

Barker Review of Land Use Planning
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Re: Barker Review of Land Use Planning - Call for Evidence - E.ON UK Response.

The UK planning regime is unusually restrictive by international standards and this is inconsistent with the long-term international competitiveness of the UK economy and, of particular relevance to E.ON UK, the delivery of the UK's energy policy objectives as set out in the 2003 White Paper on Energy Policy. What is needed is an approach which combines both effective public scrutiny with an efficient, prompt and predictable process for considering planning applications and other applications for development consent which fully reflects at the local level national energy and environmental policy objectives.

The Barker Review is very timely given that the current energy review is also looking at how the Government can best incentivise efficient investment in the energy sector both in terms of new infrastructure to achieve environmental and security of supply goals, and in terms of better enabling electricity network operators to deliver their Distribution Price Review 4 investment programmes.

We believe the planning regime will play a critical role in whether the UK can significantly tackle climate change and ensure continuing security of energy supplies, and we believe that E.ON UK have expertise and experience which is essential input to this review. We look forward to further dialogue with Government, and would particularly welcome one or more meetings

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with the Barker Review team to discuss issues and potential solutions.

Yours sincerely

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E.ON UK Response to the Barker Review of Land Use Planning

E.ON UK is the UK's second largest retailer of electricity and gas, one of the country's largest electricity generators and electricity distribution network operators. In addition to the UK, the E.ON Group has electricity and gas interests in Germany, Central and Eastern Europe, Italy, the Netherlands, Scandinavia, the USA and Russia.

In the UK:

- E.ON UK generates around 10% of the UK's electricity needs from coal, oil, and gas-fired plant and is a major developer of renewable energy sources including wind and biomass;
- E.ON UK distributes electricity to around 5 million customers across the Midlands through 133,000 km of cable and via almost 100,000 substations through our Central Networks business; and
- E.ON UK supplies electricity and gas to over 10,000 industrial consumers and, through our Powergen brand, to 8.5 million domestic and small business customers across the UK.

Summary

E.ON UK welcomes this review and strongly endorses the Government's objective of reviewing the UK's planning system to ensure it can effectively encourage economic growth and UK competitiveness, whilst delivering sustainable development.

This is of particular relevance to the Energy Industry, and it is important that the Barker Review is informed by the current Energy Review and vice versa, as the effectiveness of the planning and consent system in facilitating the efficient delivery of UK energy infrastructure investment over the next fifteen years will be a critical component in determining whether the

UK's energy and environmental policy objectives are met or not.

The Energy Industry is about to embark on a major phase of investment in electricity and gas supply:

- The UK power sector requires major sustained investment in energy infrastructure to cut CO₂ emissions and maintain security of electricity supply. Over the next fifteen years to 2020, 9GW of existing nuclear and 13GW of coal and oil-fired generating plant will close, which equates to one third of total UK power plant. The sector is also seeking to invest in renewable energy to meet the Governments' obligation on suppliers to source 15.4% contribution of electricity supplies from renewable sources by 2015.
- In electricity transmission and distribution, new electricity generating projects will mean a significant increase in investment in networks both to accommodate the resultant power flows and also to connect individual plants at the transmission and distribution level. The move towards smaller, more distributed low carbon generation sources will impose new requirements on electricity networks. There is also a requirement to replace much of the distribution network infrastructure, much of it built in the 1950s and 1960s, to ensure reliable energy supplies to customers. This process tends to go through long-term cycles of investment, and we are entering a phase of significantly increased investment. The planning process needs to be aligned with the requirement for network operators to deliver the investment programmes agreed with Ofgem, as part of the Price Review process within each Price Review period.
- In gas infrastructure, the declining output of the UKCS means increased demand for projects allowing

gas to be sourced from outside the UK either by pipeline with associated treatment plant or by LNG shipment with associated port facilities. The UK also has an urgent need to enhance its gas storage capacity to enable suppliers to manage gas supply throughout the year as the flexibility provided by UKCS supplies declines. E.ON UK are actively seeking new opportunities for onshore gas storage.

The UK planning and consents regime has a significant effect on energy companies' ability to invest in infrastructure in three main areas:

1. Protracted and uncertain timescales;
2. Inconsistency in decisions and interpretation of policy; and
3. Accountability and the process for appealing decisions.

