Building a Safer Future consultation

31 July 2019

The Royal Town Planning Institute

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General points from RTPI:

The correct role of Planning

Given the importance of decisions regarding high risk buildings, the RTPI is concerned that the responsibility borne by planning professionals and others might get confused through some of the proposals. In particular we are concerned about the application of the statutory consultee regime to Fire and Rescue Authorities. See our response to question 2.5 where we raise concerns about the interaction of this safety-driven regime with a speed-drive regime imposed on local planning authorities.

Pre application discussions / "Gateway Zero"

MHCLG is reminded that in addition to dealing with land use and access of the role of planning in agreeing *materials* in construction. Whilst the role of planning in this regard is limited to the *appearance* of buildings –and thereby the materials they are constructed from, this is nevertheless critical in terms of successful consenting. Developers will seek both secure materials that are acceptable to the planning authority in terms of appearance and to building control in terms of safety and performance. It may be that despite obtaining planning permission using a certain design, the applicant does not in the first instance get materials approved by building control. Building Inspectors may then recommend materials which would be satisfactory. Then the applicant would have to return to the planning authority to check if these new materials comply with the existing planning permission. This can be a source of delay and wasted resources for all concerned.

Our suggestion is that this difficulty can be avoided if extensive use of *pre application procedures* is followed. This approach is already recommended as best practice in current government planning guidance and policy. Effectively this would mean there is a "Gateway Zero" at which relevant professional input is secured to ensure that a future planning permission would *be likely to be approved* and could also be built, in accordance with later approvals through Building Regs etc.

However, this does call into question the use of Approved Inspectors, as the current participation in pre application discussions does tend to be limited either to public sector personnel or the staff of bodies with specific remits such as utility companies. Including a person chosen by the applicant into pre apps but on the regulatory side not the applicant side is without precedent. The Proposals appear to envisage a continued role for Approved Inspectors in relation to buildings in scope. It is not our place to take a position on the merits of this, but the implications must be provided for. Any risks to the proper operation of the pre application process must be overcome.

Gateway Zero would also be a very useful gateway for providing an opportunity to check whether a prospective planning application was likely to be in scope.

Permitted Development

The Coalition government introduced the opportunity for the owners of office buildings to convert them to residential buildings *without planning permission*. And this has, despite some considerable concerns expressed by many commentators and backed by evidence of how it has operated, has recently been made permanent. Therefore, there is a high risk that new residential accommodation at height can be created without express planning permission.

There is a current "Prior Notification" procedure whereby an applicant must serve notice on the local planning authority, although the LPA has a limited remit compared to planning permission. However, specific additional funds are needed for the activity of local planning authorities in this regard, since Prior Notifications only attract a low fee which even now by no means covers the cost of processing them. In relation to buildings within scope this processing activity is likely to be more extensive than for buildings of less than 18 metres as a result of the various proposals in the consultation document.

There is only one reference to permitted development in the proposals document (at para 106) and it is inadequate and arguably misleading.

Consultation Questions

Chapter 2 Stronger requirements

Do you agree that the new regime should go beyond Dame Judith's recommendation and initially apply to multi-occupied residential buildings of 18 metres or more?

Yes. It should also apply to buildings in which there is any residential component not just "residential buildings". And there should be no different threshold for fire and rescue consultation (see Q 2.6.). No reason for this difference has been brought forward.

Chapter 3: A new duty holder regime for residential buildings

Q 2.5 Do you agree that fire and rescue authorities should become statutory consultees for buildings in scope at the planning permission stage?

Yes, but with caveats below. And fire and rescue authorities should be statutory consultees for any building with a residential component in it over 18 metres**.**

It must be clear where responsibility lies around the assessment of Fire Statements. The statutory consultee legislation is binding *on the local planning authority* but not on the consultee. Statutory consultees may reply late or not at all. It must be made absolutely clear in planning guidance and or regulations from MHCLG that if the FRA does not respond within the timescale the local authority will refuse the application. This must remain the case unless special provisions around how application decision times and applications for extension of time, and planning appeals operate.

