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Dear Ms Barker

**Barker Review of Land Use Planning, Interim Report - Analysis (July, 2006) : Response by National Grid Property Holdings Ltd.**

We are writing in response to the above Interim Report, published on 4 July 2006.

By way of background, we responded to the Review Team's "*Call for Evidence*", by letter dated 27 March 2006 (for ease of reference, a copy of that letter is attached). Your website states that this and the other responses to the "*Call for Evidence*" have been "*taken into account in the drafting of the (interim) report, and will be used to inform the final recommendations*". We also note from the Interim Report itself and your Foreword to it, as well as from Review Team comments that you are now asking for written responses on the following matters:

- (a) comment on whether your work is heading in the right direction;
- (b) advice on whether there are gaps and missed points;
- (c) detailed recommendations on how to remove complexity in the planning system;
- (d) other detailed recommendations on how to reduce delay; and
- (e) comment on matters that are currently dealt with by the planning system which are already/could be dealt with better in other regulatory processes.

Our comments on each of these matters are set out below.

**(a) The Interim Report: Direction**

We consider that the Interim Report accurately reflects of the role of the land use planning system as one of a large number of diverse factors affecting economic growth and productivity. The level of understanding of the Team of the balancing and mediating role of planning in contributing to economic success and sustainable development appears to be high. We therefore agree with many of the Report's comments and findings, particularly with reference to:

- promoting more "*joined up*" thinking in planning processes;
- the significance of the shortages of skills and resources in local planning authorities (LPAs) identified by the Team (in paras. 3.44 to 48);
- the need for a clear statement of national policy on infrastructure provision (para. 3.52);
- the planning system's disproportionate costs (paras. 3.40 and 41);

- development control issues (e.g. in para. 3.52), including the use of Planning Delivery Agreements to help to resolve them (para. 3.15), the problems regarding complexity arising from planning application documentation (para. 3.26) and the direct and indirect costs resulting (paras. 3.38 to 48);
- the delays caused by appeal and call-in procedures (paras. 3.18 to 20); and
- the conclusion that the Planning and Compulsory Purchase Act's development planning provisions need to "*bed down*" (para. 1.39) and that the Final Report should not focus on this part of the system.

## **(b) Gaps and missed points in the Interim Report**

There are several omissions in the Interim Report that we point out below.

Better acknowledgement is required by the Team of the overriding need for a "*culture change*" in how planning officers and other planning-related professionals e.g. highway and environment officers think. A positive approach to policy formulation and decision-making throughout the system should prevail; it does not at present. Consideration should be given to the ethos of the entire planning process starting from a presumption in favour of development, unless the development plan and material considerations indicate otherwise. This would help the system to achieve built development to meet identified needs, in the right place and at the right time. Such a fundamental change in approach would also help to move away from the perceived negative role of planning as being one of control.

With reference to section 8 on '*planning and price signals*', the interim report's analysis is weak and lacks sufficient substance, evidence and comment to allow any firm conclusions to be drawn from it. This area of the Review Team's work needs significant re-examination and reconsideration, to be able to draw clear conclusions from it and then make soundly based recommendations.

Lastly, but equally importantly, there are only very limited direct references in the interim report to a few of the responses to the "*Call for Evidence*", yet more than 200 were submitted. We assume that the Final Report will, at the very least, review, reflect on or refer to all of the suggestions for change made in those responses and in particular, those putting forward possible measures for reducing complexity and delay in the planning system.

Our only other, relatively minor and detailed point is that at present, the Team does not appear to understand fully the development planning provisions of the Planning and Compulsory Purchase Act (para. 1.13). The Local Development Framework (LDF) is not statutory; Development Plan Documents (DPDs) are statutory and they form part of the LDF. The LDF is made up of local development documents (LDDs) which include DPDs and also, non-statutory documents (supplementary planning documents-SPDs) not forming part of the development plan.

## **(c) Recommendations for reducing complexity in the planning system**

The Government should be focussing on procedural ways to simplify the routine processes in development control. We consider that this should be the principal means employed for reducing complexity in the land use planning system, with possible measures including:

### **Minor applications**

Legislation should be introduced, to streamline application processes for more minor applications e.g. with some prior approval processes and/or '*tick box*' applications, increased permitted development (PD) rights, the use of design coding and Local Development Orders (LDOs) (with clear and more concise guidance) and greater incentives for LPAs creating simplified planning zones (SPZs). In this context, we welcome the ongoing work on simplifying householder application processes, so as to free up officer time for considering more significant development proposals (see further comment on this below).

