

PROPOSED RESPONSE TO THE TECHNICAL CONSULTATION ON THE IMPLEMENTATION OF PLANNING CHANGES.

1. PURPOSE OF THIS REPORT

- 1.1 This report seeks the approval of the Portfolio Holder to the attached proposed response to the DCLG “Technical consultation on implementation of planning changes” that has to be responded to by the 15th April. A link to the consultation is provided below and the proposed response is set out in Appendix A to this report.

<https://www.gov.uk/government/consultations/implementation-of-planning-changes-technical-consultation>

2. THE CONSULTATION

- 2.1 The Introduction to the Consultation states that the purpose of planning is to help achieve sustainable development and that the planning system must deliver the high quality new homes and the supporting infrastructure the country needs. The proposed changes are intended to implement the measures in the Housing and Planning Bill and “other planning measures and the responses to the consultation will inform future secondary legislation. These aims underpin all the proposed changes which are then considered under a number of headings all reflected in the response to the questions set out in Appendix A.

3. FINANCIAL IMPLICATIONS

- 3.1 The proposed changes would have implications on the workload and fee income of the wider planning team. These cannot be assessed until the final details of the changes are released but they will be considered as part of the ongoing budget process.

4. ENVIRONMENTAL IMPLICATIONS

- 4.1 The changes reflect the government’s position on the need to provide housing and this will have inherent environmental implications in terms of providing for additional housing numbers.

5 RECOMMENDATION

- 5.1 That the Portfolio Holder:

Approves the consultation response set out in Appendix A.

PORTFOLIO HOLDER DECISION

I endorse the recommendation set out in paragraph 5.1 of this report:

Signed

Dated

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CLLR E J HERON

.6 April 2016.

Portfolio Holder (Planning and Transportation)

Date notice of decision given: 6 April 2016

Last date for call-in: 13 April 2016

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APPENDIX A: THE PROPOSED RESPONSE

Technical consultation on implementation of planning changes. February 2016

Closing date for comments 15th April 2016

Response by Cllr Edward Heron. New Forest District Council Planning and Transportation Portfolio Holder.

Introduction

The following response is made on behalf of the Council and is based around the specific questions asked in the consultation document.

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?

The intention to adjust planning fees in line with inflation is welcomed. The proposed link to performance is both logical and supported. No alternative is proposed.

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?

Again the link to performance is accepted and no alternative is proposed. If the aim is to incentivise and support rather than penalise under-performing authorities a delay would be appropriate.

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?

Yes and it is felt that, in terms of individual proposals, these could be delivered through Planning Performance Agreements. In terms of radical reforms there may be a role for competition but the fact that the final decision (unlike with Building Regulations) remains with the Local Planning Authority would limit the effectiveness of such proposals.

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?

Not at this time but it is crucial that community involvement and political accountability are retained as a fundamental part of any reform.

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

Those who understand the system might benefit but those who do not could be exploited or disadvantaged unless appropriate measures are put in place.

2: Permission in principle

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 Plans and Neighbourhood Plans are suitable qualifying documents as long as the resources are available (they currently are not) for the 'heavy investment' to be made by councils in 'costly technical details' so as to provide clarity as to what is acceptable, in terms of the relevant constraints and what further details will be required. – otherwise significant delays to plan-making will inevitably arise. Brownfield registers could be more of an issue as it is hard to see how the above essential pre-requisites would be achieved let alone community involvement and buy in.

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

In principle yes but only if it represents something distinct from the normal application procedure and is not complex, while ensuring key issues e:g contaminated land, access and flood risk, are covered as part of determining the "in principle matters".

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?

See above, basic technical requirements must be covered as must habitat mitigation proposals. Without these the deliverability and sustainability of any permission in principle would remain in doubt.

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?

Where Permission in Principle is given in a local/neighbourhood plan the details could be defined and properly considered in 'general' terms ensuring basic assessments are undertaken prior to designation. These would then be addressed in a more thorough manner at the technical detail submission stage. The finite list of technical details could be defined if sufficient work is undertaken at the in principle stage.

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

Again it is crucial that permissions in principle can only be granted when sufficient information is to hand. On sensitive sites this is even more essential and it is an unavoidable fact that on such sites significant work upfront will be required to meet minimal

legislative requirements. Working in partnership with landowners/applicants will also be necessary.

