



18th December 2012

Agenda Item: 6

REPORT OF GROUP MANAGER PLANNING

RESPONSE TO DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT CONSULTATION ON 'PLANNING PERFORMANCE AND THE PLANNING GUARANTEE'

Purpose of Report

1. To seek Committee's agreement to a response on a consultation from the Department for Communities and Local Government in respect of 'Planning Performance and the Planning Guarantee'. The recommendation is for Committee to note the report and endorse the responses to the consultation questions as set out at Appendix 1.

Background

2. Members will be aware that the Government, in recognising the vital role the planning system has to play in supporting growth, has introduced reform aimed at simplifying national policy through the introduction of the National Planning Policy Framework (NPPF). Other reforms aimed at speeding up planning procedures have also been announced including the planning guarantee whereby applications should take no longer than a year to determine, including any planning appeal.
3. The Growth and Infrastructure Bill, introduced to Parliament on 18 October 2012, contains additional proposals, including a measure designed to facilitate quicker and better decisions where there are clear failures in local authority planning performance, by allowing applicants the option of applying directly to the Planning Inspectorate.
4. Whilst envisaged as applying only in a handful of situations where councils have a track record of failing to deliver an effective service in either the speed or quality of its decisions, the Government's intention is to offer applicants the choice of a better service. At the same time, the Government wishes to ensure such under performing authorities can access the support needed to enable them to improve as swiftly as possible.
5. In November 2012 the Department for Communities and Local Government (DCLG) issued a consultation paper entitled 'Planning Performance and the Planning Guarantee' which seeks views for implementing this measure once the Bill is enacted and to inform debate on the clause during its passage through Parliament. The consultation also sets out proposals for implementing the

planning guarantee. The following section summarises the consultation proposals. The full consultation paper can be viewed at: <https://www.gov.uk/government/consultations/planning-performance-and-the-planning-guarantee>. Appendix 1 reproduces the consultation questions and sets out suggested responses on behalf of the County Council.

6. The consultation closes on 17 January 2013. The response on behalf of the Authority would, therefore, be made by this Committee subject to any amendments that may be required by the Monitoring Officer. Should the Monitoring Officer wish to make any amendments of substance, it is proposed to bring these to the Chairman's attention.

The Proposals

7. The Government intends for very poor performance to be assessed against clear benchmarks to define what this means in practice. Applicants seeking permission for proposals falling within the definition of major development (which includes development involving 1,000 sq.m or more of new floorspace, a site of 1 hectare or more and development involving minerals and waste) in those authorities would be able to opt to have their proposal submitted to the Planning Inspectorate. A sufficient degree of improvement would need to be demonstrated before such a designation would be removed from an affected authority.
8. The Government anticipates that this legislation would stimulate increased focus on performance amongst planning authorities and help ensure the planning guarantee is met. The Government proposes to further reinforce the planning guarantee by enabling a refund of the planning application fee should an application, major or otherwise, be undetermined after 26 weeks. Whilst the principal of encouraging swifter decision-making is to be supported, it does represent a stark juxtaposition with views expressed previously by the Government that authorities should be able to set their own fees for planning applications on the basis that fee levels were insufficient to cover the costs of processing applications.
9. The consultation paper recognises the importance of delivering positive and timely decisions and notes that delays can involve unnecessary expense, loss of investment and uncertainty for affected communities. The Government notes a decline in the speed with which applications are determined despite a decrease in applications, although the paper appears to take no account of the fact that numerous authorities have been forced to reduce resources in recent years in order to deliver budgetary savings.
10. The Government acknowledges that there can be good reasons for some delays, such as where parties recognise that more time than the statutory period is required to negotiate desired outcomes on large or complex schemes. It is not the Government's aim to tackle such instances, rather those of 'unnecessary delay and of poor decisions'.
11. Much of the thrust of the paper would appear to conflict with the Government's stated position favouring localism. The paper does, however, reiterate the

Government's intention to use this power very sparingly and that its commitment to decentralisation remains. Accordingly it argues that the great majority of authorities that already provide an effective planning service will not be affected other than to be reminded of the importance of timely and well considered decisions.

