Planning for a better future

Our planning manifesto for the government

Manifesto Background Paper 15

Planning applications: how to speed up the process

This paper looks at what changes should be made to how we deal with planning applications to ensure that the government's aims of ensuring that the planning system both increases its delivery of housing and contributes to economic prosperity are delivered through that crucial development management stage.

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.

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.

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

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Summary

This paper looks at what changes should be made to how we deal with planning applications to ensure that the government's aims of ensuring that the planning system both increases its delivery of housing and contributes to economic prosperity are delivered through that crucial development management stage. Our recommended changes are:

- "Stick to the knitting" and strip out the extraneous elements that have been added to planning over the years. Our route to achieving this is to critically examine the conditions that are often attached to planning permissions through the lens of the "relevant to planning" statutory test so that the practice of statutory consultees and other agencies using planning to enforce the provisions in their legislation is stopped. Less matters would need to be considered, resulting in fewer consultees, less work and effectively creating additional resources in planning services overnight.
- Establish the principle once: there would be no more "two bites of the cherry" if local plan allocations benefit from the equivalent of a Permission in Principle.
- Planning application supporting information needs to be drastically reduced so that it is digestible by the public and proportionate to the size of the application. The results of the "stick to the knitting" exercise will also help with this.
- The legislative problems with overlapping planning consents need to be urgently addressed and proper statutory provision put in place to deal with amendments, especially to large, multi-phased schemes.
- We set out our views on a national scheme of delegation and how remote attendance at planning committee should operate.
- Sorting out s106 delays by reforming the system to reduce the need to involve lawyers, require LPAs to be more proactive in this area and allow a planning decision to be issued before the s106 is signed by utilising a Grampian condition to safeguard the completion of the planning obligation. There is a need to follow the rules (as set out in the CIL Regulations) and only seek funding for matters that are properly infrastructure.
- Other small but important changes:
  - It should be clear that planning application descriptions are the responsibility of the LPA;
  - The way planning fees operate in relation to amendments to planning applications requires additional provisions;
  - Give split decision powers to LPAs;
  - Allow conditions to be used to amend a minor design detail; and
  - Finally, cut out three areas of pointless bureaucracy: the requirement to get the applicant's agreement to attach pre-commencement conditions; adding a statement to decision notices "explaining whether, and if so how, in dealing with the application, the local planning authority have worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with a planning application"; and scrap the Planning Guarantee.

POS believes that this package of changes, most of which are best practice and can be conveyed through NPPF/PPG policy/advice, would significantly speed up the planning application process.

1 Introduction

1.1 At the time of writing this document, the new Labour government is proposing to make changes to the planning system that seek to both increase its delivery of housing and contribute to economic prosperity. Most of the changes revolve around national policy and plan-making. This paper looks at what should be done to the development management part of the planning system to ensure that these aims are delivered through that crucial final stage.

1.2 The paper was prepared with the assistance of members of BusinessLDN, a business membership organisation with the mission to make London the best city in the world to do business, working with and for the whole UK. BusinessLDN works with the support of the capital's major businesses in key sectors such as housing, property, retail, finance, transport, infrastructure, professional services, ICT, and education.

1.3 The proposals in this paper were discussed at one of our regular joint meetings with BusinessLDN members from the private sector who operate in the planning and development process, including developers, planning consultants and planning lawyers. At the meeting, very strong, cross-sector support was expressed for the proposed solutions put forward.

2 Proposals

2.1 To speed up the planning application process effectively you need to look at all aspects because the more that goes in at the front end, the longer an application will take to deal with. We set out our ideas in this paper, most of which would be relatively simple to implement and not require legislation.

"Stick to the knitting"

2.2 We must start by stripping out the extraneous elements that have been added to planning over the years (the latest being BNG) so we "stick to the knitting" – this should significantly speed up the process (including fewer consultees to get advice from about non-planning matters and less supporting information to submit with an application) and a significant reduction in the number of conditions needed. It effectively creates extra resources within planning services as those officers are dealing with less stuff.

2.3 To undertake this exercise, we recommend that a good place to start is to examine some of the conditions that are typically attached to planning permissions and critically examine them against the statutory test, are they relevant to planning?

