Broads Authority
Planning Committee
29 April 2016
Agenda Item No 13

Changes to the Planning System

Report by Head of Planning

Summary	This report outlines a consultation by Communities and Local Government (CLG) on proposed changes to the planning system arising from the Housing and Planning Bill

Recommendation: That the report be noted.

1 Introduction

1.1 As part of its modernisation agenda for the planning system and in order to promote economic recovery, the Government has been implementing a programme of changes to the planning system.

1.2 A report was presented to the 1 March 2013 Planning Committee detailing 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 were implemented.

1.3 A report was presented to the 11 October 2013 Planning Committee detailing 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 were implemented.

1.4 A report was presented to the 12 September 2014 Planning Committee detailing further changes including changes to Neighbourhood Planning, further changes to permitted development rights and the Use Classes Order and improving the use of planning conditions.

1.5 The purpose of this report is to outline for Members the further proposed changes. A full response to the consultation has been submitted on behalf of the English National Parks by National Parks England and the Broads Authority has supported this. A copy of this submission is attached at Appendix 1.

2 Proposed changes

2.1 The Housing and Planning Bill is currently passing through Parliament and has passed the first reading stage. Once the Bill has received Royal Assent (expected Summer 2016) secondary legislation will be required in order to implement its provisions. The consultation advises that the responses received will inform the secondary legislation in due course.

2.2 The proposed changes relate to 12 separate areas. This report will outline each of the areas in turn, with a brief commentary.

Chapter 1 – Changes to planning application fees

2.3 Planning application fees are currently set nationally, with periodic increases in line with inflation, but tend not to reflect the true cost of processing planning applications. A proposal in 2012 to allow Local Planning Authorities (LPAs) to set fees locally was not pursued.

2.4 The consultation proposes that fees should increase in line with inflation, but that this should be linked to performance so that only LPAs which meet certain performance standards should receive the increased fee. The increased fee would only apply if and when performance had improved. The consultation also explores other options for linking fees directly to the service, including the option for a 'fast track' service for an enhanced fee, local performance agreements (effectively planning deals) or through enabling competition in the market to allow alternative, approved providers to process applications and set their own service standards and fees.

Commentary

2.5 The proposal to increase fees in line with inflation is welcome. Linking it to performance to incentivise service improvement is an over simplistic approach. It is also the case that there is likely to be a correlation between lack of resources and poor performance so that poorly performing authorities will only be doubly disadvantaged if they do not receive increased fee levels. If local authorities are to become more efficient and market driven, they should be able to charge a fee which reflects the cost of delivering the service and this should be annually adjusted as in other areas. There are already consequences and remedies to address underperforming planning services and fees that do not in any case reflect the cost of the service being provided should not be linked to performance. A greater use of planning performance agreements as a more flexible way to manage targets would be a better approach. The proposal for a paid 'fast track' service is not supported as it introduces a two tier system where the planning process should serve all stakeholders equally.

Chapter 2 – Permission in principle

2.6 The Housing and Planning Bill introduces a new 'permission in principle' route for obtaining planning permission. The justification put forward for this is to reduce the delays, costs and uncertainties associated with bringing a site forward. In effect, a 'permission in principle' site would be more certain than an allocation, but less detailed than an outline and once 'permission in principle' had been granted there would be no opportunity to reconsider the principle of the use . In order to benefit from a 'permission in principle' a site would:

- need to be allocated in 'locally produced and supported documents that have followed an effective process of preparation, public engagement, and have regard to local and national policy; and
- that document would need to state expressly that this was a 'permission in principle'; and
- the allocation would need to contain 'prescribed particulars' which would be the core 'in principle' matters which formed the basis of the permission, and these would operate in lieu of planning conditions.

2.7 The Housing and Planning Bill also makes provision for 'permission in principle' to be granted through application to the LPA, as it is for all other application types.

2.8 The technical details consent process would be the point at which full planning permission would be granted. The principle of the development could not be reconsidered at this stage, simply the technical details of the scheme and these must be presented on a single application which proposes development in accordance with the 'permission in principle'. Conditions can be imposed if required.

2.9 The consultation document seeks views on the detailed operation of the 'permission in principle' approach as proposed, as follows:

(i) The qualifying documents capable of granting a 'permission in principle' would be future local plans, future neighbourhood plans and brownfield registers, as well as the route via an application which would also be applicable for small sites.

(ii) The only details which would be required for a 'permission in principle' would be a red line plan identifying the site, the uses and the amount of development, with a minimum and maximum level for residential development only. The parameters of the technical details that need to be agreed, including essential infrastructure provision, will have to be described at the 'permission in principle' stage.

(iii) On sensitive sites, 'permission in principle' would only be granted where the LPA had sufficient detail to enable an assessment of the impacts in accordance with the Environmental Impact Assessment Regulations 2011 and the Habitats Directive.

(iv) The statutory requirements for consultation on 'permission in principle' would be the same as currently exists for allocations or planning applications, but there would be no statutory requirement at the technical details stage and the level of consultation would be left to the LPA to decide.

(v) The information required to support proposed sites for 'permission in principle' should be proportionate and justified, and kept to the minimum. The information provided in Local, Parish and Neighbourhood Plans is sufficient for allocations, whilst applications for minor development should be supported by an application form, a plan and a fee. For the technical details stage it is proposed that, in addition to a form, drawings and a fee, the application should be accompanied by only two further sets of information:

- a design statement containing information relating to design matters such as layout, access and materials
- an impact statement including required further assessments such as flood risk assessment and details of mitigation

(vi) The duration of a 'permission in principle' would be detailed in that permission but a period of 5 years is recommended for an allocation and either 1 or 3 years for a permission granted on application. A technical details consent would expire after 3 years.

(vii) The determination period for an application for 'permission in principle' is proposed as 5 weeks, technical details consent for minor sites as 5 weeks and 10 weeks for technical details consent for major sites.