We would also suggest that issues specific to electricity networks deserve attention, and address this in a separate section below also:

4. Electricity Networks.

1.0 Timescales:

It is our experience that response times in all areas of the UK planning and consents regime are protracted and uncertain. It is essential that business can plan against timescales that are transparent, enforced, and as short as possible, whilst maintaining adequate consultation time. and appropriate checks and balances.

Currently, statutory response times either do not exist or are not enforced. The provisions in the Planning and Compulsory Purchase Act 2004 requiring statutory consultees to respond within a specific timescale are welcomed. However, it is our experience that local planning authorities do not determine applications for energy proposals within the statutory period. In many

instances, authorities are asking applicants to withdraw applications, with the threat that they will otherwise be refused. In the light of the long delays in the appeal process, applicants are left with very little option other than to cooperate with authorities in these instances.

Significant delays are also often experienced when planning obligations are required, in association with infrastructure development. Local planning authorities are often reluctant to discuss detailed terms, until the principle of the development has been accepted by the appropriate Committee.

The Electricity Act consents framework for generating stations in excess of 50MW (including wind farms) and other electricity infrastructure does not include a statutory response time for decisions from the Secretary of State. Furthermore, whilst local planning authorities are meant to respond within a specific timescale, as statutory consultees, those deadlines are rarely met. This leads to delay in the determination of applications for energy and infrastructure works, which can have significant economic disbenefits.

Where it is necessary for planning or other consent applications to be considered at public inquiry, there are further significant delays. Furthermore, whilst the appropriate Inquiries Procedure Rules include provision for issues to be identified and, where possible, agreed prior to the inquiry there is no enforcement of the provisions or practical sanction against parties who default.

This process leads to significant uncertainty as to the timescales involved in the planning, development and construction of new infrastructure. This leads directly to increased risks against maintaining security of supply for the UK and increased costs to consumers as the business cost of the increased risks are passed on via higher energy prices.

As well as being uncertain, response times to applications under both the Electricity Act and the TCPA tend to be protracted and inefficient. This appears to be due to either a lack of resources available in planning departments or a lack of expertise and/or experience in handling the highly technical and demanding issues involved in modern energy infrastructure projects.

1.1 Recommendations

E.ON UK would recommend the following with respect to addressing timescale issues:

- *Ensure all instances where responses are required within the planning regime have a statutory deadline that is efficient and strictly enforced;*
- *Greater liaison between local planning authorities and the energy industry to ensure that future demands on the planning regime are fully understood;*
- *Ensure adequate and appropriate resources are available at all levels of Government, and within the Planning Inspectorate, for major planning applications to be handled efficiently and proficiently.*
- *More active case management of the inquiry process by Inspectors on major planning and consent applications and appeal.*

2.0 Inconsistency

Energy infrastructure invariably has a local impact, but a national benefit. This inevitably leads to a tension where decisions are made at a local level. There is significant inconsistency in approach and policy interpretation on energy projects between Planning Authorities, and even between decisions made by the same Planning Authority, across the UK. This uncertainty leads to increased risks to business, and in terms of the energy industry, this again inhibits our ability to maintain security of supply, and leads

to increased energy prices as costs are passed on to consumers.

Whilst a lack of appropriate guidance on energy infrastructure does not help the situation - only planning guidance on renewable energy projects currently exists - the real problem is a lack of enforcement in instances where local government interpretation or policy differs from central government policy.

2.1 Recommendations

E.ON UK would recommend the following with respect to addressing inconsistency issues:

- *A thorough review of how central government policy on energy infrastructure has been interpreted at local government levels with more active intervention by the relevant Government Office where necessary;*
- *Clear and strongly enforced guidance on national energy policy;*
- *Pro-active training of planning officers and decision-makers (e.g. planning committees, etc.) on energy policy and associated issues.*

3.0 Accountability

One of the root problems in the UK planning regime appears to be the lack of accountability throughout the planning process. Officers rarely have sufficient resources to assess major development proposals in a timely manner. Councillors are often more responsive to the electorate and have no incentive to approve contentious applications, where there is significant opposition from the electorate. Applicants receiving poor service in any area of the planning process have very few options available to improve the situation. In essence, the only course of action is to appeal to the Secretary of State.

