**Broads Authority**
**Planning Committee**
12 September 2014
Agenda Item No 12

# Changes to the Planning System

Report by Head of Planning


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| **Summary:** | This report outlines a consultation by Communities and Local Government (CLG) on proposed changes to the planning system, including changes to the Use Classes and Permitted Development rights regimes**.** |
| **Recommendation:** | The report be noted and the proposed responses submitted. |


## 1 Introduction

1.1 As part of its modernisation agenda for the planning system and in order to promote economic recovery, the Government has consulted on various changes to the planning system. The consultation notes that the proposed changes build on reforms already made, including changes to the Use Classes and Permitted Development rights regimes.

1.2 Regarding these earlier changes, Members will recall a report to the 1 March 2013 Planning Committee which detailed changes including the Red Tape Challenge, proposed changes to permitted development rights to allow offices to be converted to residential use, agricultural buildings to be converted to a range of other uses and for the conversion of town centre buildings to other uses including shops, offices, business start-ups and community projects. All of these proposed changes have been implemented.

1.3 Members will also recall a report to the 11 October 2013 Planning Committee which detailed further changes to permitted development rights, plus other changes to mainly commercial buildings, the issuing of the National Planning Practice Guidance and changes to fees and appeals. All of these proposed changes have been implemented.

1.4 The latest consultation was issued on 31 July 2014 and comprises a Technical Consultation on Planning. The full details are available on the website of the Communities and Local Government department (CLG) website at www.gov.uk/government/organisations/department-for-communities-and-local-government.

1.5 The purpose of this report is to outline the proposed changes for Members and provide recommended responses..

## 2 Proposed changes

2.1 The Technical Consultation on Planning is divided into 6 sections:

- Changes to Neighbourhood Planning
- Further changes to permitted development rights
- Changes to Use Classes
- Improving the use of planning conditions
- Removing the need for Environmental Impact Assessment for certain developments
- Improving the way that major infrastructure projects are planned

2.2 This report will outline each of the areas in turn, with a brief commentary. The detailed questions and proposed responses are set out in Appendix 1.

Section 1 - Changes to Neighbourhood Planning

2.3 Neighbourhood Planning was introduced under the Localism Act, and over 1,000 communities have applied for a neighbourhood planning area to be designated. The consultation paper estimates that 8.7% of households live in a designated neighbourhood area. The changes proposed seek to speed up and simplify neighbourhood planning. They propose to do this in a number of ways.

2.4 Firstly, it is proposed to introduce a statutory time limit of 10 weeks for a Local Planning Authority to make a decision on whether or not to designate a neighbourhood area; initially this provision will only apply where the boundaries of the proposed neighbourhood plan area coincide with parish or electoral ward boundaries and there is no existing or outstanding application for designation. It is not proposed to remove the requirement for an LPA to publicise the area designation application for a minimum period of 6 weeks. It is, however, proposed to remove the statutory requirement for the submitting body (eg the Parish Council) to undertake a consultation and publicity period of at least 6 weeks, by introducing, instead, a new statutory requirement to test the extent of consultation undertaken during the preparation of the neighbourhood plan and by requiring that consultation is undertaken with certain landowners; this will give more flexibility to the local bodies to consult as they consider appropriate. It is additionally proposed to clarify the information that should be submitted with a Neighbourhood Plan to ensure that the obligations under the Strategic Environmental Assessment Directive are met.

*Commentary*

2.5 The proposals to introduce statutory time limits for decision making, particularly at the early stages of the process, is sensible in order to avoid delay and 10 weeks is appropriate; it is noted that most other areas of planning operate to statutory time limits. With regard to the proposed removal of the 6 week statutory consultation requirement, whilst the rationale for this is

understood – to allow communities to consult as locally appropriate – and supported, the provision of a basic statutory minimum gives certainty to stakeholders and communities being consulted that an appropriate process has been followed, gives useful guidance to communities undertaking the preparation of the neighbourhood plan as to what they need to do and, of course, does not preclude consultation or publicity additional to the statutory minimum. It is considered that a statutory minimum provides a starting point for the development of best practice, rather than inhibiting it and there is no justification for removing this. It is also the case that the 6 week consultation before submission to the LPA (who then undertake a 6 week publication period) gives the community the ability to inform the plan and suggest improvements which could be taken on board and implemented by the qualifying body. The next stage following submission and publication is the consideration of the submitted plan by an independent Examiner, who will agree or disagree with the representations arising from the publication stage. Without the formal consultation stage, an important element of plan making is removed from the community and invested in the qualifying body and the Examiner. In terms of introducing a statutory requirement to consult landowners, it is noted that this is a legal requirement when submitting a planning application on the basis that a landowner should be formally advised of proposals which affect his/her land; this proposal is consistent with the principle of notification and can be supported.

2.6 With regard to the Government's objective to see more communities developing Neighbourhood Plans, it is the case that the same procedural requirements apply whether the community wishes to designate a site for 1 house or sites for 100 houses, which is a disincentive for communities with modest needs and aspirations; in such cases the costs too are disproportionate. This tends also to mitigate against Neighbourhood Plan production in rural communities.

2.7 The proposed changes around compliance with the Strategic Environmental Assessment Directive (SEA) clarify the information which is required, and do not fundamentally change the process which is, in any case, set by the Directive. The application of the SEA legislation is complex and any measures which clarify this, including, as proposed, a clear explanation of what is required, is welcomed particularly given that the users in the neighbourhood planning arena may have limited experience of the Directive. For those producing Neighbourhood Plans, a plain English guide is likely to be of use.

