people represented by the 63 participants at Leicestershire plus the 5 "own account individuals" bears any resemblance to the number of people who were affected by the County Structure Plan for Leicestershire particularly as a further 21 of the 63 come under the headings "Government Departments and Statutory Undertakings Landowners and Developers and Industry (including agriculture)".

No one seriously believes that the District and County Councils represent the views of all the people with their respective electorates. If the Barsetshire County Council has 28 Conservative members, 16 Labour members, 5 Liberal members and 2 Wessex Regionalist members, only the Conservative policies of the 28-strong dominant party will be translated into concrete proposals in the real world of Town Hall politics. The electors who voted for defeated candidates of all the other parties who opposed the 28 successful Conservatives, as well as those Labour, Liberal and Wessex Regionalist

voters who managed to have candidates elected will not find their values encapsulated within the draft Structure Plan approved by a Conservative controlled Barsetshire County Council. It may even be that Independent councillors will allow a minority party to have its party policy adopted as the County's future strategy. Neither is it a suitable answer to say that the local Labour, Liberal and Wessex Regionalist parties should appear to ensure that everyone is represented, although it would be an improvement on the current apathy by political parties (one appeared at Berkshire and one at Surrey). Party political groups are amorphous bands often with widely differing views internally on some or many matters, but bound together by one or more shared ideals. Where the shared ideal(s) cannot be related to a planning strategy or even interpreted outside the ideological battlefield as is usually the case, the ability of political parties whether in power or not, to reflect their own members values for the purposes of structure planning is strictly limited. Their ability to represent other colours of opinion is almost nil. Thus, however, inconvenient it is, and however much it may revive spectres of the GLDP many more "Own account individuals" and more purpose-formed action groups must appear before anyone will believe that a process of genuine public participation is taking place at the EIP. For reasons that have been stated, few things could be less likely to inspire confidence in the participatory nature of the EIP than the presence of a dozen or more planning officers, servants of the particular ruling clique at the Town Halls of the County and the representatives of remote Whitehall Departments, opposed perhaps by the John Lewis Partnership (as at Berkshire) or some big property development company. By an incredible stroke of misjudgment at Berkshire the County, District and Town

Council representatives were ranged along one side of the pi-shaped table arrangement with a layer of 'back-up' advisers etc. behind them which gave a vivid impression of formidable local authority strength and perhaps not an inaccurate one, but the diametric opposite of the atmosphere conducive to public participation by "own account individuals" which is essential if this function of satisfying demand for such participation is to be fulfilled.

Alec Samuels in his article[16] complains about the 'paper mountain' as he calls it, and wishes that submissions could be confined, like Balfour's celebrated solution, to the back of an envelope. He then qualifies this by saying that "the technical paper put in an appendix may have its uses". The view taken in this thesis is the opposite. The more information that is available from every source, the better. If it signalled the end of councillors hiding behind terse statistical data and providing explicit accounts of the reasoning behind their proposals, additions to the paper mountain would be welcome. Lay participants are more likely to be discouraged by what is not available than what is. If they can wade through an in-depth justification by the people responsible for a proposal (rather than the ones called in to prove its objective necessity) and, assimilate the arguments they will be in a much better position to make representations agreeing or disagreeing with it than if they had to try to guess the political implications of a set of statistical data. So far as fulfilling the function of satisfying the demand for public participation is concerned, the technical paper will not have "its uses", it will be an obstacle to would-be participants.[17]

The number of Parish Councils, "local action groups" and to some extent "wider action groups", at Staffordshire and especially Leicestershire was an early indication

that "grass roots organisations" might be persuaded that for a well organised, prepared body, there was a genuine opportunity to participate and to influence decision-making. Vielba[18] shows that at Staffordshire nearly 30% of all participants come under her "Grass roots organisations" headings (this included "Parish councils, Local action groups and Wider action groups"). At Leicestershire the figure was over 40%. Leaving aside for a moment the "Wider action groups" the meaning of which is more difficult to assess, it is interesting to notice that 22 parish councils/local action groups participated at the Staffordshire EIP and 26 at the Leicestershire one, relatively high figures. This does not weaken the contention that the function of inducing confidence and belief in the EIP as a vehicle for public participation, it rather confirms it. It should be remembered that the research carried out by the Institute of Judicial Administration concerned EIP's held in late 1974 when enthusiasm for the new model, if not high, had not sunk to its present level. An analysis of the Surrey County Structure Plan EIP results which are presented below in Table A for comparison, bearing in mind that this EIP took place in late 1978 after more than four years experience of EIP's up and down the country. Relevant statistics have been included from Vielba's Table 2.2 to provide some base figures for comparative purposes. However, the following strictures should be observed.

One would not expect the Surrey figures to correspond exactly with those of Leicestershire and Staffordshire even if all other factors were constant. Population total and distribution, administrative organisations and economic infra-structures differ considerably. But it is safe to make the broad generalisation that in affluent Surrey with a fairly high percentage of older people and high-income groups one would expect

greater capability for participation and greater tenacity in resisting change than in either of the substantially industrialised midlands counties. It may also be true that the static, conservative nature of the Surrey Plan itself did not excite very much opposition. This however begs the question as to why the EIP was not then packed with supporters of the plan. Whatever explanation of the disparity between the Staffordshire/Leicestershire and the Surrey figures is adduced; the fact remains that participation in the latest EIP was distinctly low.

TABLE A

"GRASS ROOTS" PARTICIPANTS AT 3 EXAMINATIONS IN PUBLIC

	Staffordshire	Leicestershire	Surrey
Parish Councils	12	16	4
Local Action Groups	10	10	8
Own Account Individuals	8	5	3
	30	31	15

Expressed in percentage terms "grass roots" participants comprised 28.5% of the total of participants at Staffordshire, 45.6% at Leicestershire and 25% at Surrey. Percentages are not in this case very important, although they do tend to support my theory. After all, it is not a triumph for public participants if one parish councillor and a County Planning Officer are the sole participants at an EIP giving grass-roots participants 50% of the total. Sheer numbers (or rather the lack of them) are what matters in measuring the extent of public participation and the wretched totals achieved at Surrey imply strongly that public confidence in the EIP is low and the trend, occasioned by experience of the reality of the EIP, is towards a lower level still. That is the presumption which seems to have been established, although I would like to see begun a complete survey of all EIP's so far conducted,

to affirm or rebut this presumption. As another "straw-in-the-wind" only one Parish Council felt it worthwhile to appear at the Isle of Wight County Structure Plan EIP, a truly lamentable total for a predominantly rural area.

The theoretical nature of the EIP was not, as was asserted in the appropriate sub-section of Section 2 (see section (iv) above) an optimistic beginning so far as convincing large sections of the populace that a real opportunity for participation had arrived was concerned. But the reality has been worse than could have been predicted from the unpromising beginning of the theoretical framework. A positive provision like a nascent awareness of the value of environment in creating a particular kind of discussion and interaction between participants was one of the more hopeful pointers in the Code of Practice: Paragraph 3.50 "The arrangements at the examination, and the conduct of it, will be designed to create the right atmosphere for intensive discussion but to get away from the formalities of the traditional public local inquiry. To this end, the intention is that the panel should not sit apart from the participants, but that the panel and the participants should, whenever possible, sit round the same table.

This experiment, it is understood, was tried at Warwickshire, certainly it was tried at Staffordshire as Dunlop notes[19] and a wholly round table does not seem to meet this requirement exactly.

Yet this early recognition of a chance for advancement of the art of fostering that informality which neutralises trepidation and encourages participants has now been abandoned, indeed the trend appears to be one of regression. At Berkshire, the latest EIP of which any detailed knowledge was available at the time of writing, the County and District Councils and

Government representatives all sat on one side of the pi-shaped arrangement of tables facing all the other 'non-official' participants in a physical juxtaposition which could only be described as confrontation. In addition, the electronic recording system present at each EIP means that all participants have to address remarks through the chair and can only speak at the invitation of the Chairman. This involves catching his eye, which is very easy if you are sitting next to the Panel (the County Council were at Surrey and at Berkshire) but not so easy at the end of a long table. Accordingly there is an ever-present likelihood of the kind of 'front-bench' domination which is a feature of the House of Commons.[20] It is not an exaggeration to say that while little in the theory of the EIP would encourage the belief that it is intended to foster public participation, public confidence and recognition would be better if the theory were properly applied than at present.

(v) Satisfaction of the Demand for Fairness

During an interview with an Assistant Chief Planning Inspector (ACPI) who is a member of the Inspectorate's Administrative Staff and a former "in-the-field" Inspector, I raised the question of independence of Inspectors from the DoE who employ them. The earnest answer was "Inspectors <u>are</u> impartial, they really are, you know. People are always raising the question of involvement with the Department, but there is no interference with Inspectors", "the Inspectorate is quite independent". Like many people, this ACPI failed to make the distinction between reality and appearance of reality. There is no mystic extra quality which an independent mind will necessarily bring to a problem. There is no difficulty in conceiving of or indeed remembering perfectly fair-minded Inspectors at public inquiries who showed themselves to be so by the

way they conducted the inquiry, by the way they spoke at informal meetings and by the reports which they produced. Yet they cannot be regarded as independent, because like good professionals they are able to set the question of their paymasters aside while they do a job, because one must look at the presumption, as most observers will; the presumption established by the paymaster-payee relationship is a degree of control and influence by the former over the latter. This presumption can be rebutted, as has been suggested, by conduct, but it will linger most persistently, in spite of the Inspector's efforts to set it aside. Wherever he feels compelled to crack down on an objector the questions will be raised in some people's minds: what does it matter to him? What's his interest? This undesirable set of facts affect every inquiry run by an Inspector of the Department of the Environment's Inspectorate until he can completely reassure everyone, in many cases a hopeless task. In some road inquiries now the Lord Chancellor's Office appoints the Inspector from a Panel. It seems that a great opportunity was missed when the EIP was introduced to take this undesirable factor out of planning hearings altogether. For the fears, real and imagined, continue. That this was not foreseen is, of course, culpable. The process was constructed so that the DoE can choose participants from among those who made representations about the plan. The DoE can be among the participants invited (by the DoE) to attend although no representation was made. The matters selected to be heard by the DoE appointed Chairman, a member of the DoE Inspectorate and a man from the appropriate DoE regional Office before the Panel report back to the DoE for final decision-making and before the County Council finally get their amended plan. The danger is made greater by the almost total absence of lawyers. Solicitors are seldom

present[21] and barristers almost never[22]. The whole EIP is free from the kind of scrutiny which would reassure observers. Lawyers, whatever may be the other merits and demerits of their presence, are always quick to spot procedural irregularity. The legal tradition[23] echoes with exhortations to equality like Nemo iudex in causa sua and Audi alterem partem and considerable reassurance is derived from knowing that one has employed a procedural watch-dog, or at least that several are actively involved in the process. Take this appearance of a safe-guard away, add a Panel who might be colleagues of some of the participants and phrases like "an independent Chairman" sound ominously thin. Lord Sandford, a DoE spokesman once said that he hoped that the EIP would "give proper scope to the legitimate rights of objectors to the plan,[24] Dunlop[25] refers to in his statement ignoring the fact that it could not do that if the DoE had not chosen the participant or his topic to appear at the EIP. Probably a DoE Inspector reading this[26] would think that I have over-stressed the extent to which the appearance of fairness has been eroded. It is unnecessary to look further for evidence to support me than the Staffordshire Structure Plan EIP where no less a person than the Chairman of Staffordshire County Council expressed himself "disturbed" by the way in which the Chairman encouraged the DoE representative to play an active role in the examination. Surely something must be wrong when a commentator such as Dunlop who quotes the Staffordshire example[27] is moved to say that "In practice either loss of objectivity or depth of focus must be expected of his (the Chairman's) conduct of an examination". One cannot help feeling that Dunlop's conclusion in the light of this perceptive comment is rather strange "Whatever dissatisfaction some persons may have felt with the first

structure plans, their examination has passed off without any substantial public outcry". Predictably this conclusion leads to the call for the preservation of the status quo. "There thus seems to be no immediate reason to press for the more formal regulation of the examination procedure or for its radical revision." Yet the conclusion itself does not seem a natural one to draw from the serious concern of the Chairman of a County Council and from the warning that loss of objectivity is one of two distinct possibilities, and one which materialised in one out of two EIP's studied by Dunlop.

To return to the second part of Lord Sandford's statement, people will only believe in the fairness of a process when it gives "proper scope to the legitimate rights of objectors to the plan" which he hoped the EIP would do. Let us review the reality of that laudable hope. To begin with objectors have no "legitimate rights" in connection with EIP's which invalidates the letter of the statement if not the spirit. It is true that s.9 (3) (a) of the 1971 TCP Act as amended by s.3 (1) of the TCP (Amendment) Act of 1972 places a mandatory duty on the Secretary of State to consider all objections but, s.9 (5) of the former Act as amended by s3(1) of the latter (Amendment) Act explicitly denies the existence of any "legitimate right" as formulated by Lord Sandford "The Secretary of State shall not be required to secure any local planning authority or other person a right to be heard at any examination". Of course, the insistence that nobody has a right to be heard (which being the greater presumably includes the lesser - nobody has a right to be heard fairly) is not a good start in convincing people that the EIP gives a fair hearing. Probably a more charitable construction of Lord Sandford's words is that the EIP should give 'proper

scope to the moral claims of objectors to the plan'. Dunlop[28] reports that at Staffordshire 94 out of 105 organisations were selected and at Leicestershire 62 out of 70 were selected and says that "selection of organisations is not too stringent, it would appear". This rather misses the point. For the arbitrary nature of the selection method to be concealed "not the most democratic process imaginable" says Samuels a little kindly[29], all those who desired participation would have to be granted it. You do not satisfy nearly everyone by excluding only a few participants. This clear emphasis of the arbitrary appearance of the selection process is not compatible with the appearance of a fair hearing. This is even more true with individuals of whom less than 2% were selected to appear at Staffordshire and less than 10% at Leicestershire (calculated from figures given by Dunlop)[30]. Similarly, the rigid classifications of issues to be discussed are unlikely to satisfy even the mildest demands for a fair hearing. Dunlop[31] gives an example of an issue as large and important as a motorway across Staffordshire being excluded because it was promoted by the Secretary of State rather than the County Council. The most glaring aspect of this exclusion is that some people, probably many people, were denied an opportunity to talk over something about which they felt strongly because of the selective nature of the EIP. Another example quoted is the decision to exclude Shelter's arguments in favour of municipal rather than private housing on the grounds that this did not raise land-use issues. This can only serve to destroy any belief that Shelter might have had in the EIP. Of course, even in the quasi-judicial public inquiries people who lose, or feel they have lost, cry "unfair", but it is dysfunctional to create a body of aggrieved parties before the hearing has even begun to swell the ranks of

the post-examination 'losers' and further destroy confidence in the fairness of the EIP.

(vi) Achievement of Finality

Dunlop's conclusion that all must be well "because the first examinations have passed off without incurring any substantial public outcry" shows an unexpected misunderstanding of the new planning system and of the kind of organisations who take part in EIP's (or are excluded from them). One wonders what exactly there is for the public to cry out about or what action it is open to them to take. In this sence, EIP's are, in reality, proving very final indeed. It is true that at Warwickshire there was what the Panel described as a "carefully planned walk-out" but the EIP proceeded undisturbed by this and, save for a 'side-swipe' in the Panel Report[32] from the Panel at these protesters that would perforce be the end of the matter. There are no remedies available to anyone who feels that their rights have been infringed since no-one has any rights at an EIP. There could be no appeal on points of law since there is no law on the conduct of an EIP, only the non-statutory code. Presumably the administrative function of the EIP means that the Parliamentary Commissioner could be brought in if any evidence of maladministration could be found which a sympathetic M.P. would countenance but the powers of the Secretary of State concerning the selection of issues and of participants and the powers of the Chairman and Panel to conduct the EIP are so widely drawn that almost nothing could be ultra vines. Of course, s.9 (6) of the 1971 TCP Act as amended by s.3 (1) of the 1972 TCP (Amendment) Act enacts that "An examination under subsection (3) (b) of this section shall constitute a statutory inquiry for the purposes of s.9 1971 section 1 (1) (c) of the Tribunals and Inquiries Act 1971". Thus the cold comfort of the opportunity to ask the

Council on Tribunals to review an EIP is available. Reference has already been made to their well-known paucity of resources for carrying out the task with which they have been charged and this too is regarded as a comparatively unimportant remedy. For any remedy after the close of an EIP will be faced with the insuperable problem of finding a right possessed by the applicant which has been infringed or an administrative rule which has not been complied with. If none of the participants has a right to be present at the EIP at all, then presumably they have no rights not to be sent away from it, silenced at it or generally to be denied a proper hearing. Such rules as govern the setting up of an EIP under the 1972 TCP (Amendment) Act merely confer wide discretion on the Secretary of State to a degree which is hardly capable of identifiable abuse and he in turn delegates some of it to the Chairman and his Panel by the non-statutory Code of Practice, which is not, of course, enforceable at law. The question arises what chance has anyone got of making an outcry publicly? What does Dunlop look for? For the reasons explained no-one is likely to litigate with any hope of success nor is there any useful investigation which can be conducted. The DoE scrutinise their salaried Inspectors in the field, but the ACPI interviewed was clear that no such scrutiny is made of Panels at EIP's, so there could be no initiative from there likely to cause public disquiet. It is submitted that what can be done, which is little indeed, has been done.

There has been a walk-out and a complaint of "speaking into a bottomless void" (Warwickshire) a County Council Chairman expressing himself "disturbed" (Staffordshire) commentators like Bridges and Vielba, Samuels and Dunlop himself showing concern about aspects of the process. Only the physical disruption of those

motorway inquiries at which John Tyme appeared remains to be used and structure plans are usually sufficiently imprecise to avoid arousing powerful emotions on specific issues of the kind that produce such action. The accusation that Dunlop misunderstands the likely reaction of the participants too is relevant here too. The Structure Plan EIP is but the first battle ina protracted campaign for many organisations taking part. They will appear again at the local plan inquiry and perhaps then again at the development control stage at planning permission appeals. Rather than shout about a lost cause like a past EIP, the disappointed participants are far more likely to conserve their energy and resources for the coming battles where they still have a chance of winning. EIP's have proved to absolutely final thus far and superficially the function of finality has been fulfilled in that no EIP has been re-opened and none has become the subject of litigation in the courts. However, the extra instructions and consequent increases of power given to the Chairman and the Panel to invite anyone at all in their absolute discretion to make sure that no-one is missed out and the institution of the inquisitorial Chairman to make sure that all of the areas of the Secretary of State's concern are covered, have all been unnecessary. If there is no incentive to make a fuss about the shortcomings of an EIP and every incentive not to undertake such a wholly unrewarding task, and if the means of challenge are made so feeble and so hard to grasp as to make it impossible then the EIP has achieved the ultimate in finality. It may be that trouble is being stored up for the later stages ind the process but the local plan inquiries are not yet far enough advanced properly to evaluate this. In defiance of all the probable outcomes of such a novel procedure, the EIP has emerged as a model achieving

finality par excellence, not by perfecting completeness and not by wholly satisfying all of the demands for opportunities for participation and a fair hearing of the public, but by the much simpler expedient of making protest futile.

Summary

To summarise the lessons which are available to be learned from the experience of the EIP, it can be stated with some confidence that any new procedural model which is not preceded by a simple check list of intended functions, with some indication of order of importance, is built upon a foundation of sand. Moreover, no assumptions should be made about the ability of particular procedures to fulfil particular functions. The limitations and effects of procedural devices must be carefully appraised and understood before they are either included or rejected.

Finally, it is worth mentioning that, particularly if there is any doubt about the relationship between functions and procedural nature, the need for detailed monitoring and the apparatus for early review has been clearly demonstrated.

[1] I am not aware that there has ever been a complaint that a participant's point of view has been falsely represented.

[2] 1975 J.P.L. p.125

[3] p.81 op. cit.

[4] Table 4.1 on p.82 op. cit

[5] s.9 (3) (b)

[6] p.83 op. cit

7 1975 J.P.L. p.125

8 or it is intended that they should be assumed to; see paragraph 3.51 of the DoE Code of Practice

9 I should add that I am firmly convinced that some District Council representatives are so embarrassed by the rambling length of their colleagues' opening statements that they cut their own to a few disjointed sentences and have to come in again later when the Chairman invites 'all-comers' to contribute. This was the case at Surrey and possibly at Central and East Berkshire as well, although I see no useful purpose to be served by specifying the authorities concerned, a glimpse even of the daily transcript will provide prima facie support for my point.

10 I discount, at present, without any misgivings, the response which higher councils get to their questionnaire. McAuslan (Note 94 on p.710 op. cit) refers to a questionnaire by Warwickshire, saying "It produced a 10 per cent return. Is this statistically insignificant or a triumph for public participation?" Typically, McAuslan does not answer this question. I take leave to reply that it is statistically insignificant as are most responses to such questionnaires.

11 although beyond the provision of technical assistance it is difficult to think exactly how this could be done

12 1976 J.P.L. Examination in Public of Structure Plan - An Emerging Procedure Part 2.

13 op. cit.

14 op. cit.

15 1976 University of Brimingham Institute of Judicial Aministration records in Table 2.2 of p.6

16 Structure Plan Examinations in Public 1976 J.P.L. p.125

17 When I interviewed the Deputy Chief Planning Officer of Berkshire County Council, Mr. Patterson, one of the major participants in the Central and East Berkshire Structure Plans EIP, he seemed fully aware of the problem of the obvious disparity in technical resources even between his authority and the districts and certainly between the County Council

and a private "own account individual". If Mr. Patterson is a representative of his profession, in this awareness, one wonders what purpose some County authorities (and sometimes lower tiers of administration too) hope to serve by flaunting their superiority of expertise and resources so shamelessly. When one is faced with a prospect of confronting what was literally a line of participants utilising this approach to the EIP, it is easy to understand why more people do not believe that they have a real opportunity to participate and hard to understand how 13 "own account individuals" (Table 2.2 Vielba op. cit.) found the courage and hope of a profitable participation to appear at the Staffordshire and Leicestershire EIP's.

18 Table 2.2 op. cit.

19 JPL 1976 op. cit.

20 How, bearing in mind these retrogressivechanges, the apologists for the EIP can liken it to a seminar is difficult to explain. One can only assume that they have attended a singularly sterile type of seminar during their education or elsewhere where spontaneous challenge is forbidden and the seminar leader dominates the whole process giving each member a chance to make a speech in turn. My understanding of a seminar is of a lively free-ranging discussion with the participants striking sparks off each other for the illumination of all and I would have thought that a much more attractive proposition to a 'would-be' participant than the highly formal reality of the present, which has frustrated to a great degree the foregoing attempts to achieve informality.

21 two is the most I have come across at any EIP I have studied

22 none to my knowledge

23 however speciously is not my concern here

24 House of Lords debate on the 1972 Amendment Act

25 op. cit.

26 believing what I am prepared to believe that most Inspectors are fair-minded men and most Chairmen presumably likewise

[27] Dunlop op. cit.

[28] op. cit.

[29] op. cit.

[30] op. cit.

[31] op. cit.

[32] See the Introduction to the Warwickshire Structure Plan Panel Report

LOCAL PLANS AND INQUIRIES

The second half of this thesis deals with planning inquiries of several kinds, but is mainly concerned with local plan inquiries. The area of local plan inquiries is the one which I believe should be dealt with by legislation as a matter of some urgency. At least at structure plan level an attempt albeit an ill-fated one has been made by central government to produce a procedural format suitable to a particular kind of plan. At local plan level a point has been reached where in the absence of reform from above, the participants themselves have got together to try to impose reform on an unwilling Inspector. This happened at the Lewes District Council's Local Plan Inquiry which was a central object of my research and I shall deal, at some length, with the lessons, encouraging and salutory which can be derived from that. Deriving from the controversy generated or revived by the Lewes Inquiry is the whole question of the role of the lawyer at an inquiry. I conducted a questionaire among all the participants at two hotly-contested Compulsory Purchase Order Inquiries (C.P.O. Inquiries) under Part III 1957 Housing Act and observed the role of lawyers at these and at two more inquiries, the Westminster City Local Plan Inquiry and a small planning permission appeal involving Medina Borough Council on the Isle of Wight. I do not propose to adduce statistical evidence from my questionaires and observations because I am well aware that they are insufficiently representative to stand the test of minimum scientific requirements as well as being necessarily small, I shall use them instead to provide an impression of the 'grass-roots' views, to aid my consideration of a better way to examine local plans, in the hope that some of the pit-falls of the EIP can thereby be avoided. If we produce a model which conforms more nearly to the requirements and expectations of those who have to make it work in the field rather than the perceptions of outsiders, an initial improvement will have been made and the chances of success increased. I shall frequently quote what local authority officers and objectors and their representatives have said to me and occasionally where it has been possible to secure an interview,

what Inspectors have said to me, because I think that any reform, or any denial of reform which fails to take into account what the denizens of the system think is doomed to be opposed, evaded and undermined.

