PENFOLD |

Review of non-planning consents

Final Report

July 2010

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Foreword by Adrian Penfold

This is a challenging time both for businesses investing in development projects and for those public bodies that play a part in development proposals. There is a renewed drive – right across the economy – to deregulate and remove barriers to economic growth as the Government seeks to rebalance the economy. At the same time, the Coalition has made it clear that it intends to make fundamental changes to the way that planning decisions are reached.

The remit of this Review aligns well with these priorities. Its main aim has been to identify opportunities to deregulate, as a means of supporting business investment in development. It also supports the Coalition Programme commitment to sustainable development; and its emphasis on greater local involvement in planning and development. The key will be to ensure that the processes that underpin local community decisions are efficient, effective and do not create unnecessary burdens and barriers to investment. This principle is central to my report.

A well functioning planning system is vital to ensuring that the right decisions about development are made for the right reasons. What is apparent from the findings of my interim report is that 'non-planning consents' – those consents that have to be obtained alongside or after, and separate from, planning permission in order to complete a development – can also have a serious impact on how efficiently and effectively the end-to-end development process operates. The complexity of the non-planning consents landscape and its interaction with the planning system impose additional costs and generate additional risk for businesses. Together, they are a sizeable factor in determining the investment climate in the UK and, therefore, in delivering sustainable development and economic growth. They also play an essential part in achieving wider Government goals such as tackling climate change, delivering well-functioning infrastructure and promoting the health and well-being of local communities.

In the second phase of this Review, I have identified changes that will bring greater certainty, speedier decisions and reduced duplication and bureaucracy. I am confident that the recommendations I have made present a package of measures that can deliver real benefits to developers. I believe they also have the potential to benefit decision-making bodies by enabling them to free up resource and redirect it towards their highest priorities. They should also give people more influence over what happens in their local communities thanks to more efficient and accountable processes.

Inevitably there are trade-offs to be made between certainty and speed, on the one hand, and cost on the other. I am only too well aware that decision making bodies face resource pressures which are likely to get worse. There are no easy solutions to the resource problems within the public sector. The onus, I believe, will need to be on finding innovative ways to make scarce resources stretch as far as possible and, unpalatable as it may seem,

introducing fees or other forms of charging for the provision of additional services where appropriate.

Of course, there are costs attached to change itself. I have stopped short of recommending wholesale reform through wide-ranging ‘unification’ of planning and other consents and have concentrated instead on practical, targeted changes that I judge are capable of delivering the benefits businesses told me they want to see and provide scope for additional scaling down of regulation in the future. It will take concerted, collaborative effort across central Government to integrate these changes with the wide-ranging reform to the planning system already underway and with activity to promote de-regulation. Assuming that can be done, I believe there has never been a better opportunity to make progress on these issues.

I urge the Government to accept and implement my recommendations.

I would like to offer my sincere thanks to all those who have given their time and effort so generously to the Review. In particular, I would like to thank members of my Sounding Board, whose constructive comments and ideas have informed my own conclusions; and the Review team in the Better Regulation Executive who have worked so hard to get to grips with a wide-ranging and complex area of Government business. Finally, I would like to put on record my gratitude to my colleagues at British Land for their support and forbearance during the sometimes lengthy periods of time when I was absent from the ‘day job’.

ADRIAN PENFOLD

Executive Summary

Introduction

The focus of this Review has been on those consents which have to be obtained alongside or after, and separate from, planning permission in order to complete and operate a development: 'non-planning consents'. Non-planning consents play an important role in achieving a wide range of government objectives – be it protecting endangered species, tackling climate change, delivering a well functioning road network or protecting the health and well-being of local communities.

They also have a serious impact on how efficiently and effectively the end-to-end development process operates. Together with planning, they are a sizeable factor in determining the investment climate in the UK. As the Government seeks to rebalance the economy, it is more important then ever to ensure that they do not discourage sustainable development and growth.

The Review was established to explore whether the process for obtaining non-planning consents is delaying or discouraging business investment and identify areas where there is scope to support investment by streamlining processes, removing duplication and improving working practices. The interim report found that difficulties arise from the way individual non-planning consents operate and the way the non-planning consent landscape as a whole interacts with planning. The key problems identified were:

- Non-planning consents are numerous and complex, there is no standard 'way in' to them for developers and responsibility for them is fragmented with no-one in Government looking at the landscape as a whole;

- Overlaps and duplication between planning and non-planning consents are a source of inefficiency and blur the boundary between the decision of principle about whether development should go ahead (the 'if' decision) and detailed decisions about how a development should be built and operated ('how' decisions);

- Non-planning consents can be critical to some investment decisions and any unforeseen or unnecessary delays they cause increase development costs and can have an adverse economic impact; and

- Inconsistency and frustration often characterise developers' experience of consenting bodies.

The Review has therefore looked for changes that increase certainty, speed up processes, reduce duplication and minimise costs. Business contributors to the Review emphasised that they wanted to see action taken to reform those consents that they consider to be most problematic – namely, heritage, highways and environment-related consents – and the Review has therefore sought to make recommendations focused on improving the operation of consents in these specific areas.

Changing working practices

Many respondents to the Review reported experiencing uncertainty about the timing of decisions; difficulty in resolving differences of view across and between consenting bodies; and lack of responsiveness, caused – in their judgement – by a mix of resource pressures and the absence of a service culture. To address these issues, the Review has made recommendations that build on existing good practice and aim to improve consenting bodies' working practices. They cover:

- Strengthening the service culture of consenting bodies, for example, by publishing service standards and information to help applicants 'get it right first time' in a 'quality development code';

- Improving the co-ordination of the relevant consenting bodies' involvement in the development process, for example, by extending good practice in development management; and

- Improving the accessibility of information and guidance for developers on non-planning consents and using e-enablement to integrate processes, especially with planning, for example, by further developing the '1 App' planning application facility.

Resource pressures create additional challenges, to which there are no easy solutions. In a world where resources in the public sector will become increasingly constrained, the onus has to be on finding innovative ways to make the best possible use of existing staff and on making broader use of fees or other forms of charging for additional services. The Review has made recommendations to help provide for this.

Simplifying the landscape

Businesses told the Review that they would welcome a reduction in the complexity of the non-planning consent landscape in order to increase certainty and reduce costs. Whilst there are limited opportunities for immediate repeal of non-planning consents, the Review makes recommendations for further work that has the potential to lead to worthwhile simplification of the landscape, consistent with the Coalition Programme's commitment to deregulation.

