Consultation Response

April 2016

DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT

TECHNICAL CONSULTATION ON IMPLEMENTATION OF PLANNING CHANGES

RESPONSE BY THE HOME BUILDERS FEDERATION

This document was published on 18th February and consultation closed on 15th April 2016. The HBF response to the consultation was arrived at through discussions with HBF members at regional planning committees around the country and at the HBF National Planning Committee held on 13th April 2016. The structure of the response follows the Chapters and Questions set out in the consultation document. For details of the specific proposals please refer to the consultation document itself. This can be found here:

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?

Annual fee increases in line with inflation will assist in ensuring that local planning authorities are adequately resourced to handle planning applications. However, we believe that there would be a number of problems with linking fee increases to performance which we set out in response to other questions in this Chapter.

We would suggest that the work undertaken by PAS with regard to fee recovery is re-examined and consideration given to how those applications which are currently subsidised, such as householder applications and heritage applications, some of which attract no fee, are increased to more closely reflect the costs of processing them.

We have previously suggested that the fee structure should be staged to reflect the many interventions that the local planning authority makes in the development process. Overall, the fee for a development scheme would be set nationally but each stage of the process would attract part of the fee. Each subsequent fee payment would be dependent on the performance of both the LPA and the applicant at the previous stage. This would work particular well with pre-application discussions which are very varied in quality around the country, particularly with regard to fees being charged for similar services.

Fees for pre-application discussion should be formalised with a national fee scale set down by central government. Applicants who hold pre-app discussions with the LPA should have an easier passage through the application process, meaning that the fees for pre-app could be offset against the planning application fee. Applicants who chose not to enter into a pre-app discussion would pay a higher fee to reflect the additional work necessary to process their application starting from scratch.

Similarly, other stages of the development process could attract fees that are paid only if performance has been good. For example, fees for discharging conditions would only be payable if the local authority had agreed the conditions with the applicant and had made a decision on the application within the statutory timetable.

This new structure would not result in additional fees overall (since this would be difficult to budget for in the development planning process) but would mean that performance on both sides would be improved.

The suggestions above link better performance directly with the service provided to each applicant. Other government proposals do not do this (see response to Q1.5), as they merely measure average performance over all applications.

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?

By only allowing an increase in fees if the local authority meets performance standards for that year could, potentially, lead to very large rises in fees for some areas. It would also be difficult for applicants to know what the planning fee in any given area would be, adding an unnecessary complication to calculating the costs of a development project.

It is counter intuitive to link increases in fees solely to those who are already performing well with the fee income that they currently receive since they are obviously able to provide a good service within the current fee level of income. Indeed, it might be argued that it is those authorities who are performing poorly who should be allowed to charge more for application processing since this would allow them to invest more in performance measures to deliver efficient services. However, this would be “rewarding” poorly performing authorities rather than driving excellence, thereby demonstrating the quandary of allowing good performing authorities to increase their fees.

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?

The national planning application fee structure is simple, well understood and reflects the fact that the process is, essentially, the same across the country. It means that the cost of submitting a planning application is known at the start of the development process and can

be accounted for. While good performing authorities should be rewarded, this should be through access to other grants and income rather than passing the additional cost of this incentive on to applicants.

Our suggestions for a more radical restructuring of the fee regime, set out in response to Q1.1, staging payments across the development process, would link fees directly to performance in a fairer way than other proposals.

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?

The appeal of a fast track application processing service is, superficially, attractive but it would only be a matter of time before all applications would be paying a higher fee for receiving a standard performance service. This would be because local authorities would (quite rightly) prioritise fast track applications meaning that performance on standard applications would fall. This would force applicants to choose the fast track option for all applications or else face potential delays in processing time due to the prioritisation of fast track applications.

One of the problems with fast track applications and higher fees is ensuring that the local authority invests the increased income in additional resource within planning departments. The development industry often pays for PPAs yet the LPA does not invest in any additional resources meaning either that the resource which the PPA has paid for does not materialise or resources are diverted from other applications in order to facilitate the PPA application.

It would be far better to increase the fees of all applications (as proposed in response to Q1.1) and require local authorities to invest generally in their planning services in order that they can all provide a high quality service.

