



## **BIFFA WASTE SERVICES BARKER REVIEW OF LAND USE PLANNING – CALL FOR EVIDENCE JANUARY 2006**

---

### About Biffa

Biffa Plc is the holding company of the Biffa Group, the largest waste management group operating in the UK, the largest wholly British owned waste management group, and a part of the Severn Trent Plc Group. The Biffa Group can justifiably claim to be the most diverse in terms of its spread of interests in industrial, commercial and domestic waste collection, recycling, treatment, landfill, and specialist liquid and hazardous waste management systems.

The Biffa Group's annual turnover is about £700m. We have over 170 operating centres throughout the UK including Northern Ireland. We handle 12 million tonnes of waste materials per annum, which we treat, recycle, recover and/or landfill on behalf of an extensive public, commercial and industrial customer base. We are also one of the largest operators of landfill sites in the United Kingdom. The Biffa Group has 36 operational landfill sites, and accepts about 8.5 million tonnes of waste into these sites each year. Biffa is a leading member of the Environmental Services Association (ESA), which is the trade association for the waste industry.

In terms of planning, Biffa has an in-house planning department with considerable experience of work in local authority planning departments as well as industry. Biffa planning staff are active members of ESA Planning Technical Group and actively engage with national government, particularly ODPM and DEFRA, on national planning policy and regulatory matters. At the regional planning level we hold seats on both the West and East Midlands Regional Technical Advisory Bodies (RTABs) which provide technical support for the Regional Assemblies on waste planning matters. Locally, we also actively engage with local development framework and waste development framework processes across the country.

### General Comments

Waste planning is a specialist area, both in terms of its technical complexity and the fact that there are statutory targets for waste management driven by the European Landfill Directive. This context is recognised by ODPM and expressed in the new PPS10 (Planning For Sustainable Waste Management) published in July last year. Currently, DEFRA is undertaking a major consultation on a review of the national waste policy. However, despite its specialist and controversial nature, many of the problems experienced in waste planning are common to the planning system as a whole.

The significance and importance of the planning system is not to be underestimated in terms of its influence on investment decisions and project delivery. This has increased public importance in relation to waste planning, given that over the next few years thousands of new, sustainable waste management facilities are required in order for the UK to meet statutory European targets. If the planning system does not work effectively and expeditiously, the public and environmental cost will ultimately

be high as a result of the delay moving towards a system of sustainable waste management within the UK.

In terms of investment risk, planning is a key area, as evidenced by its priority during the procurement process for new, long term local authority waste management contracts. This is because planning is not simply a technical exercise – it is also inherently political. The more controversial the subject matter, the more political and parochial the process tends to become, thereby increasing uncertainty and undermining confidence still further. Whilst the waste industry makes every effort to follow best practice in terms of pre-application discussions and community liaison – often with a fair degree of success – the uncertainty over final outcomes and timescales still remains.

Many of our general planning concerns are well articulated in the CBI's 2005 report entitled "Planning reform: Delivering for Business", which looks at the early success or otherwise of the new planning system introduced in September 2004. Our answers to the specific questions are detailed below.

### Answers to Specific Consultation Questions

1. Is the planning system sufficiently flexible and/or responsive to the right signals to deliver the right development in the right place, given the changing economic circumstances due to globalisation, demographic change, natural resource pressures and environmental change? If not, what policy measures might help deliver this flexibility?

*The short answer to the first question is "no", hence this being one traditional criticism of the planning system. The high level of public consultation and procedural hoops to be dealt with at every part of the process combined with its enshrinement within the local government decision making framework and the spotlight which planning enjoys at the local political level do not make for a quick and responsive system. To believe otherwise is to delude oneself. In the absence of political reform (eg regional government), recent regulatory changes to the planning system can only have very limited impact on its speed and responsive unless they are also backed up with substantial additional resourcing. Given this context, waste planning is not quick and it is therefore unfortunate that Government has left planning reforms so late, given the urgent statutory requirements under the EU Landfill Directive which have been known for many years.*

*Industry is willing and able to do what it can to assist with quick decision making, and has done so well before the current planning reforms were introduced, as indeed have many Waste Planning Authorities. For example, pre-application community liaison has been common practice for major schemes for many years now. However much these practical measures help, they are not a magic wand and the fundamentals of the system remain the same as they have been for many years. The complexity of the administrative processes, particularly those associated with the new system of Local Development Frameworks, has been made worse by the changes introduced by the 2004 Planning Act.*

