

## **DEVELOPMENT CONTROL (SOUTH SUNDERLAND) SUB-COMMITTEE**

**26 FEBRUARY 2013**

### **RESPONSE TO THE DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT CONSULTATION ON PLANNING PERFORMANCE AND THE PLANNING GUARANTEE.**

#### **REPORT BY THE DEPUTY CHIEF EXECUTIVE**

#### **1.0 PURPOSE OF THE REPORT**

- 1.1 To endorse the response to the DCLG consultation of November 2012, "Planning Performance and the Planning Guarantee" which is appended to this report.

#### **2.0 BACKGROUND**

- 2.1 The Growth and Infrastructure Bill which was introduced to Parliament on 18 October 2012 contains a number proposals which build upon existing planning reforms.
- 2.2 The intent of the Bill is to help deliver more new homes and more jobs and to "*cut through rigid processes and unnecessary paperwork*". It is expected that the Bill will be enacted by April 2013.
- 2.3 The consultation period which ended on 17 January 2013 seeks the views of local planning authorities (LPAs) and others over proposals that the performance of LPAs should be assessed on the basis of speed and quality of decisions in relation to planning applications.
- 2.4 The consultation also sets out and seeks views on proposals for introducing a planning guarantee whereby a maximum period of 12 months for determination of a planning application, including any appeal would be introduced.

#### **3.0 ANALYSIS OF THE KEY ISSUES IN THE CONSULTATION**

- 3.1 The most significant proposal within the consultation is in respect of major planning applications, and the proposal that an applicant be able to apply to the Planning Inspectorate to get planning permission in the first instance, thus effectively bypassing the Council, as the statutory LPA. The proposal is intended to apply where an LPA has been placed in special measures and is formally designated by the Secretary of State as "very poor".

- 3.2 The grounds for such a designation are proposed to be where;
- 30% or fewer major applications have been determined within 13 weeks over a two-year period or
  - the proportion of major decisions overturned on appeal is greater than 20 per cent over two years.
- 3.3 The Government anticipates that the proposed legislation will stimulate an increased focus on performance within LPAs and will help to ensure that the proposal to introduce a planning guarantee (ie a planning decision within 12 months including time taken for any appeal) will be met.
- 3.4 As a further means of ensuring that decisions are made within the guarantee period the Government also proposes amendment of secondary legislation to require a refund of the planning application fee if no decision has been made on a scheme within 26 weeks. This proposal in respect of LPAs impacts upon all 3 categories of planning application *ie* major, minor and other applications and applies also to the Planning Inspectorate in relation to major applications
- 3.5 Other main details from the consultation document outline that:
- Designations would be made annually and would last for one 1 year. A designated authority would need to demonstrate a sufficient degree of improvement before the designation is lifted.
  - Thresholds for the speed of decisions made would be raised after the first year to ensure that there is "a strong but achievable incentive for further improvement"
  - Any LPA with a whole year of planning decisions data missing would automatically be designated as "very poor" performing
  - In return for carrying out the decision making element, the Planning Inspectorate would receive the fee normally gathered by the designated LPA. Notwithstanding the loss of fee income the designated LPA would still be expected to carry out all technical administrative support (such as consultations) together with any negotiations on Section 106 agreements.
  - Applications would be exempt from any statistical return where they are undertaken under a Planning Performance Agreement or are the subject of post application agreements to extend the timescale for determination
  - In the case of designated LPAs, Government would monitor performance in determining the remaining applications and consider the steps taken by the LPA to improve in its capacity and capability before making a judgment as to whether the improvements were sufficient to warrant removal from the special measures.
  - In choosing to opt for submission directly to the Planning Inspectorate, where allowed, the developer loses any right of appeal.

