

Barker Review of Land Use Planning

Response by Miller Homes Limited

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1. Flexibility of the planning system

The ability of the planning system to deliver economic needs is largely dependent upon accurate assessment of development needs at the plan making stage and flexibility depends upon rapid review when circumstances change. We support the plan led system as a framework for private (and public investment). However, review of the plan approach is not flexible enough to respond to change (even under new system) when the need arises. In part this is because the plan as adopted has no flexibility to respond to change. Part of the change needed is having a trigger or threshold to identify clearly when the plan is no longer sufficiently robust (see Miller Homes' response to PPS3 about need for trigger for action when departing from housing trajectory). We also supported the concept of buffers of land supply and floor and ceiling provisions previously identified under the original Barker report and we see no reason why this principle should not be extended to employment land provision. However, we are disappointed to note that these proposals are not carried forward into PPS3. However, we consider a similar longer term perspective for economic development with actual sites identified for a 15 year period but phased beyond the first few years of the plan would allow for the bringing forward of development phased for later release if circumstances warranted. Again, there would need to be clarity as to when the need for such action was triggered. In our opinion, there would need to be the ultimate sanction of the threat of losing planning appeals if appropriate action was not taken by LPA's resulting in an adequate land supply was not achieved and guidance issued clarifying when such appeals were likely to be successful ie land supply less than 3-4 years. Clearly this interacts with later questions regarding the efficacy of the appeal system.

2. Scope of the new tiers of plans and potential improvements

There is currently confusion over the demarcation between the role of RSS, Core Strategies and Site Allocation LDDs. RSSs are expected to take on, at least in part, the former role of structure plans. However, the time allotted to examining the soundness of those plans is, in our experience, wholly inadequate. For example, the East of England RSS Examination just concluded sought to provide some level of detail in relation to key growth areas such as Harlow and Stevenage given the need for co-ordinated investment by the public and private sectors, the long lead in times required for major development, the need for early site starts to deliver the required rate of growth and the need to co-ordinate across administrative boundaries. However, it is clear that the time allotted to the examination was wholly inadequate to address properly these issues and that the evidence base of the RSS was inadequately prepared to rationalise fully the decisions required.

At the LDF level, we understand the logic of separating Core Strategies and Site Allocation Strategies. However, the impact of such though is to extend the time taken (and cost to participants) of identifying land supply. Further, there is a lack of clarity over the level of detail required at each stage. If a Core Strategy is to be sound in specifying a particular direction of growth or general location for a new strategic business park, for example, the plan maker must have carried out sufficient research to ensure there are suitable and deliverable opportunities for the development of business parks in that area. There is, therefore, considerable overlap with the evidence required at the Allocation stage to determine precise locations. We consider that where development is required which is of a strategic scale (and by this we mean significant to achieving the objectives of the plan), the Core Strategy should define the location of the development and the Site Allocation plan confine itself to defining precise boundaries to that allocation and the development form, in other words the principle of the location would not be re-examined. We had thought that this was the intention behind the original decision to stagger the preparation of these documents but it does not seem to be the emerging practice. See also below re SCIs.

In terms of the central/ local balance, we have yet to see how the balance works under the new system. We are aware of comments from various Govt Offices regarding the under provision for development in emerging RSSs but we do not know whether these comments will be followed through by action when approving the final RSS. If this is to be the case , it is a frustration that the RSS process can carry on through an EiP in a false vein for so long without the preferred central government alternative being properly assessed. For example, the current draft of the South East plan makes provision for housing significantly less than current government projections. We wonder whether the Independent Intelligence Unit recommended under the earlier Barker report would help address this in objectively outlining policy options and their consequences to allow for a more informed debate at the inquiry. However, we are concerned that in the past, where central government has identified flaws in the plan making process, there has been inadequate carry through action or the recommended action has been thwarted by LPA's simply withdrawing the plan (as with the Gloucestershire Structure Plan) rather than adopting it with changes. We understand that withdrawal of LDFs or RSSs if the binding conclusions of the SoS or Inspector are not palatable will no longer be an option under the new procedures and, if so, we welcome this. However, we also await the outcome of early LDF inquiries to see whether the advent of binding reports will result in the deferral or avoidance of difficult decisions by inspectors.

