

**POS Development Management Committee & ALBPO (Development Management)
on Friday 15^h January 2010 at Croydon**

Briefing Note on two DCLG consultation documents:

1. *“Development Management: Proactive Planning from Pre Application to Delivery” (PPS)*
 2. *“Improving Engagement by Statutory and Non-Statutory Consultees” (IEC)*
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Introduction:

This Note has been prepared by POSe consultants Geoff Cross and Stephen Olivant who have run the Development Management & Spatial Planning Group (DM&SP) for two years. The group comprises thirteen planning authorities across England which are seeking to move their corporate culture and planning service towards development management. Significantly, the majority of these authorities are sufficiently motivated to start this process before adopting a Core Strategy.

The DCLG, PAS and POS are expected to continue supporting the group in 2010 because it has already led much of the emerging thinking and practical application of development management. We helped to inform the DCLG response to the Killian Pretty Review, and the PAS has commissioned a series of case studies based upon the group to illustrate its forthcoming guidance material on development management.

The comments given below are designed to start a debate amongst group and other POS members on key underlying issues raised by the two DCLG consultation papers. They do not seek to pick up matters of detail.

1. “Development Management: Proactive Planning from Pre Application to Delivery”

It appears that only three parts of this eight-part consultation document are intended to become government policy. These are:

- Part 2 will be a Planning Policy Statement (PPS) on development management
- Part 3 will be a policy annex to the PPS on pre-application engagement
- Part 4 will be a policy annex to the PPS on the determination of applications.

The final versions of the PPS and the policy annex on determination will replace *“The Planning System: General Principles”* published in 2004 as the explanatory ‘daughter document’ of PPS1. The Part 4 policy annex, and the improving consultees’ engagement consultation (IEC) policy annex (described in section 2 below) will provide substantive policy guidance along with other policy annexes.

Comments:

- i. Part 2 (PPS) - This covers important development management issues and meets the need for a planning policy statement; as identified and agreed following the Killian Pretty report. It is pitched at an appropriate level for the purpose.

- ii. Part 1 (Introduction to consultation document) - We understand that this part is intended to be stripped away when the PPS comes into effect. However, that would remove a useful attempt by DCLG at explaining '*what is development management?*' (see para.1.4). DM&SP group members have previously stressed the need for a simple explanation of development management and what it is for. So we strongly suggest that the PPS should contain such an explanation and that it should be widened to highlight the principal purpose of development management (ie help to achieve sustainable development - which was not possible under pre-2004 land use planning).
- iii. Parts 2, 3 & 4 (PPS and policy annexes) – These, and the IEC consultation annex are the first stage in a set of government policy on development management. We understand that they will be followed by other policy annexes covering five further themes (see para.1.14). These cover application, appeals, delivery, monitoring, and special consent regimes. In addition, current consultation is happening on a draft policy annex on improving the use and discharge of conditions. It is not clear what benefit will be brought to the application, appeals and monitoring stages, and to special consent regimes by being re-written as policy annexes, unless they are intended to be updated replacements of current circulars. The obvious missing element from these policy annexes is enforcement (which is actually hidden within the delivery theme).
- iv. Part 2 (PPS) - DM&SP group members report that corporate culture change has been one of their toughest challenges. We are also aware from PAS regional seminars that some dyed-in-the-wool planners are reluctant to change from development control. Therefore, we were disappointed that the draft wording of the important PPS does not 'sell' the benefits of development management better, or give greater backing and impetus for change at the corporate centre, as well as in planning practice, for planning authorities.
- v. Part 2 (PPS) - The draft lacks specific mention of the commissioning and continuing provision of local services (such as education, health services and care of elderly) when it encourages LPAs to work with other organisations (see paras.2.6, DM1, DM3, DM5, DM6). Yet we know that these services are a vital component of sustainable development and effective 'place-shaping'. The DM&SP group has highlighted the importance of involving these service providers in pro-active consideration of future development in their area, and at later stages of development management. Therefore, we suggest that the PPS should state it expects that key infrastructure and services providers will actively engage throughout the whole development management cycle, from pre application to delivery.
- vi. Parts 2 & 4 (PPS and policy annex on determination) - One of the fundamentals of spatial planning (post 2004) is that it looks wider than the development plan in order to achieve sustainable development. The DM&SP group and participants in PAS regional workshops have consistently agreed that spatial planning must look beyond traditional land use 'material considerations' to align development plan objectives with their sustainable community strategy and other relevant local strategies. Therefore, it is disappointing that the draft policy annex restates a land use planning (pre-2004) approach to 'material considerations' (see para.DE6). We believe that the policy annex should explain how the sustainable community strategy, and local authority and other relevant strategies, can be used as 'material considerations' to

