

Barker Review  
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Your ref  
Our ref  
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Dear Ms Barker

I am writing to give the response of the Office of Fair Trading to your interim Review of Land Use Planning.

The OFT's goal is to make markets work well for consumers. Markets work well when there is vigorous competition between businesses. When markets work well, good businesses flourish.

Competition in many markets depends on companies having ready access to suitable facilities which in many cases will mean development sites. The report details some of the costs associated with the requirement for planning permission to develop land and how the planning system may thereby create barriers to entry and expansion. We welcome the interim Review's comments on the impact of planning on UK productivity. As you make clear, the planning regime needs to balance a number of different policy goals alongside productivity growth, notably the need to encourage sustainable development. We believe your interim report also goes a long way towards addressing the issues that would make development more responsive to economic demands while maintaining this balance with social and environmental objectives and the OFT believes that, wherever possible, the planning regime should be designed to minimise distortions of competition.

We note that you have already taken up some points from earlier discussions with us. The following are some further points that seem to us to be especially important.

As you note in paragraph 5.49, the OFT has referred the groceries market to the Competition Commission for a market investigation. In our reasons for reference, we raised concerns about the impact of the planning regime, particularly for larger format stores. We note with interest your analysis of the effect of the 'town centres first' policy, and agree with your finding that the relationship between town centres and retail location is 'complex' (para 5.33). While we understand the policy rationale for encouraging town centre development, we also note your observations that the causes of decline in towns and cities are often unrelated to retail.

We also agree with your observation that the length of time taken to achieve planning consent can have a significant impact on market developments. As stated in our groceries market reference document in May, we believe that these delays can be particularly significant for large-scale retail sites. Based on evidence submitted to us by the supermarkets, we believe that achieving planning consent can take up to six years, depending on the complexity of the case.

The report makes the point that the discretion to vary planning policy according to local circumstances may be unduly limited and rarely used when the flexibility is there (paras 3.32 and 4.29). Might there nevertheless be scope for an increased role for national criteria to determine certain types of planning applications as a means of simplifying the system? For example, assessing planning applications to build houses according to set criteria including density and energy efficiency. This has the potential to make the process developers must go through in gaining planning permission more certain, fast, transparent and simple and less costly. It is worth noting that the 'flexibility' and 'room for manoeuvre' desired by business can work to the advantage of (particularly larger) companies able to play the system in the ways outlined in the report (paras 5.13 and 8.63-4).



The report points out the tendency of some local authorities to release large sites for development with the effect that only the bigger developers are able to compete effectively for the resulting business (para 5.13 5th bullet and 8.63 3rd bullet). We note the comment in the report that planning permission to operate a retail store applies to the land or the building, rather than being specific to the operator, and that “planning policy does not have the tools to counter loss of diversity” (para 5.46). While mindful of the principle that the planning system should be blind to the applicant, in principle might there nevertheless be a case for using the planning system to avoid ‘anti-competitive’ development? Where a retailer or house builder has a very high local market share, is there a way for the planning regime to block an application for further development, or favour an application from a new entrant? We note the practical difficulties; in particular, we wouldn’t be comfortable with local authorities making unilateral decisions based on competition issues but also note that in the particular case of PPS6 local authorities can take account of ‘choice’ in planning for certain types of developments. The OFT is also interested in whether this issue might be addressed by measures such as requiring local authorities to release land in smaller chunks, giving planning consent only if these blocks are developed by different companies.

Indeed the OFT notes the scope offered by local development plans for large and experienced incumbent firms to lobby to influence the choice of sites allocated for development (paras 5.13 and 8.63), particularly when allied with use of option agreements (paras 5.14 second bullet and 8.64) and urges consideration of ending the allocation of zones for development by local authorities.

With reference to the sections on protected areas and value of open space (paras 1.19-1.21 and 8.17-8.21, respectively), are there ways of further categorising different types of undeveloped land, according to the varying levels of social costs that their development would incur? How might these classifications be used to determine where development is to be allowed?

I also attach a list of more detailed points and we would be very happy to discuss any of the points we have raised with you.

Yours sincerely

David Osmon

1. We are interested in the potential for benefits from increasing the scope of 'permitted development rights' (chapter 1 of the report - para 1.16, first bullet of para 1.22 and para 3.27) whereby planning permission is deemed to have been granted for certain (currently minor) forms of development.
2. Indeed the report states (in relation to householder consents) that 'Given the range of types of cases that planning permissions cover, from house extensions to major developments, an efficient system would ensure that the level of regulations was proportionate to the risk involved in making a wrong decision, a principle articulated fully in the recent Hampton review.' (para 3.39). This is taken to mean that the number of things for which planning permission is required should be limited so that developments which incur only a small amount of detriment do not require permission. However, it needs to be borne in mind that the requirement to apply for planning permission might itself deter a number of such developments.
3. We note also that the values of open space quoted in the report (in table 8.2) may be significantly understated because they do not incorporate various factors (listed in the penultimate paragraph of the appendix to chapter 8). In particular, the valuation of urban fringe green belt may be seen to be very high once its location close to a population centre is taken into account. Other factors listed there such as climate control demand a certain total amount of land to be left undeveloped so individuals' valuations of incremental changes to open space do not measure its true value. There may also be other benefits to open space that are not included in the valuation, such as constraining town development (as outlined in box 8.3).
4. The report lists the justifications for green belts (Box 8.3). Another may be that, while constraints on city growth can constrain agglomerations of economic activity and hence the benefits these bring (para 6.63), in so far as they bring about the recycling of urban land (mentioned in Box 8.3) they may in some cases help to bring about the conditions suitable for clusters (as with Shoreditch and Hoxton, for example – paras 6.39-6.46).
5. Para 4.30 (4<sup>th</sup> bullet) suggests that the UK is perceived to be more urbanised than it really is. It quotes a 'real figure' of 8.3% for the proportion of the surface area (of England alone) that is developed. It should be made clear here that 8.3% is not the proportion of the surface area that is developed but the proportion of urbanised land, which is defined as land built on with settlements with a minimum population of 1,000 and a minimum land area of 20 hectares (footnote 25 p.33). Thus the proportion of the surface area that is developed will be higher.
6. The OFT is interested in whether there might be scope to fix the amounts that can be levied by local authorities for certain things currently subject to s106 negotiated agreements (para 1.23), such as charges to cover the cost of providing extra schools to cater for the residents of new housing developments. Avoiding the need to negotiate these would reduce the delays and uncertainty faced by developers.

7. The statement in the report that community groups' voice is heard over business groups (para 4.30 2<sup>nd</sup> bullet) does not reflect larger firms' advantage due to their knowledge of the system and their ability to employ designated specialists (paras 5.13 first two bullets and 8.63).
8. We would welcome suggestions to facilitate the granting of permission to change of use planning applications (chapter 8).
9. Does the review have views on the efficacy of the government using targets to determine where houses are built rather than price signals?
10. The inclusion in the report of a quote from a McKinsey Report of 1998 that there is a greater proportion of UK employment in relatively inefficient corner shops and specialist shops than in the US and France (para 5.44 first bullet) does not accord with the high number of small shops to be seen in French towns and villages! (These constitute a sure foundation for sustainable and inclusive patterns of urban and rural development, the objective for the planning system in this country.)