

Barker Review of Land Use Planning

Response from Birmingham City Council

The response set out below has been made within the context how the reforms to the planning system are contributing to the city council being able to achieve its economic, social and environmental goals. This context reflects Birmingham's transformational move away from its traditional manufacturing roots into one embracing new economies, seeking real growth in population and an aspiration to become a world top 20 city. A good and efficient planning system should be able to assist in this process; our initial experience of the recent reforms is that they are not helping and in particular the new plan making process may well be slowing down and hindering our progress.

1 Is the planning system sufficiently flexible and responsive? What policy measures might deliver this flexibility?

1.1 Although the new planning system has barely been in place 18 months, it is already clear to Birmingham City Council that far from being the simpler, speedier and more focused process the Government promised; it is anything but this. The regulations are too rigorous, too time consuming and too inflexible and as such would appear to fatally undermine the achievement of the Government's objectives. The system is clearly over-engineered and therefore inflexible in being able to respond quickly when the need arises. Already this is proving a frustration to both developers and planners who both wish to see a system that enables development rather than puts bureaucratic barriers in its place.

1.2 An example of the planning system's inflexibility may be seen by considering the closure of the 140 ha MG Rover plant at Longbridge. Despite the wish of the DTI's Rover Task Force to respond quickly to this new development opportunity, an aspiration matched by both the landowners and city council; new planning guidance cannot be put in place quickly as the plan making process could take between 2 – 3 years to complete if the Government's guidance (PPS12) is followed rigorously! For example:

- new land use allocations *can only* be made through preparing a Development Plan Document (DPD),
- a DPD cannot formally commence until it is identified in the Local Development Scheme (LDS). The LDS is normally only rolled forward once per year. To amend it outside the normal timeframe requires the specific approval of the Government Office. In addition to this itself being a time consuming process, it also means the City Council cannot begin to put planning guidance in place until the government has agreed this!
- the process of producing a full sustainability appraisal in which to ground any proposals can take up to a year!
- The statutory timetable for producing the DPD is lengthy, and ultimately will depend upon the speed with which the Planning Inspectorate can hold an Examination and produce a report,

1.3 The result of this is that should development proposals come forward prior to the DPD's adoption, the Planning Authority has either to take incremental and uncoordinated decisions, or refuse them on the grounds of prematurity.

1.4 A policy measure that would help overcome this would be to allow Planning Authorities to make land use allocations for smaller discrete areas through the production of supplementary documents produced in 3-6 months. These could use existing sustainability and environmental information, could be made within the context of the Regional Spatial Strategy (RSS) and core policies and include appropriate community and stakeholder engagement.

2 What are your views on the scope of plans at different spatial levels in the new system and does the system strike the right balance between central, regional and local discretion.

2.1 It should be noted that whilst national policy guidance is provided through Planning Policy Statements (PPS) but there is no equivalent mechanism (i.e. no plan) for co-ordinating land use proposals of national significance. For example planning for national expansion in air travel, major road, rail or utility investment is done through independent systems or plans that do not easily sit within the Russian Doll nest of "planning" plans.

2.2 At Regional level there are potential issues relating to public accountability and engagement. In the absence of any directly elected body to produce regional strategies, the public at large may have some difficulty equating the desire for increased community engagement within a democratic planning process with a system that automatically includes the RSS as part of the local area's Development Plan.

2.3 At the local level (and setting aside the comments made in section 1 above) it is still too early to say how well the new system will deliver. Whilst Birmingham still has its UDP in place, there is an accessible and easily understood overview of planning policies that cover the whole city. Once this is removed it will be interesting to see how well the "folder" of different plans works. For example if it is decided to produce core policies for a particular topic (eg housing or retailing) how well will this translate to site allocations in either DPDs or site allocation plans?

2.4 At the local level, given the complexity of the new system it remains to be seen whether the public and developers believe it will deliver discretion. What is clear is that there is a huge learning curve for anyone (including planners) wishing to understand the complexities of new process. A stakeholder may now have to refer to, the LDS, the LDF, the RSS, the Statement of Community Involvement (SCI), Core Strategy documents, Site Allocation Plans, DPDs, Area Action Plans (AAP), Supplementary Planning Documents (SPD), a proposals map, possibly several sustainability appraisals, and an annual monitoring report! Most of these have separate and time consuming processes to follow. In short, the transparency and clarity of the process has been lost through the plethora of plans and their acronyms.

