PHD684
Ward(s): General

Winchester City Council

DRAFT PORTFOLIO HOLDER DECISION NOTICE

PROPOSED INDIVIDUAL DECISION BY THE PORTFOLIO HOLDER FOR THE BUILT ENVIRONMENT

CONSULTATION RESPONSE TO THE TECHNICAL CONSULTATION ON IMPLEMENTATION OF PLANNING CHANGES PUBLISHED BY DCLG.

PROCEDURAL INFORMATION

The Access to Information Procedure Rules – Part 4, Section 22 of the Council's Constitution provides for a decision to be made by an individual member of Cabinet.

In accordance with the Procedure Rules, the Chief Operating Officer, the Chief Executive and the Chief Finance Officer are consulted together with Chairman and Vice Chairman of The Overview and Scrutiny Committee and any other relevant overview and scrutiny committee. In addition, all Members are notified.

If five or more Members from those informed so request, the Leader may require the matter to be referred to Cabinet for determination.

If you wish to make representation on this proposed Decision please contact the relevant Portfolio Holder and the following Democratic Services Officer by 5.00pm on Tuesday, 12 April 2016.

Contact Officers: Steve Opacic

Case Officer: Julie Pinnock Tel 01962 848439 jpinnock@winchester.gov.uk

Or Jenny Nell Tel 01962 848278, jnell@winchester.gov.uk

Democratic Services Officer: Nancy Graham, Tel: 01962 848 235, ngraham@winchester.gov.uk

SUMMARY

On 18 February 2016, the Planning Directorate in the Department for Communities and Local Government, published for consultation a number of proposed changes to the planning system, covering the following topics:-

Chapter 1: Changes to planning application fees
Chapter 2: Permission in principle
Chapter 3: Brownfield register
Chapter 4: Small sites register
Chapter 5: Neighbourhood planning
Chapter 6: Local plans

Chapter 7: Expanding the approach to planning performance
Chapter 8: Testing competition in the processing of planning applications
Chapter 9: Information about financial benefits
Chapter 10: Section 106 dispute resolution
Chapter 11: Permitted development rights for state-funded schools
Chapter 12: Changes to statutory consultation on planning applications
Chapter 13: Public Sector Equality Duty

Attached below is a link to the full document

https://www.gov.uk/government/consultations/implementation-of-planning-changes-technical-consultation

The consultation period runs from Thursday 18 February to Friday 15 April 2016.

The consultation paper is presented as a series of questions, following an explanation as to what changes are being sought and what's intended to be achieved through the implementation of the changes. The following therefore, summarises the changes proposed for those matters of interest for planning in the Winchester District. The Council's recommended response is set out at Appendix A. Due to the wide ranging nature of the consultation, the response has been compiled between officers in Development Management and Strategic Planning, and covers those areas of most concern to the Council, rather than addressing all parts of the consultation. The Council's response at Appendix A includes the questions being asked by DCLG.

PROPOSED DECISION

That the recommended response contained within Appendix A be presented to DCLG by the deadline of Friday 15 April 2016 and authority be delegated to the Head of Development Management/Strategic Planning, in consultation with the Portfolio Holder for the Built Environment, to agree any final changes in response to this notice.

REASON FOR THE PROPOSED DECISION AND OTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

It is recommended that the focus for the response from Winchester City Council will cover the following matters:

Changes to planning application fees
Permission in principle
Brownfield register
Small sites register
Local plans
Expanding the approach to planning performance
Testing competition in the processing of planning applications
Information about financial benefits
Section 106 dispute resolution

Changes to statutory consultation on planning applications

The response to be forwarded to DCLG is set out at Appendix A.

Summary of those matters of interest for planning in the Winchester District:

Changes to planning application fees

<u>Summary of proposed changes</u>

The consultation focuses on whether increases in planning fees (in line with inflation and performance) will improve service delivery and overall performance. The fees were last updated in 2012. It is proposed that the fees are updated annually in line with inflation, but only for those Councils which are performing well.

Winchester's performance is high, and there is no present risk that the Council will be designated as an under performing authority. However for those that may be designated, the reduction in fee income is likely to affect their ability to delivery a quality service with no incentive to provide a better service.

The consultation puts forward a suggestion that those Councils in the top 75% for speed and quality could have limited increases. Speed is assessed against the time taken to make decisions on planning applications whilst quality is measured by the proportion of all decisions on applications for major development that are overturned at appeal.

The consultation suggests that proposals should be locally led; however it also recognizes that the Government did not implement local fee setting. The report explains that this was because of the fear that there was no competition in the planning service and that local fees (which would have been based on cost recovery), would not have been linked sufficiently to improved performance.

The consultation seeks views on a fast track service (or services), but with a requirement to maintain the minimum standards for notification while offering decisions in less time that the statutory period (8 or 13 weeks). The Development Management service is currently in the midst of a review with Vanguard, and it has been possible to determine some householder decisions within a much shorter period than the statutory time frame.

What is not clear in the consultation is how the fast track service would be funded, and what happens if processing an application, perhaps because of public representation or policy issues, results in a slower determination period (although delivers a quality service).

Permission in principle

<u>Summary of proposed changes</u>

The Housing and Planning Bill introduces a new ‘permission in principle’ route for obtaining planning permission. The Bill provides for permission in principle to be granted on sites in plans and registers, and for minor sites on application to the local planning authority. This is designed to separate decision making on ‘in principle’ issues (such as land use, location and amount of development) from matters of technical detail (such as what the buildings will look like).

The present system allows for sites to be allocated in local/neighbourhood plans and for outline planning permission to be granted. The Government considers that these processes both require details for the development to be considered more than once, whereas the permission in principle philosophy would grant planning permission and that consideration of ‘prescribed particulars’ could not be re-considered at another stage of the process. However, the permission in principle would need to be followed up by an application for technical details consent.

