

## **The Barker Review of Land Use Planning**

Comments from The Civic Trust  
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The Civic Trust has already submitted a range of comments on the Government's recent consultations on proposals in regard to the Planning System; these are:

- Planning for Housing Provision ODMP, Sept. 2005)
- Draft PPS3 (ODPM March 2006)
- Planning Gain Supplement (ODPM/treasury/C&E March 2006).

The Civic Trust believes that all these issues, consulted upon separately, are interdependent and that the success of any changes depends on a holistic approach. Since our overall view of the needs of a sustainable, inclusive and community-focussed planning system, as detailed in those responses, remains unchanged, the following comments on the present consultation link closely with these earlier consultations and should be read in conjunction with them. We would be happy to provide copies if required.

The land use and planning system in England has given many positive benefits. It has directed development and protected open space; it has concentrated development in cities and corridors; Green Belts have been one of the most enduring of its successes. Despite the assertion in the final paragraph of page 2 of the call for evidence, we are concerned that Ms. Barker's recommendations in fact set up economic growth in opposition to other factors, such as those relating to social issues and environmental protection, and believe that they will hinder the planning system in its role of securing the correct balance between

these three different elements of sustainable development (economic, social and environmental). Although it is stated on p.3 that the Barker review of housing supply will not be a primary focus of the current review, this is in practice such a major element of how the planning system and the development sector impact on the economy and the urban and rural environment, particularly in the South-East, that we cannot see how it can be omitted as a major factor in the planning system without prejudicing the conclusions of the inquiry.

The strongest need for planning is in intervening where the market fails, where social benefits can be realised or when the environment is being threatened. We remain concerned that the focus of the Barker Review is too much on economic growth and employment, with the emphasis on increasing productivity to the exclusion of other interests. Getting the balance right is listed last of the six points; but it is the most important if the primary aim is to improve the quality of life and the environment.

Economic and environmental interests should not be incompatible; but Barker's perspective is too heavily weighted towards business or commercial needs, as if what people value beyond the economic is not valid.

Planning is about people and opportunity (also Point 3 in the Annex on sustainable development).

We would make three other substantive points, which relate to several of the 15 points in Annex 1.

***1. Efficiency and speed of the system*** the system should not operate in the interests of business at the expense of local democracy and participation; the two should surely

not be treated as in opposition, but as integral. Public confidence in the planning system which is a major feature of most guidelines, etc., issued by Government recently - depends on openness and accountability, and public meetings and Public Inquiries are central to the process of representative democracy.

There have been substantial improvements within Local Authorities to speed up processes and turn planning applications around within the statutory 6 weeks. Most public inquiries are quite short and the time taken is in the writing up of the inspector's report, the preparatory work, and the time taken (sometimes by Government) to actually make a decision. Processes are now in place to shorten the actual inquiry by having pre-meetings and greater access to information for all parties. To reduce the role of public participation in the process in the interests of speed and efficiency is totally misplaced (this relates to Point 7, but also to the first point in the terms of reference), and will fatally undermine the confidence in the planning system of a public which has been led to believe that the Government wishes it to have a greater and more active role in deciding upon the nature, design and quality of developments which will impact upon their living and working environment. If the Government wishes people to return to the polls and to develop a greater interest and participation in citizenship issues, it must ensure that their expectations for greater direct involvement in planning what affects them are not frustrated.

A further point that needs addressing is the need to make sure that land given permission for development is

actually put into use, and not held in land banks in the expectation that not doing anything with it will give it the <sup>3</sup>hope value<sup>2</sup> of a change in use, or that the owners will benefit from escalating prices. This relates to several of the issues raised in Point 9 on occupation costs, imperfect competition and a lack of transparency in the land market. The fault lies with both public and private land owners, and incentives should be given to facilitate early development of land with outstanding consents and to bring it into use.

