**ECONOMIC DEVELOPMENT COMMITTEE** **AGENDA ITEM NO. 12**
**30 MARCH 2016**

# RESPONSE TO THE GOVERNMENT'S TECHNICAL CONSULTATION ON THE IMPLEMENTATION OF THE HOUSING AND PLANNING BILL

## 1.0 Purpose of Report

1.1 To seek Members' approval for this Council's response to the Government's technical consultation on the proposed approach to implementing the planning provisions in the Housing and Planning Bill.

## 2.0 Background Information

2.1 Members will recall considering this Council's response to the proposed policy changes to facilitate the implementation of the Housing and Planning Bill at 6 January committee. The Government have now put forward a range of proposals for technical changes to facilitate the implementation of the Bill through a public consultation running between 18 February and 15 April 2016. The document is available at https://www.gov.uk/government/consultations/implementation-of-planning-changes-technical-consultation and the relevant page numbers are referenced at the start of each chapter in Section 3 of the report.

## 3.0 Proposals

3.1 The proposed changes are contained with thirteen chapters which are considered in order under their respective headings below; the District Council proposed responses are set out in italics:

3.2 Changes to Planning Application Fees (pages 7 – 9)

The consultation proposes increasing fees nationally by a proportionate amount (linked to both inflation and performance)

The consultation states that DCLG are clear that any changes in fees should go hand-in-hand with the provision of an effective service. Consequently, any increase in national fees would apply only to those authorities that are performing well.

Approaches are suggested, which include:

- not apply an increase where an authority is designated as under-performing in its handling of applications for major development (or, in future, applications for non-major development); or
- limiting increases to those authorities that are in the top 75% of performance for both the speed and quality of their decisions4.

Whatever approach is taken, DCLG wish to consider whether this change should be implemented as quickly as possible – so that under-performing authorities do not receive the next available increase – or whether authorities should be given a period of grace before the policy applies, so that there is further time to improve before any fee increases are withheld.

Question 1.1: 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?

*It is proposed that we welcome the recognition that planning fees need to be reviewed regularly. We would suggest that not only does an inflationary rise need to be considered but also the ability, as part of a review, to look at whether specific types of planning applications may have resource implications for a Local Planning Authority. For example wind turbine applications generate a small fee (approx. £1500 for a single turbine) which does not match the resource required to determine it. Equally if an applicant presents a viability appraisal or landscape character assessment for consideration external advice is often required at a cost to the Authority.*

Question 1.2: 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?

*There is no issue with the principle that where delegation occurs for speed of performance an inflationary rise should be withheld. With respect to the speed criteria for major planning applications there is no reason why this should be delayed beyond a designation period given that LPA's have been aware of this target for period in which it would apply. There is less of a case for doing this with non-major criteria given that LPA's have not known of this for the full 2 year period for which performance would be measured. Whilst many LPA's may have continued to monitor the old KPI's for 'minor' and 'other' planning applications perhaps one way to implement quickly would be for the performance threshold to be set lower in the first instance, as was done when majors were initially introduced.*

*It is suggested that it would be difficult to withhold increases with respect to quality of decision making on the basis that a final decision may often by finely balanced or indeed challenged by the LPA. This element would require greater scrutiny and the opportunity for an LPA to set out any relevant circumstances prior to any designation or restriction in planning fee.*

The consultation sets out a further alternative approach, allowing some flexibility in the fee charged. An example cited is providing applicants with the choice of a fast-track service (or services) in return for a proportionate fee. Such proposals would need to maintain the minimum standards for notification and representations set out in legislation5, while offering decisions in less time than the current statutory periods. We are interested in your views on whether any fast track standards should be set out in regulations (and applied in specific areas that pursue this approach), or whether local performance agreements could be used to provide sufficient assurance of the enhanced service to be offered.

Question 1.3: 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?

