

**Commission for
Architecture and
the Built Environment
(CABE)**

**Design and Planning:
Response to the Planning
Green Paper and
associated consultation
papers**

March 2002

Foreword

When the government published the Planning Green Paper in December last year it signalled a willingness to overhaul a system which is now over 50 years old and creaking at the seams.

CABE is fully behind the Government on the need for change. For fifty years our built environment has been characterised by mediocrity. Many new buildings, unhappily a lot of them funded by the public purse, have failed even in terms of functionality, let alone in any aspiration to be the well loved landmarks and beacons of regeneration we need.

This document outlines CABE's response to the Green Paper. It pulls no punches. CABE supports many of the proposals made in the Green Paper, including the controversial tariff scheme which should replace the current system of planning obligations. However, there are also some serious caveats. For example, we oppose the proposed business planning zones, at least as currently defined, believing they could actually detract high quality investors because of low standards of development.

What we do know is that the health of our economy and the quality of our environment is reliant on a fair, positive and efficient planning system. That is what the Government must now strive to deliver. CABE will be ready to offer support and advice through the difficult phase of transition.

Jon Rouse
Chief Executive
CABE

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1. Introduction

CABE supports the Planning Green Paper.

In presenting our submission on design and planning reform last autumn, CABE argued that the current statutory planning system was:

- increasingly unable to reflect changes in national, regional and local policy priorities within a reasonable timeframe
- not an effective tool in positively promoting economic development and urban regeneration
- a heavy-handed control mechanism which, in design terms, tends to apply the lowest common denominator between many vested interests, resulting in developments of mediocre quality
- too complex to enjoy widespread understanding and support, and thereby to encourage effective public participation

and that these systemic problems were compounded by a lack of relevant skills and resources within many local planning authorities, at both officer and member level.

Instead, we need a system that:

- is positive in securing change
- is efficient and consistent in delivering consents
- provides a level of control proportionate to impact
- rewards quality
- involves communities in setting the parameters for decisions
- without unduly encumbering the system with individual third party objections
- is affordable

To achieve this, we have consistently argued for the adoption of ten key principles.

1. Streamline the plan-making process
2. Promote positive planning to regenerate neighbourhoods
3. Give priority to the most significant developments in the decision-making process
4. Reward investment in quality with quicker and less encumbered permissions
5. Replace the current system of outline planning consents with a more sophisticated system of 'partial consents'
6. Create a simpler and more transparent system of planning obligations, probably through the introduction of impact fees

7. Ensure that local planning authorities have access to design advisory expertise and relevant training
8. Create a single permission to develop by rationalising other consent requirements
9. Avoid the introduction of third party rights of appeal by providing more meaningful consultation mechanisms during the plan-making process
10. Resource the system generously by increasing planning application fees

The resulting Green Paper adopts most of these principles and therefore has strong potential to create a planning system which is fairer and more efficient. As is evident from the rest of this response, CABE agrees with many of the Government's proposals that will help put planning in this country back on a positive footing and start to attract more skilled and ambitious people into the profession.

In particular, CABE supports, (albeit with some important conditions explained later in the paper):

- the proposed new plan system
- the expanded use of masterplanning as a positive planning tool
- the possible abolition of outline planning consents
- proposals to speed up development control, including the reduction in numbers of statutory consultees
- the new tariff system
- rejection of third party rights of appeal
- increased land assembly powers

By contrast, we oppose only small parts of the Green Paper package:

- business planning zones, which, as currently defined, we regard as unnecessary and potentially detrimental to the objectives of the Green Paper
- the lack of commitment to force through an improvement in the skills of planning committee members to make informed decisions

There are, however, important elements missing from the Green Paper. In particular, we need a far clearer statement of the purpose of the planning system, which is to help create high quality environments that meet economic social and environmental needs, and therefore improve our quality of life. At the end of the day, we could create the most efficient planning system in the world, but if it is not producing high quality development, there will be no net contribution either to our economy or society in general.

CABE therefore strongly considers that the Green Paper should have made clear to the development community that there is a deal on the table. Greater freedom, greater certainty and greater efficiency within the planning system should be offered in return for a commitment to higher quality of development. In the Green Paper, this is a sentiment that is at best implicit. In the final policy statements, CABE would expect this to be a non-negotiable requirement made explicit.

