

GENERAL

The Scope of the Review

Paragraph 3

You use the words "faster fairer and more efficient" to describe the anticipated effects the proposed reforms will have on the planning system.

These words are the very same marketing words the ODPM has used to promote its proposed reforms, and it is concerning therefore that your independent survey uses the same words. (Many colleagues in the industry have been quick to pick up on this).

1.0 **Issue 1**

- **Is there a shortage of suitable land for development?**

1.1 No, there is a shortage of land with planning permission. There is not a shortage of suitable land for development.

- **Are there any factors which reduce land owners' willingness to sell?**

1.2 Yes. As was the factual experience during the Development Land Tax years, the high rates of taxation deterred land owners from making it available for development.

1.3 Similarly, increasingly high levels of planning obligations, including social housing, are now deterring land owners. Many contracts have minimum land value provisions, which allow the landowner to withdraw from the transaction if a certain specified minimum price is not achieved. Increasing planning obligations will cause such minimum prices not to be achieved and will tend to reduce the supply of housing land.

1.4 Additionally, some land owners will decide to withhold their land on the grounds of principle; that is to say that they exercise their choice not to "pay" (subsidise in their view) for social infrastructure which they may believe is not their responsibility to provide.

- **Are there problems with land assembly, particularly brownfield land?**

1.5 Yes. Urban brownfield land tends to have a much higher fragmentation of ownership and thus to assemble a site of an appropriate size may require many ownerships to be acquired. It is often not possible to commence development on a smaller site (i.e. having experienced difficulties in assembling a larger site because the derelict nature of the neighbouring land would deter purchasers).

- **Does the practice of optioning land restrict the overall supply of land?**
- **Is optioning necessary? If so, why?**

- 1.6 No, the reverse.
For strategic land to come forward for development, it generally has to be promoted through all levels of the planning system over a considerable period of time. This is expensive and the costs are generally beyond the pocket of many landowners, or if not, they are unwilling to risk the expenditure.
- 1.7 A developer will therefore take on, at its cost and risk, the promotion of the land for the landowner, in return for the option to purchase land at a price reflecting a small discount from the market value once it has planning consent.
- 1.8 The legal mechanism that holds this arrangement together is an option, which is merely a form of conditional contract.
- 1.9 The developer would not undertake the lengthy and expensive commitment to promote the land without the benefit of being able to purchase the land on planning consent.
- 1.10 Therefore, without the option or a conditional contract arrangement, the supply of land for development may even be diminished on the basis that a lesser quantity of land would be promoted for development.
- 1.11 Additionally, it goes without saying that the practice of bringing land forward by way of an option arrangement helps to provide the house builder with a supply of land.
- 1.12 Moreover, it is a source of development land, without which, the house builder would have to revert to the open market for acquisition opportunities at very high speculative prices. (You can expect about 8 competing bidders for each parcel of development land offered on the open market and thus the chances of being able to maintain a regular supply of land by this way alone are not good).
- **Is the land allocated for housing in local plans sufficient to meet housing need?**
- 1.13 We doubt it. It depends of course on the local authority.
- 1.14 Our experience is that, even on the "predict and provide basis" the real required housing numbers were deliberately reduced at each stage - Regional Guidance (refer Regional Guidance for the South East - Professor Crow and subsequent admission of shortfall by ODPM), Structure Plans and Local Plans. Throughout these processes there is a concerted effort from the public sector to lower the figures.
- 1.15 Please read the following dismaying account relating to the former County of Avon.

