Report to	Sustainable development panel 9 January 2013	**Item**
Report of	Head of planning service	6
Subject	Update on legislative changes to the planning system	

Purpose

This report updates members on legislative changes to the planning system and in particular focuses on three areas on which Norwich City Council is making consultation responses to government:

(a) speeding up the planning system for large scale business and commercial projects;

(b) the proposed changes to permitted development rights;

(c) planning performance and the planning guarantee.

Recommendation

That members note the contents of this report and endorse the consultation responses.

Corporate and service priorities

The report helps to meet the corporate priorities: A prosperous city; and city of character and culture.

Financial implications

There are no direct financial implications to this report.

Ward/s: All wards

Cabinet member: Councillor Bremner – Environment and development

Contact officers

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Background documents

None

Report

Background

1. This report updates panel members on the government's announcement on 6 September 2012 of a major new housing and planning package to help to assist development and cut red tape.

2. The package is largely being enacted through new national planning legislation in the Growth and Infrastructure Bill, introduced in Parliament in October 2012.

3. Section A of the report includes commentary on aspects of the implementation of the legislation Norwich City Council is seeking to influence through responses to Communities and Local Government (CLG) consultations, along with the consultation responses in appendices.

4. The consultation responses cover:

   (a) speeding up the planning system for large scale business and commercial projects;

   (b) the proposed changes to permitted development rights for small scale development;

   (c) planning performance and the planning guarantee, concerning how "underperforming authorities" will be defined.

5. Section B of the report also briefly informs members of the government's intention to consult on environmental impact assessment (EIA) procedures.

A. The Growth and Infrastructure Bill

6. The Growth and Infrastructure Bill is wide ranging. The intention is that it will "Help the country compete on the global stage by setting out a comprehensive series of practical reforms to reduce confusing and overlapping red tape that delays and discourages business investment, new infrastructure and job creation."[1]

7. In relation to planning for Norwich, the main areas it covers are:

   (a) Reconsideration of economically unviable 'Section 106' agreements (Norwich City council's consultation response on this was considered by the Sustainable Development Panel on 26th September 2012 and subsequently submitted to CLG).

   (b) Speeding up the planning system for large scale business and commercial projects (see paragraphs 9 to 20 below);

[1] Gov.uk web site 12 October 2012 https://www.gov.uk/government/news/bill-to-boost-growth-and-infrastructure-goes-before-parliament

(c) Allowing planning decisions to be made by the Planning Inspectorate (PINS) rather than locally where local authorities have been underperforming (see paragraphs 44 to 53);

(d) Changing permitted development rights for a limited period so that planning permission is not required for some small scale developments, including single storey extensions (see paragraphs 21 to 43);

(e) Cutting back the volume of paperwork which applicants have to submit with a planning application.

8. The next section of this report (A1 to A3) provides a commentary and justification for officer responses to the government consultations on specific aspects of implementing the Growth and Infrastructure Bill. Sustainable Development Panel members are asked to comment on and endorse these consultation responses.

A1: Speeding up the planning system for large scale business and commercial projects

9. The government's intention is to enable decisions on planning applications for large scale business and commercial projects to be speeded up by extending the nationally significant infrastructure regime. If enacted through the Growth and Infrastructure Bill, this would mean that developers of schemes above certain thresholds would be able to by-pass local authorities and have their planning applications determined by PINS for the Secretary of State.

10. For those developers that opt to take the PINS route, decisions will be taken in twelve months from the start of examination.

11. The CLG consultation seeks views on secondary legislation on the specific thresholds to be applied to different types of commercial and business development.

12. The opportunity for an applicant to apply directly to Secretary of State for developments of as little as 40,000 square metres and above as proposed in the consultation represents a significant procedural change. Where this route is chosen by developers, it will by-pass local democratic accountability and potentially the plan led system. This results from the fact that under the 2008 Planning Act such proposals would be subject to, the Secretary of State is under no obligation to take account of Local Plans.

13. At the same time, this route would not necessarily speed up the delivery of decision making. Planning Minister Nick Boles has stated in parliament that PINS may not decide such applications any faster than local planning authorities would have done. He stressed that the government did not intend to "force anyone" down the PINS route, but that it offered choice and may appeal to developers as it "Will be more predictable because it is timetabled". The minster also said that the Government expects that only a few developers would opt to apply to PINS, "We are talking handfuls, not hundreds and hundreds".

14. In the case of Norwich, developments of over 40,000 square metres can and do come forward. For example, Norwich Airport is currently in the early stages of an application for 93,400 square metres of aviation related floor space, consisting mainly of hangars.

15. The Planning Act 2008 regime, designed primarily for proposals such as power stations, is ill suited to assessing local proposals. The act gives power to the Secretary of State to amend the types of project to which the Act applies. However, logically this power only extends to where projects could be reasonably considered to be nationally significant.

