

Planning applications: A faster and more responsive system

A Call for Solutions

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Published by Communities and Local Government on behalf of the Killian Pretty Review

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Foreword

By Joanna Killian and David Pretty

When asked to jointly lead this review, we both welcomed the opportunity to make a real difference on the ground.

Between us we have over 60 years of experience as operators and users of the planning system and, as such, have a personal interest in ensuring that it works efficiently and effectively. We also believe that the answers to making the planning application system work better lie among those who regularly use and operate it and know how it works from within. We certainly believe that the planning application system in England needs to be made more proportionate, faster and more responsive to the needs of all users, within a strong democratic framework.

Why does this matter? From our experience we know that for many projects, particularly larger ones, the planning system can be time consuming, costly and unpredictable and delays in the system impose significant costs to the economy and wider society. To put this into international perspective, World Bank statistics (January 2008) show the UK is the fifth most attractive economy to invest in overall but it is in 54th place in relation to licenses (principally planning and building control consents). But we also know that the planning system must work for the benefit of all our communities and be a strong and effective tool to allow councils, and their elected members, to deliver the ambitions and priorities they have for the people they serve.

In preparing our *Call for Solutions* we have talked to a large number of stakeholders – local authority planning officers, local authority councillors, housebuilders, commercial developers, statutory consultees, amenity groups and conservation groups. Although these groups may have very diverse views on how we respond to development pressures, it became clear very early on that there is a great deal of consensus among them on how the planning application process should work, and also the main issues that prevent it operating efficiently.

Anyone who has dealt with the planning system over a number of years will testify to its increasing complexity and the burden placed upon it by a significantly increased workload. Central government seeks to use the planning system to help deliver Whitehall objectives on a wide front including housing, retail development, renewable energy, crime reduction, health and safety, and so on. Local councils also want to deliver an increasingly ambitious set of local policies and priorities using the same system. What we have also seen is that this increasing complexity results in low impact planning applications, getting a disproportionate amount of attention compared to higher impact major developments which need greater levels of skill, capacity, and public engagement to determine. It may also mean that individual householder applicants, who submit half of all planning applications, often feel lost in a complex and burdensome system.

We also believe that procedures are unnecessarily bureaucratic, focusing heavily on the process and in danger of creating an increasingly risk averse and tick box mentality. We understand, however, that this results from a number of reasons including the complexity in central policy and the pressures on local authorities to respond to this.

Nevertheless, we know that many of the areas we think are particularly problematic have been recognised by both central and local government, and also that much good practice is already happening in many places. We want to harness those examples and learn from practitioners how they have implemented them and also overcome the barriers that prevent them from being used more widely.

We will now be talking to a wide range of people in a series of events in the nine English regions, and invite responses to the questions posed in this document from everyone. We hope that you are able to become involved in identifying and suggesting solutions to the problems in the planning application system and help us create an application process that engages effectively with communities whilst being proportionate, just, and more responsive.

Two handwritten signatures in black ink. The signature on the left is stylized and appears to be 'John A. ...'. The signature on the right is 'Daniel Varty'.

How to respond to our Call for Solutions

David Pretty and Joanna Killian welcome submissions detailing solutions to the issues posed in this *Call for Solutions*. They are interested in workable solutions applicable to the planning application process in England.

Representations from all interested parties are invited and the list of questions is summarised in the Executive Summary. We welcome references to existing good practice. If cited, it would be helpful to know how long the measures have been in operation, any evaluation of their impact and how any difficulties encountered in developing the proposals were overcome.

The deadline for responses to this Call is 5 September 2008, though earlier responses would be helpful.

It is intended that responses will be made public. If you do not wish all or part of your response (including your identity) to be made public, please state in your response which parts you wish us to keep confidential.

However, information provided in response to this Call, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

Submissions of evidence should be sent (preferably electronically) in a Word document, and should clearly state which question(s) are being addressed.

Up to date information on the review, including stakeholder events and our background evidence papers can be found at:

www.planningportal.gov.uk/killian_pretty_review

Responses should be sent to the address mentioned below.

Issued on: 27 June 2008

Respond by: 5 September 2008

Enquiries to: Phelim Rowe

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Executive summary

Planning plays a vital role in shaping the places where we live, work and visit. The planning system is a powerful tool which helps deliver a wide range of important objectives and impacts directly on a wide range of householders, businesses and others who propose changes to the use or development of land and buildings.

Although considerable improvements have been made to the planning application system, concerns still remain in relation to its speed and responsiveness. This review aims to identify practicable and feasible solutions that will improve the planning application process on the ground for all users, operators, and the wider community.

Whilst its focus is on the planning application process, the review recognises that other processes and policies impact on the way that the system works and how applicants and operators of the system behave, which in turn impacts on users' experiences. We also recognise that considerable reform of the planning system has taken place and is on-going and that it is important not to re-invent the wheel or undermine recent or planned improvements.

Generally, local planning authorities are now processing the majority of planning applications faster; indeed, there has been a marked improvement in performance against targets in recent years. This improvement has been supported by increased resources, such as the Planning Delivery Grant.

But these performance statistics do not reflect the overall experience of some users and applicants. For example, the performance statistics only measure the period from validating an application to the decision, and not other important steps in the process: for many applications long periods of time can be spent in informal pre-application discussion; and for others, there may be further delays discharging conditions before development work can start.

For a small proportion of large and more complex developments, the delays in the system can be severe. For instance, in 2006, the planning applications of 1,000 major housing developments and 100 major retail developments had taken longer than one year to process. These major applications are the ones with the greatest potential to deliver economic benefits and vital housing units. Using conservative estimates, these figures suggest that around 29,000 units of housing could be caught up in the system at any one time. The Barker Review estimated planning delays to cost the overall economy between £700 million and £2.7 billion.

The planning application system has evolved over time and its increasing complexity makes it difficult for all users, but this is particularly so for those who rarely come into contact with the system. 96.7% of applications in the system are for minor or householder developments, about half of all applications are for householder developments (extensions etc), and only 3.3% of applications are for major developments. Although efforts have been made to reduce the complexity for developments of less impact, the scale of information and other requirements still appear disproportionate in many instances. This places unnecessary burdens on all parties involved, including applicants, local planning authorities and those wishing to understand and comment on proposals.

Local planning authorities are clear that delays can be as a result of receiving poor quality applications, and that much of the complexity arises from external factors, such as national policy requirements that are either unclear, or applied without sufficient regard to the scale of the proposal. Similarly, local planning authorities raise concerns about the impact the emphasis on meeting time targets has on their ability to negotiate with applicants to improve the quality of the proposals.

A key element of the first stage of our work has been to talk to stakeholders about what outcome the planning application process should achieve and how the process should operate. There was a strong consensus at our stakeholder events that the planning application process should be customer focused, fair, proportionate, transparent, encourage effective community engagement and deliver decisions with appropriate speed.

The main part of our work in the first stage has been to identify where there are problems and concerns with the current process. This has involved extensive engagement with a wide range of stakeholders, quantitative research and a review of recent reforms and literature.

It is clear that the causes of the problems in the planning application system and their interactions are complex. Business, developers and local authorities are all parts of a very complex system, and the way that they behave in the system reflects external drivers, such as the target regime and political pressures (for local authorities), or viability issues (for developers), as well as internal factors such as organisational leadership. Unless we understand why certain actions are taken, we will not be able to design solutions that will change behaviours on the ground. For this reason we have looked at the planning application system as a whole as well as the individual processes within it.

We have, with help of stakeholders and our other work, developed a good understanding of the key problems and issues that exist in the planning application process and identified a clear picture of the key themes that we need to focus on, in order to deliver meaningful improvements. Thus, we want to focus this *Call for Solutions* on how best we can address these key themes.

We are asking for solutions in relation to:

- **Proportionality – matching skills and resources (capacity) to planning application demand:** Given likely continuing skill shortages and resource constraints, there is a need to look closely at how we can better match capacity with the demands of the planning application system.
- **Complexity:** A range of factors are contributing to make the system overly complex for the preparation and consideration of applications, particularly smaller ones.
- **Culture:** A key thrust of recent reforms has been to move local planning authorities towards steering and shaping development and away from controlling it, yet targets and the threat of legal challenge tend to push towards a mechanistic and legalistic approach.
- **Engagement:** In particular, the need to ensure more effective engagement of the community, statutory and non-statutory consultees and elected members.

In addition we are looking at:

- **Process:** Various elements in the application process from pre-application discussions to the discharge of conditions have been identified as needing further improvement.

We have posed a series of questions, which are set out below, grouped according to these themes. The questions are deliberately framed to seek solutions to the concerns outlined in this paper. It is clear that a great deal of good practice exists already, which may address a number of these concerns, if not in full, then in part. We welcome evidence regarding successful measures to address the concerns identified, or how existing guidance has been successfully implemented, overcoming cultural or other barriers. It would be helpful, when citing any examples of exemplary practice, to know how long they have been in operation, any evaluation of their impact, and how any difficulties encountered in developing the proposals were overcome.

Proportionality

Q1 How much scope is there for introducing a more proportionate and tiered way of dealing with development proposals of different scale and complexity?

In particular, what are the merits of developing an intermediate level of approach, between permitted development and full planning permission?

What are the main barriers to the introduction of such an approach, and how could they be overcome? How could increased complexity be avoided?

Q2 How can local planning authorities be encouraged to take up the opportunities offered by Local Development Orders to free up development from the need to obtain planning permission in local areas?

Q3 Different types of planning application require different skills. How can local planning authorities respond to the continuing skills and resources challenges efficiently? What scope is there for solutions such as sharing of resources/skills between local planning authorities?

Complexity

Q4 How can we ensure that all users of the system have access to the simple, customer-oriented information and guidance they need about how the process operates and what they need to do to put in an application that will satisfy the local authority?

Q5 What measures can be taken to improve the quality of applications made by developers, agents and applicants?

Q6 How can the information required to support planning applications be made more proportionate, while at the same time maintaining a necessary degree of flexibility to accommodate specific circumstances? What are the key areas where changes to the scale and nature of information requirements need to be made, and how might those changes be delivered?

Culture

Q7 What are the likely implications for the processing of applications of all sizes, from householder changes to proposals of strategic importance, of moving from a development control to a development management approach and how might they best be addressed?

Q8 How might the current approach to targets be improved to help deliver the right outcome (decision) most efficiently?

How might the use of Planning Performance Agreements be further encouraged?

Engagement

Q9 How can the involvement of statutory and non-statutory consultees in the planning application process be improved?

Q10 What do you consider to be best practice in the involvement of elected members in the planning application process? How could best practice be further encouraged?

Q11 How might community engagement in the planning application process be made more effective? What role is there for different forms of engagement, such as dispute resolution and stakeholder dialogue approaches, e.g. 'Enquiry by Design', in the planning application process? How might any changes needed be implemented?

Process

Q12 How can the effectiveness of pre application discussions be improved in a way which improves the overall speed and quality of the process from start to finish?

Q13 What would be the pros and cons of a change to allow local planning authorities to choose whether to advertise applications in a local newspaper? Are there other changes to the publicity process for applications which should be considered?

Q14 What experiences have you had of electronic submission of applications? What more, if anything, could be done to further encourage the use of e-planning in practice?

Are there other process improvements which could yield significant benefits for the efficient handling of applications?

Q15 How can the process of negotiation of planning obligations be further improved?

Q16 How could the concerns about conditions be addressed? How can the discharge, enforcement and monitoring of conditions be improved?

Any other issues

Q17 What other measures do you consider could improve the speed and responsiveness of the planning application process?

Setting the scene: The context in which the review takes place and overview of the issues

This review focuses on the speed and responsiveness of the overall planning application process

Planning plays a vital role in shaping the places where we live, work and visit. The planning system is a potentially powerful tool, which is intended to help deliver a wide range of important objectives, from delivering economic development and housing, and tackling climate change (such as through the provision of renewable energy facilities), to protecting the natural and historic environment and providing access to green spaces. It also provides the framework for taking the local decisions in which relevant factors are weighed in the balance. The process of determining planning applications forms a key part of the overall planning system.

Considerable reforms of the planning system have taken place in recent years and these have achieved a range of improvements, including a substantial improvement in local planning authority performance in determining applications within time targets. Nevertheless, concerns continue to be expressed that the process is not meeting the expectations of developers and other applicants, is not providing sufficient opportunities for communities to engage, and is not meeting the needs or objectives of local or national government.

This review aims to identify improvements to the speed and responsiveness of the planning application process for the benefit of all involved. The terms of reference¹ make it clear that any improvements must be consistent with the Government's objectives for the planning system, build on recent reforms and benefit all involved in the process.

Although the review focuses on the planning application process, it recognises that other process and policies impact on the way that the system works, which in turn impact on users' experience.

Many other parts of the planning system, such as national planning policy and development plans, impact on this process. Where there is an impact, we will look carefully to establish whether improvements can be made in the way these elements interact, but we will not be looking in detail at other parts of the system.

We will be looking at the whole of the application process from the start of initial negotiations with the local planning authority to the point where the permission can be implemented². For larger scale proposals, this process typically comprises the following steps:

- pre-application discussions;
- submission and validation of the application;
- consultation of relevant interests;
- consideration of the application by the local planning authority;

¹ Our full terms of reference are in Annex A.

² A diagram of the process is in Annex B.

- decision (or resolution to grant consent) by the local planning authority;
- completion of Section 106 agreement (where appropriate); and
- the discharge of pre start conditions (where imposed).

In addition, where an application is refused, the applicant can exercise a right to appeal to the Planning Inspectorate.

It is important not to reinvent the wheel unnecessarily or undermine recent or planned improvements in the process.

In recent years, there have been a number of reviews of the planning system as a whole, and of specific elements within it. These include the Egan Review of Skills for Sustainable Communities, the Audit Commission review of the planning system, the Barker Review of Land Use Planning, and the Householder Development Consents Review, as well as numerous internal studies published by Communities and Local Government and predecessor Departments³.

We have had regard to this earlier work, including trying to understand why some earlier recommendations haven't been taken forward. We have also had regard to the many reforms that have taken place in recent years. Some of the key changes which are of particular relevance to the processing of applications and already in place are listed below:

- the development of a new performance framework for planning, underpinned with additional resources in the form of Planning Delivery Grant (over £600 million in 5 years);
- the development of e-planning through the Planning Portal which provides a one stop shop for planning services on line;
- introduction of a standard application form (1 App) used by all planning authorities together with national guidance on information requirements;
- establishment of the Planning Advisory Service (PAS) & Advisory Team for Large Applications (ATLAS);
- measures to increase the supply of qualified planners.

In addition, there are also some important changes in the pipeline, including:

- a package of measures in the Planning Bill, including a new process for dealing with nationally significant infrastructure projects and proposals to improve the planning appeals system; and
- changes to permitted development for householders, small scale non-householder and small scale renewables.

³ See Literature review at Appendix 3 for details. The Appendices are available online at: http://www.planningportal.gov.uk/killian_pretty_review

Local planning authorities are processing the majority of planning applications faster, but these performance statistics do not reflect the overall experience of some users and applicants.

Performance statistics⁴ on the time taken by local planning authorities to deal with different types of development, from the validation of the application to decision, clearly show that the majority of applications are determined within target periods (8 or 13 weeks) and that local planning authority performance overall has improved markedly in recent years.

But these performance statistics only relate to the time taken to consider the submitted application, not the whole application process:

Many users argue that measuring the time from registration/validation to decision does not reflect the totality of their experience, which would include, in particular, pre-application discussions and discharging pre-start conditions. A survey of their major members by the Home Builders Federation (HBF) in 2006⁵ found that the average time between the submission of the application and the commencement of development on site was 15.5 months. If pre-application discussions were included, the time taken for the whole process would be even longer. This demonstrates the disparity between what the performance targets are measuring (validation to decision) and what a user might consider the planning application process to be.

And for some applications, the delays in the process are considerable:

Major applications tend to be complex. A one-off survey⁶ of decisions made in 2005/06 found that, for major dwelling or retail developments, 10 and 12% of decisions (respectively) took more than one year from validation, and 2.8 and 2.2 % took longer than two years. This equates to about 1,000 residential applications and 100 retail applications taking more than a year.

And there is evidence of unintended consequences of the target regime:

Many of the major developer and business representatives (HBF, CBI, Major Developers' Group (MDG) - whose applications the targets were meant to improve) have called for the targets to be reconsidered because of their unintended consequences. The box summarises the CBI's view⁷, for example.

⁴ See Statistical report at Appendix 2 for details, available online at: www.planningportal.gov.uk/killian_pretty_review

⁵ HBF (2006) New Research Shows that Planning Approval now Averages Nine Months – Three Times Longer than Government Targets at: [http://www.hbf.co.uk/index.php?id=1577&encryptionKey=&tx_ttnews\[backPid\]=452&tx_ttnews\[tt_news\]=10069&cHash=60e99cb22a](http://www.hbf.co.uk/index.php?id=1577&encryptionKey=&tx_ttnews[backPid]=452&tx_ttnews[tt_news]=10069&cHash=60e99cb22a) [Last accessed 10/06/08]

⁶ CLG survey of local planning authorities in 2006. See Appendix 2 for more details.