- a) RPG10 (published 2001) for the period 1996-2016 requires an average build rate of 3,700 p.a. within the former Avon area.
- b) Over the 15 year period of the Structure Plan, this equates to 55,500 houses.
- c) The deposit Structure Plan proposed only 43,000 new houses over the period, with 15,200 for the South Gloucestershire Unitary area.
- d) The Panel Report following detailed public scrutiny and analysis during the EIP recommended an overall requirement of 54,300 with 21,200 for the South Gloucestershire area.
- e) The Panel reported **"Provision as low as the level proposed in the Plan would fall a long way short of meeting demand. It does nothing to address the housing problems in the area and would contribute to a worsening of them. This is a major weakness in the Plan, which belies its claim to be a sustainable development strategy"**.
- f) After about a year of further delay, the Joint Committee published its Notice of Intention to Adopt, and choosing to ignore the EIP, its process and Panel recommendations, put forward a figure of 43,600.
- g) Following this, the Secretary of State issued a holding Direction, then a Formal Direction requiring the authorities to abide by the EIP Panel recommendations.
- h) Ultimately the authorities ignored the "Direction" and "compromised" at 50,200 units, being a shortfall of 4,100 houses below the "Direction", but also impacting on the South Gloucestershire housing numbers disproportionately; where the EIP Panel recommended 21,200, the Plan now proposes 16,100 - a shortfall of 5,100!
- i) The Secretary of State accepted the planned shortfall. The very same person, (the Deputy Prime Minister) then made a House of Commons statement (18.7.02).

"I will insist that all local authorities deliver the housing numbers set out in RPG. I am putting all local authorities on notice that where they fail to meet their targets, I will take action to intervene".

- 1.16 The deeper problem, of course, is that the shortfall figures that have been accepted (after a failed intervention) are now the fixed housing figures up to 2011. The local authority area is now locked into a short and medium term undersupply. Furthermore, due to delays in Plan preparation, there is no prospect of any of the strategic sites producing dwellings until 2005/2006, and thus even the reduced targets will not be met, exacerbating the real shortfall.

1.18 If we are to wait until 2011 for action to be taken to remedy the shortfall, then it will be too late to avoid the housing supply crisis.

1.19 The timetables for the adoption of statutory plans generally suffer delay after delay. How many Local Plans for the period 2001-2011 have been adopted? In Gloucestershire - none. The current timetable for the adoption of Gloucestershire Local Plans (2001-2011) is: -

Gloucester	-	Local Plan abandoned
Stroud	-	January 2006
Cheltenham	-	?
Tewkesbury	-	February 2005
Cotswold	-	January 2006
Forest of Dean	-	June 2004

1.20 So even if these plans allocated sufficient housing land, the inordinate delays in the production of the Plans quite simply means that half the plan period will have been lost and with it half the housing. This is common place. (Please note that the lost housing cannot simply be replaced by doubling the rate of build in the remaining years of the plan period). The lost housing numbers are regularly not carried forward as a "shortfall" to the next plan period. This is a major contributor to housing supply shortages.

1.21 Please note that in the case of Stroud we had been assured that the Inspector's Report would be published before Christmas 2003. We have now been informed by the Inspectorate, with dazzling indifference to collateral damage, that its publication will be January 2005.

1.22 We will not go into the detail of this here, but we are now aware that 4 out of the 5 strategic sites in the county will be stymied by this delay. Thus again, the main sources of housing for the county do not come forward in time to achieve the required levels of house building.

1.23 Naturally, Gloucestershire is an area where house price inflation is running well above the national average.

1.24 Sites allocated in Local Plans tend to come forward more slowly than in the past.

1.25 Arbitrary phasing conditions are imposed and the "red tape" level of detail, quantity of studies etc. required to even make a planning application is enormous.

1.26 This Company used to work on the basis of a time lag of 15 months between outline consent and the occupation on the site of the first house. Currently we are looking at a time lag of 28 months.

1.27 Since PPG3 came into being, many local authorities have become unrealistic in their expectation of the quantum, density and timing of delivery of houses

from brownfield sites. Urban capacity studies have given local authorities a device to overestimate housing supply from urban sites and thus reduce the planned housing supply from other sources. Many urban capacity studies do not go so far as to investigate the ownership (and leasehold) interests in the sites and erroneously assume most of them to be "available" for development.