<u>Section 2 - Further changes to Permitted Development rights and the Use Classes Order</u>

2.8 Section 2 of the consultation sets out proposals to further extend permitted development rights and make permanent those changes to permitted development rights which were introduced on a temporary basis in 2012 and 2013. The changes proposed are wide ranging and comprehensive and, cumulatively, would take significant changes in land use, both commercial and

residential, out of planning control. The full list of questions covering the proposed changes are set out at Appendix 1, however, the main proposed changes are:

a) Industrial and warehouse buildings (B1c) and B8) to change use to a dwelling house (C3);
b) Launderettes, amusement arcades/centres, casinos and nightclubs (sui generis) to change use to a dwelling house (C3);
c) Making permanent the existing temporary permitted development right to allow offices (B1a) to change use to a dwelling house (C3);
d) Amending the existing retail (A1) and financial and professional service (A2) use classes to allow more flexibility between the uses, but introducing restrictions on changes to betting shops or pay day loan shops;
e) Launderettes, amusement arcades/centres, casinos and nightclubs (sui generis) to change use to restaurants and cafes (A3)
f) Launderettes, amusement arcades/centres, casinos and nightclubs (sui generis) to change use to assembly and leisure (D2);
g) Introduce permitted development rights to allow ancillary buildings and loading bays to be constructed for existing shops; and
h) Making permanent the existing temporary permitted development right allowing larger extensions to shops, offices, industrial and warehouse buildings.

2.9 In respect of (a), the consultation asks whether the right should or should not apply in National Parks and the Broads; in respect of (f), (g) and (h) the consultation proposes that these would not apply in National Parks and the Broads.

2.10 Section 2 also sets out the Government's intention to create a three-tier planning system which, it states, will make it easier for applicants to navigate the planning system as well as further focus the planning process and recognise the role of local authorities in considering major developments and those with the greatest potential impact on localities. It explains the three tiers as follows:

• full planning application – an application for planning permission is usually appropriate for large scale, complex developments, or those with greatest impact on neighbours, the wider community or the environment;

• permitted development rights with prior approval – an intermediary route, between permitted development and a full planning application. Prior approval is a lighter touch process that applies where the principle of the development has already been established, but certain specific planning issues still require local consideration. Unlike a planning application, when considering prior approval, local planning authorities should only consider specific planning issues such as visual amenity, highways and transport, traffic management, noise levels and flooding risks. Prior approval provides applicants with a less complex and less costly process, thus enabling growth. Prior approval in the context of this consultation grants automatic permission if

the local planning authority has not responded in 56 days, other than the householder neighbour notification scheme which is 42 days.

• permitted development rights with no prior approval – removes the need for a planning application as planning permission is granted nationally by the Secretary of State. This approach is more appropriate for small scale changes and some strategic development, providing freedom to carry out development which has less impact on neighbours, the community or environment.

*Commentary*

2.11 It is the case that, with the exception of the proposed change to allow industrial and warehouse buildings to change use to a dwelling house ((a) above), the proposed changes to permitted development rights are unlikely to have a significant effect on the Broads. The industrial buildings and warehouses in the Broads area are primarily associated with boatyards, and there is limited pressure to convert them to residential use as they are essential facilities for the operators. An exemption for the Broads, however, as consulted on, would ensure their continued protection.

2.12 With regard to the other changes proposed, it is noted that the Government's objective is to simplify the planning system, however, the scale and complexity of the incremental changes is such that the permitted development rights system is becoming increasingly complex and difficult to negotiate, which does not assist either the development industry or businesses. The consultation seeks comments on the proposed changes, specifically on whether or not the LPA considers that they should be taken forward. Whilst the changes would not, in the main, affect the Broads this does not necessarily mean that the changes are supported and Members' views on the principle of the changes will be welcome and will inform the response.

2.13 This consultation paper is the first written articulation of the introduction of the three-tier system, and it is useful to see how the Government expects the system to work. The principle of focusing resources on the more complex or impactful schemes is sound, but this requires the application of objective and definite parameters to define those more complex or impactful schemes and risks disenfranchising stakeholders and communities by taking all other schemes out of planning control. The prior notification procedure, in particular, can be a source of frustration for communities because the range of matters which can be considered are very limited. For a Local Planning Authority, the processes around dealing with a prior notification application are similar to that of a full application, but the fee is set considerably lower meaning that the full costs are not met. If the Government intend to make more use of this procedure the fees should be set at such a level as to cover the cost.

<u>Section 3 – Improving the use of planning conditions</u>

2.14 Section 3 of the consultation covers the use of planning conditions and sets out proposals to reform this. It covers the two areas of the conditions which

are placed by local planning authorities at the decision making stage and the delays in discharging conditions. As justification for the proposals, it 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” and that often LPAs do not prioritise the discharge of planning conditions which causes delay to development.

2.15 In order to address the former issue the following is proposed:

- Introduction of a requirement for LPAs to share draft conditions on major applications with applicants prior to issuing a decision;
- Introduction of a requirement for LPAs to justify the use of pre-commencement conditions;

The question of how to communicate to applicants late conditions (for example, coming out of a Planning Committee) is also discussed and options for this presented.

2.16 In order to address the latter issue it is proposed to introduce a deemed discharge for certain conditions, where the condition is discharged by default if the LPA has not responded within the statutory timescale. The deemed discharge would be activated by the applicant serving notice on the LPA, giving them a further two weeks (or such timescale as given in the notice) to determine the condition discharge application, otherwise the condition would be automatically discharged. This would not apply to all conditions (for example, development which is likely to have a significant effect on an SPA or SAC) and the consultation requests views on what sort of conditions should be exempt. Currently if a condition is not discharged within 12 weeks, the LPA must refund the fee to the applicant – the consultation proposes shortening this timescale to 8 weeks.

*Commentary*

2.17 The tests for the use of planning conditions are set out in the National Planning Policy Framework and further guidance provided in the National Planning Practice Guidance. These require that conditions are necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects. In imposing conditions the LPA is required to justify the reason for the condition and to set this out on the Decision Notice. If conditions are proposed which are not in accordance with these tests, the LPA which has imposed them is vulnerable to challenge and to the condition being removed or amended at appeal. If the LPA is found to have acted unreasonably in imposing the challenged condition it will also be vulnerable to a successful costs claim. It is the case that there should be no need for further regulation covering conditions as the tests are set out clearly in the guidance.