The Review also believes that it is increasingly important for decision makers to concentrate their efforts on those proposals that matter most in terms of achieving the policy objective that underpins the consent. To that end, the Review proposes that non-planning consent regimes should adopt a more 'proportionate' approach and take low risk activities out of scope altogether or ensure that they are subject to less stringent requirements. This shift would be particularly welcomed by small business.

Improving the interaction between planning and non-planning consents

Changes to working practices and simplification of the consent landscape, whilst delivering real benefits, will not address the confusion and duplication between planning and non-planning consents that developers reported. The Review believes that clarifying the boundary between planning and non-planning consents will be vital in ensuring that real improvements are made.

To improve certainty for developers and remove duplication, the following principles should apply:

- As far as possible, all factors relevant to deciding whether a development can go ahead (the 'if' decision) should be considered at the same time, as part of or alongside the planning application process;

- So long as all the non-planning consent issues which might affect the 'if' decision have been considered by the relevant decision maker in parallel with planning permission, and have informed the decision on planning permission, then the decision in principle as to whether the development can proceed should be considered to have been dealt with.

- Thereafter, the determination of non-planning consents should be concerned with 'how' a development is built or operated rather than whether it can go ahead, unless:

  - There has been a significant change in circumstances or policy;

  - A critical issue that was not material[1] to planning arises and has therefore not been previously considered;

  - The planning decision maker has acted unreasonably; or

  - Following more focused and detailed consideration, previously unforeseen issues of substance come to light.

- Consequently, the consideration of the 'if' decision should, in most cases, lead smoothly on to a more detailed consideration of 'how' the development should be built and operated;

- Planning and non-planning consent decision makers should only ask for the level of detail that is essential to enable them collectively to reach an informed 'if' decision; and

- Developers should have the flexibility to bring forward applications for non-planning consents that deal with 'how' questions at the same time as planning.

[1]The word 'material' is used here to describe all the issues that can be relevant to consideration of a planning application.

Critical to the successful application of these principles is making sure that all factors that may influence the decision as to whether the development should be allowed to go ahead are considered at the same time. It will require planning and non-planning consent decision makers to work collaboratively together and with the applicant from the start of the process. It also places particular emphasis on the role consenting bodies have as consultees in the planning application process and on the need for consistency between the consultation and consent-giving stages.

Applying these principles to specific concerns, the Review makes recommendations for changes to individual regimes. These aim to reduce the risk to development arising from town and village green registration; ensure that the issues raised by rights of way orders are only dealt with once; remove duplication in the consideration of protected species licences and highways consents; and clarify the boundary between planning and building control when considering energy efficiency issues.

In practice, planning already deals with the vast majority of 'if' questions. Formally recognising that planning has a central part in deciding whether or not a development can go ahead opens up the possibility of merging some non-planning consent regimes with planning and thus moving to a more integrated model. The Review believes that progressive integration of services, processes and decision-making would bring benefits for developers and decision makers alike. It stops short, however, of recommending a wholesale move to a 'unified' consent that pulls together a bundle of related consents and planning. Such a change would be extremely complex and carries a high level of risk at a time when resources are severely constrained and the benefits of Development Consent Orders (DCOs), as a new model of unification, are not yet proven. Instead, the Review recommends that Government should proceed with incremental changes and consider extending the DCO approach to other types of projects (and potentially other decision makers) once its advantages have been demonstrated in practice.

Managing the landscape

Taking a more holistic look at the problems faced by developers, it is clear that a major reason for the complex and fragmented nature of the planning and non-planning consent landscape is that there is not – and has never been – strategic oversight of the landscape as a whole. No-one in Government is responsible for looking at these regimes in their entirety, from the perspective of the developer; nor is there a mechanism to ensure that existing non-planning consents operate as effectively and efficiently as possible and that any new consents are implemented in a way that takes account of the landscape as a whole.

The Review therefore recommends that Government establish a mechanism to ensure that departments and non-planning consent decision makers work collaboratively together to provide strategic oversight of the planning and non-planning consents landscape in order to ensure that it operates as coherently, efficiently and effectively as possible.

Other challenges

Contributors to the Review raised concerns about the way statutory undertakers (principally utility and railway companies) can add time and cost to the development process. They were most concerned with the time taken to obtain electricity connections; delays gaining adoption and connection of water and sewerage; and difficulties faced when having to deal with railways, for example when building a bridge over the tracks or developing next to the railways.

The Review considered these issues as outside its scope and has not made specific recommendations to address them. However, the Review team has met the relevant regulators to discuss the concerns raised by developers. Whilst there is work underway within the regulators to mitigate the reported problems, the Review encourages them to build on the on-going activity aimed at tackling the main issues and to continue to engage with the development and property industry to ensure that progress is being made in these areas.

Conclusion

The recommendations made by this Review represent a package of changes that together aim to deliver real benefits to developers by achieving greater certainty, speedier decisions, reduced duplication between regimes and minimised bureaucracy. If implemented in full, they also have the potential to benefit decision-making bodies by enabling them to free up resource and redirect it towards their highest priorities; and give local communities greater transparency and clarity, making planning permission the ‘central’ point at which the decision about whether a development should go ahead or not is taken. This will enable local people to take a rounded and informed view of development proposals.

The Review recognises the financial pressures on local authorities and other consenting bodies. As such, it has tried to go with the grain of changes already in hand and has called for incremental change rather than radical reform of the landscape. This is also very much in line with the preferences of businesses and other interests. However, whilst there is the potential for savings, the Review also appreciates that some individual recommendations would add to the resource pressures being felt by decision makers, particularly in the short term.

With wider changes to both the planning regime and local government currently being proposed and a strong push behind deregulation, there is now a rare window of opportunity finally to drive through changes to the non-planning consent landscape. The Review therefore calls on Government to ensure that the changes argued for in this report are implemented.

