ROTHERHAM METROPOLITAN BOROUGH COUNCIL

To the Chairman and Members of the
PLANNING REGULATORY BOARD **Date 31st March 2016**

Report of the Director of Planning, Regeneration and Culture

ITEM NO. SUBJECT

1 DCLG Technical consultation on implementation of planning changes – proposed response to questions.

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PLANNING REGULATORY BOARD

PLANNING, REGENERATION AND CULTURE

REPORT TO BOARD
31st MARCH 2016

Item 1 **Planning Board Item Report**

DCLG Technical consultation on implementation of planning changes – proposed response to questions.

Recommendation

That the contents of the report be agreed and the response sent to DCLG before the deadline on the 15th April 2016.

Background

The Government produced a technical consultation on implementation of planning changes in February 2016.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/507019/160310_planning_consultation.pdf

The consultation is seeking views on the proposed approach to implementation of measures in the Housing and Planning Bill, and some other planning measures. Responses to the consultation will inform the detail of the secondary legislation which will be prepared once the Bill gains Royal Assent. The consultation sets out proposals in the following areas:

Chapter 1: Changes to planning application fees;

Chapter 2: Enabling planning bodies to grant permission in principle for housing development on sites allocated in plans or identified on brownfield registers, and allowing small builders to apply directly for permission in principle for minor development;

Chapter 3: Introducing a statutory register of brownfield land suitable for housing development;

Chapter 4: Creating a small sites register to support custom build homes;

Chapter 5: Speeding up and simplifying neighbourhood planning and giving more powers to neighbourhood forums;

Chapter 6: Introducing criteria to inform decisions on intervention to deliver on the commitment to get local plans in place;

Chapter 7: Extending the existing designation approach to include applications for non-major development;

Chapter 8: Testing competition in the processing of planning applications;

Chapter 9: Information about financial benefits;

Chapter 10: Introducing a Section 106 dispute resolution service;

Chapter 11: Facilitating delivery of new state-funded school places, including free schools, through expanded permitted development rights; and,

Chapter 12: Improving the performance of all statutory consultees.

Response to questions:

Chapter 1: Changes to planning application fees

Question 1.1: Do you agree with our proposal to adjust planning fees in line with inflation, but only in areas where the local planning authority is performing well? If not what alternative would you suggest?

No we think that the fees should be increased equitably across all local planning authorities. There are other measures available to the Government to penalise underperforming local planning authorities such as being 'designated' and allowing developers the opportunity to submit applications to a third party as is the case with major applications.

Question 1.2: Do you agree that national fee changes should not apply where a local planning authority is designated as under-performing, or would you propose an alternative means of linking fees to performance? And should there be a delay before any change of this type is applied?

No – see answer to question 1:1

Question 1.3: Do you agree that additional flexibility over planning application fees should be allowed through deals, in return for higher standards of service or radical proposals for reform?

Yes – although higher standards of service or radical proposals for reform should be at the heart of every LPA's drive to deliver an efficient and effective development management service. To only try and deliver this through a premium fee regime could lead to more delays at the expense of people that cannot afford to pay the increased levy. There is nothing wrong with a two tier approach for strategic important sites that would have significant economic benefits.

Question 1.4: Do you have a view on how any fast-track services could best operate, or on other options for radical service improvement?

No – see answer to question 1.3

Question 1.5: Do you have any other comments on these proposals, including the impact on business and other users of the system?

Planning is done in the public interest and should be a fair and equitable service for all. The worry about these proposals is that private contractors would have a vested interest in getting a favourable decision for the client.

Chapter 2: Permission in principle

Question 2.1: Do you agree that the following should be qualifying documents capable of granting permission in principle? a) future local plans; b) future neighbourhood plans; c) brownfield registers.

a) future local plans; yes
b) future neighbourhood plans; yes
c) brownfield registers. No – there should just be a schedule of land where development is encouraged through the submission of a normal planning application.

Question 2.2: Do you agree that permission in principle on application should be available to minor development?

Yes

Question 2.3: Do you agree that location, uses and amount of residential development should constitute 'in principle matters' that must be included in a permission in principle and do you think any other matter should be included?

Yes we agree that location, uses and amount of residential development should constitute 'in principle matters' that must be included in a permission in principle but no we do not think any other matter should be included.

