

Barker Review of Land Use Planning: Call for Evidence

City of London Law Society: Planning and Environmental Law Committee Response

28 March 2006

This paper has been produced by the City of London Law Society's Planning and Environmental Law Committee on behalf of the City of London Law Society. It is offered in response to the joint ODPM and HM Treasury "Call for Evidence" on the independent review of land use planning in England by Kate Barker.

The Committee welcomes in principle the broad scope of the review and fully agree that the land use planning system, subject to certain constraints, needs to support economic growth and prosperity. Whilst we accept the Government's general commitment towards ensuring that the planning system in England is both efficient and robust, we do, however, have a number of concerns about the need for such a review, its timing and the terms of reference upon which the current "Call for Evidence" is based.

1 General Comments

- 1.1 We have stated above that, we support the fundamental aspirations which have stimulated this review of the land use planning system and we do not wish our response to appear overly negative. It is our view that this proposed study of current systems and practices should be taken as an opportunity to identify priority areas where action for further improvement may be required. One such example we believe, is the system of compulsory acquisition and compensation. The Planning and Compulsory Purchase Act 2004 (PCPA 2004) went some way towards making improvements, but we would suggest that the Act presented as somewhat of a missed opportunity and that the work which has been achieved to date, including recent reforms, should be further taken forward. The process provides a means to resolve land issues and speed up the process, with regeneration being the key beneficiary in line with the goal of economic growth and prosperity for the planning process, entirely in line with the current study.
- 1.2 Nevertheless, we must say that as a Committee, we find the timing of the review of the current land use planning system more than a little surprising. We would suggest that it is somewhat premature, in light of recent reforms to the planning system prescribed in the PCPA 2004, which we would note are still not yet fully implemented and which took a number of years to bring to fruition following the Green Paper "Delivering a Fundamental Change" and the Bill's controversial and lengthy passage through Parliament.
- 1.3 A key example of these recent major revisions to planning practice and of particular relevance to this study are those which established a new framework of Development Plans in England. They are very much still in their infancy. Both local government and developers alike are still trying to get to grips with the requirements and procedures associated with the new framework. Consequently, a climate of uncertainty and delay currently prevails, especially for

promoters of new schemes. To undertake a review of land use planning at this time and to contemplate even further reforms to planning practice and procedure would, we suggest, only serve to deepen the uncertainty, which in turn would lead to additional costs and burdens for potential developers and local government.

- 1.4 In addition, we feel it appropriate to bring to your attention in this regard the Government's current proposals for a new "Planning Gain Supplement", which were set out in a December 2005 consultation paper. The proposals for such a tariff have caused considerable controversy and to date there has only been the broadest indication of how the proposed tariff might work in practice. We would, therefore, strongly advocate clarity and certainty at this juncture, especially in light of the current climate for growth and the need for caution. To put forward further proposals for reform when the proposed changes to the practice of negotiated legal agreements have not yet been settled would, we believe, be entirely inappropriate.
- 1.5 Turning to matters associated with the actual terms of reference of the review, they appear to us to be overly broad. Moreover, the terms seem to be framed in such a way so as to actually presume that there are problems and failings with the present system. The Call for Evidence has not provided any evidence to support this presumption. We would suggest that a more focused approach would have afforded a more apposite way of dealing with matters, enabling a careful consideration of the evidence prior to advocating change where change was found to be necessary. It is hard to understand why the perceived problems and failings of the current system and their causes have instigated such an impetus for change.

2 Annex 1: Responses

Q1. Is the planning system sufficiently flexible and/or responsive to the right signals to deliver the right development in the right place, given the changing economic circumstances due to globalisation, demographic change, natural resource pressures and environmental change? If not, what policy measures might help deliver this flexibility?

We would suggest that, based upon our understanding of planning practice, the current planning system by its very nature is inflexible in one important aspect: the mechanisms put in place for the purposes of administering the system are more concerned with development control than with forward planning. As the system currently operates, there is little scope to deliver forward planning. In most cases, impetus for change or new innovative ideas for development come from developers themselves rather than local planning authorities. In light of this, one possibility would be to look towards adopting a more proactive approach towards planning for the future and for local authorities to be encouraged in this regard with the appropriate resources and tools being made available to them. The current system, we believe, reacts to applications, appeals and problems as opposed to predicting issues and dealing with them proactively. The new system of regional planning and

Regional Spatial Strategies may go some way to addressing this inflexibility, but we are still to assess the results of these changes.

Q2. Do you have any views on the scope of plans at the different spatial levels in England which are now emerging following the introduction of the new system in 2004? Are there further improvements to the plan-making process at the different spatial levels in England, particularly regarding the need to encourage a positive/proactive approach to planning, which was a key theme of the new plan-making system? Does the current system strike the right balance between central direction and regional and local discretion?

