POS
Planning Officers Society

Accelerated Planning Service

POS response to consultation

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1 Planning Officers Society

1.1 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.

1.2 We operate in three main ways:

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

1.3 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.

2 Consultation question responses

Question 1. Do you agree with the proposal for an Accelerated Planning Service?

Not in the way, it is currently formulated. It is not based on any evidence. If all authorities will be required to offer an Accelerated Planning Service how will those authorities that have recruitment or retention issues be able to provide the service? Assuming that suitably experienced planners can be recruited it will take time to do so. The cost of recruiting those planners will be borne by the Local Authority because until an application is submitted there will be no fee received. The National Audit Office (NAO) in its report, *Planning for New Homes,* back in 2019 highlighted the shortage of planners. It pointed out that the number of local authority planning staff fell by 15 per cent between 2006 and

2016. The NAO also noted a 13 per cent fall in staff numbers that between 2010 and 2018. Recent surveys by the LGA have highlighted the situation has worsened.

POS also urges government to consider how communities and stakeholders will be included in the process as a quicker process may give the perception of communities being excluded from the process. Government would need to be clear if pursuing this approach that there will be an opportunity for communities to take part.

Question 2. Do you agree with the initial scope of applications proposed for the Accelerated Planning Service (Non-EIA major commercial development)?

Yes

Question 3. Do you consider there is scope for EIA development to also benefit from an Accelerated Planning Service?

No, they are too complex and require input from a number of consultees.

Question 4. Do you agree with the proposed exclusions from the Accelerated Planning Service – applications subject to Habitat Regulations Assessment, within the curtilage or area of listed buildings and other designated heritage assets, Scheduled Monuments and World Heritage Sites, and applications for retrospective development or minerals and waste development?

Yes, they are not suited for such a service.

Question 5. Do you agree that the Accelerated Planning Service should:

a) have an accelerated 10-week statutory time limit for the determination of eligible applications. If not, please confirm what you consider would be an appropriate accelerated time limit.

Where is the evidence that 10 weeks is an appropriate period for determining significant applications? This question belies a lack of appreciation of the different strands of input into weighing up and determining planning applications. For example, statutory consultees or similar external bodies.

It is unrealistic for Authorities to process complex or significant applications within less than 13 weeks. The focus should be on getting the right outcome rather than a quick decision. The development industry values certainty more than speed. For example, see the discussion in David Adams *et. al.,* who point out that one of the characteristics of debates about delay in planning is the narrow definition of the stakeholders affected by planning. Most discussions tend to focus on the developer or applicant for planning permission and the planner as the key actors in the process of decision-making and therefore the key 'customer' of the planning system. However, this too narrowly confines the scope of discussion about the wide array of people and organisations with a stake in planning decisions.[1] This is not just about speed of decision. The Quality, cost and customer service is of equal importance. It can not be that LPAs are at risk of needing to refund fees after 10 weeks as this is an impossible way to run and resource a service.

Question 5. Do you agree that the Accelerated Planning Service should:

b) encourage pre-application engagement

Yes – it's key to improving the design of developments (as required by the NPPF) and to a better decision.

Question 5. Do you agree that the Accelerated Planning Service should:

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

Yes – although encouragement is not strong enough – accountability need to rest where it belongs and if delays are due to statutory consultees then they should be held accountable.

[1] D. Adams, M. O'Sullivan, A. Inch, M. Tait, C. Watkins, and M. Harris, *Delivering the Value of Planning,* RTPI Research Report no.15 August 2016, p.

Question 6. Do you consider that the fee for Accelerated Planning Service applications should be a percentage uplift on the existing planning application fee? If yes, please specify what percentage uplift you consider appropriate, with evidence if possible.

Yes. As it is probably the most straightforward method for applying an uplift. The uplift should be very significant, for example, at least 50% of the current fee based on accurate evidence. Applications for major commercial developments take time due to the complexity of the issues and the resources that are required to assess and determine them. To properly resource, the service will mean that the cost will be considerable.

