

Technical consultation response to the Government's Implementation of planning changes

Chapter 1: Changes to planning application fees;

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

It is appropriate to increase planning application fees in line with inflation but this should be applied to all local planning authorities irrespective of their performance. Local planning authorities need to be properly resourced to exercise their statutory functions and contribute towards economic growth. The proposed financial penalty will not improve the performance of under-performing LPAs; it will contribute towards a continuing lack of resources. The government should be increasing the funding available to local planning authorities not imposing what amounts to real-term cuts.

Question 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 above, inflationary fee increases are necessary for local planning authorities to, at the very least, maintain existing performance levels. The continuing lack of inflationary fee increases will not only undermine attempts to improve performance, it could jeopardise existing levels of performance.

If this system were to be introduced then there should be a delay of 12 months to allow LPAs which are not at the required level of performance to seek to address this.

Question 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?

The ability to be flexible in terms of the revenue obtained through the submission of a planning application is already in place by means of Planning Performance Agreement (PPA); this is a discretionary offer however and not all applicants will choose to use it. In cases where LPAs are performing well there is a case for locally set fees which will allow LPAs to better resource themselves to deliver heightened levels of service and different offers of service. In most industries there is the option of choosing different packages depending on the individual's needs and wishes the planning system could work in this way also.

Question 1.4: Do you have a view on how any fast-track services could best operate, or on other options for radical service improvement?

The majority of applications nationally are dealt with within the 8 and 13 week deadlines and the Government already has measures in place to deal with local planning authorities which consistency fail to meet a certain percentage of these deadlines. A minority of applications

do not meet the aforementioned deadlines but this is usually due unexpected or complex reasons and/or because the local planning authority is working proactively to resolve those issue. The imposition of a fast-track service will not resolve those unexpected or complex reasons or enable the local planning authority and developers to resolve them more quickly. It will simply increase the pressure on local planning authorities to not seek to resolve problems and instead determine applications as submitted – which in the case of applications which have raised complex issues may mean refusal.

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

No further comments.

Chapter 2: Enabling planning bodies to grant permission in principle for housing development on sites allocated in plans or identified on brownfield registers, and allowing small builders to apply directly for permission in principle for minor development;

Question 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.

Local and neighbourhood plan allocations and brownfield registers could be capable of granting permission in principle provided that all matters relating to the principle of a certain development are addressed and resolved through the respective plan-making processes.

When allocating a site for residential development in a local plan for example or including a site on the brownfield register, local planning authorities will need to be certain that all factors that could impact upon the principle of residential development on that site have been taken into account. This is feasible and, if satisfactory mechanisms are in place, potentially acceptable but it will mean that matters such as ecology, land contamination and flood risk for example will need to be considered comprehensively through the plan-making process rather than being deferred to the planning application stage; this risks significantly slowing down the preparation of local and neighbourhood plans. In respect of Neighbourhood Plans there is also a question of whether parishes and neighbourhoods are appropriately equipped and resourced to prepare such a technical document.

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

No, the benefits of doing so are limited. The submission of an outline planning application will all matters reserved is no different and thus will remain the most effective way of establishing the principle of residential development on such sites.

Question 2.3: Do you agree that location, uses and amount of residential development should constitute 'in principle matters' that must be included in a permission in principle? Do you think any other matter should be included?

Location, the nature of the proposed use and the amount of development must form part of the permission in principle but so too must the means of access. There are many development sites which are in an appropriate location for a certain quantum of residential development but residential development is essentially unacceptable in principle due to serious highway problems. The current proposal could result in permission in principle being established for sites which cannot be pursued due to insurmountable highway issues.

Separating technical considerations from matters of principle is not straight-forward. It is proposed that location is an 'in principle matter' (understandably) but it is the case that various technical matters will need to feed into an assessment of whether the proposed location is acceptable in principle; such matters cannot be deferred to the 'technical approval' stage, they are intrinsically linked. A good example of this is the flood risk sequential test; the outcome of this test dictates whether the location of a site is acceptable in principle having regard to flood risk and the availability of alternative sites. This test cannot be deferred to the 'technical approval' stage as it forms a fundamental part of the assessment of whether a site's location is acceptable in principle. Any assessment of 'location' at the permission in principle stage (whether on application or allocation) must be broad in scope and enable the local planning authority to assess all matters that could influence whether the site's location (and use and amount) is acceptable in principle, some of these matters are technical.