Commentary

2.10 The objective of Government to increase certainty and reduce risk for developers is recognised, as is the need to increase housing supply and the speed of delivery nationally. It is also accepted that these objectives would be served by ensuring that the process of establishing the principle of development needs to be done only once. Whilst this is accepted, it is also the case that it is imperative that there is full local engagement in this process – more especially so if it is to be done only once. The use of Local, Parish and Neighbourhood Plans to identify sites suitable for 'permission in principle' satisfies the engagement test, as these Plans are subject to a comprehensive statutory process, however this is not the case for the sites identified through the proposed brownfield register route as some of these (for example those arising from the call for sites) would not have been through any process of consultation.

2.11 The importance of full consultation and engagement at the preliminary 'permission in principle' stage for all development proposals which are likely to be consented through this route is further emphasised by the discretionary nature of the consultation proposed at the technical details stage, particularly

as the parameters for the development will be established at the outset. The information required at the technical details stage is largely technical, however this is precisely the point at which communities start to 'see' what the scheme will look like and to have views on it. Failure to consult at this stage will result in disenfranchisement and is contrary to the localism agenda. The extent of consultation is left with the LPA to decide according to local circumstances and whilst some discretion is welcome, a statutory minimum would give comfort to communities and offer LPAs a simple process outwith any political decisions around time and extent of consultation. It is considered that a statutory minimum provides a starting point for the development of best practice, rather than inhibiting it.

2.12 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. This means that 'permission in principle' would only be granted in the Broads where the LPA had sufficient detail to enable an assessment of the impacts.

2.13 The proposal to apply a 5 week determination periods for 'permission in principle' applications and technical details consent, with 10 weeks allowed only for technical details on major schemes, is of concerns as this will impact on the ability to undertake meaningful consultation. Given that 8 and 13 weeks are currently allowed for the determination of, respectively, minor and major applications, the proposal to allow a much shorter period for potentially larger schemes and ones on which there is less detail (and hence more uncertainty locally) is anomalous. This is also a very limited period in which to agree the parameter for the details at the technical details stage, given the imperative for stakeholder and consultee input.

Chapter 3 – Brownfield Register

2.14 The Government has made a commitment to ensure that 90% of suitable brownfield land nationally will have planning permission for housing by 2020. It proposes to do this through the creation of a £2B Long Term Housing Development Fund, a £1.2B fund to unlock at least 30,000 starter homes on brownfield land and the requirement for LPAs to create a brownfield register which sets out information on such sites and acts as a vehicle for delivering housing development as it will act as a qualifying document for 'permission in principle'

2.15 The brownfield register will include existing sites identified through the Strategic Housing Land Availability Assessments (SHLAA), as well as sites with permission, sites which have not been previously considered (public sector land is suggested as an example) as well as land put forward in response to a call for sites. LPAs are required to be positive and proactive in the compilation of the register.

2.16 To be suitable for housing and inclusion on the register, a site must be available and either deliverable (with a realistic prospect of development within 5 years) or developable (likely to come forward between 6 – 10 years), and capable of supporting 5 or more dwellings and capable of development.

2.17 On sensitive sites, defined as such in Schedule 2 of the Environmental Impact Assessment Regulations 2011, a site would only be included on the register where the LPA had sufficient detail to enable an assessment of the impacts in accordance with the Regulations. The requirements of the Habitats Directive would also need to be met.

2.18 There would be a requirement to make information about potential sites for the brownfield register available for public inspection (at the LPA offices and online) and consultation would be required.

2.19 When completed, the register would comprise a list of all sites with planning permission (full or outline) and those with planning permission granted under a Local Development Order (LDO) or where planning applications or LDOs are under consideration, and where 'permission in principle ' for housing has been granted and which are suitable for housing but have no permission. The LPA would be required to provide specified information for each site, including an estimate of the number of homes it would support and details of ownership if known, as well as other useful information such as site constraints and history. The required data would be standardised nationally and would be displayed on the LPA website, as well as linked to established data portals to enable developers to find suitable sites. The information would need to be regularly updated, annually as a minimum.

2.20 The Government intend to monitor the brownfield registers, to assess progress against the commitment set out in 2.14 above.

Commentary

2.21 The brownfield register is driven by the need to increase housing land supply, but it does not adequately recognise that in areas with limited sites with development potential, including rural areas and protected landscapes, there is competition for brownfield sites. Housing land is a higher value use and by identifying such land broadly as suitable for housing there is a risk that it will be lost to housing from employment or amenity uses, thereby undermining sustainability.

2.22 As proposed, there is a consultation deficit in the operation of the register. If brownfield land is available and suitable for development it should be allocated as such through the Local Plan or Neighbourhood Plans process.

2.23 The consultation does not explain how the register will deal with the various statutory processes required as part of the wider allocations process, including Strategic Environmental Assessment and Habitats Regulations Assessment, which are specialist and technical processes. It should not be used to bypass these processes. The cost of refreshing these assessments

annually when the register is updated will be a significant financial burden on an LPA.

Chapter 4 – Small sites register

2.24 The Government consider that the publication of a small sites register (identifying sites capable of accommodating less than 10 units) will make it easier for developers and individuals interested in self-build and custom housebuilding to identify suitable sites, and it will also encourage more landowners to come forward and offer their land for development. It is noted that less than 10% of housing in England is provided through self build or custom build, compared to over 50% in parts of Europe.

2.25 The Housing and Planning Bill contains a provision to require LPAs to keep and publish a register of particular types of land in their area and it is proposed that, as part of this, there will be a requirement for LPAs to keep a 'small site' register identifying sites of 1 – 4 plots. Unlike the sites identified on the brownfield register, it is not proposed that these sites will have undergone any assessment of their suitability for development, but simply that they have been put forward as the objective to increase awareness of the location of small sites.

Commentary

2.26 The function of the small sites register is to increase awareness of the small sites, to make it easier for custom and self-build particularly to take up sites. This is laudable, however it will place a significant burden on LPAs (particularly the smaller ones) to create and maintain the register. Furthermore, as the listed sites will have undergone no assessment as to their suitability for housing the LPA will need to respond to both the expectation of the landowner and the aspirations of the would-be developer.

