Report to Planning Committee 4 April2024

Director Lead: Matt Lamb, Planning & Growth

Lead Officer: Lisa Hughes, Business Manager – Planning Development, x 5565

Report Summary	
Report Title	Accelerated Planning System: Consultation
Purpose of Report	To set before Planning Committee a consultation by the Government and consider the proposed response to be made
Recommendations	a) The contents of the report and the proposal for an accelerated planning system to be noted and b) That, subject to any other comments Planning Committee agrees to make, that it endorses the draft Council response in Appendix 1.

1.0 Background

1.1 On 6th March 2024, the Department for Levelling Up, Housing and Communities (DLUHC) commenced a consultation on 'An Accelerated Planning Service'. The consultation runs for 8 weeks from the 6th March to 1st May 2024.

1.2 The accompanying consultation paper is not available as a downloadable format, however it can be viewed using the following link An Accelerated Planning Service. There are 35 consultation questions – attached at appendix A, together with the suggested response of the Council.

1.3 This consultation follows on from recent interventions the government has undertaken including the increase in planning fees, range of funding streams, for example Skills Funding that we were successful in being awarded and streamlining of the development management process.

1.4 The consultation proposes new measures for an accelerated planning system which is said would "*provide greater certainty to applicants and enable delivery partners to bring forward much needed housing, commercial and infrastructure development at greater pace*". This would be achieved through an "*Accelerated Planning Service for major commercial development, new measures to constrain the use of extension of time agreements and identifying local planning authorities who are using these excessively. It will also be achieved by broadening the simplified process for written representation planning appeals.*"

1.5 The plans are to have a service that would allow local planning authorities (LPAs) to recover the full costs of major business applications in return for being required to meet guaranteed accelerated timescales. If a LPA fails to meet the timescales, fees will be refunded automatically with the applications being processed free of charge, in other words a prompt service or your money back.

1.6 For major planning applications, the statutory timescale for deciding major planning applications is 13 weeks or 16 weeks when the application is subject to an Environmental Impact Assessment (EIA). For non-majors, the timescale is 8 weeks. Our current performance in relation to meeting performance deadlines without extension of time agreements is shown in the table below. This displays performance figures over a 12-month period and includes performance within statutory time limits, excluding extension of time agreements.

	Percentage of major decisions made within the statutory time period (13 weeks) MAJORS	Percentage of decisions made within the statutory time period (8 weeks) HOUSEHOLDERS	Percentage of decisions on applications for non-major development (excluding householder development) made within the statutory time period (8 weeks) NON-MAJOR EXCL. HOUSEHOLDERS	Percentage of decisions on applications for non-major development made within the statutory time period (8 weeks) NON MAJOR (ALL)
Newark and Sherwood	39	64	47	57
Average across the Country	19	56	37	49

1.7 The government's proposal is to apply the accelerated service to major commercial applications initially due to their being fewer of these than major residential. All LPAs will be required to offer this service for a higher fee, with the decision required within 10 weeks or the fee will be refund the fee. In relation to this, the consultation is exploring two options for the detailed design of this service. The first is that applicants can choose whether to use this service, subject to meeting the qualifying criteria. The second is that the Accelerated service is mandatory to all applications in a given development category. The details and scope of the service is provided within Section 2.0 of this report. Due to the implications of the potential changes, the majority of the consultation document is addressed below, with narrative as appropriate.

1.8 In summary, the proposed measures within the consultation are:

i. the introduction of a new Accelerated Planning Service (APS) which would offer a new application route with accelerated decision dates for major commercial applications and fee refunds wherever these are not met;
ii. changes in relation to extensions of time agreements, including a new performance measure for speed of decision-making against statutory time limits,

and an end to the use of extension of time agreements for householder applications and repeat agreements for the same application for other types of application;

iii. an expansion of the current simplified householder and minor commercial appeal service for more written representation appeals; and

iv. detail on the broadening of the ability to vary a planning permission through section 73B applications and on the treatment of overlapping planning permissions.

2.0 Detail

1. Accelerated Planning Service

2.1 For both the discretionary or mandatory options it is proposed that the following would apply.

2.2 Scope of the Service: The Accelerated Planning Service (APS) would initially apply to applications for major commercial development which create 1,000 sqm or more of new or additional employment floorspace. For Newark and Sherwood, this relates to an average of 40 applications per annum. This category includes offices, storage and warehousing, retail, general industry, research and development, light industry and advanced manufacturing. Mixed use developments (if they meet the employment floorspace criteria) are suggested would also be eligible to use the Accelerated Planning Service.

2.3 The APS would not apply to applications which are screened as EIA development due to further duties and requirements on applicants and local planning authorities. Notwithstanding this, the government is interested in receiving views on whether there is scope for EIA development to also be covered by an Accelerated Planning Service that offers a guaranteed decision before the current 16-week statutory time limit.

2.4 The following applications are proposed to be excluded from the APS:

- subject to Habitats Regulations Assessment (as they require an appropriate assessment to be undertaken and the consideration of mitigation measures);
- within the curtilage or area of listed buildings and other designated heritage assets, Scheduled Monuments and World Heritage Sites (as they require special considerations); and
- for retrospective development (as the regularisation of unauthorised development should not be prioritised).

2.5 Both section 73 and 73B applications which seek to vary existing planning permissions for relevant commercial development would fall under the APS.

2.6 The initial focus of the APS is for major commercial applications which the government state are vital to economic growth. Over time, this service will be explored as to whether it might also apply to similar major infrastructure and residential developments. The government want to ensure the Service works for commercial development before any further development proposals are included, given that there are significantly more residential applications and often a larger number of matters to be considered with these types of applications.

2.7 Nature of the Service: Planning applications using the APS would be subject to the same statutory requirements for publicity and consultation and would be determined on the same basis as other major development applications. Local communities and statutory consultees would still get at least 21 days to consider and make representations on the proposals. Local planning authorities would be required to determine the application in the usual way, that is in accordance with the development plan unless material considerations indicate otherwise.