Where the Government must make this requirement particularly clear is in revised Planning Policy Guidance Note 1, to provide a national spatial strategy at the apex of the planning system. This is where the real drive for quality through the system must begin, making clear that local planning authorities no longer have to acquiesce to the mediocre, but can demand higher standards across all areas. It is therefore important to CABE that this guidance note is revised at the earliest opportunity.

There is clearly much work to be done between now and the summer so that the Government will have a robust legislative package ready to stand up to Parliamentary scrutiny by the autumn. CABE stands ready to help in this process. In the meantime, we hope that the Government will act quickly upon the proposals made within the Green Paper and within this response. Many of the suggestions in the Green Paper can be taken up in the short term, in that they do not require primary legislation. We hope that opportunity will be taken.

2. A fundamental change for plans

The new plan framework

We agree with the conclusions of the Green Paper that the current plan-making system is overly complex, unresponsive, and slow and cumbersome to implement. This is having a direct impact on the speed and effectiveness of the renewal of the built environment. Planning departments' limited resources are too often focused on developing rather than implementing plans, while project proposers are uncertain about the relevance of local plans, whose policies are often out of date.

We agree with the proposed new framework, including the abolition of county structure plans, subject to the creation of adequate and flexible sub-regional planning arrangements across local authority boundaries.

CABE welcomes the introduction of action plans, and the recognition of the role of topic-based plans as well as area-based plans. It is important that these action plans have sufficient legal status. We hope that they will be stronger in their standing as a material consideration than the current status of supplementary planning guidance. It is also important that these action plans are kept up-to-date, or there could be a proliferation of out-of-date local policy statements. We would suggest that where action plan policies depart from national or regional planning guidance, then they should not be regarded as having the status of a material consideration. This will concentrate local planning authority minds in withdrawing action plans on a timely basis.

We consider that the **adoption** of a local authority development framework should be seen as part of the local democratic process. We therefore prefer the first option set out in the Green Paper of a wide public participation exercise managed by the local authority, with the back-stop of a binding right of intervention by the Secretary of State where national or regional policy has been incorrectly applied, or where the Statement of Community Involvement was clearly inadequate. Local authorities will, however, require best practice guidance on undertaking the participation process, including the use of independent facilitation.

We agree with the Green Paper's analysis of the current deficiencies of regional planning guidance, and its replacement with **regional spatial strategies** with statutory status.

The role of national planning guidance

CABE considers that national planning policy has generally proven successful. Our view is that the status of PPGs as a material consideration needs to be strengthened, so that there is greater confidence within local planning authorities that decisions made in

accordance with national planning guidance will be backed up by consistent recommendations from Planning Inspectors and decisions by the Secretary of State.

At the same time, the Government needs to strengthen the allocation of resources to the dissemination of national planning guidance and principles along the lines set out in Chapter 8 of the Urban Task Force report, 'Towards an Urban Renaissance'.

We welcome the proposal to use PPG3 as the model for modernising the PPG's. However, as the Green Paper recognises, PPG3 is backed up by good practice guides. The design companion guides to PPG1 and PPG3 have proven very effective and such guides are worth considering in respect other PPG's, for example PPG6: Town Centres and Retail Development and PPG17: Sport and Recreation.

In terms of priorities for revision, PPG1 has to be the first priority. It should establish the primary purpose of the planning system as achieving a high quality environment in the most efficient way possible. It should put in place the policies required to promote urban regeneration and it should specifically establish a clearer role for the planning system in ensuring design quality through positive planning.

From CABI's perspective, the next two priorities are a strengthening of PPG6 to bring leisure and entertainment development back into our towns and city centres, and a revision of PPG15 to provide greater scope for high quality new development in historic areas.