2.27 As at 2.22 above, there is consultation deficit in the operation of the register and small sites should be put forward through the Local Plan or Neighbourhood Plans process.

Chapter 5 – Neighbourhood Planning

2.28 The Localism Act 2011 gave communities direct power to create Neighbourhood Plans which, when adopted, form part of the development plan. This introduced the ability for plans to be made at a grassroots level and nationally over 1,730 Neighbourhood Plans are underway. In the Broads area two have been adopted (Acle and Strumpshaw) and a further four are in preparation (Brundall, Beccles area, Bungay and Oulton).

2.29 The consultation sets out proposals to set various time periods for the LPAs decision on Neighbourhood Plans. The changes would mean that LPAs had a period of 13 weeks to designate neighbourhood forum to develop the Plan, five weeks after an Inspector's report to decide whether to proceed to

referendum, ten weeks to that referendum and then eight weeks after that referendum to make the Plan.

2.30 The consultation also sets a procedure for call-in and introduces a new way for neighbourhood forums to better engage in the process, by making them formal consultation bodies in the preparation of a Local Plan.

Commentary

2.31 The purpose of the proposed changes is to speed up the neighbourhood planning process, and this is supported. The situation is more complex in the Broads area as all Neighbourhood Plans straddle the boundary of the Broads Authority area and the District Council, meaning both authorities are involved. This has potential to delay the process, but to date this has been addressed through joint working. Whilst uncommon, this is the situation and the final legislation should make provision for this.

Chapter 6 – Local Plans

2.32 The Housing and Planning Bill proposes changes to enable the Government to intervene in plan-making at LPAs where performance is considered inadequate. This would be where the least progress has been made, where policies have not been kept up to date, where there is highest housing pressure and/or where the intervention will have the greatest impact. Prior to intervention the Government would give the LPA an opportunity to explain any exceptional circumstances which, in their view, would make intervention unreasonable and would consider this in their decision.

2.33 It is intended that information on the progress in plan-making be published for all English LPAs.

Commentary

2.34 There has long been Government intervention in the development management function where there is poor performance, and this extends that principle. The consideration given to the reasons for delay and/or slippage (as they are not the same) will be very important, as will local factors. As with the intervention mechanism for development management, it should be noted that small LPAs and teams are potentially disproportionately affected as there is less resilience and one complex issue can absorb a significant amount of time.

Chapter 7 – Expanding the approach to planning performance

2.35 There has long been a performance measurement approach to development management, most recently set out in the Growth and Infrastructure Act 2013. If an LPA does not meet the required performance thresholds it risks being designated as under-performing and must prepare an action plan to address areas of weakness; in addition, applicants for major development can apply directly to the Secretary of State.

2.36 The Housing and Planning Bill proposes extending the ability to apply directly to the Secretary of State to applicants of non-major development too (excluding householder development) and revising the performance thresholds. It proposes the following thresholds:

Non-major applications:	60 – 70% determined on time (within 8 weeks) 80 – 90% of appeals dismissed
Major developments:	50% determined on time (within 13 weeks) 90% of appeals dismissed

The assessment would be made over a rolling two year period and account could be taken of exceptional circumstances. The consultation explains that amongst exceptional circumstances which could be taken into account would be where an appeal decision has been allowed despite the LPA considering that its decision was in accordance with the development plan

Commentary

2.37 The proposed determination targets for non-major applications are acceptable and build on existing targets of 65% of minor and 80% for 'other' applications. The threshold for appeals, however, is very high – particularly if the higher one of 90% is selected. There is typically a greater degree of planning judgement and weight involved in minor and householder applications (and some variation between the LPA and the Inspectorate must be expected around interpretation of policy at any subsequent appeals. Such variation can indeed be useful to an LPA as it assists with setting policy boundaries and parameters. An appeal threshold of 90% success would seriously inhibit an LPAs confidence around a refusal in all but the most definite of circumstances.

2.38 The proposed determination target for major applications is acceptable. It should be noted that many small LPAs (the Broads Authority included) do not receive many applications for major development, therefore there is limited scope to improve the average performance if one application overruns. There is scope here for greater use of Planning Performance Agreements and this could be highlighted. The threshold for appeals, as above, is also very high and mitigates against LPAs with small number of majors and even smaller numbers of major appeals.

Chapter 8 – Testing competition in the processing of planning applications

2.39 One of the most contentious matters in the Housing and Planning Bill is the provision to trial competition in the processing of planning applications. It is proposed to trial this in certain areas of the country for a limited period. In the trial areas, the LPA would remain the decision maker, but the planning application would be handled up to the point of recommendation by an 'approved provider' instead of by staff of the LPA. The applicant would have the choice of whether to submit to the LPA or the 'approved provider'.

2.40 The ‘approved provider’ could be a third party, or an LPA from another area.

Commentary

2.41 The objective of the proposal is to introduce competition and thereby offer improved service standards for the applicant and savings. It is not stated in the document, but it is worth noting that it is usually expected that savings made by an LPA should be passed on to the consumer in the form of lower costs. Given that currently the application fee does not meet the costs of its processing, it would be beneficial if any savings made were able to address this shortfall – this would also address the wider issue of the general taxpayers in an area subsidising the cost of planning applications.

2.42 There would remain a role for the LPA in the handling of applications by any ‘approved provider’ as they would need to share the planning history of the site at the outset, enter information on the various statutory registers as well as make the final decision. It is unclear how this function would be paid for if the application fee has been paid to the ‘approved provider’, but clearly this is not a cost which the LPA should bear.

2.43 It is noted that LPAs already have the ability to ‘outsource’ the processing of planning applications. Members will be familiar with Andy Scales who processes the planning applications for BESL on behalf of the Broads Authority.

