Local Government Association (LGA) submission to DCLG technical consulation on implementation of planning changes

14 April 2016

The Local Government Association (LGA) welcomes the opportunity to respond to the DCLG technical consultation on implementation of planning changes.

The LGA is here to support, promote and improve local government. We will represent local government and support councils through challenging times by making the case for greater devolution, helping councils tackle their challenges and assisting them to deliver better value for money services. www.local.gov.uk

This response has been agreed by the LGA's Environment, Economy, Housing and Transport (EEHT) Board. The EEHT Board has responsibility for LGA activity in relation to the economy and environment, including: transport, employment and skills, economic development and business support, housing, planning, waste and climate change.

Chapter 1: Changes to planning application fees

Effectively resourced planning departments will be key to delivering the responsive, high quality and strategic planning services that are crucial to building new homes and developing prosperous places that people want to live and work.

Planning services have been under-resourced for many years, and within a context of significant wider local government funding reductions. Nationally set planning fees have not covered costs, leaving councils to subsidise 30 per cent of the estimated cost of processing all planning applications. Planners and developers are equally concerned about the implications of underinvestment.

Government's recognition of this is welcome and we support proposals to revise the national fee schedule for planning applications in line with the rate of inflation, this will provide important additional resource moving forward. It will unlikely resolve the effects of the longer-term challenge in resourcing planning up to now and so we would like to see the Government reset fees to cover the average actual costs, or go further still by enabling councils to locally set their own fees to factor in costs with other issues.

We do not believe the proposed increases should only be available to authorities that are determined to be "performing well". It is crucial that all authorities have the opportunity to use the additional funding to contribute towards costs and to develop and improve the service, given the entrenched funding challenges and the range of future Government reforms relying on an effectively resourced planning system. The proposed increase with inflation should apply to all local planning authorities for a set period – for example 7 years – at which point the government might review progress and the case for linking fee increases to a

Submission

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measure of performance.

We support proposals in the consultation that would enable local areas to have additional flexibility over planning application fees through the devolution deal process. In our view this should be in addition to the increase in fees with inflation applying to all local authorities, it should include a wide range of options including full cost recovery, and it should include a commitment to capture and evaluate the impacts and learning for all areas.

It is important that the Government will support councils to innovate and improve delivery of planning services, including the provision of fast-track and other tailored planning services. We welcome this national intention which will give more councils the confidence to pursue this route, however it is unnecessary to introduce new regulations, councils are already able to offer a fast-track service and should be encouraged to use flexibilities to develop new practice, rather than tied to specific regulations.

Chapter 2: Permission in Principle

We broadly support the intention of Permission in Principle (PiP) to provide greater and earlier certainty on land suitable for development, and that it apply to new development on sites in local plans, neighbourhood plans and brownfield registers.

It is crucial that the proposed technical details consent process deals with all material considerations, other than the matters of principle set out in the PiP. This will be crucial for ensuring that councils and their communities are continually able to ensure developments respond to local circumstances. Therefore, in our view, there should not be a requirement on technical details consent to be contained within a single application.

It is important that the PiP process is not overly prescriptive, and leaves councils with maximum discretion and flexibility. A minimal level of prescription will encourage a greater and more effective use of PiPs in local plans, and there will need to be a simple process to locally convert existing local plan allocations to permission in principle sites.

Fees for permission in principle and technical details consent should cover actual average costs of processing the applications and the timescales for processing permission in principle and technical details consent should match the existing 8 and 13 week timescales for current minor and major planning applications.

Chapter 3: Brownfield register

We broadly agree with the proposed criteria for assessing suitable sites for the brownfield register. There should be additional flexibility for local planning authorities to include sites that are developable and which they want to bring forward proactively, but where there is not yet agreement from the land owner. The size definition for suitable sites should match the exact wording in the Planning Practice Guidance on housing and economic land availability assessments. There should be flexibility for local authorities to exempt certain types of development, and development on certain land or in certain areas, from the brownfield register.

Local government already publishes a number of data sets in a standard format. The LGA has supported councils with this through maintaining and developing the local government information standards, and via guidance and resources from its

sector-led improvement programme and INSPIRE new burdens funding.

Councils also already publish assessments of housing land availability as part of the evidence base for their Local Plans. However, we agree that publishing data on brownfield land available and suitable for housing in a standard format could be helpful in supporting local councils' existing efforts in incentivising investment in housing and bringing forward land for development.

