

# Planning for a better future

Our planning manifesto for the government



## Manifesto Background Paper 4

### Red line submissions: a proportionate approach

“Outline planning applications have got too complex! Why can’t we go back to simple red-line outlines?” POS looks at the truth and reasons behind this claim and suggests an innovative solution.

## Planning Officers Society

POS is the single credible voice for public sector planners, pursuing good quality and effective planning practice. The Society's aim is to ensure that planning makes a major contribution to achieving sustainable development in ways that are fair and equitable and achieve the social, economic and environmental aspirations of the community.

We operate in three main ways:

- As a support network for planners in the public sector
- As promoters of best practise in planning
- As a think tank and lobbying organisation for excellence in planning practice

Where we can, we will work across the sector to craft proposals that have widespread support from the people who operate the planning system at the coalface: landowners, developers, agents, legal, local authorities and politicians. We will be both radical and practical as we look for solutions to tangible problems that will make a real difference to crucial areas. Our objective is to improve the planning system to enable it to deliver its key aim of sustainable development. It is within this context that we have set out this advice to Government so we can plan together for a better future.

## POS Manifesto

This started in early 2014 when we looked ahead to the national parliamentary elections in May 2015. The main parties were drafting their manifestos, so we thought about what we could do to help them. This resulted in Planning for a better future: Our planning manifesto for the next government. The time since then has seen an unprecedented amount of change to the planning system, so our initial planning manifesto for the next government has morphed into an on-going planning manifesto for government.

These are think pieces that tackle a topical area within planning practice and sets out our recommendations for improvement. They comprise a growing series of Manifesto Background Papers that look in detail at specific issues. Those that are still current are summarised in our main Planning Manifesto paper that sets out the current ask from POS to the government.

The views expressed in these documents reflect the initial view of POS. It is a consensus position. It should not be taken as a final position; rather an informed starting point to debate the issues. It is expected that the recommendations will evolve as the debate progresses.

Other titles in the series can be viewed from our website.

## Contents

Summary	4
1 Background	5
2 What is the problem?	5
3 The issues around the current outline regime	5
4 How these issues can be addressed	7
5 Legal issues	9
6 Information requirements for applications for planning permission	9
7 Testing and piloting PDC applications and new application requirements	11
8 Conclusions	11

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## Summary

“Outline planning applications have got too complex! Why can’t we go back to simple red-line outlines?” POS looks at the truth and reasons behind this claim and suggests an innovative solution. Its key features are:

- Outlines are complex because the LPA must consider all material planning considerations and the outline planning permission must contain all the necessary planning conditions
- LPAs only get one shot at this – they cannot condition matters afresh in the approval of details stage
- Our solution lies in separating out the decision on the principle of a development from the conditions that control the detailed development
- The applicant would be required to submit:
  - A short description of the proposed development
  - Ownership certificate and agricultural land declaration
  - A basic plan including high-level details of the application (site, number of units, access route etc)
  - Additional information that is necessary to support the application, particularly an explanation of why there are no in-principle impediments to the development that can’t be addressed at the detailed stage
- Consultation and publicity/advertisement would be carried out as usual
- The development principle would be formally endorsed by the LPA and an approval in the form of a decision notice issued to the applicant
- The decision would not be a planning permission as such, the document would not have conditions attached to it, but it would indicate what matters are necessary to address in any subsequent application and set out what additional supporting information would be needed to be included in a subsequent application for planning permission
- LPAs should have the power to issue these unilaterally as this could be a useful proactive tool that enables Local Plan allocations to be more dynamic and streamlined and would be a more efficient version of a Local Development Order
- Our background paper also sets out our suggestions for streamlining the information requirements for applications for planning permission

## 1 Background

- 1.1 The Autumn Statement announced a focus on supporting the approval of small sites through the planning system in addition to taking forward measures to ensure that the principle of development need only be established once. The Lyons Housing Review also proposed legislative change to permit 'red-line' outline planning applications on smaller sites of fewer than 10 homes. Most recently the government, in Fixing the Foundations: creating a more prosperous nation, stated that they will introduce a fast-track certificate process for establishing the principle of development for minor development proposals.
- 1.2 This paper looks at how these aims can best be delivered.

## 2 What is the problem?

- 2.1 Developers say that to get finance from their lenders there is a need for a degree of certainty around the principle of the development of a site before funds are released to work up the details of a scheme. They see the outline process as the way to do this. Developers, particularly the smaller ones, are saying that what they must submit as part of an outline application can sometimes be quite considerable and the cost of this can be prohibitive.
- 2.2 This paper looks at how this "Catch 22" can be addressed.
- 2.3 POS recognises that there may be some instances where applicants are submitting excessive information to support planning applications. This paper also explores the reasons for that and how it can be addressed.