The Government considers that these proposals would give greater certainty and predictability within the planning system by ensuring that the principle of development only needs to be established once. More certainty would therefore be available earlier in the process, before heavy investment is made in costly technical details and will have a number of benefits: it will increase the likelihood of suitable sites being developed; it will also improve the efficiency of the planning system by reducing the number of detailed applications that are unsuitable in principle; and it will limit the amount of time spent reappraising the principle of development at different points in the process.

The Bill sets the overarching framework for permission in principle to be granted in two ways:

- on allocation in a locally supported qualifying document that identifies sites as having permission in principle; and,
- on application to the local planning authority.

The three key requirements that need to be met in order for permission in principle to be granted by this route are:

a) the site must be allocated in locally produced and supported documents that have followed an effective process of preparation, public engagement, and have regard to local and national policy;

b) the document must indicate that a particular site is allocated with permission in principle. The choice about which sites to grant permission in principle in a qualifying document will be a local one, but our expectation is that it will be used in most cases. Allocations in existing plans cannot grant permission in principle i.e. it will not apply retrospectively;

c) the site allocation must contain ‘prescribed particulars’. These are the core ‘in principle’ matters that will form the basis of the permission in principle.

This would then be required to be followed by a technical details consent, which must:

a) relate to a site where permission in principle is in place;

b) propose development in accordance with the permission in principle; and

c) be contained in a single application (i.e. not broken down into a series of applications).

Permission in principle will only be able to be granted on allocation where it is identified in a qualifying document. The choice about whether to grant permission in principle should be locally driven and reinforces a commitment to a plan-led system. It is suggested that qualifying documents should be:

a) future local plans;

b) future neighbourhood plans;

c) brownfield registers

It is proposed that anything other than location, use, and amount of development are not included in the permission in principle and will be regarded as technical details. These matters will need later agreement through an application for technical details consent. Examples of technical details include the provision of infrastructure, fuller details of open space, affordable housing, alongside matters of design, access, layout and landscaping. If the technical details are not acceptable for justifiable reasons, the local planning authority could justify a refusal at the technical details stage, and the applicant would have the right of appeal. The local planning authority may not use the technical details consent process to reopen the 'in principle' issues that have been approved in the permission in principle.

Permission in principle will not remove the need to assess the impact of development properly before full planning permission is granted. The assessment of all sites against local and national planning policy is at the heart of both the decision to grant permission in principle and the subsequent agreement of technical details. In most cases it should be possible to decide whether or not to grant permission in principle. In a small number of cases, the site might be suitable, but the extent or nature of development is highly constrained due to the sensitivity of the site or its surroundings. Where allocation is being considered in these circumstances, a decision may be taken to allocate a site, but not grant permission in principle.

For permission in principle applications, it is proposed to set consultation arrangements for involvement of communities and statutory consultees that are in line with requirements for planning applications.

Before an application for technical details consent is determined, it is not proposed to require (by secondary legislation) local planning authorities to consult with the community and others before making a decision. The Government welcomes views

about giving local planning authorities the option to carry out further consultation with such interested persons as they consider appropriate. This would be based on their judgement and would be informed by the engagement that took place when permission in principle was granted. It should, however, be mandatory for applicants to notify landowners and agricultural tenants of the application (as is currently the case with a planning application).

Where an applicant submits an application for permission in principle to the local planning authority for minor development, a decision about whether the development is acceptable in principle should be possible with minimal information. It is proposed that applications will include:

- a nationally prescribed application form;
- a plan which identifies the land to which the application relates (drawn to an identified scale and showing the direction of north); and
- a fee which we would expect to be set at a level that is consistent with similar types of applications in the planning system.

For applications for technical details consent, it is proposed that an application will include:

- a nationally prescribed application form (including an ownership certificate);
- plans and drawings necessary to describe the technical details of the development;
- a fee which we would expect to be set at a level that is consistent with similar types of applications in the planning system.

Accordingly, it is proposed that applications for technical details consent should be limited to only require two further sets of information:

- a design statement, which should contain information relating to design matters including layout, access and architectural detail; and
- an impact statement, which should include:
    i. required further assessments e.g. contamination study and flood risk assessment
    ii. mitigation e.g. remediation and drainage schemes.

The Government is of the view that the early certainty given by permission in principle about the acceptability of a development offers the potential to improve the efficiency of planning system overall. Reflecting this, it is proposed that permission in principle applications and applications for technical details consent should be subject to the following maximum determination periods:

Application:	Determination period:
Permission in principle minor application	5 weeks

Technical details consent for minor sites	5 weeks
Technical details consent for major sites	10 weeks

Brownfield register

Summary of proposed changes

The National Planning Policy Framework sets out that planning policies and decisions should encourage the effective use of land by reusing brownfield sites, provided they are not of high environmental value, and that local planning authorities may set locally appropriate targets for the use of brownfield land. Planning Practice Guidance also stresses the importance of bringing brownfield land back into use.

The Government wishes to maximise the number of new homes built on suitable brownfield land and therefore sets out a commitment to introduce a statutory brownfield register, and ensure that 90% of suitable brownfield sites have planning permission for housing by 2020. Through brownfield registers, a standard set of information will be kept up-to date and made publicly available to help provide certainty for developers and communities and encourage investment in local areas. These brownfield registers should be a qualifying document to grant permission in principle. The Government expect authorities to take a positive, proactive approach when including sites in their registers, rejecting potential sites only if they can demonstrate that there is no realistic prospect of sites being suitable for new housing. The Government also expect that the large majority of sites on registers that do not already have an extant planning permission will be granted permission in principle, and technical details consent subsequently, for housing.

Planning Practice Guidance will be published on how brownfield registers should be drawn up and kept under review. Brownfield registers will comprise a comprehensive list of brownfield sites that are suitable for housing, including housing led schemes where housing is the predominant use with a subsidiary element of mixed use.

