

Chichester District Council

Planning Committee

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Response to Government 'An accelerated planning system'

1. Contacts

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2. Recommendation

- 2.1 That the Planning Committee consider and agree the attached responses to the consultation questions for submission in response to the government 'An accelerated planning system'.**

3. Background

- 3.1 The Government is running a public consultation from 6 March 2024 to 1 May 2024 on proposed changes to the planning system to speed up decision making and increase certainty of outcome for applicants.

- 3.2 The consultation can be found here:

[An accelerated planning system - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

- 3.3 The consultation covers:

- the introduction of a new Accelerated Planning Service, which would offer a new application route with accelerated decision dates for major commercial applications and fee refunds wherever these are not met
- changes in relation to extensions of time agreements, including
 - a new performance measure for speed of decision-making against statutory time limits,
 - an end to the use of extension of time agreements for householder applications
 - an end to repeat agreements for the same application for other types of application
- an expansion of the current simplified householder and minor commercial appeal service for more written representation appeals
- detail on the broadening of the ability to vary a planning permission through section 73B applications and on the treatment of overlapping planning permissions

4. Outcomes to be Achieved

4.1 To influence the Government's proposals for changes to the planning system.

5. Proposal

5.1 The purpose of this report is to provide a response to the consultation. The full text of the questions and proposed responses are detailed in Appendix 1. The following highlights the key changes proposed and summarises the responses, using the consultation chapter headings.

Accelerated planning service (APS)

5.2 The consultation indicates that whilst the statutory time period for the determination of a major commercial planning application is usually 13 weeks (16 weeks where it is EIA development), applications frequently take longer. The Government's objective is to reduce decision making times and provide greater certainty for the development sector. The objective of the proposed APS would ensure that decisions on major commercial are made within 10 weeks, and if they are not the planning fee would be refunded.

5.3 The consultation is seeking views on 2 options for the APS; a discretionary or a mandatory service. A discretionary service would allow applicants to choose to use the APS or the standard process. A mandatory service would be the only option available to applicants. The consultation is not however clear on whether a local planning authority (LPA) can decide whether to offer the discretionary service, or if it would still be mandatory for LPA's to have it available.

5.4 The APS would apply to major applications (including S73 variation of condition applications) for commercial schemes which create 1,000 sq. m or more of new or additional employment floor space (offices, storage and warehousing, retail, general industry, research and development, light industry and advanced manufacturing). The APS would not apply to the following types of development

- EIA development
- Applications subject to Habitat Regulations Assessment (HRA)
- Developments within the curtilage/area of listed buildings and other designated heritage assets, Scheduled Ancient Monuments and World Heritage Sites
- Retrospective applications
- Minerals and waste development

5.4 The consultation recognises that in order to meet shorter time periods for determination it would be necessary for LPA's to undertake its internal processes faster, this would include having sufficient resources within validation teams, legal teams and the need to convene planning committees on time. It is expected that the increase in fees will ensure LPA's have sufficient resources. The consultation indicates that there would be a flat rate fee uplift as a premium fee for applications

submitted under the APS. However the consultation does not indicate what this increase would be and therefore it is unclear as to how the relationship between the cost of additional resources required to deliver the service and fee uplift has been assessed by Government. To ensure LPA's meet the requirements of the APS it is proposed that Council's would be required to refund 50% of the planning application fee if the application is not determined within 10 weeks, and the whole fee if it is not determined within 13 weeks. It is considered that this timeframe is unrealistic for complex major commercial applications. It is also considered that the proposals to require LPA's to return fees if the timeframes are not met will result in the potential loss of fee income and increased pressures on resources which will not benefit applicants or assist to develop a more efficient planning system.

