

## Appendix 1

### Nottinghamshire County Council's response to the "Technical consultation on the implementation of planning changes"

#### Chapter 1: Changes to planning application fees

**1.1 Do you agree with our proposal to adjust planning fees in line with inflation, but only where the local planning authority is performing well? If not, what alternative would you suggest?**

*Nottinghamshire County Council agrees that planning fees should be increased annually in line with inflation and should be uplifted to more accurately reflect the cost of dealing with applications. For instance, S73 applications to vary conditions on a minerals or waste site could require an EIA. Even if they don't, the applications can be significant and fees for them should be significantly increased to reflect this as the current planning application fee attracted by such proposals does not even cover the cost of the mandatory publicity.*

*However, the level of fees should not be linked to performance as suggested, i.e. fees are only increased for the top 75% performing authorities. This measure would unfairly penalise authorities meeting other Government target for determining applications and is likely to result in a reduction in performance rates as the resources available to provide the planning service would reduce over time, possibly leading to a reduction of staff with even less ability to meet targets.*

*It is not considered appropriate to introduce a system where local authorities are competing with each other which is what would happen if only the top 75% performing authorities received the fee increase. There is a huge variation in the total number of applications that authorities deal with and other local factors influencing performance so you are not comparing like for like. The Government has introduced targets for determining major planning applications within the statutory timeframe or an agreed extension and this is currently set at 50%. If this is the standard the Government wishes to use to determine whether planning authorities are performing well or not, then it would seem to make sense to use this target to determine whether planning application fees should increase in any particular authority.*

*An additional measure that the Government could consider introducing could be to require planning fees to be ring fenced to the planning service within the local authority to ensure they are properly resourced and able to meet performance targets.*

**1.2 Do you agree that national fee changes should not apply where a local planning authority is designated as under-performing, or would you propose an alternative means of linking fees to performance? And should there be a delay before any change of this type is applied?**

*As stated above, Nottinghamshire County Council does not agree with the linking of fee levels to performance as proposed. If introduced in this manner, there should be a delay before any change is applied, i.e. this should not be based upon the performance from one or two quarters.*

**1.3 Do you agree that additional flexibility over planning application fees should be allowed through deals, in return for higher standards of service or radical proposals for reform?**

*This measure is to some extent already available through Planning Performance Agreements*

**1.4 Do you have a view on how any fast track services could best operate or on other options for radical service improvements?**

*This measure may lead to inadequate consultations/notifications and less time for measured responses.*

*Further measures to expand planning fast tracking would potentially result in a less equitable planning system, favouring developers and applicants willing to expend greater sums on the planning phase and pay higher planning fees, which inevitably means that other applicants become less of a priority and have to wait longer for a decision. This also has implications in terms of business competition.*

**1.5 Do you have any other comments on these proposals, including the impact on business and other users of the system?**

*It would be useful to know how planning fee levels (if related to performance) would be calculated if “other providers” (Chapter 8), whose performance had not been previously measured, were to deal with planning applications.*

*Local fees setting has been explored previously in 2011/12. The process to arrive at the cost per hour was extremely onerous and time consuming. If local fee setting is to be reconsidered an easier way to calculate the local fees would be welcomed, such as looking at previous figures uplifted in line with inflation.*

## **Chapter 2: Permission in principle**

**2.1 Do you agree that the following should be qualifying documents capable of granting permission in principle? a) future local plans; b) future neighbourhood plans; c) brownfield registers**

*The consultation document as drafted is ambiguous as to whether Minerals and Waste development would be included in these proposals although there are clear references to housing-led proposals. Clarification sought from DCLG has since the publication of the consultation paper confirmed that minerals and waste development will be excluded from this proposal. On this basis we have no further comments to make on this chapter.*

**2.2 Do you agree that permission in principle on application should be available to minor development?**

2.3 Do you agree that location, uses and amount of residential development should constitute “in principle matters” that must be included?

2.4 Do you have views on how best to ensure that the parameters of the technical details that need to be agreed are described at the permission in principle stage?

2.5 Do you have views on our suggested approach to a) EIA, b) Habitats Directive or c) other sensitive sites?

2.6 Do you agree with our proposals for community and other involvement?

2.7 Do you agree with our proposals for information requirements?

2.8 Do you have any views about the fee that should be set for a) a permission in principle allocation and b) a technical details consent application?

2.9 Do you agree with our proposals for the expiry of on permission in principle on allocation and application? Do you have any views about whether we should allow for local variation to the duration of permission in principle?

2.10 Do you agree with our proposals for the maximum determination periods for a) permission in principle minor applications, and b) technical details consent for minor and major sites?