- 3.6 It is proposed that initial designations will be made in October 2013 using performance data from the financial years 2011/12 and 2012/13.
- 3.7 Placing LPAs under special measures based upon poor planning performance is not new. This Council was identified as a Standards Authority for 2005/06 in respect of minor and other applications and in 2006/07 for major applications. However under previous administration poor performance was penalised by inability to share in the windfall of Planning Delivery Grant. Poor performance under current proposals cuts to the heart of the planning budget by potentially taking away estimated fee income.
- 3.8 Sunderland's performance against the suggested thresholds over the 2011/2012 and 2012/2013 period is as follows :
- Major planning applications determined (up to Nov 2012 ie 20 months) is 66.3% - well above the suggested benchmark of 30%
  - There have been no major planning appeals overturned so as it currently stands there would be no measurement against the quality of decision making criteria.
- 3.9 However, the proposal to bypass the LPA as the first point of the decision making process is entirely new and raises some key issues of both principle and practicality:
- Democratic control of planning is one of the founding principles of the planning system. The proposal would introduce a new kind of planning where the substantive right to have a decision taken by a democratically elected LPA is transferred to an unelected body.
  - Invariably, most major applications are the subject of pre-application discussions between the LPA and the prospective applicant (which in Sunderland's case generates a fee). This front loading of applications is a major factor in reducing the time taken in the decision making process. It is unclear as to whether the Planning Inspectorate would take on this pre application advisory role.
  - Adequate resourcing of the LPA is a critical factor in terms of performance. Any loss of the application fees to the Planning Inspectorate would result in less investment in the service and merely perpetuate poor performance.
  - There is a danger in the sole use of metrics to measure planning performance as the bare figures are unable to tell the whole story of why planning applications get delayed which in many cases is down to circumstances outside the control of the LPA
  - To meet performance targets, there could be a temptation to determine applications quickly rather than work with applicants to address issues. The National Planning Policy Framework requires LPAs to *"look for solutions and not problems"* implying the quality of the development could rank higher than the speed of the decision.
  - There could be a major disconnect between the decision-making on applications dealt with by the Planning Inspectorate and any Section 106 negotiations which would still be undertaken by the LPA. Invariably, it can be the slow turnaround of Section 106 Agreements

that is often the main reason for slow decision-making in the first place.

#### **4.0 THE NEXT STEPS**

- 4.1 It is intended that after consideration of the consultation responses a summary of those responses will be published. The consultation responses will help inform debate as the Bill passes through Parliament. Any intended implementation of proposals arising would be enacted through policy and secondary legislation, the final form of which would need to reflect Parliaments decisions on the Bill.

#### **5.0 RECOMMENDATIONS**

- 5.1 Committee is recommended to note comments highlighted within this report and endorse the response to DCLG which is contained within Appendix 1.

#### **6.0 BACKGROUND PAPERS**

- 6.1 *Planning performance and the planning guarantee* – DCLG November 2012

## APPENDIX 1

### **Response of Sunderland City Council and the North East Councils to:**

#### **Planning Performance and the Planning Guarantee: Consultation**

##### ***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?***

Agree that speed of decision making is important but needs to be balanced against ensuring that quality of development is not compromised as a result.

Local Planning Authorities are well used to performance targets and they do have a place within the planning system focussing the attention of both the LPA and also the applicant when the requirement for additional information arises as a result of the consultation process.

It must be recognised that some proposals do take longer than others and the complexity of cases can vary enormously requiring differing degrees of engagement to ensure a quality decision.

Agree with the intention of maintaining the current statutory time limits for determining planning applications, unless an extended period has been agreed in writing between both parties.

Agree that in identifying and addressing poor performance Government focus only on major applications as these types of application are the most important for stimulating growth, encouraging redevelopment and creating employment.

It should however be noted that most LPAs frequently work with applicants beyond the 13 weeks when necessary in an attempt to find solutions to issues, balancing the benefits of the scheme against the impacts (as stated in the National Planning Policy Framework).

Where this has led to planning permission being granted the developer is often happier with a positive outcome at say week 15 as opposed to a refusal or pressure to withdraw an application at week 13.

Also many major schemes by their nature require a Section 106 Agreement and planning decisions can not be issued until these are signed. The drafting and checking of such agreements can take time even when schemes have

had pre application discussions. This delay often takes applications beyond the 13 week threshold.

When attempting to assess the quality of decision it is important to take account of the whole of the decision making process from pre application engagement to determination and not focus solely on the final outcome.