Question 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?

The government's comments in relation to the proposed inability to impose conditions on permission in principles are noted but it suggested that the imposition of a condition prescribing the parameters of the technical details would be the most sensible and easily understood method.

Question 2.5: Do you have views on our suggested approach to a) Environmental Impact Assessment, b) Habitats Directive or c) other sensitive sites?

The suggestions seem logical

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

No. It is important that local residents and the community are fully involved (if they wish to be) at the technical approval stage. There is no justification in not requiring the notification of neighbours etc. in relation to an application for technical approval. Such an application should not be treated any differently to an application for the approval of reserved matters. Local residents' comments are not limited to matters of principle but often relate to the detail of a scheme and its impact. Notifying neighbours will not duplicate engagement, as suggested in the consultation paper, because matters of technical detail will not have yet been considered. Mandating notification/consultation ensures consistency between local planning authorities.

Question 2.7: Do you agree with our proposals for information requirements?

The proposed information requirements for applications for technical approval are reasonable but the suggested information requirements for applications for permissions in principle are considered to be inadequate. As stated above the supporting information submitted with applications for permissions in principle must relate to all matters that may influence whether the development is acceptable in principle. The example given above is the flood risk sequential test – this cannot be deferred to the technical approval stage because it relates to matters of principle; it will need to be a validation requirement. Another example is ecology; the LPA will need to establish at the permission in principle stage whether there are European protected species on site. The three derogation tests (the first two at least – IROPI and satisfactory alternatives) are matters of principle which cannot be deferred to the technical approval stage. The LPA will need a full ecological survey/assessment to undertake this assessment.

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

The gross fee across the two applications should be comparable to an equivalent full planning application to ensure that there are adequate resources to deal with the proposal efficiently. This could be split 50/50 between permission in principle and the technical approval stage or it could be proportionate to the level work involved – which would need to be calculated.

The government should avoid setting permission in principle fees at a level that is disproportionately low compared to the level of work involved as this will encourage speculative applications and applications which will not necessarily be followed by subsequent applications for technical approval; in such situations the LPA would be unable to recover the remainder of the fee.

Question 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?

Yes agree.

Question 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?

A 5 week determination period is only sufficient time if an application is acceptable as submitted (i.e. without revisions) and determined under delegated powers. If the scheme needs to be amended to make it acceptable then this timescale will not allow for it. Likewise it would exclude local members from the decision-making process on major developments.

Experience has shown that 10 weeks is very rarely sufficient time in which to process a major planning application. A major technical approval application will be no different; it will only be marginally less complicated than a full planning application (all matters will still be relevant except the principle) and it will be considerably more complicated than a major reserved matters applications (potential S.106 Agreement etc.)

Chapter 3: Introducing a statutory register of brownfield land suitable for housing development;

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

This seems sensible

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

Yes provided that the Local Plan is relevant to a local planning authority's consideration of whether a brownfield site is capable of development and thus to be included on the register. This is implied in the consultation but is not explicit in the bulleted points.

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

The consultation suggests that the local planning authority will be responsible for undertaking an EIA in relation to each site (where it has been concluded that an EIA is necessary) prior to its inclusion on the brownfield register. This is a significant and resource intensive piece of work. The responsibility to commission an EIA currently rests with an applicant for planning permission, there is no justification in moving away from this. The responsibility to prepare an EIA should rest with the landowner/promoter of the site and the Environmental Statement should be submitted to the Council as part of the brownfield register process.

Question 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?

No comment

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

Yes

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

The specified required information is logical but caution is urged in respect of the requirement to provide an estimate of the number of homes. The capacity of a site depends upon a range of factors which may not be available at the time that the brownfield register is adopted, and/or may change. Factors include the height (no. of storeys) of buildings, amount of public open space and car parking provision. The number of dwellings a site can accommodate is best led by the design process, having regard to the site's constraints and opportunities. If the further information required can be incorporated into the permission in principle requirements then it would be essential to have a maximum figure for housing which can be delivered on site.

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

The brownfield register should be published on LPA websites as a layer on the online GIS systems that most local authorities already use.

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

An annual review by the local planning authority seems sensible.

Question 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?

