

**GOVERNMENT CONSULTATION ON STATUTORY CONSULTEE
PERFORMANCE AND AWARD OF COSTS
REPORT OF DEPUTY CHIEF EXECUTIVE (COMMUNITY
DIRECTION)**



Hinckley & Bosworth
Borough Council

A Borough to be proud of

WARDS AFFECTED: ALL

1. **PURPOSE OF REPORT**

- 1.1 To advise Members of, and to seek Members agreement on the appended consultation response on the proposed changes to the Statutory Consultee Performance and Award of Costs consultation, issued by the Department of Communities and Local Government in July 2012.

2. **RECOMMENDATION**

- 2.1 That Members:

- (i) note the content of the report; and
- (ii) agree the appended consultation response.

3. **BACKGROUND TO THE REPORT**

- 3.1 The Government is committed to ensuring local authorities deliver an efficient planning service. It expects all those involved in the planning system to play their part. Statutory consultees are organisations and bodies, defined by statute, who must be consulted on relevant planning applications. The Government recognises that Local Planning Authorities can give significant weight to the advice of statutory consultees to such an extent that their comments can lead to the imposition of planning conditions or in some cases the refusal of planning permission. Whilst Local Planning Authorities remain ultimately responsible for planning decisions, statutory consultees should take responsibility for the advice they give.

- 3.2 The Government is keen to promote good practice and ensure advice continues to be of high quality, appropriate to each particular case and provided within the statutory time frame of 21 days. It is consulting on amending guidance in the Award of Costs Circular to promote a proportionate response on the part of statutory consultees when they are advising on planning applications and their subsequent responsibility for that advice at appeal. Together these measures should result in clearer, stronger advice from statutory consultees to Local Planning Authorities and applicants which should then result in quicker, more efficient and fully justified decisions from local authorities.

- 3.3 The scope of this consultation document includes:

- The Government's proposals to amend guidance in Circular 03/09: Costs Awards in Appeals and Other Planning Proceedings in relation to statutory consultees and their advice at appeal.
- The Government is also announcing clarifications to the guidance in Circular 03/09 in relation to local councils and their development plan, and in relation to ensuring evidence submitted at appeal is manifestly accurate and truthful.

- The Government is also proposing to require the five main statutory consultees to report on, and be accountable for, their performance on dealing with planning applications as part of their individual Improvement Plans.

3.4 The Policy Context

Statutory consultees are organisations and bodies who must be consulted on relevant planning applications. In November 2011, the Government committed to improving the performance of the key statutory consultees in responding swiftly to applications, the focus of this work is on the five main statutory bodies (English Heritage, Natural England, Environment Agency, Highways Agency and Health & Safety Executive). The Government also announced in November 2011, that it will ensure that there is a more effective mechanism for applicants to obtain an award of costs, if there is an appeal against refusal of a planning permission, where a statutory consultee has acted unreasonably. In 2011, there were no awards of costs against statutory consultees.

During the passage of the Localism Act, the Government committed to revising its guidance on the award of costs regime so that there should be no grounds for an award of costs against a local planning authority if it refuses a planning application that is clearly contrary to a development plan and where no material considerations including national policy indicate that planning permission should have been granted.

3.5 The Legal Context

The Government sets out time limits for processing planning applications through the Development Management Procedure Order. Currently statutory consultees have 21 days within which they should respond to consultations unless otherwise agreed with the Local Planning Authority. When determining planning applications, Local Planning Authorities must have regard to the views of statutory consultees. The primacy of the development plan is set out by Section 38(6) of the Planning and Compulsory Purchase Act 2004 which states *"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."* As stated above, the views of the statutory consultee would be such a material consideration.

3.6 Consultation Proposals

The scope of the consultation seeks the following changes to the Award of Costs Circular 03/09: which provides guidance to the Planning Inspectorate when assessing submissions from parties at an appeal for costs to be awarded for unreasonable behaviour.

3.7 Amending guidance on statutory consultees

It is proposed to cancel paragraphs D7 and D8 as it should be the case that statutory consultees act reasonably in the same way that other third parties as defined by regulation are expected to do. Further it shall amend the guidance in paragraph B24 and insert a new paragraph D6a to support the intention that statutory consultees should take responsibility for their advice on appeal and should not be excluded from consideration of an award of costs on the grounds of unreasonable behaviour where their advice has been relevant to the refusal of the application.

3.8 Clarifying guidance regarding the development plan

It is proposed to insert a new paragraph B15a to advise appeal parties there should generally be no grounds for an award of costs against a local authority where it has

refused a planning application that is clearly contrary to a development plan where no material considerations including national policy indicate that planning permission should have been granted. This additional paragraph seeks to make the existing guidance clearer.

