



Historic England

## **DCLG Technical Consultation on Implementation of Planning Changes Historic England Submission**

Historic England is the Government's statutory adviser on all matters relating to the historic environment in England. We are a non-departmental public body established under the National Heritage Act 1983 and sponsored by the Department for Culture, Media and Sport (DCMS). We champion and protect England's historic places, providing expert advice to local planning authorities, developers, owners and communities to help ensure our historic environment is properly understood, enjoyed and cared for.

We welcome the opportunity to submit a response on the following points:

### **Chapter 1: Changes to Planning Application Fees**

#### National 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?*

- An (annual) increase in planning fees is certainly supported, though it should be noted that any inflation-related increase remains unlikely to cover local planning authorities' costs. A significant proportion of planning applications have a heritage dimension, and inadequate resourcing of services can have a disproportionate impact on heritage protection.
- The suggestion that quality of decision-making should feature in the performance criteria is welcomed, as speed of decision-making alone is not itself an indicator of good planning.

*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?*

- Some low-performing authorities might need the increased fees to support service improvements (including to the handling of heritage-related applications, which constitute a significant proportion of planning applications), although the rationale for incentivising good performance is understood. Given the scale of planning changes currently proposed (including some wholly new duties for local planning authorities, tighter deadlines for some processes, and of course learning and applying a number of new measures), and the inevitable disruption that occurs as a new system beds down, some flexibility in the short term might be considered appropriate.
- If increased fees are not to apply to low-performing authorities, then a delay in the introduction of the revised fee regime would at least maximise the time for those authorities to try to improve their service and avoid being penalised.

## Local flexibility and performance

*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?*

- Local variations in the services offered and the fees charged might enable an improved service to applicants in some regards, but might also further complicate the planning landscape for applicants, as the speed and cost of services could vary widely, and also potentially have differential impacts on development across the country. It would be helpful to understand the evidence behind these proposals, and the degree to which alternative incentives for local service improvements (including the proposals within this consultation in respect of national fee increases) have been considered.

*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?*

- If these proposals are to be implemented, the implications for statutory consultees such as Historic England need to be carefully considered. A change to the current statutory timelines for consultees would not be supported: anything less than 21 days would not enable Historic England to deliver appropriately considered advice.
- If fast-track services are to be introduced then Historic England would wish to explore the scope for cost recovery to support the provision of our advice to local planning authorities.
- The implications of the proposals for community engagement should also be carefully considered, and any new mechanisms should ensure that LPAs themselves retain sufficient time to make robust and appropriate decisions.

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

- As noted by Historic England in response to Question 1.3, local variations in the services offered and the fees charged might enable an improved service to applicants in some regards, but might also further complicate the planning landscape for applicants, as the speed and cost of services could vary widely, and also potentially have differential impacts on development across the country.

## **Chapter 2: Permission in Principle**

### The locally supported qualifying documents that can grant permission in principle on allocation

*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.*
- Yes to all, subject to sufficiently robust information requirements and consultation processes, to ensure that the commitment at paragraph 2.27 of the consultation can be observed (namely, to ensure that the impact of development is assessed ‘properly’ against local and national planning policy, at both the permission in principle and technical details consent stages). Historic England’s detailed concerns in this regard are addressed further in response to Questions 2.2-2.10 and 3.1-3.10.

### Permission in principle on application

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

- Historic England supports – subject to the caveats raised in response to other questions in this consultation – the use of the direct application route for minor development proposals.
- The additional use of this route for major applications, as suggested at paragraph 2.20 of the current consultation, is not supported, however: it would undermine the plan-led system, and would not be supported by an appropriate level of information.

### The ‘in principle matters’ that should be covered in a grant of permission in principle

*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?*

- Historic England’s concern is less to do with which matters are settled at permission in principle stage, and more to do with whether sufficient information is available to determine whether a proposal is permissible or not, in line with the requirements of NPPF policy (paragraphs 128-29), and the commitments at paragraph 2.27 of the consultation document.
- The availability of more information at the subsequent technical details consent stage would not be sufficient to undo the harm caused by an ‘in principle’ decision based on inadequate information as – according to the Housing and Planning Bill as currently drafted – the ‘in principle’ decision could not be overturned in light of emerging information about the site, and technical details consent applications could only be refused on the basis of detailed matters. This particular concern is not addressed by the proposal to specify a minimum and maximum level of residential development (although the extra flexibility this provides is noted), and would be of particular relevance for proposals which meet Environmental Impact Assessment thresholds.

