Consultation Response

Consultation on an accelerated planning system in England

Date: 30 April 2024

The CLA is the membership organisation for owners and managers of land, property and businesses in rural England and Wales. Our 26,000 members own or manage around half the rural land in England and Wales and operate more than 250 different types of businesses. We help safeguard the interests of owners of land, and all those with an economic, social, and environmental interest in rural land.

Accelerated Planning Service

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

1. The CLA has sympathy for the principle underpinning the proposal for an Accelerated Planning Service (APS) but does not support the proposal. It is undeniable that the current delays with planning applications are unacceptable and lead to factors that make development unviable. We have heard examples from our members that planning delays have resulted in the increased cost of materials or the loss of contractors. The time it takes to obtain planning permission combined with the money that must be risked despite no guarantee of success results in landowners that are unwilling and/or unable to go through the development process. A more predictable timeline for the processing of planning applications will increase investment in certain types of development but the proposals put forward in this consultation are not the right way to achieve this.

2. We strongly believe that the proposed APS will result in further delays for planning applications that are not for major commercial development (1,000sqm or more of new or additional employment floorspace). The APS could tilt the focus of planning authorities towards issuing timely decisions for those applications that are liable for refunds to avoid the loss of much needed additional fees.

3. There is also the issue of ringfencing of planning application fees. 88% of respondents to last year's consultation on increasing planning application fees supported the ringfencing of planning revenue for planning departments[1]. Despite this, the proposal was not implemented. For an APS to work, ringfencing of the additional APS fees must be introduced, as a lack of dedicated funding for these departments undermines any reform to improve the application process.

4. There are other mechanisms that could be used to fast track development. Greater use of permission in principle can be used for smaller sites to reduce both risk and cost to the applicant and LPA. Splitting an application into a two-stage process spreads and reduces the resources needed from the local authority. The use of permission in principle should be further expanded and its use as an option to obtain planning permission encouraged.

[1] https://www.gov.uk/government/consultations/increasing-planning-fees-and-performance-technical-consultation/outcome/technical-consultation-stronger-performance-of-local-planning-authorities-supported-through-an-increase-in-planning-fees-government-response

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

5. No. Whilst major commercial development has the potential to boost the economy and must receive timely planning decisions, smaller-scale development in the rural economy can also make a significant contribution. The rural economy is 19% less productive than the national average. Closing this gap would add £43 billion to the economy[2]. Opportunities should be made available to speed up planning decisions for both agricultural development and farm diversification that exceeds 1,000 sqm (see answer to Question 9 below).

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

6. Whilst we agree that the delivery of development must be sped up, this must not come at the cost of a thorough assessment of environmental impacts. Development that may harm ecosystems/biodiversity must be appropriately assessed.

7. Rather than introducing an APS for EIA development, the EIA process could be streamlined and improved to speed up the delivery of development.

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

8. No, we do not support the proposals for the APS. We do support the principle of a sped up planning service, but any mechanisms to speed up delivery should be made available for applications that are within the curtilage or area of a listed building and other designated heritage assets. The listed building consent (LBC) application process should not hinder deliverability.

9. Feedback from members has identified that minerals and waste planning applications can have significant impacts on not only the economy but also the environment. These types of applications can take on average 7 years to determine. Bespoke proposals for a sped-up service could be delivered at a county level to speed up the decision-making process for these applications.

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

a) have an accelerated 10-week statutory time limit for the determination of eligible applications

10. No. Whilst we support timely planning application decisions, these applications are classified as major and should therefore be subject to the 13-week statutory time limit as is already set. As outlined within our response to Question 1, we are concerned that the focus of planning department resources will turn solely to applications submitted via the APS to ensure much needed additional fees are not lost. Reducing the statutory time

[2] https://media.cla.org.uk/documents/Mission_4_-_Economic_Growth_LR_WEB_pdf.pdf

limit by 3 weeks will only increase this pressure. The current resourcing issue of planning departments must be considered in more detail.

b) encourage pre-application engagement

11. No. The current regime for pre-application engagement needs to be improved. We hear from our members that the pre-application service as currently offered by many LPAs is not fit for purpose. We often hear how the pre-application service is slow and whilst meaningful advice can be received in respect of a proposal, it can take many months to receive this advice. Responses vary significantly across LPAs. Some provide pragmatic and useful advice for schemes to enable their support whilst others outline that proposals would be refused with no helpful feedback on what would make them more acceptable. Applicants/developers rarely feel as though the pre-application service offered to them is good value for money.

12. The resourcing issue at the heart of LPA departments impacts pre-application engagement. Applicants and developers lose confidence in the system as the Officer that reviews their pre-application submission and provides meaningful advice is unlikely to be the same Officer determining the planning application. Pre-application responses must be considered more favorably at application stage to increase consistency, regardless of who undertook them. The NPPF acknowledges that the more issues that can be resolved at pre-application stage, the greater the benefits[3].

