

SUBMISSION BY THE ENVIRONMENT AGENCY
BARKER REVIEW OF LAND USE PLANNING

1. SUMMARY

- 1.1 The Environment Agency welcomes this opportunity to provide evidence to the Barker Review of Land Use Planning. The Review's terms of reference are broad in their scope, although particularly focused on the economic consequences of the planning system. The review, in particular, seeks to establish how the planning system impacts on economic growth, employment and the five key drivers of productivity – enterprise, competition, innovation, investment and skills. It will focus on:-
- ways to further improve the efficiency and speed of the system;
 - ways of increasing the flexibility, transparency and predictability that enterprise requires;
 - the relationship between planning and productivity and how planning outcomes can better deliver 'sustainable economic objectives'; and
 - the relationship between economic and other sustainable development goals in the delivery of sustainable communities.
- 1.2 We welcome the focus in the last of these criteria on wider sustainable development goals and in particular the stress in the call for evidence that *"it is not the aim of the review to promote economic considerations above social or environmental considerations"*. The Barker review of housing supply did not give adequate attention to environmental consequences and the infrastructure costs of expanding housing supply. It is important that this review takes a more holistic view of the objectives of the planning system, namely to deliver sustainable development.
- 1.3 We also welcome the assurance that the review will build on the spatial planning system reforms already put in place by the Government. The planning system has just undergone probably its most fundamental review for 50 years. **We believe it is too early to assess the success or otherwise of the recent system and policy reforms. The Review should recommend that the effectiveness of these reforms be examined in about 3-5 years time.** It should seek to reassure itself that adequate processes, benchmarks and data collection strategies are in place to ensure this future review is effective and there is an adequate evidence base upon which to make a sound judgement at that time.
- 1.4 The planning system is a mechanism for making important social choices between different objectives: economic, environmental and social. To the extent that it reduces productivity, it does so to achieve other important objectives that are determined through democratic processes such as plan-making and public examination of plans, including **protection and enhancement of environmental assets and non-renewable natural resources.**

- 1.5 In summary the Environment Agency's believes the review should:
- investigate the planning system as a mechanism for determining social choices in sustainable development. It should not focus on the productivity agenda at the expense of other important objectives or on particular business sectors to the exclusion of others;
 - give time for the recent fundamental legislative, policy and process planning reforms to bed down - it is too early to judge the success or otherwise of these reforms. They should be reviewed in 3-5 years time;
 - retain the new statutory purpose for planning to deliver sustainable development. The Environment Agency strongly endorses the clear purpose that has been given to planning (and the use of sustainability appraisal for plans);
 - retain statutory Regional Spatial Strategies (RSS) - these are a welcome feature of the new system. Some environmental issues are best dealt with at a strategic level, for example water resources, water quality and flooding issues cover large scale catchment boundaries;
 - focus on how planning can best secure development that delivers integrated objectives. It should not unduly focus on 'balance' as this has often resulted in environmental losses and 'least worst' solutions, rather than a concerted effort to deliver the best developments that achieve economic, social and environmental goals at the same time. Whilst trade off is a legitimate part of the system it should only apply when integrated development solutions are demonstrably not achievable;
 - promote the role of planning in delivering more sustainable commercial building and infrastructure, through for example the use of Supplementary Planning Documents on sustainable construction;
 - promote an updating of planning policy for business. PPG4 *Industrial and commercial development and small firms* (1992) is now nearly 15 years old and warrants revision. Many key messages remain relevant but they risk being overlooked because they pre-date system and policy reforms and don't reflect changes in the business environment in this period;
 - seriously examine whether the apparent improvement in meeting planning application time targets is having perverse consequences for business. The Review should monitor the outcomes of the Planning Delivery Agreements pilots for any advantages that this project management approach may bring to business in terms of certainty of the timing of a planning decision on medium and large scale projects.