*We understand the principle of what is being sought. The LPA would suggest that an obvious way in which a fee could be reduced (by a percentage or stated amount, eg. a pre-app fee paid + a % of that fee) is if an applicant has entered into pre-application advice with*

*the Local Planning Authority. This would provide an incentive for LPA's to provide a robust and appropriate service and for developers to have greater certainty on the outcome. It is difficult to see how simply paying less for a lighter service would suffice. The LPA would still need to do all necessary processing (potentially) and making of robust planning judgement. With a pre-application route it would be accepted that some efficiencies could be made (the LPA should know the site and the issues). A budget option could simply undermine public trust given that fees are meant to be reflective in a broad sense of the resource required to determine the application.*

The consultation refers to the DCLG wish to test the potential for, and benefits of, competition in application processing. Clauses in the Housing and Planning Bill will, if enacted, allow competition to be trialled in specific areas, with applicants having the choice of applying to the local planning authority or one of a range of approved providers (which could be other planning authorities). The final sign-off for decisions would remain with the local planning authority. A competitive market for processing applications would require the ability for providers – including the local planning authority – to set their own fees and service standards. Chapter 8 sets out our proposals for how competition could work.

Question 1.4: Do you have a view on how any fast-track services could best operate, or on other options for radical service improvement?

*As detailed above there is no issue in principle to a fast-track service, especially for applicants who have engaged in pre-application discussions. It is accepted that some development types also offer more ability to be fast-tracked. For example both a house extension, a change of use of a shop, and a scheme for 9 houses all fall within a non-major category. There is an ability to introduce some flexibility for householder development for example (which is in volume of applications terms is significant in number) by having a short period for decision.*

3.3 Permission in principle (pages 10 – 20)

The consultation identifies two key issues with the present system:

- It allows in principle decisions to be revisited at multiple points in the process. Local planning authorities, parishes and designated neighbourhood planning forums frequently identify land and assess its suitability for development when they propose the allocation of sites in plans. Even where land is allocated in a local plan, decision makers will reassess the basic principles of site suitability when a planning application is submitted.

- It requires applicants to invest heavily in the finer detail of a scheme without sufficient certainty that a site is suitable in principle. Alongside uncertainty of outcome, the system requires applicants to invest upfront in producing information related to a wide variety of detailed technical matters, such as detailed design. The cost of producing this information can be considerable and the time spent considering it can be significant for local authorities and others, including consultees and communities, who are asked to comment on proposals. Even where only outline planning permission is sought with all matters reserved, an applicant often needs to invest heavily in illustrative detail (e.g. showing detailed layouts and other design features).

The Bill sets the overarching framework for permission in principle to be granted in two ways:

- on allocation in a locally supported qualifying document that identifies sites as having permission in principle; and,
- on application to the local planning authority.

The three key requirements that need to be met in order for permission in principle to be granted by this route are:

a) the site must 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;
b) the document must indicate that a particular site is allocated with permission in principle (allocations in existing plans cannot grant permission in principle i.e. it will not apply retrospectively);
c) the site allocation must contain 'prescribed particulars'. These are the core 'in principle' matters that will form the basis of the permission in principle.

Permission in principle can only be granted on allocation where it is identified in a qualifying document. The choice about whether to grant permission in principle should be locally driven and reinforces our commitment to a plan-led system. We therefore propose that qualifying documents should be:

a) future local plans;
b) future neighbourhood plans;
c) brownfield registers.

Question 2.1: Do you agree that the following (the above in this case) should be qualifying documents capable of granting permission in principle?

*We would agree that if permission in principle is to be implemented that the above pre-qualifying documents are sensible. However we are concerned that having another class of permission will further complicate the planning system. The LPA is concerned that the level of information required to implement permission in principal may further increase the burden of plan making and result in delays in plan making. Care would need to be taken that there is no contradiction or ambiguity in documents, including where there may be dispute on the appropriate end land use of a site. It is considered that a) and b) should carry greatest weight in order to provide some certainty as to the use which the community and LPA consider is appropriate.*

Question 2.2: Do you agree that permission in principle on application should be available to minor development?