Local planning authorities should use existing evidence within an up to date Strategic Housing Land Availability Assessment (SHLAA) as the starting point for identifying suitable sites for local brownfield registers. This could be supported by the existing call for sites process to ask members of the public and other interested parties to volunteer potentially suitable sites for inclusion in their registers. That will enable windfall sites to be put forward by developers and others for consideration by the authority. To be regarded as suitable for housing, the proposed criteria are that sites must be:

• Available – sites should be either deliverable or developable, with a realistic prospect that housing will be delivered on the site within five years and in particular

that development of the site is viable. To be considered developable sites are likely to come forward later on (e.g. between six and ten years).

• Capable of supporting five or more dwellings or more than 0.25 hectares. This approach to defining a minimum site size threshold is intended to be proportionate and is in line with Planning Practice Guidance on conducting Strategic Housing Land Availability Assessments. Authorities should also aim to seek suggestions for smaller sites from the public and other interested parties and include these sites in their registers whenever possible because of their valuable contribution to overall housing supply.

• Capable of development**.** Local authorities should ensure that sites are suitable for residential use and free from constraints *that cannot be mitigated*.

A key purpose of brownfield registers is to provide transparent information about suitable sites to local communities, developers and others. Information about potentially suitable sites should be available at local authority offices and online. Once local authorities have considered representations on the proposed list of sites, decisions should be published including reasons why sites have or have not been granted permission in principle.

Brownfield registers will improve the availability and transparency of information on brownfield land that is suitable for housing. Authorities will be expected to include all sites considered suitable irrespective of their planning status and registers should include sites that:

• have extant outline or full planning permission or permission granted by local development order where sites have not yet been developed, and sites where planning permissions are under consideration and local development orders are being prepared;

• have permission in principle for housing;

• are suitable for housing but have no form of existing permission

The usefulness of local brownfield registers will be maximised if the data held across all local authority areas is consistent. For each site in the brownfield register local planning authorities will be required to provide:

• site reference - Unique Property Reference Number (UPRN)
• site name and address
• grid reference
• size (in hectares)
• an estimate of the number of homes that the site would likely to be support, preferably a range of provision

- planning status (including link to details held elsewhere of planning permissions, permission in principle/associated technical details consents, and local development orders)
- ownership (if known and in public ownership)

As sites are developed and new sites become available, authorities will need to review their stock of brownfield land and its permission status on a regular basis, this should be at least once a year.

Small sites register

Summary of proposed changes

The Government considers that a published list of small sites will make it easier for developers and individuals interested in self-build and custom housebuilding to identify suitable sites for development, and will also encourage more land owners to come forward and offer their land for development. Sites on the register will not necessarily have been subject to an assessment of their suitability for development therefore anyone wishing to develop a site on the register will need to apply for planning permission in the usual way.

The definition of small sites for this purpose should be sites which are between one and four plots in size.

So as not to discourage landowners from offering their sites for potential development or place an unreasonable burden on local authorities, there is no need for any suitability assessment associated with placing a site on the register. Although this will mean that there is no guarantee that land on the register can be used for development, it will still achieve its overall objective of increasing awareness of the location of small sites.

The Government would be interested in understanding whether local planning authorities should be permitted to exclude sites from the register which they deem completely unsuitable for development and consider that the minimum information which the register should contain is:

- the location of the site (such as a six figure grid reference);

- the approximate size of the site (number of square metres); and

- contact details for the owner

Local Plans

Summary of proposed changes

The Government has made clear that all local planning authorities should have a local plan in place on the basis that they have had more than a decade since the

introduction of the Planning and Compulsory Purchase Act 2004 (the 2004 Act) to prepare a local plan. Local plans are the primary basis for identifying what development is needed in an area and for deciding where it should go, providing certainty for both communities and the development industry. There is an expectation that local plans should to be kept up-to-date to ensure policies remain relevant. The National Planning Policy Framework is clear that housing policies should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. Furthermore, guidance sets out clearly that most local plans are likely to require updating in whole or in part at least every five years.

The Government has set out its commitments to take action to get plans in place and ensure plans have up-to-date policies by:

• publishing league tables, setting out local authorities' progress on their local plans;

• intervening where no local plan has been produced by early 2017, to arrange for the plan to be written, in consultation with local people, to accelerate production of a local plan; and

• establishing a new delivery test on local authorities, to ensure delivery against the number of homes set out in local plans.

The proposals include to prioritise intervention where:

• the least progress in plan-making has been made;

• policies in plans have not been kept up-to-date;

• there is higher housing pressure;

• intervention will have the greatest impact in accelerating local plan production.

Local planning authorities are required to publish and keep up to date a local development scheme which sets out the documents which will comprise their local plan.

Before taking decisions on intervention in a local plan, local authorities will be given an opportunity to explain any exceptional circumstances which, in their view, would make intervention at the proposed time unreasonable. What constitutes an 'exceptional circumstance' cannot, by its very nature, be defined fully in advance, but the general tests that will be applied in considering such cases, would be:

• whether the issue significantly affects the reasonableness of the conclusions that can be drawn from the data and criteria used to inform decisions on intervention;

• whether the issue had a significant impact on the authority's ability to produce a local plan, for reasons that were entirely beyond its control.

The Government also wishes to increase transparency for local communities on local authorities' progress in plan-making, through the publication of key information for each local planning authority in England:

• the date that the local plan was adopted or last reviewed (for areas without an adopted local plan it would be the date of their last plan prior to the 2004 Act);

• for the publication and submission stages of the plan-making process, the date these stages have been achieved;

• for each stage in the plan-making process (publication, submission, adoption) that has not been achieved:

a) the forecast date for achieving that stage as set out in the authority's local development scheme at a baseline date (likely to be April 2016);

b) for subsequent publications of this information, the most recent forecast dates. If this remains the same as the baseline date it will still be published to show the authority is meeting their timetable;

c) any slippage or acceleration between the original baseline date and the most recent forecast dates.