The benefit of a fast track system does not appear very attractive when set within the context of still requiring the statutory consultation periods and the current statutory periods for determining applications. The former is not less than 3 weeks (or 2 if advertised in a newspaper) while the latter is 8, 13 or 16 weeks dependent upon the type of application. This leaves a very brief window of time in which the local authority could promise to make a decision if any fast track service was to offer any significant benefit to applicants.

The development industry already enters into planning performance agreements (PPAs), often paying more than a standard application fee for a guaranteed performance regarding application processing. This is considered an adequate vehicle for linking performance to fees and should be explored more fully (for example, through use of standard agreements) rather than the government's proposed changes to the fee regime.

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

As demonstrated above, there are considerable concerns regarding the proposals for linking fees with performance of local authorities. Although, in principle, such measures appear attractive they may result in unintended outcomes and create a perverse incentive.

One of the critical issues for applicants is that the fee is associated with the service provided for that applicant. Therefore any changes that merely improve the service for the following year or compensate applicants in the future for poor quality service in the past is not considered to be equitable.

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.

We agree that local plans should be qualifying documents. Neighbourhood plans should only become qualifying documents once they are "made" and become part of the development plan. We have some concerns regarding the status of brownfield registers as qualifying documents which we set out in response to Chapter 3.

We also suggest that the concept of permission in principle could be applied to existing allocations in both local plans and adopted neighbourhood plans.

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

Yes. However, because such sites will not have been previously considered by the local planning authority there is no opportunity to set out "prescribed particulars" other than as part of the application. Two possible solutions to this would be either to require such particulars to be a requirement of applications or to allow the imposition of conditions on the determination of an 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?

HBF suggests that the prescribed list of in principle matters should be a minimum requirement with other details able to be included where necessary (see below re Q2.4).

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?

Paragraph 2.24 of the consultation suggests that "the parameters of the technical details that need to be agreed, such as essential infrastructure provision, will have been described at the permission in principle stage and will vary from site to site". However, the "in principle matters" make no reference to this requirements and conditions are not allowed on the permission in principle. This seems to be a fundamental error which must be corrected, either through allowing further details to be included within the PiP (see Q2.3) or to allow conditions, critical to the development, established via the PiP process, to be attached to PiP.

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

Permission in principle is not a planning permission. Allocations within development plan documents should already have been adequately tested through the plan process and are, therefore, compatible with the EiA regulations. The implications of the Habitat Directive and other sensitive sites can be adequately dealt with through technical consents, particularly where this has been flagged under the "in principle matters" as suggested in our response to Q2.4.

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

Yes. Communities should engage fully with the local plan process and therefore it is appropriate to include consultation on allocations in such a plan as part of that process.

Applications for PiP should attract a requirement for consultation similar to other applications. However, it should either be made clear that representations on the technical details of such an application are inappropriate at this stage or (as we suggest elsewhere) the "in principle matters" should be open to extension or conditions.

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

We agree that the information requirements for PiP in qualifying documents should be covered by existing requirements and processes.

Information accompanying applications for PiP should be kept simple and minimal. However, such applications must contain details of the "in principle matters" proposed by the applicant or, as requested by the LPA (via, for example, pre application discussion).

We agree that technical details consent applications should contain those elements described in paragraphs 2.39 and 2.40 of the consultation document. However, given that the TDS relates back to the PiP, the requirements for information should specifically reflect the requirements of the PiP rather than conform to a centrally prescribed minimum information list.

However, we have very serious concerns over the information requirements for PiP with regard to using evidence of PiP in the calculation of five year housing land supply. If sites with PiP are automatically included within the five year housing land supply, the information requirements should be more robust than if they are still to be subject to the same tests of deliverability and developability currently applied as part of the assessment of sites contributing towards the supply.

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?

PiP applications are supposed to be a simple and fast way of establishing the principle of development on a site. They should, therefore, require less work on the part of the LPA and should, therefore, attract a lower fee than for other types of application.

Technical details consent should attract a similar fee to other types of application for development.

Question 2.9: Do you agree with our proposals for the expiry 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?

There is no reason why PiP established in qualifying documents should expire and their life should be concurrent with that of the qualifying document. However, where a qualifying document is being amended or reviewed the PiP should not expire until the new document has been formally adopted.