2. ENVIRONMENT AGENCY RESPONSE TO THE CALL FOR EVIDENCE

Role of the Environment Agency

- 2.1 The Environment Agency plays a significant role in the spatial (land use) planning system in England. As both a statutory and non-statutory consultee we advise on the formulation of national planning policy and assist in the production of technical guidance; we comment on Regional Spatial Strategies (RSS) and Local Development Frameworks (LDFs), including commenting on associated Sustainability Appraisals (SA), incorporating Strategic Environmental Assessment (SEA); we provide environmental information to help Regional Planning Bodies and Local Planning Authorities (LPAs) to formulate policy options; we provide timely and practical advice to consultations on planning applications by LPAs and pre-application enquiries by developers; and we

advise on the environmental implications of spatial planning on other environmental strategies and policies, such as River Basin Management Plans arising from the Water Framework Directive. We receive around 50,000 – 60,000 planning consultation every year.

Balancing spatial planning objectives

- 2.2 Perhaps the central question in the Review bearing on the Environment Agency's main interests in planning is **Question 3**:

“Sustainable development is the core principle underpinning planning. Does the current system achieve the right balance between economic and other goals, such as the regeneration of areas and the promotion of social cohesion, improving the quality of design of buildings and urban environments, and the protection and enhancement of our natural and historic environment? Are some environmental, natural resource, or social considerations given too much or too little weight? (Annex 1, question 3)

- 2.3 **Environmental protection and enhancement:** The planning system delivers significant benefits - economic and social development and environmental protection and enhancement. It helps deliver rational spatial decisions in the public interest including protection of important environmental assets and resources that would not necessarily be delivered by the free market alone. Whilst issues such as flood risk are increasingly being given proper weight in national planning policy, for example Planning Policy Guidance note PPG25, and now draft Planning Policy Statement PPS25, *Development and Flood Risk* and also PPS23 on Pollution, other issues such as climate change, water resources and water quality need to be given further weight. PPS1 *Delivering Sustainable Development* provides important core messages on these issues. We are pleased that the government has committed to produce a PPS on reduction of carbon emissions in new development, (Climate Change UK Programme announcement, March 2006).
- 2.4 **The planning system is to become more responsive to price signals.** One of the most significant policy developments in the new planning system is the importance accorded to land prices as a signal to develop as part of the consultation on draft PPS3 *Housing*. The Environment Agency welcomes the aim of PPS3 to increase the supply of housing, by allocating and identifying sufficient land for housing where it is needed and the need for local authorities to identify a rolling supply of 'developable' land for future development. However, the appropriateness of land in environmental terms must be a key feature of the new approach and whether that land is 'developable' or not. This needs to be made more explicit in the draft PPS. There is a probable lack of sufficient training for planners in the market processes and realities behind the development proposals that they consider.
- 2.5 **The planning system (partially) addresses a variety of market failures.** These include:
- Under-valued externalities, such as increased pollution, noise, intrusion, loss of environmental services and non-renewable resources;
 - Increased demand for services or for public goods such as flood protection,

- transportation or other infrastructure that may not be borne by the developer;
- Collective action failures in which the aggregation of individual decisions would produce lower welfare than a better collective decision – for example the loss of town-centre vibrancy, advancing urban sprawl, the loss of landscape visual amenity. The democratic dimension to planning helps to address collective action failures through democratically legitimised collective decision-making. The government’s process reforms have brought community involvement even more to the fore in the planning process.

2.6 **Sustainable development purpose.** The purpose of planning has not been clearly defined in statute until the Government’s most recent planning reforms. Previously the purpose of planning has shifted with the evolution of the system. In the immediate post-war period the 1947 Town and Country Planning Act was founded on the need for planning to reconstruct a war torn country by building new homes, separating housing from polluting industries, protecting the countryside, and especially agricultural land, from urban sprawl. In the intervening years the purpose became much less clear and has changed with different administrations. **The Environment Agency strongly endorsed the clear purpose that was given to planning, to deliver sustainable development,** by the Planning and Compulsory Purchase Act 2004 – “sustainable development is the core principle underpinning planning” (Planning Policy Statement PPS1 *Delivering Sustainable Development*, para 3). **This must remain the bedrock of the planning system in the future.**

2.7 There is, of course, debate about what sustainable development means and looks like. Part of the role of planning is to now determine what this means in each locality through the development plan process. As PPS1 indicates, fundamentally, “good planning ensures that we get the right development, in the right place and at the right time” (para 1). In focusing on sustainable development the planning system needs to help deliver land use change and development that furthers economic, social and environmental objectives in an **integrated** way. PPS1 places emphasis on the need to deliver economic growth and employment, social progress, protection and enhancement of the physical environment, and to optimise resource and energy use “in an integrated way” (para 4).