2.8 Such applications would need to be prioritised to get through our, as LPA, internal processes faster, e.g. Planning Support with the validation of the application. However, other parties to the process e.g. internal consultees (Environmental Health, Conservation) as well as the Legal team would also need to ensure they have the expertise on hand; and, when applicable that Planning Committee meetings are convened to enable the meeting of this timescale. In relation to the Legal team, this is of particular relevance with the introduction of mandatory biodiversity net gain and the need to secure, as a minimum monitoring fees, via a section 106 planning obligation which requires co-operation from the Applicants legal team as well as all interested parties (e.g. landowners). A decision (of approval) cannot be issued until the legal obligation has been completed. The proposed higher planning fee is intended to ensure that local planning authorities have the resources to do this.

2.9 The timescale of 10 weeks would be the statutory timeframe for decisions to be made on applications, and against which performance on these applications would be measured. It would be used as the trigger point for when appeals can be made against non-determination and for monitoring the performance of local planning authorities (LPAs).

2.10 However, in order to meet the timescale of 10 weeks without leading to more refusals, it is crucial that the applications submitted are of good quality with the right information. Research and engagement with the sector, by the government, over the last decade has highlighted the most common causes for delay with these types of major development applications are a) inadequate or missing information requirements and b) the time taken to agree and finalise any section 106 agreements. To ensure this occurs, it is proposed that:

- LPAs should offer a clear pre-application service so they can discuss their proposals, key issues, information requirements and any other issues (such as EIA screening), and applicants will be strongly encouraged to use these services. It is not proposed to mandate the use or content of a pre-application service, but it will be beneficial to all parties to engage in it. The consultation details that innovation emerging from practice will be disseminated across the sector building on the work the Planning Advisory Service has been undertaking on pre-application services;

- prior to submitting their application, applicants should notify key statutory consultees which are likely to be engaged that they are making an application under the APS. The consultation details that it is known that the determination of some planning applications can be held up by continued discussions with specific statutory consultees on particular matters (which are outside the control of the LPA). DLUHC has begun a review of the role of national statutory consultees in the planning application process and will

make recommendations about how their performance can be improved. The government will look to use its oversight of statutory consultees to prioritise applications under the APS and to monitor their performance.

2.11 If the APS is introduced, these 'suggestions' are welcomed. However, the drafting of applicants 'should' engage with key statutory consultees does not make it obligatory. Neither is any suggested timescale given for the applicant to notify the statutory consultee. If they do this one day ahead, this would more than likely not give sufficient time to re-prioritise any existing work. Furthermore, the requirements of one statutory consultee might necessitate in changes to a scheme that, as a result, affect the response from a different statutory consultee. Lastly, the list of statutory consultees is quite narrow and, aside from the local highway authority (i.e. NCC Highways) invariably most applications require a response from a non-statutory consultee e.g. Environmental Health, County Archaeology (currently provided by Lincolnshire County Council), Conservation, Trees and Landscaping. As the consultation is currently drafted, none of these would be notified. Views are sought about how statutory consultees can best support this accelerated service, with a reference that in most cases, early pre-application engagement will be important.

2.12 Planning fee proposals: To cover the additional resourcing costs, it is proposed to set a premium fee for an application through the APS. Planning fees are set by government and cannot exceed the cost in providing that service. In order to maintain a fair and consistent approach to fee-setting for statutory services, the method of fee calculation would continue to be set centrally. It is proposed that the premium fee would be set as a flat fee uplift, which would be a percentage of the normal planning application fee: the applicant would pay the normal planning application fee plus the fee uplift.

2.13 It is recognised that it may not be possible to achieve full cost recovery in every case. However, in order to set the fee uplift at a level that most closely meets, but does not exceed, full cost recovery, the consultation is seeking views on what the percentage fee uplift should be, with supporting evidence if possible.

2.14 The APS would represent a new statutory planning application route and, as such, planning performance agreements for these applications should not be necessary. Where an applicant chooses to agree a bespoke planning performance agreement programme, they would not be able to benefit from the APS.

2.15 It is proposed that an applicant or the LPA would still have the ability to propose an extension of time to the determination of the application for instance, if there is an outstanding matter which could be readily resolved to make an application acceptable. This should be an exception and it would not affect any potential refunds.

2.16 Fee guarantee: It is proposed that either all or a proportion of the statutory application fee must be refunded by the LPA if the application is not determined within the 10-week timescale, even if an extension of time has been agreed. This refund policy differs from the existing Planning Guarantee where a refund is not provided if an extension of time has been agreed.

2.17 The consultation considers whether it is appropriate for the whole fee to be refunded in this scenario, with recognition that if the whole fee is refunded at 10 weeks, there is no incentive for the LPA to make a decision on the application. To mitigate this, an alternative option suggested is to stagger the fee refund. For example, if no decision

has been made within 10 weeks, the premium part of the fee or 50% of the whole fee could be refunded at that point, with the remainder of the fee refunded at 13 weeks, if the application was still undecided.

Options for an Accelerated Planning Service

2.18 The consultation details that a key design choice is the extent to which the APS is discretionary or mandatory for relevant commercial development applications. Two options are explored: a discretionary model where applicants could choose to opt in to the APS where their application meets the qualifying criteria; or a mandatory model where the APS is the only available application route for all applications in a given development category.

Option 1 - Discretionary Accelerated Planning Service

2.19 The ambition is for applicants for major commercial development to have the choice of using either the APS or the usual planning application service It is proposed that in order to opt in to the discretionary APS, applicants would need to provide a set of additional prescribed information requirements with their planning application to ensure the application can be determined quickly. Without this additional statutory information, the application would be treated as a normal application for major development.

2.20 These information requirements would include a prescribed planning statement setting out how the application proposals meet key local and national planning policies relevant to the development. This is said would help to standardise and streamline information requirements to reduce the burden on both applicants and LPAs. Further information on specific matters may still be required depending on the development, but the exclusion of applications set out at paragraph 2.4 above would reduce information requirements.

