

**SOUTH EAST ENGLAND REGIONAL ASSEMBLY
REGIONAL PLANNING COMMITTEE**

Date: 25 July 2007

Subject: **Planning White Paper - Consultation Response**

Report of: Director of Development

Recommendations:

It is recommended that the Committee endorse Annex 2 as a supplementary submission to consultation on the Planning White Paper.

Purpose of the Report:

To consider in greater detail specific aspects of the Assembly's response to the consultation on the Planning White Paper.

Key Issues:

The Executive Committee of the Assembly agreed an initial response to the consultation on the Planning White Paper at its meeting on 15 June.

This paper provides the opportunity for the Committee to consider in greater detail a limited number of issues relating to that response; these concern:

- i) Clarification in respect of the Assembly's proposal for establishing the need for infrastructure.
- ii) Clarification in respect of how the consent regimes can be simplified, building upon existing initiatives.
- iii) Additional points in respect of how the Town and Country Planning framework might be refined.

I. Context

- I.1 The Planning White Paper was published for consultation on 20 May 2007. The Executive Committee agreed an initial response at its meeting on 15 June (Annex 1). This focused on the key issues with regard to the proposals for dealing with infrastructure projects of national significance.
- I.2 It was noted that there may be a need for a supplementary submission to be made following more detailed consideration of the Government's proposal by this Committee.
- I.3 Following further consideration of the proposals set out in the White Paper it is clear that our response would benefit from clarification of a limited number of points.
- I.4 We suggest that there is a need to emphasise how our response builds positively on the move to a spatial planning approach. We feel there is a need to set out more clearly how the approach advocated by the Assembly would support the Government's commitment to empowering local authorities, and in particular how it would enable them to perform the role as leading in 'place shaping'.
- I.5 In addition, there are a number of points in respect of the proposals relating to the Town and Country Planning regime on which it is appropriate for the Assembly to comment.
- I.6 A supplementary submission has been prepared for consideration by this Committee (Annex 2). The Committee is asked to consider and endorse the supplementary submission.

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Planning White Paper

**South East England Regional Assembly
Initial Response**

(as agreed by Executive Committee on 15 June 2007)

I. The Assembly's Response

- I.1 The opportunity to review how the new planning system is working is welcomed given that it has now formally been in operation for about four years and we have had experience now of what is working and where improvements could be made. The emphasis given in the White Paper to streamlining some of the processes involved in preparing Local Development Documents and rationalizing the consents regime for infrastructure projects is particularly welcomed (as referred to in paragraph I.3).
- I.2 There is less evidence, however, to support some of the more radical proposals in relation to the handling of major infrastructure projects. Delivery of infrastructure is an area where there has been significant progress by the Assembly to fill the gaps created by the 2004 Act. This is particularly reflected through our comprehensive and innovative Implementation Plan for the Regional Spatial Strategy (the South East Plan). Key issues being addressed by the Assembly include funding mechanisms and priorities and improving alignment between the Region's economic, housing and transport priorities, as demonstrated in our response to the Comprehensive Spending Review (and Sub-National Review).
- I.3 It is disappointing, therefore, that the Government has concluded that they cannot build on the successes of the current planning system and use existing bodies, such as the Regional Assemblies, to improve the way in which we deal with national infrastructure proposals. In fact the Government is proposing a fundamentally different approach to that which underpins the planning system (see paragraph 3.5), an approach that would lead to a radical shift in accountability, away from local authorities towards a Government appointed quango. The following paragraphs outline the Assembly's concerns about the evidence base for fundamental reforms; the proposals themselves; and suggest an alternative way in which the same outcome could be achieved, building on what we already have in place at a regional level.
- I.4 The Evidence for Major Reform
 - I.4.1 While it is fully accepted that there is evidence to suggest that improvements to the system are needed, the evidence provided by the Government (using

examples of where the planning system has failed in the past) to justify fundamental changes ignores three key facts:

- The examples cited in the White Paper were considered under the planning system preceding the 2004 Act, before the introduction of statutory Regional Spatial Strategies which allow for 'need' to be tested at the regional level and delivered at the local level. The post-2004 planning system provides greater certainty and confidence that major infrastructure will be delivered if it is identified in the Development Plan (the combination of the RSS and LDF).
- One of the principle barriers to delivering publicly funded infrastructure (particularly major transport projects) has been addressed through the identification of regional funding allocations and the requirement on each region to prioritise their investment requirements.