*As regards the second part of the question (policy measures), policies are ultimately just words and can be ignored. Also, policy changes on their own are unlikely to result in a significant difference to the overall speed of the planning process unless*

*there is the will and resources to implement them. The sorts of system changes which might make a significant difference will inevitably require regulatory and, possibly, political structural change, as well as policy measures. The ability to determine strategic waste planning applications and plans at a regional level may have been one measure which could have helped encourage better decision making in the wider public interest by removing some of the more parochial influences. However, given the apparent failure of the regional government political agenda, this option appears to have been dropped.*

*One practical measure could be the introduction of a system which meant that development proposals which are in accordance with approved Local Development Frameworks which themselves have undergone lengthy public consultation, do not have to undergo public consultation yet again at the development consent stage – similar to the way the system appears to work in some other European countries (see answer to question 4). Lengthy “repeat” consultation ought only to be necessary for development proposals which conflict with approved Local Development Frameworks. This way the required and right sorts of development can be delivered in the wider public interest without further unnecessary prevarication and delay.*

2. Do you have any views on the scope of plans at the different spatial levels in England which are now emerging following the introduction of the new system in 2004? Are there further improvements to the plan-making process at the different spatial levels in England, particularly regarding the need to encourage a positive/proactive approach to planning, which was a key theme of the new plan-making system? Does the current system strike the right balance between central direction and regional and local discretion?

*The actual scope of plans is not the issue – the complexity of the new development framework process is the problem. Whereas before we had a consultation process (albeit a slow one) based on one local plan document, we now effectively have a system which breaks down what would have been a single document into different, separate components such as Core Strategy, Detailed Policies and Site Proposals. These necessitate separate consultations. Whilst we support the principles of community engagement, the cumbersome process associated with producing Statements of Community Involvement has been both confusing and, in our view, largely an unwelcome and unnecessary diversion of valuable resources at a time when this can be ill afforded. It is difficult enough to engage communities on somewhat abstract and generalised documents such as Core Strategies, without trying to pre-empt that with a consultation on how consultation is going to be carried out. The SCI process seems to us to be a classic example of an obsession with process rather than outcomes.*

*In terms of the sheer volume of consultations and the fact that the new Planning Act has required local plan reviews to be carried out across the country at the same time, local communities, industry and other stakeholders have a limited capacity as to how much consultation they can absorb and sensibly engage in. This is particularly challenging for a national operator such as us. The risk is that the process becomes so elaborate and abstract (in the sense of being broken down into separate components without being able to see the full development framework picture) that consultees begin to switch off, thereby actually resulting in even less engagement than was the case before.*

*Further confusion is arising because some councils are producing and consulting on the different development plan documents simultaneously, whilst others are progressing them in series over a longer period. The former approach is best in our view, as it enables one large consultation "hit" which also enables respondents to appreciate the full suite of issues and their inter-relationship. This in turn helps encourage meaningful engagement, better understanding and more meaningful comments. It should also assist in delivering the complete package sooner. However, some councils prefer not to do this, for either political or professional preferences or simply because they do not have sufficient resources and can only reasonably deal with one step at a time. Progressing the different development plan documents simultaneously rather than in series would be one recommendation for improvement.*

*Looking further down the road, we anticipate a serious bottleneck as the various LDF documents reach the Public Inquiry stage. This will have a knock-on impact on planning application appeals and PPC Permit appeals which are also dealt with by the same Inspectorate.*

*As regards the balance between central/regional/local discretion, we believe that for certain controversial, strategic developments such as major waste management facilities the decision making on planning applications is at too local a level, particularly in the case of Unitary Authorities. This can result in a failure to take difficult and locally unpopular strategic decisions in the wider public interest.*

3. Sustainable development is the core principle underpinning planning. Does the current system achieve the right balance between economic and other goals, such as the regeneration of areas and the promotion of social cohesion, improving the quality of design of buildings and urban environments, and the protection and enhancement of our natural and historic environment? Are some environmental, natural resource, or social considerations given too much or too little weight?

