

BIS | Department for Business
Innovation & Skills

**IMPLEMENTATION OF THE
PENFOLD REVIEW**

NOVEMBER 2011

Introduction

The Autumn Statement made today sets out action the Government is taking to promote economic growth and enhance the competitiveness of the business environment in the UK.

An important part of this agenda is reforming the planning system. The Government has already made substantial progress through the Localism Act and the publication of the draft National Planning Policy Framework, which sets out a presumption in favour of sustainable development.

In addition to the planning system, there are several consent regimes that businesses must apply for depending on how they wish to develop or operate properties. These development consents deliver significant economic, social and environmental benefits – such as maintaining our heritage, tackling climate change and ensuring a well-functioning road network. However the Penfold Review found these consents to be “numerous and complex” and that they could create delay, uncertainty and costs to business.

The Government’s aim is to support growth and competitiveness by ensuring these regimes operate in the most flexible and simplified way possible, whilst delivering the benefits they were established to achieve. The Government is therefore announcing today a further programme to:

- Scrap unnecessary development consents and simplify others;
- Reform the remits and working practices of the public bodies granting or advising on development consents;
- Set a clear timescale for deciding development consent applications; and
- Make it easier to apply for development consents.

Taken together, the measures in this programme will reduce costs and bureaucracy, speed the process up and increase certainty; and ensure the regulatory benefits delivered by development consents are achieved with the minimum of burden.

This programme builds upon the deregulatory agenda the Penfold Review set Government, and on the measures announced in the Government’s Progress Report on implementing the Review.

Scrap unnecessary development consents and simplify others

The Government's aim is to minimise the burden of complying with development consents, and to de-regulate entirely where it is appropriate. To do so the Government has identified the following measures that would exempt more developments from needing consents, reduce the information applicants are required to submit, and reduce complexity when development consents are applied for at the same time as planning permission. These measures will also allow the public agencies which administer development consents to focus upon the highest risk areas and thus deliver a more efficient service.

A) The Government will, subject to Parliamentary time, introduce the following measures to simplify and reduce costs associated with the heritage protection system

A1. Developers must apply for Listed Building Consent if they wish to undertake works that would impact on the special historic or architectural interest of a listed building. Given there are 375, 000 listed buildings in England this is one of the most regularly applied for development consents. To reduce the number of unnecessary applications, **the Government will enable the extent of a listed building's special interest to be legally defined in its list entry** – so only those parts of a building that contribute to its special interest are protected by regulation, removing the requirement to apply for a consent for works that impact other parts of the building.

A2. To aid developers plan with more certainty, **the Government will enable developers to seek a Certificate of Immunity (COI) from listing or scheduling at any time, valid for five years**, rather than the current provision of issuing COIs only in relation to listing, and after the developer has applied for planning permission.

A3. To reduce the need for owners or developers to make repeated applications for Listed Building Consent (for example owners of large numbers of buildings, or in relation to complex or frequently-changing buildings), **the Government will allow owners of listed buildings and local authorities to enter into Statutory Management Agreements** and enable works specified in such agreement to be undertaken without the need for separate applications.

A4. Conservation Area Consent is currently required to demolish buildings in a conservation area. Demolition is normally to make way for a new development – which will require separate planning permission. To reduce the paperwork involved, **the Government will remove the requirement for Conservation Area Consent when demolishing unlisted buildings**, and make this subject to planning permission instead. It will remain necessary to obtain the permission of the local planning authority for such demolition, but it will reduce complexity in the system by removing a separate consent regime. Currently it is an offence to demolish an unlisted building in a conservation area without consent. To ensure continued protection of conservation areas, the Government will ensure that demolishing an unlisted building in a conservation area without planning permission is an offence.

B) The Government will consult on further measures to simplify and reduce costs associated with the heritage protection system

B1. Nearly nine out of ten applications for Listed Building Consent are approved. A more risk-based approach would focus enforcement on those applications most likely to impact a building's special interest, enabling a lighter touch approach for non-controversial applications. This would lighten the burden on developers whilst allowing public agencies to focus their resources on higher risk applications. Therefore **the Government will consult on options for introducing a system of prior-approval for specified types of works to listed buildings**. Under the system Listed Building Consent would be deemed granted if the local planning authority does not respond to a developer's notification by requesting a full application within a specified time period.

B2. Local authorities rely upon their conservation officers to provide advice on granting Listed Building Consent. To expand the market for that advice and increase choice and flexibility for developers, **the Government will consult on options for allowing certification of applications for Listed Building Consent by accredited independent agents**.