## 3 The issues around the current outline regime

- 3.1 Small and medium sized builders find it difficult to access finance from lenders in the absence of confirmation that the principle of development on a site is accepted.
- 3.2 Small and medium sized builders see the outline planning application route as the way to get approval in principle for their scheme. They wish to submit minimal information to do this: a red line application. A "letter of comfort" from the LPA is not seen as carrying enough weight by the lending institutions, and quite rightly as such letters cannot carry any weight in the subsequent decision making process as they have no legal basis.
- 3.3 An outline planning application is an application for planning permission, but with some or all of the matters reserved for submission at a later date. The Reserved Matters are defined and are:
  - **Layout:** includes buildings, routes and open spaces within the development and the way they are laid out in relations to buildings and spaces outside the development
  - **Scale:** includes information on the size of the development, including the height, width and length of each proposed building
  - **Appearance:** aspects of a building or place which affect the way it looks, including the exterior of the development
  - **Landscaping:** the improvement or protection of the amenities of the site and the area and the surrounding area, this could include planting trees or hedges as a screen

- **Means of access:** covers accessibility for all routes to and within the site, as well as the way they link up to other roads and pathways outside the site
- 3.4 An application for outline planning permission results in a planning permission for the development; an obvious but a crucial point to understand. The LPA must consider all material planning considerations and the outline planning permission must contain all the necessary planning conditions. LPAs only get one shot at this – they cannot condition matters afresh in the approval of details stage. They can only conditionally approve matters that are already reserved or already conditioned.
- 3.5 In practice this means that if there is a tree in a plot that is proposed to be developed with a house, the LPA needs to know whether that tree should be retained and if so what is involved in its retention. The developer is therefore required to provide the necessary information to enable the LPA to make this judgement: a tree survey carried out by a competent person to BS 5837:2012 standards. With that information, the LPA can first decide whether the site can be developed in the manner requested without harm to the tree if its condition and contribution to amenity means it should be retained. They have a duty under the 1990 Planning Act (section 197) to do this.
- 3.6 If the development can go ahead they must then consider what conditions are necessary to protect the tree. This could be specifying necessary separation distances, tree protection measures (eg preventing the laying of hard surfaces over its roots) or a tree maintenance regime that allows for the growth of the tree to be managed so that its uncontrolled growth does not result in problems that creates pressures for its subsequent removal. Tree protection measures to be used during construction will also be specified. Again, section 197 places a LPA under a statutory duty to consider these matters.
- 3.7 What the LPA cannot do is ignore the tree. Similarly, if they have a “red line” application with no supporting information about the tree, they cannot put a condition on an outline consent requesting the detailed information later. This is because this information goes to the heart of the question “can the site be developed” and an LPA cannot grant a planning permission that cannot be implemented.
- 3.8 Similar situations arise with other matters. Necessary information requirements for outline planning applications must be front-loaded where the LPA needs this information to make the right decision with all the appropriate conditions attached. This adds burden on both the applicant and the LPA. This also exposes applicants to up-front financial risk with no guarantee of success. These burdens and risks impact small and medium builders more acutely.
- 3.9 Therefore, the costs associated with submitting applications for outline planning permission, with all its information requirements, can be significant for small and medium builders. This, coupled with no guarantee of success, can deter small and medium businesses from putting forward sites into the planning system. This needs to be resolved.