*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?*

- Further clarification of what is intended would be welcomed. As technical details consent constitutes the award of planning permission, it is clear that it must cover everything that the permission in principle has not, to ensure that all necessary matters have been properly addressed, and that existing levels of protection for heritage assets are unchanged (as per recent (and welcome) Ministerial commitments in Parliament).

### The approach to sensitive sites

*Question 2.5: Do you have views on our suggested approach to*

#### *a) Environmental Impact Assessment*

- It appears that with regard to ‘sensitive sites’ (and potentially others), Environmental Impact Assessment and Strategic Environmental Assessment may well be required. Should this be the case, appropriate guidance will be needed to ensure that these processes are clear, that there is clarity as to what is being considered, that the evidence needed for these assessments is proportionate, and that the related additional burden

on statutory consultees is minimised. We would be happy to offer our support in the drafting of this guidance.

*c) other sensitive sites?*

- Historic England has some significant concerns in relation to the way in which heritage issues are to be handled.
- The recognition at paragraph 2.26 that sites can have particular constraints and sensitivities – including proximity to (or indeed inclusion of) heritage assets – is welcomed.
- In light of the limited nature of the ‘in principle’ matters proposed at paragraph 2.23, and the ‘minimal’ information to be required in support of them (paragraph 2.38), it is however impossible to see how ‘all sites’ will be able to be assessed ‘against local and national planning policy’ at the permission in principle stage (as suggested in paragraph 2.27), as insufficient information will be available about the site, including in relation to its heritage significance, and the impact of the proposed development upon that significance (see also our response to Question 2.3). This concern is also relevant in relation to the need to fulfil the statutory duties in respect of listed buildings and conservation areas.
- The provisions at paragraph 2.28 are noted, namely that site sensitivity may inform a decision not to allocate a site with permission in principle, or not to grant it permission in principle in response to a direct application. In the absence of adequate information, however, it may be that a site’s sensitivity is not apparent; it may alternatively be the case that a premature decision is made not to proceed with a site which might at first appear sensitive, but which – with proper handling – might in fact be entirely suitable for housing: Historic England is very clear that the historic environment is not an automatic obstacle to development. The use of existing planning tools provides an alternative route that allows adequate information to be sought, but some of the language in the remainder of the consultation document suggests that this might be discouraged (e.g., the references at paragraph 3.5 to local planning authorities ‘rejecting potential sites only if they can demonstrate that there is no realistic prospect of sites being suitable for new housing’, and the recognition that it may not be appropriate for local registers to grant permission in principle ‘in a small number of cases’; also the reference at paragraphs 3.24-3.36 to potential penalties for local planning authorities not delivering housing on brownfield sites, as assessed via data on their registers).

Involvement of the community and others

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

- The use of existing consultation arrangements for the allocation route should be adequate, as long as the need for some additional evidence in support of the combined proposed application/permission in principle is reflected in subsequent regulations and/or guidance, to enable statutory and other consultees to come to an appropriate view.
- For the application route, mirroring existing consultation requirements for planning applications is supported at the permission in principle stage.
- The proposal not to require similar consultation at the technical details consent stage is not however supported. As only limited information is to be available in support of applications at the permission in principle stage, it will not be possible for statutory and other consultees to make suitably informed comments: consultation at the technical

details stage will also be required. Whilst noting that the current proposal would allow local planning authorities to consult Historic England and other bodies at technical details stage if so minded, this is not a sufficiently robust mechanism to ensure proper consideration of applications. As the consultation document notes at paragraph 2.36, local planning authorities should 'have the information needed to determine an application' (itself proportionate and justified), and this is no less true in relation to the consideration of proposals by Historic England and other consultees; as the consultation then proposes at paragraph 2.37, further information will be available at technical details stage, which consultees should have sight of. To support the efficient operation of a requirement for consultation at both the permission in principle and technical details consent stages, provision could be made for statutory consultees to 'waive' the need for the second, technical details consent stage consultation in appropriate cases.

