

Development Control Committee
Meeting to be held on 13th April 2016

Electoral Division affected: N/A

The Housing and Planning Bill – Technical Consultation on implementation of planning changes.

Implications for Development Management.

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Executive Summary

The Housing and Planning Bill was published in October 2015 and is currently passing through Parliamentary procedures. The Bill includes a number of measures that would have implications for development management and other planning procedures. The Government have recently launched a technical consultation on how the provisions in the Bill will be implemented. This report details these provisions and explains possible implications for development management practice.

Recommendation – Summary

The Development Control Committee is asked to:

- i) Note the potential implications of the Housing and Planning Bill for development management procedures and development plan preparation.
- ii) Instruct the Head of Service – Planning and Environment to respond to the consultation as indicated in this report.

Background and advice

The Housing and Planning Bill was published by the Government in October 2015. The Government's broad aim with the Bill is to increase housing supply and to allow more people to own their own home. The Bill incorporates a number of measures to increase build rates of starter and open market housing together with a wide range of reforms to the planning system to improve local plan coverage, assist in the allocation of land for housing and speed up the operation of the development management system.

The Government has recently published a technical consultation on how the legislation in the Bill will be implemented in practice. The proposals in the consultation have a number of implications for development management and planning generally that have a much wider effect than being confined to purely housing issues.

The responses to the consultation will inform the detail of the secondary legislation that will be required once the Bill gains Royal Assent.

The consultation deals with the following topics:-

- Changes to planning application fees
- Extending the existing designation (special measures) to include applications for non major development.
- Testing competition in the processing of planning applications
- Information on financial benefits
- Introducing a section 106 dispute resolution service
- Facilitating delivery of school places through expanded permitted development rights
- Improving the performance of all statutory consultees.
- Introducing criteria to inform decisions on intervention to ensure local plan coverage
- Enabling planning bodies to grant permission in principle for housing development on sites allocated in plans or on brownfield registers and allowing small builders to apply directly for permission in principle for minor development
- Introducing a register of brown field land suitable for housing development.
- Creating a small sites register to support custom build homes
- Speeding up and simplifying neighbourhood planning and giving more powers to neighbourhood forums

Many of these proposals will not directly affect the County Council due to the particular types of development that are determined by the Development Control Committee. However, as a general comment, the various initiatives to increase housing supply may have implications for the County Council in terms of increasing demand for construction minerals and the need to dispose of construction and demolition wastes.

1. Changes to Planning Application fees

Most applicants for planning permission have to pay a fee. The fees are set nationally and were last revised in line with inflation in 2012.

The Government are now proposing that fees are increased by a proportionate amount linked to both inflation and local authority performance in terms of speed and quality of decision making. The proposal is that fee increases would only apply to authorities which are performing well and that they would not apply to authorities which are designated as under performing in the handling of planning applications.

An alternative suggestion is that fee increases would be limited to those authorities that are in the top 75% of performance for both speed and quality of decision.

The Government have considered the ability for authorities to set fees locally but are concerned that such increases would not be sufficiently related to performance or might be increased to a level that would be a deterrent to applications being submitted. As an alternative, the Government is proposing that applicant's may be able to pay a higher fee for a fast track service or that applicants would be able to have a choice of applying to the local authority or another approved provider thereby establishing a competitive market for the processing of planning application. Such a market would require authorities (and other providers) to set their own fees.

Comment: - In general the recognition that fees should be increased is welcomed. For some application types, the fee received falls far short of the costs of determining planning applications. This particularly affects Minerals and Waste Planning Authorities which receive many applications to vary conditions which can raise complex issues yet the fee received is limited to £195. However, as a general theme, it is clear that the Government wish to link the ability to charge higher fees to local authority performance, measured either in terms of timescales for determination of application or quality of decision (percentage of decisions overturned at appeal). Linking the fee increase to such performance indicators raises a number of issues which are discussed below as are the proposals to introduce alternative providers for development control services.

2. Expanding the approach to planning performance

The Government states that timely and well considered decisions on planning applications are a key feature of an effective planning system. They stress the importance that is attached to ensuring that decisions are reached within a reasonable time frame and that there is confidence in the decisions that are made and that they are reasonable taking into account national and local policies.

The Growth and Infrastructure Act 2013 introduced a performance approach for major planning applications. This assesses speed and quality of decisions taken by LPA's and provides a system for authorities being designated as underperforming if they do not meet performance thresholds which are expressed in terms of 1) speed of decision and 2) quality of decision:-

- Speed is assessed as percentage of applications determined in the statutory period (including any agreed extended period) over a two year period. The threshold for designation is 50% or fewer of an authority's decisions made within the statutory determination period (13 weeks or 16 weeks in the case of EIA development) or such extended period as has been agreed in writing
- Quality is assessed as the percentage of all decisions on applications for major development that are overturned at appeal, over a two year period. The threshold for designation is 20% or more of an authority's decisions on applications for major development made during the assessment period being overturned at appeal.

