

**DELEGATED**

**AGENDA NO**

**PLANNING COMMITTEE**

**DATE 12 DECEMBER 2012**

**REPORT OF CORPORATE DIRECTOR,  
DEVELOPMENT AND  
NEIGHBOURHOOD SERVICES**

**Planning performance and the planning guarantee consultation from  
Department of Communities and Local Government**

**Summary**

The Government has published a consultation paper indicating proposed changes to the determination of planning applications where it considers a local planning authority has a track record of very poor performance in either the speed or quality of decisions.

It is intended to relate solely to Major planning applications which would as a consequence be submitted to the Planning Inspectorate. A designated authority would then need to demonstrate a sufficient degree of improvement before the designation was lifted. It is proposed that any designation would last for at least a year, but would be subject to review well before that year ends, so that an authority had the opportunity for the designation to be lifted at the end of the one year period.

The Government is proposing to use the existing statutory time limits for determining planning applications, (unless an extended period has been agreed in writing between the parties or the application has been subject to a planning performance agreement) as a measure of performance-“speed”.

The Government also propose to use the appeal success rate for major development to indicate the ‘quality’ of decisions made by each planning authority. It considers that successful appeals against planning authority decisions represent cases where the Secretary of State, or an Inspector acting on his behalf, concludes that a different decision should have been reached and the application allowed. In the Government’s view this provides an indication of whether planning authorities are making positive decisions that reflect policies in up-to-date plans (where relevant) and the National Planning Policy Framework.

The Government proposes to monitor and assess performance on the basis of two key measures: the speed and quality of decisions on planning applications. These are considered to have a direct bearing on the planning system’s efficiency and effectiveness for both applicants and communities; and on its contribution to growth.

The consultation paper does not acknowledge in anyway the significant resource difficulties facing local planning authorities in terms of all the proposed changes to the planning system and providing an effective service at a time when pressures for cost savings and staff cuts in local authorities are at their maximum. The issue of providing sufficient funding to operate a planning service able to meet all the new targets as well as applicants and local communities’ needs has only been partially addressed by increasing the planning application fees by 15% even though in

previous consultations the Government has fully acknowledged that the majority of local planning authorities are failing to recover costs from fee income. No regard has been paid to the Planning Costs and Fees Final report commissioned by DCLG and produced by Ove Arup which was published in November 2010.

The purpose of the proposal is to firmly “focus” the attention of local planning authorities on not only making timely decisions but “positive” decisions reflecting the National Planning Policy framework and allowing development otherwise they will be designated and major planning applications will be determined by the Planning Inspectorate together with the significant loss of planning application fee income. It is considered that the “Quality” of decision indicator needs to incorporate a minimum number of decisions otherwise the percentage figure would have a disproportionate impact.

There is no consideration by Government of the resource implications on local planning authorities of achieving and maintaining the speed and quality of planning application decisions particularly given the unspecified level to which the “speed” bar is to be raised after the first year together with all the other proposed changes to the planning system. As indicated above the Government has acknowledged that local planning authorities are not properly funded and has again failed to ensure they are adequately resourced to secure the delivery of an efficient, proportionate and effective service. Consequently the potential implications of the proposed changes are an even greater need to ensure that nationally set targets are met as failing to do so would not only be the loss of control of the determination of major planning applications but it would also create a significant budget pressure with the loss of the greater part of annual fee income which supports the service. There will be further increased workload for staff at a time when there is great uncertainty as to the level of staffing which can be funded and thereby limiting the prospects of meeting the targets or improving sufficiently to demonstrate a sufficient degree of improvement before the designation is lifted.

## **Recommendation**

***That the contents of the report be noted and Members are invited to comment on the proposals which will be incorporated into the response to the Department of Communities and Local Government***

## **The Government’s proposals**

1. The Growth and Infrastructure Bill will allow applications to be submitted to the Secretary of State where a local planning authority is designated. It is claimed that this power would be used only where there is a track record of very poor performance in either the speed or quality of the decisions made by an authority; and that clear benchmarks are used to define what this means in practice.
2. Where an authority is designated, it is proposed that applications would be submitted to the Planning Inspectorate (on behalf of the Secretary of State), where the applicant chooses this route. This ability would be limited to those seeking permission for major development. A designated authority would need to demonstrate a sufficient degree of improvement before the designation was lifted.
3. The Government propose that performance should be assessed on the extent to which applications for major development are determined within 13 weeks, averaged over a two year period. This assessment would be made once a year.

