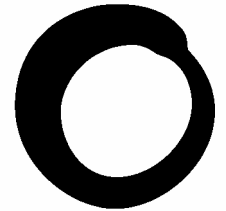


March 2006



**Friends of
the Earth**

The second Barker review of land use planning

a response by Friends of the Earth

“if the town and country planning system had not existed, widespread damage to the environment would have occurred over the last fifty years, probably with serious economic and social consequences.”

Twenty-third report of the Royal Commission on Environmental Pollution

“success has been measured by economic growth – GDP – alone. We have failed to see how our economy, our environment and our society are all one. And that delivering the best possible quality of life for us all means more than concentrating solely on economic growth.”

Tony Blair

(A better quality of life: strategy for sustainable development for the United Kingdom, 1999)

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1. Summary

The second Barker review is focused on examining how far the English land-use planning system impacts upon business performance in an increasingly globalised economic context. The Barker review team has been asked to assess whether or not recent reforms have improved the efficiency and speed of the system and whether this has encouraged the flexibility and transparency that enterprise requires.

The context for the review is a belief within Treasury that planning is slow and inefficient and doesn't give sufficient weight to economic concerns, and that therefore it needs reform. Friends of the Earth profoundly disagree with this assessment and our evidence seeks to show that:

- The fears about the effects of planning on the economy are misplaced.
 - The effects on productivity and competitiveness are small and the benefits of dealing with business externalities are huge.
 - The planning system adds to the value of the UK economy in a range of ways which include creating a strategic framework for investment decisions and securing high quality environments.
- Further deregulation of planning would make it far harder for planning to continue to deliver three essential objectives:
 - providing a rationale landscape for business.
 - delivering multiple public interest objectives.
 - ensuring democratic accountability and participative rights.
- The inquiry's requirement to assess "the relationship between economic and other sustainable development goals" is a critical opportunity to consider how planning can deliver on all these goals. But the review's focus on economic objectives alone is a mistake because sustainable development requires economic, social and environmental objectives to be integrated. The approach in the review makes it much more likely that the non-economic objectives will be traded-off (in Treasury parlance, "balanced").
- The Government's fears that economic concerns are not given sufficient weight are misplaced. In fact, it is environmental and social concerns which require greater weight within the planning process.

We also suggest that the Review team commission independent research in a number of areas, covering:

- the economic effects of previous deregulatory measures on planning.
- the economic benefits that planning provides.
- the current and recent effects of the planning system against the Government's environmental and social objectives.

2. The Review Terms of Reference

2.1 The Terms of Reference are clear that the review intends to look at how planning can “*better deliver economic growth and prosperity*”, with an emphasis on increasing planning’s flexibility, transparency, predictability and speed as means to deliver on this goal. We believe that these terms-of-reference are flawed, because they focus on just one objective of sustainable development (the economic objective) when progress on all three (economic, social and environmental) should be considered together, and integrated. We have three concerns with the current terms-of-reference:

- I The stated case for reform - that planning is not delivering on economic goals - is very weak.
- II Planning reform is still needed, but it is the environmental and social goals, rather than the economic goals, which are not being met.
- III The analytical approach chosen in the Review to deliver reform will deliver inefficient results, because it explicitly sets out to look at one policy goal in isolation, when all three (economic, social and environmental) need to be considered together. Reform is needed to ensure that action on these three objectives is integrated.

2.2 We advocate that there is time at this stage to reframe the review so that it ensures that any reforms deliver on all three economic, environmental and social objectives of planning. We suggest that a more effective review would instead ask three broader questions:

- What are the economic, social and environmental benefits of the planning system?
- What weaknesses are there in delivering on these three objectives?
- What changes to the planning system could deliver more effectively on these goals in a way which integrates rather than trades-off progress on them?

2.3 We also question the unwritten assumption within the Review questions that expanding the operation of free land or free property markets will deliver more efficient outcomes. Whilst this may be the case in certain very limited theoretical situations, in the real world this does not apply, particularly to areas such as this with multiple potential and actual market failures. **We recommend the Review Team commission independent research into the economic effects of previous deregulatory measures on planning.**

In more detail:

- (I) **The case that planning is not delivering on economic goals is very weak.**

2.4 The alleged negative effects of planning on the economy, productivity and competitiveness are small. There is almost no empirical evidence of negative effects. The ODPM select committee found in 2003 that “*Our evidence shows that planning is not a*

significant factor in determining productivity, even in the retail sector. Skills, innovation and investment are most important. Rather than blaming planning for the UK's low productivity, our evidence shows that businesses consider the planning system to be an essential part of doing business in the UKⁱ. Such evidence as does exist appears to be largely anecdotal.

2.5 Most businesses are clear that planning is not a major impediment to their business. In a 2001 survey of businesses asking them *“what is the single most important thing the UK government could do in the short term to ensure that it remains the number one location for business”*, planning came 16th out of 19 issues, being the most important issue for a mere 2% of businessesⁱⁱ.

2.6 The Scottish Executive's 2005 report on *“Business Development and the Planning System”*ⁱⁱⁱ finds that estimates of “costs” to business are not at all robust. It states: *“Most commentary relates to the impact of the planning system on housing - other than the general observations made by CBI Scotland, there appears to be much less evidence that the planning system is holding back business.”*

2.7 *“The CBI Scotland report produced an indicative estimate (£600m) of what the planning system might cost business in Scotland. That estimate was based on an earlier CBI national report entitled ‘Shaping the Nation – Report of the Planning Task Force’. We have reviewed the approaches used in that report and consider that certain of them – those used to estimate the costs of delayed infrastructure investment and the impact on wage costs through increased house prices - are very approximate in their nature and open to debate. The CBI report considers only costs to individual businesses, whereas there are many other countervailing effects and impacts which are not taken into account. In our view, a more robust methodology would be required to tackle this extremely complex question of impact at the level of the national economy.”*

2.8 In contrast, planning can deliver economic benefits, which are very rarely mentioned. As the ODPM Select Committee concluded: *“The benefits of the planning system have always been difficult to pinpoint in economic terms, but contributors were keen to align themselves with the benefits in principle, such as allocating land for economic activity, the provision of housing and infrastructure, certainty, the creation of a level playing field for developers, correcting for market failures and externalities and creating attractive environments in which to live and do business.”*(para7). These benefits may easily outweigh any costs, but are more difficult to measure. There has been no substantive attempt to assess these benefits. **We recommend that the review team commission independent research to assess the economic benefits that planning provides.**

2.9 We are concerned that costs are talked up, whereas benefits are talked down. This may be because costs are easier to estimate, and benefits are more indirect and soft. As ODPM say: *“how do you identify the firms who are doing better as a result of less congestion and fewer incompatible land uses?”* (op cit, section 1.20). However, Treasury guidance is quite explicit that such soft benefits must be given weight^{iv}: *“Costs and benefits that have not been valued should also be appraised; they should not be ignored simply because they cannot easily be valued. All costs and benefits must therefore be clearly described in an appraisal, and should be quantified where this is possible and meaningful.”*

(II) Reform is needed – but in other areas.

2.10 Although there is little evidence that reforms are needed to help meet economic objectives, it is the case that reform is necessary to better deliver on environmental and social objectives. For social objectives for example there is no third party right of appeal, giving greater weight to the concerns of businesses than to individuals. For environmental objectives, environmental concerns are routinely downplayed, for example assessments in the planning process which give very little weight to environmental impacts for which it is difficult to provide monetary values (for example, damage to woodland or built heritage).

2.11 The Government's advisory body on Sustainable Development states that:

“In practice the Government and society have not managed to give equal or balanced weight to the four objectives [of the 1999 sustainable development strategy] . They have given overwhelmingly greater importance to the economic growth objective, and to some extent to elements of social progress; and they have effectively subordinated protection of the environment and prudent use of resources to these other objectives.... This imbalance not only brings about unbalanced development, but is also unsustainable in that the damage to the environment and loss of natural resources is already imposing significant economic costs on society, which will increasingly undermine the very economic growth they have been sacrificed to.”

2.12 We recommend that the **Review Team commissions independent research to assess the current and recent effects of the planning system against the Government's environmental and social objectives. This would enable the Review Team to conduct an integrated appraisal of what reforms are needed to ensure that planning delivers on the Government's sustainable development objectives.**

(III) The analytical approach chosen will give inefficient results.

2.13 Although it may well be appropriate to assess whether planning is delivering on any of the main pillars of sustainable development (economic, environmental, social), it is not acceptable to prescribe policy solutions based solely on that assessment, for the simple reason that the central purpose of planning is to deliver on multiple objectives.

2.14 Conflicts between objectives are often inevitable, but it should be the job of planning, and all Government policy, to ensure that major trade-offs between the three objectives do not occur. This means not prioritising one objective above others – an approach which will maximise the chances of major trade-offs being required – but instead prioritising integration from the start. This instead maximises the chances of avoiding damaging trade-offs.

2.15 This focus on integration does not of course mean no trade-offs will ever occur, but it does mean that economic actions can be pursued which help not hinder progress on environmental and social objectives, and vice versa. Integration should be a major focus of plans, so that they provide a strong, positive framework to encourage the right development in the right place. This in itself would reduce delay by providing a stronger steer about what types of development are appropriate.

2.16 Integration may mean that there is less progress on one particular objective, but overall greater progress on all three together. As the ODPM select committee's research says^{vi} *"If planning does have some adverse effects on competitiveness, this is not necessarily a bad thing; these may be offset by positive effects on distribution, the environment or the welfare of future generations."* (section 1.16-1.17).

Change in focus needed by the Review team

2.17 If the review team is solely looking at improving on delivery of economic efficiency, it is more than likely that it will be proposing measures which affect planning's ability to deliver on its other core objectives. All core objectives need to be considered together, rather than focus narrowly on economic efficiency.

2.18 There is a great danger that because of the review's partial focus on economic issues, it will treat economic goals of overriding importance, with environmental and social goals as side-issues to be dealt with after the economic goals are met. This partial assessment of the land use planning system implies outcomes which will produce a distorted view about the value and purpose of planning. There is significant risk that the ambition of the Barker review to recommend 'further reform' of planning will therefore be based on an extremely narrow view and analysis of the current land-use planning system.

2.19 It would be inadequate and inefficient to do as the review suggests and "consider the impact of planning and practices on these environmental and social goals in so far as these impact on economic development" (our underlining) For the reasons set out above, we believe that the review is taking too narrow a view of the role of planning.

2.20 The focus of the policy recommendation section of this review must be on delivering all objectives of sustainable development, not on one of them and treating the others as bolt-ons. An integrated approach will minimise inefficient trade-offs.

3 The case for planning regulation.

3.1 The Planning system continues to play a vital role in society by providing clear public policy benefits in a globalised economic context. In assessing these benefits it is important to appreciate that the planning system did not appear by chance but was the product of a slow engagement by government to tackle the negative impacts of private sector activity in the development of land. The modern planning system was born out of an awareness of the need to create an efficient framework for economic and social progress and to guarantee environmental quality for the whole population. Significantly, the imposition of regulation was based on an acute awareness, identified in the Barlow report (1940), of the huge negative externalities of a free market in the development of land. This free-market had led to as much to business inefficiency, through poorly serviced and badly designed development, as it had to environmental degradation. These basic economic arguments for planning remain intact, particularly where land is an increasingly scarce resource. Significant deregulation has taken place in planning since 1947 including the abolition of betterment taxation, the abandonment of re directive regional policy, the effective withdrawal of state as a major provider and sponsor of housing and infrastructure development and a series of less profound procedural changes which have streamlined Development Control and Development plan procedures.

3.2 Despite these changes the land-use planning system embodied in the 1947 Planning Act remains the most sophisticated form of economic and social and environmental regulation ever introduced into the United Kingdom. This sophistication as compared with other regimes, for example pollution control, is founded on three important principles:

- A The regulation of land provides a rational landscape for economic development delivering more efficient and effective economic and business outcomes by, for example, resolving externalities.**
- B The regulation of land offers the opportunity to achieve wider public interest objectives such as delivering sustainable development.**
- C Planning regulation is carried out in a democratically accountable and participative manner in order to ensure that both the public interest is upheld and that conflict over land is mediated in a transparent way.**

All of these principles are clearly related and together they form an extremely powerful way of shaping spatial change. **We recommend that the Review team carefully consider both the benefits of these principles and impact on upon them of any reform package.**

A Regulation as a rational landscape for economic development.

3.3 There are three main ways in which planning delivers better economic outcomes:

- It corrects market failures
- It provides certainty for business
- It protects environmental and social capital, which is good for the economy in the long-run.

Correcting market failures:

3.4 Overall, planning has a clear role to play in ensuring the efficiency of the economy by delivering effective controls over economic externalities.