2.8 This is the real challenge of the **positive planning** agenda that the government has laid down for the system. The review places emphasis on the ‘achieving the right balance between economic and other goals’ (Question 3). We believe it should not unduly focus on questions of ‘**balance**’ as this has often resulted in environmental losses and ‘least worst’ solutions, rather than a concerted effort to deliver the best developments that achieve economic, social and environmental goals at the same time - so called win-win-win solutions. Whilst trade off will always be a legitimate part of the system - clearly not all development can achieve such win-win-win solutions - it should only apply when integrated development solutions are shown to be unachievable. Planning should make informed (evidence-based) judgements between options. In doing this it parallels the ‘sequential approach’ adopted for issues such as flood risk, where the emphasis is firmly on the developer to show that no suitable better alternatives (locations) are available (in areas of less flood risk, draft PPS25). In looking at this issue the Review could examine the merits of alternative dispute resolution processes that are used in the US.

- 2.9 The Environment Agency is putting considerable effort into delivering multi-purpose benefits through, for example, its flood alleviation development schemes. The Quaggy River flood alleviation scheme in the London Borough of Greenwich is a good example, it demonstrates a joined-up solution. The scheme's primary purpose was to address flood alleviation in neighbouring Lewisham, but it also provides greenspace (Sutcliffe Park) and helps to tackle urban deprivation. The scheme protects 600 homes and businesses from flood risk at a cost £3.8 million (out of a total overall project cost of £11.8 million). It was delivered by a multi-disciplinary team of engineers, landscape architects, ecologists and planners and a community liaison officer, the latter helped secure local support and to overcome concerns.
- 2.10 On an associated point, it should be borne in mind that brownfield sites sometimes contain significant environmental assets or are subject to environmental risks, such as high flood risk, which makes them less suitable for development than some greenfield sites. Government policy tends to be 'black and white' in this respect although draft Planning Policy Statement PPS25, *Development and Flood Risk*, does recognise this issue. Brownfield sites also have very different market conditions to greenfield sites where the change in value from agricultural land value to land with planning permission is enormous and becomes a key part of the development proposition. (The exclusion of agriculture from the meaning of development, and therefore the planning system, in the 1947 Planning Act and subsequent Acts re-enforces this situation). The Treasury is currently considering the responses to its consultation on the proposed Planning Gain Supplement and this potentially significant proposal needs to be accommodated in this review, as it is so fundamental to the future nature and operation of the system.
- 2.11 **The strategic cascade of policy.** The Environment Agency supports the current cascade of planning policies from national level (PPGs and PPSs) through statutory RSS to LDFs and individual planning decisions. Many environmental issues are best dealt with at a strategic level, and we welcome the recent national policy priority given to issues such as flood risk (PPG/PPS25), pollution (PPS23), waste (PPS10) and biodiversity (PPS9). We also welcome the new statutory RSS as a valuable feature of the new system. Water resources, water quality and flooding issues operate over large areas - catchment boundaries – and it is important that a strategic approach is taken to these issues, an approach that is often more difficult at the more local, district, level.
- 2.12 We concur that the review should examine the 'joining up' of RSS with other plans, such as Regional Economic Strategies, as different relationships have emerged in different regions. It should repeat this for the relationship between LDFs and other plans, such as sustainable community strategies and environmental/resource plans, such as Shoreline Management Plans, and River Basin Management Plans (under the Water Framework Directive). It should also not neglect the area of waste planning and Waste Development Frameworks.

Pre-application discussion

- 2.13 **The Review should focus on the conditions necessary to achieve multi-purpose objectives in developments.** This undoubtedly includes the need for

all parties - developers, LPA, statutory consultees - to engage in meaningful **pre-application discussions** at an early stage of scheme development and prior to any planning application being submitted to the LPA. This maximises the chances of securing integrated development solutions and involvement of statutory consultees can avoid 'nasty surprises' emerging late in the process. With the Government's current focus on tight timescales for the delivery of planning decisions it is really not possible to meaningfully negotiate changes to complex schemes once they are submitted and meet those time targets.