4. The Government propose using absolute thresholds below which authorities would be designated, rather than a fixed percentage of authorities that are performing most poorly on the basis of speed or quality.
5. It is intended to set these thresholds so that in the Government's opinion only very poor performance would result in an authority being designated: where 30% or fewer major applications have been determined within the statutory period or more than 20% of major decisions have been overturned at appeal. The Government consider it is important that a designation could be made on the basis of either measure (rather than a combination of the two), so that applicants can access a better service where speed or quality is a significant issue. It is also proposed to raise the bar for the speed of decisions after the first year, to ensure that there is a strong but achievable incentive for further improvement in performance, and to reflect an anticipated increase in the use of planning performance agreements for the more difficult cases as proposed in this consultation.
6. Apart from its direct effects, the Government anticipate that the proposed legislation will stimulate an increased focus on performance across planning authorities generally, and will help to ensure that the planning guarantee is met. As a further means of ensuring that decisions are made within the guarantee period, It is also proposed to require a refund of the planning application fee, should an application remain undetermined after 26 weeks. This would apply to all planning applications, and be implemented through a change to secondary legislation.
7. The Government recognise that there can be good reasons for some delays, in particular where authorities and applicants have both recognised that more time than the statutory period is required to negotiate the right outcome on large or complex proposals. This is not the issue that it says it wishes to tackle; rather it is the instances of unnecessary delay and of poor quality decisions on applications that add to costs, and which delay or deter investment and growth.
8. It is because of the consequences of unnecessary delays – whether those delays arise from slow decisions or poorly judged decisions that are overturned at appeal – that the Government believes it is right to take action where there is clear evidence that particular planning authorities are performing very poorly. It expects to have to use this power very sparingly. The Government states it remains committed to decentralising power and responsibility wherever possible, and this measure will not affect the great majority of authorities that already provide an effective planning service, other than to act as a reminder of the importance of timely and well considered decisions.

### **The role of planning performance agreements**

9. The National Planning Policy Framework encourages the use of planning performance agreements. These involve a bespoke timetable agreed between the authority and the applicant where it is clear – at the pre-application stage – that more time than the statutory period will be required to reach a decision. Such agreements are reported separately by authorities, and are excluded from the statistics on the extent to which decisions are made within the statutory period.
10. Agreements to extend the time for a decision beyond the statutory period sometimes need to be made after an application is submitted. The Government

consider that it would be fair to treat these in the same way as planning performance agreements for reporting purposes – so that they are not included in the assessment of the time within which an authority makes its planning decisions.

11. The Government is proposing that post-application agreements to extend the timescale for determination should in future be recorded as a form of planning performance agreement, provided there is explicit agreement to the extension of time from the applicant (in writing), and the agreement specifies a clear timescale for reaching a decision.

### **Having the right information**

12. The Government consider there is a risk that in future authorities could withhold data for quarters in which their performance has slipped. To discourage this it is proposed that data for a single missing quarter in one reporting (financial) year would be estimated by the Department from the returns for other quarters – based on average performance for the quarters for which information is available. Where data for two or three quarters in a reporting year are missing, figures for the absent quarters would be imputed in a similar way, but with a penalty then applied in proportion to the amount of data missing. It is proposed that this penalty would be a reduction of five percentage points per missing quarter for the speed of decisions, and one percentage point per missing quarter for decisions overturned at appeal. Any authority with a whole year of data missing would automatically be designated as very poor performing.

### **Effects of designation**

13. Those applying directly to the Secretary of State would be able (and encouraged) to seek pre-application advice from the Planning Inspectorate, the local planning authority or both. It is proposed that the Inspectorate would charge for any pre-application advice on a cost recovery basis. The Planning Inspectorate would also receive the application fee (on behalf of the Secretary of State) for any application submitted directly to it and this would be set at the same level as the fees payable to local planning authorities.
14. Where a planning application is submitted directly to the Secretary of State there will be a small number of administrative functions which, for practical reasons, will be carried out locally by the designated local planning authority and include:
  - Site notices and neighbour notification
  - Providing the planning history for the site
  - Notification of any cumulative impact considerations, such as where environmental impact assessment or assessment under the Habitats Regulations is involved, or there may be cumulative impacts upon the highways network
  - The Planning Inspectorate would specify a timescale for the completion of these tasks. The consultation is also inviting views on whether alternative approaches should be considered, such as the use of a local agent.
15. The Planning Inspectorate would not enter into discussions with the applicant about the nature and scope of any section 106 agreement that may be appropriate, as it is considered these are best determined locally by the applicant and the planning authority. In determining an application the Inspectorate would take into account, as a material consideration, any planning obligation advanced

by the applicant, or any agreement which the applicant has entered into (or is prepared to enter into) with the authority

