
Report on the Progress of Planning Applications – a House Builder’s perspective.

Prepared by CALA Homes Ltd – July 2003.

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1.0 Introduction

This report has been prepared by Cala Homes to explain and quantify various experiences of the planning system in England over the last two years.

CALA are well placed to comment, with three active regional offices; Leeds in Yorkshire, Solihull in Midlands and Staines in the SouthEast. With a range of sites of varying sizes, densities and locations CALA can report on numerous negotiations and draw meaningful recommendations from the issues raised.

In line with most developers the fundamental problem facing us is the ability to secure planning permissions for what are recognised development opportunities. The principal barrier to this is the inability of Local Authorities to manage the planning process so as to ensure an effective and sustainable supply of land for housing. Too often proper planning is overridden by “NIMBY” politics and this is a significant contributing factor to poor morale amongst local authority planners.

This short report seeks to identify what CALA, as a developer, considers to be the key issues currently surrounding the planning system and its role in supplying land for new housing. It also sets out some recommendations as to how the system could be changed to create a more effective, sustainable and economically viable process.

R J Millar
25.7.03

2.0 Key Issues

1. Councillors

Members of Planning Committees and to a certain extent Local Members in whose area applications are submitted, are ill-informed in the rudimentaries of the planning system and often fail to understand the recommendations presented by their Officers at Committee Meetings. Numerous recommendations for approval are over ruled leaving Officers to search for sustainable reasons for refusal. This leaves the Local Authority open to applications for costs at any subsequent appeal if an Inspector finds that they acted unreasonably.

Also many Councillors seek election on the very platform of wanting to resist development, Elmbridge Borough Council in Surrey is an example where Independent Members have formed a “Federation of Settlements” between them. The aim is to actively thwart new residential development proposals, much to the dismay of their Planning Officers who appear demoralised by the entire process.

2. Highly politicised

Too much emotion is attached by Councillors at Planning Committee Meetings due to their involvement, directly or indirectly with local pressure groups, many of whom are small in nature but create a large impact on the decision making process by lobbying Councillors direct. Perfectly good development proposals supported by planners are refused as a result of an anti- development mindset.

Councillors are also influenced by looming local elections and we actively seek to have decisions deferred if they fall close to a Council election date as most get refused to pander to public opinion. Most Authorities have a rolling programme of elections every two years where at least 1/3 of Members are up for re-election.

3. Lack of Local Government Resources

Over time the number of suitably qualified and more importantly experienced Planners working in the Public Sector has fallen. Experienced officers are much better able to offer good advice and guide prospective applicants towards a clear end route. They are also able to present their cases more effectively at Planning Committees and help guide Councillors towards a decision. New recently graduated planners, obviously lack experience but also find it demoralising to have recommendations consistently overturned. This coupled with low pay results in an exodus to the Private Sector, with the lure of better rewards and career prospects.

4. Covenants

In common with most developers in England, we are increasingly finding that the few development sites remaining are blighted by the existence of restrictive covenants.

These generally date back to the turn of the 19th and 20th century and were originally drafted to create an element of control over future development. No doubt the original intention of the covenants was reasonable and in the absence of any planning legislation it represented the only form of development control. However, the introduction of the Town and Country Planning Act 1971 heralded a new era of organised development control, which made the existence of many restrictive covenants redundant.

We now have the absurd situation whereby, having fought through the planning process and secured consent, it is still possible for development to be prohibited because of ancient covenants from a era when no proper planning legislation existed.

Even worse is the fact that the majority of sites blighted by covenants are brown field redevelopment opportunities exactly in line with central government policies.

In essence the only way to remove the covenant restriction is by one of the four means listed below:

1. Negotiation with the beneficiaries which can result in substantial financial payments being necessary and is a nightmare in cases where large estates may mean 20 to 100 people have the benefit.
2. Securing a Defective Title Indemnity policy from an insurer, although this is only available after planning consent is granted and only if no-one has objected to the application on covenant grounds.
3. By application to the Lands Tribunal, which can take over a year for a hearing date and is very expensive (cost us c. £150k about six years ago).
4. By obtaining a High Court Declaration that the development proposed is not in breach of the covenants. This involves complex legal arguments and whilst relatively inexpensive (£25k) and quicker than the Lands Tribunal it very much depends upon the individual Judge's opinion since there are case decisions completely at odds with each other.

The existence of these covenants is severely restricting development and in recent months we have encountered the problem at almost every site we have considered in an existing residential area. It seems entirely reasonable to make a case for the abolition of all covenants which pre-date the T&CP Act 1971 after which the responsibility for development control lies fairly and squarely with the local planning authority and ultimately the Secretary of State.

5. Pre-Application discussions

Guidance states that prospective applicants should seek early pre application discussions with local authorities so as to minimise the time taken to determine the application once made. However due to limited resources or lack of experience, officers are unable to give the guidance required. To make meaningful progress we are submitting detailed planning statements with every application justifying our proposals against identified criteria and Council policies. We also meet/discuss and agree with the various statutory consultees what is required. We then present the planning officer with agreed solutions thereby taking on an increasing part of the Planning Officers role.