3. A Fundamental Change in Development Control

Streamlining the system

CABE supports the aspirations of the Green Paper and fully endorses the objectives set in Chapter 5 that we require a development control system which:

- is responsive to the needs of all its customers and offers a new culture of customer service
- delivers decisions quickly in a predictable and transparent way
- produces quality development
- genuinely involves the community

CABE supports the introduction of a **checklist** of application materials. We do not, however, understand why there has to be variation in requirements from authority to authority. We suggest that the checklist should be embedded within national guidance with a need for local authorities to demonstrate grounds for departure within their development framework. We welcome the inclusion within the possible checklist of “...a clear statement of what is proposed including its design, materials, impact, accessibility and environmental effects.” This should include guidance on levels of drawings required for different types of scheme.

In terms of **pre-application discussions**, CABE would reassert our initial submission that there could be a formal gateway test of application materials against the checklist before the application enters the system. This would then make decision targets fairer to local planning authorities and more meaningful to DTLR.

CABE welcomes the commitment to create a **one-stop shop** for consents. In respect of heritage issues, this will require significant changes in the relationship between local government and English Heritage. We have already submitted details confidentially to central government on how this might be achieved as part of the current quinquennial review of English Heritage.

We support the breakdown of **delivery targets** by type of application. However, we are under no illusions that local authority performance against these targets has little correlation with the quality of performance in terms of the decisions taken. We would therefore ask the Government to be more explicit about the limitations of quantitative measures.

The Green Paper is unfortunately silent on how Government will monitor the quality of decisions taken. The Planning Officers Society and the Improvement & Development

Agency are undertaking some important work on use of best value audit in development control (including design quality) and this should be better reflected within any final policy statement.

We welcome the proposal to reduce the numbers of **statutory and non-statutory consultees**. We would specifically suggest that the scale of English Heritage's statutory consultee functions could be reduced and that the status of most of the other heritage bodies should be reduced to non-statutory consultee to place them on the same footing as CABE.

Business Planning Zones

We consider that the proposals on **business planning zones** need more work if they are to be retained. There is a danger that, as presented in the Green Paper, the Business Planning Zones could become a successor to Enterprise Zones and Simplified Planning Zones, where the dearth of quality of development actually detracted not only from the physical environment but also the ability to attract blue-chip investors to the areas. They also suggest that the Government does not have sufficient confidence that the rest of the Green Paper package will work, because if it does work, the Business Planning Zone concept is unnecessary.

If they are adopted, we would suggest that the Business Zones should resemble the US 'as of right' system. An action plan would be drawn up setting out criteria for development on the site, including design standards. Any potential developer would need to demonstrate to the local authority's satisfaction that those standards had been met in which case the need for consent would be waived. If, however, at any stage, the local authority considered that the standards had not been met, it should be able to demand a full planning application.

We would further suggest that Business Planning Zones should be restricted to brownfield sites.

Masterplanning and outline planning consents

The section of the Green Paper on masterplanning larger developments needs further thought. There are actually two separate ideas here, both of which have merit. The first is the importance of **masterplanning large-scale developments**. This can be undertaken by the planning authority, by a private lead developer or by a partnership and could be given the status of an action plan, allowing an area to be developed out in a coherent way in accordance with key urban design principles over time. This is straight-forward and belongs with the material in chapter 4 of the Green Paper.

The real subject of this section is **outline planning consents**. As stated in our earlier submission, CABE does consider that there is a strong case for outline planning

consents being abolished. The current system of outline planning consents serves neither developer nor public interest. Particularly in respect of larger development projects, the crude process of red-lining particular areas for development approval bypasses important design issues such as massing, scale and relationship of new buildings, thus offering little or no protection over the final design quality. Treating such issues as 'reserved matters' can be dangerous because they may not have been sufficiently explored to be confident that the development could ever be a satisfactory one in practice. At the same time, the outline consent system provides the developer with little security as to the planning authority's view on the many reserved issues that will require detailed consent.

In our submission we suggested the concept of partial consents but consider that the proposal in the Green Paper of a system of certification may represent a more useful way forward. We would, however, make the following observations:

- the Green Paper does not demonstrate that there is the ability, in law, to distinguish between the current outline consent and the replacement certificate; would they both be regarded as a form of consent?
- the relevant section (paras. 5.39 – 5.42) confuses issues by suggesting the replacement of outline planning consents only in the case of larger developments; we do not see a distinction in the dangers of outline consents between larger and smaller schemes

The intention of a certificate should be to give the developer some security in progressing a scheme without giving away control over key design and land use issues too early in the process.