3.5 This is clearly set out in the research commissioned by the ODPM select committee in 2003, when they state^{vii}: *“By correcting for externalities and other kinds of market failure, planning may be expected to increase productivity and hence GDP. Although it will reduce productivity in some firms/economic sectors (those that without planning would generate negative externalities) it should increase it in others (those that without planning would suffer them), with the net effect being positive.”*

3.6 And in appendix 2: *“Microeconomic theory suggests that uncorrected externalities lead to misallocation of resources, and therefore total welfare (GDP) is lower than it could be. Government measures to correct externalities - which include land-use planning - thus increase efficiency and GDP.”*

3.7 Planning also deals with imperfect knowledge, which reduces inefficiencies. This research goes on to say^{viii} *“Where market transactions are depressed or less efficient because information is not available or known or is incorrect, which is called imperfect knowledge. The planning system can improve knowledge about land uses. For example, an up to date local plan provides greater certainty about neighbouring land uses. Proposals to bring together planning and economic development strategies can improve information.”*

3.8 It also states: *“Where planning prevents incompatible commercial land uses from locating next to each other, or conversely encourages economies of agglomeration including clusters, the firms affected will be more efficient and more productive as a result.”* (para 3.23)

3.9 The planning system also protects businesses against unfair practices (stops “free-rider” problems), further correcting market failures. ODPM’s select committee research states: *“Where goods are “non-rival” in consumption - and “free riders” cannot be excluded. The classic free-rider obstacle to development occurs where utility companies require developers to pay for sewerage, gas or electricity capacity (e.g., a new electricity sub-station) which is substantially greater than what the developer himself needs; developers down the line benefit from the additional capacity without having to pay the capital costs of creating it, and the utility company enjoys the additional revenues at no capital cost to them. A similar situation arises with local highways infrastructure, or new public realm, where developer A is required to provide the capacity, or develop the new public space, that developer B enjoys [and gains value from] at no cost. The planning system can bring about fair systems for payment for shared infrastructure”^{ix}.*

3.10 Spatial planning policy also has created positive externalities – for example pursuing innovative clusters, for example in IT, software and computer consultancy activities^x.

Providing certainty for business

3.11 The strategic planning framework and in particular the function of the local development plan provides a large degree of predictability and certainty for those wishing to promote development. Longer term investment strategies can have a large measure of

confidence about the scale and direction of future development. Business interests have a large measure of influence over establishing these plans in the first place (an issue we provide more detailed evidence below). It is also significant that unlike the American zoning system the UK discretionary planning system allows for a measure of flexibility in assessing individual development proposals which fall outside the remit of the plan. This means that businesses can promote development so long as they can justify it inside the wider objectives for the planning system to uphold the public interest inside established policy objectives.

3.12 Planning can reduce risk for businesses. Taking property development and investment as an example: the bulk of business property is rented, not owned, and the total value of commercial property was £446 billion at the end of 2002, of which £199 billion (44.6%) was held by owner occupiers and £247 billion (55.4%) by investors^{xi}. Consequently, business generally is dependent on its property development and investment sectors to build and own the accommodation that it uses (as rent-paying tenants) for the production and distribution of goods and services. Planning regulation reduces risk and uncertainty for property developers and investors, encouraging the provision of business accommodation – but it also raises rents – another encouragement to property development and investment – and, therefore, raises business costs. The balance between the risk lowering and the rent raising effects of planning is not known. Government might argue that if planning regulation was substantially reduced, supply would increase and occupiers would be offered more choice of accommodation at lower rents. But this assumes that developers and investors would be willing to produce and own such accommodation, when absolute returns (rents and capital appreciation) would be lower and risk (competition for tenants) would be higher. This high risk strategy only works if risk-adjusted relative returns are increased and this would require a very substantial increase in supply of land and reduction in land costs and a reduction in the cost of other factors of building production (labour, materials etc). There is, however no evidence either way that this will happen.^{xii}

Protecting environmental and social capital, which is good for the economy in the long run

3.13 The research for the ODPM select committee states that a clear economic rationale for planning is that: *“It furthers or protects aspects of human welfare, or quality of life, which are 'non-economic' - or at least not reflected in GDP and productivity as traditionally measured. Protection of the environment and the countryside and, more widely, sustainability, which includes the interests (both economic and otherwise) or future generations, comes under this heading”^{xiii}.*

3.14 We would also note that protecting environmental capital is a good for the economy, but is not counted in conventional GDP figures. It is one of the problems with using GDP as a measure of the strength of the economy, because GDP is simply a measure of flow. GDP can for example be increased by running down capital assets (such as fossil fuel stocks for example). No successful business would last long treating its capital assets as current income – but this is what the use of GDP does. Planning can help here – in its role of integrating objectives, actions which protect the environment in the long-term also protect the economy in the long-term. A narrow focus on economic interests does the opposite.

3.15 It is worth noting also that a good quality environment is a core factor in the quality of life of local and regional areas. The Government has stated that: *“British business has to*

compete by exploiting capabilities which competitors find hard to imitate. The UK's distinctive capabilities are not raw materials, land or cheap labour. They must be our knowledge, skills and creativity^{xiv}. The UK's ability to attract or retain globalised and mobile workers with knowledge, skills and creativity, depends on there being high standards of quality of life in British cities^{xv}. The planning system is to a large degree a guardian of that quality of life.

3.16 Also, we refer the Review team to the evidence submitted by the RSPB to this inquiry regarding the value of high environmental quality to the economy.

3B The role of planning regulation in securing the public interest

3.17 The principal rationale of the British land-use planning system is to regulate land to secure the wider public interest. Of itself this justification for planning is similar to all other state interventions to secure public policy objectives. However, the planning system has proved a remarkably durable framework for articulating societies changing public interest aspirations and delivering them in a transparent and accountable way.

3.18 We strongly suggest that the review team carefully consider the dual function of the public interest in planning. Howe (1994) and Campbell (1998) have both identified the important distinction between procedural and substantive public interest objectives in the system. The procedural aspects of this debate surrounds the fairness of the decision-making process and are dealt with in Section C. The substantive public interest outcomes of the planning system are essential to the reviews exploration of the validity of these goals in a globalised economic context.

The purpose of planning

3.19 There is a strong tendency to view the purpose of planning and the actions of planners as a 'dead hand' on social progress. Planning is often betrayed simply as a bureaucratic practice with planners operating as mere functionaries. This view fails to recognise not just the high ideals of those who founded the system but the ambitions of the new planning system to deliver sustainable development in a spatial manner. Planning was conceived as a 'progressive and reforming activity' (Evans 1997) and its development was intimately connected with social equity by, for example, securing minimum environmental standards for all sections of the community. The ideals of planning combined visionary city design and aesthetic control with the key objectives to preserve high quality environments and increased access to such environments. Strategic and comprehensive planning to secure wider rational economic development was also a central concern. The objectives of planning were and remain explicitly long-term, a fact that which while politically unpopular remains a key asset of the system.

3.20 There is quite clearly a gap between all these ideals and the post-war record of delivery. Major deregulation in the 1950s along with almost constant minor reform combined with the retrenchment of local government in 1980's are just a few of the factors which explain this position. However, these difficulties should not undermine the very real achievements of the planning system which are manifest in hard edged outcomes such as National Parks and planned new towns as well as broader social and environmental protection objectives. In addition to the public interest of reducing business externalities and securing procedural fairness the modern planning system has a broader objective reflected in the need to secure sustainable development.

3.21 The Government has made clear that Sustainable Development is the “*core principle underpinning planning*” and is therefore the central public interest objectives of the system . The Planning and Compulsory Purchase Act 2004 has created a new legal duty on policy makers to promote its implementation (PPS 1 Para 3, PPS 11 Para 1.7 and the 2004 PCP Act section 39). PPS 1 also empowers the contents of the UK sustainable development strategy 2005 (PPS 1 Para 13 (i)) so that regional and local decision makers must have regard to its objectives, stating: “*Development plans should ensure that sustainable development is pursued in an integrated manner, in line with the principles for sustainable development set out in the UK strategy*”^{xvi} Overall, sustainable development is becoming a core purpose at all levels of Government. The Government’s new Sustainable Development Strategy published in March 2005 states that “*sustainable development is a priority shared by all Government departments.*”

3.22 However, progress towards delivering sustainable outcomes has been slow precisely because of the approach reflected in the review team’s terms of reference. This implies the ‘trading off’ of the three pillars of sustainable development rather than the stated imperative to integrate such objectives. In addition there has been a general failure to incorporate the 5 guiding policy principles set out in the SD strategy. These are:

- Living within environmental limits
- Ensuring a strong, healthy and just society
- Achieving a sustainable economy
- Promoting good governance
- Using sound science responsibly

3.23 These principles build on the previous sustainable development strategy. However there are two crucial changes which have major implications for decision makers.

- First, the strategy is clear that the economic objective is now to promote a “strong, stable and sustainable economy”, replacing the previous economic objective “maintenance of high and stable levels of economic growth”. In effect this is recognition that increasing the quantity of economic activity (i.e. GDP growth) is not the overriding economic goal, and that the quality of economic activity is critical. This new emphasis reflects The Treasury’s position that “quality of growth matters, not just quantity”.
- Second, the strategy is clear that these principles are to be met together, and not “traded-off” or “balanced” against each other. This was the perhaps the greatest failure of implementation of the previous strategy, where many decision-makers assumed that progress on one aim meant that adverse effects on other aims were a price worth paying. The new strategy states “*although the 1999 strategy stressed that...objectives had to be pursued at the same time, in practice, different agencies focused on those one or two most relevant to them. So a new purpose is needed to show how Government will integrate these aims.*”

Social Justice and Environmental Equity

3.24 The sustainable development strategy also commits the Government to “ensuring a strong, healthy and just society” (HM Government 2005 “Securing the Future” page 16). Eliminating environmental inequalities is an important part of this goal. The planning system is a major means of eliminating environmental inequalities through, for example:

- better planning for the location of infrastructure and jobs;
- reducing the need to travel and thereby reducing pollution;
- improving the local environment which, for all communities including deprived communities, includes the quality of open space, cleanliness and access to amenities. (Kate Burningham and Diana Thrush 2001 “Rainforests are a long way from here”, Joseph Rowntree Foundation.)

3.25 The Government has also committed to ensuring that appraisal of policy proposals takes account of their local and distributional impact to avoid adverse impacts on the most deprived areas and social groups (HM Government 2005 “Securing the Future” page 132). The planning system embeds a number of policy appraisals, such as strategic environmental assessment and impact assessments for individual developments. Friends of the Earth recently commissioned research into environmental justice impact assessment (Walker et al 2005 “Environmental justice impact assessment: an evaluation of requirements and tools required for distributional analysis”.) The research examines the options for incorporating distributional analysis into impact assessment of various kinds including SEA, EIA, health impact assessment and transport analysis. Friends of the Earth recommends that the Barker review team review the potential for the planning system, through its associated impact assessments, to eliminate environmental inequalities, particularly in the most deprived wards of the UK. This would help ensure the integration of economic, social and environmental goals through the planning system.

3.26 One of the principal tasks of the review team, reflected in question 3, is to consider how effectively the planning system is delivering on the new imperative for sustainable development. In this regard the review team should carefully consider the Royal Commission on Environmental pollution’s 23rd report, ‘Environmental Planning’ (2002). This report concluded that the planning system was vital to the delivery of sustainable development but that there were significant delivery problems not least a lack of integration with other environmental regulation such as integrated pollution prevention control (IPPC). While a minority of the report's recommendations were addressed, such as the statutory purpose for planning, the question of integration continues to pose a challenge.

3.27 A clear example of the mismatch between the capacity of planning and its actual delivery can be seen in relation to action on climate change reduction. In brief, while the government has established a number of CO₂ reduction targets and acknowledged the important part spatial planning has to play in dealing with climate change (PPS1 2005) there is a striking disparity between the approach taken by regional and local planning authorities. While the reasons for this failure are complex the principal issues are lack of political emphasis and the failure to exploit the planning systems spatial capacity to co-ordinate different strategies particularly at the regional strategic tier.

3.28 The new spatial approach set out in Planning Policy Statement 11 (ODPM 2004) explicitly identifies the systems ability to consider issues beyond simply land-use matters. In principle this allows for a high degree of integration and co-ordination in strategic planning at

the regional level. There are notable examples of good practice but government has failed to give sufficient emphasis to the lead role of the spatial approach in co-ordinating different delivery mechanisms.

3.29 Ultimately establishing the public interest objectives of the planning system is a political process embedded in social values. While Friends of the Earth believes that sustainable development should remain the overarching objective vibrant representative democracy will always play a role in deciding the public interest of individual development proposals. In this sense establishing and reinvigorating clear public interest objectives is intimately connected with the system's ability to remain accountable and participative.

3C. Democratic accountability and participative rights

The case for public participation in planning

3.30 From the inception of the planning system in 1947 the voice of local people has been vitally important, initially through the mechanism of representative democracy. The fact that planning regulation places local decision-making by elected representatives at the heart of the process is one of its most unique and important aspects. From the 1960s and particular from the vitally important Skeffington (1969) report there has been an increasing concern to develop directly participative model of decision-making.