We agree that PiP via application should have a life of 5 years which is considered to be a suitable period in which to produce information required for technical details consent.

Local variation to the life of a PiP should only be allowed where the period is being extended beyond the nationally prescribed period. While we believe that, as set out above, PiP in qualifying documents should not expire, if the government introduces a five year "life" then allowing locally set extensions to this period would cope with the issue of having to wait for other triggers before development can be commenced.

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?

Yes.

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?

Regulations should be very clear regarding the definition of "brownfield" and the qualifying process for sites to be included on the register. This is particularly important if assumptions about sites on the register are made in any assessment of five year housing supply calculations.

The key issue to including sites on a brownfield register should be that such sites are deliverable and developable (see Q3.2). This is essential as such sites will be granted permission in principle. Local Authorities should consider all sources of identifying land but, in order for it to be included on the register it should meet the criteria for PiP and, in particular, the LPA should be clear as to what issues are considered to be the "in principle matters" associated with the site.

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

Yes. It is essential that sites contained on a brownfield register and with the benefit of PiP meet the criteria set out in the consultation, specifically that they are available and capable of development.

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

We agree with the suggested approach.

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?

Clear guidance by the government on how to apply the SEA Directive to the register would be extremely useful. It is agreed that the application of the Directive is likely to be limited in scope when applied to a brownfield register.

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

We see little difference between brownfield registers and the process of local planning. Therefore we believe that registers should be subject to a similar level of public engagement and consultation as local plans.

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

As well as the factual details of a site set out in paragraph 3.28 it is vital that information of site constraints and factors to take into account in developing a site are also contained within the brownfield register. Since most sites are expected to be granted permission in principle then the "in principle matters" should also be included.

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

Standardisation of data and publication format and process would be welcome. The detailed requirements of how this is done should be prescribed by government.

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

Annual updating of the register is supported in principle. However, we envisage problems regarding local authority resources around the assessment of suitability of new sites and, in particular, community engagement on newly emerging sites. We believe that it would be better to align the update of brownfield registers with local and neighbourhood plan processes and reviews.

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?

Paragraph 3.34 and 3.35 suggests that the establishment of brownfield registers will meet the government's wish "to ensure that 90% of suitable brownfield sites have planning permission for housing by 2020". However, it is quite clear that the status of permission in principle is not a planning permission until it is granted technical details consent. Thus, a site on a brownfield register or allocated in a development plan cannot be considered to have a valid planning permission until it has an actual valid planning permission.

We believe that a presumption in favour of brownfield land should apply regardless of whether or not the local authority has a five year housing land supply or a brownfield register. This would ensure that brownfield land that becomes available for development is not held back through the bureaucracy of having to go through the process of being included on the register before planning permission can be granted.

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?

See our response to Q3.9. We believe that a presumption in favour of brownfield land should apply regardless of whether or not the local authority has a five year housing land supply or a brownfield register. This would ensure that brownfield land that becomes

available for development is not held back through the bureaucracy of having to go through the process of being included on the register before planning permission can be granted.

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?

No. Small sites should be defined locally and should reflect the threshold established by local authorities through their local plan process.

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?

No. We can see no point of keeping register of small sites if there is no assessment of their suitability for development. In fact, the keeping of such a register may give a false impression of the quantum of such sites available for development and will thus slow down the release of other sites.

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

Screening of sites is essential if a register is to be maintained of small sites (with which we do not agree). Land should be excluded if it is currently being used for a lawful use other than housing.

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?

As suggested in our responses to this Section, there should be some assessment of the potential of the site to be developed for housing.

CHAPETR 5: NEIGHBOURHOOD PLANNING

Question 5.1: Do you support our proposals for the circumstances in which a local planning authority must designate all of the neighbourhood area applied for?

No. It should still be possible for a local planning authority to refuse to designate an area as a neighbourhood planning area if there reason to do so. This is especially important if such applications are made to seek to thwart previously agreed development.

Given that 90% of applications are approved within the designated timetables there is no general need for this proposed change yet, in a very small number of cases, it could delay the delivery of new dwellings.

Question 5.2: Do you agree with the proposed time periods for a local planning authority to designate a neighbourhood forum?