**2. *The Private Sector*** requires a consistent and stable framework within which to operate; the planning system provides such a framework. The private sector does not want uncertainty with respect to major investment decisions, as this leads to higher risks and lower returns. Such a situation was apparent in Docklands in the 1970s-80s, when any development was encouraged with minimal planning direction. It was only when the LDDC took control and provided the necessary infrastructure and clear incentives that major and lasting development became possible, and it was in the 1990s that developers became interested in the potential that Docklands had to offer (Point 5). We consider that the current planning system does, in fact, provide the necessary transparency and certainty for business, and planners are now very much concerned about facilitating development and building partnerships with the private sector. Planning is in fact very much aware of market forces, particularly in regard to local needs and conditions, and does not need to be dictated to on the matter in the over-generalised manner in which the recommendations are couched.

**3. Complexity of Land Use Planning** In the past, land use planning was a relatively uncomplicated activity which operated primarily in a responsive mode to development, often on an ad hoc basis but, nevertheless, still within the context of the wider aims stated in the statutory Structure Plans and Local Plans. The system now bears little relationship with this traditional model as spatial planning has now taken over. Spatial planning has a much wider remit, including the Regional Spatial Strategies (RSS), Local Development Schemes (LDS) and the Statements of Community Involvement (SCI).

All three requirements are set within the EU context of the Spatial Development Perspective, sustainable development and sustainability assessment.

The new demands on the land use planning system seem to have been overlooked by the Barker Review, which takes a disappointingly traditional and over-simplistic view of planning. There is nothing in the brief on the requirements to deliver sustainable cities (and sustainable communities), environmental quality (including energy savings and renewable energy), environmental management (including waste, recycling, water supply and sewage), the increasing concerns over flood risk and new housing development, the need for more affordable homes, and the massive investment required in the infrastructure; instead, it appears to have an unjustified, outmoded and, we fear, misplaced faith that the free market will automatically result in the optimal siting of all developments in a better way than any planned system. However, all of these factors have an impact on the economic competitiveness of cities, as well as enhancing social and environmental quality and the

quality of the built, historic and natural environment. To try and separate out what is narrowly defined as <sup>3</sup>economic growth, employment and productivity<sup>2</sup> is mistaken and underestimates the importance of spatial planning in England.

It is inevitable that a consultation such as this, which pits economic against social and cultural interests, will produce diametrically opposed responses from developers and from communities, based on perceptions and experiences - often subjective, on both sides and that such perceptions should not be accepted uncritically and in isolation without weighing them against the other argument, or the entirely wrong conclusions may be reached.

Where we have more specific comments additional to the above, these are set out below in accordance with the questions in Annex 1:-

*1. Is the planning system sufficiently flexible and/or responsive to the right signals to deliver the right development in the right place, given the changing economic circumstances due to globalisation, demographic change, natural resource pressures and environmental change? If not, what policy measures might help deliver this flexibility?*

As indicated above, we believe that the planning system does contain sufficient flexibility and transparency, but that the excessively rapid pace of change in planning law - accompanied by a seemingly never-ending flow of new legislation, guidance, advice, etc., produced under the guise of reform but, in reality, giving rise to confusion

and uncertainty has created a new form of uncertainty namely, for the local authorities and the communities attempting to implement it, but who particularly in the latter case cannot afford the expensive expert legal advice necessary to come to terms with it, which is mainly accessible to the larger private sector developers. This <sup>3</sup>community uncertainty<sup>2</sup> is exacerbated by issues such as:

- the slowness attached to the process of implementing enforcement procedures, which enables planning offences to continue for a socially unacceptable length of time;
- the unpredictability of the appeals process, and the consequent reluctance of local authorities to refuse applications, sometimes demonstrable in conflict with local planning policies, for fear of losing on appeal and incurring costs which few of them can afford but which developers, with substantial returns at stake, are more able to sustain;
- the possibility, particularly in areas of high development pressure, that local authority determinations, even when upheld on appeal, may be overturned by the Secretary of State;
- the exemption of statutory undertakers from the need to obtain planning consent, even when their proposals are of poor design quality, in conflict with or even undermining local planning policies, or demonstrably not germane to their basic remit.