However, to consider whether lawyers are needed in an inquiry into local plans and how the local plan inquiry should be composed is to pre-empt the fundamental question posed by Martin Jewell (1979 JPL. p. 216) namely "Is there an alternative to the Public Inquiry?". This was a contribution to the debate initiated by Peter Boydell Q.C. on "The Roles of the Lawyer in the Planning System" and deals with a specific example of an informal kind of inquiry within the London Borough of Enfield, Mr. Jewell's own authority. Mr. Jewell's article is necessarily limited in its scope to his personal experience of a meeting held in lieu of a public inquiry and does not purport to examine all the alternatives for different kinds of planning decision. Since it specifically refers to a planning permission appeal against a supermarket proposal, I shall only mention Enfield's solution briefly, since there are several other purported alternatives for different kinds of public inquiry to be discussed. I intend to examine these alternatives before making the assumption that a public inquiry is necessary at all.

1. ALTERNATIVE MODELS

(i) Panel Hearing Procedures

There is an outline of what is involved in a panel hearing in 1977 J.P.L. at p. 406, but briefly what it comprises is an improvement in communication and understanding between local authority and objectors. The local authority planning committee publicises the details relating to the hearing both through the newspapers and by informing anyone who has made representations through the normal procedure when departure from a structure or development plan is proposed. All interested parties are required to notify the local authority if they wish to appear. The panel comprises the Chairman and Vice-Chairman of the local authority Planning Committee and a senior

member of the opposition party. The Panel then submits a Report to the Planning Committee in a mirror-image of the relationship between an EIP Panel and the Secretary of State. The Planning Committee then either agrees with the Report or disagrees and gives reasons for its final decision. This procedure is mainly aimed at improving public relations and neither councillors nor council officers can either be cross-examined or cross-examine themselves. It does lead to better informed Council decisions and it does establish a proper emphasis on councillors as decision-makers rather than council officers as decision-defenders. It is submitted that it could not be a substitute for a public inquiry because there would be no impartial person or persons to control the hearing, neither would objectors have any right to probe the Council's case. In common parlance the procedure 'lacks teeth' to get under the surface of cases presented. As a supplement to a formal opportunity for objection it has much to commend it, especially for controversial planning permission applications and the local authority's own developments, but it is too ineffectual and unable to guarantee objectors a fair hearing to be a substitute for the public inquiry. For a local plan the panel hearing procedure would be seriously deficient because it would not allow scope for detailed formal objections and would thus be an infringement of an existing right, which is not a good start to reform.

(ii) The Mini EIP

This is the name which has been given to the Enfield scheme described in Jewell's J.P.L. article. Here Enfield were faced with several demands for the Secretary of State to call in a planning permission request which they proposed to grant. The brief of

the meeting which they called was "to enable those who have made representatives regarding the outline application to be made fully aware of the scheme as proposed and its effect on the surrounding area; to be given an opportunity in the light of these explanations to expand on their representations; and to examine by way of a dialogue the effect on the scheme of the various representations". An independent Chairman of high professional repute was chosen and he invited the planning and technical officers to make opening background statements like Chief Planning Officers at EIP's. A debate involving everyone then began and was expanded in the inquisitorial manner by the Chairman to "clarify the implications and possible areas of conflict" Jewell, who ends the article by recording evidently with relief that "the flood of letters about the scheme arriving in the Planning Office and appearing in the local press ceased overnight" has an obvious interest in the model used and as such his tributes to its excellence must be regarded warily. The public satisfaction which he describes is an important factor but not necessarily a decisive one. Without the right to cross-examine and with no advocate to present their case for them, lay objectors will be at a disadvantage in free-ranging debate if opposed by skilled, articulate professional officers, whether or not they feel pleased with the course of events. It should also be remembered that under this model the local authority has the choice of Chairman with presumably no limits to their discretion and it is not hard to envisage the opportunities for and accusations of abuse in exercising that discretion.

(iii) Planning Inquiry Commissions

Although local plans are not among the matters listed in s. 48 (1) of the 1971 TCP Act as referable to a

planning inquiry commission, if it were thought desirable the sub-section could easily be extended to include local plans. In practice this would not be a very effective method of improving the hearing of objections to local plans. The planning inquiry commission is a kind of planning inquiry de luxe, with a more esoteric discussion of the special circumstances surrounding the proposal or plan as a preliminary stage to set the scene for the more mundane task of going through the hearing of the objectors. These special circumstances are either "considerations of national or regional importance" under s. 48 (2) (a) 1971 TCP Act or technical or scientific aspects ... of ... unfamiliar ... character" under s. 48 (2) (b) 1971 TCP Act. There are good reasons why the planning inquiry commission should be used more frequently in inquiries meeting these criteria since it would highlight those vital aspects which might otherwise be buried under the more parochial objection in the ordinary inquiry stage. Whether this kind of hearing could usefully be extended to local plan inquiries is more problematical. One feature which would have to be modified is this were attempted is the discretion of the Secretary of State. Under s. 48 (2) 1971 TCP Act, an appropriate matter would only be referred to a planning inquiry commission "if it appears expedient to the responsible Minister or Ministers". This would presumably be replaced by discretion vested in the local authority, since under the present local plans procedure it is to them that the appointed person or persons would make their report. That would be no bad thing where the local authority maintained good relations and a high degree of consultation with the community in general and persons and organisations objecting in particular, since the local authority would then be well-placed

to respond to the kind of inquiry wished for by the people concerned. If these conditions did not pertain, however, the power of choosing a particular type of hearing might be exercised in ignorance of the wishes of objectors or worse still, to frustrate them. This is a most important factor to consider in assessing the use of planning inquiry commissions for local plans especially, but should be borne in mind throughout consideration of local plan inquiries. Any power given to the local authority, to Inspectors, to anybody, aimed at flexibility to meet individual requirements is capable of misuse and will not always benefit anyone except the recipients of that power.

A more obvious objection to the use of planning inquiry commissions for local plans is that they were not really designed for the discussion of local matters, but to put local matters in a national or regional context. One cannot easily conceive of a local plan which would need to take account of a higher level of strategy than the Structure Plan. Technical and scientific aspects of such a magnitude as would require separate treatment, hardly ever occur in local plans. The terms of reference for planning inquiry commissions could be extended to include "matters of outstanding local interest and concern", but this would clearly duplicate the second stage; the public inquiry proper, where such matters invariably arise and are explored.

(iv) Inquisitorial Model

I choose for purposes of explanation the trial system in West Germany. Here a three-judge panel gives judgment in civil litigation, one member of which is the main active participant in the course of hearings before the panel. The judge is 'affirmatively charged' with taking steps to narrow the conflict to areas of irreconcileable opposition and then fully to investigate them by requesting clarification of the respective

contentions, visiting the site (if any) and generally sifting the evidence. Proceedings are informal and the main judge is able to comment on and state the law for the action or even change its basis if that is misconceived. The order of proceedings is wholly at the instance of the judge, although the parties have certain guaranteed minimum rights which may not be infringed without rendering the proceedings a nullity. Much more importantly, all expert witnesses are called by the court and never 'belong' to any of the parties involved. The most obvious disincentive to applying this scheme in the British planning system is the extraordinary burden which is places on the central decision-making or information-collecting figure. It would be very difficult indeed to find a body of people capable of discharging such an onerous duty at a planning hearing of any kind in the contemporary civil service. Some people would like to see judges involved in planning hearings along the lines described by Fogg.[5] The experience in this country has been most discouraging and few are keen to try the experiment. In matters of planning law which have gone to the Court of Appeal in particular there has been criticism of lack of expertise and modern understanding of some judges, so the prospects for judges involved with pure planning theory are bleak. There was considerable dissatisfaction too with the particular variation on the planning inquiry at Windscale for the hearing of objections to the nuclear waste re-processing plant there and especially the role played by Parker J. The Journal of Planning Law[6] rather perversely reported that our planning inquiries continue "to attract admiration from overseas visitors". They seem to have been particularly impressed by the "facilities provided at Windscale for the examination of evidence by opposing sides and by

the opportunity given to them to cross-examine each other's witnesses". This reassurance sounds rather odd in the light of the heavy press and academic criticism of the way in which issues were quite inadequately explored and consequently left obscure, because of the failures of Parker J.
One imagines that current members of the DoE Planning Inspectorate would find it very difficult indeed to adapt to the much heavier demands of the wholly inquisitorial style. Any planning Inspector[7] is likely to say that he derives very considerable assistance from the lawyers involved in the adversarial process and it can be foreseen that he would be under constant pressure to probe further and deeper while remaining impartial. This would accentuate the differences between those who were legally represented and those who where not. Against this the semi-inquisitorial approach of the Structure Plan EIP has not been wholly unsuccessful, although this may be due to the vestigeal ability of participants to put points to one another and ask questions through the Chairman, an ability which would disappear with the fully inquisitorial system. The usually higher degree to which the local authority representatives are briefed (within limited topics) might differentiate it from inquiries at lower levels in the planning system, where preparation and knowledge might sometimes be much lower and the inquisitor's job almost hopelessly difficult I certainly anticipate that Inspectors would offer some resistance to a model which demanded so much of them and took away their most useful allies, the respective advocates, and as I have said, the wishes of the operatives of the system at ground level will only be ignored at some peril.

(v) The Steering Group

Following the disruption of inquiries at Aire Valley,

Epping, Winchester, Archway and Hornchurch (inter alia) and the development of John Tymes's celebrated tactics[8] there was in the DoE an outbreak of what is known colloquially as "the jitters" about public inquiries. Geoffrey Rippon, the then Secretary of State for the Environment, faced with another potentially emotive issue at Bath tried an experiment to try to avert a public inquiry which he foresaw would be "long drawn-out and expensive" and where "even the basic facts will not be agreed and the inquiry might be inconclusive". In short the DoE was backing away from a head-on conflict between Bath City and Avon County Councils and their ambitious schemes for Bath and the Bath Preservation Trust (BPT) an ultra-reactionary group, numerically small, but wealthy and influential who espoused Minimum Physical Growth (MPG). Geoffrey Rippon's solution was a steering group comprising representatives of the two councils, the Bath Preservation Trust and the DoE who would guide and brief a working group of expert consultants chosen by both sides. In the event, the consultants had to produce the brief themselves because the BPT could not accept the Secretary of State's formulation and this brief merely proposed more research by the consultants, paid for by the respective sides.[9] The Steering group set up a Technical Liaison Group comprising experts from the DoE, the Councils and the consultants, and the Bath Conservation Area Advisory Committee (BCAA) was also set up to pass on the minutes of the Steering Group to members of the local community and amenity societies. Couper and Davies[10] very ably point out the disadvantages of this system in planning an area. The use of expert consultants is based on the fallacy that an objectively correct answer can be discovered at all. In the end it is the conflict of interest which must be resolved by one

method or another, not the conflict of fact, which is only a means to an end and this the Steering Group never attempted to do. The sole presence of the BPT cast doubts on the representative constitution of the Steering Group since their membership was a tiny proportion of Bath residents and included many non-residents who were among the most vociferous. Other possible objectors were excluded from the Steering Group and only acknowledged in the BCAAC, who merely received information in a role somewhat spuriously supposed to further public participation. This is the greatest cause of concern to Couper and Davies and is the best reason why the Steering Group should not be used again. Public Inquiries need to take into account all shades of opinion organised and individual, within the community and this is especially true of local plans. No substitute for the local plan inquiry could be admitted which provided an inferior opportunity for everyone's opinion to be heard, the only justification for change is improvement.

I hope to have shown from this outline of the fully-deve d alternative s s t o ideal for is waiting ready at hand to be adop . In every e at least one grave defect makes its use instead of the public inquiry into local plans impossible. In short, there is no easy answer. Regarding this as established, I turn to a review of some theoretical alternatives to give an early indication of what can be safely ed and wh ust be explored.

2. The Theory of Decision-Making

As a starting-point for my discussion, I have chosen a classification of five methods of decision-making, produced by John Thibaut and Laurens Walker as a result of research conducted at the University of North Carolina[11]. I reproduce my own interpretation of

their work in Table B below.

TABLE B

1. Autocratic - Parties put their respective desired outcomes to adjudicator who decides the actual outcome.

2. Arbitration - Parties put their respective desired outcomes to adjudicator, then explain and support their case with witnesses, cross-examination and evidence. The adjudicator then decides the actual outcome in the light of what he has heard.

3. Moot - Parties put their respective desired outcomes to adjudicator, then explain and support their case with witnesses, cross-examination and evidence. The parties and the adjudicator then discuss the respective desired outcomes together and all have to agree on the actual outcome (N.B. in Thibaut and Walker's research this could not be a compromise, which was a serious drawback. Because of the nature of the problems to be resolved under consideration in my thesis, a compromise would be very likely).

4. Mediation - Parties put their respective desired outcomes to 'adjudicators' then explain and support their case with witnesses, cross-examination and evidence. The 'adjudicator' suggests an actual outcome but the parties decide together whether to accept it or not. If not, the 'adjudicator' provides a more acceptable outcome

to be decided upon by the parties.

5. Bargaining - Parties put their respective desired outcomes to each other, then explain and support their case with witnesses, cross-examination and evidence. The parties then decide upon the actual outcome.

This is only a preliminary to making a choice between inquisitorial and adversarial proceedings. That is a matter of how the hearing is to be conducted rather than the form of decision making which I am concerned with here. The reason that I wish to establish in advance what the particular properties of different models are is that any list of intended functions must be an ideal and it is more efficient to explore the possibilities and then incorporate as much of the ideal as possible, than to prepare a fanciful and roseate collection of ideals and then try to achieve everything. With the Structure Plan EIP there was far too little concentration on the adequacy of the procedural measures chosen and as a consequence inadequate and even counter-productive ones were chosen. Attempts were made to satisfy perceived ideals without any regard to the possibility of achieving them. By analysing Thibaut and Walker's classification, I believe that clear facts will emerge as to results obtained from different models.

(a) Speed

It is almost a trite observation that the five models have been listed in descending order of expedition in producing a result. In the first model, Arbitration, the adjudicator has no cross-examination to follow, no witness or evidence to be sifted. He simply looks at the submitted cases of the two parties and decides in favour of one or the other usually according to a set

of pre-established criteria or rules. Thus he can produce his decision as soon as he can relate the facts to the criteria.

In the second model, Arbitration, the adjudicator must take into account all the evidence, evidence of witnesses and cross-examination which he has heard at a hearing designed to elicit as much information as possible. Whether this is adversarial or inquisitorial is an important, but subsequent question to that of the decision-making model. Many more factors than the stated interests of the parties will emerge in the course of such a process and in addition to the time taken to hear them, the adjudicator has a much more complex task in reaching his decision.

In the third model, the Moot, for the first time the element of consensus is present. In the first two, the adjudicator can produce a decision in as short a time as it takes to satisfy himself with no regard to its acceptability to the contesting parties and no need to persuade them of anything. The decision is imposed. In the Moot, either a compromise must be achieved or one party must agree to lose. It is unlikely that a compromise will be discovered after the beginning of the hearing which would have satisfied both parties ab initio, unless the pre-hearing consultation procedure is peculiarly primitive. The compromise is much more likely to have to be effected by persuading one or all of the parties to alter their position so that everyone's position becomes mutually acceptable. The process of persuasion will be a slow one and the eventual construction of the decision a careful balancing

act. One factor is present which makes this more expeditious than the models below. The adjudicator is involved throughout in hearing the cases and in constructing a decision. Provided that he is accepted as impartial he will have a significant speeding-up effect as he will not be hampered by barriers of suspicion and distrust. His guidance will be the more readily accepted because it is perceived by the parties to be disinterested and aimed at achieving an amicable solution.

In the Mediation model, although the 'adjudicator', as I will continue to call him for the sake of consistency, can achieve a certain degree of speed by producing a 'good' i.e. mutually acceptable solution; it is very often likely to be delayed since he has no part in the final decision-making stage. This is undertaken by the parties and however skilfully constructed the 'adjudicator's' solution the parties are likely always to use the decision-making stage as an opportunity to achieve all their demands at the expense of the other, and the parties may take a long time to reach the realisation that a less selfish approach is inevitable.

If the parties have not been able to settle their differences before the hearing, a format based on Bargaining will by definition be a very long drawn-out affair. There will be no impartial third-party to try to avoid deadlock and the manoeuvering for advantage will continue until one party tires or runs out of the resources to go on or until a realisation is reached that there is no further profit to be gained by remaining intransigent. While the prospect of gain (of whatever sort) remains, the bargaining

will drag on seemingly interminably.

(b) Efficiency - Third Party Control

The more control which a third party exercises over all the stages of the hearing and decision-making process, the more certainly minimum standards of efficiency can be guaranteed. This is inevitably a generalisation, dependent upon the individual qualities of an adjudicator under, say, Arbitration and of the respective parties under Bargaining, but it is logical to assume that only an independent person, whose job it is, can be prevailed upon to conduct the hearing and decision-making in a particular way. With no such third party presence to influence the actual procedure, as in Bargaining, no guarantees can be made about the way in which the hearing will proceed or the decision arrived at, up to and including coercion, threats and intimidation. Provided the correct procedure (or alternatives to meet different eventualities) is established and the adjudicator properly trained, efficiency will tend to increase with an increase in the extent to which the adjudicator is involved and decrease conversely. Thus in the Autocratic method, a complete guarantee of due process could be given, since the application of criteria to facts could be made purely mechanical and conferring no discretion on the adjudicator. Under Arbitration, the adjudicator still has a firm grip of proceedings and can be expected to follow whatever he has been taught is the most efficient method, although unless an inquisitorial hearing is chosen, efficiency of case presentation will be out of his hands and he must also have some flexibility of interpretation absent from the cast-iron, mechanical Autocratic model,

which is a denial of guaranteed efficiency. Under the Moot system, the adjudicator would have to accommodate greater intrusion of non-regulated methods. Since all the parties would have to be satisfied as well as the adjudicator, it would be counter-productive to try to impose a formal scheme of decision-making onto the parties; since their agreement is vital and that is likely to rest upon goodwill and amenability. Under mediation, the 'adjudicator' could possibly preserve some sort of formality and a guarantee of efficiency in the hearing stage, but since the decision-making stage, once his suggestion was submitted would be completely out of his control no certainty could be achieved in advance as to how that decision-making would be conducted. As I have stated above, no-one would be incontrol of the Bargaining procedure, which would be a public continuation of that negotiating stage which should precede all conflict resolution. The methods and techniques employed and whether they were at all efficient in clarifying information or moving towards a decision would be entirely at the behest of the parties involved. As the Ford Motor Co. and its workforce discovered in the autumn of 1978 any process which involves interference by a third party, even if it is the Government, is not bargaining at all however good or bad that process is.

(c) Public Participation

This term has, unfortunately, come to be watered down in its common usage in this country. If I equated public participation with lack of third party control, someone grounded in the planning system of Britain and accustomed to thinking of public participation as a cross between a public relations exercise and

preliminary fact-finding before an EIP, would accuse me of distortion. I mean public participation in the sense of rungs 6, 7 and 8 of Sherry Arnstein's well-known ladder. These are the rungs bracketed together collectively under the title "Degrees of citizen power" and are in ascending order of participation Partnership, Delegated Power and Citizen Control. These are synonymous with participation in decision-making, from partnership in it (Rung No. 6) to Control of it (Rung No. 8). In this sense of the term public participation, the proper sense in my view, only Moot, Mediation, and Bargaining offer any opportunities for participation at all. However, much opportunity for hearing the opinions of the participants is accorded under Autocratic (hardly any) or Arbitration (potentially a great deal) it still falls short of true public participation. In the Moot there is partnership in decision-making between the parties and the adjudicator. In Mediation there is prima facie control of the decison-making process by participants, but in fact their control will be affected according to the skill with which the 'adjudicator's' suggestion is framed. Both parties may be persuaded that a referendum or questionaire should be held to resolve a conflict based on different claims as to popular support, and the decision-making would then have been finessed from their hands. Only in the Bargaining process is there total and impregnable control over decision-making by the participants.

3. <u>The Functions of a Local Plan Inquiry</u>

I have considered three main areas of potential within

the Thibaut and Walker classification of decision-making techniques. As I belatedly recommended to the legislators of the EIP in the first half of this thesis, selection of an appropriate mechanism should only be undertaken after a list of objectives has been decided upon with some indications as to which, if any, are sacrosanct and which can be infringed upon. I have taken it upon myself to decide what the functions of a local plan hearing are in the absence of a pronouncement on the subject from a proper and authoritative body such as Parliament, or some other governmental body with a claim to a more than sectional interest.

(i) Public Participation

I have explained above what I mean by this and I put it first because it is of paramount importance. The case for true public participation is the same as the case for democracy. James Simmie, following Arnstein and other American sociologists, does not accept that "the town planning version" of participation is democratic in that it involves a redistribution of power and one of the central tenets of his work is that "participation without power is a charade". Thus the distinction has been preserved between 'true public participation' and "the town planning version" which merely "increases the flow of information between planners and their clients"[12]. Planning is undertaken by government at various levels and Hampton's presumption[13] seems a fair one; "Democratic institutions are presumably concerned to implement policies acceptable to the people they serve". It is difficult to understand how a democrat can oppose public participation.

The objections of the planners as represented by Sir Desmond Heap[14] are quite facile and readily dealt with. His first objection is that "one of the worst things about citizen participation is that the people participating are frequently ill-informed". It is excusable to question the veracity of this statement since any citizen attending an inquiry has by definition been sufficiently well-informed to discover the subject matter, time and venue of the inquiry, which given the absence of full-scale statutory publicity requirements, is no mean feat. He further objects that no citizen or group at inquiries he has seen has ever come forward "to advance the case of the local authority". This proves no more than that local authorities are not producing the kind of plans which excite support. Heap's third objection is that citizen participation "leads increasingly to what I would call town planning by the neighbour". This says nothing. The whole point of participation is that it should lead to planning by the neighbour and if he is angry it should afford him an opportunity to remove the source of his anger. A rather more reasonable objection to public participation is one of the resources. If the response were anything like the level hoped for by proponents of participation, public inquiries would be even more costly and time-consuming than they are now. Here again Hampton[15] supplies a riposte; "expense incurred in discovering the general consensus is surely worthwhile". The most important quality of the mechanism chosen for resolving planning conflict is taken to be its ability

to take account of all involved interests and to produce a solution which involves as little 'losing' by as few people as possible. At local plan level, participation by the public should mean all those organisations and individuals who choose to make representations concerning specific parts of the plan, and also councillors to represent those who choose not to take any active part themselves. The only role which can be justified for council officers is that of the witness. They represent no-one[16].

(ii) Efficiency - Third Party Control

There are several advantages to having a controlled and structured hearing, some of them intrinsic and some of them conducive towards the fulfillment of other functions. If a third party is to be involved at all, either at the hearing or decision-making stage, he will be concerned to see that the process passes off efficiently, since this is the reason for his presence. Any adjudicator who is exposed to total informality and practices to which he is not accustomed will be uncomfortable, resentful and probably unsympathetic to the parties. This is not a reason for having a third party involved, but if he is to be, then proceedings must be conducted in a way which is familiar and acceptable to him and he is likely to respond better if he has some power to ensure compliance with this regular conduct. Secondly, some sort of order of proceeding helps to ensure completeness, which is inherently good. While no importance whatever is attached to the idea of Samuels[17] as well as many planners, that the 'quality'

of a decision can be improved by a particular kind of input, since it is difficult to assert the view that planning decisions can be shown to be of a good or bad quality, nevertheless the converse is true; any decision which is made with no information will be arbitrary and any decision made with imperfect information runs the risk of being so. This does not mean that by increasing information you can improve the 'quality' of the decision, whatever that means, you just avoid the risk of a decision made without 'due process' the proper consideration of all material facts. If any matter is left unconsidered, any party feeling themselves injured by this may either want the inquiry reopened which will be costly and time-consuming (delaying the early decision which builders in particular need) or will else nurse a grievance, which defeats the whole object of public participation and consensus planning. Public participation also benefits from control since a properly-briefed adjudicator can ensure that the weaker voices are encouraged and given a fair chance, whereas a discussion governed by the principle of laissez-faire inevitably involves the domination of the articulate or the garrulous. Third party control means that there is some independent, impartial referee to appeal to, if one party feels that they are being unfairly treated. In an uncontrolled debate, such as might obtain under the Bargaining model, the only persons available to appeal to would be the opposition and some of the protagonists at planning inquires do not seem to have a

highly developed sense of fair play. Order of proceedings also aids the individual participant or representative who can only take a limited amount of time off work and need to know exactly when they will be needed. This is not ideally managed at present (and reference will be made later to some sound guide-lines established by Eric Cox, on how programme officers should go about this), but it would be infinitely worse without the discipline of some measure of third party control. Another of the functions of the adjudicator would be to pronounce on legal and technical matters which might ramble on under a complete misapprehansion before arriving at a decision which would have to be declared invalid. The adjudicator is needed to keep the discussion within the parameters appointed for the hearing. Ordered discussion also makes for easier understanding by observers, spectators and other participants especially those who are only able to attend on a piece-meal basis, whereas unstructured discussions may range over past arguments, through areas of irrelevance and back to the matter in hand in a manner quite incomprehensible to anyone who has not followed each step.

