Item No. 9

PLANNING COMMITTEE

31st March 2016

JOINT REPORT OF THE HEAD OF PLANNING, ENGINEERING & TRANSPORT AND THE HEAD OF REGENERATION AND DEVELOPMENT

Consultation on proposed changes to national planning policy

Implementation of planning changes: technical consultation

1. PURPOSE OF REPORT

To advise Committee of the implications of proposed provisions set out in the technical consultation to the Housing and Planning Bill, in order to agree a Committee response to be sent to the Department for Communities and Local Government (DCLG) and shared with relevant interested parties.

Responses to the consultation need to be submitted to the DCLG by 15 April 2016

2. RECOMMENDATIONS

i) That Planning Committee instructs officers to submit the comments setout in this report, and detailed responses to the consultation questionsbased on these comments, to the DCLG as the Council's response tothe consultation document.

ii) That Planning Committee agrees that the Head of Regeneration andDevelopment and the Head of Planning, Environment and Transportation to share this report and consultation response with the borough's MPs, the Black Country Local Enterprise Partnership (LEP),other West Midlands Metropolitan Councils, the Local Governmentthe Local Government Association, the Association of Directors of Environment, Economy, Planning & Transport and others concerned with the regeneration of the borough, to help advocate that potentially damaging proposals should be avoided and/or mitigated.

3. FINANCIAL IMPLICATIONS

These proposed changes, coming on top of other changes announced or proposed by the Government will have financial impacts on local planning authorities but without a detailed evaluation it will not be possible to quantify what the financial impacts on the Council's planning service might be. However, it is likely that the proposals would lead to increased administrative burdens on the authority

Of particular note are the changes to allowing approved providers to undertake the assessment of planning applications and provide recommendations to the Local Planning Authority for determination. Whilst this process will take a large part of the assessment costs off the Council, there will still be requirements for initial processing, supply of supporting data and determination of the application for which it appears no fee will be available.

In addition to seeing third parties take on work historically undertaken by the in house planning department, it is possible for the Council to act as an approved provider in its own right providing a development management service to other Councils.

The consultation proposes to introduce a performance regime to make sure local authorities keep their Local Plans up-to-date. In December the Government consulted on proposals to hold back some or all of its New Homes Bonus awards to Councils where an authority did not have what Government considers to be an up-date Local Plan. For 2016-2017 the provisional payment of New Homes Bonus for Walsall Council has been announced as being around £5.9 million.

The consultation on new homes bonus also proposed to take account of a local planning authority's performance in defending planning appeals in awards of New Homes Bonus. The current consultation proposes to strengthen the performance regime, so that unless a higher proportion of applications is determined within set time limits and fewer appeals are overturned, an authority might be designated as poorly performing. This would mean that those proposing applications for major developments could seek to have them determined by the Planning Inspectorate and that whilst the local planning authority would have to administer the application it would not receive a fee.

Overall, the effect of the Government's proposals are likely to mean that authority's failing to meet its performance targets could face serious financial difficulties.

4. POLICY IMPLICATIONS

The Council's corporate plan priorities include supporting businesses and helping people into work, improving health and well-being, and creating safe, sustainable and inclusive communities. The Council's development plans, including the Black Country Core Strategy (BCCS), support these priorities in a regeneration strategy that seeks to provide and maintain supplies of employment land and premises, a supply of land for housing, and investment in town, district and local centres, all supported by necessary infrastructure whilst protecting the environment. In the view of officers the proposed changes coming on top of other changescould conflict with the ability to deliver local priorities and policies.

These points of conflict are set out in the report but in particular the proposals on the use of permissions in principle, the brownfield land register and local plans are noted.

5. LEGAL IMPLICATIONS

Most of the proposed changes reflect the emerging provisions of the Housing and Planning Bill, which is currently being considered by Parliament. The Bill is to give legal status to various concepts, notably 'permission in principle', and the ability of third parties to provide recommendations on applications to the Council for consideration.

Both of these measures may open opportunities for third parties including consultees or residents to seek legal challenge to decisions made by the Council.

Whilst the proposals seek to expedite the delivery of suitable land for housing, additional checks on the decisions undertaken will be necessary especially in respect of recommendationsprovided to the authority by approved providers.

6. EQUALITY

The present proposals come on top of changes that the Walsall Council has previously considered to be likely to have adverse impacts in terms of the future of industrial activities and the creation of poor living conditions.Besides risking increasing unemployment, they would seem most likely to fallon the less well-off in society. The Government has not published any impact assessment of the present proposals including in terms of equalities.

Further details are provided in Section 13 of the proposed response to the consultation, but in summary it appears:
- there is a general lack of consideration that economic, environmental and social conditions vary around the country;
- whilst encouragement for owner occupation is supported, there is a lack of consideration of the needs of those who might not be able to afford it;
- there is a lack of consideration of the implications for uses other than housing; and
- proposals to reduce consultation arrangements are most likely to exclude people who are disadvantaged.

7. ENVIRONMENTAL IMPACT

The proposals for permission in principle in particular carry with them the risk that development in principle may be established without appropriate consideration of the Environmental Impact Regulations, the Habitat Regulation. As the proposals currently stand, there is a risk that insufficient consideration is given to these matters resulting is opportunities arising for legal challenge to proposals or for the Council to be exposed to separate action in its handling of any application

8. **WARD(S) AFFECTED**

All.

9. **CONSULTEES**

Officers from Planning Policy and Development Management have provided input into the proposed response.

10. **CONTACT OFFICERS**

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11. **BACKGROUND PAPERS**

Technical consultation on implementation of planning changes (February 2016)
https://www.gov.uk/government/consultations/implementation-of-planning-changes-technical-consultation

Planning and Housing Bill 2015-16 (13.10.15)
http://services.parliament.uk/bills/2015-16/housingandplanning.html

Housing and Planning Bill Impact Assessment (19.10.15)
http://services.parliament.uk/bills/2015-/housingandplanning/documents.html

Steve Pretty
Head of Planning, Environment and Transport

Simon Tranter
Head of Regeneration and Development

EXECUTIVE SUMMARY

To assist in the reading of the response paper to the proposals in the Technical Consultation, a summary of the main changes together with the scope of the proposed response is set out below.

1. Changes to planning application fees

Proposed increase in fees in line with inflation and performance

The report welcomes the link to inflation. Caution expressed with regard to performance link especially where refused applications are allowed at appeal. Restriction to fee increases following poor performance opposed at it will compound poor performance. Fast-track service option has provisional support.

2. Permission in principle

This would be a new form of permission separate to an outline application granted either through allocation in a qualifying document e.g. Local Plan or through application.

Officers have significant concern over this proposal. It is considered it offers limited clarification on the suitability of a site for development compared to outline applications and development plan allocations and whilst easier to secure than either of these routes to site identification, it leaves too much detail in abeyance resulting in the permission in principle having little material benefit. There is also a risk that this 'light-touch' approach to planning will fail to address environmental requirements or processes, arising from EU legislation, invalidating the worth of any decision.

3. Brownfield register

Brownfield registers are proposed are proposed as part of the Bill for identifying suitable sites for housing, including mixed use schemes. The register would also be used to identify sites where permission in principle could be granted.

Officers do not consider that brownfield registers should be a qualifying document for permission in principle. Walsall is taking part in the pilot for the brownfield register. DCLG officials have given assurance that preparing registers should not involve much additional work but should simply involve drawing together data we already hold in our Local Plan, SHLAAs etc. Secondly the brownfield register should deal with land for all types of development as there is a need to provide brownfield land for the needs of industry and other facilities. It is critical that an Employment Land Review or similar study is produced to ensure that there is sufficient land to meet the needs of employment. If the brownfield register were to become a 'plan' because it provided a framework for future development consent then that would be likely to trigger the requirements of the Strategic Environment Assessment Directive

4. Small sites register

It is proposed Councils publish a list of small sites to make it easier for developers and individuals interested in self-build housing to identify suitable sites for development, and will also encourage more land owners to come forward and offer their land for development

Walsall is an old industrial area with a complex and fragmented settlement pattern and there are very many (almost certainly hundreds) of small sites. In practice therefore, it would be nearly impossible to be able to capture and record details of such sites on anything like a comprehensive basis. Given the relatively limited number of homes that might be provided on such sites, an effort to include such small sites on an individual basis might not be worthwhile and could distract from efforts to plan for larger sites and to meet development needs overall. In summary, this proposal is considered to be resource intensive with limited gain.

5. Neighbourhood planning

The Bill will give new powers for government to set time periods for various local planning authority decisions on neighbourhood plans, and give a new power for the Secretary of State to intervene to send a plan or Order to referendum.

At present there are no Neighbourhood Plans in place or proposals to bring any forward.. From the point of view of Walsall, the measures proposed do not seem to be unreasonable, but they do suppose that sufficient resources will be available to operate them.

6. Local plans

In order to ensure there is national coverage of local plans, the Government is proposing to prioritise intervention where either the least progress in plan-making has been made; policies in plans have not been kept up-to-date; there is higher housing pressure in an authorities areas or intervention will have the greatest impact in accelerating local plan production.

Through the Black Country Core Strategy, Walsall has a sound, up to date plan. In this context, the council should not have anything to fear in respect of the proposed basis for intervention. However, the existence of a potential sanction might be useful in helping to maintain a commitment to plan-making. The extent to which such a commitment can be sustained, however, will be dependent on the availability of sufficient resources. Officers would welcome flexibility within the intervention criteria to take into the account the need to cooperate with neighbouring authorities and other bodies. Joint working has a number of advantages but it also makes developing long term work programmes and maintaining deadlines difficult.

7. Expanding the planning performance regime

The Government is consulting on revised thresholds for assessing the quality of performance on applications for major development and new thresholds for non-major development for both speed and quality; the approach to designation and de-designation for non-major development; and considering which applications may be submitted to the Secretary of State in areas that are designated for their handling of non-major development.

In principle, performance monitoring is welcomed however the proposals as set out do not sufficiently recognize the external influences on the planning process which may introduce delays. In particular, the 10% target for overturned appeal decisions is considered too restrictive and will excessively constrain the decision making process of local authorities. There is already a costs mechanism in place to address poor performance either in terms of time or quality of the decision making process.

8. Testing competition in the processing of planning applications

The Government is keen to explore the benefits of competition in the processing of planning applications. Local planning authorities would also be able to apply to process planning applications in other authorities' areas. Decisions on applications would remain with the local planning authority. Approved providers would be able to process applications, undertake, consultation and make a recommendation to the local planning authority

Officers have significant concern over this proposal particularly with respect to minor and major forms of development. The core concern is the potential loss of impartiality. Unlike the Building Regulation process which is based on assessment of facts, the planning process is centered on the weighing up of different material considerations. There is a concern that insufficient weight may be given in a report to some matters resulting in recommendations being made which cannot be supported by the decision makers.

If approved providers are allowed by the Government, it is recommended that that consideration be given to how the development management service may be provided across the combined authority area.

9. Information about financial benefits

The Bill proposes a requirement for "local finance considerations" to be listed in planning reports. The Government is proposing that, alongside "local finance considerations" as currently defined in section 70 of the Town and Country Planning Act, the following benefits should be listed in planning reports where it is considered likely they will be payable if development proceeds, council tax revenue; business rate revenue and section 106 payments.

Officers have no objection to this in principal but assessing all of these financial benefits will place a burden on the authority and it is unclear what weight will be given to this

information in the consideration of an application. Furthermore, the proposals only seek to highlight the returns arising from development and do not recognise the infrastructure and possible economic, social and environmental costs that will also be incurred

10. Section 106 dispute resolution

The Government is proposing to introduce a dispute resolution mechanism for section 106 agreements. The dispute resolution process will potentially apply to any planning application where the local planning authority would be likely to grant planning permission where there are unresolved issues relating to section 106 obligations.

Officers consider this additional dispute resolution process adds an additional layer to the planning system duplicating in part the role of the existing appeal route. Whilst not objecting in principle, it is considered this measure will only increase delay and confusion rather than expediting the decision making process.

11. Permitted development rights for state-funded schools

The Government is seeking to expand the permitted development rights for school including the time limits for temporary use from one to two years, increase floorspace allowances from 100 sqm to 250 sqm and some change of use criteria.

Subject to some conditions on ensuring development does not impact on existing residential neighbours or harm protected environments e.g. the Green Belt or Conservation Areas, officers offer a cautious response to these proposals.

12. Changes to statutory consultation on planning applications

The Government is seeking to introduce maximum timescales for consultees to respond on applications.

Officers consider this arrangement poorly thought through in that an arbitrary cut-off date for comments especially from a key consultee will weaken the decision making process. Poor performance from any party in the planning process can already be accounted for in reporting figures to Government and also cost awards though the appeal process.

13. Equalities and other Issues

The consultation also asks about the application of the public sector equality duty and provides an opportunity to raise issues not covered in the specific questions.

The proposed response observes that there has not been a Government assessment of the impacts of the proposals, including in combination with the other measures proposed or announced by Government.

REPORT DETAIL

1. The Government consultation seeks views on the proposed approach to implementing the planning provisions in the Housing and Planning Bill, and some other planning measures. It covers the following areas:
    1. Changes to planning application fees
    2. Permission in principle
    3. Brownfield register
    4. Small sites register
    5. Neighbourhood planning
    6. Local plans
    7. Expanding the planning performance regime
    8. Testing competition in the processing of planning applications
    9. Information about financial benefits
    10. Section 106 dispute resolution
    11. Permitted development rights for state-funded schools
    12. Changes to statutory consultation on planning applications

2. A copy of the consultation document can be viewed at: https://www.gov.uk/government/consultations/implementation-of-planning-changes-technical-consultation. The consultation document poses a number of questions on the issues covered and on the Public Sector Equality Duty. The Government has set a deadline for comments of 15th April.

   We consider that the questions do not reflect the importance of the issues involved. The consultation does not include any questions about the impact that these proposed changes would have, and indeed the consultation is not supported by any economic impact assessment of the proposals.