Planning permission and extensions of time agreements

5.5 Extension of time agreements are used to extend the time allowed to determine an application. They were introduced just over 10 years ago, and LPA's have become reliant on them to meet performance targets as planning matters have become more complex. This is particularly the case in Chichester where habitat regulation issues such as recreational disturbance, nutrient neutrality and water neutrality have presented challenges to determining applications. The use of extensions of time can help applicants receive an approval, however they have led to case officers having applications on hand for significantly longer than they otherwise would. The use of extension of time agreements has masked the amount of work undertaken by case officers, the planning fee does not cover the additional work undertaken to determine the application agreements, and whilst some applicants benefit from longer running applications, many who have submitted policy compliant schemes are held up in the process for too long. The consultation seeks to pull back on the use of extensions of time in order to speed up decision making, and this means the use of extensions of time will no longer mask how well LPA's are performing against performance thresholds. Overall, this is likely a positive step, however it will be a significant challenge in the short term for both applicants and the LPA.

5.6 The consultation proposes to change the performance thresholds to require the measures set out below, potentially in combination with the current performance thresholds.

Existing performance thresholds:

- Major applications – 60% within statutory time limit/agreed extension of time
- Minor applications – 65% within statutory time limit/agreed extension of time
- Other applications – 80% within statutory time limit/agreed extension of time

Additional performance thresholds:

- major applications – 50% or more of applications determined within the statutory time limit; and

- non-major applications – 60% or more of applications determined within the statutory time limit

5.7 The consultation proposes that extensions of time may still be agreed for all applications except householder applications, and it recognises that there are benefits to their use (for example to allow a minor issue to be resolved in order to determine an application positively), however they should only be used in exceptional circumstances. The consultation does not however state what constitute an exceptional circumstance.

5.8 It is proposed that a LPA would be at risk of designation for speed of decision-making in the following circumstances:

- if a local planning authority does not meet the thresholds for the current measure, inclusive of extension of time agreements and planning performance agreements (as per current regime), **or**
- if a local planning authority meets the thresholds for the current measure, inclusive of extension of time agreements and planning performance agreements, but does not meet the new threshold for the proportion of decisions within the statutory time limit, **or**
- if a local planning does not meet the thresholds for both the current and the new measure.

5.9 The consultation also proposes to change the assessment period from a 24 month period to 12 months, which would allow LPA's to demonstrate an uplift in performance more swiftly which is considered to be positive. In addition, the consultation states that extensions of time would not be possible for householder applications. Whilst this is considered to present a considerable challenge in the short term, in the longer term this would benefit the ability of LPA's to process applications would effectively and deliver a better level of customer service to most applicants. Finally, the consultation proposes that LPA's would only be able to agree one extension of time agreement for each application. Officers are generally supportive of a limitation that allows a single extension of time only, as it would assist with the throughput of cases. However, officers have concerns about how this would work for major applications which may face unexpected delays (e.g. at the late stages of completing a s106 agreement. This could result in cases being determined outside of the agreed extension of time period through no fault of the LPA. There is also concern that more LPA's would be designated as a result of the proposed new performance thresholds, which would lead to a loss of local decision making and a loss of fee income for Council's, which would likely have significant negative impacts on local communities.

Simplified process for planning written representation appeals

5.10 At present some appeals are considered by the Planning Inspectorate based on a brief appeal statement from the appellant, the officers report and the decision notice. There would be no opportunity for the appellant to submit additional evidence or amend the proposal to address the reasons for refusal, and no

interested parties would have the opportunity to comment. This system started in 2009 for householder applications, and grew in 2013 to include some commercial applications. These are generally small scale, less complex applications. The consultation proposes to increase this to include a wider range of development types that would otherwise be assessed under the 'written representation' appeal process, which is one where the appellant and the LPA make their cases in writing. The types of appeals that could be included would be appeals relating to applications for planning permission, reserved matters, listed building consent, lawful development certifications, high hedges, conditions, hedgerow regulations, and works to trees. This is considered to be a positive step forward, and would reduce the impact that these appeals can have upon the LPA.

