PLANNING PERFORMANCE AND THE PLANNING GUARANTEE

Proposed Response to a Government Consultation

Purpose of the Report

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

RECOMMENDATIONS

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 Growth and Infrastructure Bill currently going through Parliament, will allow applicants for planning permission to apply directly to the Planning Inspectorate, where a planning authority has been designated as poorly performing. The Government are seeking views on their proposals for how this measure would be implemented and for related proposals for the Planning Guarantee

2. The consultation sets out the criteria that might be used to assess planning authority performance, what thresholds might be used, how any designations would be made and the consequences of such a designation (including the procedures that would apply where an application is submitted to the Planning Inspectorate, and the basis on which a designation would end. It also proposes a refund of the planning application feed in case where the Planning Guarantee is not met. The full consultation paper can be viewed via the following link www.newcastle-staffs.gov.uk/planning/planningperformanceguarantee The list of questions posed in the consultation paper is provided as Appendix A to this report.

3. The consultation ends on 17 January 2013.

Introduction

About this consultation

In introducing this consultation the document states as follows:

4. *An effective planning system plays a vital part in supporting growth – promoting and enabling the homes, jobs and facilities need and minimising uncertainty for those proposing or affected by development.*

5. *The Government has already taken important steps to ensuring that the planning system fulfils this potential – in particular by publishing the National Planning Policy Framework in March 2012. This not only represents a radical simplification of national policy but also emphasises the need for a positive approach to both plan making and decision taking whilst retaining important protections. A number of reforms to simplify and speed up planning procedures have also been announced, including the Planning Guarantee – that applications should take no more than a year to decide, including any planning appeal.*

6. *Our reforms have given significant additional power to councils and communities in deciding the scale, location and form of development in their areas. But with this power comes a responsibility to exercise planning functions properly. The Growth and Infrastructure Bill introduced to Parliament on 18 October, contains a number of additional proposals that build upon our existing reforms. They include a measure to enable quicker and better decisions where there are clear failures in local planning authority performance, by giving applicants the opportunity to apply directly to the Planning Inspectorate.*

7. *This measure is aimed only at those few situations where councils are clearly failing to deliver an effective service. Applicants for planning permission can reasonably expect timely and good quality decisions – justice delayed is justice denied. Where there is clear evidence of very poor performance we want to give applicants the choice of a better service, but will also want to ensure that those authorities have access to the support they need in order to improve as quickly as possible.*

What is being proposed?

8. The legislation will allow applications to be submitted to the Secretary of State where a local planning authority has been designated as poorly performing. In those cases applications would be submitted to the Planning Inspectorate where the applicant chooses this option – this would be only available for those seeking permission for Major development. Once designated an authority would need to demonstrate a "sufficient degree of improvement" before the designation would be lifted. The Government consider that apart for its direct effects the legislation will stimulate an increased focus on performance across planning authorities generally and will help to ensure that the Planning Guarantee is met. As a further means of ensuring that decisions are made within the Guarantee period they are also proposing a refund of the planning fee should an application remain undetermined after 26 weeks. This would apply to all planning applications.

Context

Why positive and timely planning decisions matter

9. The paper reports that in 2011/12 some 87% of the decisions made by local planning authorities were approvals and the majority - 78% overall – were determined within the statutory time limits. The picture is however far from uniform. In particular they report that there has been nationally a decline in the speed with which applications for major development are decided, despite a decrease in workload – over the past 4 years the proportions of major applications determined within the statutory 13 weeks time limit has fallen from 71% (2008/09) to 57% (2011/12) despite an 18% drop in major decisions over the same period. A number of other statistics are provided.

10. The Government emphasise that they recognise that there can be good reasons for some delays, in particular where planning authorities and applicants have both recognised that more time than the statutory period is required to negotiate the right outcome on large and complex proposals. They say that this is not the issue that they wish to tackle, rather it is the instances of unnecessary delay and of poor quality decisions on applications that add to costs and which delay or deter investment and growth. Reference is made to the concerns that have been voiced by house builders and to evidence presented by Professor Michael Ball that the financing costs to developers of holding onto land and other assets while their projects are evaluated amounts to £1 billion a year, with further substantial costs associated with land holdings that are required due the uncertainty of the planning process and as a consequence of sites that fail to gain consent.

