

PLANNING A NEW WORLD ORDER

Embroidered in a lengthy planning battle, Donald Henry discovered a conflict of interest that robs communities of the power to control their own destinies; one that is unethical and Lord Nolan warned potentially corrupt.

On March 11, 2005, at Castle Douglas, the local planning officer recommended approval for a Tesco supermarket (and petrol station) to be built on the outskirts of town, placing full reliance on advice from 'independent' planning consultant GVA Grimley that because the local Co-Op was 'overtrading', there was therefore capacity to support another supermarket with a floor area that would exceed that of the existing Co-Op. Grimley's capacity study into the state of the local market was a desk-based exercise and no actual survey took place; certain Town Centre shops were simply overlooked.

When it was revealed that Grimley also acted for Tesco, albeit elsewhere, but clear from the firm's website, the self-evident conflict of interest was actively rejected by officers controlling the meeting. Grimley's appointee present stated that because they did not represent Tesco in Scotland, there was therefore no conflict. Alerted to the potential for perception of irregularity

as the meeting progressed, Grimley issued a fax of denial immediately, with a targeted warning read out loud by the governance officer that in light of the "'serious" allegations' the firm would be taking immediate legal advice – and that correspondence would likely be forthcoming from the firm's solicitors. The officer dismissed Grimley's website material as constituting nothing more than an 'internet flyer'. The meeting broke into vocal disorder and the police were called.

A 'serious' revelation

The officer's partiality toward private firm Grimley – commissioned without tendering – became clear days later when it was discovered that the text of the fax did not contain the word "serious" anywhere.

The open and transparent objectivity expected of local governance was undermined by the legal advisor's injection of a weighted word in his statement to the elected members, despite repeated calls from councillors

to be assured there was no conflict. Concerned over the relationship between business and public affairs, my own objection was strictly pro-ethics in local government and not anti-Tesco.

Final approval was subject to a second-level meeting of the Planning & Environment committee one month later, on April 8, where the public was prohibited from speaking. On that date, regarding the subject of conflict of interest, the planning officer deemed

because of the fact that no minutes are taken of an Area Committee meeting and therefore no record of the actual questions and answers raised at the public meeting in Castle Douglas exists to better inform the members of the full Planning and Environment Committee when it meets to determine this application.

‘That situation is exacerbated by the fact that members of the public have no input to the full committee meeting...

may I ask how you intend to deal with these charges posing, as they do, a serious question mark over this impor-

tant strategic development. I should tell you that I have also drawn these concerns to the attention of the Minister.’

On 5th May 2005, the general election unseated Peter Duncan. A few weeks later, a meeting with newly elected constituency Labour MP Russell Brown followed the accidental discovery of another case involving Tesco and Grimley at Berwick-on-Tweed on the east coast. The Chamber of Trade there had submitted concerns to the then Office of the Deputy Prime Minister (ODPM), so Mr. Brown, concerned about the ‘fundamental democratic principle’ in Castle Douglas, sought advice from John Prescott.

Mr Prescott observed ‘it would seem conflicts of interest are not uncommon’. Absent of any expression of concern

that ‘there is no basis for any perception to the contrary’ as their chosen consultant had stated the report was compiled from a ‘neutral standpoint’. This clearly did not convince everyone.

Impartiality questioned

In the intervening period the local Conservative MSP Alex Fergusson – now Presiding Officer for the Scottish Parliament – had written to the Chief Executive of the council a letter endorsed by the Shadow Secretary of State for Scotland, Conservative MP Peter Duncan, expressing concern over the impartiality of the council’s chosen consultant.

‘There is a serious danger of the public’s faith in the credibility of the whole public procedure being seriously undermined’, and continued: ‘That credibility is already under strain

Cabinet indifference

In his response Mr. Prescott observed, ‘it would seem that conflicts of interest are not uncommon’. Absent of any

expression of concern, Mr. Prescott's remark bordered on the complacent, so the Committee on Standards in Public Life was advised.

Letters were also sent to Alistair Darling, then Secretary of State for Scotland, in Sept 05, and the reply indicated that planning issues north of the border were for the Scottish Executive alone to determine. The response did not concede that such matters are in fact not fully devolved from Westminster control.

