Planning Committee

26 April 2024
Agenda item number 11

Consultation by Department for Levelling Up, Housing & Communities: An accelerated planning system

Report by Head of Planning

Summary

The Department of Levelling Up, Housing and Communities (DLUHC) is consulting on proposed changes to the process for determining planning applications. The report summarises the proposed changes and includes proposed responses to the questions asked in the consultation.

Recommendation

To note the report and endorse the nature of the proposed response.

Contents

1. Introduction

1.1. On 6 March 2024 the Department for Levelling Up, Housing & Communities (DLUHC) published a consultation document "An accelerated planning system".

1.2. The consultation outlines a number of proposals aimed at speeding up the planning system and supports the Government's objective to simplify and modernise the planning system. Members will recall previous measures set out in the Levelling Up and Regeneration Act 2023 (LURA) and earlier consultations around changes to permitted development rights.

1.3. The proposals in the consultation can be summarised as follows:

a) introduce a new Accelerated Planning Service for major commercial applications with a decision time in 10 weeks and fee refunds if this is not met;

b) change the use of extensions of time, including ending their use for householder applications and only allowing one extension of time for other developments, which links to a proposed new performance measure for local planning authority speed of decision-making against statutory time limits;

c) expand the current simplified written representations appeals process for householder and minor commercial appeals to more appeals; and

d) detail on the broadening of the ability to vary a planning permission through section 73B applications and on the treatment of overlapping planning permissions.

1.4 The consultation runs to 1 May 2024.

2. The Proposal and Comments

2.1. Further details of the proposals and a commentary on each of them are provided below.

An Accelerated Planning Service

2.2. All local planning authorities will be required to offer an Accelerated Planning Service (APS) for major commercial applications. Major commercial applications are defined as development which creates 1,000 sqm or more of new or additional employment floorspace and the statutory timescale for determination is currently 13 weeks. For applications dealt with under the APS the applicant would pay a higher planning fee and the LPA would be required to determine the applications within 10 weeks, with a guarantee that the fee would be refunded (either fully or in part) if the application is not determined within this timescale.

2.3. DLUHC is exploring two options for the detailed design of this service. Under the first option, the APS would be discretionary and applicants could choose to use it where their application meets the qualifying criteria, rather than use the standard service. A second option is the APS would be mandatory and would be the only available application route for all applications in a given development category. DLUHC consider that this second option would have the benefit of clarity and certainty for applicants and local planning authorities but remove the element of choice for the applicant.

2.4. DLUHC propose to exclude the following types of application from the accelerated process:

- Those that are subject to Environmental Impact Assessment (EIA);
- Those that are subject to Habitats Regulations Assessment (as they require an appropriate assessment to be undertaken and the consideration of mitigation measures);
- within the curtilage or area of listed buildings and other designated heritage assets, Scheduled Monuments and World Heritage Sites (as they require special considerations);
- for retrospective development (as the regularisation of unauthorised development should not be prioritised); and
- minerals and waste development (given the different arrangements for these types of applications).

2.5. DLUHC advise that applications dealt with under the APS process would be subject to exactly the same processes as all other applications, including consultation requirements, and that the objective would be to get them prioritised through the local planning authority's own internal processes faster. The purpose of the enhanced fee would be to enable the LPA to resource these faster processes.

Commentary

2.6. The idea of a paid-for 'Premium' service is not a new one, having been considered previously for various types of application, but has not been progressed. Planning Performance Agreements (PPA) – whereby an applicant and LPA agree a fixed programme and timetable for the determination of an application – is the only comparable mechanism, but these tend only to be used for larger and/or more complex schemes.

2.7. There are two main concerns with the creation of a 'Premium' service: firstly, there can be a perception that applications submitted under the APS will receive less scrutiny than standard applications due to the shorter consideration period and, secondly, the implications for the 'non-accelerated' applications. Were a two-tier system to result in one set of applicants receiving a better service whilst the remainder receive a worse service this does not represent an overall improvement, and, when combined with concerns over scrutiny in the accelerated process, risks undermining public trust in the

system. On this basis, there is an argument that if the planning system needs improving then it needs improving for all.

