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Barker Review Team
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Dear Ms Howard

REPRESENTATIONS TO THE BARKER REVIEW OF LAND USE PLANNING

I write in response to the call for evidence for Kate Barker's review of land use planning. The submission is made on a personal basis, with assistance from my colleague Nick Smith.

I am currently a Technical Director within a multi-disciplinary planning practice and have more than 16 years of planning experience spread across both the public and private sectors. I have worked on a range of significant planning projects, from master planning business parks and new communities, to development proposals for urban extensions and commercial facilities. I have represented clients through local and structure plan processes, as well as promoting development through applications and appeals.

My colleague Nick Smith is a Senior Planner and has four years of experience within the private sector. To date, he has been involved with a variety of projects, including proposals for a number of sustainable urban extensions, and a variety of commercial schemes. More recently, he has been involved with a number of significant regeneration schemes.

We have considered the main issues as set out in the call for evidence document that we feel are important to businesses and as they relate to the tiers of plan making within the new system. Before we do this, our response focuses initially upon the rationale for why the intervention of the planning system is necessary, particularly in terms of providing for certainty and predictability.

Rationale for intervention

Although often seen in narrow terms, such as a means for controlling development, spatial planning intervenes in land and property markets in a variety of ways to compensate for market failures. For example, the planning system seeks to ensure that development is provided at the right place at the right time, and helps to ensure the provision of public goods associated with development. It also internalises the social costs of development, ensures good neighbourliness and allows for the conservation of non-renewable economic resources.

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The planning system can also stimulate the market. For instance, in terms of supply, Local Planning Authorities (LPAs) can allocate sites, help to coordinate infrastructure, and in some cases, assist with implementation. On the demand side, LPAs can contribute by developing visions and frameworks capable of providing greater direction and optimism.

As the document 'Securing Our Future' explains, the government recognises the role that spatial planning has in delivering sustainable development. Consequently, in this respect, while the call for evidence gives particular emphasis to the need to encourage sustainable economic development, it is right to acknowledge that intervention on this basis must be reconciled elsewhere, by balancing social and environment objectives accordingly.

Certainty and Predictability

The former, and current planning system which is just evolving, puts great emphasis on a plan-led system. The aim of such a system is to deliver certainty and predictability. In our experience, certainty and predictability are absolutely fundamental to businesses and economic growth. Businesses cannot plan, invest and grow without these elements.

There is little point in having a fast system if there is no certainty to the outcome. A good development plan structure is required to give businesses the confidence to invest over a period of time. A good plan will tell them where they can invest, where they cannot and what they need to do to achieve planning permission. They can then plan with confidence, and proceed with a planning application in the knowledge that they will receive planning permission if the proposals accord with the plan policies.

Good development plans will also set out what infrastructure is required. Certainty is important to being able to deliver these requirements, which may take time and investment to put into place, with or without development.

We believe that we need to keep the current planning system, and allow the time for it to be worked through, consolidated and completed. We are currently in a state of flux, which is not providing certainty, but further change would only exacerbate this. Those working in the planning system need to concentrate on making the current system work – and work well - without the added burden of additional or further major changes.

The possible introduction of the Planning Gain Supplement in 2008 adds to the level of uncertainty, and in our opinion will not help provide the right environment for businesses to have the confidence to invest for the medium or longer-term.

Regional Planning

From our experience of following the evolution of Regional Spatial Strategies (RSSs), it appears that the planning system may not be as joined-up with other related aspects of regional policy as it should. For example, in the south east, there is a direct conflict between the draft Regional Economic Strategy (RES) and the draft RSS. The draft RES has identified a need for a certain level of economic growth with an associated growth in housing. The draft RES has identified a higher number of dwellings than is proposed in the RSS.

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It appears, however, that the RSS has not taken this on board, suggesting a lack of communication and varying levels of attachment with respect to the plans and strategies that have, or are, being produced. For example, as far as some regional assemblies are concerned (such as the south east), the RSS is an ODPM document as the First Secretary of State finally approves it, not the regional assembly. Therefore, Members may not feel that they need to invest in or 'own' the document and its contents.

Members of the regional assemblies are not elected to serve at the Assembly, and often tend to be parochial in their opinions. Our experience in the south east and south west particularly indicate that Members are not planning in the best interest of the region, with some often being more concerned about ensuring that their own areas do not become disadvantaged during the negotiations.

It is suggested that more joined up governance is needed, especially with respect to drafting policy and advising on implementation. It is also suggested that the key strategies be given equal weight. A more transparent system is also required to provide regional planning in the public interest, for example, by directly electing Members to the regional assemblies. It is acknowledged that greater integration is being sought, as witnessed by the proposed merger of regional housing and planning functions by September 2006. It is hoped that this will assist with the delivery of housing and infrastructure.

