

PLANNING PERFORMANCE CONSULTATION

Proposed response to a Government consultation

Purpose of the Report

To advise members of a consultation by the Government on Planning Performance and to provide the Committee with an opportunity to make comments to the Government in response to this consultation

RECOMMENDATION

That the Head of Planning and Development in consultation with the Chairman and Vice Chairman draws up and submits responses to each of the questions posed by the Government on the basis of the views indicated in this report and any other comments agreed by the Committee

Summary

1. The August Statement 2013 included a commitment to consult on a new threshold for designating local planning authorities as underperforming.
2. Members may recall a government consultation being reported to the Planning Committee at its meeting on the 2nd January 2013 when the original criteria for designation were being consulted upon. The Government following that consultation published the criteria for designation in June 2013. There are at present two thresholds for designation – one relating to the speed of decision making and the other relating to appeal performance. Both deal only with applications for ‘major’ development
3. The Government are proposing that the threshold for designating authorities as underperforming, based on the speed of deciding applications for major development should increase to 40% or fewer of decisions made in time. They indicate that the threshold may be raised further at a future stage. They are also proposing that the criteria for designation would set out the types of exceptional circumstances that may be taken into account, prior to designations being confirmed.
4. Designation allows applicants for planning permission to apply directly to the Planning Inspectorate. The full consultation paper can be viewed via the following link www.newcastle-staffs.gov.uk/planning/planningperformance
5. The consultation ends on the 4th May 2014

Introduction

6. In introducing this consultation the document indicates that:-
7. *Timely and well-considered decisions on planning applications are a key part of delivering an effective planning service. Applicants as well as local communities, should be confident that decisions on proposals will be reached within a reasonable period of time – whether that is within the statutory timescale or a longer period agreed transparently with the local planning authority. Equally, all parties should have confidence in the quality of the decisions made on applications for development – that all relevant considerations are being taken into account, and that the weight being given to different considerations is reasonable in the context of national and local policies. The Secretary of State has the power to designate local Planning authorities if he considers their performance in handling planning applications has fallen below*

an acceptable standard. Any designations of local planning authorities must be made by reference to criteria published by the Secretary of State. The published criteria relate to the speed and quality of decisions on applications for major development.

8. *The Government believes that the thresholds for acceptable minimum standards of performance against these criteria should be kept under review, to take into account changing circumstances and encourage continuing improvement in service standards. This consultation proposes changes to the threshold for speed, as well as proposing to clarify the way in which any exceptional circumstances affecting performance will be taken into account.*
9. *The existing threshold for identifying under-performance in the speed of determining applications is low, at just 30% or fewer of an authority's decisions on applications for major development made on time. 'On time' means within the statutory period of 13 weeks (or 16 weeks for applications subject to Environmental Impact Assessment), or such longer period as has been agreed in writing between the local planning authority and the applicant.*
10. It is said that a low threshold was used originally for a number of reasons. Because the two year period over which performance was to be assessed started before the announcement of the policy (and local planning authorities could not remedy past failings), the threshold was set at a level that would only affect cases of very poor performance, in the context of a national average of fewer than 60% of major decisions being made on time. The low threshold also reflected the fact that prior to April 2013 the data recorded by DCLG did not fully reflect agreed extensions of time
11. The next full round of designations, due to be made in October 2014, will be based on performance from July 2012 to June 2014. The intention to designate under-performing authorities has been known for the great majority of this assessment period, as have the thresholds that might be applied and the Government's intention to raise the threshold for speed of performance after the first year. The majority of the data used to inform designations in October this year will also reflect agreed extensions of time on applications for major development.
12. Taking these changes into account – and to encourage further improvement – the government think it would be appropriate to raise the threshold for designating authorities as under-performing, based on the speed of decisions, from 30% to 40% made on time. This threshold would be used for any designations in October 2014, for both district and county matter authorities.
13. A series of questions are then posed
14. **Question 1: Do you agree that the threshold for designating authorities as under-performing, based on speed, should increase to 40% or fewer of decisions made on time?**
15. **Your Officer fully accepts that timeliness is an important consideration and indeed the Planning Service has continued to focus over the years on timeliness, upon occasion to the concern of both applicants and third parties. However given the seriousness of the implications of designation and the likelihood that an increasing number of Local Planning Authorities will fall below the threshold that is being promoted in the consultation, the arbitrary nature of the measure of speed justifies comment. For example a situation could arise whereby despite the parties having agreed over a period of time that the statutory period can be extended, right at the end of that period, the applicant's agreement to a relatively minor further extension is not provided and as a result the decision is then considered not to have been made in time.**
16. The Government indicate that they expect the extent to which applications for major development are decided on time to continue to improve, especially if more effective

use is made of Planning Performance Agreements. In that context it would be appropriate for the definition of under-performance to continue to change as well. How quickly this happens will depend on the overall trend in performance, but they are interested in views on when and by how much the threshold might rise in future, beyond the move to 40% proposed above.

17. **Question 2: Do you think there is scope to raise the threshold for under-performance above 40% (for example to 45% or 50%); and, if so, by when?**
18. **Your officer would have to point out the potentially significant consequences of such moves. It is likely to simply lead to some local authorities “gaming” the system. If the government understand that to be the case then so be it, but the fear is that they are so removed from the reality of the process of completing legal agreements and similar that they misunderstand the potentially perverse consequence of the approach that they are taking**
19. The Government say that they have looked again at whether it is appropriate to exempt authorities that have dealt with very small numbers of applications for major development from designation. In principle it should be possible to deal with all such applications ‘on time’, whether this is within the relevant statutory period or – where necessary – within a longer period agreed with the applicant. At the same time they say that they accept that one or two decisions that run over time during the assessment period are insufficient to point to a record of under-performance. They therefore propose to exempt authorities that have dealt with no more than two major applications per two year assessment period from designation.
20. **Question 3: Do you agree that authorities that have dealt with no more than two applications for major development, over the two year assessment period, should be exempt from designation based on their speed of decisions?**
21. **Your Officer would suggest that this threshold is being set far too low – the statistical significance of a single application being determined out of time being considerable even if the threshold were set at say 10 applications over the 2 year assessment period**
22. Before any decisions to designate authorities are confirmed, they will be given an opportunity to explain any exceptional circumstances which, in their view, would make a designation unreasonable. What constitutes an ‘exceptional circumstance’ cannot, by its very nature, be defined fully in advance, but they think it would be helpful to set out the general tests that will be applied in considering such cases.
23. Consequently, they propose to include the following tests within the criteria document:
 - (a) Whether the issue significantly affects the reasonableness of the conclusions that can be drawn from the recorded data for the authority, over the assessment period;
 - (b) Whether the issue had a significant impact on the authority's performance, for reasons that were beyond its control.
24. They say that they will, in considering the first of these tests, take into account corrections that need to be made to the data, where authorities can provide clear evidence that such changes are justified.
25. **Question 4: Do you agree that the tests set out at paragraph 23 of this report are appropriate for taking exceptional circumstances into account, prior to designations being confirmed?**
26. **Your Officer would suggest that the very introduction of an opportunity to plead exceptional circumstances exemplifies the simplistic nature of the measure**

