PLANNING COMMITTEE – 18 DECEMBER 2012

PLANNING PERFORMANCE AND THE PLANNING GUARANTEE
REPORT OF DEPUTY CHIEF EXECUTIVE (COMMUNITY DIRECTION)

Hinckley & Bosworth Borough Council
A Borough to be proud of

WARDS AFFECTED: ALL WARDS

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1. PURPOSE OF REPORT

1.1 To advise Members of, and to seek Members agreement on, the appended consultation response on the proposed changes in respect of the performance of local planning authorities in the determination of planning applications.

2. RECOMMENDATION

2.1 That Members:

(i) note the content of the report; and

(ii) agree the responses to the questions raised as detailed within this report.

3. BACKGROUND TO THE REPORT

3.1 This consultation sets out the criteria that might be used to assess planning authority performance, what thresholds might be used, how any designations would be made and the consequences of such a designation (including the procedures that would apply where an application is submitted to the Planning Inspectorate, and the basis on which a designation would end). It also proposes a refund of the planning application fee in cases where the planning guarantee is not met.

3.2 The proposal would allow applications to be submitted to the Secretary of State where a local planning authority is designated for this purpose. It is intended that the power would be used only where there is a track record of very poor performance in either the speed or quality of the decisions made by an authority; and that clear benchmarks are used to define what this means in practice.

3.3 Where an authority is designated as a poor performing authority, it is proposed that applications would be submitted to the Planning Inspectorate (on behalf of the Secretary of State), where the applicant chooses that route. This ability would be limited to those seeking permission for major development. A designated authority would need to demonstrate a sufficient degree of improvement before the designation is lifted.

3.4 As a further means of ensuring that decisions are made within the guarantee period it is also proposed that authorities should have to issue a refund of the planning application fee, should an application remain undetermined after 26 weeks. This would apply to all planning applications, and be implemented through a change to secondary legislation.

3.5 The Government is of the view that obtaining planning permission is a key step for those wishing to carry out development – whether house builders proposing new homes, businesses with plans to expand or individuals hoping to make significant changes to their property. Delays in the process can mean frustration, unnecessary expense and the loss of investment and jobs. It can also create uncertainty for communities with an interest in the proposals.

3.6 It is because of the consequences of unnecessary delays – whether those delays arise from slow decisions or poorly judged decisions that are overturned at appeal – that the Government believes it is right to take action where there is clear evidence that particular planning authorities are performing very poorly. It expects to have to use this power very sparingly. The Government remains committed to decentralising power and responsibility wherever possible, and this measure will not affect the great majority of authorities that already provide an effective planning service, other than to act as a reminder of the importance of timely and well considered decisions.

3.7 Government intends to set out the criteria for assessing performance, and the thresholds for designating any authorities under this measure, in a policy statement that will be published in response to this consultation once the Growth and Infrastructure Bill gains Royal Assent. It indicates that the performance of planning authorities can be looked at in a number of ways, from a focus on particular indicators to wider measures of the 'quality of service'. The overall service that planning authorities provide to applicants and local communities needs to be efficient, proportionate and effective. It is right that this continues to be the focus of improvement efforts by authorities, supported by organisations such as the Planning Officers' Society and the Planning Advisory Service.

3.8 At the same time it considers that the basis for identifying any cases of very poor performance needs to be kept relatively simple, so that the approach is transparent, and to avoid placing additional reporting burdens on authorities. For this reason they propose to monitor and assess performance on the basis of two key measures: the speed and quality of decisions on planning applications. These have a direct bearing on the planning system's efficiency and effectiveness for both applicants and communities; and on its contribution to growth.

Question 1: Do you agree that local planning authority performance should be assessed on the basis of the speed and quality of decisions on planning applications?

Response:

Whilst accepting that speed of decision making is an important issue for the development industry and economic growth, the quality of decision making is extremely important for local communities and locally elected members of councils. It is vitally important that the localism agenda, which the Government reiterates its support for in this document, is not undermined by a regime which puts extreme speed over the democratic process or disenfranchises local communities. It should also be clear as to what the measurement is to be so that authorities are able to ensure that resources are in place to deliver the national targets. If Government wants speedy decision making then it needs to ensure that local authority planning departments are properly resourced to deliver the growth required.

4 <u>Speed of Decisions:</u>

4.1 The Government proposes to use the existing statutory time limits for determining planning applications, as in principle all decisions should be made within these periods – unless an extended period has been agreed in writing between the parties. This means a maximum of 13 weeks for applications for major development and eight weeks for all others. They also propose, for identifying and addressing very poor performance, to focus only on applications for major development – as these are the proposals which are most important for driving growth, and which have the greatest bearing upon communities.