### Information requirements

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

- The information produced in support of allocations is not necessarily as detailed as should be made available in support of permission in principle; this is true in relation to local plan allocations, and particularly true in relation to neighbourhood plan allocations.
- With regard to the application route, the proposed information requirements at permission in principle stage are not sufficient to support assessments in line with national planning policy, as suggested at paragraphs 2.27 and 2.36 of the consultation (see also responses to Questions 2.3 and 2.5).
- The proposals in respect of the information to be submitted at technical details consent stage are not yet clear. It is possible that the required content of both the proposed design statement and the impact statement could be adequately defined in guidance, but the current proposals suggest an arbitrary and unhelpful limitation on the information to be submitted. Instead, the information submitted should be defined as that which is necessary in support of the application – itself proportionate as per current policy in the NPPF. In relation to the historic environment, this would include sufficient information to enable the significance of heritage assets to be described, and to understand the potential impact of the proposal on their significance, and a desk-based assessment and field evaluation where necessary, in accordance with the NPPF (paragraph 128).

### The maximum determination periods for permission in principle on application and technical details consent

*Question 2.10: Do you agree with our proposals for the maximum determination periods for*

*a) permission in principle minor applications*

*b) technical details consent for minor and major sites?*

- It is not currently clear how the commitment at paragraph 2.27 relating to the proper assessment of applications, and the retention of a 21-day consultation period, are compatible with the five- and ten-week maximum determination periods proposed. More information on how this is envisaged as operating would be welcomed.

## Chapter 3: Brownfield Register

### Preparing registers of brownfield land suitable for housing

#### Identifying provisional sites

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

- Paragraph 3.9 of the consultation document states that Strategic Housing Land Availability Assessments (SHLAAs) will be the ‘starting point’ for identifying suitable sites for local brownfield registers, and that is certainly logical. The fact that an approach to subsequent assessment is not described, however, suggests that registers will in fact be based predominantly on SHLAAs, which were never designed to allocate sites (as is explicitly articulated in the Planning Practice Guidance). This could be addressed by clarifying the site assessment process which is to be followed, and ensuring that proper planning judgements – in line with the NPPF – are a part of that process, in support of the commitment made at paragraph 2.27 of the consultation document.
- Paragraph 3.10 refers to ‘other sources’ being used to supplement the SHLAA; it is clear from the context that this means ‘other sources of sites’, but reference also needs to be made in any subsequent regulations and/or guidance to ‘other sources of information’ to inform site selection, such as Historic Environment Records, so that the suitability of sites can be more clearly understood from the outset.

#### Identifying brownfield land that is suitable for housing

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

- The relationship of the criteria proposed to NPPF policy is supported, but Historic England has concerns about other aspects of these proposals.
- The proposal at paragraph 3.17 that ‘local authorities should ensure that sites are suitable for residential use and free from constraints that cannot be mitigated’ is welcomed, but warrants some clarification. As noted in our recent response to the ‘Consultation on Proposed Changes to National Planning Policy’, everything can be mitigated to some degree, and more specific wording is therefore suggested, e.g. ‘mitigated to an acceptable level’. This would ensure that the ‘capable of development’ test was not applied at too high or low a level, and housing delivered where appropriate.
- The reference in the same paragraph to the need to take NPPF policy into account in considering sites for the register is also to be welcomed (though reference to the statutory duties relating to listed buildings and conservation areas would be welcomed, too). Given that both large and small sites are to be considered for the register and a potential permission in principle allocation, the information requirements should be similar to those for local plan allocations, as a similar outcome is being pursued. The links between the register and the local plan should also be clarified in subsequent guidance, to ensure that registers do not undermine the plan-led system, but instead are part of a positive local development strategy that also delivers wider objectives (e.g., a positive strategy for the conservation and enjoyment of the historic environment).
- There is however a tension between the suggested application of criteria (including the proper consideration of sites in light of NPPF policy), and the statements at paragraph 3.5 of the consultation document that potential sites should only be rejected if there is

'no realistic prospect of sites being suitable for new housing', that the expectation is that 'the large majority of sites on registers ... will be granted permission in principle', and that environmental impacts may suggest that a planning application might be more appropriate in a 'small' number of cases: decisions should be made through the proper application of the criteria, and the issue not otherwise forced.