This has brought a more realistic approach to programming of major projects; it discourages proposals being developed without any reference to the likely funds available. The fact that regional prioritisation of investment takes place within the framework of a statutory planning framework at the regional level ensures clarity and certainty of funding for individual projects; it creates confidence that proposals will be delivered.

- Many of the examples given, including the Heathrow Terminal 5 planning application, are extreme examples of the difficulty experienced with the planning system. A new system should not be introduced in response to extreme cases.

1.5 Why Government's Proposals are flawed

1.5.1 There are a number of fundamental concerns about the Government's proposals:

- The proposed approach to major infrastructure projects will be fundamentally different to the traditional planning approach; the tests to be employed, as set out in the NPS (if the Government's intent is that the NPS forms the basis for determining whether a proposal should proceed) will be different in determining whether a proposal should be allowed to proceed. However, it is difficult to conceive of a situation where the normal 'planning tests' would not apply, namely the requirement for the development of a proposal to consider all the alternative and to be subject to the necessary assessments (SEA, EIA and AA). Hence it is unlikely that the level of assessment required will change. Indeed it is arguable that the approach set out by the Government would introduce a 'test' of Government policy that is currently not required.

- It is envisaged that the level of detail in each NPS will vary, with some identifying specific locations and others setting out little more than strategic priorities. This approach does not appear to be consistent with the philosophy of simplifying the consent regimes.
- Given that the NPS will be the 'primary' consideration in determining an application, the extent to which the contents of the statement are tested will be critical. At present the proposal puts the Government in the role of 'judge and jury'. That alone is likely to increase the potential for legal challenges. If one then considers the situation where a proposal set out in a NPS is contradicted by proposals set out in the (independently examined) statutory Development Plan, the likelihood of challenge increases further.
- The Aviation White Paper is held up as being an example of the form a NPS could take. The fact that it is spatially specific means that, for it to be a material consideration for planning purposes, its contents would have to be subject to the various tests outlined above. It is a matter of record that the approach advocated by the Government has been roundly criticised as being inconsistent with its own policy on sustainable development and ignoring the overwhelming scientific evidence on the impact that unrestrained growth in air traffic would have on wider policy objectives.
- Herein lies a further contradiction in the Government's approach. The provision of airports and air services are commercial concerns provided by the private sector. The Government has a long standing view that it is appropriate for the public sector to have a role in shaping the future provision of airport provision. Compare this with the same Government's approach to the provision of port facilities and shipping services (both of which are similarly commercial concerns provided by the private sector) and the inconsistency in approach is likely to give rise to further challenges if future growth is determined on the basis of an NPS.
- The creation of a new system for granting approval for projects will inevitably give rise to difficulties around the margins of any thresholds identified by the Government for determining whether or not a proposal is of national significance. Moreover, there is the potential for substantial confusion to arise if a proposal starts off being promoted through one route only to be transferred to the other during its development.
- Continuing with thresholds, it is proposed that only those proposals which fall within a prescribed set of thresholds will be subject to the new approach to planning. The threshold for major highway schemes is any proposal on the Strategic Route Network - i.e. all proposals promoted by the Highways Agency (HA) irrespective of whether it is widening of the M25 or a junction improvement on the A21.

There are two consequences of this; first, it means that the number of cases handled by the proposed Commission will be substantially more than the predicted ten a year; and second, it means that the Commission will consider some small scale improvements on the HA network and yet it will not be involved in some of the larger schemes promoted by Local Transport Authorities. Such an anomaly is likely to create confusion and is inconsistent with the desire to simplify the consent regimes.

- An added consequence of the proposed thresholds is that there will be greater concentration of decision making role within central Government, contrary to the desire to devolve decision making to the most appropriate level.
- Finally, a significant issue that has not been considered by the White Paper is the matter of negotiations on contributions to offset adverse impact on the local area. Who would be responsible for such negotiations in situations where the scale of the scheme is such that it is being handled by the Commission? Again this is likely to result in greater centralisation of processes.