4.2 It therefore proposes that performance should be assessed on the extent to which applications for major development are determined within 13 weeks, averaged over a two year period. This assessment would be made once a year.

Question 2: Do you agree that speed should be assessed on the extent to which applications for major development are determined within the statutory time limits, over a two year period?

Response:

There is no fundamental issue with assessment for performance being over a two year period but there needs to be regard to the number of major applications an authority receives and the resources available to it to determine those.

5 The role of Planning Performance Agreements

5.1 The National Planning Policy Framework encourages the use of planning performance agreements. These involve a bespoke timetable agreed between the authority and the applicant where it is clear – at the pre-application stage – that more time than the statutory period will be required to reach a decision. Such agreements are reported separately by authorities, and are excluded from the statistics on the extent to which decisions are made within the statutory period.

5.2 Agreements to extend the time for a decision beyond the statutory period sometimes need to be made after an application is submitted (as the Development Management Procedure Order explicitly allows). It is considered that it would be fair to treat these in the same way as planning performance agreements for reporting purposes – so that they are not included in the assessment of the time within which an authority makes its planning decisions. It is therefore proposed that post-application agreements to extend the timescale for determination should in future be recorded as a form of planning performance agreement, provided there is explicit agreement to the extension of time from the applicant (in writing), and the agreement specifies a clear timescale for reaching a decision.

5.3 In proposing this, it is also considered that the approach sometimes taken towards planning performance agreements needs to change. Existing guidance encourages a very thorough approach that will not always be appropriate. Government would like to see a more proportionate approach which is tailored to the size and complexity of schemes and the stage that they have reached in the application process. However agreements should, as a minimum, set out a clear and agreed timescale for determining the application.

Question 3: Do you agree that extensions to timescales, made with the written consent of the applicant following submission, should be treated as a form of planning performance agreement (and therefore excluded from the data on which performance will be assessed)?

Response:

There is agreement with this proposal.

Question 4: Do you agree that there is scope for a more proportionate approach to the form and content of planning performance agreements?

Response:

There is agreement with this proposal. The planning performance agreement process has the potential to be complicated and expensive and can by itself slow down the planning process. A simple means of agreeing basic principles and timelines should be adopted.

6 Quality of Decisions.

6.1 Government proposes to use the appeal success rate for major development to indicate the 'quality' of decisions made by each planning authority. Successful appeals against planning authority decisions represent cases where the Secretary of State, or an Inspector acting on his behalf, concludes that a different decision should have been reached and the application allowed. As such they provide an indication of whether planning authorities are making positive decisions that reflect policies in up-to-date plans (where relevant) and the National Planning Policy Framework.

6.2 Where an authority has a sustained track record of losing significantly more appeals than the average, it is likely to reflect the quality of its initial decisions. The appeal success rate also needs to be read in context. An authority that acts positively and approves the great majority of its applications for major development, but loses a very small number of appeals brought against it, should not be penalised for 'poor performance'. It follows that the number of appeals lost each year needs to be related to the total volume of applications dealt with. We therefore propose that the measure of quality should be the proportion of all major decisions made that are overturned at appeal, over a two year period.

Question 5: Do you agree that quality should be assessed on the proportion of major decisions that are overturned at appeal, over a two year period?

Response:

There is no inherent issue with this providing that regard is had to the overall number of consents for major development that an authority makes. It would be unfair if an authority granted consent for all but one major development and was penalised because the refusal was allowed on appeal.

7 Having the right information

7.1 The proposed measures of speed and quality both rely upon accurate data being supplied to the Department on a regular basis (i.e. decisions made within the statutory period, and the total volume of major decisions made so that the proportion overturned at appeal can be calculated). This information is already supplied by local authorities as part of the quarterly returns required by the single data list. At present there are very few gaps in the data provided by authorities, but there is a risk that in future authorities could withhold data for quarters in which their performance has slipped.

7.2 To discourage this the following is proposed:

- Data for a single missing quarter in one reporting (financial) year would be estimated by the Department from the returns for other quarters – based on average performance for the quarters for which information is available.

- Where data for two or three quarters in a reporting year are missing, figures for the absent quarters would be imuted in a similar way, but with a penalty then applied in proportion to the amount of data missing. It is proposed that this penalty would be a reduction of five percentage points per missing

quarter for the speed of decisions, and one percentage point per missing quarter for decisions overturned at appeal.

- Any authority with a whole year of data missing would automatically be designated as very poor performing.