Varying and overlapping planning permissions

- 5.11 It is not uncommon that developers need to amend applications post decision for a range of reasons including due to new constraints such as lack of materials, timing of infrastructure works or changes in market forces, house prices etc. This can be challenging due to legislative constraints, for example whilst a development can be amended, the description of the development cannot. A new 's73B' application, as legislated for under the Levelling-Up and Regeneration Act 2023 would allow LPAs to deal with applications that amend the description of the development in addition to the details of the proposal provided the amendment is not substantially different to what was granted planning permission. Whilst this adds an additional layer of complexity to the existing non-material amendment (s96A) and minor-material amendment (s73) applications that LPA deal with already, it is a means of providing greater flexibility for developers and LPA's. The only concern is that the work undertaken on these applications is properly reflected in the fee. The proposal to increase fees marginally for householder applications and minor applications will not meet the cost of assessing these applications and therefore it is recommended that the fees be increased.

6. Alternatives Considered

- 6.1 The alternatives are not to respond to this consultation, or to provide different consultation responses.

7. Resource and Legal Implications

- 7.1 There are no resource or legal implications connected with responding to this consultation for this Council.

8. Consultation

- 8.1 This is a public consultation being run by the government.

9. Community Impact and Corporate Risks

- 9.1 There are no community impacts or risks to this council of responding to this consultation.

10. Other Implications

	Yes	No
Crime and Disorder		✓
Climate Change and Biodiversity The proposed changes could impact upon climate change		✓
Human Rights and Equality Impact The consultation seeks views on the potential impacts under the Public Sector Equality Duty	✓	
Safeguarding and Early Help		✓
General Data Protection Regulations (GDPR)		✓
Health and Wellbeing The proposed changes could impact upon wellbeing		✓

11. Appendices

Appendix 1: Consultation questions and draft answers for consideration

Appendix 1: Proposed consultation responses

Accelerated Planning Service

Question 1. Do you agree with the proposal for an Accelerated Planning Service?

No

Question 2. Do you agree with the initial scope of applications proposed for the Accelerated Planning Service (Non-EIA major commercial development)?

Yes

Question 3. Do you consider there is scope for EIA development to also benefit from an Accelerated Planning Service?

No

Question 4. Do you agree with the proposed exclusions from the Accelerated Planning Service – applications subject to Habitat Regulations Assessment, within the curtilage or area of listed buildings and other designated heritage assets, Scheduled Monuments and World Heritage Sites, and applications for retrospective development or minerals and waste development?

Yes

Question 5. Do you agree that the Accelerated Planning Service should:

a) have an accelerated 10-week statutory time limit for the determination of eligible applications. If not, please confirm what you consider would be an appropriate accelerated time limit

No. It is unrealistic for LPA's to process complex major applications within less than 13 weeks.

b) encourage pre-application engagement

Yes

c) encourage notification of statutory consultees before the application is made

Yes

Question 6. Do you consider that the fee for Accelerated Planning Service applications should be a percentage uplift on the existing planning application fee? If yes, please specify what percentage uplift you consider appropriate, with evidence if possible.

Yes. The uplift should be very significant, for example up to 50% of the current fee based on accurate evidence. Applications for major commercial developments take time due to the complexity of the issues and the resources that are required to assess and determine

the applications. To increase resources for internal consultees, legal teams, committee services the cost will be considerable.

Question 7. Do you consider that the refund of the planning fee should be:

a. the whole fee at 10 weeks if the 10-week timeline is not met

b. the premium part of the fee at 10 weeks if the 10-week timeline is not met, and the remainder of the fee at 13 weeks

c. 50% of the whole fee at 10 weeks if the 10-week timeline is not met, and the remainder of the fee at 13 weeks

d. none of the above (please specify an alternative option)

e. don't know

Please give your reasons

d. None of the above. In order to improve the performance of LPA's there needs to be certainty around funding for resources. There are many stakeholders in the planning process, and any small delay from any part of the process, or any change in advice from consultees can derail an application and prevent it from being determined within the time frame suggested. LPA's will only be able to build sufficient resources if there is certainty around the fee income to be received. In addition, if LPA's are placed under such financial pressure to determine an application it is likely that the process will result in more refusals because the LPA will not have the time to resolve issues. Whilst the consultation indicates extensions of time will be allowed in exceptional circumstances, it says this will not affect the repayment of the fee which suggests refunds would be paid even if an extension of time to determine the application is agreed which is counterproductive and will not assist LPA's or developers who are working towards a positive outcome for an application.