- The reference at paragraph 3.13 to much brownfield land already being in productive use and not suitable for new housing is not entirely consistent with the intentions set out in the recent 'Consultation on Proposed Changes to National Planning Policy', or the recent extensions to permitted development rights, but is supported, in the interests of retaining an appropriate mix of uses and the character of historic areas, and also supporting wider sustainability objectives. In this regard the proposal at paragraph 3.15 to have regard to local plan allocations for uses other than housing is also supported.

### The approach to development raising environmental impacts or habitats issues

#### Environmental Impact Assessment and Habitats Directives

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

- Historic England supports the proposal relating to development on sites within Schedule 2 of the Environmental Impact Assessment (EIA) Regulations.

#### Strategic Environmental Assessment

*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?*

- Historic England would welcome further clarification in this area, and it will be an important area to address in guidance.
- The suggested links to the local plan SEA reinforce the point made in response to Question 3.2, and might also ensure that the potential cumulative effect of various brownfield sites being brought forward could be appropriately considered.

#### Publicity and consultation requirements

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

- The proposal for consultation on registers is supported. Whilst noting the need for proportionate engagement, the consultation should broadly mirror that for local plan allocations/planning applications, given the potential for the register to allocate sites for permission in principle. The proposed requirement to give reasons why sites have or have not been granted permission in principle is welcomed, but means that permission in principle and planning applications will be handled differently in this regard.
- Historic England would welcome early notification of the proposed consultation mechanisms, so that we might offer our assistance in their development, and to maximise our ability to prepare for this additional work stream.
- The proposals at paragraph 3.25 of the consultation document are not entirely clear: clarification would be welcomed.

## Content of brownfield registers

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

- Information on site constraints (and their mitigation) will be particularly important in relation to historic environment protection; the role of Historic Environment Records in supporting this could usefully be addressed in any subsequent guidance (see also Historic England's response to Question 3.1).

## Updating brownfield registers

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

- Historic England would welcome further information on how it is envisaged that the community and statutory consultees will be engaged in reviews of brownfield registers, not least as this will have potentially significant resource implications.

## Assessing progress

*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?*

- The proposals to disallow claims of a five year housing land supply if 90% of suitable brownfield sites do not have planning permission by 2020 certainly provide a strong incentive, but risk undermining plan-led development, the proper consideration of sites (including those with heritage assets), and also localism objectives.

*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?*

- As the granting of planning permission is dependent on the submission of planning applications, a target that reflects actions wholly within the local planning authority's control may be worth considering as an alternative (see also Historic England's response to Question 6.1 regarding the potential for such measures to operate as disincentives to housing delivery).

## **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?*

- The intended relationship between the proposed small sites register, 'brownfield' register, and new self-build and custom housebuilding register is not currently clear, and, even if clarified, such a proliferation of information sources is unlikely to be helpful to those whom the consultation hopes to encourage.
- The suggested site size of between one and four plots is clearly intended to complement the current size threshold proposed for the 'brownfield' register, and it may make more sense for the 'brownfield' register to be explicitly extended in scope to include these smaller sites where appropriate, meaning that all potentially available sites for housing would at least be identified in one place, and – subject to Historic England's other comments about the way in which sites are added to the register – would also enable the issue of site assessment to be addressed (see response to Question 4.2).
- In addition, by promoting the use of brownfield sites for such housing (rather than all small sites), it would address the related concerns on small site development raised by



Historic England in its response to the 'Consultation on Proposed Changes to National Planning Policy'. These were that the proposed application of a new, strengthened brownfield approach to 'other small sites' (not themselves brownfield) would fundamentally change the definition of previously developed land, and overarching housing policy, with potentially significant implications for the consideration of character; heritage, habitat and open space protection; and countryside and Green Belt policy. It is of some concern that the proposals in the current consultation do not suggest a restriction to brownfield sites; the proposed reliance on the 'usual' planning application approach to 'ensure that inappropriate development ... does not occur' is not itself reassuring when the relevant policy is itself under review, and with insufficient detail available about its proposed evolution to be able adequately to assess its potential impacts.