- 2.14 The need for more effective pre-application discussion was a strong theme of the Planning Green Paper, but has not been such a major focus in terms of the subsequent system reforms. There is anecdotal evidence that this welcome and valuable process is being squeezed out by performance measurement on local planning authorities in terms of the time taken to determine planning applications. The focus on determining planning applications within 8 or 13 weeks is causing some LPAs to withdraw from pre-applications discussion altogether (and also negotiation when an application has been submitted) resulting in more refusals of permission. It is interesting to note that while LPAs currently have no measurement on their pre-application delivery, the Environment Agency and other statutory consultees are required to respond to both planning application consultations by LPAs and pre-application enquiries by developers within 21 days (or another time period agreed in writing).

The impact of targets for speed of decision-making

- 2.15 The planning system must be efficient and effective, but there are signs that the focus on speed targets is having unintended consequences. The Audit Commission has noted that *"we spoke to a wide range of users of the planning system, including housing associations, house builders, solicitors, architects and consultants, many of whom felt that that system was suffering as a result of emphasis on speed. They supported their concerns with examples of lapses in services including:*
- *... refusing planning permission due to lack of time to negotiate;*
 - *... a lack of focus on those applications that had gone beyond the target dates;*
 - *... a lack of focus on pre-application discussions;... "* (*The Planning System: matching expectations and capacity*, Audit Commission, 2006, para 61)
- 2.16 The result is that there appears to be a target-driven administrative pressure to reject applications within the target timetable and then to sort out the substantive issues during a process of appeals and challenge. In that way the targets work against efficiency and certainty. **The review should examine whether the apparent improvement in meeting planning application time targets is having perverse consequences for business.**
- 2.17 Business surveys indicate that what business wants most from the planning system is **certainty**, over and above speed of outcome. The Audit Commission's recent study of planning concluded *"our research also repeatedly highlighted that, when it comes to major applications, certainty of timescale is more important to planning applicants than speed"*, (Audit Commission, 2006,

para 63). **The review should examine whether a ‘one size fits all’ target for larger developments is really helping to deliver certainty.**

- 2.18 The Planning Advisory Service (PAS) is currently undertaking a trial of Planning Delivery Agreements (PDA). This approach can be applied to large applications. It is being piloted by 23 LPAs and developers, with the Environment Agency involved as a statutory consultee in some of these pilots. The pilots will apply project management skills and approaches to the handling of major applications and should result in a decision delivery timetable that is agreed by all the key players. This approach appears to have considerable merit and **the Review should monitor the outcomes of the Planning Delivery Agreements pilots for advantages this may bring to business in terms of certainty of the timing of a decision.**

The value of the plan-led system

- 2.19 The other element of certainty that business demands is **certainty of decision outcome**. The plan-led system is critical to such certainty and **the Environment Agency supports the plan-led system**, as introduced by the Planning and Compensation Act 1991 and re-affirmed in the Planning and Compulsory Purchase Act 2004. We also support the requirement for Sustainability Appraisal of plans incorporating SEA. These should be retained in any further planning reforms.
- 2.20 The introduction of the plan-led system in the 1990s was a direct response to the uncertainty of the 1980s when development was generally deemed to be acceptable so long as it did not “*cause demonstrable harm to interests of acknowledged importance*” (Department of the Environment Circular 22/80 *Development Control: Policy and Practice*).
- 2.21 Circular 22/80 focused on business, and in particular small business. It urged LPAs to “*pick out for priority handling those applications which in their judgement will contribute most to national and local economic activity*” and it identified that some businesses were compatible with a residential or rural location, whereas in the past they had been more strictly zoned. Business generally welcomed the thrust of the Circular, but it was ultimately critical of the lack of certainty in the ‘application-led’ system it generated – if a business located in a particular site there was no certainty as to what might be granted on a neighbouring site. Some business interests were moved to support the more plan-led approach.
- 2.22 Criticism was subsequently made of the slow rate of progress in plan preparation following the 1991 Act and this led to the Government’s planning reforms in 2004. The new Local Development Frameworks now provide the potential for a plan-led system that is also much more responsive to changing circumstances. There is, however, a dichotomy in being both plan-led and responsive. Like some of the other process reforms it is too early to judge the success of the LDF approach, but **the Review should recommend that an examination of the potential dichotomy in a plan-led, but responsive system form part of any review of the LDF system** – have plans managed to maintain long-term objectives but also be responsive to circumstances?