CBI:

The CBI believes that the current performance related target structure is imperfect, for the following reasons:

- The current approach fails to assess the totality of the development control process.
- The pressure and expectation on local planning authorities to meet their targets has given rise to a number of perverse, unintended consequences which have undermined an applicant's experience of the development control process including:
 - Problems validating applications: although the applicant is ready to proceed – even following pre-application discussions – some local planning authorities are delaying validating the application by requesting additional information (on occasions contrary to advice provided through pre-application discussions) in order to manage their workloads.
 - 'Back-end loading' – difficulties in attaining an implementable planning consent: When it is unlikely that a target will be met some local planning authorities are increasingly making use of pre-start conditions as part of the granting of permission; the applicant does not get an implementable consent and often finds it very difficult subsequently to access planning officers to discharge the pre-start conditions.
 - Missed target – downgraded priority: As soon as a target is missed the application goes to the 'bottom of the pile' as there is greater incentive to work on other applications.
 - Withdrawals: Some applicants are being requested to withdraw their applications if the target is unlikely to be met, or if changes mean that the application has to be re-advertised. In such cases the applicant needs to go through the whole application process again so the authority can hit the target.
 - Refusals: Where an applicant does not withdraw, an easy option for councils is to refuse the application with an unbalanced and unfair assessment of its merits.

A wide range of stakeholders, including local planning authorities, have told us that, when faced with an application that will not be determined within target, it is quite widespread practice, perhaps not surprisingly given the incentives for meeting the targets, for a local planning authority to, in effect, give the applicant an ultimatum to either withdraw the application or face a refusal.

⁷ CBI input to this review, 2008

The major developments that are subject to most delays are the ones with the potential to deliver economic benefits and vital housing units.

Communities and Local Government has no comprehensive data on the typical number of housing units proposed per planning application. However, even with the very conservative assumption that all 1,000 major developments waiting for more than a year to be determined are of the minimum size of ten units (major development is ten units and over), decisions on 10,000 units are being delayed every year in the planning system. For housing developments, the average approval rate is 62%, so permissions for at least 6,200 housing units each year are delayed in the planning system at any one time. A less conservative assumption of 25% of ten units, 25% of 25 units, 25% of 50 units and 25% of 100 units would mean that decisions on around 46,000 units, and permissions for 29,000 units, could be delayed in the system at any one time.

More generally, the Barker Review of Land Use Planning estimated that the costs to the UK economy of planning delays were between £700 million and £2.7 billion⁸. It also highlighted the adverse effects on competition and choice in the hotel, leisure and retail sectors.

For commercial applications, delays in planning approvals can mean the difference between development taking place and becoming unviable. Business and investment decisions are time dependent. The targets can raise legitimate expectations, particularly in those less familiar with the process, about when decisions could reasonably be expected. Significant delays can then often call into question the whole basis for the investment decision.

The planning application system has evolved over time and its increasing complexity makes it difficult for users who rarely come into contact with the system to cope.

Typically, major developers or applicants regularly making applications are either familiar with the planning system, or have the resources to use planning consultants and expert advisors.

By contrast, for small business users, householders and those who rarely come into contact with the planning system, making a valid planning application can be confusing and daunting. When viewed through the lens of the customer, difficulties include:

- understanding what is expected of them;
- access to advice and information on technical planning issues; and
- the complexity of the application when compared to the impact of the proposed development.

⁸ Barker, Kate (2006a) *Barker Review of Land Use Planning: Interim Report – Analysis*. HM Treasury, London

The information required, especially for applications that, on the face of it, have very minor impacts on the environment or amenity, can appear disproportionate to the applicant. The vast majority of applicants, even those proposing small household extensions, will use an 'agent' (often the architect that has drawn up the plans, who will then charge an additional fee for negotiating the planning system).

It is not unreasonable for small businesses wishing to obtain planning permission to expect quick and easy access to information on what they have to do, guidance that is clear and concise, and a process that is designed around their needs as applicants, rather than designed around separate policy objectives⁹. A survey of Institute of Directors members¹⁰ (generally small businesses) resulted in 12 planning related case studies that identified common issues that business encounters in relation to planning applications. These were: lack of clarity in official guidance; the length of time taken (and the associated opportunity cost); and inconsistency of advice.

Business groups generally report concerns on certainty, clarity and complexity in relation to planning applications. Many of these complaints relate to the lack of a focus on the needs of the user which applies across the whole interface between the applicant and the planning application process.

Complexity also impacts on local planning authorities. Up to 60% of applications are not validated on first submission, and planning authorities often complain of poor applications that are missing information, or do not address the issues in sufficient detail. One reason for the difficulties applicants have in producing applications and supporting information that can be validated by local planning authorities is the complexity of the system.

The cost of delay is not the only economic impact of the planning application process – the costs imposed by the complexity of the system are hugely important, and may be disproportionate for applications of minor impact.

The Barker Review estimated that the annual cost of planning complexity was £750 million¹¹. CLG has estimated that the cost of the planning application process to applicants is roughly £1.2bn per annum¹². A large proportion of this will be planning consultant fees.

Major applications can cost millions of pounds to prepare. For instance, a stakeholder told us that the environmental consultancy, design, traffic and transport assessment, engineers and architects fees for a recent major application in the South of England cost £11 million. For major developments with huge impacts, these costs may not be disproportionate.

For small developments of minor impact, the costs imposed are not known. We intend to explore this issue and the proportionality of information requirements in the next phase of our work.

⁹ BERR (2008) *A Code of Practice on Good Guidance on Regulation: Consultation Document*. Department for Business, Enterprise and Regulatory Reform, London.

¹⁰ IoD (2005) *Planning for Success – The Land-Use Planning System*. Institute of Directors, London.

¹¹ Barker, Kate (2006a) *Barker Review of Land Use Planning: Interim Report – Analysis*. HM Treasury, London.

¹² CLG (2006a) *Simplification Plan: The Route to Better Regulation*. Department for Communities and Local Government, London.

The impact of unnecessary complexity and other concerns is felt by all parties in the process.

Complexity also impacts on local planning authorities, who must carefully consider all the material submitted and consult upon it, and makes it harder for those parties who want to understand and comment on the proposals. Local planning authorities are clear that much of the complexity arises from external factors, such as national policy requirements which can lack sufficient clarity, both in their requirements and in how they should be applied with regard to the scale of the proposal. Similarly, local planning authorities raise concerns about the impact the emphasis on meeting time targets has on their ability to negotiate with applicants to improve the quality of proposals.

Our starting point: What do stakeholders want the planning application system to achieve, and how?

As part of the first stage of our work, we asked a wide range of key stakeholders¹³ for their views on the overall aim of the planning application process and how it should operate.

There was strong consensus that ideally the process should:

- be customer focused;
- be fair;
- be proportionate;
- be transparent;
- encourage effective community engagement; and
- deliver decisions with appropriate speed.

The overall aim of the process should be to help deliver high quality sustainable development.

The first stage of the review has developed an understanding of the complex system that leads to the current issues within the planning application process.

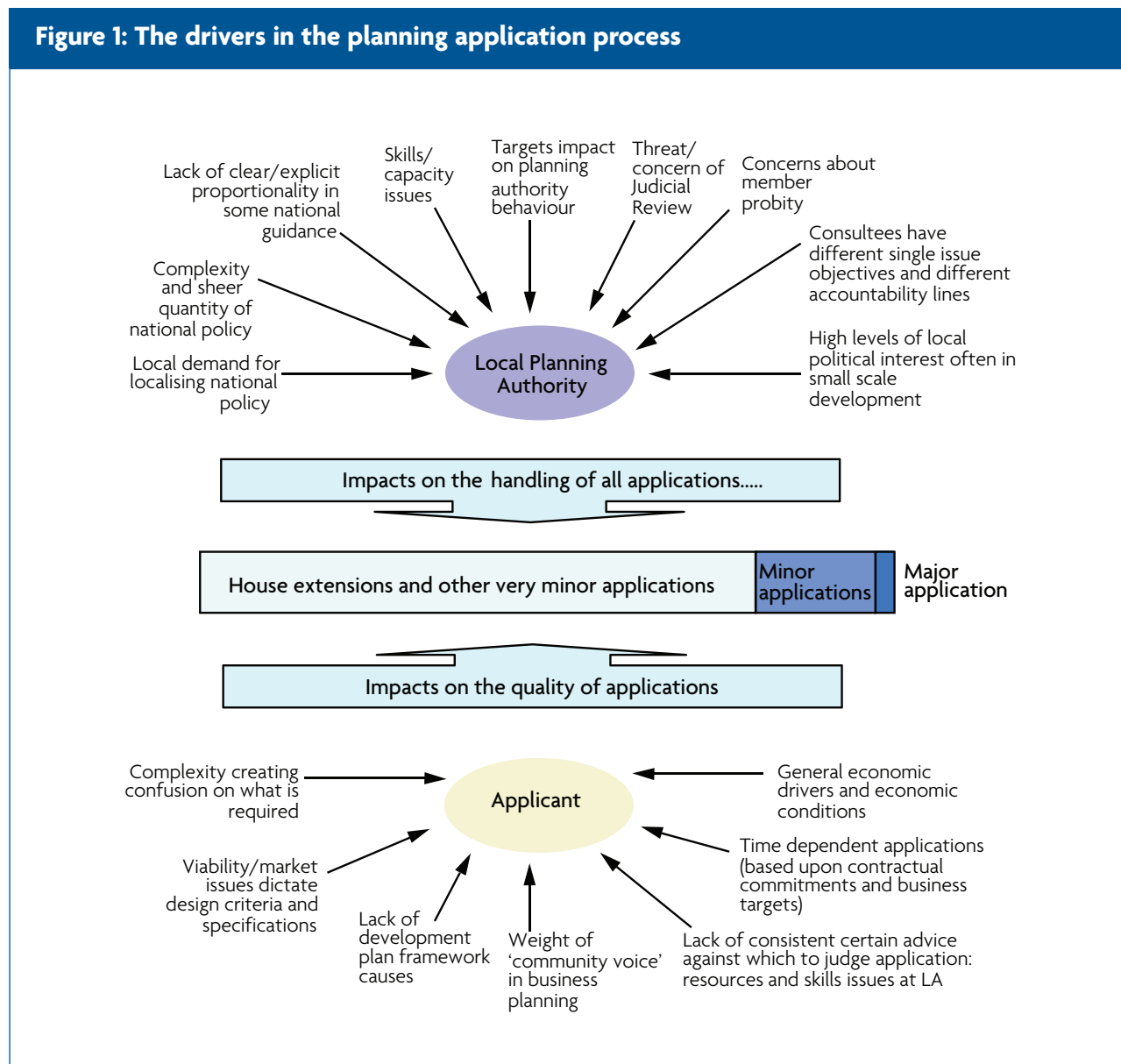
Annex D summarises the approach we are using for the review.

This document is a Call for Solutions, as we believe that, in our first stage of work, we have developed a good understanding of the main problems and issues that exist in the planning application process. We have engaged widely with stakeholders, carried out research into the operation of the planning application process, and held stakeholder events that have confirmed the

¹³ See Annex C for details of who we have engaged with.

widespread agreement on the major problem areas in the system. This document brings together the findings from this initial stage of work, identifies the key areas where improvements are required, and seeks views on how best to tackle the key problems.

Figure 1 shows the pressures and drivers on local planning authorities and applicants. It illustrates how the behaviour of applicants and planning authorities is driven by a range of factors.



It is clear that the causes of the problems in the planning application system and their interactions are complex. Business, developers and local authorities are all parts of a very complex system, and the way that they behave in the system reflects external drivers, such as the target regime (for local authorities), or viability issues (for developers), as well as internal factors such as organisational leadership. Unless we understand why certain actions are taken, we will not be able to design solutions that will change behaviours on the ground. For this reason, we have looked at the planning application system as a whole, as well as the individual processes within it.

This analysis is synthesised from evidence from stakeholders, a review of previous work in the area, and our initial research work. The key themes that arise from this analysis are:

- A lack of availability of appropriately skilled staff means that applicants can find it difficult to access advice about what they need to do and too often submit poor or incomplete applications. It can also lead to delays in the processing of applications and poorer quality outcomes.
- Complexity and uncertainty about processes and requirements creates confusion for applicants and difficulties for local planning authorities. It results in applicants producing poor quality applications and authorities sometimes asking for more information than is strictly required. It also encourages local planning authorities to take a risk averse approach in dealing with applications.
- Performance targets can raise expectations in applicants about when a decision may be received and cause problems for project and business plans when they are not met. They also put pressure on local planning authorities to meet deadlines, possibly at the expense of negotiation which could resolve issues with an application.
- Applicants can fail fully to understand the concerns of the community or the sensitivity of council members to these concerns.
- Statutory consultees have their own objectives, accountability and resources constraints. Applicants can find it difficult to understand the requirements of statutory consultees; local planning authorities can find it difficult to understand who needs to be consulted, when and why and then do not feel they have the expertise to overrule consultee advice.
- These drivers manifest themselves at all stages of the process.

Our call for solutions is structured around this analysis of the problems.

We are asking for solutions in relation to:

- **Proportionality – matching skills and resources (capacity) to planning application demand:** Given likely continuing skill shortages and resource constraints there is a need to look closely at how we can better match capacity with planning application demand.
- **Complexity:** A range of factors are contributing to make the system overly complex for the preparation and consideration of applications, particularly smaller ones.
- **Culture:** A key thrust of recent reforms has been to move local planning authorities towards steering and shaping development and away from controlling it, yet targets and the threat of legal challenge tend to push towards a mechanistic and legalistic approach.
- **Engagement:** In particular, the need to ensure more effective engagement of the community, statutory and non-statutory consultees and elected members.

In addition, we propose to look at:

- **Process:** Various elements in the application process from pre application discussions to the discharge of conditions have been identified as needing further improvement.

We are seeking your views on solutions

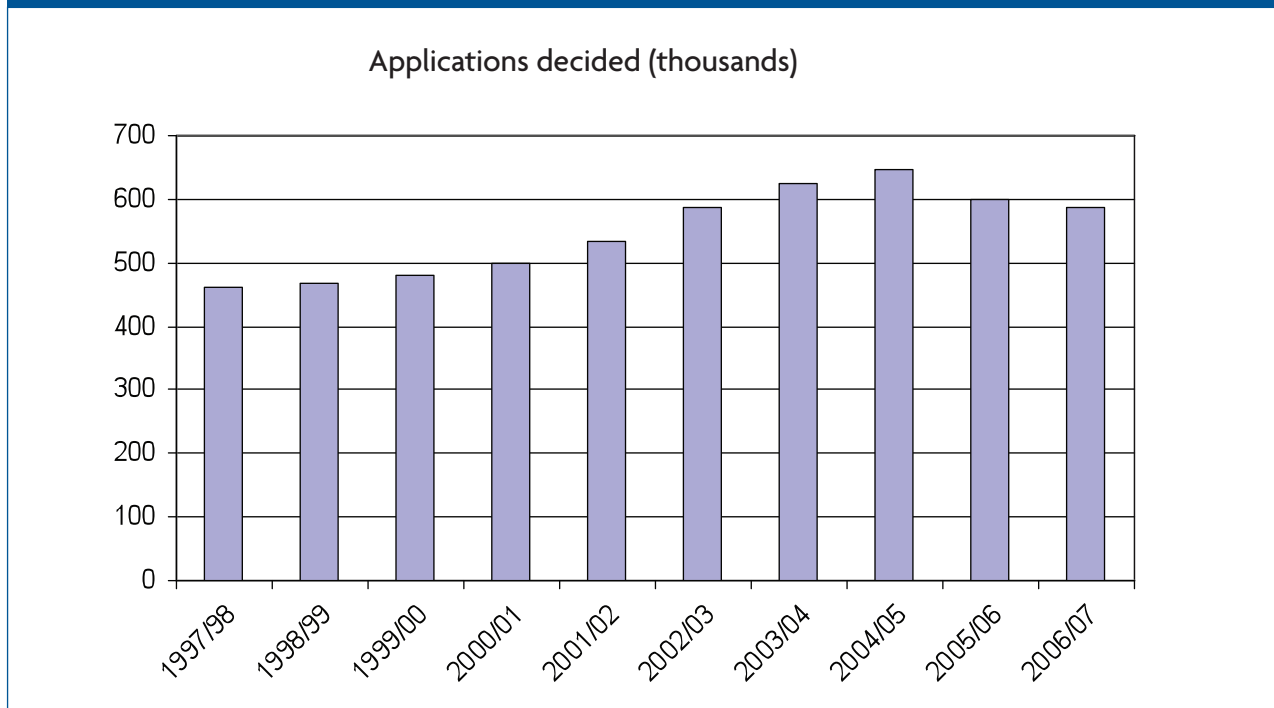
The remainder of this document looks at each of these main themes in turn and seeks your views on potential solutions to the concerns and difficulties that have been identified. In many cases, there may be examples of good practice already existing which, if adopted more widely, would significantly address these concerns. Where you provide examples of existing good practice, it would be useful if you could also let us know how long these measures have been in place, and how any difficulties were overcome to ensure successful implementation.