7.3 For the initial introduction of the measure it is proposed that planning authorities would be given an opportunity to fill gaps in the existing data prior to any designations being made. Gaps in the existing data which are not filled by authorities in this way will be imputed (and, if necessary, penalised) as described above.

7.4 The current statistical returns supplied to the Department do not indicate the determination times for district applications which are subject to environmental impact assessment. These could, as a result, be counted against the 13 week time limit for applications for major development, rather than the 16 weeks which the law allows. It is proposed to amend the returns so that this can be remedied for future data collection. As a transitional measure, any authorities identified for potential designation on the basis of existing data will be given an opportunity to notify them of any environmental impact assessment cases relating to applications for major development during the assessment period, which will be discounted from the calculation of performance. To ensure that the information on which any designations would be based is readily available, the Department will publish quarterly statistics on the extent to which decisions on applications for major development have been overturned at appeal, alongside the existing data on the extent to which decisions are made within the statutory time periods.

Question 6: Do you agree with the proposed approach to ensuring that sufficient information is available to implement the policy?

Response:

There is no objection to this approach providing authorities are given a clear and timely opportunity to provide the missing data.

8 Setting the Bar

8.1 In order to set out clearly what constitutes sufficiently poor performance for a planning authority to be designated it is proposed to use absolute thresholds below which authorities would be designated, rather than a fixed percentage of authorities that are performing most poorly on the basis of speed or quality.

8.2 It is intended to set these thresholds so that only very poor performance would result in an authority being designated: where 30% or fewer major applications have been determined within the statutory period or more than 20% of major decisions have been overturned at appeal. It is considered important that a designation could be made on the basis of either measure (rather than a combination of the two), so that applicants can access a better service where speed or quality is a significant issue.

8.3 It is also proposed to raise the bar for the speed of decisions after the first year, to ensure that there is a strong but achievable incentive for further improvement in performance, and to reflect an anticipated increase in the use of planning performance agreements for the more difficult cases as proposed elsewhere in the consultation.

Question 7: Do you agree that the threshold for designations should be set initially at 30% or fewer of major decisions made on time or more than 20% of major decisions overturned at appeal?

Response

Whilst having no fundamental issue with the thresholds, it is considered that there should be discussions with an underperforming authority to establish why it is underperforming rather than removing the ability to make decisions at a local level.

Question 8: Do you agree that the threshold for designation on the basis of processing speeds should be raised over time? And, if so, by how much should it increase after the first year?

Response

It is considered that this should be reviewed. If additional pressure is to be placed on decision makers then they should be given the resources to allow this to be implemented. The thresholds will need to be assessed to see how realistic they are and how difficult or otherwise it is for authorities to meet the targets. It seems counter productive to penalise authorities then to keep raising the bar so the bar becomes unreachable within a reasonable period of time.

9 Making a designation.

9.1 The Government proposes that designations would be made once a year, and that those authorities which are designated would remain in that situation for at least a year. Any designations would need to be made fairly and transparently. They therefore propose that the designation process would follow automatically, following the publication of the relevant statistics on processing speeds and appeal outcomes for the year, were an authority to appear below the thresholds that have been set. For the first year, before any initial designations are made, authorities will be given an opportunity to correct any gaps or errors in the existing data and cases that were subject to environmental impact assessment will also be taken into account. It will be clear from each year's data not just which authorities are to be designated (if any), but also which authorities are just above the bar and need to improve to avoid a designation the following year.

Question 9: Do you agree that designations should be made once a year, solely on the basis of the published statistics, as a way to ensure fairness and transparency?

Response:

It is considered that designations should not be made immediately but that under-performing authorities should be given a clear opportunity to discuss why they are "failing" and given an opportunity to improve performance within an agreed programme. To rely solely on statistics is likely to give a distorted view of why authorities may be experiencing difficulties.

10 Application Process

10.1 Where a planning authority is designated on the basis of very poor performance, the Growth and Infrastructure Bill would give applicants the option of applying directly to the Secretary of State; applicants could if they wish continue to apply to the designated authority in the usual way. The legislation would allow the Secretary of State to prescribe the types of development to which this choice would apply. It is proposed that it be limited to applications for major development.

10.2 Where an application is submitted directly in this way, certain related applications may also be made to the Secretary of State at the same time. The Bill makes specific provision for applications for listed building and conservation area consent. The Bill also allows the Secretary of State to appoint persons to determine applications on his behalf, and it is proposed that the Planning Inspectorate carries out this role (the Secretary of State would also be able to 'recover' any such cases for his own determination, but it is expected that this power would be used sparingly).