Expanding the approach to planning performance

Summary of proposed changes

The consultation proposes introducing the ability to designate under performing local planning authorities on non-major development (which includes householder applications, change of use (less than 1 hectare site area) and 1 – 9 dwellings or 999sq.m. of development). It has already been introduced for major development (10+ dwellings or 1,000+ sq.m development), although the proposal seeks opinions on reducing the quality measure by a further 10% for major development overturned at appeal.

The national average determination period for non-major applications is 79% in time (agreed extensions of time or planning performance agreements count). The consultation is therefore seeking views on what the performance measure should be before an authority is designated as under performing. The consultation is suggesting 60-70 percent over a two year assessment period. For major development the threshold for a risk of designation is 50%, and it is proposed to keep this figure under review.

It is proposed that the quality measure of 20% of overturned appeals on major development is reduced to 10%. This could cause concern if the number of appeals on major applications is low, and applicants may submit poorly conceived planning

applications, which leave the Council no alternative but to refuse, but then submit further information during the appeal to overcome reasons for refusal.

For the period April 2016 – February 2016 performance for Major applications was at 81.25%, performance for Minors was at 84.29%, and for other (which includes householder and change of use) we are at 93.43%.

For the two-year period 1 March 2014 to 29 February, the Council achieved 84.06% for determining major applications within 13 weeks or an agreed extension of time.

The Council's performance across the board is strong and therefore the introduction of a 60-70% performance measure of non-major development would not pose a risk to the authority at the present time and neither does the 50% measure for major applications. However it should be borne in mind that performance can be affected by a number of factors which it can be difficult for councils to control. For example staff recruitment and retention can be particularly challenging in a buoyant economy and this can constrain performance..

Testing competition in the processing of planning applications

Summary of proposed changes

The consultation seeks to explore ways of introducing competition in the planning process. However the paper also advises that this would not include any changes to the final decision making on planning applications, which it advises would stay with the local planning authority.

The consultation is initially exploring views on a programme to test how competition could effectively be introduced in the processing of planning applications in certain geographical locations by allowing 'approved providers' to compete to process planning applications. The suggestion is that local authorities could also compete to process planning applications in other local authorities' areas.

The consultation acknowledges that the democratic determination of planning applications is a "fundamental pillar of the planning system", and therefore proposes that the decision would remain with the local planning authority. The consultation does not explain how this would be managed, how the process would be resourced or what happens if 'approved providers' do not deliver quality service.

Information about financial benefits

Summary of proposed changes

The consultation explains that financial benefits of planning applications are not always set out fully in public during the course of the decision making process. It explains that financial benefits can accrue to local areas a result of development.

For example the New Home Bonus which is advises had a positive impact on local authority's attitude towards new housing.

The NPPG makes it clear that local finance considerations may be cited in reports (even when they are not material planning considerations) the concern in the report is that they are not fully set out in public domain at present. The Housing and Planning Bill proposes to place a duty on local planning authorities to ensure that planning reports to record financial benefits that are likely to accrue. It will also require other "local finance considerations" such as the Community Infrastructure Levy, Government Grants and New Home Bonus. Other benefits beyond these local finance considerations include Council tax and/or Business Rates.

This requirement does not pose a problem for the Council. We already include information about S106 obligations and CIL and it would not be difficult to provide other financial details that the Council hold.

What is unclear is how approved providers (or local planning authorities who have no other function) will incorporate this information into recommendations, although the consultation advises that this can be an estimate to what appears the likely value at the time of the report.

Section 106 dispute resolution

Summary of proposed changes

The consultation suggests introducing a dispute resolution mechanism for S106 agreements through the Housing and Planning Bill. This would apply where there are unresolved issues relating to S106 obligations. This should not have a significant impact on the Council as we have always been willing to negotiate and reach conclusions on S106 agreements. It may be useful where other parties to the S106 have been unable to resolve an issue. It would avoid the need to refuse an application and have the matter considered through the appeal process.

Changes to statutory consultation on planning applications

Summary of proposed changes

The consultation suggests setting a maximum time by which statutory consultees can ask for an extension beyond the usual statutory period (usually 14 or 21 days). It recommends that a further maximum 14 day period could be agreed.

The Council would have no objection to this, as it would ensure statutory consultees respond in a timely way. However, it could place a burden on the local planning authority as decision maker if statutory consultees do not respond.

RESOURCE IMPLICATIONS:

Changes to planning process and policy can have significant resource implications through the need to adjust processing requirements and methods and commit additional resources to collating additional data. It is very likely that some of the proposed changes to the system summarised above, such as compiling Brownfield and Small sites registers, will have significant resource implications for the Council, particularly in relation to officer time, and this additional burden will seemingly need to be met without any additional funding. As also explained above planning performance could also affect future fee income as charges will depend upon how the Council performs against set criteria. Furthermore opening up development management to competition could impact upon fee income although it is not clear at this point how this would work in practice so it is not possible to predict the scale of the impact.

CONSULTATION UNDERTAKEN ON THE PROPOSED DECISION

Consultation with the Portfolio Holder for Built Environment.

FURTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED FOLLOWING PUBLICATION OF THE DRAFT PORTFOLIO HOLDER DECISION NOTICE

n/a

DECLARATION OF INTERESTS BY THE DECISION MAKER OR A MEMBER OR OFFICER CONSULTED

none.

DISPENSATION GRANTED BY THE STANDARDS COMMITTEE

None.

Approved by: (signature) **Date of Decision**

Councillor Mike Read – Portfolio Holder for Built Environment

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APPENDIX A

Response of Winchester City Council to Technical Consultation on implementation of planning changes.

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Consultation questions followed by Winchester City Council's response:

Chapter 1: Changes to planning application fees

Question 1.1: Do you agree with our proposal to adjust planning fees in line with inflation, but only in areas where the local planning authority is performing well? If not what alternative would you suggest?

