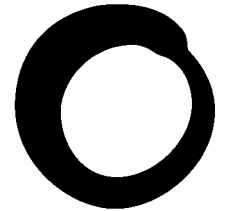


August 2006



**Friends of  
the Earth**

# Response to the Barker Review of Land Use Planning: Interim Report

## Introduction

Friends of the Earth welcomes the opportunity to respond to the Barker Review of Land Use Planning: Interim Report (henceforth referred to as the Interim Report).

The land-use planning system remains the most sophisticated form of economic, social and environmental regulation ever introduced into the United Kingdom. Without planning regulation, there would be no effective governance of the development of land at the local, regional and national level. The fact that planning regulation places local decision-making by elected representatives at the heart of the process is one of its most unique and important aspects. There is also a powerful principled case for public participation in local planning decisions. This case is based on the importance of community empowerment and learning, encouraging active citizenship and delivering better informed decisions that themselves contribute to social and environmental justice and sustainable development.

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Friends of the Earth therefore welcomes the Interim Report's explicit conclusion, expressed in the Executive Summary, that planning is essential to deal with market failure, and a vital mechanism to ensure the integration of economic, environmental and social objectives in spatial development.

However, the main body of the report does not share this analysis, instead taking a much narrower view, largely assessing 'optimality' and 'efficiency' against the criteria of economic benefits to the developer only. This narrow assessment undermines the report's subsequent conclusions, that planning is in need of reform. It is simply not viable in a democratic society to suggest that the interests of a small number of businesses and developers should override the public interests of the country.

### **Limitations of the Interim Report**

The Interim Report is severely limited in the validity of its conclusions, because it concerns itself with only a narrow analysis of land-use planning. This is an inevitable consequence of the flawed terms of reference to assess progress against only one of the objectives of planning's wider statutory objectives to achieve sustainable development: the economic objective.

Although it may well be appropriate to assess whether planning is delivering on any of the main pillars of sustainable development (economic, environmental, social), it is not acceptable to prescribe policy solutions based solely on that assessment, for the simple reason that the central purpose of planning – as the executive summary states - is to deliver on multiple objectives.

Even if, as the Interim Report suggests, 'more efficient' outcomes - against a single criterion of narrow economic benefit to the developer - are possible, the reason they should not necessarily be pursued is that slightly less efficient outcomes for the developer may be more than outweighed by greater economic benefits elsewhere in society, or greater environmental and social benefits elsewhere in society. The land use planning system exists in a democracy to promote the overall public interest, not single interests.

The Interim Report's preliminary finding that planning needs to be 'speeded-up' is therefore based upon a false premise, because it only looks at a narrow subsection of the total economic impacts. A wider view is essential precisely because planning is needed to overcome market failure, which the Interim Report itself acknowledges (paragraph 1.8, page 25).

Such an integrated assessment would in addition require a much wider evidence base – for example on the wide-ranging economic benefits of planning, which are largely ignored in the report - and the environmental and social costs and benefits, which are given only the briefest mention. For example, flooding risk is acknowledged as an issue that would not be addressed by developers (much to the detriment of future householders or businesses in high flood risk areas), but is considered an 'environmental concern' rather than an environmental, social and economic concern, even though there would be multiple economic and social costs (paragraph 1.8, page 26).

We are particularly disappointed that the Interim Report did not explore the wider constitutional functions of rights and democratic accountability in planning. We remain

concerned that this has led to a highly selective analysis of the literature surrounding public engagement.

## Friends of the Earth's main concerns

Friends of the Earth has concerns over five specific areas of analysis in the interim report:

- Rights and democracy
- Biodiversity and environmental designations
- Retailing and town centres
- Complexity and delay in planning
- Planning and competitiveness.

We ask that the Final Report assesses all the economic, social and environmental benefits and costs of planning before making recommendations rather than, as at present, making recommendations based on an assessment of a narrow definition of the costs of planning to the economy. Failure to do this will result in seriously sub-optimal outcomes, as the rest of our response contends.

### 1. Rights and democracy

The Interim Report has major implications for community participation in the planning system which, taken to their logical conclusion, would represent a very serious erosion of the rights of people and communities to shape their local areas.

#### Local democracy

Friends of the Earth would like to see the final report acknowledge the special role of democratic decision making in planning. As we noted earlier, the fact that planning places local decision-making by elected representatives at the heart of the process is one of its most unique and important aspects. That is why we are concerned to see statements such as this: *"local councillors may go against the advice of their officers when taking decisions on more complex or controversial cases (while this may be fully justifiable it adds to uncertainty)."* (paragraph 3.38). The decision making of local elected officials is a bed-rock of the planning system and without it the robustness of decisions would be seriously compromised.