B3. To provide greater certainty to the owners of listed buildings and reduce the cost to local authorities of enforcement, **the Government will consult on legally defining circumstances in which minimum compensation should be payable when listed buildings are subject to compulsory purchase**.

C) English Heritage will undertake a programme to update the list entries of listed buildings

To enable a more flexible approach to be taken to re-development of listed buildings, particularly to support measures A1 and A3, **the Government will commission English Heritage to begin a programme to update the list entries of listed buildings**, providing more detail on the special interest of listed buildings. This will ensure that those parts of a building of special interest are protected by regulation, and parts of a building that are not listed are not subject to Listed Building Consent. The programme will start with enhancing the listings of C20th office buildings – a category subject to regular applications for works by businesses.

D) The Government will introduce measures to further simplify environmental development consents

D1. The Environmental Permit is a consent that unifies several other consents, allowing developers to apply for one permit covering many activities, rather than requiring several individual consents. This reduces the volume of applications and paperwork necessary for developers and public bodies. **The Government will continue and expand upon the Environmental Permit programme and add more consents into it**. Subject to Parliamentary time, legislation in 2012 will introduce water abstraction and impoundment, flood defence consents and fish pass approvals into the programme. By the end of this process 10 separate permissions and consents would have been unified into the Environmental Permit regime.

D2. In line with that rationale, **Natural England has begun expanding its class licensing approach** to allow individuals to register once to undertake activities that would

otherwise require several consent applications. This will reduce and remove application costs for developers of small-scale developments. The approach will be formally launched by summer 2012. **Natural England will also introduce organisational licensing** linked to a Code of Conduct. This will allow major infrastructure organisations, utilities and other public bodies to apply once rather than repeatedly for consents covering routine and low-impact activities.

D3. Ecological consultants support developers put together some consent applications. **Natural England from 2012/ 13 will explore the scope for developing a system of chartered or accredited consultants** and for offering tailored training products to further improve the quality and consistency of work undertaken by consultants, thus reducing costs for developers by ensuring more applications are 'right first time'.

D4. To reduce the risks of prosecution for trivial offences, by the end of this financial year **Natural England will issue guidance on how it proposes to apply the offence of deliberately disturbing a wild animal.**

D5. To support this agenda and provide a pro-active service to developers facing complex applications, **the Environment Agency, Natural England the Forestry Commission will, in consultation with business, introduce Environmental Account Managers** providing a named point of contact to applicants. Subject to agreement between agencies and developers, the programme will be initiated in April 2012.

E) The Government will review and consult upon measures to speed up and simplify the application process for highways and transport consents

E1. Development often has an impact upon the transport network, for which highways and transport consents may be required. **The Government will consult upon options to improve the operation of Stopping Up Orders and the interaction between highways consents and the planning system** when development is proposed. The following options are being considered:

- Processing Stopping Up Orders concurrently with planning permission to save the developer time;
- Devolving decision-making powers to local authorities; and
- Merging Stopping Up Orders with the planning system and thus removing the requirement for an additional Stopping Up Order.

E2. Developers are often required to work with both local highways authorities and local planning authorities when seeking approval for development. To speed up and simplify this process – potentially providing a better service to developers and greater efficiency for local authorities – **the Government will review existing arrangements** with a view to (a) developing guidance to encourage close working practices between local planning and highway authorities, and (b) encouraging delegation of functions from local highway authorities to local planning authorities when the consents are associated with development. The findings of this work will be reported at the same time as the Department for Transport's response to the consultation on Stopping Up Orders.

E3. Regarding Traffic Regulation Orders, **the Government plans to launch a public consultation before the end of the year to review the regulations in relation to publication and consultation methods**, with a view to introducing greater flexibility and enabling local decision-making. A small proportion of Orders are made by traffic authorities at the request of property developers who pay the administration and publication costs.

F) The Government will reduce the duplication and overlap between development consent regimes and the planning system

In some instances, the same controls and regulation can be imposed upon proposed development at the planning permission stage and during the development consent stage. This means development is subject to regulation twice for the same activity. To reduce this duplication and thus reduce bureaucracy for developers, the Government will:

- **Pilot a system of prior-approval for Natural England's species licenses**, with full introduction by September 2012. This would give developers the option of applying for a species license (charged on a cost-recovery basis) prior to planning permission, to speed up the subsequent process (F1);
- **Issue a consultation document giving options for reducing the duplication between Rights of Way consents and the planning system**: these proposals will be part of a wider consultation package of rights of way reforms on which an announcement will be made in due course (F2); and
- **Strengthen guidance to smooth working practices between licensing authorities and planning authorities**, so that planning applications with associated licensing applications are dealt with in a more coordinated manner (F3).