The consultation document assumes that an enhanced application fee will enable LPAs to bring in specialist resources, such as urban design or sustainability specialist officers. This is not a reflection of the real world for many LPAs who, when needing to access this kind of advice will have to go through procurement or mini competition processes which does take time. Without a reliable source of funding, which this application process would not provide, LPAs are not able to maintain this kind of staffing resource.

Question 7. Do you consider that the refund of the planning fee should be:

a. the whole fee at 10 weeks if the 10-week timeline is not met

See below

b. the premium part of the fee at 10 weeks if the 10-week timeline is not met, and the remainder of the fee at 13 weeks

See below

c. 50% of the whole fee at 10 weeks if the 10-week timeline is not met, and the remainder of the fee at 13 weeks d. none of the above (please specify an alternative option)

See below

d. None of the above

See below

e. don't know Please give your reasons

It is recommended that only the uplift fee be refunded.

In order to provide the accelerated service authorities need certainty around funding for resources. Many authorities have reduced their staffing to levels that allow no spare capacity. There are many stakeholders in the planning process, and any small delay from any part of the process, or any change in advice from consultees can disrupt an application and prevent it from being determined within the period suggested. In addition, there is no reduction in the time allocated for publicising planning applications or flexibility around this. POS has raised this issue in its Planning Manifesto.[2] Planning resources are in short supply: we have seen less graduates choosing planning as a career and increasingly those that do are being attracted into the private sector.

Authorities will only be able to build sufficient resources if there is certainty around the fee income to be received. In addition, if authorities are placed under such financial pressure to determine an application it is likely that the process will result in more refusals because the authority will not have the time or capacity to resolve issues. Whilst the consultation indicates extensions of time will be allowed in exceptional circumstances, it says this will not affect the repayment of the fee, which suggests refunds would be paid even if an extension of time to determine the application is agreed which is counterproductive and will not assist authorities or applicants who are working towards a positive outcome.

Question 8. Do you have views about how statutory consultees can best support the Accelerated Planning Service? Please explain

The time-frame for statutory consultees to provide full comments should be reduced, it is not uncommon that additional information or amendments are required and when comments are not received until late in the process this will not allow sufficient time to negotiate amendments and re-consult before a decision is due. In addition, statutory consultees should be required to engage with consultations on requests for pre-application advice made to authorities, rather than operating their own paid for advice services. It is not unusual for an issue to arise with statutory consultees during the course of an application, and if these matters could be known at the pre-application stage then there would be greater certainty as to the most likely outcome for an application. Consultees

[2] Planning Officers' Society, Manifesto Background Paper 12 Planning Resources: designing a more efficient system, POS Template (planningofficers.org.uk)

should also be bound by the advice they provide at pre-application stage unless circumstances change.

POS understands that the government has already commissioned a review of the role of statutory consultees in the planning process. It will be important to consider the outcomes and recommendations of this review before proceeding with the implementation of a system which will rely so heavily on those same consultees.

Question 9. Do you consider that the Accelerated Planning Service could be extended to:

a. major infrastructure development

No

b. major residential development

No

c. any other development

No

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

N/A

Question 10. Do you prefer: a. the discretionary option (which provides a choice for applicants between an Accelerated Planning Service or a standard planning application route) b. the mandatory option (which provides a single Accelerated Planning Service for all applications within a given definition) c. neither d. don't know.

The consultation is not clear on whether it would be mandatory for LPAs to offer the service as a discretionary one, or if it is mandatory to offer a service irrespective of whether the developer receives a choice. The proposed new procedure just adds another layer of complexity to the system and runs the risk of a two tier planning service as APS applications will be prioritised at the expense of the other applications being handled by an authority given authorities do not have the resources to manage applications faster. It is

not just about the number of planning professionals but also about the knowledge, experience and expertise available. Recruitment to experienced planning roles remains extremely challenging, particularly in areas where the cost of housing/living is so high. LPA's are developing staff in-house but it will take more time for the level of resource within the planning system to be sufficiently resilient.