Proportionality: Matching resources/skills to planning application demand

What is the nature of types of applications dealt with, and what demands do they impose on planning authorities?

Demands on the planning application process have been increasing (Figure 2). Between 1997/98 and 2004/05 the number of applications decided each year rose from 462,000 to 645,000, although they have since fallen back to 587,000 in 2006/07¹⁴. A large proportion of this increase (89%) can be attributed to a more than doubling in the number of applications for householder developments over this time period.

Figure 2: Total numbers of decisions on planning applications per year in England



Applications are broadly categorised as follows:

Major

- **For dwellings**, a major development is one where the number of dwellings to be constructed is 10 or more, or where the site area is 0.5 hectares or more.
- **For all other uses**, a major development is one where the floorspace to be built is 1,000 square metres or more, or where the site area is 1 hectare or more.

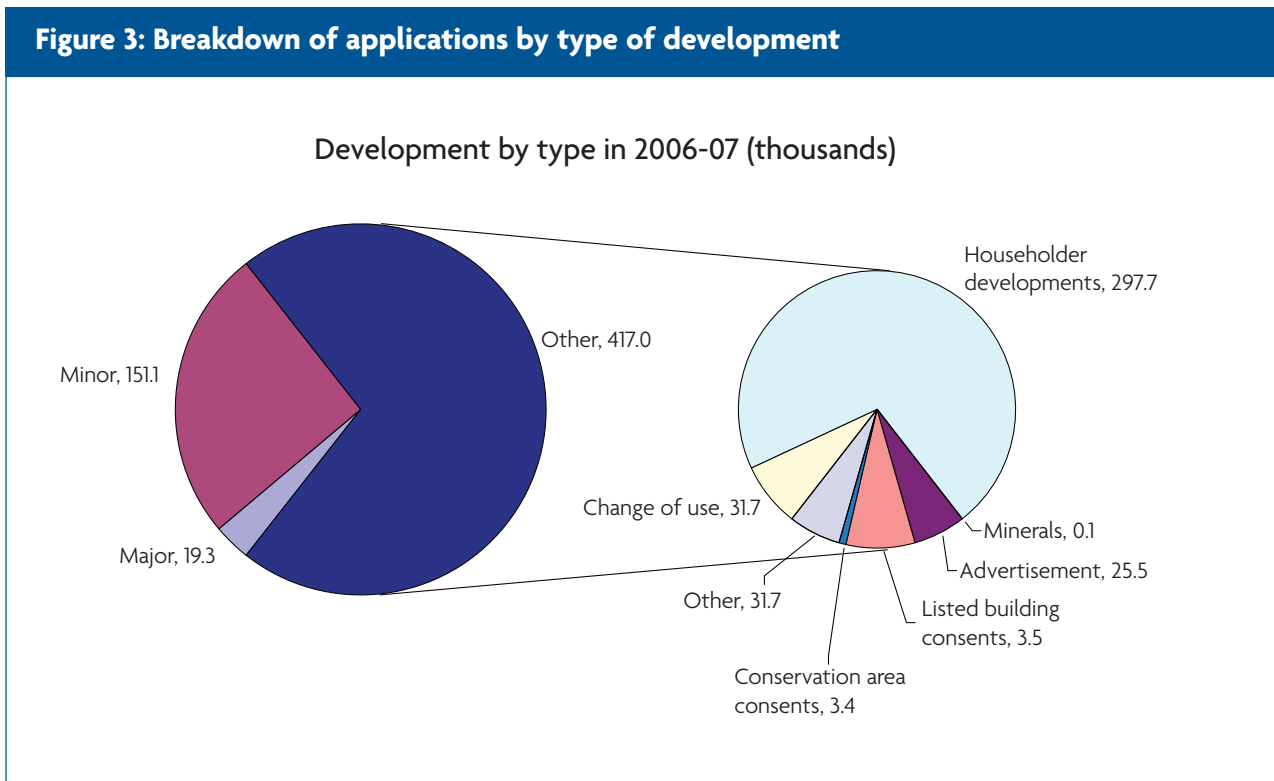
Minor development is development which is smaller than major development (see above) but is not change of use or householder development.

¹⁴ CLG (2007a) *Development Control Statistic, England 2006/07*. Department for Communities and Local Government, London.

Other development includes change of use and householder developments, as well as other smaller scale developments such as those relating to advertisements, conservation area and listed building consents, and applications for certificates of lawful development.

National statistics show that the bulk of applications in the system are applications for householder developments (in the “other” category) – see Figure 3 below. They account for approximately half of the total (50.7%) and concern minor alterations to householders’ properties, including pruning or felling trees and hedgerows, erecting fences, walls or gates, installing satellite dishes, and minor extensions which fall outside permitted development. On average, only about 3% of applications concern major developments, and about half of these relate to housing development.

Figure 3: Breakdown of applications by type of development



Figures 4 and 5 illustrate how this national picture can vary in specific local planning authorities. It is clear from this snapshot that the bulk of the work (in number terms) is not demanding in a ‘technical planning’ sense. However we know that, from a local authority member perspective, many of these very small developments are the ones that can generate local concerns among their constituents. So, although technically undemanding from a planning perspective, they may demand high levels of community engagement, dispute resolution and softer, people skills.

Figure 4: One month's applications at a metropolitan/urban authority

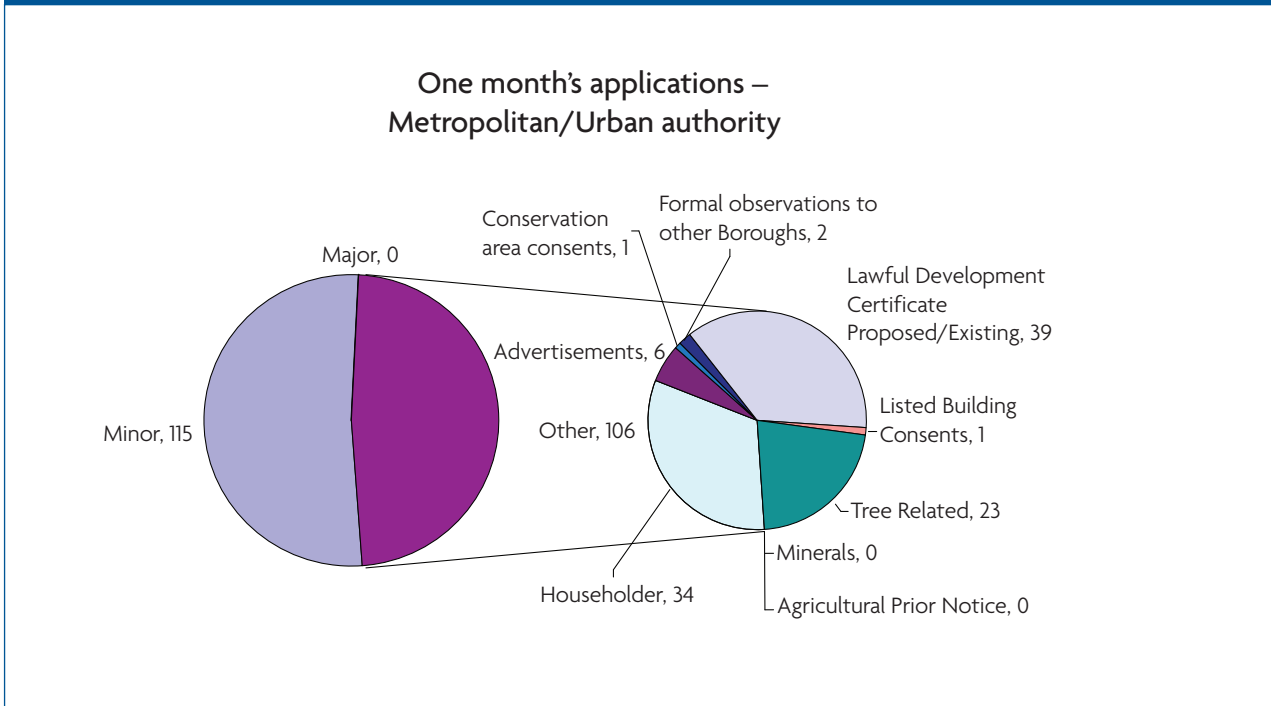
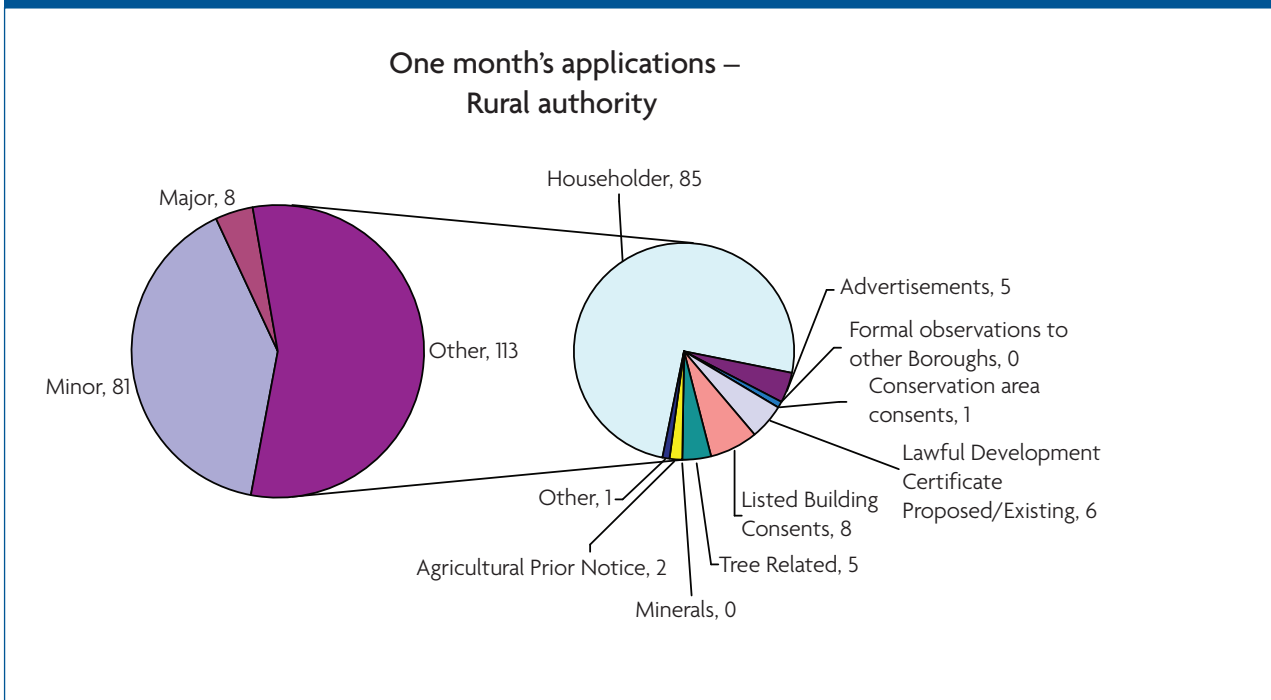


Figure 5: One month's applications at a rural authority



As can be seen, as well as householder applications, local planning authorities receive relatively large numbers of applications relating to trees and to listed buildings, and applications for certificates of lawful development. These are often used to provide confirmation that a development is permitted development.

The importance of householder developments can also be seen in the Appeals system, where major and minor developments are comparatively over-represented at 10% and 57% respectively, but where 32% of appeals received are householder cases¹⁵.

Does the nature of the demand have implications for the way applications are processed?

The ways in which the range of types of development are dealt with within the current system and the impact of currently proposed reforms are illustrated in Figure 6. The reforms set out in the Planning Bill will establish a separate system for determining the approximately 45 per year of nationally significant infrastructure projects¹⁶. In addition, there are proposals to extend permitted development rights for:

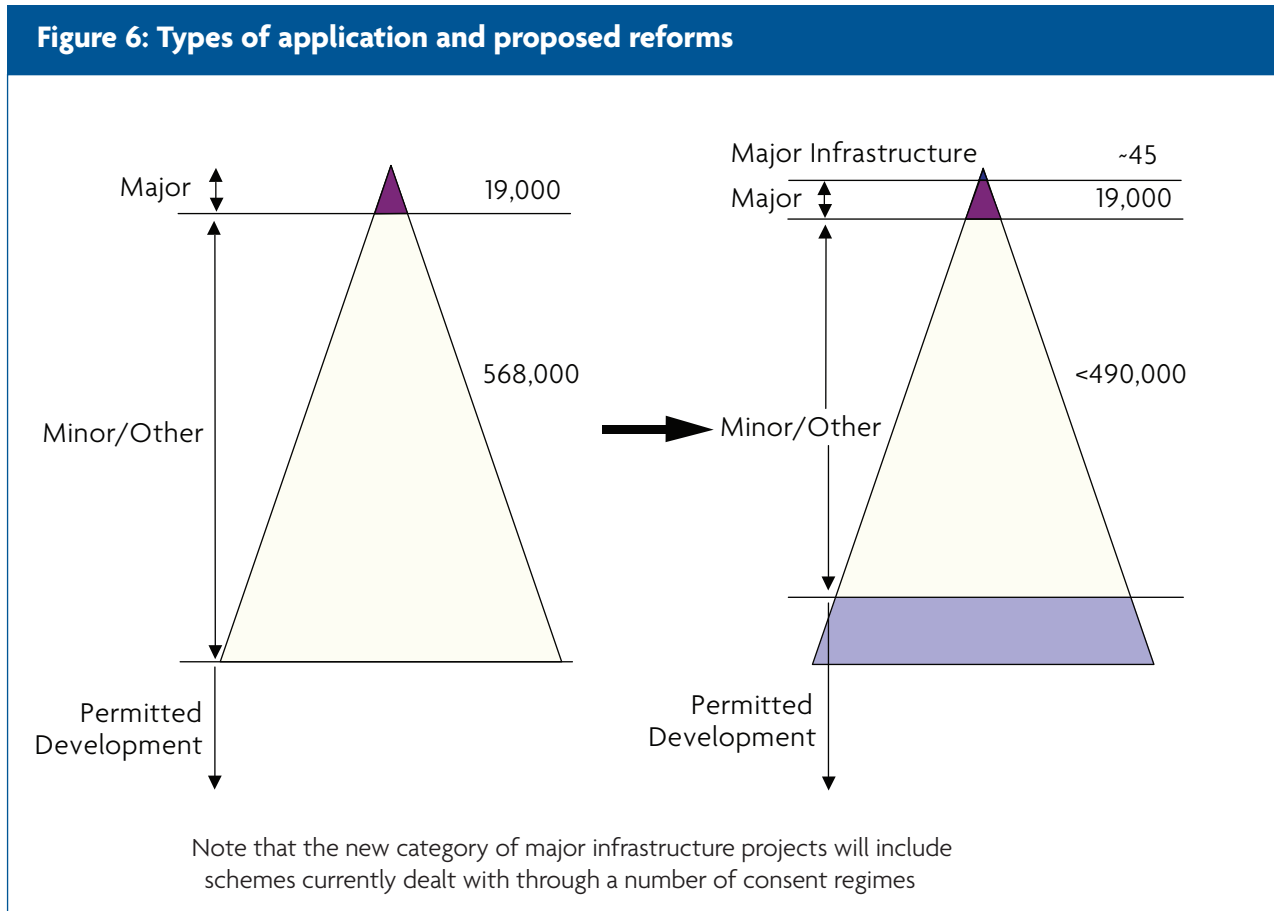
- householder development;
- small scale non-householder development; and
- small scale renewables.

These reforms would make very little difference to the number of major developments, but could reduce the number of minor and other developments – it is estimated that the proposals for extending permitted development for householder developments alone could remove up to 80,000 applications from the need to apply for planning permission¹⁷. This could ease the demands on the system, although we recognise that it would also reduce the fee income of local planning authorities (by around £12 million per year in total).

¹⁵ PINS (2008a) *Planning Appeals Received by Development Type 2004/2005 - 2007/2008*. Unpublished data, supplied by the Planning Inspectorate (Bristol) to the Review.

¹⁶ CLG (2007b) *Planning Bill – Impact Assessment*. Department for Communities and Local Government, London.

¹⁷ CLG (2007c) *Householder Development Consents Review – Implementation of Recommendations*. Department for Communities and Local Government, London.



For the majority of applications in the major, minor and other categories, the basic process used to determine the application is broadly the same, from small scale residential or commercial development, such as a shop front, to a distribution park and major residential development. This will remain the case, even after the above reforms.

The only subdivisions of this broad range of types of development relate to the target timescales in which applications should be determined (major and minor/other), and the timescales after which an appeal can be made against non-determination (development proposals requiring Environmental Impact Assessment and those that do not).

These are very broad categories to encompass such a wide range of developments. The minor and other category ranges from the installation of a satellite dish up to the construction of up to nine houses, and from a change to shop signage up to a new retail or commercial development of up to 1,000 square metres. The major category includes developments of ten houses up to those of 3,000 or more, and retail developments of 1,000 square metres up to those of 50,000 square metres or more. Most stakeholders would agree that eight weeks is likely to be realistic, if not generous, for an application for small scale development, but that 16 weeks can be quite unrealistic for some larger major developments.