   There is an overriding issue in regards to the consultation process, in that it presupposes particular outcomes on higher level consultations on the Housing and Planning Bill and on related changes that are proposed to on national policy in the National Planning Policy Framework (NPPF). Government's consultation on proposed changes to the NPPF only finished on the 22nd February, i.e. after this technical consultation started. The NPPF consultation was reported to Walsall's Planning Committee on 7th January when a response was agreed that was critical of the Government's proposals.

   Both of the NPPF consultation and the current 'Technical' consultation have been undertaken before Parliamentary consideration of the Housing and Planning Bill has been concluded. Walsall's Planning Committee on 3rd December 2015 received a report on the Housing and Planning Bill and agreed that serious concerns should be conveyed to the borough's MPs. It would appear that insufficient consideration is being given to the responses to the consultations, even though these include expressions of serious concerns, raised by local planning authorities and others, about the implications of the various proposals.

In addition, the Government has published the report of a 'Local Plans Expert Group' which is *"open for representations"* from 16th March to 27th April, and it has launched a consultation 'Technical Consultation on Starter Homes' which runs from 23rd March to 18th May. The short periods for these consultations and the fact they are being held in the period running up to local elections exacerbates the difficulties in responding in a consistent and meaningful way to the plethora of various consultations. Ideally, the council and other respondents should be able to coordinate comments on the present 'Technical Consultation' with views on the other consultations – and other recent announcements / decisions by Government[1] - . should be coordinated to present a consistent view, but this is very difficult It is also unclear as to whether the Government will be able to formulate a consistent and workable approach to planning changes following the current consultations and the wide ranges of issues they cover.

1. CHANGES TO PLANNING APPLICATION FEES

National Fees

Planning application fees were last revised, in line with inflation, in 2012. The consultation sets out proposals for amending fees to reflect changes since 2012, but in ways the Government believes link more effectively to the service which is provided. They are particularly keen to encourage innovation and improvement in the way that planning services operate, for the benefit of both applicants and authorities.

The Government believes opportunities exist to go much further, and the proposals in the consultation are designed to enable radical reform where authorities identify the scope for significant improvements.

The Government is proposing that national fees are increased by a proportionate amount, in a way which is linked to both inflation and performance. The national fee schedule would be revised in line with the rate of inflation since the last adjustment with the exact level of increase reflecting when the change comes into effect. They also propose to make future adjustments on an annual basis, if required, to maintain fee levels relative to inflation.

The changes though are linked to the provision of an effective service. Consequently any proposed increases would apply to authorities that are performing well. One approach advocated would be to not apply an increase where an authority is designated as under-performing in its handling of applications for major development or, in future, applications for non-major development. Also under consideration is whether the increases should be

[1] For example, the Government has published regulations, to come into effect on 6thApril, that will make permanent the permitted development rights for office buildings to be converted to residential use. The regulations add noise, to flooding, highways (including parking) and contamination as the only issues that local planning authorities will be allowed to consider. In December 2016 the Government also consulted on proposals to relate the award of New Homes Bonus to authorities having up-to-date local plans and to their performance in terms of planning appeals granted.

provided to the best 75% performing authorities and whether the increase should be based on current or future performance. Views are being sought on this matter.

Local flexibility and performance

As part of a programme of decentralising power from Whitehall, the Government is looking at measures that will innovate the planning service and improve the way it is delivered. The Government is keen to ensure proposals are locally led and streamline the process for applicants. Two ideas that the Government are keen to explore are:

a) provide applicants with the choice of a fast-track service (or services) in return for a proportionate fee. Such proposals would need to maintain the minimum standards for notification and representations set out in legislation, while offering decisions in less time than the current statutory periods. They are interested whether any fast track standards should be set out in regulations and applied in specific areas that pursue this approach, or whether local performance agreements could be used to provide sufficient assurance of the enhanced service to be offered.

b) test the potential for, and benefits of, competition in application processing. Clauses in the Housing and Planning Bill will, if enacted, allow competition to be trialled in specific areas, with applicants having the choice of applying to the local planning authority or one of a range of approved providers (which could be other planning authorities). The final sign-off for decisions would remain with the local planning authority. A competitive market for processing applications would require the ability for providers – including the local planning authority – to set their own fees and service standards.

The following questions have been posed by the government in respect of the review of planning fees. These, together with officers suggested response to DCLG are set out below:

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?

Proposed Response: The proposal to link planning fees to inflation is welcomed as this will enable Councils to have some certainty about the likelihood of future fee income although it is accepted the actual level of income is dependent on the number of applications submitted.

Of more concern though is the link to performance. There are issues about how this is to be measured, especially in regard to timescales. There can be a number of reasons for poor performance, especially in the short-term, such staff shortages or an influx of major applications or appeals. Authorities should not be penalised because of short term issues that can affect performance in a single year.

Should a Council find itself in a position where performance falls short this will commence a vicious circle of less resources coming in hindering opportunities to enable future improvement potentially compounding poor performance in future years and ever less resources to resolve the problem. To overcome this Councils are likely to cut back on non-

essential tasks limiting pre-application engagement and liaison with the public. Whilst these measures may enable performance to increase there is the potential that the development industry may find it increasingly difficult to pursue development opportunities hence limiting the delivery of much needed housing or conversely eroding people's faith in the planning system as an independent arbitrator of the benefits and harm that may arise from development subsequently increasing resistance to accommodating the delivery of much needed housing.

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?

Proposed Response: This question is based on a predetermination that planning fees should indeed be linked to performance. Historically through the use of measures such a planning delivery grant, the encouragement of good performance has been achieved through the use of grants to support Local Planning Authorities who have performed well to enable the Council to invest in improved services. The approach currently being advocated moves from one of supporting well performing Councils to punishing poor performing Councils.

This represents a significant step change in the approach to managing the planning process. It is accepted that poor performance should not be endorsed and instead addressed. If however the resources available to a Council are diminishing over time then the ability to enable change will diminish resulting in a contraction of the non-statutory elements of the planning process. In particular these may relate to engagement with the applicants and the public to improve schemes to secure the best benefits for all the parties including assisting developers to overcome potential grounds for refusal.

This process could lead to a lower level of engagement with the planning process, greater uncertainty for all parties about likely decisions and an associated increase in risk for developers.

Taking into account the other measures proposed in the Bill notably the opportunity for third parties to engage in the assessment process, there is potential that the work of failing authorities will be picked up by another organisation. However, the proposals as currently structured do not appear to show how an increase in fees to the national average will be achieved. It is unclear whether there will remain a national fee level which all performing Councils can charge or should a Council fall below the necessary standard in one year, will they lose that years inflation linked increase and thereafter have to charge a lower fee that the more successful Councils.

If this is the case that once a Council falls behind, it cannot catch up on the lost years increase then it is likely that over time the fee structure across different Councils will become stratified with some who have been consistently successful reaping the on-going reward, others only able to charge slightly reduced fees representing previous poor performance and others may have fees lower again

Such an arrangement will result in a range of fees which will potentially be confusing to the public and the development industry but it is recognised that the planning fee is only one fee out of a series required for a development project.

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?

Proposed Response: Additional fees should not be allowed just because a Council seeks to radically reform its planning process. Fee increases should be based on sound evidence that the changes proposed will bring forward benefits for the applicant in terms of the handling of the application.

Such proposals can include the ability for additional fees to be charged for an improved standard of service for example the delivery of a decision in a reduced time scale. Such arrangement would however need to be secured through some form of contractual arrangement e.g. the use of a planning performance agreement.

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?

Proposed Response: The ability for a Council to make an early decision on an application will depend largely on the quality of the application submitted. Some Councils including Walsall already operate approved agent schemes where agents agree to work to a set standard in terms of the quality of their submissions.

Potentially on-going contracts could be established with the more capable agents and applicants to provide increased certainty to the assessment and decision making process. Lessening the validation requirements can put into abeyance matters of potential concern to the decision matter and lead to increased ambiguity to those affected by the proposal.

As the development process is based on the principle of confidence about the merits of a scheme, it is recommended that for any fast track system to work effectively all elements of risk or uncertainty about the impacts a development could have should be addressed at the earliest opportunity.

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

Proposed Response: In principle, the move to a more market based model of fee charging is not opposed. However the planning system serves a wide number of customers, not only the applicant. It is essential that any changes do not erode the public's belief that the planning system is there to regulate development and avoid the worse forms of development which may result in significant harm arising to their detriment.

If confidence is lost either at a local or national level, then this will result in a significant block to the delivery of new development that is supposed to reinforce local communities

and a potential return of the public's concerns about the impacts on quality of life and social issues generated by urban sprawl as experienced in the late 1980's and early 1990's. (reference UCL Working Paper 47: March 2002 Unearthing the Roots of Urban Sprawl: A Critical Analysis of Form, Function and Methodology)

2. PERMISSION IN PRINCIPLE

The Housing and Planning Bill, currently being considered by Parliament, introduces a new 'permission in principle' route for obtaining planning permission. This is designed to separate decision making on 'in principle' issues from matters of technical detail. The Bill provides for permission in principle to be granted on sites in plans and registers, and for minor sites on application to the local planning authority

The Government is of the view that by improving how matters of basic principle are dealt with in the planning system, this can help make the process more effective and support the delivery of new homes. There is also a belief that the current system can often require too much information to be produced upfront before there is reliable certainty that a development can go ahead in principle.

Two issues are raised with the present system, these being that:

- It allows in principle decisions to be revisited at multiple points in the process. Local planning authorities, parishes and designated neighbourhood planning forums frequently identify land and assess its suitability for development when they propose the allocation of sites in plans. Even where land is allocated in a local plan, decision makers will reassess the basic principles of site suitability when a planning application is submitted.
- It requires applicants to invest heavily in the finer detail of a scheme without sufficient certainty that a site is suitable in principle. Alongside uncertainty of outcome, the system requires applicants to invest upfront in producing information related to a wide variety of detailed technical matters, such as detailed design. The cost of producing this information can be considerable and the time spent considering it can be significant for local authorities and others, including consultees and communities, who are asked to comment on proposals. Even where only outline planning permission is sought with all matters reserved, an applicant often needs to invest heavily in illustrative detail (e.g. showing detailed layouts and other design features).

The Government believes that permission in principle will have a number of benefits: it will increase the likelihood of suitable sites being developed; it will also improve the efficiency of the planning system by reducing the number of detailed applications that are unsuitable in principle; and it will limit the amount of time spent reappraising the principle of development at different points in the process.

The Bill sets the overarching framework for permission in principle to be granted in two ways:

- on allocation in a locally supported qualifying document that identifies sites as having permission in principle; and,
- on application to the local planning authority.

In summary, the three key requirements that need to be met in order for permission in principle to be granted by this route are:

a) the site must be allocated in locally produced and supported documents;
b) the document must indicate that a particular site is allocated with permission in principle.;
c) the site allocation must contain 'prescribed particulars'. These are the core 'in principle' matters that will form the basis of the permission in principle.

The result of a grant of permission in principle is that the acceptability of the 'prescribed particulars' cannot be re-opened when an application for technical details consent is considered by the local planning authority. Local planning authorities will not have the opportunity to impose any conditions when they grant permission in principle. It will therefore be important for the development granted in principle to be described in sufficient detail, to ensure that the parameters within which subsequent application for technical details consent must come forward is absolutely clear

Whether permission in principle is granted on allocation or application, full planning permission will only be secured once technical details consent has been obtained by applying to the local planning authority.

The Locally Supported Qualifying Documents That Can Grant Permission In Principle On Allocation

Permission in principle can only be granted on allocation where it is identified in a qualifying document. The Government believes the choice about whether to grant permission in principle should be locally driven. They therefore propose that qualifying documents should be:

a) future local plans;
b) future neighbourhood plans;
c) brownfield registers

Permission In Principle On Application

The Government is proposing that applicants for minor development should be able to apply directly to the local planning authority for permission in principle, submitting a minimum amount of information.

Permission in principle applications could also be of benefit to applicants for major development. As major development can involve greater information requirements, before making this route available they want to ensure that it would provide a sufficiently distinct option from existing outline planning permission. The Government therefore is proposing to consider the case for this following a closer examination of the operation of outline permission.

It is proposed that the only 'in principle matters' that should be determined as part of a permission in principle should be the location, the uses and the amount of development. The scope of these terms is defined in the consultation paper.

The Approach To Sensitive Sites

The Government recognises that permission in principle will not remove obligations in relation to European Directives. Views are therefore sought on options for addressing the requirements of the Environmental Impact Assessment Directive, Strategic Environment Assessment and the Habitats Directive are taken account of.

Proposed Responses: General Principles

Before we provide answers to the individual questions there are issues in relation to how this would actually work in practice. The first of these is in regards to the relationship between the proposed'in principle' allocation and the difference between existing outline permissions (how would an'in principle'permission differ from an outline permission). This is not made clear in the consultation.

Secondly there is also a question over how it will work in relation to the development plan. The government appears to be of the misunderstanding that development plans simply allocate sites for one use only. There is no appreciation that plans also cater for mixed use developments especially in town centres. Indeed paragraph 17 of the NPPF promotes mixed use developments. It is unclear how the permission in principle system would work in cases where a single use in proposed on a site allocated for mixed use.

Thirdlythe development plan can allocate sites for specific uses under certain conditions. For example in Walsall we are proposing to allocate, through the Site Allocation Document, a category of sites where, subject to certain conditions, we would approve housing on industrial land. But the policy still protects industry on these sites for as long as necessary in view of the need to protect the employment base. It is not clear how permission in principle could be applied in this situation as the details hear go beyond technical for example the protection of the business and ensuring it has another home to go to before housing can replace it.

Therefore the practical consequences and limitations of operating an in principle allocation system on the ground need further careful consideration before any decision is made.

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.

Proposed Response:In the first instance we have strong reservations about the practicalities of operating such a system as noted above and consider that there needs to be further detailed scoping work by the government as to how this would work on the ground.

It is assumed that the proposal intends all allocations in local plans and neighbourhood plans and all sites placed on a 'brownfield register' would automatically be granted 'permission in principle' – in which case, these sites will be subject to the EIA Regulations, which would not otherwise apply to local plans, and this would add an extra layer of complexity, over and above the existing requirement for compliance with the SEA Regulations and Habitats Regulations. See our further responses below.

