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DCLG announces additional changes to the English Planning System

Summary of key points

- * Three consultation papers issued improve delivery of sustainable development.
- * "Development control" to be replaced by "Development management"
- * Emphasis on pre application negotiations.
- * Decision notice to have planning conditions categorised as **pre commencement**; **pre occupation** and **regulatory**.
- * New standard planning conditions proposed.
- * In exceptional circumstances, planning permissions can be granted with a planning condition stating that the development cannot commence until the 106 is signed by all interested parties.
- * New discharge of planning conditions regime.
- * New streamlined consultation procedure.
- * All to be incorporated into a new "Development Management" PPS in 2010.

Background

Communities and Local Government published for consultation in December 2009 until 19 March 2010, proposed changes to the English Planning system aimed to improve the delivery of sustainable development and help remove further administrative burdens of the planning system on business and house builders.

The proposed changes are given in three consultation papers entitled as follows:

1. **Development Management: Proactive planning from pre application to delivery.**
2. **Improving the use and discharge of planning conditions**
3. **Improving the engagement by statutory and non statutory consultees**

In announcing the proposals the Housing and Planning Minister John Healey said:

"An efficient and cost effective planning system is crucial for economic recovery and growth. Changing the way local authorities, businesses and agencies work together will ensure that the homes this country needs are not delayed in the planning system and the administrative burden on councils is reduced.

"Businesses also need certainty that their developments will not be delayed by red tape after planning permission has been given. By cooperating from the drawing board to the last brick being laid, proposals will get through the planning system faster and barriers that stall projects will be removed."

Copies of these consultation documents can be seen at the following **DCLG** web links:

- [improving engagement consultation](#)
- [development management consultation](#)
- [improving planning conditions](#)

What do the consultations papers propose?

Summarised below are the key proposed changes:

1. Consultation Paper: Development Management - proactive planning from pre application to delivery

This consultation paper paves the way for a new Planning Policy Statement to be entitled "Development Management." This new PPS will provide guidance to Local Planning Authorities in relation to how to handle development proposals from pre -application; application; consultation; determination; appeals; delivery; monitoring, to special consent regimes.

This paper considers that land use planning should move forward from its traditional role of "development control" - of just processing planning applications and enforcing contraventions - to that of "development management."

Development management is to be a more proactive and positive approach to *"shaping, considering, determining and delivering development proposals. It is to be led by the Local Planning Authority working closely with those proposing development and other stakeholders."*

Key points of the consultation paper in relation to development management are that Local Authorities should:

- **Take a positive and proactive approach to place shaping** by encouraging and facilitating collaborative working between parties with a key role in delivering strategically significant buildings, infrastructure, environments.
- **Put planning policy into action** by ensuring that there are strong functional links between plan preparation and development management. This is considered essential for the delivery of the spatial planning strategy of the development plan.
- **Front load** the application process by having pre -application engagement so as to provide clear advice to applicants to help further develop and refine their proposals; identify issues and prospects for achieving planning permission and identify those who should be involved and need for conditions.
- **Take a proportionate approach in assessing development proposals** and consider the scale and impact of the development; not re-visit

issues of principle established in the plan making process and local information requirements are clear, reasonable and proportionate.

- Consider opportunities for introducing **Local Development Orders**.
- Review local schemes of **delegation**, delegate more decisions to planning officers and only take major applications to committee.
- Foster **effective engagement and participation of stakeholders** and community groups at the pre application stage - including elected members when options are being scoped and plans shaped without prejudicing their decisions or compromising the integrity of the process.
- Ensure **proactive delivery** that the permitted development is not unnecessarily delayed by too many pre- commencement or pre -occupation planning conditions and ensure that terms of any planning obligation are agreed prior to the issuing of the decision notice, other than in very exceptional circumstances set out in detailed national policy on conditions (see separate consultation paper).
- Where necessary ensure schemes are delivered by the greater use of compulsory purchase and bringing together potential planning and delivery partners.
- **Monitor and review development management outcomes**, for example through Annual Monitoring Reports (AMR's).

