

MEDIATION IN PLANNING: EXECUTIVE SUMMARY

This report was commissioned by the National Planning Forum (NPF) and the Planning Inspectorate (PINS) in June 2009 as a response to a recommendation in the Killian-Prety report (2008) urging investigation of the use of alternative dispute resolution at all stages in the planning process.

Mediation is a cost effective way of resolving disputes with the help of an independent third party. It also incorporates safeguards for third party rights and satisfies public requirements for transparency. The project aims to demonstrate its value by undertaking and evaluating 5 'live' case studies involving enforcement, an Area Action Plan and a major development, by drawing on the results of completed mediations as well as related work being undertaken in England, expert interviews and a specially commissioned survey to test opinion, international experience, and relevant literature. Lessons are drawn from all these sources and the similarities and differences between the use of mediation in civil litigation and in planning explored.

Evaluation of the live cases shows that that the tone and atmosphere is entirely different from the conventional hearing, inquiry or public meeting; very positive results can be produced for all parties; complexity reduced and key issues resolved; but much depends on the mediator's skill and on the preparatory work s/he undertakes; confidentiality within the process is an important ingredient, but outcomes can be structured to safeguard the public interest of the planning system.

Analysis of the evidence results in identification of the barriers and opportunities to the use of mediation in planning. The barriers are a lack of understanding of mediation and its potential use in planning, scarce resources and capacity, existing systems and processes, and culture. The opportunities are the current favourable context, the fact that mediation allows better use of resources, fits well with the spatial planning and localism agendas, and can be made accessible to a wide range of people.

The report concludes that mediation could provide an effective tool to tackle a wide range of planning issues. It recommends that mediation should be strongly encouraged by Government by providing a policy framework, creating capacity to allow its benefits to be realised and establishing an appropriate regime of incentives and penalties to support the delivery of a new approach to planning. In due course it concludes that it might be sensible to require mediation to be considered in planning disputes, as is the case in our civil justice system. Recommendations cover the need to develop and build a market; provide advice and guidance; develop skills and create capacity.

The authors acknowledge the support of project sponsors NPF and PINS; the funders NPF, PINS and the Planning Advisory Service; the invaluable advice of the Steering Group who gave their time freely to the project; the skill and dedication of the mediators; the important contribution of the consultant evaluators; the enthusiasm of all those in local planning authorities and Planning Aid who participated in, or volunteered for, the project; and the encouragement of all the people who contacted the project team to offer their services or to register their interest in the project.