

Public Art & The Planning System

Advice

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RE: PUBLIC ART AND THE PLANNING SYSTEM

ADVICE

I have been asked to advise ixia, the national think tank for public art, about the relationship between public art and the planning system. Effectively, three issues are raised by the several questions which they have identified for my consideration. The first is: what (if any) mechanisms may exist within the planning system for securing public art? The second is: what might the content of a requirement for public art properly be? And the third is: what is the process for securing a contribution towards public art?

To deal with the first issue, there is to my mind no doubt that public art is capable of amounting to a material consideration in the planning system. The documents published by ixia adopt a broad definition of public art which embraces both permanent and temporary artworks located on and off development sites. To my mind, this conception of public art is capable of being material to the planning system. Permanent

art, in the form of sculptures or the ideas of artists integrated within the design of buildings and spaces, are features which involve the use of land, require planning permission and can affect the appearance of development so as to engage the planning system. Where buildings and spaces suitable for temporary artworks or events either exist or are being created then consideration could also be given to the provision of funding by way of a planning obligation to support the commissioning of artworks to inhabit those buildings and spaces. Whether or not they are required is a different issue and one which would have to be addressed on a site-by-site basis.

The means whereby this potential material consideration could become relevant is either as a result of being part of a development plan policy which, pursuant to Section 38(6) of the Planning and Compulsory Purchase Act 2004, would be necessary for the local planning authority to take account of in determining an application for planning permission, or as a result of the preparation of a specific supplementary planning document which would amount to an "other material consideration" in the context of the consideration of the application. In the course of preparing to advise ixia, I have undertaken an examination of national planning policy in PPS1

and also supplementary documents issued by the government and others in relation to design such as "By Design", "Better Places to Live: By Design" and "The Urban Design Compendium". It is fair to observe that, whilst there are passing references to public art – for instance, in "By Design" – it is not an element of development which features strongly in any of these documents and, on their own, and in the absence of national planning policy in respect of public art, it would be potentially difficult to establish a general requirement for the provision of public art in the absence of any specific local policy. Plainly this analysis demonstrates that it would promote the interests of public art within the planning system if it were to be specifically included within a national policy statement such as PPS1 or alternatively dealt with in its own national policy advice.

The means whereby development plan policy or a supplementary planning document could require the provision of public art is that it would provide the circumstances based upon local assessment where public art would be necessary and appropriate as part of a development project, and could legitimately found the refusal of planning permission if the specifications and requirements of the policy had not been complied with. In discussion with the representatives of ixia, I

provided a recent example of the incorporation of a requirement for public art of this kind in the provisions of the Longbridge Area Action Plan, recently considered at examination and promoted by Birmingham City Council in order to guide the regeneration of the Longbridge site.

Thus, there are a range of policy documents which could include such a provision. Core strategies, development control policies, area action plans, supplementary planning documents and specific design briefs for sites could all contain requirements in this respect.

Turning to the content of a requirement for public art, I am aware that it is common to seek to secure public art by means of a policy called "Percent for Art" and, more recently, by public art tariffs. A Percent for Art policy operates on the basis of securing a proportion of cost, commonly I am given to understand the construction cost, for a development project to be devoted to the provision of public artworks. The difficulty, in my view, which arises in relation to a Percent for Art policy, is that it is difficult to square that approach with the advice of the Secretary of State on planning obligations in Circular 05/2005. That policy provides that obligations in relation to planning permissions need to satisfy the appropriate tests of being

relevant, necessary to make the development acceptable in planning terms, directly related to the proposed development, fairly and reasonably related in scale and kind to the proposed development, and reasonable in all other respects. I envisage some difficulty, in particular in relation to the requirement that obligations are fairly and reasonably related in scale and kind, to justifying a rigid Percent for Art approach. Thus, I have to register my concern as to the compliance of the Percent for Art policy with the general principles of assessing the legitimacy of planning obligations. Public art tariffs are potentially capable of being made more compliant with the planning system, but in my view they can easily fall foul of a similar problem, namely that they are generic formulas which do not in all cases necessarily relate to the impact which the development gives rise to.

