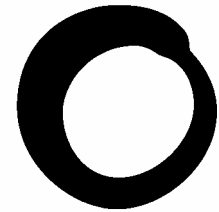


August 2006



**Friends of
the Earth**

Briefing

Barker Review of Land use planning

Analysis of the interim report

The Kate Barker review of land use planning in England will have a dramatic impact on the way we shape the future of our communities. Despite the radical restructuring of planning which began in 2005, her interim report heralds the beginning of a further major program of reform and deregulation. But the analysis in the report is based on a flawed understanding of the purpose of planning and lacks both a rigorous evidence base and a coherent analytical approach. Consequently, its key ideas threaten changes to planning which would damage the UK's economy, environment and democratic process. These ideas include:

- Questioning the role of local participation in planning decisions and exploring how local communities can be 'incentivised' to accept a high growth agenda;
- Overturning the 'town centre first' policy for retail development, primarily on productivity grounds, with added assertions that out-of-town development can be good for the socially excluded and reduce carbon emissions;
- Streamlining procedures for deciding on major infrastructure projects;
- Deregulating other important parts of the existing planning system by streamlining national policy, dismantling the plan led system and introducing 'price sensitive' planning.

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Taken together, these ideas make a powerful case that the English planning system is intrinsically anti-competitive and that business requires a much greater voice in the whole process. The document's executive summary acknowledges that the central purpose of planning is to deliver sustainable development, by integrating economic, environmental and social objectives. But the subsequent analysis is almost entirely focussed on how to deliver 'better' results on one of these objectives only: the economic. The tendency is to discuss how social and environmental goals can be 'traded off' against this overriding objective. This misses the purpose of planning entirely. Reforms that deliver on one objective alone will almost inevitably affect delivery of the others.

Furthermore, because the economic objective is narrowly defined in the interim report primarily as economic benefit to the developer (rather than the overall economy) the subsequent recommendations risk damaging the economy as a whole. This is particularly the case if measures worsen environmental problems such as climate change, for example, which will have major long-term economic costs.

Friends of the Earth is deeply concerned that the final Barker Report will form part of a calculated web of other policy documents, including the Energy Review and the Eddington Transport Study, whose proposals will prioritise narrow and short-term economic objectives, will marginalise the voice of communities and will compromise the planning system's ability to deliver other vital public policy objectives.

Context

The interim report by Kate Barker was announced by the Chancellor at the end of 2005 and is one in a series of Treasury-inspired reports which are attempting to deregulate the planning system.¹ The interim report itself is essentially a narrow economic analysis of the current operation of the planning system which does not attempt to provide any kind of rounded assessment of the performance of planning. It does not, for example, examine in any detail the wider issues of rights and democracy or the planning system's performance in terms of other public goods such as the protection and enhancement of the environment. This partial assessment has led to a distorted view about the value and purpose of the planning system. There is a significant risk that the ambition of the Barker review to recommend 'further reform' of the planning system will therefore be based on an extremely narrow and flawed analysis of the current system.

The interim report does not provide detailed recommendations but the analysis paves the way for significant deregulation. It is important to recognise that there is a very significant difference between the executive summary, which has been the focus of the media debate, and the detailed analysis in the body of the report. It is within this detail that some of the most dramatic implications are contained.

Analysis of the interim report

1. Rights and democracy

The report has major implications for community participation in the planning system. While paying lip-service to the importance of people in the process, the detailed analysis identifies local 'special-interest' groups as being a major problem for economic development.

Paragraph 1.21 of the executive summary states: *“plan-making and development control can favour small and more concentrated special-interest groups at the expense of more diffuse interests. If a development will, for example, lower prices by improving the efficiency of the firm, it will do so for a wide group who each gain marginally, but may more directly affect a small group who may feel increased costs of higher congestion in the area. [...] similarly the nature of political pressures and time horizons means that there can be a bias against developments that could have long run gain and short term costs: development may, for example, result in short term local disruption to traffic (particularly with major infrastructure projects such as airports) even though the benefits it supports directly or indirectly may be felt over many years to come...”*

In paragraph 3.48 of the main report, the argument continues: *“complexity can work in the interests of certain groups who can use their knowledge of the system to work it to their advantage. The ability of pressure groups to overcome the collective action problem of participation means that they have a special ability to influence the planning system - a complex system increases this advantage.”* The report itself provides no evidence for this assertion which appears to be based on hearsay.

