RTPI response to ‘An Accelerated Planning System’ consultation

May 2024

About the RTPI

The Royal Town Planning Institute (RTPI) champions the power of planning in creating sustainable, prosperous places and vibrant communities. We have over 27,000 members in the private, public, academic, and voluntary sectors. Using our expertise and research we bring evidence and thought leadership to shape planning policies and thinking, putting the profession at the heart of society's big debates. We set the standards of planning education and professional behaviour that give our members, wherever they work in the world, a unique ability to meet complex economic, social environmental and cultural challenges.

Accelerated planning service

Q1. Do you agree with the proposal for an Accelerated Planning Service?

Yes / No / Don’t know

Accelerating the planning system

We share the government’s concerns that it takes too long for many planning applications to be decided. Indeed, RTPI research (Planning Agencies, RTPI, 2021) has previously documented that this is a widespread problem which has worsened over time:

> “In 2009, approximately 85% [of] decisions were made within statutory time limits and without performance agreements, however by 2021 this figure fell to 49% (209,000 of the 427,000). Whilst some of this could be put down to Covid, the trend over the last 12 years is worrying and highlights a downturn in the performances of local planning authorities.”

We are also concerned that between July 2023 and September 2023 only 21% of major applications were decided within 13 weeks, and that the average time was approximately 28 weeks.

The RTPI therefore support the government’s drive to accelerate the planning system, and particularly to introduce planning application fees that approach cost recovery. This is something we have consistently argued for and strongly support.

What we are less certain about is whether these proposals will enable LPAs to make the kinds of systemic, sustained improvements to their whole services that DLUHC want to see.

As in-depth case study research from PAS (Planning Advisory Service, 2014) has found, this kind of improvement can only come from interventions that aim to bring about broad-based improvements to services as whole:

> *“Focus on overall improvement, not just speed: case study LPAs report that achieving the [13 week decision making deadline for major application] is a by-product of improving all aspects of the service…”*

The following measures would enable this by building LPAs' in-house capacity, improving decision making times for all kinds of application, and ensuring that outcomes 'on the ground', as well as processes, are effectively monitored:

- **Ringfencing the additional fee income which these proposals bring:** We are concerned that, even if fees are set at a rate equivalent to cost recovery, there is currently no guarantee that the additional fee income will be spent within planning departments (unlike with Planning Performance Agreements, which these proposals make clear will not be used alongside applications under the Accelerated Planning Service), to either provide services associated with the Accelerated Planning Service or to generally improve services. More generally, if development management services are to be sustainable in the absence of increased central government funding, they will need to become self-sustaining, and this will require the **general ring fencing of all planning application fee income.**
- Consulting on whether **more decisions could be made by planners, via delegated powers, rather than committees, when applications are consistent with local plans**. To ensure public confidence and high-quality decision making, these planners should be chartered members of the RTPI.
- Finally, we are very pleased that the government acknowledges in this consultation that the quality of applications submitted is an important factor in how long they can take to be decided. PPAs and pre-app consultation can be valuable tools for applicants and LPAs to strengthen applications, but their quality can vary widely. As we argue in more detail in response to question 8, **there are several steps the government could take to institutionalise best practice and standardise approaches to PPAs and pre-app services**.
- **Monitoring of any unintended consequences:** We broadly support the proposals in part three to form a clearer picture of LPA's performance on decision making. Alongside this, it will be crucial for DLUHC to monitor whether the new decision making period produces any unintended consequences in terms of the schemes that come forwards or outcomes 'on the ground'. These could be, for example:
    - LPAs making poor decisions in order to meet decision making deadlines (for example, refusals which are later successfully appealed or approvals which later lead to poor outcomes on the ground);
    - Schemes being designed by developers so that they purposefully avoid the threshold that qualifies them as applications under the Accelerated Planning Service (this would be a particular risk if the service provided under the Accelerated Planning Service was mandatory and unpopular with developers).

Combined with more realistic decision making time limits (13 weeks, rather than the proposed 10, as we describe in response to question 5), and giving LPAs the responsibility to set application fees for projects under the Accelerated Planning Service at the equivalent of cost recovery, this would create a system in which:

- Applicants will have more confidence that decisions will be made in good time; while
- LPAs will have more confidence that they will have a consistent stream of additional fee income, which they can use to improve their services/capacity as a whole and over the longer-term.