G) The Government will remove two redundant energy development consents

The Department for Energy and Climate Change will seek a legislative opportunity to remove the discrepancy of gas transporter pipelines Environmental Impact Assessment determination applications in England having to be submitted to both the department and the Infrastructure Planning Commission; and to revoke the requirement to provide gas/hydrocarbon fuelled generating stations notice, which is now redundant.

Reform remits and working practices

The Penfold Review recognised that the public agencies which determine development consent applications, or provide advice on them, make an important contribution to facilitating sustainable development and economic growth. These activities, and the way in which they are delivered, make an impact upon the business environment and the ease of doing business.

H) The Government will reform the remits of the key consenting and advisory agencies to ensure they promote sustainable development

The Government's aim is to ensure these agencies contribute to a competitive business environment by considering the impact of their decisions upon sustainable economic growth and the viability of what may be economically significant projects, and swiftly approving consents when it is appropriate to do so.

Therefore Government Ministers will ensure that the following agencies have a remit to promote sustainable development:

- The Environment Agency
- Natural England
- English Heritage
- The Highways Agency
- The Health and Safety Executive

To ensure a consistent framework is applied to how development is regulated by Government, 'sustainable development' will be based upon how that term is described by the final National Planning Policy Framework. These remits will extend to decision-making on development consents and on providing statutory advice and would be in addition to the other statutory remits these agencies have, including promoting the environmental and social aspects of sustainability.

The Government recognises that changes to remits must lead to changes in working practices if they are to have an impact on development and the business environment. Therefore Government will ensure improvement plans are produced by agencies on improving their responses to statutory consultation, and will consider proposals to further enhance relationship management between agencies and developers.

Setting a clear timescale

The Penfold Review found that developers could face uncertainty over the amount of time it takes to receive a determination of their development consent applications. The Government's aim is to support developers by providing clearer timescales on when decisions will be made, and completing that process in the shortest possible time.

I) To provide greater certainty and reduce delay, Government will aim to determine the majority of development consent applications in a maximum of 13 weeks, and less when other timetables are agreed

This timescale would apply to the development consents identified by the Penfold Review. The 13 week timescale provides a maximum limit to the determination period, subject to the conditions cited below. In many cases consenting agencies provide a quicker service – for example by adopting the 8 week timescale for non-complex applications that operates within the planning system, or by allowing notifications or self-approval.

The 13 week timescale would begin once the consenting agency which makes the decision receives all relevant information to make that decision. To allow flexibility in individual cases, when the applicant and consenting body both agree to do so, these timelines may be extended. The only exceptions to the 13 week timescale are consents relating to major projects on a scale similar to those determined through the Major Infrastructure Planning Unit and those involving factors outside the decision-maker's control (notably where it is necessary to exercise their statutory discretion for an extension in the public interest, holding hearings to ensure procedural fairness, or to conduct public consultation). The consents thus excluded make up less than 5% of the total volume of consents applied for each year across all consenting agencies.

The 13 week timescale will be active immediately in the case of national consenting agencies (for example Government departments and national regulators). The Department of Communities and Local Government will work with local authorities on identifying the best way of introducing the timescale at local government level. The timescale would not apply to consents determined by private sector providers (e.g. Building Regulations Approved Inspectors).

J) Government will be transparent about the performance of consenting agencies in meeting the 13 week timescale

Providing transparent information on the performance in attaining this timeline is the most effective way of encouraging compliance and accountability. Therefore national consenting agencies will publicise to developers information on their timeliness in determining development consent applications. On an annual basis, these agencies will report to Parliament if the timescale has not been met.

The Government continues to place a priority on transparency of data in local government. Therefore we will encourage local authorities to be transparent about their performance in determining development consents.

Making it easier to apply

Planning permission and the various development consent regimes are administered separately, by different tiers of Government, public bodies and central departments – meaning it is difficult to understand which consents are necessary, and that the process is complex to comply with. The Penfold Review found this complexity could increase costs and uncertainty for business.

K) The Government will add information and web links on major development consents to the Planning Portal

To better support developers and would-be applicants the Government will improve the information provided – helping developers know which development consents they may need to apply for, and how they should go about doing so.

The Department of Communities and Local Government runs an online portal which provides a ‘one stop shop’ for all types of planning applications, enabling developers to understand how to engage with the planning system. The Government will provide information and web links on the Planning Portal website covering the development consents that are regularly applied for with planning permission. These changes will go live on the Planning Portal from April 2012.