The report does not provide any analysis of the very significant barriers to public participation which exist in the system now. Nor is there any discussion of wide range of institutionalised advantages which the development industry current enjoys including privileged legal rights. Only on one occasion does the report touch on the unequal distribution of rights of redress: *“It is also the case that not all the processes work against development: the lack of third party rights to appeal can work to favour economic growth, for example, as applicants can appeal a rejected decision while opponents of development are not able to appeal a successful application”* (para 4.32). This celebration of the absence of a basic right of redress for communities illustrates the review team’s inability to consider the wider importance of planning in local governance.²

The report raises further concerns about existing levels of consultation in the planning process. In paragraph 3.36 the report describes the requirements for statements of community involvement as *“overly prescriptive about consultation, and process driven”*. Paragraph 3.38 alleges that *“complexity is compounded by the large range of statutory consultees, local groups and other stakeholders who are engaged in the decision-making process”*. It is hard to conceive of how this analysis of the ‘problem’ of community involvement can be squared with existing government policy which aims to enhance it. For example, PPS1 and the ODPM report ‘Community Involvement in Planning: The government’s objectives (2004) are both clear that more effective community involvement is a key element of the Government’s latest planning reforms.

The report does discuss how the Government can provide greater financial incentives for local authorities and communities to accept a pro-growth agenda. Friends of the Earth believes that while communities should gain benefit from sustainable development, financial incentives should not be allowed to outweigh other legitimate planning concerns. Nor should new initiatives reinforce the existing perception of planning gain which is viewed by many as a form of ‘bribery’.

The report also shows a worrying lack of awareness of how the existing planning system is already dominated by property and business interests. There is no question that medium and large scale business have a major influence on local plans and have access to expertise

which many communities do not. The final Barker report will be left with the dilemma of how to achieve the marginalisation of communities in a politically acceptable way.

2. Biodiversity and environmental designations

Chapter 1 of the report contains a detailed description of statutory environmental designations in the UK. There was considerable concern in the run-up to the publication of the interim report that its analysis would conclude that such designations amounted to an 'anti-competitive landscape' for development and that UK environmental designations were more complex than those in other European countries which have less protection. The report does contain a discussion about the level of environmental designations in England including detailed statistics about land area and the legal basis of such designations. But it provides no analysis of this material, suggesting either poor drafting or perhaps last-minute editing. There is certainly a private view amongst some Treasury officials that environmental designations, both national and based on EU directives, are a 'gold-plating' of environmental protection and should be 'rationalised'. In fact, a range of development takes place within our statutory designations already including a significant proportion of our aggregate mineral production. For example, the Peak Park Local Plan in 1997 recorded that 8.5 million tonnes of limestone were produced in the park in 1990, with permitted reserves of 341 million tonnes.

Environmental designations are not, therefore, prohibitions on sensitive development but they do provide vital safeguards to ecosystems and natural landscapes which have been progressively eroded and diminished in the post-war period. Before the Countryside and Rights of Way Act was introduced in 2000, more than 300 SSSIs were being damaged every year.³ Many of these designations have intrinsic and non-tradeable value, particularly where rare and endangered species are involved. In addition, such designations have wider national economic benefits in terms of tourism.

3. Retailing and town centres

The constraints on out-of-town retail provision are identified as one of the factors which may be a brake on UK retail competitiveness. The analysis in the report suggests that land-use planning has led to the 'sub-optimal' location of many retail developments. The report alleges that planning has led to smaller retail developments and supplies evidence that local authorities have a bias towards indigenous businesses. While the report does not overtly recommend the removal of out-of-town controls, that is its clear implication.

Beginning in paragraph 5.34 on page 109 the report starts to construct an argument that the UK Government's existing 'town centre first' policy is no longer desirable. The argument has three main parts.

Carbon impacts of retail

The report alleges that town centres have a higher carbon impact because of less efficient transport servicing. Paragraph 5.37 gives a flavour of this theory: "*In addition to consumer behaviour, large format stores have larger storage facilities and therefore require fewer road haulage miles to service the store. Multi store firms can minimise journeys through the use of central distribution system. A report for DEFRA found that pollution and congestion spillovers due to heavy goods vehicles have fallen due to decreasing mileages, achieved by increasing*

vehicle size and higher load factors. Small retailers located in town, conversely, may require a larger number of delivery journeys.”