10.3 Early pre-application discussions can have significant benefits for the overall efficiency and effectiveness of the planning application process, including the prospects for securing timely decisions once a planning application has been submitted. Those applying directly to the Secretary of State would be able (and encouraged) to seek pre-application advice from the Planning Inspectorate, the local planning authority or both. It is proposed that the Inspectorate would charge for any pre-application advice on a cost recovery basis. The Planning Inspectorate would also receive the application fee (on behalf of the Secretary of State) for any application submitted directly to it, and it is proposed to amend the regulations so that this would be set at the same level as the fees payable to local planning authorities.

10.4 It is proposed that the process for determining applications submitted to the Inspectorate should mirror, as far as possible, that which usually applies when an application is submitted to a local planning authority. A necessary exception to this principle is the planning committee stage, alternative proposals for which are set out below.

10.5 Where a planning application is submitted directly to the Secretary of State there will be a small number of administrative functions which, for practical reasons, will need to be carried out locally. It is proposed that these should continue to be undertaken by the designated local planning authority (and the Bill allows the Secretary of State to issue directions to this effect). These functions would include:

Site notices and neighbour notification

Providing the planning history for the site

Notification of any cumulative impact considerations, such as where environmental impact assessment or assessment under the Habitats Regulations is involved, or there may be cumulative impacts upon the highways network

10.6 The Planning Inspectorate would specify a timescale for the completion of these tasks. While it is considered that the planning authority is best placed to do this work, they would welcome views on whether alternative approaches should be considered, such as the use of a local agent. The local planning authority would remain responsible for maintaining the planning register for its area, including details of any applications that are submitted directly to the Planning Inspectorate. The Planning Inspectorate would notify the planning authority of such applications.

10.7 Most applications for major development determined by local planning authorities are decided at a planning committee meeting, providing an opportunity for the merits of the proposal to be considered in public. The Bill allows the Secretary of State to determine the procedure to be followed where an application is submitted directly to him. It is proposed that the Planning Inspectorate should choose the most appropriate procedure to employ on a case by case basis (which could be an abbreviated form of hearing or inquiry, or written representations); but that the presumption should be that applications are examined principally by means of written representations with the option of a short hearing to allow the key parties to briefly put their points in person.

10.8 They do not propose that the Planning Inspectorate would enter into discussions with the applicant about the nature and scope of any section 106 agreement that may be appropriate, as it is considered these are best determined locally by the applicant and the planning authority. In determining an application the Inspectorate would take into account, as a material consideration, any planning obligation advanced by the applicant, or any agreement which the applicant has entered into (or is prepared to enter into) with the authority.

10.9 It is proposed that the performance standard for the Inspectorate in dealing with applications would, initially, be to determine 80% of cases within 13 weeks (or 16 weeks in the case of applications for major development which are subject to environmental impact assessment); unless an extended period has been agreed in writing with the applicant. This compares to the current average performance among planning authorities of deciding 57% of applications for major development within 13 weeks. The Inspectorate will provide quarterly data on its performance, and the performance standard will be reviewed annually.

10.10 The Bill does not provide for any right of appeal once an application has been decided by the Inspectorate, other than judicial review, as the application will already have been considered on behalf of the Secretary of State. This mirrors the position where applicants for planning permission choose to appeal against non-determination. Applicants will be made fully aware of this if they choose to submit their applications directly to the Inspectorate. The discharge of any planning conditions attached to a planning permission issued by the Inspectorate would remain the responsibility of the local planning authority.

Question 10: Do you agree that the option to apply directly to the Secretary of State should be limited to applications for major development?

Response

The Authority fundamentally disagrees with the principle of the Secretary of State determining planning applications instead of the Local Planning Authority, especially major applications which can have a significant impact on a local area and should be determined locally.

Question 11: Do you agree with the proposed approaches to pre-application engagement and the determination of applications submitted directly to the Secretary of State?

Response

See above. It is considered that the approach undermines the role of locally elected members and still requires the authority to carry out the administrative work.

11 Supporting and Assessing Improvement

11.1 Any authorities designated on the basis of very poor performance will need time to improve, support while they are doing so and a fair opportunity to show when – and to what extent – their performance has improved. It is proposed that any designation would last for at least a year, but would be subject to review well before that year ends, so that the authority has every opportunity for the designation to be lifted at the end of the one year period. During the period of designation the authority would be expected to take maximum advantage of opportunities for peer support and other forms of sector-led improvement (such as those offered through the Planning Advisory Service); and to explore options for radical change such as shared services.

