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Dear Ms Howard

THE BARKER REVIEW OF LAND USE PLANNING

We welcome the opportunity to respond to the Barker Review of Land Use Planning in England.

Business Context for Response

Tarmac Limited is the leading supplier of aggregates in England. We operate 82 quarries throughout the country supplying crushed rock and sand & gravel; we also supply secondary aggregates produced from iron and steel slag and recycled aggregates from construction and demolition waste. Marine dredged sand & gravel is supplied through a joint venture company.

As well as the extraction and supply of aggregates we have significant related manufacturing interests. Tarmac Limited is one of only four companies in England producing cement, from a new £100m+ state-of-the art plant at Buxton, Derbyshire and is also the single largest producer of lime for industrial and environmental uses in the UK. Tarmac Limited is also the biggest producer of asphalt in England and is amongst the top three suppliers of ready mixed concrete. Tarmac also has a market leading presence in the manufacture of concrete products – blocks, pre-cast structures, flooring, railway sleepers and paving materials.

All of Tarmac's activities are reliant on an efficient and effective land use planning system. This is especially the case for the extraction of aggregate minerals that is the core of our business. Unlike other forms of development, mineral extraction "consumes" land and thus the ability of the planning system to achieve cost-effective and business focussed delivery of new planning permissions to replenish mineral reserves and grow our business is critical to us – and, as we supply the very building blocks of construction, to development generally.

The main thrust of this response is, therefore, aimed at Land Use Planning in relation to aggregate mineral extraction.

The breadth of its interests has given Tarmac very extensive experience of the English Land Use Planning system. We are engaged in the land use planning process at all stages, from the development of national policy guidance (through our work in the CBI Minerals Group and the Quarry Products Association), through development planning, planning applications & appeals and development control. Tarmac is thus well placed to offer informed and relevant comments to the Barker Review.

Our comments are made under the following headings:-

- 1) The Development Plan system
- 2) "Joined Up" policy & regulation
- 3) Environmental protection
- 4) Speed of decision-making
- 5) Legal Challenges
- 6) Planning Appeals
- 7) Costs

1) The Development Plan system

The tenor of the Call for Evidence is that the reforms introduced from 2004 by the Planning and Compulsory Purchase Act have already contributed to improved operation of the planning system for stakeholders.

We have seen no evidence to provide substantive support for that view and believe that, at least as regards aggregates minerals planning, it is too soon to say whether, overall, these reforms have improved the system.

Whilst the moves at the strategic level of plan making from Regional Planning Guidance and Structure Plans to Regional Spatial Strategies appear to have some merit, the preparation of Minerals Development Frameworks is generally only at an early stage. The myriad documents to be produced under the 2004 requirements are confusing to the practitioner and lay person alike and will, we believe, require proportionately more time to deal with than the pre-2004 system.

Much of what has been seen to date has concerned with the preparation of Statements of Community Involvement, which have vastly increased the number of documents that we have had to consider and respond to. We question whether SCIs and the processes that result from them will markedly improve the "inclusiveness" of policy making. The acid test will be whether the revised plan making system delivers improved decision-making in terms of speed, quality and public satisfaction. In a contested area of the planning system, such as planning for aggregate mineral extraction, this is a substantial challenge.

Our view was that there was nothing fundamentally wrong with the pre-2004 system and that the improvements that were required to the system itself (such as the welcome introduction of binding Inspector's reports) could have been introduced by simple amendments, whilst operational performance could have been addressed by better resourcing of planning authorities.

At the present time we remain sceptical of whether the changes to the development plan system brought about by the 2004 changes will deliver an overall improvement and we do not consider that further change should be introduced until there has been time to assess the success or otherwise of full implementation of the 2004 changes. So far the process of producing development plans under the new system has not progressed far enough for a judgement to be made.

2) "Joined up" policy and regulation

This is an area of crucial importance to minerals planning and development, where both securing planning permission and the carrying out of development depends on the interaction of several policy and consent regimes, mainly those where the Environment Agency is the regulator. Key areas are:-

- Water resources
- Flood risk
- Waste

These are some of the areas of greatest difficulty, with the Environment Agency developing policy in these fields that does not adequately balance the need for development against the regulatory approach. These policies then drive the Environment Agency input to development planning and the response to planning applications (where they are a key consultee). Planning authorities invariably follow the Environment Agency line, to the detriment of the planning balance.

- Water resources – development of water abstraction licencing policy by the Environment Agency (e.g. in Catchment Abstraction Management Strategies) is not well integrated with consideration of the effects on development of the likely licencing outcomes. In addition, whilst Environment Agency policy may admit the grant of planning permission, the relatively short term approach of the Agency to the licencing of abstraction itself will lead to tensions between a planning system that envisages long term development and a licencing regime that does not provide a sufficiently certain long term environment for investment.
- Flood risk – the Environment Agency's policy and approach seemingly contains no balanced view between the absolute elimination of risk and the need for development.
- Waste – Environment Agency regulatory policy on inert waste is adversely impacting on the restoration of mineral sites (and hence on the availability of land for mineral working) without any sensible enhancement of environmental protection.