2.44 There would be concerns around the practicality of alternative ‘approved providers’ carrying out a similar role more remotely from the area in question and whether this would result in complaints levied to the LPA about the ‘alternative providers’ as not understanding the local context or nature of an area. This would be particularly the case in the Broads, where the landscape is unique and the patterns of development very site specific. It would also exacerbate the impression sense of remoteness between the LPA and its stakeholders – currently there is a democratic deficit as members are not elected, but the planning officers do at least work directly for the organisation so there is some accountability.

2.45 Finally, planning is one of the key statutory functions of the Broads Authority and the main vehicle for delivering the first two statutory purposes, as well as essential in supporting the third.

Chapter 9 – Information about financial benefits

2.46 The Housing and Planning Bill proposes to place a duty on LPAs to record details of financial benefits accruing to an area from a planning decision. This would include Community Infrastructure Levy, grants from Central Government including New Homes Bonus, council tax revenue, business rate revenue and Section 106 payments. The planning report should detail these and estimate how much they would each be worth.

Commentary

2.47 The proposal is justified on the grounds that local communities may be more willing to accept new development if they had a better understanding of what the local benefits would be. The document states "The 2013 British Social Attitudes Survey found that people might be more supportive of the development of new homes in their area if they thought that local authorities might receive more funding".

2.48 This is more likely to be more relevant to larger development sites. The consultation does not make it clear whether the provision would apply to all development or certain types only. It would be disproportionate to have to provide this information for minor and householder development.

Chapter 10 – Section 106 dispute resolution

2.49 The Government are introducing a new dispute resolution mechanism for Section 106 agreements to speed up negotiations and enable development to get started. It would be provided by a new body on behalf of the Secretary of State, would operate within prescribed timescales and would produce a binding report.

Commentary

2.50 This is a pragmatic approach and can be supported.

Chapter 11 – Permitted development rights for state funded schools

2.51 The Government proposes to extend permitted development rights for schools to enable larger extensions to existing schools and for temporary buildings for school use to be constructed on cleared land where the previous building had permitted development rights for school use. It also extends temporary change of use to a school use from one to two years.

Commentary

2.52 No comments.

Chapter 12 – Changes to statutory consultation on planning applications

2.53 The Government proposes setting a statutory limit to the amount of time a statutory consultee can request when asking for an extension of time to respond to a consultation. The proposed limit would be 14 days.

Commentary

2.54 Decision making can be delayed whilst an LPA waits for a response from a statutory consultee and this can be frustrating for both an applicant and an LPA. However, consultation is an essential part of the planning process and all parties need to be confident that the correct advice is being given. The

consequences of incorrect advice from a statutory consultee can be significant and adverse – ranging from flood risk and contamination to impacts on highway safety. These can be expensive to remedy.

2.55 The consultation states that in 5 – 12% of cases a statutory consultee requests and receives additional time beyond the statutory 21 day period. Given the complex nature of many of the consultations, this is not considered to be a particularly high proportion and it may be expedient to examine the patterns around the requests.

Chapter 13 – Public Sector Equality Duty

2.56 This chapter summarises the proposed measure and asks for comments on the effect of the measures on people with defined characteristics as defined in the Equalities Act 2010.

Commentary

2.57 No comments.

3 Conclusion

3.1 The scale and speed of change to the planning system is extensive.

3.2 Members will note that the main objectives of the changes are to speed up and increase the provision of new housing nationally. The Broads area has an Objectively Assessed Need for 12 new houses per annum so is unlikely to be directly affected by the changes, although there may be indirect effects as a result of some of the procedural changes.

3.3 In reviewing the proposed changes, Members are reminded of the comments of Leonora Rozee OBE, former head of the Planning Inspectorate and RTPI, who on retirement in summer 2014 wrote the RTPI's discussion forum on *Linked-in*:

"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."

Background papers:	None
Author:	Cally Smith
Date of report:	14 April 2016
Appendices:	APPENDIX 1 – Technical consultation on implementation of planning changes - A response by National Parks England

APPENDIX 1

Technical consultation on implementation of planning changes

A response by National Parks England

14 April 2016

National Parks England (NPE) supports the policy-making process by co-ordinating the views of the nine English National Park Authorities (NPAs) and the Broads Authority. It is governed by the Chairs of the ten authorities. Our response represents the collective view of officers who are working within the policies established by the NPAs and Broads Authority and follows internal consultation amongst the officers. ***It should be noted that all references to 'National Parks' in this response refer to the nine National Parks and the Broads*.** We are happy for our response to be made publicly available and would be happy to discuss any of the points we make further with officials if that would be helpful.

National Parks England – Summary Consultation Response

The proposal to increase planning application fees in line with the rate of inflation is welcomed. We would support measures to introduce local flexibility on fee setting if it would allow the National Parks to recover the full cost of providing their local planning services.

We have previously asked that National Parks be exempt from the proposed presumption in favour of housing on brownfield land and small sites. We do not therefore support the 'permission in principle' extending to brownfield registers as a 'qualifying document' within the National Parks.

As the vast majority of sites that come forward for development within the National Parks are between one and four plots, the need to maintain a separate small sites register in addition to an up to date Local Plan seems unnecessarily burdensome.

We broadly support the proposals for Neighbourhood Plans and Local Plans subject to points of further clarification.

We have concerns about some of the proposals to expand the approach to planning performance, especially in relation to the thresholds for major applications (of which relatively few are submitted in National Parks) and appeals overturned on applications for non-major development.

National Parks, as stand-alone local planning authorities, are rightly afforded a special status in planning law and practice and have a good track record in delivering timely and highly specialised planning services (in furtherance of the two statutory National Park purposes).

We do not see any proven business case to compel National Parks to 'privatise' their planning functions.

National Parks already have a duty to foster the social and economic well-being of their local communities in pursuing the two National Park purposes. It therefore seems superfluous to require National Parks to list separately all the financial benefits that accrue from new development in their planning reports, especially when many of these benefits do not directly accrue to the National Parks, e.g. council tax & business rate revenues and the new homes bonus.

Consultation questions

Q1.1 Do you agree with our proposal to adjust planning fees in line with inflation, but only in areas where the local planning authority is performing well? If not what alternative would you suggest?