We provide more details on these proposals in response to questions 5A (the decision making timeline) and 6 (fee increases for applications under the Accelerated Planning Service).

Q2. Do you agree with the initial scope of applications proposed for the Accelerated Planning Service (Non-EIA major commercial development)?

Yes / No / Don't know

No.

We have three sets of concerns about applying the Accelerated Planning Service model only to non-EIA major commercial developments.

1. The potential unintended consequences of LPAs prioritising major commercial applications

If the Accelerated Planning Service is only applied to non-EIA commercial development there is a risk that, in an effort to hit targets and retain additional fee income, LPAs will prioritise decision making on these commercial applications over others.

This could potentially slow down other types of application, including for major residential developments, and lead to no overall improvement in the speed of decision making across the system as a whole.

2. The need to ensure that additional fee income is sufficient to improve planning services as a whole

We are very pleased that DLUHC recognises the benefit of LPAs being able to charge application fees that approach full cost recovery.

However, this additional fee income will only enable LPAs to make the systemic changes to their planning services that these proposals envisage ('setting up efficient case work systems, ensuring validation teams, lawyers and internal expertise are on hand') and lead to improvements for all types the application, if this fee income is: a) consistently received, b) predictable, and c) high enough in aggregate.

If the additional fee income that LPAs receive from applications under the Accelerated Planning Service is too low, sporadic, or unpredictable, it will likely be spent on hiring independent consultants to work, short-term, on individual applications under this system. This will not bring about the systemic changes to service delivery, and the gradual build-up of internal officer resource in LPAs, that would benefit the whole of the system over the long term.

3. The financial benefits of including EIA major commercial development

While we understand the logic behind initially applying the Accelerated Planning Service only to **non-EIA** major commercial development (these schemes are generally seen as less complex or controversial), there would be significant benefits to applying it to EIA major commercial development too. These large schemes are often those with the greatest potential to drive significant growth and fee income for LPAs.

Applying the Accelerated Planning Service to all types of major application

These three issues suggest that it may be more effective for government to apply the model of the Accelerated Planning Service to all major applications, not just those concerning non- EIA major commercial developments (so long as this is done in conjunction with the recommendations we make elsewhere in this response). Doing so would ensure that:

- LPAs prioritise applications according to outcomes and overall service delivery, not preserving application fee income from one type of scheme;
- The additional fee income produced by services under the Accelerated Planning Service is consistent, predictable and high enough to systemically improve planning service delivery; and
- Those schemes with the greatest potential to drive local growth and support service delivery come through the Accelerated Planning Service route.

Q3. Do you consider there is scope for EIA development to also benefit from an Accelerated Planning Service?

Yes / No / Don't Know. If yes, what do you consider would be an appropriate accelerated time limit?

Yes, as we pointed out in response to question 2, there would be significant benefits to applying the Accelerated Planning Service to EIA major commercial development too. Not least, these large schemes are often those with the greatest potential to drive significant growth and fee income for LPAs.

Q4. 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 / No / Don't Know

Q5. Do you agree that the Accelerated Planning Service should:

a) have an accelerated 10-week statutory time limit for the determination of eligible applications

Yes / No / Don't know. If not, please confirm what you consider would be an appropriate accelerated time limit

No.

Considering that the average (median) time to determine a major planning application is currently approximately 28 weeks, a timeline of 10 weeks is probably much too ambitious.

The CMA, in its 'Housebuilding Market Study: Planning working paper', identified the following as the key factors that drive up the length of time it takes LPAs to make decisions on applications of all types:

1. The increasing amount of regulation and policy impacting the planning system leading to increased time to navigate the system;
2. LPA resourcing constraints;
3. Delays in receiving responses from statutory consultees;
4. Increasing public and political engagement with the planning process; and
5. The time taken to negotiate agreements between LPAs and housebuilders to secure developer contributions towards local infrastructure.

