

## Reforms to the Statutory Consultee System

### HBF Response

The Home Builders Federation welcomes Government's ambition to reform the statutory consultee system to make it an effective tool in the decision making process. The role of statutory consultees is important, but engaging statutory consultees currently prolongs decision making and takes up additional resource in a system which is, for many, already at breaking point.

Overall, many of the proposals in the consultation are positive and well thought through, however, HBF has concerns at the level of discretion which will be left to local authorities and it is considered that without training and empowerment of officers (planning and support staff) the desired outcome of streamlining what organisations are consulted and how regularly will ultimately be undermined by officers erring on the side of caution and consulting these bodies any way.

Streamlining of the statutory consultee system should also be considered in the context of digitalisation of the planning system to remove the element of officer judgement. Training should be given to officers on the use of Standing Advice and Members need to be trained on the acceptability of decision makers going against consultee advice or making a decision where a consultee is silent.

In addition, to the planning application process, statutory and internal consultees play an important role in the pre-application process and discharge of planning conditions. To reduce overall delays, it is therefore vital that these areas are covered within any reform to the consultee system. Moreover, it is imperative that these organisations engage effectively in the Plan making process. This should align with a reduction in the number of planning applications they are consulted on but ensure these organisations still contribute to the planning system.

Finally, this consultation is silent on the role of several consultees such as highway authorities, education authorities, NHS, police and fire services. These organisations are often responsible for delaying decision making and it is necessary that any performance criteria are rolled out to these organisations as well as the national statutory consultees if the improvements to the system are going to be realised.

### **Question 1: Are there other key areas we should be considering in relation to improving the performance of statutory consultees?**

HBF agree with the areas that are identified in the consultation. However, further information is required as to how these will be implemented. Without this information it is difficult to comment on the likely success.

For example, Government has highlighted the proportion of referrals that are not necessary. There is already clear guidance as to when cases should be referred to a statutory consultee so how is Government going to ensure that the number of wrongly referred applications decreases.

It seems that this is crucial to the efficacy of these reforms but there is no further information as to how this will be achieved.

Furthermore, area 4 focuses on the how these statutory consultees engage with the Plan making system and sets out that ‘double handling’ should ‘not generally [be] required’. These reforms should include further detail on this to avoid this double handling which can lead to unwarranted changes in advice. Performance measures should extend to areas including Plan making, pre-application engagement and discharge of conditions.

Moreover, the consultation proposes greater use of standing advice by some consultees, including Natural England. However, standing advice is published without consultation or impact assessment and can have far reaching consequences on the determination of planning application and discharges of condition. For example, this has halted the development of over 20,000 homes in Sussex, which whilst now lifted required Government intervention to do so. Standing advice needs to be issued for consultation prior to publication and accompanied by an impact assessment so Government and the housebuilding industry can evaluate the risk and opportunities of such advice.

**Question 2: In exploring reforms to the system, we have so far focussed more on key national statutory consultees. Is there more that government should do in relation to smaller scale and local statutory consultees?**

It is not solely national statutory consultees that are barriers to growth, local consultees are significant contributors to delays in decision making. Highways authorities, education authorities, NHS to name but a few. These authorities need to be held accountable for their delays and measured on the timing and quality of their engagement. Without overhaul of the entire consultee system, the proposals in this consultation will not result in the desired outcomes of speeding up decision making.

Notably water authorities and lead local flood authorities are excluded from this consultation but are responsible for pre-commencement matters that are delaying a significant number of homes. HBF research set out in the ‘Drain on the Nation Report’ found that around 30,000 homes are currently blocked due to water authority objections. This figure is arguably higher as over 6 months has passed since the research was published and no solution to the issue has been found.

**Question 3:**

**In light of the proposed mitigations, do you support the removal of Sport England as a statutory consultee?**

- support
- oppose
- neutral

Support. However, the mitigation is considered unnecessary. With effective engagement in the Plan making process and specific policies in relation to the loss of playing fields and pitches, consulting Sports England on individual planning applications is not required.

The mitigation proposed will lead to creep in the number of applications Sport England are consulted on and will not empower Local Authorities as decision maker.

## Question 4:

In relation to notification requirements, should substantial loss of an existing playing field be defined as:

- 20%
- a figure below 20%
- a figure above 20%
- an alternative approach

A figure above 20%. Any notification should only relate to where there is a net loss, not where playing fields are being re-provided in part or whole.

