



APJM/tjs@kingsturge.com

King Sturge LLP
7 Stratford Place
London W1C 1ST

T +44 (0)20 7493 4933
F +44 (0)20 7499 0468
www.kingsturge.com

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Ms Kate Barker
Barker Review of Land Use Planning
c/o. Carmel Howard
Barker Review Team
4-E1, 1 Horseguards Road
London
SW1A 2HQ

Dear Ms Barker

BARKER REVIEW OF LAND USE PLANNING

Mark Perowne, UK Managing Partner of King Sturge has passed to me your letter of 24 January. The following **reply is in a personal capacity** as both a Chartered Surveyor and an Economist, not as necessarily representing King Sturge.

My background over more than three decades is being an economist in the property market. However, much of my working life I have been in the property market working for a nationalised industry (British Rail), a life insurance company (Provident Mutual Life), lecturing (Portsmouth Polytechnic, Kingston Polytechnic and as a Visiting Professor at University of Salford and more recently as a Visiting Professor at Oxford Brookes University), as Head of Research for nine years at Healey & Baker (now Cushman & Wakefield) and for seven years at Richard Ellis(now CBRE).

Since joining King Sturge in 2000 I have been involved with a wide range of national and international consultancy assignments including advising HM Treasury on the Sir Michael Lyons review to relocate 20,000 civil servants, advising the new Commission for Equality and Human Rights, advising the National Audit Office and working on the Under-Served Retail Markets project – a retail regeneration project closely involving the ODPM.

General Issues

Before getting into the specific questions set out in your letter of 24 January, and the ODPM "Barker" review originally set up on 9 April 2003, I have the following broad comments to make.

Global Economic Issues

The growth of affluence, increasing uncertainties in the stock market since 2000, the collapse in interest rates in the bond market and the wall of UK and international monies seeking property investment have all created a climate where vast sums of money are increasingly invested in domestic and non-domestic property in the expectation of pecuniary gain. Such gains are largely based on asset value increases, not necessarily underlying occupational demands.

This global economic picture influences all Governments in the developed economies as well as central banks! But it also has far-reaching implications for many other areas of economic and land use planning policy. Unless Governments and central banks become more influential and are able to contain the THREE major imbalances (high long-term debt, annual budget deficits and international balance of payments debits) which have major impact on commercial property and house prices, the powers of the ODPM are likely to be very limited; a far more co-ordinated strategy must be developed involving both the ODPM and HM Treasury.

Public Sector Financial Constraints

Over the last 20 years there has been a continuing bearing down on public sector expenditure. Perhaps by chance, the Right Honourable Michael Heseltine stumbled across the ideal of selling public housing in the 1980s. This began a wave of "privatisation" which has swept across the developed economies. The economic necessity to control public expenditure and sell public assets (re-enforced by the targets of the Maastricht Treaty) has resulted in local authorities coming under extreme financial pressure; they have been constrained in their areas of economic activity.

The end result is that today the stock of public housing is very low and very little public finance from general taxation is nowadays allocated to public housing (unlike the pre-1980s era). As a result, local authorities' actions to create social housing and/or other social objectives have become distorted. Public "corporate corruption" is rife. This is not to suggest that individuals are corrupt but there is pressure on public authorities to find ways of meeting public needs by distorting systems. Across Great Britain local Government has frequently been accused of allocating planning permission on land held by the same authority, rather than allocating planning permission according to defined, and far more objective, public land use objectives.

The Planning Structure

Since the first comprehensive Town & Country Planning Act of 1947, the land-use planning regime in the UK has become increasingly distorted, partly due to the financial pressures as set out above. Increasingly there is a conflict between meeting financial and social goals versus the need to allocate land according to its most appropriate use. Hence, land has frequently become over developed and public infrastructure proved inadequate. Congested transport systems have resulted.

This dilemma is coupled with the fact that those involved with land use planning at local authority level are often poorly qualified and under resourced. This, combined with the lack of understanding amongst elected members, has resulted in some very poor and ill-conceived planning permissions being granted in some locations.

I see no prospects that the conflict between global economic trends, financial objectives and land use planning objectives will be resolved in the near future; the situation seems to be getting worse, year-by-year.

Sustainability

As you may know, King Sturge (and myself in particular) have pioneered a number of reports in this area over the last year or two (see Property Sustainability Matters 2004 & 2005 on our website). However, the longer we are involved with this subject (reviewing United Nations objectives, combining them with European Union directives and examining their implementation at national level) the more we understand the complexity and the confusion.

Clients frequently say to me "what exactly do you mean by sustainable?". In defence I try to explain that there are three different concepts of sustainability; economic, environmental and social. I am attaching herewith a copy of my article which appeared in the Estates Gazette last June. It seems to me that we are a very, very long way from having a structured approach to "sustainable" decision-making. James Lovelock's latest frightening book "The Revenge of Gaia" says this far better than I can explain in this letter.

