

THE ROYAL TOWN PLANNING INSTITUTE

CHANGES TO THE DEVELOPMENT CONTROL SYSTEM

A response to the Office of the Deputy Prime
Minister on its consultation paper

February 2005

2005/07

INTRODUCTION

1. The consultation paper, published in November 2004, is available on the ODPM website at www.odpm.gov.uk/stellent/groups/odpm_planning/documents/page/odpm_plan_033057.hcsp.
2. In October 2003 a consultation document was published by ODPM which gave some details of the Government's planning reform agenda. The document contained suggested amendments to the Town and Country Planning (General Development Procedure) Order 1995 (GDPO) and additional guidance relating to provisions contained in the Planning and Compulsory Purchase Bill – now the Planning and Compulsory Purchase Act 2004. As a result of discussions in Parliament during the passage of the Bill, and responses to the earlier consultation, a number of changes have been made. ODPM feels that it is necessary to re-consult on the revised proposals.
3. This is the first of two proposed new consultations and covers -
 - the power to decline to determine applications (repeat applications);
 - the duration of permission and consent;
 - the duty to respond to consultation; and
 - major infrastructure projects - economic impact report.
4. A further consultation paper, to be issued later in 2005, will set out ODPM's proposals for –
 - local development orders;
 - mezzanines;
 - outline planning permission and reserved matters;
 - design and access statements;
 - standard application forms;
 - criteria for consulting statutory consultees;
 - determination of major applications; and
 - e-fees.

GENERAL COMMENTS

5. The Institute sees this consultation paper, and that intended to follow later in the year, as further evidence that the Government rushed preparation of the draft of what is now the

Planning and Compulsory Purchase Act 2004, without thinking through the implications. Had these issues been followed up in detail following publication of the 2002 Green Paper – *Planning: Delivering a fundamental change*, the Government would not now be in the position of consulting on afterthoughts.

6. Some more robust evidence of joined-up Government thinking on the development control reform agenda would be welcomed. The present paper seeks views on a disconnected series of items, without any overall context beyond the existence of enabling legislation in the Act. It appears that the promised second consultation paper will cover a similarly disparate set of topics. In the meantime the Institute has responded to consultations on *Changes to the System of Planning Fees in England, Further Proposed Changes to the System of Planning Fees, Temporary Stop Notice, the Draft Revised Circular on Planning Obligations, and Proposals for the Allocation of Planning Delivery Grant 2005-2006*. All have been connected with the operation of the development control system, and all have sought to take forward Green Paper/Planning and Compulsory Purchase Act proposals. While we would not have expected all these issues to be brought forward in a single paper, some evidence of read-across, or acknowledgment of their interrelationship, would have been reassuring.

DETAILED COMMENTS

POWER TO DECLINE TO DETERMINE APPLICATIONS

Purpose of powers

7. *Paragraph 3:* The consultation paper encourages applicants to enter into pre-application discussions “*to minimise the likelihood of their application being rejected*”. This is a central issue for the development control process as a whole, and not one limited to the narrow circumstances suggested in the consultation paper. The Institute strongly supports the role and usefulness of pre-application discussions, and is amazed that this paper does not acknowledge the consideration given to them in the earlier consultations on planning application fees and PDG allocations for 2005-06, if not the views of respondents to those consultations.
8. The Government must decide whether pre-application discussions are to become a formal part of the development control process, or an optional extra. Both applicants and local planning authorities are being pulled in two directions by the present lack of clarity in the Government’s position.

Repeat Applications

9. Essentially the paper is concerned with a pretty straightforward concept that it manages to make very complicated. The different repeat application scenarios described in *paragraphs 5-7* must be capable of being expressed more simply. Perhaps a diagram would be useful.
10. *Paragraph 5:* In the first scenario, when does the “*following two years*” start to run? Is it two years from the date of the appeal decision or refusal notice?
11. *Paragraph 9:* The Institute believes that it is important that local planning authorities should be able to decline to determine repeat applications where they believe that the applicant is trying to wear down opposition by submitting repeated applications.

“Similar” applications

12. A clearer definition of “*similar*” would be welcome, beyond that given in section 70A(8), as it is unclear what “*substantially the same*” means. This definition gives local authorities a great deal of discretion, provides opportunities for a variety of interpretations, and will lead to inconsistencies in interpretation between LPAs.

“Significant change”

13. Local planning authorities should be asked to clearly set out what constitutes a “*significant change*”. Again, it seems likely that the interpretation of this will differ between LPAs.