2.5 With specific regard to the balance between central and local discretion the balance still clearly lies with central government. National policies set out in the

PPS's apply uniformly regardless of local circumstances whilst the content of DPDs ultimately rests upon the decisions within the binding Inspector's report.

3 Does the current system strike the right balance between economic, environmental and social goals?

3.1 The system itself doesn't prevent this balance, but how successfully it enables its delivery is debateable. At the strategic and plan making level, whilst the need for and role of sustainability appraisals is excellent in theory; in practice as the means of testing and balancing disparate economic, social and environmental needs its success is far from clear. The concept of sustainability and what it means for the planning process still lacks sufficient definition and clarity and there is a tendency for it to be able to mean all things to all people. For example there is a tendency for the green lobby to see it in one light and the economic lobby in another. Our experience to date of Environmental Appraisals supporting major planning applications is that they always manage to argue that it is sustainable for the proposed development to go ahead – what does this say about the rigour of the process? Production of Sustainability and Environmental Appraisals, however, does put a significant delay in the production process, and appraisals are in danger of demanding over intense data gathering. The potential for this to become the basis for extensive argument at Examinations appears high. At the scheme specific level guidance on the best ways of delivering sustainable and energy efficient developments is just that – guidance!

4 What can be learnt from overseas systems of planning?

4.1 It is believed that in Holland and the Scandinavian countries the ability to truly address the sustainability agenda without hindering economic development has been achieved much more successfully than in this country. In France and Germany there is clear evidence of an ability to deliver key infrastructure improvements in a timely manner; whilst the public consultation methods employed in some of the Australian States appears to be much more pragmatic and realistic than here. There would be merit in looking at these and no doubt other countries practices in more detail.

5 What is the impact of planning on encouraging or impeding business investment? What further reforms can improve the transparency and effectiveness of the system?

5.1 The business community will be better placed to comment on this, but we believe the new planning system to be a disappointment to them. One of the key reasons for the reforms was to make the process more responsive and inviting for business investment. The old system was perceived to be putting barriers in the way of progress; the new reforms appear to have done little to change this. At the development planning level the system is confusing, lengthy, overly bureaucratic and with no guarantee of certainty until the very end of the process; whilst the reforms to the development control part still emphasise planning authority performance rather than quality of development. Whilst speed of decision-making does not prohibit quality, neither does it facilitate it. Developer's investment decisions are best served by delivering certainty, but few of the recent reforms give any further reassurances than before.

5.2 Birmingham City Council believes that rather than stipulating that major developments should be delivered within a “blanket” 13-week timescale (16 weeks with EA) regardless of complexity, we should be able to negotiate and agree a more realistic and “certain” timetable with the developer – if necessary with performance monitored against this. For example if a major city centre redevelopment is known to have tricky issues to deal with, or that S106 negotiations will take time, why not agree with the developer a realistic programme. 20 -30 weeks are not uncommon timescales, so why not be able to negotiate and agree these?

5.3 One observation of the planning system is that it can affect the dynamics of how some sectors of business may work. For example in retailing, although competition is not a material consideration, planning policies or development control decisions for large food stores or bulky goods operators do impact upon the wider retail markets and store operator’s ability to trade or invest most effectively. For example strict criteria in PPS 6 about the location of bulky goods stores has meant that Birmingham has been unable to find a policy compliant location for Ikea, despite both their and our wish to have them trade within the city. Paradoxically this inability to find a site means their Darlaston store overtrades and often causes severe congestion problems on the M5 and surrounding roads. A Birmingham store would be a more sustainable addition, reducing the length and number of vehicular traffic movements.

5.1 On a more positive side planning can condition certain sites to assist industry, such as safeguarding land for long term high technology uses in the face of competition from more immediately available general commercial or office uses.

6 Is the system sufficiently joined up with other related aspects of Government policy – in particular Regional Economic Strategies?

6.1 The relationship between the Regional Economic Strategies and the RSS is likely to vary from region to region. In the West Midlands there is a reasonable level of connectedness, however, there is less certainty regarding other policy elements. Regional policy and local planning often still appear to have little relationship to each other whilst the sheer number of Government strategies and policy documents a plan should have regard to is bewildering.