Recommendations

Recommendation A (paragraph 2.27) – Reinforcing a service culture

In order to incentivise non-planning consenting bodies, applicants and their agents to demonstrate the behaviours needed to deliver timely, transparent and efficient consenting services, Government should take steps to ensure that non-planning consent decision makers:

- Recognise, at an appropriate level in their business objectives, the contribution they make to sustainable development through the decisions they take on non-planning consents;
- Publish a 'quality development code' containing:
  - Indicators of 'satisfaction with the non-planning consent application service' for their non-planning consent activity;
  - A clear statement about the availability of guidance and opportunities to access pre-application advice;
  - Information about complaint processes;
  - Information about technical and other standards expected of consent applicants (and their agents) and appropriate means of fulfilling these;
- Publish annual statistics of performance against their 'satisfaction' indicators and the operation of the complaints processes; and
- Undertake periodic surveys of customer satisfaction.

Recommendation B (paragraph 2.43) – improving co-ordination and governance

To make the development consenting process more effective and improve the co-ordination and governance of decisions involving multiple consenting bodies or consultees Government should:

- Encourage local authorities to adopt 'development management' good practice, including:
  - Appointment of a designated development co-ordinator for major projects to monitor and manage the taking forward of consideration alongside planning of all non-planning consent applications in a systematic manner; and
  - Extending the use of planning performance agreements (PPAs) for major developments by enabling non-planning consent issues to be included within them and reinforcing the principle that a more proportionate approach to PPAs is acceptable for smaller proposals.
- Take steps to ensure that non-planning consenting bodies, including local authorities, include a clear statement in their 'quality development code' (see recommendation A) about the guidance and advice that they offer at the pre-application stage.

Recommendation C (paragraph 2.66) – Addressing resource pressures

Recognising that additional resources will not be available, Government should explore ways to mainstream good working practices in resource sharing, behaviour and culture in order to optimise use of resources and skills currently available and promote appropriate use of fees for discretionary services by:

- Requiring Departments to encourage local authorities to fully exploit opportunities for joint working with other councils and the private sector;
- Expecting that non-planning consent decision makers should continue to seek ways, working with and alongside professional bodies, to examine the resource and skills requirements in relevant non-planning consenting departments with a view to identifying opportunities for more efficient use of resources as well as addressing potential shortfalls; and
- Encouraging and enabling consenting bodies to make more extensive use of powers to charge for discretionary services ('premium services') such as the development co-ordination role, over and above minimum standards (such services should be optional for developers).

Recommendation D (paragraph 2.83) – Accessibility of information

To make the process of applying for non-planning consents simpler Government should ensure the following steps are taken to improve the quality of advice, information and e-transactions available for all users of the development consenting system:

- The Planning Portal should identify and publicise existing good practice by local planning authorities around provision of information about planning and non-planning consents;
- Local authorities should be encouraged to review the information they provide in the light of identified good practice to ensure that they give the advice that applicants need, or a suitable signposting service, in a readily accessible form;
- the Planning Portal should take forward its programme of work to allow greater consultation electronically on non-planning consent applications, rather than by paper;
- BusinessLink and the Planning Portal should work together to support and encourage the development of a high quality internet based information system, which allows developers to establish accurately and quickly whether and, if so, what non-planning consent applications are required for commercial development (this consideration should take into account an enhanced role for the private sector in information provision about non-planning consents); and
- CLG should actively explore with non-planning consenting bodies the extent to which it is possible to further develop the 1App planning application facility to provide for the concurrent submission of additional non-planning consent applications alongside planning applications.

Recommendation E (paragraph 3.20) – Simplifying the landscape

Government should simplify the non-planning consents landscape and reduce the number of non-planning consents that apply to business developments by:

- Carrying out a 'light touch' review of all those non-planning consents which have not been the subject of substantive review for more than 10 years to consider whether they are still needed and, if so, whether the protection they offer could be achieved by other means that reduced or removed the regulatory burden;
- Bringing forward legislation, at the earliest opportunity, to merge conservation area consent with planning permission; and to combine listed building consent and scheduled monument consent into a single historic assets consent, determined by local authorities;
- Going ahead, as soon as possible, with the next phase of the Environmental Permitting Programme to amalgamate water abstraction and impoundment consents, amongst others, with the environmental permitting regime; and
- Actively considering whether other groups of related consents, such as those dealing with species licensing; highways orders; creation, diversion or extinguishment of public rights of way; or categories of business specific licensing, are capable of being reformed using the principles and approach adopted by the Environmental Permitting Programme.

Recommendation F (paragraph 3.27) – Improving proportionality

While acting within constraints, such as those imposed by underpinning EU legislation, Government should actively seek to improve the proportionality of widely used operational and permissive non-planning consents and to standardise and simplify common elements of the consenting process by:

- In appropriate cases, substantially increasing the number of small scale, commercial developments and other minor non-residential developments that are treated as *de minimis* (falling below designated thresholds requiring a consent application);
- Identifying those current consent requirements suitable for a process below formal consent application (for example, simple registration); or where 'deeming' consent is appropriate; or where the use of self-certification or prior authorisation would reduce the need for applications relating to low impact activities;
- Reviewing the operation of inquiry and appeal processes for planning and non-planning consents, with a view to standardising and simplifying related processes; and
- Seeking further opportunities to standardise and simplify application, consultation and determination processes.

Recommendation G (paragraph 4.23) – Clarifying the boundary between planning and non-planning consents

Government should clarify the boundary between planning and non-planning consents by:

- Ensuring that the revised national planning policy framework being developed by CLG confirms the centrality of the planning process in determining whether a development should go ahead, while recognising that non-planning consents may also have a critical role in this;
- Ensuring that local authorities have robust local development plans in place to inform businesses and consenting bodies about the types of proposals that are likely to be acceptable in specific locations;
- Promoting the use of pre-application discussions, which bring together the planning authority, other consent decision makers and the applicant, as a means to identify and resolve areas of potential controversy associated with the application and to stop inappropriate applications going forward;
- Putting in place clear rules of engagement between planning authorities and the different non-planning consent decision makers to ensure that, where appropriate, the latter give substantive advice to the planning decision maker(s), identifying 'show-stoppers' and significant mitigation costs to help inform their decision of principle; and
- Emphasising that, so long as all the non-planning consent issues which might affect the 'if' decision have been considered by the relevant decision maker in parallel with planning permission, and have informed the decision on planning permission, then the decision in principle as to whether the development can proceed should be considered to have been dealt with. Thereafter, the determination of non-planning consents should be concerned with 'how' a development is built or operated rather than whether it can go ahead, unless the factors listed in paragraph 4.8 apply.