Para 2.30 appears to suggest that the planning authority would have to undertake EIA screening and if necessary full EIA if permission in principle (PiP) was sought in a sensitive area. This would be unduly burdensome on local authorities especially in areas where all or most sites are sensitive, and it would seem to replicate the process of SA, HRA, SFRA etc. that informs plan-making. It would be more appropriate to define sensitive areas and fully exempt them from the possibility of 'PiP on application', while leaving plan-makers the option of undertaking the work necessary to enable PiP status to be assigned to an allocation site through the plan-making process.

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

Full community involvement in terms of identifying the location of sites and the in principle matters will be required. The Plan making process facilitates this. Direct consultation for applications would also be effective but again sufficient information must be available. If these steps have been taken and local views taken on board consultation at the details stage may well not be required

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

The key issue is what information comes forward when. To give the in principle permissions the necessary robustness the key issues including for example access and flood risk must be considered and information provided to guide subsequent technical details such as design and layout. Any principle decision not doing this could very well fall apart at the technical stage helping nobody. In addition basic legislative requirements regarding sensitive sites and development of a certain scale must be addressed.

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 fees set must relate to the scale of work the decision maker has to cover. It is hard to see how the work involved in making a robust in principle decision would be less than that involved in an outline application at the present time in any area where significant constraints exist. The idea of simple in principle consents while initially attractive would not provide the certainty the Government are looking for unless these are all covered.

For technical details the work should be broken down into individual components with a fee for each component relating to the amount of work required.

Question 2.9: Do you agree with our proposals for the expiry of 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?

There is merit in standard 5 year permission. One could identify broad areas where development depends on provision of infrastructure and therefore commence the permission at a specified time.

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?

These periods are too tight and do not reflect the work involved even on many small sites at the in principle stage. The current time periods for applications are appropriate and should remain. Obviously quicker decisions can and should be made when an effective pre application process has been undertaken.

3: Brownfield register

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

The key word is 'suitable'. Resources would be required to decide which sites are suitable for housing based on clear and consistent criteria for making this assessment.

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 but significant work may be required to ensure relevant environmental considerations are covered so as to provide the certainty that suitable sites have been proposed.

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

No but the scale of the issue in certain Districts and the related resourcing problems have to be realised if a meaningful number of sites are to result.

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?

See above, in certain areas a light touch approach, while desirable, may well not be sufficient.

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?

No comment

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

Yes, but significant work may be required to allow the suggested details, notably number of homes, to be provided.

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

Yes

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?

Yes in theory but use of a “stick” not a “carrot” approach and the lack of any additional funding does not recognise the essential work that will be required to produce the Register

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?

No

4: Small Sites Register

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

The definition seems appropriate

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?

To have any value whatsoever sites have to be properly assessed prior to inclusion on a Register. This would have major workload implications

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

Generic categories are not appropriate. An informed assessment must be made in each case. This would have profound workload implications.

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?

No, the information must at the very least identify numbers and the form of development e:g flats or houses.

5: Neighbourhood planning

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?

Yes, provided that it does not fetter the ability of a local authority to allocate in their local plan development sites within a designated neighbourhood area. The timeliness and deliverability of local plans must not be subject to risks from neighbourhood planning processes, especially if the Expert Group recommendations on local plan timetable and process were to be implemented.

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

No comment

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?

The appropriate timeframe would depend on the number and nature of the inspector's recommendations. Five weeks would be sufficient if no or only minor modifications were required.

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?

Yes

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

Yes

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

Yes

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

A formal council decision might be required so there should be sufficient flexibility to refer to the first available sitting of the relevant decision-taking body.

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

Simplified sustainability appraisal. It may be possible to screen out development by scale or type of location from the need for SA, for example smaller scale development on land in or adjoining a settlement that has no high level planning and environmental constraints (which could be defined). For example if it is consistent in principle with an adopted local plan.

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 comment

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?

Yes

6: Local plans

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

The proposals lack detail but at that level appear reasonable.

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?

As above. It is reasonable to allow more time for local plans in areas committed to and delivering on preparatory work at a strategic level. There is no resource to do both concurrently.