There is strong concern that the Environment Agency's role in regulation, compounded by planning authorities unwillingness to challenge the Agency's position or subject it to a balanced appraisal, is leading to the Agency taking on the de-facto role of planning authority, thus negating the role of the planning system in producing a balanced consideration of issues that is at the heart of the land-use planning system.

There is an aching need for joined up policy and balanced regulation if development is not to be unreasonably constrained.

3) Environmental Protection

Annex 1 to the Call for Evidence helpfully asks for views on whether planning policy is too biased on favour of environmental protection, at the expense of economic considerations.

This is a very important area for mineral planning.

Tarmac acknowledges that mineral extraction proposals often raise complex environmental issues that must be given proper attention and that due weight should be given to the protection of key environmental assets (and to the role that mineral extraction can play in enhancing the environment through restoration).

There are concerns that:-

- Planning policy often over emphasises the protection of features of local nature conservation significance, rather than striking a reasonable balance between features of national, regional and local significance. The issue here is that aggregates need to be considered at the regional or sub-regional level, but stakeholder concerns are often (understandably) at the local level. This is just an example of the tensions that the planning system must resolve.

It is important that the correct balance is maintained in development plans and development control decisions. This requires clear policy guidance and effective policing in operation.

- The approach to archaeology is imposing excessive costs and constraints on minerals development. Archaeological evaluation prior to determining planning applications now

imposes significant burdens of time and cost on applicants. The scope of what is required has increased markedly in recent years, for reasons that have not been well considered or explained. Decisions on the protection to be afforded are increasingly poorly explained and seemingly capricious.

4) Speed of Decision-making

Tarmac acknowledges that many of its planning applications for aggregate minerals extraction are major development proposals. They are invariably subject to formal Environmental Impact Assessment. As such they may properly take some time to determine. Absolute speed of decision-making is not itself a predominant concern, what is important is that there is a reasonably certain programme and timetable for getting to decisions on planning applications that will often have taken several years and cost some £100,000s to prepare and submit and that decisions are made: -

- After a proper review of the materials submitted
- On the basis of a high quality assessment of the information submitted by the applicant and other stakeholders
- Consistently with planning policy.
- By a planning committee that is well briefed and advised and that approaches its task fairly

It is often the case that the long period for determination that is a constant feature of mineral planning applications are, despite the considerable efforts that are put into pre-application consultations with stakeholders, the result of the planning authority waiting for the substantive response of consultees. Further improvement in this respect could materially assist the performance of the planning system, to the benefit of all stakeholders.

Question 7 of Annex 1 to the Call for Evidence asks what improvements might be made to the planning appeal system in the context of improvements to the overall speed of decision-making? We comment on the planning appeal system at 6) below, but would say that we regard a planning appeal as very much a last resort in obtaining a planning decision. A properly considered and negotiated planning permission secured by the timely first instance decision of the planning authority is much preferable to the additional time, cost and uncertainty of a planning appeal.

In relation to applications for non-mineral development, we are concerned that the emphasis placed on speed of decision has had adverse consequences. The refusal of planning applications, where a planning authority required further information (even where the scope of what has been submitted had been discussed with the authority in pre-application discussions), in order to meet speed of determination targets it is not uncommon. This leads to a considerable waste of time in making re-submissions and inevitable further time in securing a decision. This is a classic example of an ill-thought out and poorly incentivised performance target having adverse consequences.

5) Legal Challenges

Tarmac has noted that a recent factor in the performance of planning authorities in determining planning applications is the degree to which they have either been dissuaded from taking decisions that override objections from a consultee and/or have been forced to delay in determining applications whilst awaiting consultee responses by the fear of legal challenge to their decisions.

This is an area that requires further close examination so that planning authorities are not discouraged from making balance decisions and a reasonable balance is achieved between the protection of legitimate interests and the balance and efficiency of the planning system.

6) Planning appeals

As noted in 4) above, we see use of planning appeals as a route to securing an initial determination of a planning application very much as a last resort.

The planning appeals system is however a very important means of properly testing issues and the planning balance in cases where a planning authority has decided to refuse planning permission.

The mechanism for dealing with planning appeals is not in itself in need of change. What is most definitely required is a far greater number of planning inspectors, so that the time taken for those appeals that need to be dealt with by formal inquiries (including most mineral planning applications) to be brought on is reduced to a reasonable level from the current period of 12 months or so.

7) Costs

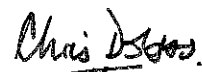
The costs of effective participation in the planning system, particularly those for aggregate minerals extraction are substantial.

In addition to the planning application fee of up to £50,000 (and many sites are of a size where this maximum fee is payable), the cost of preparing a planning application and associated environmental statement (effectively mandatory for all minerals applications) for deposits of modest size will approach £100,000 and would increase substantially if extensive pre-determination archaeological investigations are required or there was a need to carry out detailed flood risk modelling.

It is estimated that the direct cost of providing a staff resource to handle planning matters, planning applications fees and consultancy costs for Tarmac's business in England is in the order of £2.5 million pa. The cost of obtaining planning permission per tonne of newly permitted reserves is a material element of total operating cost at the unit level at which investment decisions are made.

We hope that these comments are helpful and would be happy to provide any further information or discuss any aspects of his letter, should that be helpful.

Yours sincerely



C G Dobbs

Director of Estates & Geology