2.8. The objective of the APS is to speed up decision making on commercial applications in order to reduce impediments to economic growth, in accordance with one of the core goals of 'Construction 2025', the UK government's Industrial Strategy: government and industry in partnership (publishing.service.gov.uk), to reduce the time taken to deliver projects by 50%. This is noted, however whilst a faster process may be a valid objective, given the overall time needed to bring major schemes to fruition (i.e. completed on site), it is doubtful whether a reduction of three weeks in the planning system will make a significant difference to developers. Furthermore, if it is certainty of outcome that is sought then for major schemes a better route to this is early pre-application engagement with the LPA and the community so that any issues are identified and addressed prior to submission of an application. Not only will this achieve greater certainty and quicker decisions for the developer, but it involves the community and stakeholders from the beginning of the process.

2.9. It is also worth noting that an APS would place greater pressure on consultees, as although the consultation period would be the same, the ability of the LPA to allow additional time where needed would be reduced.

2.10. When looking at reasons for delays in determining planning applications, an LPA's resources is a major contributor. In its 'Stronger performance of local planning authorities supported through an increase in planning fees' consultation February 2023 (www.gov.uk) the Government accepted that "local planning authorities need more resource in order to perform their critical social, economic and environmental functions on planning effectively"(paragraph 8) and this was the justification for the subsequent increase in application fees, which came into effect in December 2023. The consultation also noted that "Money is not enough; we know that many local planning authorities are struggling to recruit and retain enough staff to deliver the planning service. We want to provide local planning authorities with additional resources to deliver an effective planning service, facilitated by skilled and experienced planners and other technical specialists" (paragraph 9). Further to this, £42.5M funding has recently been made available through a Planning Skills Delivery Fund to enable LPAs to take on new staff to deal with backlogs, a £13M national 'Super Squad' of mobile planners has been created to focus on major housing delivery projects and the routes to a career in planning have been simplified. All of these measures are welcome, but they will take time to become effective and the introduction of an additional (or alternative) process for major commercial applications will divert resources from the wider improvements that need to be made.

2.11. Interestingly, the question of a 'Premium' or fast-track service was included in the February 2023 consultation ('Stronger performance of local planning authorities supported through an increase in planning fees'). The Government response to that consultation was published in July 2023 and this stated "A significant number of

respondents from across the different groups said that fast-track services should not be allowed as they are unaffordable for most members of the public and they risk creating a two-tier system" (paragraph 22) and "Respondents from across all groups highlighted the lack of resources in many local planning authorities which prevented the provision of fast-track services and they suggested better resourcing of local planning authorities to enable this" (paragraph 23).

Planning Performance and extensions of time agreements

2.12. An extension of time agreement (EOT) is a mechanism by which an applicant can agree an extended time period to determine a planning application, beyond the statutory time limit, with the LPA. This allows more time for the consideration of unforeseen issues raised during the application process and to enable amendments to schemes which would make them acceptable. They are also often used when consultation responses from statutory bodies (or others) are delayed and the application will consequently go over time. Currently, if an application is determined within an agreed extended time period, it is deemed to be determined 'in time' and does not count against the overall performance of an LPA. The most recent data shows that EOTs were used in 41.6% of applications in England for the year ending 31 December 2023 (The councils that used the most extension of time agreements in 2023 | Planning Resource).