The Major Question

The major question we have to ask ourselves is whether using the land use planning system is the best way to solve key social, economic and environmental objectives. For instance, to provide sufficient "social" or "affordable" housing (whatever such terms mean) the land use planning system is corrupted; planning permission may only be granted if a Section 106 Notice is deemed to meet certain social objective goals, regardless of whether that particular land use is appropriate.

For instance, the density of development in some locations has risen so high so as to make Section 106 agreements financially viable, that, without a shadow of doubt, the planning system is delivering high density squalor which future generations will come to regret. This is **not** sustainable planning.

This is not to argue that "urban sprawl" is to be praised. However, the lack of co-ordination between transport and other infrastructure needs, and an increasingly dense land use development process, poses one of the largest threats to the future of sustainable town and city centres. From a personal experience, in the town I live, there is a proposal to increase the density of economic activity far beyond the capabilities of the infrastructure to support such land uses. Pollution and environment degeneration are inevitable. However, the local Chamber of Commerce and the local retailers seem oblivious to what will come to pass ten years or more from now, as and when each of these major schemes is implemented.

The Planning Gain Supplement

Before reviewing the 15 key questions in your letter of 24 January 2006, I have some thoughts on the Planning Gain Supplement.

You will be aware by now of the history of the Development Charge relating to the Central Land Board of the Town and Country Planning Act 1947, the Development Levy and the Land Commission set up in 1964, the advent of Development Gains Tax introduced in 1973 and the Development Land Tax Act of 1976. It makes very sober reading reviewing how much public and private time and money was wasted producing and re-appealing such legislation. Not only did they "not work" but if they had worked, the net take (after all costs) would have made each or any of those taxes **the least efficient ways to raise public finance.**

A similar comment seems to be applicable to the proposed Planning Gain Supplement. The following key questions need to be answered, and costs allocated accordingly (both actual and notional social costs).

Who undertake a property valuation and how is it derived immediately before planning permission is granted? (there may be little if any actual comparable market evidence)

Who undertakes a valuation, and how is it derived, the moment after planning permission is granted?

Both the above questions rely upon the expertise of valuation profession. Whilst they all do an excellent job, there will be no hard market evidence to prove that such valuations are accurate. This is an enormous field of conflict (as well as fees for valuers and lawyers) to be overcome to assess these two simple concepts of value.

By contrast, Stamp Duty Land Tax is normally easy to quantify; the property is sold at a known value, and the tax is levied on that variable price.

The same cannot be said of the proposals to "value" before and after planning permission is granted.

Who is liable to pay tax?

As you know, especially with urban renewal projects, there are frequently a large number of people involved with a joint venture company. Public and private land owners seek partnership structures to gain expertise in the market, but also to off-set some of the risks involved. Defining the "land owner" is extremely difficult in many planning applications. To simply say it is the person with the freehold title, or the person with the long leasehold title, is far from sufficient. The issue becomes even more complicated if there are "options" involved in the process.

When is the Planning Gain Supplement paid?

I understand that it is to do with the time the development commences. To define the word "commencement" is extremely difficult. As you will know from history, the definition of completion has also been a point of contention in the past. For instance, some developers have deliberately removed the roof of a building to prove (beyond a shadow of doubt) that the building is not complete. Similar legal complications will arise with the word "commencement".

Perhaps you can clarify "does commencement begin when an engineer takes soil samples to verify the level of pollution on site?".

Such an event may take place before planning permission is granted but could be defined as the commencement of the building activities perhaps several decades before construction starts. Imagine the complexity of re-developing the Rover Cars Longbridge site in Birmingham. It may take over a decade; at what point will this mixed-use "development" begin and what is the value at that point in time?

If the developer is to issue a "development start notice" and within a "specified period" is to issue a "self assessment return", this seems to me a field day for lawyers, both in the public and private sectors. If the development is stopped by way of a court injunction, the costs and risks become even more enormous.

Without discussing the complexity of the relationship between PGS and Section 106 notices, and whether the central government OR the local government levies the tax, if the objective is to accelerate the supply of land for housing development, how does an increasingly complicated and costly structure of obtaining planning permission achieve this simple objective?

Annexe 1

I now address myself to the specific points made in the Annexe 1 attached to your letter of 24 January 2006.

1 Is the planning system sufficiently flexible?

You will see from above that there are global events dictating the value of land. The problem is not with the planning system but is far more to do with the use of finance to buy property. It is well known that in certain parts of Great Britain (such as in National Parks where "planning ties" according to our research have been a total failure and not significantly increased "affordable" housing supply) up to 40% of homes are owned as "second homes" and are held empty for much of the year depriving local inhabitants of "affordable" housing. This is a not a failure of the planning system, but an inability of a taxation structure to address this fundamental problem.

2 Does the current system strike the right balance between central direction and regional and local direction?

To some extent the situation varies regionally. The un-elected Regional Development Assemblies have added an additional level of complexity; the local authority as well as the RDAs need to be involved. The same applies to Highways Authority where there are frequently conflicts between Regional and Local Highway Authorities and the Land Use Planning System.