Recommendation H (paragraph 4.37) – Changes to specific regimes

Government should improve the interaction between planning and non-planning consents in specific instances to clarify what should be viewed as material to planning and non-planning consent regimes, remove duplication and reduce the need for detailed design work to obtain planning by:

- Reviewing the operation of registration of town and village greens in order to reduce the impact of the current arrangements on developments that have received planning permission;
- Ensuring that the impact of a planning application on rights of way is considered as part of the planning process to reduce the risk of delay arising from challenge to any subsequent diversion (or other) order;
- Reviewing the operation of species licensing to assess whether it is appropriate to reduce or remove duplication in the respective roles of the planning authorities and Natural England by enabling the former to determine the 'over-riding public interest' and 'no satisfactory alternative' tests and the latter to focus on the 'favourable conservation test';
- Exploring the options for merging highways consents with planning permission;
- Clarifying the roles of planning authorities (setting objectives and standards) and building control (ensuring objectives and standards are met) in relation to energy efficiency to reduce the need for applicants to carry out detailed design work at the planning permission stage;
- Removing the remaining legal barriers to the flexible sequencing of non-planning consents in relation to planning whilst taking account of constraints such as underpinning EU regulations; and

In addition, Government should pro-actively consider whether there are other opportunities, not mentioned above, that could be taken to remove duplication between planning and non-planning consents and to reduce the need for detailed design work to obtain planning permission.

Recommendation I (paragraph 4.49) – Facilitating integration of planning and non-planning consents

Government should encourage more local authorities to offer an improved, integrated and end-to-end planning and non-planning consents service by

- Actively promoting the adoption of existing good practice in development management across all authorities that take planning decisions;
- Inviting local authorities that want to attract investment to volunteer to pilot the further integration of planning and non-planning consents by extending the 1App approach offered through the Planning Portal to include more non-planning consents, with the facility for developers to opt for consideration of related consents in parallel with their planning application;
- Creating the necessary powers that would enable local authorities to take on a wider role in determining what are currently non-planning consents as part of the planning process.

Recommendation J (paragraph 4.57) – Extending 'unification' of planning and non-planning consents

Government should look for opportunities to extend the benefits, if realised, of the introduction of Development Consent Orders by reviewing their operation after 2 years experience and actively considering extending their use to a wider range of projects and / or extending decision-making powers to appropriate local authorities (potentially by building on any future aims to increase local decision making more generally).

Recommendation K (paragraph 5.7) – Providing oversight of the planning and non-planning consents landscape

Government should put in place a body or mechanism responsible for maintaining central oversight of the planning and non-planning consent landscape, tasked with ensuring individual and related regimes operate effectively and efficiently and with scrutinising potential new consents.

To achieve this, the body or mechanism should:

- Give developers advance notice of significant changes to planning and non-planning consent regimes;
- Scrutinise potential new consents or changes to the planning regime to ensure that they are necessary and that they are developed and implemented into the landscape with minimal additional burden and with full consideration given to their interaction with related consents and regimes;
- Continuously scrutinise the existing landscape for possible barriers / inappropriate burdens and make proposals for periodic improvements; and
- Monitor the cumulative burden of regulation on developers with a view to reducing it.

Recommendation L (paragraph 5.9) – Making change happen

Government should develop an 'Action Plan' to drive implementation of this Review's recommendations and to ensure that reforms to the wider planning regime are delivered in a way that is complementary to the aims of this review. To achieve this, Government should:

- Agree a cross-Whitehall 'Action Plan' setting out exactly how each of the recommendations will be delivered, by whom and in what timescale; and
- As part of that 'Action Plan', make clear how wider planning reforms will take account / incorporate specific Penfold Review recommendations.

Chapter 1 – Introduction

Context of the Review

1.1 The new Government has made supporting sustainable growth and enterprise, balanced across all regions and industries, one of its top priorities[2]. This means creating the right conditions for private enterprise and business investment. A well-functioning planning and wider consents regime is an essential component of the overall attractiveness of the business environment in the UK and the Government proposes to reform the planning system, creating a presumption in favour of sustainable development and providing more opportunities for local communities to determine the shape of the places in which they live.

1.2 Reform of the planning system and of specific elements within it has been underway for some time, with the aim both of making it more efficient and effective and of ensuring that it is not acting as a barrier to investment and sustainable development. This Review was set up to look beyond the planning system at those consents which have to be obtained alongside or after, and separate from, planning permission in order to complete and use a development: 'non-planning consents'. Its intention has been to explore whether the process for obtaining non-planning consents is delaying or discouraging businesses from investing, with a view to identifying areas where there is scope to support investment by streamlining the process. Its terms of reference are at Annex A. Whilst non-planning consents may be needed for projects that do not require planning permission, the Review has focused on those proposals where planning permission is needed as well, as they represent the kind of investment needed for economic growth.

1.3 Because of its remit, the Review has taken a practical, business-focused look at the operation of non-planning consents. In contributing their views, users have inevitably focused on those aspects of non-planning consents they find problematic. That said, they have also been quick to recognise both that there is a lot of on-going work intended to improve individual consent regimes and that decision makers face resource and other pressures, which can get in the way of effective service delivery.

1.4 The Review has tried to complement other on-going work, sharing evidence and contributing ideas where relevant, without duplicating it. It has also recognised the important underpinning rationale for non-planning consents – whether that be protecting the natural or historic environment, or the health and welfare of citizens. Just as those operating the consent regimes must be customer focused and acknowledge the need to support sustainable economic growth, so too businesses must (and for the most part do) understand the importance of the broader objectives, such as tackling climate change, that underpin the existence of non-planning consents.

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[2] Cabinet Office, 'The Coalition: our programme for government' (May 2010) http://www.cabinetoffice.gov.uk/media/409088/pfg_coalition.pdf

Likewise, the Review has sought to test how well non-planning consents meet the principles of better regulation (see Box 1), individually and collectively, and to suggest improvements that are consistent with those principles. It has focused on practice in England.