It would be inappropriate for planning permission to be granted automatically as a result of allocating a site in a local plan or neighbourhood plan. While developers are expected to provide sufficient information to demonstrate the proposed development is appropriate and deliverable as part of the plan-making process, as a general rule the information that has to be provided is not as detailed as that required with a detailed planning application, unless there is a major concern about a specific issue, such as the impact on an environmental asset of national or international importance. If sufficient information had to be included in a local plan to justify a grant (or potential grant) of planning permission there is a real risk that plan-making would be delayed.

Aside from this brownfield registers should not be qualifying documents. In our view, the registers should be promotional tools and a way of highlighting sites that already have planning permission, are already allocated in local plans or have potential for housing. Furthermore this would be duplication and an over complication, with the brownfield register being seen as an alternative plan to the Local Plan. It is unclear how consultation in relation to the register would be organised given the need to continually update it; what would happen if the register is reviewed and a site is removed from it? Moreover, if such documents granted permission in principle, it would be necessary to make much more thorough checks before placing sites on them. Even with the proposals for 'calls for sites,' these sites may not be supported by the same level of evidence as a site subject to a planning application, or a site which has been put forward for allocation in a local plan, and will not be open to as much scrutiny from other interested parties as a planning application Proper consideration would add considerably to the workload involved in preparing registers, especially in an area such as the Black Country that has a large number of brownfield sites with many complex issues affecting them.

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

Proposed Response: Based on the evidence put forward in the consultation paper, there is a fundamental question over the value of the in principle planning permission. The proposal is based on the assumption that the information required for an outline planning permission is excessive and adds little of value to decision making process and points of detail can be put in abeyance for later consideration.

It is a accepted that in some instances, the requests for information have exceeded what is necessary but matters such as the remediation of contamination, accessibility to the site, exposure and management of flood risk and harm to important habitats or environments are core issues upon which the decision to proceed with development rests. Seeking to address these at a later stage in the decision making process is unlikely to reduce the time from conception of a development proposal by a developer to the time work actually starts on site. Indeed, it has the potential to introduce an additional layer of risk that an in principle approval cannot be progressed past the technical consideration stage due to the extent of harm that may materialise. If the principle is disaggregated from the assessment of how harm can be addressed either through the use of conditions or legal obligations then developers may find that they have secured an in principle approval that cannot be delivered requiring a traditional outline or full application to be submitted to ensure both aspects, principle and key details can be addressed together.

In the absence of any firm details on the scope of development proposed it will be difficult to quantify to the public the extent of any benefits that may be accrued from accommodating development within their community. Should this situation arise, it will not only bring the process into disrepute eroding public confidence in the value of development but also delay developers as they reengage with the planning process to address unanswered risks on the technical constraints posed by a site whilst having to undertake potentially abortive detailed design work at the same time.

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?

Proposed Response: As noted in response to question 2.2, there are fundamental concerns with the in principle process in that it would leave too much information outstanding on the nature of a development proposal. It is considered the current outline and reserved matters scheme draws a reasonable balance between the need for information and the demands on developers to provide information on a scheme.

Where there is scope to enhance the system is in terms of providing clarity to authorities on the information required for an outline application and to address excessive requests for information.

It is agreed that location, uses and amount of development (though including all types of development, not just residential development) should constitute 'in principle matters' that must be included in a permission in principle. However, in some circumstances it will be appropriate (and indeed necessary) for the local planning authority to require more information than this. Experience of dealing with outline applications shows that it is not always easy to identify the 'in principle' matters without understanding at least some of the technical detail.

This is likely to be the case with particularly large or complicated developments, or land uses which could be potentially harmful to adjacent land, property, people or environmental assets. Having information about the location, the land uses and the amount of

development will not always be sufficient to identify whether or not the site is suitable for what is proposed, or what the impacts are likely to be. The consultation paper acknowledges that site constraints would be important 'material considerations' to be taken into account when applications for 'permission in principle' are determined and it is implicit that planning authorities will have the right to refuse applications where development is 'unsuitable in principle.' However, this may be difficult where there are uncertainties about the effects of the development and there is not enough information to establish, beyond reasonable doubt, that the development will be 'suitable in principle.'

The local planning authority should therefore have the discretion to request any other information needed to establish that the development will be 'suitable in principle,' where there are environmental and physical constraints, which mean that the development could be harmful to sensitive sites (such as designated nature conservation sites or heritage assets), harmful to 'sensitive receptors' (such as existing residential areas and community facilities) or could put significant pressure on existing infrastructure (such as highway networks and utilities infrastructure).

More information will certainly be required if the development is determined to be EIA development – see below.

As noted above, it is not clear how long the 'permission in principle' is supposed to last, and unless a time limit is imposed through secondary legislation, it could apply in perpetuity to sites placed on the 'brownfield register' or approved through development consent. This would be inappropriate, because it would not allow any flexibility where circumstances have changed. For example, it could become clear subsequently that the site is not suitable for development. For example, new technical evidence on flood risk or air quality could come forward which suggest that development would present unacceptable risks to the new occupiers from air pollution or flooding. It is also unclear what status an existing 'permission in principle' should be given, if an application for an alternative type of development comes forward on the same site, because the original land use is no longer considered economically viable.

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?

Proposed Response: On the assumption the permission in principle approach is adopted, then the matters to be addressed at the technical details stage should be set out in a schedule of requirements that the developer will need to adhere to. It is this council's view however that the schedule will need to prescribe a substantive range of information. This would mean that whilst the in principle decision might be easy to secure it would prove to be of limited worth in many cases.

Whilst objectors will oppose a development in some instances on principle, many objections are based on the substantive details of a scheme e.g. impact on the highway network, landscape impact, and ground conditions. These matters will still need to be weighed up through the planning process but independently of the principle of development potentially leaving a developer with two contradictorydecision, one where the principle is acceptable

but a second where the technical constraints cannot adequately be addressed. As they are separate decisions they will need to stand independently of each other and the decision maker may find there is insufficient justification to offset one aspect of technical harm against a planning gain secured on a differing technical aspect. For example without the ability to take into account the merits of the principal of a housing proposal to assist in the delivery of properties a concern over harm to protected habitats may not be offset by limited highway improvements.

In addition, the local planning authority should have the discretion to request any information needed to establish that the development will address all the relevant issues, including issues that may not have been identified at the outline/ 'in principle' stage, which new evidence shows are relevant (or because circumstances have changed), and should be addressed to ensure that the development will be 'sustainable.'

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

Proposed Response: The consultation paper recognises that the proposals will not remove the existing obligations to comply with European Directives (such as the EIA, SEA and Habitats Directives, transposed into national legislation through regulations) when considering applications for development consent. It is assumed that the proposal intends all allocations in local plans and neighbourhood plans and all sites placed on a 'brownfield register' would automatically be granted 'permission in principle'. Accordingly any development that is affected by the EIA, SEA and/or Habitats legislation will need to provide the necessary information at the 'in principal' stage. The alternative to this would be to define the 'in principle' decision not as part of the planning permission process but as a form of decision of intent to grant planning permission. Such a decision however could not restrict further involvement in the planning consultation process and when a formal application is made, consultees and the public would be free to comment on the application.

In respect of EIA it is proposed that where a development would fall within Schedule 2 of the EIA Regulations 2011 (as amended) the permission in principle may only be granted where sufficient information is available to screen the project and that where EIA is required, the local planning authority should carry out EIA. This of course, means that sufficient information is made available for screening and – we sincerely hope- that where EIA is considered necessary the developer / proposer of the site would have to provide an Environmental Statement sufficient for the assessment to be undertaken. These requirements and how they are to be met will need to be made clear (i.e. that all 'call for sites' submissions for Schedule 2 development must be accompanied by EIA screening submissions). And what would happen if the necessary information is not provided also needs to be explained. In practice the requirements are likely to limit the usefulness of permission in principle for EIA developments, perhaps especially where a conclusion on environmental impacts would depend on detailed 'technical' matters, such as mitigation measures.

Interesting questions arise in respect of the need for EIA to consider cumulative impacts. If a 'plan' is to be used to give development consent and any one proposal in that plan requires

EIA, then does the whole 'plan' - including all of the individual sites / projects -require EIA? If the 'plan' as whole could have a significant impact then do all of the individual sites need to be subject to EIA?

Furthermore, following the 2014 amendments to the EIA Directive (2014/52/EU) -which impose stricter requirements for provision of information with EIA screening applications - the UK is currently expected to transpose the changes by having revised regulations in place by May 2017. The arrangements for permission in principle would obviously have to reflect such regulations.

In respect of the Habitats Regulations, Walsall's experience is that Natural England's approach to European Sites is to define a so-called 'Zone of Influence' and then to require all developments of a particular kind (say, housing) within some or all of this area to pay towards migration measures, without which it would expect permissions to be refused. This approach can cover very wide areas and where the viability of development is a challenge it can cause significant problems. It is our view, on behalf of Walsall Council, that Natural England's approach needs to be changed to enable development to be able to go ahead. Unless there is a change it would appear that it would not be appropriate to allow permission in principle for developments that are within the 'Zone of Influence' of any European Site.

As far as other requirements are concerned, we comment below that if the Brownfield Register (or even perhaps a small sites register) was likely to have a significant environmental effect then it would appear to trigger the requirements for SEA and EIA. In our view, other regulatory requirements should be covered under the information required to justify permission in principle.

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

Proposed Response: We agree that it is important for members of the community to be consulted upon and involved in decisions that will affect them. However, as will be apparent from our other responses, we consider that the introduction of a new type of permission, slightly different from existing arrangements and providing an almost duplicate system to the current arrangements for outline and reserved matters permissionswill be confusing for members of the public.

If the measures are carried forward then, as a matter of principle, we consider that communities should be consulted on applications for technical detailsas well as applications for 'in principle' consent. Otherwise, perhaps some years after a consultation 'in principle' on a somewhat abstract proposal people might be surprised by a new development and might be unhappy if they find the local authority had an application for technical detailsbut did not consult them. Of course, for such consultations to be undertaken, planning authorities will have to have the necessary resources. Without such resources mandating such consultation would only be at the expense of other planning work. There is also a statutory requirement to consult the public on SEA Environmental Reports, which is likely to be an issue if 'permission in principle' is granted through allocation in a plan or inclusion on a Brownfield Register.

There are also fundamental issues regarding the involvement of statutory consultees. If a permission in principle is not to address important issues, including mitigation requirements, then it will be vital – and a legal requirement if SEA, EIA and HRA apply -to consult statutory bodies, so pollution, flood risks, significant impacts on the environment, damage to heritage assets, etc. can be avoided and/or mitigated. Consultation with statutory bodies will need to be mandated where relevant issues have not been resolved at the 'in principle' stage. It is surprising that the consultation does not seem to have recognised the importance of fundamental issues being properly addressed.

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

Proposed Response: No. As we have pointed out in response to other questions, it is wrong to assume that the local planning process (let alone the proposed brownfield register) would provide sufficient information to justify a planning permission in principle, nor that minor developments would face fewer issues than major developments.

Development plan allocations – including for minor developments - are often made subject to requirements for issues (such as ground conditions, heritage assets, nature conservation designations, air quality, open space, drainage etc.) to be addressed. As an example, if a site or part of a site is subject to flood risk then a permission in principle would serve little purpose if it has not been demonstrated that the risk has been avoided or mitigated. In addition, some proposals might only be appropriate if they are subject to policy-based test, such as the sequential approach and the economic impact test for key town centre uses.

Information requirements at the 'in principle' stage should also to reflect the need for EIA and Habits screenings where these would be necessary.

The reference to only two sets of information being required for technical details submissions might be a little disingenuous as the proposed 'impact statement' should include all of the necessary assessments for the details to be approved. These could be assessments (and mitigation proposals) in respect of a wide variety of issues: coal mining and ground conditions, relationships with different uses, effects on water quality, policies to safeguard mineral resources and minerals infrastructure, policies to safeguard waste facilities. nature conservation (Special Areas of Conservation, SSSIs, SINCs, SLINCs, Local Nature Reserves, Ancient Woodland, records of protected species), heritage (scheduled monuments, registered parks and gardens, listed buildings, locally listed buildings, conservation areas), Green Belt, public rights of way, noise, air pollution, open space, high quality agricultural land.etc. Such a range of issues could be relevant not only where permission in principle has been granted on application, but also where issues have not been definitively settled in respect of the particular proposal by means of a 'qualifying document'. Whilst we do not consider the brownfield register suitable to be such a document, the pilot work on this should be used to explore the ranges of issues that need to be addressed. Regulations would need to be clear that all of the relevant issues (identified by the local planning authority and by statutory consultees) would need to be addressed. They should also enable local planning authorities and consultees to require additional information and

should make clear that consent should not be granted if necessary information is not provided.

Question 2.8: Do you have any views about the fee that should be set for a) a permission in principle application and b) a technical details consent application?

Proposed Response: Whilst the consultation refers to*"a fee which we would expect to be set at a level that is consistent with similar types of applications in the planning system"*, no description is given of what types of *"similar"*application are being considered. Our view is that in practice there are only very limited differences between the proposed approach to permission in principle followed by technical details and outline and reserved matters permissions, so that the fees charged for the proposed approaches should be no less than for the existing regime.

Generally, it will need to be ensured that there would not be a loss of fee income to planning authorities as a result of the use of the proposed 'in principle' and 'technical details' regime, rather than outline and reserved matters permissions. If that were to happen the effectiveness and quality of authorities' planning services would be undermined and in turn the public's confidence in the role of local authorities or approved providers can be eroded.

If it is argued that the fee for an in principle decision should reduced then the reciprocal fee for technical matters application should be increased to address the matters that will remain unresolved and only put into abeyance for later consideration.

This Council is strongly of the view that the use of 'in principal' decisions does not reduce the amount of consideration needed to appropriately assess a development scheme but just rearranges a well understood process increasing blight for communities affected by these proposals and placing an substantial burden on developers later on when they will need to address detailed design details at the same time as resolving strategic highway or contamination details compounding the risk one or more ancillary work packages are undertaken to meet the technical submission requirements whilst the scheme fails on more substantive matters.

Question 2.9: Do you agree with our proposals for the expiry of on permission in principle on allocation and application? Do you have any views about whether we should allow for local variation to the duration of permission in principle?