2.23 Circular 22/80 was replaced by PPG4 in 1988 and a revised PPG4 *Industrial and commercial development and small firms* in 1992. **PPG4 is now nearly 15 years old and it warrants a review.** While planning policy guidance on town centres and retail (PPS6) has been reviewed more recently, policy guidance for the rest of business is out of date. The restrictive spatial policies in PPS6, in particular the sequential approach applied to out of town development, have been criticised by some business interests, but they are a clear example of the application of planning policy in the wider public interest - namely forsaking some commercial development opportunities in order to reduce the need to travel and to stimulate regeneration of towns. It is arguable that this policy intervention has led to some innovation in the food retail sector, for instance the growth of the smaller, urban metro supermarket concept.

2.24 Many of the messages in PPG4 are still relevant to today's planning and business environment:

- emphasis on understanding the locational needs of business and wider environmental objectives in preparing development plans;
- reducing the need to travel;
- helping small firms through the planning process; and
- securing mixed development recognising modern business doesn't necessarily need to be segregated from residential development.

However, there is a significant risk of these being overlooked because they pre-date the current system and many policy reforms that have taken place since, as well as rapid changes that have taken place in the business environment in that period.

2.25 It is important that the planning system does not create any unnecessary barriers to business development. The regime is currently quite permissive in relation to extensions of commercial buildings under the Town and Country Planning General Permitted Development Order and allowing appropriate changes of use as permitted development under the Use Classes Order, provided they do not give rise to adverse environmental or other consequences. The ODPM has embarked on a Householder Consent Review to examine whether further permitted development rights might apply to residential properties. The Barker review could examine whether the current permitted development regime is appropriate for commercial development, taking into account environmental issues.

2.26 Equally, business could play a greater part in delivering more sustainable development. The review should promote the role of planning in delivering more sustainable commercial building and infrastructure, through for example the use of Supplementary Planning Documents on sustainable construction. Whilst improvements to the Building Regulations can secure increased environmental efficiency in the performance of individual buildings, planning can play an important part in delivering more sustainable industrial and business estates, for example, such as through the provision of sustainable drainage systems that can help to alleviate flood risk.

Importance of planning in reducing policy risk and providing clear signals

- 2.27 The Audit Commission has observed that “*not only does this (PPS6) provide a consistent policy framework to encourage sustainable development, but it has also had a demonstrable effect on development patterns over the last 10 years*” (Audit Commission, 2006, para 39)
- 2.28 This raises a key point for the review. The planning system may inhibit a particular form of development that reduces potential productivity growth, for example, by inhibiting the realisation of the “Walmart effect”, however, the adaptive behaviour of markets and businesses may reduce the expected impact. Infact, the brake on out-of-town retail development has raised competition and innovation in the town centres, improving productivity but in a different way.
- 2.29 It is also worth recognising the competitive impacts of changes in policy. A return to out of town shopping development would favour those companies with land-holdings at the expense of those without. However, since PPS6 there has been a clear policy signal against out of town retail development. There would be a danger of rewarding those that had not taken government policy at face value in favour of those that had.

Different businesses and different business needs

- 2.30 In conducting this review it is important to reflect that there are many businesses and different business sectors have different needs and expectations of the planning system. They include:
- the property and housing sectors, where planning is absolutely central to their business interests;
 - the retail sector who have been critical of the restrictive planning approach to out of town shopping; and
 - small and medium sized enterprises (SMEs) who may only ever come across planning when expanding or moving their premises, and whose real need is to understand how best to engage in the system.
- 2.31 The Review needs to address all these different elements of business and their interactions with planning and not focus on one particular sector at the expense of others. In focusing on SMEs’ engagement in the plan making process (**question13**), for instance, **the Review should consider the general problem of how to foster public (and commercial) engagement in plan making.** This is a thorny issue. Such interests are generally highly location specific and the whole plan process may seem far too remote from them, yet where allocation decisions are made in the plan they will frame future planning application decisions that directly affect them. This long-standing and difficult issue to resolve may benefit from a focus from the business perspective.
- 2.32 **The Review should investigate existing market research and surveys of business opinions of the planning system, for more qualitative opinion on business attitudes to planning.** If necessary, it should consider commissioning its own market research. The CBI have surveyed their members (see *Planning Reform: delivering for business?*, CBI, 2005) and it is

understood that the Office of the Deputy Prime Minister (ODPM) is currently carrying out a customer satisfaction survey of the business sector.