The introduction of the FRA consultation regime will have implications for local planning authority resources which are at a critical level. We understand MHCLG is looking again at how to fund local planning departments and how to fund this additional burden should be included in that review. It could be that a special supplement on planning application fees for buildings over 18 metres will be required.

Q 2.6 Do you agree that planning applicants must submit a Fire Statement as part of their planning application? If yes, are there other issues that it should cover?

Yes. A Fire Statement should be added to the existing Design and Access Statements for buildings in scope. However, it should identify and be confined to clearly relevant Planning matters to be given weight in the Planning decision making process as distinct from those relevant at Gateway 2.

However, as we have indicated in our opening statement this is a back-stop approach. Best practice would be to share the information that would eventually go in a Fire Statement at pre-application stage as set out in NPPF and NPPG. Fire and

Rescue Authorities should therefore respond to pre-application requests for comment. We cannot stress too highly the importance of this stage.

For buildings in scope the designer should also give early attention to what will be necessary at Gateway 2. This is to avoid planning permission being given for details which will not then satisfy Building Regulations. (This would be the applicants' responsibility.)

We are engaged in detailed discussions with MHCLG on the matter of the content of the Fire Statement.

Q 2.7 Do you agree that fire and rescue authorities should be consulted on applications for developments within the 'near vicinity' of buildings in scope? If so, should the 'near vicinity' be defined as 50m, 100m, 150m or other. Please support your view.

Yes. And again, this measure should be applied to buildings with residential components in them which are over 18 metres.

Resources need to be identified to deal with legacy development in scope and to have these plotted as constraint on Geographical Information Systems in local planning authorities so that when applications are first received and validated, the need for this consultation can be identified.

We are concerned however that too simply a radius approach as suggested above would not work. This is because the crow flies distance may not be the relevant one. What matters is the route that fire appliances may need to take. In cases where comprehensive redevelopment has taken place since 1950 this could be quite circuitous.

Q 2.8 What kind of developments should be considered?
• All developments within the defined radius,
• All developments within the defined radius, with the exception of single dwellings,
• Only developments which the local planning authority considers could compromise access to the building(s) in scope,
• Other

In practice it will be a judgement call as to whether applications prejudice access for Fire and Rescue Authorities to buildings in scope. If local planning authorities (LPAs) are to be expected to make such a judgement there will need to clear guidance provided by specialists for LPAs to apply. This more complex that simply where buildings are located because even landscaping schemes, for example, could inhibit access through inappropriate planting and features. There is an issue here relating to competency and the production of design guidance such as is provided for highway design.

Q 2.9 Should the planning applicant be given the status of a Client at gateway one? If yes, should they be responsible for the Fire Statement? Please support your view.

Yes, since the applicant is the consistent link through the planning process including entering into pre-application discussion.

Q 2.11 Is planning permission the most appropriate mechanism for ensuring developers consider fire and structural risks before they finalise the design of their building? If not, are there alternative mechanisms to achieve this objective?

The planning permission stage is vital, but so is the pre application process where key design issues will be discussed and developed to give and efficient and effective route through the later formal process..

Q. 2.32. Do you agree with the proposal for refurbished buildings?

Not at all. The description of permitted development is most misleading, since it refers only to refurbishment not change of use**.** See our comments on page 2**.**

Where a prior notification is required, a proper “pre notification” process should be triggered in which the local planning authority is empowered and resourced to discuss the implications of the proposals with the fire and rescue services before submitting a notice. Gateway 2 is far too late.

Q 2.33 Do you agree with the approach to transitional arrangements for Gateways?

Generally, no. We agree that a pragmatic approach will have to be adopted, the question is which one? Where planning permission has not yet been applied for, the proposal should go through Gateway Zero if at all possible. We would also bring to the attention of MHCLG that even if planning permission has been granted, it might need revision if building control requires different materials. So again, leaving things to Gateway 2 is not helpful will lead to considerable inefficiencies and delay and is potentially misleading especially to stakeholders such as those commenting and being consulted at the planning application stage