Proposed Response: The creation of an alternative planning regime with expiry dates different from the periods covered by qualifying documents and/or existing planning permissions would create complexity and potential confusion.

If the proposed regime were to be introduced then we consider that the expiry dates for permissions should be the same as those for outline and reserved matters permissions, but with the ability for local authorities to vary the duration of permissions similar to that provided by section 91 of the Town and Country Planning Act 1990.

Such variance though should be considered on a site by site basis with recognition of the unique circumstances of each development proposal.

Question2.10: Do you agree with our proposals for the maximum determination periods for a) permission in principle minor applications, and b) technical details consent for minor and major sites?

Proposed Response:In short, no. As referred to in our previous answers, we consider the view that the proposed 'in principle' arrangements would somehow be simpler to be misplaced. Ultimately, there can be a wide range of issues to be considered and responded to before an implementable planning permission can be put into place.

In addition, the proposals for a 5-week determination period for some applications does not seem to allow sufficient time for consultations to be carried out and responded to in any meaningful way. What would happen if a statutory consultee was to request additional information.And the potential difficulties would be likely to be exacerbated if authorities or approved providers might have to use out-sourced providers to administer consultations.

Without additional resources, it appears likely that local planning authorities would find great difficulty in meeting the proposed determination periods.

We wonder whether there is an obvious question about determination periods where applications would require consideration of EIA and /or Habitats regulations issues? On a site where such assessments under the HRA or EIA regulations are required, the short timescales proposed do not allow these assessments to be completed and accordingly the schemes would fail by default.

3. BROWNFIELD REGISTER

The Government state that Local planning authorities and communities share their ambition to maximise the use of brownfield land. This is a position supported by Walsall Council. The Government is supporting such Councils in a number of ways to drive up the number of permissions for new homes on suitable sites including:

- through brownfield registers which we propose will be a vehicle for granting permission in principle for new homes on suitable brownfield sites;
- by offering financial support to authorities that are piloting the preparation of brownfield registers ahead of the proposed statutory requirement; and,
- by supporting authorities that are spearheading the use of local development orders for housing. These orders help speed up the planning process and provide investor certainty. They are a valuable tool to help local planning authorities get planning permissions in place.

As set out in the previous chapter, they propose that brownfield registers should be a qualifying document to grant permission in principle. The Government expect authorities to take a positive, proactive approach when including sites in their registers, rejecting potential sites only if they can demonstrate that there is no realistic prospect of sites being suitable

for new housing. They also expect that the large majority of sites on registers that do not already have an extant planning permission will be granted permission inprinciple, and technical details consent subsequently, for housing. In a small number of cases, we recognise that it may not be appropriate for local registers to grant permission in principle, for example because there is a proposed planning application or local development order in the pipeline; or where the development raises environmental impacts or habitats issues that would be more appropriately dealt with through a planning application. The Government will publish Planning Practice Guidance to confirm our expectations on how brownfield registers should be drawn up and kept under review.

What Are We Proposing?

This consultation seeks views on proposals for preparing brownfield registers and keeping them up to date. This section sets out the Government proposals for identifying suitable sites, publicity and consultation, the proposed content of the registers and their intended requirements for publishing and updating the data.

Brownfield registers will comprise a comprehensive list of brownfield sites that are suitable for housing, including housing led schemes where housing is the predominant use with a subsidiary element of mixed use.

Environmental Impact Assessment and Habitats Directives

When compiling brownfield registers, local planning authorities will need to have in mind obligations in relation to European Directives. The Government are considering options for addressing the requirements of the EIA Directive.

Strategic Environmental Assessment

The Environmental Assessment of Plans and Programmes Regulations 2004 which transpose the requirements of the Strategic Environment Assessment Directive require an environmental assessment to be carried out for certain plans and programmes which are likely to have significant environmental effects. Depending on the content of brownfield registers, there may be potential for the regulations to apply. The Government is considering this and how this might be handled.

Publicity And Consultation Requirements

A key purpose of brownfield registers is to provide transparent information about suitable sites to local communities, developers and others. The Government propose that information about potentially suitable sites should be available at local authority offices and online. Once local authorities have considered representations on their proposed list of sites, the Government will encourage them to publicise their decisions, including reasons why sites have or have not been granted permission in principle.

The Government intend, through regulations, to require local planning authorities to carry out consultation and other procedures on their registers. This will give communities and

other interested parties the opportunity to have their views heard or provide specialist advice where sites on brownfield registers are being considered for permission in principle for housing development. Engagement should be proportionate and follow the approach set out for our proposals for permission in principle.

Where a site is included in a register but is not suitable for a grant of permission in principle, the Housing and Planning Bill also contains a provision, which the Government intend to use, for the Secretary of State to give local authorities the discretion to consult their local communities and other interested parties, such as those who can offer specialist advice, about those sites. This recognises that local planning authorities are best placed to determine whether consultation with local communities and others would be helpful, and it provides authorities with flexibility to adapt their approach to particular circumstances. If planning permission for housing on suitable sites is to be granted through a planning application or local development order, separate consultation arrangements will apply.

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

Proposed Response:As stated above we do not consider that brownfield registers should be a qualifying document for permission in principle. Walsall Council is taking part in the pilot for the brownfield register. DCLG officials have given assurance that preparing registers should not involve much additional work but should simply involve drawing together data we already hold in our Local Plan, SHLAAs etc. However, significant additional work will be required, from both the Council and from those proposing sites, if the register becomes a qualifying document rather than evidence/ a promotional tool.

Secondly the brownfield register should deal with land for all types of development and not just housing. There is a need to provide brownfield land for the needs of industry and other community facilities as well as housing. Therefore it is wrong to reject sites simply because there is no realistic prospect of them being suitable for housing, as they may be suitable and needed for industry for example.

An Employment Land Review could be used as source of information on sites that are suitable for employment purposes along with providing information on land which has become vacant and no longer meets the needs and demands of industry.

Question3.2: Do you agree with our proposed criteria for assessing suitable sites? Are there other factors which you think should be considered?

Proposed Response:The consultation states that in deciding whether to include a site on the register authorities will have to have regard to the National Planning Policy Framework and Planning Practice Guidance. Authorities should also have regard to their Local Plan. Where a brownfield site is subject to an allocation for a use other than housing in an up to date local plan and there is compelling evidence supporting that allocation, it is unlikely that the site would be regarded as being suitable for housing.

We do not agree with the criteria proposed, as the approach should not be only about identifying land for housing but for all land uses, as stated above. This should be done through one register to avoid duplication.

It is critical that an Employment Land Review or similar study is produced to ensure that there is sufficient land to meet the needs of employment and that brownfield land is not identified for housing without first understanding the other land requirements to ensure the economic prosperity of an area.

As regards to the criteria it is important to understand in relation to whether a site might be developable that many issue relating to the delivery of sites only becomes apparent at the site investigation stage following permission, for example ground conditions.

Question3.3: Do you have any views on our suggested approach for addressing the requirements of Environmental Impact Assessment and Habitats Directives?

Proposed Response: Our response to this question is the same as for Question 2.6.

In respect of EIA it is proposed that where a development would fall within Schedule 2 of the EIA Regulations 2011 (as amended) the permission in principle may only be granted where sufficient information is available to screen the project and that where EIA is required, the local planning authority should carry out EIA. This of course, means that sufficient information is made available for screening and – we sincerely hope - that where EIA is considered necessary the developer / proposer of the site would have to provide an Environmental Statement sufficient for the assessment to be undertaken. These requirements and how they are to be met will need to be made clear (all call for sites submissions for Schedule 2 development to be accompanied by EIA screening submissions). And what would happen if the necessary information is not provided also needs to be explained. In practice the requirements could be likely to limit the usefulness of permission in principle for EIA developments, perhaps especially where a conclusion on environmental impacts would depend on detailed 'technical' matters, such as mitigation measures.

Interesting questions arise in respect of the need for EIA to consider cumulative impacts. If a 'plan' is to be used to give development consent and any one proposal in that plan requires EIA, then does the whole 'plan' - including all of the individual sites / projects -require EIA? If the 'plan' as whole could have a significant impact then do all of the individual sites need to be subject to EIA?

Furthermore, following the 2014 amendments to the EIA Directive (2014/52/EU) – which impose stricter requirements for provision of information with EIA screening applications - the UK is currently expected to transpose the changes by having revised regulations in place by May 2017. The arrangements for permission in principle would obviously have to reflect such regulations.

In respect of the Habitats Regulations, Walsall's experience is that Natural England's approach to European Sites is to define a so-called 'Zone of Influence' and then to require all developments of a particular kind (say, housing) within some or all of this area to pay

towards migration measures, without which it would expect permissions to be refused. This approach can cover very wide areas and where the viability of development is a challenge it can cause significant problems. It is our view, on behalf of Walsall Council that Natural England's approach needs to be changed to enable development to be able to go ahead. Unless there is a change it would appear that it would not be appropriate to allow permission in principle for developments that are within the 'Zone of Influence' of any European Site.

Question3.4: 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?

Proposed Response:If the brownfield register were to become a 'plan' because it provided a framework for future development consent by granting permission in principle then, in our view, this would potentially trigger a requirement for SEA. In the Black Country there are many brownfield sites and many of these are large and /or bring with them potential environmental impacts (such as the need to deal with serious contamination). In such circumstances, there could be risks in seeking to argue – includingthrough a SEA screening assessment - that there might not be a need for SEA.

Perhaps the best way forward would be for the brownfield registers of the present pilot authorities to be assembled and then assessed by an expert panel to decide whether –if they were 'plans' – SEAs would be required. This could help to develop criteria for wider use in the future. It could also be used to develop scenarios to see whether reviews of the brownfield register would have to be subject to SEA and to derive criteria to decide this.

In our view the potential for SEA provides another reason not to include brownfield registers as qualifying documents.

The help of the Department would be most welcome, but in respect of the potential requirements EIA and Habitats Regulations Assessment as well as SEA. These are some of the most difficult issues that planning authorities have to deal with and are perhaps the most demanding parts of local plan preparation.

Question3.5: Do you agree with our proposals on publicity and consultation requirements?

Proposed Response:The suggested requirements for publicity and consultation would imply that local authorities maintain a dual planning system. It would mean greater complexity and scope for confusion and uncertainty. For example, we have noted above in response to Question 2.6 that there are statutory requirements for public consultation and consultation with certain statutory environmental bodies if the proposals are subject to SEA, EIA and HRA.It also imposes cost and resource issues for local authorities at a time when resources are being cut. There is no reference to additional resources to support local authorities with this new requirement, without such resources local authorities will be unable to maintain the database and it could become quickly redundant with resources already committed thereby being wasted.

It is proposed that the register should be updated – and this is proposed to be on an annual basis. Would each review have to be the subject of a round of public consultation and how extensive should this be?

It is normal when considering planning applications for all neighbouring occupiers within an agreed distance from the site to be notified of the application. This would not be practical when preparing the registers as they would cover the entire area of the authority in a similar way to local plans. This is another reason why the inclusion of a site in the register should not by itself grant permission in principle, but application for permission in principle should continue to be a separate exercise carried out on an individual site basis.

Question3.6: Do you agree with the specific information we are proposing to require for each site?

Proposed Response:Site references should also have a local ID. It is important to recognise that sites can change size and shape over time. This can affect the coverage of the allocation and also therefore the coverage of the in principle permission.

As noted above the information on the use of a site this should not just be about the number of dwellings as the register should provide for other uses.

The planning details should make reference to the allocations within the Local Plan and not just planning permissions.

Question3.7: Do you have any suggestions about how the data could be standardised and published in a transparent manner?

Proposed Response:We agree that the data should be standardised.Walsall is a pilot authority for the brownfield register and will work with the government with the aim of development a register that does provide useful information about sites in the context of our comments above.

Question3.8: Do you agree with our proposed approach for keeping data up-to-date?

Proposed Response:Clarity is needed around the level of consultation needed each time the register was updated and there is a need to recognise the resource implication of this especially if the register is to be more than just a promotional tool. If the brownfield register is not just a promotional tool and it is proposed as a qualifying document for permission in principle it will impose an onerous duty on authorities to consult the public. This could lead to information becoming out-of-date of the use of the register being diluted.

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?

Proposed Response:This approach is misconceived. As noted above, the implied promotion of a dualistic planning system, with all its attendant complexity and onerous consultation requirements on local authorities, with no mention of extra resources, will most likely cause

delay to the maintenance of the brownfield land register, as compared with a more sensible arrangement under which the register is an information and promotion tool. The 90% compliance figure is arbitrary – why not 100% of suitable sites, if suitability is the criterion? The approach should be one of partnership, not with the threat of sanctions attached.

Further consideration should be given to how the register can be used to encourage sites to be developed. It may be the case that land owners request to be included on the register with no real intention to building out a site or an unrealistic idea of the profit levels meaning that sites stall. The brownfield register could be used as a way to identify sites that are suitable for compulsory purchase when they have stalled or as evidence to support bids for funding for the remediation of land for example.

Question3.10: Are there further specific measures we should consider where local authorities fail to make sufficient progress, both in advance of 2020 and thereafter?

Proposed Response:See our answer to Q 3.9.

4. SMALL SITES REGISTER

Development on small sites, whether in rural or urban locations, can deliver a range of economic and social benefits, including:

- providing opportunities for smaller companies or individuals interested in self-build and custom housebuilding to enter the development market;
- increasing residential build out rates (especially if they can make use of existing infrastructure);
- creating local jobs and sustaining local growth, particularly in rural areas; and,
- making effective use of land which can be developed

What Are We Proposing?

The Government considers that a published list of small sites will make it easier for developers and individuals interested in self-build and custom housebuilding to identify suitable sites for development, and will also encourage more land owners to come forward and offer their land for development. The Government believes a small sites register has particular utility in areas of high demand for self-build and custom housebuilding, as councils will be required to permission sufficient serviced land to match demand. A small sites register will also have a wider utility and support development on small sites more generally. Sites on the register will not necessarily have been subject to an assessment of their suitability for development therefore anyone wishing to develop a site on the register will need to apply for planning permission in the usual way. The Government believes this will ensure that inappropriate development, for example in back gardens, does not occur. The Housing and Planning Bill contains a power to make regulations requiring local planning authorities in England to keep and publish a register of particular types of land in the authority's area. The Government are proposing to use this power to require local planning authorities to have a part of their register dedicated to "small sites". They believe that the

definition of small sites for this purpose should be sites which are between one and four plots in size.

