

FAREHAM

BOROUGH COUNCIL

Report to the Executive for Decision 7 January 2013

Portfolio:	Strategic Planning and Environment
Subject:	Consultation on Planning Performance and the Planning Guarantee
Report of:	Director of Planning and Environment
Strategy/Policy:	
Corporate Objective:	Dynamic, prudent and progressive council; Maintain and extend prosperity; Strong and inclusive communities;

Purpose:

This report reviews the consultation on 'Planning Performance and the Planning Guarantee' and makes recommendations on the response to the Government.

Executive summary:

On the 22nd November the Government began a consultation on 'Planning Performance and the Planning Guarantee'. The consultation sets out the criteria that might be used to assess planning authority performance, what thresholds might be used, how any designations would be made and the consequences of such a designation. Where a Planning Authority has been designated as poorly performing applicants for planning permission will be able to apply directly to the Planning Inspectorate. It also proposes a refund of the planning application fee in cases where the planning guarantee is not met.

Recommendation:

That the Executive agrees the Council's response to the government consultation on 'Planning Performance and the Planning Guarantee' as set out in Appendix B to this report.

Reason:

To ensure that the Government is made aware of this Council's views before any changes are made to existing planning legislation

Cost of proposals:

The administration and additional work associated with planning performance agreements is unlikely to have any major impact upon resources.

Failure to make decisions on any planning applications within 26 weeks (unless agreed with the applicant) could result in the planning application fee being repaid in full.

Appendices A: [Planning Performance and the Planning Guarantee - consultation by Department of Communities & local Government - November 2012](#)

B: Proposed Council response to consultation

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Executive Briefing Paper

Date: 7 January 2013

Subject: Consultation on Planning Performance and the Planning Guarantee

Briefing by: Director of Planning and Environment

Portfolio: Strategic Planning and Environment

INTRODUCTION

1. This report concerns a consultation from the Department for Communities and Local Government concerning "Planning performance and the planning guarantee". The underlying aim is to stimulate economic growth by seeking to ensure that quality planning decisions are made as quickly and efficiently as possible.
2. The aims would be facilitated by "The Growth and Infrastructure Bill", which was introduced to Parliament on 18 October 2012. If the quality or speed of decisions on planning applications by Local Planning Authorities is judged to be unacceptable (as set out in greater detail within the following Executive Briefing Paper) applicants will be given the option of making planning applications directly to the Secretary of State from the outset.
3. The consultation sets out how the Government proposes to measure quality and speed and requests views on specific questions. It should be noted that the questions are focussed upon the method of implementation and review rather than seeking views upon the overall principle.

SYNOPSIS OF THE CONSULTATION DOCUMENT

4. The focus of the consultation is upon poorly performing Local Planning Authorities and emphasises that it will apply where there is clear evidence of very poor performance.
5. Performance would be assessed by the speed and quality of decisions made and any Authority failing would be designated as poorly performing. It is proposed that these be assessed as follows:-

SPEED

6. The Government expects that local planning authorities make decisions within the statutory periods wherever possible. These periods are: 16 weeks in the case of applications subject to an Environmental Impact Assessment; 13 weeks for major planning applications; and 8 weeks for virtually all other cases.
7. Major applications are seen as the most important for driving economic growth. Major applications are defined as those: comprising housing schemes of 10 or more houses (or sites greater than 0.5 hectares or more where the number of dwellings is not yet known); development involving 1,000 square metres or more of new floorspace or a site area of 1 hectare or more; and development involving minerals and waste.
8. Local planning authority performance is proposed to be assessed on the extent to which applications for major development are determined within 13 weeks, averaged over a two year period. This assessment would be made once a year.
9. The National Planning Policy Framework encourages the use of Planning Performance Agreements (PPAs). These are timetable agreements between the Authority and the applicant where it is clear – at the pre-application or post application submission stage – that more time will be required to reach a decision. These applications would not be included in the assessment of the time within which an Authority makes its planning decisions.

QUALITY

10. As a quantitative means of assessment, the consultation proposes the use of the planning appeal success rate for major development as a measure of quality.
11. The Government believes that successful appeals provide an indication of whether planning authorities are making decisions that reflect policies in up-to-date plans and the National Planning Policy Framework. The consultation recognises that Local Authorities deal with differing numbers of major application appeals so it suggests that the number of major development appeals allowed each year needs to be related to the total volume of applications dealt with. The measure of quality should be the proportion of all major decisions made that are overturned at appeal, over a two year period.

PROVIDING THE RIGHT INFORMATION

12. The proposed measure of time taken to make planning decisions (i.e. decisions taken within the statutory period and the number of major applications decided) relies upon accurate data being supplied to the Department of Communities and Local Government (DCLG) on a regular basis. This information is already supplied by Fareham Borough Council as part of the quarterly returns to the DCLG.