1. The proposal to adjust planning application fees in line with the rate of inflation is welcomed. We believe they should be increased annually in line with inflation across the National Parks and that there are other ways to deal with under-performing local authorities. The alternative is to allow the National Parks to recover the full cost of providing their local planning service by setting their own fees. In that scenario, full cost recovery could be linked to performance.

Q1.2 Do you agree that national fee changes should not apply where a local planning authority is designated as under-performing, or would you propose an alternative means of linking fees to performance? And should there be a delay before any change of this type is applied?

2. There is likely to be a correlation between lack of resources and poor performance so that poorly performing authorities will only be doubly disadvantaged if they do not receive increased fee levels. If local authorities are to become more efficient and market driven, they should be able to charge a fee which reflects the cost of delivering the service and this should be annually adjusted as in other areas. There are already consequences and remedies to address underperforming planning services and fees that do not in any case reflect the cost of the service being provided should not be linked to performance.

Q1.3 Do you agree that additional flexibility over planning application fees should be allowed through deals, in return for higher standards of service or radical proposals for reform?

3. Fast track services and more certainty over timescales are already available in National Parks through locally set Planning Performance Agreements, where increased resources can be delivered with the applicant covering the cost of additional staffing or consultancy. The transparency and consistency of the planning service should be maintained through an accepted level of application fees which should not be able to be varied.

Q1.4 Do you have a view on how any fast-track services could best operate, or on other options for radical service improvement?

4. Any fast-track service should not mean that public engagement is lost or compromised, especially so in protected landscapes like National Parks. One option would be to cut the statutory requirements for press notices and allow LPAs to set their own public consultation procedures and timescales.

Q2.1 Do you agree that the following should be qualifying documents capable of granting permission in principle?
a) future local plans;
b) future neighbourhood plans;
c) brownfield registers.

5. In response to the earlier consultation on proposed changes to national planning policy, we have already asked that National Parks be exempt from the proposed presumption in favour of housing on brownfield land and small sites. It therefore follows that the National Parks do not agree that brownfield registers should be a qualifying document for permission in principle. Whilst this proposal has significant resource implications for local plan preparation, no objections are raised in principle to local and neighbourhood plans being included as qualifying documents.

Q2.2 Do you agree that permission in principle on application should be available to minor development?

6 With the exception of the brownfield register, we do not oppose that permission in principle should be available for minor development on application.

Q2.3 Do you agree that location, uses and amount of residential development should constitute 'in principle matters' that must be included in a permission in principle? Do you think any other matter should be included?

7 We agree that location, use, and amount of residential development should constitute 'in principle matters'. We do not believe it is necessary to include other matters.

8 Because permission in principle is housing led it would also be necessary for the 'use' to identify the minimum and maximum levels of non-residential uses (such as retail, community and commercial) in order to comply with local plan policies and to enable permission in principle to be granted.

Q2.4 Do you have views on how best to ensure that the parameters of the technical details that need to be agreed are described at the permission in principle stage?

9 We believe parameters should be set nationally. We suggest that on the granting of permission in principle and the issuing of a decision notice, LPAs are required to

send a national application form for technical details consent and a nationally standardised checklist which the local planning authority would complete outlining the parameters which the technical details would need to cover. This would include a free text field 'other matters' to accommodate Local Plan requests and, or specific issues.

Q2.5 Do you have views on our suggested approach to a) Environmental Impact Assessment, b) Habitats Directive or c) other sensitive sites?

10 We agree with the suggested approach through qualifying documents as an assessment of impact on sensitive sites would take place during the allocations process.

11 However, we have significant concerns regarding the proposals for the screening process for Environmental Impact Assessment (EIA) development, and the suggestion in the consultation that the onus would be on the LPA to undertake the EIA if the application was deemed to be EIA development. This is not something which we support and is not something the LPA could do on behalf of the developer. Our suggested approach to overcome this issue would be to have a screening process that complies with current regulations. If an application is deemed to require an EIA then the application could not proceed to gaining permission in principle and a full application would be required. If an EIA is not required then the application can proceed to permission in principle. We do not expect many applications to be screened out as the permission in principle only relates to minor development applications.

12 We believe this suggested screening approach to EIA development would be applicable to the Habitats Regulations, and would recommend extending this suggested approach to cover these regulations.

13 The consultation is silent on how the process would deal with protected species in relation to permission in principle for minor development applications.

Q2.6 Do you agree with our proposals for community and other involvement?

14 We agree with the proposals for community and other involvement for qualifying documents. We also agree with the approach to set consultation requirements for permission in principle in line with the requirements for planning applications.

15 However, we have significant concerns regarding the proposed approach to applications for technical details consent. In our experience local communities, consultees and others would not accept that they would not have the opportunity to comment on the technical details. In National Parks, issues such as design, access, drainage, scale and massing, visual impact, and amenity issues are all important considerations. Planning Practice Guidance recognises that communities, consultees and others may be able to offer a particular insight or detailed information on that is relevant to the consideration of the application (Ref ID 15-007-20140306).

16 By not requiring LPAs to consult on technical details it would inevitably give rise to issues and concerns about consistency and fairness in the planning process. We suggest that consultation for technical consultation is mandatory, and consultation requirements are set in line with requirements for planning applications. Appropriate timescales for maximum determination periods would need to be amended to take account of statutory consultation requirements. These changes would enable particular insights or detailed information that is relevant to the consideration of the application from communities and consultees to be considered.

Q2.7 Do you agree with our proposals for information requirements?

17 We agree with the information requirements regarding permission in principle for allocated sites in qualifying documents.

18 As outlined in our response to question 2.5 applications for permission in principle will require information for screening of Environmental Impact Assessment and Habitats Directive assessment to be submitted as part of an application for permission in principle.

Q2.8 Do you have any views about the fee that should be set for a) a permission in principle application and b) a technical details consent application?