#### The role of special interest groups

Whilst paying lip-service to the importance of people in the process, the Interim Report claims that local 'special-interest groups' are a major problem for economic development. Paragraph 1.21 of the executive summary states that: *"plan making and development control can favour smaller and more concentrated special-interest groups at the expense of more diffuse interests."* In paragraph 3.48 the Interim Report goes on to allege that: *"complexity can work in the interest of certain groups who can use their knowledge of the system to work to their advantage. The ability of pressure groups to overcome the collective action problem of participation means that they have a special ability to influence the planning system - a complex system increases this advantage."*

Friends of the Earth cannot agree with this sweeping statement. While the influence of

pressure groups (or other parties) is not examined in detail, neither does the Interim Report provide any analysis of the very significant barriers to public participation which exist in the system now. Nor is there any discussion of the wide range of institutionalised advantages which the development industry currently enjoys, including privileged legal rights. Only on one occasion does the report touch on the unequal distribution of rights of redress: *“It is also the case that not all the processes work against development: the lack of third party rights to appeal can work to favour economic growth, for example, as applicants can appeal a rejected decision while opponents of development are not able to appeal a successful application.”* (paragraph 4.32). This statement appears to endorse the absence of a very basic right of redress for communities in the planning system. It also suggests that the Review Team has failed to examine the value of planning to the broader systems and structures of local governance.<sup>1</sup>

The Interim Report provides no evidence for its assertions with regard to ‘special interest groups’ and the issue therefore must be researched thoroughly before these statements can have any validity. Developers have far greater resources and expertise at their fingertips than local community groups who rely on voluntary time and local knowledge, whether or not they are supported by ‘pressure groups’. This is already acknowledged by Government publications on participation.<sup>2</sup>

### **Levels of consultation and involvement**

The Interim Report raises further concerns about existing levels of consultation in the planning process. In paragraph 3.36 the report describes the requirements for statements of community involvement as *“overly prescriptive about consultation, and process driven.”* Paragraph 3.38 alleges that *“Complexity is compounded by the large range of statutory consultees, local groups and other stakeholders who are engaged in the decision-making process.”* It is hard to conceive of how this analysis of the ‘problem’ of community involvement can be squared with existing UK Government policy which aims to enhance it. For example, PPS1 and the ODPM report ‘Community Involvement in Planning: The government’s objectives (2004) are both clear that more effective community involvement is a key element of the Government’s latest planning reforms.

We also fear the Interim Report has failed to convey the importance of statutory consultees such as the Environment Agency in shaping decisions which reduce the causes of and adapt to the threat of climate change. Rather than less involvement, there is a strong case for the greater involvement of such agencies to reduce the risk of inappropriate development where there is risk from flooding and sea level rise. Such inappropriate development will create both huge direct social and economic costs and a specific burden on the Treasury and individuals, for example as the insurance industry passes on its rising costs. The wider economic and social costs of ‘streamlining’ the involvement of statutory consultees need to be very carefully weighed.

The Interim Report does discuss the opportunities to provide greater financial incentives to communities to accept a pro-growth agenda. Friends of the Earth believes that while communities should gain benefit from sustainable development, financial incentives should

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<sup>1</sup> Friends of the Earth supports a limited third party right of appeal as set out in the Green Balance research report: Third Party Rights of Appeal in Planning, 2002.

<sup>2</sup> See for example ODPM (2004) “Community Involvement in Planning”, section 1.5.

not be allowed to outweigh other legitimate planning concerns. Nor should new initiatives reinforce the existing perception of planning gain which is viewed by many as a form of 'bribery'.<sup>3</sup>

The Interim Report also shows a worrying lack of awareness of how the existing planning system is already dominated by property and business interests. There is no question that medium and large scale businesses have a major influence on local plans and have access to expertise which many communities do not. We hope that the final report will recognise the reality of the situation rather than propose reforms that will marginalise communities still further. Existing UK Government policy and Ministerial statements and speeches have all recognised the importance of citizen engagement and community participation in decision making. We suggest that the final Report needs to catch up with current UK Government thinking, as well as recognise the UK's obligations under the Aarhus Convention. These obligations are about integrating the objectives of access to information, rights to participate and rights of redress within one simple framework that citizens can understand. All these objectives are relevant to the planning system, which therefore needs to be responsive to them.

## **2. Biodiversity and environmental designations**

Chapter 1 of the Interim Report contains a detailed description of the statutory environmental designations in the UK. There was considerable concern in the run up to the publication of the Interim Report that its analysis would conclude that such designations amounted to an 'anti-competitive landscape' for development, and that UK environmental designations were more complex than other European countries with less protection. The Interim Report does contain a discussion of the level of environmental designations in England including detailed statistics about land area and the legal basis of such designations. But it does not provide an analysis of this material. Friends of the Earth is aware of a growing discourse (amongst a minority) that environmental designations, both national and based on EU directives, provide 'gold plated' environmental protection and should be 'rationalised'.

In fact a range of development takes place within our statutory designations already, including a significant proportion of our aggregate mineral production. To provide an indication of the extent of development in national parks, for example (which the Interim Report failed to examine), the Peak Park Local Plan recorded that in 1990 8.5 million tonnes of limestone were produced in the park with permitted reserves of 341 million tonnes. Such designations are not, therefore, prohibitions on sensitive development but they do provide vital safeguards to ecosystems and natural landscapes which have been progressively eroded and diminished in the post war period. Before the Countryside and Rights of Way Act was introduced in 2000, more than 300 SSSIs were being damaged every year.<sup>4</sup> An assessment published recently by English Nature demonstrates that there is a long way to go to in order to bring SSSIs up to favourable conditions.<sup>5</sup> Many of these environmental designations have intrinsic and non-tradeable value (i.e. they are unique and irreplaceable),

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3 Campbell, Ellis and Henneberry (2000) "Planning obligations, planning practice and land use outcomes", Environment and Planning B: Vol 27(5) 2000 pp 759-775.