There is a risk that an unintended consequence of this proposal could be more refusals of applications, which might have otherwise ended up as approvals with more time.

Question 11. In addition to a planning statement, is there any other additional statutory information you think should be provided by an applicant in order to opt-in to a discretionary Accelerated Planning Service?

If a S.106 is likely to be required should be a draft planning obligation as well as solicitor and title information. A draft set of conditions should also be submitted. All pre-application responses and suggested draft conditions from statutory consultees should be submitted with the application as well as a summary of community engagement, including Parish and Town Council responses.

Question 12. Do you agree with the introduction of a new performance measure for speed of decision-making for major and non-major applications based on the proportion of decisions made within the statutory time limit only?

This question is predicated on an assumption that the statutory time limits are the right time limits for determining planning applications. The time limits also cover several types and there is no nuance about categories of application. The statutory time limits are a blunt measure of performance. If a new performance measure of this kind is to be implemented, there must first be a review of current statutory determination periods and whether these are fit for purpose when taking into account how the planning system has changed since they were first derived.

If the experience from the period during which planning delivery grant was tied to performance is indicative it is likely that there will be a significant increase in the number of applications that are refused in order to meet the timescales, rather than seeking minor amendments. This is likely to lead to an increase in appeals.

One way to speed up decision would be to allow virtual planning meetings or partial attendance at meetings virtually. POS has produced a good practice note on this in March 2020.[3]

Planning becomes more and more complex for all involved in the process. All measures that have tried to simplify the process have been unsuccessful. This proposal is another layer complexity, which is unlikely to result in better outcomes. Extensions of time are currently used for a variety of reasons, to cover the ever-increasing complexity of the planning system, the multiple roles that the planning system is supposed to play (delivery at pace, delivering beauty, delivering growth, active travel, public safety, design and build quality etc), resourcing within local planning authority teams, skills and experience, time taken to agree S106 legal agreements and the involvement of other parties in this process.

Extensions of time agreements are often sought by applicants who may accept that they need to provide further information, or to negotiate amendments to their proposal in some way, and would far rather do this through the flexibility afforded by an extension of time agreement than by having to either withdraw their application and resubmit, or to receive a refusal of planning permission.

Question 13. Do you agree with the proposed performance thresholds for assessing the proportion of decisions made within the statutory time limit (50% or more for major applications and 60% or more for non-major applications)?

See response to question 12. This is another crude method of addressing performance that is highly unlikely to lead to better outcomes for the customer.

Question 14. Do you consider that the designation decisions in relation to performance for speed of decision-making should be made based on:

a) the new criteria only – i.e. the proportion of decisions made within the statutory time limit; or

b) both the current criteria (proportion of applications determined within the statutory time limit or an agreed extended time period) and the new criteria (proportion

[3] Planning Officers' Society, DM Decision Making + COVID-19 How to manage committee decisions during the Coronavirus Emergency, POS Template (planningofficers.org.uk)

of decisions made within the statutory time limit) with a local planning authority at risk of designation if they do not meet the threshold for either or both criteria

c) neither of the above

d) don't know Please give your reasons.

It not considered that further performance criteria is appropriate. However, if this is introduced, noting that the speed of decision-making is not solely due to the performance of the authority in the majority of cases, then it should be based on both criteria. Authorities should be allowed sufficient time to recruit/upskill planners, legal teams, and specialists before a new measure is introduced as a threshold for designation.

Question 15. Do you agree that the performance of local planning authorities for speed of decision-making should be measured across a 12-month period?

Yes

Question 16. Do you agree with the proposed transitional arrangements for the new measure for assessing speed of decision-making performance?