Question 4.1: Do you agree that for the small sites register, small sites should be between one and four plots in size?

Proposed Response:In principle the issues are the same for small sites as other sites and they can have the same assets and constraints. Indeed, as small sites are perhaps more likely to bring development in close proximity to existing occupiers the issues might be thrown into shaper relief.

On the other hand, Walsall (like many other places) is an old industrial area with a complex and fragmented settlement pattern and there are very many (almost certainly hundreds) of small sites. In practice therefore, it would be impossible to be able to capture and record details of such sites on anything like a comprehensive basis. To even begin to do so would require a substantial and dedicated resource, which is not available and shows no sign of being available.

In addition, given the relatively limited amounts of development (/ numbers of homes) that might be provided on such sites, an effort to include such small sites on an individual basis might not be worthwhile and could distract from efforts to plan for larger sites and to meet development needs overall. In terms of plan-making the council uses a threshold to identify sites of over 1 acre (0.4ha).

Much will be determined through greater clarity of what Government intends. It needs to be clear whether the proposed register is simply to be for sites submitted by landowners or whether local authorities would be expected to actively search for sites. The former might be achievable, although there are not the resources at present. The latter does not seem to be practically possible.

Question4.2: 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?

Proposed Response: In principle all sites should be suitable if they are to be included in a register. But it is unlikely that a local planning authority would have the resources to ensure this. In that case, any register would need to make clear that inclusion does not mean a site is necessarily suitable for development and reference should be made to the Local Plan for the area and to national planning policy.

Question4.3: Are there any categories of land which we should automatically exclude from the register? If so what are they?

Proposed Response: In principle, if there is to be a register then it should include all vacant land for all kinds of uses (e.g. for industry as well as for housing).

Whilst it would seem desirable to identify sites where development would be inappropriate – so perhaps identifying sites that are subject to environmental, nature conservation or heritage designations or Green Belt – any attempt to identify categories of land that should be excluded might be arbitrary and could mean sites being placed on a register but not being suitable for development for reasons not identified among the exclusions. It would seem most practical to not identify exclusions, but to ensure that the caveats are clear that inclusion in the register does not mean a site is suitable.
Our responses to the question in earlier sections have referred to the issues raised by EIA, SEA, and the Habitats regulations. It may be that such difficulties might be lessened in respect of small sites, especially if there would not be cumulative impacts in terms of EIA and SEA (although within areas that it determines to be the potential Zones of Influence for European Sites, Natural England seems to be taking the view that there is no minimum size of development that is required to address the Habitats Regulations). The difficulties would seem best avoided by not making the register a plan or programme and not implying that inclusion on the register means such sites might be suitable for development.

Question4.4: Do you agree that location, size and contact details will be sufficient to make the small sites register useful? If not what additional information should be required?

Proposed Response:See the answers to the questions above.

5. NEIGHBOURHOOD PLANNING

In July 2014, the Government consulted on a number of proposals to make it easier for residents and businesses to come together to produce a neighbourhood plan or Order. In response to the consultation, steps were taken to speed up the first stage of the process by setting a period of time within which local authorities must decide applications to designate a neighbourhood area. This earlier consultation also sought views on whether there are other stages in the process where time periods may be beneficial. Greater use of time periods for decisions was supported by 50% of respondents from organisations that are, or could be, neighbourhood groups and by 54% of those with a development interest.

The Government wants to encourage communities already engaged in neighbourhood planning to complete the process successfully, and assist others to draw up their own plans or Orders. The Housing and Planning Bill will give new powers for government to set time periods for various local planning authority decisions, and give a new power for the Secretary of State to intervene to send a plan or Order to referendum.

What Are We Proposing?

The Government are proposing to set the various time periods for local planning authority decisions on neighbourhood planning; to set the procedure to be followed where the Secretary of State choses to intervene in sending a plan or Order to a referendum; and to introduce a new way for neighbourhood forums to better engage in local planning.

Question5.1: Do you support our proposals for the circumstances in which a local planning authority must designate all of the neighbourhood area applied for?

Question5.2: Do you agree with the proposed time periods for a local planning authority to designate a neighbourhood forum?

Question5.3: Do you agree with the proposed time period for the local planning authority to decide whether to send a plan or Order to referendum?

Question5.4: Do you agree with the suggested persons to be notified and invited to make representations when a local planning authority's proposed decision differs from the recommendation of the examiner?

Question5.5: Do you agree with the proposed time periods where a local planning authority seeks further representations and makes a final decision?

Question5.6: Do you agree with the proposed time period within which a referendum must be held?

Question5.7: Do you agree with the time period by which a neighbourhood plan or Order should be made following a successful referendum?

Question5.8: What other measures could speed up or simplify the neighbourhood planning process?

Question5.9: Do you agree with the proposed procedure to be followed where the Secretary of State may intervene to decide whether a neighbourhood plan or Order should be put to a referendum?

Question5.10: Do you agree that local planning authorities must notify and invite representations from designated neighbourhood forums where they consider they may have an interest in the preparation of a local plan?

Proposed ResponseTo All Questions: Walsall does not have neighbourhood plans nor has the council received any serious proposals to prepare such plans. Businesses have indicated they prefer policy to be made through the local plan process, whilst previous enquiries from a very limited number of residents' groups have been concerned to resist rather than to facilitate development. If the council did receive serious proposals for neighbourhood plans then the requirement to provide help and support and to fulfil various roles in the process would mean that staff would have to be diverted from elsewhere, probably to the detriment of local planning.

The measures that are the subject of the consultation would seem to be a response to issues raised by a lack of resources on the part of local authorities. From the point of view of Walsall, the measures proposed do not seem to be unreasonable, but they do suppose that sufficient resources will be available to operate them.

6. LOCAL PLANS

The Government have made clear their expectation that all local planning authorities should have a local plan in place. Local plans are the primary basis for identifying what development is needed in an area and for deciding where it should go, providing the certainty communities and businesses deserve.

Local planning authorities have had more than a decade since the introduction of the Planning and Compulsory Purchase Act 2004 (the 2004 Act) to prepare a local plan, and most have done so. At the end of January 2016, 84% had published a local plan and 68% had adopted a local plan.

The Government expect local plans to be kept up-to-date to ensure policies remain relevant. The National Planning Policy Framework is clear that housing policies should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. Furthermore, guidance sets out clearly that most local plans are likely to require updating in whole or in part at least every five years. At the end of Jan 2016, 45% of authorities had a local plan which had been adopted in the last 5 years.

Local plans adopted since the National Planning Policy Framework was published in March 2012 allocate substantially more housing than those adopted before the Framework was published. The average post- National Planning Policy Framework plan makes provision for 109% of household projections compared to only 86% for pre-Framework plans.

We are consulting on criteria that will inform our decision on whether to intervene to deliver our commitment to get plans with up-to-date policies in place. We want to engage with authorities early on, and therefore we do not expect any authority to be surprised if we are considering intervention. We want to see local government take action to get plans in place and would be interested to receive details of examples of where authorities have worked collaboratively, including where one authority has supported another to bring forward local plans.

In those instances where progress is not being made, the Government will intervene to ensure plans with up-to-date policies are put in place in consultation with local communities. The Secretary of State can intervene in local plans using his powers under the 2004 Act43. He may direct a local planning authority to review their existing plan, or to modify an emerging plan or submit the document for his approval. He may also arrange for a document to be prepared or revised for a local planning authority that is failing to do so and must be reimbursed by the authority for any costs incurred. The Government envisage that where it is necessary to intervene in this way, they will appoint an external party to undertake the work and they are considering potential sector-led approaches to this work.

In many instances, where the Secretary of State intervenes under these powers, the only option is to take over responsibility for the remaining process of plan-making. Measures in the Housing and Planning Bill refine these powers, enabling the Secretary of State to intervene in a more proportionate way, allowing responsibility for plan-making to be

retained by the local planning authority wherever possible, while still ensuring that local plans are in place.

Where the Government have to intervene to get local plans in place or ensure that policies are up-to-date, because an authority has not done so, this should not compromise effective community engagement. Local plans, including those prepared or revised following intervention, are subject to a legal requirement to consult the public and others, along with the right to make representations on the plan. This provides a strong framework for protecting rights of public participation.

The Government is proposing to prioritise intervention where:

- the least progress in plan-making has been made;
- policies in plans have not been kept up-to-date;
- there is higher housing pressure;
- intervention will have the greatest impact in accelerating local plan production.

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

Proposed Response:Walsall (with Dudley, Sandwell and Wolverhampton) is covered by the Black Country Core Strategy, which was adopted before the NPPF was published, but has been assessed as being in conformity with it. The Core Strategy trajectory for the delivery of housing in Walsall is being met and the Council has published a borough-wide Site Allocation Document (and a town centre Area Action Plan) aiming for adoption before the start of a Review of the Core Strategy. In this context, the council should not have anything to fear in respect of the proposed basis for intervention. However, the existence of a potential sanction might be useful in helping to maintain a commitment to plan-making. The extent to which such a commitment can be sustained, however, will be dependent above all else on the availability of sufficient resources.

Recognition needs to be given to role of plan-making as a continuing service rather than in terms of specific events, such as intervention. Before intervention is implemented there should be a trigger for a process whereby the government provides support to local authorities and discusses the issues they face in maintaining up-to-date plans.

Intervention alone is not the answer to problems with the making of local plans, and the the government needs to address the issues causing such problems. Before implementingan intervention regime the government should review the resources available for local authority plan-making in order to understand what is causing delays and what can be done to support Councils. This review needs to consider the impact of the other requirements being placed on local authorities, including through this consultation and other recent and proposed government changes, as all of these will have resource implications ingthat will deflect from local plan making. The government should also consider protecting plan-making functions within local authorities otherwise the delivery of local plans cannot be guaranteed.

Question 6.2: Do you agree that decisions on prioritising intervention to arrange for a local plan to be written should take into consideration a) collaborative and strategic plan-making and b) neighbourhood planning?

Proposed Response: We would welcome flexibility within the intervention criteria to take into the account the need to cooperate with neighbouring authorities and other duty to cooperate bodies. Joint working has a number of advantages but it also makes developing long term work programmes and maintaining deadlines difficult. This needs to be recognised by the government. Consideration should be given to the introduction of mediation support provided by the government to support local authorities overcome difficult cross boundary or cross organisational issues.

See above for our responses in respect of neighbourhood plans.

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

Proposed Response:The government needs to consider the impact of the changes to planninglegislation, policies and guidance,and the impact this has on plan making. The constant stream of proposed changes and new initiatives draws resources away from plan making. Also the changes proposed can impact directly of the policies and proposals being developed, which can mean that time is needed to consider the impact on whether the emerging plan would be accordance with national policy. As set out in the NPPF consultation there might be a need for transitional arrangements to allow for changes in the planning system to be fed into the plans.

Question 6.4: Do you agree that the Secretary of State should take exceptional circumstances submitted by local planning authorities into account when considering intervention?

Proposed Response:We agree that *"exceptional circumstances"* should be taken into account. We agree also that it is difficult to define these in advance, beyond the terms set out in this consultation. However, whilst it is correct to refer to the principle of exceptional circumstances being concerned with matters outside of an authority's control, we wonder whether it is correct to include the term *"entirely".* Authorities might have some influence with and participate in cooperation with other bodies, but sometimes landowners can introduce significant matters into a plan at a very late stage, and the some of the regulatory requirements imposed by public agencies can be so onerous as to threaten to render plans undeliverable (the application of the Habitats Regulations is a particular case in point).

As stated previously there should be a stage before intervention when the government discusses the issues facing local authorities and provides support.

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

Proposed Response: There is a need to recognise that authorities will often have more than a single local plan document. In the Black Country (Dudley, Sandwell and Wolverhampton as well as Walsall) there is a joint Core Strategy with each of the authorities preparing Site Allocations Documents and Area Action Plans (usually for town centres). This approach is necessary in view of the size and complexity of the area involved.

Besides publishing information about performance in producing local plans against published Local Development Schemes, information should also be published on the resources available for plan-making, to make sure that such resources are being maintained. This should include:

- the number of posts in the local planning team (and whether these include posts to cover statutory requirements such as for sustainability appraisal and Strategic Environmental Assessment, Habitats Regulations Assessment, and to address requirements to advise on heritage assets);
- how many of the relevant staff posts are vacant;
- the current year's budget available for the for salaries and to commission / pay for plan-making work;
- the amount of New Homes Bonus received in the past year and any funding that has been held back as a result of Government performance measures; and
- the amount of New Homes Bonus from the previous year that is being made available within the local planning authority to support plan-making.

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

Proposed Response: Yes.

7. EXPANDING THE PLANNING PERFORMANCE REGIME

In 2013 the Government published The Growth and Infrastructure Act. This introduced the performance approach for applications for major development and assesses the speed and quality of decisions taken by local planning authorities. Speed is determined as the percentage of applications determined in the statutory period and quality relates to the number of decisions overturned at appeal in a two year period.

Nationally, the percentage of applications determined in the statutory period has risen from 57% in July to September 2012 to 79% in July to September 2015. Walsall has in recent quarters successfully returned performance figures of 100% performance.

The Government is now proposing to extend this approach to non-major types of development i.e. minor schemes, changes of use and the others category which includes householder applications.

The Autumn Statement published on 25 November 2015 also set out a proposal to reduce the threshold for assessing the quality of local planning authorities' decisions to 10 per cent

of applications for major development overturned at appeal, subject to considering an authority's appeal decisions prior to confirming designation on the basis of this measure.

The Government is now consulting on:

- revised thresholds for assessing the quality of performance on applications for major development and new thresholds for non-major development for both speed and quality;
- the approach to designation and de-designation for non-major development; and,
- which applications may be submitted to the Secretary of State in areas that are designated for their handling of non-major development.