Question 2.4: Do you have views on how best to ensure that the parameters of the technical details that need to be agreed are described at the permission in principle stage?

No – the permission in principle should really only establish the principle of the development as such. The technical details are what set the second part of the application process from the basic first part.

Question 2.5: Do you have views on our suggested approach to a) Environmental Impact Assessment, b) Habitats Directive or c) other sensitive sites?

No

Question 2.6: Do you agree with our proposals for community and other involvement?

Yes

Question 2.7: Do you agree with our proposals for information requirements?

Yes

Question 2.8: Do you have any views about the fee that should be set for a) a permission in principle application and based on site area and b) a technical details consent application?

Yes – we think that the fees for a permission in principle should be the same as an outline application and based on site area and the technical details application should be the same as the full planning application fee.

Question 2.9: Do you agree with our proposals for the expiry of on permission in principle on allocation and application?

Yes – we agree with option A that they should be in line with the time limits for planning permission and 5 years for allocations seems a reasonable time and gives scope for review.

Question 2.9(a): Do you have any views about whether we should allow for local variation to the duration of permission in principle?

Yes – like applications for planning permission there should always be the opportunity to amend the time period.

Question 2.10: Do you agree with our proposals for the maximum determination periods for a) permission in principle minor applications, and b) technical details consent for minor and major sites?

a) 5 weeks seems a little tight for permission in principle minor applications considering there is still a statutory consultation period, we would suggest a minimum of 6 weeks

b) technical details consent for minor – these should be 8 weeks like a planning application

c) major sites 10 weeks should be sufficient.

Chapter 3: Brownfield register

Question 3.1: Do you agree with our proposals for identifying potential sites? Are there other sources of information that we should highlight?

Yes, use of an up-to-date SHLAA is a sensible primary source for potential sites. The further sources used by local planning authorities should be at their discretion to avoid the process being overly prescriptive. But some other useful sources could be those such as, emerging Local Plan sites, prior NLUD returns, previous Urban Potential Studies, any Housing/Asset Team data on surplus land/sites etc.

Question 3.2: Do you agree with our proposed criteria for assessing suitable sites? Are there other factors which you think should be considered?

Yes we agree with the proposed criteria.

Question 3.3: Do you have any views on our suggested approach for addressing the requirements of Environmental Impact Assessment and Habitats Directives?

This seems a commensurate approach. Regulations should avoid imposing additional burdens on local planning authorities if brownfield registers are to be achieved and maintained in a timely manner.

Question 3.4: Do you agree with our views on the application of the Strategic Environment Assessment Directive? Could the Department provide assistance in order to make any applicable requirements easier to meet?

Clarity over if or when SA/SEA might apply to sites on a brownfield register would be welcomed. We would strongly support the ability to reuse the SA prepared for the Local Plan to inform sites included on the register. This should help minimise additional cost and streamline the process. Any further guidance/clarity that helps local planning authorities navigate the SA/SEA requirements in terms of brownfield registers would be welcomed. If the government target of 90% of suitable brownfield sites to have permission for housing by 2020 is to be met then unnecessary site assessments should be avoided.

Question 3.5: Do you agree with our proposals on publicity and consultation requirements?

Any consultation requirements should be kept simple and avoid adding a burden to local planning authorities. It should be proportionate with the purpose of preparing and updating a brownfield register. Any requirement to publicise reasons why a site has not been granted permission in principle should be clear in its scope. Government should promote the digital by default imperative in all publishing requirements and could usefully remove the requirement to have hard copies “on deposit” at council offices. Publishing a brownfield register online allows 24/7 access and any requirement to make hard copies available seems superfluous. It would also be helpful to allow local planning authorities to consult solely by electronic means for efficiency and cost saving.

Question 3.6: Do you agree with the specific information we are proposing to require for each site?

Yes. It would also be helpful if brownfield registers included a site plan for each site although it is recognised not all local planning authorities have the capacity to publish this information electronically. It is unclear what is intended on ownership – is there to be a requirement to publish ownership information only if in public ownership? Or is any ownership information to be published, if known? Does this give rise to data protection issues? Potential development sites may have been put forward to local planning authorities in confidence as part of the Local Plan process. A land owner may wish to see a site developed but may live locally and not wish their intentions known.

Question 3.7: Do you have any suggestions about how the data could be standardised and published in a transparent manner?

Requirements should be kept as simple as possible to avoid extra burdens on local planning authorities.