*2. Do you have any views on the scope of plans at the different spatial levels in England which are now emerging following the introduction of the new system in 2004? Are there further improvements to the plan-*

*making process at the different spatial levels in England, particularly regarding the need to encourage a positive/proactive approach to planning, which was a key theme of the new planning system? Does the current system strike the right balance between central direction and regional and local discretion?*

No, the current system appears according to our members<sup>1</sup> interpretation to give clear primacy to the regional over the sub-regional, and to the sub-regional over the local. This must inevitably work counter to the Government's stated aim of delegating more decisions to the local level and will still further reduce public confidence in the ability of the system to improve their quality of life. While regional strategies are clearly necessary, they must have sufficient flexibility to accommodate their aims within local conditions. This is essential in such fields as the provision of the needed levels of housing in already-crowded areas such as the South-East

*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?*

No. It is the experience of our membership, which has wide experience of working within the planning system to secure the best possible outcomes for their towns or

areas, in co-operation with local authorities and private developers, that the promotion of good quality architectural and public realm design is, in practice, very difficult to achieve. Local authorities are reluctant to refuse poor design because of concerns that it is only a matter of personal taste and is likely to be overturned on appeal, while it is too often the experience of the community in which the development takes place that design of a development within the wider context of its setting is not a major concern of the developer.

Government should ascertain from developers the extent to which they regard regeneration of areas and the promotion of social cohesion as within their remit, and the protection of the natural and historic environment as secondary, or even tertiary, to that remit. Indeed, without clear and strong legislation placing the public realm, the natural and historic environment, and community cohesion on an equality with - or, rather, as an integral factor in - economic considerations, and making their neglect or omission a valid reason for refusing consent, developers may justifiably feel that these issues are not within their remit. This perception will be reinforced if they perceive that, for example, the resources of the so-called <sup>3</sup>Heritage<sup>2</sup> Lottery Fund, which are peculiarly suited to the reinforcement of the much-neglected environmental and heritage sector, are to be diverted to objectives which have previously been directly funded through taxation revenues.

It is therefore our conviction, and the regular experience of our membership, that environmental, natural resource and to a lesser extent social considerations are given scant weight in the scales as against economic factors, and that this is a

source of great resentment and disaffection amongst communities. An example of where this can work particularly adversely against a community is where a cherished historic building, or open space, in a high-value area is to be demolished for new development; to raise the funds necessary to save it is beyond the capacity of most community groups in that situation, whereas if it was in a low-value area, the task of raising the funds to purchase it is significantly easier. This leaves communities in no doubt that the character and individuality of their local environment is, in reality, in thrall to economic considerations, the benefits of which may not even accrue to the local area in the long run, and add to public disaffection.

This is particularly regrettable because, in our experience, local communities do understand the economic necessities of life, and are anxious to work with local authorities and the private sector to secure change which both brings economic benefits and meets their own aspirations for their areas. They are dismayed when their objections to what they see as inappropriate development for their areas are dismissed as coming from a <sup>3</sup>vociferous minority<sup>2</sup> or <sup>3</sup>nimbys<sup>2</sup>, when, all too often, the current system of processing development proposals obliges them to be negative and reactive, rather than positive and proactive. We are not yet convinced that the concept of Sustainable development is adequately understood, certainly in practical terms.

*4. What, if anything, could the English planning system learn from the planning and consents systems operated in other countries in order to respond to this new economic environment?*

We do not feel qualified to answer this question in general terms. However, in regard to the current major issue of <sup>3</sup>clone towns<sup>2</sup> and the loss of small traders to supermarkets, it is our understanding that, in Paris, it can be required that when, for example, a butcher<sup>1</sup>s shop closes, only a new butcher<sup>1</sup>s shop can replace it, and that, in certain parts of the United States, local community assemblies can veto development proposals under some circumstances. While any such rights must, of course, be exercised responsibly, it is our view and experience that giving communities that level of responsibility, and a stronger role in the development of their local area, will reduce delays and confrontation by enabling them to use their skills and local knowledge to negotiate the best possible solutions, benefiting all parties.