*There is no issue in principle with this approach. The issue is in the detail of what is being approved, as is detailed below.*

The consultation sets out that a permission in principle will cover 3 areas:

| | |
|---|---|
| Location of the site. | a red line plan drawn to a scale that clearly identifies the location and parameters |
| Uses | permission in principle should be given for proposals that are housing led. Retail, community, and commercial uses that are compatible with a residential use can also be granted permission in principle where they form part of a housing led development. |

| | |
|---|---|
| Amount | To achieve a good balance between ensuring upfront certainty and flexibility, it is proposed that permission in principle will specify a minimum and maximum level of residential development that is acceptable. This range will be indicated either by the number of units or by the dwellings per hectare. Using a range will allow some flexibility to address issues emerging at the technical details consent stage. The amount of non-residential development will not have to be specified |

Question 2.3: Do you agree that location, uses and amount of residential development should constitute 'in principle matters' that must be included in permission in principle? Do you think any other matter should be included?

*It is agreed that location and land use should be included. The issue of amount is much more difficult. Even at plan preparation stage one does not work up a detailed site layout (indeed it is only developers who do this with architects, masterplanners, landscapers, and commercial advice on which houses/product to use), rather one may look at simply the size of a site and deduct from it assumed non-developed areas (eg. an assumed % of open space, an assumed buffer if an expansion site). Whilst a conservative minimum quantum of development could be defined (and offer some comfort) it is difficult to see how simply a red line planning submission could allow a maximum quantum to be defined. It is equally difficult to see how any refusal to allow a maximum quantum could be debated at appeal without a site layout to demonstrate the point (and in doing so defeat the object).*

*Defining a minimum quantum would also allow applicants to consider whether viability will be an issue and engage early with the LPA in terms of S106 and CIL.*

Question 2.4: 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?

*If a Local and/or Neighbourhood plan identifies sites it would state the necessary requirements to develop the site, such as the need for open space or buffers. That would then allow an application in principle to make assumptions for land take and take a conservative view on amount in advance of any detailed layout.*

Question 2.5: Do you have views on our suggested approach to a) Environmental Impact Assessment, b) Habitats Directive or c) other sensitive sites?

*No.*

The consultation states that where permission in principle is proposed on allocation in local and neighbourhood plans, the government considers that existing consultation arrangements provide an appropriate framework for involving communities and appropriate specialist bodies such as the Environment Agency and Natural England.

For permission in principle applications, it is proposed to set consultation arrangements for involvement of communities and statutory consultees that are in line with requirements for planning applications.

Question 2.6: Do you agree with our proposals for community and other involvement?

*We welcome the involvement of communities in line with existing arrangements.*

For minor development the government thinks that a decision about whether the development is acceptable in principle should be possible with minimal information. It is proposed that that an application will include:

| Permission in principle stage | Technical detail stage |
|---|---|
| • a nationally prescribed application form;<br>• a plan which identifies the land to which the application relates (drawn to an identified scale and showing the direction of north); and<br>• a fee which we would expect to be set at a level that is consistent with similar types of applications in the planning system. | • a nationally prescribed application form (including an ownership certificate);<br>• plans and drawings necessary to describe the technical details of the development;<br>• a fee which we would expect to be set at a level that is consistent with similar types of applications in the planning system.<br><br>And (if relevant)<br><br>• a design statement, which should contain information relating to design matters including layout, access and architectural detail; and<br>• an impact statement, which should include:<br>i. required further assessments e.g. contamination study and flood risk assessment<br>ii. mitigation e.g. remediation and drainage schemes. |

Question 2.7: Do you agree with our proposals for information requirements?

*There is no objection in principle to the list set out for technical detail. Relevant LPA's could set a local list of requirements that could assist albeit some sites may generate individual reports (eg. archaeology). Pre-application advice is recommended for any impact statement items to be defined.*

Question 2.8: 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?