Thresholds For Assessing Performance

As part of the proposed changes, the Government thinks that the thresholds at which authorities would become liable for designation in relation to non-major development should fall within the following ranges:

- speed of decisions: where authorities fail to determine at least 60-70 per cent of applications for non-major development on time, over the two year assessment period, they would be at risk of designation
- quality of decisions: where authorities have had more than 10-20 per cent of their decisions on applications for non-major development overturned at appeal, they would be at risk of designation.

Approach To Designation And De-designation

The Government is proposing that the general approach to designating and de-designating authorities for non-major development should mirror that which exists already for major development. This will include taking into account applications that are subject to Planning Performance Agreements and Extension of Time Agreements and setting the same thresholds for exempting authorities from designation in circumstances where very few applications have been submitted

The data for major and non-major applications will not be aggregated, so the designation and de-designation processes for major and non-major development would be conducted separately (so that an authority could be designated on the basis of handling applications for major development, or non-major development, or both)

The Government is proposing that in the future they will take into account any situations where appeals have been allowed despite the authority considering that its initial decision was in line with an up-to-date plan. This is to ensure that this measure does not inadvertently discourage any authorities from making decisions that they believe to be in line with an up-to-date local plan or neighbourhood plan.

Effects Of Designation In Respect Of Applications For Non-Major Development

The proposals indicate that applicants can only apply directly to the Secretary of State for the category of applications to which a designation relates i.e. if a Council has been

designated for minor developments only, an applicant cannot apply to the Secretary of State for a major development to be handled independently of the Council.. As with the approach to major development, we are proposing that applicants would have a choice of applying directly to the Planning Inspectorate (on behalf of the Secretary of State) where an authority is designated for its performance in handling applications for non-major development. However we are proposing that this ability would be limited to applications involving minor development and changes of use, and not include householder development.

The Government considers that due to the small sized and high volume of householder applications, they are best dealt with at the local level. This does not, however, mean that under-performance in such areas would not be addressed: where authorities are designated on the basis of non–major development we will want to make sure that all aspects of their service improve, including then handling of applications for householder developments. The Government would therefore require a detailed improvement plan which focuses on improving processes for householder developments from designated authorities, where this relates to the reasons for their under-performance.

Question 7.1: Do you agree that the threshold for designations involving applications for non-major development should be set initially at between 60-70% of decisions made on time, and between 10-20% of decisions overturned at appeal? If so what specific thresholds would you suggest?

Proposed Response: The proposed target of between 60 and 70% of decisions to be determined on time is considered to be reasonable given the opportunity for applicants and Councils to use extension of time agreements as part of managing the development process. This target though is only considered reasonable on the basis that all the necessary information is available to the decision maker in a timely manner to enable appropriate consultation and where external parties are involved in providing information, poor performance on their part does not prejudice the Council. An example of this is the situation where Highways England has the ability to issue a TR110 direction preventing a Council from granting planning approval until such time strategic highway matters have been resolved. As such directions can take effect for a period of 6 months or more, it would be unreasonable to penalise a Council for the delay if the applicant is unwilling to engage with the extension of time process.

The proposed quality of decision making indicator of overturned appeals though may be more challenging to some Councils. As the planning system has a responsibility to many customers including developers and the public, it needs to be seen as not being encumbered by statistics and each decision whether for approval or refusal is based on the merits of that proposal and not the prevailing percentages. For a small Council that may only have twenty or thirty appeals, a target of say no more than 15% of decisions being overturned would equate to three or four decisions being overturned. Given some of the refusal decisions are based on partly subjective matters e.g. appearance in the street scene or impact on neighbours, it would be difficult for the public to reconcile the decision by a Council to allow a poorly designed scheme on the basis they may be penalised financially for refusing the application.

It is considered a simple percentage approach will not reflect the differences between the types of decisions made to refuse applications. It is recognised that some Councils will determine applications based on poorly based judgements and repetitively refuse applications on principle particularly for certain types of development even when the evidence does not support the reasons for refusal. This practice is unhelpful and not only incurs unnecessary costs and delays for applicants but also gives false hope to the electorate for a period of time until the appeal is decided. Ultimately this approach brings the planning system into disrepute and should be addressed.

The planning system already includes measures to enable poor performance based on irrational decision making through the ability for applicants to seek costs from a party who has behaved unreasonably. This process places a nominal burden on applicants as the request for costs is made as part of an appeal process and, if successful, provides direct compensation to the party affected.

Question 7.2: Do you agree that the threshold for designations based on the quality of decisions on applications for major development should be reduced to 10% of decisions overturned at appeal

Proposed Response: Taking into account the response to question 7.1, it is considered the move to a 10% threshold would place many smaller Councils in a potentially invidious situation of having to balance considerations of harm in a planning application against impacts on the Councils budget. This would then lead to planning based on risk not on the merits of each case on its own merits.

Attention should instead be given to the improved and widened use of the costs awards process as a mechanism for challenging poor behaviour by Councils

Question 7.3: Do you agree with our proposed approach to designation and de-designation, and in particular

(a) that the general approach should be the same for applications involving major and non-major development?
(b) performance in handling applications for major and non-major development should be assessed separately?
(c) in considering exceptional circumstances, we should take into account the extent to which any appeals involve decisions which authorities considered to be in line with an up-to-date plan, prior to confirming any designations based on the quality of decisions

Proposed Response: In principle the designation process has merit in that it provides an alternative mechanism for developers affected by unacceptably poor performance to seek a mechanism to potentially secure planning permission. The fundamental weakness though in the process is that it weakens the involvement of the community affected by development to engage with the consultation process. The existing process enables local councillors to engage on behalf of their constituents and whilst this is still theoretically possible in the new arrangements the engagement is more remote. Accordingly, it can be more difficult for the

decision maker to correctly assess the importance of certain issues and the weight applied to varying arguments may be perceived as being perverse to an outside observer.

In response to the three questions, the following response is offered:

a) The general approach currently adopted for major developments can in theory be rolled out to the other forms of developments. Due to the difference between the volume of major and minor applications handled by most authorities each year, the time table for de-designation in the case of minor and other applications may be more appropriately set at six months subject to the completion of a satisfactory improvement plan.
b) It is considered each category should be assessed independently as the process involved in handling each type of application can differ. For example, if a Council finds difficulty in assessing major development proposal efficiently due to poor internal consultation arrangements these problems may not manifest themselves on minor developments.
c) On the basis that a sound planning system should be based on up to date planning advice in development and neighbourhood plans, there is a justifiable argument to support a differentiation between those decisions based on up to date plans and those without such support. This should act as a driver to promote the adoption of up to date plans.

Question 7.4: Do you agree that the option to apply directly to the Secretary of State should not apply to applications for householder developments?

Proposed Response: Householder applications make up a significant proportion of the applications considered by a local authority. Although often small in scale, many of these proposals are given close consideration by neighbours and local Councillors play an important role in expressing the fears of those affected by development to officers whilst also explaining to the public the role of the planning system and the constraints faced by officers.

Allowing householder applications to be considered directly by the Planning Inspectorate or another body will remove this service to the detriment of neighbours who often rely on the skills of a local member to explain the works proposed and enable them to engage with the development process.

Before support can therefore be given this change, it is considered attention should be given to the wider implications of the designation process on other forms of development.

8. TESTING COMPETITION IN THE PROCESSING OF PLANNING APPLICATIONS

One form of innovation that the Government is keen to explore is competition in the processing of planning applications. This will not include any changes to decision-making on planning applications which will remain with the local authority whose area the application falls within. Nor is this about preventing local authorities from processing planning applications or forcing them to outsource their processing function.

The Government is keen to see how they could implement a programme to test how they can most effectively introduce competition in the processing of planning applications.

Based on past experiences including the opening out of the Building Control service to completion, the Government is keen to explore to test the benefits of competition in the processing of planning applications. These benefits could include giving the applicant choice, enabling innovation in service provision, bringing new resources into the planning system, driving down costs and improving performance.

The Governments Proposal

The Housing and Planning Bill contains powers to enable the testing of competition in the processing of planning applications. The Government is proposing that in a number of specific geographic areas across the country, for a limited period of time, a planning applicant would be able to apply to either the local planning authority for the area or an 'approved provider' (a person who is considered to have the expertise to managethe processing of a planning application) to have their planning application processed.

This does not prevent local planning authorities from continuing to process planning applications nor does it force them to outsource their development management service – it means that other approved providers will be able to compete to process planning applications in their area.

Local planning authorities, in addition to processing planning applications in relation to land in their area, would also be able to apply to process planning applications in other local authorities' areas.

Decisions on applications would remain with the local planning authority. However, an approved provider would be able to process the application, having regard to the relevant statutory requirements for notification, consultation and decision making, and make a recommendation to the local planning authority giving their view on how the application should be decided. But, it would be for the local planning authority to consider the recommendation and make the final decision.

Scope

Competition can be tested in different ways within this overall approach. More innovation may be possible and better use of resources, efficiency and performance, with full competition involving both approved private providers and local authorities competing for the processing of all planning applications in test areas. However, competition could be limited to just local authorities or specific types of planning application.

Fees

The Government believes a market for planning application processing might operate best by allowing approved providers and the local planning authority in test areas to set their

own fee levels, enabling them to set different levels of fee for different levels of service. Measures to ensure excessive fees are curtailed and refunded for poor performance where promised service and performance standards are not met are also considered

In competition test areas the Government considers that as an alternative approach, measures could be implemented restricting approved providers and local planning authorities to setting fee levels within a range. The Government state local authorities could be limited to charging no more than cost recovery for processing planning applications. A requirement for providers in test areas to provide a low-cost processing option could also be explored. It is likely that even where an approved provider processes a planning application the local planning authority will incur small costs, for example reviewing the provider's report and recommendation to be able to take a decision. The Government believes a balance will need to be struck between ensuring costs can be recovered fairly but without introducing duplication and additional costs to the applicant.

The Government envisage an approved provider will undertake all the tasks a local planning authority would ordinarily undertake. This includes, for example, checking and validating the application, posting site and neighbour notices, undertaking site visits, undertaking statutory consultation, carrying out informal engagement with the community, seeking more information from the applicant, negotiating section 106 agreements and undertaking Environmental Impact Assessment screening. The Government believes local people and councillors will need to be able to comment on planning applications as they can at the moment.

When a local planning authority in a test area receives a report and recommendation from an approved provider for a decision, it would be required to take the decision within a short specified period (perhaps a week or two in the Governments view); and not be delayed unreasonably.

Standards And Performance

Approved providers would not be able to process applications in which they and the member(s) of staff dealing with the application have an interest. They would alsoneed to demonstrate that they have the professional skills and capabilities to process planning applications on behalf of applicants.
Sharing

Local planning authorities and approved providers would need to share information so that planning applications are processed effectively during the test. Local planning authorities would need to provide an approved provider with the planning history for the site relevant to the application, so the provider could for example ascertain whether it is a repeat application and whether there are any other outstanding planning permissions in relation to the site.

Approved providers would need to provide summary details to the relevant local planning authority of any planning applications they receive directly, so that the application could be listed on the planning register. The Government intend to provide that information can only

be shared between providers and planning authorities for the purposes of processing planning applications during the testing of competition and must not be disclosed to any other persons.

The Government believe competition could benefit both communities and applicants. A more effective and efficient planning system would be better able to secure the development of the homes and other facilities that communities need. Improved choice in the services on offer in the Governments view would mean that applicants would be able to shop around for the services which best met their needs

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

Proposed Response: Given all planning applications are legal documents that allow certain rights to the owner of a site to undertake development, exceptional care needs to be taken in the preparation of reports. Whilst the determination of applications will remain with the local planning authorities this decision process can only be expedited in a timely manner if the reports presented for consideration are considered to be of a sufficiently high quality.

Giving consideration to the aspiration timescales for determining applications of between one and two weeks mentioned in paragraph 8.14, the committee or designated officer will need to be confident all relevant issues have been addressed and proportional weight given to the relative arguments contained in the report. In the case of a simple householder application that meets prescribed design standards if adopted by a council and no objections have been made, then the decision process is relatively simple and the application may be signed off in a matter of hours.

In more complex cases, the decision maker will have to make a clear decision as to the quality of the assessment. Unlike the existing system where a senior officer can interrogate a report writer and if necessary pursue amendments or clarification on details or the outcomes of an assessment, the authority decision maker will need to exercise a single decision on the merits of the assessment with the inherent risk that the decision is not accepted.

Importantly, not signing off a report recommending approval of an application is not the same as refusing an application. If a report is deemed unsuitable in the opinion of the decision maker then the approved provider will need to explore measures to secure the signing off of the application to ensure a decision can be issued in the appropriate time.

Potentially a situation may arise where the work undertaken by one approved provider is considered too often inadequately reflect the importance a Council gives to certain material considerations e.g. protection of the environment or Green Belts compared to the delivery of employment opportunities through new commercial development.

Should such a situation occur and a breakdown of trust emerge between the two parties then the applicant will find themselves in an invidious situation where an application

remains undetermined necessitating an appeal for non-determination. It is unclear from the consultation paper where the responsibility for this failure would lay.

Whilst technically the report may be accurate, there is no obligation on the authority to issue a decision notice. If it is considered the report is unsuitable for determination because it would either approve an undesirable form of development with the incumbent risks of the Council having to address a potential judicial review challenge or is deemed to be a poorly considered recommendation for refusal exposing the Council to an indefensible appeal with the potential for costs, then the decision maker needs to exercise caution. Recommendations are just that and are not an automatic precursor to the signing off of an application.

Should disagreement arise and it is considered that it would be inappropriate for the decision maker whether at officer or member level to accept the recommendation then there is a risk that any alternative decision reached to that recommended would be poorly informed and not give appropriate weight to the relevant planning matters.

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

Proposed Response: Unlike nearly all other reports, the recommendation report differs in that it cannot represent the interests of any one party. Once it is perceived to advocate the interests of one group over any other then there is a risk that any decision based on the recommendation may be subject to challenge from a party aggrieved that their interests were not fairly represented.

Where an approved provider receives a fee from an applicant, there will inevitably be an expectation that the recommendation on the scheme will be positive. Decision makers though challenge the relative elements of weight attributed to each planning matter resulting in a contradictory decision or one encumbered with conditions or obligations which were not anticipated.