Where an authority is designated as underperforming having regard to either of these criteria, applicants have the choice of submitting the application direct to the Secretary of State. An authority so designated also has to produce an action plan to address areas of weakness.

The proposals in the Bill propose that these thresholds will be extended to non major development. This change will not affect the County Council since all county matter minerals and waste applications are 'major' for the purposes of assessment. However, the Government have said that the thresholds for major development will be kept under review. Of more immediate importance is the Government's proposals to reduce the threshold for quality of decisions to 10% of decisions overturned at appeal.

Comment: The Government's continued drive to improve LPA performance on determination timescales is clear and the existing thresholds may well be raised further in future. In terms of the County Council's performance in determining major planning applications, the data for 2015 shows that 100% of such applications were determined within the statutory period or such other period as was agreed with the applicant.(57% were determined within 13 weeks). Therefore, the County Council is performing well in excess of the Government's thresholds in terms of speed of decision.

In terms of quality of decision, the following table provides details of planning applications in the last 10 years that have been refused by the County Council and which have been subject to an appeal.

Site name	Officer recommendation	Committee resolution	Appeal outcome
Preesall Underground Gas Storage	Refuse	Refused	Dismissed
Preesall Underground Gas Storage	Refuse	Refused	Dismissed
Sandons Farm	Approval	Refused	Allowed
Sandons Farm	Approval	Refused	Allowed
Runshaw Quarry, Euxton	Approval	Refused	Allowed
Spondon Mill	Refuse	Refused	Dismissed
Tarnbrick Farm	Refuse	Refused	Allowed
Old Sawmill, Pressall	Refuse	Refused	Allowed
Ream Hills Farm	Refuse	Refused	Allowed
Nans Nook Farm	Refuse	Refused	Dismissed
Grange Road Exploration Site	Approval	Refused	Allowed
Preston New Road	Approval	Refused	Decision awaited
Preston New Road Arrays	Approval	Refused	Decision awaited
Roseacre Wood	Refuse	Refused	Decision awaited
Roseacre Wood Arrays	Approval	Approved (Appeal against conditions)	Decision awaited

Analysis of the above table shows that since 2013 (when the criteria on appeal performance was introduced), 66 % of the County Council's decisions have been overturned at appeal. Should the current shale gas appeals be determined against the County Council, then this figure will clearly change. In either scenario, the figure is higher than the current performance indicator or that proposed by the Government in the Bill, therefore putting the County Council at risk of designation of under performance in relation to quality of decision. If the County Council was so designated, applicants would have the option of submitting applications direct to the Planning Inspectorate with the County Council losing its role as determining authority. The Government state that only limited exemptions would apply – authorities will not be liable for designation if they decided ten or fewer applications for major development during the assessment period. The County Council determines around 50 major applications per year and would therefore not fall within this exemption. The proposals in the Bill in relation to quality of decision therefore have implications for the County Council's decision making procedures particularly if the threshold is further reduced as is proposed in the technical consultation.

Although the Government have already established the criteria in terms of quality of decision, there is a concern that further lowering the threshold will make authorities very risk adverse when considering applications, particularly when proposals are very finely balanced and where the issues may hinge on subjective judgement for example in terms of landscape impact. It is considered that a better measure of poor quality decisions would be where costs are awarded against authorities for unreasonable behaviour or failure to produce evidence to defend refusal of planning permission.

3. Testing Competition in the Processing of Planning Applications

The Government considers that it is important that the planning process is resourced in a way that allows an efficient service to be provided. The consultation seeks views on changes to planning application fees linked to improved performance and provision of innovative planning services. One form of innovation that the Government are keen to explore is competition in the processing of planning applications. It is important to note that Authorities would still retain their decision making powers and the proposals only relate to that part of the development management process that is undertaken prior to determination such as validation, advertising, consultation, negotiation and production of recommendations.

The Government consider that many local authority services such as Building Control are already subject to competition and that there is merit in extending this to planning as this would provide greater choice for applicants, enable innovation in service provision and drive down costs and improve performance. The Government therefore intend to introduce competition in a number of specific areas across the country for a limited period of time where an applicant would be able to apply to either the local authority or another 'approved provider'. An approved provider could be either a private sector company or another local authority. The alternative provider would have to meet certain criteria in terms of competence and capabilities

but would be able to set their own fees with the Government retaining powers to intervene to prevent excessive fees being charged or to allow fees to be returned where service standards are not met.