2.21 Views are welcomed on whether there should be any further additional information requirements to ensure decisions can be made quickly. The inclusion of a draft section 106 heads of terms, for instance, could speed up the agreement of a section 106 for the development and in turn enable the decision to be made more quickly. The consultation details that not all applications may require a section 106 and the draft heads of terms may not include all relevant matters. However, with consideration to mandatory biodiversity net gain and the need to secure monies for the monitoring of the net gain over a period of 30-years, it is anticipated that the significant majority, if not all, major commercial developments will require the completion of a section 106 agreement.

Option 2 - Mandatory Accelerated Planning Service

2.22 An alternative option suggested could be to establish a new, mandatory application route for a clearly defined category of major commercial applications which would be carved out of the current major development category. The application route is proposed would still offer a guaranteed decision within 10 weeks in return for a higher fee with a refund if no decision has been made within that period. The proposed fee uplift and refund mechanism would be the same as that proposed for the discretionary option above. However, there would be no additional statutory information requirements.

2.23 Applications which meet the development criteria for this mandatory option would have to use it and pay the higher fee. This would give certainty to the LPA and applicants. The consultation details the key disadvantage with a mandatory approach is that the quality of applications could vary, some may still have complex issues to resolve, and there is less opportunity for the applicant and LPA to agree to pause the application while further information is being asked for or an issue is being resolved. The consequence is likely to be greater rates of refusals requiring applicants to resubmit better applications which creates delays.

2.24 In view of the consultation indicating that extension of time (EoT) agreements would not mean the fee would not need to be refunded, even subject to a possible sliding scale, it is difficult to envisage a situation when a LPA would 'wish to' enter into an EoT and then be penalised. However, this does in part depend upon the responses from consultees being timely and reasonable as well as resources within other teams, e.g. Legal being available for the completion of s106 legal agreements, subject to timely instruction as well. The ability of a LPA managing the resources and response times of many consultees is outside of our direct control, as we are a two-tier authority. There ought to be a mechanism, although how this could work in reality is unknown, that if a consultee does not respond or provides an unsound response and we, as the LPA, are not in a position to make a well-considered decision and thus need to agree an EoT, the party responsible for the delay should reimburse the LPA. This would be akin to an award of costs whereby if a consultee recommends refusal for a reason but is unable to satisfactorily defend that reason, they are required to pay the respective costs application.

2.25 However, subject to consultees meeting timescales, noting that a reason (or reasons) for refusal always need to be sound and defendable, it is not considered that refusing the application at, or just before the expiry of the 10-weeks, would be likely to lead to additional successful costs applications from the Appellant. In fact, an Applicant knowing about the strict time limits on LPAs should look to engage at the earliest opportunity i.e. submit a pre-application enquiry.

2.26 Implementation: Changes to legislation would be required to implement the APS. The consultation details the government will work with the sector on its practical implementation and provide sufficient time before introduction to allow LPAs to prepare to deal with these applications.

2. Planning performance and extension of time agreements

2.27 As Members will be aware, an extension of time agreement is a mechanism by which an applicant can agree with the LPA an extended time period to determine a planning application, beyond the statutory time limit. This allows more time for the consideration of issues raised during the application process and to enable amendments to schemes which may make a scheme acceptable when otherwise it would not be. Currently, if an application is determined within an agreed extended time period, it is deemed to be determined 'in time' and does not count against the overall performance of a LPA.

2.28 Extension of time agreements can offer benefits to both a LPA and applicant, particularly now that the ability to have a 'free-go' for a resubmission has been removed. The consultation details that "*the government knows that extension of time*

agreements can also be used by authorities to compensate for delays in decision-making, which masks poor performance and does not incentivise local authorities to determine applications within the statutory time limit."

2.29 Whilst this may or may not be true of some LPAs, in the case of ourselves, the majority are agreed in order to enable negotiation / additional information etc., in order to secure a positive outcome.

2.30 The consultation details the increase in the use of extension of time agreements and, in response has published a new Planning Performance Dashboard, an extract of which is provided within the table above under paragraph 1.6.

2.31 The consultation provides detail regarding designation of planning authorities, which is assessed against 2 measures - speed and quality of decision making. It notes that any revisions to the performance criteria and thresholds or assessment periods would need updating. There are now five LPAs that are designated with St Albans and Bristol having been designated (March 2024) for their performance in relation to non-major developments. Other LPAs are on the threshold of being designated. In such cases, Applicants may apply directly to the Planning Inspectorate (on behalf of the Secretary of State), rather than the LPA, for the category of applications (major, non-major or both) for which the authority has been designated.

Proposal

Monitoring speed of decision-making against statutory time limit

2.32 The government is proposing, due to their concern about the high use of EoTs to introduce a new performance measure for speed of decision-making for the proportion of applications that are determined within the statutory time limit only i.e. within the 8 for non-major or 13 weeks for major unless subject to an EIA (16 weeks) and potentially 10 weeks.

2.33 The consultation proposes that the new performance thresholds would be:

- major applications – 50% or more of applications determined within the statutory time limit; and
- non-major applications – 60% or more of applications determined within the statutory time limit.

2.34 The consultation details these "*proposed thresholds do not preclude the use of EoT agreements and planning performance agreements (PPAs), but the expectation is that such agreements are used only in exceptional circumstances. The proposed threshold is also lower for major applications in recognition that, in more instances, extension of time agreements may still be required due to the more complex nature of the applications and major applications are also more likely to be subject to a planning performance agreement*." However, with mandatory biodiversity net gain for non-majors having come into effect on the 2nd April, in order to secure the monitoring fee associated with this, it is estimated that for NSDC, approximately 250 non-major applications will be subject to a planning obligation i.e. those approved. This represents approximately 27% of non-major applications approved annually. This number does not account for those that might be allowed on appeal which would need to be subject to a planning obligation.