(iii) Public Confidence and Acceptance

In local planning, it is not enough that opportunities for full public participation should be legally available. There must be very full confidence in the hearing and decision-making processes primarily amongh those who wish to take part, but also amongst those who choose not to. If an adjudicatoris to be involved he must be absolutely unimpeachable in his antecedents and in his disinterest-

ness, not merely in fact (and this was the failure to distinguish fact from appearance of which the ACPI interviewed was guilty) but also in the appearance of his role. If there is to be a procedural frame-work, including an order of hearing, it must be clearly apparent that this is to aid public participation and a fair hearing for all parties. The impression should not be given of undue preoccupation with speed and cost, which to judge from the informal interviewing of participants at the Lewes Local Plan and Portsmouth CPO Inquiries do not figure largely in the minds of ordinary citizens, provided that they do not become ridiculously excessive. A fair hearing conducted impartially and the fullest opportunity for representing the wishes of members of the community in the making of the decision are the requirements of most of the people to whom I spoke. Openness and proximity are both important related qualities here. The decision-making should not be done behind closed doors away from participants and it should not be undertaken in a remote Whitehall office. Proposals for satisfying the needs for a readily-accessible decision-making process will be discussed below. Because of the lack of understanding of the distinction between reality and appearance, all efforts at securing public approval of and aquiescence in local planning has been directed towards the reality. Far too little emphasis has been placed on public relations, and here again a constructive attitude by a programme officer can be invaluable. Of course, if there is to be greater openness

it is no use projecting an empty illusion, because when the truth becomes known, disillusionment and scepticism will characterise the public reaction. There must be genuine public participation, fairness and impartiality in fact, but there must be a much greater emphasis on getting across the message that these elements are present and that there are opportunities to be taken advantage of. One can sympathise with the complaint of the ACPI that his Inspectors are regarded suspiciously, but the local authorities running the inquiries are to blame for this and not the public. When a marketable public hearing has been produced (and the claim which will be made for the proposed model in this thesis amounts to no less than that) then it is up to the local authorities to 'sell' it to their public. The suspicion will always remain, often unjustly in some quarters that too low a profile is preserved because public confidence would not be improved by closer scrutiny and greater awareness of the qualities of the present system. So, as has been said, the model chosen must be sufficiently well made to correspond to the image projected to the public, so that the favourable impression is confirmed and not dispelled by greater openness and wider publicity.

(iv) Speed

It appears that many criticisms of Development Plan Inquiries - Structure Plan EIP's and Public Inquires may be ill-founded. The temptation to look at the whole process as a unitary system is ever present and as a result

the actual hearing stage is branded as unduly lengthy because the pre-hearing and decision-making stages go on for a long time. In fact, it is probably rare for a hearing itself to be conducted so inexpeditiously as to arouse public resentment. The decision-making process for certain types of inquiry is, however, unquestionably too long. The pressure to have a shorter hearing, which may prejudice the vitally important function of public participation could be removed entirely if the decision-making were completed without delay. The hearing could even be lengthened so far as was thought necessary to fulfil other, more important functions than speed, and yet months or years could be saved on the total length if the decision-making did not have to remove to the corridors of Whitehall for final determination. One may well agree with Mr. Page and his statement in the House of Commons which was cited above in the discussion of the function of Structure Plan EIP's "We want quicker decisions". This is not the same as pressing for indecent haste in the hearing stage. The proposed decision-making model which will be advocated below, will not only save time into which the hearing or hearings can be expanded if necessary, it will save time overall. Quicker decisions will help to avoid the horrors of blight and they will remove the uncertainty from development control at an early stage since the local plan will be known to have the acceptance of a wide range of active citizens in addition to the representations of councillors speaking for those who did not choose to participate. The ghost of

the GLDP should be exorcised for all time, and while due expedition should always be considered a function of any hearing as costly and demanding as a local plan inquiry, it is here rightly relegated to its true place at the foot of the list of intended functions.

4. A Choice of Decision-Making Model for Local Plans

(i) Public Participation

Of the five kinds of decision-making mechanism identified in the Thibaut and Walker classification, only three are capable of meeting the first criterion, the first intended function, namely public participation in decision-making, which has been described as being decision-making involving participants on behalf of themselves or organisations, and local councillors to provide some sort of representation for non-participants. The reason for this is simple. Neither the Autocratic nor Arbitration models allow any scope for decision-making other than by the adjudicator. Within my definition, that is a negation of public participation. At best only an opportunity to influence the judgment of the decision-maker is offered and at worst local people have no chance at all to influence the decision about their environment. While in many respects the decision by the Secretary of State on Structure Plans, planning permission appeals and CPO's makes it akin to Arbitration, this model is ruled out as is the Autocratic one from these deliberations of a suitable choice for local plans. This leaves a choice of three; Moot, Mediation and

Bargaining. All of these are capable of accommodating proper public participation to a lesser or greater extent and must all be brought into the picture for consideration under other headings. On purely public participation grounds either Mediation or Bargaining would be preferable to the Moot. In the Moot, the participants will only be able to make their decision in conjunction with the adjudicator and with his consent. This would only amount to Partnership (Rung 6) on Arnstein's ladder and cannot offer the fullest kind of participation, namely Citizen Control (Rung 8). This would seem most likely to be achieved by Bargaining, being an extreme form of control of decision-making, (by the participants) where no active third party is present at all throughout the entire process. However, the theory may be shown to be deficient in practice. Better opportunities for public participation could be expected to occur within the hearing if it were not wholly controlled by participants, because of the likelihood of domination of weaker participants by stronger ones. I look for participation in decision-making with optimism only where it follows proper opportunity for participation in the hearing stage and I feel that this opportunity is more likely to be given by the Mediation than by the Bargaining model. Thus even on the grounds of public participation alone the most extreme kind of control is not that which is likely to produce the best opportunities for public participation throughout the hearing and decision-making stages, but the Mediation Model.

(ii) Efficiency - Third Party Control

Since the Autocratic and Arbitration models have already been ruled out on the grounds that they cannot possibly fulfil the most important function of a local plan hearing, only the remaining three models need be considered under this heading. The Bargaining model is severely handicapped here because of the virtual impossibility of attaching safeguards to a process which has by definition been passed out of the control of third parties into that of the participants. The participants will literally be at each other's mercy. This would compromise public participation opportunities for less articulate, less confident, more deferential, unrepresented participants. It is likely that the efficient exploration of all material considerations would be jeopardised with perhaps no trained or experienced adjudicator involved in hearing or decision-making and no-one affirmatively charged with the task of probing and completing the examination of all the relevant matters. It is hard to see that the public would find a system so obviously weighted in favour of the big battalions acceptable and most improbable that the confidence in impartial treatment would approach that accorded at present to Inspectors, never mind an adjudicator such as a High Court Judge. It has already been suggested that the bargaining would be a continuous process, continuing from pre-hearing negotiation and spilling over into the decision-making, which is likely to be protracted by the lack of a third party. Increasingly, one comes to the conclusion

that these compound disadvantages emanating from the absence of third party control are overwhelming. All the functions of the local plan hearing will tend to be put at risk if Bargaining is adopted because of the uncertainty and unpredictability of the actual course of proceedings and accordingly it is proposed to dismiss it in favour of one of the two remaining models the Moot or Mediation. The clear advantage in this area which the Moot enjoys over Mediation is that the adjudicator is present throughout in the Moot whereas his influence is only included in the hearing stage of Mediation. This is likely to benefit the participants who will be constantly reminded of the need to be reasonable and moderate in their demands and concessions while formulating the decision. Experience is always at a premium in dealing with delicate relations such as those between a local authority and section of the electorate, and a trained and tested adjudicator should ensure a constructive diplomacy to the decision-making stage which might well be absent if the participants were left to battle it out alone.

(iii) Public Confidence and Acceptance.

All the participants in the local plan hearing have a vested interest of some sort. They have a particular conception of what the future of their locality should be ideally. The acceptance by other participants and the community in general of solutions proposed by decision-makers so obviously partisan is doubtful. Any stage of the process in which there was no impartial third-party presence

would become suspect; Mediation by the 'adjudicator' might be inconclusive and in the last resort the parties themselves would decide. If the 'adjudicator' was unable to get any of the remaining disputants to agree, the issues could well have reached a position where emotions, possibly with strong ideological overtones were running high and no decision reached in such an atmosphere will be regarded by the public or other participants as calmly and rationally achieved. Relying on one side to counter-balance the pull of the other is an extremely risky presumption; no-one will believe that the side making concessions did not do so because of lack of strength to support its own case. For example if a property development company, which made no secret of its willingness to bargain for planning gain, was able to gain concessions from a local authority having undertaken the decision-making stage together, there would be scepticism about the means by which the local authority had been brought to see that the proposals of the property developers were beneficial in the future planning of the area. If the presence, and active involvement of an impartial third party could not banish the dubious practice of unofficial bargaining, it could at least prevent every decision being coloured with suspicion of a deal and would reassure many doubters that the decision-making itself was also being conducted in a fair and unexceptionable way. Although the use of the quasi-judicial model has been the source of many faults of the inquiry system, any model which can succeed in emulating the

prestige and public confidence of the judicial system has an in-built advantage and where this can be done without any cost in terms of disadvantages incurred elsewhere, it should be strong evidence to support such a model. While there are real dangers in a hearing which resembled a court as closely as do public inquirires at present[18], if a judge-like figure can give authority and stature to the process, then let us choose a model which incorporates such a figure throughout. Almost nothing can be attempted by the participants without the adjudicator's acquiescence and there could be no better reassurance to those who are used to regarding a judge as the guardian of due process and propriety (however unwisely). The Moot seems much more likely to promote public confidence and perhaps willingness to become involved than Mediation.

(iv) Speed

Having dismissed the Autocratic Arbitration and Bargaining models and established a presumption in favour of the Moot over Mediation, this process of reasoning concludes with an assessment of speed. At all the inquiries (and EIP's) attended in the course of this research, the only person who has ever tried to inject an awareness of the need for greater speed has been the Inspector (Chairman of Panel). While this need for greater speed is always subject to and subsiduary to the preceding functions of a local plan inquiry, unless the 'adjudicator' is present at every stage, the ability to control speed at all will have been given away to participants who may have reasons of their own for wanting to rush

things through or for dragging them out as long as possible. The tactic of 'filibustering' has not yet been successfully used in a planning inquiry in this country, at least to my knowledge, because no Inspector would allow it. Any attempts to speed up the hearing or decision-making beyond the limits necessary for fulfillment of other functions would be potentially detrimental to the rights of participants and any attempts to slow it down for tactical reasons would be straining public confidence and would be a wanton waste of public resources. It is essential that, while the fullest degree of freedom consistent with the functions of a local plan hearing is afforded to participants, there is a residual ability in some third party to stop abuses of that freedom by an individual or individuals which threaten the rights of others. While the adjudicator would have to be trained and briefed somewhat differently about the much lower priority of speed in the hearing stage from a present day Inspector and while it is maintained that domination of decision-making by Civil Servants should cease forthwith, to allow the pace of such a major democratic process to be determined by interested participants alone, could turn out to be an invitation to anarchy.

Accordingly, the Moot is hereby adopted as a basis model for hearing and decision-making of local plans.

5. The Nature of the Hearing

Now that I have established the framework which I wish to see adopted for the review of local plans, I shall deal more

precisely with the exact procedural nature of the hearing stage. Here I am conscious of the importance of the Lewes experiment, which purported to represent a departure from the traditional quasi-judicial, adversarial model, traditionally used for considering objections into local plans and I propose to try to pin-point and apply the lessons to be learnt from it. These lessons are of two kinds. They are firstly about the traditional adversarial quasi-judicial model, its failings and strengths, and secondly about the improvements and weaknesses of the experimental model of which Lewes was the pilot-scheme. I will briefly describe the background to my research at the Lewes inquiry before considering it in greater depth.

(i) <u>The Inquiry Into Objections to the Town of Lewes District Plan</u>[19]

Before the inquiry opened on 28th November, 1978 at Lewes, there had been considerable discussion between District Council Officers and members about the best way to approach the hearing. Mr. Michael Francis and Mr. Terry Powell, respectively the Chief Planning Officer and Principal Planning Officer of Lewes District Council, advocated a scheme resembling in some respects the Structure Plan EIP, an informal discussion between the Council, officers and objectors with an active part taken by the Inspector to isolate and probe areas of disagreement. The Planning Officers wanted to get away from the formalistic approach which they felt had dogged some inquiries in the past and they decided that in addition to the less formal procedure, lawyers should be dispensed with as well. The councilors approved this and talks were held with DoE Inspectorate. What the exact outcome of the talks with the Inspectorate were is not certain. Mr. Francis, in an article in his professional journal "Planning"[20] claims that "it (the proposed approach) was discussed with the (sic)

Assistant Planning Inspector of DoE before the inspector was appointed and he did not discourage our approach. Indeed our ideas have subsequently been accepted by the (sic) Assistant Chief Planning Inspector as being within the DoE guidelines". While the Inspectorate were unsurprisingly unwilling to comment on this case specifically, I gathered from two interviews accorded me by ACPI's that Mr. Francis' contact with one ACPI did not give him a blank cheque from the Inspectorate to proceed with their blessing and further that he might not have been very sensitive to any discouragement which was offered to him. There was no comment on whether his ideas were or were not within DoE guidelines to me, although Mr. Francis may well have obtained such an assurance. My fairly detailed questioning of objectors has revealed that Mr. Francis was quite right to say[21] that the approach "was discussed with objectors and received their wholehearted endorsement". I was not present at the pre-inquiry procedural meeting when the Inspector voiced his disapproval of the new approach and asked Lewes District Council to reconsider their decision, but I understand from everyone, including the Inspector, that there was considerable public support for the reply of the officers with the endorsement of the councilors that they would not. The Inspector then opened the inquiry and proposed to run it on traditional lines with evidence in chief then examination and cross-examination. The objectors had prepared for the informal approach and had to try to adjust, as did the Council officers who had to act as advocates for their side. This led to a most unhappy super-imposition of formal traditional procedure upon informal approaches by both sides. The Inspector stuck to his guns and dragged the inquiry through its painful course. Despite the claims which Mr. Powell and

Mr. Francis have made to me in correspondence on the subject of my research, cross-examination was highly unsatisfactory, ranging from the barely adequate to the completely useless. I do not think it is at all helpful at this stage to try to apportion blame for the stuttering, clumsiness of the Lewes inquiry. Predictably, in a letter to Mr. Thompson, the District Council's Chief Executive, the Inspector who handled the inquiry, Mr. Woodford, criticises the District Council Officers for their handling of the whole inquiry. Mr. Woodford's letter, of which I have obtained a copy, must be examined closely where it raises specific criticisms but at present it is sufficient to quote Paragraph 2 where he criticises Mr. Francis for "a failure to appreciate the legal requirements dictating the form of the inquiry, and an unwillingness to co-operate within the framework of the requisite formal procedure, in a manner whereby the inquiry might have had the happily relaxed informal atmosphere on all sides, which is essential if lay objectors are to feel thoroughly at ease in presenting their cases". Mr. Francis[22] has equally predictably blamed the Inspector. "If the objectors were disadvantaged ... it was not to my mind the fault of myself or other officers of the Council, but resulted from the unco-operative attitude of the Inspector". Regardless for the moment of whose fault it was, I shall consider what use can be made of the lessons of Lewes.

(ii) Views on Lawyers

(a) Council Officers

Only the Southern Water Authority persisted in using a solicitor despite the agreement concluded before and at Pre-Inquiry Procedural meeting between most objectors and the District Council officers to dispense with them, and his

part was so small that it can be disregarded. It does, however, highlight the inability of anyone at present totally to exclude all lawyers. Paragraph 3.7 of the non-statutory Code of Practice issued in the DoE booklet[23] says that "It is open to objectors to be professionally represented if they so wish". Mr. Francis and Mr. Powell gave[24] a list of four reasons why they had decided to exclude lawyers from the Lewes inquiry.

(i) Informality.

(ii) More direct interface between objectors and those responsible for preparing the plan.

(iii) Cost.

(iv) (per Mr. Powell) to get closer to the EIP model and closer to the spirit of Paragraph 3.17 of the Code of Practice.

If one concentrates on the first three objectives, because the fourth is a personal view,[25] one can decide to what extent the Lewes inquiry was at all successful in achieving the hopes nursed by its creators.

(i) Mr. Francis did not think that the inquiry achieved formality to the extent that he would have liked, "because of the Inspector who was constantly trying to force us back to formality" (interview with Mr. Francis, Chief Planning Officer to Lewes District Council December 1978). Almost no improvement at all in informality was evident. If there was any it was in relieving council officers from formal cross-examination by objectors solicitors and putting them more at ease.

Mr. Francis and Mr. Powell gave very confident performances when cross-examined by lay objectors. This can be contrasted with the wary approach of Council officers of Portsmouth City Council at the Cumberland and Carlisle Road CPO inquiries, where they were subjected to the rigors of magistrate-court type cross-examinations from Mr. Saulet, the objector's solicitor. If the absence of lawyers at Lewes, provided informality at all, which must be regarded as doubtful, it did so for the Lewes District Council officers. When requested by the Inspector to cross-examine objectors if they wished to do so, the Council officers adopted the attitude and manner of lawyers. Mr. Francis did this rather ineffectively at first, while questioning the first two witnesses he was requested by the Inspector on seven occasions to question more slowly and he tended to put composite questions requiring inter-dependent answers, which irritated the Inspector and confused the witnesses. Even more fatal to informality was the demeanour of Mr. Powell who questioned (Town) Councillor Howard on her objection to the traffic management proposals. He put it to her that what she was proposing was "a recipe for inaction". The Inspector quite rightly disallowed this type of questioning since it was "the kind of point-scoring question which I understood your Council wished

to avoid", the kind fairly or unfairly associated with the court room. It would be impossible to hold Mr. Francis and Mr. Powell personally responsible for the lack of informality; there is a measure of truth in what they say about being forced into the position of advocates.[26] It is true that the Inspector pointed out in his letter to the Chief Executive that "The Council's representatives were not obliged to take these opportunities, if to do so was against their wishes or the Council's instructions", but they could hardly be expected to preside over the total collapse of their case. Whatever the apportionment of responsibility may be, the lesson to be learnt is that you do not achieve the informality desired by Mr. Francis just by excluding lawyers, in fact, if there is not full agreement over procedure, less informality than the average traditional inquiry may result.

(ii) There was certainly more 'interface' between objectors and council officers at Lewes, but less than Mr. Francis would have liked. Each side had a spokesman at the Inspector's insistance and several of the youthful Housing Action Group objectors suffered much frustration at being unable to put questions thrown up by their representative's cross-examination of council officers. This was only a limited success.

(iii) Cost. I interviewed a member of the

District Solicitor's department and discovered that they had no reservation about being replaced by technical officers. They were contented that the main object of the exercise was a sound one and that was their only concern. Mr. Francis thought that he had saved Lewes District ratepayers money and that a subsiduary objective at least was achieved in full. This view should not be accessed uncritically. I thought the inquiry was substantially lengthened by the resultant mixture of informal approaches and formal procedure, and would have been still further had not the Inspector cracked down, sometimes harshly on statements and questioning straying into irrelevance. Thus the cost was not necessarily decreased at all; the Inspector thought not. It would be difficult to compare the cost of several extra days of inquiry with the costs of a lawyer and his staff, but no-one is entitled to assume that dispensing with lawyers is automatically cheaper. Neither can it be accepted that time and money are very important at least according to my hierarchy of functions, possibly because I am not subjected to the pressures and constraints which are the unhappy lot of a council officer. However, I am concerned to take notice of what senior planning officers think, because their good-will has to be preserved if a harmonious hearing is to be produced. If these are the

aspirations of many planning officers[27] then they must be accommodated as far as possible, if planning officers still have a major part to play in local plan hearings. (See below the sub-section entitled Council Officers and Councillors.)

(b) Objectors

(a) Mrs Viloria: representing Lansdowne Place and Friars Walk Community Association. Mrs Viloria had been in favour of dispensing with lawyers as had her Association. They expected that an easier atmosphere would prevail without lawyers. If the District Council had employed a solicitor the Association would have got one of their members, a barrister, to appear, but if he had refused they would probably have had to appear unrepresented. Mrs Viloria felt that the local authority would have had a great advantage if they had employed a lawyer while the Association could not, but felt that they had in any case benefited more from the absence of lawyers, as she put it "it was an amateur against a professional". Significantly, she thought that the local authority officers were "intelligent enough to know this" and that they would not have done it if they had felt that they would be very disadvantaged. Mrs Viloria wanted more intervention, and a more positive inquisitorial approach from the Inspector. The new type of inquiry should be allowed to continue since "it has the seeds of something good and democratic in it". Overall the experiment had been a qualified success worth persevering with,

but in need of firm guidance of Inspectors by the DoE to help make it work. One major criticism was insufficient attention to publicity and greater community involvement.

(b) Mr. Herman: representing the Housing Action Group. Mr. Herman confessed to being a little uncertain about the decision to dispense with lawyers, although he had not said so at the pre-inquiry Procedural Meeting. He would have liked advice from a solicitor "sympathetic to out case", but he stressed that his Group did not want anyone to represent them. He saw a positive benefit in being face to face with council officials as opposed to hiding behind "middle men". The Group would certainly have been disadvantaged if the District Council had employed a lawyer since the Group could not have afforded one, unless they had undertaken some special form of fund-raising. The advantage which lawyers would have brought would have been smoothness of procedure. Mr. Herman did not feel that the objectors were especially disadvantaged under the inquiry-without-lawyers model and he though that the "very good and well-equipped Inspector" deserved much credit for this. The Group believed that cross-examination is essential to a hearing to bring out alternatives and to expose the real reasons behind decisions. Overall the system could be made to work with some modifications chiefly that proposals should be redrafted to try to get objectors approval

after an adjournment to negotiate alterations.

(c) Mrs Howard: representing the Town Council and Lewes Labour Party.

Mrs Howard had "not particularly" been in favour of a less formal inquiry[28]. She felt that the organisations which she represented had not benefited from the inquiry without lawyers. Mrs Howard was also of the opinion that some objectors had believed that lawyers would be more intimidating than Council Officers, whereas Mr. Francis had sometimes "been more obviously aggressive than an experienced lawyer would have been". Mrs Howard would have liked to have seen a lawyer representing the District Council. The Town Council and the Labour Party could both have hoped to have had the services of a legal representative if this had been the case. The Inspector had played his role well in a difficult situation. Mrs Howard's view was that the question of the District Council officers had prolonged proceedings unnecessarily or to no purpose. She was not in favour of repeating this approach at future local plan inquiries because she felt the absence of the District Solicitor was felt.

One thing is clear from the interview with objectors and that is that they see a role for cross-examination and questioning which the District Council Officers were simply unable to fulfil. They generally thought that their own cross-examination had been fairly successful. I did not. I

thought that the standard of cross-examination from objectors and council officers alike was wretched. The objectors were alike in perceiving the danger of appearing unrepresented against a District Solicitor, although Mrs Howard, who had experience of other inquiries said that Inspectors "bent over backwards" to such a degree that they more than equalised the disparity and thus she actually preferred to appear unrepresented against the District Solicitor. Mrs Viloria and Mrs Howard both felt that the council officers had benefited rather more from the new format than some objectors while some objectors had benefited less than they expected. Neither the Community Association nor the Housing Action Group could really have afforded a lawyer and they had been less sanguine than Mrs Howard about being opposed by a lawyer unrepresented and so they had welcomed the opportunity of removing what seemed to them an obvious inequality. Only Mrs Viloria would have liked the Inspector to have taken a more active role, but that was because she envisaged a hearing more resembling a discussion than a court hearing.