Box 1: Principles of Better Regulation:

The five principles of better regulation state that regulation should be:

- Transparent
- Accountable
- Proportionate
- Consistent
- Targeted – only at cases where action is needed

Interim report

1.5 The Review published an interim report in March 2010[3], setting out its preliminary findings and identifying areas for further work. The interim report acknowledged that there are numerous examples of good practice within consenting bodies and in terms of improving the operation of individual non-planning consents – many are discussed in detail in this report. It also found that developers experienced difficulties, summarised in Figure 1, either with specific consents or the landscape as a whole. Its main findings were:

- Non-planning consents are numerous and complex, there is no standard 'way in' to them for developers and responsibility for them is fragmented. Whilst there is a great deal of work going on in different parts of Government to consider ways of improving the operation of individual consents or individual consenting bodies, no-one in Government is looking at the consents landscape as a whole.

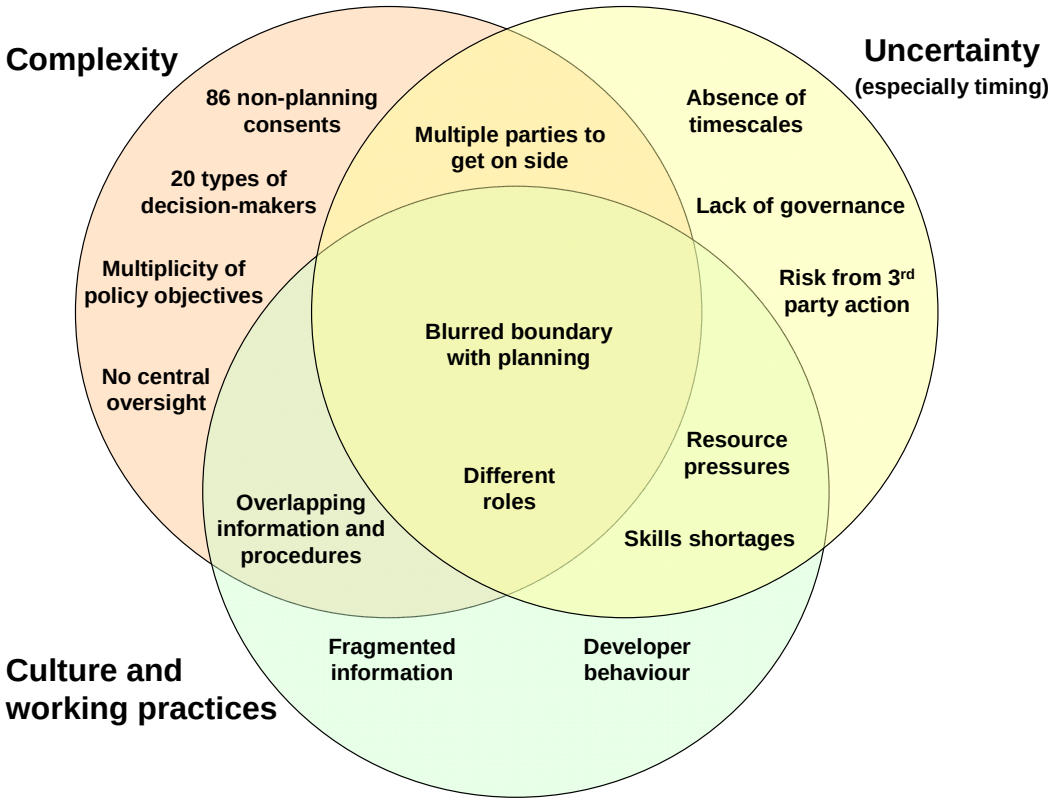
- Overlaps and duplication between planning and non-planning consents are a source of inefficiency and blur the boundary between the decision of principle about whether development should go ahead (the 'if' decision) and decisions about how a development should be built and operated ('how' decisions).

- Non-planning consents can be critical to some investment decisions, having a particular impact on specific sectors and on those who do not have extensive development expertise. Where they cause unforeseen or unnecessary delays, they increase development costs and can have an adverse economic impact. The cumulative impact of planning and non-planning consents is also a concern to some businesses.

[3] BIS, 'Penfold Review – Interim Report' (March 2010) http://www.bis.gov.uk/penfold

- Inconsistency and frustration often characterises developers' experience of consenting bodies. There are examples of good practice and much recent and on-going improvement within consenting bodies, but there remains a lack of transparency and consistency in processes and available information and support are fragmented.

Figure 1: Summary of concerns raised by respondents to Phase 1



1.6 Whilst there has been a significant amount of work done to look at the operation of some non-planning consents and their interaction with planning, this is the first time a study has attempted to look at the end-to-end experience of businesses that embark on development projects. It is clear that current arrangements reflect the often 'silo' approach to working of both Whitehall departments and local authorities. Looking at the process businesses follow from concept through to operational completion has highlighted problem areas, many of which are familiar from previous work.

1.7 Much of the Review's evidence, gathered through responses to the call for evidence and direct contact with businesses, representative bodies, practitioners, non-governmental organisations and consenting bodies, was qualitative rather than quantitative. A list of those organisations and individuals that have contributed to the Review is at Annex B. The absence of consistent, centrally available data about many of the consents means that is it has been impossible either to establish the prevalence of problems identified by contributors or to cost them. Nevertheless, the perceptions of problems were sufficiently consistent and widespread – coming from large

and small businesses and a range of sectors as well as being recognised by consenting bodies – to make the case for trying to improve the way in which non-planning consents operate.

1.8 Business contributors to the Phase 1 of the Review wanted to see action taken to reform those consents that they experience as most problematic. They identified three groups of regimes as priorities. They were:

