The Plan-led System

Submission for the proposed Planning White Paper
The Royal Society for the Protection of Birds
February 2007

Name: Simon Marsh
Organisation: The Royal Society for the Protection of Birds
Address: The Lodge, Sandy, Bedfordshire, SG19 2DL
E-mail address: simon.marsh@rspb.org.uk
Telephone number: 01767 680551

The Royal Society for the Protection of Birds (the RSPB) is the charity that takes action for wild birds and the environment. We are the largest wildlife conservation organisation in Europe with over one million members. We own or manage approximately 135,000 hectares of land for nature conservation on 200 reserves throughout the UK.

We believe that sustainability should be at the heart of decision-making. The RSPB’s policy and advocacy work covers a wide range of issues including planning and regional policy, climate change, energy, marine issues, water, trade and agriculture. As well as commenting on national planning policy issues, the RSPB’s professional conservation and planning specialists make representations on around 800 items of planning casework each year throughout the UK, including regional planning, development plans and individual planning applications and proposals. We thus have considerable planning experience.

Summary

Both the Barker and Eddington Reviews propose a form of presumption in favour of development, which is unnecessary, undermines the plan-led system and the achievement of sustainable development. The RSPB believes that there should be no changes to the legal and policy framework for the town and country planning consent regime. Legislation for Major Infrastructure Projects should include a sustainable development objective and ensure that decisions take into account the development plan.
Background

“Status of development plans
54A. Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise.”

Town and Country Planning Act 1990

A ‘plan-led’ system has been the cornerstone of the planning system in England for more than fifteen years, since it was inaugurated by the Planning and Compensation Act 1991 as section 54a of the Town and Country Planning Act 1990, as shown above, and more recently repeated (but not thereby repealed) in section 38 of the Planning and Compulsory Purchase Act 2004. The policy framework which sets out the interpretation of these clauses is contained in Planning Policy Statement 1 (paragraph 8) and The Planning System: General Principles (paragraphs 7 and 10), both published in 2005.

In effect, the plan-led system is based on ‘a presumption in favour of development which is in accordance with the development plan’1, unless material considerations indicate otherwise. The development plan is not the only consideration, but is given first place. As General Principles observes, it is the ‘starting point’ and provides the ‘essential framework’ for planning decisions.

Benefits of the plan-led system

It is important to understand what preceded the plan-led system. Prior to 1991, there was a policy presumption (rather than a legal rule) in favour of development. The development plan was only one of a number of considerations, and not necessarily the pre-eminent. By the 1980s, in a political environment that favoured the deregulation of planning, development plans were often out-of-date or non-existent. In the development boom of the late 1980s, the result was ‘planning by appeal’ as local authorities tried to resist, often unsuccessfully, inappropriate development schemes. The result was a rash of retail, commercial and low-density housing developments on the urban fringe or in entirely extra-urban locations, often in locations accessible only by car; the archetypal ‘sheds on the bypass’. Section 54a of the 1990 Act, which came into force from September 1991, was as much as anything a reaction to this.

This type of development stands in complete contrast to the kind of high density, mixed use development accessible by a variety of modes of transport, which is one of the objectives of planning policy today.

The plan-led system inaugurated in 1991, and reformed in 2004, offers a number of positive benefits, some of which are noted by Barker (paragraph 1.6):

- Contributing to the achievement of sustainable development
- Securing participation from the public and interested parties
- Environmental protection, through the use of Strategic Environmental Assessment
- Certainty for developers and communities about what is proposed or is likely to be acceptable

The Barker Review and the plan-led system

On the face of it, the Barker Review expresses support for the plan-led system (paragraphs 1.4-1.6) and is in agreement with the points made above. The Review recognises the value of the plan-led system and rejects a general presumption in favour of development. However, Recommendation 1 seeks to moderate the plan-led system by revising the policy framework in cases where plans are out-of-date or ‘indeterminate’. In our view, this reformulation is unnecessary, undermines the plan-led approach and threatens sustainable development.

Although Barker does not recommend legislative change, it is difficult to see how the change she is seeking could be effected otherwise. *General Principles* is carefully worded in the light of the legal framework, and in particular what the courts – always the final arbiter – have determined to be a ‘material consideration’ in determining planning applications. It would be difficult to change this wording significantly without legislative change.

**Recommendation 1 is unnecessary**

Barker is particularly concerned with a scenario in which a development unanticipated by the plan comes forward. However, the reformed planning system is designed so that plans are to be reviewed much more frequently than before, reducing the potential for significant unanticipated development. In any case, the existing policy framework has always coped with this scenario – if the local plan is out-of-date or has nothing relevant to say about the proposal, the application is considered in the light of national and regional policy and other material considerations.