*The same level of resource will be required as that currently required in terms of assessing quantum and technical detail. It is accepted that land use permission in principle should allow for a 'lighter touch approach' and thus a fee could be reduced albeit an aggregated fee would be similar to a full application route.*

For expiry of permission in principle granted on application, the government are considering setting a nationally prescribed period. Two alternative options for this are:

Option A – to set the expiry of a permission in principle granted on application at three years. This would achieve consistency with outline planning permissions.

Option B – to set the expiry at one year. This is to encourage applicants to bring forward an application for technical details consent quickly after receiving permission in principle.

Question 2.9: 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?

*Given that permissions in principle are focussed on residential development and to allow an applicant to then mobilise to a technical approval a short period of expiry to a detailed planning application is logical. This will avoid permissions in principle being banked. Care need to be taken as to whether a permission in principle can also contribute to an LPA's 5 year land supply, as one will have allocated sites, sites with a permission in principle, outline approvals, and full approvals all in existence and capable of coming forward within 5 years.*

The Government is suggesting the following timescales for determination:

| Application: | Determination period: |
|---|---|
| Permission in principle minor application | 5 weeks |
| Technical details consent for minor sites | 5 weeks |
| Technical details consent for major sites | 10 weeks |

Question 2.10: 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?

*There is no objection to target dates for determination providing, as is the case at present, the sensible ability exists for the applicant and LPA to agree an extension of time. This is especially the case for major development proposals which may need to go to a planning committee for determination. A 10 week determination date may not allow all of the issues to be resolved in time for a Planning Committee cycle.*

3.4 Brownfield register (pages 22 – 30)

Government policy and guidance has long promoted the re-use of brownfield land in favour of green field sites and has set various targets for achieving this over time. The Government now wish to ensure that 90% of suitable brownfield sites have planning permission for housing by 2020, wherever possible through permission in principle, as described above. The Government eventually intend to make this requirement mandatory but are offering financial incentives for authorities that precede this requirement and supporting those that use local development orders (LDO's) to achieve it.

It is anticipated that the Strategic Housing Land Availability Assessment (SHLAA) will form the basis of the register and this will be supplemented by other relevant sources such public sector land and calls for sites.

In identifying land suitable to go on the register the government propose criteria of availability, ability to support five or more dwellings and lack of constraints that cannot be mitigated. The Government are not proposing that any locational criteria are included within the test for inclusion on the register and believe that allocated sites should be included unless compelling evidence of the suitability of the site for another use is available.

The consultation goes on to set out proposals for dealing with Environmental Impact Assessment and Habitats Directives, Strategic Environmental Assessment, publicity and consultation requirements, content of brownfield registers, published data requirements, updating registers and assessing progress. Within these sections, of particular interest are the intended requirements to maintain the register in a nationally consistent form and for it to be updated annually. It is also proposed to monitor progress against the 90% target and introduce measures to incentivise this such as not being able to claim a five year land supply if the target is not hit by 2020.

The requirement to produce a brownfield register is not significantly different from the work already done on producing and maintaining the SHLAA however the maintenance requirements and potential sanctions are significantly more onerous. One benefit of a register may be to reveal previously unidentified sites that could contribute to maintaining a five year supply.

Question 3.2: Do you agree with our proposed criteria for assessing suitable sites? Are there other factors which you think should be considered?

*It is proposed to suggest that sites allocated in development plans for other uses should not be included within Brownfield registers if the plan has been produced within the past five years, this will provide for the proper protection of sites which have been identified for other purposes. It is also proposed that there should be a locational test for selecting suitable sites for inclusion which would rule out sites which are not in sustainable locations and which could not be sustainably redeveloped for housing, for example if the infrastructure costs where too great.*

3.5 Small sites register (pages 31 -32)

In addition to a brownfield register the government consider that a similar register of small sites for 1-4 dwellings would make it easier for developers and individuals interested in self build and custom housebuilding to identify suitable sites for development and also encourage more landowners to come forward and offer their land for development.