- 1.28 Looking at the entire system of allocating (i.e. restricting) housing numbers via the statutory processes and plans, one is inevitably led to a fundamental conclusion. That is to simply say that the reason why housing supply is unresponsive to housing demand is because house building is restricted.
- 1.29 Given that the vast majority of households' need to sell their house before buying another one, and also that house builders will not continue to build houses unless they can actually sell them, it is fair to expect that the market itself would restrict the level of house building in line with demand.
- 1.30 There is a popular misconception that house builders set prices. This is not the case, they are "price takers", always tied back to the level of the vastly larger second hand market (which of course includes last year's new house).
- 1.31 They therefore cannot nor would not build and sell at will, ahead of the market, even in a derestricted planning environment. Instead, the price of land would reduce and enable house builders to offer properties at prices which were lower than those of the second hand market.

- **Is the RPG housing shortfall explained by a shortfall in the number of appropriate planning applications?**

- 1.32 We do not know. There is no doubt, however, that it is risking considerable expense to prepare and submit a planning application in respect of land that is not allocated in the Local Plan, or if it is, where the Local Plan has not been adopted. In both cases, the application is likely to be refused, in the latter case, on the grounds of "prematurity" notwithstanding the fact that the Local Plan may be 4-5 years late.
- 1.33 Thus the decision to make an application cannot be taken lightly.

2.0 **Issue 2**

- **Are there particular problems in developing land due to contamination or dereliction?**

- 2.1 Yes. The developer must make allowances for the costs of remediation. He must do this prior to knowing the full extent of the contamination and the remediation costs; these are determined by the levels and extent of contamination actually found during construction. This increases risk and thus tends to deter investment. Alternatively, it requires the developer to seek a higher return (to represent the additional risks), which is often in competition with the costs of other planning obligations being demanded by Local Authorities.

3.0 **Issue 3**

- **Are there problems with the interpretation of planning guidance by local authorities?**

3.1 Yes. Our general recent experience finds a lack of professionalism from planning officers and a lack of knowledge of the guidance, its background, its objectives and interpretation.

3.2 Sometimes it is fair to describe the deliberate misinterpretation of guidance by local authorities as abusive.

3.3 Some planning officers see guidance as an excuse to make up primary legislation "on the hoof". This often occurs on the subject of affordable housing where there is a growing tendency for officers to demand "free serviced land" when they are in no position to do so and are certainly outside of what is lawful. Some authorities have difficulties accepting the Circular 6/98 definition of affordable housing.

3.4 With the increase in the quantum of work required to achieve a planning consent, many private planning practices have had to expand rapidly. The result is that they have, in doing so, creamed off some of the best and most able public sector planners and graduates to the inevitable detriment of the local authority's standards.

- **Does the planning system provide incentives to develop brownfield land?**

3.5 Not really. One is led to believe that applications for permission to develop brownfield sites for housing would be fast tracked. This is not our experience.

3.6 A consortium of house builders, Quedgeley Urban Village Limited, (Wimpey, Taylor Woodrow, Westbury and ourselves) made an application for a mixed use scheme in respect of the principal allocated strategic site in the county. This was a brownfield and contaminated (including radioactive contamination) urban site. The application was made in October 2000. We have only just received the consent from the Secretary of State following his call in. It is however not an implementable consent because one of the central issues of the appeal (the mechanism for the provision of affordable housing) was left undecided by the Secretary of State. It will clearly be some time yet before any housing gets occupied especially when lead-in allowances are made for demolition, decontamination, infrastructure provision etc. A great part of the delay was the fault of the Secretary of State or somebody acting in his name

3.7 He chose to overturn his Inspector's recommendation to grant the consent. (The Inspector who had sat and heard all the evidence during a 3 week Inquiry and who had later studied all of the evidence presented).