Decisions on the designation of neighbourhood forums should be made in a timely manner. We therefore agree that a decision regarding designation should be made within a prescribed period. The consultation does not specify the sanction for not doing so and this should be made clear, especially if it is proposed to allow automatic designation after the expiration of this period.

Question 5.3: Do you agree with the proposed time period for the local planning authority to decide whether to send a plan or Order to referendum?

Yes. There should also be a similar time period in which local planning authorities should approve a plan for examination.

Question 5.4: Do you agree with the suggested persons to be notified and invited to make representations when a local planning authority's proposed decision differs from the recommendation of the examiner?

Yes.

Question 5.5: Do you agree with the proposed time periods where a local planning authority seeks further representations and makes a final decision?

Yes.

Question 5.6: Do you agree with the proposed time period within which a referendum must be held?

Yes, subject to the exceptions.

Question 5.7: Do you agree with the time period by which a neighbourhood plan or Order should be made following a successful referendum?

Yes.

Question 5.8: What other measures could speed up or simplify the neighbourhood planning process?

The HBF believes that, since they are part of the development plan on which decisions should be based neighbourhood plans should be subject to the same rigorous testing as local plans. Currently the examination process is considered to be too light touch especially where neighbourhood plans are prepared in advance of the relevant local plan. A more robust examination would result in local authorities being happier to adopt plans quickly thereby meeting the targets proposed under Q5.7.

Question 5.9: Do you agree with the proposed procedure to be followed where the Secretary of State may intervene to decide whether a neighbourhood plan or Order should be put to a referendum?

Yes.

Question 5.10: Do you agree that local planning authorities must notify and invite representations from designated neighbourhood forums where they consider they may have an interest in the preparation of a local plan?

Yes.

CHAPTER 6: LOCAL PLANS

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

The criteria set out in paragraph 6.11 should be mutually independent and the SoS should be able to intervene where one or more criteria are met. This will allow for early intervention rather than allowing local authorities to avoid intervention through, for example, submitting a plan that they know has no chance of being found sound.

There should be a further, manual, examination of progress on local plans with the ability for third parties to submit requests for the SoS to intervene in local plan production. This will stop local authorities from "gaming" the monitoring process by creating updated local development schemes or knowingly submitting unsound plans as a way of avoiding possible intervention.

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?

Local authorities who refuse to work collaboratively with adjoining authorities who may be dependent upon them to meet housing needs should be prioritised for SoS intervention.

While we agree that, in some cases, the lack of a local plan is a potential deterrent to communities wanting to produce a neighbourhood plan it is highly unlikely that a local plan is delayed solely to limit the ability of communities to produce neighbourhood plans. However, since it may be a contributing factor it should be included within the intervention criteria.

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

The ability of a local authority to demonstrate a five year supply of land for housing is closely allied to the robustness of its local plan, particularly where the plan is not kept up to date. We therefore suggest that the assessment of five year land supply should be a key element in the consideration of SoS intervention into local plan production.

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?

Yes. This should include feedback from third parties and users of the planning system in the area concerned such as developers.

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

In order that the government can prioritise local plan intervention in those areas where housing delivery is not being met local plan information should also include the annual housing provision figure set out or being proposed in the relevant local plan. This would allow for early intervention in plans where housing needs are greatest but are not proposed to be met.

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

Yes. It is particularly important that local plans are kept up to date. Monitoring on an annual basis will allow too much slippage before a decision on intervention can be made.

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?

Yes.

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?

Yes.

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?

Yes.

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

Yes.

(c) in considering exceptional circumstances, we should take into account the extent to which any appeals involve decisions which authorities considered to be in line with an up-to-date plan, prior to confirming any designations based on the quality of decisions?

No. In accordance with S38(6), all decisions must be made in accordance with the development plan unless material considerations indicate otherwise. Therefore the vast majority of decision makers will believe that they are making decisions in accordance with their development plan.

There is, therefore, no need for this caveat on the monitoring of performance criteria.

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?

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?

The various criteria and performance targets discussed elsewhere in this section will limit the type of companies able to compete for the processing of applications. This will, inevitably, limit the extent of competition, particularly within the private sector.