**Recommendation 1 undermines the plan-led approach**

The plan-led approach has been operating for more than fifteen years, is well-understood, and a considerable body of case law has built up around it. Now that regional spatial strategies (all currently under revision) are in place around the country, forming the top tier of the statutory development plan, it is hard to conceive of a scenario where the development plan has nothing relevant to say, especially in terms of
the strategic direction. Revising the policy framework will create uncertainty, not to mention a field day for lawyers.

Recommendation 1 threatens sustainable development
Barker proposes a form of cost-benefit analysis where the development plan is out-of-date or indeterminate. This itself is objectionable: it raises moral issues about how society values environmental and social goods which are not properly recognised by the market, and because of the difficulties in doing so will inevitably result in economic factors being given greater weight than is appropriate. It is also not an approach which sits comfortably with policy for sustainable development, in that it uses cost-benefit analysis to determine society’s goals; social and environmental goals should be determined in relation to society’s welfare, and cost-benefit analysis used to determine how best the economy can support them. Sustainable development (following the UK Sustainable Development Strategy and PPS1) seeks to integrate social, economic and environmental objectives rather than to balance or to trade off objectives.

Note that the current version of the UK Sustainable Development Strategy (March 2005) revises the previous formulation of ‘the maintenance of high and stable levels of economic growth and employment’ as the guiding principle ‘Achieving a Sustainable Economy’, which is defined as ‘Building a strong, stable and sustainable economy which provides prosperity and opportunities for all, and in which environmental and social costs fall on those who impose them (polluter pays), and efficient resource use is incentivised’. This puts economic development firmly in the context of society’s environmental and social goals.

As local planning authorities experience on a daily basis, proposals for development can be badly designed and badly located. While the worst schemes can be refused, planning authorities sometimes face the dilemma that an unsatisfactory application is ‘not bad enough to refuse’. Recommendation 1 tilts the playing field in favour of such applications. By contrast, the legal and policy framework needs to be even-handed or neutral in its approach to planning applications so that decisions are made which contribute to the achievement of sustainable development.

We conclude, therefore, that Recommendation 1 is harmful, and that the existing legal and policy framework for applications determined under the town and country planning acts is robust and fit for purpose.

The Eddington Review and major infrastructure projects
The Eddington Review deals with transport proposals, which are dealt with outside the town and country planning regime. The Planning Commission ‘would determine

---

2 As quoted in PPS1 (February 2005) and referenced in paragraph 1.7 of the Barker Review.
whether the main aims of a planning application are consistent with the objectives set out in a strategic statement, within a sustainable development context. Where they are consistent, there would be a presumption in favour of granting permission for the scheme, subject to ensuring that the scheme is compatible with:

- EC law, including EC environmental law requirements;
- ECHR law requirements;
- Any other exceptional circumstances that Ministers may have specified in the Strategic Statement.’

As the Barker Review makes clear, though, the Planning Commission would deal with a wide range of major infrastructure, not just transport schemes.

As formulated by Eddington, this presumption in favour of development is heavily guarded by caveats. Even so, the RSPB objects to it because it undermines sustainable development and is not even-handed towards planning applications.

Although the presumption would provide ‘increased certainty for all interested parties’, it would be likely to tilt the playing field in favour of economic interests, as argued above, and would make it difficult for local communities to engage in meaningful debate about planning applications.

The RSPB’s alternative proposal provides a more suitable decision-making framework:

Firstly, Eddington refers to a ‘sustainable development context’ without making clear how this would be made to work. Legislation for Major Infrastructure Projects should include a sustainable development objective, at least equivalent to that contained in section 39 of the Planning and Compulsory Purchase Act 2004\(^3\). This would provide an important safeguard for sustainable development.

Secondly, there should be no presumption in favour, but instead a statutory requirement for the decision-maker to take into account:

- **the Statement of Strategic Objectives**
- EC law, including environmental law requirements
- ECHR law requirements
- Applicable national Government policy produced after the statement of strategic objectives
- Any other exceptional circumstances that Ministers may have specified in the strategic statement
- the development plan

\(^3\) Note that, in debate over the Planning and Compulsory Purchase Bill, the RSPB and others argued in favour of a stronger sustainable development duty. This is still our preferred solution, but we recognise the advantages of wording more similar to the Act as passed.
These suggested amendments to the decision making criteria would allow a robust and flexible process that is reactive to changes in the policy environment but not slowed down significantly by them. Adopting this strategy would minimise uncertainty between reviews of the statements.