Requiring 90% of sites entered on the brownfield register to have planning permission (which includes permission in principle) by 2020 is unrealistic. It is reasonable to require 90% of sites to come forward within a reasonable time period but this must be measured from the date the brownfield register is adopted; not an arbitrary date. It is only reasonable provided that local planning authorities have control over which sites are and are not entered on the register. LPA's should not be penalised if this target is unachievable through no fault of their own, for example if certain sites stall due to peculiar difficulties or complexities or the land owner chooses not to develop the site. This system is likely to result in the more complex sites being excluded from the register.

Taking the measure from permission in principle (ie when a site is entered on the register) is unreasonable however. It ought to be from when technical approval is granted. This is for 2 reasons, a) complex sites may fail at this stage thus would need to be removed from the register, b) because the onus is with the owner to bring forward the technical application (which could be complex and expensive) the LPA would have no control of this. The only way to assist would be to have grant funding available for the LPA to call on for use to subsidise the technical reports needed. Even this will not guarantee the owner will ever bring the site to completion.

Question 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?

This consultation fails to recognise that a failure to deliver a planning permission within a prescribed timescale is not always the fault of the local planning authority and therefore penalising LPAs is unlikely to result in an increase in performance.

Chapter 4: Creating a small sites register to support custom build homes;

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

Yes

Question 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 – there needs to be an assessment process which all prospective sites are considered against. The purpose of holding a register of small sites, a significant proportion of which may not be suitable for housing development, would seem of little value and will be very confusing to those not familiar with the planning system. This would also raise the expectations of landowners without any assessment having taken place of the acceptability of the land. Likewise it could create unnecessary concern with neighbours to such sites.

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

If the suitability of a site is a factor when considering whether to include a site then that assessment will need to be much broader than simply excluding certain types of land from the register. Either the site's suitability (in planning terms) is relevant or it is not, it cannot ambiguously fall between the two.

Question 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?

Yes

Chapter 5: Speeding up and simplifying neighbourhood planning and giving more powers to neighbourhood forums;

Question 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?

No comments

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

No comments

Question 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?

No comments

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

No comments

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

No comments

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

No comments

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

No comments

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

No comments

Question 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 or Order should be put to a referendum?

No comments

Question 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?

No comments

Chapter 6: Introducing criteria to inform decisions on intervention to deliver our commitment to get local plans in place;

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

No comments

Question 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?

No comments

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

No comments

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

No comments

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

No comments

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

No comments

Chapter 7: Extending the existing designation approach to include applications for non-major development;

Question 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 what specific thresholds would you suggest?

No. The existing thresholds were considered to be an appropriate reflection of what constitutes an acceptable level of performance and the need to alter them is unfounded. Raising the target to 70% could lead to LPAs who have been exceeding previously required performance level e.g. 65% on minor applications being designated for poor performance. This will lead to the majority of LPAs being designated for poor performance.

Question 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?

Yes

Question 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?

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

(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 this is supported. It is sensible for the approach to be consistent.

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

Agreed

Chapter 8: Testing competition in the processing of planning applications;

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

Who should be able to compete?

The process of assessing planning applications and providing a recommendation can involve a complex process of bringing together a variety of expertise and specialisms. It is therefore essential that processing of planning applications is undertaken by suitably trained and qualified planners.

In terms of organisations, only those with sufficient access to the relevant expertise and specialisms in the many areas the planning process considers (planning, ecological, arboriculture, landscape, highways, drainage, etc.) will be able to provide rigorous and thorough recommendations to LPAs. This clearly suggests that multi-disciplinary organisations would be in a better position to compete for the processing of planning applications. For organisations that are not multi-disciplinary, they will have to have access to these expertise and specialisms in order to formulate recommendations. This could be achieved by buying these services in from other private providers.

Most problematic would be the potential conflicts of interest arising from approved providers who are also involved in promoting planning applications for development in the same local authority districts in which they are acting as approved providers. Obviously, the regulations would need to bar approved providers from making recommendations on their own planning applications, but this may not go far enough to remove the potential for and perception of conflicts of interests occurring.

High performing LPAs make the ideal candidates for acting as alternative providers in other local authority areas, as they already have experience of, and are set up to deal with, all types of planning applications and have in place the relevant expertise and access to specialist advice.