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

Appropriate allowance should be made for significant changes to planning legislation, regulations or guidance.

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?

Yes

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

Changes that are not acceleration or slippage that may justify timetable changes eg changes to the number or scope of local plans.

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

Annually in Annual Monitoring Reports would suffice.

7: Expanding the approach to planning performance

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?

Yes initially at the bottom of the suggested ranges

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 but allowance has to be made in respect of the small numbers of applications and the potential impact in terms of performance of a single decision

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

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?

Yes

8: Testing competition in 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?

Relevant individuals and organisations with suitably qualified and experienced staff and the resources to be able to undertake to a professional and timely standard the required processing work

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

The challenge is that all applications should be processed thoroughly and effectively and it is difficult to suggest lower or higher standards. It might be possible to set fees based on

varying speeds of processing i.e. higher fee for a quicker decision. The true cost of registration and consultation as well as reviewing recommendations and making and recording a decision which fall on the LPA must be recognised if this function remains with them in whole or part.

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

There is merit in getting 'approved providers' to do everything possible. Checking and validating may be challenging and there would have to be consistent standards. At the very least the LPA would have to be satisfied that the application they receive with a recommendation is accurate, has the right details etc. to be able to determine it and that all consultation requirements are met. Given the need to use back office systems to undertake many essential processes and provide essential Register information the ability of an outside processor to do these tasks is questioned

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

Approved providers should be RTPI members or be 'guaranteed / underwritten' by a RTPI member and hold relevant liability insurance. Performance standards would need to be set and monitored as they are for LPA's, with sanctions if not met.

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?

Information to be shared includes Planning History, enforcement history, constraints information, validation requirements, process requirements and working practices. In terms of safeguards' to do the job properly full access to back office systems and data would be required, raising serious IT (COCO) type security issues, as well as data security and the need to regulate the use of data to task specific data.

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

This would be creating a new market and it might take some time for it to work properly and effectively. There is an uneasy balance between the technical process and the assessment of planning merits carried out by the provider and the decision making of the LPA. The weight given to material considerations is a matter of judgement. It remains an open question as to whether any benefits would result.

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?

It is important to be clear that these are not material planning considerations as such. CIL and S106 funds are not 'extra' money but there to be spent on mitigation / infrastructure etc. While new development brings in additional council tax etc. it also requires services to be supplied at a cost to the local authority.

If a recommendation is finely balanced members may reach a different view on the weight to be given to the planning considerations and would still have to do this if they were persuaded that permission should be granted in the light of financial benefits.

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?

It is not seen that any great benefits would result and additional work would accrue. There should be a safeguard to prevent applications which are completely contrary to policy being approved solely to take advantage of financial benefits.

10. S106 dispute resolution

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?

Yes

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

Yes

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?

Yes and Yes

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

Yes

Appointed person

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

RICS Qualified, MRTPI aware and suitably experienced.

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

Yes

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

8 or 13 Weeks

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

All matters relevant to the topic, with the option to submit statements or additional evidence as required

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 and Yes.

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?

8 or 13 weeks, or an extended period if all parties agree.

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?

None if both main parties agree

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

11. PD rights for state funded schools

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?

No

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?

Yes and Yes

12. Changes to statutory consultation

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?

Unnecessary delay and little added value has to be avoided so a maximum period should apply

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?

21 days.

13. Public Sector Equality Duty

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?

No

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

In summary, while the overall logic of the proposed changes can be generally supported, significant issues would derive locally, especially in an area as constrained as that covered by New Forest District Council. These issues principally regard the effectiveness of permissions in principle, given the significant environmental constraints that apply within and adjacent to the District that must be covered even at the “in principle” stage, in order to give the certainty required. This does not mean the proposed changes are not beneficial but that they will not always be as straightforward as is suggested if the required certainty is to result. In fact, the controls suggested with respect to Brownfield Land equally apply to permissions in principle.

Competition and alternative service delivery are viable options, but the differences between Building Control and Planning in terms of process, community involvement, democratic accountability and the political role have to be fully appreciated and taken on board.

The other key issue is resourcing as many of the proposals effectively “front load” the system meaning that Councils will have significant extra work to deliver the in principle consents and augmented Local and Neighbourhood Plan objectives the Government are looking for.

SW/DG/MWMARCH16