Creating Places ■ Delivering Communities

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Dear Sir / Madam,

Re : 'An accelerated planning system' consultation

Thank you for consulting the Land, Planning and Development Federation (LPDF) on the 'An accelerated planning system' consultation.

The LPDF was set up in April 2018 and seeks to represent the UK's leading land promoters, home builders and commercial developers.

LPDF members support the housebuilding and commercial development sectors by promoting sites through the planning system, providing "shovel ready" land with a planning permission which can facilitate the delivery of infrastructure and serviced land parcels.

The LPDF seeks to actively engage with government on planning, housing and commercial development policy and to educate the wider public on the social, environmental and economic benefits of development through an evidenced based approach.

The LPDF encourages its members to deliver well designed, high quality, sustainable places which deliver a mix of housing types and tenures, commercial spaces and community uses that have a positive social, environmental, and economic impact.

Our key values include:

- Working in a positive and cooperative way with central and local government and key stakeholders, to deliver a planning system capable of supplying the homes and employment space we need.
- Promoting research and an evidence-led approach to policy development.
- Increasing the supply of new homes to meet demand and make home ownership a realistic possibility for all those who aspire to it.

- Ensuring that we build the affordable homes of all types and tenures that this country so desperately needs.
- Delivering new employment space to meet demand from businesses and support economic growth.
- Championing the impact of increased housing delivery on reducing intergenerational unfairness.
- Creating well designed, high quality and sustainable places to live and work.
- Educating and informing about the social, environmental and economic benefits of development.
- Supporting diversity of delivery in the market and championing SME developers.
- Promoting diversity and inclusivity within the sector.

Questions

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

No – The planning system has become incredibly slow and unresponsive with decisions on planning applications taking longer and longer and low percentages of planning applications being determined within the statutory determination periods. Between July and September 2023, only 21% of major applications were determined within 13 weeks. The LPDF therefore agree that there is a real need to address the issues which cause these slow determination rates, to ensure that the planning system runs as efficiently as possible. However, severely underfunded Local Planning Authorities (LPAs), the increasing complexity of the planning system which is having to deal with an increasing number of technical issues, slow response rates from statutory consultees, and regulatory failure in areas such as nutrient and water neutrality are the main causes. These fundamental issues will not be addressed by the introduction of a speeded up planning application system and they may be made considerably worse.

The system proposed in the consultation is highly likely to create perverse outcomes through various unintended consequences which will lead to other issues within the planning system which are harder to overcome. There is a real concern that, when faced with the prospect of having to return a planning application fee because they are not able to issue a decision within the necessary timeframe, LPAs will simply seek to refuse the planning application. This is a real risk which is highlighted by the government in its consultation paper, and is likely to be a direct consequence of the proposals.

With the removal of the 'free go' application, any premature and unjustified refusal of a planning application will only increase delays in the planning process and will add significantly to the cost which needs to be borne by the applicant as a new application and application fee will need to be prepared and paid. These costs are considerable and can be prohibitive,

especially for SME housebuilders as the LPDFs research 'Small Builders, Big Burdens'[1] clearly evidences.

At a time when we are facing a housing crisis, and the need for economic growth, investment in new infrastructure, and the provision of services and facilities are all critical, the government needs to think very carefully about the potential impact of any changes to the planning system, particularly those which could have unintended negative consequences which increase delays in the system, rather than improving decision making timeframes.

We agree that the planning system is slow and unresponsive and needs to be sped up, but this is not the way to achieve this outcome. In fact, it is likely to lead to the polar opposite of the government's objective.

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

To some degree - It is understandable why the government, if it is trialling an accelerated planning system, would seek to concentrate on commercial development as there are less applications for this type of development than residential for example. However, there is a housing crisis, and there are many, many thousands of new homes that are currently stuck in the planning system awaiting determination. There is a need to speed up the determination process for **all** applications, particularly residential as the housing needs of this country's population have gone unmet for far too long.

However, as set out above in response to **Question 1**, this proposal is not the way to achieve the government's objective as it is likely to lead to the opposite effect by significantly increasing delay in the system.