4 Friends of the Earth (1998) 'Wildlife Act 1998'.

5 <http://www.english-nature.org.uk/news/story.asp?ID=786>.

in particular where rare and endangered species are involved. In addition such designations have much wider national economic benefits in terms of tourism. They also help ensure a high quality of life, which will be an increasingly core factor in attracting and retaining skilled and highly mobile workers in a competitive globalised economy.

### **3. Retailing and town centres**

The constraints on out-of-town retail provision are identified in the Interim Report as one of the issues which may be a brake on UK retail competitiveness and productivity. An argument is constructed that the UK Government's 'town centre first' policy is no longer desirable. The analysis suggests that land-use planning has led to the 'sub-optimal' location of many retail developments. There is also an allegation that planning has led to smaller retail developments and evidence that local authorities have a bias towards indigenous businesses. The Interim Report alleges that town centres have higher carbon impact because of less efficient transport servicing. It also dismisses the argument that out-of-town development does not serve those on low incomes or without car access. Therefore, while the Interim Report does not recommend at this stage the removal of out-of-town controls, this appears to be its clear implication. Friends of the Earth has a number of concerns about this approach.

#### **Is the 'town centres first' policy a brake on productivity?**

First, the evidence base is weak. There is no clear evidence provided by the Interim Report to demonstrate that planning policy, including the 'town centres first' policy, is adversely affecting the productivity of UK retailers. The Interim Report acknowledges that the gap in productivity is unclear and that factors other than planning contribute to it. Evidence gathered by the Office of the Deputy Prime Minister (ODPM) suggests that negative effects of planning on the economy and productivity are generally small. The ODPM select committee found in 2003 that "*Our evidence shows that planning is not a significant factor in determining productivity even in the retail sector*". There is certainly not a strong enough evidence base to justify considering significant changes to current retail planning policy on productivity grounds.

Second, Friends of the Earth fundamentally disagrees with the analysis that planning policy on out-of-town development acts as a barrier to entry for retailers - either for large format stores or for smaller and independent retailers.

The Interim Report suggests that market entry for large scale retailers is difficult in the UK, and also that firms may be prevented from growing to their full potential. However, in the grocery sector existing firms do not appear to be finding it hard to grow. Market leader Tesco has grown its market share from just over 13 per cent in the mid 1980s to about 30 per cent in 2006. In late 2005 it was revealed that Tesco's land bank, if built on, would increase its market share to 45 per cent.<sup>6</sup> Nor has Tesco been prevented from building large-format stores: the proportion of floor space taken by hypermarkets has more than tripled over the last five years, most of which will be located out-of-town or on the edge of town centres. Last year Tesco opened 18 Extra hypermarkets, mostly through extensions to existing stores. Another 28 Extra stores are planned to open in the coming year, again mostly

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<sup>6</sup> Richard Fletcher & Dan Drillsma-Milgrom (2005) 'Focus: Tesco tactics', The Sunday Times, 18/09/05.

through extension of existing superstores.<sup>7</sup>

Although planning policy has sought to concentrate retail development in town centres about 60 per cent of development still takes place out of the town centre, with a rising percentage of 'edge-of-town' locations.<sup>8</sup> Recently revised national planning guidance (PPS6) actually encourages the provision of sites for large format stores on the edge of town centres, so it is our view that planning policy contains a bias in favour of big supermarkets and other retailers that operate out of large format stores.

It is likely that any weakening of the policy to restrict out-of-town development would disproportionately favour the major retailers such as the biggest four supermarkets, allowing them to expand significantly. In the case of the grocery market four companies already control over 75 per cent of the market and this would allow them to grow their market share further. The Office of Fair Trading (OFT) has recently acknowledged that the level of dominance in the grocery market is already such that it may be having an adverse effect on competition and harming consumers. It is for this reason that the OFT referred the grocery market to the Competition Commission.

While the Interim Report has produced a long list of the 'benefits' of large stores there is no equivalent list of the economic and social benefits of smaller stores. Such a list would include more quality local jobs, a greater contribution to the local economy, more locally sourced food (which is good for the rural economy), greater accessibility, and the retention of local wealth.

Allowing rival chains to open in out-of-town locations where one or two large supermarkets already exist will not do anything to increase genuine consumer choice but will instead harm consumer choice since it will inevitably lead to the loss of more independent and smaller retailers. Local economies will be harmed by the loss of local independent businesses which tend to spend more money within the local areas and provide more jobs.<sup>9</sup> In the case of food retailing there will be wider knock-on effects for the rural economy as smaller independent shops tend to source more food from the surrounding countryside. Shoppers will become more car dependent if more shopping is located out of town. It will also cause disproportionate harm to consumers without access to a car who are more dependent on town centre and high street shops. This is discussed further below.