Applicants for any type of application should be allowed to use competitive services for processing.

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

In theory, if competition was applied to the whole country, the market would set fees that would remain competitive. However, in a limited pilot project this is unlikely to occur.

While local authorities cannot charge more than their own cost recovery this is difficult to achieve on each individual application. It is, therefore, inevitable that some simple or routine applications cross subsidise other, more complicated applications. While this is possible to achieve when there is a monopoly service provider such as a local planning authority it is difficult to see how this can be successfully achieved within a competitive market. It would, for example, be possible that the simple applications are processed by third parties while the more complex applications are kept with the LPA or vice versa. This polarisation of choice would lead to higher, rather than lower fees as the greater uncertainty will require greater contingency within the individual application fee. The only way around this problem would be to allow individual fee negotiations on each and every planning application. However, this would create huge uncertainty within the development process as an early, clear assessment of costs would not be possible.

This raises another important issue regarding the pilot project. In those local authority areas taking part applicants themselves will have to pay locally set fees rather than the nationally prescribed fee. This may be beneficial if the fees are reduced as a result of competition but, as we have suggested above, it is likely that fees will be increased, particularly for those applications that currently do not cover their own costs (such as householder applications). Thus, applicants in the pilot project areas will be forced to pay more for their application processing through no fault of their own other than geography. This is manifestly unfair yet to counter this the only solution would be to allow applicants to have their application processed by the local planning authority for the nationally prescribed fee, thereby rendering the entire pilot project useless.

We see the only solution to the problems set out above as being a nationally prescribed fee. However, efficiency in fee setting and cost recovery is at the heart of why competition in planning services is being examined.

HBF would, therefore, wish to be very closely involved with government in setting up of the pilot projects in order to avoid some of the more obvious pitfalls set out above.

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

If an alternative service provider is available they should be able to undertake all activities of service provision including negotiating S106 agreements and undertaking EIA screening.

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

Professional standards in planning are maintained by the Royal Town Planning Institute. It would seem appropriate for the RTPI to have a role in the examination and certification of standards in service providers. This should include within local planning authorities who would also need to demonstrate sufficient professional skills and capabilities to process planning applications.

We agree that performance designation measures should be suspended in pilot areas. However, performance should be closely monitored in order to assess the impact of competition on performance.

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?

Approved providers should have the same access to information as local planning authorities. Much of this information is available on line and approved providers could deposit information on the Council's online systems to ensure the information was publicly available.

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

It is difficult to see how a meaningful pilot project could manage some of the issues raised in response to other questions in this section. The pilot would need to be undertaken for a considerable number of years (minimum 5?) and would need to involve a number of local planning authorities of different types (minimum 12?).

We are concerned about the ability of third party providers to be able to offer a competitive service given the many “hidden” costs or shared costs within local planning authorities of other, associated services (such as internal consultations etc).

Issues such as whether or not an approved provider would have a statutory responsibility to determine applications or whether they would be allowed to refuse applications (on whatever basis – certainly they would have to if they had a conflict of interest) is an issue that hasn’t been sufficiently addressed.

However, the most difficult problem is whether applicants in the pilot areas will be disadvantaged in any way during the pilot period. This would be unfair and unjust.

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?

Yes.

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?

Yes.

It should be made clear in guidance which financial benefits can be a material consideration when making planning decisions. There is a concern that, when faced with two similar applications it will be tempting to take account of non-material financial considerations and that this could be seen as “buying planning permission”.

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?

Yes. The dispute resolution process is to be used where the tests for whether a planning obligation being required meets the tests of necessity set out in Regulation 122 of the CIL regulations. This includes the scale of the obligation as well as whether it is "necessary". Failure to meet the tests can apply to development of any size and thus the dispute resolution should be available to all applicants.

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

Requests for dispute resolution should be able to be made at any time in the planning process, including at pre-application stage. This ability to instigate dispute resolution would act as an incentive for the tests of necessity to be applied from the outset rather than unreasonable requests being negotiated with requests being withdrawn once dispute resolution is invoked.

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

No. It should not be necessary to have a draft S106 agreement to invoke the dispute resolution. Some of the disputes will be regarding what should go into the draft agreement and thus a draft position may not have been reached.

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?