We broadly agree with the proposed information to be included on the brownfield register, but the final list should be guided by the feedback from the pilot local authorities. Producing the registers in a standardised format will be a new responsibility for local authorities and so should be fully funded through the new burdens regime.

In relation to the specific data items:

- Site reference/UPRN: Currently, a licence restriction does not permit the UPRN to be used this way unless an exemption is granted by Ordnance Survey/GeoPlace.
- Site name and site address: these should be two separate items. Site address should follow BS7666 standards.
- Grid reference: this should be geographic coordinate reference following ISO 19111:2007

It should be noted that the brownfield register will almost certainly fall under the Infrastructure for Spatial Information Regulation in Europe (INSPIRE). DCLG requirements for the register should therefore follow the common INPSIRE implementing rules, so that councils are not in breach of the European regulation. The brownfield site register would be a new INSPIRE dataset, and therefore local authorities should be funded for setting it up in compliance with the INSPIRE implementation rules.

The consultation proposes that this data held on the brownfield register should be reviewed and updated annually. However rather than introducing an additional review process within councils this should fit in with existing mechanisms and timescales for review of Strategic Housing Land Availability Assessments and strategic site allocations.

We do not agree with the proposal to change the national definition of a five year housing land supply. This would mean that any local planning authorities that do not meet the arbitrary proposed government targets for 90% of suitable brownfield sites to have planning permission by 2020, would be unable to claim the existence of an up-to-date five year housing land supply, and a presumption in favour would apply. This risks disrupting progress with local plans and would be an unhelpful precedent of instability in requirements of the NPPF. This will cause uncertainty in the housing market and is likely to lead to reducing confidence, at a time when developers are increasing the supply of houses.

Chapter 4: Small sites register

The consultation proposes that councils will be required through the Housing and Planning Bill to hold a register of "small sites" (sites between one and four plots in size). There will be no suitability assessment associated with placing a site on the register, which means that there is no guarantee that land on the register can be used for development.

Our view is that this is an unnecessary use of legislation as councils could already have a small sites register. If the government is minded to introduce this

requirement, there will inevitably be an additional administrative burden on councils and this should be fully funded.

An alternative approach would be for the government to create an online portal where landowners could upload details of land that they are willing to have developed, so that developers and councils had one place to look.

Chapter 5: Neighbourhood planning

No comment.

Chapter 6: Local Plans

The LGA welcomed the National Planning Policy Framework's (NPPF) introduction and the focus away from centralised guidance onto clear, up-to-date and well-evidenced local plans. An effective democratically-led planning system is critical to good place-making that drives growth and prosperity.

We also welcomed the establishment of the Local Plans Expert Group (LPEG) in 2015, which has published recommendations for streamlining an expensive and complicated local plan process. In our view the government should focus on implementing recommendations for streamlining and improving the plan-making process, rather than committing more resources to intervening in the existing process in a way that would risk slowing it down further.

It is important that the government work with the LGA and local authorities to determine the most effective means for incentivising sector-led improvement models for helping councils get local plans in place.

Chapter 7: Expanding the approach to planning performance

Through the Housing and Planning Bill the government is proposing to extend the planning performance regime, which currently exists for major developments, to non-major development.

Councils recognise the importance of timely and quality planning services, however the planning performance regime is a narrow measure which focuses on process targets rather than good quality service provision. For many applicants, getting a positive decision in an agreed timescale is preferable to being refused permission within a statutory timescale, which is reflected in the willingness of many applicants to enter into extension of time agreements.

We therefore do not support the proposal to extend the planning performance regime to non-major development. Councils do not have the resources to deal with, for instance, an increase in the application of extension of time agreements.

Chapter 8: Testing competition in the processing of planning applications

The LGA has consistently called for the ability for local planning authorities to locally-set planning applications fees to enable full cost recovery, meeting the needs of applicants and communities.

It is crucial to acknowledge that a planning application is not simply a transaction between an application and a determining body, but a consultative process mediating various interests to ensure developments contribute towards strategically well-designed, prosperous local communities and economies. It is crucial to safeguard this, and the vital role that locally elected leaders play in

ensuring communities buy into new developments.

The justifications for exploring this model require detailed examination and scrutiny throughout the progress of the pilots. In particular we are unclear that it would improve services and increase efficiencies, as the introduction of uncertainties and risks will inevitably increase complications and costs. More generally we are concerned that the proposal runs the risk of destabilising council planning departments to the detriment of the quality of decision making.