In paragraph 5.33 the Interim Report suggests that by restricting out-of-town development prices go up in the town centre. The report has blamed planning without looking at other reasons for rises in prices of retail premises. For example, research by the Association of Convenience Stores found that rising prices for convenience stores are a result not of planning policies but of the large retailers entering the convenience store sectors of the grocery market. For example the average cost per store when Tesco acquired Adminstore was £1.2 million.<sup>10</sup> The large multiples can cross-subsidise losses suffered in the acquisition

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<sup>7</sup> Tesco Annual Review and Summary Financial Statement 2006.

<sup>8</sup> Calculated using ODPM statistics. For breakdown see Friends of the Earth (2006) 'Calling the Shots: How supermarkets get their way in planning decisions' page 7.

<sup>9</sup> The net loss of jobs per superstore has been calculated to be 276 jobs, according to research by the National Retail Planning Forum 1998.

<sup>10</sup> Association of Convenience Stores' submission to the Office of Fair Trading: 'Grocery Market: Proposed decision to make a market investigation reference'.

and early operation of these stores but the price of convenience stores has become an almost insurmountable barrier to entry for existing and prospective small and independent retailers. The entry of big supermarkets into the convenience store market has not been driven by restriction on out-of-town development, but by the recognition that this is a vibrant market as consumers increasingly value the convenience of local shops.<sup>11</sup>

### **Carbon impacts on retail**

The Interim Report claims that town centres have a higher carbon impact as a result of less efficient transport servicing.

Paragraph 5.34 suggests that because customers may visit out-of-town stores less frequently than in-town stores, the net impact on transport is unclear, implying that out-of-town retailing does not necessarily generate more travel by car. The Interim Report also claims in paragraph 5.37 that large format stores require fewer road haulage miles and that central distribution systems minimise journeys.

However the evidence presented to back up these claims is very selective. The approach is also too narrow: the report only looks at UK distribution systems and not sourcing policies. DEFRA has concluded that the air freight of food has the highest environmental impact per tonne of any mode, accounting for 13 per cent of CO<sub>2</sub> emissions from food transport in 2004.<sup>12</sup> As the major supermarkets have become more dominant, the distance that our food travels has increased and it is the multiples that have encouraged consumers to expect unseasonal produce such as strawberries all year round.

The Interim Report is also misleading in the way it presents evidence on food haulage miles within the UK. A recent report for DEFRA on food miles found that urban *food vehicle km* by car increased by 30 per cent between 1992 and 2002 and concluded that “this has been driven by an increase in car ownership together with changes in shopping patterns from frequent visits to local shops towards weekly visits to large out-of-town supermarkets”.<sup>13</sup>

Whilst this report did find that increased loads and efficiency improvements had recently resulted in a decrease in vehicle km it also reported that the overall trend has been upwards since 1974.<sup>14</sup> DEFRA predicted that the downward trend was likely to go back up again if there are continuing increases in food movements. This prediction was backed up by the most recent statistics published which show that food transport by HGV (measured in vehicle km) increased by 5 per cent between 2003 and 2004, reversing the previous decline, partly due to a 3 per cent increase in imported food and drink.<sup>15</sup>

The AEA Technology report for DEFRA also describes the dramatic increase in *food tonne*

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<http://www.thelocalshop.com/default.asp?Call=Article&Search=OFT+decision+2006&ID=4510>

<sup>11</sup> Lancaster University Management School (2004) ‘Retail Competition and Consumer Choice Workshop: Briefing Note’, 8 June 2004.

<sup>12</sup> DEFRA (2005) ‘Food Transport Indicators to 2004 Experimental Statistics, national statistics’, 20 July 2004.

<sup>13</sup> AEA Technology (2005) ‘The Validity of Food Miles as an Indicator of Sustainable Development’. Final report for DEFRA, July 2005.

<sup>14</sup> AEA Technology (2005) ‘The Validity of Food Miles as an Indicator of Sustainable Development’. Final report for DEFRA, July 2005.

<sup>15</sup> DEFRA (2006) ‘Food Transport Indicators to 2004 Experimental Statistics’. National statistics, 20 July 2006.

km due to concentration of food sales in supermarkets, concentration of the food supply base and associated changes in food delivery patterns.

### **Impacts on low income consumers**

The Interim Report suggests that town centre shops will not necessarily be conveniently located for deprived communities and out-of-town development is actually beneficial for those in low income groups, although no evidence is presented for this view. Friends of the Earth disputes these conclusions.

First, planning policy as set out in PPS6 seeks to protect and promote *district* and *local* centres as well as city and town centres. These more local centres are likely to be closer to residential areas and accessible by foot or bus. Corner shops and neighbourhood parades located in residential areas are also important to those without cars. Although they are not covered as 'centres' by PPS6 they will also be under threat from an increase in out-of-town development. By contrast, out-of-town retail stores do not tend to be located in residential areas and are often located on major roads to facilitate access by car-based shoppers.