16. The current range of projects considered to be nationally significant generally have impacts far beyond their own footprint, they provide power inputting to national grid or provide linkages in nationally significant transport networks. The current consultation suggests thresholds which in certain instances could not reasonably be considered to be nationally significant. As such they appear to seek to stretch the legislation beyond what was originally intended.

17. Therefore the Norwich City Council consultation response in appendix 1 sent to the CLG prior to the deadline on 7 January 2013 argues that overall the scale of projects proposed for PINS assessment is too small. In particular, it argues that thresholds for offices and warehousing, storage and distribution developments should be extended significantly above the proposed thresholds of 40,000 square metres.

18. The consultation response also argues that if this measure is implemented, a National Policy Statement or Statements should be prepared on business and commercial development to provide a clear policy framework.

19. In addition, the consultation does not cover the potential for local authorities themselves to opt to have applications assessed nationally where they consider them to be of national significance. There may be some advantage to this, such as in the case of schemes which straddle borders, or where other legislative processes are involved such as the need for compulsory purchase. This issue is raised in the additional comments section of the consultation response.

20. Simultaneous to this consultation, the Department for Transport is consulting on proposals to amend the definitions of "nationally significant" highways and railways schemes. This is with a view to reducing the number of local major road schemes being determined through the national process[2] as opposed to this measure which will lead to an increase in nationally assessed projects.

A2: Extending permitted development rights

Background

21. The CLG on extending permitted development rights for homeowners and businesses recently closed.

22. The changes proposed to permitted development rights are:

    (a) Single storey rear extensions to increase in depth from 4m to 8m for detached houses and from 3m to 6m for all other houses.

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[2] < https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/37017/consultation-document.pdf>

(b) Extensions to shops and professional/financial services uses of up to 100sq.m. (or 50% of the floorspace of the original building, whichever is less) up to 2m from the boundary of the site.

(c) Extensions to offices of up to 100sq.m. (or 50% of the floor space of the original building, whichever is less), of up to 5m in height within 10m of the site boundary, not higher than the height of the existing building on site and not within 5m of the site boundary.

(d) New industrial buildings of up to 200sq.m. within the curtilage of an existing industrial building (that does not increase the floor space of the original building by more than 50%) of up to 5m in height within 10m of the site boundary, not within 5m of the site boundary and with no reduction to space for parking or turning of vehicles.

(e) Removing the requirement for prior approval from the council for the installation, alteration or replacement of fixed electronic communications equipment within conservation areas for a period of 5 years.

23. The changes are proposed for only a period of 3 years. The development must be completed by the end of this 3 year period, with notification sent to the council to demonstrate the permitted development rights that have been taken advantage of. These changes do not apply to Conservation Areas or Sites of Special Scientific Interest.

24. There are also requests for suggestions as to how to make it easier to convert garages to living spaces, but no specific mechanisms are proposed.

Planning Issues

25. The proposed changes present a range of issues to Norwich. The key issues are the removal of the democratic process for some developments that may disadvantage residents and land owners, the potential cluttering of conservation areas with telecommunications equipment and the cost to the council from dealing with notifications of the works and potential complaints.

26. Each of the proposed changes is discussed in more detail in the attached response to Communities and Local Government (CLG) (Appendix 2). The overall response to the consultation is that the proposed changes would not deliver significant benefits when weighed against the disbenefits to local communities and land owners. These are summarised in the following sections of the report.

Householder extensions

27. Given the typical nature of housing being terraced streets or semi-detached dwellings within the urban area of Norwich, residents stand to lose a significant amount of outlook and potentially daylight and sunlight from the proposed changes. This is particularly the case for properties with narrow rear gardens. With an eaves height of 3m on boundaries of properties the extended depth would have an even more significant impact on neighbours.

28. Whilst increasing the rights may enable more people to build extensions which would otherwise have been refused or modified to make them more acceptable to

neighbours they would still require full scaled plans for the building regulation process and there would be no costs saving for plan drawing for applicants.

Conversion of garages to living space

29. Garages can already be converted to living space under current permitted development rights. The only time where this is not the case is when councils have actively removed permitted development rights through restrictive conditions on the original planning consent for the dwelling or through an Article 4 Direction. These restrictions would still apply.

30. The only way in which it could be easier for residents to occupy their garages as living space would be if there was a steer from central government on the use of restrictive conditions. In any event Building Regulations would still be required to create these habitable rooms. Meeting the required quality of living space for thermal insulation may be difficult if the garage is of lower construction quality.

Shops, professional/financial services, offices and industrial buildings

31. Increasing the amount of permitted development to enable a shop, professional/financial service, office or industrial building to grow is welcomed if it helps promote businesses. As with domestic extensions, plans will still need to be drawn up for Building Regulations. However, there is potential for adverse impacts on the amenity of residential occupants and the overall design of the urban environment of Norwich.

32. The extended permitted development rights do try and restrict development adjacent to residential dwellings, but this would only leave a gap of 2m for a 4m high extension to a shop or professional/financial service use and a gap of 10m for a 5m high extension to an office or industrial building. This could lead to a loss of outlook, daylight, sunlight and possibly privacy.