However, the report is very selective in the evidence it uses to back up this claim and even in the way it approaches the issue. It fails to look at the carbon impact of sourcing policies and non-UK distribution. DEFRA concluded that the air freight of food has the highest environmental impact per tonne of any mode accounting for 13 per cent of CO2 emissions from food transport in 2004.⁴

The report is also misleading in the way it presents evidence on food haulage miles within the UK. Whilst a report by DEFRA in 2005⁵ did find that increased loads and efficiency improvements had recently resulted in a decrease in vehicle km it also reported that the overall trend has been upwards since 1974. DEFRA predicted that the downward trend was likely to go back up again if there are continuing increases in food movements. The same DEFRA report also described the dramatic increase in food tonne km “due to concentration of food sales in supermarkets, concentration of the food supply base, and associated changes in food delivery patterns”.

Impacts on low-income consumers

Paragraph 5.38 suggests, without providing any evidence that out-of-town development is beneficial for those in low income groups and that town centre shops will not necessarily be conveniently located for deprived communities. It ignores evidence that out-of-town development does not serve those on low incomes or without car access.

Planning policy as set out in PPS6 seeks to protect and promote district and local centres as well as city and town centres. These more local centres are likely to be closer to residential areas and accessible by foot or bus. Corner shops and neighbourhood parades located in residential areas are also important to consumers without cars. By contrast, out-of-town retail stores do not tend to be located in residential areas and are often located on major roads to facilitate access by car-based shoppers.

The Food Poverty Project which works with over 300 disadvantaged communities in the UK recently warned that the loss of independent shops can result in a more limited choice of healthy food being available to disadvantaged consumers.⁶ Where low income households have access to large supermarkets these do not necessarily best serve their needs. A study in Leeds found that street markets and greengrocers are better than supermarkets for promoting increased fruit and vegetable consumption.⁷

In addition, travel to out-of-town stores adds a significant cost to low-income households. A survey of low income families carried out by NCH The Children’s Charity found that travel costs to go food shopping added 23 per cent on the average shopping cost.⁸ If local shops were still present, people wouldn’t have to travel so far, or spend so much.

‘Town centres first’ policy is a brake on competitiveness

Whether intended or not, the interim report is a wholesale assault on the Government’s existing ‘town centre first’ policy. Friends of the Earth fundamentally disagrees with the analysis that planning policy on out-of-town development acts as a barrier to entry for retailers either for large format stores or for smaller and independent retailers. Although planning policy has sought to concentrate retail development in town centres, ODPM data

suggests that about 60 per cent of development still takes place out of the town centre, with a rising percentage of 'edge-of-town' locations.⁹ Recently revised national planning policy (PPS6) actually encourages the provision of sites for large format stores on the edge of town centres, so it is our view that planning policy contains an existing bias in favour of big supermarkets and other retailers that operate out of large format stores.

Any weakening of the policy to restrict out-of-town development would disproportionately favour the major retailers such as the biggest four supermarkets, allowing them to expand significantly. The Office of Fair Trading has recently acknowledged that the level of dominance in the grocery market is already such that it may be having an adverse effect on competition and harming consumers. Local economies will also be harmed by the loss of local independent businesses which tend to spend more money within local areas. In the case of food retailing there will be wider knock-on effects for the rural economy as smaller independent shops tend to source more food from the surrounding countryside.

4. Complexity and delay

The report repeats the well-worn argument that infrastructure provision takes too long and that this impacts on UK competitiveness. However the report does acknowledge that there are: *"only...a few studies and no recent ones"* into the cost of delay (para 3.7). Transport infrastructure is particularly identified with a brief mention of aviation: see for example paragraphs 3.7, 3.21. Decisions on energy infrastructure and specifically gas storage are identified as needing to be speeded up and streamlined. The report concludes that *"timeframes are still unacceptably long, particularly regarding public inquiries"* (Para 3.20). The cost of public inquiries on business is highlighted and a price tag is given to the Dibden Bay Inquiry of £45 million.

But the report provides no benchmark as to what an acceptable time period might be for a major infrastructure inquiry. Friends of the Earth is keen to promote timely and efficient decision making but not at the expense of a full examination of the issues and full public participation. There is little acknowledgement in the report of delay caused by applicants in the process nor of the very serious barriers which many lay people face in trying to gain access to planning decision-making process including public inquiries.

There is no explicit discussion of changes to the major infrastructure project proposal system beyond the broad assertion that it needs to be streamlined and speeded up. However the report does identify the Eddington Transport Study as the place where these issues will be dealt with. The Energy Review also makes recommendations for speeding up nuclear and other major energy projects, in part by curtailing people's rights to discuss certain issues at local public inquiries including need, health and safety and environmental impacts.

5. 'Planning is to blame'

Underpinning the four areas discussed above, the central tenet of the interim report is that planning is anti-competitive. Friends of the Earth strongly disagrees with this analysis.