WCC Response:

Yes the Council does agree that fees should be adjusted in line with inflation.
It would be wrong to penalise those authorities that are not performing well without understanding the reasons why. A reduction in fees may mean an inability to appropriately resource the service which would place an added pressure on the planning authority.

It is difficult to offer alternatives without actively understanding the problems. The Planning Guarantee already allows for a refund of the planning fee if a decision takes longer than 26 weeks without an agreed extension of time or a prior agreed planning performance agreement.

Question 1.2: Do you agree that national fee changes should not apply where a local planning authority is designated as under-performing, or would you propose an alternative means of linking fees to performance? And should there be a delay before any change of this type is applied?

WCC Response:

No it does not seem appropriate to target under performing authorities' fee income as this will detrimentally affect their ability to improve their service. Planning fee income does not cover the cost of delivering the service. If local planning authorities could ensure cost recovery through planning fees, then service would improve, as planning authorities could be appropriately resourced.

Question 1.3: Do you agree that additional flexibility over planning application fees should be allowed through deals, in return for higher standards of service or radical proposals for reform?

WCC Response:

Everyone deserves and should expect the same high standard of service. If this proposal was introduced there would be a risk that those not able to pay i a 'premium' will be not prioritised and will have to wait longer for their decisions..

Question 1.4: Do you have a view on how any fast-track services could best operate, or on other options for radical service improvement?

WCC Response:

The Council is looking at ways to improve its service placing customer needs at the heart of the system. This focuses on end to end principles. What is important is understanding and responding to customer needs and it is therefore preferable to develop a system which offers a high quality service to all rather than creating a two tier system..

Question 1.5: Do you have any other comments on these proposals, including the impact on business and other users of the system?

WCC Response:

Chapter 2: Permission in principle

Question 2.1: Do you agree that the following should be qualifying documents capable of granting permission in principle?
a) future local plans;
b) future neighbourhood plans;
c) brownfield registers.

WCC Response:

The documents listed are already the principle source of the identification of sites for development; indeed for both neighbourhood and local plans this is one of their key functions. It is considered that Permission in Principle would only adda further layer of complexity to the plan making process and it is difficult to see how this will speed up either plan or decision making, as once a site is allocated in a local/neighbourhood plan it has, in effect, permission in principle anyway.

Question 2.2: Do you agree that permission in principle on application should be available to minor development?

WCC Response:

The key concern with this approach is the inability to control the scale of development (albeit references to 'minor'which is unspecified) and the need to ensure that schemes also contributes to affordable housing provision, open space requirements etc and that matters such as site viability have been considered at the outset, as would be the case with a local plan allocation or outline planning application.

Question 2.3: Do you agree that location, uses and amount of residential development should constitute 'in principle matters' that must be included in a permission in principle? Do you think any other matter should be included?

WCC Response:

All sites will typically have infrastructure requirements which should be established prior to the granting of permission as these could have an impact on site viability and ,by extension, site delivery. If the infrastructure implications are left to the technical details stage and these are identified as significant then these will inevitably have an impact on how quickly a site can be delivered if at all. Therefore to ensure the site identified under the permission in principle route can be delivered it would be necessary for all details and constraints to be identified early on in the site identification process – this is something that happens during the identification and subsequent allocation of a site in a local plan which will contain in policy all the necessary elements to ensure that the site can be delivered. Leaving these considerations to the technical details stages could cause delay.

Question 2.4: Do you have views on how best to ensure that the parameters of the technical details that need to be agreed are described at the permission in principle stage?

WCC Response:

See response to 2.3 above

Question 2.5: Do you have views on our suggested approach to a) Environmental Impact Assessment, b) Habitats Directive or c) other sensitive sites?

WCC Response:

Typically sensitive sites are not allocated for development and, following this approach, should not be granted permission in principle. Local Authorities liaise with the statutory environmental agencies on a regular basis and involve them in the plan making/decision making processes. Only sensitive sites, where all other reasonable alternatives have been explored, may be considered suitable for development and even then the mitigation requirements could be extensive.

Question 2.6: Do you agree with our proposals for community and other involvement?

WCC Response:

This appears to be consistent with the requirements to identify sites for the allocation in local plans and the processes required in the determining of planning applications. Of concern is the potential ad hoc nature of the applications that could place additional burdens on the resources of the local authority. Indeed would these applications fall within the remit of local plan making or decision making which are typically undertaken by separate teams? It is therefore considered that these will add another unnecessary layer of duplication in the planning regime.

Question 2.7: Do you agree with our proposals for information requirements?

Question 2.8: Do you have any views about the fee that should be set for a) a permission in principle application and b) a technical details consent application?

Question 2.9: Do you agree with our proposals for the expiry of of permission in principle on allocation and application? Do you have any views about whether we should allow for local variation to the duration of permission in principle?

Question 2.10: Do you agree with our proposals for the maximum determination periods for a) permission in principle minor applications, and b) technical details consent for minor and major sites?

WCC Response:

This paper includes reference to a maximum 5 year expiry period for permission in principle consent. The key issue is delivery and, under the current system, it is not unusual for sites to secure planning permission but not be developed immediately. This means that there are sometimes other factors which delay development including the house builders' ability or desire to start work on site quickly. If the purpose of introducing the Permission in Principle regime is to speed up delivery then the time limits should be significantly shorter to ensure that the site is delivered without unreasonable delays.

Fees should be comparable to outline and full planning applications.

The time limits for determination of applications set at 5 weeks for minors and 10 weeks for majors are not considered feasible given the information requirements which will be needed to properly assess these types of application and to allow for proper community engagement. .

Chapter 3: Brownfield register

Question 3.1: Do you agree with our proposals for identifying potential sites? Are there other sources of information that we should highlight?

Question 3.2: Do you agree with our proposed criteria for assessing suitable sites? Are there other factors which you think should be considered?