33. The potential for noise from industrial uses in closer vicinity to residential uses would also be of concern. A planning application would seek to protect adjoining residential uses from noise by appropriate siting of a building or other mitigation measures such as acoustic fencing. In the absence of this mitigation process the amenities of adjacent residential occupants could be compromised.

Timescale and completion

34. The timescales for the extension of rights is relatively tight. At three years a project would need to be planned, financed, constructed and completed. This would limit the number of projects that could go ahead.

35. The justification for the extension is indicated to be it is only acceptable in the current economic climate. The government seems to be saying that in the current economic climate then this relaxation can take place, with the undoubted potential for harm, but that in a few years time the current rules would be re-applied. For a neighbour who lives next door to a site where an appeal has been dismissed on amenity grounds up to then have the proposal be able to be built without planning permission for a period of three years and then the current rules are re-imposed would quite reasonably feel aggrieved at the apparent lack of natural justice. The proposals are considered to significant boost for the economy, however the money spent on planning application

drawings and fees is relatively minor compared to that of drawing up plans and the consent process for building regulations and which would still be necessary. The overall percentage of the construction costs of a project is small.

36. Plans would still be required in any case if the council were required to confirm the development was within permitted development rights, or a costly site visit by council officers to measure development on site. The potential for developments to be commenced but not completed by the three year deadline is also high as projects do get delayed due to unforeseen circumstances. The council would then need to make a decision as to whether to take enforcement action against a development that was permitted development but that may disadvantage neighbours' amenity. If the government does proceed with a temporary window it is not recommended that a "completion" clause is imposed but that there is a clear definition of commencement.

37. The disadvantages to local communities and land owners are therefore not considered to be outweighed by the economic benefits suggested by the proposals.

Electronic communications equipment

38. The extension to permitted development rights only apply to broadband service delivery, not telecommunications masts and other communications equipment. The intention of this change is to free up operators to install new equipment cabinets as required.

39. Works to upgrade the telephone exchange in Norwich are underway and have largely been completed for the west telephone exchange and are underway for the east telephone exchange. The council has already received around 40 prior approval planning applications and so this change is most likely too late for this round of infrastructure upgrade.

40. There may be a future upgrade, but this is unlikely within the short timescale of the proposed changes.

41. Concerns are raised however over the impact of additional street clutter in conservation areas in relation to urban design and pedestrian movement through the city due to the dense layout of streets within the medieval street pattern of the historic city centre which forms a conservation area. The works over the past 12 months have indicated the value of the existing controls in Conservation Areas. On a number of occasions negotiations have involved the re-siting of boxes to better integrate with the historic environment and a complete removal of controls would be likely to have a harmful impact.

Conclusion

42. The proposed changes to the permitted development rights would not deliver the benefits intended by central government when weighed against the loss of democratic accountability and potential adverse impact on neighbouring residents to such developments.

43. It is requested that members consider the attached response to CLG in appendix 2 and endorse the consultation response already submitted by officers prior to the consultation deadline on 24 December, 2012.

A3 Planning performance and the planning guarantee

44. The Growth and Infrastructure Bill also allows developers to opt for planning decisions to be made by PINS rather than locally where there is clear evidence that local authorities have been underperforming. CLG is consulting on how the definition of "underperforming authorities" will be established.

45. The focus of the consultation is about how local planning authorities deal with planning applications in a timely manner. The government points out that that an effective planning system plays a vital part in supporting growth and argues that the National Planning Policy Framework published in March 2012 was an important step to ensure that the planning system fulfils this potential.

46. A number of reforms have been announced to simplify and speed up procedures including the planning guarantee - that applications take no longer than 12 months to decide, including any appeal. The Growth and Infrastructure Bill includes a measure to enable quicker and better decisions where there are clear failures in local authority planning performance by giving applicants the option of applying directly to the Planning Inspectorate. This is "aimed only at those few situations where councils are clearly failing to deliver an effective service". The consultation is running in parallel to consideration of the Bill in Parliament and can only be brought into effect once it becomes an Act.

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49. The proposed legislation will allow major applications to be submitted to the Secretary of State if a local authority is "designated" i.e. there is a "track record of very poor performance in either the speed or quality of the decisions made".

50. The government anticipates an increased focus on performance across planning authorities generally and will help to ensure that the planning guarantee is met. Also proposed is a refund of the planning application fee should any application be determined after 26 weeks. This would require secondary legislation.

51. In the past year, nationally, over a fifth of applications for major development took more than 26 weeks to determine. In Norwich the figure for the year ending 30th November 2012 was exactly 20% (7 out of 35 cases). Nationally 9% took over 12 months and in Norwich the figure was 17.1%. Appeal decision rates against the local

authority ranged from 18% to 80%. In Norwich the figure was 31.5% for all appeals. There was only one major application appealed in the last two years.