Second, there is much evidence that local shops are very important for people on low incomes. The Department of Health's analysis of improving shopping access for deprived communities stressed the importance of local shops and raised concerns about the impact of supermarket dominance on local shopping provision.<sup>16</sup> More recently, the Food Poverty Project, which works with over 300 disadvantaged communities in the UK, raised concerns about supermarket dominance to the Competition Commission and warned that the loss of independent shops can result in a more limited choice of healthy food being available to disadvantaged consumers.<sup>17</sup> Where low income households have access to large supermarkets, these do not necessarily best serve their needs. A study in Leeds found that street markets and greengrocers are better than supermarkets for promoting increased fruit and vegetable consumption.<sup>18</sup>

There is also evidence that encouraging more out-of-town development will not benefit low income households. Travel to out-of-town stores adds a significant cost to low-income households. A survey of low income families carried out by NCH, The Children's Charity, found that travel costs to go food shopping added 23 per cent on the average shopping cost.<sup>19</sup> If local shops were still present, people wouldn't have to travel so far, or spend so much.

### **The role of planning in retail provision**

The Interim Report states in paragraph 5.46 that *"Planning policy does not have the tools to counter loss of diversity, and therefore other measures would have to be considered to support small independent operators if this were thought to be desirable"*.

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<sup>16</sup> Department of Health (2000) 'Improving shopping access for people living in deprived neighbourhoods.' National Strategy for Neighbourhood Renewal, Policy Action Team 13.

<sup>17</sup> Food Poverty Project (2006) A response by Sustain's Food Poverty Project to the Competition Commission's Grocery Market Investigation.

<sup>18</sup> Wrigley, N et al (2002) 'Assessing the impact of improved retail access on diet in a 'food desert': a preliminary report'. *Urban Studies* Vol. 39, No. 11, pp. 2061-2082.

<sup>19</sup> NCH (2004) 'Going Hungry: The struggle to eat healthily on a low income'.

It is true that planning cannot distinguish between operators and this does leave a loophole in terms of assessing local dominance. It allows for a situation where Tesco can gain some 50 per cent of the grocery market in towns like Inverness. Friends of the Earth has urged the Competition Commission to look into this issue and suggest a remedy that would allow the dominance of a retailer to be assessed when a planning application is submitted.

Planning does, however, have a vital role to play in countering loss of diversity. We believe that this role could be strengthened if local authorities were able to plan more proactively for a diverse retail mix in their areas through the LDF process. It will not be possible for them to do this if national planning policy on town centres is weakened because an increase in out-of-town development by the major retailers will lead to decline of diversity in town centres and make it much harder for smaller companies to enter the market. A report by the Campaign to Protect Rural England based on an eight year study of food networks in East Suffolk demonstrates how diversity can thrive as a result of far-sighted planning policy and development control decisions,<sup>20</sup> to the overall benefit of the local economy, community and environment.

Friends of the Earth will submit a further paper on retail in early September.

#### **4. Complexity and delay**

The Interim Report repeats the well-worn assertion that infrastructure provision takes too long and that this impacts on UK competitiveness. However the Interim Report does acknowledge that there are *“only...a few studies and no recent ones”* into the cost of delay (paragraph 3.7). The report mentions transport infrastructure including aviation, and energy infrastructure including gas storage as specifically needing to be speeded up and streamlined. It concludes: *“timeframes are still unacceptably long, particularly regarding public inquiries”* (paragraph 3.20). The cost of public inquiries on business is highlighted and a price tag is given to the Dibden Bay Inquiry of £45 million.

But the report provides no benchmark as to what an acceptable time period might be for a major infrastructure inquiry. Friends of the Earth is keen that planning promotes timely and efficient decision making but not at the expense of a full examination of the issues and full public participation. There is little acknowledgement in the Interim Report of delay caused by applicants in the process, nor of the very serious barriers which many lay people find in trying to gain access to the inquiry process. We have already made it clear in our earlier response to this review that there is no real evidence base to suggest that communities are a critical source of delay.

There is no explicit discussion in the Interim Report of changes to the major infrastructure project proposal system beyond the broad assertion that it needs to be streamlined and speeded up. However the report does identify the Eddington Transport Study as the place where these issues will be dealt with. The Energy Review also makes recommendations for speeding up nuclear and other major energy projects, in part by curtailing people's rights to discuss certain issues at local public inquiries including need, health and safety and environmental impacts. It seems inevitable that the final Barker report will make parallel recommendations around major infrastructure projects.

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<sup>20</sup> CPRE (2006) 'The real choice: How local foods can survive the supermarket onslaught.' Caroline Cranbrook and the Campaign to Protect Rural England.

Before it does so, a better evidence base is needed. It is not clear that the duration of the majority of major infrastructure project inquiries has been a significant problem in recent years. The UK Government's own analysis contained within the 'Modernising planning: progress report' concluded: '*The processing of major infrastructure projects through the planning system has always presented a challenge*'.<sup>21</sup> But as this report pointed out, there are very few projects of this scale: only 10 projects in the last 15 years had a public inquiry that lasted more than 3 months. The nature of these projects (including the NIREX Inquiry, duration 66 days, and the MoD Otterburn training area, duration 83 days) was often extremely controversial. All raised issues of national significance and deserved detailed scrutiny to establish if they were genuinely in the public interest.