16. The Bill does not provide for any right of appeal once an application has been decided by the Inspectorate, other than judicial review, as the application will already have been considered on behalf of the Secretary of State. This mirrors the position where applicants for planning permission choose to appeal against non-determination.
17. The discharge of any planning conditions attached to a planning permission issued by the Inspectorate would remain the responsibility of the local planning authority.

### **Supporting and assessing improvement**

18. During the period of designation it would be expected that an authority took maximum advantage of opportunities for peer support and other forms of sector-led improvement (such as those offered through the Planning Advisory Service); and to explore options for radical change such as shared services.
19. It is proposed that any assessment of improvement would be based on a range of other considerations that will be set out in policy:
  - - The authority's performance in determining all those applications for which it remains responsible
  - - Its performance in carrying out any administrative tasks associated with applications submitted directly to the Secretary of State
  - - A review of the steps taken by the planning authority to improve, and its capacity and capability to deal efficiently and effectively with major planning applications with the assessment undertaken by the Department for Communities and Local Government.

### **The planning guarantee**

20. The planning guarantee was announced in the Plan for Growth (March 2011) that no planning application – major or otherwise – should take more than a year to decide, even where a planning appeal has been made. It does not replace the statutory time limits for determining applications, which continue to be met wherever possible, but instead provides a 'longstop' date by which any schemes that take longer (or which involve a planning appeal) should be determined.
21. In practice the guarantee means that cases would spend no more than 26 weeks with either the local planning authority or, in the case of appeals, the Planning Inspectorate. This is to give both decision-making bodies an equal maximum time to come to a view, limiting the risk that over-runs with one part of the process might restrict the scope for the guarantee to be met. A similar 26 week limit would in future apply to the Planning Inspectorate where it is determining planning applications submitted to it directly as a result of these proposals.
22. There are a small number of cases which, exceptionally, to be excluded from the scope of the planning guarantee. These are:
  - Applications subject to Planning Performance Agreements, due to the bespoke timetables involved

Similarly, planning appeals subject to bespoke timetables agreed between the main parties for particularly complex cases (including Secretary of State casework where this applies

Planning appeals that relate to enforcement cases (which are often particularly complex with additional evidence coming forward during the course of the appeal); or which involve re-determinations following a successful judicial review

An initial monitoring report on performance against the planning guarantee was published earlier this year, and will continue to be reported on annually.

### **Implications for Stockton Borough Council on performance, staffing and income.**

23. The consultation emphasises the importance the Government places on the speed and quality of decisions on major planning applications with an increased focus on performance. This is being reinforced with a new ability to designate Local Planning Authorities for “poor performance” and pass their major planning applications to the Planning Inspectorate to determine.
24. Although the Government recognises that there can be good reasons for delay on large and complex proposals this is not reflected in the performance criteria.
25. The Government proposes to monitor and assess performance on the basis of two key measures: the speed and quality of decisions on planning applications. These are considered to have a direct bearing on the planning system’s efficiency and effectiveness for both applicants and communities; and on its contribution to growth.
26. It is intended to set these thresholds where 30% or fewer major applications have been determined within the statutory period or more than 20% of major decisions have been overturned at appeal. The Government consider it is important that a designation could be made on the basis of either measure (rather than a combination of the two), so that applicants can access a better service where speed or quality is a significant issue. It is also proposed to raise the bar to an unspecified level for the speed of decisions after the first year.
27. It is acknowledged that the initial thresholds are currently being achieved with the existing level of staff but previous National Indicators set by Government were 75% for major applications, 80% for minors and other applications. These targets have still been retained under the Single Data List which is intended to replace the previous performance management system and performance is reported quarterly to the Planning Committee. While these greater targets are being achieved it has required significant effort to ensure that these targets are met and a sound and robust recommendation and decision are made. It is considered that this level of performance is unlikely to be able to be sustained due to the uncertainty surrounding the ability to maintain existing staffing levels and the time required for statutory consultees such as the Highways Agency to analyse and assess the impact of major planning applications. No reference in the paper has been made to the reliance on advice from statutory consultees in reaching a timely sound and robust decision or the ability of certain consultees to issue holding directions. While the Government has sought to reduce the need for planning permission and thereby the volume of planning applications, the nature of the permitted development changes will still involve significant staff time

in determining whether planning permission is required and dealing with concerns from affected neighbours