2.18 The sharing of proposed conditions with applicants on major schemes represents best practice and making it mandatory would improve

transparency here and introduce early discussion. Most LPAs include draft conditions in their Committee reports, which again is best practice, and this ensures that applicants have an early sight of the content of any conditions. For Members information, the Broads Authority routinely shares draft conditions with applicants on major schemes and finds this a useful process.

2.19 With regards to delays in discharging conditions, from experience this is as likely to result from the submission of poor quality or insufficient information from the applicant, as from delays within the LPA. A deemed discharge mechanism would address the latter, as it has done in respect of telecommunications development, but the starting date for the discharge period would need to commence only after sufficient information had been provided and a process around the agreement of this would need to be devised. The outlined process requiring the applicant to serve a deemed discharge notice on the LPA would be welcomed, if the proposal is taken forward, in order to provide clarity to all parties. However, it is noted that this provides a further layer of bureaucracy for the applicant and LPA alike. With regards to reducing the timescale for the fee refund in the event of failure to discharge conditions, given that the fee for condition discharge is £28 for householder and £97 for commercial development (per application, not per condition), it is unlikely that this will be a particularly effective additional incentive.

Section 4 – Planning application process improvements

2.20 Section 4 of the consultation looks at proposals for improvements to the planning application process and identifies three areas for change. Firstly, it proposes to amend the wording covering the statutory requirement to consult various statutory bodies. For Natural England it proposes to make the consultation requirements less prescriptive and more a matter of judgement for the LPA. For The Highways Agency, it proposes to specifically exempt certain developments and apply a narrower test focused on safety and queuing. For English Heritage the consultation proposes to adopt new procedures which:

- streamline and simplify current arrangements;
- adopt a consistent approach across the different types of heritage asset;
- align the requirements inside and outside Greater London;
- ensure English Heritage's resources and expertise are focused where they can add most value. Our view is that this should be where proposals involve the most important heritage assets (e.g. Grade I and II* listed buildings) or have the potential to cause greatest harm to a heritage asset (i.e. where demolition is involved);
- not change the approach that in many cases notification rather than consultation is required.

2.21 It is not proposed to change the consultation processes as they relate to the Environment Agency.

2.22 An extract showing the proposed changes to the consultation arrangements is attached at Appendix 2.

2.23 This section of the consultation also explores what mechanism could be implemented to increase the involvement of statutory consultees at the pre-application stage, both to build their expertise in to emerging proposals and to reduce (or remove) consultation delays later in the process.

2.24 The second part of section 4 proposes changes to require LPAs to notify railway infrastructure managers of planning applications within the vicinity of their railway, proposing a buffer of 10m.

2.25 The third part of Section 4 notes that The Town and Country Planning (Development Management Procedure) Order 2010 has been subject of various amendments and asks for the thoughts of LPAs on a consolidation.

*Commentary*

2.26 The consultation makes it clear that the proposals to reduce the need for consultation with statutory consultees on applications is in order to reduce the workloads of the statutory agencies and enable them to focus on those applications where they can add most value; the additional benefits are considered to be an increase in efficiency and effectiveness of the consultation. Whilst the rationale for this is understood, there would be significant concerns if this were to result in a downgrading of the advice and information available to LPAs as part of the decision making process, particularly where the natural environment, protected species and the historic environment are concerned,. The NPPF makes it clear that these features are national assets and should be protected through the planning system.

<u>Section 5 – Environmental Impact Assessment Thresholds</u>

2.27 Section 5 of the consultation sets out the Government's concerns that LPAs are demanding Environmental Impact Assessments (EIA) for developments where these are not required (ie 'which are not likely to give rise to significant effects), mainly because they are concerned about the risk of a legal challenge if one is not provided. It should be noted that the whole Environmental Impact Assessment regime is a particularly fruitful area for legal challenge, because the Regulations are complex and the requirements are very prescriptive. The Government is concerned that LPAs tend towards 'the over-implementation of the European Directive's requirements' for EIA and therefore proposes raising the screening thresholds for certain types of development as follows:

- Industrial estate development (including manufacturing, trading, distribution, and transport projects): raising the existing threshold of 0.5 hectares to 5 hectares
- Urban development projects (including housing): also to 5 hectares – the Government has calculated that for housing schemes, based on an

average housing density of 30 dwellings per hectare, the new higher threshold will equate to around 150 units.

2.28 The Government estimates that this higher threshold will reduce the number of residential development screenings in England by almost 80 per cent, from around 1600 a year to about 300. Ultimately, it wants to increase the screening threshold for likely significant effects to developments of 1000 dwellings (or around 30 hectares) provided that ministers are 'reassured from the available evidence that to do so would be consistent with the requirements of the Directive'.

2.29 The proposed raised thresholds would not apply to projects which are located in, or partly in, sensitive areas.

*Commentary*

2.30 The Broads is identified in the Environmental Impact Assessment Regulations as a sensitive area and consequently all applications must be screened for 'significant effects' in the context of the Regulations and this is carried out at the validation stage, unless a formal screening request has previously been made. Typically only a small number of applications per annum do require EIA and these are usually major schemes such as the flood alleviation works. The proposed changes will not affect the Broads Authority as LPA.

2.31 It is noted that there is already an appeal mechanism for applicants and developers to challenge an LPAs screening opinion whereby the Secretary of State, through the Planning Inspectorate, reviews the decision which has been made. It might be more appropriate to encourage developers to make better use of this existing mechanism, rather than amend the legislation, because the revised thresholds will remain only indicative (ie not mandatory) so it will not fully address the 'over-implementation' if this is motivated by an LPA's fear of challenge.

<u>Section 6: Nationally Significant Infrastructure Projects (NSIP)</u>

2.32 Section 6 focuses on the national planning system for delivering significant infrastructure and sets out the Government's plans to improve and simplify the existing system by amending regulations for making changes to Development Consent Orders, which provide planning consent for nationally significant infrastructure projects, and increasing the number of consents and licenses that can be included within an Order.