The proposals in this consultation that relate to increasing planning fees, earlier notification of statutory consultees, and better pre-app may help address points two, three and five **to some extent**, but certainly not entirely. These issues can only be addressed by better resourcing across the planning system and planning services, not very specific aspects of them.

Points one (the increasing complexity of the system) and four (increasing public and political engagement) – both major reasons for decision making delay - will not be addressed by these proposals.

Looking beyond the factors identified by the CMA, there are also practical and bureaucratic limits to the extent that decision making can be accelerated. Notably, planning committees meet at fixed times and intervals. A 10-week timeline may not be long enough for these to take place before an application needs to be decided.

The consequences of an unrealistically short time limit for the determination of eligibly applications

As well as the risks of LPAs losing fee income when they fail to meet the deadline, we are concerned that:

- By stretching to meet deadlines we are concerned that LPAs will make decisions that leave them open to appeals. An increase in appeals would result in pressure being transferred from one element of the planning system to another – not an overall increase in the time it takes for development to begin;
- LPAs could encourage applicants to stall submitting applications, or delay their validation as a way of 'making time' for themselves – this would also simply 'move' delay to another part of the process; and
- Applicants and officers will have little time to negotiate changes to applications which would be in the long-term benefit of both parties and the general public.

An alternative decision making timeline

Overall, it is more important for the government to set a statutory time limit that can be realistically met and provides certainty to all actors, than one which is overly ambitious and therefore runs the risk of the above issues.

Given this, we think that the current statutory decision making period of 13-week should apply to applications under the Accelerated Planning Service. This would still represent a significant improvement on average decision making times, and would be more realistic and achievable for all parties, in part because LPAs' planning services are already geared towards delivering to this timescale where possible. Once a 13-week target under the Accelerated Planning Service had bedded in and if LPAs prove consistently able to meet this target, it may be reasonable for the government to tighten the time limit further.

b) encourage pre-application engagement

Yes / No / Don't know

c) encourage notification of statutory consultees before the application is made

Yes / No / Don't know

Q6. Do you consider that the fee for Accelerated Planning Service applications should be a percentage uplift on the existing planning application fee?

Yes / No / Don't know. If yes, please specify what percentage uplift you consider appropriate, with evidence if possible.

No.

We warmly welcome the government's ambitions to achieve something approaching full cost recovery through the Accelerated Planning Service. However, given how much the cost of deciding major applications can vary by location and complexity, it is hard to see how a flat percentage increase, set centrally, could achieve cost recovery in all areas. Similarly, there is a risk that a centrally-set flat percentage increase could result in applications fees *exceeding* cost recovery in some places – something which these proposals seek to avoid.

Local LPAs are best placed to calculate fees that achieve but do not exceed cost recovery in their area and in relation to their services. Though this would lead to different fees in different areas, this would be preferential to LPAs either over-charging or under-charging, and could be modelled on the Building Regulation fee structure.

Q7. 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

No comment

Q8. Do you have views about how statutory consultees can best support the Accelerated Planning Service?

Please explain

We are pleased that this consultation identifies the timely involvement of statutory consultees as crucial for faster decision making, and in particular, finalising S106 agreements in good time.

The consultation proposes three measures to address this in relation to applications under the Accelerated Planning Service.

First, LPAs will be encouraged to offer pre-application services to potential applicants. When delivered with clarity and firm commitments, pre-app services can be good value for both applicants and LPAs, and help both to identify issues before the decision making timetable begins. So this is positive step. However, our members have raised concerns that there can little accountability for LPAs that fail to provide useful services, and that the quality of pre-app services can vary significantly across the country. As such, DLUHC should consider steps to improve and standardise pre-app services offered by LPAs. These could include:

- Standardised templates for pre-application service officers, so that is easier for applicants to understand what LPAs are offering, and for LPAs to set our realistic time frames;
- Using these templates to encourage LPAs to use fee structures that reward the delivery of advice and milestone dates, rather fixed fee approaches;
- A system of 'pre-application statements of common ground'. This would be a signed statement between the LPA and applicant which sets out the agreed items which have been covered through the pre-application process; and
- Enshrining Planning Advisory Service's comprehensive guidance on the subject (see PAS, 2024) in official guidance, so that it is more widely applied

It is important to note that our members have reported LPAs increasingly ceasing to offer pre-app services because they do not have the resources to provide them. Being sufficiently resourced is a pre-requisite for LPAs to be able to offer effective pre-app services.