Types of applications

Presumably the approved providers would not be compelled under the new statutory regime to process all applications they receive, i.e. they are not under a duty to determine applications received like the LPA is. This introduces the very real possibility that approved providers will 'cherry pick' the most valuable (in terms of fee income) applications and refuse to deal with the least valuable. The current fees structure means that fee income for certain

types of applications is greater than the cost of processing them and that for other types of application it is less than the cost of processing them. For example, benchmarking exercises undertaken by the Planning Advisory Service (PAS) demonstrated that the fee income from dealing with discharge of conditions applications and householder developments do not cover the costs of dealing with them. It is highly likely that private companies acting as alternative providers will only take on those applications which they deem to be the most profitable. This could have the effect of removing resources from LPA whilst leaving them to deal with the most timely, complicated and costly of applications.

It would therefore be necessary to consider making it a requirement that each alternative provider must deal with any application which is lodged with them. Failure to do this would result in an un-level playing field with LPAs at a competitive disadvantage. It would likewise be critical to the success of the system that all providers were able to charge the same rates to deal with applications.

This new system would make it confusing for members of the public as to who is dealing with individual applications. Alternative providers may be unwilling to respond to third party queries which will not be fee generating.

Question 8.2: How should fee setting in competition test areas operate?

Fee setting needs to be done on an equitable basis with each provider potentially able to charge the same amount. This would mean introducing local fee setting in the test area. Allowing the setting of fees to cover costs would be welcomed as planning application fees have not risen in line with inflation for a number of years and there are a number of applications fees which do not currently cover the costs of dealing with them.

Consideration needs to be given to the work involved for LPAs reviewing recommendations and taking decisions (particularly where these are taken by a planning committee). This could potentially involve a considerable amount of work if they disagree with the recommendation taken or if the quality of the report is poor. There will also likely be costs to LPA from keeping the planning register up-to-date and taking enquiries from members of the public about planning applications. The proportion of the fee to be given to the LPA should take account of these factors.

Question 8.3: What should applicants, approved providers and local planning authorities in test areas be able to do?

The test needs to run as the new system is proposed to operate. Alternative providers need to demonstrate how they will deal with applications from registration to making a recommendation to the LPA.

Approved providers will need to undertake site visits, they will not benefit from the powers afforded to local government officers to enter private land there will need to be a change in legislation to allow alternative providers a right of access.

If an LPA receives a report and recommendation from an approved provider it will need time to assess and review the report to determine its quality and that it covers all the relevant issues. It is difficult to see how some element of duplication will not occur at this stage as the LPA will either have to take the report on trust (which would not safeguard the integrity of the system) or make its own judgement upon parts of the report which it might have reason to query. This is particularly pertinent if the LPA rejects the recommendation of the report as, presumably, it will need to prepare its own report outlining the reasons for the alternative

recommendation. The timeframes afforded to LPAs to take decisions on reports from approved providers will need to take this into account.

If an application is required to be determined by committee rather than at delegated level, the usual committee cycles of a Council will need to be taken into account when considering what timeframe to set LPAs for taking a decision. This needs to account for the time required to prepare papers for committees and allowing the publication of the report in advance of any meeting.

It is important that the regulations do not set any unfair restrictions or penalties upon the LPA if they need to disagree with a recommendation from an approved provider. As the ultimate decision maker, they are also democratically accountable and clarity will be needed about how alternative providers will be accountable for their recommendations to third parties.

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

Monitor performance of approved providers and LPAs against timescale targets.

Monitor the types of applications been taken on by approved providers.

Introduce a measure of quality of decision making (beyond appeal performance) by having a robust review mechanism in the test areas of recommendations.

Monitor the impacts upon the setting of fee levels and the fee incomes of LPAs.

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

The planning history of a site, access to GIS mapping showing the relevant site constraints, and copies of any pre-application enquiry and the LPA's response.

There will be a cost associated with the provision of information from LPAs to approved providers. For example, planning histories are not always readily available in an easily accessible format and require detailed history searches to be undertaken by LPA staff. This is particularly the case where unitary authorities out of multiple historic local authorities each with their own system of record keeping. Approved providers may need to pay to receive this information from LPAs.

The LPA is responsible for maintaining the planning register and display information on planning applications on their websites (plans/drawings/background information/correspondence/etc.) available for public viewing and comment. Approved providers will need to provide the LPA with details of any planning applications they receive so that these details can be published on their website. This should include copies of the plans and all other information submitted with the application so that it can be subject to public scrutiny and comment. Approved providers will need to provide this information in a standardised electronic format.