Question 8. Do you have views about how statutory consultees can best support the Accelerated Planning Service? Please explain

The time frame for statutory consultees to provide full comments should be reduced to 21 days for all statutory consultees, it is not unusual that additional information or amendments are required and when comments are not received until 28 days into the process this will not allow sufficient time to negotiate amendments and reconsult before a decision is due. In addition, statutory consultees should be required to engage with consultations on requests for pre-application advice made to LPA's, rather than operating their own paid for advice services. It is not uncommon for an issue to arise with National Highways or Natural England during the course of an application, and if these matters could be known as pre-application advice stage then the LPA and the developer would have greater certainty as to the most likely outcome for an application and would be able to address concerns before an application is received.

Question 9. Do you consider that the Accelerated Planning Service could be extended to:

a. major infrastructure development

No

b. major residential development

No

c. any other development

No

If yes to any of the above, what do you consider would be an appropriate accelerated time limit?

N/A

Question 10. Do you prefer:

a. the discretionary option (which provides a choice for applicants between an Accelerated Planning Service or a standard planning application route)

b. the mandatory option (which provides a single Accelerated Planning Service for all applications within a given definition)

c. neither

d. don't know

c. neither. The consultation is not clear on whether it would be mandatory for LPAs to offer the service as a discretionary one, or if it is mandatory to offer a service irrespective of whether the developer receives a choice. The greatest concern about the APS is that it adds another layer of complexity to the system and a lack of fairness since it would result in APS applications be prioritised at the expense of the other applications being handled by an LPA given authorities do not have the resources to manage applications faster. Funding for additional resources is not the sole barrier to implementation, it is well documented that there is a lack of resources with appropriate knowledge to deal with these complex schemes. Recruitment to the level of post (Senior or Principal in most instances) remains extremely difficult, particularly in areas such as Chichester where the cost of housing/living is so high. LPA's are developing staff and 'growing our own' but it will take more time for the level of resource within the planning system to robust across the country.

Question 11. In addition to a planning statement, is there any other additional statutory information you think should be provided by an applicant in order to opt-in to a discretionary Accelerated Planning Service?

No

Planning performance and extension of time agreements

Question 12. Do you agree with the introduction of a new performance measure for speed of decision-making for major and non-major applications based on the proportion of decisions made within the statutory time limit only?

Yes. However, LPA's need to be provided with clear guidance of what an exceptional circumstance for the use of an extension of time agreement is to ensure a consistent approach nationally.

Question 13. Do you agree with the proposed performance thresholds for assessing the proportion of decisions made within the statutory time limit (50% or more for major applications and 60% or more for non-major applications)?

Yes

Question 14. Do you consider that the designation decisions in relation to performance for speed of decision-making should be made based on:

a) the new criteria only – i.e. the proportion of decisions made within the statutory time limit; or

b) both the current criteria (proportion of applications determined within the statutory time limit or an agreed extended time period) and the new criteria (proportion of decisions made within the statutory time limit) with a local planning authority at risk of designation if they do not meet the threshold for either or both criteria

c) neither of the above

d) don't know

Please give your reasons

c. neither of the above. LPA's should be provided with sufficient time to recruit/upskill planners, legal teams, internal consultees through the Planning Skills Delivery Fund and the increased application fees before the new measure is used as a threshold for designation. It is considered that this should be a period of 2 years from the date of the new requirements, after which the new thresholds would more likely be a reasonable indicator of performance.

Question 15. Do you agree that the performance of local planning authorities for speed of decision-making should be measured across a 12-month period?

Yes

Question 16. Do you agree with the proposed transitional arrangements for the new measure for assessing speed of decision-making performance?

Yes

Question 17. Do you agree that the measure and thresholds for assessing quality of decision-making performance should stay the same?

Yes

Question 18. Do you agree with the proposal to remove the ability to use extension of time agreements for householder applications?