Public involvement is vitally important and should be seen as a positive part of the scrutiny of major new projects. Experience shows that detailed public scrutiny leads to the avoidance of projects that are unsound and the improvement of those that go ahead. Prime examples of this are the Hinkley C reactor and the Nirex RCF proposals. The Hinkley C reactor inquiry took place at a time when UK policy on nuclear reactors was in a state of flux. At the close of the inquiry the UK Government's position on the funding of nuclear power had significantly changed and ultimately the project did not go ahead. The Nirex RCF proposal was challenged, in the face of the status quo, by a detailed scientific case drawn together by the objectors. This case was accepted and the project did not go ahead. It is better for a project to be scrutinised in order that mistakes can be avoided, than a policy of undue haste be adopted simply to push projects through. Friends of the Earth firmly believes that decision-making on major projects should be made on the basis of the best available information and be subject to public scrutiny and debate. Any extra time involved or delays this entails are more than made up for by the benefits brought about by better decisions.

Notwithstanding the lack of evidence on sources of delay we understand that a number of proposals are being considered for the reform of the inquiry process into major infrastructure projects.

We are concerned that current Government thinking is founded on the proposition that there can be a separation in the approval major infrastructure projects between issues of national need and those of local environmental impact. We believe this proposition is practically unworkable and legally dubious. Statements of national need for a specific kind of development cannot in any way be site-specific without engaging aspects of human rights legislation. The degree to which such a document could discuss preferred locations is also complicated by a range of existing legislation including the Habitats Directive and the SEA Directive. In the former case this issue surrounds the importance of making individual development consents in one legal moment taking on board all relevant material issues.

In any specific decision-making process, national need should not be considered automatically to outweigh local circumstances. The decision-making process must consider both the importance of the case for national need and therefore the weight to be attributed to it, as well as the level and severity of environmental and social impacts on the local level. In practice what this means is that inquiry inspectors will wish to test the weight and credibility to be given to both sides of this debate. The suggestion has been made, including in the

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<sup>21</sup> DETR (2000) 'Modernising planning: progress report', paragraph 40.

recent Energy Review,<sup>22</sup> that inspectors could rule out debates on national issues but in practice this would be almost impossible if a meaningful examination of the decision was to take place. Friends of Earth also believes that it would be legally dubious for planning inspectors to attempt to silence individual objectors if they wish to voice concerns over issues of national significance.

## 5. Planning and competitiveness

Underpinning the four areas discussed above, the central tenet of the Interim Report is that planning is anti-competitive. Friends of the Earth strongly disagrees with this analysis.

The framework of planning is blamed for high land and rental prices, poor productivity and lower investment. Paragraph 1.22 states: *“Planning requirements may lead to development being constructed below an economically optimal size, shape, condition or in a sub-optimal location, leading to higher cost structures and lower revenue flows.”* In this context, ‘sub-optimal’ means purely sub-optimal for the developer. Many decisions in planning will, and should, be sub-optimal for the developer because the role of planning is to make decisions that are optimal for society as a whole.

While there is inevitably a causal relationship between regulation and market behaviour (that is after all the point), there is little in the Interim Report which helps to quantify the extent of the impact. It is unclear, for example, how far planning rather than education and skills or other working practices impact on productivity. In fact, an ODPM select committee found in 2003 that: *“planning is not a significant factor in determining productivity, even in the retail sector.”*<sup>23</sup>

### Price sensitive planning

The first Barker inquiry into housing supply made price sensitive planning for housing one of its central recommendations. This later proved to be practically unworkable inside the existing land-use planning system. Despite this, and the implications that price sensitive planning has for the achievement of sustainable development, the Interim Report forcefully endorses this approach in the future reform of planning. Paragraph 1.37 of the executive summary asks: *“can the planning system be made more responsive to price signals and changing economic circumstance at a local and regional level, while also providing the certainty that businesses value?”*

We are concerned that the final report promises to explore financial incentives for local authorities to make the ‘right’ planning decisions. The interim report makes the curious observation that *“for many local planning authorities there is often little financial incentive to adopt pro-growth strategies”* (para 1.37 exec summary).

Friends of the Earth believes that the Government can either adopt market-led planning which inevitably compromises the achievement of sustainable development and

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<sup>22</sup> HM Government (2006) ‘The Energy Challenge: Energy review report 2006’, chapter 7 and Annexes A and D. DTI.

<sup>23</sup> ODPM: Housing, Planning, Local Government and the Regions Committee (2003) Fourth Report: ‘Planning, Competitiveness and Productivity’.

marginalises the voice of local communities, or it can retain the public interest planning system which exists at the moment. It is hard to see how these ideas can be integrated.