28. Clearly what the Government have not yet indicated is the level the bar will be raised to for speed of decisions after the first year so the full potential impact cannot be properly assessed at this time alongside the other planning initiatives it will be implementing. As indicated above the performance target for majors is 75% and it would appear likely that the bar would be raised closer to this figure than remaining around 30%. It seems illogical that the Government has not identified at this stage the level of performance it wishes LPA's to achieve in the second year
29. Equally important is the potential impact of more than 20% of major planning applications being overturned on appeal in a two year period. It is considered that a percentage figure alone is inadequate to properly identify "poor decisions". In simple terms whilst 1 lost appeal out of 5 appeal decisions equals 20%, 1 lost appeal out of 2 appeal decisions equals 50% and would under these proposals place a local planning authority into the designated category. Therefore there needs to be an actual minimum number of appeals set as well as a percentage figure to more accurately reflect the concept of poor performance.
30. With regard to a Local Planning Authority having to refund the planning fee after 26 weeks if the application has not been determined, the paper states that the Government want to avoid any risk of applicants deliberately delaying the determination of an application in order to obtain a refund, or of authorities refusing applications just to avoid the penalty. Such behaviour would be taken into account by an Inspector in considering whether to award costs in any subsequent appeal proceedings. This ignores the fact that if the applicant does not appeal after engineering a refund of the planning fee there is no redress for the local planning authority to recover a refunded fee.
31. However the consultation paper does not acknowledge in anyway the significant resource difficulties facing local planning authorities in terms of all the proposed changes to the planning system and providing an effective service at a time when pressures for cost savings and staff cuts in local authorities are at their maximum. The issue of providing sufficient funding to operate a planning service able to meet all the new targets as well as applicants and local communities' needs has only been partially addressed by increasing the planning application fees by 15% even though in previous consultations the Government does acknowledge that the majority of local planning authorities are failing to recover costs from fee income. No regard has been paid to the Planning Costs and Fees Final report commissioned by DCLG and produced by Ove Arup which was published in November 2010. Two of the conclusions of the report indicated that
32. (1)"The issue of fee levels is pertinent given the importance of adequate resources in meeting expectations of increased speed, quality and delivery of planning decisions and delivery of development. Fee levels are also important in terms of the potential of a better system of fees to provide some of the additional resources needed. However, fee paying development management is one part of the local authority planning services and it sits alongside development planning and other significant activities such as heritage and conservation which are not covered by fees; it is very unlikely that fee increases alone can deliver additional resources to planning services as a whole."

33. (2) “The 15 per cent decline in applications has translated into decline in fees, from being equivalent to 38 per cent of the service cost down to 31 per cent of the service cost. This would suggest a 20 per cent or more increase in fees to reach 2006-07 cost recovery levels.” So in real terms the planning fee regime introduced on 22 November 2012 is at least 5% below 2006-07 cost recovery levels.
34. The Planning fees system to work effectively is dependent on the required application types/fees to be submitted to cover the real costs of an efficient and effective service. What it doesn't provide for is if insufficient application types and fees are submitted and do not cover the real costs of an efficient and effective service. This makes it particularly difficult to retain the level of staff required to operate a minimal service or fund capital expenditure such as improving ICT such as the online planning application system which is now recognised as a highly valued public service. These specific proposals involve the potential loss of significant planning fees if the level of required performance is not achieved which would be severely punitive by constraining even further the ability to fund increased resources to achieve the performance thresholds