Second, the consultation proposes that "prior to submitting their application, applicants should notify key statutory consultees which are likely to be engaged that they are making an application under the Accelerated Planning Service…". This seems like a reasonable step.

Third, "The government will look to use its oversight of statutory consultees to prioritise applications under the Accelerated Planning Service and to monitor their performance." We are concerned that, with no additional funding to cover this work, this will require statutory consultees to deprioritise other applications. This could lead to delays in decision making on other types of

application, which may be equally important in terms of outcomes on the ground. In addition, statutory consultees should prioritise those applications which they deem to have the most significant outcomes for their areas of responsibility, and therefore have the most significant outcomes for places.

Q9. Do you consider that the Accelerated Planning Service could be extended to:

a. major infrastructure development

Yes / No / Don't Know

b. major residential development

Yes / No / Don't know

c. any other development

Yes / No / Don't know.

If yes, please specify

Please see our answer to question 2 for more on why we think it may be beneficial to apply the Accelerated Planning Service to all types of major development, not just non-EIA major commercial.

If yes to any of the above, what do you consider would be an appropriate accelerated time limit?

As we argued in detail response to question 2, if an Accelerated Planning Service is introduced, it may be preferable for it to be applied to all major projects, rather than only non-EIA major commercial development. This would:

- Put all types of major application on a level footing in terms of financial prioritisation – meaning that LPAs would be more likely to prioritise applications on the basis of the public interest and outcomes 'on the ground';
- Ensure a larger and more consistent pipeline of projects under the Accelerated Planning Service, the fee income from which would enable LPAs to more effectively plan for the resourcing and development of their services and in-house capacity. This is more likely to lead to significant reductions in decision making times for all types of application; and
- Increase the number of types of planning application that approach cost recovery.

We suggested in response to question five that the current statutory decision making period for major application should remain.

Q10. 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

On balance, we would prefer option B.

Making the Accelerated Planning Service mandatory for developers would give LPAs more certainty about the number of applications under the system they are likely to receive, and therefore the additional fee income they would be likely to receive. This would, in turn, make it easier for them to

plan, resource, and improve the planning services they provide. If applicants have discretion to choose between the Accelerated Planning Service and a standard planning application route, LPAs may face more uncertainty about their fee income and service delivery.

Indeed, there is no guarantee that applicants would regularly choose the Accelerated Planning Service route. We note that few have chosen to take the Section 62A route in the designated LPAs to which this applies (see Lichfields, 'Passport to PINS: How attractive is a planning application under Section 62A?', 2022).

However, if the Accelerated Planning Service route is made mandatory for qualifying applications, it would be particularly important for its statutory decision making time limit to be realistic (in response to question 5, we argued that this should be, at a minimum 13 weeks, rather than the proposed ten week). This is because, if developers are unable to avoid this route to permission, and decisions continue to take too long, they may be incentivised to put forward schemes that purposefully sit below the threshold for them to be considered major commercial projects.

Q11. 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?

No comment.

Planning performance and extension of time agreements

Q12. 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

Yes, we welcome further monitoring and transparency within the system, including publication of the recent draft Planning Performance Dashboard. Government statistics confirm that the use of Extension of Time (EOT) agreements has increased significantly for both major and non-major applications.

This new measure will reveal a more accurate picture of determination timeframes across the country, whilst encouraging LPAs to use extension of time agreements more appropriately (we discuss appropriateness in more detail in response to questions 18 and 19).

Indeed, a better understanding of the actual time it takes for LPAs to decide applications would enable government to set realistic and achievable targets, timeframes and performance thresholds. These, as we argued Planning Fees and Local Authority Performance consultation response (RTPI, 2023), should reflect the current limitations of the system (for example, barriers that are outside of LPAs' control and resourcing levels).

An up-to-date indication of 'real' determination timescales in relation to the statutory time limit will showcase where targeted reforms and assistance is most needed.