The framework of planning is blamed for high land and rental prices, poor productivity and lower investment. Paragraph 1.22 of the executive summary states: *"Planning requirements may lead to development being constructed below an economically optimal size, shape, condition or in a sub-optimal location, leading to higher cost structures and/or lower revenue"*

flows.” In this context, ‘sub-optimal’ means purely sub-optimal for the developer. Many decisions in planning will, and should, be sub-optimal for the developer because the role of planning is to make decisions that are optimal for society as a whole.

The paragraph goes on: *“Similarly other restrictions to the use and development of property can preclude the efficient use of capital and lower competitive intensity, though they may be justified by wider goals such as cultural heritage; and to the extent that restrictions to land supply raise land values and property prices, this raises the cost of entry to the market.”*

While there is inevitably a causal relationship between regulation and market behaviour (that is after all the point) there is little in the report which helps to quantify the extent of the relationship. It is unclear, for example, how far planning rather than education and skills or other working practices impact on productivity. In fact, an ODPM select committee found in 2003 that: “planning is not a significant factor in determining productivity, even in the retail sector.”¹⁰ The debate mirrors closely the flawed argument in Kate Barker’s first report for the Treasury that increases in the supply of houses would bring prices down.

Price-sensitive planning

Kate Barker’s inquiry into housing supply made price-sensitive planning for housing one of its central recommendations. This later proved to be practically unworkable inside the existing land-use planning system. Despite this and the implications that price-sensitive planning has for the achievement of sustainable development, the Barker interim report forcefully endorses this approach in the future reform of planning. Paragraph 1.37 of the executive summary asks: *“can the planning system be made more responsive to price signals and changing economic circumstance at a local and regional level, while also providing the certainty that businesses value?”*

The final report will explore financial incentives for local authorities to make the ‘right’ planning decisions. The interim report makes the curious observation that *“for many local planning authorities there is often little financial incentive to adopt pro-growth strategies”* (para 1.37 exec summary). The final report will also tackle the level which decisions are best made and consider how the principle of subsidiarity might best be applied.

Friends of the Earth believes that the Government can either adopt market-led planning which inevitably compromises the achievement of sustainable development and marginalises the voice of local communities, or it can retain the public interest planning system which exists at the moment. It is hard to see how these ideas can be integrated.

Reviewing the plan-led system

The report raises a number of questions around the impact of the plan-led system on flexibility and responsiveness in the market. Paragraph 4.3 states: *“The nature of the plan-led system may also be causing a sub-optimal supply of development... in part because investment opportunities that arise after the plan has been agreed may have more difficulty gaining approval if not in accordance with the plan.”* The report suggests that *“an unintended consequence of the plan-led system could be a reduction in the ability of the system to respond to economic and social requirements.”*

We can only assume that correcting this problem will lead the final report to soften the emphasis on the plan-led system. This would have two profoundly negative impacts:

- A system where the plan is only advisory to the final decision removes all the strategic value of the document. Plans should create certainty for business and communities based on a participative dialogue. Advisory plans cannot deliver this certainty, nor can they provide sufficient direction to shape the rational and sustainable development of communities.
- There is little or no point having robust rights of participation for communities in a plan which itself has only limited impact on the final outcomes of decisions. The question posed by many communities would be 'what's the point'. Introducing advisory plans would inevitably create much stronger arguments for greater participative rights in the final decision making process, including third party rights of appeal.

Streamlining national policy

In a number of places the interim report recommends the streamlining of national policy and raises questions about whether such policies are necessary at all. The report is critical of the time that it has taken to prepare planning policy statements. The report also identifies the complexity of the planning system as a major source of delay.

Paragraph 1.15 of the executive summary states: *"While some of the new Planning Policy Statements are shorter than their predecessors, they are sometimes accompanied by lengthy guidance notes. Partly due to the range of interest to be considered, it has taken two years to update just nine of the 25 national policy guidance notes - completing the task could take another five. There are still thousands of pages of national policy guidance including circulars."* Paragraph 3.32 suggests that *"one approach to this would be to think about national policy being limited to issues of real priority, and to ensuring a certain amount of consistency."*

The reform of national guidance is underway and a number of new PPSs have been produced. Friends of the Earth believes there is powerful case for clear guidance on what are complex issues and, in particular, for the expansion of national guidance on issues such as climate change. Generalisations about national policy are unhelpful and the interim report fails to identify clear examples of where existing guidance might be reduced.