Question 3.8: Do you agree with our proposed approach for keeping data up-to-date?

Yes. It would also make sense to incorporate annual register updates into local planning authorities SHLAA updates.

Question 3.9: Do our proposals to drive progress provide a strong enough incentive to ensure the most effective use of local brownfield registers and permission in principle?

No comment

Question 3.10: Are there further specific measures we should consider where local authorities fail to make sufficient progress, both in advance of 2020 and thereafter?

In the climate of continuing resource constraint and loss of planning technical capacity in many local planning authorities over recent years, government should consider investment as well as incentives to help achieve good coverage of brownfield registers.

Chapter 4: Small sites register

Question 4.1: Do you agree that for the small sites register, small sites should be between one and four plots in size?

Yes this is a reasonable size threshold.

Question 4.2: Do you agree that sites should just be entered on the small sites register when a local authority is aware of them without any need for a suitability assessment?

Yes – if they were to require a SA this could well overburden the LPA and devalue the use of having a small sites register.

Question 4.3: Are there any categories of land which we should automatically exclude from the register? If so what are they?
We consider that any garden land, green belt or allocated open space within a local plan should be excluded.

Question 4.4: Do you agree that location, size and contact details will be sufficient to make the small sites register useful? If not what additional information should be required?

Yes – this would be sufficient.

Chapter 5: Neighbourhood planning

Question 5.1: Do you support our proposals for the circumstances in which a local planning authority must designate all of the neighbourhood area applied for?

We would support in principle the whole area of the parish to be designated without discretion to amend the boundary as these appear to be local units for neighbourhood plans.

The consultation says “the designation should be made as soon as possible, once the authority is satisfied that the application is valid and complete. Our proposals would also act as a safeguard where a local planning authority is not meeting its statutory duty to

decide other types of applications for neighbourhood areas within the current time periods, so that communities are not disadvantaged by the delay". There may be good reason for a delay in determining the designation application. Designation without addressing this may not help quality plans to be produced and put in place. The proposals do not empower local authorities to meet the demands of neighbourhood planning at a time resources are stretched.

Question 5.2: Do you agree with the proposed time periods for a local planning authority to designate a neighbourhood forum?

No comment.

Question 5.3: Do you agree with the proposed time period for the local planning authority to decide whether to send a plan or Order to referendum?

No comment.

Question 5.4: Do you agree with the suggested persons to be notified and invited to make representations when a local planning authority's proposed decision differs from the recommendation of the examiner?

No comment.

Question 5.5: Do you agree with the proposed time periods where a local planning authority seeks further representations and makes a final decision?

No comment.

Question 5.6: Do you agree with the proposed time period within which a referendum must be held?

The proposed time period within which a referendum must be held should be 3 months from the decision to hold a referendum; and that the NPR should be combined with another poll(s) if it is due to be held within 6 months of the decision to hold the referendum.

Question 5.7: Do you agree with the time period by which a neighbourhood plan or Order should be made following a successful referendum?

No comment.

Question 5.8: What other measures could speed up or simplify the neighbourhood planning process?

Ring fenced resources for LPA and local communities, more PAS training events, ready availability of free expert advice to local authorities and local communities.

Question 5.9: Do you agree with the proposed procedure to be followed where the Secretary of State may intervene to decide whether a neighbourhood plan or Order should be put to a referendum?

No comment.

Question 5.10: Do you agree that local planning authorities must notify and invite representations from designated neighbourhood forums where they consider they may have an interest in the preparation of a local plan?

Yes, this is reasonable.

Chapter 6: Local plans

Question 6.1: Do you agree with our proposed criteria for prioritising intervention in local plans?

Yes, the criteria for prioritising intervention seem reasonable. It is sensible to prioritise intervention where it is most needed. However, how “housing pressure” is defined and measured will be important. It should be an objective assessment taking account of all relevant factors, importantly it should consider the amount of extant permissions not implemented/completed.

Question 6.2: Do you agree that decisions on prioritising intervention to arrange for a local plan to be written should take into consideration a) collaborative and strategic plan-making and b) neighbourhood planning?

Yes, it would be reasonable to take into account strategic plan-making and neighbourhood plans. However, any assessment considering strategic plan-making should take into account the progress on a local plan by individual local planning authorities within a devolution area. local planning authorities making progress on an appropriate plan should not be held back while any strategic planning emerges from a devolution deal. Any sub-regional plan or framework can inform future reviews of constituent local planning authorities.