2.13. DLUHC are concerned that EOTs are being used to mask poor performance and that the EOT mechanism is a disincentive to prompt decision making. It is therefore proposing the introduction of a new performance measure which would differentiate between those applications that are determined within the statutory time limit only and those where an EOT was used. The consultation proposes the following limits for an acceptable level of EOT use:

Application type	Statutory timescale	EOT performance target
Major development – EIA	16 weeks	Less than 50% EOTs
Major development – non-EIA	13 weeks	Less than 50% EOTs
Non-major development	8 weeks	Less than 40% EOTs

2.14. DLUHC note that the proposed thresholds do not preclude the use of extension of time agreements and planning performance agreements, but the expectation is that such agreements are used only in exceptional circumstances. It is noted that the proposed threshold is lower for major applications because, in more instances, extension of time agreements may still be required due to the more complex nature of the applications. For this same reason, it is proposed that EOT will no longer apply to householder

applications, as these are identified as being smaller and less complex and therefore more capable of being dealt with within the statutory timescale.

2.15. It is the case that sometimes multiple EOTs are used on an application (for example, where negotiations are protracted) and DLUHC are seeking comments on proposals to prohibit this.

2.16. The consultation proposes that the new performance measure be introduced on 1 October 2024, with a 12 month assessment period running to October 2025 and the first designation decisions against the new performance measure to take place in the first quarter of 2026.

Commentary

2.17. DLUHC has long been concerned about the use of EOTs to mask poor performance. It is certainly true that an EOT will buy some time for an LPA, thus enabling it to delay a decision without adversely affecting the performance statistics, however this does not necessarily mean that EOTs are bad. Used properly, they are very helpful and give both LPA and applicant the time to negotiate amendments, give flexibility for consultations (e.g. for Parish Councils, whose meetings may not coincide with the three week statutory consultation period) and facilitate the balance between speed of decision and quality of decision, as well as the quality of the final development. Used badly, however, they enable either party, applicant or LPA, to prevaricate – on the applicant's side this might be through delays in the submission of documents, providing responses to questions or agreeing to a site meeting, whilst for an LPA an EOT might be used as a resource management tool when workloads are high.

2.18. Restrictions in the use of EOTs will require a culture change from applicants as well as LPAs. The LPA will need to ensure they have all the information required at validation stage, rather than validating an application and allowing the outstanding or further information to be submitted later in the process, which will make this part of the process more onerous. LPAs will also need to be much stricter on timescales given for submission of amended plans and other changes, so applicants/agents will need to be more responsive. The consultation process is a frequent cause of delay, particularly with a number of the statutory consultees, however this is not within the control of the LPA.

2.19. The consultation does not propose to prohibit EOTs altogether and this is welcomed because they are useful. As above, early engagement with the pre-application service is the best way to avoid the need for EOTs, and the Broads Authority will continue to promote this. It will need to be recognised by applicants and agents, however, that where negotiations within the application process are either slow or unproductive, the changes to the EOT will mean that the LPA will be more likely to issue a refusal.

2.20. The February 2023 consultation ('Stronger performance of local planning authorities supported through an increase in planning fees') also mooted the question of restricting the use of EOTs and the July 2023 response noted "We are clear that an

increase in planning fee income and resourcing to local planning authorities must lead to improved performance. It is our intention to introduce a new planning performance framework once we have increased planning fees and invested in supporting the capacity and capability of planning departments. However, we recognise that local planning authorities need a period of adjustment to any new planning performance framework, and we would reiterate our commitment to consult further on detailed proposals, including thresholds, assessment periods and transitional arrangements from the current performance regime" (paragraph 71). Given the fee increase took effect in December 2023 and the capacity and capability funding has only recently been available, it may be unrealistic to expect significant change to be achieved by October 2024.

A simplified process for planning written representation appeals

2.21. A planning appeal can be dealt in one of three ways – Written Representations, a Hearing or an Inquiry – of which Written Representations is the quickest and simplest. The majority of appeals are dealt with in this way. Within this process, there are further simplifications which apply to appeals against householder decisions (the HAS procedure) and minor commercial decisions (the CAS procedure). For the HAS and CAS processes, the Planning Inspectorate will only consider the following documents:

- For the appellant - the appeal documents submitted with the appeal; no further submissions are allowed;
- For the LPA – the consultation responses received, the officer's report (either the delegated report or the report to Planning Committee) and the decision notice (usually, the refusal of planning permission), plus various factual documents, for example a plan confirming the site is in a Conservation Area or an SSSI;
- For consultees and third parties – the LPA will send any consultation representations received, but no further submissions are allowed.