3.31 However, there is a widely held belief among planning commentators that public participation in the planning system results in 'unnecessary delay' and complexity. It is important to recognise there is no evidence to support this view neither in the planning literature nor in that presented to Parliament. For example the Terminal 5 public inquiry sat for 525 days. The main sources of delay were due lack of clear policy, BAA changing its mind on key access issues during the inquiry and the fact that Ministers sat on the decision for 11 months.

3.32 It is also important to note that those who characterise public participation as at odds with efficient land-use planning profoundly misunderstand the role of planning in the wider pattern of national, regional and local governance in England. The land-use planning system does not operate in a socio-economic vacuum and is intimately embedded within the governance and social norms of British society. As well as the tangible benefits of public involvement in decision-making participation should be seen as part of the wider constitutional arrangements of the state (Booth 1996). These arrangements involve the complex interaction of democratic accountability, judicial norms, civil rights, property rights and more recently ideas of community empowerment and civil renewal (McAuslan 1980).

3.33 Specific rights to be heard in development plan preparation and rights to freedom of information which exist inside the planning process are enshrined in statute law. Further opportunities for participation are contained within the provisions of the EU Environmental Impact Assessment and Strategic Environmental Assessment directives. Much broader procedural rights are enshrined in international agreements such as the Aarhus Convention (1998). It is vital that any examination of the performance of the land-use planning system must take account of these important constitutional functions. Contrary to the popular mythology which surrounds the practice of planning, public participation is not a 'bolt on' addition to the process, it is fundamental and integral.

3.34 There is a parallel view that local elected representatives create uncertainty in the planning process by delivering ‘perverse’ decisions. Indeed the Barker 1 inquiry was quite explicit in its desire to ‘**distance land availability decisions from the political process**’ (Box 2.1 and recommendation 11) by introducing price mechanisms in planning and encouraging much greater delegation of decisions to planning professionals. The CBI has even gone so far as to suggest that councillors been financially penalised for departing from officer recommendations. (CBI 2005) These views on the performance of local elected representatives seem largely founded on hearsay and not evidence based in any systematic research. In fact, the conduct of councillors is closely bounded by codes of conduct (Nolan 1998) and public law principles (see for example the Wednesbury Judgment) of reasonable behaviour in decision making. In fact the ODPM WS4 (Workstream 4, Participation in Planning 2003) report clearly identified a growing concern that elected members were now so constrained in their behaviour that they could no longer properly fulfil their democratic function. (See Annex 1 WS 4 report for the full argument). This function is vital, providing the only mechanism for ensuring the final democratic accountability of decisions. This is particularly important when difficult decisions have to be taken despite the feelings of a strong vocal minority. It is important to note that without robust local democratic control the case for third party rights is overwhelming. There is a range of important comparative lessons on creating effective rights of redress from other nations and these are summarised in the research document ‘Third Party Rights in Planning’ (Popham, Purdue et al 2002).

3.35 Direct public participation as well as local democratic accountability are intrinsic aspects of the planning process and should be considered as key civil rights and as an element of a vibrant, open and participative democracy. In addition, participation delivers a range of further benefits which have both intrinsic value and which should be carefully weighted against any perceived cost to the system. In summary these are:

- Participation improves the quality and efficiency of decision-making by using local knowledge and avoiding unnecessary and costly conflict.
- Participation has an educative role for all participants in terms of the needs of communities, the business sector and the mechanisms of local government.
- Participation assists in promoting social cohesion by making real connections with communities and offering them a tangible stake in decision-making. (Promotes the engagement of business with wider civil society)

3.36 It is important to note that these benefits have been widely acknowledged, not least by government in the publication ‘Community Engagement: the Government’s Objectives’ (ODPM 2004).

The place of participation in planning

3.37 Despite the central constitutional importance of participation in planning, the issue of its effective implementation has been poorly investigated. This is ironic since the public legitimacy of the system is by far, in our view, the single most pressing crisis in the planning system. Government proposals for local government and particularly the 2000 Local Government Act largely failed to recognise the centrality of local planning in governance. The ODPM’s Workstream 4 report on participation made clear the need for further urgent and comprehensive investigation of public involvement in planning, but this recommendation was not taken forward.

3.38 It is significant that while progress has been made on increased efficiency in the planning process and in redefining public interest objectives, public participation has been badly served by the planning reform process. This is because:

- The overall effect of planning reform has been to centralise power at the regional level where opportunities for participation are largely ineffective. There is for example no right to be heard for third parties in the examination in public of regional spatial strategy despite the new statutory force of these plans. This is combined with a lack of public awareness of the regional planning process.
- Increased funding for planning has not been channelled into effective participative measures at the local level. This is because Government has failed to create any indicators or targets which can effectively deliver on public participation. Local authorities are unlikely to spend money on activities which do not deliver on the Government's performance regime.
- Specific measures which flow from the first Barker inquiry into housing land supply and which are now included in the draft Planning Policy Statement 3 will further marginalise public involvement in the planning process.
- Specific delivery vehicles such as UDC's remove democratic accountability from whole geographic areas. BPZ's and the forthcoming LDO's also remove opportunities for participation by removing the need to submit detailed planning applications for specific designated areas.
- Statements of community involvement introduced by the 2004 Planning Act have been a significant failure. These documents introduced considerable procedural complexity into the planning process but as yet have not delivered any tangible improvement in public participation (Town and Country Planning Journal, Feb 2006).
- Despite the widely held view of the unfairness of the planning system which grants rights of redress to applicants but not to third parties, the Government has ruled out any discussion or investigation of the introduction of a third party right of appeal.

3.39 Despite the Government's commitment to strong public participation of the planning process in Planning Policy Statement 1 (2004), there is a gulf between these aspirations and direct measures which would help improve effective engagement. Taken together the actual effect of the policy measures and the 2004 Act have been to centralise decision-making while granting not one single new opportunity for public participation in the planning process.

3.40 These failures stem from a lack of clarity policy-making about the role of local communities particularly in strategic planning. This dilemma has been compounded in recent years by a range of societal changes which have called into question the process and outcome of the planning system. These changes include:

- disengagement from local representative democracy
- scepticism of professional expertise
- increasing public demands for direct participation in decision making
- the public perception of the greater centralisation in decision-making

Contemporary barriers to effective public participation

3.41 Despite the measures contained within the planning reform package, a series of profound barriers still exist which prevent effective participation from all sections of the community and particularly marginalise hard to reach groups. These barriers include:

- Practical issues, including the cost of information and the minimum standards of publicity of planning applications.
- Tangible inequalities, most notably that property interests define rights of redress and lack of right to be heard at RSS EIP's but also the fact that developers have privileged access to planners during pre-negotiation and the negotiation of planning gain.
- Access to professional expertise and particularly the cost of seeking professional advice.
- Professional norms of expression including the use of complex language, the proliferation of consultants' reports and the failure of planners to communicate with users and the wider community.
- The perception of objectors by planners as 'Nimbys' and as therefore representing illegitimate community views.

3.42 There continues to be an entrenched culture in some parts of the planning service which regards 'people' as 'problems'. Instead the direction of planning reform should recognise the value of local knowledge and community ownership of decision-making. As well as addressing pragmatic solutions to the barriers to public participation, culture change requires a reaffirmation that planning is a people centred activity, not solely a technocratic one. The review should address the barriers to participation which impact upon specific business interests and the wider community, identifying how far these result from the structural complexity of planning and how far they relate to current and historic cultures and practices.

3.43 In our view the review must carefully consider the legitimacy of the planning process in the minds of all sections of the community and reconnect planning with those the system seeks to plan for. The process of planning should be simple to comprehend, and delivered in a fair, transparent and efficient manner. In particular the review should carefully consider the tension between a desire for speed and the need for quality and public legitimacy in decision-making. While these ideas are not necessarily incompatible there has been far too much emphasis on crude target setting rather than quality and certainty.

The balance of community interest in planning

3.44 In establishing the wider societal benefits of planning, it is important to recognise that the system plays a vitally important role in mediating competing community interests in the development of land. Overall there is public acceptance of land-use planning decisions even when these may be contrary to popular local opinion. (DoE Attitudes to Town and Country Planning 1995) The value of this mediation of community interests cannot be underestimated since without it, the development of land would be guided only by competing individual property rights and, in contentious cases, by social protest. The value of the public

legitimacy of planning in ensuring that development takes place in a strategic and timely manner within the overall objective of securing the public interest is vital to the efficient running of an economy as well as central to good governance. The alternative would simply be chaos.

3.45 Business interests enjoy all the rights of participation afforded to the wider community. Indeed the process of planning is a vital arena in which private interests can engage with wider civil society. This process offers the opportunity to deliver better decisions which are both embedded in community aspirations and which continue to meet the needs of business. However, the voice of business should not be seen to have a privileged or dominant role in this process if legitimacy of planning is to be retained.

3.46 There is an unproven assertion that the business community is somehow a loser from the planning process. Question 13 of the review's terms of reference implies that there is a need to enhance the business case in the planning process. There is little real evidence to support this assumption. In fact, business interests are by far the most dominant player in the planning process and have an institutionalised advantage in terms of rights of redress which are not afforded to any other sector.

3.47 Research by Friends of the Earth demonstrates that the private sector plays a dominant role in the preparation of regional and local plans and in challenging decisions through Judicial Review. Private interests form by far the greatest number of objections to the local planning process play a dominant role in regional strategic planning.

Table 1: Regional Spatial Strategy EIP participation: percentage of participants who were invited to the EIP

	NE RSS March 2006	East of England Plan March 2006
Private sector	46%	41%
Individuals	-	-
Interest groups	14% (inc individuals)	19% (inc individuals)
Local Authorities	32%	30%
Agencies	8%	10%
MPs	-	-

Table 2: Regional Spatial Strategy Respondents: percentage breakdown of respondents who made submissions

	North East RSS 2005/6	East Midlands RSS 2005
Private sector	56%	41%
Individuals	1%	-
Interest groups	15%	15% (inc individuals)
Local Authorities	24%	44% (inc agencies)
Agencies	4%	-
MPs	-	-

All information supplied relevant RPB's

3.48 The private sector is clearly well represented during this process and in general has the benefit of the advocacy of trade organisations such as the House Builders Federation, who make representations for a large constituency of businesses. NGOs and other interest groups play a much smaller role but the striking feature of this table is a tiny fraction of participation from non-aligned members of the public. For example in the NE Friends of the Earth could find evidence of only one member of the public who was invited to the EIP. This evidence strongly supports Friends of the Earths view that it is this group and not business who remain the most disengaged from the strategic planning process.

Table 3: Summary of Section 287 appeals since 1990

Types	Number of appeals	Development plan				Success		
		SoS order	UDP	Structure Plan	Local Plan	yes	no	partial
Property developers	28		4	4	20	10	17	1
Charity	1	1					1	
Landowner	9		3	2	6	2	6	2
Council	4		1	2	1	2	1	1
Public	4			1	3		3	1
Development Agency	1				1		1	
Total	47	1	7	9	31	14	29	5

Research by Friends of the Earth 2005

3.49 Table 3 represents legal challenges to the development plan under section 287 of 1990 TCP Act. The use of legal challenge has been suggested as a growing source of uncertainty and delay in the planning process by slowing down the adoption of plans. It is interesting, therefore, to reflect that the vast majority of such challenges emanate from the private sector. Only four cases amounting to under 10 per cent of the total came from members of the public. This reflects the difficulties of costs inherent in the legal process.

3.50 There are two important qualifications to this overall picture:

1. It is always likely to be the case that those with individual property interests will object to or challenge plans which exclude their land from development because of the potential development values that the allocation of property in a development plan will bring.
2. Objections and challenges to a plan may indicate dissatisfaction with the process rather than demonstrating the successful embedding of business views in strategic policy.

3.51 However, large numbers of business objections do demonstrate that there is very significant business engagement in the planning process. (Business objections are also the dominant feature of most local plan inquiries and Friends of the Earth is currently undertaking research in this area) Such objections are quite legitimate and illustrate the strong involvement of business in strategic planning

3.52 There are several other issues which reinforce business influence in planning including the degree to which businesses are represented by trade organisations in a way which communities are not and the degree to which businesses have opportunities to employ professional help and expertise. Planning applicants also have 'special' opportunities for access to decision makers both through the pre-negotiation process and the negotiation of planning obligations. Local Strategic Partnerships which draw up Community Strategies (and are the basis for Local Development Frameworks) also have very significant business representation. Regional assemblies which draw up Regional Spatial Strategies have significant business representation. Across England the composition of the 8 Regional Assemblies which draw up RSS are approximately two thirds local authority representation. Of the remaining third 50% of the seats are business representation and 50% the social sector which includes a wide range of bodies representing: education, health, ethnic minorities, faith groups etc. Environmental interests usually have only 1 or 2 representatives.

3.53 However, we acknowledge that it is likely that small and medium-size enterprises may struggle with the complexity of the planning process in the same way as ordinary citizens.