2.35 The government proposes to continue publishing performance data on performance against statutory timescales and agreed extensions. In time, it is proposed to measure performance against both the current measure, which includes extension of time agreements and planning performance agreements, and the new measure, which would cover decisions within statutory time limits only. These would continue to measure major and non-major applications separately.

2.36 The consultation details that LPAs would be at risk of designation for speed or decision-making in the following circumstances:

1. if a local planning authority does not meet the threshold for the current measure, inclusive of extension of time agreements and planning performance agreements (as per current regime), or
2. if a local planning authority meets the threshold for the current measure, inclusive of extension of time agreements and planning performance agreements, but does not meet the new threshold for the proportion of decisions within the statutory time limit, or
3. if a local planning does not meet the threshold for both the current and the new measure

2.37 From the performance table above, performance in both categories would be missed, albeit for non-majors (including householders) is only slightly lower than the proposed target at 57% (compared to 60%). However, this is without the challenge of requiring s106 planning obligations meaning reaching this target will be challenging and require changes to processes.

<u>Assessment period for performance for speed of decision-making</u>

2.38 The assessment period for speed of decision-making is currently across a 24-month period. The consultation states that "…*this assessment period means that underperformance may be identified later in the process as it is concealed by previous good performance. Assessing performance across a 24-month period also makes it difficult for authorities to demonstrate improvement in performance data, with previous poor performance concealing positive progress. To ensure that both improvement and underperformance are identified effectively at an earlier stage, we propose that performance for speed of decision-making should be assessed across a 12-month assessment period."*

2.39 Performance in relation to quality of decision-making is measured by the proportion of decisions that are allowed at appeal. The number of relevant cases is lower than that for the speed of decision-making and if measured over 12 months would represent too few cases to provide an accurate measure of performance. It is not proposed to change this assessment period.

<u>Transitional arrangements for assessment of the speed of decision-making</u>

2.40 The consultation recognises that LPAs will currently be working to the performance regime that is in place, and that time will be required to adjust to a new regime. It is also acknowledged that it would be unreasonable to make designation decisions against the proposed new measure until a whole 12-month assessment period following introduction of the new measure has occurred. In light of this, proposed transitional arrangements are provided (below). This allows for the continuation of the current

regime until September 2024, with data collection for the new 12-month assessment period for the new performance measure beginning from 1 October 2024. The intention is for the first designation decisions against the new performance measure to take place in the first quarter of 2026.

Measure and type of Application	**Threshold and assessment period LPA decisions: October 2022 to September 2024**	**Threshold and assessment period LPA decisions: October 2024 to September 2025**
Speed of major Development (District and County)	60% of decisions within statutory time limit or an agreed extended period (extension of time or planning performance agreement)	Either or both of: 60% of decisions within statutory time limit or an agreed extended period (extension of time or planning performance agreement) OR 50% of decisions with statutory time limit only
Speed of non-major Development	70% of decisions within statutory time limit or an agreed extended period (extension of time or planning performance agreement)	Either or both of: 70% of decisions within statutory time limit or an agreed extended period (extension of time or planning performance agreement) OR 60% of decisions with statutory time limit only

2.41 The consultation paper notes that performance will continually be reviewed with the aim of local government efficiencies to support housing delivery and economic growth.

Removing the ability to use extension of time agreements for householder applications and for repeat agreements on the same application for other types of application

2.42 The consultation details the government's concern regarding the use of EoTs for smaller and less complex householder applications, reported to be "…*without good reason, to compensate for delays in decision-making and poor performance."* In order to ensure that LPAs focus on efficiently determining householder planning applications, it is proposed to remove the ability to use extension of time agreements for householder applications.

2.43 In addition, it cites that "*Extension of time agreements enable matters to be resolved prior to decision without the need for an applicant having to submit a new planning application...requirement for additional material from the applicant or comments from statutory consultees…allows completion of section 106 agreements*." LPAs are encouraged to agree realistic timetables to determine applications in the shortest time

period possible, including for the signing of a section 106 agreement. Views are sought on the use of repeat extension of time agreements for the same application and whether this is something that should be prohibited.

3. Simplified process for planning written representation appeals

2.44 The consultation recognises that a fair and transparent appeal process is central to the operation of the planning system. Timeliness of appeal decisions is essential to give certainty to developers and other appellants and also to communities that need to know what development is acceptable in their areas. A balance needs to be struck between opportunities in the appeal process to provide relevant evidence to the Planning Inspectorate and the need for timely decision making.

2.45 The expedited written representations procedures (Fast Track) - Householder Appeals Service (HAS) and the Commercial Appeals Service (CAS) provided a simplified process for determining these less complex, small-scale cases by removing opportunities for the main parties and other interested parties to provide additional information at appeal stage.

2.46 The government considers there is scope to expand the simplified appeals procedure to cover more written representation appeals. Such a change would:

- reduce pressure on LPA by removing the need for them to submit an appeal statement and final comments, instead relying on their decision notice or officer's report
- encourage applicants to submit information or amended proposals to LPAs instead of appealing, supporting the principle of keeping decisions local
- support the Planning Inspectorate's timely processing of written representation appeals and help sustain its improving performance

2.47 The consultation details that most written representations appeals are straightforward and can be considered without the need for further representations. Where this is not the case, the Planning Inspectorate will retain the power where they have it now to change the appeal procedure to a hearing or inquiry or to follow the current non-simplified written representation procedure.

Proposal

2.48 The following types of appeal are proposed for inclusion within a simplified process, mirroring the HAS and CAS process:

- appeals relating to refusing planning permission or reserved matters;
- appeals relating to refusing listed building consent;
- appeals relating to refusing works to protected trees;
- appeals relating to refusing lawful development certificates;
- appeals relating to refusing the variation or removal of a condition;
- appeals relating to refusing the approval of details reserved by a condition;
- appeals relating to the imposition of conditions on approvals;
- appeals relating to refusing modifications or discharge of planning legal agreements;
- appeals relating to refusal of consent under the Hedgerow Regulations;
- appeals relating to anti-social high hedges.