(c) Inspectors

Mr. Woodford, the Inspector at Lewes, was not, for obvious reasons, able to comment specifically on the Lewes inquiry and he rightly observed that it would be improper for him to do so. However, he did agree to reiterate what he had said at the pre-inquiry procedural meeting, since that was a matter of public record. His

objection to the proposed format of Lewes District Council's inquiry experiment was that "the lawyers assistance is required to assist a smoothly structured inquiry" and his reasoning that "in my experience, the presence of at least an advocate for the local authority is likely to be of great assistance to me and to the objectors".

Reproduced below are comments which the Inspector made during the course of the inquiry which are considered to be indicative of his views, although he has not confirmed that they do indicate his views. These are drawn from notes which were made of the procedural events of the inquiry; as an integral part of this research a sort of unofficial transcript, but without undue attention to the substantive issues. On the morning session of Tuesday 5th December, the Inspector's reaction to the unsatisfactory proceeding of the previous week was heard. "I was, in the early stages of this inquiry, reluctant to come down with a heavy hand on people who are having difficulty in putting their cases; but I am now having difficulty myself in drawing a line as to what is within the scope of this inquiry and what falls outside. It is not necessary to put a long string of questions on points which, although in contention, could be dealt with more briefly by way of comment or reply. There have been a large number of questions in this inquiry to which I submit the answers have been obvious before they were asked. It is simpler to me at least, if the points are made by way of comment, rather than drawn out of witnesses. We are not bound by the rules of evidence, and not obliged, as

barristers feel themselves obliged to cross-examine on points with which they disagree. Due to our own experience of this, we are spending too much time at this inquiry on these matters". He continued later in the same session "over the week-end, I have concluded that too many people, including myself, were accustomed to asking too many questions and I have decided that I should steer the inquiry away from this kind of procedure". Broadly speaking, the opinions held by those involved in the Lewes inquiry split up into two categories. Mr. Francis and Mr. Powell, the Lewes District Council Planning officers, supported by their solicitor's Department and with the sympathy of one of the major objectors, the Lansdowne Place and Friars Walk Community Association thought that their new type of inquiry was the answer to the perceived problem, and that the Inspector was the only thing that came between them and complete success. The Inspector, supported so far as I can discover by the DoE Inspectorate (see below) and by the representative of two organisations the Town Council and Lewes Labour Party believed and believes that there is nothing wrong with the traditional quasi-judicial adversarial inquiry and that it was the attempted informal approach which was responsible for the faults of the Lewes inquiry. The problem with diametrically opposed views like this is that if either were to be translated into the procedural nature of the local plan hearing, the lack of good-will and frustration of the defeated party would result in the non-fulfillment of some of the most important functions of the hearing such as achieving confidence

throughout the community. The Lewes inquiry was the worst of both worlds, with both the traditionalists and the innovators feeling that they had been hampered. If the Inspector had been much stricter much earlier he would have been more contented himself and ensured that supporters of the traditional inquiry had no cause for dissatisfaction. If, on the other hand, the Inspector had bowed to Mr. Francis' wishes and those of objectors and colleagues who agreed with him, there would have been a much greater feeling that the experiment had been given a fair chance. The really unsatisfactory thing about the Lewes inquiry is that almost everyone had some complaint about some fundamental feature of it. I think that my list of functions of a local plan inquiry would be acceptable to all of those present at Lewes, with the possible exception of actual involvement of objectors in the decision-making stage. It is only because the traditionalists and innovators alike try to translate their narrower view of the ideal way of fulfilling these functions without regard for the effect on other participants that the impasse is reached. It is my task now to accommodate the wishes of both camps into one hearing procedure. I do not agree that there is nothing wrong at present, because the functions of a local plan hearing, as I have defined them are not being properly fulfilled, especially (1) public participation and (3) public confidence. Neither do I think that the Lewes inquiry was an improvement or that the logical conclusion of Mr. Francis' scheme would fulfill all the functions of a local plan hearing adequately,

especially (1) public participation and (2) control and efficiency.

(iii) Council Officers and Councillors

Before any discussion of the reformed local plan inquiry is undertaken, the appearance of councillors at inquiries instead of officers. I envisage that councillors would be fully recompensed for their absence from work and that employers would be compelled to give leave, as for jury service. Officers would only be called as technical witnesses, albeit important ones. Councillors would then be required to explain what was present to their minds at the time of deciding on a particular proposal in the draft plan rather than allow officers to find ex post facto rationalisations to support them. But this is a very radical suggestion. It is essential to relate any research with pretensions to usefulness closely to reality. Fortunately, the proposed 'ideal' model can accommodate either councillors or council officers. At the present, the views of council officers must be included because while they are present, in the system, their co-operation and goodwill in making the system work is of the first importance. Anyone who ignores the aspirations of those who operate the system, runs the risk of producing a theory devoid of practical value. My continued reference to council officers' requirements should not be construed as acquiescence in their presence as a 'side' in local plan inquiries, it is rather a recognition of a de facto situation, and an unwillingness to make the model proposed contingent upon a future and uncertain change of this magnitude.

6. The Reformed Local Plan Inquiry

One of the positive aspects of Lewes District Council's approach to the local plan was the long series of negotiating sessions held between District Council officers and

organisations, councils and individuals who objected to the initial proposals drafted by the council. The need for the fullest consultation and involvement by everyone, invitees or volunteers, institutions or individuals can scarcely be over-emphasised. The more objections which can be satisfied at the pre-hearing stage the better, and the plan-making authority should understand that the inquiry is reserved for genuine conflicts of belief and not for the clearing up of matters of detail which could either be dealt with by written submission, or, more properly, during the pre-inquiry consultation stage. So when we come to the hearing itself we are left with several objections of a fundamental deeply-rooted kind. There may be more than a few, but it is hoped that the knowledge that agreement will have to be reached at the end of the inquiry anyway, will encourage the Council and the objectors to settle sooner rather than later, that is at the pre-inquiry stage.

Lawyers at Inquiries

Thus it may be seen that the purpose of the proposed model throughout will be to achieve consensus, to encourage open bargaining and mutual benefit, to reduce the 'losing' which any one party has to suffer to a minimum.

The reasons given by those people who wish to remove lawyers from inquiries are two-fold. These are that they lead to an oppresively formal atmosphere which inhibits freedom of expression, especially by lay participants and that the invariable presence of a local authority solicitor is unfair to those who are not legally represented. If we turn to the nature of the role which their apologists perceive them to fulfil, we shall have isolated those elements which might be excluded and those which might be included. If they are not incompatible then my suggested procedure should satisfy everyone, at least with regard to the role of the lawyer. To help explain what the role of lawyers is in public inquiries, a study was made of the Cumberland and Carlisle Road CPO Inquiries and the perceptions of participants in these as to

the role of lawyers. These inquiries and this study were chosen despite the fact that relating experience of a CPO Inquiry to a local plan inquiry is hazardous. This is because the CPO inquiries were the kind of emotive, politically-charged hearings which represent the extreme of what might be encountered at a local plan inquiry. It is unlikely that parties at a local plan inquiry could be more deeply entrenched in their positions than the Residents Group trying to defend their community from destruction and the City Council committed to demolition. Thus lawyers are likely to be more necessary here than where a constructive relationship exists between local authority and objectors. The CPO Inquiry study throws more light on potential roles for the lawyer in especially controversial inquiries in a way which the studies undertaken at the fairly civilised Lewes and Westminster Local Plan Inquiries could not. In other words, any role of the lawyer contained in local plan inquiries (the lesser) can be discovered by looking at a CPO inquiry, provided it is a sufficiently combative one (the greater). I asked the participants in the CPO inquiries, lawyers, council officers and objectors (including a non-legal representative) questions about the role of the lawyer of which some of the most important were:

(i) What is the role of the objector's legal representative?

(ii) What is the role of the Council's legal representative?

(iii) Would you welcome the removal of lawyers from <u>all</u> inquiries (including CPO's)?

(iv) Would you welcome the removal of lawyers from local plan inquiries?

(v) What would have happened at a highly political inquiry (like the Portsmouth ones) without lawyers?

In tables C-G I give a comprehensive list of the replies which were received to these questions.

It is proposed to deduce from this information what aspects of the lawyers role <u>do</u> need to be included in the ideal local plan inquiry model, bearing in mind the potentiality of the

local plan inquiry for becoming as politically contentious as the CPO inquiries.

TABLE C

1. What is the role of the objector's legal representative?

   Mr. Robins (counsel for City Council) "to win the case and help the Inspector".

   Mr. Sellers (City Solicitors' Department) "to win the case".

   Mr. Irwin (City Estates Department) "to win the case".

   Mr. Manning (Architects Department) "to win the case by informing the Inspector".

   Mr. Webb (Chief Planning Officer) "to win the case and gain publicity".

   Mr. Smith (Housing Department) "to present the objector's case in the best possible light".

   Mr. Lloyd (Planning Department) "to win the case and get publicity".

   Mr. Smith (Environmental Health) "to win the case".

   Mr. Bates (Housing Services Department) "to win the case".

   Mr. Saulet (solicitor for objectors) "to win the case for the objectors".

   Mr. Lithgow (Member - Residents Association) "to understand and present a technical case".

   Dr. James (Statutory objector) "to win the case".

   Mr. Nesbitt (Surveyor representing objector) "to win the case".

   Mr. Guy (Statutory objector) "to win the case and help the Inspector".

The virtual unanimity of these answers makes it clear that a lawyer is perceived as a tool in the hands of the objector to achieve his objective. It is evidently seen as necessary to have help in winning a case. On the basis of these answers, particularly Mr. Lithgow's, which are considered most significant, it is clear that legal help must be available to objectors to enable them to present their case "In the best possible light" as one interviewee said. When interviewees were questioned more closely on the exact necessity of the

lawyer's role by asking whether the objector would have been gravely disadvantaged if unrepresented against a lawyer, it was revealed that some, but not all, of the reasoning was based on the inequality of an unrepresented objector confronting an expert barrister. There was also, it should be noted, concentration on a lawyer's capacity for assimilating and presenting a mass of technical information, felicitously. This insight is important because it supports the view that a lawyer's skills will have to be available to objectors <u>even</u> if it is not to equalise an inequality between them and the local authority.

<u>TABLE D</u>

2. What is the role of the local authority's legal representative?

Mr. Robins (Counsel for City Council) "To win the case and to maximise the Inspector's information.

Mr. Sellers (City Solicitors Department) "depends on the type of inquiry - a CPO to win the case".

Mr. Irwin (City Estates Department) "a co-ordinator of council officers and legal expert".

Mr. Manning (Architects Department) "to win and to inform the inspector".

Mr. Webb (Chief Planning Officer) "orchestrator of Council's case".

Mr. Smith (Housing Department) "collator of evidence, presentor of case and legal expertise".

Mr. Lloyd (Planning Department) "leader of the team, win the case but from a low profile, also public relations exercise".

Mr. Smith (Environmental Health) "to co-ordinate efforts of officers, to help Inspector and objectors and to win".

Mr. Bates (Housing Services Department) "to win the case, to co-ordinate and advise the council officers".

Mr. Saulet (Solicitor for objectors) "to win the case, certainly not to help objectors".

Mr. Lithgow (Member of Residents Association) "not to help

the objectors".

Dr. James (Statutory objector) "to win the case".

Mr. Nesbitt (Surveyor representing objector) "to win the case and to help the Inspector but not to help the objectors".

Mr. Guy (Statutory objector) "to help the Inspector and the objectors".

This reveals a fascinating divergence between those participants who believe that the role of the Council's representative is to help objectors and those, all on the objector's side, who are certain that it is not. The conclusion that is drawn from this is that the objectors, perhaps from personal experience, perhaps from cynicism, see no benefit accruing to them from the role of the local authority's lawyer. This is a most important point to ascertain because it means that the only elements of a local authority's lawyer which need to be retained are the council officer's perception, almost exclusively as a co-ordinator, and the help given to the Inspector. I am confident that both of these requirements can be met without the need to have a lawyer actually appearing for the local authority at a local plan inquiry at all. This is open to the criticism that local authority solicitors adopt a much 'lower profile' in local plan inquiries and so <u>will</u> in fact help objectors to a certain extent. This must be partly accepted, but with the twin caveats that this is probably not always the case, depending on the local authority and solicitor and also that it will be much less so when local plan inquiries become more overtly politicised. This must be envisaged as a distinct possibility with the (future conditional) presence of local councillors and their participation with objectors in decision-making. In such an environment the District Solicitor might well play a role akin to that in the Portsmouth CPO's and that, at least in the view of those involved, does not include helping objectors.

TABLE E

3. Would you welcome the removal of lawyers from all inquiries (including CPO's)?

Mr. Robins (Counsel for City Council) "no, it does local authorities good to be attacked by legal minds".

Mr. Sellers (City Solicitors Department) "No".

Mr. Irwin (City Estates Department) "in CPO inquiries like this one, there is a need for lawyers".

Mr. Manning (Architects Department) "it should be the best expert available".

Mr. Webb (Chief Planning Officer) "no, because of entrenched attitudes one needs a barrier".

Mr. Smith (Housing Department) "in CPO's, especially I would prefer to see legal representation".

Mr. Lloyd (Planning Department) "what they contribute is not that important".

Mr. Smith (Environmental Health) "Can't answer that".

Mr. Bates (Housing Services Department) "it would save us a lot of money. But we want to win".

Mr. Saulet (Solicitor for objector) "there is no magic in the word 'lawyer' but experience is essential".

Mr. Lithgow (Member of Residents Association) "no, although there would be greater relaxation, there would be a lack of organisation in the objector's case".

Dr. James (Statutory objector) "No."

Mr. Nesbitt (Surveyor representing objector) "I would welcome the removal of lawyers".

Mr. Guy (Statutory objector) "no, matters could easily get out of hand".

There is an interesting divergence of opinion here, the sort of 'scatter' that makes statistical analysis impossible. Predictably the two Portsmouth City Council lawyers could not conceive of inquiries without lawyers. Those, especially council officers, who oppose the removal of lawyers, speak of the need[29] for a barrier, a need to keep things impersonal and civilised. There is an undisguised fear that the council

officers would face a rough ride from a group such as the Residents Association at the Cumberland and Carlisle Road Inquiries who stood in some cases to lose their homes and their communities, as a result of a decision made by councillors. Until the time comes when councillors are present to bear the brunt of the feelings of their electors, there is a good deal of force in this argument. Council officers, who after all did not take the decision and are only doing their duty in explaining their advice to the Council, should not be exposed to possible abuse and personal criticism. They are not politicians, but professional technical experts and public invective and degradation is an excess of barbarism. This provides a salutory reminder that the lawyer's de-personalising presence may be necessary to keep the heat within proper limits. Since none of the City Council officers felt that they needed Mr. Robins 'protection', it is apparent that the precise object of their concern is that cross-examination by the objectors should be restricted to objective questioning by channelling it through a legal representative. Clearly, the 'interface' which Mr. Francis said[30] was one of his desired objectives, would be objectionable to many council officers, not enjoying the good relationship of those of Lewes District Council with particular community bodies. Any interface incorporated into a new format for local plan inquiries would have to be carefully controlled so as not to alienate the sympathy of one of the (at present) major participants. There will be no benefit to objectors to be derived from the new system, if it is torn apart from inside by hostility arising from unallayed fears. Only Mr. Bates said that lawyers should be retained because "we want to win". My reply would be that if 'we' win, then 'they' must lose. This should not be regarded as a legitimate reason for making legal representation available to local authority officers and no attempt will be made to protect this element of the lawyer's role in local plan inquiries.

Mr. Robins interesting observation that local authority administrative practices are tightened up by the scrutiny of a lawyer, should also be briefly dealt with. Having been employed by Portsmouth City Council on several occasions, Mr. Robins is in a good position to see the results of his attention to unsatisfactory areas. However, as a general principle one would require a far less ad hoc check on improper administration. Mr. Robins would not be accountable for anything which he failed to 'tighten up' and if his province is beyond the purview of the Parliamentary Commissioner (which it must be or his additional scrutiny would be superfluous) then it would be without any check at all. Probably, minor inefficiencies are what Mr. Robins had in mind and the celebrated Chancery mind would be of use in detecting such cracks in the administrative edifice, but it is not necessary to put a lawyer into a public inquiry for him to undertake a close review of the workings of the various departments. I accept as I am bound to that local authorities may benefit in the way described by Mr. Robins and if so, perhaps lawyers should be hired by the local authority or by the Parliamentary Commissioner to help periodic overhauls of council efficiency by providing independent reports. It does not follow from this that the retained lawyer has to appear in an inquiry of any kind or that scrutiny is necessarily connected indissolubly with such an appearance. My view is that the lawyers' role in reviewing local authority administration is a beneficial side effect of the place of the lawyer in public inquiries which could remain even if that place ever disappeared.

TABLE F

4. Would you welcome the removal of lawyers from local plan inquiries?

   Mr. Robins (Counsel for City Council) "No."

   Mr. Sellers (City Solicitors Department) "No."

   Mr. Irwin (City Estates Department) "Yes, you could do without them, provided that you had a planner who was au

fait with cross-examination"

Mr. Manning (Architects Department) "It doesn't need to be a lawyer - it should be left to the parties."

Mr. Webb (Chief Planning Officer) "Yes, in planning inquiries it might be suitable".

Mr. Lloyd (Planning Department) "At a local plan inquiry, it would be just as well to do without them."

Mr. Smith (Environmental Health) "Can't answer that."

Mr. Bates (Housing Services Department) "Can't answer that."

Mr. Saulet (Solicitor for objector) "There is no magic in the word lawyer."

Mr. Lithgow (Member of Residents Association) "There would be greater relaxation, but lack of organisation".

Dr. James (Statutory objector) "No".

Mr. Nesbitt (Surveyor representing objector) "Yes, I would welcome the removal of lawyers."

Mr. Guy (Statutory objector) "It would be an advantage - but there is a limit, even in local plans".

Table F, when contrasted with Table E, shows that there is a much more receptive attitude, particularly among council officers, towards inquiries without lawyers where a more amicable atmosphere is likely to prevail. Several useful deductions can be made from this. If lawyers are seen as necessary where there may be a hostile atmosphere (to help remove it) and much less desirable where there is a constructive atmosphere (which they may remove) it can be stated that they provide a degree of uniformity. They reduce the extremes of co-operation and antagonism to which individual inquiries might tend. At the antagonistic end of the scale, they are worth their place at a CPO inquiry, (for example) and they cannot contribute to making the atmosphere worse than it is. At the co-operative end of the scale, the use of lawyers is more uncertain and they may adversely affect the relaxed atmosphere existing between local authority officers and objectors. It will, therefore, be desirable, if possible, to

include an element of flexibility into the ideal local plan hearing format so that either objectors or the local authority can invoke a legal presence (or a greater role for lawyers) as they see fit, provided that equal rights and opportunities are at all times accorded to other participants. This is vital to allow a full opportunity for public participation in the hearing and also to promote public confidence in its fairness. Furthermore, the present view of local plan inquiries is markedly different from that of the more contentious CPO and planning permission inquiries. Presumably, the experience of those interviewees, who saw the need for lawyers in CPO's, but not in local plan inquiries is based on fairly low-key versions of the latter. I anticipate that once the element of full participation by objectors in decision-making were introduced the local plan hearing might frequently come to resemble the quasi-ideological battle of the more overtly political CPO inquiries. Thus 'relaxation' and 'informality' would become very empty qualities, mere words, with no corresponding advantage to anyone in such an inquiry. While the potential damage caused by allowing lawyers to be brought in where they are not needed (at least by the parties) should be avoided as much as possible, the danger of assuming that all local plan inquiries will always be (or are always) so amicable is equally to be borne in mind. Some of the likely occurrences at a controversial inquiry which was ostensibly conducted on informal lines without lawyers may be plainly foreseen but I questioned the participants at the Cumberland and Carlisle Road Inquiries to see what were their chief anxieties and expectations in such a situation[31]. The reason why the Lewes format proposed by Mr. Francis and Mr. Powell would not be a panacea for the problems of the local plan inquiry system is that it would be powerless to cope with bitter controversy, and the ability to switch to a more controlled procedure must be available as a right to those who might suffer from the breakdown of an informal hearing.

TABLE G

5. What would have happened at a highly political and controversial inquiry like the Portsmouth ones without lawyers?

Mr. Robins (Counsel for City Council) "Chaos."

Mr. Sellers (City Solicitors Department) "Chaos."

Mr. Irwin (City Estates Department) "There would have been imbalance between the contributions of officers."

Mr. Manning (Architects Department) "They would have been a lot shorter."

Mr. Webb (Chief Planning Officer) "It would have been a shambles and a shouting match."

Mr. Smith (Housing Department) "It would have been very interesting."

Mr. Lloyd (Planning Department) "We'd have saved an enormous amount of time."

Mr. Smith (Environmental Health) "The objectors would not have known what to ask. It would have cut the time down."

Mr. Bates (Housing Services Department) "A shambles. The objectors would not have been able to put forward a case."

Mr. Saulet (Solicitor for objectors) "The council officers would have coped, the objectors would have had difficulty."

Mr. Lithgow (Member of Residents Association) "There would have been a lack of organisation."

Dr. James (Statutory objector) "It would not have made a terrific difference, but it would have been shorter."

Mr. Nesbitt (Surveyor representing objector) "The situation would have been difficult."

Mr. Guy (Statutory objector) "I would have presented my case in the same way."

Here there are two main bodies of opinion, contradictory, but along different lines. Several council officers thought that without the 'barriers' of the respective lawyers, which they said in reply to a previous question[32] would be necessary,

matters would have got out of hand and there might even have been a breakdown in the hearing. Since some of those who apprehended such disorder were in favour of dispensing with lawyers at local plan inquiries, it is reasonable to infer that if the local plan inquiry came to resemble the Cumberland and Carlisle Road Inquiries in intensity of feeling and implacability of opposition, they would be just as fearful about the absence of lawyers leading to chaos as they were in the hypothetical question posed in Table G (above). It seems that they would never be content with the exclusion of lawyers unless they were fairly sure in advance at what level of conflict the inquiry would be pitched. Since this is problematical and any attempt to foresee and influence it would be an improper pre-judgment of the case, the need for flexibility becomes clearer still[33]. If constructive initiatives by council representatives, by objectors, or by the adjudicating third party can conciliate the participants then the intrusion of lawyers would be kept to an absolute minimum. Where, as might often be the case under the proposals made in this thesis for participation in decision-making, the differences between the local authority and objectors were so fundamental and strongly held as to make confrontation likely, the right to bring in lawyers would have to be available to all. This leads on to the second body of opinion represented in Table G which is that the absence of lawyers from such an inquiry as the Cumberland and Carlisle Road CPO ones saves a large amount of time. This is probably true but in spite of the view of some of the people who expressed the opinion, that need not be regarded as beneficial. Mr. Smith of the City Council's Environmental Health Department and Mr. Bates of Housing Services agreed with Mr. Saulet, solicitor representing the Residents Association (inter alia) on this if on little else, that the objectors would have been at a considerable disadvantage if there had been no legal representation. Mr. Smith pointed out that without Mr. Saulet, the Association Members would have found

it an impossible task to assimilate and contest the mass of technical information presented by the 'galaxy of professional expertise'[34] on behalf of Portsmouth City Council. Mr. Robins, counsel representing the Council, also had some interesting observations to make when questioned further "The objectors would not have had the staying power and by the third day or so no-one would have been left. The Council would have run the whole thing. The Inspector would have got a very one-sided view". Here Mr. Robins has put his finger on a most important disadvantage encountered by some objectors, the sheer physical difficulty of frequent attendance at inquiries when they have to work. Where there is a bi-partisan inquiry or one with a major group of objectors opposing the local authority on all fronts, constant attendance will be essential and the continuation of the inquiry in the absence of a major participant would be detrimental to the credibility of the whole local planning process. There comes a point when, because of the technical evidence involved, because of the impossibility of regular attendance or because of the personal qualities of the objectors, (extreme diffidence, inarticulacy, language difficulties or a speech impediment) when representation of some kind becomes necessary. While it is accepted that it need not be <u>legal</u> representation, again there must be at least a residual availability of a representative to cover these eventualities. Speed was given a much lower priority than public participation in the list of functions of local plan inquiries so that there would be no temptation to cut time and cost by interfering with the proper hearing of the parties, such as minimising their rights to representation. Almost certainly Mr. Saulet <u>was</u> largely responsible for enabling the Residents Association to compete at all with the 'galaxy of professional expertise' and this should be regarded as a positive reason for making representation available. Mr. Saulet's point that there is no magic in the word 'lawyer' should be borne in mind and it would be quite wrong to deliver representation into

the hands of lawyers as a monopoly. Despite this, the prestige enjoyed by lawyers in some quarters will make them strong contenders for any role in the proposed model. While some objectors like the property company at the Carlisle Road Inquiry will continue to choose valuation experts like Mr. Nesbitt, it must be admitted that lawyers will often be chosen if complete freedom of choice is allowed. It is not my intention that individual objectors should be allowed to exersise choice in any way unavailable to other participants. In other words, if freedom of choice means the right of wealthy companies and organisations to seek advantage by employing expensive counsel to 'take on' other participants who are unrepresented or represented by a lay-man, then it is no freedom at all but a privilege. Therefore, if any of the participants feel the need for representation it should only be that representation, legal or otherwise which is available to everyone. In the proposed model, 'levelling-down' is a consistent theme throughout. This has acquired negative connotations in many spheres, such as education, but it is seen here as a positive means of eliminating domination by the strong over the weak. The channels for negotiation and the standard of representation available to wealthy participants would be the same as for all others.[35] The aim then is to make as sure as possible that no-one at a local plan inquiry is better represented than anyone else.