3.54 In addition to this qualitative picture it's important to recognise the privileged position of those with property interests in the planning process. Applicants for planning permission have an absolute right to appeal on the refusal of that planning permission. Third-party interests have no such right of appeal. It is interesting to reflect that few other forms of governance in the United Kingdom enshrine the privileged rights of those with property interests over ordinary citizens. This inequity in access to redress in the planning system is the cause of deep resentment among many communities who experience the planning process. The only route available for third parties is judicial review which is complex, costly

and beyond that the practical reach of many individuals (see the third party rights of appeal research).

3.55 While there are a number of managerial measures which may improve the ability of businesses and communities to reflect their views in the planning process it seems difficult to argue that businesses are disproportionately excluded from the process given both a practical current engagement and the institutionalised advantages which accrue to planning applicants.

3.56 Friends of the Earth believe that there is a need for an urgent and full examination of the relationship of the public with the planning service. This reassessment should lead the way new settlement in which the public truly understands their rights and responsibilities in decision making. The Aarhus three pillar model provides a systematic basis for such settlement allowing for certainty for the public and providing it clear benchmarks for evaluating the implementation of policy reform. We believe the review team final report should take up the opportunity to reaffirm the value of an open, participative, democratic and efficient planning process. A clear message that planning is an opportunity to empower communities by valuing their place in decision making will make a real contribution to the legitimacy of the service.

4. Specific Review questions

4.1 Section 3 sets both a rationale for and the continuing benefits of the planning system. This discussion dealt directly with many of the questions outlined in the Review's Terms of Reference. However, there are five specific aspects of the review which require comment:

Costs and delays in the planning system

4.2 We are concerned that all of the time spent processing planning applications may be perceived as being either "delay" or a "cost". However, much of this time could equally be construed as being a benefit. On this point, the ODPM select committee research states (para 2.14)

"Keogh and Evans (1992) point out that planning delays are difficult to measure, for two key reasons. Firstly, to categorise any time taken to obtain planning permission as delay implies a view that planning has no value. Secondly, categorising as delay any time taken to obtain permission which runs over the statutory 8 weeks allowed for decisions is unrealistic in the context of large or sensitive planning applications. The authors stress that 'planning is only one potential source of delay amongst many' (1992.688), but note that the delays that planning is responsible for can have both positive and negative effects for both the developer and the economy. For a successful application, delays prolong the period over which land must be held and defers the realisation of profit for the developer; for the economy, delays slow the transfer of land to a more productive use. Equally, though, there can be benefits of 'permanent delay' (i.e. rejection), which can be seen when sub-optimal schemes are not taken forward. The research found that the available estimates of delay cost were deficient. Instead, detailed case study research was required in order to ensure that variations between property sectors, locations and points in time were understood and accounted for." (<http://www.publications.parliament.uk/pa/cm200203/cmselect/cmodpm/114-iii/114m03.htm>).

4.3 We would also stress that "delays" are not necessarily or even predominantly caused by the planning system itself. Often it is the developer who is "at fault". For example, the Scottish Executive found in 2005 that: *"Our analysis of a selection of the planning applications which had remained undetermined for the longest period showed that the behaviour of local authorities was not the only reason for delay - a high proportion of applications were delayed because the applicant failed to supply or was slow to supply necessary information, or submit a Transport Assessment or Environmental Assessment. In these cases, the delays were often considerable and ranged from 8 to 12 months."* (p.iii Executive summary <http://www.scotland.gov.uk/Resource/Doc/57346/0016983.pdf>)

4.4 Overall, the ODPM Select Committee have summarised *"The Government's evidence states that there has been no systematic analysis of the costs of planning delay to businesses. It draws attention to its own research which found that delay was as much due to poor project management by applicants and a desire to change planning policy, as to prolonged negotiations."* (op cit, para 23).

The Comparative performance of the UK planning system

4.5 The review is concerned (Question 4) with the comparative performance of the British land use planning system. Once again this debate is often framed by an assumption that the UK system delivers slower and more cumbersome system than its competitors.

Friends of the Earth believes that there is ample evidenced that this is not the case. This is not simply because of the benefits that planning brings discussed in depth in section 3. Annex 2 contains a note by Dr Philip Booth which examines the French system and concludes:

'It seems doubtful that planning is either a faster or a more certain process in France than in Britain. Even in crude statistical terms, processing of applications is probably not faster than in Britain, and the time spent on achieving a permis de construire may considerably exceed the formal processing time.' (Booth 2003 see appendix 2)

4.6 The evidence also suggest that the French Zoning approach requires much more detailed plans and reduces flexibility. A further more extensive study in 1990 concluded 'It is not possible to say that one country's system is better than another's' (DOE 'Planning Control in Western Europe' 1990 Paragraph C6.25) Each system is embedded in is own constitutional and social objectives. However, the report did conclude that UK discretionary system was the most flexible of nations examined. (Study nations were France, Denmark Germany Netherlands and UK)

Increasing flexibility

4.7 The review team's terms of reference has identified the need to examine ways to increase flexibility in relation to 'economic signals' in the planning system. There is the important question as to the balance between the benefits of certainty and flexibility which illustrate the unique nature of the discretionary British planning system as opposed to the US zoning models. Business has long argued that certainty is a vital component the planning system and this suggests a greater emphasis on the plan led system where decision-making is both long-term and transparent. However, the continuing criticism of business of the system reflects to desire by developers to exploit the flexibility of the system in order to argue the merits of specific cases. Indeed, the approval of a un-allocated land for development often brings the highest levels of betterment.

4.8 Booths 1996 investigation into development control produced a range of evidence to support this view: *'The truth appears to be, that, just as with US zoning ordinances, the development industry in Britain needs planning control to reduce the risks inherent in a wholly free market. Some degree of certainty of outcome is important and the planning system can help deliver it. Nevertheless, if certainty is perceived as important to the development industry, there is evidence to suggest that absolute certainty is not what being looked for ... Within the British system of development control, the ability to argue the case has by and large been seen as much as a strength as a weakness by the development industry.'* (Booth 1996)

4.9 The review team should be cautious in believing that increased flexibility is synonymous with business interest.

The impact of increased 'flexibility' in the planning system on participation

4.10 In a paper for the neo-conservative think-tank the Policy Exchange, Evans and Hartwich (2006) make a case for the deregulation of planning by abolishing the primacy of the plan-led system and introducing a right to develop. These ideas, including the reform to local taxation, can most generously be described as crude and lacking in a detailed understanding of framework and objectives of the current planning system. However, their discussion does raise significant issues about the relationship of deregulatory measures with

effective community engagement. Meaningful participation in local planning policy is founded on the power of the plan-led system. It is in the preparation of the plan that local communities have most opportunity to engage in debate about the future of their localities. Down rating the power of the plan directly down plays the power of communities and effectively marginalises their participation. It is extremely difficult to imagine how one could encourage participation in the plan process when the plan itself will have little or no effect on decisions made on the ground. The end of the plan-led system would engage all the risks of confusion, cost and social protest discussed above

The framework of spatial plans

4.11 Question 2 of the terms of reference is focuses on the current framework of spatial plans. In our view there is urgent need for a national spatial strategy. This is because it is vital that the regional spatial planning approach is seen in the wider context of UK spatial development so that progress of one region is not at the expense of others. Current government policy does not provide this national framework resulting in a situation which prevents an effective response to the wider pattern of unsustainable pressures and growing regional inequalities. The national objective is to ensure Sustainable development and simply promoting competition between regions or boosting GDP growth in those that are “behind” will not deliver this objective.

4.12 Friends of the Earth advocates a national spatial framework within which the position and needs of individual regions, and the opportunities for their future development must be set. The purpose of this framework should be to avoid the negative competition between regions for crude GDP economic growth, and to address the lack of a proper response to 'North-South' disparities. The national spatial framework would begin to apply a broad restraint policy in the areas where environmental limits are exceeded (such as much of the South East in relation to water availability), while promoting sustainable regeneration in other regions where the environment limits will not be breached and where social need is the greatest (for example in areas within the North and West).

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?

4.13 The review team's terms of reference raised questions about how communities can better understand the benefits of development. There are two particular routes to addressing this issue.

4.14 The review team's question is not clear what is meant by “incentive structures”. If this effectively means local authorities obtaining revenue on the basis of whether they approve development or not, this creates a clear conflict of interest. The long-term implications of this (as local authorities come to depend on such revenues) may make this conflict of interest rather one-sided.

4.15 It appears that creating such “incentive structures” would make it harder for the multiple objectives of planning to be met.

4.16 We are also concerned by the somewhat loose wording of the second half of the

question – it is our guess that by “interests of the wider community” you mean “GDP” – but there are far broader interests, for example if local people are given “incentives” to accept a big new housing development of luxury homes with high car use, this may well appease their local own objections. However “the interests of the wider community” would not be served - people in future generations and other countries affected by carbon emissions are part of the “interests of the wider community” and would not have their interests met by “incentives” being used to placate local opposition.

4.17 There are already mechanism of local taxation and planning obligations which allow impact of new development to be off set and an element of betterment to be recouped. The achievement of planning ‘gain’ is now institutionalised in many development plans and this markedly changed and incentivised many authorities to approved development to secure wider benefits. Research has suggested that this has led to marked change sin the approval of sites for development in attempt to maximise such financial benefits. Campbell has referred to this as the ‘hollowing out of planning’ (Campbell et al 1999)

4.18 Overall we believe this is the wrong approach. It has the large potential to prejudice the overall process in favour of development which may otherwise be deemed to be unacceptable in term of the wider sustainable development objective. As a result we believe there is no case for financial incentives and a powerful imperative to regularise, simplify the planning obligations process and in particular deal with its profoundly regressive nature.

4.19 An alternative to an approach based on financial incentives is the use of the empowering and educative role of local participation to frame more sophisticated debate about the positive or negative impacts of new development. Friends of the Earth has a unique experience of working with over 200 community groups who are heavily engaged in the planning process. This experience indicates that local opposition is often the result of the failure of local decision makers to make any attempt to effectively communicate new development proposals. The private sector also has significant responsibility in this arena.

4.20 One of the most profound failures of government over the last four years is the absence of any attempt to have a coherent debate over the contents of the ‘Community's Plan’ and other regional growth areas. Instead the Government has attempted to marginalise community rights through regulatory measures in the planning reform package as if such moves were a substitute for communicating and winning a political argument.

5. Future Reform

5.1 The review team is committed the 'further reform' of the planning system. We believe the review team should carefully consider a number of issues before embarking on any reform package

Guiding principles

5.2 Further reform should be based on a set of clear guiding principles which set out the objectives for the planning system. The failure to do this in the past has led piecemeal and sometimes contradictory reform measures. The guiding principles must be framed within the planning system statutory purpose so that it outcomes deliver the integration of sustainable development objectives. In our view PPS 1 is an adequate expression of this objective. The process of planning reform should be guided by the need to achieve:

- Meaningful community participation
- Effective democratic accountability
- Simplicity of structure
- Efficiency of delivery
- Local devolution of power

5.3 The prime concern of any reform suggestions must be to counter the overall sense of deregulation and marginalisation of local democratic control and community participation. The objective should be to rebuild public legitimacy in the planning system providing opportunities for all sections of the community to be meaningful engaged on an equal basis.

Creating an effective framework for participation

5.4 Overall friends of the Earth strongly endorses the analysis and reform package identified in the ODPM WS4 report. (Annex 1) In particular we need *'to achieve a clear framework in which all participants can understand their rights and responsibilities in relation to the planning process. This implies a new settlement between communities and the national and local state not just in the realm of planning but in other important policy frameworks such as regeneration and IPPC'* (WS4 2003).

5.5 There are two areas of reform which require action to deliver such a systematic framework. The first is a coherent and simple framework for participation and the second surrounds changing the culture of decision makers.

(i) A systematic framework for participation

5.6 Friends of the Earth has long advocated the framework provided by the Aarhus Convention as a systematic and coherent approach to governance in planning. The Convention has three pillars:

- Access to information
- Access to participation
- Access to justice

5.7 Friends of the Earth believes these three elements provide the overarching benchmarks with which to guide effective public participation and to steer the approach of further reform. The three pillars of the Convention imply a new spirit of openness and certainty for all participants. The WS4 report makes a series of detailed recommendations about delivering on each of these three areas and we strongly support the recommendations of this report.

(ii) Re shaping the Culture of planning

5.8 In our view the last planning reform package place too much emphasis on structural solutions to managerial and cultural problems. The government culture change programme these to be both refocused and properly resourced and secure a high-level political backing. They should be clear objectives, political leadership, higher skills and proper resources. Planning must exercise an inclusive, progressive and dynamic role in our society and this can only be done with significant behavioural change on behalf of institutions and the profession. Significantly, private sector business practice in relation to issues such as community involvement must also change.