2.49 This simplified route would not apply against appeals for non-determination or against an enforcement notice. Other limited scenarios might also apply, such as where evidence needs to be tested. In such cases, the appeal would continue by the current process, with the Inspectorate retaining the power to determine the appropriate appeal procedure. Where an individual case requires a hearing or inquiry all interested parties will be able to provide supporting statements and additional representations as at present.

2.50 Should an appellant have requested a hearing or inquiry but the Inspectorate considers it could proceed by the simplified written representations procedure, the additional evidence submitted will be returned to the appellant.

2.51 Similar to HAS and CAS, the consultation proposes that appeals determined through the simplified route would be based on the appellant's brief appeal statement plus the original planning application documentation and any comments made at the application stage (including those of interested parties). There would be no opportunity for the appellant to submit additional evidence, to amend the proposal, for additional comments to be made from interested parties or for the main appeal parties to comment on each other's representations.

2.52 The process for the LPA would be the same as for existing HAS and CAS along with timescales for appealing remaining unchanged.

2.53 Views are sought in relation to engagement during the application stage and "…*the way in which information is provided and consulted on at application stage. For example, it could lead to an applicant providing more material upfront with their planning application to compensate for this, should they need to appeal the decision*." It notes that LPAs would also need to ensure that adequate opportunities are made for interested parties to provide additional representations if the proposal is amended during the course of the application.

2.54 Ensuring that interested parties (e.g. neighbours) are made aware of amendments is a process that already takes place notwithstanding there is no statutory provision for this within the Town and Country Planning (Development Management Procedure) Order 2015, as amended. This, therefore, should not result in any change. However, this needs to be considered in light of this consultation paper wanting to speed up the speed of decision-making, not being able to enter into extension of time agreements for householder developments.

5. Varying and overlapping planning permissions

2.55 Members will be aware that a number of applications are varied after they have been granted planning permission. There are a variety of reasons for doing so and this prevents the need to submit a 'brand new' application. Applications may be varied either through a section 73 (variation or removal of condition(s)) application or as a non-material amendment.

2.56 In relation to section 73 applications, these cannot be used to amend the description of the planning permission, thus limiting the scope of amendments. However, under section 110 of the Levelling-up and Regeneration Act 2023 a new route (section 73B) would enable material variations to planning permissions.

2.57 Views are sought on the implementation of section 73B and the treatment of overlapping permissions (including the role for drop in permissions) to ensure there are effective, proportionate and transparent routes to manage post-permission changes to development.

Implementing section 73B

2.58 The consultation provides some detail regarding the introduction of s73B, but in practical terms an applicant would be able to make an application for development which can be a variation of both the description and conditions of an existing planning permission, providing the development was not substantially different from the existing development.

2.59 Implementation of this would require changes to legislation, with the consultation detailing that the government want to prepare guidance on the use of the route to aid applicants and LPAs. Details of how this might be approached is set out within the consultation.

2.60 It is suggested that the application fee should be the same as for existing section 73 applications. However, it is recognised that the current flat fee for a section 73 application (£293) does not capture the amount of work often undertaken by a LPA in relation to these applications. It is therefore proposed to restructure the fees for these applications so that the fee is banded reflecting different development types.

2.61 Three separate fee bands are suggested:

- householder applications where the fee would be set lower at £86. This lower fee addresses an anomaly that the flat fee for a s73 application is currently higher than the fee for a householder application at £258.
- non-major development, the fee would remain at £293
- major development, there would be a higher fee. The fee would be less than the fee for the original planning application and be proportionate to the work necessary to consider the proposed variations. Views are sought on where this fee should be set.

2.62 Other questions are raised in relation to the use of section 73 and 73B and when applications may or may not use this route.

3.0 Summary

3.1 The changes in relation to performance targets, use of Extension of Time agreements will have a consequential impact in relation to the service we deliver and how we do so in order to not become a standards authority. Whilst consultation responses will need to be considered and a response provided by government, it is anticipated that they will come into effect, principally in the form set out. The consultation also details that there will be a transition period. However, it is considered necessary to consider resources and impacts across the various departments that would be affected by such change to ensure that they look to make arrangements as required in order to respond. It will also be necessary to make other departments aware, who submit applications to us for decision-making that our ability to negotiate and make changes during the consideration of an application will be unlikely.

3.2 Resources and process will be assessed by the Planning Development team.

4.0 Implications

4.1 In writing this report and in putting forward recommendations officers have considered the following implications; Data Protection, Digital and Cyber Security, Equality and Diversity, Financial, Human Resources, Human Rights, Legal, Safeguarding and Sustainability, and where appropriate they have made reference to these implications and added suitable expert comment where appropriate.

4.2 The changes will have a significant impact upon many teams across the Council and their resources. A further report will be prepared in relation to this for presentation to the appropriate Committee/Council meetings.

Background Papers and Published Documents

An Accelerated Planning Service.

Written statements - Written questions, answers and statements - UK Parliament

Appendix A

Question 1. Do you agree with the proposal for an Accelerated Planning Service?

Yes / **No** / Don't know

In theory this is commendable. However, the majority of LPAs look to make decisions at the earliest opportunity available. The significant number of applications submitted are of poor quality, without sufficient information, do not respond to the context of the locality and planning policies of the respective Councils. Planning officers undertake significant work to try and secure a development that will respond appropriately to an area and deliver the outcomes that are aspired to. Generally, this will take place during the consideration of an application due to Applicants not submitting pre-application enquiries. It can also be difficult to engage with all consultees in the process – especially those that are statutory due to their resources.

The reality is that if the Accelerated Planning Service is introduced, authorities will need to make a decision at or just prior to the 10-week expiry in order to retain the fee. Consideration within the associated report would have been given to the risk of an appeal being made and also the potential of a costs award or legal challenge as a result of the decision, as occurs with every determined application. This Service is therefore unlikely to achieve the outcomes set out within the consultation.