Yes

Question 19. What is your view on the use of repeat extension of time agreements for the same application? Is this something that should be prohibited?

Yes, for the majority of cases, however it is considered that this approach may be problematic for significant major applications. To prohibit the use of a second extension of time in exceptional circumstances for major applications is a concern. It may be necessary, for example, to complete a s106 after an application has a resolution to grant permission. If the LPA had to refuse an application at a late stage due to the ongoing risks of designation due to performance thresholds this would be contrary to the intentions of the proposals to speed up the planning system and deliver certainty for applicants. It is therefore considered that repeat extensions of time should be allowed in exceptional circumstances for significant major applications.

Simplified process for planning written representation appeals

Question 20. Do you agree with the proposals for the simplified written representation appeal route?

Yes

Question 21. Do you agree with the types of appeals that are proposed for inclusion through the simplified written representation appeal route? If not, which types of appeals should be excluded from the simplified written representation appeal route?

Yes

Question 22. Are there any other types of appeals which should be included in a simplified written representation appeal route?

Yes. Appeals against applications for prior approval.

Question 23. Would you raise any concern about removing the ability for additional representations, including those of third parties, to be made during the appeal stage on cases that would follow the simplified written representations procedure? Please give your reasons.

No. This is already the case for householder applications and small scale commercial proposals, and the LPA can amend its guidance to ensure that customers are aware that their only opportunity to comment is at the application stage.

Question 24. Do you agree that there should be an option for written representation appeals to be determined under the current (non-simplified) process in cases where the Planning Inspectorate considers that the simplified process is not appropriate?

Yes. Some applications, particularly applications relating to planning permission, reserved matters and lawful development certificates will still require the written representation appeal process to ensure that the Inspector is clear on all the facts before determining the application. In addition, it is important that if there is a change in circumstances that the LPA can make the Planning Inspector aware, and the appeal route amended where necessary e.g. where a new issue has arisen since the application was determined, such as a habitat regulations matter.

Question 25. Do you agree that the existing time limits for lodging appeals should remain as they currently are, should the proposed simplified procedure for determining written representation planning appeals be introduced?

Yes

Varying and overlapping planning permissions

Question 26. Do you agree that guidance should encourage clearer descriptors of development for planning permissions and section 73B to become the route to make general variations to planning permissions (rather than section 73)?

Yes

Question 27. Do you have any further comments on the scope of the guidance?

No.

Question 28. Do you agree with the proposed approach for the procedural arrangements for a section 73B application? If not, please explain why you disagree

Yes

Question 29. Do you agree that the application fee for a section 73B application should be the same as the fee for a section 73 application? If not, please explain why you disagree and set out an alternative approach

No. The application fees for s73 applications does not cover the cost of determining the application, particularly for major applications. The fee for all applications under S73 should be 50% of the cost of the original application.

Question 30. Do you agree with the proposal for a 3 band application fee structure for section 73 and 73B applications?

No

Question 31. What should be the fee for section 73 and 73B applications for major development (providing evidence where possible)?

The fee should be significant to reflect the amount of work undertaken, for example 50% of the cost of the original application.

Question 32. Do you agree with this approach for section 73B permissions in relation to Community Infrastructure Levy?

Yes

Question 33. Can you provide evidence about the use of the 'drop in' permissions and the extent the Hillside judgment has affected development?

No

Question 34. To what extent could the use of section 73B provide an alternative to the use of drop in permissions?

It is unknown at this time.

Question 35. If section 73B cannot address all circumstances, do you have views about the use of a general development order to deal with overlapping permissions related to large scale development granted through outline planning permission?

If there is an alternative option, such as a general development order, that would allow major schemes to be amended in a more simplistic manner then this should be explored. A consultation on any such proposals should be undertaken.

Question 36. Do you have any views on the implications of the proposals in this consultation for you, or the group or business you represent, and on anyone with a relevant protected characteristic? If so, please explain who, which groups, including those with protected characteristics, or which businesses may be impacted and how. Is there anything that could be done to mitigate any impact identified?

No.