3. Is the right balance achieved between social, economic and environmental goals of the planning system?

We consider that there is no guidance as to how these balances should be drawn at a national level. For example, there is no clear national strategy regarding economic growth or housing provision. There are disparate national environmental objectives (such as the renewable energy targets) and overriding national advice regarding the importance of nature conservation or areas of national landscape importance, for example. There is no framework as to how these sometimes conflicting objectives should be balanced at the national level.

At the local level, in areas of development pressure at least and where the economic imperative (in a local sense) is less strong for development, our perception is that the balance is unduly weighted in favour of environmental concerns. There is the converse danger that in areas of economic weakness, environmental concerns are underplayed reflecting local political priorities. We are drawn to the conclusion that there needs to be some national framework of objectives which can be tapped into by RSS and a balance drawn between relative priorities of the regions to achieve overall national goals. Such a national framework should also provide some guidance regarding regional objectives as evidenced by the often competing claims on resources and likely growth put forward in potentially mutually incompatible regional economic strategies (for example, all regions chasing high tech growth at unrealistic levels having regard to the likely national potential).

We are concerned at the extent to which the development industry seems to be regarded as a cash cow for solving the environmental and social ills of the country. Cases in point are the (over) use of the planning system to achieve objectives in terms of social housing and the prevention of housing development and in some cases business development pending mitigation/improved conservation status of the Special Protection Areas (SPA's). In the former case it is clear that the need for the level of social housing sought derives not just from the desire to create new sustainable communities but from the backlog of unmet need and the continued sale of the social housing stock through 'right to buy'. The latter is an issue that should be addressed by government before heaping additional burdens upon private development. Nevertheless, an increasing burden is placed upon development, both commercial and residential, to meet the cost of such provision.

Similarly, the pressures upon the integrity of the SPAs are many yet the solution seems to be to seek funding for the management of and provision of alternative recreational provision from new development. New development doubtless has a role to play in addressing these issues but this should be proportional to the needs and pressures it generates.

Furthermore, most of the burden of meeting government objectives in terms of climate change, building efficiency, etc. seems to be loaded upon new development through increasingly strict building regulations, policies seeking renewable energy on new development sites and sustainable building codes. Again, we recognise the role new development may have to play in these areas but would also draw attention to the vast superiority of new development over the second hand stock in these regards and query whether the focus of improvements should not be directed rather more to improving the existing stock. Conversely, the effect of such excessive intervention might be to discourage new or replacement development to the detriment of the sustainability of the stock of residential or business premises overall.

4. What lessons can be learned from overseas planning systems?

Nothing to add.

5. Does planning help or impede investment and what improvements are desirable to further enhance transparency and effectiveness of the system?

We have already said we support the plan led system as a framework for investment decisions. However, we consider the current system to be highly complicated even for planning practitioners and this does not provide for a streamlined, speedy decision-making process. There is an inevitable tension between flexibility to respond to changing circumstances and certainty offered by the plan system as to outcomes on particular projects. However, we do believe that the system would benefit from additional clarity as to when proposals not in keeping with the plan system would be expected to gain consent. This is also fundamental to achieving an efficient and usable appeal system to avoid 'hopeless' cases clogging the system, the difficulty being that whether they are 'hopeless' or not only becomes apparent after review of a

clutch of appeal decisions. This is a very inefficient way of proceeding, particularly in a system where guidance is rapidly changing. We point to the recent PPS3 draft as an example of poor guidance as to when applications for development not consistent with the plan might prove acceptable. This is suggested to be the case where the housing trajectory is not met but not when environmental considerations suggest otherwise. How far off the trajectory, how strong are the environmental considerations to be, is the degree of departure from the trajectory relevant in determining the level of environmental concern which might be overridden? No guidance whatsoever is offered and there is therefore no clarity for someone making an application despite the considerable and ever increasing cost and time resources required to prosecute an application.