3.9 Clarifying guidance on accurate and truthful information

An additional example of when an appellant may be at risk of costs will be inserted into paragraph B14. This would include instances where an appellant has relied on evidence that has been shown to be manifestly inaccurate or untrue. Equally, information the appellant relied on at the time of the planning application should have been accurate and true.

4. FINANCIAL IMPLICATIONS [PE]

4.1 Contained within the body of the report. Following this consultation, there is a likelihood that local authorities expenditure on appeal costs would reduce, due to the costs being borne by the consultee.

5. LEGAL IMPLICATIONS [EP]

5.1 None arising directly from the report. The report details a consultation response which, if approved, the Council is entitled to make as Local Planning Authority.

6. CORPORATE PLAN IMPLICATIONS

6.1 This document contributes to Strategic Aim 2 of the Corporate Plan: Thriving Economy.

7. CONSULTATION

7.1 The appended response is on behalf of this Authority. Neighbouring Authorities in England, applicants and third parties can respond independently should they wish.

8. RISK IMPLICATIONS

8.1 It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

8.2 It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

8.3 The following significant risks associated with this report / decisions were identified from this assessment:

Management of significant (Net Red) Risks		
Risk Description	Mitigating actions	Owner
None		

9. KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS

9.1 The proposed changes to the Award of Costs Circular will result in a clearer, stronger advice from statutory consultees to local authorities and applicants which should then result in quicker, more efficient and fully justified decisions from local authorities.

10. **CORPORATE IMPLICATIONS**

By submitting this report, the report author has taken the following into account:

- Community Safety implications
- Environmental implications
- ICT implications
- Asset Management implications
- Human Resources implications
- Planning Implications
- Voluntary Sector

Background papers: Statutory consultee performance and award of costs consultation document

Appendix One: Proposed consultation response

Contact Officer: Tracy Miller, ext 5809

Executive Member: Councillor Bray



Response form

Statutory consultee performance and award of costs: Consultation

We are seeking your views to the following questions on the proposals to improve consultee performance and make changes to the Award of Costs Circular 03/09.

How to respond:

The closing date for responses is 11 September 2012.

Responses should be sent preferably by email:

Email responses to: StatCons@communities.gsi.gov.uk

Written responses to:

Statutory consultee performance and award of costs - Consultation
Department for Communities and Local Government
Zone 1/J3 Eland House
Bressenden Place
London SW1E 5DU

About you

i) Your details:

Name:	Tracy Miller
Position:	Development Control Manager
Name of organisation (if applicable):	Hinckley and Bosworth Borough Council
Address:	Argents Mead Hinckley Leicestershire LE10 1BZ
Email	tracy.miller@hinckley-bosworth.gov.uk
Telephone number:	01455 255809

ii) Are the views expressed on this consultation an official response from the organisation you represent or your own personal views?

Organisational response

Personal views

iii) Please tick the box which best describes you or your organisation:

District Council

Metropolitan district council

London borough council

Unitary authority/county council/county borough council

Parish council

Community council

Non-Departmental Public Body (NDPB)

Planner

Professional trade association

Land owner

Private developer/house builder

Developer association

Voluntary sector/charity

Other

(please comment):	
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**iv) What is your main area of expertise or interest in this work
(please tick one box)?**

- Chief Executive
- Planner
- Developer
- Surveyor
- Member of professional or trade association
- Councillor
- Planning policy/implementation
- Environmental protection
- Other

(please comment):	
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Would you be happy for us to contact you again in relation to this questionnaire?

Yes No

ii) Questions

Please refer to the relevant parts of the consultation document for narrative relating to each question.

Question A: Do you agree with the proposal to amend the Award of Costs Circular in relation to statutory consultees and their advice?

Yes No

Comments

It should be relevant to all statutory consultees including the Local Highway Authority.

Question B: Do you have any other comments on the consultation?

Clarifications to the guidance in relation to development plans

Where there are changes to national guidance (such as the NPPF) and adequate time is not provided in order to consider the guidance and how it impacts upon the Authorities development plan, for example release of national guidance with immediate effect, it should be taken into account at appeal in any costs award if it is later considered that the national guidance did change the development plan position and hence the development was not contrary to the development plan.

Clarifications to the guidance in relation to accurate information

A welcomed change.

Any other comments

None

The consultation includes a draft impact assessment of the proposals.

Question IA1: Do you have any further evidence, positive or negative, of the behaviour of statutory consultees in the planning appeal process?

Yes No

Comments

Question IA2: Do you agree with our appraisal of the impact of the change to the Award of Costs Circular?

Yes No

Comments

Thank you for your comments.