Local Planning – LDF System

Although the government has sought to ensure that plan making at the local level becomes faster and more transparent, and better equipped to respond to change, our experiences during this transitory period suggest that further improvement is needed before all three objectives can be achieved.

Speed

In terms of speed, a number of LPAs appear to be experiencing difficulty with respect to meeting the challenges that they have set themselves through their Local Development Scheme (LDS). While in some cases this is synonymous with a lack of resources, difficulties have also arisen as LPAs have waited and tried to remain in sync with both national (such as PPS3, in relation to assessing housing demand and supply) and regional guidance (such as housing numbers).

In some cases, delays are also being caused by the size, complexity and cost of some of the documents being produced as part of the LDF. For example, rather than being succinct and action-led, the combined size of some of the emerging LDF documents is often the same, or indeed larger, than the plan they are collectively replacing.

Rather than being more transparent, a number of our clients have also expressed their frustration at the apparent complexity of the system. However, this should decrease as contact and experience with the new system increases, and as LPAs, as well as developers, learn to use the new system to best effect.

Flexibility

Despite the promise of greater flexibility, the new system has, in some cases, proven to be fairly rigid, a consequence in part of the way in which the current round of Local Development Schemes were developed. Specifically, some LPAs have been unwilling to change or add to their programme for fear of the resource implications that this would bring about. This reluctance has often been raised despite the assurance of financial support from the relevant developer/business. In some cases, this decision has been taken behind closed doors.

The sequencing of the LDS has also produced problems with respect to flexibility, especially where LPAs have deliberately held off from developing the bulk of their LDF in advance of their Core Strategy being suitably advanced. As a result, some of our clients face a long and uncertain wait until their particular case can be presented (typically through a dedicated allocations DPD). While developers understand the shift in emphasis towards evaluating potential sites early on, they do have concerns regarding the appropriateness of the consultation provided for omission sites given that SEA is supposed to be applied iteratively.

It is still too early to provide a view on the flexibility of the new system, although some developers are beginning to question whether they should bypass the plan-led system by submitting a planning application now rather than wait for the LDF to run its course. Clearly, this poses a threat to the certainty and predictability that is offered by adhering to the development plan.

Community involvement

Community involvement in planning is now an important objective for government. However, in some cases, the inclusiveness of the process is being undermined by the amount of material being consulted upon, its timetabling, and the way in which the material is being presented. The Statements of Community Involvement have helped to promote an effective and standardised approach to consultation, although there are concerns as to whether initial commitments can be maintained as development plan documents are brought forward.

With time it is hoped that these various issues will be addressed. However, in order to assist with the delivery, as well as the certainty and predictability of the new LDF system, we believe that improvement should be focused on:

- Additional research and best-practice in order to provide greater guidance on document production (such as more stream-lined SEAs) and more accessible overviews of the new system, such as guides specifically written to respond to the requirements and potential questions of business
- Less, but more focused consultation on matters where greater interest is likely to be shown, such as at the issues and options stage and once preferred options are published
- Exchanging best-practice on consultation and using existing forums and networks to better effect, such as those allied to Local Strategic Partnerships
- Continuing and intensifying the review of national planning guidance, particularly on those aspects that are now out of date- policy relating to Green Belt is now 11 years old whilst policy on commercial development (PPG4) is now 14 years old
- Giving greater emphasis to joint-working, for example between LPAs and agencies and between business

- Improved communication, in order to ensure that the elements of the LDF system are clearly understood (both in terms of processes and outcomes)
- Supporting the role of the Planning Advisory Service, such as through the identification of beacon councils, secondments and peer reviews

Local Planning – the Development Control System

The issues of certainty and predictability equally apply to the development control system.

Engagement and consensus building

To help generate greater certainty, effective dialogue with the LPA, and other key stakeholders, is necessary from the outset. However, the speed at which responses are received, or the enthusiasm that LPAs show with respect to getting involved, differ considerably across the country. In too many cases, responses are received too late on, principally as a result of a lack of resources.

This is particularly frustrating when LPAs, in order to maximise their share of the planning delivery grant, either refuse, or request that the application be withdrawn, if the submission is unable to be determined within the desired timeframe.

Despite the encouragement that the Government gives to pre-application discussions, many LPAs are unable to assist given their current workloads. Where discussions have been possible, we have experienced cases where advice has been inaccurate or has been altered without notice at a later date (for example, the date at which an application is due to be presented at Committee).

Pre-application discussions are also important with respect to defining the form that the application should take. Specifically, although best practice guidance on the validation of planning applications was published last year, significant difference exists with respect to the type of information that needs to be submitted. Often, requirements have been altered in response to changing legislation. Some of the more recent requirements present significant costs to the client (financially and in time), even though some of this supporting information has often a limited role in shaping the final decision.