Enforce the "relevant to planning" test properly

2.4 The NPPF and PPG should make it clear that planning must not duplicate other consenting regimes. The NPPF does mention this, but it needs to be much clearer and far stronger – the old PPG/PPS documents were better in this regard. Mission creep has occurred and a whole range of conditions are commonly used (including in the GPDO in the recently added Part 20 Construction of New Dwellinghouses, yet inconsistently not for other (older) PDR that potentially involves large structures[1]) that effectively duplicate other regulatory regimes and are therefore not relevant to planning or necessary to impose, ie they fail at least two of the statutory tests and are consequently ultra vires. Common examples are:

- Wheel washing equipment – it's an offence under s148 of the 1980 Highways Act to deposit mud on a highway.
- Controls over the building phase such as Construction Management Plans – these are covered by environmental health nuisance and highway legislation.
- Fire safety (eg as required by policy D12 of the London Plan) – this is dealt with by the Building Regulations (Approved Document B) – it is not the role of planning to assess or in any way approve these elements. The only requirement (as set out in government advice in Gateway 1) is to ensure that the spatial implications of the fire safety strategy have been considered as a design input so the need for a later building redesign (and potentially another planning application) at the Building Regulations stage is minimised. That is all the planning process needs to do, the Building Regulations process makes sure that the building is safe from this perspective. Therefore, all we need is a prompt to the designer to consider fire safety in designing the building (at RIBA Stages 2 and 3) so that they don't have to come back to planning to deal with a design amendment (at RIBA Stage 4, which is after planning permission has been granted). A tick box on the application form is all that is really required from the planning side. Planners should not be judging fire safety design, or getting someone else to do it on their behalf, at such an early stage in the design process.
- Conditions that duplicate wildlife and environmental protection controls by requiring surveys or preventing works before certain licences are in place – that legislation should be for others to enforce and not be foisted onto planning enforcement through such conditions. We need to inform bodies like Natural England that we have a planning application, but there should be no need to consult them.
- Restricting development until water or sewerage facilities are in place – the statutory undertakers have a duty to provide such facilities, and its provision is controlled through the Building Regulations: Approved Document G for Sanitation, hot water safety and water efficiency (Requirement G1 for water supply) and Approved Document H for Drainage and waste disposal (Requirement H1 for foul water drainage).

[1] Such as new buildings and extensions under Part 7 Non-domestic extensions, alterations etc, Part 8 Transport related development, Part 9 Development relating to roads, Part 12 Development by local authorities, Part 13 Water and sewerage, Part 15 Power related development. Part 16 Communications, Part 17 Mining and mineral exploration, Part 18 Miscellaneous development and Part 19 Development by the Crown or for national security purposes.

- The GLA seek the imposition of conditions controlling Non-Road Mobile Machinery during the construction phase. This is dealt with through the NRMM Regulations and there is therefore no need for a planning condition duplicating those controls.
- The Building Regulations need to be urgently updated with respect to zero carbon outcomes so that all matter relating to the fabric and operation of a building are coded in those Regulations and there is no need for LPAs to fill the gap left by what has been lethargic government regulation.

2.5 These matters, and no doubt others, must be taken out of planning because they fail the "relevant to planning" test. They cannot be the subject of a planning condition because such matters do not relate to planning as they are covered by other legislation and therefore such a condition is unnecessary. Such failures of statutory tests for conditions render them ultra vires and unenforceable. Imposing them really is a waste of everyone's time and we must stop doing it. All these issues can be appropriately dealt with by an informative on the planning permission bringing the requirements of other legislative regimes to the attention of the applicant. As part of this exercise it would be helpful if government was to draft model informatives for these common areas of regulation.

2.6 The NPPF needs to very clearly and explicitly say that we must stop considering these matters and attaching such conditions. It should also have an annexe (or a link to a section in the PPG) that comprehensively sets out common examples (ie the above and any more that are identified). The exercise of drawing up this list should be one of identifying all such duplications and setting them out, but where the process identifies deficiencies in other regimes, those regimes should be fixed rather than using the planning process to fix them.

2.7 It would also be helpful if the NPPF/PPG said that a planning case officer MUST consider critically any conditions suggested by statutory (or other) consultees as it is their duty to make sure that the conditions they recommend meet the six statutory tests and are not ultra vires. If they decide that a matter is not appropriate for a planning condition and/or can be dealt with by an appropriate informative then they should not have to revert to the consultee, no matter how they have expressed their comments.

2.8 The cumulative impact on the development management process of addressing all these issues would be considerable and tackling them will result in a substantial freeing up of resources once a correct approach is embedded into the system. It also significantly reduces the burden on applicants, particularly SMEs. It is vital that this is strongly led by government.