- 3.8 All of the Inspector's recommendations had been unambiguously decided in our favour; it was a heavily favourable decision.
- 3.9 Quite why the Secretary of State decided to call this in, we sometimes wonder; being a contaminated brownfield urban site, which had been viewed by most of the local community as an uncontroversial mixed use development site. Amazingly, by providing vital funding via planning obligations towards a long awaited ring road scheme, the release of the site would be the catalyst for city centre regeneration, which itself cannot start until the road is in place. The city centre regeneration scheme and the completion of the ring road itself are the 2 principal objectives of the Local Plan. The third is the redevelopment of the subject site!
- 3.10 There then followed 2 years (yes 2 years) of what can only be described as the re-running parts of the Inquiry by letter, with the eventual decision being made by some person (we do not know who) who did not sit and hear the Inquiry evidence, questioning expert witnesses etc. etc.
- 3.11 Ultimately, out of the main 10 or 12 contested issues, the Secretary of State's final decision supported the developers on all but one issue, and a middle ground position was decided on this. (It has cost the consortium well over £1m. in fees, not to mention the overhead costs of its own senior staff and 3 years to reach this point; i.e. acceptance that its original year 2000 application was, in all but a very minor respect, appropriate and permissible).
- 3.12 The overwhelming experience of the developer participants was one of having being "mugged".
- 3.13 We doubt that the first house will be occupied before summer 2005 - that is five years after the planning application, in respect of this brownfield urban site.
- 3.14 Other experiences have included encountering employment land protection policies where sites are not suited to employment use, and the unreasonably high expectations of planning obligations.
- **Is planning guidance applied appropriately?**
- 3.15 No. Planning guidance (Circular 1/97) states that planning obligations should not be used to redress existing deficiencies. Circular 1/97 also sets out a series of tests for planning obligations.
- 3.16 These tests are commonly ignored by local authorities. The only recourse for the applicant is to agree or to appeal.
- 3.17 When it comes to affordable housing, Circular 6/98 and PPG3 are consistently ignored.
- 3.18 It is becoming a commonplace experience to submit a planning application, liaise closely with planning officers and other statutory consultees and agree

all issues, only to have the officer recommendations rejected by Councillors. Indeed, they often have to "look for" reasons for refusal to camouflage their personal prejudice and vitriol towards developers.

3.19 Even if Councillors undergo training to overcome their lack of knowledge of the system, this will not overcome the well seated problem in the minds of some decision makers, namely that the words "greedy" and "developer" go well together.

3.20 The introduction of provisions which penalise Councillors for ignoring officers' recommendations, where they are later found to have acted "without policy justification" would improve housing supply. It would also introduce some rationality and calm discussions into the system, with resulting beneficial outcomes.

- **Is the current reform programme sufficient to address inefficiencies in the planning system?**

3.21 No, not at all.

3.22 Notwithstanding that there is a frightening absence of detail in the Planning Bill making it hard to comment in detail, our reading of the proposed reforms is very pessimistic.

3.23 They seek to simplify the system, but in reality this is a mirage. There are added complexities.

3.24 Overall the reforms seem merely to rename aspects of the current system, and will not make it "faster or fairer".

3.25 There is not much wrong with the current system itself, it just needs processing in a disciplined, efficient and speedy manner combined with a change in attitude towards a presumption in favour of development.

3.26 More worrying is that, if the Bill is introduced during a time of housing supply crisis, the resulting difficulties experienced during the transitional period, (have you read the transitory provisions!!) as participants struggle to get to grips with the new system, will exacerbate the current delays and inevitably result in fewer houses being built, just when the Government is saying it needs to increase supply.

3.27 One reform, in particular, introduced for consultation very recently, is the proposed change to PPG3 for "influencing the size, type and affordability of housing".

3.28 One aspect of this seeks to give greater powers to local planning officers for them to decide the size and type of the market housing to be built, to create a "better mix of housing" and a "better match between the housing planned and the needs of the community".

- 3.29 This is utter nonsense.
- 3.30 The guidance requires "Local Authorities to keep an up-to-date assessment of housing need across all tenures in their area".
- 3.31 The Local Authority is in no position to be able to do this work. Its officers are not qualified to do so; there are few experts in the field who are and the market is far more complex than it might appear. The workload entailed is vast, market interpretation is as much an art as a science and stupid oversimplified outcomes will result, because the dynamics and intricacies of the market will not be understood. For example, to correlate the need for smaller houses to match smaller households is superficial and naïve in the extreme. If a local authority is going to interfere in the working of the market, there will be perverse outcomes. (Does the Government tell car manufacturers what type of car to build?).