19 We agree with the suggestions as outlined in the consultation.

Q2.9 Do you agree with our proposals for the expiry of on permission in principle on allocation and application? Do you have any views about whether we should allow for local variation to the duration of permission in principle?

20 We have no objections to the expiry of permission in principle on sites allocated in neighbourhood plans and local plans after five years, however a situation could arise where a site is allocated but does not benefit from permission in principle until a local plan review has been completed. We are not aware of any mechanism for neighbourhood plans to be reviewed during their plan period, so permission in principle may expire after five years and the allocation would remain valid for the plan period.

21 We have no preference over the options of expiry for permission in principle of applications. Setting the expiry date at a year for minor development would enable developers or applicants to gather necessary information to support an application for technical details. The shorter expiry period would encourage the faster delivery of housing sites.

Q2.10 Do you agree with our proposals for the maximum determination periods for a) permission in principle minor applications, and b) technical details consent for minor and major sites?

22 We do not support the proposals for maximum determination periods. To accommodate the statutory minimum consultation requirements of 21 days it would be necessary for permission in principle to have an eight week determination period.

23 For technical details consent on minor sites we also suggest the maximum determination is changed to eight weeks. As explained in our response to question 2.6 we believe it is necessary to make consultation on technical details statutory and for consultees to have the statutory minimum consultation requirements of 21 days to submit comments. An eight week maximum determination period would allow sufficient time for community and other consulted to make comments and for planning officers to consider these and determine the technical details consent.

24 We have no comments to make on the maximum determination period for technical details consent for major sites.

Q3.1 Do you agree with our proposals for identifying potential sites? Are there other sources of information that we should highlight?

25 Brownfield sites remain a scare resource within the National Parks and need to be utilised for a range of uses that support the National Park purposes and duty. Defra's recently published 8-Point Plan for National Parks sets out a clear strategic vision that looks to deliver a range of benefits to the nation, such as driving growth in international tourism, developing great food destinations and realising the immense potential for outdoor recreation. To realise these ambitions will require suitably serviced land and buildings, which are not reflected in the proposals for identifying potential sites.

Q3.2 Do you agree with our proposed criteria for assessing suitable sites? Are there other factors which you think should be considered?

26 As above. We also have concerns that the proposed approach lacks specific clear criteria to enable rigorous assessment. To refer to brownfield or previously developed land is vague. We suggest that clarity on definition is provided – either brownfield to be defined in regulation or the NPPF to be amended to refer to brownfield.

27 The consultation sets out an intention to require potential sites to be assessed against specific criteria, which are not provided. It is these criteria that will be essential for rigorous assessment.

28 It is essential for the proper planning of their area that LPAs must retain discretion and decision and we suggest the starting point must be the policies of an up to date Local Plan and agree that the evidence supporting allocation for uses other than housing is material, especially in a National Park context.

Q3.3 Do you have any views on our suggested approach for addressing the requirements of Environmental Impact Assessment and Habitats Directives?

29 No.

Q3.4 Do you agree with our views on the application of the Strategic Environment Assessment Directive? Could the Department provide assistance in order to make any applicable requirements easier to meet?

30 Yes and National Practice Guidance on the subject would be useful.

Q3.5 Do you agree with our proposals on publicity and consultation requirements?

31 Yes.

Q3.6 Do you agree with the specific information we are proposing to require for each site?

32 In rural areas not all land has a postal address and in this case it will not have a UPRN.

Q3.7 Do you have any suggestions about how the data could be standardised and published in a transparent manner?

33 We suggest that a national system is provided. This would achieve a standard approach and avoid delay, inconsistency and duplication of costly systems development by hundreds of LPAs. Each LPA could provide a link to the national system. If this is not the case it is essential that national guidance is provided on how data is held and made available and that sufficient time is allowed to enable LPAs to provide appropriate systems.

Q3.8 Do you agree with our proposed approach for keeping data up-to-date?

34 We consider that an annual review is appropriate.

Q3.9 Do our proposals to drive progress provide a strong enough incentive to ensure the most effective use of local brownfield registers and permission in principle?

35 Please refer to our answer to Q3.1.

Q4.1 – Q4.4 Small sites register

36 In its response to the earlier consultation on proposed changes to national planning policy, NPE asked that National Parks be exempt from the proposed presumption in favour of housing on small sites. As most housing sites in the National Parks fall within one to four plots, we question the need for National Parks to maintain a separate register for small sites as such sites are already brought forward through Neighbourhood and Local Plans.

Q5.1 Do you support our proposals for the circumstances in which a local planning authority must designate all of the neighbourhood plan applied for?

37 No concern is raised regarding the removal of the statutory period for advertising the intent to designate a neighbourhood planning area (other than the exceptions to avoid clash with current proposals). However this stage does have value in specifying minimum standards of advertisement of intent to designate a neighbourhood plan area. If this stage is removed, it would be helpful to retain some minimum standards of advertising to the local resident and business community and statutory stakeholders. This would be part of the Statement of Community Involvement and enable the planning authority and plan inspectors to assess the strength of the plan making process at examination

Q5.2 Do you agree with the proposed time periods for local planning authority to designate a neighbourhood forum?

38 The proposed time periods appear reasonable but there are circumstances outside of LPA control (e.g. Purdah periods of other councils in the case of cross boundary neighbourhood plan areas) when the determination of applications may be problematic for our neighbours and reduce or remove opportunities for them to process the application through the democratic channels of committees. This would impact negatively on National Parks as they could, by no fault of their own, be deemed, as a jointly responsible body, to be failing to reach a decision with statutory time periods.

39 In addition, the information required to determine an application for a neighbourhood forum may not be supplied by the applicant. In such cases, the local planning authority (LPA) needs the ability to 'not register' the application. If the resolution of such matters takes a long time, it may be a strong indicator of the strength of feeling, level of resources, appetite/need for a neighbourhood plan. It is often the community level issues that set the timescale for this stage rather than the planning authority. It is a critical stage of the process if the Neighbourhood Plan is to be representative and ultimately effective, so we would urge caution in forcing this issue.