For instance, in our view, proposals risk:

- Delays, if decisions are deferred for additional work to be undertaken to gain the necessary confidence.
- More rejected applications, as decision-makers consider they are not being presented with an objective and balanced report from approved providers. Or as an alternative to outright refusal, planning permissions may be granted with an increased number of conditions that need to be addressed/discharged before development can proceed.
- Alternative Providers 'cherry-picking' which applications they process, for example those which attract larger fees e.g. major applications, leaving local planning authorities to process no fee/low fee applications, further reducing the resources in planning departments.
- Movement of qualified planning officers from councils to private sector Approved Providers who may be able to offer preferable salary and benefits packages - leading to a skills and capacity shortage in local planning authorities. This will be difficult and costly to reverse should evaluation demonstrate that competition in processing planning applications should not proceed beyond the pilot phase.
- Administrative costs, for instance the majority of planning applications come through the Planning Portal and this data goes straight into the council's back office systems to avoid double handling. If Approved Providers are not required to have similar technology this will introduce inefficiencies, increased costs and delays into the process.
- Relationship costs, for instance many councils have built up strong relationships with partners crucial to helping appraise and develop planning applications, including at pre-application stage. Approved Providers would have to either spend time and resource building those relationships or lose the invaluable input.
- Additional costs for councils, for instance responding to enquiries from the public about planning applications, as well as registering and publishing details on applications being processed by Approved Provider's. These costs need to be covered in full.
- Poor quality and ineffective public consultation, section 106 negotiations and pre-application discussions by private Approved Providers who do not have appropriate skills, qualifications or knowledge of the local area, to undertake such tasks.
- A perception that Approved Providers are unlikely to recommend refusal or maximise section 106 contributions for a planning application they have been appointed to process.
- The possible introduction of no-win, no-fee/performance related pay models from Approved Providers, which are also likely to undermine public perception of the planning system.
- Difficulties in monitoring and benchmarking performance between local planning authorities and Approved Providers

These issues must be addressed and appropriate safeguards put in place if the pilots are to go ahead on the current government timetable.

It is fundamental that planning decisions continue to be made locally through a democratically accountable planning system. Dealing with planning applications is not straightforward. Comparison with Building Regulations approval is insufficient, as the matters to consider and implications of the planning decision are significantly greater in breadth and depth. It is a political process that can be controversial at the local level and is the subject of appeals and increasingly legal challenges.

We therefore believe that there need to be appropriate safeguards to ensure that approved providers, representing the clients who have appointed them, are not biased to recommend schemes for approval. For instance this could include a requirement that where an Approved Provider recommends approval that is refused by the council it is liable for the council's full appeal costs if the appeal is dismissed. There should also be a requirement for an Approved Provider to be required to defend (at their own cost) their advice to the local planning authority if it is the subject of a Judicial Review.

There should be flexibility for local planning authorities to set fees at a level appropriate to deliver a service that can compete on a level playing field with the Alternative Providers in that area. The conditions created by competition pilots means that it would not be appropriate to use an evaluation of fee setting within the pilots to understand the potential of locally-set fees for all areas.

Chapter 9: Information about financial benefits

The Housing and Planning Bill proposes to place a duty on local planning authority to ensure that planning reports, record details of "local finance considerations" that are likely to accrue to the area as a result of proposed development.

This is an unnecessary use of legislation. If this is taken forward as proposed, there must be a clear, tightly-drawn definition to what must be addressed in reports. Otherwise, there is a risk that local planning authorities could be left open to legal challenge based on the content of planning reports.

Chapter 10: Section 106 dispute resolution

Councils recognise the importance of timely negotiation and agreement of developer contributions required to make development acceptable. All development should make a reasonable contribution to necessary infrastructure and affordable housing. We are concerned that the current approach to section 106 obligations will reduce expectations on this score, and risk increasing land values rather than helping with viability on anything but marginal sites.

Delays are best avoided by engagement at the early stages of the planning process, where section 106 obligations can be discussed and agreed in advance of the planning application being considered. It provides certainty to the developer and the local authority and transparency to the community.

In our view, strengthened requirements for the upfront negotiation of s106 obligations would be a more effective means of avoiding delays than offering an alternative route for resolution.

We do not support the proposals for a national dispute resolution process. Section 106 obligations are a means of meeting policy requirements of the local plan and are central to the assessment of the acceptability of the development proposal as a whole, and should not be considered through a separate process. A national

dispute resolution process would provide an incentive for developers to appeal against any section 106 obligation in the hope of getting something better from arbitration. That would lead to delays, costs, and undermine local accountability and public confidence.