We think there is merit in exploring whether a more tailored and proportionate approach to the way these types of development proposals are considered in the planning process could yield benefits for all users of the system. However, it could also be argued that it could introduce more complexity into the process.

Of course, many local planning authorities already deal with planning applications of different scale and potential controversy in a tailored way. The box below describes an approach used by one planning authority, in which account is taken not only of the broad size of the development but also of the likelihood that the application will generate complaints.

A large urban authority uses a system of “triage” to define which types of application will be dealt with by different teams. All applications are validated by administrators, and a skilled senior planner examines all applications at a daily meeting. The planner uses his/her skill and judgement to group the applications into those not likely to generate complaints, applications that are householder or minor that are likely to generate complaints, and major applications. Different teams, staffed to take account of the complexity and nature of the applications, then process the applications.

Local planning authorities also already have the power to extend permitted development rights on a local basis through the use of Local Development Orders, introduced in the Planning and Compulsory Purchase Act 2004. They could make use of this provision to remove more types of development, in addition to those prescribed nationally in the General Permitted Development Order (GPDO), from the need to obtain planning permission, and thus free up resources. However, it appears that this opportunity has not been used¹⁸. On the contrary, anecdotal evidence from stakeholders suggests that local planning authorities are more likely to be using directions under Article 4 of the GPDO to remove permitted development Rights. In addition, there is evidence that some local planning authorities encourage those proposing to carry out developments which may be within the scope of permitted development to apply either for planning permission or for a certificate of lawful development, if they want to check if planning permission is required.

While local planning authorities therefore already have some flexibility to adopt an effective and proportionate approach, it has been suggested by some stakeholders that introducing an intermediate category between permitted development and full planning permission would also have merit.

¹⁸ CLG (2007b) *Planning Bill – Impact Assessment*. Department for Communities and Local Government, London.

Town and Country Planning Association:

The TCPA called for and welcomed freeing up of permitted development rights... however...the TCPA would advocate exploration of further categories of minor development (extensions to dwelling houses and extensions to office/industrial buildings up to a specified size for example) for which an intermediate route to planning permission might be considered which does not require each application to be considered in detail by highly qualified planners and/or by the Planning Committee. (It is well known that many of the lengthiest Planning Committee deliberations are on the most minor applications.)

Indeed, there is already provision in the Town and Country Planning Act 1990 (Sections 59 & 60) for permission to be granted by Development Order, which might provide the legislative framework for an intermediate approach. This provision is already used for a prior approval process for various types of development, including agricultural and forestry buildings. Key features of the prior approval process are that the local planning authority may not consider the principle of development, only issues such as siting, design and appearance, and that, if the local planning authority fails to determine the application within the stipulated timescale, then consent is deemed to be granted.

A potential concern of a more graduated approach to the treatment of different scales and types of development is that it could introduce more complexity into the process.

Q1 How much scope is there for introducing a more proportionate and tiered way of dealing with development proposals of different scale and complexity?

In particular, what are the merits of developing an intermediate level of approach, between permitted development and full planning permission?

What are the main barriers to the introduction of such an approach, and how could they be overcome? How could increased complexity be avoided?

Q2 How can local planning authorities be encouraged to take up the opportunities offered by local development orders to free up development from the need to obtain planning permission in local areas?

A shortage of resources and skills is a commonly cited problem in the system, but what do stakeholders mean when they complain of lack of resources?

On the face of it, the statistical analysis in Appendix 2 shows that local planning authorities are coping increasingly well with the demands on the system, with considerable improvements in the speed of decision making. For example, in 2002, only 25% of local planning authorities met the Government's targets for dealing with 60% of major applications within 13 weeks and 65% of minor and 80% of other applications within eight weeks. By 2007, 75% of local planning authorities were meeting these targets.

From the point of view of applicants and developers however, these statistics are not borne out by their experience. The applicant's perception is too often that they do not receive the quality of service from the planning authority that they expect – they have difficulty speaking to planners by phone or arranging meetings, they do not receive replies to email queries, and they see different planning officers dealing with their application (see the example in the box below).

Case Study

This applicant found that, throughout the planning process, there were a number of changes in the assigned case officer, each with a different interpretation of the Council's Design Code. This resulted in refusal based on "non code compliancy", as the applicant found it impossible to foresee the expectations of new case officers.

We discuss the issue of a shortage of suitably skilled staff below, but the statistical analysis in Appendix 2* indicates that the issue is more complex than simply a shortage of staff or funding. Indeed, it shows no significant link between speed of decision making and the resources available to deal with planning applications (measured either in terms of expenditure per head of population or in terms of the case load per member of staff). This is again consistent with the results of previous studies.^{19, 20}

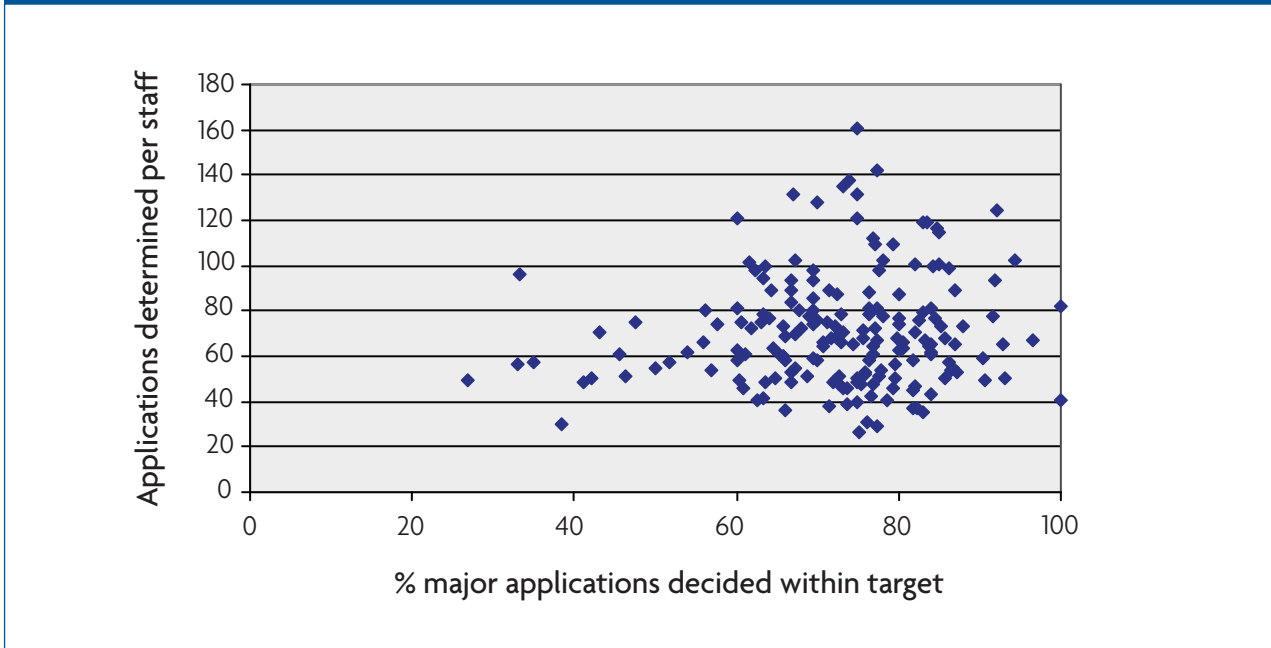
For example, Figure 7 shows the relationship between the number of decisions made per member of development control staff and the percentage of decisions on major developments made within the target timescale of 13 weeks (where each point on the graph represents one local planning authority). It generally demonstrates a clustering of local planning authorities who achieve between 60 and 100% of major decisions within 13 weeks, but a very wide range (generally between about 30 and about 130) in the number of decisions made per member of staff. It shows, for example, that there are two local planning authorities who can achieve more than 70% of major decisions within the target timescale using one member of staff for every 140-160 applications determined per year; and that there are others who achieve comparable speed using one member of staff for every 30 applications determined per year. Some of these wide variations will be due to differences in the nature of the major applications being handled in the two cases – the category of major developments spans a very wide range. However, the data provide no evidence that more resources will necessarily deliver greater speed of decision making.

* Available online at: www.planningportal.gov.uk/killian_pretty_review

¹⁹ CLG (2006b) *Evaluation of Planning Delivery Grant 2005/06*. Department for Communities and Local Government, London.

²⁰ DTLR (2002) *Resourcing of Local Planning Authorities*. Department of Transport, Local Government and the Regions, London.

Figure 7: Relationship between resources and speed of decision making



Many local planning authorities are faced with the problem that, while on the one hand, the relatively small number of major applications they may receive during the course of the year require high levels of skills and expertise, on the other hand, most applications received do not require such high levels of skills and expertise and provide relatively little in the way of challenge. The key question they face is how best to deploy the resources/skills they have available, or could buy in or draw from elsewhere, to deal with the wide range of different types of planning application, and the different types of inherent issue they pose.

What is the capacity within local authorities to deal with demand: Are there implications for the skill levels available in planning authorities?

For local authorities, the main resources gap is a lack of appropriately skilled planners to fill vacancies. For some time there have been concerns about a recruitment and retention ‘crisis’ within the planning profession. A 2004 study by the Local Government Association²¹ reported that 87% of authorities reported recruitment and retention problems which they felt were affecting their ability to deliver an effective planning service, and the Audit Commission reported that planners were the second most difficult profession for local authorities to recruit²². The Communities and Local Government bursary scheme for planning masters degrees has increased the number of entrants to the profession, but does not tackle the recruitment problems for more experienced planners.

²¹ Edmundson, Tim (2004a) *Recruitment and Retention of Planners: Towards Addressing the Need for Planners in London*. Association of London Government, London.

²² Audit Commission (2006a) *Planning Services and the Private Sector: Myths Explored*. Audit Commission, London.

In addition to the recruitment and retention problem, a 'skills gap' in the planning profession has been identified by the Egan Review²³, and also by the Academy for Sustainable Communities²⁴, and more recently by the Planning Inspectorate, in their evidence to a House of Commons committee inquiry into planning skills²⁵. There is concern about generic skills across all built environment professions, but for planners in particular there are concerns about the skills base necessary for dealing with more complex applications.

The Select Committee will look at a range of important issues, including:

- recent changes to the range and detail of knowledge and skills needed by staff within planning departments;
- the main areas where a lack of skills is most pronounced; and
- the skills needed by, and level of training provided to, councillors who make planning decisions.

The Select Committee are due to report later this year.

We propose to complement this work by looking at one particular issue, namely, how we can make most effective use of the skills and resources that are available. For example, the Audit Commission's 2006 study²⁶ recommended that councils should consider:

- solutions available through the private sector, given the current shortage of planners and skills; and/or
- sharing planning resources with other councils.

It is not clear how widespread the adoption of these recommendations has been, but there are specific examples (see box below).

Salford City Council has dealt with these issues by the establishment of 'Urban Vision', which enables planning skills to be shared and pooled. Urban Vision's Planning and Building Control comprises primarily development control, including planning policy advice and support, building control services, and a specialist mineral and waste planning service. In addition to their one main client, Salford, Urban Vision now also offer planning and building control services to local authorities on a national scale.

At the other end of the scale, there is increasing use of planning technicians for dealing with more minor (particularly householder) applications, and the Royal Town Planning Institute (RTPI) now has a 'technical membership' category. There is, however, evidence that the ratio of fully chartered planners to planning technicians is still quite high, i.e. most local planning authorities employ a large number of chartered planners compared to quite a low number of planning technicians. RTPI

²³ Egan, Sir John (2004) *The Egan Review – Skills for Sustainable Communities*. RIBA, London.

²⁴ ASC (2007) *Mind the Skills Gap*. Academy for Sustainable Communities, Leeds.

²⁵ PINS (2008b) *Evidence to the Commons Select Committee Inquiry into Planning Skills*. Planning Inspectorate, Bristol.

²⁶ Audit Commission (2006a) *Planning Services and the Private Sector: Myths Explored*. Audit Commission, London.

membership figures for 2008 show just 141 technical members as opposed to 15,244 fully qualified members. While the technical membership category is a new one and many planning technicians will not have joined the RTPI at all, this would suggest that the number of qualified planners exceeds the number of planning technicians by some very large margin.

A 2004 report by Tim Edmundson for the Office of the Deputy Prime Minister (ODPM)²⁷ found evidence that many authorities were not fully utilising the potential of their support staff. Edmundson argued that the roles of support staff in planning authorities should be enhanced to help address recruitment problems for qualified planners, to free up qualified planners to work on the more complex tasks for which they are qualified, and to make use of underutilised skills and abilities in the planning workforce. He felt that, despite generally supportive attitudes towards enhanced roles for support staff, there was little evidence of this happening to any great extent in practice.

Q3 Different types of planning application require different skills. How can local planning authorities respond to these skills and resources challenges efficiently? What scope is there for solutions such as sharing of resources/ skills between local planning authorities?

²⁷ Edmundson, Tim (2004b) *The Potential Role of Planning Technicians and Planning Support Staff in Enhancing Service Delivery in a Reformed Statutory Planning System* – A Report for the Office of the Deputy prime Minister. Tim Edmundson, London.

Unnecessary complexity in the policy and planning application system

Can the system be made simpler and more user-friendly for all?

In common with the earlier work by Kate Barker^{28,29}, a key point of concern emerging from our initial work is the adverse impact that the complexity of the planning application system has on all parties who are involved, including applicants, local planning authorities and communities.

This complexity means that:

- many parties simply do not understand how to engage with the system;
- the cost of making and processing an application is high – with increased need for specialists, experts and agents;
- there is too much focus on process, rather than outcome;
- decisions are often unnecessarily delayed, and in some cases the reasoning behind the decision is not understood.

There can be no doubt that some development proposals do raise complex issues, which need detailed assessment and specialist input, and it is right that the planning application system can deal appropriately with such proposals. But for the majority of cases, the issues raised are far less complicated, yet the burdens placed on those preparing or considering those proposals often do not appear proportionally smaller.

The problem was put well in a White Paper published by the Scottish Executive on proposals for reform of the similar planning system in Scotland:

“Founded on simple principles, the planning system has nevertheless become complex and poorly focused. A wide variety of demands are currently placed on the system, from delivering essential infrastructure and promoting investment, to allowing householder improvements. In addition, it has become a mechanism for solving local disputes which should not have a place in the planning system. The system has not evolved to respond in a proportionate way to these different demands. The overall purpose of planning has been obscured, and a sense of priorities has been lost.”³⁰

In order to tackle the issue of unnecessary complexity, our initial work has identified a number of key factors which contribute to this problem.

An ever widening policy delivery role

Many stakeholders have suggested (see Appendix 1)* that the planning system is being overburdened with (sometimes contradictory) policy objectives, some of which it is not well designed to deliver. From helping tackle obesity, meeting climate change objectives, protecting the

* Available online at: www.planningportal.gov.uk/killian_pretty_review

²⁸ Barker, Kate (2006a) *Barker Review of Land Use Planning: Interim Report – Analysis*. HM Treasury, London

²⁹ Barker, Kate (2006b) *Barker Review of Land Use Planning: Final Report – Recommendations*. HM Treasury, London.

³⁰ Scottish Executive (2005a) *Modernising the Planning System*. Scottish Executive, Edinburgh: 17

environment, increasing housing supply to reducing the risk of crime or terrorism, the planning system is seen as a useful tool to help deliver change. While, in themselves, each of these (and indeed many others) are worthy and important objectives, they make the planning application system more complex and can lead to potentially confusing duplication with other regulatory regimes, for example, building control and premises licensing regulations

In the Planning White Paper in May 2007³¹, the Government signalled its intention to produce a clearer and more focused national policy framework to provide the context for plan-making and decision taking.

We do not propose to duplicate this work, which would not, in any event, be within the scope of this review. However, there are a number of points which have emerged from our initial work about the impact of the current policy framework on the speed and efficiency of the planning application process, which are of critical importance when the Communities and Local Government national policy review is undertaken.

In particular, in terms of impact on the planning application process, the following issues have been highlighted:

- national policy is not sufficiently clear and concise;
- new policy can interact unhelpfully with existing policy requirements, leading to policy conflicts;
- the distinction between national policy and guidance is not sufficiently clear;
- where national policy sets out national development control policies –
 - the scope for any regional or local flexibility is not sufficiently clearly defined;
 - the control may overlap other regulatory regimes;
 - the regulatory impact of any additional control is sometimes assessed on a piecemeal basis;
- when national policy requires the submission of evidence or specific assessment to accompany a planning application, that:
 - the additional information can be disproportionate to the scale of development proposed;
 - overlaps with information requirements for other regulatory regimes can result;
 - the regulatory impact of any additional information requirement is not always sufficiently carefully assessed and justified.

³¹ CLG (2007d) *Planning for a Sustainable Future: White Paper*. Cm7120; The Stationary office, London.

A complex statutory framework

The planning legislation which sets out how the planning application process should work is also extremely complex and difficult to assimilate and understand, even for those working regularly in the system. In particular, the Town and Country Planning (General Development Procedure) Order 1995 (GDPO), which is the main legislation setting out the process for submitting and considering applications, and the Town and Country Planning (General Permitted Development) Order 1995 (GPDO), which contains provisions in relation to permitted development rights, have been subject to a series of amendments since they were issued.