Town-by-town it works better or worse, depending on the politics of the local area.

3 Sustainable development is the core principal?

You will see what I said above about the concept of sustainable development.

The easiest way to achieve environmental sustainability (but not necessarily economic or social sustainability) is to continue to lighten up Planning and Building Regulation laws. The use of BREEAM and Eco-Home Standards and the advent of Energy Performance Certificates fall into this category. These are a far better way to achieve sustainable development.

4 Learning from overseas?

In many ways the UK system (you say English – what about Wales, Scotland and Northern Ireland?) is at the forefront of planning policy worldwide. We need to accelerate what is good **not** make it more complicated.

5 Planning to encourage business investment?

The secret to business investment is **certainty** and **transparency**. Vast sums of time are wasted every year due to the lack of transparency and the “vagaries” of the political decision making at a local level. Anything which cuts down the uncertainty is to be applauded.

6 Is the planning system “joined up”?

You will see my comment above relating to RDAs. Arguably, the system works better in Scotland and Wales than in does in England. It is far from clear how the unelected RDAs relate to the elected members at a Council level.

7 Planning applications are time consuming?

One of the major problems with large projects is clarifying national, regional or local objectives. The classic case frequently discussed is Heathrow Terminal 5. Nationally, it could be argued that Terminal 5 is essential to the economic prosperity of London. Equally, the construction of Canary Wharf has without doubt accelerated London’s ability to be the international “financial capital of the world”.

However, at a local level both Terminal 5 and Canary Wharf (it could be argued) do not reflect local needs. Clarifying the objectives of the planning system is absolutely essential and frequently the system of planning appeals does not adequately reflect a clear national strategy.

8 Planning Application Costs?

Yes, planning applications sometimes cost a vast amount of money. Some sites, such as the 120 acres next to Kings Cross rail station (which is a national disgrace) have wasted public and private monies for THREE DECADES. However, they also slow up development generally and thereby further enhancing asset values of standing investments. This is why people love to invest in property; they simply watch it rise in value as the planning system is unable to deliver new schemes. Limited supply and excess demand equals rising asset values. This is simple GCSE economics! But PGS is VERY unlikely to solve this issue.

9 High Occupational Costs?

High occupational costs are not a problem of the planning system. If they were, London would not be the most expensive location in the world to rent an office building and Heathrow according to the King Sturge survey, the most expensive industrial property location in the world. Do not forget, for a typical business, the cost of property represents only 5-10% of turnover whilst the cost of salaries represent 70-80% of turnover.

10 Impact on Competition?

Legal certainty is far more important than the planning system. "Corruption" and a lack of transparency, as with the current collapse of the German Property Market, are far more important than the planning system.

11 Planning System Innovation?

There is very little evidence that the planning system, or town planners are innovative. It is normally the private market which forces new thinking on town planners.

12 Do planning authorities have skills and resources to promote sustainable development?

The answer, as set out above, is no. There is a desperate shortage of skills and resources in local Government.

13 Stakeholder Engagement?

This is an impossible question to answer. Different local areas approach it differently; generally red tape and bureaucracy are not in the interests of Small and Medium Enterprises and other stakeholders.

14 Balancing local with wider interests?

With respect to sustainable development, see my comments above. We have not clarified what we mean by "wider community". **Clarifying, simplifying and speeding up** decision making are the keys to economic prosperity.

15 Economic development and regeneration?

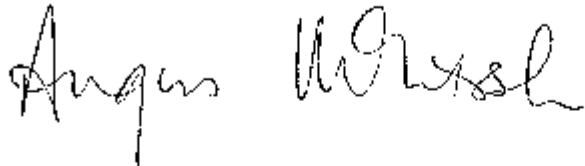
Unfortunately there is a myopia in the town planning process. For instance, development in town centres is perceived as "good"; development outside town centres is perceived as "bad".

This simplification of the planning process does not serve well. Urban regeneration, and meeting the needs of "under served markets" are classic examples where the mantra that "town centres are good", does not fit.

We know the major challenges today are the disaffected suburban communities where drugs and vandalism are rife. We only need to reflect on the problems in suburban Paris or suburban Birmingham in the last 12 months to know that this is a major issue which the current town and planning system is failing to address and does not appear to have any obvious solutions in its armoury. If town planning had solved the problem of ASBOs, I would not be writing this letter! Social "deprivation" in some local areas is a major problem.

I hope this rather long, but fairly comprehensive letter, is helpful. I would be very happy to meet with you or your team if you consider it helpful. Having worked as an urban economist for over 30 years, these are a few ideas which you may find useful, and I would be happy to discuss at greater length.

Yours sincerely



ANGUS MCINTOSH
Partner
King Sturge LLP

T 020 7529 6860 (Direct)
F 020 7499 0569 (Direct)
angus.mcintosh@kingsturge.com

PS

You may find the article attached useful. It was drafted in 2004 and an edited version appeared in The Times newspaper

PPS

I would be very happy to arrange a focus group of key property economists to discuss your letter, if appropriate