In Scotland, the Minister for Communities Malcolm Chisholm (Lab) had received MSP's concerns and his deputy Johann Lamont was issuing standard form letters to Mr. Fergusson and to Green MSP Chris Ballance, who had asked for the application to be called-in for a public inquiry. The press reported other reactions: SNP Roseanna Cunningham (Advocate) 'very suspicious', SSP Rosemary Byrne 'grave concerns about the practices uncovered'.

Self-regulating guild 'investigates'

Complaints to the relevant professional institute – the Royal Town Planning Institute (RTPI), a registered charity – were submitted in mid June making reference to their published code of professional conduct, clause 4 Without making any allegation of impropriety against their member and author of the council-commissioned report, Richard Slipper, it was considered he had not complied with the Institute's clear advice, to 'ensure that no conflict of duty arises between the interests of one

employer or client and another, or between the interests of any employer or client and the interests of themselves or their firms or business associates.'

Rather than uphold or dismiss the complaint, the RTPI on July 20 agreed to 'investigate this matter further'. Three months later it reported, oddly, 'there was no evidence that Mr. Slipper had personally breached the Code... However... additional advice should be published as soon as possible as it will assist members, companies, local planning authorities and the public in appointing consultants and in understanding this matter'. Adding three days later on Oct 21: 'The Institute is now going to commission some work... advising in clearer terms where we feel our members should perhaps withdraw from a situation'.

Decision fudged

Mr. Slipper's disclosure was noted through solicitors stating: 'for the avoidance of any doubt... Mr. Slipper has in the course of his professional career been involved in meetings with Tesco, developers representing Tesco, consultants representing Tesco and ... involved in local authority planning advice where proposals have been made by Tesco'.

He was supported by the opinion of a QC, and by other planning consultants, in a plea to the RTPI to consider the implications for the limited few: 'Scotland is a small country. There are only a handful of Scottish planning consultants expert in retail planning, if the RTPI find against... it could have far

reaching consequences for the practice’.

Apparently the membership wanted the Code to be flexible. Over three years have passed since the RTPI concluded its investigation, and still it is not known when the new advice, superseding the existing Code, will be circulated to endorse both the position of the member involved in the Castle Douglas case, and simultaneously prevent the same situation from recurring. But repeat it has, throughout the country, many times over.

Further afield

Grimley also advised the local council in a Tesco application to build a super-market in the town of Sheringham in Norfolk, where Lib Dem Norman Lamb is the constituency MP. Informed of the situation in Castle Douglas, Mr. Lamb, a solicitor by profession, responded, ‘I have absolutely no doubt whatsoever you are right in identifying a very clear conflict of interest in this situation... I am appalled at the treatment you appear to have received...’

Mr. Lamb also wrote to the RTPI: ‘I was horrified to read of the situation that GVA Grimley were in. There is an absolutely clear conflict of interest in both representing Tesco... and providing advice and assessments to local authorities in respect of planning applications by Tesco. ... by investigating the matter and agreeing to publish new advice, indicates your institute agrees there is a need for absolute clarity in advice to your members about avoiding conflicts of interest’. And: ‘You appear to take the view that it is suffi-

cient not to be engaged on both sides in any particular case. I do not accept this.’

Mr. Lamb was interviewed on R4’s You and Yours and excerpts were played to the Appeal Reporter at Sheringham in 2008. The closing words on the tape recording are: ‘...there needs to be much more rigorous interpretation of Conflict of Interest... I don’t see any problem if the rule (Clause 4) was actually enforced properly’. Tesco’s Appeal at Sheringham was defeated although it is not known whether Mr. Lamb’s opinion had any bearing on the decision.

Lobbying and the shaping of policy

A glance through Grimley’s web site reveals the centrality of their role in shaping government policy and its subsequent application. The company is retained as consultants to the Office of Government Commerce (OGC), providing advice to over 60 central government departments. ‘At a strategic level we have top level contacts with the relevant government departments’, declares their Lobbying page; ‘We have a close relationship with many influential stakeholders... that helps create a successful climate for planning applications’. News of their reappointment to the OGC for four more years contained a quote from their Head of Public Sector stating: ‘It allows us access to the whole of the public sector market whilst at the same time offering Customers the benefits...’