Q13. 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.

No.

As research by Planning Resource recently established (Planning Resource, '97% of planning authorities would not meet proposed new 'special measures' metric for slow decision-making', 2024), if these thresholds were applied now they would, together, result in roughly 97% of LPAs being designated for under-performance by the Secretary of State. We question whether this would be constructive. Helping LPAs work towards a lower pair of thresholds, which are more realistically achievable based on current data, would be preferable. If the measures being proposed here improve performance to the extent that tighter time limits would be realistically achievable, they could be revisited at that point.

Q14. 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

We would not support option A because extension of time (EOT) agreements are commonly used legitimately, and in the interest of both applicants and LPAs (for example, to provide more time to agree unforeseen but appropriate amendments to schemes). Where this is the case, LPAs should be able to use them without being penalised.

We support option B. This gives the Secretary of State the ability to consider where agreed extended time periods may have been legitimately used by LPAs. As we argued in response to the consultation Planning Fees and Local Authority Performance (RTPI, 2023), LPAs' speed of decision making should be assessed on a mixture of data, which includes both the percentage of applications that are determined within the statutory determination period, and the percentage of applications that are determined outside the statutory determination period, but within a mutually agreed EOT or PPA. EOTs and PPAs can have an important role in the planning process and it is often not possible to reach a good-quality decision within statutory timeframes for larger and more complex applications.

To further improve transparency, data should distinguish between PPAs/EOTs used with the proactive agreement of applicants, and those used by LPAs to prevent an application from being recorded as over time.

Finally, while we support a finer-grained approach to monitoring LPA's performance, it is crucial that the planning system is evaluated robustly on its social, economic and environmental outcomes, too. As we argued in our research report 'Measuring What Matters: Planning Outcomes Research' (RTPI, 2020), part-funded by MHLCG:

> *"This means going beyond simple metrics like speed of processing applications and number of housing units delivered and assessing planning in terms of placemaking aspirations and social, economic and environmental value, in order to track and improve the impact of planning."*

That report provides a toolkit and handbook for conducting such outcome-focused assessments.

We regard it as crucial that high-quality social, economic and environmental outcomes are not neglected in pursuit of a faster planning system.

Q15. 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

Yes, this is a logical period to assess performance and enables higher quality analysis to then inform targeted reform. Reducing the monitoring period from 24 months to 12 months will enable more accurate performance assessment, with underperformance identified much earlier (which will in turn aid Government targeted improvement).

This condensed timeframe will also facilitate a more responsive approach, in which previous good performance by LPAs is less likely to conceal more recent poor performance, and improvements in performance are identified sooner.

Q16. Do you agree with the proposed transitional arrangements for the new measure for assessing speed of decision-making performance?

Yes / No / Don't know

Yes.

It is sensible to base future designation decisions on a whole 12-month assessment period of the new performance regime from October 2024, with the first designations to take place at the start of 2026.

Q17. Do you agree that the measure and thresholds for assessing quality of decision-making performance should stay the same?

Yes / No / Don't know

Q18. Do you agree with the proposal to remove the ability to use extension of time agreements for householder applications?

Yes / No / Don't know

We strongly disagree with this proposal for two main reasons.

First, when used correctly, the EOT mechanism can be extremely valuable to both officers and applicants; unforeseen issues can be addressed via minor amendments that are easily facilitated and would otherwise lead to a refusal or withdrawal. A sensible EOT is therefore a potentially valuable tool.

Second, it is unreasonable to tighten up timelines for decision making, or to remove tools used to meet targets, without providing the additional resources required to make this achievable. The outcome is likely to be more decisions being made after the statutory time limit has expired and more LPAs being designated for poor decision-making as a result, without any improvement in service.

To promote the correct use of EOTs, DLUHC should work with partners in the sector, including the RTPI, to design and disseminate guidance that describes the circumstances in which this mechanism is appropriate and useful.

Q19. What is your view on the use of repeat extension of time agreements for the same application? Is this something that should be prohibited?

We agree that the excessive use of repeat EOT agreements should be prohibited. As set out above, whilst EOT agreements can be very useful when used correctly and sparingly, we are aware they can

be abused, meaning applicants can be left with open-ended timeframes. Indefinitely extending determination periods is not what EOTs should be for.