Q5.3 Do you agree with the proposed time period for the local planning authority to decide whether to send a plan or Order to referendum?

40 On the first exceptional circumstance proposed, this may result in a more precautionary approach than might otherwise be necessary. If a LPA suspects (but is unable to be sure within a strict deadline) that the neighbourhood plan is not in general conformity with their plan, they could, and arguably should apply for an extension as a precaution to enable wider consideration and if necessary Member involvement in the decision. To identify likely non conformity with the development plan without properly addressing it on the grounds there is insufficient time or resources could also store up problems in using the plans at a later date.

41 On the second exceptional circumstance proposed, it is important that the LPA has dispensation to seek an extension to a five week deadline (with or without the neighbourhood plan groups agreement). LPAs do not always employ neighbourhood planners, so the ability to deal with a five week timeline may be compromised by other work on Local Plan preparation, other neighbourhood plan work, processing of planning applications (with their own deadlines). Neighbourhood Plans' ultimate status as part of the development plan and their longevity as part of the development justifies caution at this stage.

Q5.4 Do you agree with the suggested persons to be notified and invited to make representations when a local planning authority's proposed decision differs from the recommendation of the examiner?

42 LPAs would expect that those making representations are kept informed of progress of a plan in the stages towards adoption. The value in re-opening consultation is however less clear at this stage because the inspector will have already heard from these people if they have made representations that the inspector considers should have been usefully expanded upon as part of the examination. We consider that government needs to clarify whether it means consultation or information at this stage, and if it means consultation, that it clarifies what value it sees in further consultation at this stage. In light of the concerns over timescales already cited, a re-opening of consultation and evidence gathering stages would have knock on effects on the timescales within which a LPA could move the process through to adoption.

Q5.5 Do you agree with the proposed time periods where a local planning authority seeks further representation and makes a final decision?

43 In some circumstances five weeks would be far too short to consider representations and get Member agreement to the officer response.

Q5.6 Do you agree with the proposed time period within which a referendum must be held?

44 The flexibility for the LPA and the neighbourhood plan group to agree the time period means that this target 10 weeks is reasonable as an outline expectation

Q5.7 Do you agree with the time period by which a neighbourhood plan or Order should be made following a successful referendum?

45 The term 'as soon as reasonably practicable' is clear, and allows for circumstances beyond the control of planning authorities (Purdah periods, appointment of committee members, councillor training etc.) An eight week deadline serves no useful purpose since it could only be used by central government to force a neighbourhood plan to be 'made' outside the locally democratic stage of making part of its development plan. It is already possible to force plans through on the grounds that the LPA had not made the plan as soon as reasonably practicable, so we see no advantage from the change.

Q5.8 What other measures could speed up or simplify the neighbourhood planning process?

46 The requirements for sustainability appraisals and SEA are perhaps disproportionate to the scale of the plan being produced, with the statutory development plan picking these things up for the whole LPA area. In cases where a neighbourhood plan is triggered by pressure to develop a site, any application for the site would be subject to necessary appraisals so it seems onerous to expect appraisals of a type already done for the development plan or required by planning applications for a neighbourhood plan. In addition, the assessment of conformity would pick up any problems of potential adverse environmental impact or unsustainable development and screen this out.

Q5.9 Do you agree with the proposed procedure to be followed where the Secretary of State may intervene to decide whether a neighbourhood plan or Order should be put to a referendum?

47 This process seems to open up scope for actions (intended or unintended) on behalf of neighbourhood planning groups or stakeholders that would prevent a LPA taking a decision ahead of a deadline and trigger a mechanism to take the process out of the hands of the LPA at the end of the process.

48 It is unreasonable to insist on a LPA accepting all examiners recommendations until the LPA and the examiner are sure that the understanding that has led to the recommendations. If there is a recommendation based on a misunderstanding, it is not appropriate to penalise a LPA for refusing to agree the recommendation, or penalise them by removing the scope for challenge to a recommendation.

49 It is more reasonable for the S of S to intervene where an LPA is seeking to modify and plan or Order at the last stage in ways that an examiner has not recommended. However there may be changes to the development plan or indeed national policy at the last minute that have to be brought into the neighbourhood plan, especially as the timelines for different local and national policy changes will never coincide neatly with the neighbourhood plan processes.

50 The S of S intervention to install another Inspector is perhaps a crude way of taking over the process and reducing the local legitimacy of the process.

51 The various measures within this intervention stage create more red tape rather than less, central control over local determination, and seem generally at odds with the thrust of these changes to simplify and speed up the neighbourhood plan making process.

Q5.10 Do you agree that local planning authorities must notify and invite representations from designated neighbourhood forums where they consider they may have an interest in the preparation of a local plan?

52 Yes providing that it is the responsibility of the neighbourhood forum to ensure the LPA has up to date contact details for the Forum. Unlike Parish Councils,

neighbourhood forums do not have the same legal status or modus operandi, so it is more likely that their membership and leadership and way of working will be less widely known. This clarification of responsibilities would make the suggestion workable.

Q6.1 Do you agree with our proposed criteria for prioritising intervention in local plans?

53 We have already responded to the consultation regarding the housing delivery test but the intent to use performance against this test is flawed in the context of planning for a National Park unless the determination is set against the context for planning in National Parks as established by the NPPF and the NPVC. National Parks are seen as not being areas of high housing pressure in which higher housing delivery can achieve national objectives for these protected areas. The other criteria for assessing progress seem sensible.

Q6.2 Do you agree that decisions on prioritising intervention to arrange for a local plan to be written should take into consideration a) collaborative and strategic plan making, and b) neighbourhood planning?

54 Collaborative and strategic plan making – National Parks already co-operate with constituent authorities but operate to different plan objectives (borne of their protected area status). Joint plans are sensible where the responsibilities and objectives of the LPAs are broadly the same, but are not appropriate where one area is seeking growth and another is seeking sustainable development in the context of protected area status.