The key difference between this and the brownfield register is that there is proposed to be no assessment of suitability for the small sites register, just an indication of availability. The other specific questions posed are the appropriateness of the threshold of 1-4 dwellings and the details that should be placed on the register.

Question 4.2: Do you agree that sites should just be entered on the small sites register when a local authority is aware of them without any need for a suitability assessment?
Question 4.3: Are there any categories of land which we should automatically exclude from the register? If so what are they?

*It is proposed that the District Council set out concern that sites will be entered on a register even if they are not suitable for development. It will benefit no one if a series of site advertised as available by the LPA subsequently turn out to be unsuitable because they are in Flood Zone 3 or are in Green Belt. Therefore a level of suitability assessment should be undertaken to establish if there are any technical (flooding, heritage, access etc.) or overriding policy issues (Green Belt, open countryside, protected open space, land safeguarded for transport schemes etc.) which would make the site unsuitable.*

3.6 Neighbourhood Planning (page 33 – 39)

The proposals relate mostly to setting specific deadlines for the consideration of various aspects of the Neighbourhood Plan process. These deadlines will have a number of implications for the District Council as many of the decisions are taken at Committee Meetings and Full Council.

Questions 5.1 to 5.8 apply

*It is proposed that the District Council object to arbitrary time limits being placed on decision making by the District Council. We are particularly concerned regarding the requirements to hold a referendum within 10 weeks of a decision to hold one. This would be inappropriate if for instance the because of requirements the authority is forced to hold this during August. It also takes no account of the workload of Election staff, who may be forced to hold a referendum close to another election where combining with other elections is not appropriate (e.g. European Referendum).*

The other element of the Neighbourhood Plan proposals relate to a new ability for Neighbourhood Forums to appeal to the Secretary of State if the Local Planning Authority fails to follow the advice of Examiner or proposes to amend the plan in a way that was not recommended by the Examiner.

Question 5.9: 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?

*It is proposed that the District Council support this approach as it provides a safeguard for Neighbourhood Forums to ensure that the plan is not amended by the Local Planning Authority against the wishes of the Neighbourhood Forum.*

3.7 Local Plans (pages 40 – 44)

The Government requires LPAs to have up-to-date Development Plans in place. Since the 2004 Planning & Compulsory Purchase Act 68% of authorities have adopted Local Plans (this statistic refers to Core Strategy type documents) including of course this Council. The Government wants all LPAs to have a plan in place by early 2017. The Government also requires that plans be reviewed or partially reviewed every five years, something this Council is currently undertaking with its Plan Review programme. The Government is proposing that where LPAs are not meeting the requirement to have an up-to-date development plan then they will intervene in the process. The Housing & Planning Bill will allow the Secretary of State to intervene without having to themselves take over responsibility for plan production – something which is currently the case.

The Consultation paper sets out circumstances for intervention where:

- the least progress in plan-making has been made;
- policies in plans have not been kept up-to-date;
- there is higher housing pressure;
- intervention will have the greatest impact in accelerating local plan production.

It goes on to state that it proposes to further take into account wider planning context and the need to allow neighbourhood planning (which is a harder proposition without an up-to-date plan) in its decision making regarding intervention and that it will consider exceptional circumstances in mitigation.

This Council has a good record in plan making, the first in Nottinghamshire to adopt a Core Strategy and one of the first to fully replace our Local Plan. However whilst this record is a testament to the commitment of officers and members to delivering growth, it is also a product of local circumstances and something that other authorities have not been so fortunate with. Many LPAs where particularly effected by the end of Regional Planning in that there development targets increased massively, many planning authorities in and around Birmingham for instance had to suddenly take into account a need to accommodate the city's unmet housing need – in places as far away as Gloucestershire.