(What happens if the local authority enforced housing type makes a loss?).

- 3.32 A good example of misconceived views of the market is found in last year's house price inflation figures. The average rise across the U.K. was about 26%. With the strong increases in the number of single person households (and smaller households generally), one would simply have expected to have seen that the flats or apartment market was a major contributor to this 26%. The fact that the price of flats rose the least among all other types of property, at a mere 5% explodes this myth. (I have recently read a Friends of the Earth submission which argues that because there were so many new single person or childless households, virtually all the units allocated should be flats without gardens. Presumably therefore only families enjoy gardening, the amenity of a garden, space, wildlife, privacy, flowers, trees etc. And presumably friends and family of single people do not enjoy gardens etc.).
- 3.33 If one looks at the property pages of a typical local newspaper, one will see hundreds of second hand properties of all types; there is no shortage of a range of house types.
- 3.34 If a house builder is to be led by the nose and have its output decided or influenced by an unqualified person, or indeed anybody other than its own chosen expert, then it loses control of its business and with it, its profitability. Its share price will suffer and with it, its ability to expand. Housing supply will suffer.
- 3.35 Another part of the proposed PPG3 reforms seeks to introduce, by the back door, the concept of "open book accounting" in relation to planning obligations and affordable housing. The "spin" describes this as "local planning authorities working with developers to ensure planning objectives reflect the development potential of sites" and "the affordable housing provision sought should not make development unviable".
- 3.36 Local Planning authorities will tend therefore to seek higher and higher levels of affordable housing and when developers disagree, the local planning

officers will use this guidance to require developers to disclose to them their entire viability study of a given site, including commercially confidential information such as the price paid for a site, building costs, margins etc. This abuse is already happening quite regularly on the basis of the old guidance!

- 3.37 Planning authorities will seek to use this to the full by seeking very high levels of affordable housing and then placing the burden on developers to prove that the level of provision is not viable. So, is the level of provision a developer makes to be directly related to the local authority's perceived profitability of a given site? What about the site developed last year that made a loss? If "profitability" is to be taxed in this way, where is the incentive to be efficient? What do you think will happen to the industry if you have a system where planning officers can dictate the profit levels of plc companies?
- 3.38 Then you will get developers playing the system with inflated costs and complicated valuation methodologies, more planning appeals, longer appeals and more expensive appeals. The profitability of a given scheme is not known before it is finished. It will depend on how much the houses will, in the future, sell for. The entire business is speculative, with the land being purchased and planning consent being negotiated often years before the houses on the site are sold. How can a site be declared to be profitable until it is finished? If the market turns during the build period, can the house builder expect a refund from the Local Authority?
- 3.39 Another proposed reform seeks to increase community involvement in development. Whilst laudable, this will obviously slow up delivery - it being yet another hurdle to jump.
- 3.40 You made reference to "nimbyism" in the report in the Times (referred to earlier). "Homeowners must be ready to accept development".
- 3.41 The expectation of a reduction in nimbyism is no basis for a rational solution to the housing supply crisis. Most people will not change their views. We fully expect nimbyism to worsen when the consequences of high levels of immigration are felt, especially following the forthcoming expansion of the EU.
- 3.42 Finally and most importantly, part of the proposed reforms contained in the Bill seeks to make Local Plan Inspectors' Reports binding. This is an encouraging step forward but it is not going to have much effect in the short term because it is proposed only to apply to situations where Inspectors have been appointed following the coming into force of the legislation. Thus for several years hence, the practice, on the part of local authorities to ignore Inspectors' reports (when they do not suit) will continue. This applies equally to Structure Plan EIP panel recommendations.
- 3.43 This practice is not uncommon and at its core, runs totally against principles of natural justice. Participants from every sector are invited to take part, spend time and expense arguing their cases before an independent arbiter/expert only

to have the local authority either ignore or delay the recommendations; one questions whether it is worth taking part.

- **Are S.106 Agreements an effective means for addressing and mitigating the impact of developments?**

3.44 Not really. They take ages to conclude and often end up with the developer being coerced to meet the costs associated with existing deficiencies in social facilities and to provide new facilities, which really should be the responsibility of the state.

