

Submission by Planning Mediation Ltd

To the Barker Review of Land Use Planning

Mediation in Planning

The Centre for Effective Dispute Resolution defines mediation as a process whereby “*a neutral person actively assists parties in working towards a negotiated agreement of a dispute or difference, with the parties in ultimate control of the decision to settle and the terms of resolution.*”

Mediation is a well established, flexible, responsive process that can be used to settle disputes in a wide range of situations. We believe it has an important part to play in relieving the pressures on and improving the reputation of the planning system. Mediation could improve quality, effectiveness and speed of delivery and - most importantly - promote common understanding and reduce confrontation.

Conflict in the current planning system is resolved by order of an authority – the local planning authority, a planning inspector or the First Secretary. This is alien to the way in which conflict is resolved in the business world where the parties remain in control of decision-taking. The use of mediation in planning offers the opportunity for business applicants to regain a measure of control over the final decision (although the planning authority must always have a right to act unilaterally ‘in the public good’). Mediation can, however, be used to great effect to determine the content and terms of legal agreements linked to planning permission - currently, a source of great frustration and delay for business.

In 1998, the Department of the Environment, Transport and the Regions commissioned a study into mediation in the planning system which found that, where there is a willingness on the part of both parties to enter into the process, mediation can be a very successful method of resolving planning disputes. In the pilot study, an appeal was avoided in 73% of cases. The report concluded that the use of mediation should be encouraged because it could result in benefits to the whole planning system. In addition it found that, regardless of the outcome, all the participants welcomed the opportunity for open, non-confrontational discussion.

The then Planning Minister, Beverley Hughes, gave her support to the concept, saying: *“The mediation process was a useful way of exploring all the issues in dispute on a non-confrontational ‘without prejudice’ basis. It was particularly attractive to householders because it achieved a communication link with planners, which was in their eyes more user-friendly.”*

A follow-up report was commissioned by DETR in 2001. Its findings indicated that mediation could potentially be advantageous in resolving disputes across a wide range of areas, including:

- * Conformity with Community Strategies
- * Enforcement procedures
- * Applicant and third party conflicts
- * Objections to draft plans
- * Section 106 agreements
- * Environmental Impact Assessments
- * Supplementary Planning Guidance

It concluded that mediation could result in overall financial savings, time saving and social advantages and that a National Mediation Service should therefore be established. The study found widespread support for the general concept but little demand from practitioners because of a lack of promotion and awareness.

This inertia is puzzling, not least because mediation has been used to resolve planning disputes very effectively in other countries. The following examples are drawn from the 2003 report 'Participatory Planning for Sustainable Communities: International experience in mediation, negotiation and engagement in making plans'.

Mediating small town expansion into the urban/rural fringe
Ephrata, Washington State, USA

In 2000, the City of Ephrata employed an independent planning consultant to act as a mediator between the planning authority and local residents, who objected to a designated Urban Growth Area identified in the city's Comprehensive Plan. The mediation ran for two years and covered the entire length of the planning process, defining issues, developing policy, amending policy and ensuring adoption of appropriate plans and regulatory documents by the City.

Ephrata's experience shows that a planning consultant acting as a mediator can achieve substantial agreement on a plan, even when there has been significant conflict. The professional planning consultant helped to propose compromises, build a consensus-based plan, write spatial planning policies and implement them successfully.

Metropolitan regional planning after apartheid

Cape Town, South Africa

In Cape Town, mediation was used in the development of the city's Metropolitan Spatial Development Framework between 1991 and 1996. The process was successful in generating engagement and negotiation amongst diverse stakeholders.

The study suggests that this example is of considerable interest to planning elsewhere, such as the community involvement strategies for local development frameworks in England - but also in engagement with the public around larger scale regional strategies. It concludes that the lessons learned – that planners represent an important resource; there needs to be adequate investment in a participatory process and a willingness to engage – are transferable to England.

The Barker Review of Land Use Planning

The terms of reference of the review outline particular areas for consideration, including improving the efficiency and speed of delivery of the planning system and increasing its flexibility and transparency. We believe that mediation is an approach which could address each of these concerns.

In particular, we would like to respond to questions 5 and 7 as outlined in Annex 1 to the Call for Evidence.

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?

Whilst it is clear that there is every intention for greater community involvement, and therefore input by the business community, it is far from clear to what extent there will be reform that allows open discussion and inclusion. Positive promotion of mediation would provide significant opportunities for transparency and a two way flow of information and ideas. Through mediation business investors and the local planning authority would have the opportunity achieve greater understanding of each others aims and objectives and develop a local development framework based more closely on achievable outcomes. There would be openness through the mediation process and the confrontational approach of the Local Inquiry could be avoided.

The current reforms should be taken further to ensure that mediation has been made a part of the development plan process to resolve issues and conflict before the confrontational forum of the Inquiry is entered into.

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 it 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?

There is considerable pressure (both political and financial) on local planning authorities to determine applications quickly. Whilst the local planning authority will give conscientious consideration to all the implications of major projects the emphasis on speed can often lead to an initial negative response and, arising from this, a confrontational stance with entrenched positions. Contractual obligations can often put pressure on the developer or promoter to seek to resolve disagreement through the planning appeal system which can be lengthy and expensive without necessarily taking matters forward. An appeal can be dismissed, declaring a development unacceptable in one or more aspects without exploring how those aspects might be resolved.

Mediation would bring the parties together to find solutions in a non-confrontational atmosphere. It can be initiated sooner without having to wait on a timetable to meet statutory requirements and take into account the workload of the Planning Inspectorate. Win-win outcomes can be achieved with the local authority working with the

developer/promoter to find a way to resolve areas of disagreement.

Official promotion of mediation would encourage all parties to take up this alternative whereas at present there is reluctance and uncertainty given that it is largely untried in this country.