

# Proposed response to consultation on implementation of planning changes in the Housing and Planning Bill

Planning Committee

12<sup>th</sup> April 2016

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Author:	Head of Planning, Regulatory Services and Heritage
Wards:	All
Locality Affected:	All
Parishes Affected:	All

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## 1. Purpose and Reasons

- 1.1 The purpose of this report is to advise the Planning Committee of measures contained within the Housing Bill and accompanying Technical Consultation on Planning.
- 1.2 The report also seeks the Committee's endorsement of a response to the Consultation.
- 1.3 The proposals support the Stronger Together outcomes of "a more focused, relevant and effective organisation" and "all resources, both in the organisation and in our communities, working together to meet shared challenges." The report also supports the Vision Priority to: "improve infrastructure and housing to support a growing low-carbon economy."

## 2. Recommendations

### The Committee is recommended to:

- 2.1 Note the proposed provisions of the Housing and Planning Bill as contained within the Technical Consultation on Planning including:
  - support for increasing housing supply through a 'presumption in favour' of brownfield land;
  - support for delivery of housing on smaller sites;
  - increasing the density of development around commuter hubs and in sustainable locations
  - the potential for Local Planning Authorities to establish their own fee schedule, and
  - the potential for applications to be processed and recommendations drafted by professional third party organisations on behalf of the Local Planning Authority
- 2.2 Endorse this report as the Council's response to the Consultation and authorise the Head of Planning, Regulatory Services and Heritage to submit this response to the Department for Communities and Local Government (DCLG).
- 2.3 Authorise the Head of Planning, Regulatory Services and Heritage to investigate measures to increase housing delivery through greater collaboration with the

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development industry and local communities, including an enhanced pre-application advice, and a more proactive approach to unlocking brownfield sites.

## 3. Detail

### Background

- 3.1 Emerging legislation in the Housing and Planning Bill, if enacted, would have significant implications for Planning in the Borough. The context for the proposals is the low level of housing delivery nationally, and the new legislation is expected to assist in speeding up housebuilding in Swindon, particularly for smaller sites, brownfield sites and custom and self-build housing, which would help to improve the Council's five year housing supply position.
- 3.2 The changes may also affect the level of fee income for the Planning Service by extending the Government's special measures scheme, which would reward councils for timely and high quality decision-making, and increase fees in line with inflation. A pilot scheme, if adopted, introducing competition in the processing of applications has the potential to reduce fees received by the Council, in line with a potential reduction in workload; but this could also be a source of income. Opening up competition for the processing of planning applications could affect the Council's ability to develop a reliable, sustainable self-financing planning service, and further work is needed to understand the impact of this.
- 3.3 The 'Technical consultation on implementation of planning changes' was published for consultation in February 2016 and 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 of interest to the Planning Committee:
- Changes to planning application fees
  - Planning Permission in Principle (PPIP)
  - Brownfield register
  - Small sites register
  - Expanding the planning performance regime
  - Testing competition in the processing of planning applications
  - Information about financial benefits
  - Section 106 dispute resolution

### Changes to planning fees

- 3.4 The consultation outlines that 'well-performing councils' (proposed to be those in the top 75% of performance for both the speed and quality of decisions nationally), would be allowed to increase planning fees in-line with inflation. It is

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therefore important that the Council through its Scheme of Delegation and Planning Committee continues to make timely and robust decisions that are unlikely to be overturned at appeal so that the planning service can come as close as possible to covering its own costs. The implications for Councils that miss out on fee increases are that it could result in less money to process planning applications and would likely make it harder to make timely and high quality decisions, risking a move towards being designated as under 'special measures' through the planning performance regime.

- 3.5 The consultation also outlines that Local Planning Authorities (LPAs) could introduce a fast-track service in return for a 'proportionate fee'. This would be a welcome source of income for the Council; however, it would shorten the time that officers have to process the application and that Committee would have to determine applications. It is recommended that Members should **support** both of these initiatives, with consideration given to extending the ability to increase fees to all Local Planning Authorities.

## Planning Permission in Principle (PPIP)

- 3.6 Planning Permission in Principle is similar to an outline consent but the 'prescribed particulars' are fixed and are not able to be revisited at a later stage in the planning process. A secondary Technical Details Consent would then convert the PPIP into a full planning permission. The consultation states "*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.*"
- 3.7 The 'in principle matters' are the core elements underpinning the basic suitability of a site for development. DCLG proposes 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 quantum of development. It is proposed that permission in principle will specify a minimum and maximum level of residential development that is acceptable on a site.
- 3.8 Examples of technical details include the provision of infrastructure, fuller details of open space, affordable housing, design, access, layout and landscaping.
- 3.9 The Government proposes that PPIP be granted either through adoption of a future local or neighbourhood plan; via a brownfield register that allocates specific sites; or through direct application from a developer to the council. PPIP was originally suggested for minor residential developments (under 10 dwellings), however the consultation now proposes to extend this to major 'residential-led' schemes.