### **Conclusion**

35. The consultation paper reflects the Government's intention to monitor and take action against those local planning authorities it considers are not making timely or positive decisions on planning applications that reflect policies in up-to-date plans (where relevant) and the National Planning Policy Framework.
36. The purpose of the proposal is to firmly focus the attention of local planning authorities on not only making timely decisions but “positive” decisions reflecting the National Planning Policy framework and allowing development otherwise they will be designated and major planning applications will be determined by the Planning Inspectorate together with the significant loss of planning application fee income. It is considered that the “Quality” of decision indicator needs to incorporate a minimum number of decisions otherwise the percentage figure would have a disproportionate impact.
37. There is no consideration by Government of the resource implications on local planning authorities of achieving and maintaining the speed and quality of planning application decisions particularly given the unspecified level to which the “speed” bar is to be raised after the first year together with all the other proposed changes to the planning system. As indicated above the Government has acknowledged that local planning authorities are not properly funded and has again failed to ensure they are adequately resourced to secure the delivery of an efficient, proportionate and effective service. Consequently the potential implications of the proposed changes are an even greater need to ensure that nationally set targets are met as failing to do so would not only be the loss of control of the determination of major planning applications but it would also create a significant budget pressure with the loss of the greater part of annual fee income which supports the service. There will be further increased workload for staff at a time when there is great uncertainty as to the level of staffing which can be funded and thereby limiting the prospects of meeting the targets or improving sufficiently to demonstrate a sufficient degree of improvement before the designation is lifted.

**Corporate Director of Development and Neighbourhood Services**  
**Contact Officer Barry Jackson Telephone No 01642 526066**



## **WARD AND WARD COUNCILLORS**

All

### **Financial Implications:**

Potential loss of major planning application fees if required performance is not met. Requirement to continue to provide a service to administer application process and negotiate any financial contributions. It is considered that there could be a significant funding impact on the planning service in ensuring the service is able to function efficiently and effectively to deliver the policies and vision of the Development Plan.

### **Environmental Implications:**

As above

### **Human Rights Implications:**

The provisions of the European Convention of Human Rights 1950 have been taken into account in the preparation of this report and it is considered there will be no change.

### **Community Safety Implications:**

The provisions of Section 17 of the Crime and Disorder Act 1998 have been taken into account in the preparation of this report and it is considered there will be no change.

### **Background Papers**

Consultation document from Department of Communities and Local Government Planning performance and the planning guarantee November 2012

Planning Costs and Fees Final report by Ove Arup for the Department of Communities and Local Government November 2010

Streamlining information requirements for planning applications Consultation Department of Communities and Local Government July 2012

Statutory consultee performance and award of costs Consultation Department of Communities and Local Government July 2012

Proposals for changes to planning application fees in England Consultation November 2010

## **Appendix 1**

### **Consultation questions**

**Question 1: Do you agree that local planning authority performance should be assessed on the basis of the speed and quality of decisions on planning applications?**

**Question 2: Do you agree that speed should be assessed on the extent to which applications for major development are determined within the statutory time limits, over a two year period?**

**Question 3: Do you agree that extensions to timescales, made with the written consent of the applicant following submission, should be treated as a form of planning performance agreement (and therefore excluded from the data on which performance will be assessed)?**

**Question 4: Do you agree that there is scope for a more proportionate approach to the form and content of planning performance agreements?**

**Question 5: Do you agree that quality should be assessed on the proportion of major decisions that are overturned at appeal, over a two year period?**

**Question 6: Do you agree with the proposed approach to ensuring that sufficient information is available to implement the policy?**

**Question 7: Do you agree that the threshold for designations should be set initially at 30% or fewer of major decisions made on time or more than 20% of major decisions overturned at appeal?**

**Question 8: Do you agree that the threshold for designation on the basis of processing speeds should be raised over time? And, if so, by how much should they increase after the first year?**

**Question 9: Do you agree that designations should be made once a year, solely on the basis of the published statistics, as a way to ensure fairness and transparency?**

**Question 10: Do you agree that the option to apply directly to the Secretary of State should be limited to applications for major development?**

**Question 11: Do you agree with the proposed approaches to pre-application engagement and the determination of applications submitted directly to the Secretary of State?**

**Question 12: Do you agree with the proposed approach to supporting and assessing improvement in designated authorities? Are there specific criteria or thresholds that you would propose?**

**Question 13: Do you agree with the proposed scope of the planning guarantee?**

**Question 14: Do you agree that the planning application fee should be refunded if no decision has been made within 26 weeks?**