11. The Government have indicated that they expect to use the power within the Growth and Infrastructure Bill very sparingly, they remain committed to decentralising power and responsibility wherever possible and that this measure will not affect the great majority of authorities that already provide an effective planning service, other than to act as a reminder of the importance of timely and well considered decisions

Assessing Performance

The Government's approach

12. As indicated in the performance report to the Planning Committee in December 2012 the proposal is to monitor and assess performance on the basis of two key measures – the speed and quality of decisions on planning applications. Consultees are asking if they agree with this (Question 1)

Speed of decisions

13. They propose, for identifying (and addressing) very poor performance, to focus only on applications for major development – on the basis that these are the proposals which are most important for economic growth and which have the greatest bearing upon communities.

14. A two year period is to be used – with the assessment being made once a year. It is indicated that they have considered an alternative approach – that of using the average processing time for determining applications for major development – but they comment that this would not reflect the obligation to make decisions within the statutory time limits nor would it address as effectively the minority of decisions that take considerably longer to decide, and finally that it would require a new reporting regime. Consultees are asked if they agree with the suggested approach (Question 2)

The Role of Planning Performance Agreements

15. To ensure that they focus on genuinely poor performance and that authorities are not penalised unfairly for delays that are beyond their control, certain qualifications are proposed. They suggest that applications which are subject to Planning Performance Agreements (PPAs) should be excluded from the calculations (apparently regardless of the actual performance achieved), and they indicate that where agreements to extend the statutory period beyond the statutory period have to be made after an application is submitted they propose that this will be able to be taken into account. Members may wish to note that it is already the usual practice at Newcastle to seek formal agreements, but we have not used any PPAs to date. Consultees are asked whether they agree with these proposals (Question 3) and whether there is scope for a more proportionate approach to the form and content of planning performance agreements (question 4). With respect to the latter your officers have in the past rejected pursuing Planning Performance Agreements on the basis that they appeared to be overcomplicated (and to require additional work in setting up) – so proposals to simplify them are welcomed. The authority to enter into such PPA is also unclear at present.

Quality of decisions

16. Appeal success for major developments is proposed to be used to indicate the 'quality' of decisions made by the planning authority – on the basis that they are an indication of whether planning authorities are making positive decisions that reflect policies in up to date plans and the National Planning Policy Framework. The Government recognise that some individual appeal outcomes can turn on small differences of view about the application or interpretation of particular policies or about the weight to be given to different material considerations, but where an authority has a track record of losing significantly more appeals than the average, they consider it is likely to reflect the quality of its initial appeal decisions.

17. As was indicated in the Performance report to the Committee in December the intention is that the measure should be over a two year period, and that it should take into account the total volume of applications dealt with. Consultees are asked whether they agree with this approach (Question 5). Your officer would suggest an alternative measure would be the proportion of major appeals where costs are awarded against the LPA. This after all is a more direct measure of "unreasonable behaviour". In the past some agents have perhaps hung back from making applications for the award of costs – perhaps on the basis that they fear it may affect their or their client's relationship, over the long term with the LPA. The Government have consulted separately in the recent Technical Review of appeal procedures consultation (closed 13 December 2012) on proposals to give the Inspector in appeals the power to make awards of costs regardless of whether applications for costs are made (and for awards to include the costs of the Planning Inspectorate itself). A further criticism of the Government's proposal is that there is no necessary connection between the number of major applications decided and those which have been overturned at appeal. Appeal decisions may well relate to decisions made by Local Planning Authorities in an earlier period.

Having the right information

18. Proposals are set down to penalise those authorities which do not submit returns. Consultees are asked whether they agree with this approach (Question 6). This is understandable and reasonable – in the interests of ensuring a level playingfield. Unfortunately it is likely that with the focus being on applications for Major development, differences in interpretation of what is included within the term Major development could become a significant source of dispute between the DCLG and individual

authorities. Clear guidance is required, but provided this is given, your Officer accepts that the proposed penalties for non submission are reasonable

Setting the bar

19. The Government indicate that they wish to set out very clearly what constitutes sufficiently poor performance for a planning authority to be designated once the Growth and Infrastructure Bill becomes law. For this reason they are proposing to use absolute thresholds below which authorities would be designated rather than a fixed percentage of authorities that are performing most poorly. The proposal is to set the threshold as follows – where 30% or fewer major applications have been determined within the statutory period or more than 20% of major decisions have been overturned at appeal. They also intend to raise the bar for the speed of decision after the first year, to ensure that there is a "strong but achievable incentive for further improvement in performance" and to reflect an anticipated increased use of Planning Performance Agreements. Consultees are asked if they agree with the above thresholds (Question 7) and the proposal to raise the bar over time (Question 8).