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

13. Don't know. The consultation acknowledges at paragraph 19 that the determination of some applications can be held up by specific statutory consultees on matters outside the control of the LPA. We agree with this statement and support the independent review being undertaken by DLUHC on national statutory consultees in the planning application process. However, it is difficult to ascertain how the proposal that applicants should engage with statutory consultees prior to submitting an application via the APS will work in practice. There will be barriers like a lack of knowledge of all statutory consultees and how to contact them.

Question 6. Do you consider that the fee for Accelerated Planning Service applications should be a percentage uplift on the existing planning application fee?

14. Whilst we do not support the proposals for the APS as set out within this consultation, we would support a proposal that allows an applicant to have the choice to decide on whether to proceed with a sped up service or via the traditional planning application route (see answer to Question 10 below). There is no clarity that the proposed premium fees 'to cover additional resourcing costs' will go directly to the LPA departments. LPAs routinely divert some or most of additional planning fee incomes to other more visible and higher legal or reputational risk categories, like social care. Any additional planning application fees must be ringfenced for use by planning departments only.

[3] Paragraph 40, NPPF 2023

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

a) the whole fee at 10 weeks if the 10-week timeline is not met
b) the premium part of the fee at 10 weeks if the 10-week timeline is not met, and the remainder of the fee at 13 weeks
c) 50% of the whole fee at 10 weeks if the 10-week timeline is not met, and the remainder of the fee at 13 weeks
d) none of the above (please specify an alternative option)
e) don't know

15. D. We do not support the implementation of a shorter timeframe for the reasons set out at our response to Question 5a above.

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

16. Further to our response to Question 5c, applications are regularly held up by statutory consultee responses. To speed up planning decisions, statutory consultees require better resourcing. The consequence for statutory consultees not meeting their timeframes will be felt by the planning departments in much need of the additional resource under the existing proposals for the APS. If an additional fee is to be charged, it would be sensible for the statutory consultees to be eligible for some of this fee to improve their service. This way, there would be an incentive for the consultees to provide their response on time.

17. Furthermore, if a consultee has not responded within the required time, it must be assumed that there are no objections to any proposals and planning consent must proceed.

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

a) major infrastructure development

18. Don't know. We acknowledge that the time it takes to obtain consent for these projects increases the cost to deliver the infrastructure and can result in impacts on viability and ultimately project abandonment in some cases. Infrastructure development related to decarbonisation and/or climate change adaptation projects should be able to benefit from some form of an APS as these projects are often required on a critical timescale.

b) major residential development

19. No. As outlined at Paragraph 2, we have concerns that the APS will result in further delays for planning applications that are submitted via the traditional route. Allowing major residential development as well as major commercial development will tilt the focus considerably and leave applications for smaller schemes behind. This could result in further delays and backlogs for these types of applications than are already experienced.

c) any other development

20. While the proposals for the APS are not currently suitable, the CLA would support a planning service that enables quicker decisions to be made for planning applications for

agricultural development that exceeds 1,000 sqm. In addition, a sped-up service would be beneficial for applications made for the discharge of planning conditions. These applications are vital to commencing development and can regularly exceed the statutory 8-week timeframe. Enabling a quicker decision-making process for discharge of condition applications would unlock many forms of development and speed up delivery.

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

21. A time limit in accordance with the existing statutory time limit of 13 weeks would be appropriate. We do not support proposals for a reduced time limit.

Question 10. Do you prefer:

a) the discretionary option (which provides a choice for applicants between an Accelerated Planning Service or a standard planning application route)
b) the mandatory option (which provides a single Accelerated Planning Service for all applications within a given definition)
c) neither
d) don't know

22. A. The CLA does not support the current proposals for the APS. However, any proposal to offer a service that will require an uplift in application fee must be provided as a discretionary option. Some applicants will be willing to pay an increased fee for the guarantee that they will receive their decision in the appropriate timeframe. However, others may not have access to this additional capital. Whilst the planning application process is slow and costly, an increased application fee may push more applicants out of the scope of being able to develop in the first place. There is also a risk that a two-tier planning system is unintentionally developed that favours those with access to a higher level of funds.

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

23. Whilst we support the principle of an APS but not the proposal put forward within this consultation, it would be sensible that certain statutory information is required to inform a quicker planning service. This information should include: flood risk assessments (when a site is located within Flood Zones 2 or 3), phase 1 habitat survey (and any subsequent surveys), heritage assessments and transport information such as visibility splays and confirmation of safe and suitable access points.

Planning performance and extension of time agreements

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

24. Yes.

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

25. Yes.

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

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

26. A. Performance for speed of decision-making should be based on the new criteria only. Local Authorities regularly extend the decision period, in 2022-23, of all District planning authorities' applications received, only 46%[4] were decided within the relevant statutory timeframe.

27. Any transition period must acknowledge that many LPAs will need time to adapt to the new performance measures as many rely on the use of extension of time agreements to provide decisions by a determination date. The new criteria will provide a true representation of how LPAs perform against statutory time limits.

Assessment period for performance for speed of decision-making

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

28. Yes, this is a more accurate representation of how LPAs are performing. As outlined at paragraph 47 of the consultation, the current 24-month assessment period conceals the underperformance of LPAs by previous good performance.