## 4 How these issues can be addressed

- 4.1 The solution here lies in separating out the decision on the principle of a development from the conditions that control the detailed development. By doing this the information requirements are reduced. An outline consent does not do this. POS is not saying that there is not a role for outline consents, just that they do not do the job that small and medium sized builders want when they talk about “red line” outline applications.
- 4.2 What is needed is the ability for an applicant to apply for a decision from the LPA on the principle of a development. Essentially this would be the same process that is now carried out with Applications for Certificates of Appropriate Alternative Development under s17 of the Land Compensation Act 1961. These are applications to establish the value of land in Compulsory Purchase Order compensation disputes as to what alternative development opportunities would be acceptable on land subject to a successful CPO.
- 4.3 The information requirements would be significantly less burdensome than an outline planning application, thereby reducing up-front cost and risk to developers, whilst still providing a sufficient level of information to enable local planning authorities to decide on the principle of development. For the purposes of this paper we are calling this a Principle of Development Consent (PDC).
- 4.4 The applicant would be required to submit:
  - A short description of the proposed development
  - Ownership certificate and agricultural land declaration
  - A basic plan including high-level details of the application (site, number of units, access route etc)
  - Additional information that is necessary to support the application, particularly an explanation of why there are no in-principle impediments to the development that can't be addressed at the detailed stage
- 4.5 An application fee should be payable sufficient to cover the cost to the local planning authority of processing these applications.
- 4.6 There would be a requirement for limited consultation with statutory consultees and non-statutory consultees to ensure the development principles are sound before a PDC approval can be granted. Consideration should also be given to whether local publicity and notification is carried out. POS thinks that it should be.
- 4.7 The development principle would be formally endorsed by the LPA and an approval in the form of a decision notice issued to the applicant. These decisions could be made under delegated powers or at committee and would be a local choice through a LPA's own Scheme of Delegation.
- 4.8 As the PDC would not be a planning permission as such, the document would not have conditions attached to it. The PDC notice would however indicate what matters are necessary to address in any subsequent application. This would set out what additional supporting information would be needed to be included in a subsequent application for planning permission (which could be in outline or in full). Best practice LPAs currently do this as part of their pre-application process and a PDC should become a useful formal output that developers will find very beneficial.

- 4.9 A process that formally decides that the principle of a development is acceptable on a specific site could have much wider application:
- Allocations in Local Plans could be given the same status as a PDC
  - Windfall sites, or departures from the Local Plan could benefit from this process, especially if the previous suggestion is taken up
  - LPAs should have the power to issue a PDC unilaterally as this could be a useful pro-active tool that enables Local Plan allocations to be more dynamic and streamlined and would be a more efficient version of a Local Development Order
- 4.10 Consideration needs to be given to whether matters that go to the heart of the question “can the site be developed?” should be pre-addressed in a PDC application or if they can be merely identified as matters to be addressed in any subsequent application for planning permission. Looking at a practical example again: the tree in the house plot. Here there is a need to consider the principle of whether the tree should be retained and, if so, whether the development can happen without its loss. As illustrated earlier, some of these matters are about detailed implementation, whereas others clearly go to the principle. There are essentially two options here:
- Apply to PDCs the same principle that applies to planning permissions: that an LPA cannot grant a planning permission that cannot be implemented. This would increase, in certain cases, the burden of information necessary to be submitted with these applications to enable these “in principle” issues to be addressed, however the resulting consents would have more certainty as all in-principle issues would have been addressed.
  - Accept that a PDC is not a planning permission and that therefore detailed matters, when fully explored, may mean that a planning permission cannot be granted. This may reduce the benefit of these consents to lenders and undermine their utility but it would reduce the up-front burden on applicants.
- 4.11 POS believes that the best way forward is a halfway house. The legal principle should be clear that a PDC is not a planning permission and does not guarantee that a planning permission will be granted when matters are considered in detail. However, where these matters of principle are clear at the PDC application stage, the LPA should give the applicant the opportunity to address them in their application. If the applicant declined to do this the matter (in our example the impact of the tree) would be flagged by the LPA in the PDC notice as a matter to be subsequently addressed and the fact that it could prevent the development of the land in the manner envisaged should also be stated.
- 4.12 The PDC would be carried with the land, ensuring that the principle of development does not have to be established again. For example, should the land be sold or when a future outline or full planning application is submitted. It would be binding on LPAs when they considered planning applications for the same description of development during this period. There would however be a need to address the key matters identified in the PDC decision notice.
- 4.13 The approval should have a life of three years (the same period as a planning permission) and after a PDC lapsed they would be a material planning consideration in the same way as a lapsed planning permission, ie they will carry weight unless there has been a material change in circumstances.

- 4.14 It is hoped that, subject to agreement with the lending industry, a PDC notice would overcome one of the key issues raised by small builders and enable them to access finance to bring forward developments.

## 5 Legal issues

- 5.1 Consideration will need to be given to ensure that the legal status of any PDC notice is compliant with relevant EU Directives, including requirements for Environmental Impact Assessment (EIA). As the proposals would generally apply to smaller development, it is expected that these would generally be below the thresholds for EIA. It is also considered that as a PDC notice does not constitute a planning permission that can be implemented; this should also avoid the need for EIA. The subsequent planning application would discharge this requirement if the development was of a scale and impact that required such an assessment. The legal status should therefore be drawn up in such a way that it minimises the need for costly information requirements at this early stage in the process, thus reducing the burden on developers.