Question 6.1 – 6.4 apply

*It is proposed that the District Council do not object in principal to intervention however it is concerned that any intervention is proportionate and that Council's will be afforded the ability to demonstrate the reasons why they are not meeting their plan timetables including exceptional circumstances.*

Expanding the approach to planning performance (pages 45 – 48)

For applications for major development, we have raised the designation threshold for the speed of decisions to 50 per cent made on time, and will continue to keep this under review. The threshold for the quality of decisions on applications for major development has remained at 20 per cent since 2013. The threshold needs to be at a level that drives improvement and safeguards against genuinely poor performance, and the Autumn Statement proposed that the threshold could now be reduced to 10 per cent of decisions on applications overturned at appeal.

Question 7.1: 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?

*We have no objection to a speed performance measure, provided that the ability to mutually agree appropriate extensions of time with applicants remains. As with major performance an initial introduction should be made at lower end.*

Question 7.2: 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?

*We would have some concerns in principle with reducing this target as suggested. As detailed above major planning applications often involve finely balanced decisions and occasionally the Planning Inspectorate decisions themselves are challenged. That in itself does not mean that the quality of decision making warrants designation. If an Authority were making unreasonable decisions, and indeed had costs awarded against them on that basis, it would be a different matter. There would need to be safeguards in place to carefully look at each appeal decision on which designation could turn in order to understand whether poor decision making in terms of quality was the issue*.

Question 7.3: 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?
*Agreed*

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

(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?
*Agreed*

If an LPA were designated for non-major performance the government would not allow the ability to apply direct to the Secretary of State to apply to householders.

We would therefore require a detailed improvement plan which focuses on improving processes for householder developments from designated authorities, where this relates to the reasons for their under-performance.

Question 7.4: Do you agree that the option to apply directly to the Secretary of State should not apply to applications for householder developments?

*This would only apply if householder performance fell below standard. An authority could presumably be designated for poor performance on non-major development but has good performance for house extensions. Some clarity is required on the non-major category.*

3.8 Testing competition in the processing of planning applications (pages 49 – 52)

The Housing and Planning Bill contains powers to enable the testing of competition in the processing of planning applications. We are proposing that in a number of specific geographic areas across the country, for a limited period of time, a planning applicant would be able to apply to either the local planning authority for the area or an 'approved provider' to have their planning application processed.

Decisions on applications would remain with the local planning authority. However, an approved provider would be able to process the application, having regard to the relevant statutory requirements for notification, consultation and decision making, and make a recommendation to the local planning authority giving their view on how the application should be decided. But, it would be for the local planning authority to consider the recommendation and make the final decision, ensuring no loss of democratic oversight of local planning decisions.

Question 8.1: Who should be able to compete for the processing of planning applications and which applications could they compete for?

*There is certainly ability for LPA's to assist each other in terms of resource sharing to process applications. This is already done in our case via formal collaboration with two neighbouring authorities. This has allowed staff and processes to be shared resulting in greater speed and efficiency particularly when validating and consulting on an application*.

*Private providers have been used to write offer reports and recommendations on numerous occasions. Whilst they remain a tool at an LPA's disposal there are a number of barriers/problems which have been experienced which I have detailed below:*

- *The company providing may have an excellent reputation but the person delivering may not have the relevant experience or skills required. When this did occur a period of review and re-negotiation on price was required. In reality the level of resource spent re-negotiating and putting right issues was greater than that required to deliver*
- *If a report and recommendation is prepared this may need revising/amending by the LPA. This is most often with respect to adding in local context (perhaps in the interests of consistency - a similar scheme has been to appeal or the Planning Committee has debated something similar recently), revising a planning balance, or adding/deleting planning conditions. There is then an issue as to whether the provider will and should defend any associated appeal of a decision.*
- *Given that providers need access to back office systems to ensure that all material planning considerations are considered there will also be issues of protecting conflicts of interest and potentially sensitive information.*

The legislation would allow for the government to intervene if it considered that excessive fees were being charged and the market was not self-regulating them. It will also allow for fees to be returned to the applicant where promised service and performance standards are not met by approved providers and/or the local planning authority in test areas.

Question 8.2: How should fee setting in competition test areas operate?