Assessing Performance (see Q1, Appendix 1)

12. The Government intends to issue a policy statement setting out criteria for assessing performance and thresholds for designating any authorities under this measure. In an effort to keep the approach simple and transparent, the Government proposes to monitor and assess performance on the basis of two key measures: the speed and quality of decisions on planning applications

Speed of decisions (Q2)

13. The Government proposes to use existing statutory time limits for determining applications - unless an extended period has been agreed in writing between the parties. The statutory time limits allow 13 weeks for applications for major development, 16 weeks for applications subject to the Town and County Planning (Environmental Impact Assessment) (EIA) Regulations 2011 and eight weeks for all others.
14. It is proposed that identifying and addressing very poor performance would solely focus on applications for major development as the Government considers these to be the most important for driving growth and as having the greatest bearing upon communities. Government recognises that some authorities may deal with relatively few applications for major development and performance can fluctuate quarter to quarter. Accordingly it is proposed that performance is assessed annually against such applications determined within 13 weeks (or 16 weeks for those subject to EIA) averaged over a two year period.
15. As an alternative approach Government considered using the average processing time for determining applications for major development but felt this would not reflect the obligation to make decisions within the statutory time limits nor as effectively address the minority of applications that take considerably longer to determine. It would also require a new reporting regime.

The role of planning performance agreements (Q3 & 4)

16. The Government aims to focus on genuinely poor performance and avoid unfairly penalising authorities for delays that are beyond their control. The paper notes that some applications for major development need more time than the statutory period to decide, especially where complex issues arise. Government also acknowledges that some delays are at the instigation of the applicant.
17. The NPPF encourages the use of planning performance agreements (PPAs) whereby a bespoke timeframe is agreed between the LPA and the applicant in recognition that more time than the statutory period allows will be necessary to determine the application. PPAs are excluded from the statistics on the

proportion of decisions made within the statutory period. LPAs also have scope to extend the time needed to reach a decision beyond the statutory period and the Government considers it fair to treat these in the same way as PPAs for reporting purposes thereby excluding them from the assessment of time within which a LPA makes its planning decisions. It is proposed that written post-application agreements to extend determination periods to a specified date should in future be recorded as a form of PPA

18. Government also proposes a more proportionate approach regarding PPAs enabling them to be tailored to the size and complexity of schemes, whilst still establishing a defined timescale for determination.

Quality of decisions (Q5)

19. The Government proposes to use the appeal success rate for major development to indicate the 'quality' of decisions made by each LPA and argues that appeal decisions provide an indication of whether LPAs are making positive decisions that reflect policies in up-to-date plans (where relevant) and the NPPF.
20. It is proposed that appeal success rates should be assessed over a two year period and that the number of appeals lost each year needs to be related to the total volume of applications dealt with. As such the Government proposes that the quality indicator should be the proportion of all major decisions made that are overturned at appeal over a two year period. This does, of course, rather assume that decisions reached following appeal are the 'correct' ones.

Having the right information (Q6)

21. The suggested measures of speed and quality both rely upon the regular supply of accurate data to DCLG, namely decisions made within the statutory period and the total volume of major decisions made to enable the proportion overturned at appeal to be calculated.
22. Whilst such data is presently supplied, the Government considers there a risk that LPAs may withhold data for quarters in which performance has slipped. To discourage this, Government proposes that where data for a single quarter is absent, an estimate would be made from the average returns of available quarters. Where data for two or three quarters in a reporting year are absent, similar estimates would be made, but with a penalty applied in proportion to the amount of absent data. This is suggested as a 5% reduction per missing quarter for the speed of decisions and 1% per missing quarter for decisions overturned at appeal. LPAs failing to report data over a whole year would automatically be designated as very poor performing.