DURATION OF PERMISSION AND CONSENT

14. *Paragraph 20*: The Institute welcomes the proposal to change the timescale for the start of implementation of a planning permission from 5 years to 3 years. We have some concerns, however, that the change may lead to an increase in the number of planning applications submitted and thus to resource problems (as with the Planning Inspectorate following the recent change to the appeal timetable), and suggest that the situation should be carefully monitored.
15. We also welcome the flexibility allowing LPAs to agree longer or shorter duration of permissions given the complexity that often attends, for example, mixed use schemes, redevelopment of contaminated brownfield sites, or regeneration schemes on sites in multiple ownership. The guidance should state the need for a transparent approach by developers in identifying and demonstrating their problems, so that well founded duration periods can be agreed.
16. *Paragraph 28*: The inability to vary the time limit, once set, could create difficulties where genuinely unforeseen circumstances arise.
17. *Paragraph 32*, in stating that it is “*for the local planning authority...to decide whether development had started in any particular case*”, highlights a general issue that arises at a number of points in the consultation paper. Essentially, this is whether a variety of locally-determined dates, definitions and interpretations is to be preferred to a nationally uniform standard. Local determination, and the principle of subsidiarity, support one view. The need for standardisation - so that developers operating in a number of different LPA areas know where they stand - supports the other. The Government must decide which road it wants to go down.

DUTY TO RESPOND TO CONSULTATION

18. The Institute suggests that the proposals focus too much on numbers and quantity and too little on the quality and value of the comments made by consultees. There may be a worthwhile exercise in monitoring and assessing the helpfulness and usefulness of consultees’ responses to the determination of specific applications. The Environment Agency, for example, and for entirely sensible reasons from its perspective, is moving more towards generic rather than specific responses to statutory consultations. How useful are these, in practice, to the applicant or the LPA?
19. It is difficult to assess whether the proposals will have any greater resource implications for LPAs than the current system. LPAs are generally responsible for sending out the relevant papers to consultees. Some major applications are of monstrous proportions, and the costs of copying and circulating documentation are considerable, even where maximum use is made of e-communication.

20. *Paragraph 45* requires re-visiting. There is confusion over who sends what to whom, with responsibilities apparently resting simultaneously with both the LPA and the applicant. More importantly, we suggest that the requirement that “*the 21 day deadline will not start until the statutory consultee has received all the information needed to provide an informed response*” is unworkable. The LPA will not be aware of when papers that it has forwarded have been received by the statutory consultees, let alone those sent by the applicant. As a consequence, it will be unaware of when the 21 day period expires – a critical factor, given the current prominence of determination targets. There is also a need for clarification over what happens if the statutory consultee requires further information – perhaps information that has not been received by the LPA in support of a planning application. We suggest that the clock should be stopped in these circumstances.
21. It is important to be certain that consultees are in a position to respond effectively within the specified time limits. The staffing pressures being experienced by LPAs are often replicated with statutory consultees. The Institute suggests that some flexibility in the time allowed to consultees should be allowed to reflect the varying complexities of applications.
22. *Paragraphs 46-47*: The Institute welcomes the evidence that some time has been spent in defining what is meant by a “*substantive response*”.
23. *Paragraph 53*: Although the requirement for statutory consultees to produce an annual monitoring report will focus their attention on their own performance, it could be argued that the time spent on producing the report would be better used in responding to consultations. The reporting requirements are quite onerous, and one is tempted to ask what the Secretary of State will do with this information when he receives it.

CONSULTATION WITH REGIONAL PLANNING BODIES

24. From a practical point of view, the definition, in *paragraph 67*, of the types of planning application on which the regional planning body (RPB) should be consulted is less than helpful. It would also be useful if any constraints on what each RPB might identify as “*other descriptions of development in relation to which it wishes to be consulted*” were identified here. Although we recognise that some planning applications for major developments will have strategic implications, the Institute thinks it is questionable whether either of these regimes is necessary, given the “plan-led” system and the requirement for local development documents to be in general conformity with the regional spatial strategy. This view is only underlined by the democratic deficit at regional level, and the consequentially tenuous accountability of the RPB.

MAJOR INFRASTRUCTURE PROJECTS: ECONOMIC IMPACT REPORTS

25. *Paragraphs 68-77*: The Institute acknowledges that the requirement for an economic impact report (EIR) is now enshrined in legislation, but remains unclear about its purpose and value. In particular, we find the relationship with the statutory requirements for sustainability appraisal and environmental impact assessment obscure. With a “plan-led” system, based on spatial plans, we might increasingly expect MIPs to have been tested in regional spatial strategies, for example, where they will have been part of the sustainability appraisal (which should have included economic as well as environmental and social appraisals). What value does a separate EIR add to the process, downstream, of determining a planning application?
26. *Paragraph 73* appears to leave a lot to chance in terms of the applicant’s awareness of the need for an EIR.

27. *Paragraph 77:* In recent times, at public inquiries into MIPs, opponents of the scheme have been far more concerned about environmental impacts than the economics of the proposed development.

ADB/EC
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