

Barker Review of Land Use Planning

Call for Evidence

Introduction

- 1.1 The Government has issued a call for evidence on the land use planning system in order to inform the current review by Kate Barker. In particular, views have been sought on:
- Defining problem areas;
 - Establishing causes;
 - Recommending solutions.
- 1.2 Our responses to the 15 specific questions set out our detailed comments but in summary we would make the following points:

Problem Areas

- The planning system in the UK remains complicated with a wide variety of consents regimes.
- The system is good at protecting resources and community interests but it is less effective at delivering the new infrastructure and resources that are required for expanding communities and businesses.
- The consents process can be rather slow. Even though performance on achieving prescribed timescales for the determination of planning applications is improving, there is a considerable way to go to establish a truly efficient system. The time taken for planning decisions on major infrastructure projects is particularly slow.
- Some strategic policies are out dated and in need of review, for example the policy on green belts.
- The existing Section 106 system has a number of flaws and has been widely criticised. However, it works. Its great benefit is its flexibility – it is locally negotiated and therefore allows for local circumstances, including local needs, local demands, local land values and local land availability. It will be important to refine this system to introduce greater certainty and transparency for both developers and the local community.

Establishing Causes

- The planning system's function is to balance a range of competing interests (economic, social, environmental etc) with the aim of minimising conflicts between these. In a system based on the principles of consultation and maximising community involvement, where there are a multitude of different interests or perspectives on the merits or disbenefits of a development scheme, the decision making process is inevitably going to be time consuming.
- The system undoubtedly suffers from a lack of appropriate resources in the local planning authorities. Staff shortages lead to delays in producing and reviewing policy documents and in processing planning applications.
- There are skills shortages within local planning authorities. For example, in some planning departments a lack of understanding of financial appraisal and viability issues can hinder S.106 negotiations.

Possible Solutions

- Greater use of best practice guides to help address skills shortages.

- A more explicit and transparent mechanism for achieving planning benefits and mitigating development impacts.
- More frequent reviews of strategic policy objectives and, in particular, the relationship between strategic policy principles, economic development and competitiveness.

Response to Questions in Annex 1

Q1. 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?

- 1.3 The planning system in the UK has the capability to function in a way that is sufficiently flexible and responsive to signals so that the right development is delivered in the right place. This is because the policy framework can be reviewed at regular intervals and local policies adjusted to reflect new conditions. In addition, the development control system allows for the consideration of “other material considerations” when determining a planning application, thus allowing economic, demographic, resource, and environmental issues that may not be currently reflected in policy to be reflected in the planning decision.
- 1.4 However, the critical question is whether this capability is actually being used to its full potential and effectiveness. In some cases, it is not. A good example is green belt policy. While this was introduced to serve a specific purpose some 50 years ago, and green belts have performed a valuable function over the years, the policy approach is now severely outdated and does not reflect the full range of economic, demographic and environmental issues facing our society today. We consider that this is hindering economic development and the delivery of sustainable communities particularly in and around Greater London.
- 1.5 The fact that an area of land was defined in the past as green belt to prevent urban sprawl and the coalescence of built up areas, does not mean that this will necessarily be the most appropriate treatment of the land today – particularly where it is well located with respect to public transport and other infrastructure, shops and services. The land may be well suited to deliver a sustainable urban extension or appropriate for some form of limited built economic development which could help fund the management of remaining open areas so that they may be used more effectively and intensively as an open space resource for the community. Green belt policy does not permit this flexibility. There are other ways that policy could ensure appropriate space planning and containment of sprawl.
- 1.6 We consider that strategic policies such as that for the green belt should be regularly reviewed to ensure that they reflect current economic/demographic/resource/environmental conditions.
- 1.7 Conversely, an example of the planning system responding to signals in a positive and effective way would include the introduction of policies to promote energy efficiency and recycling – especially in Greater London where the Mayor is taking a strong lead.

Q2 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?

- 1.8 The main advantage of the new plan system will be the ability to produce and update plans more regularly and quickly than in the past. It is rather early to judge whether this result will be achieved. It would be unwise to embark on a wholesale reorganisation now – before the new plan system has been properly established and evaluated.