Setting the bar (Q7 & Q8)

23. Government intends to clearly set out what constitutes sufficiently poor performance for a LPA to be designated once the Growth and Infrastructure Bill becomes enacted. Accordingly it is proposed to use absolute thresholds below which LPAs would be designated, rather than a fixed percentage of the most poorly performing LPAs based on speed and quality. The thresholds to indicate

very poor performance are suggested as being where 30% or fewer applications have been determined within the statutory period **or** where more than 20% of major decisions have been overturned at appeal. Designation could be made in respect of either indicator.

24. Government also proposes 'raising the bar' for the speed of decisions after the first year to promote achievable incentive for further performance improvement and to reflect an anticipated increase in the use of PPAs for the more complex cases.

Making a designation (Q9)

25. Government proposes that designations would be made once a year and affected authorities would remain so designated for at least a year to provide certainty to developers and give sufficient time for authorities to improve. It is intended for a transparent designation process for affected LPAs to follow annual publication of statistics on processing speeds and appeal outcomes.
26. For the first year, prior to any designations being made, LPAs will be allowed to correct any gaps or errors in the existing data and to take account of cases subject to environmental impact assessment.
27. Once the Growth and Infrastructure Bill receives Royal assent, it is anticipated that the first designations would be made once the necessary secondary legislation is in place around October 2013. The timetable is:
 - April 2013: Response to consultation announced; criteria and initial thresholds for designation confirmed
 - July 2013: Performance data for 2012-13 (as well as 2011-12) available, indicating which authorities are liable for designation
 - Aug – Sep 2013: Opportunity to correct any data errors and account for applications subject to environmental impact assessment
 - Oct 2013: Secondary legislation in place and initial designations made.

Effects of designation (Q10 & Q11)

28. Where a LPA is designated on the basis of very poor performance, the Growth and Infrastructure Bill would give applicants the option of applying directly to the Secretary of State, although they may apply to the designated LPA.
29. The option of applying to the Secretary of State would be limited to applications for major development. Provision would be made for related applications (listed building and conservation area consent) to also be made to the Secretary of State.
30. The Secretary of State would be allowed to appoint persons to determine applications on his behalf and it is proposed that the Planning Inspectorate (PINS) would fulfil this role. The Secretary of State would also be able to 'recover' cases for his own determination.

31. The benefit of pre-application advice is recognised and those applying to the Secretary of State would be encouraged to seek such advice from PINS, the LPA or both. It is proposed that PINS would charge for such advice on a cost recovery basis. PINS would also receive the application fee which would be set at the same level as that payable to the LPA.
32. It is intended that the processing for determining applications submitted to PINS should, as far as possible, mirror that followed by LPAs and modifications to the Development Management Procedure Order are proposed.
33. However, the paper suggests that various administrative functions would best be carried out locally and accordingly it is proposed that LPAs would undertake the following tasks:
 - Site notices and neighbour notification
 - Provision of site planning history
 - Notification of any cumulative impact considerations, such as EIA, assessment under the Habitats Regulations or cumulative impact upon the highway network.
34. PINS would specify a timescale within which to complete such tasks. Whilst LPAs are considered to be best placed to undertake such tasks, comment is invited as to whether alternatives, such as a local agent, would be preferable.
35. The Bill allows the Secretary of State to determine procedures where applications are submitted directly to him. Government proposes to allow PINS to choose the most suitable procedure for individual . This could entail an abbreviated form of hearing or inquiry, or written representations, although the presumption is for applications to be generally examined by written representations with the option of a short hearing to allow key parties to present their points in person.
36. Government considers that discussions into any section 106 agreement would be best determined locally by the applicant and the LPA. In determining applications, PINS would take into account, as a material consideration, any planning obligation put forward by the applicant, or any agreement which the applicant has entered into, or is prepared to do so. The discharge of any planning conditions would remain the LPA's responsibility.
37. It is proposed to initially set a performance standard for PINS to determine 80% of cases within 13 weeks or 16 weeks where subject to EIA. This would be reviewed annually.
38. Once determined by the PINS, applicants would have no right of appeal other than by judicial review. This reflects the current position where applicants appeal against non-determination.