- The proposal in the recent 'Consultation on Proposed Changes to National Planning Policy' also suggested that local planning authorities should put in place a specific positive local policy for assessing applications for development on small sites not allocated in the Local Plan; this emphasis on encouragement of the plan-led system is also relevant to the current proposal, and should not be overlooked.

*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. This appears to run counter to the Government's objectives as expressed elsewhere, namely that developers (and particularly the smaller developers) are not put to any unnecessary effort, expense or uncertainty when seeking to deliver housing. As proposed, developers' expectations will be unnecessarily and unhelpfully raised.
- The passing reference at paragraph 4.4 to a requirement for local planning authorities to 'permission sufficient serviced land to match demand' is of some concern, as it suggests that usual planning processes (regarding evidence of need, capacity of the local environment and infrastructure to meet that need, etc.) are not to be followed; Historic England would be concerned if this was in fact intended, and would welcome further information.

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

- If no assessment of sites is to be undertaken before they are added to a register, then it might help to manage expectations and wasted effort if certain sites were automatically excluded, but this would also rule out some sites which, with a little care, could contribute to housing delivery.

## **Chapter 6: Local Plans**

### Criteria that will inform decisions on government intervention

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

- Historic England has no objection to the proposed criteria, but does have some concerns that opportunities to consider the performance of local plans in relation to the delivery of other NPPF objectives (such as those relating to heritage) are being overlooked. As noted in paragraph 6.1 of the consultation, local plans are 'the primary basis for identifying what development is needed in an area', and not just housing.

- Historic England articulated its concerns about the effectiveness of the housing delivery test in its response to the recent 'Consultation on Proposed Changes to National Planning Policy'. In summary, these were that it is not accompanied by measures to encourage other partners in the development process to 'play their part'; that it may prove counterproductive, by actually incentivising developers to delay delivery on brownfield sites in the expectation of being awarded additional (and 'easier') greenfield sites; and that the promotion of additional development plan documents is contrary to the current emphasis on single local plan documents, and could lead to further delay in the delivery of housing, rather than expedite it.

## **Chapter 8: Testing Competition in the Processing of Planning Applications**

### Scope

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

- Approved providers would need to demonstrate the same range of professional skills and capabilities as local planning authorities, including an ability to deal appropriately with heritage-related applications (both planning applications and (related) listed building consent applications).

### The role of applicants, approved providers and local planning authorities in competition test areas

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

- Historic England would welcome further clarification as to how pre-application discussions would be addressed under the proposed changes, as well as the way in which applications handled by an alternative provider for which the decision was later deferred by a planning committee would be handled; also appeals.
- More detail would also be welcome on how the proposed one- or two-week period for local planning authorities to consider the alternative provider's report and make their decision will relate to the overarching time limits for determining applications, and, particularly, to the statutory consultee 'window' within this. Historic England would like to understand how any necessary extensions to the statutory consultee period would be accommodated within defined service levels.

### Standards and performance

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

- As noted in response to Question 8.1, approved providers would need to demonstrate the same range of professional skills and capabilities as local planning authorities, including an ability to deal appropriately with heritage-related applications.
- The implications for statutory consultees should be monitored throughout any testing, not least to understand if there are resource implications from the increased number of providers. The provision of chargeable services (from statutory consultees) is one way to meet such additional resource needs should they arise.

## Information

*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?*

- For cases dealt with by alternative providers, it will be important to ensure that consultation responses and information submitted in support of applications will be made publicly and accessibly available, and current applications linked clearly to complete planning histories for the relevant sites (as is currently the case via local planning authority systems).
- It will also be important to ensure that the information gathered from consultees and other sources by the alternative provider is then added to the Council-held comprehensive planning history (irrespective of service provider, the maintenance of a complete set of planning records will remain an essential local planning authority function), and the necessary information also passed to repositories such as Historic Environment Records.