WCC Response:

Most Strategic Housing Land Availability Assessments (SHLAAs) include recording of whether sites are previously developed or not. The basis for the brownfield register would therefore be the SHLAA, which also assesses when a site will be available and includes a list of policy constraints. The SHLAA is also the starting point for the identification of potential sites to allocate through the local plan process. Therefore to introduce an additional parallel register seems unnecessary and indeed the level of detail required is similar to that previously collated under the National Land Use Database (NLUD); a register that local authorities were required to complete on an annual basis and a requirement withdrawn by the Government a few years ago.

Local Authorities publish their SHLAAs and update them on a regular basis so to introduce an additional register is unnecessary and would be unlikely therefore to improve housing delivery.

If a site is identified on a brownfield register then this would potentially raise expectations as there appears to be a presumption in favour of housing development at the cost of other uses. This would undermine the retention of land for other uses such as retail or employment.

Question 3.3: Do you have any views on our suggested approach for addressing the requirements of Environmental Impact Assessment and Habitats Directives?

Question 3.4: Do you agree with our views on the application of the Strategic Environment Assessment Directive? Could the Department provide assistance in order to make any applicable requirements easier to meet?

WCC Response:

The local plan process undertakes an assessment under the SA/SEA and Habitats Regulations; this can be carried out on the basis of a known quantity of development i.e. the local authorities objectively assessed need and spatial distribution through the proposed development strategy. If a significant number of sites (dwellings) were to be identified and this is over and above the levels assessed during the plan making process then it could be necessary to undertake further SA/SEA/HRA, particularly with regard to cumulative impacts. This is an issue Natural England and the other environmental agencies would be able to advise on. The preparation of a register itself would not necessarily require an SA/SEA/HRA but the impact if all the

sites identified then came forward for development could be an issue. – To promote this piecemeal process of development outside of the plan making process could therefore lead to unknown impacts where mitigation has not been established through planning policy.

Question 3.5: Do you agree with our proposals on publicity and consultation requirements?

WCC Response:

The paper suggests that if a site is on the brownfield register then it automatically receives Permission in Principle. Whilst participation on a register is feasible, it is not until a site is actually identified for development that local interest will become more apparent. Communities in general understand both the local plan and planning application processes so there is a real risk that introducing new means of both identifying, allocating and giving sites planning permission will lead to confusion. The ideal position would be to identify all those potentially affected on compilation of the register but this is too onerous a task to be undertaken and the feedback would then need to be addressed in some manner. Local authority Planning teams already face resource pressures in relation to meeting the requirements of the system in its present form so to introduce additional burdens without the necessary financial support could cause performance issues and delays in housing delivery. .

Question 3.6: Do you agree with the specific information we are proposing to require for each site?

WCC Response:

This creates duplication with SHLAA and is therefore unnecessary, see above comments re NLUD. Of key concern is reference in para 3.27 to inclusion on the register of brownfield sites irrespective of their planning status. This suggests that brownfield sites in rural areas will be considered suitable for housing development and that all planning consents should be included, even though these are already in the public domain. It is imperative that the identification of a site on the register does not automatically result in the site being allocated for development; there needs to be stronger links with the NPPF and local policy. . At present this is not evident from the proposals and there is a major risk that sites in unsustainable locations could be seen as suitable for development contrary to both local and national policy.

Question 3.7: Do you have any suggestions about how the data could be standardised and published in a transparent manner?

Question 3.8: Do you agree with our proposed approach for keeping data up-to-date?

WCC Response:

Updating this on an annual basis would be resource intensive. The regular updates to the SHLAA take many months to complete in terms of collating data and chasing

land owners. Standardising data is to be commended but there needs to be some flexibility to allow local authorities to address local issues.

Question 3.9: Do our proposals to drive progress provide a strong enough incentive to ensure the most effective use of local brownfield registers and permission in principle?

Question 3.10: Are there further specific measures we should consider where local authorities fail to make sufficient progress, both in advance of 2020 and thereafter?

WCC Response:

A new process is not required, a s explained above the process is not likely to yield the intended benefits as it duplicates publically available data in the SHLAA which is updated on a regular basis. Re-use of brownfield sites is monitored annually through the AMR . Previous attempts to capture data of this nature have failed (NLUD) with a number of local authorities not completing returns due to the excessive amount of data required.

Chapter 4: Small sites register

Question 4.1: Do you agree that for the small sites register, small sites should be between one and four plots in size?

WCC Response:

No objection in principle.   However, the Council's SHLAA uses a site threshold of 5 or more dwellings, as this was determined as a pragmatic approach to survey an extensive district. Winchester covers approximately 250 square miles and the local authority does not have the resources to survey all potential smaller sites across such a large area. Lists of small sites with planning permissions do however exist and a realistic compromise may be to publish these.

Question 4.2: Do you agree that sites should just be entered on the small sites register when a local authority is aware of them without any need for a suitability assessment?

WCC Response:

Local authorities 's do not have the resources to potentially deal with hundreds of small sites and to not undertake any form of assessment will create a list of all sites some of which will not be developable for various reasons. This is unlikely to help housing delivery and may create unreasonable expectations for sites which are not suitable for development .

Question 4.3: Are there any categories of land which we should automatically exclude from the register? If so what are they?

WCC Response:

Sites that have policy constraints at either National or Local level should not be included (e.g. SSSIs, local nature conservation sites, settlement gaps, etc).

Question 4.4: Do you agree that location, size and contact details will be sufficient to make the small sites register useful? If not what additional information should be required?

WCC Response:

For the reasons explained above it is considered that this register is not needed.

Chapter 6: Local plans

Question 6.1: Do you agree with our proposed criteria for prioritising intervention in local plans?

Question 6.2: Do you agree that decisions on prioritising intervention to arrange for a local plan to be written should take into consideration a) collaborative and strategic plan-making and b) neighbourhood planning?