*Commentary*

2.33 The Planning Act 2008 and the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 set out the processes for obtaining a Development Consent Order for an NSIP. The Regulations are extensive and complex. The Broads Authority as LPA is unlikely to receive, or submit, any NSIP applications and it is not proposed to make any comments on the proposed changes.

## 3 Conclusion

3.1 The scale and speed of change to the planning system is extensive. The comments which are proposed to be sent to CLG are attached, but Members will note that these mainly only cover the areas where the Broads Authority as LPA is affected.

3.2 More generally, Members will note that the outcome of the proposed changes would be to take many types of development, including further conversions to housing, out of planning control and reduce the need for (and scope of) consultation and notification on many of those types of development which remained subject to planning control. The consequences of this are likely to include the location of inappropriate development in unsustainable locations and conflict with the Government's own National Planning Policy Framework.

3.3 In considering the response to the consultation Members may be interested to read the comments of Leonora Rozee OBE, former head of the Planning Inspectorate and RTPI, who retired recently. Writing on the RTPI's discussion forum on *Linked-in*, she said:

"We are rapidly reaching the stage where no-one will actually have any idea of what our English planning system is any more. (Have we already reached it?). The only sensible solution is a wholesale review from top to bottom of why we need a planning system and what it needs to comprise, with the result set out in a single Act supported by such regulations, policy and guidance as are necessary to enable all to understand it. We now have a complete mess as successive governments have fiddled and changed what is there without thinking through exactly what it is they are trying to achieve - other than the much expressed desire for a simpler system with increased community involvement! If this Government want to get rid of it completely, then be honest and do so - not death by a thousand statutes, regulations, policies and guides*."*

## 4 Recommendation

4.1 That the report is noted and the attached responses are sent to CLG as the formal response of the Broads Authority.

Background papers: None

Author: Cally Smith
Date of report: 1 September 2014

Appendices: APPENDIX 1 - Questions covering the proposed changes and proposed responses
APPENDIX 2 - Extract showing the proposed changes to the consultation arrangements

**APPENDIX 1**

| | **Question** | **Proposed response** |
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| | Section 1 – Neighbourhood Planning | |
| 1.1 | Do you agree that the Regulations should require an application for a neighbourhood plan designation to be determined by a prescribed date? | Yes |
| 1.2 | If a prescribed date is supported, do you agree that this should apply only where:<br>* the boundaries of the neighbourhood area applied for coincide with those of an existing parish or electoral ward; and<br>There is no existing designation or outstanding application for designation, for all or part of the area for which a new designation is sought? | No |
| 1.3 | If a date is prescribed, do you agree that this should be 10 weeks (70 days) after a valid application is made? If you do not agree, is there an alternative time period that you would propose? | Yes |
| 1.4 | Do you support our proposal not to change the period of six weeks in which representations can be made on an application for a neighbourhood area to be designated? If you do not, do you think this period should be shorter? What alternative time period would you propose? | Yes |
| 1.5 | We are interested in views on whether there are other stages in the neighbourhood planning process where time limits may be beneficial. Where time limits are considered beneficial, we would also welcome views on what might be an appropriate time period for local planning authority decision taking at each stage | No comment |
| 1.6 | Do you support the removal of the requirement in regulations for a minimum of six weeks consultation and publicity before a neighbourhood plan or Order is submitted to a local planning authority? | No |
| 1.7 | Do you agree that responsibility for publicising a proposed neighbourhood plan or Order, inviting representations and notifying consultation bodies ahead of independent examination should remain with a local planning authority? If you do not agree, what alternative proposals do you suggest, recognising the need to ensure that the process is open, transparent and robust? | Yes |
| 1.8 | Do you agree that regulations should require those preparing a neighbourhood plan proposal to consult the owners of sites they consider may be affected by the neighbourhood plan as part of the site assessment process? If you do not agree, is there an alternative approach that you would suggest that can achieve our objective? | Yes |

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| 1.9 | If regulations required those preparing a neighbourhood plan proposal to consult the owners of sites they consider may be affected by the neighbourhood plan as part of the site assessment process, what would be the estimated cost of that requirement to you or your organisation? Are there other material impacts that the requirement might have on you or your organisation? We are also interested in your views on how such consultation could be undertaken and for examples of successful approaches that may have been taken. | N/A |
| 1.10 | Do you agree with the introduction of a new statutory requirement (basic condition) to test the nature and adequacy of the consultation undertaken during the preparation of a neighbourhood plan or Order? If you do not agree, is there an alternative approach that you would suggest that can achieve our objective? | No. Statutory minimum is appropriate approach. |
| 1.11 | Do you agree that it should be a statutory requirement that either: a statement of reasons; an environmental report, or an explanation of why the plan is not subject to the requirements of the Strategic Environmental Assessment Directive must accompany a neighbourhood plan proposal when it is submitted to a local planning authority? | Yes |
| 1.12 | Aside from the proposals put forward in this consultation document are there alternative or further measures that would improve the understanding of how the Environmental Assessment of Plans and Programmes Regulations 2004 apply to neighbourhood plans? If there are such measures should they be introduced through changes to existing guidance, policy or new legislation? | No comment |
| 1.13 | We would like your views on what further steps we and others could take to meet the Government's objective to see more communities taking up their right to produce a neighbourhood plan or neighbourhood development order. We are particularly interested in hearing views on:<br>• stages in the process that are considered disproportionate to the purpose, or any unnecessary requirements that could be removed<br>• how the shared insights from early adopters could support and speed up the progress of others<br>• whether communities need to be supported differently<br>• innovative ways in which communities are funding, or could fund, their neighbourhood planning activities. | The same procedural requirements apply regardless of the complexity of the proposed Plan, which is a disincentive for communities with modest needs and aspirations, and the costs are disproportionate. This mitigates against Neighbourhood Plan production in rural communities |
| | <u>Section 2 – changes to permitted development rights and use classes</u> | |