The proposal to determine quality based upon the success rate at appeal is not a true reflection or way of assessing LPAs as the trigger only assesses those LPAs who have refused applications and does not attempt to measure quality in all of the decision making process. ie including approvals.

In the case of a refused application taken to appeal it must be recognised that the fact an Inspector may come to a different view to a LPA does not mean the decision was incorrect, equally if an appeal is dismissed by an Inspector it does not follow that the applicants scheme was without merit and poorly made.

Planning is ultimately about judgements and subjectivity and what weight a decision maker gives to component elements of a scheme weighing up benefits and impacts. To potentially designate a LPA as poorly performing due to having lost a number of appeals even though the judgements made were fair and reasonable (but ultimately not agreed by an Inspector) would seem wrong when compared to the alternative of approving all major applications (in 13 weeks) irrespective of their quality and impacts.

**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?***

There are no objections over assessment of speed of determination of major applications over a 2 year period.

**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)?***

Agree that applications with planning performance agreements are all excluded from the data on which performance is assessed. However the means of recording this information will need to be established.

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

Agree due to the differing complexity of major schemes.

Some major schemes are strategic and very complex and as such it follows a planning performance agreement will need to reflect that in its nature.

**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?***

The proposal to determine quality based upon the success rate at appeal is not a true reflection or way of assessing LPAs as the trigger only assesses those LPAs who have refused applications and does not attempt to measure quality in all of the decision making process. ie including approvals.

There needs to be more clarity around how the measure would be calculated. Is the proposal that the quality of decision be assessed solely against the number of appeals over a 2 year period which are overturned, or is it the number of appeals overturned expressed as a percentage of the total number of major planning application decisions determined by the LPA?

In the case of a refused application taken to appeal it must be recognised that the fact an Inspector may come to a different view to a LPA does not mean the decision was a poor one, equally if an appeal is dismissed by an Inspector it does not follow that the applicants scheme was without merit and poorly made.

Planning is ultimately about judgements and what weight a decision maker gives to component elements of a scheme weighing up benefits and impacts. To potentially designate a LPA as poorly performing due to having lost a number of appeals even though the judgements made were fair and reasonable (but ultimately not agreed by an Inspector) would seem wrong when compared to the alternative of approving all major applications (in 13 weeks) irrespective of their quality and impacts.

Another issue that needs clarification is in the case of a split decision, whereby the substantive reason for refusal of the scheme is accepted but whereby the Inspector has the power to allow a discreet element of a scheme (a power the LPA does not have). In such cases where a split decision is made this should not be counted as an allowed appeal and instead should be recorded as a split decision.

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

Agree that this seems appropriate and should ensure information submissions are made in a timely way.

The minimum standard suggested will provide certainty to LPAs around actions necessary to address poor performance.

**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?**

Agree in respect of the threshold for speed of determination but do not agree with the approach to the way in which quality of decisions are intended to be determined as described above.

**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 they increase after the first year?**

In principle yes but it would appear reasonable to first see how many authorities are designated under the proposed initial thresholds and then assess performance nationally so that a body of evidence can be assessed to judge average performance before setting new absolute thresholds. This will prevent artificially high or low thresholds being set.

The other key issue is the capacity of the Planning Inspectorate to handle increased workload, as potentially the proposals will simply move the problem to a different determining body.

**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?**

Agree.

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

Agree. Again there is a concern over the capacity of the Planning Inspectorate to deal with the potential number of applications.

**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?**

Further clarity is required in respect of the pre application process and how it is to be co-ordinated by the Secretary of State to ensure all relevant matters are dealt with including community and Member engagement and cost recovery for LPAs who are engaged in the process.

LPAs should be fully reimbursed for carrying out all administrative duties.

Further clarity is needed around S106 agreements including all negotiations and costs associated with their completion.



**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?***

Agree. No objections to the proposed approach for support and assessment of designated authorities

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

Agree

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

Do not agree with the proposal that the planning fee should be refunded if a decision is not made within the 26 week period as significant resources will have been committed to the application at this point.