The appeal process suffers from all the problems

described above (i.e. uncertainty, protracted timescales, etc.) and, when considering energy infrastructure projects, involves significant additional costs.

3.1 Recommendations

E.ON UK would recommend the following with respect to addressing accountability issues:

- Planning Authorities should be held accountable for their decisions at all stages of the planning process;*
- The appeals process should be reviewed, with more cost and time-efficient options available to the appellant, whilst still maintaining appropriate scrutiny;*
- A more transparent and efficient complaints process should be implemented with stricter penalties for poorly performing planning authorities.*

4.0 Electricity Networks

It is important to consider the effect of the current planning regime on the ability to deliver infrastructure to facilitate future electricity generation and provide power to consumers, and also on the day to day operation of the electricity distribution networks which are a vital feature for the successful economic development of the country.

Decisions relating to the operation, maintenance and construction of new networks are made in response to a range of drivers, for example new network to accommodate both new development and intensification of existing load, reinforcement works to provide improvements in the quality of supply to customers and also asset replacement in accordance with condition, obsolescence, changes in technology etc. In the absence of this infrastructure economic development in the UK would at best be inhibited and at worst prevented.

The distribution network comprises overhead lines, underground cables, substations and associated apparatus at a range of voltages. The planning regime impacts on distribution network development in three main areas:-

- New Overhead Lines - Section 37 of the Electricity Act 1989 prescribes the process which Distribution Network Operators (DNO's) must follow to obtain consent from the Secretary of State in relation to new overhead line development. This is similar to the consent process for generating stations in excess of 50MW. Similar problems arise in relation to new overhead lines, as are described above in relation to new generation proposals. Furthermore, the Secretary of State has the power to review consents for overhead lines on request by relevant landowners at any time after 5 years from the grant of the consent, which can seriously undermine the integrity of the network.
- Existing Overhead Lines - Overhead Lines (Exemption) Regulations 1990 provides scope for limited development of the network without the specific need for a new S37 application. The scope of the exemptions is not clear and needs revision.
- New sub stations - Town & Country Planning Act legislation provides limited permitted development rights in respect of certain substations. However, new substations will often require planning permission. Such development proposals are subject to the delays, inconsistency and lack of accountability identified above.
- Wayleave Terminations - the Electricity (Compulsory Wayleaves) Hearings Procedure) Rules are a loose set of Rules that govern the process by which landowners and DNOs address landowners

terminating rights that underpin the existence of the distribution infrastructure.

In relation to land use planning issues which are likely to arise from the Energy Review, it is appropriate to have regard to the nature of the network development projects which will be driven by new generation projects. Examples, and the way in which the planning regime might impact, are as follows:-

- The construction of new circuits to accommodate load where there is no existing network (i.e. new greenfield generation projects)
- Upgrading of existing network where there is inadequate capacity to accommodate new generation load.
- The construction of new or the amendment of existing sub stations for additional load, or to reduce embedded generation derived network faults.

4.1 Recommendations

E.ON UK would recommend the following with respect to addressing specific network issues:

- *Ensure all instances where responses are required within the Electricity Act consents regime have a statutory deadline that is efficient and strictly enforced;*
- *More active management of the consents process by the Consents team within the DTI.*
- *Abolish the principle of review of S37 Consents, unless the electricity line has become redundant,*
- *Align the Wayleave Hearing Rules with the Town & Country Planning Appeal Rules*

Response to questions posed:

1. *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?

The current development control process is failing developers. A lack of consistency exists between Local Authorities and long delays in the determination of planning applications and appeals leads to increased costs to developers. We recommend a number of practical measures that the government should take to alleviate these planning constraints:

- a) Regular consultation with industry to understand future UK planning resource needs
- b) Adequate planning resources at local and national level
- c) Adequate training to ensure proficiency and experience with energy infrastructure projects, particularly new and emerging technologies
- d) Creation of dedicated major developments teams within local planning authorities
- e) Incentivising planning authorities and statutory consultees to meet targeted timescales for progressing planning applications
- f) Rethink the current target arrangements that provide no incentive to progress applications that overrun
- g) Encourage processing arrangements between developers and planners
- h) Conduct appeals in more efficient ways (i.e. by written representations rather than public hearing) whilst maintaining appropriate scrutiny.
- i) Better guidance to planning authorities regarding the considerations to be taken into account, energy policy issues, and the nature of their role in the s.37 application process.