2.21 It is proposed to extend the simplified process to include the following application types where permission has been refused:

- Full and other applications, including reserved matters;
- listed building consent applications;
- applications for works to protected trees;
- lawful development certificates;
- applications to vary or remove a planning condition;
- applications for the approval of details reserved by condition;
- applications to modify or discharge a planning legal agreement; and
- applications under the Hedgerow Regulations

2.22. Appeals against planning conditions would also come under this expedited process.

2.23. As with the current service for HAS and CAS appeals, it is proposed that the simplified route would only apply where an application has been determined. Appeals against non-determination or appeals against an enforcement notice would follow the current process to allow further submissions to be made.

Commentary

2.24. It is not clear from the consultation whether the proposal to use the simplified process for the majority of appeals is to reduce the pressure on LPAs or on the Planning Inspectorate. Members will of course be aware that the planning appeal process is very slow and the overall performance of the Planning Inspectorate does not meet the national targets set by Ministers. The most recent performance statistics are set out below and these show the performance targets for the various types of appeal and the actual performance:

Procedure type	Last 12 months	February 2024	Target
Written representations	30 weeks	28 weeks	16 – 20 weeks
Hearings	36 weeks	38 weeks	24 – 26 weeks
Inquiries	46 weeks	37 weeks	24 – 26 weeks
All cases	31 weeks	28 weeks	-
Enforcement	54 weeks	51 weeks	-

Source: Planning Inspectorate statistical release 28 March 2024 - GOV.UK (www.gov.uk)

2.25. From the Broads Authority perspective, as an LPA, there are no objections to applying the simplified process as the decision report, whether prepared for Planning Committee or as a delegated report, will already have set out an assessment of the application and the reason for the decision, so there is no additional work required.

2.26. In terms of community and stakeholder participation, however, this change would limit their involvement to the application stage only. Given the increasing emphasis on involving communities in planning this would appear to be a regressive step.

Varying and overlapping planning permissions

2.27. Currently there are two legislative routes under the Town and Country Planning Act 1990 which allow applicants to propose variations to planning permissions:

- section 73 which enables an applicant to vary a planning condition imposed on a planning permission; and
- section 96A which enables an applicant to make non-material amendments to a planning permission.

2.28. These processes can be straightforward, where a developer wants, for example, to make modest changes to the size of a building but can also get very complicated. There

has been recent case law about how an LPA can treat a new application on land which forms part of a larger site on which an earlier permission is in the process of implementation – these so called 'drop-in' permissions have often been used as a flexible mechanism to deal with changing circumstances, for instance, where a new developer wants to carry out alternative development.

2.29. To address this, DLUHC propose the introduction into the legislation of a new section 73B, which would enable an applicant to apply for a new planning permission for development which is not substantially different to that granted by an existing planning permission. The new section would be subject to certain legal features and restrictions, which are set out in the consultation document. Changes to the planning application fees for a section 73 application are also proposed, to ensure that they are proportionate to the complexity of the application.

2.30. The final issue covered in the consultation relates to the matter of overlapping planning permissions. The Courts have held that full planning permissions are not usually severable - that is to say, parts of a full planning permission cannot be selectively implemented. If a new permission which overlaps with an existing permission commences, and as a result of this (i.e. the carrying out of the new permission) it becomes physically impossible to carry out the rest of the existing permission, then the existing permission is in effect superseded. In legal terms, it would be unlawful to continue further development under the existing permission and if someone wanted to change part of the development, they should seek to amend the entire existing permission. This position has recently been upheld in the Supreme Court in the Hillside judgement.