## Validation

Of more direct importance to us, the Government should revise advice to LPAs on what can be asked for as part of or in support of an application. This should state that LPAs must avoid asking for too much information simply to be “*on the safe side*”; e.g. they should not ask for EIA for smaller developments for this reason.

In this regard, we are very concerned with the current DCLG consultation proposals in “*Validation of Planning Applications*” (published on 25 July, for comment by 30 September, 2006). In short, the consultation proposals will vastly increase the complexity of the application process if local application checklists are introduced. What is difficult to understand is that while the Government is introducing a Standard Application Form to simplify and standardise this part of development control procedures, it is simultaneously complicating the application process hugely and unnecessarily.

The aim of “*adopting a more rigorous approach to validation by ensuring that all relevant information and documentation required to determine the application is submitted up-front*” (para. 3 of the Consultation Paper’s Partial RIA, p. 24) is laudable, as this would in theory speed “*the process from registration to decision*” and benefit consultees/the community. But because there is no differentiation proposed between what is required to validate a “*major*” application, and any other application, what may well happen is that LPAs, rather than discussing and agreeing informally at pre-application stage what is required in support of an application (other than the Government’s mandatory list of documents), will take a cautious approach and seek most (if not all) of the possible document requirements by including them all in their own list of “*Planning Application Requirements (Local)*”. The outcome will be arbitrary inconsistency, even between neighbouring authorities, in terms of the mandatory information being required to accompany an application for it to be valid. It will be luck of the draw whether our application proposals are sited in an LPA area that has few mandatory items on its own (Local) list, or in one with a vast list. Information requirements for an application may be directed more by the list than what is really required to assess and determine the merits of an application properly.

Yet another area of concern for us is where the Government is proposing changes to policy, this time to Circular 2/99 on environmental impact assessment (EIA). The proposed changes to advice will only serve to unnecessarily increase complexity in development control in relation to planning applications requiring such assessment. In short, the proposed changes to the relevant Circular (and the accompanying draft EIA procedural and good practice guidance), as well as the new DCLG interim guidance on EIA and reserved matters approvals (issued on 30 June, 2006), will almost certainly lead LPAs to take an even more cautious approach and they will require EIA of applications simply as a precautionary step, not fully understanding the cost, complexity and delay implications of making such a requirement.

Instead, the Government should be examining the scope for raising the threshold for EIA, for urban development projects in particular, to 1 ha., in order to avoid the unnecessary preparation (and analysis) of Environmental Statements.

## Single Consent Procedure

The proposed longer-term introduction of a Single Consent Procedure (following the welcomed proposed introduction of the Standard Application Form), that secures all the following and necessary permissions/consents should be a priority:

- (a) development;
- (b) conservation area issues;
- (c) listed buildings;
- (d) advertisement consent; and
- (e) highway works (including for road closure/stopping up etc.).

This combined procedure would be more efficient and would reduce complexity, in avoiding the duplication of regimes and applications. Clarity would also be provided for users, by having a single consent document for each development approved, making it easier to enforce and for users to understand.

## **Decision notices**

New secondary legislation should be introduced, which would require that permissions granted pursuant to Section 73 repeat all of the conditions that still remain from previous decisions, so that the new decision notice lists all relevant conditions. This would ensure clarity in identifying all relevant conditions affecting that development, and avoid the confusion that presently exists when trying to assess which conditions in which permission continue to apply.

Similarly, where extensions and refurbishment permissions are issued, LPAs should be required to repeat all of the conditions that still remain from previous decisions, so that a single new decision notice sets out all those relevant conditions. This simple measure would give clarity by identifying all the relevant conditions affecting a development, and would avoid the confusion that occurs now, when trying to assess which conditions in which decision continue to apply.

## **The use of conditions for financial contributions**

The Government should also amend the advice in guidance on s106 and in Circular 11/95 on conditions, to allow conditions to be used to secure financial contributions where there is no need for a contractual obligation on the LPA to deliver e.g. infrastructure. Such a provision would simplify the issuing of permissions and give added benefits of increased speed, efficiency and reductions in cost.