*Too little weight has been given to sustainable waste management over the last few years, now resulting in the serious difficulties in the UK being able to meet its future statutory targets under the EU Landfill Directive. There has also been much focus on the "sustainable" word and less on the "development" word. In the context of waste management, there has also been a failure to manage waste positively as a potential resource (rather than something to be disposed of), coupled with a failure to integrate waste planning with other land use planning, particularly additional new housing and economic development which will be adding to future waste arisings. See also our answers to questions 14 and 15 regarding the need for a more holistic approach to resource management and mass balance.*

4. What, if anything, could the English planning system learn from the planning and consent systems operated in other countries in order to respond to this new economic environment?

*Many other European countries have a history of strategic planning decisions being taken at a strategic level, often regional, especially for controversial, strategic infrastructure projects such as essential waste management facilities. Some also*

*have systems which only have extensive public consultation at one key stage, such as the local plan stage, rather than at numerous stages and again for individual projects which are in accordance with the approved land use plan. In the UK, the history of strong local government, extensive consultation and a desire to try and achieve consensus inevitably results in a slower system and one which is more prone to blockages at a local level, particularly in the case of some Unitary Councils which are sometimes less able or willing to take a strategic view.*

5. What is the impact of planning on encouraging or impeding business investment? In this context, how would you assess the potential of recent reforms to the English planning system, which are now being implemented? Are they increasing the transparency of the system and providing greater certainty for businesses? What further reforms, if any, are desirable in order to improve the transparency and effectiveness of the system still further?

*Planning and planning risk is a significant factor in investment decisions. This is particularly recognised in waste planning in the context of new waste management facility development as part of the procurement process for local authority municipal waste management contracts. DEFRA and ODPM have jointly identified the issue and provided advice on it last year during the joint consultation exercises regarding PPS10 and Guidance on Municipal Waste Management Strategies. It also features as a key issue in funding such projects through the PFI route.*

*The recent planning reforms are mainly concerned with the policy side of the planning process and in our view have had little bearing in terms of planning risk reduction or increasing industry confidence in the process. There is no more guarantee now than there was before that development projects which are in accordance with development plans will receive planning permission.*

*The development plan process itself has become more complicated and convoluted, as already commented on above. The requirement to publish Local Development Schemes does at least give developers a clearer idea of when key local development stages will happen, which is a benefit, as is the move towards e-government in terms of information being more accessible. We note though that some Local Development Schemes for Unitary Authorities still do not detail when waste issues and sites will be dealt with, therefore it seems that some Councils are ignoring the requirements of the Act on some subjects when it suits them. This failure needs to be addressed. However, these are relatively minor issues in terms of risk reduction and greater certainty regarding outcomes and determination timescales for planning applications. As noted by the CBI, the over obsession with determination time monitoring regardless of the actual nature of the decision has, in some instances, result in a worsening of service and an unwillingness to negotiate because of the additional time required. Further reforms or best practice advice could advocate a more project management type approach to the handling and determination of major planning applications, based on agreed actions and milestones, with performance then measured against those agreed matters.*

*Additionally, there needs to be vigilance regarding the quality of local decision making by planning committees, for example, compliance with local authority Codes of Conduct, which are now mandatory. In particular, there needs to be adherence to the principles of decision making on land-use planning issues not political issues. This ought to be reinforced by mandatory specialist planning and waste planning training for members of all Planning Committees. Some Councils already do this and*

*should be held up as examples of best practice (eg Surrey, Staffordshire and no doubt some other County Councils), but others do nothing at all in respect of waste planning training, even when they have waste planning responsibilities. This clearly implies they do not take such responsibilities seriously.*

6. Is the planning system sufficiently “joined-up” with other related aspects of government policy? In particular, are Regional Economic Strategies delivering a clear economic framework to help inform Regional Spatial Strategies? Is there sufficient interaction between RDAs and RSSs when preparing their respective regional strategies and if not how might greater interaction be encouraged?

*This is still a problem area, as evidenced by current confusion and variations in practice regarding integration of Regional Waste Strategies with RSS’s (and indeed with the plethora of other regional strategies of one sort or another). See also our answers to questions 14 and 15 regarding better integration with resource management and sustainability issues.*

7. Planning applications for major projects will typically take a considerable time to work through all the necessary stages. Do you consider the system puts too much emphasis on speed or do you feel that is too slow? If there is an undue emphasis on speed, what are the negative consequences of this and how could they best be avoided? If the process is too slow, what could be done to overcome delays? In particular, what improvements might be made to the planning appeal system to improve its speed and efficiency?