5.9 Further structural change particularly to better achieve more inclusive and sustainable outcomes remains an attractive option but there is significant cost to such changes both communities and for business. The new planning system must be allowed to bear down so to show an understanding of how it operates can develop. As a result, it is our view that significant structural change to the system is deeply undesirable at this time.

Effective Advocacy

5.10 Friends of the Earth welcomes the development of a national Planning Aid advocacy service. The planning system is by necessity a complex framework and the advocacy service can make a real contribution to engaging with excluded groups. Adequate funding of the service is crucial as are imaginative ways to reach the wider community and business interests. The e-government initiative is an opportunity to deliver this and Planning Portal has begun to create innovation in this area.

Tackling exclusion

5.11 Friends of the Earth believes that the planning service should be much more proactive in reaching excluded communities. There is a vital need to reach out to distinct social groups such as children whose voice in planning policy making has often been completely ignored. A strong 'listening' culture which seeks genuine dialogue and feedback, and a sound knowledge of the cultural diversity of the local population must therefore be the starting point. Planners must become aware of the significant religious and ethnic cultural norms which may render the traditional methods of participation inappropriate or positively exclusive.

6 Conclusions

6.1 Friends of the Earth believes the planning system is a vital way of delivering sustainable development by ensuring that we build the highest quality development in the right locations without compromising environmental limits. Friends of the Earth is committed to a planning system which is fair, open and accountable for all participants. We welcome the new 'spatial-planning' approach which should allow a range of strategies to be integrated so that society can more effectively deal with critical issues such as climate change and poverty.

References and Footnotes

- Ambrose, P. (1986) ***Whatever Happened to Planning?***, London: Methuen.
- Aarhus Convention, Convention on access to information, public participation in decision-making and access to justice in environmental matters 25th June 1998
- Associated Picture House vs. The Wednesbury Corporation (1948) ***JPPL***, Vol.1, pp.33-37, London:
- Barker, K. **Delivering Stability: securing future housing needs** (HM Treasury/ODPM)
- Blowers, A. and Evans, B. (eds.) (1997) ***Town Planning in the 21st Century***, pp.71-105, London: Routledge.
- Booth, P. (1996) ***Controlling Development***, London: UCL Press.
- Campbell, H. and Marshall, R. (1998) Moral Obligation, Planning and the Public Interest: a Commentary on Current British Practice, ***Environment and Planning B***.
- Campbell, H., Ellis, H., Gladwell, C. and Henneberry, J. (1999) ***Planning Obligations, the Planning System and Development***, Paper presented at the Planning Research Conference, Sheffield, March.
- Campbell, H. and Marshall, R. (1999) Public **Involvement and Planning: Looking Beyond the One to the Many**, paper presented to the Planning Research Conference, University of Sheffield, 29-31 March.
- Committee on Standards in Public Life (1997) ***Standards of Conduct in Local Government in England, Scotland and Wales***, 3rd Report Cmd. 3702-1, London: HMSO.
- Cullingworth, J. and Nadin (1997) ***Town and Country Planning in the UK***, 12th Edition, London: Routledge.
- DEFRA (2005) **Securing the Future, delivering the UK sustainable development strategy**. (HMSO)
- DOE (1995) **Attitudes to town and Country planning**. (HMSO)
- DOE (1990) **Planning Control in Western Europe**. (HMSO)
- Evans, B. (1995) ***Experts and Environmental Planning***, Aldershot: Avebury.
- Grant (1982) ***Urban Planning Law***, London: Sweet Maxwell.
- Hall, P., Gracey, H. and Drewitt, R. (1972) ***The Containment of Urban England***, London: Allen and Unwin.
- Healey, P. (1997) ***Collaborative Planning***, London: Macmillan.

Howe, E. (1994) *Acting on Ethics in City Planning*, New Jersey: SUNY.

Huxley, M. (1998) The Limits to Communicative Planning: a Contribution to the Critique of Actually Existing Practice. Paper presented to the Oxford Planning Theory Conference, 2-4 April.

McAuslan, P. (1980) *The Ideology of Planning Law*, Oxford: Pergamon Press.

ODPM (2004) PPS 1

ODPM ("000? PPS 11

ODPM (2005) Draft Planning policy statement 3 Housing (HMSO)

ODPM (2004) **Public Involvement in planning: the governments objectives** (HMSO)

Popham, J., Purdue, M. et al (2002) **Third Party Rights of Appeal** (TCPA, ELF, FoE et al)

Royal commission on Environmental Pollution, Twenty Third Report (2002)
Environmental Planning (HMSO)

Thornley, A. (1993) *Urban Planning Under Thatcherism*, London: Routledge.

ⁱ <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmodpm/114/11402.htm>

ⁱⁱ Arthur Anderson 2001. High-tech industry: survey of foreign investors. In a memorandum from ODPM to ODPM select committee, published by ODPM SC in 17th Dec 2002.

ⁱⁱⁱ <http://www.scotland.gov.uk/Resource/Doc/57346/0016983.pdf>

^{iv} Treasury Green book, section 5.76. <http://greenbook.treasury.gov.uk/chapter05.htm#considering>

^v Sustainable Development Commission, 2004. <http://www.sd-commission.org.uk/publications/downloads/040413-Shows-promise.But%20must-try-harder.pdf>, page 16

^{vi} <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmodpm/114-iii/114m02.htm>

^{vii} <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmodpm/114-iii/114m02.htm>

^{viii} appendix 2

^{ix} op cit, appendix 2

^x OECD, 2001. Innovation clusters: drivers of national innovation systems. chapter 17, p325.

^{xi} Key, T. (2004) *The Analysis of Transactions Evidence*, Working Paper 3. In Bond, S, Crosby, N, Hwang, S, Key, T, Lizieri, C, Matysiak, G, McAllister, P and Ward, C 'Liquidity in Commercial Property Markets', Research Findings, IPF, London, 40-85

^{xii} pers comm. with John Hennenbury, University of Sheffield

^{xiii} House of Commons ODPM Select Committee, memorandum

<http://www.publications.parliament.uk/pa/cm200203/cmselect/cmodpm/114-iii/114m01.htm>, section 1.18, iii

^{xiv} DTI, 1998, 6, cited in section 2.4 of research to ODPM select committee, op cit.

^{xv} In support of this point, see also: Parkinson, M et al (2006). State of the English Cities, ODPM, London.

^{xvi} This now means the new UK Sustainable Development Strategy (see reference 2 above).

^{xvii} <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmodpm/114-iii/114m03.htm>

Annex 1

ODPM. Workstream 4. Final Report

Changing the Culture of Planning

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Workstream 4. Empowering People and Engaging Communities

Introduction

Workstream 4. was asked to consider the role of public participation in planning in relation to the Government's planning reform agenda. The detailed terms of reference and membership of the work stream committee are set out in appendix 1. The issues surrounding public participation are extremely complex, ranging from detailed service delivery to the nature of local governance. The following report is explicitly limited in scope to a number of principled and detailed policy issues which require consideration by ODPM. The report does not consider the detailed community development strategies for facilitating public participation since these are well understood.

Instead the report focuses on where participation should fit in to the planning process, how it can be embedded in the culture of the planning profession and how the other explicit barriers to public participation can be removed. The papers produced by Workstream 4. members have been appended to this report and provide a more reflective consideration of some of the major dilemmas surrounding participation. Workstream 4. believes that further detailed consideration should be given to these issues over the course of the implementation of planning reform. In response to the terms of reference the report has been structured into four sections:

1. The case for public participation in planning.
2. Establishing a systematic approach to public participation.
3. Cross-cutting themes.
4. Specific implementation issues.

1.0 SECTION 1

1.1 The case for public participation in planning

From the inception of the planning system the voice of local people has been vitally important, initially through the mechanism of representative democracy and from the 1960s onwards through an increasingly participative model of decision-making. The precise way people should be involved and how much power they should have has, however, been an unresolved tension. This dilemma has been compounded in recent years by a range of societal changes which have called into question the process and outcome of the planning system. These changes include:

- disengagement from local representative democracy
- scepticism of professional expertise
- increasing public demands for direct participation in decision making
- uncertainty as to the purpose of planning
- persistent levels of social exclusion

Workstream 4. overall view is that the planning reform agenda must above all else contribute to the legitimacy of the planning process in the minds of all sections of the community and to reconnect planning with those the system seeks to plan for. The process of planning should be simple to comprehend, and delivered in a fair, transparent and efficient manner.

BOX 1 The case for public participation

Workstream 4. has taken as read the value of public participation in the planning process. Nonetheless Workstream 4. was concerned that ODPM should carefully consider the tension between a desire for speed and the need for quality and public legitimacy in decision making. While these ideas are not necessarily incompatible it is important to restate the principled case for public participation which has four major elements:

- The intrinsic value of public participation as a key civil right and as an element of a vibrant, open and participative democracy.
- Participation improves the quality and efficiency of decision-making by using local knowledge and avoiding unnecessary and costly conflict.
- Participation has an educative role for all participants in terms of the needs of communities, the business sector and the mechanisms of local government.
- Participation assists in promoting social cohesion by making real connections with communities and offering them a tangible stake in decision making.

2.0 SECTION 2

2.1 Establishing a systematic approach to public participation

Too often in the past policy reform has been piecemeal or contradictory. There has not, for example, been a systematic review of public involvement in planning since the Skeffington report of 1969. The significant dilemmas which this report identifies should be dealt with comprehensively and aim to achieve a clear framework in which all participants can understand their rights and responsibilities in relation to the planning process. This implies a new settlement between communities and the national and local state not just in the realm of planning but in other important policy frameworks such as regeneration and IPPC. Workstream 4. recognises the vast academic literature not just on public participation in planning but the whole relationship of rights and empowerment in local governance. The reality is that these arguments are often perceived as too problematic to be translated into coherent public policy outcomes. Faced with this complexity the workstream felt it was vital to adopt a systematic approach using a single model with which to assess and proscribe the relationship of the public with the planning service.

In our view the Aarhus Convention (Refer to Appendix 2.) provides just such a systematic and coherent approach to governance. The convention has three pillars:

- Access to information
- Access to participation
- Access to justice

The committee believes these three elements provide the overarching benchmarks with which to guide effective public participation and to steer the culture change initiative. The three pillars of convention imply a new spirit of openness and certainty for all participants. We are aware that DEFRA has responsibility for the implementation of the Convention but for the purpose of this report it is not the precise legal framework of the convention which is important; it is the structure and principles which underlie it.

3.0 SECTION 3

3.1 *Cross-cutting themes*

The committee identified a number of major issues which underlie the debate about public participation in planning. These cross-cutting themes include:

- Public accountability in the planning process
- The balance of power between local needs and wider public interest objectives
- The tension between voluntarist and rights-based governance models
- The continuing barriers to public participation in planning particularly in relation to excluded communities
- The relationship of local government modernisation with the reform of the planning service
- Challenging the negative public perception of the planning service

3.2 **Public accountability**

Workstream 4. was concerned that insufficient attention has been paid to the fundamental tension between representative and participative models of accountability in the planning process. The paper provided by Councillor Peter Johnson makes a compelling case why planning has become marginalised as a result of local government modernisation. Workstream 4. identified the fault line between the need to make planning accountable to the public, and procedural guidance and legal requirements which stop elected members acting on behalf of their constituents. Workstream 4. was concerned that increased delegation of decision-making would exacerbate the perception of local politicians as disempowered bystanders in a predominantly technocratic process.

There was a clear view that attempts to depoliticise planning also degraded a key mechanism of public accountability and leads inevitably to calls for more direct public participation. The role of elected members as ultimate arbiters of decision-making should be reaffirmed. A reassessment is required of the limitations of what is material to planning decisions particularly in the light of emerging requirements for local authorities to have regard to community 'well-

being' (Refer to Appendix 4.). Workstream 4. was keen to stress that participative and representative governance models can dovetail so long as a clear distinction is made between effective participation in the process of decision-making and the continued role of representative democracy in providing safeguards on the outcomes of decisions. The reconsideration of the role of elected members implies a linkage with Workstream 3. and with those implementing local government modernisation.

3.3 The balance of power between local needs and wider public interest objectives

Workstream 4. identified the underlying tension in the implementation of public participation between empowering local communities and the achievement of a wider 'public interest' objectives. This tension is particularly evident in the field of housing allocation where arguments have been increasingly polarised. It is vitally important that ODPM consider how much power local communities are to be given in the planning process. In the past, failure to clarify this has been a key source of public disenchantment in the system. Communities who do express a clear view on planning issues often find themselves overridden by regional and national decisions of which they had no knowledge or involvement. Whatever the final decision on this power balance it is important to communicate with the wider public and give an honest assessment of how much influence their views might have. This clarity should be seen as part of the new settlement between government and local communities.

3.4 The tension between voluntarist and right spaced governance models

Workstream 4. identified an important policy tension between the voluntarist and rights- based governance models in the planning process. The publication of the planning green paper and a Llewelyn-Davies research document for the ODPM on SCIs did not acknowledge the rights based foundation for the current planning system. Instead it built on a voluntarist model which has dominated local government modernisation. The confusion surrounding this debate has led to unnecessary conflict and confusion over public participation, particularly in relation to the right to be heard at local plan inquiries. Workstream 4. was convinced that new opportunities for public participation must build on existing rights rather than seek to replace them. In the final analysis rights are useful because they are the clearest expression of the power balance between the individual citizen, communities and the local and national state.