### **Reviewing the Plan-led system**

The Interim Report raises a number of questions about the impact of the plan-led system on flexibility and responsiveness. Paragraph 4.30 states: *“the nature of the plan-led system may also be causing a suboptimal supply of development... in part because investment opportunities that arise after the plan has been agreed may have more difficulty gaining approval if not in accordance with the plan.”* The report suggests that *“an unintended consequence of the plan-led system could be a reduction in the ability of the system to respond to economic and social requirements.”*

We can only assume that correcting this problem will lead the final report to soften the emphasis on the plan led system. This would have two profoundly negative impacts:

- A system where the plan is only advisory to the final decision removes all the strategic value of the document. Plans should create certainty for business and communities based on a participative dialogue. Advisory plans cannot deliver this certainty, nor can they provide sufficient direction to shape the rational and sustainable development of communities.
- There is little or no point having robust rights of participation for communities in a plan which itself has only limited impact on the final outcomes of decisions. The question posed by many communities would be ‘what’s the point’. Introducing advisory plans would inevitably create much stronger arguments for greater participative rights in the final decision making process, including third party rights of appeal.

### **Streamlining national policy**

In a number of places the Interim Report recommends the streamlining of national policy and raises questions about whether such policies are necessary at all. The Interim Report is critical of the time that it has taken to prepare planning policy statements. The Interim Report also identifies the complexity of the planning system as a major source of delay.

Paragraph 1.15 refers to the length of time taken to review the new planning policy statements and their lengthy guidance notes. Paragraph 3.32 then suggests that a possible reform measure would be to *“think about national policy being limited to issues of real priority”*.

Generalisations about national policy are unhelpful and the Interim Report fails to identify clear examples of where existing guidance might be reduced and to what purpose. The reform of national guidance is underway and a number of new PPSs have been produced. Friends of the Earth believes there is powerful case for clear guidance on what are complex issues and, in particular, for the expansion of national guidance on issues such as climate change. UK Government planning policy guidance forms an essential level playing field for all interests, in the public interest. Without this guidance the performance of local planning authorities and the certainties of investment in development would be severely damaged.

There is a great deal of other detailed economic analysis of the costs that planning imposes on the UK economy, albeit with little evidence. This is balanced by some discussion of the value of planning. However, there is no equivalent analysis of the benefits of planning. In this

sense the report is simply the product of the limited terms of reference which the Treasury set down.

### **Planning and sustainable development**

Compounding the problems noted above with identifying the impact of planning on the economy, the Interim Report pursues a flawed approach to sustainable development.

As we made clear in our initial submission of evidence, the achievement of sustainable development requires the integration of social, economic and environmental considerations and explicitly seeks to move away from 'trading off' one objective against another. It is clear that this position was central to the UK Government's interpretation of sustainable development in the 2005 UK Sustainable Development Strategy.<sup>24</sup> Too little regard appears to have been paid to this position by the Review Team because the Interim Report continues to contain numerous references to the notion of 'trade-offs'. Such a position is the inevitable result of elevating economic considerations, and in particular price signals, to the status of special considerations in the planning process. We believe the Interim Report also continues to misrepresent the process for achieving sustainable development by repeatedly using the phrase 'balance' rather than 'integrate' and by suggesting that the indicators of sustainable development are 'hard to define' (paragraph 1.4). In fact, the current UK Sustainable Development strategy sets down a number of clear indicators.<sup>25</sup>

While there are no doubt negative examples of balancing and trading-off of sustainable development objectives within the current planning system, this is not the intended policy approach set down by the UK Government. Furthermore, the obligations of the planning system to achieve sustainable development are robust and supported by detailed guidance on delivery, monitoring and review. The policy framework operates as follows:

- Section 39 of the 2004 Planning and Compulsory Purchase Act creates a duty on the planning system to contribute to the achievement of sustainable development. The precise definition of sustainable development is left to the discretion of the Secretary of State.
- PPS 1 sets out a robust definition of sustainable development explicitly stating in paragraph 13 (1): *"development plans should ensure that sustainable development is pursued in an integrated manner, in line with the principles for sustainable development set out in the UK strategy. Regional planning bodies and local planning authorities should ensure that the un plans promote outcomes in which environmental, economic and social objectives are achieved together over time."* The word 'balance' does not appear in this definition.
- PPS 1 empowers the contents of the Sustainable Development Strategy for the UK as material to all planning decisions. The strategy itself provides much greater detail on sustainable development, covering a range of issues from climate change to environmental justice, and setting out in Chapter 7 a list of detailed sustainable development indicators. Chapter 1 of the UK Sustainable Development Strategy states: *"a new purpose is needed to show how Government will integrate these aims and evolve*

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<sup>24</sup> HM Government (2005) 'Securing the Future - UK Government sustainable development strategy'.

<sup>25</sup> HM Government (2005) 'Securing the Future - UK Government sustainable development strategy', chapter 7.

*sustainable development policy- to develop the earlier strategy, not depart from it.*<sup>26</sup>

Friends of Earth remains concerned that the Interim Report talks about sustainable development in a way which is explicitly at odds with the UK Government's existing approach. We trust that the recommendations in the final report will reflect the analysis in the Executive Summary of the Interim Report, which based on a more accurate description of the planning system's key objectives, rather than the narrow analysis in the main body of the report, and will not recommend reform measures that are likely to undermine the primary legislative foundation of the planning system to deliver sustainable development.