In terms of transparency, a culture change is required because the new systems only pay lip service to openness and transparency, for example, key decisions are now taken behind closed doors with public meetings being used to endorse those decisions. We have noted above the increasing cost of securing planning permission and the increasing evidence burden being placed upon developers to demonstrate that their development is necessary and appropriate. We contrast this with the original approach of the planning system that landowners had the right to do as they will with their land subject to the planning system establishing whether such proposals would cause demonstrable public harm. We believe that balance has tipped too far against the applicant with the developer having to demonstrate a positive need for the development as opposed to avoidance of harm.

We support the plan led system as a means of establishing the balance between competing environmental, social and economic aims. Nevertheless, we fail to see how development can be legitimately refused on unused brownfield land on the basis that it does not form part of the plan's proposed housing provision or likewise, economic development where it is not of a scale to add undue pressure to the housing market irrespective of whether the plan's housing or employment provision has been met. There may need to be safeguards against the cumulative impact of small proposals but the reality

at present is that the shutters come down on new consents once a total housing supply (which may be hopelessly out of date) is reached or approached. Often the supply is planning permissions and not actual dwellings. Unfortunately, such development opportunities cannot always wait for a plan review as opportunities for change of use may be restricted by lease dates, economics of vacant property, etc..

6. Is the planning system sufficiently joined up with other strategies?

No. It is clear that Regional Economic Strategies (RES), for example, establish growth targets which are then disputed by Regional Assemblies in preparing RSS. Ideally, the RES strategy should be established having regard to the environmental factors used recently to justify undershooting those targets in the South East. However, the RES does provide a benchmark against which the RSS strategy can be measured. We wonder whether the independent body charged with collating an evidence base for the RSS might allow better integration of these strategies.

7. Is there too much emphasis on speed in the planning application system?

Yes. The setting of targets for planning application turnaround is one measure of efficiency of the development control system but is not the only or most important one. We have seen many examples of time based performance statistics being manipulated to achieve targets, for example, by refusing to register planning applications until all matters are resolved or by refusing to negotiate solutions and instead refusing permission and requiring resubmission. Such tactics, in our opinion, result in a far less efficient and user-friendly planning system despite what the statistics might suggest. We would suggest it would be more appropriate to have a range of measures targeted to see whether the development control system was delivering the targets set in the development plan/ LDF, for example, the appropriate supply of employment land; the delivery of affordable and market housing at the rates set out in the housing trajectory or the protection of key environmental assets. These may be more difficult to measure and it may be argued, in some cases

justifiably, that some lie beyond the control of the LPA which may result in the need for adoption of proxy targets. However, measurement of outcomes of the system is a more relevant measure than speed (which is itself reflected ultimately in delivery).

In terms of speeding up the process, we consider that more needs to be done to make the appeal process a realistic alternative route to a planning permission in the event of undue delay. Part of the solution we see as much clearer guidance as to when appeals are likely to be successful, particularly where the application is departing from the plan which would normally provide the framework for judging those appeals. We see no reason why the time period should be limited for appeal on undetermined applications. In our opinion and experience, this dissuades genuine efforts to resolve issues by negotiation and encourages submission of dual applications (twin tracking). It frequently results in the submission of an appeal to keep options open and this merely 'clogs' up the appeal system. However, the ability to twin track is essential as it is the only stick available to an applicant. We note the references to potential arbitration services have disappeared. While we feel it is unlikely that either potential appellant or LPA would accept an arbiter's decision as binding, we do think such opinion would help focus the minds of either party on the likely consequences of pursuing an application to appeal. Making an arbiter's decision a material consideration in whether to award costs might further focus minds. We also consider that despite recent recruitment drives in the Inspectorate, the level of the Inspectorate's resources is key to shortening the time taken for determining appeals and that there is little further to be gained in guidance on the timely submission of statements, etc..