55 Neighbourhood planning - This is sensible provided it is used to help communities in areas where the demand for neighbourhood planning is high but the local plan presence is limited or non-existent. If there is no demand for neighbourhood planning in an area there may be less to be gained from intervening to write a local plan for the area.

Q6.3 Are there any other factors that you think government should take into consideration?

56 Government needs to distinguish between plan enabling (i.e. what is permitted) and plan delivery (what is actually built). If acceptable applications are not being received, a LPA cannot permit them and if the applications are out of line with local and national policy an LPA shouldn't permit them. In these cases measures against the planning authority is unjustified because the level of permissions could not have been higher.

57 Similarly if the applications are being received and approved, but houses are not being built, government intervention in plan making will not resolve this problem. In fact intervention in plan making would be to misunderstand where the blockage to housing delivery mainly lies. A quicker plan with easier routes to permissions will not necessarily lead to increased delivery of houses, as the drip feed of delivery in

areas of high numbers of permissions demonstrates even in areas with up to date plans.

Q6.4 Do you agree that the Secretary of State should take exceptional circumstances submitted by local planning authorities into account when considering intervention?

58 These safeguards (consideration of exceptional circumstances without a tight definition of that term) are wholly necessary in the light of the response to the previous question and the need to understand fully the circumstances conspiring towards the local position on plan status and delivery.

Q6.5 Is there any other information you think we should publish alongside what is stated above?

59 Bullet point 3 c) would be more meaningful if the LPA was able to explain that. (e.g. resource diverted to neighbourhood plan work; resource diverted to respond to national changes to planning policy; purdah periods at councils when plan stages couldn't be progressed through committee; resource needed to consistently update Local Development Schemes).

Q6.6 Do you agree that the proposed information should be published on a six monthly basis?

60 Depending on the rigour of the data required this timescale looks reasonable and proportionate.

Q7.1 Do you agree that the threshold for designations involving applications for non-major development should be set initially at between 60-70% of decisions made on time, and between 10-20% of decisions overturned at appeal? If so what specific thresholds would you suggest?

61 With the caveat that a split appeal decision is counted as 50% dismissed and 50% allowed rather than the current method of counting a split appeal as wholly upheld – yes. The overall 70% broadly accords with the previous 65% & 80% targets for Minors and Others.

Q7.2 Do you agree that the threshold for designations based on the quality of decisions on applications for major development should be reduced to 10% of decisions overturned at appeal?

62 No, in almost any walk of life getting something 90% correct is good enough and a LPA which wins 90% of its major appeals should not be seen as failing - the threshold is too low.

Q7.3 Do you agree with our proposed approach to designation and de-designation, and in particular

(a) that the general approach should be the same for applications involving major and non-major development?

63 Yes, the current 'quality' dimension to assessing an Authority's planning service is based solely on major appeal performance. Having separate major and non-major assessments would protect the 'quality' of the non-major work of a planning service.

(b) performance in handling applications for major and non-major development should be assessed separately?

64 Yes, dealing with majors compared to other applications can be very different.

(c) in considering exceptional circumstances, we should take into account the extent to which any appeals involve decisions which authorities considered to be in line with an up-to-date plan, prior to confirming any designations based on the quality of decisions?

65 Yes, LPA's should not be penalised for following the general presumption of deciding applications in accordance with the development plan and where the key issue is weight to be given to other material considerations.

Q7.4 Do you agree that the option to apply directly to the Secretary of State should not apply to applications for householder developments?

66 Yes, it would be difficult to conceive that householder developments should gain equal priority over larger projects with a wider public interest.

Q8.1 Who should be able to compete for the processing of planning applications and which applications could they compete for?

67 LPAs already have the ability to 'outsource' the processing of planning applications. This option should remain at the LPA's discretion unless the LPA is designated as underperforming. There are already good examples of National Parks delivering shared planning services (New Forest NPA) and commissioning other LPAs to carry out the development management role on their behalf (South Downs NPA).

68 In the case of the South Downs, this work is only undertaken by those authorities who are actually situated within the National Park or at least partly. One would question the practicality of 'providers' carrying out a similar role more remotely from the area in question and whether this would inevitably result in complaints levied at the respective 'providers' as not understanding the local context or nature of an area.

69 We do not favour the compulsory tendering or outsourcing of the development management process, especially so where the National Park is meeting the required performance standards. Planning is the sole statutory function of National Parks and the main vehicle for delivering the two statutory purposes and associated duty. We do not see any compelling case to forcibly privatise the National Parks' planning functions.

Q8.2 How should fee setting in competition test areas operate?

69 It is considered that there should be the same fees across providers to ensure that there is equality both in resourcing and quality of service.

Q8.3 What should applicants, approved providers and local planning authorities in test areas be able to?

70 We believe that National Parks should not be chosen to pilot this proposal given the national prominence and value attached to the planning role within National Parks.

Q8.4 – 8.6

71 As 70 above.

Q9.1 Do you agree with these proposals for the range of benefits to be listed in planning reports?

72 No. The National Parks already make reference in their reports to any material considerations within an application including those of a socio-economic nature. They should not have a 'requirement' for local finance considerations to be listed, if there are clearly none. It would seem that this is almost seeking to place a higher weighting on beneficial financial considerations, where this must be surely balanced against other considerations (and it must be acknowledged in a National Park setting that the two statutory purposes are paramount, with a socio-economic duty placed upon us in meeting those two purposes).

73 It is considered that there is a lack of robust evidence that relevant financial matters (both positive and negative) are not currently assessed or presented to decision-makers, particularly for larger more significant applications.

74 There is a concern that any exaggerated emphasis on the financial benefits accruing from a development has the potential to create a misleading impression that these are somehow material to, or of a greater weight than other matters, when considering the decision to grant planning permission in each individual case. This could bring the local planning system into disrepute. It should be for National Parks to consider these matters as appropriate.

Q9.2 Do you agree with these proposals for the information to be recorded, and are there any other matters that we should consider when preparing regulations to implement this measure?

77 See above – we do not believe this information should be recorded.

National Parks England
14 April 2016