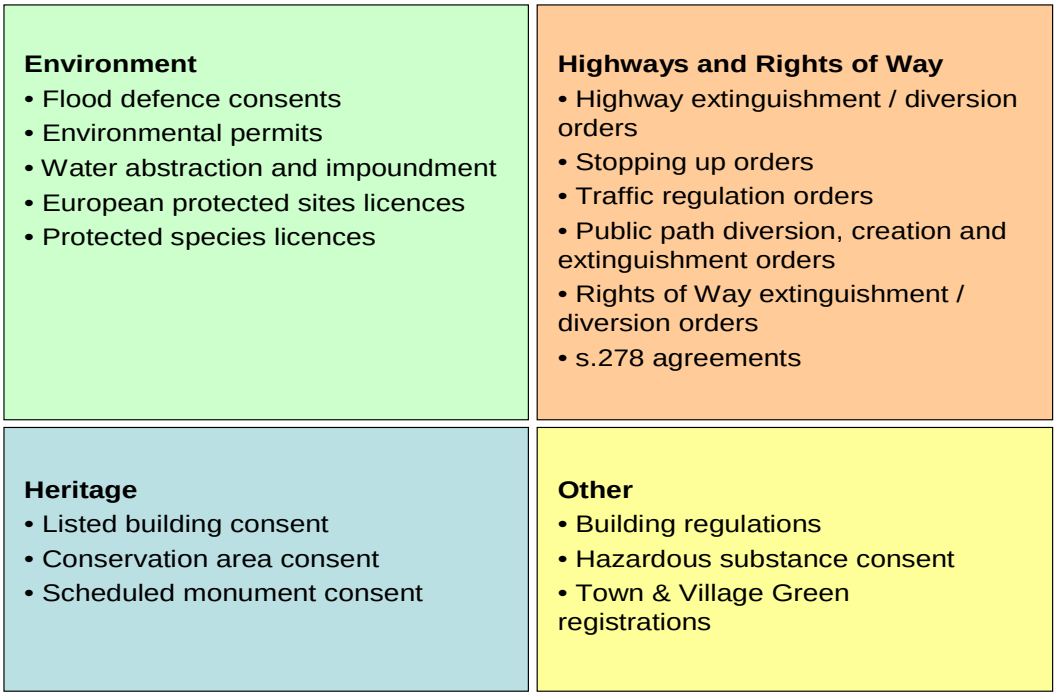
- **Heritage consents** – listed building consent, conservation area consent and scheduled monument consent;

- **Highways and related consents** – highways orders, related funding agreements under section 278[4] of the Highways Act 1980, the wider group of orders affecting public rights of way; and

- **Environmental consents** – a range of consents, broadly split between those dealing with pollution and those focused on conservation and protection of species.

1.9 In addition, a few specific consents and related provisions (such as town and village green registration) were mentioned by contributors to the Review as causing difficulties. Those considered during the second phase of the Review are listed in Figure 2.

Figure 2: High priority regimes



[4] Agreements under section 278 of the Highways Act 1980 between the highways authority and the developer about payment for highways works that are needed to implement a development scheme.

Phase 2 work streams

1.10 The Review found that the main risks for businesses associated with non-planning consents arise from the complexity of the landscape and uncertainty, especially about the timing of decisions. Whilst they recognise the importance of the policy objectives that underpin individual non-planning consents, businesses want to see changes that bring greater certainty, speedier decisions, reduced duplication and bureaucracy and lower costs, for themselves and for decision-making bodies.

1.11 With these outcomes in mind, and building on the findings of the interim report, the work streams for Phase 2 of the Review have broken down into four areas aimed at:

- Changing working practices and addressing resource constraints in consenting bodies;
- Simplifying the non-planning consent landscape;
- Improving the interaction between planning and non-planning consents; and
- Identifying appropriate owners for action and the mechanisms that will be required to implement changes.

1.12 The Review has been mindful of the pressures on public spending, which mean that decision makers need to find ways to do more with less; and also of the costs associated with change in local authorities and other consent-givers. The new Government's proposals to reform planning create an opportunity to embed wider changes affecting non-planning consents alongside those reforms.

Chapter 2 – Changing Working Practices

Findings of Phase 1 work

2.1 In its first phase, the Review identified eighty six non-planning consents and a further thirty seven business-specific operating consents[5]. Many of these consents have the potential to have a significant bearing on the decision by a business as to whether or not to go ahead with a particular development. They are administered by about twenty different types of consenting body, including central government departments, agencies, non-departmental public bodies and local authorities, where decision-making is split across different tiers of local government and different departments within the same local authority. These decision makers have diverse national and local remits and different funding, management and reporting arrangements.

2.2 The Review's interim report found that inconsistency and frustration often characterise developers' experience of working with consenting bodies. Whilst recognising the at times impressive work being done by individual consenting bodies to improve performance, the interim report concluded that there are still substantial gains to be had from further driving good practice. Those gains could benefit:

- Developers – in terms of reducing delay and increasing certainty;
- Consenting bodies – in terms of being able to free up resource so it can be redirected towards their highest priorities; and
- The local community and wider interests – in terms of greater transparency and certainty arising from efficient and accountable processes.

2.3 During Phase 1 the Review identified four broad areas of concern arising from the way consenting bodies operate, which have formed the basis of further work during the second phase of the Review. They are:

- **Service culture** – The absence of published performance indicators and timescales in some consenting bodies and the ability to extend timescales where they do exist create uncertainty for applicants; whilst decision makers would like to see an improvement in the quality of applications they receive;
- **Co-ordination and governance** – Problems arise when several different bodies are involved in considering a development proposal and no single body is responsible for resolving conflicting or contradictory advice / decisions or for overseeing the development process generally;

[5] See Footnote 3, Annex C and Annex D

- **Skills and resources** – Resources within consenting bodies are limited and in some areas there is lack of dedicated expertise. This problem is likely to become more acute, given current spending pressures; and

- **Accessibility of Information** – Although there is lots of information about non-planning consents available it is fragmented. Developers need to be able to find out about relevant non-planning consents (and the likely approach of the regulator) easily and early in the development process.

This Chapter focuses on those areas where local authorities and other consents decision makers can, for the most part, take action within existing frameworks. Chapter 3 considers potential changes to the non-planning consent regimes themselves that could also help to ease resource pressures.

Reinforcing a service culture

2.4 Businesses told the Review that they frequently lack certainty about the timescales within which their consent applications will be considered, the standards that apply to that consideration and the avenues available to them if those standards are not being met. They put this down to the absence of an appropriately service-oriented culture within decision making bodies.

2.5 For their part, non-planning consent decision makers pointed out that they do not always get the information they need from applicants and have to use scarce resources in dealing with applications that are not fit for purpose. They also raised a number of factors that they believe need to be taken into account to ensure that a balanced and proportionate consenting system is in place. They are:

- The relational nature of the development consenting process that operates most effectively where developers work with regulators and regulators work with each other on different projects, over a long period of time to build up trust and understanding;

- There are, in some cases, limits to the extent that frontline staff, particularly in local authorities, can be 'empowered' to give authoritative advice in the context of what may ultimately be a politically determined decision-making process;

- Inherent resourcing difficulties in substantially extending the flexibility of the consent application process for developers; and

- Occasionally, perverse incentives arise from setting standards and organisations being driven to meet targets rather than taking a more rounded view of the overall development process.