Comment: These proposals represent a major change in the operation of the planning system. At present, only local planning authorities (or the Secretary of State) have the powers to process planning applications. The Government's proposals only relate to the processing of applications and therefore the democratic determination of applications would remain with Local Planning Authorities – this is considered to be vital as it is a fundamental pillar of the planning system. However, even with competition limited to processing, a number of important issues are still raised as follows:-

- There would remain a need for local authorities to oversee the work carried out by alternative providers to ensure that legal requirements are complied with and that recommendations are reasonable having regard to law and policy. This overseeing role would have staffing implications for LPA's without any of the fee income that is normally received. This would be a particular issue where the LPA do not agree with the recommendations of the alternative provider.
- Who would incur the costs in the instances of a permission being quashed by the courts for failure of an alternative provider to comply with legislation or the Local Government Ombudsman concluding maladministration for lack of adequate consultation for example
- Major planning applications frequently give rise to substantial levels of public representation. There may be concerns about accountability and fairness should the processing of applications be handled by a private company rather than a local authority.
- The processing of planning applications (particularly for minerals and waste sites) requires knowledge of the local area and particularly site history. Providing such information to an alternative provider would be demanding on local authority resources and ultimately may never provide the same level of information that is held by existing local authority officers.

In conclusion, these proposals involve a major change in the operation of the planning system. There may be benefits from these proposals for some local authorities in terms of being able to undertake work in other areas thereby supporting fee income or in terms of providing for greater collaborative working at a time when local authority finances are under pressure. However, there are a number of other issues that are raised as highlighted above and it is considered that the Government should consider these issues carefully before introducing a competitive process.

4. Information about Financial Benefits

The Government considers that the potential financial benefits of proposed developments are not always made publically available during the decision making process which prevents local communities from understanding the full benefits that development can bring. To address this issue, the Government are proposing to place a duty on local authorities to ensure that planning reports include details of

financial benefits that are likely to accrue to the local area if planning permission is granted. The Government consider that council tax revenue, business rate revenue and section 106 payments should be the types of benefit that should be included.

Comment: The proposals are noted. However, in the County Council's experience with determining proposals for major development, opposition is generally strongly orientated around environmental issues and will not be reduced simply through a requirement to set out the financial benefits of development. For example, the Government have quoted the shale gas industry as an instance where financial benefits at pre-set levels have to be paid to local communities. However, in the County Council's experience, this did not radically change the balance of objections and support for these developments. There may be a concern that such proposals will actually prove counter productive as it may give the impression that permission is being bought on the back of such financial benefits thereby undermining the principles of the planning system.

5. Section 106 Dispute Resolution

The Government considers that negotiation of section 106 agreements can lead to delay in issuing planning permissions. Therefore the proposal is for a dispute mechanism to be provided by a body on behalf of the Secretary of State. The matter would be concluded within prescribed timescales and would provide a binding report setting out appropriate terms where there has been no agreement between the LPA and the developer. There would be a fee payable for using this service.

Comment: There may be occasions when this would be helpful to the County Council, although usually the broad terms of any section 106 agreement have been agreed before an application is presented to Committee. This provision may be more relevant where the County Council is seeking highway or education contributions in a section 106 agreement with a district council.

6. Permitted Development rights for schools

The Government is committed to expanding free school places and wishes to reduce the barriers to such. Currently there are certain permitted development rights that apply to state schools to allow, without the need for planning permission, change of use of existing buildings to education, limited extension to existing buildings and erection of temporary buildings for educational purposes. The proposals are to further relax existing permitted development rights to allow existing buildings to be used for educational purposes for 2 years instead of 1 year, permit larger extensions to existing school buildings without the need for planning permission (250m² rather than the existing limitation of 100m²) and to permit temporary buildings for educational uses on cleared sites for up to 3 years.

Comment: The main issue for the County Council relates to the relaxation of permitted development rights in relation to the floor space of extensions to existing state schools. If larger extensions to existing schools are classed as permitted development, this could reduce the number of applications to be considered by the Development Control Committee. It should be noted that the Government do not appear to be proposing to relax the existing limitations in relation to height of the

building, proximity to the boundary and impact on playing fields so these protections would continue to apply which is important particularly in terms of the amenity of adjacent properties.

7. Statutory Consultations on Planning Applications

The Government considers that delays in responses by statutory consultees can result in delays in determining planning applications. Consultees ordinarily have 21 days to respond to a consultation but can request additional time. The suggestion is that any extension of the time period should be limited to 14 days.