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- 3.10 It is recommended that the principle behind this initiative should be **supported**. It extends the type of initiatives behind Local Development Orders, of which the Council has several, to speed up the planning process. A potential issue, however, is that Councils will need to do more work 'up front' to make sure that the principle of development (the 'prescribed particulars') in the PPIP is suitable and sufficiently detailed to guide the Technical Details Consent. This would be particularly onerous for major applications, especially those on greenfield sites, but more straightforward for smaller sites. The Planning Committee would only be able to discuss the detail of the Technical Details Consent, not the principle of development under the PPIP. Officers recommend to Members that **it would, therefore be reasonable to limit PPIP to small sites of less than 0.25ha, which would be expected to yield no more than 10 dwellings, where it can be most effectively used. PPIP should not be supported on larger sites or for major development proposals, which involves more detailed assessment work in advance. A planning application would be more appropriate in such instances.**
- 3.11 At this stage it is unclear, given that PPIP would have a maximum duration of five years, whether such sites would contribute towards the Council's five-year housing supply and it is recommended that **clarification should be sought from DCLG through the Consultation response.**

## Brownfield register

- 3.12 The consultation sets out further detail of a proposed duty on local planning authorities to compile registers of brownfield land suitable for housing. It proposes that local authorities should use existing evidence within an up to date Strategic Housing Land Availability Assessment as the starting point for identifying suitable sites for local brownfield registers. To be regarded as suitable for housing, sites must be available (either deliverable or developable), be capable of supporting five or more dwellings or be more than 0.25 hectares, and be suitable for development and free of constraint that cannot be mitigated.
- 3.13 Sites on the Brownfield Register would, if nominated, benefit from PPIP and therefore the Council will need to undertake robust assessment work to identify an appropriate quantum of development on each relevant site.
- 3.14 Swindon is a Brownfield Register pilot authority, and so is well-placed to implement the Brownfield Register if it were to be rolled-out nationally and capitalise upon the additional five-year supply sites. It is recommended that the Brownfield Register should, therefore be **supported**.
- 3.15 The Council would need to take the initiative in working with landowners and the development industry to help unlock brownfield sites and improve the pre-application process.

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## Small sites register

- 3.16 The consultation proposes that Councils maintain an additional register of known sites that could deliver 1-4 dwellings. It is intended that this will support self-build and custom housebuilding as well as smaller developers; diversifying the pool of sites in Swindon and boosting the five-year housing land supply as smaller sites tend to be simpler and quicker to deliver than larger strategic sites.
- 3.17 This will support local jobs and local housebuilders and help to build greater capacity in the SME housebuilding sector, with additional benefits for the five-year housing supply, and should therefore be **supported** by Members.

## Expanding the planning performance regime

- 3.18 The Growth and Infrastructure Act 2013 introduced the existing performance approach for planning applications for major development; which assesses the speed and quality of decisions taken by LPAs against defined thresholds. If Local Planning Authorities do not meet either performance standard they risk being designated as underperforming and placed in 'special measures'. Applicants then have the option to submit their application directly to the Secretary of State for determination.
- 3.19 The consultation contains further explanation of the government's plan to extend the special measures regime to include non-major applications. It proposes that, where authorities fail to determine at least 60-70 per cent of applications for non-major development on time over two years they would be at risk of designation. The consultation also states that Local Authorities would face designation where they have had more than 10-20 per cent of their decisions on applications for non-major development overturned at appeal.
- 3.20 The consultation also seeks views on tightening the regime for major applications to reduce the threshold for designation to 10 per cent of decisions overturned at appeal.
- 3.21 It is recommended that Members should only **partially support** this change. It is agreed that a performance regime for determining minor applications in a timely manner should be introduced, however clarification is required on the threshold applied, and the impact of increased numbers of PPIP's and LDO's on this process. It is important that Local Authorities are not disincentivised from introducing innovative measures to remove minor, but easy to determine, planning applications from the planning system.

## Testing competition in the processing of planning applications

- 3.22 DCLG's plans for a pilot scheme to open up the processing of planning applications to competition could see Councils compete to process applications

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in other Local Authority areas. The consultation document says that the scheme could operate by allowing approved providers and the local planning authority to set their own fee levels, "*enabling them to set different levels for fee for different levels of service*".