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| 2.1 | Do you agree that there should be permitted development rights for (i) light industrial (B1(c)) buildings and (ii) storage and distribution (B8) buildings to change to residential (C3) use? | No |
| 2.2 | Should the new permitted development right (i) include a limit on the amount of floor space that can change use to residential (ii) apply in Article 1(5) land i.e. land within a National Park, the Broads, an Area of Outstanding Natural Beauty, an area designated as a conservation area, and land within World Heritage Sites and (iii) should other issues be considered as part of the prior approval, for example the impact of the proposed residential use on neighbouring employment uses? | (ii) - Yes |
| 2.3 | Do you agree that there should be permitted development rights, as proposed, for laundrettes, amusement arcades/centres, casinos and nightclubs to change use to residential (C3) use and to carry out building work directly related to the change of use? | No |
| 2.4 | Should the new permitted development right include (i) a limit on the amount of floor space that can change use to residential and (ii) a prior approval in respect of design and external appearance? | Yes |
| 2.5 | Do you agree that there should be a permitted development right from May 2016 to allow change of use from offices (B1(a)) to residential (C3)? | No |
| 2.6 | Do you have suggestions for the definition of the prior approval required to allow local planning authorities to consider the impact of the significant loss of the most strategically important office accommodation within the local area? | No comment |
| 2.7 | Do you agree that the permitted development rights allowing larger extensions for dwelling houses should be made permanent? | No comment |
| 2.8 | Do you agree that the shops (A1) use class should be broadened to incorporate the majority of uses currently within the financial and professional services (A2) use class? | No comment |
| 2.9 | Do you agree that a planning application should be required for any change of use to a betting shop or a pay day loan shop? | No planning justification has been provided as to why it is proposed to increase control over this type of operation, whilst loosening it for other businesses. |
| 2.10 | Do you have suggestions for the definition of pay day loan shops, or on the type of activities undertaken, that the regulations should capture? | No comment |
| 2.11 | Do you agree that there should be permitted | No – the impacts |

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| | development rights for (i) A1 and A2 premises and (ii) laundrettes, amusement arcades/ centres, casinos and nightclubs to change use to restaurants and cafés (A3)? | are very different |
| 2.12 | Do you agree that there should be permitted development rights for A1 and A2 uses, laundrettes, amusement arcades/centres and nightclubs to change use to assembly and leisure (D2)? | No – the impacts are very different |
| 2.13 | Do you agree that there should be a permitted development right for an ancillary building within the curtilage of an existing shop? | Yes |
| 2.14 | Do you agree that there should be a permitted development right to extend loading bays for existing shops? | Yes |
| 2.15 | Do you agree that the permitted development right allowing shops to build internal mezzanine floors should be increased from 200 square metres? | Yes |
| 2.16 | Do you agree that parking policy should be strengthened to tackle on-street parking problems by restricting powers to set maximum parking standards? | No |
| 2.17 | Do you agree that there should be a new permitted development right for commercial film and television production? | No comment |
| 2.18 | Do you agree that there should be a permitted development right for the installation of solar PV up to 1MW on the roof of non-domestic buildings? | Yes, subject to restrictions on Article 1(5) and 1(6) land |
| 2.19 | Do you agree that the permitted development rights allowing larger extensions for shops, financial and professional services, offices, industrial and warehouse buildings should be made permanent? | Yes, subject to limits and restrictions on Article 1(5) and 1(6) land |
| 2.20 | Do you agree that there should be a new permitted development right for waste management facilities to replace buildings, equipment and machinery? | No comment |
| 2.21 | Do you agree that permitted development rights for sewerage undertakers should be extended to include equipment housings? | No comment |
| 2.22 | Do you have any other comments or suggestions for extending permitted development rights? | No comment |
| | <u>Section 3 – Improving the use of planning conditions</u> | |
| 3.1 | Do you have any general comments on our intention to introduce a deemed discharge for planning conditions? | Clarity over when ‘counting’ starts would be essential |
| 3.2 | Do you agree with our proposal to exclude some types of conditions from the deemed discharge (e.g. conditions in areas of high flood risk)?<br>Where we exclude a type of condition should we apply the exemption to all the conditions in the planning permission requiring discharge or only those relating to the reason for the exemption (e.g. | Yes<br><br>No – only relevant ones<br><br>Conditions relating |

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| | those relating to flooding)?<br>Are there other types of conditions that you think should also be excluded? | to protected species and for Listed Buildings |
| 3.3 | Do you agree with our proposal that a deemed discharge should be an applicant option activated by the serving of a notice, rather than applying automatically? If not, why? | Yes |
| 3.4 | Do you agree with our proposed timings for when a deemed discharge would be available to an applicant? If not, why? What alternative timing would you suggest? | Yes |
| 3.5 | We propose that (unless the type of condition is excluded) deemed discharge would be available for conditions in full or outline (not reserved matters) planning permissions under S.70, 73, and 73A of the Town and Country Planning Act 1990 (as amended).<br>Do you think that deemed discharge should be available for other types of consents such as advertisement consent, or planning permission granted by a local development order? | Yes<br><br>Yes |
| 3.6 | Do you agree that the time limit for the fee refund should be shortened from twelve weeks to eight weeks? If not, why? | Subject to clarity of start date for 'counting' |
| 3.7 | Are there any instances where you consider that a return of the fee after eight weeks would not be appropriate? Why? | No comment |
| 3.8 | Do you agree there should be a requirement for local planning authorities to share draft conditions with applicants for major developments before they can make a decision on the application? | Yes – this is best practice |
| 3.9 | Do you agree that this requirement should be limited to major applications? | Yes - would otherwise be very onerous |
| 3.10 | When do you consider it to be an appropriate time to share draft conditions:<br>• 10 days before a planning permissions is granted?<br>• 5 days before a planning permissions is granted? or<br>• another time?, please detail | At least 10 days before planning permission issued, but subject to local agreement |
| 3.11 | We have identified two possible options for dealing with late changes or additions to conditions – Option A or Option B. Which option do you prefer?<br>If neither, can you suggest another way of addressing this issue and if so please explain your alternative approach? | No comment |
| 3.12 | Do you agree there should be an additional requirement for local planning authorities to justify the use of pre-commencement conditions? | No – already in NPPG |
| 3.13 | Do you think that the proposed requirement for local planning authorities to justify the use of pre-commencement conditions should be expanded to apply to conditions that require further action to be | No – already in NPPG |