Rather than focus entirely on one particular firm, however, by examining Berwin Leighton Pasiner (BLP) it

appears the situation is repeated. 'We also continue to advise a large number of Government Departments and local authorities'. Their planning page describes 'a team able to ... exercise influence... we are able to offer specialist expertise... through a Parliamentary Agent... and strategic advice from a consultant who is a former Planning Inspector.' The 'Public Sector' page lists legal services 'to local Government clients, in particular... planning... On contentious matters we are adept at recognizing the relationship of the various limbs of Government and aware of the political landscape that shapes the decision making process'. Like Grimley, their client list includes Tesco.

A 'corrupted' system

Herein lies the corruption of the system and the reason that officers who enjoy the delegated powers of Westminster instruction would be obliged to deny emphatically a conflict of interest where subsidiary level authority had commissioned the services of an adviser already sanctioned by Head Office. Further, set against the threat of appeal by powerful companies – and award of costs that cash-strapped councils simply cannot afford – the position taken by local officers is almost forgivable.

Under these circumstances, big will only become bigger and family firms, small businesses, and community wishes beggared if elected councillors or

members of the public cannot hold Westminster representatives to account. A key question that needs answering is, where ethics in this quasi-judicial planning forum are prohibited from discussion, have officers acted *ultra vires*?

Planning policy 'paying off'

A week prior to making his fateful comment that 'conflicts of interest are not uncommon', John Prescott made a keynote speech about sustainable development and clone towns in which he stated: 'Across the country, retail is bringing jobs and life back to our town and city centres. And the leading firm of chartered surveyors, GVA Grimley, said recently that our planning policy is "already paying off"...

'Largely because of sustained economic growth...major retailers have moved to town centre locations.'

The means to exert influence in ways that are almost invisible to the eye received attention from Lord Nolan 10 years ago

'Most of the major retailers understand the need for a proper balance in the planning system and equal treatment and fairness – although I wonder sometimes if their lawyers share that view!'

Was Mr Prescott aware I wonder, that Grimley had occupied a fiduciary role helping to shape policy? "We're encouraging local authorities to use compulsory purchase to assemble

sites." "Our reforms include changing the culture of planning, so that committees, officers and communities fight each other less." It hasn't worked.

'Gradual erosion of ethical values'

In Nov 2005, Chris Goddard, reflecting the firm's ethos as planning and regeneration partner at GVA Grimley, said the planning system was not for protecting one retailer against another. Clearly persuaded of the benefits of a significant client's expansion plans, he stated, 'It is a bit perverse to condemn Tesco and others for going into the high street when they are only responding to planning guidance'.

Government's failure to regulate directly the activities of planning consultants has created an irreconcilable disaster

How could other directors and partners in the firm cultivate within ranks an inner perspective of neutrality against the potential rewards, and yet not clash with colleagues' ambitions? Can individual members of a corporate body divorce the prestigious client list which accompanies the professional into an obscure realm of fiduciary privilege ripe for plunder, and yet claim to act with independence for the public interest?

The means to exert influence in ways that are almost invisible to the eye received attention over 10 years ago. The 3rd Lord Nolan recommendations for Local Government in 1997 should

have addressed the warnings expressed at the start of chapter 5 Working with Others. They stated: 'The opportunities for corruption are growing with the spiralling trend towards devolution of management responsibilities and greater direct provision of services by private sector organizations.' And: 'The gradual erosion of ethical values in day-to-day business transactions...'

Regulation failure

Nolan recommendation R19 states 'every local authority should be required to draw up a code of conduct for officers'. How effective has that been? Despite the Codes of Corporate Governance in local councils, the buck stops with a mere charity, the RTPI, powerless to control its membership.

Government's failure to regulate directly the activities of private firms of planning consultants appointed through the OGC, preventing them from acting for local authorities in receipt of applications by the firm's own clients, has created an irreconcilable disaster. Unless action is taken to prevent such a clear conflict of interest then the inescapable impression left will be of a sophisticated deception whose cunning architecture is the result of collusion between the largest companies and a political class who let it happen. ●