The newly established development plan framework in England moves towards centralising decision making on policies, and moving decisions away from a local level towards a regional tier. We would note, therefore, that the scope for dealing with local issues at a local level has been arguably hindered, taking into account the requirement to comply with regional and national policies. One example of this is the setting of new housing delivery targets at a regional level with the objective of responding to market needs. The final decisions on the adoption of Regional Spatial Strategies are to be taken by central government. As we have indicated, the new development plan system is still in its infancy, and therefore it is difficult to make a considered assessment of the newly established framework in order to determine whether or not the checks and balances strike an appropriate balance and from a practical perspective. We believe it is much too early to be judging the new system.

Q3. Sustainable development is the core principle underpinning planning. Does the current system achieve the right balance between economic and other goals, such as the regeneration of areas and the promotion of social cohesion, improving the quality of design of buildings and urban environments, and the protection and enhancement of our natural and historic environment? Are some environmental, natural resource, or social considerations given too much or too little weight?

Sustainable development is at the heart of recent Government reforms to the planning system and should underpin the entire system. We would note that the appropriate checks are well established within the current system, but to assess whether or not they are achieving a suitable balance between economic growth and other sustainable goals such as the environment and social cohesion is not an easy determination to make. To judge whether the correct weight is being given to sustainable goals in line with commercial considerations of development is surely a value judgement to be based on specific criteria in a given set of circumstances. That is to say, location, design, conservation issues, infrastructure, regeneration and so on will all be key factors to be considered. Commercial considerations will almost always be pitted against sustainable development goals. To this end, we would suggest that there must always be adequate opportunity for the representatives of all sides to put their case, even if an agreement is not always reached. That having been said, we would suggest that the process of Environmental Impact Assessment has become a little unwieldy, possibly acting as a fetter to sustainability, leading to additional cost and other burdens, including slower delivery.

Q4. What, if anything, could the English planning system learn from the planning and consent systems operated in other countries in order to respond to this new economic environment?

We believe that in order to do justice to this question, a considerable amount of time and resources would be required to be devoted towards researching and assessing the planning process in other jurisdictions. We would be interested to learn the findings of such research. We make no further comment at this stage.

Q5. What is the impact of planning on encouraging or impeding business investment? In this context, how would you assess the potential of recent reforms to the English planning system, which are now being implemented? Are they increasing the transparency of the system and providing greater certainty for businesses? What further reforms, if any, are desirable in order to improve the transparency and effectiveness of the system still further?

Firstly, we would like to make the point, as we have alluded to previously, that it is premature to instigate further reforms to the system at this stage. As we have indicated, from a commercial point of view recent major reforms to the planning regime have to date only served to create a climate of uncertainty and delay for developers, leading to additional cost and time burdens. At present, therefore, the transparency of the reforms is questionable and proposed schemes are being hindered as a result. Whether or not the outlook for a more efficient and effective planning system is set to improve is in doubt bearing in mind that local government departments and other agencies currently appear to be overworked and under resourced. It is, however, too early in our view to make a final determination until the new development system has had an opportunity to bed down.

Q6. Is the planning system sufficiently “joined-up” with other related aspects of government policy? In particular, are Regional Economic Strategies delivering a clear economic framework to help inform Regional Spatial Strategies? Is there sufficient interaction between RDAs and RSSs when preparing their respective regional strategies and if not how might greater interaction be encouraged?

The new development plan framework lays down complex guidelines on how new Local Development Schemes and Regional Spatial Strategies are to work in practice. It would seem to us, however, that the interaction between new Regional Spatial Strategies and Regional Economic Strategies is, firstly, not clear. Secondly, many who work in the planning field do not understand the new system at all, thereby creating uncertainty and delay. We would, therefore, suggest that, even at this early stage in the reforms, it is clear that a degree of simplification is required. We would also question the need for the number of documents required under the new system, for example, one Regional Spatial Strategy may suffice instead of separate spatial and economic strategies. Turning to matters of national policy, the revised PPS's are a much slimmed down version of former Planning Policy Guidance notes with the advice formerly comprised in PPG's moving to other Government papers. There is no clear indication of the status of these papers and how they are meant to interact, which creates further concerns as to uncertainty and cost. There is a danger that the active process will become impenetrable.

Q7. Planning applications for major projects will typically take a considerable time to work through all the necessary stages. Do you consider the system puts too much emphasis on speed or do you feel that is too slow? If there is an undue emphasis on speed, what are the negative consequences of this and how could they best be avoided? If the process is too slow, what could be done to overcome delays? In particular, what improvements might be made to the planning appeal system to improve its speed and efficiency?