*See our answer to question 5. A more Project Management based approach towards development control and major applications in particular is strongly recommended.*

*As regards appeals, controversial major schemes inevitably necessitate Public Inquiries and current waiting times are around a year for an Inquiry date, which is far too long and can sometimes kill a project, along with additional costs which can run into several hundred thousand pounds. Appeals which fall to be determined by the Secretary of State can disappear into a “black hole” for many years.*

*If a project management approach is instigated for major applications, there should be a fast track appeal facility to cater for the event that the agreed project plan is not followed. The impending bottleneck of Local Development Framework Public Inquiries is likely to worsen future delays in the appeals system. For waste planning, specialist inspectors with knowledge of the subject are necessary and some of the current delays are no doubt also due to a shortage of suitably qualified and experienced Inspectors, which may need to be addressed.*

*With planning applications for major waste management facilities, these also require consents under the Pollution Prevention and Control Regulations (ie a PPC Permit). Government recommended best practice (PPS10) is that the planning application and the PPC Permit application should be submitted in parallel. The Environment Agency also recommends this and industry supports such an approach wherever possible. However, for this to work in practice, there needs to be much better internal liaison in the Agency between Planning Liaison function and the PPC*

*Permitting function. Currently there is little or none, which is leading to major confusion and unnecessary delay in our experience. This is particularly frustrating when industry is trying to follow best practice. Added to that, the Agency is arguably the most important statutory consultee on waste planning applications and the lack of internal liaison between Agency Permitting and Planning specialists can often result in confusing or incorrect EA planning consultation responses, or duplication of issues and controls, contrary to Government advice.*

*On a similar theme, we recommend a review of the legislation which prevents a PPC Permit being issued until after a planning consent has been issued. It would provide much greater reassurance for planning authorities, particularly local councillors facing local opposition on health and pollution concerns, if the PPC Permit could be issued BEFORE the planning consent. This would mean that when the planning application comes before the planning committee it has a “clean bill of health” (literally) and councillors can focus on land use planning issues, as they are supposed to do, safe in that knowledge.*

8. Is there evidence to suggest that the direct costs of making a planning application are deterring investment? Are there any unnecessary burdens/how might information requirements be streamlined to reduce the regulatory burden from the process of making an application?

*This depends on the resources of the applicant, the nature of the project, the commercial margins and the scale of the costs. The rationale and scale behind planning application fees increases is not always clear and varies depending on what strategic objectives are trying to be achieved (ie sometimes just a rise in line with inflation, sometimes a large scale increase to attempt to recover more costs, as with the last fees increase). Some regulations are still apparently being introduced as a result of high level political dogma rather than being justified in the terms set out by the Better Regulation Task Force. The new regulations regarding fee charging for monitoring planning conditions on minerals and landfill sites is such an example, in our view.*

*With planning applications for major waste management facilities which also require consents under the Pollution Prevention and Control Regulations (ie a PPC Permit), Government recommended best practice is that the planning application and the PPC Permit application should be submitted in parallel. The costs of the necessary technical and environmental work, plus the application fees can result in combined costs of up to £200,000 just to apply for consents, double or treble that if appeals become necessary. This represents major investment on a risk basis and can affect timing as well as the decision whether or not to proceed at all.*

*There is some emerging evidence that with new rules regarding application validation, some Councils are requiring unnecessary minor details prior to even registering an application, presumably to delay “starting the clock” on their monitored determination period until the last possible moment. Whilst we have some sympathy with those Councils in terms of the temptation and pressures to “play the system”, it is nevertheless something we cannot endorse.*

*Although information requirements can be standardised to a degree, individual projects will have their own requirements and our previous suggestions for a Project Management approach would help streamline that. Notwithstanding the benefits of*

*pre-application discussions, slavish adherence to prescriptive guidelines without factoring in site-specific matters may produce consistent results but can also be unhelpful and inflexible. We have some experience of this in relation to EA advice matrices on Flood Risk, resulting in consultation responses which sometimes do not reflect the real situation on site. When such consultation responses are presented as "standard objections" without the benefit of a site visit, we have had experience of the EA refusing to attend a site visit even when this would resolve the objection. We believe that no statutory consultee should lodge an objection on a technical issue without at least first discussing it with the applicant, if necessary on site. In many cases this would enable clarification over any misunderstanding on technical issues, or early resolution of objections, saving time on both sides in the long run. Some consultees are more willing to work constructively in this way than others.*

9. To what extent are high occupation costs in England likely to be due to planning constraints, or due to other factors such as imperfect competition or lack of transparency in the land market? What is the economic impact of these costs in terms of the main drivers of productivity?