The Planning White Paper proposed that there would be a review of the GDPO, including consideration of the types of planning application with which statutory consultees should become involved.

Lack of up to date development plans

The development plan is the starting point for the consideration of a planning application. Both the Regional Spatial Strategy (RSS) and Local Development Framework (LDF) are therefore critically important in providing a clear and consistent framework for decisions which can benefit all users of the application process. The slow progress in the delivery of Local Development Frameworks (with only 22 out of 367 Core Strategies agreed to date) is of serious concern to a wide range of stakeholders.

The Government has already proposed and taken forward a number of measures, both in the Planning Bill, and through revisions to secondary legislation and policy, to streamline the LDF process and introduce more flexibility about the number and type of plans³².

Customer experiences of the application process

The first question a person needs to address when considering a development is whether planning permission is needed at all. In theory, this should be an easy question to answer, but, in practice, it can prove more difficult. As noted in the Householder Development Consents Review, the description of what constitutes permitted development “is not easily understood by non-professionals”.

A very substantial proportion (50.7%) of planning decisions relate to householder development. Inevitably then, most local planning authorities have to field many queries from householders about whether their proposals require planning permission. The “interactive house guide” on the Planning Portal is a useful tool, but it can only set out national requirements. An example of the advice provided for changes to windows and doors is given in the box below. A number of local planning authorities have interactive systems which allow users to be site specific in their enquiries, but these systems do not appear widely used. Given that the scale of permitted development is set to increase, the need for an effective mechanism for dealing with queries is likely to be of increasing importance.

³² Communities and Local Government (2008a) *Planning Policy Statement 12: Creating Strong, Safe and Prosperous Communities through Local Spatial Planning*. Communities and Local Government, London.

You do not usually need to apply for planning permission for:

- repairs, maintenance or minor improvements, such as painting frames or replacing windows;
- the insertion of windows, skylights or roof lights (though a new bay window will be treated as an extension).

Occasionally, you may need to apply for planning permission for some of these works because your council has made an Article 4 Direction withdrawing permitted development rights. If you live in a listed building, you will need listed building consent for any significant works – internal or external.

Those proposing non-householder developments face similar difficulties, and there is work underway to change and extend the scale of permitted development for non-householder development, further strengthening the need for clear advice.

Onerous and disproportionate validation and information requirements

Once it has been clarified that planning permission is needed, the next difficulty is in finding out what it is the applicant needs to do to obtain it. This includes what information and assessments are needed to support the application.

New Government guidance on validation was published in December 2007, and the use of the single application form (“1 App”) was made mandatory from 1 April 2008.

These new arrangements are designed to provide a number of benefits over the earlier arrangements for validation and consideration of applications including:

- providing applicants with certainty about the information required to support an application at the start of the process; and
- enabling the local planning authority to have the information needed to determine the application.

It is very early to judge the true impact of these changes, but initial reactions are mixed. Larger developers and more frequent users of the planning system have tended to welcome the introduction of 1 App because it brings national consistency.

There has been a long-standing problem over the high proportion of applications submitted which are rejected as being invalid. A 2002 study for the Department for Transport, Local Government and the Regions³³ found that up to 25% were invalid when submitted. More recent information we have received indicates that the level of first time rejection rates continues to be high, with levels of 50-

³³ DTLR (2002) *Resourcing of Local Planning Authorities*. Department for Transport, Local Government and the Regions, London.

60% apparently commonplace, and in some cases higher. The introduction of 1 App coupled with electronic submission is intended to help address this problem, but local planning authorities report that there are some teething problems with 1 App; when overcome, the rejection rate may well reduce over time.

From our initial discussions, it appears there are a variety of possible reasons for high rejection rates:

- Some of those representing applicants argue that the approach taken to validation is too rigid, overly complicated and over engineered and that there is a wide variation in the amount of information available to applicants on websites.
- Local planning authorities complain that many applications are of poor quality with important information missing. Where information is incomplete, some authorities automatically send the whole application back, while others seek to resolve matters through the submission of additional information. Some have a graded approach, for example, giving help to householders who submit applications directly, but not to agents who submit applications on behalf of others.

Some local planning authorities are taking proactive steps to improve the quality of applications; for example, a number of authorities have meetings and hold training sessions with key agents/developers, but, given the high levels of first time rejection rates, it appears that more needs to be done by both applicants and local planning authorities.

Q4 How can we ensure that all users of the system have access to the simple, customer-oriented information and guidance they need about how the process operates and what they need to do to put in an application that will satisfy the local authority?

Q5 What measures can be taken to improve the quality of applications made by developers, agents and applicants?

The most frequent concern about ensuring an application is valid, which has been identified by many of those representing applicants and a significant proportion of local planning authorities, relates to the range and quantity of information requested in support of the application.

Clearly the national guidance on the validation process is designed to set out a much clearer framework for the information requirements that are likely when an application is submitted. This requires local planning authorities to develop, consult and publish local validation lists alongside a core national list of information requirements.

However, initial feedback from stakeholders suggests that some local authorities are adopting the entire optional local list as well as the national list, thus increasing information requirements (contrary to its original objective).

There is a clear sense from many of those representing applicants that much of the material that they are being asked to provide for the smaller scale proposals, in particular, will contribute very little to the consideration of the planning application made by the local planning authority.

The Box sets out some examples of potentially disproportionate or unreasonable requirements identified by the CBI.

- One applicant wishing to develop within a car park was required to submit an ecology report because it was part of the local validation list;
- Another applicant was required to submit a design and access statement commenting on the economic and social impacts for constructing a porch; and
- A design and access statement was also required when an applicant wished to amend a planning consent to change the working hours of a site.

Communities and Local Government and the Review team have commissioned a review of information requirements for planning applications which will inform our work; however, we are also interested to obtain views more widely on how the validation process may be further improved.

Q6 How can the information required to support planning applications be made more proportionate, while at the same time maintaining a necessary degree of flexibility to accommodate specific circumstances? What are the key areas where changes to the scale and nature of information requirements need to be made, and how might those changes be delivered?

The drivers/shapers of culture within local planning authorities

The reforms introduced in the Planning and Compulsory Purchase Act 2004, together with *Planning Policy Statement 1: Delivering Sustainable Development*³⁴ have put sustainable development at the heart of the planning system and introduced a spatial planning approach to deliver social, economic and environmental outcomes, with a much stronger emphasis on positive and proactive management of development (as opposed to the previous - more negative - control of development). *Planning Policy Statement 12: Creating Strong Safe and Prosperous Communities through Local Spatial Planning*, explains the concept of spatial planning process in the following way:

“Spatial planning is a process of place shaping and delivery. It aims to:

- produce a vision for the future of places that responds to the local challenges and opportunities, and is based on evidence, a sense of local distinctiveness and community derived objectives, within the overall framework of national policy and regional strategies;
- translate this vision into a set of priorities, programmes, policies, and land allocations together with the public sector resources to deliver them; create a framework for private investment and regeneration that promotes economic, environmental and social well being for the area;
- coordinate and deliver the public sector components of this vision with other agencies and processes [e.g. LAAs];
- create a positive framework for action on climate change; and
- contribute to the achievement of Sustainable Development.”³⁵

Key to a spatial planning approach is an idea of focusing on the outcomes sought for the community and ensuring more effective cross-working with a variety of stakeholders and agencies that help to shape local areas and local services. Development Management is a key tool to deliver this new spatial planning approach, and this means changes are likely to be needed to the planning application process, both in how the process is perceived and approached. Development Plan Documents are expected to avoid the detail which typified many Local Plans and Unitary Development Plans and provide a more limited range of generic policies. In some cases, familiar policies may be lost and more emphasis will be placed on the interpretation of policies. To date, this is not an issue that has been covered by Government guidance, although some work has been commissioned by Communities and Local Government from POS Enterprises.

Q7 What are the likely implications for the processing of applications of all sizes, from householder changes to proposals of strategic importance, of moving from a development control to a development management approach and how might they best be addressed?

In practice, the planning application process will continue to be subject to forces which can tend to make it focus more on process than on quality of service. In the remainder of this section we look

³⁴ ODPM (2005) *Planning Policy Statement 1: Delivering Sustainable Development*. Office of the Deputy Prime Minister, London.

³⁵ Communities and Local Government (2008a) *Planning Policy Statement 12: Creating Strong, Safe and Prosperous Communities through Local Spatial Planning*. Department for Communities and Local Government, London: 4.

at the impact of two key drivers of local planning authority behaviour in the processing of applications: performance targets and the threat of legal challenge.

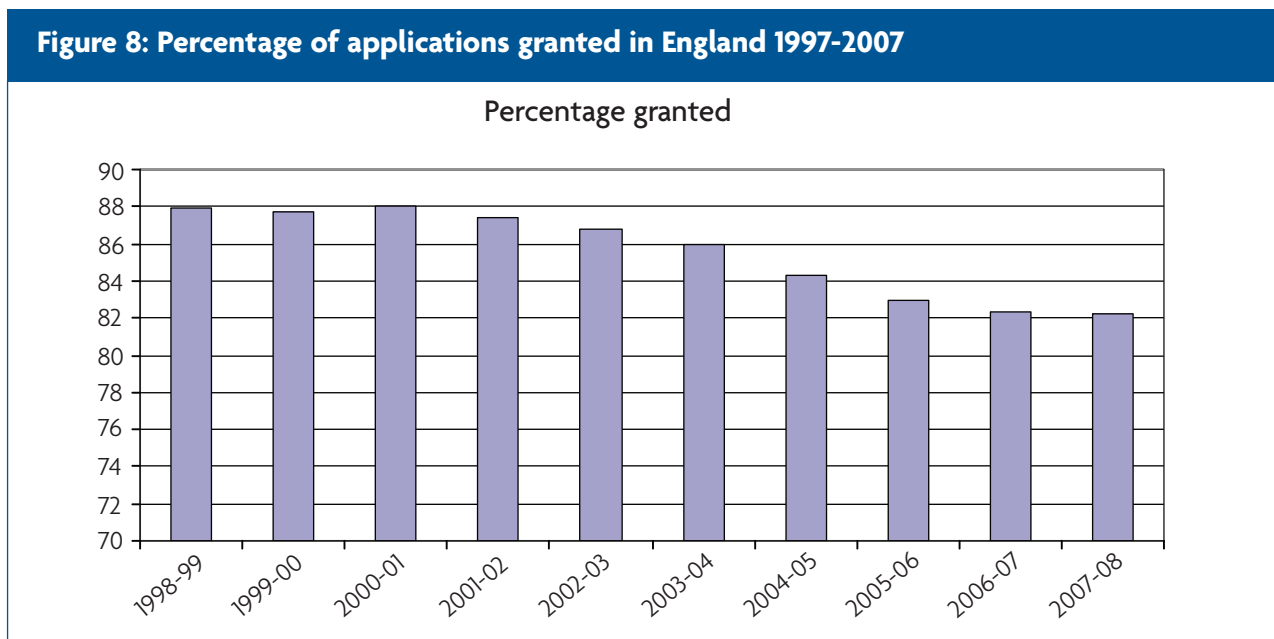
The impact of targets: positive incentives for changing behaviour but potential perverse consequences?

The rapid increase in the numbers of planning applications, and the detrimental effect it was having on the ways in which they were being dealt with, led the Government to introduce targets for the time taken to decide applications, and the Planning Delivery Grant to provide an incentive to local planning authorities to speed up their decision making. As has been noted, as a result, most applicants are receiving decisions more quickly than before the introduction of the targets.

However, many applicants claim that the targets have led to some perverse behaviour to boost performance figures, such as:

- delays in registering applications;
- LPAs advising applicants to withdraw applications or face refusal in order to decide the application within target; and
- a focus on speed and not on the quality of the outcome.

The statistical analysis in Appendix 2* does provide some support for this, by showing an increase in the rate of withdrawals and a reduction in the rate of approvals since the introduction of the targets. For example, Figure 8 indicates that the improvements in the speed of decision making have coincided with a reduction in the rate of approvals of applications from around 86-88% before 2002-03 to around 82-84% since then.



* Available online at: www.planningportal.gov.uk/killian_pretty_review

This is confirmed by other evidence. As the extract provided in the box below – taken from a letter from a local planning authority and provided to this review – shows, some local planning authorities have introduced a policy of asking applicants to withdraw their applications or refusing them in order to meet the target timescale.

To maintain and further improve our performance against the Government's targets we have introduced the following measures, which only apply to those applications which require information and/or amendment before they can be determined:

- We will only negotiate on those applications where we consider that a satisfactory outcome can be achieved within the required timeframe;
- We will commence negotiations where necessary as early as possible after the submission of the application. This will only apply to simple amendments/information requests;
- Applicants/Agents will be given a non-negotiable deadline by which to provide amended plans/further information;
- If it becomes clear you cannot meet the deadline we will invite you to withdraw the application. A further application can then be submitted (normally without the need for a further fee) once the outstanding issues have been resolved;
- If the deadline is not met and the application has not been withdrawn, it may be refused without further reference to yourself; and
- The reasons for refusal will be clearly set out on the decision notice.

Please note that any application assessed to be fundamentally in conflict with policy or where significant amendment would be required to make it acceptable, will be determined as submitted without any contact with yourself.

The impact of Communities and Local Government initiatives to improve the development control system, including the effect of Planning Delivery Grant and the targets on local planning authorities, is being investigated in a parallel study being carried out by the National Audit Office and we will be feeding the results of that study into our review.

It is also important to note that the Planning Delivery Grant is being replaced by the Housing and Planning Delivery Grant (HPDG). Consultation on the allocation mechanism was undertaken in October 2007³⁶. It is proposed that HPDG funding will focus on two areas: plan making and housing delivery. To ensure that there continues to be an incentive to deliver on targets for development control performance, the Government propose to include a mechanism to reduce HPDG where the performance of the development control service falls below any national planning standard.

³⁶ Communities and Local Government (2007e) *Housing & Planning Delivery Grant (HPDG): Consultation on Allocation Mechanism*. Department for Communities and Local Government, London.

In short, the incentives for improved performance are likely to alter, but targets to deliver decisions within a defined timescale will continue.

Another noted drawback of the current approach is that it does not measure local planning authorities' performance in managing pre-application discussions (the use of which is being actively promoted by Government policy) or the discharge of pre-start conditions. There are suggestions from stakeholders (see Appendix 1)* that, as a result, these elements of the process are accorded less priority and, when there is pressure on resources, it can be very difficult to engage effectively with the local planning authorities on pre-application discussions or to discharge conditions.

Many stakeholders also raise concerns about the impact of time constraints on the quality of the outcome. The concern is, in particular, that the focus on meeting deadlines substantially reduces the scope for negotiation which might overcome concerns and deliver better outcomes. The comments by RIBA below pick up this issue.

RIBA:

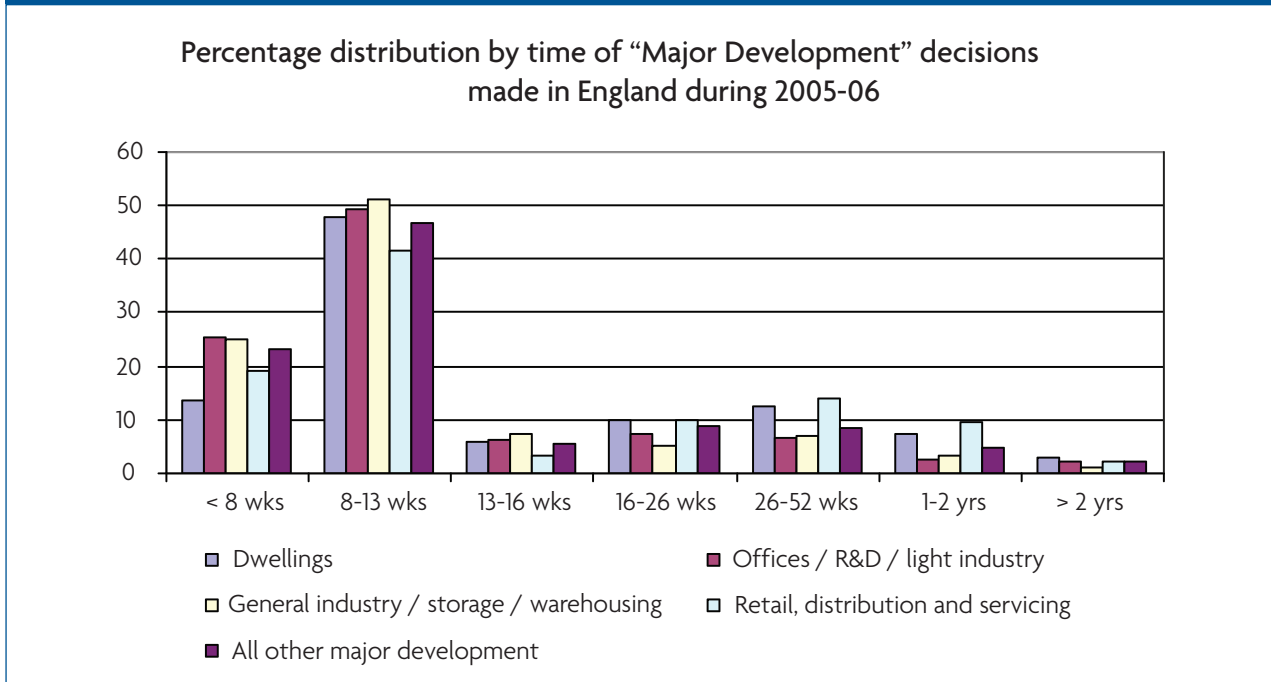
The key inefficiency is the lack of predictability in the system that would help an applicant and his/her agents to manage the project properly. It is much less common to have sensible pre-application discussion as used to be the case. This is partly because Local Authority Planning departments...have to meet strict targets that are focused around quantity and not quality. The increasing bureaucracy of the process is also seen as placing unnecessary burdens that do little to ensure quality.