## **Chapter 9: Information about Financial Benefits**

### Other financial benefits that should be listed

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

- Historic England has particular concerns about these proposals. If benefits which are not material considerations are to be included in planning reports, great care will need to be taken in regulations, policy and guidance to ensure that they are presented as being for information only, and it is not implied that the benefits are relevant to the decision (rather as is currently articulated in the PPG in relation to New Homes Bonus payments).
- Without such care being taken, there is a real risk that the decision will not be made appropriately, and that the definition and delivery of sustainable development will be skewed in consequence. The NPPF is clear that there are three dimensions to sustainable development – economic, social and environmental – and that they are mutually dependent: ‘to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system’. As Historic England noted in its response to the ‘Consultation on Proposed Changes to National Planning Policy’, in its current form, the NPPF successfully balances a range of core planning principles within the overall presumption in favour of sustainable development. Further prioritisation of any one element of policy would undermine this balance, and thus jeopardise the delivery of sustainable development, including its heritage protection dimension.
- It would be clearer to both decision-makers and communities if non-material consideration benefits were not listed in decision reports, but, if they are to be, concerns about balance could be addressed in part by ensuring that all such benefits were listed, and not just those relating to financial matters.

## Information about a financial benefit that must be recorded

### Other persons or bodies receiving a financial benefit

*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?*

- As noted in response to Question 9.1, Historic England has particular concerns about these proposals. If benefits which are not material considerations are to be included in planning reports, great care will need to be taken in regulations, policy and guidance to ensure that they are presented as being for information only, and it is not implied that the benefits are relevant to the decision (rather as is currently articulated in the PPG in relation to New Homes Bonus payments).
- Without such care being taken, there is a real risk that the decision will not be made appropriately, and that the definition and delivery of sustainable development will be skewed in consequence. The NPPF is clear that there are three dimensions to sustainable development – economic, social and environmental – and that they are mutually dependent: ‘to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system’. As Historic England noted in its response to the ‘Consultation on Proposed Changes to National Planning Policy’, in its current form, the NPPF successfully balances a range of core planning principles within the overall presumption in favour of sustainable development. Further prioritisation of any one element of policy would undermine this balance, and thus jeopardise the delivery of sustainable development, including its heritage protection dimension.
- It would be clearer to both decision-makers and communities if non-material consideration benefits were not listed in decision reports, but, if they are to be, concerns about balance could be addressed in part by ensuring that all such benefits were listed, and not just those relating to financial matters.

## **Chapter 10: Section 106 Dispute Resolution**

### Scope of the dispute resolution process

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

- Yes, but where proposals relate specifically to the historic environment (e.g., enabling development proposals, and planning applications associated with listed building consent applications), and it would be appropriate, Historic England would welcome the opportunity to participate in these discussions.

### Commencing the dispute resolution process

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

- Yes. The proposed timing seems sensible, in that it will not pre-empt or disrupt the normal consideration of the merits of the proposal in question.

## Appointed person to deliver the dispute resolution process

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

- As the resolution will have planning implications with regard to the delivery of the scheme, planning qualifications and experience should be amongst the essential criteria.

## **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?*

- The existing provisions in respect of temporary change of use to a school use exclude listed buildings and scheduled monuments; Historic England does not see any obstacle to the extension of this provision to two years.
- Assuming that the existing restrictions with regard to listing buildings and Article 2(3) land also remain in force, Historic England does not object to the proposed increase in the threshold for extensions to existing school buildings.
- Historic England has some concerns about the proposal to allow temporary buildings to be erected for up to three years on cleared sites, as there is currently no reference to any consideration of heritage issues. In addition, heritage issues would not be picked up through the prior approval considerations.

*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?*

- As the proposals are currently presented, the prior approval provisions do not appear to be adequate in relation to the erection of temporary buildings (see response to Question 11.1): impact on the historic environment should also be considered in refining these permitted development proposals.

## **Section 12: Changes to Statutory Consultation on Planning Applications**

### Improving the performance of all statutory consultees

*Question 12.3: 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?*

- *Context:* Historic England seeks to respond in a timely fashion on all cases on which it is consulted. In 2015/16 we responded to 95.4% of the consultations that we received within the 21 day period. We are committed to continuous improvement and hope to improve on this, but there will always be an operational need for extensions within a fixed staffing resource, to cover such matters as staff absence, public holidays and unanticipated peaks in workload. Taken in conjunction with the performance statistics which we have submitted separately, Historic England can demonstrate a high level of performance overall.
- *Benefits:* The benefit of setting a maximum period for extensions would be a small increase in the degree of certainty for the applicant with regard to timescales, which they could factor into their much longer overall development programme.