It is, however, worth restating that even if a system of outline planning consents has to be retained, there are key improvements that can be made, namely:

- outline planning applications could be tied to a framework of masterplanning principles set out in an action plan
- there can be a stricter requirement of open and clear presentation of what is and what is not approved at outline stage, particularly by the avoidance of potentially misleading illustrative material
- certain planning issues such as 'layout' and 'siting' could be expressed in terms of two stage approval, both at outline and detailed level
- the role of the design statement could be more formally included in the outline planning process, perhaps linked to Environmental Impact Assessment

Permitted development

The Local Government White Paper makes clear that it is the task of national government to set standards and that of local government to execute functions against locally agreed priorities. We therefore consider that **permitted development rights** should continue to be set nationally.

Community consultation

We support the proposals for **increasing community consultation requirements** at the pre-application stage. We consider that this is the point at which local people can properly influence a development, and consider that these proposals are an important counterweight to the correct decision not to pursue third party right of appeals.

However, it is important that the proposed arrangements do not become a tick-box approach for applicants. We would suggest that on applications above a certain size, there should be some form of independent verification that meaningful community consultation has been undertaken and that the views of the community have, wherever possible and practicable, been reflected in the content of the application.

4. A Fundamental Change At National, Regional And Local Level

Resolution of disputes

We support the principle position of the Green Paper on the resolution of disputes but consider that it could have gone further.

First, the number of disputes entering the appeals should be reduced. Wherever possible, the decisions made by planning officers and committees should be accepted as the impartial and rational judgements that they have to be. The legitimacy of this view will be strengthened by a simplified, more responsive and locally accountable plan-making system that leaves little ambiguity. Targets should be set for applications that are dealt with without the need for appeal. Mediation should be *compulsory* for smaller appeals and an *option* (at the discretion of the Planning Inspectorate) for larger ones. The burden on the Planning Inspectorate will then be reduced further and the system will become more streamlined.

Second, those disputes that do reach appeal must be dealt with more quickly. The appeals system itself is in need of reform. Although only 6% of appeals go to inquiry, CABE's experience of the inquiry process is that it unnecessarily wastes both taxpayers' and private money. Inspectors should be empowered to control the inquiry process to obtain the information they require in a timely manner to make an informed recommendation on the planning issues that have prompted the appeal. This also applies to called-in cases.

Third party rights

On a related matter, and as already stated, CABE supports the Green Paper's dismissal of the arguments in favour of third party rights of appeal. The Government should have the confidence in the democratic system in which planning decisions are made, strengthened by proposals for ever more meaningful community involvement in neighbourhood level plan-making. Third party involvement in setting the parameters for planning decisions is to be encouraged; involvement in blocking them, usually through the advocacy of single issue NGOs, is inappropriate.

Skills and resources

We welcome the commitment to create a **Local Planning Advisory Service** provided that it also incorporates the skills required to improve the quality as well as the efficiency of plan-making and decisions.

CABE welcomes the Green Paper's admission that local planning authorities must benefit from **better resourcing**. The assertion that the Government "*will address the*

resourcing needs of the local planning service” in the 2002 Spending Review is encouraging, but experience suggests that local authorities will be required to raise their own income to fund the increased expenditure that will be required despite the imposition of a more streamlined system.

The Green Paper rightly considers whether **planning fees** are the most appropriate way of securing additional resources. Detailed consideration needs to be given to the implementation of a more sophisticated fee regime. We would recommend nationally set fee tariffs that demonstrate a clear relationship between rate and the scale and significance of the development.

The Green Paper proposes **better accounting**, by which it means *separate* accounting. CABA would go much further than this and ensure that all monies raised by planning services are ring-fenced. Planning fees should not be allowed to finance mainstream local authority activities, running the risk of being viewed as a development tax. Instead, they should fund proactive plan making, community consultation and other positive planning interventions.

We would also go further down the road of ensuring that officers and elected members have **better skills**. Whilst better skills are required across the board, CABA's 2001 Local Government Design Survey demonstrated a particular shortage of skills in design evaluation. It found that there is both a need to increase the number of people with design skills, (half of local authorities have no officers with an urban design qualification), and the depth of knowledge of those who have them. It also found that over half of local authorities had never run design courses for planning committee members.