A further consequence of the current target based approach is that, once the target deadline for a decision has passed, there is no longer any incentive to reach a quick decision, and the priority given to that application can drop substantially.

Where the target timescale has been missed, the time taken to decide on an application can then be considerable. This particularly affects major applications, where, on average nearly 30% of decisions take more than the target timescale (compared with 24% of minor and 12% of other developments). Figure 9 below shows the results of a one-off analysis of the tail of the distribution for major applications carried out by Communities and Local Government for the year 2005/06.

* Available online at: www.planningportal.gov.uk/killian_pretty_review

Figure 9: Time taken to process major applications



According to the analysis, 9% of major applications took more than a year to determine and 2.5% took more than two years. Major dwellings and major retail, distribution and servicing developments suffered the longest delays with 10% and 12% of decisions respectively taking more than one year, and 2.8% and 2.2% of decisions respectively taking more than two years. Based on these figures, of the 10,000 or so major housing development applications decided per year, 3,200 take longer than the target timescale, 1,000 take longer than a year, and 280 longer than two years. We intend to carry out some research to look in more detail at the nature of the major applications which take such extended timescales to determine, to better understand the underlying reasons.

One measure which is designed to improve performance on major or complex applications is a Planning Performance Agreement (PPA). This is a recent initiative introduced by the Government to help establish a more formal, project-based approach to handling large or complex applications. PPAs allow a longer, more realistic timescale to be agreed for the determination of these applications, but with formal project management to provide greater certainty that the agreed timescale would be adhered to. A key incentive for the local planning authority is that an application that is subject to a PPA is then not subject to the 13 week target. So far the use of PPAs seems very limited. There appears to be a degree of reluctance about using them on the part of both applicants and local planning authorities. Local planning authorities appear wary, because of concerns about not being able to keep their side of the agreement because they do not have sufficient control over the involvement of others, such as other departments in the authority and

statutory consultees. Some developers appear concerned that the process of negotiating a PPA may in itself lengthen the process. Further guidance has just been issued³⁷, but are there further steps that need to be taken?

Q8 How might the current approach to targets be improved to help deliver the right outcome [decision] most efficiently?

How might the use of Planning Performance Agreements be further encouraged?

Fear of legal challenge is a major driver of behaviour

Considerable concern surrounds the risk of legal challenge and Local Government Ombudsman action against planning authorities. These concerns may lead local authorities to adopt a risk-averse approach to the handling of planning applications.

A paper prepared for the Major Developers Group in 2008³⁸ suggests that concern exists that there is a low threshold for claimants to demonstrate that a case exists to progress to trial for planning judicial reviews. It also suggests that there is concern that a challenger may lie in wait to ambush permission at the very end of the process, that there is a delay in getting cases before the court, and that an imbalanced position exists on costs.

Nevertheless, figures published by the Ministry of Justice show that in 2006 there were just 234 applications received for judicial review by the High Court (Queens Bench Division – Administrative Court), of which one was withdrawn and 57 were determined by a judge. Of those, 12 were allowed and 45 were dismissed³⁹. Thus, there were just 12 successful challenges (about 5% of all those applied for) out of 587,400 planning decisions made in that same year, or 0.002%. The overall number of judicial reviews allowed against planning authorities is tiny compared to the number of applications submitted and handled each year.

Concern also exists about the risk of a Local Government Ombudsman finding against the local planning authority. In the 2006-07 year, 2,950 complaints were made to the Local Government Ombudsman about planning applications (corresponding to about 0.5% of all planning applications handled in the year). Obviously each one of these may entail some work for the local authority in providing evidence to the Ombudsman. Yet just 44 of these (or 1.5% of the complaints made) resulted in a finding of maladministration of some sort on the part of the local authority⁴⁰. This represents approximately just 0.008% of all applications handled over the same period.

³⁷ CLG/ATLAS (2008) *Guidance Note: Implementing Planning Performance Agreements*. ATLAS, London.

³⁸ Major Developers Group (2008) input to this review.

³⁹ Ministry of Justice (2007) *Judicial and Court Statistics 2006*. The Stationary Office, London.

⁴⁰ LGO (2007) *Delivering Public Value: Local Government Ombudsman Annual Review 2006/07*. Local Government Ombudsman, Coventry

In the period April 2007-April 2008, there were 20 Local Government Ombudsman reports about planning application matters published on the Ombudsman's website⁴¹. In these 20 cases, on two occasions the local authority were asked just to apologise, as opposed to 18 cases where they were asked to pay compensation of some kind. The average compensation payment was £1,023. Looking at the 20 cases, five were related to planning committees ignoring the advice of their own officers, five were related to relatively minor failures to keep records, four were related to the failure to follow Government guidance or local plan policies, four related to a failure to collect sufficient evidence, and three related to a failure to allow objectors a fair chance to comment. Most of these can be attributed to fairly minor administrative matters, and the overall number of complaints upheld is small.

The evidence therefore suggests that there may be more concern about the risk of judicial review or of an adverse finding from the Local Government Ombudsman than needs to be the case, given the very small number of findings compared to the number of applications handled by local planning authorities each year. This can lead to a more risk-averse approach to the processing of planning applications.

There is no easy answer to this issue. However, improvements to the clarity and proportionality of the process could be expected to reduce the prospect of challenges based on inadvertent mistakes arising because the system is so complex to follow.

⁴¹ LGO (2008) 'Planning and Building Control Report Summaries' at the website of the Local Government Ombudsman, <http://www.lgo.org.uk/planning.htm> [last accessed 04/06/08]

Ensuring effective and efficient engagement with all affected by and interested in the application

Who should be involved in the process and how?

In addition to those who propose development and the officers of the local planning authority who operate the planning application process, there are a range of other stakeholders whose involvement is critical to the effective operation of the planning application system as a whole. In this section we focus on three key groups: those bodies routinely consulted on planning applications; local councillors involved in the application process and, in so far as they are not covered by the first group, the wider community, including those directly affected by a development.

Involvement and role of the statutory and non-statutory consultees

A frequent claim by both developers and local planning authorities is that the involvement of statutory and non-statutory consultees can introduce excessive delays into the process. Local planning authorities report that their experience of statutory and non-statutory consultees can be highly variable and concur that they can be a cause of delay. The example given in the box below illustrates the problems that can arise.

Case Study

Despite having prepared a scoping document and engaging (or, in the case of the highways authority, unsuccessfully attempting to engage) with the local planning authority and relevant statutory and non-statutory consultees before preparing and submitting its application in September 2006, this company encountered difficulties. More than six months after the application was submitted, the highways authority responded to say that the correct information hadn't been provided. The company asked for a meeting to better understand what more information the highways authority needed. The highways authority was unable to fit in a meeting until June 2007, and, when the meeting did take place, it was attended only by a junior member of staff who could do no more than provide a list of information requirements.

Further correspondence suggested that the problem centred on the company's travel plan and that the highways authority needed more information on where employees were travelling from and their start and finish times. The company felt that it had provided this information. Eventually, around September 2007, having spent months trying to understand the highways authority's concerns, the company engaged a new traffic consultant, who suggested that the issue might centre on the impact of a small number of additional day-workers on a roundabout where the road from the company's facility meets the main road. It transpired that this was the correct surmise. Having identified that this was the issue, it was possible to work to resolve it, and in December 2007 (15 months after the application was submitted) the highways authority finally responded with no objections.

On the other hand, returns which the statutory consultees now need to make on their performance show that the major national bodies (for example the Environment Agency, Natural England, English Heritage, the Highways Agency) and many of the county council bodies achieve very good response times (around 90% of consultations responded to within the defined (21 or 28 day) or other agreed timescale). See Figures 10 and 11 below.

Figure 10: Responses of large national statutory consultees to consultation requests

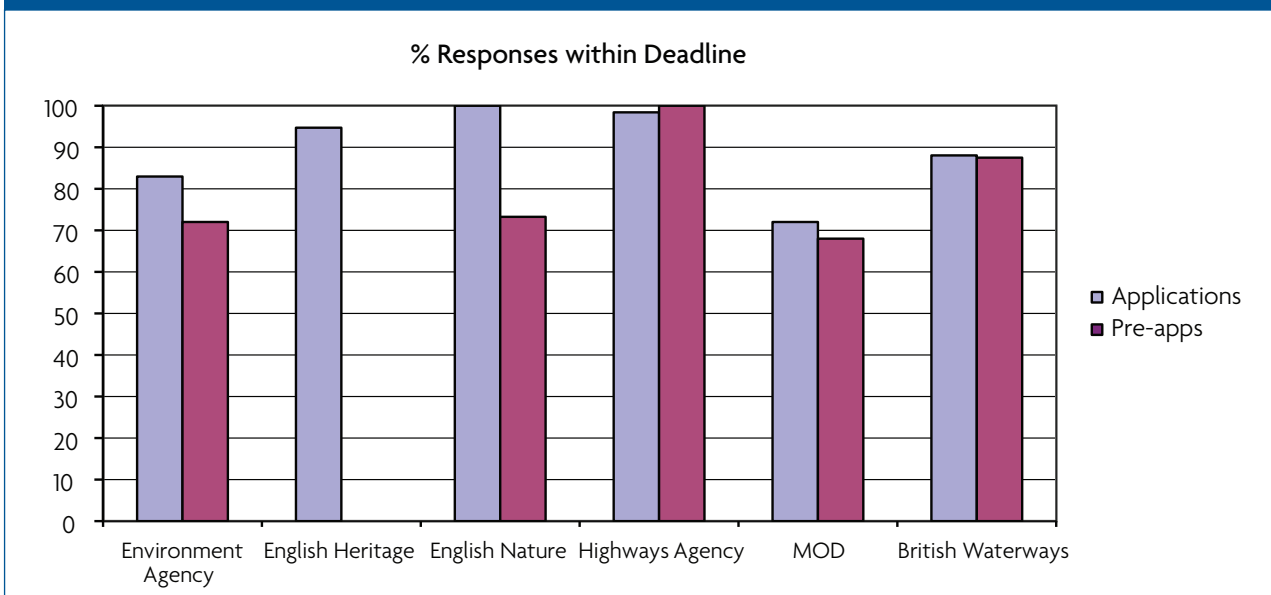
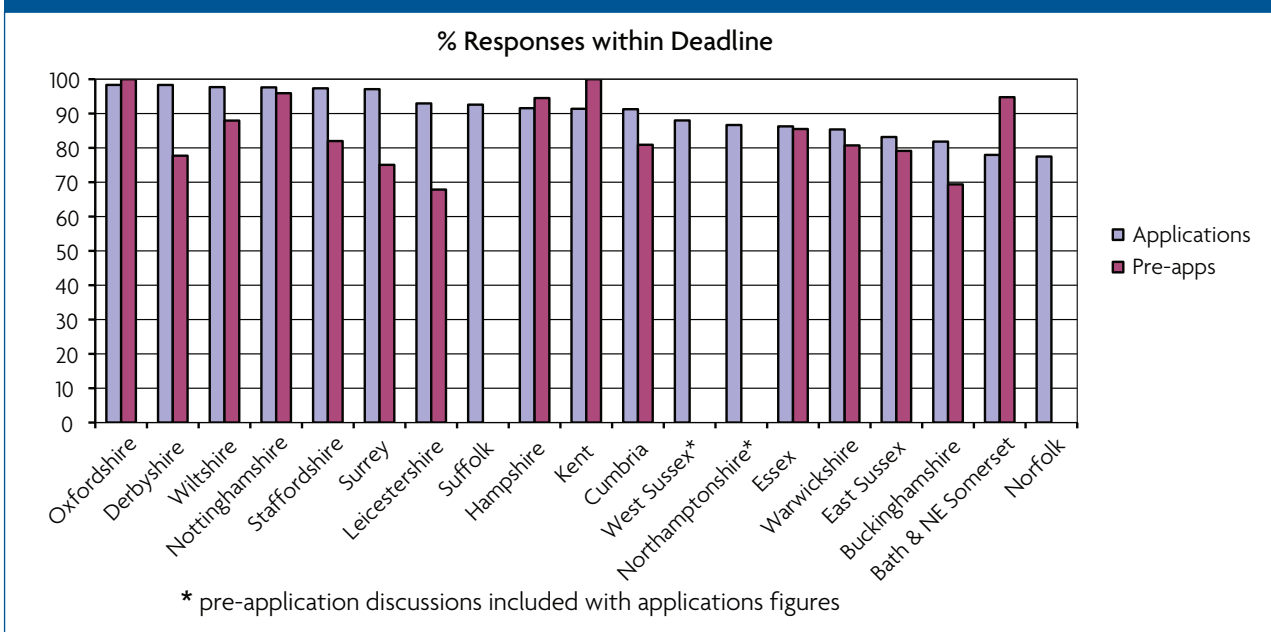


Figure 11: Responses of county highway authorities to consultation requests



Many of the major national bodies have introduced casework management systems and risk-based approaches to focus resources on the highest risk developments from their perspective. They have also provided advice to local planning authorities to help ensure that they are only sent the applications that they need to be consulted on. Despite this, they report that they still receive a significant number of applications that they do not need to see (for example, English Heritage estimate that 10-11% of the applications it receives are ones on which it did not need to be consulted). This provides another indication of the complexity of the process and the risk averse response this tends to encourage in planning officers: “when in doubt, consult”.

The role of statutory and non-statutory consultees is generally to provide advice to the local planning authority on issues within their more narrowly defined remit. In some instances, their advice may be constrained by their statutory duties and rigidly defined legal requirements. It is for the local planning authority to take the decision weighing all of the factors and advice in the balance. In general, however, local planning authorities will follow the advice given by the expert consultees, because they do not have the technical expertise, and risk aversion and fear of legal challenge will also play a part in this.

In that context, and not withstanding the evidence on the timeliness of responses received from the statutory consultees, it is clear that many stakeholders think there is a need to improve a number of aspects of this stage in the process, including:

- the range of parties consulted;
- the risk averse approach to consultation – “when in doubt, consult”;
- the means of consultation – electronic/paper;
- the timescale for responses;
- the quality of responses; and
- the accountability of statutory consultees to help ensure an effective and efficient process.

Q9 How can the involvement of statutory and non-statutory consultees in the planning application process be improved?

Involvement of elected members in the planning application process

An issue mentioned by a range of the stakeholders we spoke to concerned the role and scope for involvement of elected members in the application process. A Communities and Local Government review of member involvement⁴² suggested good practice is for members to be involved early, and that this would improve handling of many applications that go to committee. But our initial discussions suggest that, in a reasonable proportion of authorities, there remains considerable

⁴² CLG (2007f) *Review of Councillor Involvement in Planning Decisions*. Department for Communities and Local Government, London

nervousness about the involvement of members of the planning applications committee in any discussions about an application prior to the debate at the relevant committee. This is leading to considerable frustration on the part of both applicants and councillors, and an inconsistency of approach across the country.

A number of authorities restrict the involvement of councillors at the pre-application stage due to probity concerns stemming from the Nolan Report of 1997, which looked at some length into planning issues⁴³. The Nolan Committee did make a number of recommendations with regard to planning, but did not advise that members could not be part of the pre-application process, nor that they could not express an opinion on any planning application likely to come before them. Instead the report said that local members had an important democratic role in the planning process and that “attempting to exclude councillors altogether [from pre-application discussions] appears to be an over-reaction to a few bad cases”⁴⁴.

The Communities and Local Government review reported that member training can yield significant benefits, resulting in higher quality planning decisions. There was also a need for members to be well briefed about current planning policy and guidance so that they were better equipped to make predictable decisions in accordance with adopted policy.

The Communities and Local Government review also suggested that councillor decisions contrary to officer recommendation, while generally low, were more frequent in areas with out-of-date development plans, and that the promotion of closer links between policy and development control would help to foster more consistent, plan-led decision making. It recognised that it was important to increase the scope for elected members to get involved in planning policy and increase links between policy plans (often a cabinet member responsibility) and development control (often a planning committee responsibility).