A Proposal for a Local Plan Inquiry Model

1. In addition to the list of functions of a local plan inquiry set out above (see p. 121 above) it is necessary to define the specific objectives to be achieved in the suggested reformed model, which will ensure that these more general functions can be fulfilled as far as possible. Unlike the Structure Plan EIP and the present local plan inquiry, the proposed local plan inquiry model contains no procedural device which has an uncertain purpose or no purpose at all. Any infringment by a procedural device

intended to fulfil one function upon the proper fulfillment of another can be justified by reference to the order of priorities established under the list of functions above. There is no order of priority between these objectives.

Specific Objectives

The proposed model is intended to achieve as much consensus and consent as possible. The perceived evil to be avoided is the imposition of decisions upon those who are unwilling to accept them. To achieve the maximum consensus is the first objective.

Where no consensus seems possible all parties must be given opportunities for negotiation to reach a compromise. Bargaining is already a part of modern planning and it would become an institutionalised one under the proposed model. Parties would be encouraged to offer alternatives and concessions to try to accommodate the conflicting interests of other parties. Achievement of a negotiated settlement is the second objective, wherever consensus cannot be achieved.

Where no negotiated settlement is possible a hearing would be conducted with an independent Inspector to isolate areas of difference and decide upon a mutually acceptable solution which is the third objective.

Where no solution at all can be reached the dead-lock needs to be resolved in favour of a definite answer without undue delay. The resolution of matters reserved as swiftly and impartially as possible is the fourth objective.

Throughout all the stages of the local plan process, there is a danger of disparity in resources between participants. The fifth objective of the proposed model is to prescribe procedures which will nullify or greatly reduce the advantages of some interests over others.

The sixth objective is the maintenance of informality throughout the hearing stages especially, wherever this

is possible.

The seventh objective is the retention of a legal presence to be invoked by any party feeling disadvantaged without the presence of legal representation.

Objectives 1 - 3

These objectives derive from the need to avoid certain dangers inherent in the present system, of which evidence can be seen in the preceding discussion of the nature of local plan inquiries. The present quasi-judicial model encourages confrontation as appears from Tables C and D above, where there is heavy emphasis on 'winning' and 'losing'. It is true that these tables contain information collected from participants in a C.P.O. inquiry which lent itself to the language of confrontation, but the references were to the inquiry, to 'winning the case' and it is clear that any quasi-judicial inquiry could be viewed in the same way. Hence, there is a need to move to conciliation and bargaining and away from confrontation in the inquiry model itself. Negotiation, among negotiating experts (the approved consultants) representing different interests involved in a particular problem, is built into this model. The emphasis throughout is on compromise and concession. The Inspector's proposals would be discussed in the knowledge that they or a similar compromise would be imposed at the stage of deciding matters reserved. This pressure to settle earlier rather than later at a time when full control of the settlement terms is in the hands of the parties themselves would colour the thinking of local authorities and objectors alike. 'Playing to win' would become a more hazardous and less worthwhile course of action in a system where an imposed compromise awaited parties who could not settle their differences by negotiation or joint decision-making.

Objective 4

There is a danger that a model designed to afford

opportunities for the fullest public participation as this one is would become cumbersome and interminable. The swift and decisive final stage of the model is deisgned to eliminate such a danger. When complete deadlock was reached an Inspector, after reading the first Inspector's report and suggestions would hear the respective parties and suggestions and quickly give a determination of the case, often along the lines suggested by the first Inspector if appropriate. Allowing six months for public information and negotiation stages between appointment of the Inspector and the pre-inquiry procedural meeting, three weeks for the hearing stage, six weeks for the Inspector to write his report and three weeks for the decision making stage, this would total 9 months in all. The matters reserved could be heard immediately and summarily in two weeks and the decision ready in another month. From the beginning of public participation to the end of the decision of matters reserved could be as little as ten months. This is similar to the current time scale. At Lewes the gap between the whole process took about 9 months. Although speed would have a lower priority than under the present model the proposed model should not significantly affect the time taken to produce a coherent plan for use in development control. The status of the local plan at that stage would be obviously much greater because of the efforts to achieve consensus throughout, as opposed to pushing through unpopular measures.

Objective 5

The vexed question which forms a core of this thesis is how can an ordinary individual or small organisation meet a local authority or large organisation in an inquiry without being at a serious disadvantage in presenting their case? As Simmie[36] says "Low income groups often find great difficulty in penetrating institutional structures and commencing effective negotiations".

The quasi-judicial model offers many opportunities for the powerful to dominate the less powerful by the simple means of spending more money on better experts. The Portsmouth CPO inquiries showed unequivocally that the Residents Association would have been quite unable to challenge the City Council's "galaxy of expertise" had it not been for the chance opportunity to secure the services of a legal representative atlittle or no cost. Many other such groups and individuals cannot be so fortunate and must be simply unable to equalise the disparity. To this end, pre-inquiry negotiation has been institutionalised and representation removed, so that all parties are similarly represented in negotiation and similarly unrepresented at the hearing stage. One of the major reasons for embarking upon this proposed reform of local plan inquiries as opposed to 'patching up' the present structure is that as Harvey says[37] "An institutional structure, once it is created, may well become closed or partially closed". It has become increasingly difficult to avoid the view that public inquiries are effectively closed to those who have not the capability to compete with the resources of powerful opponents. The method of tackling this has been to make official representation available to everyone and to bar unofficial representation from participation.

Objective 6

One of the objections to some kind of planning aid scheme is that it will simply enable more lawyers, or at least official representatives to be present at inquiries. One consequence of adherence to the quasi-judicial model has been that legal formality is observed more closely than would be the case under another model, for example in the way witnesses are called and questioning conducted. Thus it is quite apparent that informality and the presence of legal representatives are inconsistent. If the degree of informality required to fulfil the

function of facilitating full public participation is to be achieved, legal representation in its present form must be eradicated and the retention of legal representatives by individual parties removed from local plan inquiries. Whereas 'planning aid' would increase the number of opposing legal representatives hired 'to win the case', (see table C and D above), the objective of the proposed model is to encourage an informal atmosphere between the parties wherever this is possible.

Objective 7

The experimental inquiry at Lewes showed that removal of lawyers from local plan inquiries is potentially deleterious of the whole process unless appropriate safeguards are included. Since cross-examination is necessary if weaknesses in an argument are to be exposed, a lawyer's expertise must always be available to those who cannot master the art, also, since direct 'interface' in an informal atmosphere may involve antagonism and personal abuse, there must be a means of channelling questioning so as to maintain a minimum standard of discipline. Finally, to assuage the problems created for Inspectors by the removal of individual representatives an officer capable of redirecting and orchestrating a participant's case must be available to make possible the drafting of a coherent report. Accordingly, the Inquiry Advocate has been included to meet these needs. The DoE shall compile regional lists of persons able to give comprehensive advice on legal and technical aspects of local planning an on case presentation. These lists shall include lawyers (chosen for the list by the DoE after the consultation with the Law Society) and other persons (chosen for the list by the DoE after consultation with appropriate professional bodies or trades unions). Every objector, other than those who rely on written objections, shall be required to select an 'approved consultant' from this

list, their choice being determined by the rule of 'first come - first served'. Four weeks shall be allowed after the time-limit for objectors during which other interested parties (the equivalent of section 29 parties) will be entitled to consult with an "approved consultant" about being represented by him at any negotiating session likely in the opinion of the interested party to affect their interests. This will ensure that any party, whether an objector or not, may take part at the negotiation stage and lodge a 'late' objection if dissatisfied with an agreement reached between the local authority and an objector. There should be as high a degree of public information about objections as about local authority proposals to maximise the opportunities of interested parties to become involved in the negotiating process and, if necessary, to become late objectors. Late objectors would be admitted right up to the end of the negotiation stage when the pre-inquiry procedural meeting would be held. A separate "approved consultant" shall be selected from the DoE regional list by the local authority for the preparation of their case. He may be a member of the local authority.

Each objector intending to appear must have at least one session of up to one hour with his or her allotted "approved consultant" and is entitled to a maximum of six one hour sessions. Applications for further sessions of advice and preparation must be directed to the Inspector, who has already been appointed by the DoE not less than six months before the scheduled opening of the inquiry. At these sessions it will be the responsibility of the "approved consultants" to formulate the objectors' case and to remove from it that material which cannot be included within a local plan inquiry. The "approved consultant" will fully explain procedure at the hearing to each objector. These consultations shall be

completed not less than three months before the scheduled opening of the local plan inquiry. During and after these consultations each "approved consultant" shall negotiate with the "approved consultant" of the local authority and other interested "approved consultants" for the amendment of the draft local plan in a way that would satisfy his client. The "approved consultant" of the local authority would be 'affirmatively charged' with the task of accommodating the maximum possible number of objections. The "approved consultant" of the local authority would be required to view the written objections received by the local authority in the same way. All the satisfied objectors, both those who objected solely in writing and those negotiating through "approved consultants" would then withdraw. The objectors and the local authority shall be entitled to consult any persons other than the "approved consultants" but these other persons shall have no standing to negotiate with the local authority and any amendment achieved through such negotiations shall not take effect. All negotiations at the pre-inquiry stage designed to secure amendments and compromise solutions shall be conducted between the "approved consultants" at meetings which it shall be the duty of the local authority to convene. These meetings would be public, but no-one but the approved consultants would be permitted to take part in the negotiations.

Adjournments would be available for clients to confer with their approved consultants.

Summary

Like all of this model, the pre-inquiry negotiation stage is designed to encourage conciliation and bargaining between objectors and local authority. A new onus would be placed on the local authority of which their 'approved consultant' would be constantly reminded; an onus to satisfy objectors by total or

partial acceptance of their objections, by proposing alternatives or by offering related benefits, much as 'planning bargaining' is conducted at present but in open accessible negotiation sessions. The measure of success for the local authority would no longer be how many of its own proposals it could get through, but how few objections were left at the end of the negotiation stage.

No representatives other than 'approved consultants' would be permitted to take part in the negotiations. This would eliminate much of the disparity between parties in negotiating. Of course, the parties could not be prevented from taking advice on case presentation other than from the 'approved consultant' but the incentive to do so would be less since no representative would be allowed to appear on behalf of an objector at the hearing stage. Local plan inquiries would no longer be weighted in favour of those who can afford the best counsel. Parties choosing to try to gain by refusing to negotiate at all would, in fact, be likely to suffer because the negotiating sessions would be open only to approved consultants and to persons represented by an approved consultant at that session. This would provide encouragement to negotiate; the risk of having no voice in the negotiations outweighing any imagined gain in not taking part.

2. Not more than seven days before the scheduled opening of the local plan inquiry, the Inspector, having read all the objections of both those solely in writing and those by objectors intending to appear shall hold a Procedural Meeting. At this meeting, he shall be apprised of all those objections which have been settled and withdrawn and all those whose objections remain. The Inspector shall ask if any of those whose objections remain and who intend to appear at the inquiry are not satisfied with their preparation for the

inquiry as undertaken with the "approved consultants". If such an objector declares himself not satisfied at this Procedural Meeting, the Inspector must order an adjournment in the opening of the inquiry of 48 hours and may, in his absolute discretion, order a longer adjournment. In such a case, both the "approved consultants" shall report to the Inspector whether further adjournment is necessary. If it is, it shall be granted, unless any other party objects, in which case the Inspector shall make a determination as to whether an adjournment will be granted. If an objector attributes his dissatisfaction to the efficiency of his approved consultant, he shall be allowed to choose another one and the Inspector may in his absolute discretion order an adjournment of longer duration. The Inspector may also require the approved consultant of the local authority to make available to the approved consultant of the dissatisfied objector such information or assistance as he needs to complete his preparation.

If no objector at the Procedural Meeting, being an objector who has announced his intention of appearing at the inquiry and whose objection has not been withdrawn declares himself not satisfied with his preparation for the inquiry, the Inspector shall declare the consultant and preparation procedures validly completed. The Inspector's declaration to this effect is the first requirement needed by the local authority for the validation of its local plan. The Inspector shall then explain the hearing and decision-making procedures to all objectors being objectors who have announced their intention of appearing at the inquiry and whose objections have not been withdrawn.

The Inspector being appointed by the Lord Chancellor's Department from a list submitted by the DoE must be acceptable to every participant in the inquiry. At the time of the Pre-inquiry Procedural Meeting, the local

authority and every objector who has announced his intention of appearing at the inquiry and whose objection has not been withdrawn shall be notified of the appointment and shall have the right to demand the appointment of a substitute. The second appointment shall only be revoked in the absolute discretion of the Secretary of State for the Environment or by the Lord Chancellor.

Summary

The need for achieving the maximum possible consensus is reflected here. Objectors must be satisfied with their state of preparation and with the choice of Inspector. These are not potential delays for no good reason but vital ingredients in achieving confidence in the model and the (joint) decision-maker. The latter does not only fulfil the general function of creating public good-will and acceptance of the system, it will create the right atmosphere for decision-making in partnership with the Inspector. The former provision ensures that the objector's case is fully developed and ready for presentation and will not require complex questioning to ascertain its substance. The ad hoc, improvised case would disappear entirely if objectors did not have to proceed before they had been helped to complete their case.

3. The Inspector shall be accompanied at the Inquiry by an Inquiry Advocate. The Inquiry Advocate will normally be a lawyer of long experience and high status in public inquiry practice selected by the Lord Chancellor's Department from their own list. (Seating arrangements will be discussed below under a separate heading, but the Inquiry Advocate will begin each inquiry with the Inspector.)

The Inspector shall begin by calling the first objector. The Inspector shall ask the objector what precisely the local authority's "approved consultant" gave as the

reason for the local authority's refusal to amend the draft plan to accommodate the objector's objection. The objector shall state the reasons given. The Inspector shall then ask the local authority (whether represented by officers or councillors) if they accept that those were the reasons given on their behalf. If they do, then the objector will make his first submission. If they do not, then the Inspector shall question both the objector and the local authority representatives to see what the reasons given were, calling the "approved consultant" or any other person as a witness. The Inspector shall himself question any witness called by him at this stage in the inquiry. The Inspector shall then make a ruling on the local authority's reasons for refusal as a matter of fact. When this has been resolved, the objector shall make a statement as to why he feels that his objection should be included in the local plan. Once this statement has begun, no interruption shall be made by any person except the Inspector, who may rule that the statement is outside the legal limits of the inquiry. If he does so, the objector will be given the choice of continuing with the statement himself on the understanding that he will be stopped if he strays outside the limits of the inquiry, or becomes repetitive in the opinion of the Inspector, or of having an adjournment to discuss his case with the Inquiry Advocate. If the objector chooses the latter course, the Inquiry Advocate will inform the Inspector if he needs a further adjournment and for how long, to re-arrange the objector's statement so as to make it capable of being accommodated within the parameters of the Inquiry.

When the opening statement by the objector is over, the local authority shall submit to the Inspector all those questions which they wish to be asked of the objector. The Inspector will then put these questions and any

which he wishes to ask to the objector. The objector will answer these personally.

The local authority then makes a statement through the appropriate officer or councillor. Any objector is entitled to insist that the adjournment is called during which the local authority officer/councillor discusses their case with the Inquiry Advocate. The Inspector also has the right to insist upon such adjournment and discussion. The local authority representative may then choose whether to continue with his statement himself on pain of being stopped by the Inspector if he feels that the officer/councillor is not giving and adequate exposition of the local authority's case or whether to allow the Inquiry Advocate to take over. Objectors have no further rights beyond the initial entitlement to insist upon adjournment and discussion by the local authority with the Inquiry Advocate.

When the local authority's statement is over, the objector shall be entitled to choose between questioning the local authority's officers/councillors personally or requiring the Inquiry Advocate to undertake their questioning after an adjournment during which the objector will discuss with the Inquiry Advocate which questions he wants to be asked. However, this choice by the objector will only obtain if no expression of opinion on the subject is made by the local authority. Any officer or councillor to whom the objectors wish to put questions is entitled to insist that the questioning is done by the Inquiry Advocate on behalf of the objectors, and the objector's right to choose is subject to this. The converse does not apply, the local authority cannot insist that the objectors put the case themselves. When this questioning is completed, the Inspector shall put any questions which he wishes to ask any members of the local authority, councillors or officers whom he may wish to call.

Any other objectors may then put questions to the local authority concerning the first objection, and then the Inspector shall invite any members of the public present to ask questions or to make comments, subject always to the right of the local authority officers/councillors to insist on all such questions or comments being channelled through the Inquiry Advocate.

The objector will then personally present to the inquiry a proposal for the alteration of the local plan. He will be advised by the Inspector that, unless it takes some cognisance of the local authority's expressed view it is unlikely to pass the decision-making stage. This will not be an opportunity for summarising of either case by the objector, it will be a formulation, read out at dictation speed for the Inspector to note when considering amendments to the plan.

The local authority will then present to the inquiry through one of their officers/councillors a proposal concerning the local plan, either its preservation unaltered or an alteration, although again the Inspector will advise that unless it takes some cognisance of the objector's view, it will be unlikely to pass the decision-making stage. This too will be noted word for word by the Inspector.

The inquiry would then proceed to the next objector.

At the end of the inquiry the Inspector shall ask all the objectors and the local authority if there is any matter which they wish to be further explored. If there is, then the Inspector assisted by the Inquiry Advocate shall undertake further probing until the maker of the requesteis satisfied. When everyone is satisfied that all matters have been fully explored, the Inspector shall declare the hearing stage validly completed. The Inspector's declaration to this effect is the second requirement needed by the local authority for the validation of its local plan.

Summary

This is the most crucial stage of the proposed model. Upon the safe-guard of the presence of the Inquiry Advocate depends the whole success of the novel concept of dispensing with the representation of all kinds. This officer should not be seen merely as an element of the hearing designed to protect council officers (or councillors) from abuse and to help preserve an ordered structure for the Inspector, although these are most important aspects of this role. The Inquiry Advocate is a further development of the 'levelling' theme. Any objector feeling himself disadvantaged by having to question an articulate Planning Officer or any local authority officer confronted with an objecting Property Company with an eminent Planning Queen's Counsel on the board could invoke the assistance of the Inquiry Advocate to equalise the disparity. The Inquiry Advocate, while conducting the questioning for one side or the other, or presenting their case, would not be compelled to retain the impartiality of an Inspector, he would be able to probe searchingly on behalf of his temporary 'clients' and would present their case in the best possible light. However, he would only do so so far as would not be inconsistent with the conciliatory consensus-based nature of the inquiry model. In other words, the Inquiry Advocate (as with the 'approved consultants' at the pre-hearing stage) would not encourage instransigence by assisting a case designed to win at all costs. He would here confine himself to questioning as requested by his 'client' and would not probe deeply on his own initiative. This probing would only be undertaken where the possibility of discovering some point likely to add the parties in decision-making presented itself. The Inquiry Advocate would not allow himself to be used as a tool by a local authority or objector endeavouring to win at the expense of other parties. In such a case he would be

content to structure the argument for the benefit of the Inspector and de-personalise it for the benefit of parties who might otherwise be subjected to personal attack. Expert representation would be available to counteract any perceived imbalance, but the advantage of holding it in reserve, as opposed to some form of aided legal representation, is that, where a good relationship exists between local authority and objectors, the whole hearing could be completed most informally. The Inspector would feel able to allow the parties more latitude if he was conscious that the Inquiry Advocate could take over a case at a moments notice and re-align it, and the negative qualities of the legal presence, such as destructive cross-examination and excessive formality need never be present. While the inquiry proceeded satisfactorily no legal presence at all would be involved. Thus the flexibility to invoke or omit the Inquiry Advocate would be in the hands of the parties and could be used on the basis of experience and the hearing itself rather than on the basis of preconceptions and prejudices. The Planning Aid scheme currently in vogue would merely involve a proliferation of lawyers in inquiries which would inevitably involve greater formality and the presence of an element briefed to win at the expense of other parties. With 'planning aid' representation would be imposed on the inquiry ab initio, whereas under this model it would only be invoked if someone found themselves at a disadvantage. 'Planning Aid' could only be a stop-gap measure to bolster up the quasi-judicial model.

4. The Inspector would have six weeks in which to prepare a draft report for presentation at the decision-making stage of the inquiry. During this time, the local authority would be compelled to make available on request a plenipotentiary officer or councillor to negotiate with any objector making such a request. If such negotiation led to an acceptable solution, the Inspector would be

be notified immediately and would automatically include such a solution in his report, his consent not being required after the beginning of the decision-making stage of the inquiry.

The decision-making stage of the Inquiry would begin with a meeting at which the Inspector would read out the matters decided during and since the hearing stage. He would then read out the matters outstanding, and the solutions proposed by the parties at the inquiry. He would conclude each with a recommendation of his own. He would then ask first the objector and then the local authority whether they accepted his recommendation. The answer would be given at this point in the form of an unqualified yes or no. The Inspector should make it clear that where such conditions as monitoring or review were desired the answer should be yes but where other conditions, less completely unexceptionable might be desired the answer should be no. If the answer is yes, the Inspector would add these to the list of matters resolved. The Inspector would then ask the party or parties to explain their objections to his recommendation. They could both avail themselves of the services of the Inquiry Advocate to do so and would have to do so if the other party's request that they should was upheld by the Inspector. Bearing in mind these explanations, the Inspector would make one fresh initiative himself explaining that he would have to remit it to an arbitration-type decision-making process if no decision would be reached. The prospect of a further prolongation of the dispute should provide an incentive for both parties to make a determined effort to reach a compromise. If, in the opinion of both parties and the Inspector, dead-lock has been reached then all three shall sign a statement requesting the holding of an arbitration-type inquiry and certifying this matter a 'matter reserved'. All objectors whose objections had not been withdrawn

when the inquiry started would either have to sign a statement that the decision-making stage had been satisfactorily completed or else be a signatory to a 'matter reserved' certificate. These, together would be the third requirement needed by the local authority for the validation of its local plan. This third requirement, once complied with, would authorise the local authority or anyone else to rely on any decided matter in the local plan; any decided matter being any matter not the subject of 'a matter reserved' certificate.

Summary

Like the pre-inquiry and hearing stages, the decision-making stage would be aimed at conciliation. The Inspector's report would have the purpose of defining accurately the suggested solutions of the respective parties in relation to their particular positions and of suggesting workable solutions. It would be weighted in favour of producing solutions which would be likely to prove acceptable, rather than those based on the Inspector's decision-making stage, the Inspector would encourage parties to accept or modify his solution and would remind them of the probability of the Inspector in an inquiry into 'matters reserved' imposing some sort of solution (possibly similar to that recommended in the initial Inspector's report). This would be constantly suggested to the decision-making parties by the Inspector; that it would be better to come to a decision over which they have complete control (he would automatically sanction any solution agreed to by both parties) rather than reserve the matter for an imposed solution which might conceivably be unpalatable to all parties. Throughout the stages of the inquiry, from the pre-inquiry negotiation, through the hearing stage to the decision-making stage there would be constant pressure on the parties to reach common ground and an acceptable solution. This pressure would derive from the provided 'approved consultant's' advising

their Clients as to the scope and functions of the inquiry and the options open to them, from the Inspector's reminders, from the Inquiry Advocate's moderating influence and eventually from the ever present 'threat' of arbitrated settlement at the end.