Question 6.3: Are there any other factors that you think the government should take into consideration?

No comment.

Question 6.4: Do you agree that the Secretary of State should take exceptional circumstances submitted by local planning authorities into account when considering intervention?

Yes, any consideration of intervention should allow for circumstances outside a local planning authorities control.

Question 6.5: Is there any other information you think we should publish alongside what is stated above?

No. It is supported that government should check the accuracy of dates with the LPA before publication. Presenting local planning authorities LDS target dates by financial year quarter seems a reasonable approach for clarity and consistency.

Question 6.6: Do you agree that the proposed information should be published on a six monthly basis?
Yes, this seems a reasonable interval.

Chapter 7: Expanding the approach to planning performance

Question 7.1: Do you agree that the threshold for designations involving applications for non-major development should be set initially at between 60-70% of decisions made on time, and between 10-20% of decisions overturned at appeal? If so what specific thresholds would you suggest?

Yes we agree with these thresholds

Question 7.2: Do you agree that the threshold for designations based on the quality of decisions on applications for major development should be reduced to 10% of decisions overturned at appeal?

Yes we agree with these thresholds

Question 7.3: Do you agree with our proposed approach to designation and de-designation, and in particular

(a) that the general approach should be the same for applications involving major and non-major development?

(b) performance in handling applications for major and non-major development should be assessed separately?

(c) in considering exceptional circumstances, we should take into account the extent to which any appeals involve decisions which authorities considered to be in line with an up-to-date plan, prior to confirming any designations based on the quality of decisions?

Yes we agree with these criteria

Question 7.4: Do you agree that the option to apply directly to the Secretary of State should not apply to applications for householder developments?

Yes

Chapter 8: Testing competition in the processing of planning applications

Question 8.1: Who should be able to compete for the processing of planning applications and which applications could they compete for?

We don't agree with the principle of this. Planning is done in the public interests and there are significant risks in giving someone who is processing an application a vested interest in the outcome of that application.

Question 8.2: How should fee setting in competition test areas operate?

We believe that fees should continue to be set nationally.

Question 8.3: What should applicants, approved providers and local planning authorities in test areas be able to do?

See answer to 8.1

Question 8.4: Do you have a view on how we could maintain appropriate high standards and performance during the testing of competition?

No - we have serious concerns about someone being employed to process an application being able to have total impartiality.

Question 8.5: What information would need to be shared between approved providers and local planning authorities, and what safeguards are needed to protect information?

Most of the necessary information is publicly available on our website or anyone can come and view the information in the Council offices. But significant time and effort has been invested within our back office systems to make us as efficient as possible. What is unclear is who would all the objections go to and who would be responsible for making this information publicly available. There is still a requirement to comply with the Data Protection Act.

Question 8.6: Do you have any other comments on these proposals, including the impact on business and other users of the system?

We consider that this is a very dangerous and misaligned way to try and make the planning system more efficient. Part of the delivery of a quality planning service is trying to ensure consistency in decision making and it is clear that if third parties are given the opportunity to engage within the processing of planning applications, the scope of consistency will be seriously eroded. The proposals are clear that this is not a decision making exercise and that the 'chosen' supplier will only be making recommendations but this does not seem to have been properly thought through.

Pre application discussions are vital in providing a good quality service and the use of private contractors to bypass the processing stage of an application will further erode this quality measure that results in more applications being approved. It is also unclear as to how these private contractors will fully assess all the specific site constraints and what happens if they fail to comply with statutory requirements resulting in complaints? Who would be responsible for an appeal if the application is refused? Planning is much more subjective than Building Control and there are serious concerns about the impartiality of someone that has effectively been employed by the applicant to determine an application outside of the independent LPA. Even though the final decision is with the LPA who may not agree with the recommendation, what benefit would a private contractor have in making a recommendation to refuse? The Council would not have received any fee for the application but may well have significant costs in defending any subsequent appeal. We are also concerned about how they would engage with internal consultees – it is not clear about how this relationship would work, would they have to pay for this advice?

This should not apply to any LPA that is considered to be performing well.