Supporting and assessing improvement (Q12)

39. Government proposes that any designation would last for at least a year, but subject to review during that period to enable such LPAs to have the designation lifted at the end of that year. Designated LPAs would be expected to take advantage of various opportunities for support to explore options for change and improvement.
40. Recognising that designated LPAs may not necessarily be dealing with a significant number of applications for major development, DCLG propose to assess improvement on a range of other considerations:
 - Performance in determining all applications for which the LPA is responsible
 - Performance in undertaking administrative tasks associated with applications submitted directly to the Secretary of State
 - A review of steps taken by the LPA to improve and its capacity and ability to efficiently deal with major applications.

The planning guarantee (Q13)

41. The planning guarantee, announced in the Plan for Growth (March 2011) is simply that no application, major or otherwise, should take more than a year to decide, even where a planning appeal is involved. This does not replace the statutory time limits for determining applications but provides a 'longstop' date by which any proposals that take longer, or involve an appeal, should be determined.
42. In practice this means that applications should spend no more than 26 weeks with either the LPA or, in the case of appeals, PINS. The guarantee applies to the time a valid application spends with these decision makers and excludes the periods prior to submission and post issuing of any decision.
43. DCLG proposes to exclude the following cases from the scope of the planning guarantee:
 - Applications subject to PPAs with their bespoke timetables
 - Appeals subject to agreed bespoke timetables for particularly complex cases
 - Appeals that relate to enforcement cases or which involve re-determinations following a successful judicial review.

Delivering the guarantee (Q14)

44. DCLG will report annually on performance against the planning guarantee. It is expected that the driver to determine applications for major development within the statutory period will help deliver the planning guarantee.
45. As an additional measure to assist in its delivery, however, it is proposed to amend secondary legislation to require a refund of the application fee by the

LPA or PINS where applications (other than the exceptions listed at para. 43 above) are undecided after 26 weeks.

46. It is recognised that there could be risk of applicants deliberately delaying a determination in order to secure a refund or of LPAs refusing applications 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.

Conclusions for the County Council

47. Nottinghamshire County Council has a good record in terms of its planning performance. Whilst these proposals are intended to identify only the very poorly performing authorities, it is noted that circumstances may arise which present difficulties in determining certain applications in a timely fashion where, for example, further survey work is seasonally dependent.
48. The suggested responses to the consultation exercise cover such circumstances and members should note that the effect of these proposals may introduce a risk of determining certain future applications unfavourably which may otherwise be capable of being satisfactorily negotiated.

Other Options Considered

49. This report relates to a DCLG consultation paper and responses are invited in respect of specific consultation questions. Suggested responses to those questions have been set out at Appendix 1 although Committee may of course wish for alternative views to be expressed. As mentioned above, the views of the Council's Monitoring Officer are also sought.

Statutory and Policy Implications

- 50 This report has been compiled after consideration of implications in respect of finance, the public sector equality duty, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment and those using the service and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

RECOMMENDATIONS

- 51 It is RECOMMENDED that the consultation be noted and that Committee endorse the suggested responses to the consultation questions as set out in Appendix 1, subject to any change as may be advised by the Monitoring Officer.

SALLY GILL

Group Manager Planning

Constitutional Comments

52 Planning and Licensing Committee has authority to note and endorse the matters set out in this report by virtue of its terms of reference. (NAB 7.12.12).

Comments of the Service Director - Finance

53.

Background Papers Available for Inspection

None.

Electoral Division(s) and Member(s) Affected

All.

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For any enquiries about this report, please contact the report author.