Making a designation

20. Designations would be made once a year, and local planning authorities once designated would remain in that situation for at least a year. Consultees are asked if they agree with this (Question 9). At present it is envisaged the initial designations of LPAs will take place in October 2013.

Effects of Designation

Application process

21. Consultees are asked to indicate whether they agree that the option to apply directly to the Secretary of State should be limited to applications for Major Development (Question 10). Related applications for listed building consent and conservation area consent would be included within this procedure. The consultation envisages that the Planning Inspectorate would receive the application fee. A number of administrative functions such as site notices and neighbour notification would continue to be carried out by the designated LPA under the direction of the Planning Inspectorate. Similarly it is suggested that the PI would not enter into discussions with the applicant about the nature and scope of any section 106 agreement that may be appropriate, as it is considered that these are best determined by the applicant and the planning authority. The Bill allows the Secretary of State to determine the procedure to be followed where an application is submitted directly to him and the proposal is that the Planning Inspectorate would choose "the most appropriate procedure" on a case by case basis, which could be an abbreviated form of hearing or inquiry or written representations but that the presumption should be that applications are examined principally by means of written representations with option of a short hearing to allow the key parties to briefly put their points in person. No right of appeal is envisaged. Consultees are asked if they agree with such proposals (Question 11). Members should appreciate that for most LPAs Major applications form a very significant part of their planning fee income - in the case of Newcastle between 50 and 60% per annum, so potentially this change could have very serious implications – denying LPAs the resources that they may need to improve their capacity and capability. It is clear that the LPA would still have significant tasks to perform. Whilst undoubtedly the LPA would be considered to be a key party (and thus a representative may be asked to briefly put its points in person) it is clear that the procedure would be very different from that of a Planning Committee.

Supporting and assessing improvement

22. The document states "any authorities designated on the basis of very poor performance will need time to improve, support while they are doing so, and a fair opportunity to show when – and to what extent – their performance has improved". It refers to the assistance that should be available from the Planning Advisory Service and the need to explore options for radical change such as shared services. Recognising that designated authorities may well not be dealing with any significant number of applications for major development they propose that any assessment of improvement should be based upon a range of other considerations including :-

    - the authority's performance in determining those applications it remains responsible for

- its performance in carrying out any administrative tasks associated with applications submitted to the Secretary of State
- a review of steps taken by the planning authority to improve, and its capacity and capability to deal efficiently and effectively with major planning applications

Consultees are asked whether they agree with such proposals (Question 12)

The Planning Guarantee

Principles and Scope

23. The principle of the Planning Guarantee is simple – that no planning application –major or otherwise – should take more than a year to decide, even where a planning appeal has been made. It does not replace the statutory time limits for determining applications, which should continue to be met wherever possible, but instead provides a 'long stop' date by which any scheme that takes longer should be determined. In practice this means that cases should spend no more than 26 weeks with either the LPA or in the case of appeals the Planning Inspectorate. A small number of types of case are to be excluded from the scope of the Planning Guarantee including applications with Planning Performance Agreements, planning appeals with bespoke timetables and appeals that relate to enforcement cases. Consultees are asked whether they agree with this proposed scope of the Planning Guarantee (Question 13)

Delivering the Guarantee

24. The key proposal is to require a refund of planning application fee, where an application remains undecided after 26 weeks. Applications subject to a PPA would be excluded from this measure. The Government says that it wants to avoid any risk of applicants deliberately delaying the determination of an application in order to obtain a refund, or authorities refusing applications to avoid the penalty. They suggest that such behaviour would be taken in account by an Inspector in considering whether to award costs in any subsequent appeal proceedings. Consultees are asked whether they agree that the planning application fee should be refunded if no decision has been made within 26 weeks (Question 14). Your Officer considers that the approach within the consultation shows a degree of naivety and lack of understanding as to reasons why sometimes decisions cannot be made within 26 weeks, and the suggestion that the Costs regime will provide the necessary discipline does not recognise that that regime only applies in the case of refusals, and so it bears disproportionally upon LPAs.