The consultation indicates that s106 planning obligations may be required. However, the reality is that since the introduction of mandatory biodiversity net gain, all applications for major commercial will require a planning obligation in order to secure the necessary monitoring fees for 30 years.

Question 2. Do you agree with the initial scope of applications proposed for the Accelerated Planning Service (Non-EIA major commercial development)?

Yes / No / Don't know

if this is introduced which, by the language used in the consultation and previous communications from government, will be, then this category of development is good in order to understand the implications of this proposal.

Question 3. Do you consider there is scope for EIA development to also benefit from an Accelerated Planning Service?

Yes / **No** / Don't Know. If yes, what do you consider would be an appropriate accelerated time limit?

As noted within the consultation, these types of applications can take some significant time to be considered due to the (necessary) length of the associated impact reports. These applications are infrequent and therefore a LPA and respective consultees often need to procure the necessary expertise or back-filling of posts to be able to assess and consider the information provided. They would be unlikely to have such expertise 'on hold' to assist. This timescale is therefore not realistic and risks poor and rushed decision-making. This would lead to an even greater risk of legal challenge by

interested, affected parties delaying the process for the Applicant and incurring resource implications for the LPA and consultees.

Question 4. Do you agree with the proposed exclusions from the Accelerated Planning Service – applications subject to Habitat Regulations Assessment, within the curtilage or area of listed buildings and other designated heritage assets, Scheduled Monuments and World Heritage Sites, and applications for retrospective development or minerals and waste development?

Yes / No / Don't Know

Question 5. Do you agree that the Accelerated Planning Service should:

a) have an accelerated 10-week statutory time limit for the determination of eligible applications

Yes / No / **Don't know.** If not, please confirm what you consider would be an appropriate accelerated time limit

If an Accelerated Planning Service is actually required and if it is brought into effect, noting the phrasing of the consultation and objections raised by this Council in relation to the feasibility of being able to determine applications in a positive manner (i.e. approval) within a 'guaranteed' 10 week timescale, this length of time is accepted.

b) encourage pre-application engagement

Yes / No / Don't know

*This should be mandatory for an Applicant to be able to benefit from this Service **and** be eligible for a fee refund. However, it is noted that pre-application engagement needs to be effectively delivered by all parties involved, including consultees (both statutory and non-statutory).*

There is, however, question marks in relation to being able to deliver both effective pre-application advice and meet a 10 week deadline. The same resources are needed for both elements of the service provision. Resources are limited and therefore focus will more likely be towards planning applications.

Whilst the consultation indicates increased fees to enable more resource, experienced and qualified planners who are able to deal with such applications are not available. Recent recruitment exercise undertaken by ourselves and adjoining LPAs for qualified town planners have not been successful. Trying to secure agency staff instead is often cost prohibitive and the quality of many agency staff are not of a calibre or experience that their employment is possible. Whilst efforts are being made to bring new planners into the profession, the time for them to gain the experience necessary for this type of development is at least 5-years. Resources from experienced officers are required to help support and train these new officers meaning (significantly) less time for dealing with applications.

c) encourage notification of statutory consultees before the application is made

Yes / No / Don't know

This also needs to relate to non-statutory consultees as well. In the majority of applications, aside from the local highway authority, the majority of consultees are 'local' e.g. Environmental Health, Ecology, Landscape, Conservation.

It is questioned what support (financial) is being given to consultees to enable them to secure the resources that they will need in order to meet the potential for this new Service. Without their ability to support this, it will not be possible for the LPA to positively meet this deadline.

Question 6. Do you consider that the fee for Accelerated Planning Service applications should be a percentage uplift on the existing planning application fee?

Yes / No / Don't know. If yes, please specify what percentage uplift you consider appropriate, with evidence if possible.

Theoretically, the fee for the application should reflect the amount of time required in determining the planning application although this is not always the case as it will depend upon the quality of the application.

In order for the LPA to secure the resource for itself and have some, relative, certainty of budgets, it is suggested that at least a 50% uplift is levied.

Question 7. Do you consider that the refund of the planning fee should be:

a. the whole fee at 10 weeks if the 10-week timeline is not met

b. the premium part of the fee at 10 weeks if the 10-week timeline is not met, and the remainder of the fee at 13 weeks

c. 50% of the whole fee at 10 weeks if the 10-week timeline is not met, and the remainder of the fee at 13 weeks

d. none of the above (please specify an alternative option)

e. don't know

A refund of the fee is not supported. However it is recognised that if an Applicant pays more money for a service they should expect a speedier outcome (noting the outcome might not necessarily be better). Due to the resource implications of any fee refunds and the time needed to manage this i.e. review and analyse each application, understand the stage it is at to determine whether it is eligible for a fee refund, it is suggested that only one fee refund 'trigger' should be used.

It is recommended that only the uplift fee is refunded. If an additional incentive is considered necessary to encourage LPAs to meet the 10 week deadline, an additional 10% of the uplift sum.

Question 8. Do you have views about how statutory consultees can best support the Accelerated Planning Service?

They need to be given a mechanism, in addition to any increase in planning fees which will be for the benefit of the LPA and not the consultee, to be able to recruit more staff. It is not known whether across the different consultee disciplines whether there is a similar shortage of the necessary skill sets as it is for planning officers. If there is for any area, additional measures on top of any support required to enable timely responses, should be put in effect as a matter of urgency to enable the respective bodies to appoint experienced and qualified staff.

Question 9. Do you consider that the Accelerated Planning Service could be extended to:

a. major infrastructure development

Yes / **No** / Don't Know

b. major residential development

Yes/ **No** / Don't know

c. any other development

Yes / **No** / Don't know. If yes, please specify

If yes to any of the above, what do you consider would be an appropriate accelerated time limit?

For the reasons given above, resources available and their capability (expertise) as well as across statutory consultees and non-statutory consultees, the complexity of planning in general and need for legal agreements, meeting any accelerated service is not feasible without negative consequences (increased refusals, poor decision-making).