The consultation proposes the existing statutory timeframes[1] are the most appropriate time limits before the dispute resolution process can be triggered. This does not make reference to whether a section 106 negotiation process has even started which would, for instance, allow a developer to submit a drafted section 106 agreement for the first time on week 12 (for a major application), requiring a local planning authority to sign it by the end of the week or they will trigger the dispute resolution process. If the dispute resolution process to become available, the developer must be required to provide clear evidence of meaningful section 106 negotiation with the council together with a substantively drafted section 106 agreement.

When a request is made to the Secretary of State to initiate the dispute resolution process, both main parties should be able to submit a statement clearly setting out the matters which are the subject of dispute, not just the applicant. This will ensure that both sides of the story can be considered at an early stage.

The consultation proposes restricting the options that a local planning authority can take after a report is received from the appointed person assigned to deliver the dispute resolution process. Our view is that the options available to the local planning authority should be as follows:

- If the local planning authority accept the findings of the report, they enter into the proposed section 106 agreement and issue the planning permission
- If they accept the findings, but the developer does not wish to enter into the proposed section 106 agreement, the local planning authority can refuse the planning permission
- If they local planning authority does not accept the findings, they can refuse the planning permission

It is proposed that the Secretary of State will have discretion to set fees for the running of the dispute resolution process and that in normal circumstances the costs of the process would be shared evenly between the local planning authority and the applicant. Councils have no funding for this process and we are concerned it will place significant additional financial burden.

Chapter 11: Permitted development rights for state-funded schools

No comment

Chapter 12: Changes to statutory consultation on planning applications

Statutory consultees play an important part in ensuring that planning supports the delivery of development that meets the needs of the local area. However engagement needs to be risk based, proportionate and timely.

The consultation proposes setting a maximum period that a statutory consultee can request when seeking an extension of time to respond with comments to a planning application (beyond the 21 day statutory period).

[1] 8 weeks for a minor application, 13 weeks for a major application and 16 weeks for an application accompanied by an Environmental Impact Assessment

Introducing a maximum period for extension of time may provide an increased incentive for statutory consultees to make timely responses, however a balance needs to be struck to ensure that full consideration (particularly large-scale complex applications) is given to the application to ensure that an adequate level of feedback can be given.

The LGA has developed a number of proposals for further improving the statutory consultee process, outlined below. We would like to see these proposals taken forward as part of a package of measures to streamline and speed up the statutory consultee process, and minimise the need for requests for extension of time.

Early engagement

Statutory consultees should focus on engagement at plan-making stage. This will allow significant issues with strategic sites to be identified at the outset so that all parties are aware of what further assessment and engagement is required and some sites can be screened out of further requirements. That will provide certainty and clarity to developers, reduce unnecessary consultation and save resources for all parties.

Statutory consultees should make greater use of standing advice. Early screening at plan-making stage will enable statutory consultees to do this. The provision of effective standing advice can support quick progression of planning applications by reducing the number of consultations required.

Statutory consultees should offer effective pre-application engagement discussion and advice proportionate to proposed development and the needs of applicants. Early engagement between statutory consultees, developers, councils and other partners through pre-application services allows issues to be resolved before applications are submitted, increasing the quality of schemes, reducing conflict and securing community acceptance for applications. This should be part of a coherent and joined up local pre-application offer. This can assist in bringing forward development more quickly and add value to all partners saving time and money.

A timely and proportionate approach

Statutory consultees should be required to provide notification to applicants within 5 working days if further information is needed in order to provide a substantive response within the 21-day statutory time period.

Joining-up and streamlining

Statutory consultees across different government departments should move towards a single point of engagement – a "one-stop-shop" model. Navigating numerous government agencies to find the information required is complex and time-consuming for councils and developers. A single channel of engagement or single point where information of the statutory consultee 'offer' could be accessed would simplify and speed up the process.

Statutory consultees should promote and make greater use of e-consultation. This would provide a standardised, simplified, consistent service for councils and other applicants and be provided as part of the "one-stop-shop" proposal above. Government should support the provision of appropriate systems to enable this.

Statutory consultees should join up planning functions with other regulatory, licensing and permitting functions they undertake. This should provide a seamless offer to councils and developers with processes that can run concurrently to speed up decision making and consent/permit giving. This would reduce regulatory burden and simplify the process.