help deliver the vision and community objectives and the weighting that should be applied to them. As drafted, the annex merely states that these may be material considerations. However taken with the remainder of the text there is no encouragement on this point.

- vii. Parts 2 & 4 (PPS and policy annex on determination) - The DCLG appears to be placing slightly more weight on emerging LDDs than previously, but these drafts are still unclear on the weight of other strategies published by local planning authorities and key players (such as English Nature, Environment Agency and primary care trusts). We expect this will be the subject of future planning appeals and judicial reviews, so this policy annex should be firmer and legislative change may have to be put in hand if needed.
- viii. Parts 2 & 4 (PPS and policy annex on determination) – A large majority of local planning authorities do not have an adopted core strategy, so the PPS and policy annex should assure those authorities that they do not have to wait for adoption before moving towards a development management approach. Over half of DM&SP group do not have an adopted core strategy, yet have been able to make good progress in development management by harnessing the vision and community objectives of their sustainable community strategies etc. Thus, the draft policy annex wording is too restrictive by referring to their relevance as being “*consistent with the spatial strategy set out in the development plan*” (see para.DE6.3). Instead, it should state that the objectives in the sustainable community strategy and other relevant strategies can be harnessed as weighty ‘material considerations’ before a core strategy has been adopted.
- ix. Part 2 & 4 (PPS and policy annex on determination) – The consultation document repeatedly emphasises the positive nature of development management. But it does not talk enough about the positive activities of weeding out wholly inappropriate proposals at an early stage, checking that on-going construction complies with conditions/agreements, and taking enforcement against unacceptable unauthorised development. Members of the DM&SP Group report that these activities are highly regarded by their elected members and the public as a valuable part of their development management service.
- x. Part 3 (policy annex on pre-application engagement) - The approach and policy is appropriate and follows the advice recommended by the LGA in May 2009. This includes councillor pre-application encouragement for major proposals in accordance with an adopted local protocol. It provides local flexibility of approach on appropriate pre application engagement which appropriately allows for local circumstances (see para.3.8). However, it would be helpful if the annex placed pre-application consultation properly within the context of SCI and plan making consultations. It is disappointing that the IEC consultation (see below) does not deal with consultee engagement in pre-application discussions, which is split between the annex and the IEC consultation.
- xi. Part 3 (policy annex on pre-application engagement) - There is a series of questions attached, and the last two need careful consideration:
 - Q 13 asks if you agree that extra resources spent by applicants at pre-application stage will be offset by post-application savings? While no similar question is

- asked here about LPAs potential costs and savings, Part 8 (impact assessment) assumes that 60% of LPAs will make savings of 3-14% on DC including charging for pre-application advice.
- Q 14 asks whether specific pre-application fees should be legislated for, or whether current 2003 Local Government Act powers make adequate provision.

2. “Improving Engagement by Statutory and Non-Statutory Consultees”

This separate consultation paper on engaging consultees (IEC) contains a draft statutory and non-statutory consultation policy annex, which is stated to supplement the PPS and to be read as one of its policy annexes.