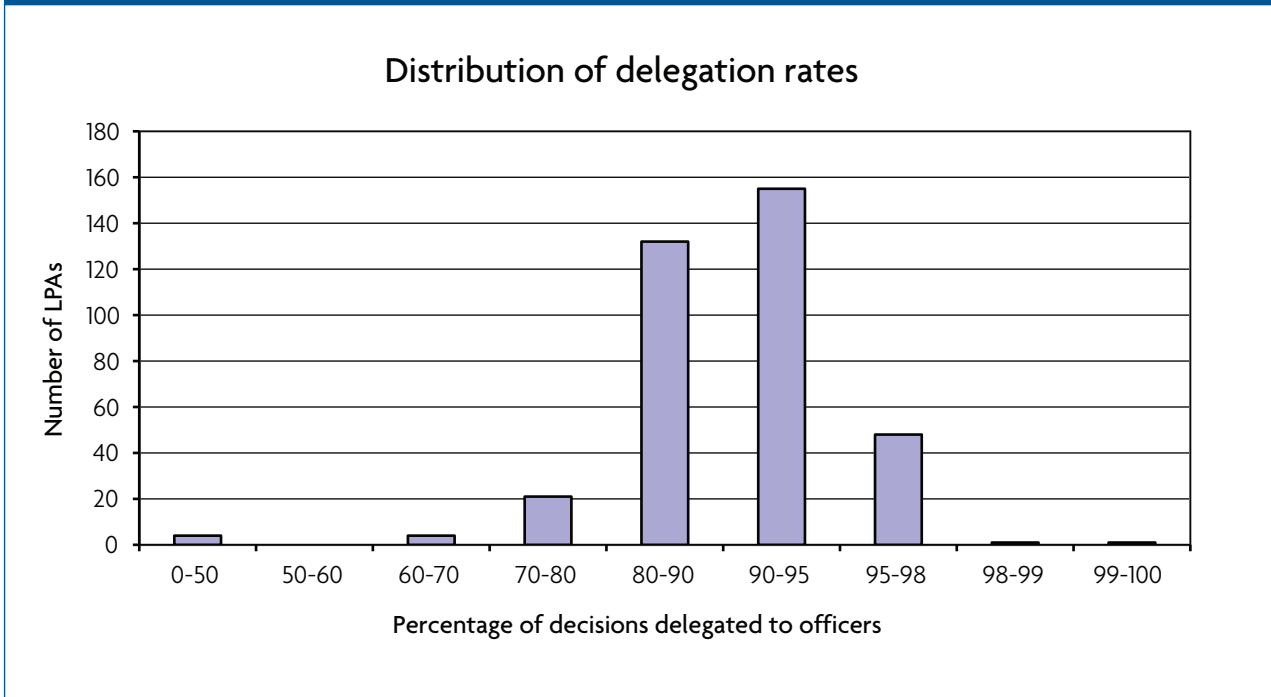
As Figure 12 shows, just over half (56%) of local planning authorities delegate at least 90% of decisions to officers and around 14% delegate more than 95% of decisions. Good practice advice on delegation recommends a 90% delegation rate⁴⁵. From local authority stakeholders, we understand that there are variations in the types of application that are delegated to officers and different rules about when matters can be referred to committee. For example, in some areas parish councils can request this, whereas in others it is ruled out. Such differences result in big differences in the number of applications referred. This has resource implications: for example, one development control chief officer said that they spend 66% of their time on the 7% of applications referred to committee.

⁴³ Nolan, Michael Patrick, Baron Nolan (1997) *3rd report of the Committee on Standards in Public Life standards in public life standards of conduct in local government in England, Scotland and Wales – Vol. 1 Report*. The Stationary Office, London.

⁴⁴ *Ibid*: 76

⁴⁵ Good practice advice on delegation was published in 2004: ODPM and LGA (2004) *Delivering Delegation*. Office of the Deputy Prime Minister, London.

Figure 12: Distribution of delegation rates among local planning authorities



Q10 What do you consider to be best practice in the involvement of elected members in the planning application process? How could best practice be further encouraged?

Wider community engagement, including those directly affected by the development

We touch on a number of relevant issues in other parts of this report, for example, in relation to community engagement in pre-application discussions, where there appears to be quite a widespread view across stakeholders that early engagement with communities can be beneficial for all parties, yet in practice engagement often appears limited. We discuss later the issues around publicity requirements for applications.

A further point, which is strongly connected to the need to tackle unnecessary complexity, is the difficulty that many parties unfamiliar with the planning process have in understanding the system. This doesn't just impact on those making applications, which we have discussed, but also those wishing to comment. For example, the Civic Trust reported that many objectors find the planning system very difficult to understand, and can therefore often find themselves disappointed and confused by decisions. The Civic Trust believes that much more work is needed to explain the basic rules of engagement and to manage expectations about what the process can and cannot achieve. Other amenity groups would agree that the process needs to be opened up and made more user-friendly to improve community engagement. The Campaign to Protect Rural England has attempted to overcome this problem by providing guidance on the planning system and how to engage with it, and there a considerable body of advice available on the Planning Portal.

Many local planning authorities have developed considerable expertise in wider engagement. For example, of the Beacon Councils for Planning⁴⁶, two have been selected for this status because of their approaches to engaging the local population (see the example of Ashford⁴⁷ in the box below). Common features of the approach taken by these better planning authorities, according to the Planning Advisory Service⁴⁸, are consistent leadership, taking a positive approach, working closely with other agencies, helping people to understand the system and being persistent with continuous consultation.

Case Study

Ashford Borough Council wished to radically improve the quality of places being created in Ashford. It found out about the 'Enquiry by Design' approach that had been trialled by the Prince's Foundation and English Partnerships. It worked with both organisations and the Campaign to Protect Rural England (CPRE) to pilot a similar approach in Ashford. The approach consists of an intensive workshop that spans 2 or more days and involves residents and stakeholders of all types.

Key aspects of the approach are:

- bringing interests from all perspectives together
- seeking consensus around key principles of making better places and communities – not accepting the lowest common denominator
- injecting independent, national experts to challenge conventional wisdom
- recording results in a comprehensive way so that all points raised are tracked and dealt with
- following up the workshop – often the same evening – with wider public exhibitions and surgeries where one-to-one discussions can take place
- capturing all the important issues in revised design and detailed development briefs and scheme designs

Delivering outline and detailed planning permissions on this clear basis is a more effective and faster way. The approach is inherently simple in concept – get people talking constructively and reach conclusions which are recorded and help shape design.

The council had to work hard to persuade developers and landowners. They initially perceived it as a high-risk approach, but now agree that the approach brings benefits.

There were sharply different views emerging on whether third parties, including the wider community, have an effective and fair influence over planning decisions. Those representing community interests felt that their ability to influence outcomes was very limited. On the other hand, a number of those representing development industry interests were concerned about

⁴⁶ Beacon is an award scheme that recognises excellence in local government.

⁴⁷ Taken from the Ashford Beacon Case Study on the IDeA website at: <http://www.beacons.idea.gov.uk/idk/core/page.do?pageId=6070189>

⁴⁸ PAS (2007a) *Letting the Light Shine in: Showcasing the planning beacon authorities*. Planning Advisory Service, London

the ability of third parties to “play the system” to delay or stymie development, for example, by raising potentially unfounded new concerns about harm to areas of nature conservation interest or flood risk late in the process.

One possible way to address some of these concerns could be through increased use of deliberative approaches, including mediation between parties. Michael Wellbank produced research for the Department of the Environment, Transport and the Regions (DETR) in 2000 about the use of mediation in the planning system⁴⁹. A follow-up report in 2002⁵⁰ suggested establishing a national planning mediation service to champion the use of mediation in planning. This research considered mediation specifically to mean dispute resolution and concluded that, in the context of the planning application process, it would be most useful as an alternative to appeal, when an application had been refused. It also concluded that what it described as stakeholder dialogue could be usefully applied at earlier stages and recommended that this could also be offered by the national planning mediation service.

Q11 How might community engagement in the planning application process be made more effective? What role is there for different forms of engagement, such as dispute resolution and stakeholder dialogue approaches, e.g. ‘Enquiry by Design’, in the planning application process? How might any changes needed be implemented?

⁴⁹ Wellbank, Michael (2000) *Mediation in the Planning System*. Department for Environment, Transport and the Regions, London.

⁵⁰ Wellbank, Michael (2002) *Further Research into Mediation in the Planning System – Main Document*. Department for Transport, Local Government and the Regions, London.

The implications of these systemic issues for the planning application process

What specific measures could make the planning application process more efficient?

Pre-application discussions

There is a strong degree of consensus across stakeholders on the usefulness of pre-application discussions, particularly in relation to large scale or complex proposals. Such discussions are encouraged by Government and some good practice guidance notes already exist. Pre-application discussions provide an opportunity to identify and address relevant issues from an early stage and therefore to avoid problems later on. As one statutory consultee pointed out, they also make it easier to take account of issues, such as impact on the natural environment, in the design of the development, and therefore facilitate enhancements rather than just mitigation of adverse impacts. However, there appears to be a wide variation in practice, in terms of the opportunities available, and the approach and charging arrangements for such discussions.

Some variations within authorities, such as linking the type of opportunity for discussion, and any fee charged, to the scale of the application, seem entirely justified, but other variations in the approach taken by different authorities can pose considerable difficulties for applicants.

A desk survey of a sample of 70 local planning authorities indicates that most do offer pre-application advice (only one did not), in most cases (around 80%) with no charge. Where a charge was made, this was usually in the form of an increasing scale of charges for householder, minor and major applications. Householder applications were usually free; flat-rate charges ranged from £25 for minor applications up to £3,000 for major applications; in a few cases, charges for major applications were based on a percentage (up to 25%) of the standard application fee.

Where pre-application discussions are integrated into the subsequent application process they represent a valuable service because they provide applicants with a degree of certainty on what the local planning authority requires of them and how their application is likely to be determined. Where this does not happen however, they can represent further delay. Problems can arise when discussions are not attended by planning officers of sufficient experience, and when important outputs are not formally recorded, or not followed through following the submission of an application, either because of a lack of continuity in the officers involved or because of a lack of engagement of key stakeholders (see example in the box opposite).

Case Study

This company entered pre-application discussions in December 2006. These involved the planning officer, highways officers and an urban design officer, and progressed for a period of six months to secure a form of layout and elevations that were acceptable to all parties prior to submission. The application was then formally submitted and registered in June 2007. The company therefore found it extremely surprising and disappointing to receive a formal consultation response to the application from the council's urban design team recommending refusal of the application, due to major issues with both the layout and architectural details of the proposals.

This was due to the head of the urban design team taking a view that was inconsistent with that of the officer present at the pre-application meetings. It took a further seven months of negotiation on layout and architectural design to reach a positive approval from the design team.

There appears to be some uncertainty about whether and to what extent council members should be involved in pre-application discussions, despite Government guidance on the issue. Risk aversion appears to play a role, with examples of legal advisors instructing members not to give any opinion on development proposals at pre-application stage.

An issue which emerged strongly from many parties was the importance of the involvement of key third parties, such as the highways authority or Environment Agency, at the pre application stage. This view is shared by many of the key consultee bodies we met and some are taking steps to improve their engagement, but the experience of applicants and local planning authorities seems to be that the extent of their involvement can be very variable.

A further point of widespread difference in current practice appears to be the involvement of the wider community in pre application discussions. A number of parties stressed the value of early engagement for all parties, for example, in providing a more constructive opportunity for the community to shape emerging proposals, in reducing inaccurate speculation about proposals, and in providing a vital source of local information and understanding of community needs.

A critical factor for many was the question of the resources available for such engagement. Put simply, a number of authorities stated that they did not have the resources to provide a good pre-application service. On the other hand, many of the representatives of the development industry we met suggested that their members were willing to pay for pre application discussions and, at their best, these represented excellent value for money, although a number argued that these fees should be offset against the application fee. Some local authorities we spoke to were very reluctant to charge for pre application discussions, for fear of deterring discussion which might improve the application, or deterring investment in their area; others found this to be an important source of income.

Q12 How can the effectiveness of pre application discussions be improved in a way which improves the overall speed and quality of the process from start to finish?

Consideration of the application

Publicity arrangements

One point which emerged very strongly from our discussions with local planning authorities was in relation to the statutory requirement to advertise a number of types of application by way of an advertisement in a local newspaper, in addition to other methods of publicity, such as a notice on the web site, site notice and neighbour notification.

In terms of consulting with the local community, local authority research shows that less than two percent of consumers find out about a planning application from an advertisement in the local newspaper⁵¹. This work confirms the earlier work undertaken by Arup for ODPM which found that newspaper advertisements were considered to be the least effective form of publicity⁵². Consequently, newspapers are widely regarded by local authorities as becoming an increasingly ineffective communication channel to inform residents about changes in their local area.

The research found greater enthusiasm for other means of communication, in particular neighbourhood letters, internet websites and site notices, and these were also found to be more effective in raising awareness and stimulating consumer responses. Evidence on comparative costs from local authorities found other methods, such as the neighbourhood letter, which 65 percent of consumers stated was their preferred communication channel, were considerably cheaper to administer than statutory notification in newspapers.

The above research found that the minimum annual cost for statutory notices for planning per local authority was approximately £35,000, though some local authorities were reported to spend over £100,000, excluding administrative costs. These figures suggest that the total cost of statutory notices for planning in England could be at least around £13 million per year.

Given the apparent cost ineffectiveness of newspaper advertisements there appears to be a strong case for removing the statutory requirement to advertise some applications in this way and allowing local planning authorities the discretion to decide whether to advertise by way of a newspaper advertisement or online, but are there any significant disadvantages?

Q13 What would be the pros and cons of a change to allow local planning authorities to choose whether to advertise applications in a local newspaper? Are there other changes to the publicity process for applications which should be considered?

⁵¹ Cabinet Office (2007) *Informing the Public in a Multi Media Age*. Cabinet Office, London.

⁵² ODPM (2004a) *Review of the Publicity Requirements for Planning Applications*. Office of the Deputy Prime Minister, London

The processing of applications

The introduction of 1 App, together with the facility to submit applications electronically via the Planning Portal, offers many advantages over the paper based alternative. Users point particularly to time and cost savings (see box below) and electronic submission of applications is welcomed by most stakeholders. The numbers of applications processed through the Planning Portal has been rising steadily from about 6% two years ago to 25% now, and the Planning Portal has a programme of work to encourage this level to rise further. Nevertheless, the majority of applications are currently still submitted in writing. Issues have also been raised about the usability of plans in electronic form, and there are issues of the interfaces between different users' IT systems that could limit the usefulness of e-planning.

Case Study

This company reported that, in the past, if it had to make a tiny, two minute change to a drawing, it would end up printing 30-40 drawings, boxing them up and then taking them to the local authority offices. "It was utterly ridiculous."

If the same change is made now, to the same type of building, the company would simply change the drawing, create a PDF version of it and email it to the local authority.

Now a planning application can be made in about half an hour. Previously, it would have taken half a day or more. "And we're no longer producing masses of paperwork."

In addition to the specific issue of the use of information technology, there is a wider question of ensuring that the process of handling applications is carried out in the most efficient way. One part of the Local Government National Process Improvement Project (NPIP)⁵³ is looking closely at the planning application process. We will discuss with the NPIP team what process improvement suggestions are emerging from their work and would welcome views more generally on this issue.

Q14 What experiences have you had of electronic submission of applications? What more, if anything, could be done to further encourage the use of e-planning in practice?

Are there other process improvements which could yield significant benefits for the efficient handling of applications?

Post resolution to grant consent or post decision

Planning obligations

A number of parties have suggested that the process of negotiating planning obligations under Section 106 (S106) of the Town and Country Planning Act 1990 is improving. Targets are seen as a key driver for improved performance. On the other hand there are continued complaints, particularly, about the length and uncertainty of the process.

⁵³ See the Business Improvement Package website for further details: <http://bip.rcoe.gov.uk/rce/core/page.do?pageId=42675>

In terms of excessive delays, a number of factors are regularly cited. Local authorities suggest that delay often arises because the applicant is in no rush to complete the S106 agreement which may trigger legal commitments, including payments. In addition, once a resolution to grant consent has been achieved, the timing of finalisation of the legal agreement can be driven by factors entirely unconnected with the planning process, such as the outcome of negotiations with the land owner or the discovery of restrictive covenants.

Developers, on the other hand, consider that delays usually occur because of delays in planning officers instructing the local authority legal department and a lack of resources in those departments. These issues are compounded because councils often insist on drafting the legal agreement, and because there is a reluctance to use a standard format as a baseline, such as the Law Society model agreement.

A common complaint, particularly from local planning authorities, is that negotiations about obligations start too late in the process and that “deal breaker” differences only emerge late in the process. A number of authorities push very strongly for draft heads of terms to be submitted with the application. This point is strongly related to a further area of concern about a lack of clear ground rules in many cases, in either national guidance or development plans, which result in markedly different demands about what is required. We are aware, for example, of two broadly similar major housing developments, where the scale of contribution sought by the education authority in the two cases varied by a factor of 10. Developers argue that the slowness and unpredictability of the process means that they will sometimes agree to demands that are not reasonably related to the development rather than risk delay and possible rejection at appeal.