*5. What is the impact of planning on encouraging or impeding business investment? In this context, how would you assess the potential of recent reforms to the English planning system, which are now being implemented? Are they increasing the transparency of the system and providing greater certainty for businesses? What further reforms, if any, are desirable in order to improve the transparency and effectiveness of the system still further?*

As indicated above, transparency and certainty are equally important for the local authorities considering development proposals and for the communities affected by them. We consider that the recent reforms to the planning system have greatly increased uncertainty for communities and planning authorities. We do not consider that an established planning system impedes business or creates uncertainty. As also indicated earlier,

the unpredictability of how the appeals process will interpret planning policies or make its own judgements is, in our view, a major factor, while the imposition of unrealistically short targets for making major planning decisions can too easily be a catalyst for poorly-thought out decisions. We also believe that national economic and fiscal restrictions have a far greater effect on the success or failure of business than any limitations of the planning system. Finally, until local authorities can have a level of resources which enables them to take on sufficient staff, of a calibre equal to that in the better-paid private sector, no amount of planning <sup>3</sup>reform<sup>2</sup> will address the real issue, which is of adequate skills within the public sector.

*6. Is the planning system sufficiently <sup>3</sup>joined-up<sup>2</sup> with other related aspects of government policy? In particular, are Regional Economic Strategies delivering a clear economic framework to help inform Regional Spatial Strategies? Is there sufficient interaction between RDAs and RSSs when preparing their respective regional strategies and, if not, how might greater interaction be encouraged?*

In our view, this question exemplifies the concerns we have raised above, by asking whether RESs deliver <sup>3</sup>a clear *economic* framework<sup>2</sup> while at the same time asking whether the planning system is sufficiently <sup>3</sup>joined-up<sup>2</sup>. The question should be, rather, whether RESs are sufficiently integrated with other non-economic aspects of government policy. It is also disappointing that the question does not ask respondents to address the issue of RESs in their relation to sub-regional and local policies and their impact on them.

*7. Planning applications for major projects will typically take a considerable time to work through all the necessary stages. Do you consider the system puts too much emphasis on speed or do you feel that it is too slow? If there is an undue emphasis on speed, what are the negative consequences of this and how could they best be avoided? In particular, what improvements might be made to the planning appeal system to improve its speed and efficiency?*

While there are widespread concerns that there is an undue emphasis on speed, it is desirable that the process should embody as much certainty as possible, since unreasonable delays may disadvantage the community as much as the developer. The negative consequences of an undue emphasis on speed can range from over-hasty refusals, through a lengthy appeal process which will slow down a process which ought to have been the subject of discussion between the public, private and community sectors in advance of a planning application, to, ultimately, the seeking of judicial reviews of controversial decisions by aggrieved communities. We have no doubt that one major improvement to the planning system, which would improve both speed and efficiency through focussing minds on the real issues, would be the introduction of a limited third party right of appeal.

*8. Is there evidence to suggest that the direct costs of making a planning application are deterring investment? Are there any unnecessary burdens / how might information requirements be streamlined to reduce the regulatory burden from the process of making an*

*application?*

We consider that it would be dangerous and undesirable and undermine public confidence in the planning system even further if such streamlining resulted in any reduction in the information required to make a holistic assessment of an application. Streamlining should aim at simplifying the process of providing the information necessary for local authorities and communities to assess the proposals, and the new standard planning application forms should be given the opportunity to demonstrate whether they address this issue before any more changes are made. We consider that the direct costs of making an application are normally very low, in relation to the value of the development itself.