For example, the new system of plan making requires each LPA to prepare, consult and subject to inquiry a Statement of Community Involvement (SCI). In our view, there is little variation between SCIs produced. We consider an improvement would be to allow a 'standard' SCI to be deemed adopted unless the LPA chooses to vary such SCI through the procedures provided. Thus flexibility would be retained where needed but in many cases, Inquiries (and consultation fatigue) would be avoided thus freeing up Inspectorate resources.

Greater clarity and the avoidance of repetition in the preparation of Core Strategies/ Site Allocation Inquiries and greater clarity of guidance are key to such aims as well as trying to identify alternatives to appeal such as arbitration.

We also feel that more needs to be done to avoid vexatious decisions by Councillors rejecting satisfactory schemes. We do not believe the costs system acts as an adequate disincentive to vexatious decisions when it may be politically attractive to resist proposed development. We accept that it is open for Councillors to go against the recommendations of officers but equally there should be a clear duty to produce cogent reasons for refusal when doing so. We have come across many instances where Councillors vote to refuse a development scheme and then openly ask the Planning Officer to draft reasons for refusal. We consider that advice on the appropriate circumstances where Councillors might be open to surcharging in respect of losses incurred by landowners/ developers due to vexatious decisions might be timely and that the instances of failure to back up such decisions with cogent argument or reasons for refusal could also feature in the performance assessments of LPAs.

However, we acknowledge that the best improvement in performance will derive from Councils recognising that it is in their interest to promote appropriate development and thereby they are incentivised to deal with applications in a timely fashion. We recognise the potential contribution of the proposed Planning Gain Supplement to this objective but have already expressed our concerns over the proposed working of the system in our response to HM Treasury. However, the resistance by LPA to a system of a betterment levy being collected by the Treasury rather than S106 contributions being collected by the LPA is unsurprising, particularly when accompanied by suggestions that income might be diverted away from the authority accepting development to fund infrastructure in areas of lower land values. We also consider that as part of a wider review of the way in which local government is funded, LPAs could be offered greater incentive to welcome new business development through partial retention of the business rate.

8 **Does the cost of securing planning permission deter investment?**

Yes. Development is inherently a high-risk business. All successful businesses will strive to minimise risk. However, the level of risk involved with development demands a high return on the money invested. At the investment end, the costs of applications (and in some cases, necessary prior promotion through the plan system) are rising dramatically before a realisable asset is generated (an enhanced land value at planning permission) and at the other end of the process, the 'reward' is being eroded by escalating S106 costs, Capital Gains Tax, proposed PGS, etc. It is, therefore, self evident that on more marginal sites, investors will be dissuaded from seeking planning permission by virtue of the diminishing risk reward ratio (though it is acknowledged that the cost of securing pp is but one of the investment costs).

9 **Are high occupation costs due to planning?**

Nothing to add

10 **Does planning impact on competition?**

Nothing to add

11 **Does planning support innovation through business clusters etc.?**

Infrequently. More often planning responds by identifying existing clusters. This in itself is a start but does not of itself remove the barriers to their successful expansion. Responses (in a spatial land use sense) could be far more proactive in identifying a shortfall of premise types and more generally the extent to which further land for expansion is required, how location and site condition sensitive such provision might be, whether use class restrictions are a barrier to rapid change (and considering uses of local development orders) and whether targeted communication improvements are desirable.

12 **Do LPAs have the skills and resources necessary?**

No and the burden is being increased. The frequent changes to the planning system, including the recent very radical changes have resulted in a steep learning curve for all concerned. This is added to by the extended research base proposed recently in PPS3.

13 **Are the new arrangements engaging SMEs?**

No information on which to comment.

14 **Can the LPA be better incentivised to accept economic development?**

See response to 7.

15 **How can planning strengthen economic performance at regional, sub regional and local level?**

By the measures identified above.