52. CLG recognises that there can be good reasons for delays, in particular where authorities and the applicant have agreed that more time is required to negotiate the right outcome on large or complex proposals. However the government wishes to tackle unnecessary delay and poor quality decisions that add to costs and which delay or deter investment and growth. The powers to designate will be used sparingly and this measure will not affect the great majority of authorities that have an effective planning service, other than as a reminder of the importance and timely decisions.

53. Since the closing date for this consultation is January 17th 2013, members are asked to comment on and endorse the formal consultation response in appendix 3 prior to it being sent to CLG.

B: <u>Environmental Impact Assessment procedures</u>

54. The government has stated in its Autumn Statement that it intends to consult on EIA procedures in order to cut red tape and ease costs for councils and developers. It intends to consult on whether screening thresholds should be raised after next spring's budget.

55. Current European regulations require an automatic EIA for major projects such as airports and screening for smaller scale projects to see if EIA is required. Small scale projects currently include "urban development projects" over a threshold of 0.5 hectares.

56. Raising the thresholds could assist in reducing work loads in Norwich as EIA screening is regularly undertaken on small scale projects, but has rarely shown that there is the need for and EIA to be done. In addition, the content of an EIA is generally covered by requirements arising from local and national policies.

Appendix 1

Norwich City Council response to CLG consultation on "Speeding up the planning system for large scale business and commercial projects"

Question 1: Do you agree that the proposed list of development types set out at Annex A should be prescribed in regulations in order to make them capable of a direction into the nationally significant infrastructure regime?

Yes

Question 2: Do you think that thresholds should apply and, if so, whether those in column 2 of the table at Annex A are appropriate? If not, how should these be changed?

No

Comments

The Planning Act 2008 regime is designed primarily for nationally significant proposals such as power stations and is ill suited to assessing local proposals. The act gives power to the Secretary of State to amend the types of project to which the Act applies. However, logically this power only extends to where projects could be reasonably considered to be nationally significant.

The current range of projects considered to be nationally significant generally have impacts far beyond their own footprint, they provide power inputting to national grid or provide linkages in nationally significant transport networks.

The suggested thresholds could not reasonably be considered to be nationally significant. As such they appear to seek to stretch the legislation beyond what was originally intended.

Overall the scale of projects proposed for PINS assessment is too small. In particular, the thresholds for offices and warehousing, storage and distribution developments should be extended significantly above the proposed thresholds of 40,000 square metres.

Question 3: Do you agree with our assessment of the factors that the Secretary of State would need to take into account when considering whether a project is nationally significant?

No

Comments

Whilst the proposed criteria are useful, it is difficult to envisage that they can be reasonably applicable at the low thresholds proposed.

Question 4: Do you agree that retail projects should not be a prescribed business or commercial project?

Yes

Comments

Agree that retail projects should not be included. It is particularly important that retail projects, which play such a key role in policy in cities such as Norwich, should be assessed locally.

Question 5: Do you agree that Government should not prepare a National Policy Statement (or Statements) for the new category of business and commercial development?

Yes

Comments

If this measure is implemented, a National Policy Statement or Statements should be prepared on business and commercial development to provide a clear policy framework.

Question 6: Do you have any other comments on the proposals that you would like to make?

Yes

Comments

1. The consultation does not cover the potential for local authorities themselves to opt to have applications assessed nationally where they consider them to be of national significance. There may be some advantage to this, such as in the case of schemes which straddle borders, or where other legislative processes are involved such as the need for compulsory purchase.

2. Simultaneous to this consultation, the Department for Transport is consulting on proposals to amend the definitions of “nationally significant” highways and railways schemes. This is with a view to reducing the number of local major road schemes being determined through the national process. This seems to in opposition to this measure which will lead to an increase in nationally assessed projects.

Appendix 2

Norwich City Council response to CLG consultation on "Extending permitted development rights".

Question 1: Do you agree that in non-protected areas the maximum depth for single-storey rear extensions should be increased to 8m for detached houses, and 6m for any other type of house?

Yes ☐ No ☒

Comments

Much of the housing in Norwich is of terraced streets or semi-detached dwellings within the urban area. Many of the late Victorian terraced properties have relatively narrow gardens (typically under 5m wide) and where the impact of longer extensions to neighbouring properties is particularly important – especially if neighbours on both sides choose to extend. Residents stand to lose a significant amount of outlook and potentially daylight and sunlight from the proposed changes. With an eaves height of 3m on boundaries of properties the extended depth would have an even more significant impact on neighbours.

The impact of removing the opportunity for neighbours to comment on proposals and enable an application to be discussed by elected Councillors at a committee would lead to a reduction in the democratic accountability of planning. One of the key time constraints involved in planning applications are the time it takes to consult interested parties and then wait for committee dates to come around.

The potential impacts on neighbours should be considered in context of the benefits that the changes propose to provide. The aims of the proposals are to free up development projects to enable them to happen, rather than being delayed by the planning system and leading to costs to applicants from fees and architectural drawings. The proposals however will have a very minor impact on the overall costs for applicants for the following reasons:

1) Building Regulations – full, scaled, and detailed plans will still be required for Building Regulation purposes.