One area where an accelerated planning service may be of benefit is for schemes on sites allocated in adopted local plans and on reserved matters applications on sites with the benefit of an outline consent. These types of applications should be easier to determine in the shortened timeframe proposed as they already have the principle of development established and, as a consequence, should deliver quickly.

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

No – These applications by their nature are complex, and with the limited resources available in LPAs, it is highly unlikely that they will be able to determine such applications in the shortened timeframes suggested by this consultation.

[1] CL16160-04 LPDF Report - Sept23.indd

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

Yes – Given the limited resources currently available to LPAs and other statutory consultees involved in the planning application process, it is highly unlikely that more complex planning applications, such as those referenced in the question, would be determined in a shorter time period than 13 weeks. However, the government should be doing all it can to improve the planning system and to increase the resources within the system so that **all** applications can be determined as quickly as possible.

Question 5. Do you agree that the Accelerated Planning Service should:
a) have an accelerated 10-week statutory time limit for the determination of eligible applications
b) encourage pre-application engagement
c) encourage notification of statutory consultees before the application is made

(a) No – Whilst the LPDF agree that there is an urgent need for the government to address the issues with the length of time it takes to determine planning applications related to all major development types, this proposal will not achieve this outcome. Many of the delays that are currently in the system are caused by issues outside of the control of the LPA, and whilst LPAs may be encouraged deal with applications quicker under the new system, statutory consultees (who have no such incentive), resolving regulatory and technical issues, and political engagement, will all continue to be the major causes of delay. These issues are simply not addressed by the consultation paper. In most circumstances, the 10 week statutory time limit will just be unachievable.

(b) Pre-application discussions can be extremely helpful for all parties involved in the planning application process. However, of greater importance is the quality of those discussions, the availability of officers from across the relevant departments of the LPA and other statutory consultees, the two-way nature of those discussions, and the quality of the advice received as a result. The outcome of the pre-application process is currently highly variable and the advice received as a result is in no way binding. These two factors make the pre-application process far less effective than it should be. If the government is serious about speeding up the planning process then they should focus on significantly improving the statutory consultee process and addressing the issues of quality and cost (such as setting a national charging schedule) within the pre-application process as this will be a much more effective approach.

(c) Statutory consultees are struggling to respond to planning applications within designated timeframes and frequently, this is leading to significant delays in the planning process and poor quality, inconsistent advice from those consultees. This needs to be addressed as a matter of urgency by the government if the planning system is to operate as it should.

Question 6. Do you consider that the fee for Accelerated Planning Service applications should be a percentage uplift on the existing planning application fee?

Yes – In order to avoid discrepancies in the charges that LPAs apply to fees for the accelerated planning service, it is considered appropriate for the fee to be a percentage uplift on the existing planning application fee (say 20%-30% uplift). However, following on from the conclusions of the CMA report into housebuilding, the government could further assist SME housebuilders by applying the 10 week determination period to all planning applications for under 100 units, where they are clearly not part of a wider scheme, and for the standard planning application fee without an uplift applied.

Question 7. Do you consider that the refund of the planning fee should be:
a. the whole fee at 10 weeks if the 10-week timeline is not met
b. the premium part of the fee at 10 weeks if the 10-week timeline is not met, and the remainder of the fee at 13 weeks
c. 50% of the whole fee at 10 weeks if the 10-week timeline is not met, and the remainder of the fee at 13 weeks
d. none of the above (please specify an alternative option)
e. don't know

(b) – If the government still wish to implement this process, contrary to the significant concerns highlighted in this response, there needs to be an incentive for LPAs to perform and a penalty when they do not. However, the LPA should only pay back the part of the fee that covers the accelerated timeframes. We must be clear, that the proposed system is only likely to lead to an increase in the number of planning applications refused by LPAs as they struggle to meet the timeframes proposed. This will only increase delay and inefficiency in the planning system.

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

The government are currently undertaking a review of the statutory consultee process as it relates to the planning system and it will be essential for the government to act on the recommendations of this review once they are received. The RTPI undertook research which found that there is anecdotal evidence that the role of statutory consultees in the planning process is causing significant delays in the system, a fact that has also been recognised by the CMA in their final report on housebuilding. This needs to be addressed by the government through their response to the findings from their current investigation.