It is suggested that Planning Delivery Agreements (PDAs) should be promoted and utilised wherever possible, and should encompass both pre-application and post-submission timeframes. PDAs can deliver both certainty and predictability for businesses. Key stages, important elements of work and meeting dates can be set out and agreed between the applicant and LPA, and most importantly, adhered to.

Engagement with the community and elected members is also important in developing consensus and bringing about greater certainty. However, while contact with the general public is often devalued by NIMBY or BANANA reactions, many councillors are not willing to get involved in pre-application discussions or post submission discussions or negotiations as they fear that they may lose their opportunity to vote or could be considered prejudiced. Despite recent probity cases making headlines, and the recommendations arising from the Nolan report, we are supportive of the steps that are being taken to maximise the effectiveness of councillor involvement.

These include the initiatives of the Planning Advisory Service, such as the leaflet that was produced with others (including the Local Government Association and the Association of Council Secretaries and Solicitors) towards the end of last year to help bring about a shift in more early forms of consultation.

Planning obligations

Information on matters that affect investment decisions, such as legal agreement obligations, needs to be readily and openly available early on in a project. It is preferable to have the obligations listed in development plan documents, but it is the costs of the obligations and the justification that can take many months to obtain. LPAs should have reasoned and standard calculations for the various, and increasingly prolific, planning obligations readily available to applicants and prospective applicants.

These elements then need to be fixed at an agreed point in time. Major projects can take many months to discuss prior to submitting an application, and then many months whilst the application is being considered. Within this timeframe, elements that can affect viability and investment may change, such as affordable housing percentages or infrastructure requirements.

We are aware that for major applications, there is help available for LPAs in the form of the Advisory Team for Large Applications (ATLAS) that is part of English Partnerships. This outside help and advice seems a good idea, particularly where LPAs are struggling with major applications. The downside, however, is that only the LPA can request assistance. It is also restricted to those authorities within London and the wider south east. There needs to be a mechanism whereby developers can request assistance, maybe after a certain period of time or if fundamental issues appear irresolvable. For the sake of fairness, we believe that such a system should be rolled out across the country.

Decision-making

LPAs are seeking to maximise the number of planning applications that can be considered under delegated powers, thereby helping to ensure that the statutory timescales are satisfied. However, in contrast, larger and more complex schemes tend to be dealt with by Planning Committees. Politics at a local level can, in our experience, make the planning system unpredictable. Members can make political decisions about applications, rather than solely judging them on their planning merits.

For example:

- (i) Members may not want to be seen to make unpopular decisions, preferring to leave it to the Planning Inspectorate or ODPM to decide, and then claiming the development has been imposed
- (ii) Members may have changed since a local plan was adopted, and do not wish to adhere to policies they associate with other political parties
- (iii) Members may have a national political agenda to pursue, such as an anti-development/anti Labour Government stance, which is not reflected in the allocations and policies of the local plans/LDFs
- (iv) Members may wish to accommodate a high profile/ high status employer, and may ignore certain aspects of planning policy, in order to do so

Although officers normally set out national and regional policies in planning reports, it has been our experience that Members rarely take it into account.

Major Infrastructure Projects

We believe that much more should be done to assist with the delivery of major infrastructure (e.g. airports, ports, reservoirs). We believe that, rather than being considered at the local level, or be called in by the relevant government office, schemes of national importance should be directed in the first instance to a team of national planners with expertise in dealing with the type of matters being presented.

We also believe that the context for this kind of development can only be provided by means of a national spatial strategy where issues of national importance can be assessed holistically and spatially together. Such a plan would help to develop stronger coordination across government, and between the vertical tiers of policy-making.

Summary

While we are aware that some have questioned the effectiveness of the recent planning reforms, we believe that it is still too early to pass judgement given the transition towards the LDF-based system is still incomplete. A variety of research is now underway, such as the ODPM-funded study entitled *Spatial Plans in Practice*. This work, that is seeking detailed feedback from a cross-section of LPAs, will enable potential issues to be identified and will allow for potential improvements to be administered. The form of these may be similar to those suggested here. However, given the level of change that LPAs have had to endure over the last couple of years, any further amendments would need to be carefully coordinated in order to avoid jeopardising the certainty and predictability of the system.

With respect to securing sustainable economic development, we believe that LPAs already have the necessary remit given the responsibilities that they have passed with respect to delivering sustainable development.

We trust that these comments are of assistance to you and your colleagues. Should you wish to discuss any of the points we raise in greater depth, please do not hesitate to contact us.

Yours sincerely,



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