If the intention is to introduce such a measure, then yes

Question 17. Do you agree that the measure and thresholds for assessing quality of decision-making performance should stay the same?

Yes, Although POS would urge government to consider data from across the country as it may be that there should be a minimum number of appeals determined over a rolling two-year period for this to be a meaningful performance measure.

Question 18. Do you agree with the proposal to remove the ability to use extension of time agreements for householder applications?

Extension of time agreements serve a useful purpose. POS has anecdotally been advised that due to the cost of living crisis there is an increase in applications that are not

submitted by professional agents, which often means that the determination period has to be extended to negotiate improvements to submissions and receiving the necessary information. If extensions of time are removed, these applications are likely to be refused, especially in circumstances where pre-application advice was not sought, or web-based guidance (eg design guides) have not been followed.

Question 19. What is your view on the use of repeat extension of time agreements for the same application? Is this something that should be prohibited?

Not prohibited but a limit on the number of extensions. Extension of time agreements serve a useful purpose particularly where decisions are dependent on external inputs such as English Heritage. To prohibit the use of a second extension of time where the circumstances warrant it seems unduly prohibitive. It may be necessary, for example, to complete an s106 after an application has a resolution to grant permission. If the LPA had to refuse an application at a late stage due to the ongoing risks of designation due to performance thresholds this would be contrary to the intensions of the proposals to speed up the planning system and deliver certainty for applicants. It is therefore considered that repeat extensions of time should be allowed in appropriate circumstances.

There seems to be an assumption underlying these proposals that extensions of time, including repeated requests, are due to some failure by the LPA, whereas often they are due to other players, such as statutory consultees not responding in a timely manner or delays in getting legal agreements in place. Rather than preventing/limiting their use, as set out in this consultation, POS would suggest that the use of an extension of time should be limited to circumstances where extra time is needed to deal with a matter that is outside the control of the LPA. This would include the following:

- Awaiting the substantive views of a consultee
- Requiring further information or amendments from the applicant
- Completion of a legal agreement

This approach enables applications to be dealt with in an efficient way and allows **agreed** extensions of time to be used to deal with matters that arise. It must be remembered that an applicant does not have to agree an extension of time and can appeal against non-determination.

Question 20. Do you agree with the proposals for the simplified written representation appeal route?

Yes, but there is a concern that an appellant, in submitting their Grounds of Appeal, submits something that is more akin to an Appeal Statement. This could create a situation that is unfair to both the LPA and third parties if new material is submitted, and they have no opportunity to comment upon it. POS suggests that there should be a duty on the Inspector to ensure that what is submitted by an appellant are just Grounds of Appeal and if the material goes beyond that, the simplified written representation appeal route should be abandoned and the normal written representation route followed.

Question 21. Do you agree with the types of appeals that are proposed for inclusion through the simplified written representation appeal route? If not, which types of appeals should be excluded form the simplified written representation appeal route?

Yes

Question 22. Are there any other types of appeals which should be included in a simplified written representation appeal route?

Yes. Appeals against applications for prior approval.

Question 23. Would you raise any concern about removing the ability for additional representations, including those of third parties, to be made during the appeal stage on cases that would follow the simplified written representations procedure? Please give your reasons.

No.

Question 24. Do you agree that there should be an option for written representation appeals to be determined under the current (non-simplified) process in cases

where the Planning Inspectorate considers that the simplified process is not appropriate?

Yes. Some applications, particularly applications relating to planning permission, reserved matters and lawful development certificates will still require the written representation appeal process to ensure that the Inspector is clear on all the facts before determining the application. In addition, it is important that if there is a change in circumstances that the authority can make the Planning Inspector aware and the appeal route amended where appropriate.

Question 25. Do you agree that the existing time limits for lodging appeals should remain as they currently are, should the proposed simplified procedure for determining written representation planning appeals be introduced?