*9. To what extent are high occupation costs in England likely to be due to planning constraints, or due to other factors such as imperfect competition or lack of transparency in the land market? What is the economic impact of these costs in terms of the main drivers of productivity?*

We are dismayed at the suggestion that outmoded Keynesian theory, in which the more that is provided, the lower prices will be, has any bearing on the planning process, or that the purely theoretical concept of <sup>3</sup>perfect competition<sup>2</sup>, in which everyone would have a choice of a range of housing anywhere in the country, could be even remotely attainable. As we pointed out in our response to *Planning for Housing Provision*, housing is not like other commodities, where the more that is provided, the lower prices will fall. The achievement of any such aim would result in millions of people suffering negative equity, with disastrous economic consequences.

<sup>3</sup>Lack of transparency in the land market<sup>2</sup> is particularly an issue of land-banking, not of the planning system; there are few constraints against submitting planning applications anywhere, except in areas needing protection from excessive or insensitive development - and this leads us back to the issues covered in question 3, of economic versus non-economic values. While this is a subject which requires a thesis rather than a paragraph to cover it, we repeat our assertion in the abovementioned document that the main issue to be addressed is that of affordable housing which, if it is to be achieved, would itself require a major manipulation of the land market, as well as a discussion of the levels of labour, materials and VAT costs of providing new housing and refurbishing existing substandard housing. We urge a complete re-think of the aim behind question.

*10. How does the planning system impact on competition, through influencing barriers to entry and exit and economies of scale? If there are areas where there is a negative impact, how can these be addressed, while protecting other goals of the planning system?*

We have similar reservations about the validity of this question, particularly as it appears to relate solely to the impact of planning on competition, and not to the working practices of the participants. A substantial proportion of the housing market is in the hands of a relatively small number of <sup>3</sup>bulk builders<sup>2</sup>, who must already reap extensive benefits from the economies of scale which their size enables them to implement, together with an element of oligopoly from the substantial land-banks which such companies hold, and in our view it is the structure of the industry, rather than

of the planning system, which should be studied in order to answer this question. We also understand that some major supermarket companies, for example, themselves subvert competition by buying sites of which could be of interest to their competitors and leaving them undeveloped in order to eliminate potential competition.

*11. To what extent does the planning system effectively support innovation through fostering the formation of business clusters and wider agglomeration of economic activity?*

Firstly, it needs to be made much clearer what <sup>3</sup>wider agglomeration of economic activity<sup>2</sup> means. <sup>3</sup>Economic activity<sup>2</sup> involves everything from a single-person business to mass-production., and it could be argued that any town centre is an <sup>3</sup>agglomeration of economic activity<sup>2</sup>. Secondly, we consider that the desirability of forming <sup>3</sup>business clusters<sup>2</sup> needs first to be demonstrated in specific locations, after which it will be more productive to examine how the planning system can promote them as appropriate. Thirdly, we see no reference to the impact of the electronic revolution on working practices and the extent to which, under such new conditions, and other factors such as the constantly-growing strain on transport infrastructure, physical <sup>3</sup>business clusters<sup>2</sup> are now relevant or desirable; this must, under certain conditions, invalidate the assertion that <sup>3</sup>innovation<sup>2</sup> can result only from such physical clusters. Only when these parameters are clarified will it be possible to determine the extent to which the planning system can help promote the conditions necessary. Until this is done, this question is far too imprecise and unfocussed to enable a clear answer to be given.

*12. Do planning authorities have the skills and resources required to help promote sustainable economic development? If not, what is the best way to ensure that resources match the challenges the system faces? Are there ways to increase further efficiency of process?*

Many local authorities have experienced and dedicated staff; but they work within an atmosphere of regulation and constraint to which the business sector is not subjected, and with a level of resources within which it is likely that the business sector could not operate efficiently. Given these constraints, it is a long-standing and well-known concern - among all parties, public, private and community - that local authorities cannot offer the pay scales adequate for attracting sufficiently skilled practitioners; this is particularly unfortunate in view of the increasing importance of the role now being taken on by the planning sector. The business sector would expect to pay skilled consultants high rates for the advice they need; it is inconsistent that the equally important advice and input from the local authority should all too often be given by over-stretched and under-resourced planning departments. However, one approach suggested in the past, that of contracting out planning work to the private sector, would not be desirable. It would inevitably call into question the impartiality of the contractors, particularly if they had in the past, or are likely in the future, to work for any of the applicants; and it would thus severely undermine public confidence in the planning system. The planning sector must therefore have resources which enable it to sustain, and process efficiently and impartially, the workload which it is statutorily obliged to process. If public

resources are limited to the extent that the private sector must pay higher application fees, that surely suggests that the fees have historically been too low and that developers have, in fact, been shielded from the full effects of competition.