The consultation draft also provides guidance as to how the pre -application principles of development management and sets out policies and stages of the pre application process.

In summary, the pre application process is seen to be critically important in the development management process and provides the applicant and the local planning authority with the opportunity to gain a clear understanding of the objectives of and constraints of the development.

The consultation paper proposes that Local Planning Authorities should:

- Set out clearly their **pre application planning service**, highlighting the range of guidance available to those proposing development and the opportunities available for pre - application discussions. The guidance should also distinguish between small - such as house extensions, changes of use or minor works to commercial buildings and large scale

development in the provision of pre application advice and services.(Policies PA1 and PA2)

- Provide clear guidance for **pre application advice and discussions** in relation to the minimum amount of information that is expected; the charge for the pre application meeting and the advice that they will provide and need to consult third parties. This should also specify the circumstances in which Planning Performance Agreements might be appropriate.(Policy PA3).
- Identify the key participants at the pre application phase, including the engagement of statutory consultees, other relevant parties and also possibly elected members.(Policy PA4)
- Set out a scale of fees for the pre application process - Policy PA5.

2. Consultation Paper: Improving the use and discharge of planning conditions

This consultation paper sets out the Government's proposals for changes to the planning system in relation to the use of planning conditions and the process for discharging planning conditions.

The paper has been produced in light of the Killian Pretty Review. The review identified that there was an inconsistency in the scope and use of conditions, that there is no clear system for discharging conditions or recording actions and that an average of eight pre commencement conditions are attached to each planning permission. This approach can lead to delays in the start of the development and place additional demands on local planning authority resources.

Summary of the proposed changes

The Government is proposing to replace Circular 11/95 "The Use of Conditions in Planning Permission" with new policy guidance to be included as an annex to the proposed new Planning Policy Statement to Development Management.

In relation to planning conditions the new policy guidance:

- Retains the **six tests of planning conditions** - conditions should only be imposed when they are necessary, relevant to planning, relevant to the permitted development, enforceable, precise, and reasonable in all other respects.
- Requires a condition to impose a **time limit condition** - the standard time period being 3 years for detailed planning permission, listed

building consent or conservation area consent. However, these standard time periods can be longer.

- States that a condition should also **list all approved plans**, so that section 73 variation applications can be submitted.
- Reminds authorities of the need to assess conditions against these tests.
- Recommends **avoiding conditions which require payment** or other consideration in return for a grant of planning permission and;
- Proceed with caution with conditions that seek to **withdraw permitted development rights and completion of the development**.
- Ability to grant permission with conditions requiring the **completion of a section 106 agreement** before development can commence (see our commentary).
- Re- affirms that conditions should be used in preference to section 106 agreements.
- Ability of the Local Planning Authority to charge a fee for the discharge of all of the conditions or that they have individually been discharged.

In relation to the **discharge of planning conditions**, key measures that the consultation paper proposes/ seeks views on the following :

- Discussion of potential conditions to be a key stage of the pre application process.
- Structuring conditions within decision notices with the standard time limit; **pre commencement conditions; pre- occupation conditions; regulatory conditions**.
- Sharing draft decision notices and drafted conditions for major applications with applicants before decisions are taken - 10 days beforehand.
- Shortening the time period for which Local Planning Authorities need to discharge planning conditions - from the current 8 weeks to 4 weeks for household applications and 6 weeks in all other cases.
- A new fast track conditions appeals service provided by the Planning Inspectorate. Appeals would need to be lodged within 8 weeks with written representations being determined within 8 weeks.
- The developer to notify the Local Planning Authority that development has commenced; to display the planning decision notice and pre commencement approvals at the site and

default approval if the Local Planning Authority does not respond within a specific time period and approve the application to discharge of the condition. These proposals would require primary legislative change if implemented.