*As regards waste facilities, there is a policy objective for certain types of facilities to be provided within the urban areas which create the waste. However, it can be difficult to secure sites in the face of strong opposition from higher value industrial developments. Safeguarding sites for waste facilities can help address that but requires the District Councils dealing with employment development to co-operate with County Councils dealing with the waste planning aspects. There are examples of District Council's granting permission for industrial development on sites identified by County Councils for waste development.*

10. How does the planning system impact on competition, through influencing barriers to entry and exit and economies or scale? If there are areas where there is a negative impact, how can these be addressed, while protecting other goals of the planning system?

*Some restrictive planning practices can affect competition, for example planning conditions on waste facilities which restrict the geographical area from which waste can be accepted. Inevitably there are older sites in same administrative area which have no such restriction, or sites nearby but in the next authority area which applies no such restrictions. The result is inequitable restrictions within the same commercial market area, which is a constraint on trade and can be anti-competitive. In planning terms, such restrictive practices are either acceptable as a matter of principle or not. They represent examples where national rules are required to ensure a level playing field.*

11. To what extent does the planning system effectively support innovation through fostering the formation of business clusters and wider agglomeration of economic activity?

*We are not aware of this happening through the planning system in respect of waste planning. Projects will ultimately only come forward if they are commercially viable in their own right.*

12. Do planning authorities have the skills and resources required to help promote sustainable economic development? If not, what is the best way to ensure that resources match the challenges the system faces? Are there ways to increase further efficiency of process?

*As regards resources, these appear to be severely limited when it comes to waste planning, although the same can no doubt be said of planning in general. There has been an apparent drain of knowledge and expertise towards the private sector over recent years, as evidenced by the growth in the consultancy sector. However, this is really just shifting resources from A to B – it is not creating any more planners within the system as a whole. More specialist planning courses, such as waste planning, would be one way of increasing resources and expertise in specialist areas of planning in the future. As regards efficiency of the process using existing resources, see above comments.*

13. Are the new arrangements for stakeholder engagement in the plan-making process succeeding in engaging those representing economic interests, including SMEs? If not, what are the barriers to that engagement and how might they be addressed?

*No – we believe the recent changes are in danger of actually making matters worse. See our answer to question 2.*

14. Are there ways that the incentive structure for decision-makers and local communities can be improved so that a balance is achieved between local interests and the interests of the wider community regarding proposals for economic development?

*As well as the issue of strategic decision making being undertaken at the strategic level (see other answers), more local “buy-in” could be achieved if waste planning was dealt with at all levels more in the context of resource planning, integrated with other spatial planning. Waste management needs to be recognised more widely in the context of carbon management, including mass balance and renewable energy policy, as well as being a key employer and service provider in communities. Thinking needs to shift from traditional “end of pipe” targets, regulations and definitions to a more holistic life cycle approach based on the concept of resource efficiency, across the entire supply chain system. In this respect we commend the 2006 report by the Mass Balance Movement, sponsored by Biffaward funding through the Landfill Tax Credit Scheme. The report can be viewed at [www.massbalance.org](http://www.massbalance.org)*

15. Economic development can help achieve the regeneration and renaissance of urban and rural areas. Are there ways which planning could strengthen economic performance in regions, sub-regions (including city regions) and at the local level?

*Ensuring adequate waste management infrastructure provision is key to achieving sustainable development and the economic performance of areas. Waste management needs to be seen in the context of resource management, as noted in our answer to question 14, with the waste management industry and re-cycling and re-use industries also being important employment providers as well as essential*

*components of sustainable communities. Even in key Government policy documents on Sustainable Development there is still scant reference to this.*