13. The Government raises concern that some local authorities could withhold data for quarters in which their performance has slipped so that to discourage this:

- Data for a single missing quarter in one reporting (financial) year would be estimated from the returns for other quarters;
- Where data for two or three quarters in a reporting year are missing, figures for the absent quarters would be imputed in a similar way, but with a penalty of a reduction of five percentage points per missing quarter for the speed of decisions, and one percentage point per missing quarter for decisions overturned at appeal;
- Any authority with a whole year of data missing would automatically designated as very poor performing;
- Planning authorities would be given an opportunity to fill gaps in the existing data prior to any performance designations being made.

Designation as poorly performing would be automatic by setting fixed thresholds:

- where 30% or fewer major applications have been determined within the statutory period or more than 20% of major decisions have been overturned at appeal.

14. To achieve increasing incentive it is proposed to 'raise the bar' for the speed of decisions after the first year.

DESIGNATION

15. Designations would be made once a year and last for at least a year. Designation would automatically follow the publication of the relevant statistics on processing speeds and appeal outcomes for the year. Initial designations would be made in October 2013 which would mean that assessment would be made on the basis of performance from 2011 - 2012 and 2012 - 2013. A designated authority would need to demonstrate a sufficient degree of improvement before the designation is lifted.

16. If a Local Planning Authority is 'designated', the following would apply:

- Applicants for major development will have the option of applying directly to the Secretary of State;
- Related applications may also be made to the Secretary of State at the same time (listed building etc).

17. The Planning Inspectorate would carry out this role on behalf of the Secretary of State.

18. Those applying directly to the Planning Inspectorate would be able to seek pre-application advice from the Planning Inspectorate, the local planning authority or both.
19. The Planning Inspectorate would also receive the application fee but the Council would still have to undertake the following:
 - Site notices and neighbour notification;
 - Providing the planning history for the site;
 - Notification of any cumulative impact considerations, such as where environmental impact assessment or assessment under the Habitats Regulations is involved, or there may be cumulative impacts upon the highways network;
 - Section 106 agreements that may be appropriate;
 - Discharge of any planning conditions.
20. Most applications for major development determined by Local Planning Authorities are decided at a planning committee meeting. It is proposed that applications to the Planning Inspectorate would be examined principally by written representations with the option of a short hearing to allow the key parties to briefly put their points in person.
21. The performance standard for the Inspectorate in dealing with applications would, initially, be to determine 80% of cases within 13 weeks (or 16 weeks in the case of applications for major development which are subject to environmental impact assessment) and the Planning Inspectorate will provide quarterly data on its performance. The performance standard will be reviewed annually.
22. The scheme does not provide for any right of appeal once an application has been decided by the Inspectorate as the application will already have been considered on behalf of the Secretary of State, mirroring non-determination appeals.
23. The Government anticipates that the legislation will stimulate an increased focus on performance across planning authorities generally, and will help to ensure that the Planning Guarantee is met.

PLANNING GUARANTEE

24. The Planning Guarantee was announced in the Plan for Growth (March 2011). The principle is that no planning application should take more than a year to decide, including any appeal. Therefore any planning application should be with the Local Planning Authority for no more than 26 weeks; and similarly no more than 26 weeks with the Planning Inspectorate.

25. Exceptions are to this approach are:
- Applications subject to Planning Performance Agreements;
 - Planning appeals for particularly complex developments;
 - Planning appeals that relate to enforcement cases.
26. The Government considers that the prospect of authorities being designated on the basis of very poor performance will help to deliver the Planning Guarantee, as this should encourage an increased focus on the timeliness of decisions.
27. The Planning Guarantee applies to individual decisions rather than individual planning authorities. It is also proposed that a refund of the planning application fee should be made for any planning application remaining undetermined after 26 weeks.

COMMENTS

28. The clear aim of the consultation is a drive to ensure Local Planning Authorities make quicker and better quality decisions. This is already an aim of this authority when taking decisions and therefore in principle the objective is strongly supported
29. The principal of monitoring how many applications are being decided within the statutorily designated time periods is not a new approach. Performance tables were used in the recent past to establish performance levels in connection with the assessment of Planning Delivery Grants. The fundamental difference from the Planning Delivery Grant assessment is that there will be penalties for poor performance as opposed to rewards for good.
30. The relative merits of the method proposed are not for debate, but the means of assessing performance is. Designation (as a poor performer) would be automatic if the Authority failed to meet the thresholds set for speed or quality (either could result in designation as a poorly performing Authority).
31. As Members will be aware, there are a number of reasons why a planning application might not be determined within statutory timetables at the present time. These include:
- Complicated planning proposals raising multiple issues;
 - A desire to achieve high quality schemes through negotiating proposals with applicants;
 - Negotiations upon complicated legal agreements which can include other agencies (e.g. Hampshire County Council);
 - Seeking further changes and additional information to address issues arising during consideration of the planning application.
32. Whilst these have resulted in decisions being taken outside 13 weeks, they have resulted in the majority of cases in negotiated planning permissions which are acceptable to the applicant.