Question 6.3: Are there any other factors that you think the government should take into consideration?

WCC Response:

In principle the concept of intervention is not considered an inappropriate action. However, there is a lack of understanding of the complexities of plan making, in particular the need for relevant up to date evidence and for on going community and stakeholder engagement. All these take time.

A key matter is community engagement and the need to allow for sufficient time for feedback and ongoing discussions to arrive at a consensus where possible. Indeed each local authority will have its own constitutional arrangements and these have their own processes and timescales.

Since the introduction of the 2004 Act the Government has made numerous changes to the plan making requirements, not least with the introduction of the NPPF in 2012. These all have consequences for plan making and can require additional evidence to be gathered and assessed and for further community engagement. Publishing league tables and the results of delivery tests alone will not ensure that plans are produced any quicker. Local authorities are in any event required to publish through their AMR housing delivery, so a more appropriate test may be the loss of planning applications on appeal referring to a lack of five year land supply.

Para 6.3 refers to requirements to up date local plans in whole or in part every 5 years, this then refers to para 49 of the NPPF. Para 49 of the NPPF refers to the need to have a five year supply of housing land but it does not refer to the need to review a local plan every five years. Indeed para 157 refers to "be drawn up over an appropriate time scale, preferably a 15-year time horizon". The purpose of local plans is to establish certainty through the identification and allocation of sites for

development. This takes time and to require a local plan review every 5 years would place an onerous and blanket requirement on local authorities and create further uncertainty It suggest that once a series of sites were identified and built out, it would be necessary immediately after to repeat the process, essentially contributing to a rolling local plan. This goes against the spirit of para 157 of NPPF, which refers to 15 year plan periods.

Neighbourhood Plans are not necessarily quicker to prepare and publish. Whilst covering a smaller geographical area, they still have to address critical issues and comply with numerous procedures.

Question 6.4: Do you agree that the Secretary of State should take exceptional circumstances submitted by local planning authorities into account when considering intervention?

WCC Response:

It is very unlikely that a local authority would intentionally delay preparation of its local plan and therefore, where there is the intention to intervene, it is a reasonable to allow for exceptional circumstances to be taken into consideration, particularly if these are beyond the LA's control.

Question 6.5: Is there any other information you think we should publish alongside what is stated above?

Question 6.6: Do you agree that the proposed information should be published on a six monthly basis?

WCC Response:

The status of local plans is available to view on the Planning Inspectorate's web pages which are updated regularly so there is no need for duplication. In any event local authorities are required to have up to date local development schemes (LDS) and these set out the key stages of local plan preparation together with a risk register. It appears the Government will use these as the basis of the data it wishes to publish. The Government should look to utilise existing published data such as that in AMRs and LDS's before requiring additional data to be collated and submitted.

Chapter 7: Expanding the approach to planning performance

Question 7.1: Do you agree that the threshold for designations involving applications for non-major development should be set initially at between 60-70% of decisions made on time, and between 10-20% of decisions overturned at appeal? If so what specific thresholds would you suggest?

WCC Response:

Yes the Council agrees that 60-70% is a reasonable threshold for designation of non-major development and 10-20% of decisions overturned on appeal. The Council

would not recommend that these thresholds are set any higher, as this will enable local authorities to improve performance and quality over time.

Question 7.2: Do you agree that the threshold for designations based on the quality of decisions on applications for major development should be reduced to 10% of decisions overturned at appeal?

WCC Response:

No the Council does not agree that this should be reduced to 10%. There are many factors that influence the outcome of appeal decisions. An applicant may submit insufficient information or a poorly supported planning application, and then through the course of an appeal submit further information to overcome reasons for refusal. This would not be the fault of the local planning authority, but could affect the Council's performance on a quality measure. Having such a low threshold could also cause issues for councils that only deal with relatively small numbers of major appeals each year.

Question 7.3: Do you agree with our proposed approach to designation and de-designation, and in particular
(a) that the general approach should be the same for applications involving major and non-major development?

WCC Response:

If a Council is designated for non-major development the general approach should be the same as that for major development.

(b) performance in handling applications for major and non-major development should be assessed separately?

WCC Response:

Yes performance should be assessed separately as the challenges of dealing with major and non-major applications are different.

Question 7.4: Do you agree that the option to apply directly to the Secretary of State should not apply to applications for householder developments?

WCC Response:

Yes

Chapter 8: Testing competition in the processing of planning applications

Question 8.1: Who should be able to compete for the processing of planning applications and which applications could they compete for?

WCC Response:

The consultation sets out limited information about how the relationship between approved provider and the local planning authority as decision maker would operate. There is real concern about the quality and accountability of approved providers especially as the local planning authority would still have to make the final decision. Even where cases are assessed by a provider therefore the council would have to check the recommendation as it would be responsible for the outcome. This would add another level of complexity, not just for the local planning authority but the applicant too, and would introduce another party into the planning application process. It is also very doubtful that a private provider could deliver a service which was more competitively priced than the local planning authority so such a system would not offer better value to the customer. Overall therefore it is difficult to see how this would benefit the applicant or decision maker. The Council consider that as local planning authority they are best placed to process and make recommendations on planning applications.

Question 8.2: How should fee setting in competition test areas operate?

WCC Response:

In the test areas fee recovery based on a range seems appropriate, although it seems unequitable that local planning authorities should only be allowed to base their fees on cost recovery, whereas an approved provider operating in the market seek to make a profit.

If an applicant chooses an approved provider, and the local planning authority is still required to be the decision maker, their will inevitably be a cost to the local planning authority which should be recoverable. Developing this type of arrangement will result in double handling and potential delays to applicants in cases where the local planning authority has concerns about the provider's assessment and recommendation which will require discussions between the council's planners and the provider in order to resolve the situation..

Question 8.3: What should applicants, approved providers and local planning authorities in test areas be able to do?