Government's emphasis should therefore be on eliminating the *misuse* of this mechanism.

This misuse is largely a symptom of LPAs being unable to meet statutory decision making periods, and then using EOTs to mask this underperformance. Government should therefore focus on providing LPAs – and statutory consultees – with the resources and capacity they need to make decisions effectively within statutory periods. We proposed several different measures which would aid this in response to question 1 of this consultation.

However, encouraging the effective use of PPAs could be particularly valuable, given that they can be used to structure and agree both decision making processes and expectations between LPAs and applicants, with agreements tailored to the specific context of the application. The signing of a PPA at the start of an application should therefore guide both officers and applicants through the whole process, whereby appropriate timescales are broken down for each stage to keep the application on-track, negating the need to extent statutory timescales towards the end. Progress meetings are also factored in to keep dialogue open between all parties, which is especially useful in more complex applications.

However, as with pre-application services, the quality of PPAs can vary widely, and applicants do not always receive the certainty or service they believe they are paying for. To ensure the best chance of success, DLUHC should consider steps to improve and standardise PPAs offered by LPAs. These could include:

- Standardised templates for PPAs service officers, so that is easier for applicants to understand what LPAs are offering, and for LPAs to set our realistic time frames;
- Using these templates to encourage LPAs to use fee structures that reward the delivery of advice and milestone dates, rather fixed fee approaches; and
- Enshrining Planning Advisory Service's comprehensive guidance on the subject (see PAS, 2024) in official guidance and templates, so that it is more widely applied.

Simplified process for planning written representation appeals

Q20. Do you agree with the proposals for the simplified written representation appeal route?

Yes / No / Don't know

Whilst we agree that action must be taken to speed up written representations, which are the most common form of appeal, we do not support this approach for two key reasons:

The removal of third party representation

Parties' ability to make third party representations within the process is in line with the principle natural justice. Appeals should be considered and assessed appropriately giving all parties a fair say in the process. Expanding the remit of the simplified route to encompass more appeal types is not appropriate in this regard.

Inability to respond to changing circumstances from when the decision notice is issued to the point at which the appeal is submitted

The simplified route does not allow for any additional information/evidence to be included within the assessment process, however relevant material considerations may arise within the window that an appeal can be lodged. The high level in which simplified appeals are determined may not be appropriate in these cases, particularly for larger reserved matters appeals. This could lead to re-submissions that then actually slow down rather than speed up the system.

Alternative or additional measures

An alternate approach, that would address many of the concerns identified by the consultation, would be for third parties to only be able to respond to additional specific new matters that have arisen since the issuing of the decision notice, rather than being able to re-state existing positions. Narrowing the scope for third parties to respond within prescribed timescales in this way is a reasonable and just approach.

It is also important to note that PINS being slow to validate written representation appeals is a crucial cause of delay right at the start of the process. This is due to a resourcing bottleneck that needs to be addressed through sustained investment that builds capacity long-term.

Q21. 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

Q22. 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.

No comment.

Q23. 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.

Yes, as we laid out in response to question 20, we have concerns about removing the ability for additional representations. Parties' ability to make them is in line with the principle natural justice. Appeals should be considered and assessed appropriately giving all parties a fair say in the process. Expanding the remit of the simplified route to encompass more appeal types is not appropriate in this regard.

Q24. 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

Yes.

Due to the potential need for third party representation and additional matters to be considered at the appeal stage, we envisage a large proportion of appeals being classed as unsuitable.

Giving PINS this role would place an additional resource burden upon the organisation, and potentially act as a point of slowdown in the process. Government should therefore ensure that any additional burdens are sufficiently resourced.

Q25. 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

Yes, we agree that the existing time limits for lodging appeals should remain as they currently are.

Varying and overlapping planning permissions

Q26. 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

Yes, we agree that guidance encouraging clearer descriptors of development would be beneficial, providing communities with a clearer understanding of the proposed development and noting that developers would be able to amend this description at a later date if needed via S73B. This would discourage applicants from submitting high level descriptions of development in an attempt to 'hedge their bets' should amendments be required further down the line.