2) Full scaled plans would be required for confirmation that the works are within these permitted development rights by the council (discussed further below under Question 8).

3) Full scaled plans would also be likely to be required for quotes from builders and for any necessary procedures under the Party Wall Act if the works abut the boundary.

A suggested route to freeing-up the planning system from unnecessary delays could be to consider specific on specific councils that have poor householder appeal dismissal rates, which could indicate the inappropriate use of national

and local planning policies. This could be incorporated in the action proposed and out to consultation at present on “planning performance and the planning guarantee”. This would be logically consistent with the proposals in respect of major planning application performance.

If notwithstanding the above comments the government is still determined to push through the proposed change it should be noted that the adverse impact of the proposals could be much reduced by limiting the maximum height of extensions permitted on the rear of semi detached and terraced houses to 3m where they are within 1m of the property boundary. This would close the current loophole where walls over 3m in height can be erected on the boundary where they have mono pitch sloping roof and eaves heights of 3m but slope upwards towards the boundary. The coupled with a restriction of the depth of such extensions to 5m would do much to limit the harm to residential amenity that could be caused.

Question 2: Are there any changes which should be made to householder permitted development rights to make it easier to convert garages for the use of family members?

Yes ☐ No ☒

Comments

As identified in the consultation document, garages can be converted to living space under current permitted development rights. The only time where this is not the case is when councils have actively removed permitted development rights through restrictive conditions on the original planning consent for the dwelling or through an Article 4 Direction.

The only way in which it could be easier for residents to occupy their garages as living space would be if there was a steer from central government on the use of restrictive conditions, through a ministerial statement or planning circular if this is seen as such a significant issue. However this will not have any impact on the many hundreds of houses in Norwich that already have such a condition imposed. If an application is made to either apply for the removal of such a restrictive condition or a full application made for a garage conversion then the Council applies the current statutory tests and in many cases would allow such a conversion – as the circumstances and policy context today is often very different form 20 or 30 years ago.

Permitted development rights could only be removed where it is reasonable, as any new condition would need to withstand the tests of planning circular 11/95. The condition would need to respond to an actual issue present on the site – i.e. potential traffic congestion due to dense urban form or design grounds to ensure the good quality design of a development.

However, if stronger direction is considered to be required from central government to discourage such restrictive conditions the following point should be noted when considering the conversion of garages.

The thermal insulation and overall living space quality would potentially be poor as the structure would have been built to standards fit for a garage only. The use of the room as an additional bedroom could provide a poor quality living space with cold walls that is prone to condensation. It could be difficult to retrofit improved insulation to bring these rooms up to the required habitable space standards under Building Regulations that would apply.

Question 3: Do you agree that in non-protected areas, shops and professional/financial services establishments should be able to extend their premises by up to 100m^2, provided that this does not increase the gross floor space of the original building by more than 50%?

Yes ☐ No ☒

Comments

The following comments apply to Questions 3, 4, 5 and 6 as there are similar issues for each.

Increasing the amount of permitted development to enable a shop, professional/financial service, office or industrial building to grow is welcomed if it helps promote businesses. However, there is potential for adverse impacts on the amenity of residential occupants and the overall design of the urban environment of Norwich. If the building is extended and altered then loading bays and servicing arrangements could change. These can cause nuisance to neighbours and there is the potential for environmental health problems to result and although there is the statutory noise nuisance procedure this is a “sledgehammer to crack a nut” and could lead to businesses being served with notices which might have been avoided with the current planning application process.

The extended permitted development rights do try and restrict development adjacent to residential dwellings, but this would only leave a gap of 2m for a 4m high extension to a shop or professional/financial service use and a gap of 10m for a 5m high extension to an office or industrial building. This could lead to a loss of outlook, daylight, sunlight and possibly privacy.

There are issues over residential uses forming part of a shop – would these be protected with the 2m gap or would the mixed use class preclude them from this?

The potential for noise from industrial uses in closer vicinity to residential uses would also be of concern. A planning application would seek to protect adjoining residential uses from noise by appropriate siting of a building or other mitigation measures such as acoustic fencing. In the absence of this mitigation process

the amenities of adjacent residential occupants could be compromised.

Question 4: Do you agree that in non-protected areas, shops and professional/financial services establishments should be able to build up to the boundary of the premises, except where the boundary is with a residential property, where a 2m gap should be left?

Yes ☐ No ☒

Comments

See response to Question 3.

Question 5: Do you agree that in non-protected areas, offices should be able to extend their premises by up to 100m^2, provided that this does not increase the gross floor space of the original building by more than 50%?

Yes ☐ No ☒

Comments

See response to Question 3.

Question 6: Do you agree that in non-protected areas, new industrial buildings of up to 200m^2 should be permitted within the curtilage of existing industrial buildings and warehouses, provided that this does not increase the gross floor space of the original building by more than 50%?