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| | undertaken by an applicant before an aspect of the development can go ahead? | |
| 3.14 | What more could be done to ensure that conditions that require further action to be undertaken by an applicant before an aspect of the development can go ahead are appropriate and that the timing is suitable and properly justified? | Mechanisms already available in the NPPG |
| | <u>Section 4 – Planning application process improvements</u> | |
| 4.1 | Do you agree with the proposed change to the requirements for consulting Natural England set out in Table 1? If not, please specify why. | Yes – subject to up to date information being provided by NE |
| 4.2 | Do you agree with the proposed changes to the requirements for consulting the Highways Agency set out in Table 2? If not, please specify what change is of concern and why? | No comment |
| 4.3 | Do you agree with the proposed changes to the requirements for consulting and notifying English Heritage set out in Table 3? If not, please specify what change is of concern and why?<br>Do you agree with the proposed change to remove English Heritage's powers of Direction and authorisation in Greater London? If not, please explain why | No – the proposed change does not reflect the status given to the heritage environment in the NPPF |
| 4.4 | Do you agree with the proposed changes to the requirements for referring applications to the Secretary of State set out in Table 4? If not, please specify what change is of concern and why. | No comment |
| 4.5 | Do you agree with the proposed minor changes to current arrangements for consultation/notification of other heritage bodies? If not, please specify what change is of concern and why. | No – the proposed change does not reflect the status given to the heritage environment in the NPPF |
| 4.6 | Do you agree with the principle of statutory consultees making more frequent use of the existing flexibility not to be consulted at the application stage, in cases where technical issues were resolved at the pre-application stage?<br>Do you have any comments on what specific measures would be necessary to facilitate more regular use of this flexibility? | No – this does not give transparency to the public and other stakeholders |
| 4.7 | How significant do you think the reduction in applications which statutory consultees are unnecessarily consulted on will be? Please provide evidence to support your answer. | No comment |
| 4.8 | In the interest of public safety, do you agree with the proposal requiring local planning authorities to notify railway infrastructure managers of planning applications within the vicinity of their railway, rather | No comment |

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| | than making them formal statutory consultees with a duty to respond? | |
| 4.9 | Do you agree with notification being required when any part of a proposed development is within 10 metres of a railway? Do you agree that 10 metres is a suitable distance? Do you have a suggestion about a methodology for measuring the distance from a railway (such as whether to measure from the edge of the railway track or the boundary of railway land, and how this would include underground railway tunnels)? | Yes |
| 4.10 | Do you have any comments on the proposal to consolidate the Town and Country Planning (Development Management Procedure) Order 2010? | Supported |
| 4.11 | Do you have any suggestions on how each stage of the planning application process should be measured? What is your idea? What stage of the process does it relate to? Why should this stage be measured and what are the benefits of such information? | No comment |
| | <u>Section 5 – Environmental Impact Assessment Thresholds</u> | |
| 5.1 | Do you agree that the existing thresholds for urban development and industrial estate development which are outside of sensitive areas are unnecessarily low? | No |
| 5.2 | Do you have any comments on where we propose to set the new thresholds? | No comment |
| 5.3 | If you consider there is scope to raise the screening threshold for residential dwellings above our current proposal, or to raise thresholds for other Schedule 2 categories, what would you suggest and why? | No comment |
| | <u>Section 6 – Improving the Nationally Significant Infrastructure Projects regime</u> | |
| 6.1 | Do you agree that the three characteristics set out in paragraph 6.10 are suitable for assessing whether a change to a Development Consent Order is more likely to be non-material? Are there any others that should be considered? | No comment |
| 6.2 | Do you agree with:<br>(i) making publicising and consulting on a non-material change the responsibility of the applicant, rather than the Secretary of State?<br>(ii) the additional amendments (see above) to regulations proposed for handling non-material changes? | No comments |

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| 6.3 | Do you agree with the proposals:<br>(i) to change the consultation requirements for a proposed application for a material change to a Development Consent Order?<br><br>(ii) to remove the requirement on an applicant to prepare a statement of community consultation for an application for a material change?<br><br>(iii) to remove the current requirement to publish a notice publicising a proposed application where an application for a material change is to be made? | No comments |
| 6.4 | Do you agree with the proposal that there should be a new regulation allowing the Secretary of State to dispense with the need to hold an examination into an application for a material change? | No comments |
| 6.5 | Do you agree with the proposal to reduce the statutory time periods set out in the 2011 Regulations to four months for the examination of an application for a material change, two months for the examining authority to produce a report and their recommendation and two months for the Secretary of State to reach a decision? | No comments |
| 6.6 | Are there any other issues that should be covered if guidance is produced on the procedures for making non-material and material changes to Development Consent Orders? | No comment |
| 6.7 | Do you agree with the proposal that applicants should be able to include the ten consents (listed below) within a Development Consent Order without the prior approval of the relevant consenting body? | No comment |
| 6.8 | Do you agree with the ways in which we propose to approach these reforms? | No comment |
| 6.9 | Are there any other ideas that we should consider in enacting the proposed changes? | No comment |
| 6.10 | Do you have any views on the proposal for some of the consents to deal only with the construction stage of projects, and for some to also cover the operational stage of projects? | No comment |
| 6.11 | Are there any other comments you wish to make in response to this section of the consultation? | No comments |

**APPENDIX 2**

# Part A – Statutory consultee involvement in the planning application process

## Background

### What are statutory consultees?

4.7 Statutory consultees are those organisations and bodies, defined by statute, which local planning authorities are legally required to consult before reaching a decision on relevant planning and listed building consent applications. The main statutory consultees, in terms of the volume of applications they are consulted on, are the Environment Agency, English Heritage, Natural England, the Highways Agency and the Health and Safety Executive.