*The issue of fee return for a few paying applicant is noted and accepted (a customer paying for a service which is not received should be entitled to some recompense). There is no acknowledgement of an ability of an LPA to be recompensed if certain providers are providing reports and recommendations which need to be heavily revised in order to be fit for purpose (i.e. to stand up to scrutiny and challenge). As detailed above this LPA has experienced both positive and negative consultancy support in terms of third party professionals making recommendations and drafting reports. If there are issues it is difficult to see how these can be resolved both in terms of financial recompense for the Authority and in terms of reputational impacts on speed of decision making.*

Question 8.3: What should applicants, approved providers and local planning authorities in test areas be able to do?

*It is difficult to speak for all parties of the process involved but as a Council we have tried to assist by offering comment on each role.*

*With respect to applicants there would be an expectation that they can do what they currently do with a planning authority. There would be an expectation that they can see comments on an application (via the Council's website) and that they would be able to call an approved provider for an update. Presumably they can also ask the approved provider whether they have contacted consultees who have not responded or discussed particular matters with any other third party.*

*Approved providers, if they are to do the full pre-LPA decision process, would need to be able to access back office systems (which contain private and confidential information on pre-apps and enforcement for example), to liaise with consultees, and critically to negotiate a scheme with their own fee paying client. There is also an issue if the proposal is to be determined by the planning committee in terms of whether the provider presents their own report and recommendation.*

*The LPA will clearly need to be satisfied that the author of any report has taken into account all material planning considerations and made a balanced judgement. The LPA should also be able to obtain an update at any time, with key stages in an application process being reported to them (consultation responses, revisions, re-consultations, likely determination or committee dates – including committee lead in times, any agreed extensions of time) so that they too can monitor performance. Any issues with the quality of reports and recommendations would need to be addressed and reported (presumably) to the fee paying applicants. The LPA may equally wish for indemnity if all properties have not been consulted (as should be checked on site) in terms of any future Local Government Ombudsman investigations.*

*The Authority does not object to the principle of other providers delivering planning services, or indeed elements of it. The difficulty is in allowing other providers to take on the judgement elements of planning. Matters of processing, such as validation and consultation more readily transfer to additional third party providers.*

Question 8.4: Do you have a view on how we could maintain appropriate high standards and performance during the testing of competition?

*In addition to empirical data (how long applications take to validate, how long to issue consultations, how long to negotiate or make a decision, overall timescales) one would need to interview applicants, providers, and LPA's to understand barriers to any scheme and quality in terms of judgements made. This is especially important is one is to gain the badge of an 'approved provider'.*

The government recognises that local planning authorities and approved providers would need to share information so that planning applications are processed effectively during the test. Local planning authorities would need to provide an approved provider with the planning history for the site relevant to the application, so the provider could for example ascertain whether it is a repeat application and whether there are any other outstanding planning permissions in relation to the site.

Approved providers would need to provide summary details to the relevant local planning authority of any planning applications they receive directly, so that the application could be listed on the planning register. We intend to provide that information can only be shared between providers and planning authorities for the purposes of processing planning applications during the testing of competition and must not be disclosed to any other persons.

Question 8.5: What information would need to be shared between approved providers and local planning authorities, and what safeguards are needed to protect information?

*There is a raft of information that will need to be shared, together with some information which is only intuitively available if one if working on local issues.*

*In terms of data one would need access to back office systems for planning and enforcement history. Access to address databases (including for additional consultations following a site visit), consultee information, and parish council information. Access would also be required to any planning constraints (eg. flood zones, conservation areas, CIL charging areas, green belt boundaries, etc). If a S106 is involved contact with and instructions to legal would also be required, as would negotiation with relevant infrastructure providers (eg. education, highways, parks and open space, etc).*

Question 8.6: Do you have any other comments on these proposals, including the impact on business and other users of the system?