Comments:

- i. It is encouraging to see that this separate consultation paper recognises the importance of timely, consistent, transparent and helpful responses from statutory and non statutory consultees (see para 5.4) . Consultees have a vital part to play in development management. The consultation introduction importantly places consultation on planning applications within the context of the SCI and plan making consultations. It includes a *draft policy statement on statutory and non statutory consultation*.
- ii. The *draft policy statement on statutory and non statutory consultation* is drafted as a policy annex supplementing the *Planning Policy Statement on Development Management (PPS)* referred to above. However it has been prepared as part of a separate consultation and it seems reasonable to assume that statutory and non statutory consultees' will focus their attention on this consultation paper given its title and interest to them. While the introduction to the consultation policy annex draft sets out the importance of effective engagement, including by consultees in the pre application and implementation stages, the policy annex *“focuses specifically on the consultation element of engagement that commences once an application has been submitted and continues during the period of evaluation, determination, and implementation of the proposals..”* (see para.2.3(2)). The pre-application engagement policy annex is referred to provide specific policy guidance encouraging early and effective engagement of consultees (in particular para.PA4.4)
- iii. This separation of pre-application consultee engagement policy from submitted application consultation guidance seems likely to diminish the importance of consultees adopting a continuing consistent development management approach. It would be better if PPS policies (see paras.PA4.3 & 4.4) were repeated in the annex to provide comprehensive advice to consultees and encourage their early and continuing engagement. It would be better if pre-application consultee engagement was set out as part of an ongoing consultation, leading in appropriate cases to the submission of a planning application with formal consultation thereon. The artificial separation of pre-application from application consultee engagement is underlined by the number of references the consultation annex then has had to make to the importance of pre-application engagement. For example, annex policy CON 1 refers to the very important point of adequacy of resources for consultee pre-application

advice, as does CON 5; the draft code of practice has to refer to consultees providing relevant and timely pre application advice at the pre application stage (see para3.11(2)); and paragraph 5.6 stresses that with a stronger pre-application process, CLG would expect fundamental or substantive concerns to have been raised by consultees at the earliest opportunity.

- iv. The difficulties some consultees have had responding to pre-application engagement requests has been a major concern. Whilst s 54 of the 2004 Act requires most statutory consultees to provide a substantive response to a formal consultation, there is no proposal to extend this requirement to pre application consultation engagement requests. The society suggested a duty on local planning authorities, applicants and consultees to engage in pre-application discussions on major application proposals. However no such proposal has been brought forward in the current consultations, although consultees signing up to the code will be agreeing to provide *“relevant and timely advice at the pre application stage in response to reasonable requests from applicants and lpas”*.
- v. POS also suggested costs advice be toughened against consultees bringing forward previously unmade objections on applications when they had failed to engage in pre-application engagement when requested to do so. A question is posed in the consultation on this, asking if Circular 3/2009 guidance in respect of this needs to be *“further clarified”*.
- vi. The main thrust of the consultation paper proposals to encourage appropriate resources to be provided by consultees lies in the proposed code of practice, and in DCLG requiring more information on consultation performance from consultees, and monitoring whether further steps may be needed. On the first point, in addition to agreeing to provide pre-application advice, consultees will be required to appoint a compliance officer to ensure consultees keep to an adopted code of practice, to deal with complaints about any breaches of the code, and to ensure consultees publish their performance annually on their web sites. (LPAs will also be required to have a compliance officer to ensure the code is maintained.) It is not clear what would happen if a consultee did not adopt the code of practice.
- vii. To respond to KP criticisms of lack of clarity in consultee responses, it is proposed that any response should have to fall into 1 of 3 categories:
 - Fundamental concern
 - Substantive concern (might be overcome)
 - Material consideration
- viii. Consultation requirements have been reviewed and a series of minor changes proposed to consultation requirements (part 4). These need to be considered in detail by POS. It is proposed to consolidate the GPDO during 2010 once these changes have been agreed. An analysis of the performance of statutory consultees has been provided in annex A. (LPAs should note that very few are providing the return required under s 54 when they have been consulted by other LPAs and are therefore consultees).
- ix. The impact assessment uses some crude assumptions in seeking to show additional costs and potential financial savings from the consultation paper proposals. This

methodology minimises the actual benefits of more sustainable better designed development which should accrue from the earlier and more helpful engagement of consultees in the development of proposals. POS may want to consider whether to express reservations about his impact methodology to avoid grant or funding reductions following; and as the biggest gains in consultees assisting to improve the environment in our communities by influencing development, is to be found in earlier helpful engagement of consultees which is not included.

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