## 6 Information requirements for applications for planning permission

- 6.1 The current system requires the following to be submitted with most applications:
- 1 APP application form
  - Ownership certificate [+ notice if needed]
  - Planning application fee
  - Plans and drawings
  - **Supporting Information - LPAs choose their local list from a nationally prescribed list**
- 6.2 The problem is that the approach to additional supporting information does encourage a tick box mentality, both from LPAs and planning consultants working for developers; if it is on the list, it should be included. Additionally, a fixed local list of requirements ignores the fact that development management is dynamic and, either over time or in circumstances that are unique or unpredicted, information may be necessary that the local list did not anticipate. The current system therefore creates certain behaviours:
- Supporting documents can be very formulaic and overlong
  - Supporting documents sometimes barely engage with the application
  - Supporting documents may have been prepared at different points in time, sometimes when the application is in an earlier state
  - Supporting documents can be silos that don't relate to each other
- 6.3 POS suggests an alternative approach. If you look at the items on a Local List they can be put into one of two categories: (1) ensuring a development is well designed and (2) identifying the impacts of a development and ensuring that they are mitigated where necessary. Therefore, the following should be submitted with most applications:
- 1 APP application form
  - Ownership certificate [+ notice if needed]
  - Planning application fee

- Plans and drawings
- **Design justification**
- **Impact assessment**

6.4 The main features of the new approach are:

- Supporting Information should be in a maximum of 2 documents (a Design Justification and an Impact Assessment) with a mandatory Plain English summary if a document is over 1,500 words
- The Design Justification should be the first document to be prepared & will inform the early stages of the pre-application process
- An Impact Assessment will inform the preparation of the detailed planning application
- In the case of small developments, these requirements could be discharged with a couple of paragraphs in a covering letter
- The validation process will only check that both documents (or statements on smaller applications) have been submitted with the application
- The determination process will assess their content
- A scoping request mechanism (as with EIAs) could be used to identify the extent & content of the two documents for larger schemes

6.5 The main features of the Design Justification are:

- This is essentially a Design & Access Statement
- It is a demonstration that the scheme has been well-designed and has responded to the planning & design constraints that apply to it:
  - Planning policy requirements
  - Urban design principles
  - Heritage issues
  - Biodiversity and natural environment considerations
  - Sustainable development aspirations
  - etc ...

6.6 The main features of the Impact Assessment are:

- Essentially an EIA (if needed) but if not, a proportionate statement that assesses:
  - What are the impacts of the development (if any)
  - How any impacts are either:
    - acceptable, or
    - if not acceptable, how they are proposed to be mitigated
- Include (where appropriate) as appendices drafts of:
  - S106 agreement
  - Travel plan
  - Construction management plan
  - etc ...

6.7 The main benefits of the new approach are:

- A logical process that complements the pre-application stages
- An integrated approach that is design lead and impact focused
- Adaptable to suit:
  - different application sizes

- different areas
  - new requirements
  - Validation requirements should be clearer
  - Documents should be more accessible & digestible by the public and members
- 6.8 This approach should support an end to a centrally imposed list of supporting statements which supports an industry of paperwork, lengthy off-the-shelf reports and a tick-box culture, where these are not proportionate or necessary to the scheme under consideration.

## 7 Testing and piloting PDC applications and new application requirements

- 7.1 It is important that the PDC notice model is tested with the financial institutions to ensure that it provides what they need to enable lending to occur to developers of small sites where funding is needed to develop designs through to the obtaining of full detailed consents.
- 7.2 The PDC application proposals should be piloted by several vanguard authorities in the first instance to ensure that any new approach introduced helps to overcome some of the key issues faced by small builders whilst at the same time ensuring that communities still feel empowered and engaged in making decisions about development in their local area.
- 7.3 The proposed new information requirements for applications for planning permission do not need new legislation to be introduced as some LPAs are already adopting similar approaches. Nevertheless, a more formal process of testing this approach should be undertaken by DCLG and then, if successful, a formal introduction be undertaken, which should include a duty on applicants to submit applications for developments that are well designed and have impacts that are demonstrably acceptable.

## 8 Conclusions

- 8.1 These suggestions should enable a system whereby the principle of a development can be established with the minimum necessary information. This will reduce the up-front risk and cost for developers, particularly small builders, and enable them to more easily access finance from lenders. This approach would establish the principle of development once and, whilst our proposals are not limited in scope, we think that they would have benefit for smaller applications from small and medium builders.
- 8.2 The system would put a stronger emphasis on the importance of early engagement between developers and local planning authorities, to establish expectations and discuss possible issues.
- 8.3 Our suggestions for altering the information requirements for applications have the potential to fundamentally alter the way consultants support the planning process. Currently there is a tendency towards silo working in the different fields. A consolidated approach, driven by the two-document model that we propose in this paper, should change this culture over time.