### **(d) Recommendations for reducing delay in the planning system**

#### **Skills and Resources**

Throughout the land use planning process, better use should be made of the skills of all the officers involved in the system. For example, and as stated above, we support the ongoing Householder Development Consent Review and its proposed relaxation of PD rights/new application procedures for householder developments. If its outline proposals were to be implemented, they would free up skilled resources to work on both policy formulation for LDFs and, more significantly at least in the short term, to give full and proper consideration to other more significant applications.

#### **Acknowledgement of planning applications**

Consideration should be given to the introduction of an absolute time limit of 5 days for an LPA to acknowledge receipt of an application, unless there are missing mandatory or necessary documents for the application. This would avoid LPAs delaying the acknowledgement of receipt of applications, and intentionally avoiding the commencement of the 8 or 13 weeks' determination periods (so as to try and ensure as well that the award of Planning Delivery Grant is not affected either). It is unsatisfactory at present that there is no right of appeal at this juncture, and that otherwise, an appeal against non-determination can only be made after a significant period of time from receipt has elapsed. A provision should therefore be introduced, for mediation at the point where the 5 days allowed has expired without resolution or alternatively, there should be scope for a fast track referral/appeal to the Government Office to resolve the issue within say 21 days (similar to EIA screening procedures).

#### **Call-in**

The Secretary of State should not be able to use call-in powers where there are no objectors to a proposal.

#### **Decisions and implementation of planning permissions**

There should also be an imposed, absolute time limit of three days for the issue of planning permission decision notices, where there is no impediment to the notice being issued e.g. as there would be on completion of a s106 obligation. There should be a deemed permission, if a planning permission decision notice is not issued in this time, so that the developer can implement the permission.

DCLG should also issue clear, new guidance on the pre-commencement discharge of conditions. This should be to the effect that development commenced without discharge is only unlawful if, for example, there has been no attempt to discharge conditions that “go to the heart” of a permission.

At implementation stage, and instead of requiring a separate agreement for highway works, there should be provisions to allow the applicant on to the highway to carry out works. Standard terms and conditions could be specified by DfT (relating to the agreement of a programme, co-ordination with others, insurance, supervision fees, bonds etc.). This would again speed the implementation process, increase efficiency and achieve a reduction in costs to both highway authorities and applicants. Likewise, there should be new provisions to allow developers to require statutory undertakers to carry out works to facilitate development for permitted schemes, in the same way that highway authorities can. Thus statutory undertakers would be required to use best endeavours to assist in the implementation of development. Again, this measure would help to avoid delay in the implementation of development.

### **Post-approval amendments to schemes**

The Government should introduce two simplified statutory processes for the speedy approval of post-planning permission changes to development i.e. one for before development has commenced and one for once development is underway. There should also be a provision for simultaneously amending Stopping-up Orders in this situation. This would avoid the lengthy delays that now occur because recent case law (*Sage –v- Secretary of State for Transport, Local Government and the Regions and Maidstone BC*) has, in effect, led some LPAs (but not all) to require a new application in such circumstances (either for the entire scheme if the permission has not been implemented, or for the changes if development of the building has started) and to a new application for any Stopping Up Order being necessary too.

### **Appeals**

The whole appeal process should be subject of fundamental review and revision. Consideration should be given to the Secretary of State only having scope to consider the grounds of refusal and third party objections when an appeal is recovered, and not any issue of her choosing. Informal hearings should be adapted and increasingly used for a greater number of appeal proposals, even where there are a significant number of objectors.

Also, new secondary legislation should require members to prepare/give evidence at inquiries where planning permission is refused against a planning officer’s recommendation. In this regard, DCLG should also issue new guidance on costs and award them more freely, including for written representations cases. It should refer to costs always being awarded, where an appeal has been allowed/planning permission granted by the Secretary of State or an Inspector, where Officers have recommended approval but Members have gone against that recommendation.

New provision should be made for a “limited” appeal, on a fast track and written basis, where an appellant has the benefit of a resolution to grant permission but the terms of the planning obligation cannot be settled. If the appellant offers a unilateral undertaking which meets the terms of the resolution and is legally compliant, then the decision notice for the permission should be issued. This would avoid the delays that occur when there is a dispute about the need for a planning obligation but not about the need for a development and a full appeal would be “overkill”.

### **Judicial Review**

DCLG should issue clear guidance on the very limited circumstances of when judicial review of planning decisions will be successful, and on the timing of taking such action, to try to help reduce the number of challenges to developments that delay their implementation.