The consultation paper also proposes new draft standard conditions. These can be viewed on the following link:

www.info4local.gov.uk/documents_consultations/1430546

3. Consultation Paper: Improving engagement by statutory and non statutory consultees.

This third consultation paper is intended to become another annex in the proposed Planning Policy Statement in relation to Development Management. It is also proposed that there should also be a voluntary code of practice for statutory consultation.

This paper has been produced as response by the Government to the recommendation of the Killian Pretty Review that a fundamental review of existing consultation arrangements on planning applications needs to be made. The paper therefore sets out proposals to achieve a substantial improvement in the way the consultation process takes place.

In essence the objective is to improve the existing system by making the process more efficient and effective by ensuring that the right bodies are consulted on the right matters at the right time and in a proportionate way.

The key measures are summarised below:

1. Proposed updated and revised national policy on statutory and non statutory consultation as an annex to the proposed PPS on Development Management.

The part of the guidance will have the following components:

- Defining when consultation is necessary to statutory and non statutory consultees.
- it is not proposed to add or remove any statutory consultees at present.
- More effective consultation by the Local Planning Authority - for example, by e mail communications and timescale for response.
- Clear and proportionate response to consultation by statutory consultees - for example, by providing standing advice linked to thresholds for minor proposals and provision of guidelines and having these available on line.

- Having responses to the consultation process received within 21 days from statutory consultees.
- Responding to the request for consultation in a "substantive and timely manner"- i.e. no comment or content with the proposed development or provide advice.
- Comments from statutory consultees to be grouped into 3 categories - **fundamental concern** (where the scheme should be refused with evidence as to why); **substantive concern** (i.e. identify how this could be overcome by say a change to the scheme or by planning condition); **material consideration** (the local planning authority need to take this into account in coming to their decision).
- Similar principles to apply to non statutory consultees.

2. Having a draft Code of practice on statutory consultation.

This is to include measures such as:

- Statutory consultees to publish on their web site information to help clear, timely and proportionate advice to consultation in terms of, for example:
- Advice on information to be provided at the application & pre application stage.
- Advice on indicative thresholds
- Provide advice at pre application stage.
- Respond within 21 days and use electronic consultation.
- Only request additional information where vital.
- Not seek conditions unless compliant with national planning policy.
- Provide necessary technical material in support of an objection that can be used at appeal and provision of expert witness if required.
- Have a compliance officer and ensure sufficient resources are available.

3. Review existing arrangements for consultation

This is to include a review of the criteria as set out in Articles 10-13, 15 and 16 of the General Permitted Development Procedure Order. The review seeks to streamline and simplify existing consultation arrangements and need for consultation with existing statutory consultees.

These proposed changes to the existing consultation

arrangements GDPO 1995 are given in Table A of the consultation document.

Proposals for improved monitoring of the performance of statutory consultees are also proposed in light of Section 54 of the Planning and Compulsory Purchase Act - such as to publish their annual returns within the 21 day consultations on their websites.

CgMs Commentary

These proposed changes to the English Planning system by the Government were widely expected in light of the Killian Pretty recommendations.

Many of the proposed changes are to be welcomed as they are pragmatic and necessary changes that seek to address well known problems and issues faced by both the applicant and the Local Planning Authority in the processing and determination of planning applications.

The key issue is, as always, whether given the limited resources that Local Planning Authorities have, the proposed changes can be effectively implemented. We highlight the following issues.

The Pre application process.

The Government's proposal is to make more formal and to regularise the pre-application negotiation process. The importance of the pre-application negotiation process has been given greater importance in recent years because once an application is validated Local Planning Authorities have to meet set targets in the determination of applications set by Government. In other words - due to the Government's targets imposed on Local Planning Authorities, there is little scope for major points of negotiation of the planning application once registered and hence during the statutory 8 or 16 week time period.

The existing pre-application negotiation process has been informal and varies according to each Local Planning Authority. For example, some Local Planning Authorities charge the applicant for pre-application meetings whilst others do not. Some are prepared to give officer time and other's are not.

Although the existing system was far from ideal, such meetings could however normally be arranged or, if not a meeting, at least informal discussions made with officers by e mail and often at short notice.