The scope of what can be achieved through planning obligations will change in the event that the new arrangements for a Community Infrastructure Levy (CIL) are introduced, and the relationship between CIL and planning obligations under S106 will be subject of consultation later this year. However, as S106 will be retained as the legal underpinning for negotiated agreements between developers and local planning authorities, it is important to consider whether further improvements can be made to the process in that context.

Q15 How can the process of negotiation of planning obligations be further improved?

Planning conditions

Clearly planning conditions play a vital role in ensuring that the development that is approved is satisfactory. However, a number of concerns have emerged from our initial analysis, namely:

- The number of conditions being imposed;
- The number of conditions that are unduly onerous or unnecessary; and
- The time and resource implications for discharging them.

There is a strong feeling amongst developers that conditions, in particular conditions which must be discharged before work can commence (“pre start” conditions), have become more numerous in recent years. Increased complexity, and a desire to “park” issues until later in order to meet performance targets, are often cited by developers for this increase. The increase in the number of conditions is of concern to some statutory consultees who argue that, in some cases, these conditions address issues that should have been covered during consideration of the application.

Of course, there are can be significant advantages for applicants with the use of pre start conditions, because they avoid the cost of preparing more detailed proposals before a decision to grant planning permission has been achieved, and they mean planning permission is achieved earlier than might otherwise be the case.

On the other hand, developers have a number of concerns about the increasing use of such conditions, including that they are sometimes:

- redundant because all the relevant information has already submitted and so the process is unnecessarily delayed by having, in effect, to submit the information again;
- unduly onerous, for example, by requiring that they must be discharged before the start of development, when some later event, such as occupation of the building, would have been just as effective;
- unnecessary, and appear to have been part of a standard template for such applications.

The third key concern is the time and resources taken to discharge conditions. Given that this work is not counted within the local planning authority’s targets, it is perhaps not surprising that discharging conditions is often not regarded as a priority. We were told of examples where information has been submitted by the developer to discharge a consent condition but no response has ever been received from the local planning authority, or there has been very considerable delay in resolving the matter. Enforcement of conditions is also generally poor, with this largely relying on public complaints, and there appears to be virtually no monitoring of the effectiveness of conditions in achieving desired outcomes. Given likely continuing resource constraints for local planning authorities, could this be an area where alternative service providers might bring additional resources to relieve overloaded planning departments? For example, could there be an opportunity for an equivalent to a private Approved Inspectors (AI’s) who provide a service in relation to building control, to operate in relation to the discharge of certain conditions?

Q16 How could the concerns about conditions be addressed? How can the discharge, enforcement and monitoring of conditions be improved?

The planning appeals process

In May 2007, the Planning White Paper and associated consultation paper⁵⁴ proposed some fundamental changes to how the appeal system operates, as well as some changes to existing procedures. These changes aim to deliver an appeals system which is more proportionate to the type and complexity of each appeal, more efficient and better resourced and offers an improved customer service.

In the light of the consultation responses⁵⁵, the Government has included measures in the Planning Bill to improve the appeal process, and announced⁵⁶ its intention to take forward a range of measures through secondary legislation during the next two years.

In the light of the scale and range of proposals for reform which are in the pipeline but have yet to be implemented, the value of identifying and developing further proposals for improving the process at this stage appears limited.

⁵⁴ Communities and Local Government (2007g) *Improving the Appeals Process in the Planning System – Making it Proportionate, Customer Focused, Efficient and Well Resourced: Consultation*. Department for Communities and Local Government, London.

⁵⁵ Communities and Local Government (2007h) *Improving the Appeals Process in the Planning System – Consultation: Summary of Responses*. Department for Communities and Local Government, London.

⁵⁶ Communities and Local Government (2007i) *Government Response to Consultation Replies: Improving the Appeal Process in the Planning System*. Department for Communities and Local Government, London.

Any other issues

This *Call for Solutions* is based on our initial assessment of the issues. There may well be other issues which you believe to be critical to improving the speed and responsiveness of the planning application process. If so, please tell us about them.

Q17 What other measures do you consider could improve the speed and responsiveness of the planning application process?

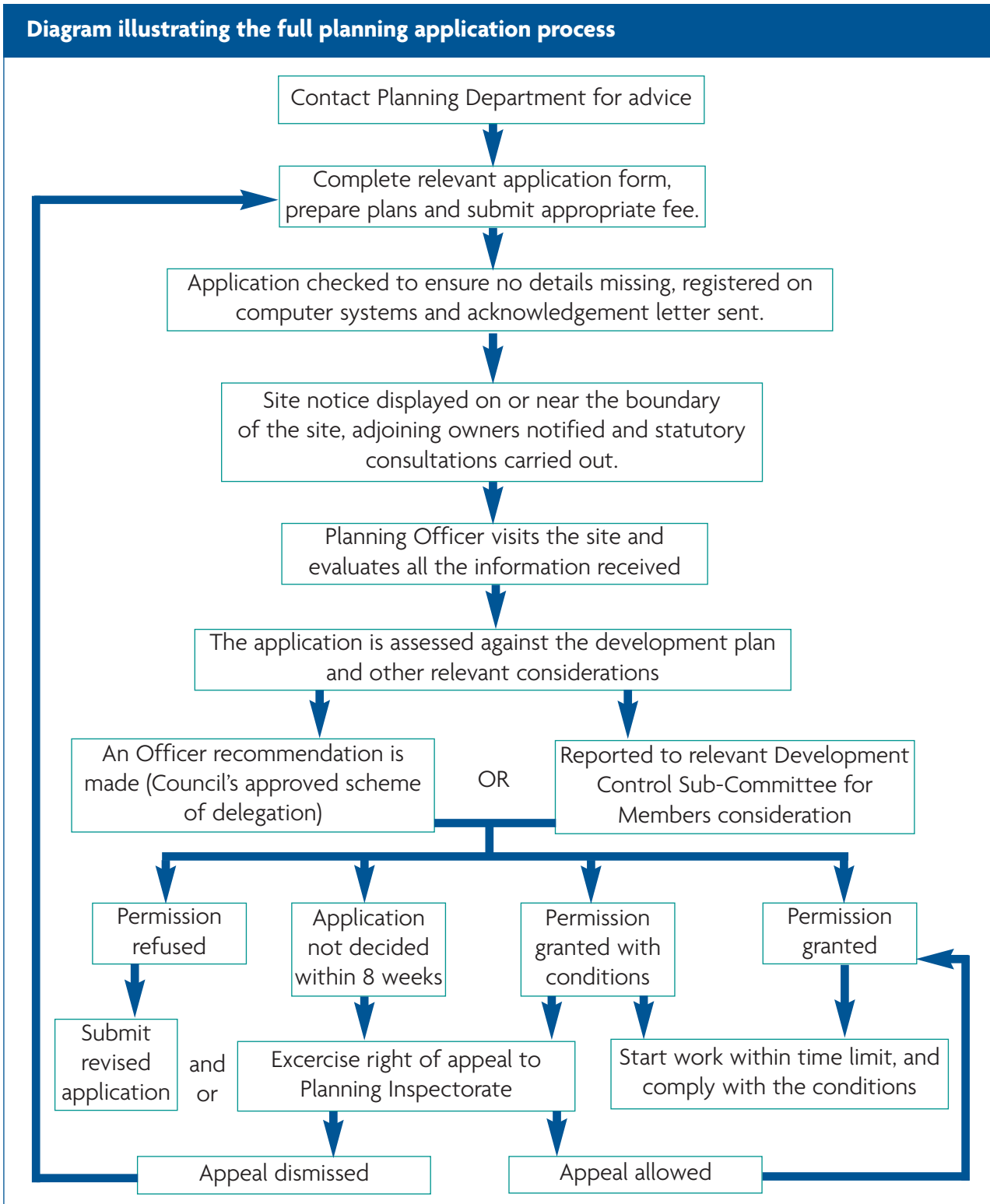
Annex A – Terms of reference

To consider how, within the context of the Government's objectives for the planning system and building on the reforms already announced, the planning application process can be improved for the benefit for all involved.

In particular to:

- Carry out an “end to end” review of a sample (including, in particular, major housing development, proposals by small and medium sized enterprises and renewable energy schemes) of applications for planning permission and associated consents as they move through the system, to establish where delays in processing applications occur. This would include a preliminary assessment of the use of Planning Performance Agreements within the process and a consideration of how the operations of local planning authorities could be further improved through application of the principles of better regulation.
- Consider the interaction between statutory consultees such as the Highways Agency, Environment Agency and Natural England and the planning development consent process and identify ways to make it operate effectively and efficiently;
- Identify areas where there is scope for reducing administrative burdens, for example through further reduction of or streamlining in information requirements or extending the use of e-planning, consistent with efficient application of development controls and delivery of sustainable development;
- Identify potential changes to ensure that the degree of planning control is proportionate to the potential impact of development on its environment (particularly through the use of permitted development rights and processes for dealing with minor appeals) and to ensure that planning resources are focused where they can deliver best value.

Annex B – Diagram of planning application process



N.B. – This does not include time for agreement of any Section 106 contributions. However, only a relatively small number of planning applications will require a Section 106 agreement to be agreed before a decision notice can be issued, and current good practice advice is that Section 106 negotiations are started early and continue through the whole process, rather than falling into one place towards the end. – Source: Wealden District Council website; reproduced with permission.

Annex C – Who we have spoken to

Stakeholder Events

Affinity Sutton
Association of London Borough Planning Officers (Tower Hamlets)
British Chambers of Commerce
British Property Federation
British Retail Consortium
Campaign for the Protection of Rural England (CPRE)
CBI
Communities and Local Government (CLG)
Country Land and Business Association
Department of Real Estate & Planning, University of Reading
English Heritage
Environment Agency
Federation of Master Builders
Government Regional Offices
Hambleton District Council
Highways Agency
Home Builders Federation (HBF)
House Builders Association
Housing Corporation
Health and Safety Executive (HSE)
Institute of Directors (IOD)
London Councils
Major Developers Group
Mike Bleakley, ex Worthing District Council
National Audit Office (NAO)
Natural England
Network Rail
O'Neill Associates
Planning Advisory Service (PAS)
Planning Aid
Planning and Environmental Bar Association (PEBA)
Planning Inspectorate
Planning Officers Society (POS)
PPS Group

Royal Institute of British Architects (RIBA)
Royal Institute of Chartered Surveyors (RICS)
Royal Society for the Protection of Birds (RSPB)
Royal Town Planning Institute (RTPI)
Town and Country Planning Association (TCPA)
University of the West of England
Westminster City Council

Local Government Association Meeting

Cllr Ian Mearns, Gateshead Council
Cllr Derek Antrobus, Salford City Council
Cllr Andrew Proctor, Broadland District Council
Cllr Horace Mitchell, Basingstoke & Deane Borough Council
Cllr Tony Newman, Croydon Council
Cllr Richard Bower, Arun District Council
Cllr Eileen Higgins, Wellingborough Borough Council
Cllr Philip Read, East Cambridgeshire District Council
Rosemary McQueen, Westminster City Council

Planning Officers Society Special DMC Meeting

Advisory Team for Large Applications (ATLAS)
Bracknell Forest Borough
Broadland District Council
City of London
Congleton Borough Council
Coventry City Council
Crewe and Nantwich Borough Council
Harlow District Council
Harrow Council
Herefordshire Council
Kenned District Council
Litchfield District Council
Local Government Association (LGA)
London Borough of Enfield
London Borough of Hillingdon
London Borough of Redbridge
London Borough of Tower Hamlets

St Edmundsbury Borough Council
Stockton on Tees Borough Council
Westminster City Council

Sounding Board

Andrew Whittaker
Julian Lyon
Kate Barker
Keith Exford
Phil Kirby
Robert Upton
Rosemarie MacQueen
Sir Stuart Lipton
Stephen Ashworth

Stakeholders – Written Submissions, Meetings and Engagement

Advisory Team for Large Applications (ATLAS)
Affinity Sutton
Association of Electricity Producers
Association of London Borough Planning Officers (ALBPO)
Audit Commission
Barratt Developments Plc
Beechcroft Developments
Birmingham City Council
Brian Barber Associates
British Aggregates
British American Business International
British Chambers of Commerce
British Property Federation
British Retail Consortium
British Wind Energy Association
Commission for Architecture and the Built Environment (CABE)
Campaign for the Protection of Rural England
Cator & Co
CBI
Cemex
Civic Trust

Communities and Local Government Units with interest
Country Land and Business Association
Campaign to Protect Rural England (CPRE)
Crawley Borough Council
Daniel Scharf
Department of Real Estate & Planning University of Reading
Dover District Council
DTZ
E.On
East Dorset District Council
East Riding of Yorkshire Council
Electricity Producers' Association
Emerson Group
English Heritage
English Partnerships
Environment Agency
Federation of Master Builders
FPB
Friends of the Earth (FOE)
FSB
Government Office West Midlands
Hambleton District Council
Highways Agency
Hillreed Residential Developments
Home Builders Federation
Home Office
Horsham District Council
House Builders Association
Housing Corporation
Health and Safety Executive (HSE)
IRIS Consulting
Law Society
Leeds City Council
Lewisham Borough Council

London Councils
McCarthy & Stone
Major Developers Group
Manchester Disabled People's Access Group
Mid Sussex District Council
Mike Bleakley, ex Worthing District Council
National Audit Office (NAO)
National Trust
Network Rail
Planning and Environmental Bar Association (PEBA)
Pendle Borough Council
Planning Advisory Service (PAS)
Planning Aid
Planning Inspectorate
Planning Officers Society (POS)
Planning Portal
Planning Potential Ltd.
PPS Group
Quadra Bec Ltd.
RDAs Planning Development Units
Reading University
Royal Institute of British Architects (RIBA)
Royal Society for the Protection of Birds (RSPB)
RTPI – Development Management Network
Scottish Executive
Service Dynamics
Society of Local Authority Chief Executives (SOLACE)
South Oxfordshire District Council
St Helens Council
Stevens & Bolton LLP
Tanner & Tilley
Taylor Young
Tesco
The Housing Forum

Three Rivers District Council
Town and Country Planning Association
Vanguard Consulting
Warwick Business School
Waveney Council
Welsh Assembly Government
Welsh Power
Westminster City Council
White Young Green
Wychavon District Council

Annex D - The approach taken in the review

Planning applications can spark huge community interest and those affected express strong views: developing an evidence base around the experiences of all those involved is at the core of the review.

This review recognises the wide range of stakeholders that have an interest in planning application processes and is engaging widely with stakeholders, collecting quantitative evidence on the operation of the planning process, and qualitative evidence on the experiences of users and operators of the system. Individual poor experiences of the planning application system can be dismissed as anecdotal, and it is important to build up a body of evidence on which to base consideration of the problem. It is equally important to evaluate whether solutions will be put into practice and make a real difference on the ground. This requires that we consider how well the whole system, not just parts of the process, work, because, unless we understand what drives the behaviour of users and operators of the system, solutions will not be taken up or acted upon.

By carrying out research and engaging widely with the stakeholders, we have scoped out the issues and problems with the planning application process in the initial stage of the review.

The first stage of our work has been to talk and listen to a wide range of stakeholders who have close involvement with the development management process, including representatives of those who:

- submit applications, such as house builders, retailers and agents, together with Planning Aid, who speak to many who propose small scale development
- have an important input, such as statutory and non statutory consultees and professional bodies who represent experts working in all sectors in the process; and
- decide applications, such as councillors and officers from local authorities and the Planning Inspectorate.

A full list of those we have met or who have otherwise had an input into this first stage is set out in Annex C of this document. We have had discussions with over 45 organisations individually, and held two stakeholder events, including some of the main representative organisations involved in the planning field. A summary of the findings from these discussions and inputs is in Appendix 1.

We have also carried out an analysis of the quantitative data available on the nature of the demand (what types of application are in the system), the speed of response and any unintended consequences of this, and the relationship between performance and resources, to better understand differences in the way planning applications are handled. This analysis is Appendix 2. Finally we have undertaken a literature review of previous work in this area in Appendix 3. All three Appendices can be found on the Review's website (at www.planningportal.gov.uk/killian_pretty_review).

We have used this understanding of the problems in the system to target further stakeholder engagement, a formal call for solutions and further research to develop practicable solutions.

This is a critically important stage in the review and the area where we want to focus our discussions with all those involved in the process. This report pulls together the findings of our initial work and identifies a series of issues that have emerged as being the key areas of concern in the current process.

We want to encourage those with a direct interest and involvement to help us identify practical and deliverable improvements to address these issues. In many cases the solutions may already exist: a key part of this work will be to identify existing good practice and make sure this is used more widely.

In parallel with this work, we will also be carrying out further discussions with stakeholders around the country, undertaking detailed research into various aspects of the process, and reviewing case studies in detail. This work will help inform the final stage of the review.

We will use the evidence from our research and stakeholder input in response to this Call to develop a package of proposals and then test them with those with practical experience on the ground.

Clearly we need to ensure that the recommendations can be implemented and will deliver real benefits. We are putting together teams of experienced practitioners with whom we can road test the solutions. Where the solutions are already best practice and being acted upon in the local authority, developer, agent or applicant communities, we will wish to develop an implementation plan to ensure that we recognise the barriers to implementation and develop solutions that will be taken up on the ground.

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