11.2 Designated authorities will not necessarily be dealing with a significant number of applications for major development, so it is proposed that any assessment of improvement should be based on a range of other considerations that will be set out in policy:

The authority's performance in determining all those applications for which it remains responsible

Its performance in carrying out any administrative tasks associated with applications submitted directly to the Secretary of State

A review of the steps taken by the planning authority to improve, and its capacity and capability to deal efficiently and effectively with major planning applications

The assessment would be undertaken by the Department for Communities and Local Government.

Question 12: Do you agree with the proposed approach to supporting and assessing improvement in designated authorities? Are there specific criteria or thresholds that you would propose?

Response

It is considered that authorities should be given the opportunity to improve performance before being designated and there should be clear programmes to follow and targets to meet to avoid designation.

12 The Planning Guarantee

Principles and Scope.

12.1 The planning guarantee was announced in the Plan for Growth (March 2011). In practice the guarantee means that cases should spend no more than 26 weeks with either the local planning authority or, in the case of appeals, the Planning Inspectorate. This gives both decision-making bodies an equal maximum time to come to a view, limiting the risk that over-runs with one part of the process might restrict the scope for the guarantee to be met. A similar 26 week limit would in future apply to the Planning Inspectorate where it is determining planning applications submitted to it directly as a result of the proposals in the Bill.

12.2 The guarantee applies to the time a valid application spends with these decision-making bodies. It does not cover the period before an application is submitted, after permission is granted, or any time between the local planning authority's decision and any subsequent decision by the applicant to appeal. This is because the behaviour of applicants can have a significant bearing upon the length of these periods; for example, they have up to six months to decide whether to lodge an appeal against a refusal (12 weeks in the case of householder applications).

12.3 There are a small number of cases which, exceptionally, it is proposed to exclude from the scope of the planning guarantee. These are:

Applications subject to Planning Performance Agreements, due to the bespoke timetables involved

Similarly, planning appeals subject to bespoke timetables agreed between the main parties for particularly complex cases (including Secretary of State casework where this applies)

Planning appeals that relate to enforcement cases (which are often particularly complex with additional evidence coming forward during the course of the appeal); or which involve re-determinations following a successful judicial review.

Question 13: Do you agree with the proposed scope of the planning guarantee?

Response

Yes, however the need to determine within a fixed time period may result in poor quality and rushed decisions which do not deliver growth and the infrastructure required to support them.

Delivering the guarantee.

12.4 The prospect of authorities being designated on the basis of very poor performance in determining applications for major development within the statutory period will help to deliver the planning guarantee, as this should encourage an increased focus on the timeliness of decisions. As the guarantee applies to individual decisions (rather than individual planning authorities) it is considered that an additional measure would also help to ensure that the guarantee is met. It is therefore proposed to amend secondary legislation to require a refund of the planning application fee, where a planning application remains undecided after 26 weeks. This would apply to planning authorities and to the Planning Inspectorate (where it is responsible for determining major planning applications). Applications subject to a planning performance agreement would be excluded from this measure.

Question 14: Do you agree that the planning application fee should be refunded if no decision has been made within 26 weeks?

Response:

No. This will unnecessarily penalise authorities where under – resourcing may be a factor in poor performance. It would be better to reward good performance than penalise bad.

5. FINANCIAL IMPLICATIONS [PE]

While there are no specific financial implications contained within the body of the report, it should be noted that if the authority is designated as a poor performing authority, there would be a loss of income due to the fact that the Planning Inspectorate would receive the fees payable.

It should also be noted that should a planning application remain undetermined for over 26 weeks, the planning fee would have to be refunded, again impacting on the income of the authority.

6. LEGAL IMPLICATIONS [MR]

Set out in the report

7. CORPORATE PLAN IMPLICATIONS

This has implications for all aspects of the Corporate Plan.

8. CONSULTATION

8.1 The responses to questions within this report have been prepared on behalf of this Authority. Neighbouring Authorities and other stakeholders can respond independently should they wish.

9. RISK IMPLICATIONS

9.1 Management of significant (Net Red) Risks		
Risk Description	Mitigating actions	Owner
Being designated an underperforming authority and having planning powers removed and losing planning fee income.	Ensure performance on major planning applications is maintained.	Simon Wood

10. **KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS**

10.1 Set out in the report

10. **CORPORATE IMPLICATIONS**

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

- Community Safety implications — None relating to this report
- Environmental implications — As detailed above in this report
- ICT implications — None relating to this report
- Asset Management implications — None relating to this report
- Human Resources implications — As detailed above in this report
- Voluntary Sector — None relating to this report

Background papers: Planning performance and the planning guarantee consultation paper

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