We agree that any party to the S106 agreement should be able to refer the matter for dispute resolution. There should be no need for parties to agree to dispute resolution. Indeed, reaching a point where dispute resolution is necessary implies a breaking down of agreement.

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

Yes.

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

The Planning Inspectorate provide a well-respected appeal process through various formats on behalf of the Secretary of State. Inspectors undergo training and are recruited

for their professional qualifications and experience. Any dispute resolution body should have similar professional standards to the Planning Inspectorate.

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

Sharing fees to take a matter to dispute resolution would seem appropriate. However, it should be possible for the appointed person to award costs against unreasonable behaviour. This would act as a check against unreasonable and unjustified use of the resolution process.

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

This should be as quickly as possible. We suggest that a target of 3-5 days for each day taken by the actual hearing is achievable The agreed period will, inevitably, only be a target as there is no realistic sanction on a late report (other than, perhaps, the return of the fees paid by participants).

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

The matters to be considered should be as agreed by the parties in dispute. No other matters should be considered. It should be possible for the appointed person to limit the disputed matters or to recommend that the dispute is escalated to a full planning appeal.

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?

Yes the report should be published as soon as possible after receipt and there should be a backstop date of not more than 10 days, after which the local authority should be sanctioned.

The correcting of errors is pragmatic and should occur. However, this should not delay the publication of the report on the local authority website. The report could be tagged to indicate that errors were being investigated and the final report published alongside the original in due course.

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?

One of the problems of setting a period within which an agreement must be signed or the application refused is the potential for LPAs to refuse to accept the dispute resolution outcome. While this might be adequately resolved through an appeal and award of costs

the need for this formal process causes considerable delay to the delivery of planning permissions and, ultimately, housing.

However, a target date with an option for parties to agree an extension to this date would seem to be pragmatic. This should, however, be linked to the stage at which the dispute resolution process is undertaken. We suggest that it is, therefore, linked to when a resolution to grant permission is made and that a period of 6 weeks is reasonable.

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

Yes. There are bound to be exceptional or changes in circumstances where the consequences of the report are no longer appropriate or necessary. This should be allowed for in order to avoid having to go back to the beginning of the planning process in such cases.

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?

Other obligations should only be possible with the agreement of the applicant. Any disputed obligations should be discussed at the dispute resolution hearing. There should only be one hearing for each application.

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?

Regulations should be clear as to when the dispute resolution process can be entered into, the costs of the process (including the awarding of costs against an unreasonable party) and the status of the report on completion.

CHAPTER 11: PERMITTED DEVELOPMENT RIGHTS FOR STATE FUNDED SCHOOLS

Question 11.1: Do you have any views on our proposals to extend permitted development rights for state-funded schools, or whether other changes should be made? For example, should changes be made to the thresholds within which school buildings can be extended?

No comment

Question 11.2: Do you consider that the existing prior approval provisions are adequate? Do you consider that other local impacts arise which should be considered in designing the right?

No comment

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?

We see little benefit to setting a maximum period for which extensions of time can be granted. Few, if any, local planning authorities will make a decision on a planning application without the benefit of the response by statutory consultees and the only sanction on such consultees to meet the imposed deadline would be for the LPA to take no account of their late response.

It would be better to impose sanctions on statutory consultees themselves if their performance fell below satisfactory levels, including the length of time they take to respond to planning applications and the incidence of requests for extensions of time.

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.

See our response to Q12.1. Without a suitable sanction there is little benefit to imposing a maximum allowed time for extensions.

CHAPTER 13: PUBLIC SECTOR EQUALITY DUTY

Question 13.1: Do you have any views about the implications of our proposed changes on people with protected characteristics as defined in the Equalities Act 2010? What evidence do you have on this matter? Is there anything that could be done to mitigate any impact identified?

The proposed changes to the planning process as set out in this technical consultation apply to all users of the system and the output arising from the changes will affect all people equally. We therefore do not believe that there are any specific impacts on particular people with protected characteristics brought about through the implementation of these proposals.

Question 13.2 Do you have any other suggestions or comments on the proposals set out in this consultation document?

A clear implementation programme for the proposed changes should be published by the government.

Andrew Whitaker

HBF Planning Director

April 2016