7 Does the planning application process put too much emphasis on speed? What improvements might be made to the planning appeal system to improve its speed and efficiency?

7.1 Birmingham City Council believes there is too much emphasis on speed rather than certainty. This can result in:

- Poor quality decisions and developments
- Pressure on developers to withdraw applications
- Little or no negotiation to help improve the quality of a scheme.

7.2 Delivery agreements, which allow for the handling of applications to be “project managed” (see earlier comments) would provide a greater degree of clarity and certainty. We believe developers will almost always value a positive outcome over speed therefore time spent negotiating to reach a positive approval rather than a

refusal within a Government stipulated period is ultimately a more efficient process for all.

7.3 There is no doubt that the planning appeals system is a major drain on officer's time. Greater use of inter-net based systems to improve speed and reduce paperwork would be welcomed.

8 Is there direct evidence to suggest that the direct cost of making a planning application is deterring investment and how might the regulatory burden be reduced?

8.1 There is little evidence to suggest the planning fee for submitting an application deters developers – for example the number of applications per year in Birmingham is at an all time high. As a proportion of the total cost of an investment, the application fee is minimal. The possible exception may be for schemes that require a full Environmental Assessment – the costs of which can be very high.

8.2 The regulatory burden could possibly be eased by using “validation check lists” setting out the information requirements. These will not, reduce the amount of information the developer needs to assemble; they would, however, enable their submissions to be registered “first time”, thereby reducing potential delays.

8.3 The greater worry for developers re the costs of dealing with the planning system relate to any S106 requirements. On marginal schemes where developers claim these costs are unaffordable, Birmingham requests to inspect their figures. This open book policy is a pragmatic approach to balancing legitimate planning requirements against the viability of a scheme.

8.4 Of particular concern is the current debate about Planning Obligation Supplements. We have real fears about how this may inhibit development and about the equity of how any supplements may be returned to the city. For example, rather than accept a development levy on the increased land value a permission brings, developers may simply sit on their land banks as has happened with previous similar attempts.

8.5 From the local need and democratic perspectives there are even greater fears:

- There are no guarantees that the levy sought will be returned in full to the local authority, not least as it is proposed to be returned through regional structures, although there is no accountable body at this level.
- Some developments that receive permission will not have their community impacts addressed as funding will either have been removed or will have been directed to other regional causes.
- As the proposals will only remove certain of the S106 requirements this does add another administrative layer to the planning process. This adds potential for further confusion and lack of transparency both for developers and local communities.

8.6 Birmingham believes that the Barker review should re-examine the alternative option of planning tariffs. There is more certainty about being able to publish clear financial costs against measurable criteria (whether counting roofs, dwelling units. Sq meters of per industrial or retail floor space etc). Once published tariffs would be

more easily understood and administered and we believe accepted by developers and the public alike.

9 Are high occupation costs due to planning constraints?

9.1 High occupation costs are likely to be a reflection of high demand for land, which in Birmingham is a scarce resource. The ability of the planning system to release more land and ease high costs is severely constrained as the vast majority of development in Birmingham is through brownfield redevelopment (for which reclamation and site preparation works add to the costs) and much of this comes forward on “windfall sites”. Legitimate planning constraints such as protecting playing fields, open space and areas of nature conservation interest are necessary to maintain the balance between economic and environmental aims, whilst other site specific constraints (eg access, parking, landscaping requirements etc) that may be a cost on development will only reflect the principles of good planning and design. These should not impose overly burdensome costs on a development and indeed should be seen as adding to its quality and marketability.

10 How does the planning system impact on competition?

10.1 The factors which influence competition are largely outside the control of the planning system and as such the system has limited impact upon competitiveness. For example competition is not a material consideration when dealing with planning applications.

10.2 The plan making process may have some influence in that restraining the availability of land or premises for certain types of use, such as retail or leisure, can impact on the operation of their markets. For example “store wars” are not an uncommon phenomena in urban areas with limited opportunity to deliver policy compliant sites. We have seen examples of sites being assembled by one store operator frustrated by the purchase of a minority land interest by rival operators. Whether having to use compulsory purchase powers, or resolving through prolonged negotiation, there are inevitable delays in schemes coming forward. Another example is where rival schemes come forward in the same centre where both may be acceptable in policy terms but where the retail demand figures can only justify one store. Such schemes are inevitably called in and determined through an Appeal Hearing, again a long and time-consuming process.