- 3.23 DCLG states that that the proposals would "*increase local choice by giving applicants the choice of whether to submit their plans to the local council, a competing council or a government approved organisation that would process applications up until the decision point*".
- 3.24 Under the proposals planning decisions would remain with the Council "*ensuring no loss of democratic oversight of local planning decisions*"; however an 'approved provider' would take over the following functions:
- checking and validating of 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.
- 3.25 This would mean that Planning Reports and recommendations contained within them would be authored by non-Council planning officers.
- 3.26 Local Authority planning officers have significant historic knowledge of local issues and case histories, as well as a clear understanding of local policies and the local area. Determination of anything other than basic administrative applications by third parties would increase the potential for unintended adverse consequences generated by a lack of local understanding.
- 3.27 The Council could register its interest in becoming a pilot authority, but before a decision is made the Council would need to investigate the financial implications of allowing other approved providers to process applications. It is recommended to Members that this proposed change should be **noted, with concerns**. Detail is required as to the type of applications that would be covered by any pilot and an indication of the type of area or Local Authority that DCLG intend to apply this competition to. For example if it is aimed at poor performing authorities, authorities with significant development pressure; or applied to small and householder applications that require less negotiation and local knowledge; or applied to development of national significance that is stalled in the system.



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## Information about financial benefits

- 3.28 The Housing and Planning Bill proposes a requirement for "local finance considerations" to be listed in planning reports, such as sums payable under the Community Infrastructure Levy and New Homes Bonus grants. The consultation document proposes that council tax revenue, business rate revenue and section 106 payments should also be listed in planning reports "where it is considered likely they will be payable if development proceeds". Such financial information could then form a material consideration for the Planning Committee. Officers recommend that this change is **not supported**. Planning should not be determined on the basis of fiscal benefits, other than where viability is brought into question. There is no justification or need to add this additional burden into a report where decision making could be unintentionally affected.

## Section 106 dispute resolution

- 3.29 DCLG are seeking to introduce a new dispute resolution mechanism for section 106 agreements, with the intention of speeding up negotiations and allowing housing starts to proceed more quickly. The dispute resolution process is intended to be provided by a body on behalf of the Secretary of State, concluded within prescribed timescales. This should help to speed up the time between planning permission being granted and development commencing on-site, which could boost the Council's five-year supply, and as such should be **supported** by Members.

## Next Steps

- 3.30 If approved this report would form the response to the Consultation, and would be sent by the Head of Planning, Regulatory Services and Heritage to the DCLG as soon as is practicable.
- 3.31 If approved, the Head of Planning, Regulatory Services and Heritage would also investigate measures to increase housing delivery through greater engagement with the development industry, including setting up an enhanced pre-application advice, and adopting a more proactive approach to unlocking brownfield sites for suitable development.

## **4. Alternative Options**

- 4.1 The Council could choose not to respond to the Consultation. There would be a risk that of missing out on opportunities to obtain additional fee income to fund the planning service, attract growth and investment in the Borough and bolster the Council's five-year housing supply position.

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## 5. Implications, Diversity Impact Assessment and Risk Management

### Financial and Procurement Implications

- 5.1 There are no direct financial and procurement implications as a result of this Report, however if the proposals are enacted by Government, the impact on planning fee income, positive or negative, will need to be investigated and quantified.

### Legal and Human Rights Implications

- 5.2 Legal and Human Rights implications were taken into account in preparing this report. It is considered that the recommendations are consistent with Convention Rights.

### All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

- 5.3 Changes to fee income would directly affect the Council's ability to fund the planning service and retain its current level of staffing. Additional work would be necessary to understand how the planning service could be impacted, and also opportunities to increase fee income once the Government has finalised its proposals.
- 5.4 Reductions in planning fee income and resourcing could adversely affect the ability of the planning service to attract growth and shape development in the Borough.

### Diversity Impact Assessment

- 5.5 Diversity Impact Assessments (DIA) and Equality Statements have been prepared by DCLG to accompany the Consultation. None of the proposals in this report are specifically aimed at persons with a protected characteristic and no adverse additional or cumulative impacts were identified. Copies of the DIA are available from the report author.

### Risk Management

- 5.6 This report is based on consultation documents and the Housing and Planning Bill, which is before Parliament. There is a possibility that the Bill may not gain Royal Assent; and there is also a possibility that the consultation responses received by DCLG cause them to significantly change or abort their proposals. The Council will need to monitor the progress of the Housing and Planning Bill and changes to the NPPF so that it can respond accordingly.



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## **6. Consultees**

- 6.1 The Cabinet Member for Communities and Strategic Planning.
- 6.2 The Board Director, Resources (Section 151 Officer) and Director of Law and Democratic Services (Monitoring Officer) are consulted in respect of all reports.

## **7. Background Papers**

- 7.1 Technical consultation on implementation of planning changes (DCLG, February 2016)

<https://www.gov.uk/government/consultations/implementation-of-planning-changes-technical-consultation>

## **8. Appendices**

- 8.1 No further information is appended to this report.