

# Technical consultation on Planning

## Proposed response to a Government Consultation

### Purpose of the Report

To advise members of a 'technical' consultation by the Government on Planning 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 the questions posed by the Government on the basis of the views indicated in this report and any other comments agreed by the Committee

That a future report be brought to the Planning Committee on the scope for and implications of the use of additional Article 4 Directions

This very detailed Technical Consultation Paper on Planning, with some seventy six questions posed of consultees, outlines a number of significant changes the Government proposes to make to the planning system including:-

1. Proposals to change the Neighbourhood Planning system.
2. Significantly extending permitted development rights to reduce the number of proposals requiring planning permission from the Local Planning Authority.
3. Proposals to improve the use of planning conditions.
4. Proposals to improve engagement with statutory consultees.
5. Raising the screening threshold for when an Environmental Impact Assessment (EIA) is required for industrial estate and urban development projects, which are located outside of defined sensitive areas.
6. Proposals to improve the nationally significant infrastructure planning regime amending regulations for making changes to Development Consent Orders, and expanding the number of non-planning consents which can be included within Development Consent Orders.

The consultation document is available to view via the following link

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/339528/Technical\\_consultation\\_on\\_planning.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/339528/Technical_consultation_on_planning.pdf)

This report focuses on the changes the Government plan to make to the planning system by the extension of permitted development rights (section 2) and proposals to improve the use of conditions (section 3). It briefly discusses the possible implications of these changes for Newcastle.

The Government have asked for comments on this consultation paper to be received by **Friday 26 September 2014**.

**Section 2 Reducing planning regulations to support housing, high streets and growth**

This section of the consultation paper seeks views on the Government's proposals to amend the Town and Country Planning (General Permitted Development) Order 1995 (as amended) and the Town and Country Planning (Use Classes) Order 1987 (as amended).

The stated intention is to "set out proposals to expand permitted development rights, further reducing red tape and supporting housing and growth" and that the "proposals will help ensure that the planning system is proportionate and a planning application is only required where this is genuinely justified". In brief the proposal is to grant permitted development rights to allow change of use from light industrial units, warehouses, storage units, offices and some sui generis uses to residential; more change of use within the high street, including a wider retail use class; and some sui generis uses to restaurants and leisure uses;

This section of the consultation also seeks views on proposals to make permitted retailers to altering their premises, commercial filming, larger solar panels on commercial buildings, extensions to houses and commercial premises etc. Details of the proposed changes are contained within the attached Appendix A.

The overall effect of these changes to permitted development rights is to reduce the ability of both the Council and by extension the local community to shape development in its area. The Council is able to impose an Article 4 direction removing permitted development rights but there are financial implications in doing this, both in terms of the resources directly involved - the procedure that has to be gone through is, despite some changes, cumbersome and convoluted - and the potential compensation implications.

This is an area of development management which the Council is going to have to address and it has not done so in a coordinated manner to date.

Whilst in some cases the need to obtain planning permission (for a particular change of use) has been replaced by a need to go through a prior approval procedure, these prior approval procedures allow consideration of a much narrower range of issues than would have been the case with an application for planning permission. For example there are concerns whether the prior condition approval process will enable the Council to place conditions on such approvals relating to ground conditions. At the moment permissions for sites with previously potentially contaminative uses, which include dry cleaners, warehousing and light industrial etc. changing to a sensitive use such as housing would probably attract a condition in respect of ground contamination.

Allowing uses such as light industrial and warehousing to convert to residential use will increase financial pressures on the Council and other public sector providers such as the County Council for the services and facilities that residents will need but the Council will be unable to seek financial contributions for their provision via planning (Section 106) obligations. Depending upon the take up of these rights this could have significant implications for the Borough.

Finally there are also financial effects (for the local planning authority) of these changes. The fee for a change of use application at present is £385. In contrast for a change of use application where prior approval is required a fee of £80 is payable. In terms of the resources required to administer a prior approval application they may be less but not by such a proportion. Where the permitted development is for change of use and allows for some physical development and prior approval is required a fee of £172 will apply, including change of use from sui generis to residential. Where a prior approval is required to carry out physical development the Government intend to introduce a fee of £80, including for the erection of a structure in a retail car park or the installation of solar panels on a non-domestic building.

### **Section 3: Planning Conditions**

Section 3 of the consultation paper states that: 'too many overly restrictive and unnecessary conditions are attached routinely to planning permissions, with no regard given to the additional costs and delays on sites which have already secured planning permission.'

The Government has identified two issues

Firstly a tendency of local planning authorities to impose too many conditions at the decision making stage

Secondly local planning authority delays in discharging conditions (the determination of applications for approvals of details required by conditions of permissions and consents)

With respect to the former, the evidence that there is a problem appears to be based upon individual examples rather than on research. Nevertheless appropriate and reasonable reference is made to the need to ensure that conditions are imposed only where they meet the 6 tests in the National Planning Policy Framework and the associated point is made that it is important to have effective dialogue between the LPA and the applicant about how conditions will impact upon the planned delivery of development. The government expresses particular concern about the use of what are termed "pre-commencement" conditions – ones that prevent any development authorised by the planning permission taking place until detailed aspects of the development have been approved formally by the Local Planning Authority.

With respect to the second issue the government say that the feedback they are receiving is that some local planning authorities do not prioritise discharging conditions, and they refer to evidence gathered in 2008 that half of the applications to discharge planning conditions took longer than 6 weeks to determine.

As members will be aware at the Borough Council we have been, as part of the wish to provide an end to end service measuring our performance with respect to the speed with which such applications are determined, and the performance has indeed been very variable. If it is possible, some information on our performance relative to the above figure will be provided to help members appreciate the local context in Newcastle.

The Government, having listed all of the actions it has already taken, proposes tackling this by:

1. Creating a 'deemed discharge' for certain types of conditions where the LPA does not make a timely decision: this would mean that if the LPA does not discharge conditions within the specified period (initially six weeks from the day after the application to discharge the condition was received by the LPA) then the applicant may regard that matter as being approved or consented by the LPA – this will be introduced via enabling powers in the Growth and Infrastructure Bill.
2. Reducing the time limit for the return of the fee for applications for confirmation of compliance with conditions attached to planning permissions (currently 12 weeks)
3. Requiring that LPAs share draft conditions with applicants for major developments before making a decision: this would be enacted by amending the Development Management Procedure Order and, according to the Government, would be in line with existing best practice
4. Requiring LPAs to justify pre-commencement conditions: LPAs will need to provide a written justification for imposing each pre-commencement condition, *over and above* the existing general justification for using conditions – this will also be introduced via the Development Management Procedure Order.

As to how the Council should respond to these proposals there are clear resource implications – namely if the work has to be done within a shorter period or if additional work has to be done, staffing and systems within LPAs will need to be in place to deal with demands that are not that predictable in their timing. Beyond that the proposals – for example to introduce new legislative requirements about consultation with applicants on draft conditions and the need to provide a written justification of any pre-commencement condition

all are indicative of a view that Local Planning Authorities are incapable of adopting best practice unless they are forced, by legislation, to do so.

Paradoxically introducing a "deemed discharge" i.e. automatic approval after a certain number of weeks will also shorten the opportunity to have a discussion with the applicant about resolving outstanding issues relating to conditions and paradoxically rather than speeding up the process of approval is likely to mean that more submissions will be refused by the Authority.