We advocate that appointments to local planning committees should be made conditional upon members of the committee agreeing to undergo relevant training each year. For planning officers, who will be making more delegated decisions, the problem, and hence the solution, is deeper. It is not just a question of training regimes for existing staff, there are also serious questions about the future supply of planning officers from higher education that need to be addressed. The Urban White Paper suggested ways to address skills shortages within the profession, such as regional Centres of Excellence, that do not seem to have greatly influenced the Green Paper to the extent they should have.

Finally, we would ask the Government to look again at whether there is scope for **co-option** of a small number of local representatives onto planning committees. This could include representation from local businesses and the voluntary sector but also representation from a respected design expert working within the locality. These could be non-voting members.

Measuring progress

The range and type of **best value** indicators, targets and standards should be broadened. For example, local planning authorities should have to demonstrate on an on-going basis that they are making reasonable decisions on the basis of recognised design advice.

We also propose that a number of local planning authorities per year should be subject to an independent quality audit to assess the impact of the planning system on the overall quality of the local environment.

We also agree with the Green Paper that if there is sustained under-performance by a local planning authority then, as a last resort option, development control powers should be transferred to another body, perhaps to the Local Planning Advisory Service rather than a private contractor.

Appendix A : Reforming Planning Obligations

This Appendix forms the basis of CABE's response to the DTLR consultation paper, 'Reforming Planning Obligations'.

The case for reforming the system of planning obligations is clear. CABE is broadly supportive of the proposed approach to reform based upon a **standardised tariff** set locally through the local plan, supported by national guidance. Although we originally recommended a system of impact fees, we consider that a tariff system is equally workable and in some respects more attractive.

We agree that local authorities should set tariff levels through Local Development Frameworks and Action Plans. We support the level of devolution proposed in the Green Paper to local planning authorities in defining how tariffs will apply, at what level, and for what purposes, with the one clear limitation that the resources should be linked to the impact of physical development.

CABE understands that there will be criticism that high development demand areas will be able to demand greater contributions. However, that is no different than the current obligations system. In addition, these areas are usually also those in most need of more affordable housing. While low demand areas will undoubtedly be able to demand less through the tariff system, this can be reflected in public expenditure provision, particularly through special programmes such as the Neighbourhood Renewal Fund.

Options for how the tariff might be set are in the table below, along with CABE's initial observations on them.

Option	Comments
Cost per gross floorspace for both commercial and residential development	<p>This could count against high density schemes and provides no incentive for reducing site coverage of a development, e.g. single storey warehousing and supermarkets. We are actually shocked that this option is being proposed, as it flies in the face of current Government planning policy.</p> <p>Our preference would therefore be for cost per gross site area, perhaps subtracting any contribution to public space.</p>
Cost per dwelling basis for residential development and gross floorspace for commercial	<p>This would still act against the interests of high density schemes and runs directly counter to PPG3.</p>

As a proportion of development value	Apart from the greater difficulty in calculation, the other disadvantage of this charging approach is that it potentially does mean automatically greater gains in richer areas.
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In summary, therefore, our preference is for a variation on option I based upon cost per sq m of development area.

CABE would warn the Government to tread warily in terms of the retention of other elements of a **planning obligation** other than the tariff. There is a danger that a dual set of negotiated obligations plus tariff will be regarded as a double whammy. CABE would question whether some or all of the residual issues would not better be dealt with by extending the scope of planning conditions. Or at least, the introduction of the tariff should be used to enable section 106 to be reinstated for its original much narrower intentions before it got hijacked as a mechanism for bypassing public expenditure controls.

CABE considers that while a local authority should have the right to **reduce or waive a tariff**, the circumstances and proportions by which this should occur should be clearly set out in the local development framework and should not be subject to case-by-case negotiation, which would simply undermine the proposed transparency and consistency of the new system. An important example might be contribution to public space. The basic guideline is that it should be possible for a developer to calculate the tariff in any local authority area at the time of submitting the planning application using only the local development framework. That is the required certainty.