Comment: Whilst a speedy response to consultations would be welcome it must be noted that in some cases the County Council is consulting on very complicated issues, for example consultation with the Environment Agency on shale gas applications. It would be of great concern if by limiting the extension time for responses this resulted in a less full or well considered response than would otherwise have been the case.

8. Local Plans

Whilst many authorities now have adopted local plans in place or have published a draft local plan, there remains some authorities where less progress on plan preparation has been made. The Government wish to ensure full local plan coverage by publishing league tables setting out local authority progress, intervening where no local plan has been produced by 2017 and establishing a new delivery test to ensure build out of housing units against levels of provision set out in local plans. The consultation states that intervention will be prioritised in certain circumstances including where policies in plans are not being kept up to date.

Comment: The main issue for the County Council relates to the provisions for intervention to ensure local plan coverage. The County Council has a statutory duty to prepare a minerals and waste local plan, the Core Strategy and Development Management Policies of which were last adopted in February 2009 and September 2013 respectively. Since that date, the requirements for local plan preparation have changed and authorities are now expected to produce single local plan rather than a number of separate development plan documents. The County Council has commenced preparation of a single replacement minerals and waste local plan in order that policies are kept up to date. Progress on preparing and adopting this local plan will be important given the provisions contained in the Bill.

9. Permission in Principle

The Bill includes measures to introduce a new 'permission in principle' route for obtaining planning permission. These provisions are designed to separate decision making on 'in principle' issues (such as broad land use categories, location and amount of development) from technical detail such as design. The provisions are designed to address concerns that the existing system requires too much detail to be submitted upfront before a permission can be granted. The Government envisage that the permission in principle can be established by means of either a locally produced document which would specify the types of developed approved in

principle for a given area or, for smaller sites, by means of an application to the local authority. In either case, full permission will only be secured once an application for approval of technical details has been approved. However, at technical details stage, there will be no opportunity to revisit the 'in principle' matters.

Comment: The Government envisage that these provisions are mainly intended to simplify and the speed up the process of securing planning permission for housing developments. However, the proposals could also be used for retail, community and commercial uses that are compatible with a residential use. It is therefore likely that these provisions will have limited impact on the County Council in its role as a LPA. The main issue is considered to be the need to ensure adequate and full consultation with local communities at the initial stage given that a permission in principle cannot be revisited once granted. There are also issues raised regarding development that would normally be subject to Environmental Impact Assessment where the full environmental information would have to be supplied up front in order to allow the likely impacts of the 'permission in principle' to be assessed. Similar issues are also raised in relation to developments that would affect European protected habitats or species.

10. Brownfield Register

The Government wishes to increase the number of homes built on brownfield sites and ensure that 90% of suitable brownfield sites have planning permission for housing by 2020. This would be achieved by creating a brownfield register which would be a qualifying document for granting 'permission in principle' as set out above.

Comment: These provisions are aimed at increasing housing land supply and therefore have limited implications for the County Council in its role as LPA. However, there may be some implications for the County Council generally in terms of its own land that is surplus to future requirements and can be marketed for reuse.

11. Small Sites Register

Again, these provisions are aimed at raising housing supply by increasing the opportunities for smaller companies or individuals to bring forward sites for self-build on land that can accommodate up to 10 units

Comment: These provisions have limited implications for the County Council as LPA.

12. Neighbourhood Planning

Neighbourhood Planning was introduced in the Localism Act 2011 and since that time a number of communities have taken up their new neighbourhood planning powers. The Government is proposing to reduce the timescale by which local planning authorities should determine an application to designate a neighbourhood forum with plan making functions in order to make it easier and quicker to establish such groups

Comment: These provisions relate to the planning at the most local level and have limited implications for the County Council in its role as LPA.

Conclusions

The package of measures contained in the Bill are the most recent of a number of changes to primary and secondary legislation aimed at improving efficiency and effectiveness of the planning system. However, some of the proposals in this Bill are of particular importance in that they affect the fundamentals of the planning system and have a number of implications for Local Planning Authorities both in terms of the processing of applications and determination by the Development Control Committee.

Consultations

N/A

Implications:

Risk management: This report relates to a consultation by DCLG regarding proposed changes to the planning system. Ultimately, the Government will decide whether, and in what form, these changes will be introduced. However, given the possible implications of these proposals, it is considered that the County Council should respond to the consultation along the lines set out in this report to ensure that its views are considered by DCLG in the preparation of the secondary legislation.

Financial: There are no financial implications arising from this report.

Local Government (Access to Information) Act 1985 List of Background Papers

Paper	Date	Contact/Ext
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Department for Communities and Local Government – Technical Consultation on implementation of planning changes – February 2016		
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Reason for Inclusion in Part II, if appropriate

N/A