1.6 An Alternative Approach

1.6.1 Having said all that, the Assembly has long argued that, for certain major pieces of infrastructure such as ports, there is a need for a clearer national policy framework within which Regional Spatial Strategies can be produced. There should therefore be a measure of support for the proposed National Policy Statements. However, these could be used as part of a refinement to the current planning system which would enable the Government's primary objective to be delivered without the need for a fundamental change. Although much more work would be needed to think through how this could work in practice, the following outlines an alternative approach which builds on the success of what we have now in terms of processes and accountable bodies:

- Government would produce National Policy Statements.
- The National Policy Statement provides the context within which the RSS is developed by the Regional Planning Bodies.
- The preparation of the RSS involves the testing of options and alternatives, and requires proposals to be subject to SEA, EIA and AA.
- The adopted RSS forms the upper tier of the (statutory) Development Plan and establishes the 'need' for strategic infrastructure in order to support delivery of planned growth.

- The alignment of the RSS with the Regional Economic Strategy (as supported by the Planning White Paper) ensures that priorities for investment in infrastructure reflect regional economic priorities.
- The Regional Implementation Plan provides an input into the independent reviews of regulated industries, thereby ensuring that future pricing regimes make provision for the necessary investment in infrastructure required to support delivery of planned growth.
- Planning applications for major infrastructure proposals identified in the RSS can be taken in forward on the basis that there is a presumption in favour of proposals identified in the Development Plan; a fundamental feature of the plan-led system.
- Where investment in major infrastructure is public sector led, the identification of regional programmes (as part of the Regional Funding Allocation process) gives greater certainty and confidence of delivery. Private sector investment in the economy can be planned for with greater confidence that the necessary infrastructure will be delivered.

1.7 The Assembly will develop this alternative option before reporting to the Regional Planning Committee on 25 July but, in the meantime, would welcome the opportunity to discuss this with government officials.

Planning White Paper

South East England Regional Assembly Supplementary Response

1. This response is supplementary to the Assembly's letter of 5 July 2007. It provides additional information and clarification of the Assembly's position in respect of the consultation on the Planning White Paper.
2. Building Upon Previous Reforms
 - 2.1 The Planning and Compulsory Purchase Act 2004 introduced the concept of spatial planning to England. As PPSI emphasises, spatial planning goes beyond traditional land use planning to bring together and integrate policies for the development and use of land with other policies and programmes which influence the nature of place and how they function.
 - 2.2 Spatial planning emphasises the importance of aligning the decision making and funding streams associated with a wide range of investments. Our commitment to develop a single Regional Delivery Plan provides the mechanism through which investment decisions can be aligned to deliver an agreed set of common objectives.
 - 2.3 Our work on implementation has highlighted the importance of alignment of decision making and funding streams. It shows how spatial planning provides a robust, evidence based approach to the identification of the infrastructure needed to support growth. It shows that infrastructure requirements are a function of the scale and distribution of the level of growth considered. It also shows how consideration of such issues at a regional level provides a firm basis on which to develop detailed proposals at the local level.
 - 2.4 As set out in our initial response, delivering a spatial strategy requires an approach that enables the decision making and investments made across a number of policy areas to be aligned with the land use planning system. More simply, any change to the consent regime needs to build upon the fact that our approach to planning is firmly based in the concept of spatial planning.
 - 2.5 Our initial response to the Planning White Paper set out that the critical issues that need to be addressed in order to achieve this objective relate to:
 - Establishing the need for a specific piece of infrastructure
 - Simplifying the consent regimes
 - Ensuring that sufficient funds are available