Chapter 9: Information about financial benefits

Question 9.1: Do you agree with these proposals for the range of benefits to be listed in planning reports?

a) Council tax revenue; No, this is not a material consideration

b) Business rate revenue; No, this is not a material consideration

c) Section 106 payments; Yes we do this a matter of course now anyway

Question 9.2: Do you agree with these proposals for the information to be recorded, and are there any other matters that we should consider when preparing regulations to implement this measure?

No these are not material planning considerations and should not be confused as such.

Chapter 10: Section 106 dispute resolution

Question 10.1: Do you agree that the dispute resolution procedure should be able to apply to any planning application?

Yes

Question 10.2: Do you agree with the proposals about when a request for dispute resolution can be made?

No it should be at least 4 weeks

Question 10.3: Do you agree with the proposals about what should be contained in a request?

Yes

Question 10.4: Do you consider that another party to the section 106 agreement should be able to refer the matter for dispute resolution? If yes, should this be with the agreement of both the main parties?

The referral for dispute resolution should only come from the applicant (or their agent) and the local planning authority. However an 'interested party' ought to be able to bring a referral – though they should have to show that they are affected by it.

Question 10.5: Do you agree that two weeks would be sufficient for the cooling off period?

Yes

Question 10.6: What qualifications and experience do you consider the appointed person should have to enable them to be credible?

We would suggest a person with experience in land economics, the Planning System, have a commercial awareness of the housing market and experience of the dealing with the law, especially planning law.

Question 10.7: Do you agree with the proposals for sharing fees? If not, what alternative arrangement would you support?
No – We think the person bringing the referral should pay the full fee – with a right to claim costs if undue time and money is spent by the other side.

Question 10.8: Do you have any comments on how long the appointed person should have to produce their report?

Four weeks seems reasonable with maybe some flexibility built in if the appointed person or other required persons have leave/ or to allow for any periods of sickness.

Question 10.9: What matters do you think should and should not be taken into account by the appointed person?

They should only deal with strict issues regarding viability that are presented. Not speculation or irrelevant arguments.

Question 10.10: Do you agree that the appointed person's report should be published on the local authority's website? Do you agree that there should be a mechanism for errors in the appointed person's report to be corrected by request?

Yes to both

Question 10.11: Do you have any comments about how long there should be following the dispute resolution process for a) completing any section 106 obligations and b) determining the planning application?

a) We would say that a minimum of 6 weeks should be given considering that the legal process can be protracted.

b) The planning application expiry dates should remain unchanged.

Question 10.12: Are there any cases or circumstances where the consequences of the report, as set out in the Bill, should not apply?

Not that we are aware of.

Question 10.13: What limitations do you consider appropriate, following the publication of the appointed person's report, to restrict the use of other obligations?

None that we are aware of.

Question 10.14: Are there any other steps that you consider that parties should be required to take in connection with the appointed person's report and are there any other matters that we should consider when preparing regulations to implement the dispute resolution process?

A protocol form – signed by applicant/LA that 'genuine' attempts have been made to communicate.

Chapter 11: Permitted development rights for state-funded schools

Question 11.1: Do you have any views on our proposals to extend permitted development rights for state-funded schools, or whether other changes should be made? For example, should changes be made to the thresholds within which school buildings can be extended?
No these thresholds are about right

Question 11.2: Do you consider that the existing prior approval provisions are adequate? Do you consider that other local impacts arise which should be considered in designing the right?

Yes these are adequate

Section 12: Changes to statutory consultation on planning applications

Question 12.1: What are the benefits and/or risks of setting a maximum period that a statutory consultee can request when seeking an extension of time to respond with comments to a planning application?

No there shouldn't be a maximum time period, this just results in more uncertainty and poor quality decision making. The current arrangement generally works well.

Question 12.2: Where an extension of time to respond is requested by a statutory consultee, what do you consider should be the maximum additional time allowed? Please provide details.

See answer to question 12.1, there shouldn't be a maximum time period for these responses. What would be the point of it and what would be the outcome if no response was made within the prescribed period from Historic England for example where there was a development affecting an important historical asset.

Chapter 13: Public Sector Equality Duty

Question 13.1: Do you have any views about the implications of our proposed changes on people with protected characteristics as defined in the Equalities Act 2010? What evidence do you have on this matter? Is there anything that could be done to mitigate any impact identified?

No

Question 13.2 Do you have any other suggestions or comments on the proposals set out in this consultation document?

No