3.5 Modernising local government.

The debate surrounding public participation in planning should be conducted within the wider argument about good governance at national, regional and local levels. In particular it must be embedded in the debate at over local government modernisation. However, there was continued concern that

planning practitioners did not creatively engage in this process and that the modernisation agenda had failed to learn very valuable lessons from the planning framework particularly in relation to the public's rights to be heard in policy making.

The Local Authority modernisation project needs to be aligned, as far as possible, with the legal basis and justification for local authority activities under the town and country planning system. Similarly, the objectives of the two systems, the relevant material considerations for their actions and the opportunities for public scrutiny all need to be fair, consistent and equitable. In the long term this is likely to result in less confusion to the general public and a potential reduction in disputes. It will also greatly facilitate empowerment and engagement. Workstream 4. recognised however that while in theory it would be possible to fully integrate the development planning system into the emerging system of community plans at local, sub-regional and regional level, such a radical change was not explicitly addressed or explored by the planning green paper.

Workstream 4. acknowledged that the introduction of a performance management element of modernisation as a way of embedding a culture of continuous improvement in their delivery of services was an important mechanism for improving the quality of public participation. The government statement of 18 July makes plain that town and country planning must embrace and help deliver this broader agenda if it is to avoid further marginalisation. It is however vitally important to understand that public participation is an objective which cannot be measured against crude 'tick box' indicators. There is a need for meaningful evaluation of quality outcomes in planning. The basis for this evaluation should be qualitative not quantitative and based on feedback from local communities.

3.6 Barriers to participation/excluded groups

Workstream 4. is keen to stress the need for a much more sophisticated grasp of both the nature of the communities that might be encouraged to participate in planning and the varied and complex barriers which restrict that participation. There was particular concern that policy reforms are sensitive to the needs of excluded communities and the processes, which actively lead, to this exclusion. Workstream 4. strongly welcomes the apparent intention of ODPM to seek a linkage between expertise in planning, NRU, and those dealing with diversity issues in the forthcoming communities plan.

There is no doubt that the planning service is failing to reach a whole series of groups and communities who are 'planned for' but who have not been empowered to participate. The planning service has, for example, been largely blind to the needs of children despite the profound effect planning decisions can have on their quality of life. There is an entrenched culture in some parts of the planning service which regards 'people' as 'problems'

(either in terms of too little or sometimes too much involvement). Instead the direction of planning reform should recognise the value of local knowledge and community ownership of decision-making. As well as addressing pragmatic solutions to the barriers to public participation, culture change requires a new conception of the role of 'the public' and 'communities'. This is related to the notion of a new settlement between individuals and the local and national state and requires a reaffirmation that planning is a people centred activity, not solely a technocratic one.

Instead of thinking about certain kinds of people as 'problems' for the planning system, we might think about the many obstacles, which prevent all sorts of people from participating effectively and appropriately. We need collectively to address the barriers to participation, identifying how far these result from the structural complexity of planning and how far they relate to current and historic cultures and practices. We may also need to recognise non-participation as a sign that our practices are not relevant to people's other life-priorities. Parcelling 'planning issues' off separately from 'health issues' or 'education' may be a complete nonsense to many citizens, who see these areas as intrinsically enmeshed. Workstream 4. recognises the positive steps in the planning reform agenda to deal with some of these issues, particularly in the realm of development control.

BOX 2

Barriers to public participation

- Practical, including the cost of information, the minimum standards of publicity of planning applications.
- Tangible inequalities, most notably that property interests define rights of redress but including the perception that developers have unfair access to planners during pre negotiation and the negotiation of planning gain.
- Access to professional expertise and particularly the cost of seeking professional advice.
- Professional norms of expression including the use of complex language, the proliferation of consultants report and the failure of planners to communicate with objectors and the wider community.
- The perception of objectors by planners as 'Nimbys'

3.7 Challenging the negative public perception of the planning system.

The planning system is seen by many as failing to satisfy people's aspirations for greater engagement, transparency and competence in decision making. The issue is not so much whether this view is justified, the real issue is that there is a perception of a shortfall in practice against aspirations. The challenge for the culture change process is not just to deliver sound planning structures and effective implementation but to communicate a new

relationship of openness and efficiency. This task is not just the responsibility of government. It is cross sectoral and applies to all scales of planning implementation. Ultimately however, ODPM must provide a clear lead in creating a positive image for the planning service by recognising its intrinsic value as a vital part of environmental and social regulation.

4.0 SECTION 4

4.1 Detailed implementation issues

The following section uses the Aarhus three-pillar model to structure the discussion of detailed implementation issues.

4.3 Access to information

To facilitate effective participation, information needs to be customer-aware, accessible, up-to-date, and provided in a variety of formats to suit the needs of the local community. It is essential that information is widely disseminated about the process to be followed and the opportunities to exert influence over the outcome. Many of these objectives can be achieved by best-practice and innovation in service delivery. However, it is important to stress that access to information in planning must be seen in the wider context of changes to the freedom of environmental information regulations currently under consideration by DEFRA. Workstream 4. believes that this framework provides an adequate structure of rights and safeguards upon which best practice can build and innovate. Wprkstream 4. could find no evidence that these regulations were being actively interpreted for local planning authorities or that there had been detailed consideration of the costs and administrative implications for service delivery.

Access to information – local

In addition to the procedural changes which the new freedom of environmental information regulations imply, Workstream 4. was convinced that increased access to information could be facilitated by improved service delivery. Information on the development plan, the plan making and development control processes together with general guidance and advice should be up to date, be provided in plain language and should be available in a variety of formats to meet all needs. All documents should be concise, logically structured and easily readable by the non-specialist. There should be clear, timely and widely disseminated information about processes to be followed and the opportunity to be involved and to exert influence over the outcome. A council's approach should be embodied in communications and equal opportunities strategies with clear evidence that staff are familiar with the requirements of both. Clear and measurable objectives should be in place

founded on prior dialogue with users, and supplemented by feedback from regular stakeholder fora and other mechanisms.

Access to all should be ensured through appropriate office location, signage, opening hours and easy access to staff and through remote access to services/information as well as an overall feeling of welcome. This implies a range of access channels reflecting known user preferences including the use of interactive ICT. There should be a clear development path within IEG2, which should show how the planning service intends to meet the Government's target for electronic delivery of services by 2005.

Particular attention should be paid to meeting the requirements of the Disability Discrimination Act, 1995. The social inclusion and community cohesion agendas also need to be addressed by facilitating access to information and advice for traditionally hard-to-reach groups. Workstream 4. acknowledged that very valuable detailed guidance on how to provide an excellent service is set out in the Planning Officers' Society's work on moving towards excellence. (Refer Appendix 4.)

Access to information at the neighbourhood level needs to co-ordinate with existing information networks, but cannot be limited to them. Using posters on trees and streets is a useful strategy, but only if the posters are meaningful and informative. Real information in plain language(s), not just off-putting technical notices, must be made available before anyone has a real chance of participating in a process.

Current planning notices are commonly illegible and uninformative and at the very least ought to be completely redesigned. Local authorities need the resources to keep themselves fully aware of existing networks and the flexibility to adopt unconventional means to reach people who are not already included. Local authorities should make use of existing PR expertise. The culture of simply passively issuing notices should be challenged and replaced by an active notion of 'selling' a message to the public in relation to Local Development Frameworks and development control decisions.

Access to information - Regional

There are some basic problems with access to information at a regional level that need to be addressed. Workstream 4.'s key concerns included:

- What information is available about the regional planning body, the RPG preparation process and the opportunities for involvement? Where is this information currently available? How many regional planning bodies send out briefings/newsletters and to whom is this sent? How do you get your name on a mailing list in the first place?
- **What level of information is in the public domain, and readily available, once the process of RPG preparation or review is underway? This is a particular problem identified in the TCPA**

study “Stakeholder Involvement in Regional Planning” (SIRP) which identified a number of specific barriers to accessing information in the regional planning process including the varying degree of openness of Panel Secretariats etc. and the unequal access to professional resources.

4.3 *Access to participation*

Access to direct participation in the decision-making process is clearly a vital component of re-engaging the public with the planning service. Overall such access to participation must be embedded in clear structures and enabled by efficient and imaginative service delivery. Access to participation will also only be meaningful if there is a genuine desire to empower local communities and a clear commitment to demonstrating how this participation has helped shape policy outcomes.

National

Workstream 4. felt that ODPM should be sensitive to the need for an open, transparent and fair process in regard to the preparation for a national planning policy framework. Greater dialogue both externally with the business, community and environmental sectors along with greater internal communication would lead to more effective policy outcomes. Systematising how external groups and individuals can make their views known would be helpful and ODPM should consider providing a clear public statement of how it delivers accessible information, reasonable participation and effective access to justice. Such a statement would go some way to challenging the perception that national policy is adopted in a closed environment accessible only to key insiders.

Regional

Workstream 4. was particularly concerned at the lack of comprehensive and formal structures for public participation at the regional level. These concerns were communicated to ODPM in a letter dated Monday 18th November 2002 (Refer to Appendix 5.) Workstream 4. was impressed by paragraph 2.4. of a legal opinion by William Upton (Refer to Appendix 6.) supplied to the Workstream 4. by FoE. This opinion concisely summarises the difficulties of a transposing RPG into a statutory plan (RSS) without at the same time transposing the formal structures for public engagement currently available through the structure plan adoption process.

The current opportunities for public participation at the regional level are strictly limited. PPG 11 does contain references to the regional planning body engaging with stakeholders and maximising opportunities for involvement but there are no clear, time-specified, ‘statutory’ opportunities to be involved (other than the consultation period once a draft RPG is submitted to the SoS). Regional planning bodies are trying to increase opportunities for engagement

but it is still difficult for those who wish to be involved to know what these opportunities will be and how they will be managed in the different regions. Key barriers to participation in regional planning are:

- Barriers to access to information
- Lack of resources and capacity
- Respondents have been highly critical of the post PE process in which central Government seeks modifications to the conclusions reached by the Inspectors and the PE
- The plethora of competing regional strategies with little sense of priority (and a confused attitude towards the role of Regional Development Agencies) obscures and confuses participation in the process forming an important barrier to meaningful participation.

Such frustrations are quite likely to rise in the context of more planning decisions being taken at the regional level and stronger regional government generally. In this context it is likely in future to prove more difficult for Inspectors to reasonably be able to invite all those who want to take part to do so. The following might help to mitigate some of these problems:

- A regional advocacy service - can Planning Aid/advocacy service have particular regional focus? Could the Regional Centres of Excellence on Urban Regeneration develop such a role?
- A more formal preparation process with clear opportunities for engagement and redress
- Status of panel report - if an Inspector's report is to be binding for LDFs, could the panel report be binding for RSSs?
- Primacy of RSSs - at present, the plethora of regional strategies has no clear leader/frame-setting document - should RSSs be given primacy so that it is clear where engagement should be focused?

Workstream 4. believed that further clarification from ODPM was necessary about the extent to which direct participation at regional level was a policy goal. It is important to consider:

- **Who** we wish to engage with and **why** - do we intend to engage individuals or do we want to focus on those groups/networks/organisations
- The **capacity** of individuals, groups, networks or organisations to engage with the regional planning process and overcome the current gulf that exists between regional policy making and the communities they plan for.

Local

Continuous, on-going and responsive participation provides the key approach to facilitating dialogue, and learning and addressing the community's needs and expectations that can be furthered by the planning system. To be

meaningful, participation should enable the community to have a say, and be visibly influential in shaping strategic choices about the direction of planning policies, as well as development control decisions. In delivering these objectives Workstream 4. felt that ODPM needed to consider not just the cross-cutting dilemmas outlined in section 1 but the following specific implementation issues.

The framework for public involvement

The key to local participation must lie in the belief that participation has a purpose and a role. That is, the process must be clear and open, and outcomes accountable. There is no substitute for clearly drawn lines of accountability. Without knowing who takes responsibility for a plan or a decision, there is no way in which participating in local governing can be meaningful. The transparency of the system is directly related to its structural simplicity. Strong reservations remain as to whether the LDF frameworks achieve this objective. Workstream 4. has already placed on record its deep reservations about the SCI project. However in summary Workstream 4.'s concerns are expressed as follows in the quotation cited below from the letter dated Monday 18th November 2002:

"We strongly welcome the principle of benchmarking public participation throughout the planning process. Such benchmarks should make clear to all participants what minimum standards people can expect and allow for the evaluation of public participation by planning inspectors. However, the workstream believes the current proposals to adopt SCI, as part of the LDF framework will deliver greater cost and complexity in the planning service without any balancing benefits for community participation.