- *Risks:* As noted in response to Question 1.1, speed of decision-making alone is not itself an indicator of good planning. Complex cases benefit from more detailed scrutiny and consideration, and more time – where needed – for discussion and negotiation is more likely to benefit the applicant by delivering an approval (this principle appears to be accepted in paragraph 7.1 of the consultation document). An inflexible guillotine on the period for exchange of information and negotiation risks the loss of this benefit, and the ‘unintended consequence’ of a higher rate of recommended refusals, as consultees adopt a precautionary approach when they are not able to be confident of an appropriate solution in the limited time available, : this would have a corresponding impact on delivery of the Government’s objectives as set out in the NPPF. Another risk is that an artificial limit on the time allowed for scrutiny results in a reduced quality of proposal and of decision-making. As extensions are also agreed by the local planning authority, a mechanism already exists to prevent unnecessary extensions. Enhanced use of Planning Performance Agreements would offer scope for further improvement and certainty in this area.
- *Alternative proposals:*
  - It is also important to note that not all extensions are the result of statutory consultee processes, or even negotiated agreements with applicants; some result from poor applications (e.g. missing or inadequate supporting information: 15% of Historic England’s extensions in 2014/15). This suggests that a useful focus for enhancements in this area could instead be improved pre-application engagement and better validation controls by local planning authorities (rather as per the requirement under PPS5 that ‘local planning authorities should not validate applications where the extent of the impact of the proposal on the significance of any heritage assets affected cannot adequately be understood from the application and supporting documents’). Almost a quarter (23%) of Historic England’s extensions are due to the complexity of the proposal, raising matters at a late stage which could have more efficiently been dealt with in pre-application discussions and information exchange.
  - Another focus for improvement might be a commitment to reducing the overall number or proportion of extensions (and particularly the number over 14 or 21 days), rather than fixing their duration: this would leave flexibility for the wholly beneficial extensions discussed above, whilst delivering demonstrable service improvement (and balancing the speed and quality of decision-making more appropriately). E.g., 90% of extensions within 21 days of extended time.
- *Clarification:* Clarification is sought as to which statutory consultees are intended to be covered by this provision; for the purposes of this response, it is assumed to mean those listed in Table 2 (paragraph 30: 15-030-20140612) of the Planning Practice Guidance, and not to include the national amenity societies.

*Question 12.4: 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.*

- If a maximum is to be introduced – and, for the reasons outlined in response to Question 12.3, Historic England does not support this – a limit of 21 days is the least that could be delivered without disproportionate impacts on the quality of service provided. Given the proposed four-week period for the production of a S106 dispute resolution report (paragraph 10.11), this does not seem unreasonable, as the complexity of issues being weighed, and their importance to the overall outcome, are broadly comparable.

## **Chapter 13: Public Sector Equality Duty**

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

- It is difficult to assess the potential impact of the proposals made in this consultation without the detail, and it is therefore hoped that there will be further consultation on more refined versions of these proposals in due course, in line with the recent recommendation by the CLG Committee in the Third Report of Session 2015–16.
- The planning system has generally served heritage protection well. There is however a risk that the cumulative effect of all the current changes is going to be the creation of a more fragmented and complicated system, which is less accessible, and which does not in fact support the intended delivery of the Government's localism, housing delivery, productivity or heritage objectives.

*Victoria Thomson  
Head of Planning Advice and Reform  
victoria.thomson@HistoricEngland.org.uk  
0207 973 3826*

*15 April 2016*

If you require an alternative accessible version of this document (for instance in audio, Braille or large print) please contact our Customer Services Department:

Telephone: 0370 333 0607

Fax: 01793 414926

Textphone: 0800 015 0516

E-mail: [customers@HistoricEngland.org.uk](mailto:customers@HistoricEngland.org.uk)