Q3 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?

- 1.9 The planning system in the UK is set up to provide a system of checks and balances between different and often competing/non complementary objectives. It does this reasonably well. We consider that much of the criticism of the current planning system derives from a lack of understanding of this role and the full range of pressures/issues that the system has to reconcile. For example, we are sure that many businesses in the UK are not aware that sustainable development is the core principle underpinning planning. In fact they may have little appreciation of the meaning of the term sustainable development. In this context, a 15 year planning battle and debate on whether or not to widen an important arterial road and relieve congestion may seem unreasonable and unsupportive of business interests.
- 1.10 It is a very important function of the planning system to deliver socially desirable objectives (e.g. regeneration, social cohesion, design quality) and to protect resources (e.g. natural and built heritage) that market forces left unchecked would not achieve.
- 1.11 We feel the right balance is generally being achieved.
- 1.12 Regeneration objectives are well supported by the planning system – for example the London Mayor's policies for regeneration areas, new CPO regulations, the formation of urban development corporations and the Olympic Delivery Authority (although it is interesting to note that the regeneration proposals associated with the Olympics are objected to by a number of local businesses).
- 1.13 The historic environment and natural resources are also appropriately protected, although there is a need for greater clarity on some regulations, consents regimes and policies. For example, the consents regime for heritage assets is very complicated and not at all user-friendly. This is acknowledged by DCMS and English Heritage and a reform process is ongoing to simplify the system. This is long overdue. Another example is the European Habitats Directive on Special Protection Areas. Lack of clarity on the interpretation of this directive is causing problems and delays to planning applications in the Thames Valley Special Protection Area.

Q4 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?

- 1.14 Other countries seem to accept to a greater degree that it is reasonable to strike a balance between conflicting needs and objectives; such as the relative value of jobs against preserving open land. In the UK opposition to development schemes is often from one-dimensional single issue groups. As a result the debate before a decision is less balanced.

Q5 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?

- 1.15 There is not a simple answer to this question. Some aspects of the system impede maximum business investment, such as the approach to selecting retail locations in PPS6. There would be more investment by firms such as IKEA in this country if they could find more locations suited to their trading formats where they could achieve planning permission. The question is do we ("the UK") want this type of investment at any price?
- 1.16 The sequential approach to retail and other town centre uses is an interventionist policy but one which protects the vitality and viability of town centres, promotes sustainability and provides maximum choice for shoppers/service users who do not have access to cars. The approach taken in countries such as North America is generally much more market driven and results in less defined town centres, a proliferation of strip retailing and high car usage.
- 1.17 Some retail policy, now set out in PSS6, has been successful insofar as it has forced retailers to build in town centres and therefore given the town centre a boost. It has been unsuccessful insofar as it has forced retailers to go to less competitive locations with higher costs, which has led to less investment. When the public are given a choice they flock to the out-of-town larger format stores. PPS6 has stopped these from being built. (See Question 10)
- 1.18 It is too early to assess the impact of the recent reforms to the planning system but overall we do not feel that they will make a significant difference in terms of increasing transparency and providing greater certainty.
- 1.19 We consider that reforms to the existing S.106 system do have potential to increase transparency and certainty. This is an area where both developers and the community are often uncertain what to expect in terms of the level of planning benefits that may be sought in association with a planning application scheme. This can be extremely frustrating for a developer who is striving to make the viability of a scheme stack up, but also for the community who are not sure how perceived negative impacts will be mitigated.
- 1.20 Up until now, new development has been taxed in three main ways. Two taxes are national, and one is local. Broadly, the land owner pays Capital Gains Tax on any increase in value when selling the land. The developer pays Corporation Tax on any profit. These are nationally raised taxes.
- 1.21 Tax is also paid for planning gain under Section 106. This is locally negotiated and can be quite diverse and wide-ranging. It can be paid through the provision of facilities and infrastructure, or through payments of cash at the outset or during the period of the development. This is a locally raised tax.
- 1.22 The proposed introduction of the new tax called Planning Gain Supplement (PGS) is on the premise that the increase in value caused by the permission for new development is not being taxed enough, and the three taxes currently in effect are inadequate to capture more tax.
- 1.23 Reforms are proposed but the precise approach has not yet been decided and there is ongoing debate in the industry as to whether the proposed PGS or some form of tariff system (as used in Milton Keynes) would be most effective.
- 1.24 We consider there would be great benefit in introducing a system where the amount payable was made explicit and transparent from the outset whether as a form of development land tax or a tariff.
- 1.25 One other aspect of the recent reforms which we do not consider helpful to business is the removal of the ability to extend the life of a planning permission through a Section 73 application to vary the time limit condition. Taken in conjunction with the reduced life time of planning permissions, which were reduced from 5 to 3 years, this gives businesses a very