Existing legislation also imposes a heavy burden on the industry to acquire land rights of third party land in order to facilitate development once approved. It is recommended that this burden and third party rights to undermine existing development are reduced.

2. 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?

Central Government has an essential role to play in driving forward investment in energy infrastructure and in particular renewables. Industry welcomes the positive thrust of planning policy contained in documents such as PPS22.

Whilst we recognise the importance of achieving balance between central direction and regional/local discretion, such discretion should not be allowed to alter Central Government guidance significantly or effectively ignore it in its entirety. There is a pressing need to educate Local Authorities on the key energy issues facing the UK, such as security of supply and emissions reduction, and take enforcement action where local policy interpretation differs from national policy.

It is clear that changes are required to the planning regime to promote a positive and proactive approach to network development projects.

An effective electricity distribution network is fundamental to regional economic success. Customers not only require supplies of adequate capacity and quality but also, in relation to connections to facilitate new development, their provision in a timely manner. This applies to commercial and domestic connections and also embedded generation customers. In this respect, it is considered essential for the planning regime to ensure due regard is given to electricity infrastructure as a core component of Regional Spatial Strategy.

There is also a lack of understanding of the importance of existing electricity infrastructure in the consideration of application proposals that may impact upon this infrastructure. Accordingly, DNOs are having to adopt a reactive position in relation to planning applications for development beneath or close to existing overhead lines which, when granted lead to wayleave terminations that have to be defended and/or requirements for line diversions and undergrounding that can be costly.

Clear government planning guidance is essential to establish a clear, proper and reasonable framework for infrastructure-related planning decisions, in relation both to existing overhead lines and the need for new infrastructure provision.

3. 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?

There is a general emphasis on impacts rather than benefits through the whole of the planning regime. It is important that all impacts of a project - both positive and negative are given appropriate weight in any decision.

There is also a tendency to expect ever increasing amounts of research and monitoring to occur in any Environmental Impact Assessment (EIA), regardless of costs, benefits or appropriateness to the project.

Whilst all applicants should be expected to produce an EIA that gives a fair and true account of the impacts, *both good and bad*, of any project, the amount of

research work involved in producing the EIA should be appropriate to the size, scale and expected impact of the project. The cost and delays which result from this aspect of a project are an important factor in relation to its viability. An impartial system of scoping appropriate research should be introduced.

In assessing proposed energy developments, there is a tendency for consultees and local planning authorities to expect the development to have no significant effect on any environmental receptor. Local planning authorities appear reluctant to give sufficient weight to the benefits of development, where consultees express concerns regarding impacts on their areas of interest. Consultees will often recommend that planning permission should be refused due to the effects of development, instead of commenting on the likely significant effects. It is the role of the local planning authority, not the consultee to weigh issues in making a determination.

There are specific, environmental impact-related amendments which could be made to clarify and update the Overhead Line (Exemption) Regulations 1990 in relation to development not requiring S37 consent. A modernisation of the Regulations would enable amendments to be made to existing networks to facilitate, for example, upgrading of overhead lines to accommodate new embedded generation load without the cost and delays of a full S37 application.

4. 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?

As E.ON Group has electricity and gas interests in Germany, Central and Eastern Europe, Italy, the Netherlands, Scandinavia, the USA and Russia, E.ON UK can call upon vast experience and expertise in planning issues from many parts of the world. We are in the process of preparing some learning points for the Barker team, and would be happy to submit this evidence at a later date, or through a specific meeting.

5. *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?*

We would question whether reforms to the planning system have improved its transparency. As previously discussed we believe that although proactive reforms have been initiated by Central Government, local authorities need to embrace the "spirit" as well as the "letter" of the reforms. Some Local Authorities are still either accidentally or deliberately less than helpful to developers.