2.31. The consultation raises the question of how to deal with this in procedural terms and whether the proposed new section 73B will be adequate. It is worth noting that this is the sort of situation that might arise on a large, multi-phased housing with multiple developers and is not something we are likely to deal with regularly in the Broads area!

Commentary

2.32. There are no objections to the introduction of section 73B, although it will involve some minor changes to procedures.

3. Conclusion and Recommendation

3.1. The DLUHC consultation sets out a number of proposed changes to the planning system, which are part of the drive to modernise the planning system.

3.2. The proposed changes, if enacted, would have an impact on the planning service and would require a number of changes to processes. The planning team is mindful of the direction of travel, particularly with regard to the use of EOTs, and will be making changes to the way it works so that it is prepared for the introduction of the new performance measures in the autumn.

3.3. It is recommended that the responses in Appendix 1 are submitted to DLUHC as the response of the Broads Authority.

Author: Cally Smith

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Appendix 1 – Proposed response to Department for Levelling Up, Housing and Communities consultation on an accelerated planning system

Appendix 1 – Department for Levelling Up, Housing and Communities consultation on an accelerated planning system

Document: An accelerated planning system - An accelerated planning system - GOV.UK (www.gov.uk)

Due date: 01 May 2024

Status: Draft proposals

Proposed level: Planning Committee endorsed

Proposed response

Question 1. Do you agree with the proposal for an Accelerated Planning Service?
No

Question 2. Do you agree with the initial scope of applications proposed for the Accelerated Planning Service (Non-EIA major commercial development)?
No

Question 3. Do you consider there is scope for EIA development to also benefit from an Accelerated Planning Service?
No

Question 4. Do you agree with the proposed exclusions from the Accelerated Planning Service – applications subject to Habitat Regulations Assessment, within the curtilage or area of listed buildings and other designated heritage assets, Scheduled Monuments and World Heritage Sites, and applications for retrospective development or minerals and waste development?
Yes

Question 5. Do you agree that the Accelerated Planning Service should:
a) have an accelerated 10-week statutory time limit for the determination of eligible applications
No
b) encourage pre-application engagement
Yes
c) encourage notification of statutory consultees before the application is made
Yes

Question 6. Do you consider that the fee for Accelerated Planning Service applications should be a percentage uplift on the existing planning application fee?
Yes

Question 7. Do you consider that the refund of the planning fee should be:
~~a. the whole fee at 10 weeks if the 10-week timeline is not met~~
b. the premium part of the fee at 10 weeks if the 10-week timeline is not met, and the remainder of the fee at 13 weeks

~~c. 50% of the whole fee at 10 weeks if the 10-week timeline is not met, and the remainder of the fee at 13 weeks~~
~~d. none of the above (please specify an alternative option)~~
~~e. don't know~~
~~Please give your reasons~~

Question 8. Do you have views about how statutory consultees can best support the Accelerated Planning Service?
The developer should be required to engage early with LPA. Resourcing of statutory consultees needs to be considered

Question 9. Do you consider that the Accelerated Planning Service could be extended to:
a. major infrastructure development
No
b. major residential development
No
c. any other development
No
If yes to any of the above, what do you consider would be an appropriate accelerated time limit?

Question 10. Do you prefer:
~~a. the discretionary option (which provides a choice for applicants between an Accelerated Planning Service or a standard planning application route)~~
~~b. the mandatory option (which provides a single Accelerated Planning Service for all applications within a given definition)~~
c. neither
~~d. don't know~~

Question 11. In addition to a planning statement, is there any other additional statutory information you think should be provided by an applicant in order to opt-in to a discretionary Accelerated Planning Service?

Question 12. Do you agree with the introduction of a new performance measure for speed of decision-making for major and non-major applications based on the proportion of decisions made within the statutory time limit only?
~~Yes / No / Don't know~~ No comment

Question 13. Do you agree with the proposed performance thresholds for assessing the proportion of decisions made within the statutory time limit (50% or more for major applications and 60% or more for non-major applications)?
Yes ~~/ No / Don't know If not, please specify what you consider the performance thresholds should be~~.