11 To what extent does the planning system support innovation by fostering the formation of business clusters?

11.1 If this is a concept the Government or a local planning authority wish to support then this has to be built into the aims and objectives of the planning process. The planning system itself cannot directly create innovation, but it can create the right conditions to support it. For example in Birmingham the A38 has been identified as a corridor for high technology development; sites have been identified to encourage

clustering, whilst there is also a UDP policy that prohibits other uses on sites within the corridor until the needs of the high technology strategy belt have first been considered.

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

12.1 Planning authorities may well have the skills to advise on sustainable economic development but almost certainly lack the resources to assist in implementation. The onerous requirements of producing sustainability and environmental appraisals for DPDs/SPDs is already beyond BCC's own internal resources for even a modest number of plans or policy documents. The result is likely to be less plan making and therefore less opportunity to guide, and assist achieving sustainable economic objectives.

12.2 Efficiencies could be improved if the plan making process required only one Sustainability appraisal for the local authority area, rather than one for every plan. Although potentially a major task initially, once produced it would deliver huge savings.

13 Are the new arrangements for stakeholder engagement succeeding in engaging those representing economic interests? If not how might barriers be addressed?

13.1 Birmingham has insufficient practical experience yet so it is too soon to say. It is thought, however, that economic interests are more likely to be better served at the regional level than the local level. In our experience SMEs have very little engagement with the planning process and are unlikely to get engaged unless directly affected by a proposal.

13.2 Birmingham's experience is that engagement with those representing economic interests and how they may contribute to helping achieve our economic goals is more likely to be fruitful outside the parameters of the planning process. For example Birmingham has set up a developer forum, which meets regularly, to discuss shared visions, aspirations and the practical means to achieving growth. It also acts as a forum to discuss detailed planning concerns eg how to deal with parking and transportation requirements in the city centre. Local and strategic partnerships are another positive vehicle for joined up thinking and action whilst at a more visionary level, Birmingham has just held a City summit offering the opportunity for the business sector to engage in the longer term economic plans and aspirations for the city.

14 Could incentive structures for decision-makers be improved to better balance local interests and those of the wider community regarding proposals for economic development?

14.1 It is not clear what is meant by "incentive structures for decision makers" in the planning process. Regarding achieving a balance between regional and local

economic objectives requires clarity of objectives at each of these levels. There are always likely to be tensions between regional economic objectives (such as the need for a major investment sites or transportation proposals) being directed to a local area that does not wish to see change. It is important, however, that decisions that do require a regional debate and decision are not clouded or obfuscated by local issues.

15 How can planning strengthen economic performance at strategic and local levels?

15.1 As will be gathered from the above, the best means of achieving better economic performance would be through making further significant changes to the planning process to “nip in the bud” the obvious pitfalls of the recent reforms. In particular speeding up the plan making process and allowing greater levels of certainty for developers would be welcomed. . There are some aspects of the recent reforms that should be retained. These include:

- the folder approach to planning which allows some policies or plans to be changed without the need to review the whole;
- basing plan preparation on an evidence base and soundness thereby hopefully removing the opportunity for too many objections at the Examination stage,
- the use of Examination over the protracted Public Inquiry; and
- recommending developers undertake their own public consultation (on major schemes) prior to an application being submitted.

15.2 Areas that would generally help create a planning system that would strengthen economic performance include:

- Speeding up the formal plan making process (still too unresponsive to change);
- Allowing land use allocations to be made for smaller discrete areas through supplementary plans that could be produced within 3-6months;
- Simplifying the terminology and number of planning documents/processes;
- Introducing planning tariffs to give clear advice to developers;
- Speeding up decision making (and delivery) on key infrastructure projects such as road building schemes, rail improvements etc, thereby removing blight and speeding up related investment decisions;
- Allowing more realistic delivery agreements to be negotiated between the Planning authority and the developer re timescales for determining applications.
- More refined development control monitoring that measures quality of service rather than speed.

Clive Dutton
Director of Planning and Regeneration

Contact Officer:
Peter H Wright
0121 303 3170
peter.wright@birmingham.gov.uk