2.6 Wider practice across all sectors suggests that organisations which have a robust and responsive service culture also commonly publish their business objectives and related service standards, as well as reporting performance against them; actively seek feedback from users and other interested parties; and have in place a well-publicised mechanism for resolving complaints when things go wrong. They also take steps to help users to 'get it right first time'.

2.7 We see no reason why these basic features of a customer focused organisation should not apply to non-planning consent decision makers. They are highly relevant to addressing a number of the concerns expressed by businesses. At the same time, the Review recognises that businesses have an important part to play if the consenting system is to operate smoothly and flexibly.

Service standards – current practice

2.8 There are a number of mechanisms by which non-planning consenting bodies currently seek both to promote and drive their own performance and help developers and their agents to get their consent applications right first time. More detail about some of the service standards and performance measures used by non-planning consent decision makers to underpin their approach to customer service is set out at Annex C. Approaches taken by decision makers include:

- Strict legal or code imposed time limits for dealing with, or commenting on, consent applications;
- Internal management measures such as casework quality standards, submissions facilitated by electronic means and other 'key performance indicators';
- General customer service charters;
- Specific 'charters' in relation to particular consents that lay down the standards expected from developers and consenting bodies; and
- Bilateral memoranda of understanding with specific developers.

2.9 Whilst there is much good practice amongst non-planning consent bodies, there is also a notable lack of consistency in approach. In particular:

- Some consenting bodies, such as local highways authorities, have no basic time standards for progressing non-planning consent applications;
- Few decision makers make use of quality standards beyond timeliness indicators to measure their performance;
- Escalation measures for applicants when they encounter problems are not always clear;

- In some areas, little is done to encourage (or make it easier for) applicants and their agents to get their application right first time; and

- Whilst some regulators use media such as internet-based feedback and customer satisfaction surveys to monitor and improve their performance, the approach to gathering customer views and publication of performance data is inconsistent.

2.10 The planning system has for some time used performance indicators to help incentivise desired behaviours and raise standards amongst local planning authorities in dealing with planning applications. The Killian Pretty Review[6] recommended that the Government should replace the current time-based national indicator[7] with a new indicator measuring 'satisfaction with the planning application service'. In response, the Department of Communities and Local Government (CLG) is exploring options for measuring planning performance in a more holistic way. Following consultation events with representatives of the development industry and planning authorities a pilot set of indicators have been generated for testing by twenty one local planning authorities over a three month period (April – June 2010). These are built around four areas:

- Pre-application advice;

- Timeliness of decision-making;

- Certainty and consistency; and

- Post-decision service.

The results of the pilot will inform thinking on alternative approaches to understanding the quality of the planning service and a consistent means of measurement across local planning authorities.

Service standards – a proportionate approach for non-planning consents

2.11 The Review considers that a structured approach to setting service standards, to dialogue with interested parties and transparency about performance are all relatively light touch means by which decision makers can consciously and directly address performance issues and help to embed a service-oriented culture. There are five specific steps the Review recommends decision makers should take.

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[6] CLG, 'The Killian Pretty Review: Planning Applications: A Faster and More Responsive System, Final Report' (November 2008) http://www.planningportal.gov.uk/uploads/kpr/kpr_final-report.pdf

[7] Planning Indicator NI157 aims for 60% of major (large and small scale) applications to be processed within 13 weeks, 65% of minor applications to be processed within 8 weeks, and 80per cent of other applications to be processed within 8 weeks.

2.12 The first step is to give overt recognition, at an appropriate level, in decision makers' business objectives to the contribution they make to sustainable development and economic growth through their consents related activity. Such an objective should draw the attention of those doing the work to the rationale for what they do and to the need for them to work collaboratively with other parties, such as planners, who make a similar contribution to sustainable development.

2.13 Secondly, it is essential that all decision makers put in place appropriate service standards for dealing with applications for non-planning consents and monitor their performance against them. Here it is worth learning lessons from the experience of planning with time-related targets. One of the reasons that the planning system is moving towards an indicator of 'satisfaction' is because the current time-based targets are seen as generating problems of their own. For instance, meeting the time target can become more important than quality of service and applications that are not dealt with within the prescribed timetable may cease to have priority. Nevertheless, as part of an overall package of performance criteria, the Review still sees an important role for timeliness indicators for non-planning consents in order to clarify expected timeframes and enhance certainty for developers. The work being done in CLG to develop a 'satisfaction' indicator for planning provides a useful model on which non-planning consent decision makers can build. The Review recommends that non-planning consents decision makers adopt and adapt (as appropriate to their circumstances) the types of performance measures being considered for planning.

2.14 Thirdly, to ensure the process of assessing performance reflects customer needs, it should be underpinned by feedback obtained from those involved in the non-planning consenting process (applicants, including those whose applications have yet to be determined, and agents; specialist advisers; other regulatory bodies; and the wider community). Decision makers should also undertake periodic surveys of customer satisfaction. The surveys should consider a range of relevant factors, including the quality of service experienced by the applicant and the timescale for determining the application. This does not have to be resource intensive activity. Simply asking applicants for feedback through a one-page questionnaire after an application has been dealt with can give excellent pointers to areas for possible service improvement. The mere fact of asking for feedback also helps to establish it as something that matters and reinforce a service culture.

2.15 Fourthly, the Review thinks it important that clear complaint procedures should be available where applicants believe things have gone wrong. Inevitably, there will be occasions where decision makers and consent applicants cannot agree either on fundamental issues (such as whether a consent should be granted) or on more detailed issues of procedure or technical standards. To ensure transparency of complaints processes, basic information about their operation (the number of complaints received and how they have been resolved) should be published by consenting bodies annually alongside other performance data.

2.16 Finally, it is important to ensure that users can find out how well decision makers are performing. To achieve transparency in monitoring and evaluating regulatory performance, the Review contends that all decision makers should publish statistics annually detailing how actual performance compared against the indicators.

Helping the developer 'get it right first time'

2.17 As noted above, as well as looking at the role of consenting bodies, it is also important to understand what more they can do to encourage good practice by developers and their agents in submitting high quality applications with a good chance of success. Many applications are rejected for incompleteness, inadequate or inaccurate information or for not meeting the necessary technical specifications of the application process. Others are simply doomed to failure from the outset because of a lack of understanding on the part of the applicant of the suitability of the location for the particular development or because of the essential public interest considerations in play when the application comes to be considered. This is wasteful of resources within consenting bodies and frustrating for applicants.