By now formally regularising the pre application process this will now change - in effect what is now being proposed is a formal two stage planning process; pre application submission and negotiation and the then submission and validation of the application to a point of determination.

Given the new emphasis on formalising pre application meetings and the need to have technical information prepared beforehand and submitted to officers and other consultees beforehand, and given the time and cost involved in preparing such information, as well as the council's charges for having a series of pre application meetings, many applicants might not be prepared to go down this route.

Instead some might just prefer to "take a chance" and submit the application for determination; if the application is refused, they will then take the planning case to appeal. Such an approach is clearly contrary to the development management objectives.

There is also the issue of how Local Planning Authorities are currently organised and resourced. Development Management requires joined up thinking; however most Local Planning Authorities are distinctly divided between area based "development control teams" and "forward planning" plan or policy teams - now mostly pre-occupied with working their Core Strategies. Indeed given the fall off of planning applications many former development control officers are now being transferred in taking forward the core strategies.

Sometimes policy officers refuse to give any comment on development control matters and development control officers also on policy matters. This system clearly has to change and the pre application process be adequately resourced if development management is to be successfully introduced.

There is also the issue of involving councillors in the pre-application process. All too often officers do not want member involvement in the pre-application process and yet it is now widely recognised that planning is effectively a political process - especially where major applications are proposed.

Consultation Paper on the use and discharge of planning conditions

The proposed changes are pragmatic and in general should be supported, including conditions that specify the approved plans enabling section 73 applications for the variation of such conditions where minor amendments are sought to the approved scheme.

Of key importance is the new approach now being proposed on the ability to have negative conditions which require the completion of a section 106 agreement before development can commence.

CLG has recently been advising Inspectors against allowing appeals which require 106 Agreements to be entered into at a later date once the final land details are done. This situation often occurs in major schemes, particularly regeneration schemes when some landowners, often local authorities (as land owners), are reluctant to enter into a 106 Agreement when as local planning authorities they are opposed to the scheme. Such situations also occur when there are multiple land owners in large schemes.

This CLG 'embargo' has caused major problems with large developments and the property industry has been lobbying CLG to address the issue.

It is welcome news to see that this Consultation Paper is indeed recognising the issue and is suggesting that such conditions can again be used in exceptional circumstance where the development would be put at risk if such a Condition 'precedent' was not allowed, there is a real need for the comprehensive nature of the scheme, the applicant has a legal interest in at least part of the site, there is general agreement that a planning obligation is required and the draft 106/ Heads of Terms is annexed to the Decision Notice.

It is important that this proposal is supported by the property development industry during this consultation process.

However, there is still the issue of how conditions work alongside section 106 agreements. There are still Local Authorities which often prefer section 106 agreements compared to conditions as they are seen to be more effective in delivering the sought public benefits and mitigation of off site impacts. All too often conditions could overcome such requirements or section 106 agreements duplicate imposed planning conditions.

There is also the issue of how the proposed changes to planning conditions will work with the proposed scaling back of section 106 agreements where Local Planning Authorities choose to adopt the Community Infrastructure Levy.

Public consultation for statutory and non statutory groups

The changes proposed are to be broadly welcomed - all to often applications are held up or even refused where statutory consultees do not respond in time or their objections are not substantiated by technical evidence or indeed unclear and where requested conditions are clearly not planning related.

It is also important for the applicant to agree with the Local Planning Authority key groups to be consulted in order to demonstrate that the local community have been consulted.

However, there is always the ongoing tension between the need to ensure effective public consultation but also and the need to ensure that all material considerations are taken into account in the decision making process. All too often local and well organised groups can unduly influence committee members when clearly statutory consultees and planning officers have no objections that cannot be resolved by planning condition or by a legal agreement. There needs to be a proportionate approach in the consideration of non statutory groups objections to proposals when other "material considerations" show otherwise and the scheme should be approved.

For further information and assessment of these proposed changes given in the consultation papers please contact either [Mike Straw](#) or [Erica Mortimer](#).

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