Further Clarification on the purpose and scope of SCI's has emerged following a helpful meeting with Nick Ward (ODPM) and the Consultants (Llewelyn-Davies); and in a paper provided by Tony Baden (ODPM). We understand that there have been three significant developments in ODPM thinking:

- The intention is to translate the Llewelyn-Davies research into national benchmarks in secondary legislation. SCIs must comply with this framework and where justified can go beyond the minimum.
- SCI's will not benefit from the legal status of section 54a and will therefore have the lesser weight of guidance in all aspects of the decision making process.
- LPA's will not be required to adopt SCIs before the other substantive policy elements of the LDFs.

The work stream is concerned that while part of the formal development plan SCI's will not benefit from section 54a (or equivalent) status. This reflects ODPM's desire not to refuse applications on procedural grounds if they accord with substantive policy. This is clear acknowledgement that procedural policy carries less weight and suggests that its inclusion in a formal development plan is questionable. In short

why have a complex mechanism which all participants can recognise as having limited influence in decision making?

The lower legal status does not remove the SCI from independent testing at an inquiry so that our previous concerns stand about the inevitable complexity of adopting procedural policy. We feel that widening the issues which planning inspectors have to examine from substantive planning issues to issues of procedure, such as the relative merits of differing standards of public participation, will cause further complexity and confusion for the public when they participate in the planning process. It is not clear what limitations will be placed on LPA's in relation to increase opportunities for public participation over and above national standards. Such increased opportunities will be of dubious legal status and will inevitably create a new arena for case law. Over time the courts will no doubt clarify the uncertain status of SCI's. The workstream was also concerned that SCI's may result in differing regimes of public involvement in differing LPA's. The administrative costs of such a move will be a key concern of business.

The workstream believes that dual status of differing elements of LDF will be confusing for both communities and business. If SCI are open to independent testing and public participation then their provision should carry full weight. Participants are not likely to respond well to the idea that after lengthy examination SCI has the lesser status of guidance in decision making.

We remain concerned that any bench marks for community participation must be in place before the LDF or DC decision making processes that they are meant to guide takes place. This is matter of "common sense". The workstream believes that there should be a clear "single expression" of individual and community rights. The current SCI benchmarks are inadequate because they do not begin by acknowledging existing legal frameworks.

The committee felt that benchmarks for community involvement should be set at national level. LPA's should be required to publish a local statement of benchmarks, which contain any additional measures to address local circumstances. **This must be a separate document and be published prior to beginning of the adoption process for the LDF.** LPA's might use existing opportunities to engage elected members and the wider community on this document. Inspectors should be allowed to evaluate the LDF preparation process against these benchmarks but not reopen debate on the benchmarks themselves. We believe this framework is transparent, cost effective and deliver certainty for all participants. Changing the status of SCI at this point requires a relatively minor shift in policy direction. Such a move will avoid the impression that planning reform has delivered more complexity at the local level for few tangible benefits."

In addition to a clear expression of community rights and responsibilities Workstream 4. felt that it was important to define the status of participation in LDF and development control decision-making. Workstream 4. believed that such participation should be a statutory duty on local authorities. Such a duty

would not seek to proscribe the precise arrangements for community participation but would make clear that local authorities were expected to devote sufficient resources to participation to make it meaningful and effective.

Advocacy

Workstream 4. welcomes the development of a national planning advocacy service. Workstream 4. were not able to reach a judgement as to the adequacy of the funding of this service since this information was not available. Workstream 4. felt that significant resources were likely to be needed to meet the demand for proactive work as oppose to reactive caseload. Careful consideration should be made of whether the likely resources available to the service can meet the cross-sectoral expectations that the establishment of a national advocacy service will create.

Tackling exclusion

Workstream 4. was extremely concerned that the planning service should be much more proactive in reaching excluded communities. In addition there was recognition of the need to reach other distinct social groups such as children whose voice in planning policy making has often been completely ignored. A strong customer focus, facilitated by a 'listening' culture which seeks genuine dialogue and feedback, and a sound knowledge of the cultural diversity of the local population must therefore be the starting point. It was not within the remit of the work stream to provide detailed pragmatic solutions to reaching these groups. It is however, self evident that significant improvements could be made by a more sophisticated targeting of service delivery to excluded groups. Offering information in different languages (including braille and audio), becoming aware of the significant religious and ethnic cultural norms which may render the traditional methods of participation inappropriate or positively exclusive.

Workstream 4. was also concerned that important lessons from best practice in regeneration and neighbourhood renewal did not appear to be cross-fertilising the delivery of planning services. Workstream 4. was convinced that the success or otherwise of effective participation of excluded groups should be a key benchmark for local authorities. Such bench marks like all other evaluation of participation must be qualitative and community based.

Service Delivery

Participation on planning issues should not be considered in isolation, but should be integrated with corporate consultation and engagement strategies, fully utilising local strategic partnerships and other existing mechanisms to promote engagement by all sections of the community. Councils should also establish on-going user forums representing a wide range of stakeholder interests to feed back on service performance and enable the public to influence *service design*, as well as policy development and planning decisions.

Transparency in decision making on planning matters is vital to facilitate and encourage participation. Both members and officers need to have an up-to-date understanding of their roles and responsibilities, with a clear and public modus operandi. Stakeholder information and feedback regarding decision-making and committee procedures form part of this process, and should be clear and explicit. Good authorities will ensure that interested parties have the right to address planning committees, with relevant information (including recommendations) provided at the earliest opportunity. Finally, in determining a strategy to ensure appropriate access to participation, particular attention should be paid to meeting the requirements of the Human Rights Act and Disability Discrimination Act 1995.

4.4 Access to Justice

Currently, rights of redress and planning are restricted to those applying for planning permission. The courts have recently concluded that judicial review offers a mechanism which complies with the requirements of article 6 of the Human Rights Act. The Green Paper also ruled out a qualified third party right of appeal suggested in the research document 'Third party rights of appeal in planning'. It is not within the remit of the committee to reconsider the detailed case for such rights. It is however, important to note that the existing judicial opportunities for redress are exclusive and expensive and do not offer a real and tangible opportunities for ordinary people to test the procedural and substantive merits of planning decision making.

There are a number of drivers for the reconsideration of access to justice in planning:

- The Aarhus convention will mean that citizens should be able to challenge the substantive as well as procedural aspects of planning decisions. Opportunities for such challenges must be available at reasonable cost. This will require reform to the judicial review process and provides an opportunity to create a fairer mechanisms for redress.
- There is growing political concern that a system which enshrines explicitly unequal rights is no longer acceptable in an era when we are attempting to achieve efficient modern and equitable forms of governance. There is widespread political support for such rights and a willingness by a range of political parties to consider the possibility of their introduction.

We suggest that ODPM does not close off the debate surrounding third party rights but instead actively encourages discussion about the political merits and procedural difficulties of the introduction of such rights. At the same time ODPM might consider other opportunities for access to justice such as the reform of JR or enhancing the role of the local government ombudsman to

investigate complaints of injury to public as well as private interests and to require remedies.

In addition to these general issues of principle Workstream 4. felt that ODPM should consider the specific regional question as to whether or not there should be the right to be heard at RSS EIP's. It could be argued that the system is unlikely to become overloaded if there is such a right but equally, the current system of structure planning does not carry such a right. The structure planning system does, however, have a much more formal preparation process than that which currently exists at regional level. What could be proposed therefore is an RPG/RSS preparation process that is much more in line with the current structure plan process, with its clear opportunities for participation and redress. Here the need for recourse to justice is probably more crucial since ability to engage in regional planning is that much more limited.

Summary

The following summary draws together the strategic concerns of Workstream 4. over the implementation of planning reform and its effectiveness in enhancing community participation.

There is a need for a comprehensive examination of the relationship of the public with the planning service. Such an investigation should wrap up together the important dilemmas and tensions identified in section 3 of his report and allow for a more open debate involving a wider range of interests. This reassessment should lead the way new settlement in which the public truly understands their rights and responsibilities in decision making. The Aarhus three pillar model provides a systematic basis for such settlement allowing for certainty for the public and providing it clear benchmarks for evaluating the implementation of policy reform. The notion of a single governance model should be urgently considered as a basis for the community's plan launch.

Workstream 4. continues to be concerned at the complexity of the structures offered in the local planning process. We have made the case for a significant re-assessment of direction of SCI's which, in their current form, will add complexity and cost to the system with little clear tangible benefits for community participation.

Workstream 4. remain convinced that best practice in service delivery has a major role to play in assisting participation.

Workstream 4. was particularly concerned that the planning service should take a more active role in tackling social exclusion by addressing participation strategies, which meet the complex needs of local communities.

Workstream 4. was concerned at the arrangements for the preparation of regional spatial strategies. ODPM should consider as a minimum transposing the standards of public involvement which exist for structure plans to the RSS preparation process.

Workstream 4. strongly believes there is need for a new culture in the preparation of national policy. There is a need for a systematic and open process by which stakeholders can debate draft policy.

While this report was not designed to review the techniques of public participation the workstream is keen to stress the implications of a new participative culture on the education of professional planners. Effective public participation requires professional community development skills. This must either be mainstream to planning practice or the planning service must recruit those with specialist skills and work alongside existing planning officers.

Workstream 4. was concerned that the drive to deliver public participation in planning should not be seen in isolation either from the debate surrounding local government modernisation or in terms of the attempt to make a more inclusive practices in areas such as housing and regeneration.

Finally, Workstream 4. believes that there is a significant opportunity to reaffirm the value of an open, participative, democratic and efficient planning process. A clear message that planning is an opportunity to empower communities by valuing their place in decision making will make a real contribution to the legitimacy of the service.

APPENDIX 1.

Composition of Workstream 4 and Terms of Reference for Workstream 4. Empowering People and Engaging Communities

Composition of Workstream 4.

Chaired by Hugh Ellis (FoE) and mentored by Mike Jackson (GOEM)

Meetings held: Monday 21 September 2002, Tuesday 15 October 2002 and Friday 15 November 2002.

Participants:

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Johnston (Chesterfield BC), Pete Murphy (ODPM), Ron Percival (Hart DC), Jenny Poxon (YHA), Ian Silvera (RTPI), Julie Stainton (CPRE), Henry Oliver (CPRE).

Terms of Reference for Workstream 4.

Background

The ODPM Planning Directorate is in the process of preparing a delivery strategy for the Government's planning reform programme. A key plank of reform will be achieving the necessary cultural change to provide a quicker, simpler and more transparent planning system, which effectively engages communities and delivers better places to live.

Initial discussions, involving a small number of external contributors, has identified 4 workstreams to take forward in more detail. These are:

1. Vision, image, purpose and outcomes
2. Education, training and morale
3. Mainstreaming planning in central and local government
4. Empowering people and engaging communities

Objective

The main objectives of the group are to consider:

- How we can most effectively empower all sections of the community to meaningfully participate in the planning process.
- Improve the quality and efficiency of frontline planning services.

In considering these overarching objectives, the group will need to address the following issues:

- What type/level of engagement is likely to be appropriate at the different tiers of planning (regional, local, neighbourhood, masterplanning, planning application)?
- What are the most effective techniques for achieving this? What are the barriers? How can we overcome these?

- How can we ensure a more transparent process, with clear and appropriate lines of accountability?
- What are the support mechanisms we need to put in place? How can we promote greater diversity in the planning profession?
- What will we need to do to make statements of community involvement effective mechanisms for ensuring effective engagement?
- How can we improve the quality of frontline planning services? How can we support effective implementation of e-planning, the Planning Portal and spread of good practice more generally?
- How can we ensure effective monitoring of community empowerment in the planning process?

Reporting

The group is required to produce a delivery strategy by the middle of November. This is expected to take the form of a short (6-10 page) report. This should not be a detailed action plan. The strategy may make specific proposals, but is more likely to identify broad areas of activity where any subsequent action plan produced by ODPM, in consultation with relevant stakeholders, should focus its attention.

Meetings/working method

First meeting of the group will be on 23 September, 2.00 pm in Elland House. It is anticipated that the group will meet a further 2 or 3 times before mid-November. Papers and drafts of the report will be circulated for comment by email between meetings.

The work of the group will not be publicised. It is intended to provide input and ideas to the development of the ODPM delivery strategy and action plan.

Membership

Dr Hugh Ellis (FoE) will chair the group. He will be supported by Mike Jackson (ODPM, Planning Director Government Office East Midlands). Members of the group have been invited from a range of organisations. They have been invited in a personal capacity, for their experience and ability to contribute.

Eamon Mythen (ODPM) will act as the secretariat to the group.