Question 10. Do you prefer:

a. the discretionary option (which provides a choice for applicants between an Accelerated Planning Service or a standard planning application route)

b. the mandatory option (which provides a single Accelerated Planning Service for all applications within a given definition)

c. neither

d. don't know

For the reasons given, it is not considered that this should be introduced. It is also likely to mean that these applications will be prioritised over all others if it is, to the determent of housebuilding.

However, if it is introduced, to enable a LPA to potentially consider resourcing this, also noting that all LPAs will likely be looking for additional qualified and experienced staff at the same time and thus unlikely to be successful, it should be mandatory.

Question 11. In addition to a planning statement, is there any other additional statutory information you think should be provided by an applicant in order to opt-in to a discretionary Accelerated Planning Service?

All information specified within the respective Council's local planning application validation checklist, relevant to the proposal being considered. If limited information is requested, this should include draft heads of terms, ideally a draft planning obligation as well as solicitor and title information.

Question 12. Do you agree with the introduction of a new performance measure for speed of decision-making for major and non-major applications based on the proportion of decisions made within the statutory time limit only?

Yes / No / **Don't know**

In theory this is supported. However, it is likely that there will be a significant increase in the number of applications that are refused in order to meet the timescales, rather than seeking minor amendments. This is likely to lead to an increase in appeals.

However, there should be incentives for LPAs to determine the majority of applications within the timeframe. This would need to be subject to a number of exclusions, for example (this list is not exhaustive), (a) did the applicant apply for pre-application advice and if they did, did they follow it?; (b) has the applicant submitted all the information reasonably necessary for the application to be determined at the time of submission <u>and</u> is this of good quality; (c) have requirements in relation to planning obligations been provided when the application was submitted; and (d) if amendments are sought during the application, has the applicant provided this within a reasonable timescale to enable determination without an EOT?

Another possibility is, also noting that the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) is silent in relation to amendments during the course of an application is to prevent these from being submitted. What is submitted as part of the original application is what the decision will be determined on. This should, in turn, encourage pre-application discussions and a more timely decision.

It should also be noted that with each passing year planning becomes more and more complex for all involved in the process. All measures that have tried to simplify the process have been unsuccessful. This complexity is a responsibility for both an applicant and a LPA to deal with, but LPAs are the sole party that comes under scrutiny (criticism) for performance.

Question 13. Do you agree with the proposed performance thresholds for assessing the proportion of decisions made within the statutory time limit (50% or more for major applications and 60% or more for non-major applications)?

Yes / No / **Don't know** If not, please specify what you consider the performance thresholds should be.

This performance measure is acceptable on the understanding that it is not solely down to LPAs in relation to performance. A significant number of times this is due to poor submissions and applicants wanting the LPA to, in effect, be their planning agent during the application's consideration.

The timescales are acceptable on the understanding that there will be less engagement during the course of an application with the only potential caveat (also depending upon the outcome of the Accelerated Planning Service consultation and expanding this to further development categories) is to only engage and seek an extension of time agreement when a planning obligation is necessary.

Question 14. Do you consider that the designation decisions in relation to performance for speed of decision-making should be made based on:

a) the new criteria only – i.e. the proportion of decisions made within the statutory time limit; or

b) both the current criteria (proportion of applications determined within the statutory time limit or an agreed extended time period) and the new criteria (proportion of decisions made within the statutory time limit) with a local planning authority at risk of designation if they do not meet the threshold for either or both criteria

c) neither of the above

d) don't know

Although further performance criteria is not supported, if this is introduced, noting that the speed of decision-making is not solely due to the performance of the LPA in the majority of cases, then it should be based on both criteria. This would be more likely to enable some engagement with applicants thus providing a better customer service (though still significantly poorer than at present), along with the completion of legal agreements. This would enable some minor amendments to be submitted and considered allowing a decision to be approved. Without this, there is a significant likelihood of a greater number of refusals, thus appeals and also resubmissions.

Question 15. Do you agree that the performance of local planning authorities for speed of decision-making should be measured across a 12-month period?

Yes / No / **Don't know**

In theory this is supported for the reasons given. However, for unforeseen reasons, it could be that a LPA has a 'blip' in relation to its performance. This would be highlighted by only measuring against a 12-month period. Any criteria relating to performance and in turn designation should be clear to <u>all</u> LPAs about (a) how performance is measured (which the outcome of this consultation should do if there are any changes to current criteria), (b) when they might be designated and (c) if they were to be designated, what they would need to achieve in order to no longer be designated.

Question 16. Do you agree with the proposed transitional arrangements for the new measure for assessing speed of decision-making performance?

Yes / No / Don't know

If this is introduced noting the concerns regarding impact upon applicants in relation to the likely increase in number of refused applications and consequential increase in the number of appeals, then the transition suggested would enable measures to be put in place in order to achieve these new targets.

Question 17. Do you agree that the measure and thresholds for assessing quality of decision-making performance should stay the same?

Yes / No / Don't know

Question 18. Do you agree with the proposal to remove the ability to use extension of time agreements for householder applications?

Yes / **No** / Don't know

It is agreed that realistic timescales for determining an application should be secured when an extension of time is entered into. However, an applicant will often not agree a suitable timescale to enable information to be submitted, appraised and decision to be made. This can be due to them wanting to know that the additional information will result in a positive outcome, which cannot be guaranteed. Furthermore, an extension of time agreements is often entered into but the applicant is then delayed in providing the additional information due to inability to secure the necessary consultants, for example, and thus additional time is needed. Not being able to enter into more than one agreement could mean an applicant has their application refused whilst they are trying to engage leading to complaints and frustration.

It should be recognised that a local planning authority is often asked to enter into an extension of time agreement that is not feasible in terms of the timescales, taking account of the need for consultation, planning committee, completion of planning obligations for example. It should be highlighted to applicants within government literature and communications that there is no obligation for a local planning authority to do so and for this information to be clear that it is without penalty of the risk of a costs award at appeal in such circumstances, should one be submitted.