## Question 6

**In light of the proposed mitigations, do you support the proposals to remove The Gardens Trust as a statutory consultee?**

- support
- oppose
- neutral

Support.

## Question 7

**Are there impacts of the removal of The Gardens Trust as a statutory consultee, or the proposed mitigations, that you think the government should take into account in making a final decision?**

HBF considers the mitigation proposed to be appropriate.

## Question 8

**In light of the proposed mitigations, do you support the removal of Theatres Trust as a statutory consultee?**

- support
- oppose
- neutral

Support.

**Question 9**

**Are there impacts of the removal of Theatres Trust as a statutory consultee, or the proposed mitigations, that you think the government should take into account in making a final decision?**

HBF considers the mitigation proposed to be appropriate.

**Question 10**

**Are there other statutory consultees for which we should consider removal? What evidence would support this approach?**

Active Travel England should be removed as a statutory consultee. All too often the advice from Active Travel England (ATE) comes too late. The role of ATE and the advice they provide is relevant to place making and design and can have a significant impact on scheme development. It is considered that ATE should be engaged during Plan making to guide policy and in pre-application engagement to inform development proposals rather than as statutory consultee.

ATE has a number of effective online tools and self-assessments which can assist planning officers in the final assessment of whether a proposal has met the requirements of ATE, it is not necessary for them to be consulted at application stage.

**Question 11**

**Do you support the proposed changes to National Highways' referral criteria?**

The difficulty with the proposed changes to National Highways criteria is that it relies on the officer, whether that will be a planning or support officer making a judgement prior to assessing the planning application that the impacted road or junction is at capacity. It is unlikely that these officers would be able to make such an assessment and even if they were, it would delay the consultation being issued, thereby prolonging the decision making process.

This could be overcome by the applicant in their transport assessment being required to declare this in an executive summary. However, if mitigation that could be secured through the planning permission brings the junction within capacity it should not be necessary to consult national highways. A similar declaration in an executive summary could be included.

**Question 12**

**Is there anything else we should consider in relation to National Highways as a statutory consultee?**

As custodian of the Strategic Road network the imperative lies in the engagement with the Plan making process, so National Highways can engage and provide advice on strategic allocations. Double handling when such allocations come forward at application stage should not then be necessary.

Additional criteria should be included to remove the need to consult with National Highways on allocated sites where the planning application reflects the requirements of the allocation.

This would further free up capacity to engage effectively in Plan making.

Fundamentally, clear and precise performance criteria need to be introduced in order for National Highways to be held accountable. These should be framed so as not to result in a proliferation of holding objections being issued.

**Question 13**

**Do you support the changes to Active Travel England's proposed referral criteria?**

No. The proposals do not go far enough. See answer to question 10.

**Question 14**

**Is there anything else we should consider in relation to the role of Active Travel England as a statutory consultee?**

ATE should be removed as a statutory consultee. If they are not removed as a statutory consultee, they should not be consulted on any applications following the grant of an outline application.

**Question 15**

**Are there other actions that the government and/or Natural England should be taking, to support their role as a statutory consultee?**

Encouraging the use of the Impact Risk Zones tool may not lead to a significant uptake. This should be made a requirement and Local Authorities should need to declare if they have used this tool prior to seeking advice from Natural England.

The Standing Advice may be difficult to interpret for some decision makers. Investment should be made to automate the system so the standing advice could become an online tool for use by officers.

The Standing Advice should be consulted on and be accompanied by an impact assessment prior to formal publication. Standing advice is often published without warning and can have significant implications for the housebuilding industry, for example, advice in relation to water and nutrient neutrality.

**Question 16**

**Are there other actions that the government and/or the Environment Agency should be taking in relation to the Environment Agency's role as a statutory consultee?**

The proposed improvements to the Environment Agency's role as a statutory consultee could result in significant improvements to the quality and speed of consultation responses. However, in order for the proposed improvements to the Environment Agency's involvement in the planning process to be realised, it is crucial that Government publish timescales for completion of the work identified. The consultation document refers to the Environment Agency reporting against these measures through the new performance framework but it is considered this is insufficient. The industry needs clear commitment to published timescales against which the Environment Agency can be measured and held accountable. An annual meeting with the CEO

will not drive the change required.

The referral criteria in the Development Management Procedure Order (2015) Table 4 (t) should be reduced from 20m to 10m to better align with the criteria for Biodiversity Net Gain impact requirements and permitting requirements from the Environment Agency. Differing approaches leads to confusion and delay in decision making.