### **Chapter 3: Brownfield register**

3.1 Do you agree with our proposals for identifying potential sites? Are there other sources of information that we should highlight?

*Chapter relates to housing development and therefore no comments on the rest of the chapter*

3.2 Do you agree with our proposed criteria for assessing suitable sites? Are there other factors which you think should be considered?

3.3 Do you have any views on our suggested approach for addressing the requirements of Environmental Impact Assessment and Habitats Directives?

3.4 Do you agree with our views on the application of the Strategic Environment Assessment Directive? Could the Department provide assistance in order to make any applicable requirements easier to meet?

3.5 Do you agree with our proposals on publicity and consultation requirements?

3.6 Do you agree with the specific information we are proposing to require for each site?

3.7 Do you have any suggestions about how the data could be standardised and published in a transparent manner?

3.8 Do you agree with our proposed approach for keeping data up to date?

3.9 Do our proposals to drive progress provide a strong enough incentive to ensure the most effective use of local brownfield registers and permission in principle?

3.10 Are there further specific measures we should consider where local authorities fail to make sufficient progress, both in advance of 2020 and thereafter?

### **Chapter 4: Small sites register**

4.1 Do you agree that for the small scale sites register small sites should be between one and four plots in size?

*No comment*

4.2 Do you agree that sites should just be entered on the small sites register when a local authority is aware of them without any need for a suitability assessment?

*No comment*

4.3 Are there any categories of land which we should automatically exclude from the register? If so what are they?

*Although very much housing focussed the small sites register also includes employment uses which could potentially include minerals and waste activities. However, given the scale of these sites and the specialist nature of mineral and waste activities it is considered that it would not be appropriate for the County Council to be required to publish a small site register showing sites available for mineral and/or waste uses.*

4.4 Do you agree that location, size and contact details will be sufficient to make the small sites register useful? If not what additional information should be required?

*No comment*

#### **Chapter 5: Neighbourhood planning**

5.1 Do you support our proposals for the circumstances in which a local planning authority must designate all of the neighbourhood area applied for?

*Neighbourhood Plans do not identify minerals and waste sites so no particular comments on this section. However Neighbourhood Plans, as well as being in conformity with other statutory plans for the area, should ensure any proposed housing sites/allocations are compatible with existing land uses (including minerals and waste sites).*

5.2 Do you agree with the proposed time periods for a local planning authority to designate a neighbourhood forum?

5.3 Do you agree with the proposed time period for the local planning authority to decide whether to send a plan or Order to referendum?

5.4 Do you agree with the suggested persons to be notified and invited to make representations when a local planning authority's decision differs from the recommendations of the examiner?

5.5 Do you agree with the proposed time periods where a local planning authority seeks further representations and makes a final decision?

5.6 Do you agree with the proposed time period within which a referendum must be held?

5.7 Do you agree with time period by which a neighbourhood plan or Order should be made following a successful referendum?

5.8 What other measures could speed up or simplify the neighbourhood planning process?

5.9 Do you agree with the proposed procedure to be followed where the Secretary of State may intervene to decide whether a neighbourhood plan should be put to referendum?

5.10 Do you agree that local planning authorities must notify and invite representations from designated neighbourhood forums where they consider they may have an interest in the preparation of a local plan?

## **Chapter 6: Local Plans**

6.1 Do you agree with our proposed criteria for prioritising intervention in local plans?

*The consultation document as drafted is ambiguous as to whether Minerals and Waste Local Plans would be included in the proposals. Clarification sought from DCLG since the publication of the document suggests that minerals and waste development will be excluded from this proposal but precise guidance would be useful to minerals and waste authorities.*

6.2 Do you agree that decisions on prioritising intervention to arrange for a local plan to be written should take into consideration a) collaborative and strategic plan-making and b) neighbourhood planning?

*These are factors which may be relevant, however, these criteria should not be applied negatively to authorities where collaboration has not been possible due to circumstances beyond their control.*

6.3 Are there any other factors that you think the government should take into consideration?

*No comment.*

6.4 Do you agree that the S of S should take exceptional circumstances submitted by local planning authorities into account when considering intervention?

*Yes, exceptional circumstances should be considered.*

6.5 Is there any other information you think we should publish alongside what is stated above?

*No comment.*

6.6 Do you agree that the proposed information should be published on a six monthly basis?

*No comment.*

## **Chapter 7: Expanding the approach to planning performance**

7.1 Do you agree that the threshold for designations involving applications for non-major development should be set initially at between 60-70% of decisions made on time, and between 10-20% of decisions overturned at appeal? If so (sic) what specific thresholds would you suggest?