3.45 They were meant to facilitate development. In practice they cause long delays and again, housing supply suffers.

4.0 **Issue 4**

- **Are these areas of provision simply not profitable?**

4.1 The provision of affordable housing, especially now since the Social Housing Grant has been removed, is not profitable and represents an enormous financial burden on developers.

4.2 We would argue that the state faces up to its responsibilities and actually starts providing the resources for the much needed affordable houses, rather than trying to coerce the private sector to do so? It would be far more direct, speedy and efficient. Why has the Government recently taken away Social Housing Grant? It cannot be in any way related to increasing housing supply.

5.0 **Conclusion**

5.1 The improvement in housing supply requires measures which make it easier for house builders to expand their output. What is not required are greater controls, regulation, market interference, commercial interference and more hurdles to jump, and a "new" planning system that nobody is familiar with.

5.2 If the impending housing supply crisis is to have any chance of being averted, the planning system needs a rapid injection of common sense and a change in the mind set of the public sector in favour of housing development.

5.3 We do however doubt that this will happen. The trouble is that this is one of those "hard decisions" which is likely to be unpopular in the short term.

5.4 We attach a short list of key suggestions, which we believe would greatly assist the responsiveness of housing supply to demand.

1. Set mandatory minimum housing number allocation for each District.
2. Instruct Local Authorities to take, as a serious objective of policy, the achievement of these minimums, making delivery a performance indicator.

3. Instruct Local Authorities to prepare for and react promptly to circumstances which threaten to lead to an undershooting of the target.
4. Instruct Local Authorities to over allocate land by at least 30%. This will release a lot of the tension and will not lead to an "oversupply of housing". (Builders will stop building if they cannot sell).
5. Instruct Local Authorities to have their Plans in place by the start of the Plan period. The entire process of plan preparation and adoption need not take more than 18 months under the existing system.
6. Restrict the use of call in powers. Limit time periods.
7. Restrict the overriding of planning officers' recommendations by Councillors. If they are in line with policy, they should be upheld and Councillors penalised.
8. Enforce the core principles of 1/97. Introduce penalties for abuse of planning obligations guidance.
9. Local Plan Inspectors' Reports and EIP Panel Reports to be binding with immediate effect.
10. Do not proceed with the Planning Reform Bill. This will inevitably lead to further delays and frustrate the achievement of housing objectives.
11. Restrict powers of the Secretary of State to intervene and override Inspectors' decisions. The ODPM should not act as judge and jury.
12. Reintroduce tax relief on mortgage interest payments for lower income households.
13. Phase out the entire dubiously lawful affordable housing "circus". It is a wasteful, slow, inefficient and obviously grossly inadequate way to provide for housing need. The increase in affordable housing numbers within a fixed overall housing numbers target reduces the supply of market housing, increasing its price, increasing the need for affordable housing and so on; affordable housing targets need to be in addition to market housing targets.

It would be more efficient for the state to subsidise the household not the house. House builders could assist by making houses available at moderate discounts.

14. Prevent more local authority interference in the choice of open market house type to be built. The market is a far superior mechanism to match supply to demand.

15. Abandon any pretension of introducing a system of open book accounting. This is a gross distortion of a free, fair and efficient market, and will result in unintended consequences.
 16. Restrict the use of the prematurity principle. This should not be allowed unless local authorities can show they are on course to achieve their target numbers and Local Plan adoption dates.
 17. Local authorities to maintain a 10 year supply of genuinely available sites. Reintroduce joint residential land studies to ensure this.
 18. Establish a rule that once a site has been allocated, the principle of its allocation and its getting an outline consent should no longer be a subject for future debate.
 19. Councillors and planning officers to be required to show neutrality in the exercise of their powers. Membership of anti house building associations, societies etc. should disqualify them, in the same way as having interests in house building companies would.
- 5.5 All of the examples referred to in this document are accounts of our first hand recent experiences and they can be verified if required. Naturally we would be pleased of the opportunity to discuss the issues raised at more length if this is at all possible.