L) The Government will evaluate whether further integration of the application process for planning permission and development consents is feasible

Further savings may be possible by providing greater integration of the application process for planning permission and development consents, for example by allowing one application form to cover applications both for planning permission and other relevant development consents. Therefore the Government will evaluate whether further integration of applications is feasible and cost-effective.

Action Plan

Reference	Action	Owner	Timescale
A1	Enable the extent of a listed building's special interest to be legally defined	DCMS	Subject to Parliamentary time
A2	Enable developers to seek a Certificate of Immunity from designation or listing at any time	DCMS	Subject to Parliamentary time
A3	Allow owners of listed buildings and local authorities to enter into Statutory Management Agreements	DCMS	Subject to Parliamentary time
A4	Remove the requirement for Conservation Area Consent when demolishing unlisted buildings	DCMS	Subject to Parliamentary time
B1	Consult on introducing a system of prior-approval for specified types of works to listed buildings	DCMS	During 2012
B2	Consult on allowing certification of applications for Listed Building Consent by accredited independent agents	DCMS	During 2012
B3	Consult on legally defining circumstances in which minimum compensation should be payable when listed buildings are subject to compulsory purchase	DCMS	During 2012
C	Undertake a prioritisation programme to update the list entries of listed buildings	DCMS/ English Heritage	Programme scoping is underway

Reference	Action	Owner	Timescale
D1	Introduce water abstraction and impoundment, flood defence consents and fish pass approvals into the Environmental Permit	Defra	Subject to agreement, included in the Water Bill in 2012
D2	Expand class licensing to further low risk activities and species, and introduce organisational licensing	Natural England	By summer 2012
D3	Explore the scope for developing a system of chartered or accredited consultants	Natural England	Beginning 12/ 13
D4	Issue guidance on how Natural England proposes to apply the offence of deliberately disturbing a wild animal	Natural England	By end of 11/ 12
D5	Consult on the introduction of Environmental Account Managers	Defra, Environment Agency, Natural England, Forestry Commission	April 2012
E1	Consult upon options to improve the operation of 'Stopping Up Orders' and the interaction between highways consents and the planning system	DfT	By end of 11/ 12
E2	Review existing arrangements between local highways authorities and local planning authorities	DfT	Reported upon by end of 2012

Reference	Action	Owner	Timescale
E3	Consult upon publicity requirements associated with Traffic Regulation Orders	DfT	By end of 2011
F1	Pilot a system of prior-approval for Natural England's species licenses	Natural England	September 2012
F2	Issue a consultation document giving options for reducing the duplication between Rights of Way consents and the planning system	Defra	In due course
F3	Strengthen guidance to smooth working practices between licensing authorities and planning authorities – through statutory Home Office guidance and DCLG guidance following the National Planning Policy Framework (NPPF)	Home Office, DCLG	April 2012 (Home Office) and following publication of the NPPF, as part of a wider review of guidance (DCLG)
G	Remove two redundant energy development consents	DECC	Upon securing a legislative slot
H1	Ensure the Environment Agency has a remit to promote sustainable development	Defra	Upon finalisation of the NPPF (expected by the end of 11/ 12)
H2	Ensure Natural England has a remit to promote sustainable development	Defra	Upon finalisation of the NPPF (expected by the end of 11/ 12)

Reference	Action	Owner	Timescale
H3	Ensure English Heritage has a remit to promote sustainable development	DCMS	Upon finalisation of the NPPF (expected by the end of 11/ 12)
H4	Ensure the Highways Agency has a remit to promote sustainable development	DfT	Upon finalisation of the NPPF (expected by the end of 11/ 12) in light of the Cook Review
H5	Ensure the Health and Safety Executive has a remit to promote sustainable development	DWP	Upon finalisation of the NPPF (expected by the end of 11/ 12)
I	Determine development consent applications in a maximum of 13 weeks, and less when other timetables are agreed	All	Immediately for national consenting agencies, and subject to consultation for local authority consenting agencies
J	Provide information on performance to developers and Parliament in determining development consents within the agreed timescale	All	Immediately for national consenting agencies
K	Add information and web links on major development consents to the Planning Portal	DCLG with Defra, DCMS, DfT, DECC, HO and DWP	To go live from April 2012

Reference	Action	Owner	Timescale
L	Evaluate whether further integration of planning permission and development consent applications is feasible	DCLG with Defra, DCMS, DfT, DECC, HO and DWP	Commencing April 2012

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