*Nottinghamshire County Council has no objection to extending the performance regime to non-major development and agree that 60% to 70% seems to be a realistic threshold. However, the criteria used for measuring the “quality” of decisions by setting a percentage of decisions overturned at appeal is fairly*

*meaningless for authorities receiving very few appeals (say less than 10 per year). A more logical method of judging the “quality” of decisions would be to measure how many appeals are received as a percentage of the overall number of decisions made. For example, Nottinghamshire County Council typically receives an average of one appeal per year (which we consider actually reflects the robustness of our decision making) and if this decision were to be overturned then the Authority would in theory meet the designation criteria.*

**7.2 Do you agree that the threshold for designations based on the quality of decisions on applications for major development should be reduced to 10% of decisions overturned at appeal?**

*No, see above.*

**7.3 Do you agree with our proposed approach to designation and de-designation, and in particular;**

**a) that the general approach should be the same for applications involving major and non-major development?**

*Yes*

**b) performance in handling applications for major and non-major development should be assessed separately?**

*Yes*

**c) in considering exceptional circumstances, we should take into account the extent to which any appeals involve decisions which authorities considered to be in line with an up-to-date plan, prior to confirming any designations based on the quality of decisions?**

*Yes*

**7.4 Do you agree that the option to apply directly to the Secretary of State should not apply to applications for householder developments?**

*Agree, as dealing with a significant number of householder developments may have an adverse impact on the resources of the planning inspectorate at the expense of major planning appeals and local plan inquiries.*

## **Chapter 8: Testing competition in the processing of planning applications**

**8.1 Who should be able to compete for the processing of planning applications and which applications could they compete for?**

*Only providers who are proven to be totally impartial, professionally qualified in planning and democratic services. It is difficult to see how non-public bodies, who may be accountable to their shareholders or may also be representing competitors to the applicants whose applications they are dealing with, could provide an objective and democratic service that is equally fair to applicants, the decision makers and the public.*

**8.2 How should fee setting in competition test areas operate?**

*Fees should be universally set for all providers otherwise alternative providers could “cherry pick” certain applications and undercut local planning authorities*



*on applications they deemed to be the most lucrative. Equality in term of competition must be maintained.*

**8.3 What should applicants, approved providers and local planning authorities in test areas be able to? (sic)**

*See response to 8.6 below*

**8.4 Do you have a view on how we could maintain appropriate high standards and performance during the testing of competition?**

*See response to 8.6 below*

**8.5 What information would need to be shared between approved providers and local planning authorities, and what safeguards are needed to protect information?**

*See response to 8.6 below*

**8.6 Do you have any other comments on these proposals, including the impact on business and other users of the system?**

*There are too many issues relating to this proposal which would need to be fully resolved before this could be taken forward to ensure that the planning service provided remains fair, professional and democratic, these include:*

*-how will local democracy be maintained in terms of decision making. How will alternative providers identify neighbours and consultees etc, will they be bound by the approved Statement of Community Involvement for the area,*

*- if fees can be set by the alternative providers, how do you ensure that they do not undercut the local planning authority and then not provide a comparable level of service?*

*- will the alternative provider pay for all the publicity etc., such as press notices? (which in some cases exceeds the associated planning fee eg some S73 applications),*

*-what information/ support will local planning authorities be expected to provide to the alternative providers and will LPA's receive part of the planning fee for this?*

*- how would the local planning authority, in their role as decision makers, be able to challenge the recommendation if they disagreed with it or had any concerns about how the application had been dealt with/ inadequate consultation/ unresolved planning issues etc.?*

*- Local planning authorities typically have planning committee meetings every month to which objectors/supporters are invited. Planning reports have to fit into committee cycles which draw up agendas of upcoming business with committee papers published five days before the meeting etc. How would the decision making process work if only a week or two were given to do this?*

*- this proposal has serious implications for the long term funding of the local planning authorities and in time their ability to provide the service.*

*On a general note there is no clear evidence that outsourcing of planning services saves money. There are examples where the service has been brought back in house after a period of outsourcing. The impetus for this proposal appears to be the outsourcing of the Building Control service. This is not considered to be a comparable precedent. Building control is a technical and*

*objective service unlike planning decisions which require a balanced professional judgement to be made on sometimes complex and conflicting issues, taking into account planning policies/ consultee responses etc.*

## **Chapter 9: Information about financial benefits**

**9.1 Do you agree with these proposals for the range of benefits to be listed in planning reports?**

*It is self-evident that new developments will result in Council tax / business rate revenue being paid if development proceeds. Whilst there is no objection to this proposal, providing that the financial information is readily available, it would be necessary to confirm in any planning report that any financial benefits of a scheme cannot be viewed as a material consideration in the determination of an application.*