I understand that ixia advises that the provision of public artworks both on and off development sites should be plan-led. I am advised that ixia suggests that the programme and costs for public artworks on a development site should be accommodated within specific, construction and other budgets for a development, and that a public art statement should be prepared for planning applications that describes the development and implementation of public artworks in relation

to the requirements of a local authority's public art policy and strategy. If the local authority's requirement for public artworks on a development site is based on a meaningful site-specific assessment and backed by appropriate planning policy then this approach can be acceptable. Likewise, it could be acceptable for a local authority to require a developer to provide an off-site financial contribution to the provision of public artworks if the local authority can demonstrate that the value of the financial contribution is based on an assessment of the cost of a public artwork that is identified within its public art policy and strategy and relevant development plan documents and that the contribution is linked to the impacts or requirements of the development proposed. Circular 05/2005 enables a local authority to 'pool' financial contributions from developments in this way.

In recent times, the government has passed enabling legislation to create a community infrastructure levy. The detail of what will be comprised within and could be funded from this infrastructure levy is yet to be clarified. Thus, at this stage, it is not possible to say that the community infrastructure levy will include within its provisions the opportunity for funds to be generated for public art for development, but that may yet emerge.

The requirement within the 2004 Act, subsequently further specified in secondary legislation, for the provision of design and access statements as a requirement of most planning applications does provide a vehicle, coupled with the policy issues I have set out above, for defining and assessing the necessity for and quality of public art provision as part of a development proposal. The definition of appearance which is contained within the Town and Country Planning (General Development Procedure) (Amendment) (England) Order 2006 (GDPO) is of assistance in this regard. It provides as follows:

“‘Appearance’ means the aspect of a building or place within the development which determines the visual impression the building or place makes, including the external built form of the development, its architectural, materials, decoration, lighting, colour and texture.”

A new Article 4C was inserted into the GDPO by amended regulations in 2006 to deal with design and access statements and, in particular, the definition of appearance now requires design and access statements to address the design principles and concepts which have been applied to the appearance of the proposed development. Clearly, the broad definition of appearance embraces the provision, if necessary, of public art.

Thus, in my view, the statutory requirement of a design and access statement is a suitable vehicle for the assessment of the content and quality of any public art provision which is required by virtue of the appropriate planning framework making it relevant to the development project. I have considered whether or not the recent requirements in relation to the validation of planning applications and information which is required in order to enable validation take the matter further forward. Notwithstanding an extensive list of documents which are either required nationally or can potentially be required by local decision, the provision of a free-standing public art statement or the like does not feature, so its omission cannot effect the process of validating a planning application. However, in my view, it can be appropriate for the provision for public artworks to be described within other documents that can be required by a local authority when validating a planning application. For example: a Planning Statement where there are planning policies relevant to the provision of public art; the Draft Heads of Terms for a S106 obligation where contributions to public art are contemplated; and the plans and drawings or other information necessary to describe the subject of the application and its landscape and urban design details where public art is to be included. I can also envisage situations where the extent of the

provision for public artworks could make the incorporation of a free-standing public art statement an important element of the application documentation.

As to the mechanics of securing the provision of public art, in my view the appropriate mechanisms remain the traditional imposition of conditions or provision of planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended). Again, those conditions and any obligations would need to satisfy the relevant policy tests in order to be imposed but there is no reason that they could not do so if properly justified and drafted.

Turning, therefore, to the final issue, namely the process of securing a public art contribution, I note from ixia's current guidance that an ambitious approach is suggested of undertaking discussions about public art at the pre-application stage and involving public art and artists in the conceptualisation of the development's function and design. In my view, from a practical perspective, if participants in the development process are to be attracted to that suggestion, it would be exceedingly helpful if practical good practice guidance with examples of projects where such an approach has proved fruitful could be produced. This is effectively the

model whereby design in general has been upgraded within the planning system in terms of its importance to the development control process since the original publication of "By Design" in 2000. The publication of practical good practice guidance would assist not only in enabling local authorities and developers to understand the benefits which the incorporation of an artist's contribution might make to certain development projects but also to identify the type, scale and nature of projects which are suitable for a public art element to be considered and incorporated. In addition to ixia's current work regarding public art and the planning system, such guidance could also sensibly help to inform the content and substance of local planning policy.

In what has been set out above I have considered the position of the local authority in their role as regulating the planning system. They also obviously have a role as a developer when they are engaged in constructing public works and buildings. In that connection local authorities have, as a result of section 2 of the Local Government Act 2000, wide powers to promote the economic, social or environmental well-being of their area. In my opinion these powers can be deployed by local authorities for the promotion of public art – whether by

themselves or through influencing the actions of other organisations with whom they work.

I trust that I have dealt with all of the matters which are concerning ixia in respect of public art and the planning system at this stage. Needless to say, if there are any other matters with which I could assist I shall of course be pleased to help as necessary.

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