6. Challenge of the 8 week target

Increasingly Local Authorities are adopting the approach that they will not entertain any meetings changes or discussions into an application once it has been formally submitted. This is to increase their chances of having the application determined within the statutory 8 week period. Quite often it was the case that following the initial statutory consultation period (3 – 4 weeks following registration of the application) we would meet with the Planning Officer to discuss the feedback, make changes as appropriate and hopefully move the matter forward towards a recommendation for approval. By taking this away it allows for an increase in applications being determined within the 8 week statutory period, but has also lead to an increase in refusals.

Effectively amendments can only be made through further applications and therefore further delays are incurred.

7. Section Agreements cause delay

One of the biggest changes over the last few years has been the increasing role played by Section Agreements (in particular 106 and 278 Agreements) in delivering new facilities which are deemed necessary in line with the provision of new housing. This is in the form of affordable housing, contributions to recreation, educational facilities or highway, water/drainage and transportation improvements. All of this is the direct result of reduced government spending / investment in these areas and expecting the private sector to pick up the bill. The community land act was abolished but this has the same effect but through the back door! All of this makes it more difficult for the development industry to deliver much needed housing, as many sites become unviable as the result of Council demands.

Worse still is that these contributions or requirements are often not published or tested via local plan inquiries (this position is gradually changing in regard to affordable housing) and demands are often based on the whims of officers or local Councillors. They see the development industry as 'rich pickings'. Thus planning negotiations become further extended as developers resist providing community facilities which should be the responsibility of the local Council. Planners know that they have the upper edge in that our only recourse is to the lengthy appeal process. Most developers cannot afford such

delays and are forced to acquiesce. This is one reason why appeal timescales must be radically reduced.

8. Site size v. decision route

Having reviewed our recent decisions there would appear to be some correlation between the size of development proposed and the likelihood of whether or not it secures planning permission at the Local Level or at Appeal. Larger sites seem to have better prospects, as in most cases the principle of developing the site for residential uses has been long debated.

Smaller sites are usually “infill” and for CALA have in the main constituted small back garden assemblies or redeveloping a single dwelling to a higher number of units in line with government guidance. As such local opposition is usually well orchestrated as the areas we choose tend to be populated by articulate professional people. Often there is concern at increasing densities in line with PPG3 and local people look to resist any changes to the existing character despite high standards of design. Since every authority expects infill sites to make a significant contribution to the land supply this is a worrying development.

9. Changing perceptions post PPG3.

Although Local Authorities now accept the requirements of PPG3 some are developing “lip service” techniques. PPG3 not only seeks higher densities but also seeks better standards of design to ensure new development is compatible with its surroundings. However, many local authorities who oppose the raising of densities seek to refuse on the grounds that either the design is not to a high enough standard or that the proposal is out of keeping with the character of the surrounding area. At the same time they accept the density as being appropriate but leave the more subjective issues, design and impact on character, open for debate at any subsequent appeal.

3.0 Recommendations for Increasing Housing Land Supply

The major issues we would like to see addressed by the Barker Review are as follows:

1. Re-introduce the presumption in favour of development. This is by far the most important issue and likely to have the greatest impact on improving the supply of housing land.
2. Speed up the appeals procedure so that informal hearings can be given within 3 months.
3. Introduce the concept of an effective 5-year housing land supply (as per Scotland). Plan, monitor and manage is not working as it takes Council's too long to react to shortfalls.
4. Ensure local authorities publish urban capacity studies with a presumption in favour of development for these sites. However, they should not be considered as part of the housing land supply until at least planning consent has been granted and there is a reasonable possibility of the site being made available for development.
5. PPG3 often ends up in a 'density' versus 'character of the area' debate allowing Council's to opt for one or the other as a reason for refusal. Higher density should prevail unless in an area of special character or conservation area. Such protected areas should be specifically identified in local plans / local development frameworks and therefore subjected to public scrutiny and consultation. Too often 'broad brush' policies are applied as a means to justify a refusal.
6. Abolish pre 1971 restrictive covenants. The Scottish Executive has instigated a process to effectively abolish superiority restrictions so a precedent has been set.
7. Make Inspector's recommendations on Local Plan Inquiries binding on local authorities. Too often, recommendations to release housing sites are rejected when reports are presented to Planning Committee's for consideration.
8. Ensure Council's publish their planning gain requirements and test these at public inquiries.
9. Encourage release of underused employment (industrial and commercial) sites for housing. Good residential proposals are being thwarted by outdated protectionist policies. Technology and modern working practices mean less land is required to serve the same number of jobs.
10. Power to determine major housing applications (10 units or more) to be taken away from planning authorities where there is consistent propensity to refuse applications and where refusals are overturned at appeal.

4.0 Appendix – Site specific examples