*The onus should be put on the applicant to provide the accurate information to be used in the planning report. This would be of particular relevance for shale gas development given that the Government has confirmed that councils would be able to keep 100% of business rates collected from shale gas sites, every well site where fracking takes place would be subject to £100,000 of community benefits, and 1% of revenues at the production stage would be payable, allocated approximately two thirds to the local community and one third at county level.*

**9.2 Do you agree with these proposals for the information to be recorded, and are there any other matters that we should consider when preparing regulations to implement this measure?**

*No comments*

## **Chapter 10: S106 dispute resolution**

*No comments*

**10.1 Do you agree that the dispute resolution procedure should be able to apply to any planning application?**

**10.2 Do you agree with the proposals about when a request for dispute resolution can be made?**

**10.3 Do you agree with the proposals about what should be contained in a request?**

**10.4 Do you consider that another party to the S106 agreement should be able to refer the matter for dispute resolution? If yes, should this be with the agreement of both the main parties?**

**10.5 Do you agree that two weeks would be sufficient for the cooling off period?**

**10.6 What qualifications and experience do you consider the appointed person should have to enable them to be credible?**

**10.7 Do you agree with the proposals for sharing fees? If not, what alternative arrangement would you support?**

**10.8 Do you have any comments on how long the appointed person should have to produce their report?**

**10.9 What matters do you think should not be taken into account by the appointed person?**



**10.10 Do you agree that the appointed person's report should be published on the local authority's website? Do you agree that there should be a mechanism for errors in the appointed person's report to be corrected by request?**

**10.11 Do you have any comments about how long there should be following the dispute resolution process for a) completing any section 106 obligations and b) determining the planning application?**

**10.12 Are there any cases or circumstances where the consequences of the report, as set out in the Bill, should not apply?**

**10.13 What limitations do you consider appropriate, following the publication of the appointed person's report, to restrict the use of other obligations?**

**10.14 Are there other steps that you consider that parties should be required to take in connection with the appointed person's report and are there any other matters that we should consider when preparing regulations to implement the dispute resolution process?**

## **Chapter 11: Permitted development rights for state-funded school**

**11.1 Do you have any views on our proposals to extend permitted development rights for state-funded schools, or whether other changes should be made?**

*The proposed increase to permitted floor space from 100m<sup>2</sup> to 250m<sup>2</sup> seems reasonable as it would still be subject to not exceeding 25% of the original building. However the reality is that many schools have been subject to multiple extensions over time meaning that they have exhausted available permitted development rights.*

*Para 11.8 below suggests that a further change could be made to reduce the 5m buffer between extensions and the boundary of the curtilage. Most schools are situated within residential areas and it is common for such properties to back onto school sites. The 5m buffer retains an appropriate balance in enabling school developments whilst maintaining residential amenity and outlook. This does not however prevent proposals being put through a planning application process and assessed accordingly.*

**11.2 Do you consider that the existing prior approval provisions are adequate? Do you consider that other local impacts arise which should be considered in designing the right?**

*No comments*

## **Chapter 12: Changes to statutory consultation on planning applications**

**12.3 (No questions 1 or 2) What are the benefits and/or risks of setting a maximum period that a statutory consultee can request when seeking an extension of time to respond with comments to a planning application?**

*Nottinghamshire County Council welcomes measures to ensure that statutory consultee responses are received in a timely manner to ensure that it can make its decisions within the statutory periods. However, an imposed maximum of 14 days could result in “essential” responses being missed and lead to legally challengeable decisions. This could apply to comments from the Environment Agency, Historic England and Natural England etc. If the Government decides to go ahead with imposing a maximum of 14 day extension for statutory consultees to submit their responses such measures should be accompanied by a review of the resources available to such statutory consultees to ensure that they are adequately resourced to meet this new measure.*

**12.4 Where an extension of time to respond is requested by a statutory consultee, what do you consider should be the maximum additional time allowed?**

*The time extension agreed should be set by the Local Authority themselves on a case by case basis rather than imposed by the Government. This would allow the Authority to make a judgement about whether the request for an extension was reasonable, such as to enable a Parish Council to report an application to its Parish Council meeting (to ensure “localism” objectives are achieved). Delays often arise as a consequence of District/ Borough Councils wishing to report applications to their committees, the County Council would question whether this is a reasonable justification for delaying the decision by the “actual” decision maker and potentially missing the statutory timeframes.*

### **Chapter 13: Public Sector Equality Duty**

**13.1 Do you have any views about the implications of our proposed changes on people with protected characteristics as defined in the Equalities Act 2010? What evidence do you have on this matter? Is there anything that could be done to mitigate any impact identified?**

*No comments*