ANNEX 2

THE FRENCH PLANNING SYSTEM

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Evidence on behalf of Friends of the Earth to the House of Commons Select Committee on Transport, Local Government and the Regions

1. Introduction

- 1.1. For the past thirty years, much of the attention given to the British planning system has focused on the problem of delay. This was the overwhelming concern of the House of Commons Expenditure Committee's Environment Sub-Committee in their 1978 report. It has remained the main focus of attention in more recent times. The British planning system is slow to deliver judgement on planning matters and the outcome is not certain. The system has been accused at various stages of unnecessary meddling in, for example, matters of design and of being subject to political whim.
- 1.2. The reasons for this emphasis upon speed of decision making, particularly in development control, cannot be explored in depth here. But there is little doubt that the search from the 1940s onwards for a *flexible* planning system, and the nationalisation of future development rights in the 1947 Town and Country Planning Act, are root causes of this concern. There can be no certainty until a planning permission is granted as to whether a particular development may proceed because the development plan – if it exists – is only an indication, not an absolute guarantee, of the acceptability of future development.
- 1.3. The question of delay would appear to be closely allied to the very basis of British planning. However, this does not necessarily invalidate an enquiry into other systems of planning which might offer useful lessons. In particular, the idea that zoning systems of the kind operated in most other parts of Europe offer greater certainty of outcome and swifter decision making is attractive. This paper takes one example of a zoning system, the French, to test those assertions. Its conclusions do not necessarily hold good for European zoning systems in general, but they are indicative of the kind of possibilities and problems created by zoning.
- 1.4. Before embarking on a discussion of French planning, we need to note that there are some inevitable difficulties in dealing with planning systems in other countries. Plans and procedures must be understood, not as objective, technical

phenomena which have more or less the same import wherever they occur, but as products of a country's style of governance. The French planning system is, therefore, to be understood in the light of French concepts of the state and administrative decision making, as well as attitudes to law and legitimacy.

- 1.5. What is clear from French debates about planning is that there is higher premium placed upon legal certainty than has traditionally been the case in Britain. This derives directly from the creation of codified, administrative law to control the behaviour of the administration and to identify citizens' rights and duties. Based on the concept of the state as a legal creation, given substance by its written constitution, the idea of government as rule-making has come to be applied to town planning as much as to other spheres of administrative activity. The town planning code spells out both broad principles on which planning in France is to be based and the minutiae of how those principles are to be applied in a series of detailed regulations. **The end result is that the code covers much of what in Britain would be considered policy, not law.**
- 1.6. Although I have insisted on the differences in governance of France, the planning system in its broad outlines invites obvious comparisons with that of Britain. There is a hierarchy of plans with the possibility of strategic plan making at an upper level and detailed land-use plans at a lower level. Detailed plans may then be created for areas in which major development or redevelopment may take place. There is also a procedure for the issuing of permits for individual proposals for development which appears to parallel the British development control system. The intentions of these plans and the process of control are rather different from those of the British planning system, however.

2. The French system of plans

- 2.1. Before describing the system in detail, it is important to note that there has been a major revision of French planning law enacted in December, 2000. Though the general intentions of this change are clear the practical effects are not. It is unlikely to call into question the general conclusions that may be drawn from the system as it operated until 2000, however.
- 2.2. Until December, 2000, the hierarchy of plans included the *schéma directeur* which was intended to be a strategic planning document, rather like the structure plan in Britain except more narrowly concerned with land use and the development of infrastructure. There are two important differences, however. The first is that there was never any intention that France should be completely covered by such strategic plans. Second, the *schéma directeur* could not be applied directly to development control decisions. It relied for its effect on the second tier of plans, the *plans d'occupation des sols (POS)* (land-use plans).
- 2.3. The *POS* was designed to be the document which would apply to the area of the *commune*, the base unit of local government in France. It was intended to provide detailed control of development through zoning plans and regulations which attached to each zone. The town planning code spelled out the nature of zones which had to be, or might be, included in a *POS* and the headings under which regulations had to be written. In legal terms, the *POS* was binding on the decision-maker, the landowner and the developer alike. It was understood as taking over from the town planning code for the area to which it applied.
- 2.4. There was, and still is, a third level in the hierarchy of plans. Where major

development or redevelopment is envisaged, the commune may declare a **zone d'aménagement concerté (ZAC)**; action area plan) in which detailed regulations are set out and agreement on financing services may be included.

- 2.5. The theory behind the *POS* was that the basis for decision making would be transparent and certain. Landowners would understand their rights to future development which were effectively conferred by the plan itself. Intending developers would be given a clear set of rules by which their proposals would be judged. The mayor of the commune, responsible for development control decisions, would be bound by the terms of the *POS* in reaching a decision. Failure to abide by the law, either in the preparation of the *POS* or in decisions that should be based upon it, laid the mayor open to challenge by third parties before the administrative courts.
- 2.6. The practice seems to have been otherwise. For major urban areas, the *POS* could often become highly complicated. Although the categories of zoning were laid down by the town planning code, it was possible to sub-divide categories to take account of different types of land use or of urban form. The *POS* for Lyon, for example, has no fewer than 20 different urban zones, each with regulations under the 15 headings required by the code. Overlaid on these locally determined zonings will be certain kinds of zone required by the code itself, for example classified woodland, and proposals developed by the state, as for example in the case of roads or high-speed railway lines.
- 2.7. *POS* could therefore be difficult to interpret. But there is a second reason why these zoning plans convey rather less certainty than the principle would suggest. Mayors of communes have always sought means of overcoming what they have often seen as the straightjacket of the regulations. Some of these means are provided directly by the code itself; others are the result of imaginative use of the powers available.
 - *Modifying the plan.* The code has of course to have procedures for modifying plans. Minor modifications may be made relatively simply, and the practice whereby proposals that do not conform to the *POS* in its current state lead immediately to a modification is widespread.
 - *Using the 'NA' zoning.* The code divides zones into two types: 'urban' in which development has already taken place and in which the infrastructure exists to support further development; and 'natural' zones where development is not envisaged. The 'NA' zoning, however, only forbids new development until such time as infrastructure is available. NA land is an important reserve for future development. Mayors have habitually used NA zonings as a way of negotiating with developers on the provision of services.
 - *Using the ZAC.* The *ZAC* effectively takes over from the *POS* in the area to which it applies. It could be used, therefore, as a way of departing by stealth from the provisions of the *POS*.
 - *Drafting the regulations of the POS to allow discretionary action.* The way in which regulations are drawn up may allow decision makers choices, which in turn paves the way for negotiation between developers and controlling authorities.
- 2.8. All these practices have caused considerable concern within France, as has the very complexity of the planning documents themselves. During the past decade,

there have been repeated calls for a simplification of the *POS* and a limitation on the ways in which mayors may depart from the approved plans, in the name of achieving a higher degree of legal certainty.

- 2.9. The system of plans has also been criticised in another way. The emphasis on rights has, so some commentators have argued, led to a system which freezes existing land-use patterns because landowners are inevitably resistant to change. In this view, the *POS* has never been satisfactory as a prospective planning document.
- 2.10. The changes made in the *Loi relative à la solidarité et au renouvellement urbains* of December, 2000, include the replacement of the *POS* with the *plan local d'urbanisme (PLU; local plan)*. Certainly the intentions of the new law are that the plan should now become integrative and prospective, and relate social, demographic and economic predictions to activity, land use and urban form. The decrees of application, however, still refer to categories of zoning that differ little to those for the *POS* and it is not clear how different the *PLU* will be in practice.

3. French development control: the *permis de construire*

- 3.1. As with the British planning system, the French have a system of requiring intending developers to seek prior approval. But there is a significant difference between the intentions of the planning permission and the ***permis de construire*** (permission to build). In principle, the *POS* anticipates all the conditions under which development may take place and provides detailed instructions to intending developers. The determination of applications for these *permis de construire* is, therefore, a process of vetting the legality of a proposal in the light of the regulations in force. In theory the process should be relatively swift.
- 3.2. The code lays down a period of two months in which processing may take place. However, the code also identifies extensions to that two-month period, according to the category of development proposed and the nature of consultations to be undertaken. The *maximum* period is set at six months. Furthermore, if the administration fails to deliver a decision within the period set by the code, developers are granted tacit permission. There is no provision for the extension of processing times by agreement.
- 3.3. The decision that is taken may be an approval, an approval subject to conditions or a refusal. The mayor may only impose conditions as a result of a specific regulation in the *POS* or in the code itself. A decision on an application may also be deferred if a *POS* is in the course of preparation or major revision.
- 3.4. Unfortunately, there have been no statistics published nationally in France on processing times and decisions since the mid-1980s. It is not, therefore, possible to make a direct comparison with Britain in 2001, nor to confirm whether the figures below still hold good.
- 3.5. In a study I undertook in 1986-88, I found from the published statistics that **some 82 to 85 per cent of applications** were processed within a **three-month period** and that the total numbers of applications lodged in France were some 50 per cent greater than England. In the statistics examined, **95 per cent** of all applications were **granted**, and less than 1 per cent gained tacit consent as a result of a failure of the decision maker to determine the application in the time provided for by the code. Deferred decisions also accounted for less than 1 per

cent of the total.

- 3.6. The high rate of approvals should be no surprise given that the basis for decision making in theory set out clearly in the *POS*. More worthy of comment is the fact that the processing times appear rather lower than for an equivalent period in England in the 1980s or indeed now. But leaving aside comparisons, it is important to note that the official processing of an application for a *permis de construire* does not in fact reveal the whole story.
- 3.7. Intending developers will often discuss proposals with both the mayor of the commune and the technical officers before submitting an application. Indeed, developers are unlikely to submit an application unless the outcome is clear.
- 3.8. Negotiation before the lodging of an application may form an important part of the process. This is particularly true of development on NA land or of major developments or redevelopments in *ZAC*. Indeed in the latter case, an intending developer is likely to be involved in the preparation of the plan, and in both cases who pays for what will be a major part of the discussion. These negotiations may well be protracted.
- 3.9. Developers may also in fact be asked to withdraw and resubmit applications. In Lyon, where the regulations have been drawn up in such a way as to allow considerable freedom to the mayor to determine the most appropriate solution, a monthly meeting is held to consider the architectural character of major development. Developers often withdraw their applications in order to modify their proposals in the light of comments received.
- 3.10. The French system also carries a further possibility. Because the regulations that apply to a given site may be unclear, landowners and developers may apply for a *certificat d'urbanisme* which is very roughly akin to an outline planning application in Britain. It has the effect of identifying, and then freezing for a period of a year, the rules governing future development for a given site. It will also have the effect of prolonging the period before development may proceed.
- 3.11. There is a final point to make about development control in France. The decision issued, in most cases now by the mayor of the commune, is itself a document which may be challenged at law. **There is, therefore, a period of two months after the decision has been taken in which it may be contested.**

4. Commentary

- 4.1. **There is little doubt that a system that is dedicated to creating legal certainty has in practice proved to be productive of uncertainty.** The French themselves have been concerned about the complexity of the planning documents that the system has given rise to. They have also been much exercised by the way in which decision makers have tried to introduce flexibility into the system. Indeed, given that legality is the touchstone of planning, discretionary behaviour is rather more threatening to the legitimacy of the system than is the case in Britain.
- 4.2. The changes introduced in 2000 do not appear to have simplified the system in the way that commentators were calling for in the previous decade.
- 4.3. **In contrast to this country, there has never been any official concern for the time taken to process applications.** In an appendix on planning in Britain

in a report by the *Conseil d'Etat* in 1992, the author expressed himself amazed that we should regard the time taken to hear appeals as excessive when to him they appeared entirely reasonable.

- 4.4. **If there has been no official concern for delay, in my research in 1986-88, developers nevertheless expressed discontent in ways that would be familiar to their British counterparts.** Procedures were seen as slow; decision making as arbitrary. Some of the cases studied – all of which were relatively modest in scale – had taken months, if not years, to determine.

5. Conclusions

- 5.1. **It seems doubtful that planning is either a faster or a more certain process in France than in Britain.** Even in crude statistical terms, processing of applications is probably not faster than in Britain, and the time spent on achieving a *permis de construire* may considerably exceed the formal processing time.
- 5.2. **The laudable desire to spell out in detail the constraints that exist on future development has led to considerable complexity that makes POS difficult to interpret for given sites. It has also led to the all-too-frequent discovery that the rules do not allow for particularities of place or changes in circumstance.** Though much of the continual round of modification that some POS are subject to is entirely honourable, there is an undercurrent of feeling that excessive modification is abusive.
- 5.3. **The reliance on zoning plans has made strategic and prospective planning more difficult than in a system of indicative plans.** The recent change to the legislation is intended to remedy this defect, but how far it will be successful is not clear.
- 5.4. **The French system does allow for extensive third party rights that are almost wholly absent here and recourse to the administrative courts does not require third parties to pay punitive legal fees.** On the other hand, the determination of *permis de construire* does not involve consultation with third parties.
- 5.5. The essential problems with a zoning system seem to be twofold. **First, zoning requires a level of detail in plans which the *Planning Green Paper* identifies as a cause of delay. Secondly, zoning does not accommodate changing circumstance easily. Either the regulations have to become ever more detailed or the plan is subject to constant modification.**
- 5.6. French planning almost certainly does not offer a helpful model for the reform of the British planning system.