Further reducing the number of conditions

2.9 The advice in the PPG (Paragraph: 024 Reference ID: 21a-024-20140306) to group conditions into the following categories:

1. the standard time limit condition for commencement of development;
2. the details and drawings subject to which the planning permission is granted (this will become unnecessary once the new s73B is enacted);
3. any pre-commencement conditions;
4. any pre-occupancy or other stage conditions;
5. any conditions relating to post occupancy monitoring and management;

needs to be publicised more widely; many LPAs do not do this and hardly any Inspectors do. This approach has been best practice since it was introduced by LB Sutton in the 1980s. It forces the case officer to think appropriately about what conditions are necessary at the various implementation stages and in our experience can reduce the number of conditions significantly. For example, it is possible for categories 3 and 4 to each be a single condition listing the elements that need to be submitted prior to the respective triggers.

2.10 It is important for LPAs to consider carefully when they need details (such as external materials) to be submitted for consideration. Anything that is visible above ground should have a "before any above-ground works commence …" rather than a "before any development commences …" condition. Whilst both are technically pre-commencement conditions[2], a development with any significant basement or other extensive ground works can be "in the ground" for a very long time. It would be helpful if government advice was clearer around this specific issue.

2.11 LPAs should be required to publish their standard conditions and, in turn, developers should be encouraged to submit with a planning application a schedule of such conditions (and any others) that it considers necessary to control the development. These should be negotiated and agreed (where possible) in the pre-application stage.

National model conditions

2.12 Government needs to revisit the annex to Circular 11/95, which is still in force even though the parent circular has been superseded by the PPG. It is coming up to its 30th birthday and is hopelessly out of date as a national set of model conditions. A fresh rewrite is needed that should capture the issues set out above. PINS have a set of model conditions for their Inspectors that would be a good starting point. The document should also set out advice on how to write conditions so that they are clear, accurate and enforceable.

Establish the principle once: no more "two bites of the cherry"

2.13 If a development is specifically allocated in a local plan (that is up to date, ie not more than 5 years old) that should represent a Permission In Principle (PiP) and there should then only be a need to get the details approved. As the principle has already been established in the planmaking process, it should not be up for consideration for a second time in the development management process.

2.14 Careful consideration would need to be given to how such allocations are described. There will be locations where high densities are expected and a description of "at least x dwellings" may be appropriate. Other locations that have clear constraints may justify a maximum number. In other situations a range may be the most appropriate description. The aim should be to optimise the flexibility of the allocation, commensurate with taking account of local constraints and characteristics.

[2] DMPO Art 35(5) definition "… a condition imposed on the grant of a planning permission which must be complied with … before any building or other operation comprised in the development is begun …"

2.15 POS recommends that PiP should be relaunched and made applicable to all developments. Where a developer wants to establish the principle of a development, a PiP is a far more efficient tool than an application for outline planning permission. The problem with the latter is that, if granted, it results in a planning permission with all the conditions attached – it is addressing the potential issues raised by those conditions that makes them take as long as they do. PiPs do not have conditions and effectively crystallises (in a formal decision) the initial stages of the pre-application process where in-principle issues are explored.

2.16 With PiPs in place in this way, applications for outline planning permission could be scrapped. After all, an outline planning permission is merely a consent with (potentially) five prescribed pre-commencement conditions. These reserved matters are not the only matters that a developer might legitimately want to reserve, and it would be time, if the principle of a development is dealt with by PiP, to review whether an application for outline planning permission is of any real use in that context. Instead, developers should be able to submit what details they consider appropriate with an application for planning permission and the LPA should have the power to direct (as is the case now for outline applications[3]) what additional details they considered necessary.

Planning application supporting information

2.17 We need to limit what can be submitted with a planning application. Apart from the form, plans and fee, only two other documents should be submitted:

- a Design Justification: why the scheme represents good design – effectively a DAS; and
- an Impact Assessment: what externalities would result from the scheme and whether they are either acceptable or otherwise mitigated – this would be the ES for EIA development.

2.18 All the various reports and studies that are currently produced and submitted with planning applications can be put into these two categories, with each issue representing a chapter in their respective document. This approach would eliminate the myriad descriptions of the development, the site, the planning history, the development plan etc that appear in current documents. For small developments these could just be two paragraphs in a supporting letter; it must be designed to be scalable and proportionate.

2.19 The results of the “stick to the knitting” process set out above coupled with the need to properly enforce the “relevant to planning” test, will have the effect of further reducing the matters that need to be covered in supporting documentation.