The Committee does not believe that the current system puts too much emphasis on speed. We would suggest that speed of the planning system is a key consideration but this should not be taken to override the need for accurate and robust decisions on individual planning applications. There are, we would suggest, always opportunities for minimising delays, however, the final decision must not be susceptible to challenge - which would of itself delay the process. A correct balance needs to be achieved and with resourcing mechanisms such as the "Planning Delivery Grant", checks need to be in place to ensure that determinations are not made in line with non-planning criteria. In our view, strategic planning projects require strategic leadership and at the moment the system is a strategic vacuum. There is little or no co-ordination of, for example, the necessary transport and social infrastructure that major projects depend upon.

Q8. Is there evidence to suggest that the direct costs of making a planning application are deterring investment? Are there any unnecessary burdens/how might information requirements be streamlined to reduce the regulatory burden from the process of making an application?

Based upon our understanding of the planning system and the range of interests that we represent, it would appear to us that direct costs associated with making a planning application do not act as a hindrance or deter in any way new developments. We would highlight, however, the interests of small developments and their promoters whose interests may be more affected by such costs, which may be more of a determining factor in their decisions as to whether or not to proceed with development.

Q9. To what extent are high occupation costs in England likely to be due to planning constraints, or due to other factors such as imperfect competition or lack of transparency in the land market? What is the economic impact of these costs in terms of the main drivers of productivity?

We would suggest that the current planning system is market led and that high occupation costs are not due to planning constraints. The planning system looks towards the planning merits of proposed schemes in a public law context where the public rights of individuals are openly weighed against the private interests of developers. Accordingly, the system cannot, in our view, be seen as a cause of imperfect competition or lack of transparency. The planning system and development control is, and should be founded on planning merits - not commercial interest.

Q10. How does the planning system impact on competition, through influencing barriers to entry and exit and economies or scale? If there are areas where there is a

negative impact, how can these be addressed, while protecting other goals of the planning system?

Based upon our current experience and understanding of the planning process, we do not believe that it acts as a barrier to trade.

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

To elaborate further on our response to question 10 above, we would suggest that the planning system is market led. Furthermore, we believe that it does support growth by way of fostering business clusters and innovation, albeit only when opportunities are embraced by developers. This can be seen in the developments at, for example, Canary Wharf and Paddington Basin and also in the emerging regeneration projects along the route of the Channel Tunnel Rail Link such as Ebbsfleet, Stratford City and King's Cross. Our answer to Q7 also refers.

Q12. Do planning authorities have the skills and resources required to help promote sustainable economic development? If not, what is the best way to ensure that resources match the challenges the system faces? Are there ways to increase further efficiency of process?

We would note that more often than not it is quite clear that local government department's resources do not match those of developers. We would also point out that local planning authorities would appear to be working at a disadvantage, on the whole lacking in the necessary resources and skills that are required to cope with the day to day functions of the planning system and the volume of applications that it now handles, especially in light of the recent reforms to the system prescribed under the PCPA 2004. We believe that increased funding to address this imbalance of resources is urgently required. Moreover, we would note in highlighting a lack of resources, that there would appear to us to be a glut of temporary appointments to local planning departments at present, which may ensure that the planning process ticks over, but ultimately cannot be a long term solution to the lack of permanent skilled appointments required to avoid adverse impacts on the planning process such as delay.

Q13. Are the new arrangements for stakeholder engagement in the plan-making process succeeding in engaging those representing economic interests, including SMEs? If not, what are the barriers to that engagement and how might they be addressed?

Whilst we commend the new priority for engaging the local community in decision making from the very outset, we do feel that the system has become overly complex, and as a consequence local planning authorities, local community groups and private developers are all unsure how the system works in practice and how to become involved. Moreover, with Local Development Frameworks still emerging we are awaiting Statements of Community Involvement and how they will evolve.

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?

With regard to the current system, we would suggest that there are at present a number of mechanisms which aim to provide incentives to decision-makers and local planning authorities, one such example being the "Planning Delivery Grant". In order to achieve a balance between the interests of the decision-makers and the local community, however, there will generally speaking be a stand off between the competing interests. That having been said a balance does need to be achieved.

Q15. Economic development can help achieve the regeneration and renaissance of urban and rural areas. Are there ways which planning could strengthen economic performance in regions, sub-regions (including city regions) and at the local level?

Based upon our experience of the planning system, we would suggest that economic growth and development can only help towards promoting regeneration. As we have indicated above, it would appear to us that the current system does promote growth. We would also make the point, however, that growth and regeneration should not be achieved at the expense of other social goals (e.g. the environment) and we need to ensure that the appropriate checks and balances in the current system are maintained.

We hope that the above response to the questions raised by the review is both helpful and informative. We are, however, quite happy to meet to discuss matters in more detail if this may be of assistance.

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