- 2.33 **The review should also draw on other recent reviews of planning from different perspectives.** The Royal Commission on Environmental Pollution conducted an extensive review of *Environmental Planning* (RCEP, 2002). As well as an intensive investigation of environmental planning, the report included an examination of New Zealand's Resource Management Act (RMA) which may prove fruitful in addressing the Review's **question 4**. The RMA was a radical overhaul of an existing planning system based on the impacts of development on natural resources. It includes amalgamating various consent regimes into a streamlined set of consents and considering those different consents at the same hearing, and adopting alternative dispute resolution procedures.

The Environment Agency's role in planning

- 2.34 The Audit Commission's report includes a main recommendation that *"developers should engage with councils at the pre-application stage and develop their proposals sufficiently to allow meaningful discussion of the planning issues"* (Audit Commission, 2006). The quality of applications can still leave a lot to be desired - in 2004/05, 50% of Environment Agency objections to development on flood risk grounds were due to the lack of an appropriate flood risk assessment despite this being required by PPG25.
- 2.35 It is the role of the planning system to sometimes legitimately refuse unacceptable development proposals. However, in general the system does not excessively block development. The annual development control statistics from the Office of the Deputy Prime show that in 2004/05, 688,000 planning applications were considered by Local Planning Authorities in England. 83% of these were granted permission, but approval rates were highest for general industry (92%) and storage and warehousing (90%). Ninety per cent of business applications were approved in the North East region with London recording the lowest (75% approval rate).
- 2.36 In the case of the Environment Agency, in 2005 we were consulted on over 51,000 applications and objected to only 6,500 of these. Only 1,500 objections were business-related applications (ODPM categories of offices/light industry, retail, heavy industry/warehousing, minerals, waste and mixed use). They constitute just 3% of all applications received by the Environment Agency. Where a decision is known by the Agency (we do not receive decision notices for many applications we object to), more objections were successfully negotiated away (239) than sustained (200). In terms of the nature of our objections, flood risk issues predominate with insufficient information, usually an appropriate flood risk assessment, a significant cause for our objection.
- 2.37 The Environment Agency is committed to its newly acquired duty (August 2005) to respond to pre-application enquiries from applicants within 21 days (or such other time as may be agreed in writing). The Environment Agency is putting more resources into its planning work, focussing on higher risk cases and developing e-planning in order to help meet this timescale. It has developed a 'new way of working with the development industry' in the Thames Gateway by establishing a system that creates one point of contact on development issues,

particularly for discussions at the very earliest stages of project development. We would be pleased to provide further details of this approach. We have also just introduced a pro-forma to help prospective applicants ensure they provide us with sufficient information to fully inform pre-application discussions and help us meet our challenging 21 day duty.

3. CONCLUSION

3.1 Although this review is particularly focused on the productivity implications of planning, we welcome the focus on wider sustainable development goals and the assurance that it is not the aim of the review to promote economic considerations above social or environmental ones. The planning system is a mechanism for making important social choices between different objectives: economic, environmental and social. To the extent that it reduces productivity, it does so to achieve other important objectives that are determined through democratic processes.

3.2 It is important that this review takes a holistic view of the objectives of the planning system. The new planning framework embodies sustainability drivers such as the new statutory planning purpose - the Environment Agency supports this. It is too early to judge the success or otherwise of the recent system and policy reforms – these should be given time to bed down and then be reviewed. There are some process and policy reforms that should be recommended by the review.

4. FURTHER INFORMATION

Further information on this response can be obtained from Mark Southgate, Head of Planning and Local Government, Rio House, Waterside Drive, Axtec West, Almondsbury, Bristol, BS32 4UD; tel: 01454 624075; or by e-mail at mark.southgate@environment-agency.gov.uk.

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