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

29. Yes, the proposed transitional arrangement is sensible.

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

30. Yes, as outlined at paragraph 48 of the consultation, the number of relevant cases will be lower and will not provide an accurate representation if measured over 12 months rather than 24.

[4] DLUHC Table P120: District planning authorities – planning applications received, decided and granted, performance agreements and speed of decisions. Accessed 5th April 2024.

Removing the ability to use extension of time agreements for householder applications and for repeat agreements on the same application for other types of application

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

31. Yes, the householder application route is supposed to offer a simplified and streamlined form of planning permission for small-scale works. Extension of time agreements should only be used for more complex planning applications.

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

32. Extension of time agreements are a useful tool in the planning application process. They not only provide LPAs with additional time, but they also provide applicants with the chance to amend proposals. The use of extension of time agreements has been abused by some LPAs and there must be better guidance on their use. Often, an extension of time agreement can enable an applicant to address an objection on an application or make an amendment to proposals. This can be the difference between an approval or refusal or the difference between a delegated decision or referral to planning committee. This must be acknowledged.

33. If applicants are not afforded the opportunity to amend their scheme or address comments/objections, it may result in more refusals. This will lead to an increase in resubmissions or planning appeals. Following the removal of the 'free-go' for repeat applications in December 2023, there is less of an encouragement for the submission of improved applications. The impact of this removal still unknown but it will likely lead to an increase in appeal submissions.

34. An alternative method could be to limit the extension of time agreements offered by the LPA to one but enable the applicant the opportunity to request extensions where improvements to a proposal are possible.

Simplified process for planning written representation appeals

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

35. Yes. Timescales for written representation appeals fall short of targets. The average time for a written representation appeal currently stands at 52 weeks[5]. This, coupled with a delayed planning application process, can result in applicants not receiving planning decisions for up to two years following submission. The simplified written representation appeal route is a sensible way to address this issue and deal with the backlogs experienced by the Planning Inspectorate.

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

36. Yes, we support the types of appeals that are proposed.

[5] https://www.gov.uk/guidance/appeals-average-timescales-for-arranging-inquiries-and-hearings

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

37. Yes. Appeals relating to refusing prior approval should also be included.

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

38. Yes, in some cases, appellants have not been able to provide additional information/evidence at application stage. This could be due to a lack of communication from the LPA or a lack of understanding. It can become apparent upon review of an officer's report or decision notice that a piece of information readily available could have influenced an alternative outcome. In these cases, the appellant should be able to submit additional information.

39. However, we agree that the ability to amend a proposal or for additional comments to be made (from various parties) should be removed.

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

40. Yes, but appropriate reasoning must be provided to the appellant.

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

41. Yes, the existing time limits for lodging appeals are fit for purpose. Amending this structure would add an extra layer of complication to the process.

Varying and overlapping planning permissions

Implementing S73B

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

42. Yes, we support any improvements to guidance that enable applicants/developers to future proof the need for subsequent planning applications for variation/amendment. The scope of variation enabled under section 73B should be no less than that currently available under section 73 or section 96A. If this is not the case, the introduction of section 73B could result in more complexity for the variation of planning permissions. It would be consistent for section 73B applications to be treated in the same way as section 73 applications.

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

43. There is currently no guidance around how much variation is allowed to satisfy the requirement for a varied scheme to not be considered as 'substantially different'. For the introduction of section 73B to be effective, it would be beneficial for the guidance to be prescriptive on the meaning of "substantially different".

Question 28. Do you agree with the proposed approach for the procedural arrangements for a section 73B application?

44. Yes, it is sensible that the existing approach for consulting statutory consultees is followed as is the requirement currently for Section 73 applications.

45. We agree that prescribed information requirements should only relate to the variation of an existing permission and the impact of that variation. However, there is scope for this to be misunderstood at the validation stage of the application process and sufficient guidance is required for both LPAs and applicants.

Question 29. Do you agree that the application fee for a section 73B application should be the same as the fee for a section 73 application?

46. Yes.

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

47. Yes, this brings the fee structure for section 73 and 73B applications in line with the fee structure for discharge of condition householder applications.

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

48. We do not have evidence to answer this question.

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

49. Yes, this is in line with the current approach for section 73 permissions. If the section 73B permission changes the CIL liability, then the most recently commenced or re-commenced scheme should be liable for the levy. However, any levy must be reflective of any past payments and ensure there is not overpayment or duplicated payment for applicants/developers.

<u>Overlapping planning permissions</u>

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

50. We do not have evidence to answer this question.

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

51. We do not have evidence to answer this question.

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

52. We do not have evidence to answer this question.

For further information please contact:

Shannon Fuller
Planning Adviser
CLA, 16 Belgrave Square
London, SW1X 8PQ

Tel: 07827287626
Email:
shannon.fuller@cla.org.uk
www.cla.org.uk

CLA reference (for internal use only):
Planning/APSConsultationMay2024