In terms of substantiating a fee, recommending bodies will need to work on the basis of best endeavours being used to process an application. If the regulations permit arrangements such as no approval; no fee, then these arrangements should be open to all parties.

It is acknowledged that local authorities cannot generate profits from the work undertaken but there will need to be arrangements that ensure the public purse can be protected from cases where the costs escalate for example where additional work is necessary to resolve objections raised through the consultation process.

If this risk is not addressed then only a basic fee level can be charged working to the lowest common denominator to ensure no profit is ever achieved. Applicants will then submit the minimum information possible to the detriment of neighbours and those affected by a development in the knowledge that all additional work will be undertaken at nil cost to the applicant and the burden for assessing the proposal carried by the tax payer thus essentially creating a hidden tax on home owners.

To ensure the public purse is not exposed to unnecessary costs, it is considered local authorities should be able to charge comparable rates to the private sector with any identified profits being used to off set grants for other services operated by the Council e.g. child protection services or welfare payments to the elderly. Through this mechanism, a Council that is more responsive to the needs of the public sector can not only assist applicants through the development process and secure much needed growth and housing but use this process to reduce the tax burden on the existing and indeed new residents and businesses over time.

By only allowing local authorities to pursue an approach of cost recovery will minimise the opportunities for the Council to take a more proactive position in addressing its own future needs and maintain, if not increase, reliance on central government and the grant culture.

In terms of ensuring fees do not become excessive precluding entrants to the development market, it is considered a ceiling should be provided to fee levels.

With regard to the decision making element, there will inevitably be some administration associated with this process either in the form of delegated of committee decision. It is considered the interests of the tax payer can be protected by providing a fixed fee schedule for householder, minor or major applications and for committee decisions. Whist it is accepted this would only be a nominal fee amounting to only tens of pounds in the simplest of cases, over a year, such fees can multiply taking resources away from more essential services such as education needs.

It would be difficult for local members to justify the closure of an elderly persons care centre for example when resourced need to be diverted away to supporting the work of commercial developers.

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

Proposed Response: In taking on an application, approved providers and local planning authorities should be responsible for all steps in the process. Once there is a split between the different work packages involved, there will inevitably be opportunities for delay to occur as information is transferred between parties. The critical path in the handling of a planning application can already be tight especially when the consultation process is taken into account.

Responsibility for all work needs to be supervised by one party and not shared to ensure the applicant receives the most efficient service possible. Whilst the Council can share some of the back ground information e.g. the planning history, much of the other data used e.g. Ordnance Survey mapping is bought in. Approved providers would therefore need to ensure they secured the appropriate agreement with data suppliers in order to exercise their duties effectively.

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

Proposed Response: The current measures of performance namely decisions overturned at appeal and timeliness of decisions are useful but of limited worth in appraising a report writer who pays scant regard to consultees and writes reports recommending approval only days after the consultation period has ended. Such reports, if signed off by the decision maker, would meet both of the current tests with ease. However, it is likely that they would fall foul of any challenges at a higher rate that is currently the norm and would provide increased uncertainty and reduced confidence in the decision making process.

At this stage, it is considered thought should be given to measuring the complaints generated however, it is recognised that this would be very difficult to draw a consistent picture from this as the complaints would often be about the merits of the scheme as opposed to the handling of the applications. Potentially, reference could be made to the decisions of the Local Government Ombudsman but this would involve the work of both the report writer and the decision maker.

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?

Proposed Response: As noted in the response to question 8.3 planning histories could be shared though as these are often paper files arrangements would need to be made to enable these to be shared. It would not be possible for the files to simple be handed over as they may be needed for other work e.g. land charges history searches, the discharge of conditions on an earlier decision or enforcement work. It is possible files can be scanned though this entails some care for example making sure relevant information is redacted. If an enforcement file is required then the members of the public who made the initial enquiry would need to be approached to secure their agreement that details of their complaint would be released to a party outside of the Council. It is recognised that a name or address could be redacted but enforcement files often contain a depth of information that means it would not be too difficult for a third party to establish the address of the initiator of the complaint.

Approved providers would also need to ensure they had access to the relevant licences to use information.

Given differing approved providers in addition to the local authority may have involvement with a site over a number of years, it will be necessary for all parties involved in the preparation of reports to make all of their reports and files available to future users. For example, if a site was subject to an application submitted by one approved provider in one year and then a second applicant sought to use a different approved provider to submit a new application a year later, the original file with the consultee responses would need to be made available to the second party.

Just as local authorities keep past planning files, approved inspectors would need to make arrangements for the storage and availability of files to future parties with an interest in the land including applicants and private search companies.

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

Proposed Response: At the heart of the planning system is the confidence of the public, developers and other interested parties that the development process is handled in an equitable manner with no favour to a single party.

The current arrangements provides a well-established mechanism to ensure the accountability of those involved in the determination of planning applications through the election and potential re-election of local councillors. Where public faith begins to fall away in the operation of the planning service within a Council, members can take steps to improve the overall service delivery and if the appropriate steps are not taken then the public are able to register their concern at the local elections. Where the process is taken outside of the work of the Council, the public will become disenfranchised and hence lose an opportunity to express their collective view on how their local community will be shaped by development.

9. INFORMATION ABOUT FINANCIAL BENEFITS

The Housing and Planning Bill proposes to place a duty on local planning authorities to ensure that planning reports, setting out a recommendation on how an application should be decided, record details of financial benefits that are likely to accrue to the area as a result of the proposed development. It also explicitly requires that planning reports list those benefits that are "local finance considerations" (sums payable under Community Infrastructure Levy and grants from central government, such as the New Homes Bonus).

Other Financial Benefits That Should Be Listed

The Bill also provides for the Secretary of State to prescribe, through regulations:

- other financial benefits beyond "local finance considerations", that must be listed in planning reports if they are likely to be obtained as a result of the proposed development;
- information about a financial benefit that must be recorded in a planning report; and,
- A financial benefit to be listed in the planning report where it is payable to another person or body other than to the authority making the planning decision.

The Bill proposes a requirement for "local finance considerations" to be listed in planning reports. However, new development can bring a number of other financial benefits beyond "local finance consideration". New homes will be chargeable for council tax and therefore bring additional revenue to the relevant local authority. New business development will be subject to business rates and similarly bring additional revenue to the relevant local authority. Also section 106 agreements can require a sum or sums to be paid to mitigate the impact of development.

The Government is therefore proposing that, alongside "local finance considerations" as defined in section 70 of the Town and Country Planning Act, the following benefits should be

listed in planning reports where it is considered likely they will be payable if development proceeds:

- Council tax revenue;
- Business rate revenue;
- Section 106 payments.

Other Persons Or Bodies Receiving A Financial Benefit

A financial benefit might accrue to a local authority or body other than the one making the planning decision. For example, a National Parks Authority or the Broads Authority may grant planning permission but the additional council tax or business rate revenue from the development will go to the relevant local authority. In addition to any payments made to the local planning authority making the decision, the Government is therefore proposing to prescribe that financial benefits accruing to any local authority, or if and where relevant a Combined Authority or Community Infrastructure Levy charging authority, should be listed in the planning report, recognising that authorities may need to liaise to collate some of the information required to be reported in the planning report.

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

Proposed Response: In principle, the more information available to a decision maker then the more robust their decision will be. Whilst this is a general rule that can be applied to all planning application reports, the circumstance of each proposal will differ. Accordingly, the weight given to each planning matter will also change.

A prescribed list of financial matters to be addressed will therefore be of limited worth as the decision maker will see theses as matters of simple fact and not of any significant worth in relation to the other merits or potentially harmful effects of a proposal.

In addition, the decision maker should be aware of the impacts that a development may have on a local community. At present the gains from council tax receipts are not taken into account nor are the additional infrastructure costs that would be associated with a development unless specifically addressed through CIL payments or a s106 agreement e.g. additional demands on medical facilities, classroom places or formal recreation provision.

To ensure the decision maker was aware of all the facts it would also be necessary to factor these infrastructure costs in as well as the receipts that may be accrued. Essentially, without this information, it would be akin to looking at an annual budget with only the income and not the expenditure information available.

As some of the benefits arising e.g. the amount of council tax to be generated would be linked to the detailed nature of the development, it may be difficult for the local authority to accurately describe this information to the decision maker for example whether a property fell in Council Tax band C or D would have a noticeable impact on the return a Council may expect to see particularly with a larger scheme.

As it is only in the applicant's gift to finalise the quality of the development offered and not for the Council to prescribe in fine detail the design of a property, it is considered applicants should provide details on the expected returns their proposal may deliver to a community. If a Council were to undertake this take then there is a risk the true worth of a development may be under reflected diminishing the work the decision maker may give to this material consideration.

Nevertheless, it will remain the role of the decision maker to determine how much weight to give this information in assessing the worth of a proposal in comparison to other factors such as the policies in the development plan

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?

Proposed Response: The costs and financial benefits associated with development can be wide spread. In addition securing this information can be a complex affair and it can place a substantial burden on report writers including approved inspectors to detail the costs. Until the worth of this financial information is established in the view of decision makers it is considered the extent of information requirements should be focused on the immediate development in the initial stages.

This is an aspect of the report writing process that should be subject to on-going review before being finalised.

10. SECTION 106 DISPUTE RESOLUTION

Obligations under section 106 of the Town and Country Planning Act 1990 help mitigate the impact of development to make it acceptable in planning terms. Policy and law on this is set out within the National Planning Policy Framework and in the Community Infrastructure Levy Regulations 2010. Delays in granting planning permission slow the rate at which new development is delivered and can increase costs.

What is the Government Proposing?

The Government is proposing to introduce a dispute resolution mechanism for section 106 agreements through the Housing and Planning Bill. The dispute resolution process is intended to be provided by a body on behalf of the Secretary of State, concluded within prescribed timescales, and to provide a binding report setting out appropriate terms where these had not previously been agreed by the local planning authority and the developer.

The dispute resolution process will potentially apply to any planning application where the local planning authority would be likely to grant planning permission where there are unresolved issues relating to section 106 obligations. Regulations may set a size threshold or other criteria that applications must meet in order to be eligible for dispute resolution, though the Government propose not to set any thresholds or criteria at this stage. This

would mean that the dispute resolution process would be available in a broad range of cases, including some small scale ones with relatively simple section 106 obligations. The Government consider that delays to section 106 agreements may affect smaller developers particularly acutely and that they should also benefit from measures to speed up the process.

The dispute resolution process can be initiated at the request of the applicant, the local planning authority or another person as set out in regulations, by making a request to the Secretary of State. The Government consider that the existing statutory timeframes (8 weeks for a minor application, 13 weeks for a major application and 16 weeks for an application accompanied by an Environmental Impact Assessment), with extensions possible where agreed, are the most appropriate time limits before the dispute resolution process can be triggered.

Where a request is made to initiate the dispute resolution process, it is intended that there will be a short 'cooling off' period prior to a person being appointed. This will give the local planning authority and applicant a final opportunity to focus minds and resolve outstanding issues. Where this is achieved the party requesting dispute resolution can withdraw the request.. The Government consider that two weeks would be an appropriate length of time for the cooling off period, striking a balance between allowing a late agreement on matters of dispute and enabling a speedy process.

Appointed person to deliver the dispute resolution process

The Government intends that the dispute resolution process would be undertaken by an independent body on behalf of the Secretary of State. The envisage that this body will consider requests and appoint people who will help resolve outstanding issues once the dispute resolution process has been requested. They believe there is scope for the level of qualifications of the appointed person to be set out in the regulations.

Running the dispute resolution process

The Secretary of State will have discretion, through regulations, to set the level of fees payable. Regulations could also give the appointed person the ability to award costs where, for example, either side does not engage in the resolution process or if one party is found to have acted unreasonably.

The Government propose that fees should be set in such a way that in normal circumstances the costs of the process would be shared evenly between the local planning authority and the applicant.

The appointed person's report would set out the matters in dispute, the steps taken to resolve these and the terms of the section 106 (if both sides are in agreement) or recommendations as to what the appropriate terms would be (if parties continue to disagree). The regulations will also set out the manner and timing of the appointed person's report.

In circumstances where there may be an error in the appointed person's report, the Government consider that there should be a mechanism for this to be corrected. This is so that the validity of the report and its recommendations are not undermined.

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

Proposed Response: In principle there are no objections to extending the scope of any dispute resolution process to all applications. One of the key aspects though will be the arrangements to review the process.

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

Proposed Response: It is considered the s106 dispute resolution process represents a cut down form of a planning appeal albeit one focused on a single part of the process. This is welcomed with some caution however it is unclear what advantages this offers over the current appeal arrangements for non-determination.

Currently, where an authority and applicant are unable to resolve the details of a s106 agreement, the applicant has the ability to pursue an appeal for non-determination. In assessing the merits of the case, the Inspector has the ability to allow the scheme subject to either resolving the area of dispute with the agreement or adapting the scheme, within some limitations, to ensure any harm can be mitigated and the impact on the local community can be addressed.

Where the legal agreement is disaggregated from the proposal, one of these routes to resolving any dispute is removed potentially leading to more failed appeals.

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

Proposed Response: As the information required for a s106 appeal essentially replicates that required for a normal s78 appeal, no objection is raised to this aspect of the proposal.

Question 10.4: Do you consider that another party to the section 106 agreement should be able to refer the matter for dispute resolution? If yes, should this be with the agreement of both the main parties?

Proposed Response:All parties believed to have an interest in a s106 should have the ability to initiate an appeal. This for example may include a drainage body who believe a house builder should sign up to a s106 to secure a bond for the on-going maintenance of a drainage scheme.

Should one party lodge an appeal, then the handler of the applications whether that be the approved provider or local authority, should notify all interested parties to ensure all views on the content of the s106 are secured.

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

Proposed Response:There is merit in having a brief period of time to allow each party to review its position before an appeal proceeds. It is considered 21 days though would be more appropriate as any decision on whether to proceed with an appeal or move to resolution will often need agreement between senior staff within each organisation whether that be applicant, approved provider or local authority. To ensure the process is not initiated by default when a senior member of staff is on leave for example, it is considered 21 days would be sufficient whilst not substantially affecting the decision making time line.