We agree that **smaller developments** should be immune from the tariffs system and consider that the sizes set out in the consultation paper are of the right order although again, we consider that, to support other Government policies, they should be expressed in terms of development area rather than floorspace.

CABE supports the **‘community chest’** proposal to legislate to enable local authorities to pool contributions from tariffs as they choose, to be put to pre-defined purposes. However, this should not be a free-for-all and there should be some clear connection with the improvement of the physical environment.

CABE agrees that the failure of the current system to provide **affordable housing** in many areas necessitates a fresh approach. We support the proposal to bring affordable housing within the planning obligation tariff. However, we are concerned that it should not dominate the tariff as there is a danger of distorting the planning obligation system in that it should remain essentially to mediate for the impact of development. Even in high demand areas, CABE considers that the proportion of a tariff that can be spent on affordable housing should be capped to ensure that sufficient tariff income benefits the whole local population in the form of better open space and other amenities.

While we see some advantages in local authorities being able to allocate sites solely for affordable housing, (para. 4.24), there are real dangers of continuing the stigmatisation of social housing. There would need to be some strict limits if we are not to undermine the aspirations towards mixed communities set out PPGs 1 and 3. This could be expressed in national guidance in terms of maximum no. of dwellings on such sites and/or in terms the overall mix of market and affordable housing within the immediate neighbourhood.

We agree with the proposal that tariff contributions could also be capable of being put towards conversions and bringing empty property back into use.

Finally, the proposals for **transparency, openness, certainty and speed** are important to the success of planning obligations. CABE agrees that this would help to overcome the justified criticism of the current system that it is secretive, ad-hoc, non-strategic and breeds uncertainty that can hinder the development process, notwithstanding the regrettable fact that Section 106 agreements have been known to take over a year to negotiate. We therefore agree with the proposals set out in the remainder of the consultation paper, including the introduction of model s106 agreements, along the lines of the model conditions set out in Circular 11/95. The real gain would be to come as close as possible to removing the need for individually negotiated section 106 agreements. We do not consider that the consultation paper has examined this issue closely enough.

Appendix B : Major Infrastructure Projects

This Appendix forms the basis of CABE's response to the DTLR consultation paper, 'Major Infrastructure Projects'.

CABE concurs with the proposals within the consultation paper, subject to Parliament ensuring that it has access to sufficient professional advice to make sound judgements on the location of new facilities.

Appendix C : Compulsory purchase and compensation

This Appendix forms the basis of CABE's response to the DTLR consultation paper, 'Compulsory purchase and compensation'.

CABE's limited interest in this consultation process is the urgent need to allow public authorities to create meaningful development sites within urban locations to foster urban regeneration against masterplanning principles agreed with the local community. The availability of strengthened compulsory purchase order powers (CPO) is essential to achieving this objective. CABE therefore welcomes the general direction of the consultation paper.

We fully agree that section 226 of the Town and Country Planning Act 1990 is unduly restrictive, placing as it does a burden on acquiring authorities to have fully worked-up schemes. We welcome the approach of introducing new legislation to replace section 226 with a new provision for CPOs for a range of planning and regeneration purposes, including halting the physical economic and/or social deterioration of an area. We believe that any wording should also recognise the need for CPOs to contribute towards the delivery of a coordinated, sustainable renewal of an area, against an agreed masterplan and set of adopted design principles.

We believe that this and the other proposals outlined in the consultation paper will go a long way to delivering a faster but also fairer CPO process. We welcome specifically the moves to properly compensate affected owners and occupiers, as recommended by the Urban Task Force.

We also welcome the commitment to consolidate and simplify the current legislation and we hope that Parliamentary time to allow this will come quickly.

Our one main concern is the proposal to allow all parties with an interest in a site the right to be treated as a statutory objector. We believe there needs to be a clear and tight definition of what is a legitimate 'interest' in a site to prevent third party abuse.

Finally, we should keep in mind throughout the implementation process that the use of compulsory purchase powers has declined over the last 20-30 years in the majority of local authorities, resulting in a shortage of personnel with the necessary skills and experience. New and better guidance will help, but further consideration now needs to be given to specialised training in land assembly. This could be an important task for the Centres of Urban Development heralded in the Urban White Paper.