The Environment Agency should be required to consult on policy changes. The March 2025 update to the flood risk mapping had significant impacts on the housebuilding industry. It was not subject to consultation, transitional arrangements or an impact assessment but had significant impacts on housing supply and construction costs. Further guidance is required on the publication of policy updates.

### **Question 17**

#### **Do you support the changes to Historic England's proposed notification criteria?**

The proposed changes to the Historic England notification criteria are proportionate. The key element here is improving Local Authorities understanding of when referral is required in order to reduce the amount of applications that are referred incorrectly.

### **Question 18**

#### **Do you support changes to align the listed building consent process in London with the process that applies elsewhere?**

Yes. There is no justification for London having a more onerous regime for historic buildings.

### **Question 19**

#### **Is there anything else we should consider in relation to the role of Historic England as a statutory consultee?**

The industry would welcome sight of the proposed training for Local Authority officers and are willing to engage in ways it can be made clearer in the application process whether referral is considered to be required.

### **Question 20**

#### **Do you support the changes to the Mining Remediation Authority's proposed referral criteria?**

Yes.

### **Question 21**

#### **Do you support the proposed changes in relation to the Mining Remediation Authority commenting on the discharge of conditions?**

Yes.

### **Question 22**

#### **Is there anything else we should consider in relation to the MRA as a statutory consultee?**

It is crucial that sufficient training is given to Local Authority officers to ensure that referrals are not made incorrectly.

**Question 23**

**Are there other statutory consultee referral criteria we should consider amending? What evidence supports this?**

No.

**Question 24**

**Is there anything further government should consider in relation to voluntary pre-application engagement and for any statutory consultees in particular? What evidence supports this?**

Engagement with statutory consultees in the pre-application process can be extremely useful to applicants by ensuring the advice in relation to a proposal is holistic. However, the time it takes to engage with these consultees and the value of their advice can differ significantly. In the case of the Environment Agency and Natural England, area teams often close pre-application services when resources are stretched for example.

HBF requests publication of a clear engagement framework with a fee arrangement which sets out the expectations in relation to the pre-application stage and ensures that all consultees engage effectively at this stage. This will reduce decision making timescales by ensuring that advice provided to the applicant is consistent across all parties that will be consulted on the application.

**Question 25**

**Is there anything further government should consider in relation to statutory consultee engagement in post-approval processes, such as agreeing that planning conditions have been fulfilled? What evidence supports this?**

Local authorities should only engage statutory consultees in the post approval process where officers are unable to make the decision themselves. If it is necessary to engage with statutory consultees, clear timescales need to be adhered to so that development is not delayed.

**Question 26**

**Do you have suggestions for how government can effectively incorporate appropriate developer and local authority feedback into consideration of statutory consultee performance?**

The current performance management framework lacks information requirement indicators on which statutory consultees will be assessed. Also to carry out a review on an annual basis is insufficient and could allow for issues of underperformance to not be recognised in a timely manner.

It is critical that Government prepare key performance indicators for all statutory consultees, including local ones, that are subject to scrutiny by both the public and private sector.

Housebuilding and economic growth should be included as performance indicators. The performance framework should also include engagement in the pre-application stage and plan making stage.

Poor performance needs to have consequences. For example, local authorities should be able to claim money back from the fee surcharge that funds statutory consultees. Costs awarded at appeal need to be paid by the statutory consultee, not the local authority if it results from their advice. Statutory consultees should fund their own participation at appeals, not local authorities if the appeal results from their advice.

HBF as a key stakeholder in the planning system and planning processes would welcome the opportunity for further engagement in the formation of these performance indicators to ensure that they deliver the improvements that the housebuilding industry needs.

This engagement could take the form of workshops, roundtables and review of draft performance indicator frameworks.

**Question 27****Do you agree with this approach?**

The funding arrangements for statutory consultees is crucial to the success of any reforms. However, Government needs to ensure that any increase in planning application fees and use of associated surcharges is ringfenced to support the planning function of local authorities and statutory consultees. This is necessary to ensure those funds support the critical planning function that has been unfunded for decades.

In this regard, HBF does not agree and further clarity is required to confirm that fees will be ringfenced.

Moreover, if a statutory consultee fails to meet its performance targets in local authority areas, the Local Authority should be able to decide to withhold the surcharge.

HBF agree that pre-application engagement with statutory consultees is an important part of the planning process, however, the extent and quality of engagement from statutory consultees varies significantly both between and within organisations.