Practices such as not revealing recommendations until a week before Committee meeting leaving developers with very little time to respond to any points raised, not passing on details of consultation responses/objections in a timely fashion and inconsistent personal signals are less than useful. Planners are reticent about holding regular meetings with developers to review progress because of time constraints. Councillors on Planning Committees advise that they cannot meet with industry for reasons of probity, yet discuss the merits of cases with those opposed to developments.

We believe stakeholders in the planning process fail to realise the effects delays/rejections in permission can have on the wider economic success of a region. We would urge the review to make local authorities think more widely about the implications of their actions and move away from short sighted constituent agendas.

It is not considered that the recent planning reforms have had a significant positive impact on network development. As already mentioned the foundation for an improvement in relation to network development projects is a clear, government driven policy framework which encourages stakeholders in the planning process for

electricity infrastructure to consider the importance of the infrastructure to the success of both individual developments and also the general economic success of the region.

6. 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?

RDA's and RSS's have little regard to the provision of electricity network development projects. Network operators are required to respond to new load requests to support new development which will dictate where network upgrades are required. There should be a cohesive interaction so that the need to reinforce the electricity network is identified at a strategic level in RSS..

7. 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?

Without doubt the Planning System suffers from slowness rather than undue haste. Sometimes this is due to the misconception of the public, Councillors and some planners that if a large proposal has not been assessed over a long period of time, it has not been assessed correctly.

In the main, this is due to a lack of resources for

Local Authorities and the various statutory consultees. However, there is also a lack of understanding of Local Authorities of their role and the appropriate considerations to be taken into account in relation to S36 and S37 Applications. This will need to be addressed. Points above have made some suggestions about how to improve efficiency, e.g. dedicated major development teams.

For the Planning Appeal system to improve, the issue of resources will also need to be resolved satisfactorily. A move away from Public Inquiries towards written representations in more cases may be appropriate. Tougher costs awards/penalties for authorities who consistently refuse applications where they meet the terms of Government guidance should also be considered. Government should also assess whether there should be some form of sanction where Councillors publicly state they are opposed to all proposals of a certain nature (e.g. wind farms), and thus do not treat each case on its merits. Government should also award significantly larger costs where Councillors have ignored the advice of officers, add grounds for refusal where these are clearly inappropriate and consider costs even on appeals made through written representations.

8. 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?

In some instances fees have deterred investment, such as small scale hydro schemes in Scotland (until the recent fees reform). However in the future, we expect greater use of microgeneration and small embedded projects which will have limited capacity to finance extensive planning processes.

For larger developers such as E.ON UK the issue comes less in the cost of the fees themselves, but in shouldering the risk of having to make many unsuccessful applications. Larger proposals can absorb the increased "risk" involved in submitting a planning fee more easily, but developers should be given more

certainty in the quality and consistency of service they receive. Making the planning process more transparent and timely would make application costs more bearable for developers. Clearer signals in the first stage of the planning application would lead to less rejected applications and increased productivity for both public authorities and the developer.

9. 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?

No comment

10. 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?

No comment

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

Some CCGTs and biomass plant were planned as part of business parks, presumably as part of a demonstrable business case. However, many CHP schemes have lost their customers and the related economic benefits have evaporated.

12. 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?

Planning authorities endemically lack resources and often lack the skills to deal with irregular projects.

We would recommend:

- a) Creation of dedicated major developments teams
- b) Measures be put in place to deal with small applications for embedded generation

If the definition of 'sustainable economic development' includes embedded generation projects, it is important for any skill development or extra resource within the planning system to be focussed on supporting infrastructure as well as the core generation project. The two components should be considered as equally important.

13. *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?*

No comment

14. *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?*

As previously voiced we believe that local authorities need to think more broadly concerning the consequence of their actions. For example in terms of network development there should be a mechanism which equates failed applications for network development against the effect on economic development in the region, so Local Authorities can explicitly see the economic effect of their actions.

A planning regime which is sympathetic to the DNO's statutory obligation to maintain an efficient, economic and co-ordinated network would be a firm foundation for balanced decisions. The incentive would be the subsequent economic and generation project success in a Local Authority's planning region.

15. *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?*

No comment