4.8 It is important to recognise that statutory consultees are not the only organisations that local planning authorities engage with in reaching decisions on planning applications. Local planning authorities will consider whether there are planning policy reasons (national or local) to engage other 'non-statutory consultees', which although not designated in law, are likely to have an interest in a proposed development. For example, a local planning authority may consult with a local wildlife trust on applications in proximity to local wildlife sites. Similarly, there is nothing to stop an organisation such as the Environment Agency or Natural England from commenting on a planning application for which it is not a statutory consultee.

4.9 Unlike non-statutory bodies, statutory consultees are under a duty to provide a substantive response to planning applications[32] they are consulted on within 21 days. They are also required to report to the Secretary of State annually on their performance in relation to this duty.

4.10 The Government is seeking to improve the quality and timeliness of engagement by statutory consultees within the planning application process as part of its work on improving the end-to-end planning application process.

4.11 Wider work has been undertaken to improve the performance of the main statutory consultees, and the quality of service they offer applicants. We have developed a package of measures with the agencies which includes: the agreement of a common service commitment; the creation of a landing page on the Planning Portal[33] by which applicants will be able to access a standard Q&A page for each agency that provides details of the advice and services available to applicants in the planning application process; additional reporting on key measures to improve transparency in performance; and a process to help resolve issues, supported by anetwork of agency contacts, if advice from multiple agencies conflict.

**Natural England**

4.24 Natural England is currently consulted on planning applications for developments likely to affect Sites of Special Scientific Interest, certain non-agricultural developments (which do not accord with a local plan) on best and most versatile agricultural land and developments involving hazardous installations, where an area of particular natural sensitivity or interest may be affected. In addition to these requirements under the Development Management Procedure Order, Natural England is a:

- Specific consultation body in the preparation of local plans – which provide the basis for decisions on individual applications;
- Consultation body for proposed developments that are subject to Environmental Impact Assessment – typically those developments which are likely to have a significant effect on the environment; and
- Statutory consultee on Development Consent Orders for nationally significant infrastructure projects.

4.25 Having reviewed the existing requirements, we have identified instances where unnecessary consultation with Natural England could be tackled by amending Schedule 5 of the Development Management Procedure Order. These are set out in Table 1 below. The proposals in the Table would not affect Natural England's status as a consultee in relation to local plans, Environmental Impact Assessment or nationally significant infrastructure projects.

**Table 1: Proposed changes to the requirements for consulting Natural England before the grant of planning permission, under Schedule 5 to the Development Management Procedure Order**

| Paragraph | Description of development on which Natural England is consulted | Proposal |
|---|---|---|
| (v)(ii) | Development within an area which has been notified to the local planning authority by Natural England, and which is within 2 kilometres of a site of special scientific interest. | Remove<br><br>(see note 1.1) |

**Highways Agency**

4.28 The Secretary of State for Transport must be consulted on applications for development that are likely to affect the volume or character of traffic entering or leaving a trunk road. In practical terms, such applications are handled by the Highways Agency on the Secretary of State's behalf.

4.29 In addition to its role as a statutory consultee on individual planning applications, the Highways Agency is a specific consultation body in the plan-making process, whose representations local planning authorities must take into account in preparing a local plan. It is also a statutory consultee on Development Consent Orders for nationally significant infrastructure projects. These strategic roles would not be affected by the proposals below.

4.30 Having reviewed the existing requirements, we have identified where unnecessary consultation with the Highways Agency could be tackled by amending Schedule 5 of the Development Management Procedure Order. These are set out in Table 2 below. The proposals in the Table would not affect the Highways Agency's status as a consultee in relation to local plans or nationally significant infrastructure projects.

**Table 2: Proposed changes to the requirements for consulting the Highways Agency before the grant of planning permission, under Schedule 5 to the Development Management Procedure Order**

| Paragraph | Description of development on which the Highways Agency is consulted | Proposal |
|---|---|---|
| (f)(i) | Development likely to result in a material increase in the volume or a material change in the character of traffic entering or leaving a trunk road. | Change to:<br>Development, other than minor development[34], likely to result in an adverse impact on the safety of, or queuing on a trunk road.<br><br>(see note 2.1) |

**English Heritage**

4.37 Table 3 sets out proposed changes to the requirements for consulting and notifying English Heritage. The distinction between the consultation and notification requirements set out in Table 3 is that with consultation, English Heritage are under a duty to provide a substantive response to the local planning authority within 21 days. If English Heritage fails to respond within that period and have not agreed an extension of time, a local planning authority may proceed to decide the application in the absence of their response. The notification requirements in Table 3 ensure that English Heritage is notified of the application; if they wish to make representations they should do so within 21 days because after that period the local planning authority may proceed to determine the application.

4.38 In developing these proposals we have sought to:

- streamline and simplify current arrangements;
- adopt a consistent approach across the different types of heritage asset;
- align the requirements inside and outside Greater London;
- ensure English Heritage's resources and expertise are focused where they can add most value. Our view is that this should be where proposals involve the most important heritage assets (e.g. Grade I and II* listed buildings) or have the potential to cause greatest harm to a heritage asset (i.e. where demolition is involved);
- not change the approach that in many cases notification rather than consultation is required.