It is recognised that Statutory consultees are affected by limited resources (both financial and staffing) which impact considerably on their ability to respond to applications within the necessary timeframes. This also needs to be addressed by the government if the performance of statutory consultees is to be significantly improved. This is one of the fundamental issues causing delay in the current system and if it is not addressed, any improvement in determination periods will not be achieved.

Question 9. Do you consider that the Accelerated Planning Service could be extended to:
a. major infrastructure development
b. major residential development
c. any other development

(a) – No – The process, as proposed in the consultation paper, will not address the issues that are currently causing delay in the planning process.

(b) – No - The process, as proposed in the consultation paper, will not address the issues that are currently causing delay in the planning process.

(c) – No - The process, as proposed in the consultation paper, will not address the issues that are currently causing delay in the planning process.

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

Option (a) – If the government still wish to implement the process as set out in the consultation paper, then it is essential that it is a discretionary service. Applicants need to have the choice of an accelerated planning system or the conventional approach which would allow flexibility in the process and would avoid the accelerated planning system from becoming overloaded.

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

No – As set out in response to **Question 1**, the planning system has become overly complex and overburdened with an ever increasing requirement for technical evidence on a wide, and increasing range of issues for every application. If the government truly wish to improve the efficiency of the planning system and encourage delivery from SME developers, then it needs

to address the increasing number of technical documents required to accompany a planning application. A significant reduction in the scope of this technical evidence will significantly reduce the cost of submitting and determining a planning application and will reduce the workload of LPAs considerably.

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

No – As set out on numerous occasions in this response, any performance measure which is introduced is only likely to lead to LPAs refusing a greater number of planning applications as they seek to adhere to the new timeframes to avoid any negative consequences of poor performance against the new performance measure. This will only increase delay in the process and place significantly greater pressure on the Planning Inspectorate, as they will have to deal with a greater number of appeals and may have to resolve an increasing number of technical issues which could have been addressed at the planning application stage if, an extension of time had been agreed.

With the aim of shortening application timescales in mind, it is pertinent to point out that this could be achieved if a greater proportion of decisions are taken by way of delegated powers, particularly where applications are consistent with an adopted local plan.

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

If the target is 50% of decisions on major applications being decided within the new timeframe, then it suggests that the government expects the timeframe to be very difficult to achieve. As set out above, there should not be a performance measure set as the system as proposed, will only lead to a greater number of refusals within the statutory time limit.

Question 14. Do you consider that the designation decisions in relation to performance for speed of decision-making should be made based on:
a) the new criteria only – i.e. the proportion of decisions made within the statutory time limit; or
b) both the current criteria (proportion of applications determined within the statutory time limit or an agreed extended time period) and the new criteria (proportion of decisions made within the statutory time limit) with a local planning authority at risk of designation if they do not meet the threshold for either or both criteria
c) neither of the above
d) don't know

(b) There should still be the ability for developers to be able to negotiate bespoke determination timetables with LPAs.

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

The LPDF do not wish to comment on this question.

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

The LPDF have no comment to make on this question.

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

The LPDF have no comment to make on this question.

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

The LPDF have no comment to make on this question.

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

Repeat extensions of time should be unnecessary in a planning system which is properly resourced and operating as it should. The first extension of time issued by an LPA should be set at a date which has a reasonable expectation of being achieved. However, with the slow performance of statutory consultees and other factors which are outside of an LPAs control, it is not always possible to achieve the dates set by an extension of time. Therefore, there should be the ability for repeat extensions of time to be utilised in certain circumstances.

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

Yes.

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

Yes.

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

The LPDF have no comment to make on this question.

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

Yes - The parties who are directly involved in the appeal i.e. the developer and LPA, should be allowed to submit additional information if it is relevant to the determination of the appeal.

Question 24. Do you agree that there should be an option for written representation appeals to be determined under the current (non-simplified) process in cases where the Planning Inspectorate considers that the simplified process is not appropriate?

Yes.

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

Yes.

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

This matter is about addressing the effects of the Finney case which made clear that a S73 application could not amend the description of development in a planning permission.