WCC Response:

The Council does not consider that approved providers are an appropriate way to deal with the assessment of planning applications. The role of overseeing recommendations from approved providers will fall to the local planning authority, and this will lead to duplication of work. . It is likely that recommendations that are not supported by the applicant or their neighbours will lobby local planning authorities to overturn the approved provider's recommendation, or refer matters to a planning committee for decision. The suggested 1 or 2 week period for consideration of the recommendation would be insufficient in these cases and lead to dis-satisfaction to all involved in the process.

Question 8.4: Do you have a view on how we could maintain appropriate high standards and performance during the testing of competition?

WCC Response:

No – as explained in 8.3 this would be difficult to achieve. As a minimum approved providers should be a chartered planner.

Question 8.5: What information would need to be shared between approved providers and local planning authorities, and what safeguards are needed to protect information?

WCC Response:

In accordance with the need to provide an open and transparent planning service, approved providers would need to make publicly available all planning applications submitted to them and would need to deal with application publicity and resultant representations made. . The Council would not be sufficiently resourced to duplicate this work. As a minimum though the Council would need to maintain the statutory part I and Part II register. Approved providers would need to provide the local planning authority with a copy of their report with all supporting information to enable the local planning authority to check the recommendation before making the final decision.

Question 8.6: Do you have any other comments on these proposals, including the impact on business and other users of the system?

WCC Response:

The introduction of approved providers would lead to confusion in the planning system as their role and responsibilities would not be readily understood by participants in the planning system, including parish council and the public, especially since the local planning authority will still be responsible for the decision.

Chapter 9: Information about financial benefits

Question 9.1: Do you agree with these proposals for the range of benefits to be listed in planning reports?

WCC Response:

Yes but the weight that can be attached to financial considerations in the planning decision making process will need to be explained.

Question 9.2: Do you agree with these proposals for the information to be recorded, and are there any other matters that we should consider when preparing regulations to implement this measure?

WCC Response:

It will be difficult for approved providers and other authorities such as National Parks or Broad Authorities to collate some data. This will place an additional burden on local authorities to provide this data.

Chapter 10: Section 106 dispute resolution

Question 10.1: Do you agree that the dispute resolution procedure should be able to apply to any planning application?
WCC Response:

Yes

Question 10.2: Do you agree with the proposals about when a request for dispute resolution can be made?

WCC Response:

Yes

Question 10.3: Do you agree with the proposals about what should be contained in a request?

WCC Response:

Yes

Question 10.4: Do you consider that another party to the section 106 agreement should be able to refer the matter for dispute resolution? If yes, should this be with the agreement of both the main parties?

WCC Response:

Yes

Question 10.5: Do you agree that two weeks would be sufficient for the cooling off period?

WCC Response:

Yes.

Question 10.6: What qualifications and experience do you consider the appointed person should have to enable them to be credible?

WCC Response:

The qualification and experience should relate to the area of dispute. This may be a viability issue, or the tenure, mix and form of affordable housing. The parties entering

into dispute resolution should be able to agree what the qualifications/experience should be. This could be a planner, lawyer, valuer or a registered affordable housing provider.

Question 10.7: Do you agree with the proposals for sharing fees? If not, what alternative arrangement would you support?

WCC Response:

No the person who refers the matter to dispute resolution should pay the fee. If both parties agree the cost can be shared.

Question 10.8: Do you have any comments on how long the appointed person should have to produce their report?

WCC Response:

Suggest 4 weeks, although it should be clear that during this process an extension of time for the determination of the planning application must be agreed by the parties, otherwise the local planning authority would be at risk of repaying the planning fee if no decision has been made within 26 weeks.

Question 10.9: What matters do you think should and should not be taken into account by the appointed person?

WCC Response:

The dispute resolution should focus on the single issue(s) between the parties.

Question 10.10: Do you agree that the appointed person's report should be published on the local authority's website? Do you agree that there should be a mechanism for errors in the appointed person's report to be corrected by request?

WCC Response:

Yes to both.

Question 10.11: Do you have any comments about how long there should be following the dispute resolution process for a) completing any section 106 obligations and b) determining the planning application?

WCC Response:

Following dispute resolution completion of S106 and determining the planning application should be taken as quickly as possible but there is no need to prescribe a time period.

Question 10.12: Are there any cases or circumstances where the consequences of the report, as set out in the Bill, should not apply?

WCC Response:

Timing could be a factor. Therefore it is suggested that reports should have a shelf life or 6 months.

Question 10.13: What limitations do you consider appropriate, following the publication of the appointed person's report, to restrict the use of other obligations?

WCC Response:

Timing of entering the dispute resolution process is critical. No party should enter dispute resolution until all the material planning considerations have been considered. If a S278 agreement is required to make the development otherwise acceptable, this needs to be considered in dispute resolution if this impacts on that matter (i.e. financial viability).

Question 10.14: Are there any other steps that you consider that parties should be required to take in connection with the appointed person's report and are there any other matters that we should consider when preparing regulations to implement the dispute resolution process?

WCC Response:

As mentioned above timing is critical. Dispute resolution should be a last resort.

Chapter 12: Changes to statutory consultation on planning applications

Question 12.1: What are the benefits and/or risks of setting a maximum period that a statutory consultee can request when seeking an extension of time to respond with comments to a planning application?

WCC Response:

The only benefit would accrue if statutory consultees were able to meet the statutory time frame or the maximum period.

However statutory consultees who are unable to provide comments on planning applications within this time will mean that the local planning authority will not have the benefit of their advice when assessing the application's merits. This would place risk of making a challengeable decision n the local planning authority where they are obliged to reach a decision on a proposal without input from a statutory consultee..

Question 12.2: Where an extension of time to respond is requested by a statutory consultee, what do you consider should be the maximum additional time allowed? Please provide details.

WCC Response:

Notwithstanding the response to question 12.1 above if a maximum time is set, then it would be reasonable to allow a further 14 days for the response.