33. In future this Authority would need to encourage applicants to enter into Planning Performance Agreements (PPAs) where the determination period was likely to extend beyond 13 weeks. This has not been done to date at Fareham, but in principle, officers do not see an objection to such an approach. The Government is seeking views on simplifying the approach to PPAs further still if possible and officers would support keeping the 'bureaucracy' to the absolute minimum wherever possible.
34. In the event that Fareham Borough Council was designated as poorly performing, it would lose the automatic right to determine major planning applications and applicants could choose determination by the Planning Inspectorate. The Consultation clarifies that the majority of applications would be handled in a form of written representation procedure. The effect would be that although local people would still be able to comment on applications, the determination by a democratically elected committee could be lost for those very applications where this is seen to be the most equitable process.

CONCLUSION

35. The principle of what the Government is seeking to achieve is supported. Concern is raised with some of detailed proposals and the implications of them. These are detailed in the suggested formal response attached at Appendix B to the Executive report.

APPENDIX B

Proposed Council response to consultation

Question 1: Do you agree that local planning authority performance should be assessed on the basis of the speed and quality of decisions on planning applications?

The Authority accepts that the monitoring of decision making performance is an established part of the ongoing planning regime and that it has an important place. It does not question the need to establish areas of poor performance and to seek to improve these. Assessing the percentage of appeals allowed as part of the total number of decisions made on planning applications is acceptable in principle; there is however a risk that planning proposals which are 'marginal' might be permitted to avoid the risk of an allowed appeal.

Question 2: Do you agree that speed should be assessed on the extent to which applications for major development are determined within the statutory time limits, over a two year period?

This authority is supportive of the approach in principle. Concern is raised however that the Government is to apply the assessment retrospectively. There are a number of major planning applications which this authority did not determine within 13 weeks and which were not subject to planning performance agreements. They were negotiated with applicants who were aware of timescales and did not object to the fact that decisions were made beyond the 13 week period.

Question 3: Do you agree that extensions to timescales, made with the written consent of the applicant following submission, should be treated as a form of planning performance agreement (and therefore excluded from the data on which performance will be assessed)?

This represents a good approach fully in line with this authority's own aims to reduce unnecessary bureaucracy.

Question 4: Do you agree that there is scope for a more proportionate approach to the form and content of planning performance agreements?

A more proportionate use of such agreements would be welcomed. Again this represents an approach in line with this authority's own aims to reduce unnecessary bureaucracy.

Question 5: Do you agree that quality should be assessed on the proportion of major decisions that are overturned at appeal, over a two year period?

The Authority believes that the two tests should be taken in combination since it believes that there is a case to suggest that longer determination periods can in some cases lead to better 'quality' decisions and reduce the need to appeal which is in the long term interests of good planning and growth encouragement. There is also a risk that planning proposals which are 'marginal' might be permitted to avoid the risk of an allowed appeal.

Question 6: Do you agree with the proposed approach to ensuring that sufficient information is available to implement the policy?

This authority currently submits performance data on a quarterly basis and does not object in principle to this approach.

Question 7: Do you agree that the threshold for designations should be set initially at 30% or fewer of major decisions made on time or more than 20% of major decisions overturned at appeal?

See 5 above. It is the Authority's view that the two performance measured should be combined.

Question 8: Do you agree that the threshold for designation on the basis of processing speeds should be raised over time? And, if so, by how much should they increase after the first year?

This authority believes it would be best to review the thresholds once the system has been operating for a time, thereby enabling a full understanding of the impact of the changes upon the decision making process.

Question 9: Do you agree that designations should be made once a year, solely on the basis of the published statistics, as a way to ensure fairness and transparency?

Yes, subject to the response provided at question 5.

Question 10: Do you agree that the option to apply directly to the Secretary of State should be limited to applications for major development?

Yes

Question 11: Do you agree with the proposed approaches to pre-application engagement and the determination of applications submitted directly to the Secretary of State?

It is recommended that pre-application advice should be required in all cases which are to be submitted directly to the Planning Inspectorate. Determination of major applications without local engagement or debate, especially large scale schemes, would substantially reduce the scope for involvement by local residents and communities from that which currently exists.

Question 12: Do you agree with the proposed approach to supporting and assessing improvement in designated authorities? Are there specific criteria or thresholds that you would propose?

Supporting poorly performing Authorities and monitoring improvement appears to be fundamental baseline if a penalty based system is to be introduced.

Question 13: Do you agree with the proposed scope of the planning guarantee?

At face value one year to determine any application should be sufficient in most cases. There remain extensive applications involving complex issues that can result in longer periods where applicants themselves struggle to achieve the next timescales.

Question 14: Do you agree that the planning application fee should be refunded if no decision has been made within 26 weeks?

Measures need to be in place to ensure applicants cannot deliberately delay determination to obtain a refund.