The suggestion in the consultation is that guidance should encourage the use of S73B applications for all proposed "changes" to planning permissions that are to do with the scheme description of any of the approved plans, and that S73s should be used only for matters that are firmly in the territory of changes to conditions. The consultation stops short of suggesting that planning permissions should no longer have conditions that set out the plans that development is to accord with and the LPDF agree that this is the correct approach.

The use of such conditions provides great clarity in terms of the approved details of a permission and this should be maintained.

Provided that S73B does allow proper consideration and approval of "changes" that can be approved without harm, be they to the scheme plans or the description of development, then guidance that encourages some greater particularity in the description of development in a planning permission is acceptable.

It is important, however, that this not to be too prescriptive. Some applicants, perhaps those promoting sites and not building them, will have a far less clear picture of the details that a builder will want to build. The details of a scheme may well be fleshed out through the conditions imposed and the negotiations with the LPA prior to the grant of permission, not in the initial description of development. It would be completely counter-productive to the idea of accelerating the delivery of development to have a situation where it was almost inevitable that a S73B would be needed to change the description.

The key concerns with regard to whether S73B allows the flexibility it really seeks to provide relate to:

1. S73B relates to the whole site when it is often the case that the change sought relates to a section of it. This creates a great deal more administrative burden and requires the updating of supporting documents and assessments.

2. The test of "substantially different " in 73B (5) does not allow for the situation where a section of the site will be substantially different, but in a way that is not harmful to the remainder of the development that has been approved under the existing permission, outside that section of the site. The test and its application need clarification.

3. The effects of 73B (7) are unclear. The LPA must "limit its consideration" to those respects in which the permission applied for would differ from the existing permission. The "consideration" of an application suggests these are the factors to be considered in deciding to grant or not, but it is not clear that this would, for example, preclude requiring an updated amount of affordable housing, across the whole site. Clarity on this point would be helpful.

4. The prohibition in S73B (2) against being able to identify an existing permission as being itself one that is a S73, S73A or S73B permission is a severely limiting factor and curtails the usefulness of S73B in a great deal of cases. It is often the case, particularly with a large site, that a development change will be needed to a permission that is already a S73 permission. This really needs amendment and certainly clarification as to the relationship of S73B (2) with S73B (3).

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

The guidance must assist in explaining the proper application of the tests of "substantially different" and "limits its consideration" to address the issues set out above.

The substantially different test could be said to capture degrees of change not degrees of acceptability and lead to a tightening of what gets approved under S73B rather than accelerating the delivery of development. Guidance needs to address this, as well as to show that the substantially different test is a relatively high bar.

For the reasons set out above, a great deal of clarity is required in guidance as to the meaning and application of the 'limit of what is to be considered' when determining an application and what can be added or changed beyond the thing which is sought in the application when permission is granted.

Question 28. Do you agree with the proposed approach for the procedural arrangements for a section 73B application?

Yes.

Question 29. Do you agree that the application fee for a section 73B application should be the same as the fee for a section 73 application?

Yes.

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

Yes.

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

It is proposed that the fee for S73 and S73B applications be proportionate to the work necessary to consider the proposed variations, but should not exceed full cost recovery. The LPDF wonders, therefore, what evidence may be collated from LPAs on the amount of time it typical takes to transact S73 and S96A applications already.

On the basis, however, that the 'substantially different' test, however it comes to operate in practice, will not result in S73B applications reopening issues of principle or having cause to

reweight a planning balance for technical reasons, the costs involved in transacting such application are likely to be administrative.

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

Yes.

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

The LPDF have no comment to make on this question.

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

The LPDF have no comment to make on this question as others have far more experience of these technical matters.

Question 35. If section 73B cannot address all circumstances, do you have views about the use of a general development order to deal with overlapping permissions related to large scale development granted through outline planning permission?

The LPDF have no comment to make on this question as others have far more experience of these technical matters.

I hope that you find these comments to be helpful and if you require any further information, then please do not hesitate to contact the LPDF at the email address shown below. The LPDF would be happy to discuss the issues raised in this representation in depth with DLUHC, if they feel that this would be of assistance.

Yours sincerely

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