2.20 LPA Local Lists would need to be reviewed following these changes and culled so that the aims of necessity and proportionality are delivered.

2.21 Advice should also be produced encouraging brevity and succinctness, with matters like methodology explanations consigned to appendices, where it is necessary to include the explanation in the document, or preferably a reference to a standard which contains that explanation via a weblink.

[3] DMPO Article 5(2)

2.22 That advice should also make the (obvious) point that the Design Justification and Impact Assessment must be based on the iteration of the scheme that has been submitted and not an earlier version; it is surprising how often this is not the case! That should be certified at the beginning of each document.

2.23 If either document is over 1,500 words a technical summary (<1,500 words) must be provided. This not only helps the case officer and the public but should also help the applicant. By being forced to produce more focused and integrated documents, the overall design of a scheme should improve. Consideration should be given to decreeing that where there is a discrepancy between the summary and the main document, it should be interpreted in favour of the summary wherever possible to ensure the quality of that element.

Overlapping planning consents

2.24 The modern planning system, when it was put in place via the 1947 Act, was not designed to deal with amendments to planning permissions. The provisions put in place later, and the custom and practice that has grown up, are far from satisfactory. The main difficulty created by the "Pilkington/Hillside" caselaw is how do you amend part of a planning permission without risking losing the original consent? We need a new comprehensive regime that is specifically designed to deal with amending planning permissions effectively and efficiently. POS has set out such a system in Manifesto Background Paper 14: Dealing with Overlapping Consents and we urge government to adopt its recommendations to meet the needs of the sector.

Determining planning applications

2.25 A national scheme of delegation should only allow Applications for Planning Permission for large strategic developments to go to committee in certain circumstances. The "large strategic development" threshold should be more along the London Mayor's Order definition of Applications of Potential Strategic Importance (150 units/15,000m^2) rather than the Major definition of 10 units/1,000m^2. The scheme should have the following principles:

- If any development is in accordance with the development plan (ie it did not have to be advertised as a departure) and has no substantial planning objections, then it could remain delegated (no matter how big it is). "Substantial planning objections" will need to be very carefully defined.
- It would need to be made clear that the Chief Planning Officer has delegated powers to enter into planning obligations on behalf of the Council and does not need planning committee authorisation to do so.
- All refusals should be delegated (no matter how big they are or how much support there is for them) as the developer has a right of appeal.
- Other planning applications (Listed Building Consent, Advertisement Consent, tree consents, LDCs, PNCs etc) should be delegated with only Applications for Planning Permission able to be reported to committee.

2.26 The idea should be that officers deal with all planning decisions except Applications for Planning Permission for strategic developments that are departures or are clearly controversial.

2.27 With such a scheme of delegation in place, consideration should be given to whether a planning committee is the right place to determine what are vitally important, strategic issues for the Council and the location. Consideration should be given to whether this is a proper role for the executive (Cabinet or Mayor) where that system is in place. The Mayor is the LPA for London as a whole and takes all the strategic planning decisions (or delegates them to a deputy or officers) so there is precedent for this approach.

2.28 Some LPAs (eg Development Corporations and National Parks) have planning committees made up of elected members and non-political appointees. This might help to bring appropriate expertise into planning committees.

2.29 Finally, the provisions set out in the recent "Enabling remote attendance and proxy voting at local authority meetings" consultation should be implemented so that meetings are attended in person except where it is necessary to do otherwise, such as to meet the needs of individual members (eg a disability or childcare commitments) or to deal with unexpected events for individuals or the committee as a whole. Proxy voting cannot be used in planning committees because of the need to not be predetermined and for a member to only finalise their view after they have heard the presentations, questions and answers, debate, officer advice etc at the committee.

Sorting out s106 delays

2.30 Planning permissions are not issued until a s106 is signed. The PPG does say that a negatively worded condition (often called a Grampian condition) limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases but may be in exceptional circumstances. It describes these circumstances as where there is clear evidence that the delivery of the development would otherwise be at serious risk, such as in the case of particularly complex development schemes.

2.31 This advice is probably wrong as it is either lawful or not to use such a condition; it is unlikely that exceptional circumstances would render something that is otherwise ultra vires, to be intra vires. Furthermore, a "particularly complex development" is hardly that exceptional.

2.32 Government should change this so that in all cases the completion of a s106 agreement before the development (or part of it) is implemented is controlled through a negatively worded condition. This enables planning permissions to be issued straight after the decision is taken. If the completion of a s106 agreement is delayed, it can trigger a need to reconsider the decision to grant planning permission if there has been a material change in circumstances since the original resolution (eg national or local policy changes). That helps nobody and adds further delay and uncertainty.