*13. Are the new arrangements for stakeholder engagement in the plan-making process succeeding in engaging those representing economic interests, including SMEs? If not, what are the barriers to that engagement and how might they be addressed?*

No. In our experience of representing the community part of the <sup>3</sup>stakeholder<sup>2</sup> element, there is considerable confusion about, and little real confidence in, the new arrangements. There is little consistency in either the style or production of Statements of Community Involvement, and the Planning Inspectorate have already made clear that the standard of the relatively few SCIs which they have seen is uniformly poor. Community groups, as well as councillors and officers, are still unclear about how stakeholders can effectively engage in the process through SCIs, Local Strategic Partnerships, Local Area Agreements, etc., and the complexity of the new system does, indeed, confuse them. The barriers seem to be that interpretation appears to depend on the awareness and grasp of the system, as well as interest, on the part of officers, councillors and those community and other stakeholder groups capable of penetrating the system to find out. One of our member bodies reports their local authority as expressing concern that major developers have a surprisingly tenuous grasp of the planning system, calling on the services of consultants to guide them through the process when necessary. For a

community comment on what are perceived as major failings of the new Local Strategic Partnerships system, we refer you to an article on pp.4-5 of the Spring 2006 newsletter of the Civic Trust's London regional federation, the London Forum of Amenity and Civic Societies, which represents c., 120 community groups in Greater London with a total membership of some 100,000 people concerned about the planning of their living and working environments.

*14. Are there ways that the incentive structure for decision-makers and local communities can be improved so that a balance is achieved between local interests and the interests of the wider community regarding proposals for economic development?*

The primary incentive for local communities to become involved is to make them believe that their views and local knowledge are being listened to in order to secure that <sup>3</sup>balance<sup>2</sup>. They must also be reassured that this <sup>3</sup>balance<sup>2</sup> is based on practicalities and not on one-size-fits-all guidelines from a remote centre which fail to allow them to take account of local conditions. In our experience, people are more likely to be receptive to change if they are involved in it, and can be persuaded that it is in their interest, as well as the wider interest.

*15. Economic development can help achieve the regeneration and renaissance of urban and rural areas. Are there ways which planning could strengthen economic performance in regions, sub-regions (including city regions) and at the local level?*

As mentioned earlier, one issue of major concern to our membership is the development of <sup>3</sup>clone towns<sup>2</sup>, the

failure of small individual businesses, and the inability of local authorities to control the proliferation of particular businesses one of our member societies reports that 20% of the shop units in its high street are now estate agents, forcing up the rents of the retail units to levels which are unsustainable for <sup>3</sup>normal<sup>2</sup> retail units by landlords with short-termist views who see the potential for high rents through change of use, and have no regard for the impact of their actions on the longer-term degradation of the area and, hence, on their future rents. Local authorities need stronger powers to ensure a mix of retail and non-retail uses which will minimise the need of local residents to travel and maintain the viability of local shopping centres. These in turn can act as a focus for local regeneration.

To infer from the above comments, however, that the Civic Trust's view of the proposed changes is largely negative, would be to entirely misinterpret the thrust of our concerns which, far from regarding change as undesirable, is concerned to ensure that the economy works to the advantage of the entire community. Our concerns relates not to change *per se*, but to aims which we fully support but which, we consider, is sought through poorly-conceived, and ultimately socially divisive and environmentally and economically damaging, proposals which will further alienate a public already disillusioned with the political and planning process because they see it as working against their aspirations