5. The residue, if any, of 'matters reserved' would be decided by an independent inspector appointed and paid by the Lord Chancellor's Department much as present planning permission appeals are conducted, except that the local authorities would be required to provide and pay for a legal or other representative for the objector, and the report of the Inspector at the local plan inquiry and a summary by him of the decision-making stage would be major items of evidence. The inspector would hear both parties and then submit a report containing a firm decision which would constitute the fourth and final requirement needed by the local authority for the validation of the local plan, namely the arbitrated settlement of matters reserved.

Summary

The final resolution of matters reserved would be brief and decisive. A new Inspector would hear statements from both sides and ask any questions which were necessary to him. He would clear up all the unresolved questions which the parties were still unable to agree. This would have the merits of impartiality, fairness and finality. The lack of machinery for participation in decision-making would not be objectionable because the parties involved have already had the opportunity to participate in decision-making together without success.

Comments on the Proposed Model for Local Plan Inquiries and Defects in it

Having strongly condemned the first effort by central government at producing a public hearing model 'custom built' to fulfil particular functions in the EIP and also pointed out the failure of Lewes District Council to

produce a satisfactory alternative at the first attempt, it is now my turn to have my proposals subjected to probing analysis and criticism. That an 'ideal' should have defects is something of a paradox, but the world of planning is not a world in which absolutes have very much meaning. An 'ideal' can be something which is substantially less bad than other alternatives. That is the very least that I wish to claim for the proposed model for local plan inquiries. However, I will point out the more obvious defects before they are pointed out to me, since I can endeavour to ensure that they are not over-stated, as well as high-lighting more positive aspects.

1. Flexibility

The Lewes District Council News Release dated 16th March, 1979 contains statements by Mr. Francis and Councillor Mechelen of the District Council Planning Committee on the subject of flexibility of procedure. Mr. Francis says that "With the large number and wide variety of types of local plan which will be coming forward to public inquiry stage, there is a need for guidance which is flexible enough to take account of local circumstances and local feelings on how they should be conducted". This is the 'gap' which Mr. Francis perceives in the system and which was the subject of the headline of the press statement "Gap exists in Inquiry System" - Chief Planning Officer, Councillor Mechelen is even more specific "I believe a public inquiry into a local plan is for the benefit of the people who like and work in the area concerned. It should not necessarily be a quasi-judicial set up. I believe the type of inquiry we were looking for was right for Lewes and had the support of those most concerned - the public who wanted to be heard". The format which is proposed above probably much more rigid than either Mr. Francis or Councillor Mechelen would approve.

Even where relations between the local authority and the objectors are as good as at Lewes antagonism may easily creep into an inquiry. This was not allowed to happen at Lewes because the Inspector kept such a tight grip on proceedings, but one could sense a potential flare-up between the Housing Action Group and the technical officers who were dealing with their objection, which the Inspector would not allow to develop into personal criticisms. Any right to uncontrolled 'interface' between objector and local authority representatives has been diluted by insisting that it must be with the consent of both parties. If a council officer chooses to insist on being examined by the Inquiry Advocate and refuses an objector's request to put a question personally then the Inspector may draw his own conclusions. No useful purpose will be served by having a layman trying to get a council officer/councillor to say something that he is unwilling to say. This would frequently be the start of the "shouting match" anticipated by Mr. Webb, Chief Planning Officer of Portsmouth City Council (see Table G above). To prevent this, it has been necessary to curb people's right to present their case how they wish. In local plan inquiries where the services of the Inquiry Advocate were called upon only a little or not at all, nothing would prevent an organisation being allowed to present its case through two or three of its members or officers, in the same way as the local authority might. This would settle some of the discontent at Lewes. Mr. Woodford objected to the District Council, the Lansdowne Place and Friars Walk Community Association and the housing Action Group using more than one spokesman since it was confusing to him. This play-safe attitude was perfectly natural for an Inspector being dragged unwillingly

into an experiment in procedure, and it is somewhat remarkable that Lewes District Council imagined that the Inspector's attitude would somehow have been different. It is futile to guess at the percentage of Inspectors who would have reacted in the same way, but my interview with senior officials of the Inspectorate leads to the conclusion that it would be high. It would be helpful if Inspectors could be briefed and prepared to accept case presentation other than through a single spokesman but deliberately incorporated in the above proposals is a power for the Inspector to insist on the Inquiry Advocate being detailed to take over the presentation of a case which is not being adequately expressed for his understanding. While this does restrict freedom of choice, much more importantly it fulfils the three major functions which have been imputed to a local plan inquiry. It ensures that no-one's case is put inadequately, indeed the 'right' to put it inadequately is taken away. Wherever the local authority or the objector is not putting his case properly he may avail himself of the services of an expert, the Inquiry Advocate and the Inspector may compel him to do this on pain of being stopped if he continues to present his case unsatisfactorily. This may be open to the charge of paternalism, but it will ensure that the many people who believe that their contributions are effective do in fact enjoy full public participation. Perhaps unlike the Structure Plan EIP an illusion of public participation is not one of the intended functions for the local plan inquiry and accordingly it has been sought to make participation fully effective, whether or not this coincides with the participant's view of what is effective. This would probably actually increase confidence in the fairness of the system and in the opportunities

which it offers for participation. If participants knew that their case presentation did not have to depend on their own personal qualities and that there was a second chance (to call on the Inquiry Advocate) if their case began to break down, they would participate more willingly and possibly less defensively. The function of control is also fulfilled. The Inspector can always invoke the safe-guard of the Inquiry Advocate if he gives the more formal approach a try and it fails. There can be little doubt that much of Mr. Woodford's caution and adherence to tried and trusted means derived from the knowledge that if the informal case presentation failed the inquiry would be a complete disaster. Accordingly, he refused to relax any control at all. If he had had the reassurance that an experienced man would take over if the objectors and local authority did not do themselves justice or were not clear enough for the Inspector's needs, he might have given much more licence to the parties in the presentation of their case. An analogy can be drawn with the teaching profession. A good teacher can allow total informality because he is confident of the presence of his residual authority which he can bring into play when he wishes. A bad teacher who has nothing to fall back on is constantly trying to restrict the opportunities for indiscipline by excessive formality. An Inspector who felt that he had something really reliable to fall back on, like the role of the Inquiry Advocate, would tend to conduct a much more informal inquiry where this were appropriate. The road to flexibility is probably through the Inspector's heart and while the suggested model probably does not go as far as Mr. Francis and his supporters would like in theory, in practice it is likely to achieve far more of the functions of a

local plan inquiry than did the Lewes inquiry. Having said that, one is left with the fact that the proposed inquiry model is aimed at securing a guaranteed invariable minimum of participation for everyone at all local plan inquiries than at taking account of "local circumstances, and local feelings on how they should be conducted".

2. Inspectors

Having spoken of the attempts to fulfil the function of preserving control and efficiency by giving the Inspector residual rights to preserve those aspects of formal procedure and legal representation which Inspectors consider indispensable to the proper discharge of their duties, the impression may have been given that the proposals would receive whole-hearted support from the Planning Inspectorate. This was not the impression which was received during an interview with an Assistant Chief Planning Inspector of the Department of the Environment. When asked about his view of the future of local plan inquiries he replied "The pattern of the future is local organisations following the established procedure by having an advocate and witnesses and testing the evidence of the local authority by cross-examination". He was then asked if local plan inquiries (inter alia) stood in need of reform, to which he replied, "We see the need for only one reform; we are concerned at the disruption of certain inquiries and Inspectors may have to be given more powers, to control disruption, at present they have only the power of a Chairman at a meeting." My experience of Inspectors at the different types of inquiry which were attended in the course of this research is that they have evolved a high standard of efficiency and expertise in one model and it is easy to infer that they will resist any change which devalues this achievement. It should not

be expected that the Moot will be a decision-making model which commends itself to Inspectors and it is possible to anticipate hostility to the idea of partnership in decision-making, since securing a consensus is much more difficult than merely producing a recommendation to be accepted or rejected by the Secretary of State or local authority. The Inspector would have to live with his report during the decision-making stage and it is vain to deny that this would place a considerable burden on his shoulders. But it may be that the Inspectorate is being short-sighted (or rather its members, since the ACPI explained that the Inspectorate has no views on policy) if it imagines that movements for change are over. Mr. Woodford, in a letter to me, inevitably refused to comment on the Lewes inquiry or its aftermath, but issued a more general warning to me not to refer to the Lewes Inquiry as the beginning of a "new system of inquiries" (I had committed this solecism on a number of occasions prior to this letter). The implication of this is that the Lewes episode was an isolated incident and that 'normality' would resume as soon as it were forgotten. This is a surprisingly unrealistic view from such an experienced Inspector, if indeed that is what Mr. Woodford was implying. The evidence certainly points in the direction of further pressure for reform. Lewes District Council, both councillors and officers seem unmoved from their original standpoint and are unlikely to be deterred by a stormy beginning from continuing as they see fit. It should also be remembered that a similar inquiry was contemplated at Stone in Staffordshire. Much more importantly, Mr. Francis has had an article published in his professional journal (Planning op. cit.) and has lectured on his theories to other local authority

representatives at a symposium on local plans. It will not require a spontaneous upsurge of demand for informality among members of the public to bring about further pressures for change. Any Chief Planning Officer who is sufficiently impressed by the arguments for informal procedure is likely to find many willing supporters amongst objectors who foresee advantages to their cause in being free from expert cross-examination and in questioning council officers personally. If any of the seeds sown by Mr. Francis have fallen on fruitful ground (I would regard the planning profession as highly receptive to this sort of proposal) it is only a matter of time before another Inspector is confronted with the same problems as Mr. Woodford at Lewes. It is contended that the suggested model could pre-empt further demands for informality aimed at removing inequality and disadvantage by assuring a minimum of equality within a formally constituted structure. In Structure Planning the decision was taken because pressure and criticism had built up to such a level that reform was necessary to answer the charges made against development plan inquiries. That was the decision irrespective of the later failures of the reform itself in the EIP. One cannot see the value of a rear-guard action to defend the local plan inquiry in its present form, if occasionally and even increasingly individual inquiries are to tear themselves apart from within. If local plan inquiries become the subject of criticism in the same way as development plan inquiries then they will simply continue until the hand of central government is forced by the need to relieve the pressure. The shortcomings of this kind of reluctant reform are discussed in the first part of this thesis. Inspectors as much as anyone, and more than most, could be expected to appreciate the desirability

of producing a reform calculated to fulfil the functions of local planning by satisfying the requirements of all participants, Inspectors, objectors and local authority officers. This would be preferable to a belated and muddled response to pressures applied in such a way as to obscure facts (as with the supposed need for 'shortening' EIP's). It might be expected that a model with safe-guards for controlled procedure and proper case presentation would in practice hold fewer terrors for Inspectors in practice than either the reform which will be won some time in the future or the improvised 'unofficial' model imposed by dissatisfied District Councils and objectors. Having said that, my proposed model would probably seem far from ideal to members of the Inspectorate, who prefer the present format to anything else. I do not think it inconceivable that Inspectors at some future inquiries, whether sooner or later, would have welcomed some of my proposals, had they known of them.

3. Witnesses

No definite provisions for witnesses have been made in 'the proposed model'. This is not because this potentially vital aspect of local plan inquiries is not envisaged. It is simply because no satisfactory conclusion was reached. At the Westminster City Council's Local Plan Inquiry, expert witnesses played a central part in both the case of the giant Grosvenor Estate and the case of Westminster City Council itself. Cross-examination of these witnesses, mainly planners employed as planning consultants or as council officers and the challenging of their technical evidence occupied many hours of several sessions at Westminster. The two Inspectors were professional planners and so were presumably able to follow the arguments for and against acceptance of the evidence,

but I am sure that I was not alone amongst those present in being quite unable to follow much of it, although I looked at a draft plan. The hearing and the decision-making model used in the West German civil litigation system, the pure inquisitorial approach, could have been utilised to give Inspectors power to call 'court witnesses' to give authoritative pronouncements on technical facts which the parties would then be at liberty to interpret and apply in a much less complex way. This was not done because it cannot be known whether the disputes involved at Westminster could have been settled in any meaningful way by the calling of a single independent 'court witness' and because it is doubtful whether it is advisable to extrapolate from an inquiry like the Westminster City one, where international considerations are urged and multi-national companies are represented. If one wanted to make any ruling designed to eliminate complex disagreement between experts one would have to make the distinction between expert and non-expert witnesses, which would involve defining them. At Lewes, the Lansdowne Place and Friars Walk Community Association called witnesses who gave evidence as to their feelings and wishes and explained how these were representative of their friends and neighbours. How could an Inspector, or anyone else, hope to find an independent witness capable of giving evidence to the inquiry as to the objective state of opinion on a subject in the area? It is easy enough to say that such a witness would not be an expert witness, but the imponderable question is: where is the dividing line? One could not give an Inspector discretion to call an independent witness to give evidence on any matter which the Inspector thought fit, without clear guidance as to what material could be the subject of expert evidence and what could not; and although the

West German courts presumably find it satisfactory, it is unlikely that any independent expert, especially in a subjective field like planning, could command universal authority. Since the need to promote and maintain public confidence in the process chosen, must be borne in mind, any witnesses not guaranteed full acceptance by participants, could not be identified with the process itself, but only with particular participants as at present. It seems indisputable that witnesses will always be needed to state their reasons for preferring a particular proposal if objections are to remain other than merely individual. When these reasons are subjective and when objective is so difficult to define that it has not been possible to separate the two. An architect could presumably comment on the technical adequacy of a proposed building but could he say whether it was aesthetically pleasing or not? Can a planning expert say whether development is 'in character' with the area or not with any claim to objectivity and can a single pronouncement decide whether an amenity is beneficial to the community or not?

Can witnesses to opinion really inform anyone? At the Lewes inquiry, the Inspector on several occasions expressed doubt about the need to call a witness to support a contention by the Lansdowne Place and Friars Walk Community Association as to what the inhabitants of those streets thought. The District Council were not contesting that the people called did not believe what they said. Whether a witness has any role to play in such a situation seems doubtful. In the context of the Inspector's warning that repitition would not aid anyone's case and the Association's statements as to the views of people in the area, it is unlikely that their witness gave a valuable contribution.

Perhaps the hearing of witness is a charade which has to

be played out in case they have anything to add to the statement of the objector who calls them. Certainly most examination-in-chief of such witnesses borders on the farcical. Sometimes cross-examination can highlight a discrepancy, but prompting witnesses as they read out their evidence which could just as easily be taken as read if it is supplied in time, is an example of the mindless aping of the judicial model which irritates its critics so greatly.

So I have left the question of witnesses open. I am sure that the 'big battalions' should not be allowed to lift the discussion beyond the reach of those who cannot afford expert consultants or assimilate masses of highly specialised data, but I am not convinced that the 'court witness' could be made to work and I cannot think of an alternative. Obviously, technical data cannot be completely excluded, although it is urged that they should be regarded as less of a trump card over personal and political preferences and more as a means of implementing those preferences. While technical data remain an integral part of public inquiries experts will continue to be needed to explain them. How does one exclude those witnesses who are expressing subjective preferences and include those claiming to make objective judgments? In the absence of a decisive answer to this sort of question during the course of this research, no provision for the calling of witnesses has been made. It is envisaged that witnesses would be called much as now, at the volition of the parties, and the "approved consultants" would have prepared some relevant questions which the Inquiry Advocate could only ask on behalf of any party faced with the task of challenging an expert witness. This should reduce the gap between the level of argument of the witness and the level of argument of which a lay objector (or councillor) was capable.

Having said that, it must be conceded that to identify an unsatisfactory aspect of contemporary inquiries which may well be inhibiting participation by laymen and is at least wasting some time and then to fail to deal with it is a grave weakness in the suggested model.[38]

4. Finality and Authority

One of the less immediate but equally important advantages of the more democratically constituted decision-making mechanism would be its effect at the 'grass-roots' planning level by which is meant development control. Because the decision-making was placed in the hands of participants and at the end of the hearing decision-making and arbitration of matters reserved stages the amendments to the plan would be signed by all the involved parties as a symbol of legitimation, the status of the local plan would be much altered for the purposes of s.29 (i) T and CP Act 1971. That section provides that the authority responsible for development control "Shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations". Commentators such as Purdue have produced lists of other material considerations and a list is often prepared which places the development plan amongst several other 'material considerations'. That is a state of affairs which would be unlikely to continue after the establishment of the inquiry model proposed above. A plan produced by a decision-making body with much greater claims to accessibility and equality of representation and more importantly concluding with a decision in arriving at which the participants have been instrumental would have an authority unique in the present plan-making system. Increasingly local authorities would be compelled, (and if they did not respond appropriately this could easily be done by

legislation), to regard the final plan arrived at after the arbitration of matters reserved as the material consideration. The other material considerations which have acquired almost equal status with the lack of esteem for development plans and their democratic nature (or lack of it) would again pale into insignificance. Planning authorities would have very little room to manoeuvre around the provisions of the local plan. Its provisions would be of paramount importance in deciding a planning application and other material considerations would only come in where the plan itself had provided for flexibility. This would be the only occasion where the planning authority would retain the wide discretion which it at present exercises as to whether to vary the development plan or not. Where the plan was clear and inflexible any future planning permission appeal would have regard to the provisions of the plan and except in extraordinary circumstances that would be decisive. Other material considerations would have no part to play except where the plan by the nature of its provisions conferred discretion on the plan-making authority to use flexibility of judgment. In other words, the power to determine the land use of the area would pass from the planners to those who participated in the local planning process - from the planners to the 'planned'. This would in turn invest the local planning stage with much greater importance - it would no longer avail the dissatisfied or the speculator to opt out of the local plan and try to have it overthrown at planning permission appeal stage. Anyone with hopes or aspirations concerning future land use in their locality would need to participate in the production of the local plan which would be more final and more authoritative than previously.

7. Getting it Right from the Start

Now that I have formulated and analysed the proposed model, I feel able to turn to the only slightly less important matter of the setting of the inquiry. By setting I mean three things;

(i) Programme officers and publicity

(ii) Environment

(iii) Training and Briefing Inspectors

each of which is vital if the inquiry is to be in accord with its functions. All of these elements must stimulate the fulfillment of the inquiry's functions rather than oppose them as is sometimes the case at present.

(i) Programme Officers and Publicity

It should be made clear that much of the discussion here on programme officers owes a great deal to a study by Mr. Cox, now of Fareham Borough Council, the Programming Officer appointed by Hampshire County Council for the Western Wards of Fareham Action Area Plan Public Local Inquiry. The roles of programme officers at the Lewes and Westminster Inquiries were also observed during this research, and my thanks are due to Mr. Miles and Mr. Hilton respectively for their help.

That Mr. Cox has produced his study[39] is a testimony to his belief expressed on p.12 that "It may be thought that the duties of the Programming Officer are of a routine nature requiring little initiative and tact. I do not subscribe to this view, I believe he has a positive contribution to make at a very sensitive stage in the procecures leading to the adoption of a Local Plan". Mr. Cox's opinion is a sound one, that a constructive approach to publicity and encouragement of participation by the Programme Officer is essential to fully developed local planning. At present this is even

more crucial than it would be under the procedural model proposed above and for that there are two main reasons. The first of these is that the statutory provisions for publicity at any sort of inquiry are not all that one could wish. Even those for a CPO inquiry, among the most demanding, only require information about venues, times and the governing statute to be relayed through certain limited media. The local plan inquiry provisions under the Town and Country Planning (Structure and local Plans) Regulations 1974 are perhaps equally thorough but suffer from the same deficiency. This is that they are confined to the limited ambition of making information available to those who are already

(i) motivated and

(ii) capable to use it.

It is no use informing people that an inquiry will be held into objections if they do not believe they can affect the eventual decision by objecting. This is what is meant when it is said that the local planning process must be sold to the public. It is not enough for the local authority to say when and where meetings and sessions are to be held and for what purpose and then to shrug its shoulders when these opportunities are not seized. Similarly, it is useless to arrange a meeting at a time or venue which makes attendance difficult or impossible or gives the impression of requirirng some knowledge in advance. At the Portsmouth CPO Inquiries, for example, Mr. Saulet, solicitor to the Residents Association complained bitterly because a public participation meeting had been held in the Guildhall in Central Portsmouth rather than in a hall in the area which was the subject of the order and further that it had been held after dark. When the City

Council then sought to rely on what they claimed was a lack of support amongst residents for the Association's case, the answer was obvious. Elderly residents of the area had not been present at pre-inquiry meetings because of the time and venue chosen. Yet these choices clearly complied with statutory requirements. A member of Parliament once complained that "I have found that 'public local inquiry' does not always mean what a layman might consider it to mean. It can mean that it is held thirteen miles away across heavy London traffic. This meant that any local person involved in the scheme had to spend an hour and a half to two hours travelling across London to reach this 'local public inquiry' (sic)".[40] In Mr. Cox's view, and in my own, the programme officer holds the key to the difference between compliance with minimum statutory requirements and a full-scale attempt to secure wide public participation. One possibility open to the programme officer is to "attend any public meetings and exhibitions to enable him to identify likely principal objectors and make himself known as the Officer who will undertake this very important role at the future Inquiry".[41] Issue is taken with Mr. Cox on a matter of emphasis as to the importance of establishing an early contact and relationship with objectors. He is in favour of such a move because "By establishing his position at an early stage, the Programming Officer will be able to advise all parties of the role he will be taking at the Inquiry and the correct channel for any day-to-day problems. By gaining the confidence of objectors, he will often be able to avert problems by dealing with them informally out of the Inquiry area to everyone's mutual satisfaction"[42]. This kind of filtering role keeping out these problems

with which the Inspector (in the view of the programme officer) would not wish to be bothered, is symbolised by the part which Mr. Cox advocates for programme officers at the pre-inquiry procedural meeting "All questions will ..... be asked through him and he will either answer them himself or invite either the officer of the local planning authority or the Inspector to answer personally. By acting as a 'buffer' he will be able to save the Inspector being compromised by objectors who try to discuss the merits of their objections or the substance of the local Plan"[43]. While the Programme Officer may be able to advise on limitations of revelance, it would not be desirable to see him or her empowered to come between Participants and Inspectors. Inspectors are perfectly capable of declining to answer improper questions whether at a pre-inquiry procedural meeting or at the inquiry itself. A better emphasis would be on the positive work which the Programme Officer can do in getting people to speak up when they are unsure of whether their question is appropriate or their case well-founded. Under the proposed model they would soon be passed on to an approved consultant for more precious advice, but particularly in contemporary local plan inquiries there is a great need for encouragement to be given to participants of all views to come forward and be heard. If an Inspector does not like what he is hearing he will say so, but a self-appointed censor, particularly one in the pay of the local authority, would be potentially disastrous to the function of achieving public confidence. Much greater store is placed by the alternative, less negative emphasis implicit in Mr. Cox's recognition[44] that "lay objectors will look to the Programme Officer for informal advice

on how the proceedings operate". It would be highly beneficial if it was seen by Programme Officers as a point of pride that everyone who could conceivably wish to contribute anything to discussions on the local plan and objections to it would have been told of the opportunities available before the Inquiry began. While no support is offered here to the rather bizarre Skeffington proposals[45], concerning selected officers intended to organise participation, (the image which this conjures of people being dragooned into the ranks of the objectors is repellent to a free society), a Programme Officer can go a long way to getting the information disseminated by his authority used, by providing the motivation to use it (helping to 'sell' the system) and the capability to use it, informing and advising on participation on an informal basis. Until such time as advisers resembling the approved consultants are available, there will be no substitute for an active and sympathetic Programme Officer.

(ii) Environment

It is almost incredible that such an important factor as environment should have been so totally neglected in discussions on hearing procedure. When the machinery of the EIP was set up in 1972 an opportunity to make environment a useful tool in fulfilling the functions of the model was ignored and a single paragraph in the Code of Practice comprises the sum total of information recognising that the environment of the hearing can affect its course.[46] "The arrangements at the examination, and the conduct of it, will be designed to create the right atmosphere for intensive discussion but to get away from the formalities of the traditional

public local inquiry. To this end, the intention is that the panel should not sit apart from the participants, but that the panel and participants should, whenever possible, sit round the same table". In case it should be thought that this paragraph representing approximately 1% of the DoE/Welsh Office booklet Structure Plans; The examination in public is all that the topic warrants, the importance of the science of semiotics as a major force influencing human social interactions will be explained[47].