| Table 3: Proposed requirements for consulting/notifying English Heritage of applications for planning permission and listed building consent | |
|---|---|
| **Proposed new consultation/ notification requirement** | **Effect of change** |
| **Consult English Heritage before granting planning permission for development affecting Grade I and II* listed buildings, Grade I and II* registered parks and gardens, scheduled monuments and registered battlefields** | This proposal would remove the following consultation requirements:<br>• in Greater London, works affecting Grade II (unstarred) listed buildings<br>• development within 3 km of Windsor Castle, Windsor Great Park or Windsor Home Park and within 800m of other palaces or parks<br>It would also introduce a new consultation requirement on:<br>• registered battlefields - these are important heritage assets and in the interests of consistency should be included |
| **Notify English Heritage of applications for planning permission for development affecting the setting of Grade I and II* listed buildings** | This reduces current notification requirements both inside and outside Greater London, by removing the need to notify English Heritage of applications for planning permission affecting the setting of Grade II (unstarred) listed buildings |
| **Notify English Heritage of applications for planning permission for development affecting the character or appearance of a conservation area which involve the erection of a new building or extension of existing building where area of land which is subject of application is more than 1000 square metres** | The current notification requirement is that local planning authorities notify English Heritage of all applications for planning permission for development affecting the character and appearance of conservation areas. This proposal reduces the current requirement to those applications which have potential for greatest impact. |
| **Notify English Heritage of local authorities' own applications for planning permission for relevant demolition in conservation areas** | This is a new requirement to reflect the proposed new arrangements for determination of these applications as set out in Table 4 below. |
| **Notify English Heritage of all listed building consent applications and decisions for works affecting Grade I and II* listed buildings** | No changes - this replicates current notification requirements |

| **Proposed new consultation/ notification requirement** | **Effect of change** |
|---|---|
| **Notify English Heritage of all listed building consent applications and decisions for works affecting Grade II (unstarred) listed buildings which comprise/include the demolition of the principal building; or demolition of the principal external wall; or demolition of all/substantial part of interior** | This brings the notification requirements in Greater London into line with those in the rest of England by removing the additional notification requirement on other Grade II (unstarred) listed buildings such as railway stations. |

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| **In Greater London, where a local planning authority intends to grant consent, it shall first notify English Heritage of listed building consent applications for works to Grade I and II* listed buildings and for works affecting Grade II (unstarred) listed buildings which comprise/include the demolition of the principal building; or demolition of the principal external wall; or demolition of all/substantial part of interior** | This proposal reduces the current requirements in Greater London by removing the additional notification requirement on other Grade II (unstarred) listed buildings such as railway stations. (This proposal brings Greater London into line with outside Greater London as far as is possible without amending primary legislation (see paragraph 4.40 – 4.42 below). |
| **Consult English Heritage on applications for planning permission for development likely to affect certain strategically important views in London** | No change to the existing requirements |

### Removing English Heritage's power of direction in London

4.40 In addition to the above, we are also seeking views on the proposal set out below. Unlike the proposals above this would require changes to primary legislation and therefore, it would only be taken forward when a suitable opportunity arises.

4.41 Under powers in Section 14 of the Planning (Listed Buildings and Conservation Areas) Act 1990, English Heritage can, in Greater London only, give directions as to the granting of the application (e.g. to grant them subject to conditions), authorise the authority to determine applications for listed building consent as they see fit, or direct the authority to refuse them. Where English Heritage authorise authorities to determine applications as they see fit or direct them to grant consent subject to conditions, English Heritage must then notify the Secretary of State who has the opportunity to call in the application.

4.42 English Heritage rarely exercises its power to direct that London authorities refuse applications and the arrangement differs from the rest of the country. In line with our general aim of bringing the requirements in Greater London into line with the rest of England we propose to remove English Heritage's power of Direction.

### Secretary of State

4.43 We have taken the opportunity to also review the arrangements for notification and referral of applications to the Secretary of State. These arrangements relate to the handling of applications by English Heritage and local planning authorities. As with the changes in relation to English Heritage above, the changes we propose here are designed to streamline and simplify arrangements, particularly in relation to London, whilst maintaining appropriate checks and balances in the process.

| Table 4: Proposed requirements for notifying and referring applications to the Secretary of State | |
|---|---|
| **Proposed new consultation/ notification requirement** | **Effect of change** |
| **English Heritage's own applications for listed building consent for properties of any grade in its ownership, guardianship, under its control or of which it is the prospective purchaser shall be determined by the local planning authority rather than the Secretary of State as is currently the case. Only those applications affecting Grade I and II* listed buildings and Grade II (unstarred) listed buildings involving demolition where the National Amenity Societies or English Heritage object would be referred to the Secretary of State for determination.** | This reduces the current requirements where all English Heritage's applications are determined by the Secretary of State. |
| **Outside Greater London, local planning authorities notify the Secretary of State of listed building consent applications, where they intend to grant consent but the National Amenity Societies or English Heritage maintain an objection, affecting Grade I and II* listed buildings and Grade II (unstarred) listed buildings involving demolition where English Heritage and National Amenity Societies are notified** | This replicates current requirements. |
| **Local authorities' own applications for planning permission for relevant demolition of local authority's buildings in a conservation area (formerly conservation area consent) where the authority intend to grant permission but English Heritage maintain an objection should be referred to the Secretary of State for determination** | This reduces the current requirements where all local authority applications are determined by the Secretary of State. |
| **Local authorities' own applications for listed building consent affecting Grade I and II* listed buildings and Grade II (unstarred) listed buildings involving demolition which it owns where the authority intend to grant consent but English Heritage or National Amenity Societies maintain an objection should be referred to the Secretary of State for determination** | This reduces the current requirements where all local authority applications are determined by the Secretary of State. |

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| **Applications for planning permission where the local planning authority intends to grant permission for proposals to which English Heritage objects because it would have an adverse impact on a World Heritage Site should be referred to the Secretary of State** | No change to existing requirement. |

**Other heritage related consultations/notifications**

4.44 There are further requirements to notify the National Amenity Societies (Society for the Protection of Ancient Buildings, Ancient Monuments Society, the Council for British Archaeology, the Georgian Group, the Victorian Society and the Twentieth Century Society) on certain listed building consent applications and to consult the Garden History Society on planning applications affecting registered parks and gardens. We do not propose any material changes to these arrangements. We believe these organisations bring a level of independent expertise to the consideration of applications which is helpful for local planning authorities. We are not aware of concerns being raised by applicants about their input. However, we intend to make two minor amendments to:

- clarify that the current requirement to notify the National Amenity Societies is on listed building consent applications involving the demolition of the whole or **substantial** part of any grade of listed building; and
- Move the requirement to consult the Garden History Society into the Development Management Procedure Order rather than have it set out in a Secretary of State Direction as is the case currently.