Yes ☐ No ☒

Comments

See response to Question 3. The point about loading bays and servicing is particularly relevant to this question.

Question 7: Do you agree these permitted development rights should be in place for a period of three years?

Yes ☐ No ☒

Comments

The timescale proposed would only enable development that was ready to be financed within the next few months. The timescales of a building project, even a small extension, need to factor in:

- financial planning to enable development
- plans being drawn up for Building Regulations
- granting of Building Regulations
- other necessary consents e.g. landlord, mortgagor, Party Wall Act
- on site build time of several months

The fact that development must be complete within the end of the three year period (as discussed below in Question 8) gives little time for projects to actually be fully implemented. A project that is not fully planned properly, for example the structural work required in relation to site conditions, would only be subject to delays.

By the time projects have been successfully planned and implemented, a three year window may not actually deliver that many developments. However, recommending a longer time period than this would be difficult as the justification is the current economic climate. A five year period for example may not be justified.

The time limit itself poses other issues. The justification for this is indicated to be it is only acceptable in the current economic climate. Therefore the proposals can only be considered to be acceptable if they do deliver a significant boost for the economy.

Given the remaining restrictions on the permitted development rights and the likelihood of these permitted development rights meeting the requirements of businesses and householders in the timescale given, it is unlikely that there will be a significant economic boost.

Also it should be noted that the current planning process provides jobs for architects and planning consultants, providing professional advice on projects from inception to completion. The project work would still be required, for example for obtaining building regulations, and the fees generated provide jobs

and economic growth. The proposals are predicted to divert this money to other jobs within the construction industry. The proposals would not therefore deliver additional economic growth and if anything reduces the number of jobs created by the development process.

It must also be remembered that through enabling development the value of either a dwelling, building or business increases. The uplift in value for the individual or company could be to the detriment of surrounding neighbours.

The justification for the potential adverse impact on residential occupants of neighbouring dwellings to any of the above uses would need to be sufficient to justify the harm. In this instance the benefits of increasing the permitted development rights are not considered to be great due to:
- the need to gain building regulations and produce full scaled plans in any case
- the relatively short window of time there is to plan and implement a building project to gain completion within three years.

The proposals would not produce significant economic growth to merit the potential harm of the proposals to residential amenity, design implications and the democratic process of planning in England. Central government should consider promoting and enabling councils to bring in locally specific cost saving exercises such as the implementation of Local Development Orders, which can be tailored to recognise locally specific assets and issues.

Question 8: Do you agree that there should be a requirement to complete the development by the end of the three-year period, and notify the local planning authority on completion?

Yes ☐ No ☐

Comments

The comments relating to build time above in the response to Question 7 are relevant to this response.

The notification of completion process would introduce new bureaucratic controls for which procedures will have to be set up and this goes against the grain of the de-regulation ethos underlying these proposals. It is unclear what these procedures would be. It would be a lot simpler and easier if “commencement” was the only relevant factor and the time period reduced accordingly to, say, 2 years if the government wishes to only have a short term window of relaxed controls.

Whichever is chosen, it would be highly desirable to define either “commencement” or “completion” as clearly as possible so that Councils do not have to interpret locally and there is clarity for the development industry across the country. This ought to relate to existing controls under other legislation and which would additional bureaucratic hurdles for developers. This could be

specified stages under the building regulations – and which the planning authority can easily check if there is an enforcement issue to investigate

If a formal response on “completion” is required from the Council information would be required to be submitted. This may not be any different to the plans that they would have submitted for planning permission in the first place.

A formal site visit may have to be made where the council measures the internal floorspace, external measurements including height. This would entail a significant cost for the council as it would involve a site visit and assessment. Therefore if such a “completion” mechanism is used there should be a fee commensurate with the costs of undertaking this checking process and the fee regulations will need to be amended accordingly. This is unlikely to be any less then the current householder planning application fee. This is a further reason why “ completion” in the way envisaged is not something that the Council could support

A Certificate of Proposed or Existing Lawful Development could be granted if the works fell within the definition of permitted development, but this again would entail a cost to the applicants.

More and more councils are charging for pre-application advice such as permitted development enquiries to ensure the continuation of the service with current budget cuts. This could fall within a charged service which would not avoid the costs for applicants. The proposals would have no impact on this.

There are however a number of other issues with the three year implementation window in conjunction with the requirement for completion to be submitted by the end of the three year period.

A council is likely to be inundated with requests as the three year period will end at the same time across the country. If any additional information is needed to prove completion it may be several weeks after this deadline before the council can contact the applicant to request the information. It may not be possible to confirm the completion was before the end of the three year period.

There are also potential unforeseen delays to the completion of a building project, such as adverse weather conditions or the long term sickness of a builder, which can occur mid-way through a project. This would put the council in a difficult position if enforcement action needed to be considered. In particular if the development was harmful to the amenity of neighbours and not accepted by surrounding residents/landowners, it would be unlikely enforcement action would be sanctioned by a planning committee.

This would lead to potentially complex enforcement cases for the council which could result in costly appealed enforcement notices.