Planning inquiries are never conducted in natural environments. Therefore, since the environment is originally created by man, is chosen specifically by man and modified for the purpose by man, it seems reasonable to conclude that any effect of environment upon a participant at an inquiry represents a form of communication between the creator/chooser/adapter of the environment and the participant thus affected. There need be no hesitation in using the word 'communication' suggesting a recognisable pattern which can be identified, Jonathan Culler[48] describes man as "a creature whose dealings with the world are characterised by the structuring and differentiating operations which are most clearly manifested in human language". It is Advisable therefore to view all human activity in the light of what Culler[49] calls "the human tendency to organise things into systems by which meaning can be transmitted". It is such a well-established theory that the only claim to break new ground must be confined to its specific application to planning inquiries. As long ago as the days of the Weimar Republic, Adolf Hitler was complaining in Mein Kampf that "our cities of the present lack the outstanding symbol of national community" and more

recently (in 1969) at the Joint Convention of the American Institute of Architects and the Royal Architecture Institute of Canada, Daniel P. Moynihan, Chief Planner of the Nixon administration bemoaned the retreat from "architecture and public buildings as a conscious element of public policy and a purpose-full instrument for the expression of public purpose".[50] In a similar way, occasional insights like the Diaries of the late Richard Crossman leave little doubt that patterns of political motive are readily discernible in even fairly minor administrative decisions. On the third element of environment, namely furniture arrangment, there is very little writing at all, but there is no qualitative difference from the other two forms of work which make it unlikely that such patterns exist. At the very least, further investigation is called for, wherever patterns can be discerned at an empirical level and likely motives or explanations imputed. This research has involved seven planning hearings (five inquiries and two EIP's) and the observations which were made are set out below under the three sub-headings of the classification chosen:-

(i) Choice of building

(ii) Choice of room

(iii) Furniture arrangement.

It should not be assumed from the use of tabular form that these findings are regarded as in any way scientifically conclusive. The method was necessarily empirical observation and the sample necessarily too small for more than tentative deduction. This information is produced to give an impression of the sort of choices made and to establish some presumptions which can be confirmed or rebutted by full-scale research at a later date.

(a) Choice of Building

Table H

Buildings in which hearings were held

Type of Inquiry	Council	Building
Compulsory Purchase Order	Portsmouth City	Guildhall
Planning Permission Appeal	Medina Borough	Town Hall
Structure Plan (EIP)	Surrey County	Sports Centre
Local Plan	Lewes District	Town Hall
Compulsory Purchase Order	Portsmouth City	Guildhall
Local Plan	Westminster City	Council Offices
Structure Plan (EIP)	Berkshire County	Old Town Hall

The elements which produce the eventual choice of a particular venue are largely imponderable. Cost, convenience and availability are doubtless taken into account, but since (to my knowledge) no extraordinary buildings such as a prison, gymnasium, or a council depot are chosen there is certainly a clear inclusion of a sense of the appropriate. In addition to the more prosaic factors listed above, the decision-maker consciously chooses a building in keeping with the nature of a planning inquiry or examination. Herein lies the first object of real concern. For it is most doubtful whether there is such a thing as a typical inquiry or whether inquiries generally can be said to have an inherent 'nature'. The nature of an inquiry is highly individual and largely determined by variable factors like the environment, participants (including inspectors) and matters to be discussed. Since this is so, no information on the nature

of the inquiry could be present to aid the decision-maker in his choice of what would be appropriate at the time when that decision would have to be made. What happens, of course, is that his judgment is influenced by a mixture of two things. These are his experience (or lack of it) of previous hearings of similar or (in his view) comparable type and his personal belief as to what the forthcoming inquiry should be like. Thus, when the hypothesis is made that objectors arriving at a Town Hall or Guildhall conclude that it must be a 'Council Matter', that the Council are running this or that 'the Council will be in charge',[51] it simply is a reflection of a Council Official's view of what inquiries have been like in the past and what this one should be like ideally. He has merely chosen a venue appropriate to his subjective and individual perception of the 'character' of the as yet unopened inquiry.

(b) Choice of Room

Table J

Rooms in which hearings were held

Type of Inquiry	Council	Room
Compulsory Purchase Order	Portsmouth City	Committee Room
Planning Permission Appeal	Medina Borough	Concert Hall
Structure Plan (EIP)	Surrey County	Conference Hall
Local Plan	Lewes District	Council Chamber
Compulsory Purchase Order	Portsmouth City	Committee Room
Local Plan	Westminster City	Council Chamber
Structure Plan (EIP)	Berkshire County	Concert Hall

The choice of a particular room is qualitatively similar to the choice of a particular building for the purpose of holding a planning inquiry. It will also be chosen partly according to physical constraints and partly from a judgment as to what is fitting. It will, therefore, be treated briefly, but it merits separate treatment because it is an opportunity for the impression gained by the participants at the nature of the inquiry to be refined, to be rendered more specific. I include in a list of those likely to be influenced by these environmental choices participants such as council officers and even Inspectors with many inquiries already behind them. This is because a similarity of environment is a confirmation of similarity of the process involved. A kind of presumption is established that those conditions prevailing at previous inquiries held in similar environments will obtain here. The significance of that is enormous. If inquiries are held in council chambers of Town Halls regardless of whether they are planning permission appeals, local plan inquiries, compulsory purchase order inquiries of structure plan EIP's, the environment is contributing to the blurring of distinctions between them. If there is a uniform environment, the individuality, purpose-built model will tend to be obscured and the similarities will be emphasised to the detriment of the differences.

The course of an inquiry can be affected by the influence of environmental constants just as it can be affected much more obviously by procedural constants. If the environment is

varied, the dangers of dysfunctional comparison can be averted. Those with experience will be just as susceptible to environmental influence as those appearing at an inquiry for the first time. If an inspector, used to the Victorian splendour of panelled Council Chambers in Victorian Town Halls, is required to walk through the futuristic architecture of a Sports Centre he will be forced to notice at once some superficial differences. This may or may not encourage recognition of more important differences between traditional inquiries andthe new EIP, but will certainly discourage any false comparisons which might be made as a result of similar environments. It is conceivable that the Panel of the EIP might conduct the hearing in precisely the same way as they would in an echoing Council Chamber, but this would be to deny the established truth that people do respond to their environment, and to changes in it, given the faculty of comparison.

My view of the room as refining and extending the initial influence effected by the building is based upon specific connotations which particular rooms have. Even my view, which is, perhaps, an extreme one in this respect, is that the architectural qualities of a town hall can give no more than a fairly definite and uncomplicated impression. A Council Chamber is much less vague in the influence which it exerts. Here is a symbol of representative democracy which might impress some as a place where tradition of service to the community and denial of

personal importance or sectional interest constitute the prevailing ethos. Others might see it as an area for political conflict with winners and losers and an uncompromising atmosphere. Either impression once received can hardly fail materially to affect the attitudes of people embarking upon a different but analagous process of decision-making or conflict-resolutions and once the attitudes have been changed, the interaction of the parties is inevitably altered.

(c) Interior Arrangement

This could be seen as the most important environmental influence because it is the most direct influence upon the proceedings at planning inquiries. The study of furniture arrangement and the physical juxtaposition of people as sources of controlling forces on their personal interaction has a long and distinguished pedigree. Thomas de Quincey in "Confessions of an Opium Eater" refers to the theory as follows:-

"Lord Bacon,[52] it is who notices the subtle policy which may lurk in the mere external figure of a table. A square table, having an undeniable head and foot, two polar extremities of what is highest and lowest, a perihelion and an aphelion, together with equatorial sides, opens at a glance a career to ambition; whilst a circular table sternly represses all such aspiring dreams and so does a triangular table. Yet if the triangle should be right-angled, then the Lucifer seated at the right angle might argue that he subtended all the tenants of the hypotheneuse therefore, as much nobler than they as Atlas was nobler than

the earth which he carried".
De Quincey goes on to speculate that the idea of "cutting away the possibility of feuds through the assistance of a round table" must extend back at least as far as King Arthur. Be that as it may, from the ideas of a sophist of the eighteenth century there evolved a real appreciation of the serious consequences to be expected from neglect to choose appropriate schemes of furniture arrangement. The problem to which Juan Bonta of Ball State University, Illinois addressed himself in the early 1970's could scarcely have been of greater import. He faced the difficulties of devising seat patterns for the 1973 Paris Peace Conference which would be acceptable to all parties. The political climate of the time was so sensitive that any failure to satisfy the Viet-Cong or the South Vietnamese government would have been fatal to the peace initiative and prolonged the crisis. The Viet-Cong would accept no arrangement which would place them in a subordinate position and the South Vietnamese would not have the Viet-Cong seated as equal negotiating partners. Upon the crucial reconciliation of these aspirations in a mutually acceptable seating arrangement depended the success of the Conference and a solution to the problem in South-East Asia.[53] Bearing this in mind, it is submitted that we should look at seating arrangements in important areas of public life in the expectation that they will be influential, rather than be surprised that such an obscure factor could be in any way important, which it is anticipated

may be a common reaction.

When strategic structure plans were first made, subject to Examinations in Public by the 1972 T and CP (Amendment) Act it was intended that the Examination should be an informal, in-depth discussion. To further this aim, a round table was adopted as a suitable arrangement for discouraging the formation of 'sides' and the adoption of entrenched positions. The studies of the Surrey County Structure Plan Examination in Public and that of Central and East Berkshire indicate that this approach has been discarded. The unofficial reason for this is, apparently, that the connotations of equality which this involved were utilised by some pressure-groups for the furtherance of minority interests. At the Surrey Examination in Public tables and chairs were placed in a formation resembling the capital version of the Greek letter Pi, with two long sides closed at one end by a short side. This was different from the circular arrangement, although the participants were placed alphabetically (with one important exception) around it as they would have been around a round table. The pre-eminence of the Panel (replacing a single Inspector) was established by its sole occupation of a single side towards which all participants came to address their remarks. The Panel's position was an improvisation upon the head-of-the-table theme. The exception to the alphabetical ordering was the placing (presumably by themselves, as the plan-making authority) of Surrey County Council's

representatives next to the Panel. It was to Surrey that the Chairman of the Panel invariably turned to begin the discussion of each new topic and their special position was accentuated by the seating arrangement. At the Berkshire Structure Plan EIP there was a remarkable variation of this scheme. The same basic arrangement was chosen with the Panel 'at the head' of two ranks of participants, but the two sides were themselves the subject of deliberate segregation. On the Panel's immediate left were Berkshire County Council (as with Surrey) and then each of the Borough and District Councils and the various interested Ministries. Facing them on the opposite side (the Panel's right) were Parish Councils, the various Residents and Amenity Groups and Political Parties, Chamber of Commerce and House-Builders Federation. The effect was quite extraordinary. The bureaucrats were actually lined up (at the instance of Berkshire County Council presumably) in physical opposition to the organisations whose views had been solicited during public participation procedure. One was reminded by Berkshire's furniture arrangement of Portsmouth City Council's 'security in numbers' approach. Portsmouth had seats for the Council officers directly opposite the objectors in three ranks, sometimes exceeding a dozen people at a time in total. This host, described by the objector's solicitor as a 'galaxy of technical expertise' by their very grouping must have forcibly impressed upon the minds of the objectors

the magnitude of the task they had undertaken in attempting to oppose a council programme. Perhaps also Berkshire County Council found comfort in the facade of a common front; there was a high level of co-operation and agreement between the district councils and the County in producing the Draft Plan. The line of Council representatives may have been suggestive of solidarity to repair the opposite impression which was created during the course of the EIP of conflict between councils.

At the Lewes District Council Local Plan Inquiries, the officers were trying to impose the informal discussion-based model on a situation which to the traditionalist Inspector was more commonly associated with a formal inquiry. When I interviewed the planning officers responsible, they told me that they had produced their seating arrangement to accord with this anti-confrontation approach. They had both the Council and the objectors facing the Inspector but not facing each other and they hoped that this would be conducive to consensus planning with no uncompromising attitudes adopted. In the event, the Inspector insisted on a formal procedure, although both parties presented their cases informally and the discordant result was decidedly not helped by the fact that he was conducting a formal inquiry in a seating arrangement with an orientation towards achieving an informal inquisitorial model.

At Westminster and at Ryde (Medina Borough) it was possible to observe a phenomenon

which has been identified as a result of help given by Professor Terence Lee of the Department of Psychology, University of Surrey.[54] This phenomenon is the exaltation of the decision-maker role by means of physical elevation and is known to environmental psychologists like Professor Lee through his studies of the environment of judicial proceedings. At Ryde, a small planning permission appeal, this was of the most basic kind, a chair upon the stage of a concert hall for the Inspector with the local authority and appellant seated at the level of the stalls. At Westminster for the Local Plan Inquiry, there were more elaborate adornments to emphasise the status of the Inspectors (there were two). The resemblance to a court-room was a strong one. The desk at which the Inspectors sat was a large panelled one, rising from floor level to the top, about ten feet high. The Inspectors sat on a raised platform. Large, imposing ornamental chairs increased the aura of solid authority. The two Queen's Counsel representing Westminster City Council and the major objectors (in terms of resources at least) the Grosvenor Estate imported their own portable lecterns and faced each other across the room below the Inspector's level. This emphasised the bi-partisan nature of each objection, and increased the apparent status of the legal representatives. Objectors waiting to have their particular objections heard sat around the Council Chamber wherever they wished, but when actually involved in presenting their case they were required to

sit opposite the Westminster representative. Indeed, when the antics of one objector prevented the Greater London Council's representative from taking up this position, the counsel for the Westminster City Council protested to the Inspectors and insisted that the solicitor appearing for the GLC be "given room to present his case". Expert witnesses sat between the two opposing sides, looking up at the respective Counsel, who were standing and looking right up at the Inspectors who were seated on a higher level. This was very much after the fashion of some Magistrate's Courts, where the witness is directly opposite the Bench, but looking up at the magistrates from a lower level to establish the relationship between the parties. It is difficult to conceive what place such a relationship could have in a planning inquiry and why conditions conducive to it should have been reproduced here. The analogy between making decisions in criminal law and in planning is a very tenuous one, if it can be defended at all.

My research in this field has only been empirical and is recorded impressionistically as it was perceived, with no claims to scientific methodology. However, I do consider that I have identified an aspect of importance which must be taken into consideration in any assessment of planning inquiries. Either in the present local plan inquiries or in some future reformed model, environment should be given full weight. The need is for a more democratically selected environment. Local councils, or rather their

officers seem to have unchecked power to impose an environment on Inspectors and participants. It is not suggested that they do so consciously to their own advantage on every occasion. The choice may often be unthinking, and the arbitrarily selected environment is unlikely to be any better for having no thought behind it. If potential participants were invited to state a preference for venue with suggestions for seating arrangements (the local authority having one vote like all participants) the Inspector could endeavour to make a choice, helped by the Programme Officer or someone else with local knowledge of as popular a place as possible. Alterations to seating arrangements could be discussed at the pre-inquiry Procedural Meeting and even adjusted during the course of the hearing. In the proposed model, a circular arrangement would be adopted to begin with, while the Inspector felt able to proceed fairly informally, with mutually agreed interface between objectors and local authority but a reversion to an obviously adversarial arrangement if the Inquiry Advocate was called into play or at the Inspector's request. It would be essential for the decision-making process to be conducted in a round table way. All of these thoughts are personal preferences and would, of course, be varied if the general view of participants was otherwise.

(iii) Training and Briefing Inspectors

If it were possible to create a perfect procedural model and a faultless decision-making process set

in an ideal invironment, it could all be set at naught by introducing an unsuitable third party as controller. This study will be concluded by looking briefly at the Inspectors who come to local plan inquiries (inter alia) at present and at what changes would have to be made to facilitate reform. If one uses the Lewes inquiry as a pointer, it is probable that no reform could be successfully attempted without the co-operation and preparation of the Inspectorate. This is much easier than one might think. Inspectors are, after all, public servants and their training could easily be altered to suit new criteria. In addition, Inspectors are all professional men who have usually excelled in their chosen profession (at present Chartered Surveyors, Engineers (Municipal and Civil) Town Planners, Architects and Lawyers) and this suggests a level of intelligence and understanding which would make a different approach easy to assimilate.[55]

Since local plan inquiries are not governed by the Statutory Instruments which govern other inquiries[56] prima facie when the DoE booklet[57] says (paragraph 3.28 "it is for him (the Inspector) to decide how to conduct the proceedings and to ensure that the inquiry is conducted in accordance with well-established principles of openness and fairness" it assumes almost total discretion in the conduct of the inquiry. Paragraph 3.28 really explores the vastness of this discretion, stating that "the Inspector keeps the proceedings as informal as possible" but rendering this impotent as a check on discretion by making the test of 'possibility of informality' the Inspector's own judgment; "interruptions and time-wasting are not allowed, but subject to this everyone may put

their case in their own way". Since no transcript is kept and there is no official monitoring only the Inspector can say whether there is time-wasting or interruptions and his criteria for so deciding do not appear capable of review. This is what appears from the booklet-total authority apparently vested in an Inspector. In fact, the Inspectorate has taken notice that the Council on Tribunals have often said that they expect local plan inquiries to be held 'within the spirit of the Rules laid down for other inquiries'[58]. The ACPI who told me this explained that Inspectors going to local plan inquiries are briefed to stick to the traditional model, within the usual order of procedure. He continued "Within that the Inspector has discretion, but the basic procedure is always the same". The usual order of appearance is objector-local authority-objector, with witnesses for each side examined, cross-examined and re-examined. This briefing, to 'stick to the safe traditional model' appears in the Inspectors' handbook at Paragraph A1.13. "Not all types of inquiry or hearing are covered by the rules; but it is government policy that where none have been made, the spirit of the general pattern established by rules should be applied. Inspectors are expected to act accordingly". This can be regarded as a strong support for the view which has been propounded throughout this thesis; that there is no substitute for a set of explicit rules formulating a model for each individual type of inquiry, produced and imposed by statute. The fallacy of non-statutory rules and wide discretion is here exposed, the hand-book simply tells Inspectors to use rules from other inquiries. It has long been understood by administrative lawyers that where wide discretion to

deal with individual cases is given away, the recipients set up their own unofficial criteria which they apply as rigidly as statutory rules. Professor Jeffrey Jowell explains this in terms of the convenience of the official who is the recipient of such discretion "Imagine the task of the supplementary benefits officer who is called up to assess each fresh claim to assistance without the help of rules. He would soon demand, or devise for himself, a check list against which to measure objective facts. To determine each case of 'need' anew would prove an insupportable source of anxiety"[59]. The Inspectorate, being the corporate body of Inspectors who would have to use discretion in relating procedure to the individualities of each local plan inquiry, has simply borrowed a 'check-list' from other statutes concerned with other types of inquiry to avoid this inconvenience. If, as Mr. Francis suggested, there is a 'gap' in the inquiry system, the absence of statutory rules for local plan inquiries to govern the conduct of them by the Inspectors seems the most likely candidate to be that gap. Presumably the Inspectorate could just as properly have imported 'the spirit of judicial principles' into the handbook as advice to Inspectors confronted with the lack of statutory rules.

To read through the Inspector's handbook is to be struck by the minuteness of detail with which the Inspectorate briefs Inspectors going to local plan and other inquiries on procedural steps. The outward impression of complete discretion of Inspectors at local plan inquiries is considerably qualified by the handbook. For example, paragraph B329 headed "Sequence of events" sets out a list of steps lettered a - o of proper procedure. Letters

c - g are set out below to illustrate this point;

c. The appellant or applicant, or his advocate, calls his first witness to give evidence or he may give evidence himself. This is called examination-in-chief.

d. At the end of each examination-in-chief the witness is cross-examined by the respondent, (as for instance the planning authority in an appeal). He may then be cross-examined by any other parties who have a right to do so (e.g. section 29 parties). In addition, the Inspector has a discretion to allow cross-examination by other interested persons and he must, as a matter of natural justice, allow an interested person to cross-examine a witness (whether on the same side or not) who gives evidence contrary to his case.

e. The witness is re-examined by the advocate who called him, but this must be strictly confined to matters raised in cross-examination.

f. The Inspector himself may then ask questions to obtain additional information which he considers relevant.

g. The same procedure, i.e. examination-in-chief, cross-examination, re-examination and Inspector's questions is followed for each witness in turn.

It must be borne inmind that these procedural rules are formulated by the Inspectorate for use at all inquiries and not just for those which require them by statute.

In some of the instructions, there are clear attempts to affect the nature of the inquiry in accordance with an Inspector's perception of his role in it without any statutory authority. Paragraph B3.32 says that the Inspector "should have ensured by

earlier reconnaissance that his chair is in an elevated position sufficiently above the parties and the general public to allow him to control proceedings properly; he must see and be seen. An isolated position behind an ample table or desk is desirable because it gives space for plans and avoids the appearance of close association with others". Generally, a witness should not have his back to the general public, should not be allowed to sit close to his advocate, and should be made to sit far enough from the Inspector to ensure that he sill have to speak up to be heard. This is the kind of unilateral structuring of inquiries by a participant with an interest which has been criticised above in local authorities and which must be equally deplored here. Briefing of Inspectors, by ex-Inspectors[60] as to the procedural and environmental nature of an Inquiry is calculated to produce an inquiry which benefits Inspectors and those interests recognised by Inspectors. It may well be that Inspectors are most sympathetic to all kinds of participants[61] but it does not make the process any more democratic. Priorities like "As inquiries continue to lengthen and become more complex the need for firmer control becomes more acute[62] should not be decided by that body of men by whom that firmer control will be exercised and still less should that body be able to include elements in an inquiry like raised chairs and particular orders of procedure designed to fulfil a function perceived by them.

It is my belief that the briefing and training of Inspectors should relate to the carrying out of statutorily defined duties, intended to fulfil statutorily defined functions by statutorily

defined methods, not to filling the gaps left in statutes. I do not claim that the Inspectorate could do anything else; as Professor Jowell would say, to leave it all to the Inspector on the day "would prove an insupportable source of anxiety". There would be tremendous pressure on each minute decision of the Inspector regarding procedure, environment, representation and evidence and there would be no certainties for anyone to rely on. In the absence of statute, the briefing of Inspectors through their hand-book has had to become a substitute for statutory direction to achieve some of that certainty. That is undeniably better than the almost total discretion which the DoE booklet[63] seems to confer in Paragraph 3.28 "It is for him to decide how to conduct the proceedings" but it is a long way from that open and authoritative statement of goals and proposed methods of achieving them which I think Parliament is required to make.
My reading of the handbook leads me to the conclusion that the briefing of Inspectors is designed to provide a safe course through an Inquiry, protecting the Inspector from the perils which await him. This course has been tried and tested in the past and the Inspector deviates from it at his peril. Beyond the safety of the tightly-drawn procedure of the handbook are the dangers of unsatisfied objectors, complaints, the Parliamentary Commissioner and the Council on Tribunals. As Paragraph B.3.9 warns "no-one must be left with the frustrated feeling that he had a valuable contribution to make but was prevented from doing so by the Inspector. Moreover it takes less time, in the end, to listen to such a contribution than to have to deal afterwards with a complaint to an M.P. or the Parliamentary Commissioner for Administration or

the Council on Tribunals". However, when there is a threat to the procedure itself, that procedure which Inspectors have nearly always found safe, satisfactory and suitable to all types of inquiry, the Inspectorate can hardly take an impartial view of that threat. There was no doubt in my mind that the local plan inquiry model produced by Mr. Francis and Mr. Powell at Lewes would have made life very difficult and sometimes intolerable for Inspectors and the Inspectorate fully supported Mr. Woodford[64] in his opposition to it and ultimate frustration of it.