If the intention is that approved providers will publish application details on their own websites, then this is likely to lead to fragmentation and confusion about where members of the public can access information about planning applications. A central place for all applications to be viewed would therefore need to be setup.

This system will potentially require a number of hand-offs between separate bodies and there is a real concern that this will slow down the process leading to delays as an unintended consequence.

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

There are significant concerns about the impacts upon the consistency of planning recommendations coming forward. All planning applications require a number of value judgements to be made and currently LPA (as the sole provider of decisions) ensure that there is a degree of consistency and, therefore, certainty in planning decisions. There is concern that by introducing a range of approved providers to make recommendations there will be no way of ensuring a consistent approach. This will increase uncertainty for business and users of the planning system who will not know whether an approved provider's recommendation is going to be upheld by the LPA. There would also be a significant cost to the LPA in terms of undertaking the checking process and explaining the decision to third parties.

There is also a concern about the impact of the proposals upon the public perception of planning. Whilst some safeguards may be put in place, the perception of a private company which may be promoting development in other areas, but is processing and making recommendations on applications in another may undermine the confidence in the system. Lack of confidence in the planning system would likely lead to greater anti-development sentiment and be counter-productive in terms of the aims of these proposals.

Planning decisions are taken in the public interest. There is concern about how private alternative providers can be made to consistently make recommendations in the public interest where they are essentially a private company seeking to make a financial return. There are concerns about whether alternative providers will be subject to Freedom of Information (FOI) requests and about the probity and transparency of how recommendations have been formulated and what negotiations with developers have been undertaken.

Chapter 9: Information about financial benefits;

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

'Local finance considerations' as defined in the act are a material consideration and therefore should be included within planning reports to committee. It is important to note that items such as CIL, council tax revenue or business rate revenue are financial 'implications' of a planning decisions and do not necessary equate to a 'benefit' of the scheme. All of these items are designed to cover the costs of servicing the development or offsetting its impact so should not be automatically taken as benefits. This requirement would need to be extended to include alternative providers within the duty. It is essential that the weight to be afforded to these issues remains a matter solely for the decision maker. Any new legislation should not alter this position.

Question 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?

There is also concern that a requirement to calculate estimated council tax or business rates will add delay to the planning process whilst this is calculated by the LPA.

Financial payments to other bodies should only be listed in a planning report if they are material to the planning decision.

Chapter 10: Introducing a Section 106 dispute resolution service;

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

Yes

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

The proposals set out reasonable time limits before the dispute resolution process can be triggered.

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

There is a potential conflict between these proposals and proposals for the reporting of financial benefits to committee. In some cases, the only way to determine whether the LPA are likely to grant planning permission if satisfactory planning obligations were entered into would be if the application has a resolution to grant permission from a planning committee. However, if there is a requirement to report all financial benefits (including S106 payments) to committee it will not be possible to do this until after the dispute resolution service has reported back. This may result in applications having to be reported to committee twice causing additional delay.

Question 10.4: Do you consider that another party to the section 106 agreement should be able to refer the matter for dispute resolution? If yes, should this be with the agreement of both the main parties?

No – the main parties to the agreement should be the only ones able to refer the matter for dispute resolution. Otherwise this may encourage other parties to cause unnecessary delay or use this option as a potential bargaining chip or ransom to influence the agreement.

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

Yes – this is a reasonable approach which will allow some time for final agreement to be reached.

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

S106 negotiations require an understanding of both the planning and legal professions. It would therefore be appropriate for the appointed person to have experience of both, i.e. RTPI qualified planner, legal qualification. Some understanding or training in development viability would also be beneficial. The level of qualification will need to be sufficient to command the confidence of both the LPA and the applicant. The Planning Inspectorate are

regularly arbitrating in these matters and would seem a logical choice to arbitrate over these disagreements.

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

Disagree with the proposals for fee sharing. The fee should be borne by the applicant or by the party requesting the use of the S106 dispute resolution service. Otherwise this could lead to serious resource implications for LPAs should the new service prove popular. The LPA will also be put to cost in engaging with the new dispute resolution service and this impact should not be compounded by a requirement to contribute towards any fees, particularly if it has acted reasonably in its S106 negotiations.

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

4 weeks is not an unreasonable time limit for producing a report. This service will need to be adequately resourced so that these time limits can be met.