2.33 If these changes are not put in place, then an alternative (used by many LPAs) is that when a resolution is made to grant permission subject to a s106, a second resolution gives delegated powers to officers to refuse permission if the s106 isn't completed within a specified timescale (say 3 months). These need to be used comprehensively by LPAs and the deadlines stuck to.

2.34 The s106 process can be streamlined. The main body of the agreement needs to be standardised. Whilst a standard draft could be prescribed, it is our understanding that because it is an agreement, parties cannot be forced to sign up to something that they do not agree with. A solution would be to use Regulations to effectively perform the role of the main body of such agreements. That would just leave the schedules (which contain the individual obligations) to be drafted and agreed, plus the need to check ownership issues (ie that the developer/applicant has the necessary property interests to perform the obligations).

2.35 Where a developer/applicant does not have the necessary property interests to perform one or more obligation there is a convention (called an Arsenal clause) that is used to deal with that. This could also be included in the suggested Regulations. Such a clause was first used for the Arsenal FC's new stadium because the developer did not own all the land over which they were required to perform some of the planning obligations. The clause operated a bit like a Grampian condition and prevented specified development activity until they had secured the performance of those obligations on that land, which could have been by acquisition or by some other contractual mechanism.

2.36 LPAs should be required to produce, consult upon, adopt and publish the most common obligation schedules that they use. In places where there is a strategic LPA (such as London currently) then they must be involved in this process so that all commonly-used obligations are templated. More such strategic LPAs are likely to be created following government's proposed planning changes, so it will be important that all LPA parties sign up to this new way of working.

2.37 Developers should be encouraged to use these templates and, like conditions, be required to submit with a planning application a schedule of such obligations (and any others) they consider necessary to make the development acceptable. These should be negotiated and agreed (where possible) in the pre-application stage. This will enable s106 agreements to be completed more quickly.

2.38 If, following the determination of the application, the negotiations on an obligation stall, and there is stalemate, the LPA should then be able to issue a unilateral undertaking containing the agreed and non-agreed obligations. The developer should have a right of appeal against the non-agreed obligations. This would be a specific new appeal right.

2.39 The most common sticking point in s106 negotiations is Affordable Housing. POS has set out a methodology that could deal with this.

2.40 It is not necessary to make the issuing of a planning permission subject to the completion of a s278 Agreement. The provision of the highway works facilitated by the Agreement can be adequately safeguarded by a negatively worded condition. Such restrictions are therefore unnecessary and fail the statutory test in s122(2)(a) of the CIL Regulations relating to planning obligations. The PPG needs to clearly state this.

2.41 The statutory undertakers responsible for much of our infrastructure capacity (water, sewerage, electricity etc) need to be held to account for their frequent failures to discharge their statutory duty to plan to meet growth that is clearly planned in development plans. In addition, the tendency for other infrastructure providers to seek funding for matters that are not infrastructure (or should be clearly defined as so if there is any doubt) needs to be curtailed. Examples include NHS Trusts seeking revenue funding because of their funding inefficiencies (as thrown out in two recent High Court challenges[4]), local constabularies seeking funding for police uniforms, radios and vehicles, local libraries for the purchase of library books etc, or transport undertakers seeking to purchase buses or trains. These are either revenue funding or consumables that should be funded through rates and taxes or fares and not the development process.

2.42 The important point here is that in any planning application there is a limited amount of money available to fund such matters. CIL is compulsory. S106 obligations must be necessary to make the development acceptable in planning terms[5]. Where there is a viability issue, it is affordable housing that is the victim because it is delivering a planning policy requirement and can, in the planning balance, be forgone. If the delivery of affordable housing is a government priority, this needs to be addressed and changed.

2.43 We must start by applying Regulation 122 properly and only allowing funding for infrastructure that is necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. But government should consider going further and moving to a position where the funding of infrastructure through the planning system is considered a bonus and should not be expected to be fully funded as this misleads the public. Devolving funding and infrastructure delivery to the new regional levels, aligned with each area's housing numbers, will be vital so that they can then plan for and support delivery strategically. If government wants to deliver housing growth at the scale it has set out, there is a need to provide funding for infrastructure to support that housing growth. The development process can't do everything, even in high value areas, and priorities need to be set by policy design and not by unintended default, as is the case now.