Yes

Question 26. Do you agree that guidance should encourage clearer descriptors of development for planning permissions and section 73B to become the route to make general variations to planning permissions (rather than section 73)?

Yes.

Question 27. Do you have any further comments on the scope of the guidance?

The use of section 73 to amend developments (rather than its statutory purpose of amending conditions) was introduced as a temporary measure (following recommendations by the Killian Pretty Review) in 2009 because there wasn't the Parliamentary time available to do it properly. It has had unintended consequences (see Finney, Armstrong and Fiske). Now that proper provision is made (via section 73B) the view of POS is that section 73 should no longer be used for amending developments and PPG advice should say that. The views expressed in para 81 of the consultation, that not imposing a condition stating that development shall be carried out in accordance with approved plans and then listing those plans would cause enforcement problems, is incorrect. Imposing that condition was not introduced to improve enforcement, it was merely to en-

able the section 73 power to be used to amend developments. You no longer need to impose such a condition as section 73B is now in place to deal with such amendments more comprehensively and without the unintended consequences that we have seen from caselaw, particularly Armstrong. Furthermore, you do not need a condition to list the approved plans on a decision notice – you can list them at the end of the description, in an informative or in a separate section. Finally, you do not need a condition to say that you must build in accordance with the approved plans – you must do that anyway. The view of POS (which we have had confirmed through KC advice) is that in the new section 73B world, such a condition would be likely to fail the statutory necessity test for the preceding reasons and we have and will continue to advise our members as such.

Question 28. Do you agree with the proposed approach for the procedural arrangements for a section 73B application? If not, please explain why you disagree

Yes Although this should include a Design and Access statement

Question 29. Do you agree that the application fee for a section 73B application should be the same as the fee for a section 73 application? If not, please explain why you disagree and set out an alternative approach

No. The application fees for S.73 applications does not cover the cost of determining the application, particularly for major applications.

Question 30. Do you agree with the proposal for a 3 band application fee structure for section 73 and 73B applications?

No

Question 31. What should be the fee for section 73 and 73B applications for major development (providing evidence where possible)?

The fee should properly reflect the amount of work undertaken, for example 50% of the cost of the original application.

Question 32. Do you agree with this approach for section 73B permissions in relation to Community Infrastructure Levy?

Yes. See the POS Planning Manifesto section on CIL.[4]

Question 33. Can you provide evidence about the use of the 'drop in' permissions and the extent the Hillside judgment has affected development?

POS has prepared a separate detailed response dealing with these matters in its Planning Manifesto[5]. Our view is that we need a new comprehensive regime that is specifically designed to effectively deal with the full range of amendments that might need to be made to a planning permission but is designed so that the processes are efficient and only examine the new elements and do not open up already determined and unaltered elements for re-examination. It is because planning permissions are not severable, and are unlikely to be easily made so, that such a regime is needed. Whilst section 73B is a welcome addition for dealing with amendments to developments, it does not provide the tools to handle changes to large-scale, multi-phased developments and eliminate the Pilkington/Hillside risks of losing the original consent by implementing a drop-in consent.

Question 34. To what extent could the use of section 73B provide an alternative to the use of drop in permissions?

See response to question 33.

Question 35. If section 73B cannot address all circumstances, do you have views about the use of a general development order to deal with overlapping permis-

[4] Planning Officers Society, Manifesto Background Paper 2 Infrastructure: funding it in a more effective way. Microsoft Word - POS MBP2 Infrastructure.docx (planningofficers.org.uk)

[5] Planning Officers' Society, Manifesto Background Paper 14 Dealing with Overlapping Consents

sions related to large scale development granted through outline planning permission?

See response to question 33.

Question 36. Do you have any views on the implications of the proposals in this consultation for you, or the group or business you represent, and on anyone with a relevant protected characteristic? If so, please explain who, which groups, including those with protected characteristics, or which businesses may be impacted and how. Is there anything that could be done to mitigate any impact identified?

No