However, consideration needs to be given to whether this period will take application over the planning guarantee deadline (i.e. refund of fees). The regulations should include safeguards to ensure that when a matter is taken to the dispute resolution service at the request of the applicant that this does not count towards the planning guarantee deadline.

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

The dispute resolution service should focus on the main issues in dispute, but should also consider any other relevant material considerations which may influence the terms of the S106.

Question 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?

Yes – publication of the report on the LPA website will ensure that there is transparency.

Yes – A simple mechanism for correcting simple errors in a report would be a useful tool to avoid delay. There needs to be some system of redress should the report contain major error which require it to reassessed completely.

Question 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?

Having a time limit on the completion of a S106 once a report is received will help to move an application to a conclusion. However, this should not be drawn too tightly as S106 agreements often involve multiple parties and there can be delays in getting all parties to enter the agreement. The consequences of not entering an agreement in a prescribed deadline should therefore not be overly harsh (i.e. refusal of planning permission) as this

would seem counter-productive in instances where all parties are in agreement following the publication of the report.

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

No

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

Existing planning legislation provides sufficient restrictions on the use of other obligations.

Question 10.14: Are there any 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?

No

Chapter 11: Facilitating delivery of new state-funded school places, including free schools, through expanded permitted development rights;

Question 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? For example, should changes be made to the thresholds within which school buildings can be extended?

Extending temporary rights to use any property as a state-funded school from 1 year to 2 years will allow more time for new schools to find and establish permanent premises elsewhere. However, a downside to this is that the longer the premise is in use the less likely it is to return to its former use when the school move to their permanent premises.

Increased the thresholds for extensions to schools will increase flexibility for schools, although a large number of school will already have exceeded the 25% of the gross floorspace threshold). In practice this will only have a limited affect. There is potential to relax the 5m restriction on building within the boundary, but this should possibly include a height restriction, such as no building higher than 3m (similar to part 1 dwellinghouse extension PD rights).

However, the relaxation and increase in thresholds need to careful consider how impacts of school expansion, e.g. increased pupil numbers, highways impacts, etc., will be managed.

There is concern about the proposal to allow the erection of temporary buildings on cleared sites which would have benefited from permanent change of use rights. It is unclear whether this proposed right will include permission to demolish an existing building or, if not, how a 'cleared site' will be defined. It will be difficult for the LPA to establish what the authorised

use of the building previously on the site was if it has already been demolished by the time this PD right is implemented.

There is particular concern in respect of temporary buildings being erected on cleared sites which would have benefited for a change of use to a state-funded school under Part 3, Class S (agricultural building to state-funded school). This is because agricultural buildings are usually positioned in isolated locations in the countryside. The erection of temporary (likely modular) classrooms or other school buildings in these locations is likely to harm the rural character of an area.

Question 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?

The existing prior approval provisions are considered to cover the main issues which need to be considered. However, issues of design and landscaping would need to be assessed when considering a new PD right for temporary buildings if these are in rural locations.

Chapter 12: Improving the performance of all statutory consultees.

Question 12.1: 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?

This will allow for greater certainty for applicants and LPA when processing applications. However, safeguards need to be built into the regulations for where the statutory consultees have requested and/or are awaiting additional information from applicants. In these cases, the time limit should start from when the additional information is received.

Third parties do need time to review proposals. Town and Parish Councils often do not meet that regularly so this could make engagement with the community more difficult.

Question 12.2: Where an extension of time to respond is requested by a statutory consultee, what do you consider should be the maximum additional time allowed? Please provide details.

An additional 14 days appears to be a reasonable period to enable consideration of complex applications or to enable the assessment of revised or additional information received. However, some option for a statutory consultee to agree a bespoke timetable with the LPA would be useful in very complicated cases. The LPA should not be held accountable in terms of performance if the consultee fails to adhere to the time limit.

Chapters 1-12 are structured to allow respondents to comment on consultation proposals which are most relevant to them. We are also seeking views on whether proposals impact on protected groups as described in chapter 13, to ensure that we take into account all relevant evidence in our consideration.

Question 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?

There is a risk that those people affected by developments will not have the right to comment on the technical details of what is being proposed which goes against the push for localism. Likewise there are a number of complicated changes to the system being proposed which may make the planning system less accessible to third parties.

Question 13.2: Do you have any other suggestions or comments on the proposals set out in this consultation document?

No