3. Establishing the Need for Infrastructure
 - 3.1 We support the Government's commitment to provide clear national policy statements that provide the framework within which the need for infrastructure of national significance is established in principle. However we remain of the view that the definition set out in the Planning White Paper is too widely drawn. Specifically we see no added value in preparing national policy statements in respect of water resources or waste infrastructure.
 - 3.2 We have a strong working relationship with water industry that has enabled us to develop a comprehensive understanding of the water supply and water treatment requirements for the region for the next 20 years. Our work on this topic has emphasised that decisions on the scale and location of future growth have a major influence in determining the infrastructure required. It has also shown that decisions on the balance between supply and demand management are equally influential.
 - 3.3 It would be impractical for the development of a national policy statement on water resources to contain the level of detail required to provide guidance that would add value to the approach that has been successfully developed in partnership by us with the water industry. Given that the preparation of a regional spatial strategy requires us to consider a range of spatial options, any work undertaken in producing a national policy statement on water resources would have no added value for the reasons set out in the previous paragraph.
 - 3.4 The Examination in Public of the draft South East Plan confirmed that spatial planning provides a practical and effective mechanism for identifying the water resource infrastructure that is required to support growth. Having established the nexus between growth and the need for investment in infrastructure, the regional spatial plan provides the basis for the water industry to secure from the independent economic regulator the funding required to develop and deliver the said infrastructure.
 - 3.5 The provision of facilities to deal with hazardous waste material is another example of where the requirement for additional infrastructure is a function of the circumstances that currently exist at the regional/local level and the scale and location of growth. It would be impractical for the development of a national policy statement on waste infrastructure to contain the level of detail required to provide any added value to the preparation of detailed proposals at the regional or local level.
 - 3.6 We continue to be of the view that scope of national policy statements should be limited to those matters that are of truly national significance as opposed to infrastructure that is significant simply because of its size. In this respect we believe that national policy statements should be limited to matters relating to airports and ports that serve as international gateways and to matters pertaining to the location of large scale power generation facilities.

- 3.7 These national policy statements should be a material consideration in developing the regional spatial strategy. In this way there would be greater clarity on nationally significant issues that need to be taken into consideration. Once a proposal is identified in the regional spatial strategy the presumption should be that it would gain the necessary consents unless 'adverse local consequences outweighed the benefits'. This is the same test that the Government proposes the Independent Planning Commission would use. It is defined in the Planning White Paper as consequences that would be incompatible with 'relevant EC and domestic law, including human rights legislation'.
- 3.8 Any consideration of the infrastructure required to support growth must take into account the relevant statutory framework of environmental directives and regulations in so far as they apply. Establishing the 'need' for infrastructure as part of the preparation of the regional spatial strategy will ensure that full account is taken of such matters at the earliest and most appropriate stage.
- 3.9 It is extremely difficult to understand how such matters could be taken into consideration in the preparation of a national policy statement in the absence of information on the scale and distribution of growth that is only available at the regional level. The acknowledgement by Government that national policy statements would not be spatially specific supports this view. It also serves to emphasise the limited value that the preparation of a national policy statement would have in terms of identifying the specific infrastructure requirements needed to support growth.
- 3.10 On a matter of detail we do not understand how it is possible to implement the proposals set out in the Planning White Paper in parallel with the preparation of National Policy Statements. We understand that a key element of the preparation of the National Policy Statements will be scrutiny by Parliament. Until such time as the scrutiny arrangements have been agreed with Parliament it appears to us impossible for Government to prepare a National Policy Statement that is robust.
4. Simplifying the Consent Regime
- 4.1 The proposal to simplify the consent regime is supported in principle. However the Government's proposals miss the opportunity to align consents made under the Town and County Planning Act with those made under regimes currently overseen by the Secretary of State. As our initial submission highlighted, we are concerned that the proposals set out in the Planning White Paper will result in consent regimes for some infrastructure being transferred from the local level to the Independent Planning Commission.
- 4.2 Spatial planning is at the heart of local authorities' role in place shaping. The spatial plans prepared at the local level provide the primary mechanism for ensuring the alignment of the decision making and funding streams associated with a wide range of investments. Any reform of the consent regimes should

therefore start from the premise that it devolves decision making to the lowest level possible.