Other small but important changes

Planning application descriptions

2.44 There is uncertainty about whether an LPA can change the description of a development if they consider it to be either vague (and therefore uninformative) or incorrect (and therefore misleading). This should be made clear in secondary legislation that it is the responsibility of the LPA to ensure that the description of development is clear, accurate and informative. Inspectors effectively fudge this point in their decision notices (ie "I have changed the description and nobody is prejudiced by the changes") where they are dealing with descriptions that have been changed or the Inspectors feels that they should be.

[4] The University Hospitals of Leicester NHS Trust, R (On the Application Of) v Harborough District Council [2023] EWHC 263 (Admin) and Worcestershire Acute Hospitals NHS Trust, R (On the Application Of) v Malvern Hills District Council & Ors [2023] EWHC 1995 (Admin)
[5] Regulation 122 of the CIL Regulations

Amending planning applications and related fees

2.45 Once an application is submitted, the LPA can seek amendments to it but if this results in a higher fee, we cannot require that to be paid. This needs to be changed by a simple amendment to the Fees Regulations.

Give split decision powers to LPAs

2.46 The law around whether an LPA has the power to issue a split decision is unclear and would benefit from being clarified. An LPA (or Inspector/SoS) should be able to issue separate decisions for parts of a development that are physically separate and whose assessment resulted in different conclusions thereby requiring a refusal of part(s) and an approval of other part(s).

Allow a condition to amend a detail

2.47 Where a detailed element is not acceptable (eg the design of a roller shutter in a shopfront or the design/positioning/insertion of a window in an elevation) the LPA must either get that design changed or get the detailed specification removed from the plans/documentation. An LPA should be able to issue a decision which contains a condition requiring that detail to be submitted for subsequent approval, notwithstanding what is shown in the application. Whilst LPAs do use such conditions, their lawfulness is open to question because such a condition can be considered to be inconsistent with the operative part of the planning permission, ie you can't take away with a condition something that you have granted planning permission for. Legislation should be amended to make it clear that LPAs can impose such conditions in these circumstances.

Cut out pointless bureaucracy

2.48 Below are three areas that government should scrap as they add nothing to the process, but potentially result in negative unintended consequences.

1. LPAs are unable to attach pre-commencement conditions to a planning permission without the written agreement of the applicant (1990 Act s100ZA(5)). If that agreement is not forthcoming and the LPA still considers that the condition is necessary, their only option is to refuse planning permission. This is an absurd and pointless bureaucratic provision that needs to be scrapped. An LPA should be unfettered in attaching such conditions as they think fit, subject only to the six statutory tests. A disgruntled applicant has a right to appeal against those conditions that they disagree with. If it is found that the LPA attached a condition that demonstrably failed one or more of the statutory tests, then an Inspector can consider awarding costs if they consider that the LPA was unreasonable. Acting ultra vires is generally considered to amount to unreasonable behaviour. A greater use of cost awards in these circumstances would modify the behaviour of LPAs who do not pay enough attention to this area.
2. LPAs are required (DMPO Art 35(2)) to add to the decision notice "a statement explaining whether, and if so how, in dealing with the application, the local planning authority have worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with a planning application". Whilst this is a relatively small point (such statements are generally standardised and non-specific) it is another example of a pointless bureaucratic addition to the planning process that adds little value. What it does do however is create the potential for a JR on the basis

that a general standardised and non-specific statement does not discharge the Art 35(2) duty as it is not specific to the application. Whilst we are not aware of such a challenge occurring, we did experience them when LPAs were required to set out the reasons for granting planning permission on the decision notice. There were successful JRs by objectors on the wording of those statements, particularly when they were generic. This led to that (pointless bureaucratic) provision being scrapped and this provision should similarly be consigned to history.

3. The Planning Guarantee requires an LPA to refund the planning fee if the applicant has not exercised their right of appeal, and the application remains undetermined after 26 weeks for major applications or 16 weeks for non-major applications, and a longer period for the decision has not been agreed in writing. This additional administrative burden on LPAs is not strongly supported by the developer sector and can result in unintended consequences such as the refusal of applications nearing the deadline when further negotiation and amendment could result in a planning permission. A further pointless bureaucratic provision that could be scrapped.

3 Conclusions

3.1 POS believes that this package of changes, most of which are best practice and can be conveyed through NPPF/PPG advice/policy, would significantly speed up the development management process.

3.2 As always, POS stands ready to work with government to develop these proposals so that a more efficient and effective planning system can be delivered.