The housebuilding industry requires certainty in the planning application process. HBF therefore request that Government sets out a framework for pre-application advice for statutory consultees and associated fees for that engagement.

HBF agree that the number of mis-referrals has a significant role to play in the ineffectiveness of the current statutory consultee system. Whilst HBF support improved training of local authority officers, empowerment is a difficult objective to quantify.

Empowering officers to make decisions based on the planning balance is the basis of good planning, but there are a number of factors that work against this in practice. Most notably the lack of a national scheme of delegation. With most major applications being determined by planning committee there is a real risk that officers are undermined at the decision making

stage. There are numerous examples of decisions made against officer recommendation based on Members disagreeing with the planning balance being undertaken. If Government want to empower officers, it needs to create an effective national scheme of delegation and support local authorities if they are subject to a legal challenge if a decision is made against the advice of a statutory consultee.

**Question 28**

**Is there anything else the government should be doing to support local planning authorities in their engagement with statutory consultees?**

HBF considers there is a role for digitalisation in making it clearer for local authorities as to when an application warrants referral. Moreover, it could be made clearer in the planning application documents if the applicant considers that referral has been triggered. See earlier responses in relation to the use of executive summaries in transport assessments.

Whilst the Local Authority need to make the decision whether to refer an application to a statutory consultee, there is a role for the applicant to play in making information as transparent as possible.

**Question 29**

**Are there best practice examples from local authorities that help support statutory consultees and developers, for example, checklists/proformas for environmental issues?**

Embedding statutory and internal consultees within the Planning Performance Agreement for a planning application is beneficial, provided the consultee is able to resource the process effectively.

**Question 30**

**How might best practice be expanded to support statutory consultees, including through reducing the volume of material which developers have to produce?**

The amount of information required to be submitted in planning applications is vast and often disproportionate to the nature and scale of the proposal. A national validation checklist will be useful to streamline the amount of information required.

Framework examples for key documents would assist in making the application documents succinct and effective and to ensure they comply with the requirements of statutory consultees. The environment agency is developing a Flood Risk Assessment which could be a good example of this. The same could be done for a Transport Assessment and Planning Statement.

Often the information within documents is repeated several times within the planning application. A short document that included key information about the site and proposal could be submitted and then not replicated in any other document. Given the iterative process of planning application development some of these documents can then be inconsistent which results in criticisms of the quality of applications. This can simply be avoided by removing this information from all but one document.

**Question 31**

**How best can government and statutory consultees support the increase in capacity and expertise of local and strategic authorities?**

It will be necessary for relevant Government departments including MHCLG and Defra to continue to be engaged in the statutory consultee system to monitor how effective the changes are. It will be necessary for them to intervene if required.

Statutory consultees will need to critically review their engagement in the system and take action if their process is not working effectively. Where capacity is freed up they should engage in the Plan making system to provide certainty to Local Authorities and applicants alike that advice provided is not going to change during the application stage.

Whilst the changes to the system come into effect it will be necessary to be on hand to Local Authorities to answer queries about consultation quickly and efficiently.

**Question 32**

**Do you agree that these criteria clearly set a framework for decisions on future statutory consultees?**

Yes. HBF does not see justification for adding statutory consultees to the planning system.

**Question 33**

**Should the government maintain the moratorium, subject to periodic review, or adopt criteria for consideration of new statutory consultees?**

Maintain the moratorium.

**Question 34**

**Is there anything else the government should consider in relation to the criteria?**

Criteria should include incentives for quick responses and penalties for poor performance. Clear requirements for engagement.

**Question 35**

**Are there any equality impacts in relation to the proposals in this consultation that the government should consider?**

No.

**Question 36**

**The government considers that these measures would have a deregulatory impact. Do you have evidence from engagement with statutory consultees under the current system of the impact this may have?**

No.

**Question 37**

**Based on the proposed changes to referral criteria, would statutory consultees expect to**

see performance improvements? Please explain your reasoning.

- **strongly agree**
- **agree**
- **neutral**
- **disagree**
- **strongly disagree**

Disagree. The current proposals do not have sufficient detail in them to be able to determine that the reform would see performance improve. Further detail is required in respect of the Environment Agency improvement plan, the performance indicators that statutory consultees will be assessed against, the consequences for not meeting the requirements, and how the fee surcharge will be ringfenced to ensure it is used to the benefit of the planning process.

HBF would welcome further engagement on this so that the reform can have the impact it has the potential to.