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

Proposed Response:S106 agreements can cover a wide range of matters ranging from viability assessments to securing infrastructure provision to controlling the future use or occupation of a site. Each of these agreements may focus on a different skill set and necessitate special skill sets from the decision maker.

It would therefore be inappropriate therefore to prescribe a certain range of qualifications or experience for all appointed persons.

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

Proposed Response: In respect of sharing fees, this can be considered but it would be detrimental to the public purse if the local authority had to support an applicant in the cost of submitting an appeal on the failure to resolve a s106 agreement. This would be even more egregious if the authority had to defend an appeal on an application being dealt with by an approved provider.

Given the appeals for the failure to resolve a s106 will arise on applications which remain undetermined and hence have not been determined by an authority and indeed may have not been subject to any consideration by the Council, any defence should be addressed by the party managing the assessment of the application.

It is recognised that a cost may be associated with the appeal but this is a risk element of the determination process that local authorities accept as part of the wider assessment and in theory is covered by the application fee.

If the authority is expected to manage the appeals process including covering part of the appellants costs in terms of submitting the appeal whilst having no involvement in the assessment of the case beforehand and no receipt of the fee element where an approved provider is involved then the public interest will be at risk from under representation exposing the process to legal challenge.

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

Proposed Response: Whilst four weeks may be reasonable in some simple cases, there is a risk that this period of time is insufficient to enable full consideration to be given to more complex cases especially where third parties such as mortgage companies may be involved.

In the absence of nationally agreed standards and conditions, it is common for each party to seek separate legal representation before signing a s106 agreement to ensure their interests are protected. With each minor revision to the agreement, additional time is necessary to ensure interests are maintained and where necessary, protected.

Should an artificial deadline of 4 weeks be prescribed then there is a risk that the appeal would fail by default if for example an applicant's mortgage company questioned the clauses in the agreement or a third party refused to sign.

With the current appeal arrangements, there is no artificial cut off period which may bring about the failure of an appeal due to the presence of unresolved details.

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

Proposed Response: Because of the wide range of matters s106 agreements can be used for, it is not considered appropriated for a prescribed list of matters to be set out for appeals. To do so would result in some appeals falling outside the scope of the new legislation leaving them to be dealt with under the traditional s78 arrangements this creating a two tier appeal process and creating the need for additional legislation over and above that set out in the existing Act.

Question 10.10: Do you agree that the appointed person's report should be published on the local authority's website? Do you agree that there should be a mechanism for errors in the appointed person's report to be corrected by request?

Proposed Response: Given appeal decisions are now readily available from the Inspectorates web site and many authorities publish planning decisions including appeals on their website, the requirement to ensure this happens is not considered to be onerous. As with all documents published on the internet, relevant sections of the decision will need to be redacted but in principle there is no objection to this requirement.

The opportunity for errors to be corrected is also welcomed subject to agreement by both parties before a revised decision is issued.

Question 10.11: Do you have any comments about how long there should be following the dispute resolution process for a) completing any section 106 obligations and b) determining the planning application?

Proposed Response: Following on to the response to question 10.8, it is considered a fixed period should not be prescribed for the determination of a s106 agreement.

Given an appeal for a s106 dispute can be lodged immediately after the expiry of the 8 or 13 weeks deadline for the decision, there is the possibility that other planning matters not associated with the legal agreement remain outstanding for example an agreement controlling future use of a commercial building may be resolved prior to concerns from Highways England on access to the site being determined.

Accordingly, it would not always be possible for an approved provider or an authority to complete its recommendation report within a prescribed period after completion of the s106 agreement.

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

Proposed Response: Whilst measures to improve the handling of s106 agreements are welcomed, it is considered the rigid system being proposed will only assist in a limited range of cases. Given the s106 process overlaps the wider consideration of a planning application, it would not be appropriate to set out a fixed list of the circumstances where the guidance should be used.

Question 10.13: What limitations do you consider appropriate, following the publication of the appointed person's report, to restrict the use of other obligations?

Proposed Response: The planning process is only one of a series of agreements and permissions an applicant needs to secure prior to the commencement of development although it is often the one where the public have the most involvement due to the consultation process. It would not be considered appropriate to restrict all other matters which may utilise the s106 process nor would it be reasonable to curtail the use of other legal agreements which are often between the developer and other parties notable infrastructure providers.

Question 10.14: Are there any other steps that you consider that parties should be required to take in connection with the appointed person's report and are there any other matters that we should consider when preparing regulations to implement the dispute resolution process?

Proposed Response:Whilst measures to reduce the burden on developers are welcomed in principle, it remains unclear what the benefits of this process may be when an existing arrangement for resolving outstanding planning matters already exists. This process introduces the potential for twin appeals to occur, one on the merits of the legal agreement and the second on the planning merits.

Potentially this process may introduce additional delay should a s106 appeal is lodged, assessed and subsequently determined. Given the uncertainties associated with any appeal,

an approved provider or local authority may put work on other matters such as detailed design in abeyance till the outcome of the s106 appeal.

It isconsidered the current arrangements provide sufficient scope for appeals just on the s106 or wider planning considerations in addition to the s106 to be addressed through a single approach rather than fragmenting the system adding confusion, additional delay and increased costs to developers.

11. PERMITTED DEVELOPMENT RIGHTS FOR STATE-FUNDED SCHOOLS

The government is committed to opening at least 500 new state-funded free schools during this Parliament, which could provide up to 270,000 new school places. To support this ambition, they are proposing to increase current permitted development rights that support delivery of new state-funded schools and the expansion of current schools.

Existing permitted development rights allow certain buildings to change use to a state-funded school, allow for extensions to be added to existing schools, and allow the temporary use of buildings as state-funded schools for up to one academic year, without the need to apply for planning permission.

The government is committed to ensuring there is sufficient provision to meet growing demand for state-funded school places, increasing choice and raising educational standards. The current permitted development rights have been developed over recent years to support the delivery of these aims, by making it easier for new schools to open, good schools to expand and all schools to adapt and improve their facilities.

The Government is now seeking to build on these rights. They seek to ensure that where there is an identified need for school places, schools can open quickly on temporary sites and in temporary buildings while permanent sites are secured and developed. It is also the intention to allow larger extensions to be made to school buildings in certain cases without the need for a planning application.

The proposals are to:

- Extend from one to two academic years the existing temporary right to use any property within the use classes for a state-funded school;
- Increase from 100 m2 to 250 m2 the threshold for extensions to existing school buildings (but not exceeding 25% of the gross floorspace of the original building); and,
- Allow temporary buildings to be erected for up to three years on cleared sites where, had a building not been demolished, the existing permitted development right for permanent change of use of a building to a state funded school would have applied.

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

Proposed Response: A 250sqm allowance is reasonably substantial and could accommodate three or four new classrooms with associated corridors and storage space.

If adopted, clarity should be given that this allowance is for single storey extensions only. In terms of setting development back from boundaries, it is considered a 5m separation distance may be insufficient in many instances for a residential development. Consideration could be given to a 10m separation distance for residential sites with a smaller separation distance for non-residential uses.

Within protected environments e.g. those in the Green Belt or Conservation Areas, it is considered there is a risk significant harm may arise. Accordingly it is recommended these allowances are not extended to such areas. In addition, the allowance should represent a maximum quantum of permitted development and not facilitate multiple extensions all below the prescribed threshold?

Question11.2: 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?

Proposed Response: Consideration needs to be given to the potential for nuisance to arise from noisy activities within the school e.g. sports use. Accordingly, this factor should be taken into account in designing any scheme to ensure residential amenity is adequately protected.

12. CHANGES TO STATUTORY CONSULTATION ON PLANNING APPLICATIONS

In certain circumstances, consultation must take place between a local planning authority and certain organisations, prior to a decision being made on a planning application. The organisations in question, known as statutory consultees, are under a duty to respond to the local planning authority within 21 days (or a longer period if agreed with the local authority) and must provide a substantive response to the application in question.

As part of this process the Government is seeking to improve the performance of all statutory consultees.

Statutory consultees are required to report their performance in terms of responding to consultation requests about planning applications each year. The most recent performance data, provided by statutory consultees that respond to the majority of planning application consultee requests, indicates that for between 5 and 12% of cases they requested and received additional time from the local planning authority to respond beyond the 21 day statutory period.

The government considers that requests for extension of time may affect the ability of local planning authorities to reach timely decisions on applications and that there is scope to reduce them.

To address this issue, the government is interested in hearing views on the benefits and risks of setting a maximum period that a statutory consultee can request when seeking an extension of time. The performance data indicates that the average extension period is between 7 and 14 days and therefore a period of 14 days may be an appropriate maximum period to set for any extension sought.

Question 12.1: What are the benefits and/or risks of setting a maximum period that a statutory consultee can request when seeking an extension of time to respond with comments to a planning application?

Proposed Response: Whilst there is benefit is setting target dates for consultees to respond, often an application cannot be determined effectively without their input. In some instances, if a consultee fails to respond, the decision maker can approve an application on the basis of no objection. For certain matters though the decision maker may be exposed to legal challenge, for example if the scheme impacts on protected species and objectors have sought to evidence how a specific element of harm may arise.

Accordingly, it may be more appropriate for a decision maker to wait for the comments from a specific consultee to ensure their decision is suitably well informed and resilient against subsequent challenge.

Question 12.2: Where an extension of time to respond is requested by a statutory consultee, what do you consider should be the maximum additional time allowed? Please provide details.

Proposed Response: Following on from question 12.1, it is considered the use of a maximum time allowance carries with it a risk that decisions are made in the absence of sufficient information resulting in the risk that a decision may be successfully challenged.

In principle the proposals might be welcomed as encouraging speedier and more efficient decision-making. However, there could be situations where the lack of a consultee's views mean that a local planning authority could run the risk of a development being allowed will cause harm. In some circumstances (such as in respect of the Habitats Regulations), this could place an authority at risk of a legal challenge, and where a development might expose people to safety risks (as a result of pollution, ground stability or traffic problems) there could be potential liabilities in respect of any dangers that might arise.

13. PUBLIC SECTOR EQUALITY DUTY

The proposals covered in the consultation have been assessed by the Government with reference to the public sector equality duty contained in the Equality Act 2010. The overall aim of the Government in these proposals is to speed up and simplify the planning system and ensure it is supporting the delivery of new homes that the country needs. The Government has confirmed that none of the proposals are specifically aimed at persons with

a protected characteristic and they have not identified any adverse cumulative impact of these proposals.

The Government is of the view that the proposals are focused on streamlining and speeding up the planning system and supporting a general increase in housing delivery for the benefit of all groups of people. They do not envisage a significant differential impact of any of these proposals on protected groups (those who share a "protected characteristic"; namely race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity).

Proposals to speed up and simplify the planning system include the measures on neighbourhood plans, permission in principle, the brownfield and small sites register, the s106 dispute resolution service and proposals for improving the performance of statutory consultees.

The Government recognises that there is limited data available about the involvement of protected groups in the planning process or as developers. They are keen to hear about any potential impacts of these new proposals on those with a protected characteristic, suggestions for any appropriate mitigation together with any supporting evidence which can assist in deciding the final policy approach in due course.

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

Proposed Response: We are surprised that the proposals have not been the subject of an impact assessment, including consideration of the proposals in the context of other Government proposals such as in respect of the NPPF. That should have been done to provide evidence as to what the potential impacts of the measures might be – including evidence of the impacts on protected groups. Without such an assessment, the statements in the consultation that the measures are to improve, speed up and simplify the planning system appear simply to be assertions. In our view the proposals will add to the complexity of the system and without increased resources to manage such complexity. The proposals will not improve the system.

In our view the proposals, together with other recent and proposed Government measures, increasing tend to a one-size fits all approach, which does not seem to recognise that different local planning authorities face different issue. From our perspective, authorities covering older industrial areas face combinations of poor environmental conditions in relatively weak local economies, they are places where there are potential brownfield opportunities but a lack of viability to enable development to be delivered easily. This requires proactive planning, but it is in such areas that resources for local authorities have come under the greatest pressure – and such pressure appears set to increase further as funding turns increasingly to locally-generated taxes and fee income. Protected groups tend to be most concentrated in such areas (compare the results of the 20011 Census and the 2015 Index of multiple deprivation with funding awards and proposals for the different local

authorities around the country). It is our view that the more planning services in areas like Walsall come under pressure the more disadvantaged people included protected groups would be at risk of being disadvantaged further.

The approach to housing is a case in point. We agree that there is a need to increase housebuilding generally and that would seem likely to at least increase housing availability (even if effects on prices might be rather marginal under any realistic projections). However, regard needs to be had to the types and tenures of housing proposed. Much if not all of the Government's proposals seem(s) to be directed towards private sector housing for sale, with 'starter homes' prioritised over social / rented housing. However, consideration should be given to the needs of those who are unlikely in the foreseeable future to be able to afford a deposit or a mortgage. We would suggest that a high proportion of people in protected groups would be likely to fall within this category.

In addition, the promotion of housing, seemingly rather than a balance of land uses, could put the ability to retain and encourage industrial investment. Again, we would suggest that many in protected groups will be dependent on areas' abilities to provide industrial jobs.

Furthermore, the proposals appear to seek to streamline the system by reducing requirements for public consultation. In our experience protected groups tend to participate least in planning and are most vulnerable to being excluded from participation in planning, especially if they are not consulted directly.

In our view it is for the Government to provide the evidence to justify its proposals, including in respect of the public sector equality duty.

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

Proposed Response: In the first instance, it is noted that the use of an automated system for the submission of comments, so that they tend to be restricted to the specific questions asked, has the effect of limiting and narrowing debate.

The development process is centred on providing confidence to those parties affected that the merits of a scheme out weight the potential harm that may arise. Whilst not always perfect, the scheme is felt to be transparent with opportunities for all interests to be taken into account and due weight given to each party.

Whilst the proposals seek to minimise delays and enable decisions to be issued earlier, this appears at time to be achieved through an erosion of some of the engagement by the public and consultees. This is evidenced for example in respect of consultee arrangements and the imposition of strict cut off dated limiting engagement with the planning process. It remains to be seen as to whether the changes will reduce the administration involved with planning applications or if they replicate in an amended form mechanisms that already exist e.g. planning appeals.