The definitions would need to be very carefully and clearly defined in any regulations (or in national advice) to avoid the waste of time and resources if every Council defines it’s own criteria and to provide national clarity to avoid wasted time.

Question 9: Do you agree that article 1(5) land and Sites of Special Scientific Interest should be excluded from the changes to permitted development rights for homeowners, offices, shops, professional/financial services establishments and industrial premises?

Yes ☒ No ☐

Comments

The proposed changes could affect heritage assets, biodiversity or geological assets which are actively sought to be protected through national policy. The exemption of these sites from the changes is therefore welcomed, to ensure the efforts made under the National Planning Policy Framework are not undermined.

However, it should be noted that the main impact of the proposed pd changes will be on residential amenity, and the main purposes of land designated under article 1(5) is not to protect residential amenity. Therefore by excluding article 1(5) residents of AONB and conservation areas will be afforded greater protection of their residential amenity irrespective of whether there would be any general impact on the purpose of designation. In Norwich most 1(5) land is conservation area, this is designated so the character and appearance of the area can be preserved and enhanced. The character and appearance of most areas is determined by the frontages of properties and how they address the highway. Although it is possible that increased pd rights for rear extensions could impact on character and appearance in most instances this is considered unlikely and what effectively exclusion of 1(5) land will do is to introduce different levels of protection for residential amenity between 1(5) land and other areas. As houses in 1(5) land are on the whole more desirable and command a higher price, the government is in danger of prioritising the residential amenity of generally wealthy inhabitants over poorer ones. This is inequitable.

Question 10: Do you agree that the prior approval requirement for the installation, alteration or replacement of any fixed electronic communications equipment should be removed in relation to article 1(5) land for a period of five years?

Yes ☐ No ☒

Comments

Conservation areas are designated as such on the basis of protecting and enhancing the character of the heritage asset. In particular in Norwich the historic city centre forms a conservation area. Within this conservation area there are a number of historic streets formed from medieval street patterns, which are narrow but subject to high footfall from pedestrians moving around the city.

It is highly important in such areas to maintain both the character of the urban form and free-flow of pedestrians by avoiding street clutter such as equipment cabinets for telecommunications operators. The joined up approach by a local planning authority in these areas ensures that heritage assets such as conservation areas and the setting of listed buildings are protected from inappropriate development, and the overall street design is enhanced to create a pleasant pedestrian environment.

Whilst an Article 4 could be implemented this is likely to be challenged by telecommunication operators who would want to remove barriers to running the telecommunications network. The Article 4 designation process is also very costly to set up (Norwich City Council earlier this year designated one for alterations to flats). However through positive dialogue with the operators council's can work to protect heritage assets whilst upgrading telecommunications networks.

The current application process has been used successfully over the past 12 months to achieve the best balance between the needs of telecoms operators and the aesthetics of a Conservation Area, the protection of the setting of a listed building or pedestrian movement in a historic city centre. Initially submitted proposals for new broadband boxes in Conservation areas have, in a number of cases, been moved from the initially suggested positions via the current process.

Do you have any comments on the assumptions and analysis set out in the consultation stage Impact Assessment? (See Annex 1)

Yes ☐ No ☒

Comments

No further comments to those made above.

Appendix 3

Norwich City Council response to CLG consultation on "Planning performance and the planning guarantee".

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

No.

There is a need for "quality" measures to genuinely measure outcomes. The proposed measure relating to appeals is only one very small part of a measure of "quality"

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

No.

13 weeks is often not practicable as a decision period for many complex major applications. A 26 week period is a better test of performance for the purposes of the planning guarantee. However, related to Q3 if major cases are excluded from the data if they have a "local PPA" as suggested under Q3 then no data has been collected on this over the past two years. Therefore if a preceding two year period is used then it cannot properly come into force for another two years. Therefore, in the short term and until April 2015 a much lower threshold is needed – or an alternative measure.

Paragraph 9 of the consultation document proposes a fee refund of the planning application fee for all applications undetermined after 26 weeks. Although this requires secondary legislation it is unclear whether there would be any further formal consultation on this matter and none of the questions directly relate to this point. This is potentially a very serious matter for local authorities as, particularly for major applications with a high fee, then the potential loss of income will mean that there will likely to be an increase in refusals prior to the 26 week period to crystallise a decision. This should not necessarily be seen as a bad thing for the developer as it will spell out to the developer what is wrong with the application and clarities the matters to address in a revised scheme. If the Council's reasons are clear and their logical arguments in a report are sound then it is unlikely that an appeal would result but more likely that a revised application is made addressing the relevant issues. It may help in applications that drift on attempting to get a satisfactory scheme so somewhat counter-intuitively the best way to positively and pro-actively work with some applicants is to refuse their application as this will, hopefully, result in a revised proposal which is then approvable

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

Yes – but as no data was collected as there was no need to request such a written consent from the applicant, then none will exist. Therefore the suggested measures cannot commence until April 2015. In the short term until then a much lower threshold is required (see Q2 above). It is expected that, in the vast majority of cases in Norwich, cases that exceeded 13 weeks in the past two years would have been agreed by the applicant if they had been asked at the time. Failure to do this will involve an entirely unrealistic picture being painted of council's such as Norwich where complex developments are negotiated to resolve key issues as part of it's requirement to be positive and proactive as required by article 31.