3.9 Information about financial benefits (pages 53 – 55)

The government wishes to make clear the benefits of a development proposal as a material planning consideration. It will require the following set benefits to be listed in planning reports:

- Community Infrastructure Levy - the tariff from the authority's charging schedule that is likely to be applied for the proposed development;
- government grant – calculating an estimate of the of the likely grant to be received;
- council tax/business rate revenue – making a broad judgement about the likely council tax band for new properties and subsequently estimating the likely additional council tax revenue, or for existing properties estimating the impact of the development on the current council tax band;
- S106 payments

Question 9.1: Do you agree with these proposals for the range of benefits to be listed in planning reports?

*The LPA is content with any material benefit to be listed provided there is clarity as to what should be included and also an explanation as to how this is to be calculated. The material weighting to such benefits will be a matter for the decision maker, as is the balance of all material planning benefits.*

3.10 Section 106 resolution dispute (pages 56 – 59)

It is proposed to introduce the ability to have a dispute resolution for S106. At this Authority no issue has needed to go as far as dispute or indeed planning appeal (an applicant would currently have to appeal a planning decision in order to have the associated S106 also considered independently). The questions in the consultation ask how this could be executed.

*There is no objection to a resolution process providing that an LPA and applicant are first required to explore steps between them. The LPA is satisfied that it currently does this and thus does not comment further.*

3.11 Permitted development rights for state funded schools (pages 60 – 61)

Question 11.1: Do you have any views on our proposals to extend permitted development rights for state-funded schools, or whether other changes should be made? For example, should changes be made to the thresholds within which school buildings can be extended?

Question 11.2: Do you consider that the existing prior approval provisions are adequate? Do you consider that other local impacts arise which should be considered in designing the right?

*No comment**.***

3.12 Changes to Statutory Consultation on Planning Applications

The government wishes to place maximum timescales by which a statutory consultee must respond by if they require further time to comment upon a planning application.

Question 12.1: What are the benefits and/or risks of setting a maximum period that a statutory consultee can request when seeking an extension of time to respond with comments to a planning application?

*There is clearly a benefit to focussing minds as to when comments on a planning application should be made and thus when an LPA can make a decision with possession of all of the material facts. However, the danger of setting a deadline is that not having information before it may lead to a decision which is missing critical information. If that information appears late (i.e. before a decision) the LPA still has a duty to consider it in coming to a decision. Equally if information is received post decision but prior to an appeal the LPA and appointed Inspectors must consider it (costs may be pursued of the relevant consultee but this is likely not to change a planning judgement).*

Question 12.2: Where an extension of time to respond is requested by a statutory consultee, what do you consider should be the maximum additional time allowed? Please provide details.

*21 days is the starting point for a consultee to come to a view and this is considered able time to do this. If a consultee then gives a view (support or object – with reasons for the latter) the LPA and applicant can then be clear on what is required. It is a failure to express a view or how to resolve an issue which is a frustration to applicants and LPA's. It is also frustrating if the consultation reply is actually a request for further (such requests are often made close to or after the 21 day consultation). If one is seeking further information a short period for reply is encouraged (14 days would be sensible). Again there should be provision to reasonably extend this if an applicant and LPA agrees.*

3.13 Public Sector Equality Duty

Question 13.1: Do you have any views about the implications of our proposed changes on people with protected characteristics as defined in the Equalities Act 2010? What evidence do you have on this matter? Is there anything that could be done to mitigate any impact identified?

Question 13.2 Do you have any other suggestions or comments on the proposals set out in this consultation document?

*No comment.*

**7.0 RECOMMENDATIONS that**

**a) the contents of the report are noted; and**

**b) the proposed comments in Section 3 along with any other comments of the committee are used as the basis for the District Council's response.**

**Reason for Recommendations**

**To ensure the District Council responds to the public consultation on the Technical Changes proposed.**

Background Papers

Technical consultation on implementation on planning changes DCLG February 2016
https://www.gov.uk/government/consultations/implementation-of-planning-changes-technical-consultation

For further information please contact Matt Lamb on Ext 5842 or Matthew Norton on Ext 5852

Kirsty Cole
Deputy Chief Executive