We recognise the extent of confusion created by recent case law that concerns varying and overlapping planning permission and we welcome efforts to resolve this. We consider that these amendments could be useful ***to an extent***:

- The proposed S73B route could be useful in circumstances where minor amendments to descriptions of development are necessary alongside variation in conditions. This additional level of flexibility beyond the current S73 regime, and the Finney ruling, will provide applicants with more certainty throughout the planning process. We understand this S73B permission would equate to a new granting of permission.
- Separating out the general variations to existing permissions (with the new S73B route) and the ability to vary only specific conditions via the existing S73 route could be useful in distinguishing the degree of variation allowed.

However, while this is a reasonable start, we have heard from members that confusion in the aftermath of the Hillside decision suggests that this new route does not go far enough in resolving uncertainty around this case law in over the longer term.

A key issue is defining what is meant by 'substantially different'. Interpretation of this could still vary significantly between different cases, leading to uncertainty. It would also not be possible to amend a S73B application, even where this may be useful and necessary.

Fully resolving these issues may require primary legislation.

Q27. Do you have any further comments on the scope of the guidance?

No comment.

Q28. 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

Yes.

It makes sense that the focus of S73B application submissions is on the impact of the proposed material variation to the existing permission, and that the overall principle of development is not re-visited. We support the publicity requirement that the local community would have the opportunity to comment on any proposed changes.

Given the constraints on many statutory consultees, it also makes sense for specific statutory consultees to be engaged only where appropriate, dependent on the relevant circumstances of the application.

Q29. 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

No.

As we argued in response to question 1, in order for development management services to be sustainable, application fees should be set at a rate equivalent to cost recovery. LPAs are best placed to establish what this would be.

Q30. Do you agree with the proposal for a 3 band application fee structure for section 73 and 73B applications?

Yes / No / Don't know

Q31. What should be the fee for section 73 and 73B applications for major development (providing evidence where possible)?

As we argued in response to question 1, in order for development management services to be sustainable, application fees should be set at a rate equivalent to cost recovery. LPAs are best placed to establish what this would be.

Q32. Do you agree with this approach for section 73B permissions in relation to Community Infrastructure Levy?

Yes / No / Don't know

No comment.

Q33. Can you provide evidence about the use of the 'drop in' permissions and the extent the Hillside judgment has affected development?

Our members have made clear that they value the flexibility that 'drop in' permissions provide. They are currently an important tool to amend an extant permission as necessary when circumstances alter, to provide a new consent for an area that overlaps with the existing permission.

As mentioned in our response to question 26, we are aware of the degree of uncertainty created by the Hillside judgement, where developers are unclear as to whether they would still be able to implement the original permission lawfully.

This case has brought into focus the concept of severability and the need to 'future proof' original permissions in which subsequent drop-in permissions can be lawfully implemented.

However, in practice this can prove challenging. There is no clear definition of 'severability', and as such, applicants can be left with amended permissions with no guarantee that they would still be able to lawfully implement the original position.

Having to submit a fresh new application is cumbersome for large schemes, as new policy and wider issues might come into play which aren't directly relevant to the amendment the applicant seeks to make. This can add significant cost and time delays to a development and make it more challenging to coordinate the phasing and delivery of infrastructure.

Q34. To what extent could the use of section 73B provide an alternative to the use of drop in permissions?

Section 73B may provide an alternative to the use of drop in permissions so long as:

- Additional clarity is provided as to what 'substantially different' means in practice (see our response to question 33); and
- That this definition provides enough flexibility for descriptions of development to be amended in ways that are useful to applicants and reasonable to LPAs.

There may still remain the need to amend an extant permission for a specific area of the wider site, meaning drop in permissions are likely to continue to be relevant.

Q35. 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?

No comment.

Public Sector Equality Duty

Q36. Do you have any views on the implications of the proposals in this consultation for you, or the group or business you represent, and on anyone with a relevant protected characteristic? If so, please explain who, which groups, including those with protected characteristics, or which businesses may be impacted and how. Is there anything that could be done to mitigate any impact identified?

No comment.