Question 19. What is your view on the use of repeat extension of time agreements for the same application? Is this something that should be prohibited?

No for the reasons given to question 18 – copied for reference.

It is agreed that realistic timescales for determining an application should be secured when an extension of time is entered into. However, an applicant will often not agree a suitable timescale to enable information to be submitted, appraised and decision to be made. This can be due to them wanting to know that the additional information will result in a positive outcome, which cannot be guaranteed. Furthermore, an extension of time agreements is often entered into but the applicant is then delayed in

providing the additional information due to inability to secure the necessary consultants, for example, and thus additional time is needed. Not being able to enter into more than one agreement could mean an applicant has their application refused whilst they are trying to engage leading to complaints and frustration.

It should be recognised that a local planning authority is often asked to enter into an extension of time agreement that is not feasible in terms of the timescales, taking account of the need for consultation, planning committee, completion of planning obligations for example. It should be highlighted to applicants within government literature and communications that there is no obligation for a local planning authority to do so and for this information to be clear that it is without penalty of the risk of a costs award at appeal in such circumstances, should one be submitted.

Question 20. Do you agree with the proposals for the simplified written representation appeal route?

Yes / No / Don't know

The reports prepared for all application types at Newark and Sherwood District Council are detailed with all maters being addressed within its drafting. Little additional information is provided as part of the Council's appeal statement aside from responding to the appellants case. Subject to an appellant not being able to amend or enhance the information provided as part of the application at appeal, this simplification is supported.

It is also anticipated that this will assist the Planning Inspectorate in the future when a greater number of appeals are likely to be received if any/all of the potential changes set out within this consultation are brought into effect.

Question 21. Do you agree with the types of appeals that are proposed for inclusion through the simplified written representation appeal route? If not, which types of appeals should be excluded form the simplified written representation appeal route?

Yes / **No** / Don't know

Lawful development certificates for existing uses or developments should be excluded, particularly in relation to a use when examination of the evidence is more often than not required in order for a sound decision to be reached. This is especially the case with an Inspector allowed to propose an alternative site location plan.

Question 22. Are there any other types of appeals which should be included in a simplified written representation appeal route?

Yes / No / Don't know. Please specify.

Prior approval applications.

Question 23. Would you raise any concern about removing the ability for additional representations, including those of third parties, to be made during the appeal stage on cases that would follow the simplified written representations procedure?

Yes / **No** / Don't know. Please give your reasons.

Question 24. Do you agree that there should be an option for written representation appeals to be determined under the current (non-simplified) process in cases where the Planning Inspectorate considers that the simplified process is not appropriate?

Yes / No / Don't know

Question 25. Do you agree that the existing time limits for lodging appeals should remain as they currently are, should the proposed simplified procedure for determining written representation planning appeals be introduced?

Yes / No / Don't know

This should give sufficient time for a potential appellant to engage with the LPA in order to try and prepare a scheme that might be supported following the submission of a further application and thus prevent the necessity of an appeal.

Question 26. Do you agree that guidance should encourage clearer descriptors of development for planning permissions and section 73B to become the route to make general variations to planning permissions (rather than section 73)?

Yes / No / Don't know

Recognition should also be given to the descriptions given by applicants are often either vague e.g. "extensions" or in the alternate considerable detail such as listing all the rooms that would be created by a development proposal along with where they are sited etc. or including terms that do not constitute development (and thus cannot be considered). In both circumstances, the LPA will endeavour to engage with the applicant to revise the description so that it is clear, easily understood by others (especially neighbours) and relevant to the application at hand. However, such agreements are often difficult to secure and, with time pressures of determining applications, the description often has to be used for notification and consultation.

It is suggested that in such instances that the timescale for determining such applications should not start until the applicant has replied to the positive or negative in relation to a description change.

Question 27. Do you have any further comments on the scope of the guidance?

No

Question 28. Do you agree with the proposed approach for the procedural arrangements for a section 73B application?

Yes / No / Don't know. If not, please explain why you disagree

Question 29. Do you agree that the application fee for a section 73B application should be the same as the fee for a section 73 application?

Yes / No / Don't know. If not, please explain why you disagree and set out an alternative approach

Subject to the fees being amended as highlighted within the consultation to reflect the amount of work that some section 73 applications require.

Question 30. Do you agree with the proposal for a 3 band application fee structure for section 73 and 73B applications?

Yes / **No** / Don't know

The resources required for dealing with non-major applications (as well as major applications as noted within the consultation) are often in excess of the fee that is received. The resource, however, is dependent upon the condition being varied. It is suggested that the fee for these applications is set at a percentage of the application fee e.g. 25%.

Question 31. What should be the fee for section 73 and 73B applications for major development (providing evidence where possible)?

The resource required for all application types can vary depending upon what is proposed to be amended and whether there is a requirement to have variations to legal agreements, return the application to planning committee and so forth. There is often a need to provide information to neighbours in relation to the implications and matters for consideration of a section 73 application taking more officer resource.

It is therefore difficult to provide evidence of the resource cost.

Question 32. Do you agree with this approach for section 73B permissions in relation to Community Infrastructure Levy?

Yes / No / Don't know

Question 33. Can you provide evidence about the use of the 'drop in' permissions and the extent the Hillside judgment has affected development?

No response

Question 34. To what extent could the use of section 73B provide an alternative to the use of drop in permissions?

No response

Question 35. If section 73B cannot address all circumstances, do you have views about the use of a general development order to deal with overlapping permissions related to large scale development granted through outline planning permission?

No response

Question 36. Do you have any views on the implications of the proposals in this consultation for you, or the group or business you represent, and on anyone with a relevant protected

characteristic? If so, please explain who, which groups, including those with protected characteristics, or which businesses may be impacted and how. Is there anything that could be done to mitigate any impact identified?

No