There is a great deal of other detailed economic analysis of the costs that planning imposes on the UK economy, albeit with little evidence. This is balanced by some discussion of the value of planning. However, there is no equivalent analysis of the benefits of planning. In this sense the report is simply the product of the limited terms of reference which the Treasury set down.

Looking forward to the final report

At the heart of the Barker interim report is a major contradiction. Kate Barker has said publicly that she does not intend to promote fundamental reform of the system. Yet the analysis contained in the report which was written by Treasury officials clearly implies that such reform is necessary to make the system perform better for business interests. Squaring this circle would seem to be an insurmountable challenge and is partly dependent on who wins the political battle between those who would put narrow economic interests first (including the Treasury) and those committed to sustainable development.

As noted above, this contradiction stems from a major flaw in the report: its focus on how to meet just one of the objectives of planning, the economic objective, and that objective very

narrowly defined at that.

It is likely that the final Barker Report will contain recommendations in the following areas:

- The report may recommend that price signals will play a much greater role in land availability in the planning process. This will mean more flexible plans and potentially even a challenge to the plan led system.
- National policy will be radically streamlined by reducing the scope of planning policy statements and questioning the role of best practice guidance.
- The report may recommend a mechanism for financial incentives for local communities to accept a strong pro-growth agenda. Those authorities who make different decisions will therefore suffer a financial penalty.
- The report will recommend the streamlining of community engagement standards by downgrading the status of Statements of Community Involvement and removing the public's right to be heard in their preparation.
- The report will recommend the streamlining of the process of approving Major Infrastructure Projects.
- The report may recommend a review of Planning Policy Statement 6 and the incorporation of much greater flexibility in the consideration of new retail facilities.
- The report may recommend a review of statutory environmental designations including green belt land.
- The report will not recommend wholesale new primary legislation but is likely to seek specific policy recommendations or specific detailed amendments to the existing framework.

The final Barker Report will be published in December. Instead of backing a wholesale shake-up of the planning system, Friends of the Earth believes the Treasury should:

- Safeguard the planning system regulations. These regulations protect our local communities and the environment while providing certainty for businesses and creating quality economic growth.
- Protect people's rights to have a say in planning decisions. Local people have a valuable contribution to make in deciding what development happens in their local area. The poorest communities should not be hit hardest by the worst environmental problems.
- Promote vibrant town centres and diverse local shopping areas to boost local economies and ensure that everyone, whatever their income, has a proper shopping choice. Car-dependent shopping should be discouraged to reduce carbon emissions from transport.
- Protect green spaces to conserve valuable wildlife and habitats. The UK must continue to act within European laws such as the Habitats Directive.
- Harness the planning system to reduce the impacts of climate change. The effect of new transport infrastructure on climate change should be considered from the outset, with the goal of increasing productivity while reducing carbon emissions.
- Encourage quality economic growth that is good for people and the environment, not growth at all costs.

The land-use planning system remains the most sophisticated form of economic, social and environmental regulation ever introduced into the United Kingdom. Without planning regulation there would be no effective governance of the development of land at the local, regional and national level. There would be no way to guard against the massive problems resulting from market failures which even the Government accepts would occur if planning was dismantled. These problems are the reason why we have a land-use planning system in the first place. The fact that planning regulation places local decision-making by elected representatives at the heart of the process is one of its most unique and important aspects. There is also a powerful principled case for public participation in local planning decisions. This case is based on the importance of community empowerment and learning, encouraging active citizenship and delivering better informed decisions that themselves contribute to social and environmental justice and sustainable development.

References

- ¹ Others include Kate Barker's review of housing supply and Rod Eddington's transport study.
- ² Friends of the Earth supports a limited third party right of appeal set out in the Green Balance research report: Third Party Rights of Appeal in Planning, 2002.
- ³ Friends of the Earth (1998) 'Wildlife Act 1998'.
- ⁴ DEFRA (2005) 'Food Transport Indicators to 2004 Experimental Statistics, national statistics', 20 July 2004.
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- ⁷ Wrigley, N et al (2002) 'Assessing the impact of improved retail access on diet in a 'food desert': a preliminary report'. *Urban Studies* Vol. 39, No. 11, pp. 2061-2082.
- ⁸ NCH (2004) 'Going Hungry: The struggle to eat healthily on a low income'.
- ⁹ Calculated using ODPM statistics. For breakdown see Friends of the Earth (2006) 'Calling the Shots: How supermarkets get their way in planning decisions' page 7.
- ¹⁰ ODPM: Housing, Planning, Local Government and the Regions Committee (2003) Fourth Report: 'Planning, Competitiveness and Productivity'.