Question 14. Do you consider that the designation decisions in relation to performance for speed of decision-making should be made based on:

~~a) the new criteria only – i.e. the proportion of decisions made within the statutory time limit; or~~
b) both the current criteria (proportion of applications determined within the statutory time limit or an agreed extended time period) and the new criteria (proportion of decisions made within the statutory time limit) with a local planning authority at risk of designation if they do not meet the threshold for either or both criteria
~~c) neither of the above~~
~~d) don't know~~
~~Please give your reasons~~

Question 15. Do you agree that the performance of local planning authorities for speed of decision-making should be measured across a 12-month period?
~~Yes /~~ No ~~/ Don't know~~ Everything else is done on 24 months – why not this?

Question 16. Do you agree with the proposed transitional arrangements for the new measure for assessing speed of decision-making performance?
~~Yes /~~ No ~~/ Don't know~~

Question 17. Do you agree that the measure and thresholds for assessing quality of decision-making performance should stay the same?
Yes ~~/ No / Don't know~~ In order to allow recent changes and investments to take effect

Question 18. Do you agree with the proposal to remove the ability to use extension of time agreements for householder applications?
~~Yes /~~ No ~~/ Don't know~~

Question 19. What is your view on the use of repeat extension of time agreements for the same application? Is this something that should be prohibited?
If EOT use is to be restricted, this would make sense

Question 20. Do you agree with the proposals for the simplified written representation appeal route?
Yes ~~/ No / Don't know~~ Subject to better arrangements for third part involvement

Question 21. Do you agree with the types of appeals that are proposed for inclusion through the simplified written representation appeal route? If not, which types of appeals should be excluded form the simplified written representation appeal route?
Yes ~~/ No / Don't know~~

Question 22. Are there any other types of appeals which should be included in a simplified written representation appeal route?
~~Yes /~~ No ~~/ Don't know. Please specify~~.

Question 23. Would you raise any concern about removing the ability for additional representations, including those of third parties, to be made during the appeal stage on cases that would follow the simplified written representations procedure?
Yes ~~/ No / Don't know. Please give your reasons.~~

Question 24. Do you agree that there should be an option for written representation appeals to be determined under the current (non-simplified) process in cases where the Planning Inspectorate considers that the simplified process is not appropriate?
Yes ~~/ No / Don't know~~

Question 25. Do you agree that the existing time limits for lodging appeals should remain as they currently are, should the proposed simplified procedure for determining written representation planning appeals be introduced?
Yes ~~/ No / Don't know~~

Question 26. Do you agree that guidance should encourage clearer descriptors of development for planning permissions and section 73B to become the route to make general variations to planning permissions (rather than section 73)?
~~Yes / No /~~ Don't know - Not sufficiently familiar with this to comment

Question 27. Do you have any further comments on the scope of the guidance?

Question 28. Do you agree with the proposed approach for the procedural arrangements for a section 73B application?
Yes / No / Don't know. If not, please explain why you disagree

Question 29. Do you agree that the application fee for a section 73B application should be the same as the fee for a section 73 application?
Yes ~~/ No / Don't know. If not, please explain why you disagree and set out an alternative approach~~

Question 30. Do you agree with the proposal for a 3 band application fee structure for section 73 and 73B applications?
Yes ~~/ No / Don't know~~

Question 31. What should be the fee for section 73 and 73B applications for major development (providing evidence where possible)?

Question 32. Do you agree with this approach for section 73B permissions in relation to Community Infrastructure Levy?
~~Yes / No /~~ Don't know

Question 33. Can you provide evidence about the use of the 'drop in' permissions and the extent the Hillside judgment has affected development?

Question 34. To what extent could the use of section 73B provide an alternative to the use of drop in permissions?

Question 35. If section 73B cannot address all circumstances, do you have views about the use of a general development order to deal with overlapping permissions related to large scale development granted through outline planning permission?