limited window of opportunity to implement a scheme. For some businesses the process of fund raising or making investment decisions cannot fit comfortably into this limited time period and we anticipate that this will cause problems. This is because there may be considerable cost and effort involved in re-applying for planning permission and there is a risk that it may not be granted – thus reducing certainty rather than increasing it.

Q6 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?

1.26 It is early to judge the effectiveness of RSSs. They do appear to have had regard to RESs. The test will be when large scale development schemes are proposed that are supported by the RES, but a balance needs to be struck with conflicting non-economic objectives. Whilst having the right policies in place is important, the acid test will be their application.

Q7 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?

1.27 We consider that the planning process in the UK is still too slow and this is a hindrance to economic growth and investment. Although there have been improvements in the performance of LPAs in determining applications, there is no doubt that planning departments remain woefully under-resourced and many cannot respond effectively to queries from developers/applicants etc and do not process applications in accordance with the prescribed time tables.

1.28 A particular problem relates to the availability of LPA staff for pre-application discussions. We are aware that some London Boroughs will refuse to meet for a pre-application discussion, while others insist of payment of a fee (see LB Camden’s pre-application meeting guidelines). These approaches can be extremely frustrating for the developer who can not hope to fine tune a planning application scheme if there is little or no consultation with the LPA. In our experience the greater the degree of pre-application consultation, the more likely the application will be determined positively in the prescribed 8 or 13 week period (or something close to this).

1.29 In terms of the appeal system, quicker lead in times to appeals, greater selectivity on the range of evidence to be heard and quicker periods for publication of the decision letters would speed up the process.

1.30 The rigid application of time targets is leading to some perverse consequences, where planning officers are being obliged to refuse both small scale developments and large scale complex developments for no reason other than the time period is up. This highly inefficient practice can be overcome through adjusting the targets demanded, to allow greater flexibility for a proportion of applications – and for larger scale applications to have an extended target period where there is agreement between the planning authority and the applicants.

Q8 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?

- 1.31 The costs of preparing a planning application for a major development have undoubtedly risen over the last 10 years. Application fees have risen but this is not unreasonable if the money is channelled back into extra resourcing for planning departments.
- 1.32 However, the greatest impact on costs has been associated with the move away from outline planning applications in many areas due to the need to show an increasing amount of design detail. This is in order to ensure appropriate design quality and the proper assessment of impacts.
- 1.33 Associated with this is the need for environmental impact assessment (EIA) for a much wider range of projects and the costs that this involves. For a major development project in central London the EIA alone can cost the best part of £200,000. To this must be added the costs of planning consultants, lawyers and possibly a consultation adviser.
- 1.34 This can be a deterrent to investment

Q9 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 drives of productivity?

- 1.35 In parts of England such as London and the South East, high occupation costs are directly related to planning constraints as the planning system limits the supply of land for certain types of development (such as business parks that are close to the motorway network). In these locations demand for space can exceed supply and prices rise.
- 1.36 The chronic undersupply of land where housing may be permitted continues. Tax requirements, such as using a large proportion of the site for affordable housing affects the viability of the developments that might be permitted. This is particularly important on the more difficult and costlier brown-field sites, where the government has said it prefers new development to be built.