- 4.3 Under our proposal, the 'need' for investment in infrastructure would be established in the regional spatial strategy. In so doing the national policy statement would be a material consideration. As part of the reform of the consent regimes it would be necessary to introduce a presumption that a proposal that is in accordance with the regional spatial strategy would be granted the appropriate consents. This would ensure that having established the 'need' in preparing the regional spatial strategy, consideration of the application for consent(s) would focus on matters of local detail.
- 4.4 It is our contention that our approach would provide the clarity and certainty that is being sought. It would have the added value of both simplifying consent regimes and ensuring alignment of decision making.
- 4.5 We support the Government's proposal that the process for obtaining any consent in respect of regulatory functions associated with the operation, safety and maintenance of infrastructure remains unaltered.
- 4.6 Our approach would empower local authorities to deliver a more efficient service and enable them to fulfil their potential to lead in place-shaping. This is in contrast to the Government's proposal which would centralise some consent regimes that are currently undertaken at the local level.
- 4.7 We note that the Government anticipates only a limited number of proposals being handled by the proposed Independent Planning Commission. We believe that local authorities have the capacity to consider a request for consents currently considered by the Secretary of State. Local authority members would determine the merits of any application on the same basis as the Secretary of State. Where specialist advice is currently provided to the Secretary of State as part of an application for a consent this could be equally supplied to the local authority.
- 4.8 The Government has already established the Advisory Team for Large Applications (ATLAS) to assist in the handling of large scale development proposals. ATLAS has pioneered the development of Planning Performance Agreements as a means of improving the handling of such proposals. The scope of this existing service could be extended as part of the reform of consent regimes. Consideration should be given to developing the ATLAS service into a centre of excellence, the benefits of which could be shared in dealing with the full range of applications for consent.
5. Improving the Town and Country Planning System
 - 5.1 The Planning White Paper is an opportunity to refine the existing planning regime in a way that will improve our ability to deliver growth.
 - 5.2 We support the proposal to streamline the statutory requirements for consultation on Development Plan Documents (DPD) by revoking the

requirement to consult on 'preferred options'. However, it is important that there is a good engagement between us at the regional level and the local authority at an early stage in the process. Such an approach will assist in the delivery of the regional spatial strategy.

- 5.3 We also concur with the view that there are benefits from enhanced cross boundary working between local authorities, particularly during the development of core strategies.
- 5.4 Our experience with the Thames Basing Heaths Special Protection Area prompts us to propose that it should be possible to develop and publish supplementary planning documents at either the regional or sub-regional level. The benefit is that it would enable a framework dealing with delivery issues to be set out in a way that provides additional guidance to local authorities. The application of a consistent approach on a cross boundary basis in this way would avoid the practical difficulties of seeking to agree a joint Development Plan Document between local authorities.
6. Changes to National Planning Policy
 - 6.1 We welcome the proposal to rationalise the current regime of national planning policy guidance. In particular we welcome the desire to reduce the amount of Government 'guidance'. Such an approach is consistent with empowering local authorities to determine the most appropriate solution for their location.
 - 6.2 It is essential that the proposed revision to the 'needs test' in the current version of PPS6 (Town Centres) does not dilute the town centre first policy that has been a fundamental component of the planning framework for some time. Regenerating existing town centres is an essential component of delivering a more sustainable pattern of development.
 - 6.3 The need to update national planning policy on economic development is acknowledged. However, it is unclear what specific failure in respect of the planning system supporting economic development it is expected the updated guidance will address. Monitoring information shows that there is a significant amount of land identified within the current planning framework for economic development. Realising this potential is likely to be dependent upon a number of external factors out with the planning system, including market conditions and the availability of adequate infrastructure.
 - 6.4 Our commitment to develop a single Regional Delivery Plan that aligns the implementation of the regional spatial strategy with the regional economic strategy will address some of the constraints on economic potential being realised. This highlights the importance of ensuring delivery of timely investment in infrastructure. In this respect the importance of public sector investment in infrastructure becomes a critical consideration in providing confidence to the private sector. In this context we are concerned that an over reliance on responding to market observations and other economic

information is unlikely to create the stability in the planning system that will enable the private sector to invest with confidence.

- 6.5 It is also unclear how the new focus on economic development sits with previous Government guidance that has positively encouraged the reallocation of land used for economic development to housing.
7. Ensuring Sufficient Funds
 - 7.1 Reform of the consent regimes and refinement of the Town and Country Planning regime will not in itself reduce the time taken to deliver the infrastructure required for growth; the availability of funding will remain the critical consideration. In taking forward any change Government must acknowledge that realisation of economic potential is dependent upon additional investment in infrastructure. This forms one of the pre-conditions for growth identified in the implementation plan that forms an integral element of the draft South East Plan.

**South East England Regional Assembly
July 2007**