There should be consistency in the judicial review period i.e. 6 weeks for all planning and highway decisions, whether made by the local planning authorities or the Secretary of State.

## **Compulsory Purchase**

Lastly on suggested procedural changes to reduce delay, DCLG should reconsider the Law Commission's recent and recommended changes to compulsory purchase procedures, as their simplification and streamlining would reduce the delays in implementing major schemes which often have significant economic development content.

For example, where DPDs explicitly state that compulsory purchase (CPO) powers will be exercised, an inquiry into the subsequent CPO should only be held in exceptional circumstances. The Government could also consider allowing LPAs to confirm their own CPOs in such circumstances. This would avoid the duplication of procedures where the issue could be addressed in principle in the DPD.

If the referencing and notice provisions for CPOs were simplified, so that the requirements could be fulfilled by advertisement, site notices and simple service on the property, this would increase efficiency and speed, and reduce cost. The preparation of detailed schedules is often expensive, laborious and in any event rarely completed accurately. At least 6 months could be saved on a complex urban CPO.

The plotting of CPOs could be simplified by treating the CPO area as a single unit with a notice being served in relation to the interest within that unit, avoiding the need for overly-complex plot boundary issues, often over multiple levels. Once more, this measure would increase efficiency and speed, and reduce cost. As above, the preparation of detailed schedules is often expensive, laborious and rarely completed accurately. Again, at least 6 months could be saved on a complex urban CPO.

Lastly, the provisions on the acquisition/extinguishment of rights could be simplified, so that all rights within an area (including any rights in favour of statutory undertakers) could be extinguished by the publication of a site notice, which would then trigger the right to compensation. Again, this measure would increase efficiency and clarity and avoid doubt.

## **Development Planning**

Although we note above from the Interim Report that the development planning provisions of the Planning and Compulsory Purchase Act will not be *"the focus of the final report"* (para. 1.39), we consider that the Government should specify the national policy criteria that should be used, other than exceptionally, for determining applications, for insertion in LDDs and particularly in DPDs. This simple measure would create efficiency in avoiding the repeated reinvention of policy criteria and statements of the obvious in each LPA for all LDDs, it would remove the need for objection and provide greater clarity and thus speed up the process of approval/adoption of policy and thereafter, application determination.

To reduce delays in moving from a policy and site allocation to a planning application/decision, there should also be clear Government advice on any scope for developer-sponsored LDDs, to allow developers to promote site-specific proposals. This used to be possible, using planning and development briefs under the old development plan/supplementary planning guidance-based system. There should also be scope to allow developers to promote policies/chapters of LDDs (and preferably, DPDs) requiring the payment by others of contributions where they themselves forward fund infrastructure benefiting those others, and to require the LPAs to enforce the policy requirements. If implemented, this proposal would formalise arrangements that are often being made between LPAs and developers of major projects/in areas where a number of schemes are being progressed by different parties.

### **(e) Matters currently dealt with by the planning system that are already or could be better dealt with by other regulatory processes**

An area of land use planning that is currently developing rapidly, but without clear Government guidance, relates to energy provision and infrastructure and to the consumption of energy in new developments. There are a growing number of ad hoc, statutory and non-statutory policies emerging in development plans, LDFs and SPDs referring to renewables and to carbon neutral developments. Such matters are already covered to some extent by Building Regulations and there is a growing concern in the development industry that the overlap in planning policy and Building Regulations requirements is already and will lead to further and

considerable inconsistency and a lack of clarity over what is required where, and what is feasible in terms of individual developments.

To remedy this situation, the awaited PPS on climate change should make general land use planning policy provisions for the location of development, emissions, energy efficiency and renewable energy sources/provision in new developments but the details and limitations to apply to any one scheme should not be included in land use planning law, Government policy or advice, RSSs and emerging LDDs (including DPDs) but only in revised national Building Regulations.

### **Conclusion**

We trust that all of the above suggestions and comments will be taken into account and that they will all be of assistance to you in drafting your final Report. We also would expect that our comments and suggestions, and any others made by other respondents, will be examined by a "*Review Panel*", to ensure that once they have been included in the Final Report's recommendations as feasible changes to the land use planning system, to have a positive impact on the economy, they will also be taken on to further stages and, eventually, to consultation and implementation.

Please do not hesitate to contact me in the meantime, if you wish to discuss any aspect of this response, or our response to you earlier Call for Evidence that is attached.

Yours sincerely

**Richard Alden**  
**Planning Manager**