## Future Reform of Planning

At the heart of the Interim Report is a major contradiction. Kate Barker has said publicly that she does not intend to promote fundamental reform of the system. Yet the analysis contained in the Interim Report logically implies that such reform is necessary to make the system perform better for business interests. Squaring this circle would seem to be an insurmountable challenge. Our reading of the Interim Report suggests that it is likely that the final report will contain recommendations in the areas in Box 1, which also contains our response to these.

### BOX 1

Potential Reform measure	Friends of the Earth's response
Price signals will play a much greater role in land availability in the planning process.	Technically complex (as the production of PPS 3 proves) and while such signals can be advisory to the SEA process they cannot be determinant without undermining the rationale of planning.
National policy will be radically streamlined by reducing the scope of planning policy statements and questioning the role of best practice guidance.	Existing reform has not yet been completed. Delivery requires an element of prescription and guidance to ensure consistency. There is no case for reducing the scope of guidance and a strong case for its expansion to deal with issues such as climate change.
Mechanism to provide financial incentives for local communities to accept a strong pro-growth agenda. Those authorities who make different decisions will therefore suffer a financial penalty.	New development should not be a burden on existing communities and should come with adequate funding packages from 106/local taxation and Government investment to meet infrastructure needs. But incentivising growth suggests measures which go beyond this. Financial gain to an authority must not outweigh other considerations which relate to the delivery of sustainable development.
Streamlining of 'over-prescriptive' community engagement standards by downgrading the status of Statements of Community Involvement and removing the public's right to be heard in their preparation.	The reduction of established rights to be heard in the preparation of the SCI would be a retrograde step both substantively, in term of the opportunities available to communities, and perhaps more importantly in terms of the signal

<sup>26</sup> HM Government (2005) 'Securing the Future - UK Government sustainable development strategy', chapter 1.

	it would send about the Government's attitude to public engagement.
Streamlining of the process of approving Major Infrastructure Projects.	This is legally dubious, and could result in highly inappropriate and uneconomic projects. Not an evidence-based conclusion, and will undermine the legitimacy of planning.
Review of Planning Policy Statement 6 and the incorporation of much greater flexibility in the consideration of new retail facilities.	Planning Policy Statement 6 strongly favours large format stores and further reform is simply unjustified by the evidence of benefit to the economy. Local jobs, economies and social and environmental impacts are at stake.
Review of statutory environmental designations including green belt.	No evidence base that this is necessary or desirable in terms of the economic, social and environmental viability of cities and towns in The UK. Significant unintended consequences for successful economic development.

### **Friends of the Earth's recommendations for reform of planning**

Friends of the Earth hopes that the final report will safeguard the planning system regulations, because these regulations protect our local communities and the environment while providing certainty for businesses and creating quality economic growth.

We want to see the planning system encourage quality economic growth that is good for people and the environment, not growth at all costs. We would therefore welcome reform measures which increase the ability of the system to deliver genuine sustainable development which integrates the achievement of economic, social and environmental goals for the benefit of all, including future generations. We do not believe there is a case for major structural reform of the system partly because many of the reforms needed relate to cultural behaviour or resource allocation. Our two main recommendations for reform, below, reflect our ongoing concerns about the public legitimacy of planning decisions, and the system's failure to deal adequately with the major threat of climate change.

#### **Increased participation**

Local people have a valuable contribution to make in deciding what development happens in their local area. In particular, the Government has a duty to support the involvement of the poorest communities in the planning system, because they tend to be hit hardest by environmental problems. Recommendations made in the final report should therefore protect people's rights to have a say in planning decisions. More specific reforms can be proposed to support this:

- Greater development of the skills base of planning practitioners for empowering communities to play a meaningful role in planning decisions.
- Greater provision of resources to ensure participation is creatively and efficiently delivered.
- The introduction of a qualitative performance regime to measure local authority progress

on local public participation and engagement.

- The funding of non-expert participants at major inquiries.
- Active consideration of third party rights of redress for local communities in planning decisions.

### **National planning policy on climate change**

Friends of the Earth strongly supports the conclusions of the Royal Commission on Environmental Pollution whose 23rd Report on 'Environmental Planning' set out the blueprints for increasing the scope of the planning system<sup>27</sup>. In the short and medium it is clear that national policy in responding to the threat of climate change has been too slow.

Whilst Friends of the Earth welcomes the introduction of a new Planning Policy Statement on climate change and the new Code for Sustainable Homes, we are deeply concerned that the delay in producing these critical documents emanates from a view amongst Treasury that they may result in the 'gold plating' of environmental regulation.

Comprehensive policy in these areas is vital to drive up the performance of local authorities and provide certainty for business and communities. Climate change will bring huge economic, environmental and social costs unless addressed by regulation on future development. One of the ways of delivering mitigation and adaptation measures for climate change is through a robust planning system. Developers and businesses will be provided with a level playing field on which to address climate change.

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<sup>27</sup> RCEP (2002) 'Environmental Planning'. 23<sup>rd</sup> report of the Royal Commission on Environmental Pollution.