



THE HOME BUILDERS FEDERATION

Penfold Review of Non Planning Consents
Zone 3136
Department of Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET

10 February 2010

Dear Sirs

PENFOLD REVIEW OF NON PLANNING CONSENTS

Thank you for consulting the Home Builders Federation (HBF) on the above review. The HBF is the principal trade federation for the housebuilding industry in England and Wales representing over 300 members ranging from large, multinational companies to small, family owned businesses. Our members account for almost 80% of all new homes built in England and Wales every year. We are, therefore, very familiar with the process of non planning consents, particularly their relationship with planning permission.

We are also very pleased to have been invited to represent the housebuilding industry on the review's sounding board and to have been afforded the opportunity of a one on one meeting with the review team. Thus many of the points raised in this evidence have been discussed in some detail at those meetings and we hope that they too will be represented in the final report.

We acknowledge that there are numerous non planning consent regimes operated by a huge number of agencies, both public and private. It is not, therefore our expectation that the review should examine all of them in detail nor to make recommendations about the actual mechanics of individual consent regimes. We accept that many of the consents/licences/agreements are a necessary part of the development process and each has its own reason for being required whether legislative (including through European Directives) or policy based.

Our principal suggestion is, therefore, that the review looks specifically at the process of how such consents are obtained and the approach of the various bodies involved in that process.

We have not, therefore, sought to make recommendations or suggestions on specific non planning consent regimes or specifically singled out any particular agency or authority. Examples referred to below should, therefore, be considered as illustrations of a wider point or issue rather than a direct comment or criticism of the particular agency or consent regime.

From our discussions with the review team so far (as referred to above), it is clear that the 3 main areas of delay and inconsistency (and thus uncertainty) are associated with requirements of utilities, highways and environmental/heritage issues and consents.

It is becoming common place for planning applications to defer decisions on these (and other) issues through the imposition of conditions on a planning permission. Yet frequently the proposed solutions to these issues are submitted as part of the planning application and therefore the principle of implementation could (and should) be agreed as part of the planning application process. In other words it should not be possible for a non planning consent requirement to be refused on principle if a planning permission has been granted. This is already the case in some areas of non planning consents such as operational licensing from the environment agency for waste and recycling plant whereby the discussion is over how to do something rather than whether you are entitled to do something.

Unfortunately, particularly in housebuilding applications, we are aware of many instances where developers have an unimplementable consent because of fundamental, in principle objections from various non planning consent agencies (such as the EA and highways agencies) which should have been declared before planning permission was granted. In effect, therefore, the grant of planning permission should entitle the developer to all the necessary non planning consents.

Unfortunately many of the non planning consent agencies are starting to impose unrealistic or unachievable conditions on their own consents thereby rendering planning permissions unimplementable. Once again such discussions should be held as part of the planning application process rather than after the planning permission has been granted.

We are, however, concerned that integrating such consents into the planning application process could slow the process down. We therefore suggest that strict consultation deadlines continue to be enforced and that once a planning consent is granted there should be a presumption in favour of the other, non planning consents, being similarly approved. We suggest that this should go further than many of the "rights" given to developers (such as the right to connect to water supplies recently reiterated by the courts in *Barratt vs Welsh Water*) and should operate within a default approval system such as that currently operated within the building regulations regime. This would allow resources of the various non planning consent agencies to be focussed on those applications which require more consideration while leaving routine consents to proceed through the system efficiently.

Conclusions

We acknowledge and accept the need for many non planning consents and therefore need such consent regimes to be efficient, transparent and predictable.

There is considerable scope for many of the consent regimes to be better integrated into the planning consent regime thereby reducing the need for conditions on planning permissions which often lead to additional debate and negotiation over matters of principle previously resolved at the planning application stage.

Many consent regimes could be run alongside the planning application process rather than deferred until after planning consent has been granted. While we acknowledge that this may result in abortive work it would also assist in the proper consideration of all issues associated with a propose development at the planning application stage and would lead to less unimplementable consents and thus greater certainty of development.

The granting of planning permission should carry greater weight in the processing of non planning consents. This would ensure that non planning consents cannot overturn the benefit of a planning permission through the imposition of “in principle” objections to a development once planning permission has been granted.

It would be of considerable benefit to ensure that as many non planning consent regimes as possible were “default yes” in their application. This would lead to greater certainty and predictability in both timescale and acceptable approach to meeting the requirements of the consent agencies.

We trust that you find these comments of relevance to the review and we are, of course, willing to continue to assist the review team in any way that you may find of additional use.

Yours faithfully

A Whitaker

Andrew Whitaker
Planning Director