Q10 How does the planning system impact on competition, through influencing barriers to entry and exit and economies of scale? If there are areas where there is a negative impact, how can these be addressed, while protecting other goals of the planning system?

- 1.37 The planning system does have an impact on competition through its regulation of the supply of sites that are suitable for certain types of business enterprise. The most obvious example is in the case of food supermarkets. In an unfettered world all of the main operators would seek to occupy a high proportion of essentially car borne facilities often in edge-of-centre or out-of-centre locations. The English planning system does not permit this as a preferred location (PPS6), thus many retailers operate from "compromise" locations, while others cannot enter the market at all due to another aspect of PPS6 which requires the applicant to demonstrate "need". The major food retailers have recently been referred by the Office of Fair Trading to the Competition Commission for the second time in 7 years.
- 1.38 This is not to say that the PPS6 approach is inappropriate. This policy plays an important role in protecting the vitality and viability of town centres and promoting sustainable development. It happens to cause particular competition impacts in the food store sector because of the specific characteristics required for an "optimal" site, the high value of development land and the operating strategies of the main supermarkets. It may be that a system of licensing, outside of the Town Planning system would assist in regulating competition.

Q11. To what extent does the planning system effectively support innovation through fostering the formation of business clusters and wider agglomeration of economic activity?

- 1.39 The planning system can be very effective at supporting innovation through fostering the formation of business clusters and wider agglomeration of economic activity. This is because development plan policies for specific areas can be worded to ensure that certain uses or facilities are provided within re/development schemes.
- 1.40 This means that on a site where market forces alone would lead to a straight residential scheme or a commercial office park, "mixed use" policies can specify that a proportion of small business units, or an enterprise hub, or live work units etc should also be provided. The Section 106 provisions may then go on to extract capital or revenue support for the construction/running/rental subsidy of the small business accommodation provided.
- 1.41 Economic agglomeration can be assisted through planning policies which promote, for example, cultural quarters.

Q12. 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?

- 1.42 There is a growing skills base in local planning authorities in relation to promoting sustainable economic development. However, it is rather patchy in coverage with some authorities such as the London Borough of Merton being very advanced, while others are far behind. In London, the Mayor's London Plan and Energy Strategy provide a strong framework for the Boroughs to work within. In addition, the London Energy Partnership has been set up to support Boroughs on energy issues and this approach could be helpful across the country.
- 1.43 Is there scope to get the energy industry to sponsor further training for local planning authorities on sustainable development and energy efficiency issues?

Q13. 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?

- 1.44 No comment.

Q14. 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?

- 1.45 Where a proposal for major economic development/regeneration comes forward (e.g. the London 2012 Olympic Park and Legacy proposals or Crossrail), there will typically be a body of protest from the local community, as well as supporters. Objections from the local community may arise due to the impact to their properties in terms of value or amenity, or due to the fact that they will be compulsorily acquired to make way for the new scheme.
- 1.46 In the first case, the Environmental Impact Assessment process has brought a greater degree of transparency to the process of identifying impacts and appropriate mitigation measures. Section 106 is the usual way of ensuring the mitigation measures are delivered. The existing Section 106 process is not particularly transparent and is therefore often not trusted by the local community to deliver planning benefits and mitigation. The Section 106 system should be improved to provide greater clarity on how development schemes are directly funding local infrastructure improvements and community benefits in an area.
- 1.47 The current consideration of the Planning Gain Supplement and planning tariffs is considering this (see Question 5). There is a need to demonstrate a linkage between development that occurs in a local community and money being reinvested in that community to offset impacts and deliver benefits.

1.48 On the issue of CPO, higher levels of compensation would remove some objections. This could save time and money down the line – but outcomes are likely to vary case by case.

Q15. 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?

1.49 To maximise the effectiveness of a planning system in promoting strong economic performance in regions, sub regions and local areas, the development plan documents must be prepared in parallel with the economic strategies for the relevant areas. Both documents must then be reviewed regularly. In particular, it is important to ensure that planning policies are kept up to date in terms of setting a framework for delivering the needs of business. The acid test of effectiveness comes not from the policy but from the application of the policy.

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On behalf of University college London

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