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

Yes. We are strongly of the opinion that the existing requirements for a PPA are so "thorough" that it is not considered to be cost effective to spend large amounts of time in setting them up. There have been none agreed in Norwich. There is little pressure from developers to have one and no-one has explicitly requested one. However, we have operated an informal system as part of our paid for pre-application advice process. This bespoke service for very large schemes allows agreement to be made on the timing of submission, pre-application presentations to committee, expected decision dates etc outside of the formal PPA process. This has generally worked well and a more flexible and simpler PPA system would be welcomed.

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

No. it is only one aspect of a quality outcome. However this measure could play a part in assessing quality. However major appeals are so few in number that it is doubtful whether any meaningful data would result except from the largest authorities. Is this really the government's intention to exclude many smaller councils? In the case of Norwich there was only one major appeal in the past two years and so it would fall below a threshold of 5 cases proposed. It is not wholly clear from the document whether there would be such a threshold but some sort of threshold of this nature is required otherwise statistics are not reflective of genuine poor performance.

Other measures could include:

- the proportion of major (or all) applications that have been overturned by Committee against officer advice. The development industry may consider this to be one of their major bugbears in some Councils.
- the proportion of major decisions (or all decisions) that are appealed. This could indicate a concern about wayward decision making in some LPAs and where reasoning in reports or the reasons for refusal are of poor quality and thus more likely to be more susceptible to an appeal.
- numbers of homes delivered annually compared to planned needs
- percentage of dwellings on previously developed land

It would be very helpful if government could give basic guidelines on customer satisfaction survey so that data had to be collected and in the same format across all LPAs so that comparison data is available. Ultimately meeting the needs of the customer through a quality process is what all LPAs should be striving for. Although some LPAs measure this there is no easy way to use this it in a comparative way. A lead should be given by CLG and work commenced on this by a body such as the Planning Advisory Service or Planning Officers Society to consider introducing such a measure – even though it would take some time to roll out. if there was such a measure then thresholds could be set for intervention by government.

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

Yes in part. However see the response to Q2 and Q3 about the preceding two years data. Although paragraph 39 refers to the filling in of gaps in data this cannot realistically apply to the “local PPA” (as suggested in paragraph 30 of the consultation and Q3) referred to earlier unless one retrospectively asks all agents whose major application exceeded the statutory targets and asked them what they would have said if they had been asked about an agreed extension of time sometime in the sixth month since validation. This is probably somewhat impractical and the robustness of responses and how they are captured will be poor and so is probably not a sensible way forward.

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

Initially, for decisions made on time, it needs to be lower. After the two years elapse where the “local PPA” exclusions come into effect it can then rise. It would be difficult to get robust data by retrospectively asking applicants what they might have said in the sixth month of the process. See Q5 about the threshold. There is also the danger ot one complex application site that may comprise two or three (or more) separate but linked applications that might skew figures.

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

Yes. See Q7 about rising after two years.

This is likely to increase refusal rates just prior to the relevant threshold. But this should not necessarily be seen as a bad thing by the developer as it crystalises what is wrong with the application and clarities the matters to address in a revised scheme. If the Council's reasons are clear and their logical arguments in a report are sound then it is unlikely that an appeal would result but more likely that a revised application is made addressing the relevant issues. It may help in applications that drift on attempting to get a satisfactory scheme so somewhat counter-intuitively the best way to positively and pro-actively work with some applicants is to refuse their application as this will, hopefully, result in a revised proposal which is then approvable.

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

Once a year, seems appropriate. However, LPAs should have a limited right to challenge prior to formal designation. For example there could be a statistical anomaly about a particularly complex site where the Council has been working with the developer in a positive and proactive manner as encouraged by Article 31(1)(cc) and which may skew otherwise good data. (see Q7). Also the poor performance could relate to a specified time and this has been rectified. For example the loss of key staff could have had a major impact for a few months form April – Sept and this has now been rectified and current performance for the last 6 months could be much better and be improving. It would be unfair to penalise for major problems some 6-12 months previously when all the most up to date evidence shows a satisfactory performance. Building in the proposals a limited time period for a council falling below the targets to make a response to justify why they should not be designated would be a major check on potentially unintended consequences and statistical blips which appear anomalous and give more confidence in the designation process.

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

Yes

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

No.

If the LPA is expected to undertake work on behalf of the Planning Inspectorate then a proportion of the fee paid should be assed to them. We agree with paragraph 60 as a local agent would still have to rely on the LPA to undertake the work for it and the use of an agent this just adds bureaucracy and complexity.

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

Yes to proposed approach.

No specific thresholds.