This concern for the interests of its members would be laudable in a trade union or a professional body, but it is not appropriate to an institution which in the absence of statutory control can and does translate its view of inquiry functions into procedural and environmental reality through the detailed briefing of Inspectors. If the kind of explicit, comprehensive statutory control of local plan inquiries which I advocate existed, then the Inspectorate's handbook briefing could be limited to a full explanation of the statute and emphasis could properly be placed on use of statutory provisions for the benefit of the Inspector, by which I mean to enable him to discharge his duty fully, with as little difficulty and complaint as possible. While the Inspector's training would still be directed towards the assistance of those participating at an inquiry (and I would like to see involvement with community associations in the training period to counterbalance the years often spent working in a local authority) the briefing would no longer have to try to take an overall view of everyone's interests, since the statute and the model established by it would guarantee

a minimum standard of rights and protection to all participants. The invidious position of the Inspectorate in a case like the Lewes one would be avoided. The briefing on procedure would not need to 'side' with the Inspector against the local authority or objectors or vice-versa. The law would be available in black and white and the briefing would need to go no further than the wording of the statute. Any order of procedure (or furniture arrangement) not allowed by the statute would be nihil ad rem.

Mr. Woodford's letter to the Chief Executive of Lewes District Council seems to me to betray the belief that the instructions in the Inspector's handbook are based on law. In Paragraph 2 of that letter he states "In his closing remarks to the inquiry the Chief Planning Officer expressed the hope that in future the Inspectorate would adopt a more flexible attitude, and stated his opinion that Inspectors should be given more guidance and more time to prepare themselves for local plan inquiries.

These remarks by the Chief Planning Officer reflect ... a failure to appreciate the legal requirements dictating the form of the inquiry." Although I supported and support several of Mr. Woodford's criticisms of Mr. Francis' model, I would not try to invoke laws to support these criticisms, because I am not aware of any that exist to stop people trying to force Inspectors to ignore their briefing and use their discretion. I do not believe as Mr. Woodford seems to that he was constrained in some way to foil the experimental model, in fact, I detect a trace here of the phenomenon identified by Professor Jowell[65] "Rules also tend to protect decision-makers from specific

individuals or groups. We all know the classic bureaucratic response 'I'd like to help you, but I'm bound by the rules', a statement that reflects the use of rules as a shield against undue pressure and an official excuse to stand firm". It appears that the constraint upon Mr. Woodford to stick to the traditional inquiry and to refuse to allow Mr. Francis' model to be used had its basis in rules which are to be found in the handbook used for briefing Inspectors and nowhere else.

[1] For a list of these with brief descriptions see Appendix A post

[2] Is there an Alternative to the Public Inquiry? op. cit.

[3] quoted by Jewell op. cit.

[4] Jewell op. cit. p.219

[5] A.S. Fogg; Town Planning by Judges An Australian Example 1977 J.P.L.

[6] 1977 J.P.L. p.486

[7] four out of the four to whom I have spoken

[8] see Sharman 1977, J.P.L. p.293. "John Tyme and Highway Inquiries; An Interim Report"

[9] see Couper and Davies "An alternative to the public inquiry?" Planner vol. 63 No. 3 May 1977 pp76 - 78

[10] op. cit.

[11] published in "Procedural Justice: a psychological analysis; Thibaut and Walker 1975 published by Lawrence Erlbaum Associates.

[12] Simmie: Citizens in Conflict p.138 1974 Hutchinson 1st Edition

[13] 1971 Journal of the Royal Town Planning Institute "Little Men in Big Societies"

[14] in his article (inter alia) in the 1973 Journal of Planning Law "Ambience and Environment - the shape of things to be"

[15] op. cit.

[16] Although this is so, I have had to recognise the reality of local government and my 'proposed model' has been constructed to take into account the (at present) inevitable presence of local authority officers.

[17] op. cit.

[18] the Westminster City Local Plan Inquiry was the best example of this that could be found

[19] See also two pieces on this inquiry which I have contributed to the Journal of Planning and Environmental Law: April J.P.L. p.201 Current Topics, August J.P.L. p.518 "Inquiries Without Lawyers"

[20] Planning 312 6th April 1979 p.4

[21] Francis op. cit.

[22] op. cit.

[23] "Local plans: public Central Office of Information 1977

[24] In an interview which I conducted at Lewes

[25] although it is interesting in the insight which it affords to the inspiration of this new approach to local plans,

[26] Rose and Barnes in Blundell and Dobry's "Planning Appeals and Inquiries" 2nd Edition 1970 point out that this is in any case an invidious position for a Planning Officer". Article 6 (3) of the Town Planning Institue's Royal Charter expressly prohibits a member from carrying out the work as an advocate unless he is a solicitor or barrister.

[27] a similar scheme at Stone in Staffordshire was nipped in the bud in deference to the expressed preference of the DoE

[28] Mr. Francis has since written to me in private correspondence that this is the first he knew of it, since she had not spoken out at the pre-inquiry procedural meeting.

[29] particularly at volatile inquiries, hence their accentuation of the need for lawyers, in C.P.O.'s

30 In an interview which I conducted at Lewes.

31 see Table G

32 see Table E

33 The flexibility which is needed and which is built into the 'proposed model' is the ability to keep legal presence to an unobtrusive minimum where it would prove an inhibiting factor (such as where the objectors enjoy a good working relationship with the local authority) but to be able to invoke it where the interest of any of the participants or the Inspector's ease of understanding is jeopardised by excessive informality, or the breakdown of ordered discussion

34 Mr. Saulet's description

35 I was much impressed at the Westminster City Council's Local Plan Inquiry by the tact with which the Queens' Counsel representing the City Council dealt with an objector complaining about her central heating under the mistaken impression that this was the proper occasion to bring the matter up, but I am in no doubt that the City Council held tremendous power over such an unrepresented objector. Had the Queen's Counsel wished he could have had the objection thrown out and the objector humiliated in a couple of moments devastating cross-examination. That this was not done is a testimony to the quality of the personnel involved and does not make the utter disparity in power between the parties any more satisfactory. As it was, the objector was offered personal attention by a senior officer from the Engineer's Department, but one wonders what the City Council's response would have been if assailed by a much more embarrassing objection. The temptation to use their 'big-gun' to blast the challenge away would be ever-present.

36 p.141 op. cit.

37 Essay in "Regional Forecasting" edited by Chisholm p.286 1970

38 I have been unable to find an authorative study to guide me at all in this area.

39 Functions and Roles of the Programming Officer: Symposium on Local Plan Inquiries: The Polytechnic of Central London

[40] Commons Dabate on 1968 T and CP Bill Hansard 757 Paras 1361 - 1479: Speech of Mr. James Wellbeloved (Erith and Crayford)

[41] Cox op. cit. p.4

[42] Cox op. cit. p.8

[43] Cox op. cit. p.9

[44] op. cit. p.4

[45] The Skeffington Report, People and Planning MHLG 1969: HMSO

[46] However, see the reference to the subject in the material derived from the Inspector's handbook below

[47] Professor Edmund Leach "Culture and Communication" Cambridge University Press 1976 p.17 defines semiotics and "the theory of signs and symbols ... the relationship between ideas and external objects"

[48] Saussure: Fontana Modern Masters 1976 p.9

[49] op. cit. p.9

[50] Both examples quoted by Robert Goodman: After the Planners: Penguin 1972 pp. 144 - 145

[51] I am indebted to the Deputy Chief Planning Officer for Berkshire C.C. for reminding me that to many people 'the council' is an indivisible monolithic representation of authority, not necessarily the planning authority

[52] "Francis Bacon - Baron Verulam and Viscount St. Albans, but not Lrod Bacon, as he is sometimes erroneously styled" - Oliphant Smeaton: Introduction to The Essayes of Francis Bacon p.4

[53] In a letter to me, Bonta referred me to detailed findings by him on this subject in a German publication Werk December 1971, but I do not propose to adduce these in my argument

[54] Professor Lee's guidance was of great assistance in sorting out ideas throughout the sub-section on Environment

[55] Most of the information in this sub-section was gained from interviews with an ACPI and one of the Deputy Chief Inspectors of the Planning Inspectorate and from the Inspectors handbook. I am conscious of the privilege which I have been accorded in viewing the vade mecum of the Inspectorate which is not available to the public and cannot be purchased from either

HMSO or the DoE itself. This has proved most useful in supplementing my understanding of the brief of an Inspector which would otherwise have been limited almost entirely to the DoE booklet "Local plans; Public local inquiries" (in this case) or the equivalent booklet (for other inquiries)

56 1974 T and CP (Inquiries Procedure) Rules, 1974 T and CP. (Planning Appeals etc.) Rules, 1976 T and CP (Compulsory Purchase by Public Authorities etc) Rules

57 local plans: Public local inquiries A guide to procedure: 1977 DoE and Welsh Office - HMSO

58 Chiefly the 1974 T and CP (Inquiries Procedure) Rules it is to be supposed

59 Jeffrey Jowell: Law, discretion and bureaucracy The Listener March 2nd 1978

60 The administrative side of the Inspectorate is well-filled with Inspectors with 'in-the-field' experience

61 this is my general impression, with one or two exceptions

62 Paragraph B3.9

63 local plans: public local inquiries A guide to procedure

64 as far as I can gather and notwithstanding Mr. Francis' claim for official support: Francis "Planning" op. cit.

65 Listener op. cit.

SUMMARY OF CONCLUSIONS

This thesis began with the recognition that not all inquiries are the same. It explored the Structure Plan EIP as the first official realisation that different types of conflict require different methods of conflict resolution. The EIP was credited with being the first tottering step towards the truth that one traditional model will not be adequate for all kinds of hearing. A critique of the EIP was undertaken to ascertain how far the intended functions of the EIP were understood by those who created it. The conclusion reached was that there was no common agreement or understanding among the legislators as to an order of priority of the functions of the EIP. A conglomeration of suggestions by various concerned M.P.'s and civil servants was compiled and an analysis made of the methods used to achieve the fulfillment of these functions. These methods, which together make up the theoretical procedural nature of the EIP, were related as closely as possible to the functions stated in general in Parliament and in Introduction of DoE booklet (op. cit.) and undue weight was not attached to specific functions claimed as justifying particular procedural mechanisms in individual paragraphs of the code of practice. The actual results of amorphous pronouncements on function and the creation of a procedural nature without proper appreciation of its likely effects were then rehearsed from material derived from past studies of EIP's and from personal observation of the Surrey and Berkshire Structure Plan examinations. The conclusion reached was that the intended functions remained in varying degrees of unfulfillment because the procedural nature chosen had been ineffective and even dysfunctional in its operation. Two major lessons were adduced from Structure Plan EIP's for application in the consideration of reform of local plan inquiries in the second half of the thesis. These were:

(i) That a definite priority of functions must be established before any procedure is set out.

(ii) That the properties, efficacy and side-effects of any procedural devices adopted must be fully understood before they

are employed.

These lessons, it is submitted, should be the starting-point for anyone seeking to set up an inquiry model of any kind and they are fundamental to the work on local plans in the second half of the thesis.

Local Plans

Before proceeding on the assumption that a reform of local plan inquiries is necessary other possible alternatives, mainly from suggestions in the technical press, have been canvassed. From a consideration of five alternatives suggested in recent times, it was concluded that no easy alternatives remain ready to be adopted for the local planning system.

The assumption was then made that a 'purpose-built' model would need to be produced in the absence of a ready-made system. A classification of decision-making models was adopted and the comparative properties of the five theoretical models explained. A list of priorities of functions of local plan inquiries was drawn up and applied to each of the theoretical models. The theoretical performance of each of the decision-making models in the fulfillment of these functions was compared. The conclusion reached was that the Moot was the model best suited to the requirements of local planning and this was adopted as a basis for a suggested reformed system.

Before the exact procedural nature of the reformed inquiry was set up, further lessons were assimilated from an attempt by officers of Lewes District Council (with the support of councillors and objectors) to reform the system from within. The inter-reaction between objectors, council officers and Inspector was described and information taken from personal notes on the proceedings and from interviews with all of the major participants produced. The views of the major participants were recorded with a view to accommodating them all in the suggested proposed model in preference to ignoring some of them as both the traditional inquiry and the Lewes experiement were inclined to do.

The role of the lawyer was examined in the light of the Lewes inquiry and in the light of surveys of opinion conducted among

participants in a CPO inquiry. The conclusions were reached that while lawyers may be unnecessary in some of the present local plan inquiries, in any more politically contentious inquiries a legal presence is a vital safeguard against personal antagonism. The further conclusion was reached that Inspectors feel themselves considerably disadvantaged without the assistance in questioning provided by lawyers. The use of cross-examination as a weapon in the hands of well-organised highly-motivated groups was also a factor militating in favour of the retention of some legal element in local plan inquiries. The conclusion was reached that the proposed model of local plan inquiries should include considerable pre-inquiry assistance to help to enable objectors and council representatives to present their own cases as informally as desired, while providing all parties with the safe-guard of a residual legal presence to be invoked when the need was perceived. When the proposed model had been synthesised its faults were explored and the conclusion reached that it fell some way short of perfection while still incorporating more desirable features for fulfilling the functions of local plan inquiries than any alternative either hypothetical or extant.

The 'setting' of local plan inquiries was discussed and the conclusion reached that much greater attention should be paid to three areas, namely programme officers and publicity generally, physical environment and the training and briefing of Inspectors and that these neglected areas should be put under the spotlight before reform is undertaken to ensure that it is complete and not undermined by ignorance of vital contributory factors.

The overall conclusion at which this thesis has arrived is that full and early study of the local plan inquiry system is needed, the investigation being given the widest terms of reference. Explicit and tightly-drawn legislation including guidance to all participants would then be undertaken as an essential, with a strong possibility, supported by the research for this thesis, that thorough reform of certain critical aspects will be necessary.

APPENDIX I

References

This Appendix is divided into 4 sections andincludes all sources to which direct reference is made in the text of the thesis or in foot-notes. In addition, several books which have been used for background information are included in the section entitled 'Books', although they are not actually cited in the main body of the work.

1. Publications and Circulars

Franks Committee Report Command 218 1957

Skeffington Committee Report "People and Planning" MHLG 1969

Hansard Vol 432

Hansard Vol 757

Hansard Vol 793

Hansard Vol 829

Department of the Environment Circular 44/71

Department of the Environment Circular 98/74

Structure Plans: The Examination in Public DoE and Welsh Office 1973

Local Plans: Public local inquiries - A guide to procedure DoE and Welsh Office 1977

Department of the Environment Planning Inspectorate Inspector's Handbook (this is an internal document neither published nor publicly available)

Derbyshire Development Plan Inquiry Inspector's Report 1961

GLDP Panel of Inquiry Report (Chairman Sir Frank Layfield)

Warwickshire Structure Plan Examination Transcript 1973

Surrey Structure Plan Examination in Public Notes for Participants 1978

Central and East Berkshire Structure Plans Examination in Public Daily Summary 1979

Structure Plan Examinations in Public - A descriptive analysis (Bridges and Vielba) Institute of Judicial Administration, University of Birmingham 1976

A Survey of those Taking Part in Two Structure Plan Examinations in Public

(Carol Vielba) Institute of Judicial Administration, University of Birmingham 1976

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2. Legislation

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1957 Housing Act: Part III

1968 Town and Country Planning Act: s.47
s.48 (1)
s.48 (2) a
s.48 (2) b
s.49

1971 Tribunals and Inquiries Act: s.1 (1) c

1971 Town and Country Planning Act: s.8 (1) a
s.8 (i) b
s.9 (1)
s.9 (3) b
s.9 (3) c
s.9 (5)
s.9 (6)
s.29

1972 Town and Country Planning (Amendment) Act: s.3 (1)
s.3 (3) a
s.3 (3) b
s.3 (4)
s.3 (5)
s.3 (7)
s.4 (2)

1974 Town and Country Planning (Structure and Local Plans) Regulations

1974 Town and Country Planning (Inquiries Procedure) Rules: Rule 10

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1976 Town and Country Planning (Compulsory Purchase by Public Authorities etc.) Rules

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"Administrative Law" (3rd Edition) Wade

"Public Inquiries as an Instrument of Governemtn" (1st Edition 1971) Wraith and Lamb

"The Reform of Planning Law" (1st Edition 1976) Roberts

"Land, Law and Planning" (1st Edition 1975) McAuslan

"Procedural Justice - A Psychological Analysis" (1st Edition 1975) Thibaut and Walker

"After the Planners" (British Edition 1972) Goodman

"Planning Appeals and Inquiries" (2nd Edition 1970) Blundell and Dobry (Rose and Barnes)

"Citizens in Conflict" (1st Edition 1974) Simmie

"Regional Forecasting" (1st Edition 1970) Chisholm et al. Essay by Harvey)

"Confessions of an Opium Eater" de Quincey

"Culture and Communication" (1st Edition 1976) Leach

"Saussure" (1st Edition 1976) Culler

- Background

"A Systems View of Planning" (1st Edition 1971) Chadwick

"Cases and Materials on Planning Law" (1st Edition 1977) Purdue

"Administrative Tribunals" (1st Edition 1973) Wraith and Hutchesson

"Cases and Materials in Administrative Law" (1st Edition 1977) Bailey et al

"Cities - The Public Dimension" (1st Edition 1971) Cox

4. Periodicals

1971 December Journal of Planning Law: Heap

1971 December Journal of Planning Law: Whybrow

1971 Journal of the Royal Town Planning Institute: Hampton

1971 December Werk: Bonta

1973 Journal of Planning Law: Heap

1973 March Official Architect and Planner: Senior

1975 Harvard Law Review: Dworkin
1975 Journal of Planning Law: Samuels (p.125)
1976 Journal of Planning Law: Dunlop (Parts I and II)
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1977 Journal of Planning Law: Sharman (p.293)
1977 Journal of Planning Law (p.406)
1977 Journal of Planning Law (p.486)
1977 Journal of Planning Law: Fogg
1978 March 2nd The Listener: Jowell
1979 Journal of Planning Law: Jewell (p.216)
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1979 August Journal of Planning Law: Lavers
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APPENDIX II

EIP's/Inquiries attended in the course of this research

1. Cumberland Road Inquiry - Guildhall, Portsmouth

This was a Compulsory Purchase Order Inquiry under Part III of the 1957 Housing Act. Portsmouth City Council had acquired a large number of houses in a particular area of Portsmouth and they were now in such a dilapidated condition that they sought to purchase and demolish all the properties in the area. Plans had been prepared for driving a large road through the area. Residents of the area, including council tenants, squatters in untenanted properties and some older owner-occupiers combined into a Residents Association to fight the Compulsory Purchase Order. They were anxious that the area should instead become a General Improvement Area and argued for the alternative of rehabilitation. The Residents Association were represented by Mr. John Saulet, a Southsea Solicitor. Portsmouth City Council, who had most of their chief technical officers present to act as witnesses, including the Chief Planning Officer, were represented by Mr. Daniel Robins, of Counsel. The inquiry, which had been postponed in August 1978 due to the illness of the Inspector, was of some three weeks total duration and took place October-November 1978.

2. Planning Permission Appeal - Ryde Town Hall, Isle of Wight

This was an appeal by the trustees of a once large local landed estate against a refusal of planning permission on some semi-used allotments which had been leased to the local authority of the day at a nominal rent by the estate for some 60 years. The trustees were represented by Mr. Mole of counsel and the local authority, Medina Borough, by the Borough Solicitor, Mr. John Matthews. There was also a speech from the floor by the secretary of the Allotments Association which continued to use the site. The hearing and site inspection together took less than a full day in October, 1978.

3. Examination in Public - Surrey County Structure Plan - Guildford Sports Centre

This was the first EIP of the first Surrey Structure Plan and was held before a Panel of 3. The matters discussed covered the whole range of strategic proposals for the County of Surrey. They included (in the sessions attended for this research) the proposed strategy of uniform restraint in development, adequacy and location of land committed for housing, policies for control of office and industrial development, the implementation of regional policy, Green Belt policies, transport policies (balance between public and private), Highway policies, Mineral supplies and 'limited time' permissions for Gypsy caravan sites. There were 60 participants at the EIP including Surrey and neighbouring County Councils, the District and Borough Councils of Surrey, a few Parish Councils and Town Councils, some Residents Associations and Amenity Societies. Some commercial interests were represented and a handful of own account individuals. Surrey County Labour Party was the only political party present but pressure groups included Transport 2,000, the National Gypsy Council, Shelter, COSIRA, the CBI and the House-builders Federation.

The hearings lasted three weeks in total from early November until the end of the month.

4. Public Local Inquiry into Local Plan - Lewes Town Hall

This was one of the first local plan inquiries held in the South of England under the 1971 T and CP Act, following the approval of the Sussex County Structure Plan. The inquiry was into objections to the plan and was a singular example of a public local inquiry because of the District Council's policy, publicised and acquiesced in by many objectors, of dispensing with legal representation. The Southern Water Authority were represented by a solicitor but everyone else represented themselves. The Inspector raised his voice in protest against this procedure on several occasions. There were two residents amenity groups; the Lansdowne Place and

Friars Walk Community Association and the Lewes Society, a housing pressure group committed to a change of housing policy called the Housing Action Group, Lewes Labour Party and Lewes Town Council represented by the same objector and several own-account individuals and the plan-making authority. Lewes District Council represented mainly by their Chief and Principal Planning Officers. The objections were highly individual but major topics of contention were the lack of community play-space in the proposed development of old railway waste-land, the one-way traffic system currently operating in Lewes, and the lack of provision of accommodation for young, single people in the town. The hearing lasted for more than two weeks including the pre-inquiry Procedural Meeting from the end of November to mid-way through December.

5. Carlisle and Froddington Roads Inquiry - Guildhall, Portsmouth

This was the sequel to the Cumberland Road Inquiry and involved a CPO order for a neighbouring area. The protagonists were largely the same with Mr. Saulet and Mr. Robins leading for the two largest organisations. There were some additional elements in this second inquiry. There was an increased role played by Dr. James, a Labour Councillor, and Mr. Guy, for the Portsmouth Society who were statutory objectors and the Residents Association also utilised the services of technical experts on rehabilitation possibilities and transport needs to a much greater extent. A Chartered Surveyor from a local firm, Mr. Nesbitt, appeared for his clients a firm who owned property in the area which was the subject of the order. A different Inspector took the first inquiry and it was generally agreed that she took a much less active role than the Inspector in the Carlisle and Froddington Roads Inquiry. Both inquiries were conducted on a formal basis with examination in chief of witnesses, then cross-examination and then re-examination by the respective advocates. This second inquiry lasted from the middle to the end of January, a total of just over two weeks.

6. Examination in Public - Central and East Berkshire Structure Plans - Old Town Hall, Reading

This was an examination of two structure plans before the panel of 3. The proposals discussed included regional growth policy, land reserves, residential, industrial and office development, Green Belt policy and relationships with neighbouring counties and roads and motorways with particular reference to the problems of Reading. The Royal County of Berkshire and neighbouring county councils were represented, as well as all of the District and Borough Councils of the relevant parts of Berkshire. Parish Councils were not much in evidence although Twyford were particularly active in opposing a policy which inevitably meant development of their village. A Residents Association from the same village also attended the discussion of this issue. The NFU were present as were the CBI and some very large business concerns such as the John Lewis Partnership. The National Housebuilders Federation were represented by the same man as appeared for them at the Surrey EIP. The only party political organisation present was the Eton and Slough Liberal Association. Shelter was represented but participated very little (at least at the sessions I attended). The arrangement of the room was somewhat unusual in that the council representatives all sat together opposite all the other participants. The hearing lasted approximately 3 weeks from early March 1979 to late March.

7. Public Local Inquiry into Local Plan - Cavell House Charing Cross Road

This was the second local plan inquiry to be held in this area (Waterloo was the first). The legality of the proceedings was challenged by a solicitor claiming to represent the GLDP Action Group, who asked the 2 Inspectors for a postponement of the Inquiry until Westminster City Council, the plan-making authority had complied with certain publicity requirements. Mr. Ian Glidewell, appearing with Mr. Barnes for Westminster City Council, offered to have this done but

the Inspectors rejected the challenge anyway. The GLC appeared with an objection presented by a Solicitor, Mr. Gajfur. The Marylebone and St. Pancras Communist Party, represented by Dr. Iliffe made an objection to Westminster's proposals to safeguard private medicine in its entrenched position in Harley Street. The representative of a group of London hoteliers challenged the proposal in the local plan not to allow any more extensions in a particular area. The major confrontation in terms of time and resources was between Mr. Glidewell and Mr. Barnes for Westminster and Sir Frank Layfield and his junior for the Grosvenor Estate who procduced a collection of detailed statements, documents and maps in a glossy cover. The objection was to Westminster's policy regarding the expiration of temporary office planning permissions and the possibility of automatic renewal. There was one own account objector in the fortnight period for which I attended and this objector was persuaded to withdraw an objection which was not appropriate to a local plan inquiry. I had to leave at the end of March 1979 after two weeks when the Grosvenor Estate and Westminster concluded their submissions on the former's objection.