2.18 The problem of poor applications is illustrated by the experience of Natural England in respect of applications for European protected species mitigation licences. In 2009, 849 new applications and 451 requests for modification to such licences were processed. Of these, just over 50 per cent (655) had to be resubmitted because of inadequacies in the application. Natural England are pursuing a two-pronged approach to addressing the issue:

- Improving the guidance they make available to applicants and placing a greater emphasis on the developer (or their agent) getting the application right; and

- Minimising the consequences of resubmission, for example by working towards this being done by electronic means and breaking down the necessary Method Statement into its constituent parts so that it can easily be updated and resubmitted if necessary.

All of these changes will have taken effect later this year. As part of its commitment to on-going improvement, Natural England will be assessing their impact on the number of resubmitted applications once they have had to time to bed down.

2.19 For their part, in an effort to reduce the proportion of applications that are turned down because they provide insufficient information, English Heritage aims to give practical advice and has introduced a more formal 'contract' between the decision maker and the developer[8]. This sets out in some detail the types of plans, photographs, drawings, explanations,

[8] English Heritage, 'A Charter for English Heritage Planning and Development Advisory Services' http://www.english-heritage.org.uk/publications/charter-for-planning-development-advisory-services/charter_6pp.pdf/

justification statements and specialist reports that may be required for a successful heritage consent application. It also contains a checklist of the information it requires in its role as a statutory consultee on proposals affecting nationally important heritage assets such as listed buildings and scheduled monuments.

2.20 The Review commends Natural England and English Heritage for their focused action to improve the quality of applications. It demonstrates the importance of thinking actively about, and responding to, problems encountered by applicants. It also illustrates the responsibility of both developers and regulators in ensuring the smooth and transparent consideration of consent applications. Additionally, these are both cases where some front-loaded investment can lead to an expectation of longer term resource savings for consenting bodies. Action of this sort needs to be based on a thorough analysis of the nature and scale of the problem, informed by feedback from users, and should be targeted to address specific problems.

Drawing it all together – the 'quality development code'

2.21 The Review sees raising performance in delivery of non-planning consenting services as a two way contract between regulators and developers. Both have strong interests in ensuring the process works as efficiently, transparently and predictably as possible and in embedding a service culture within decision makers. As a mechanism sitting at the heart of the specific proposals outlined above, the Review recommends that individual consenting bodies should draw up a 'quality development code' setting out their commitment to their users and what applicants need to do to ensure that their application can be processed quickly and smoothly.

2.22 Annex D sets out a framework of the kinds of issues, standards and information that should be covered in a comprehensive quality development code. It has been compiled from looking at a number of local government, regulatory agencies and private sector approaches to customer relations generally and development and project management specifically. The contents of the code should be determined by each consenting body, in consultation with key interested parties, according to the specific nature of that body, the type of consent concerned and the number of annual applications. At local authority level, it would make sense to have a single document covering planning and non-planning consent activity pulled together in one place in order to provide developers with an overview of what they should expect and to emphasise the need for different parts of the local authority to work together, and with others, in handling the full range of development consents.

2.23 As a minimum, the following should be included:

- Express recognition of the contribution of consenting activity to sustainable development and economic growth and the need for collaboration with others involved;

- Basic service standards (to include 'satisfaction' indicators addressing, pre-application advice, timeliness of decision-making, certainty and consistency and post-decision services);

- Information about available complaint processes; and

- Information about the technical and other standards expected of consent applicants (and their agents) and appropriate means of fulfilling these.

2.24 As well as setting out service standards in a quality development code, decision makers also need to commit to publishing information about their performance against those standards and to seeking and acting on customer feedback. Transparency of performance against consenting bodies' own standards and those of other regulators will provide benchmarks and help identify good performance and areas for improvement.

Recommended actions

2.25 There are clear benefits to be had, for regulators and those promoting development alike, from action to embed a service culture. The evidence suggests[9] that adopting a system of robust and transparent performance standards, coupled with feedback mechanisms and complaints procedures, has a positive impact in terms of informing users about the performance of organisations, understanding the outcomes achieved and identifying opportunities for improvements. Ensuring that consenting bodies publish robust data about the quality of their services will allow developers to hold consenting bodies to account and make consenting bodies focus on quality improvement, enabling more cost-effective targeting of services and potentially unlocking cost savings in consenting bodies.

2.26 Likewise, taking steps to improve the quality of applications should not only improve the applicant's experience but also, critically, save resources by reducing the need to ask for applications to be reworked; reducing queries and complaints about returned applications; and reducing the number of applications that were never likely to succeed.

2.27 There will, of course, also be costs to regulators in setting service standards, monitoring and publishing performance data and setting up complaint mechanisms where they do not currently exist. By drawing action together through the proposed 'quality development code', those costs should be kept to a minimum. They must also be seen in the light of the clear benefits outlined above in terms of their potential to raise the quality and consistency of services across the board.

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[9] For instance, these effects were mentioned in Department for Health, 'Impact Assessment of NHS (Quality Accounts) Regulations 2010' (January 2010) p. 7 http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_112461.pdf Whilst these related to data on the performance of healthcare providers, it is considered that the principles would apply to non-planning consent areas.

Recommendation A – In order to incentivise non-planning consenting bodies, applicants and their agents to demonstrate the behaviours needed to deliver timely, transparent and efficient consenting services, Government should take steps to ensure that non-planning consent decision makers:

- Recognise, at an appropriate level in their business objectives, the contribution they make to sustainable development through the decisions they take on non-planning consents;
- Publish a 'quality development code' containing:
  - Indicators of 'satisfaction with the non-planning consent application service' for their non-planning consent activity;
  - A clear statement about the availability of guidance and opportunities to access pre-application advice;
  - Information about complaint processes;
  - Information about technical and other standards expected of consent applicants (and their agents) and appropriate means of fulfilling these;
- Publish annual statistics of performance against their 'satisfaction' indicators and the operation of the complaints processes; and
- Undertake periodic surveys of customer satisfaction.

Improving co-ordination and governance

2.28 Respondents to the Review noted difficulties arising from having multiple (public sector) bodies involved in decisions and asked for improved governance around decisions, more consistent advice and a clear path for resolving difficulties as and when they arise. The problems experienced by developers fall into two broad categories:

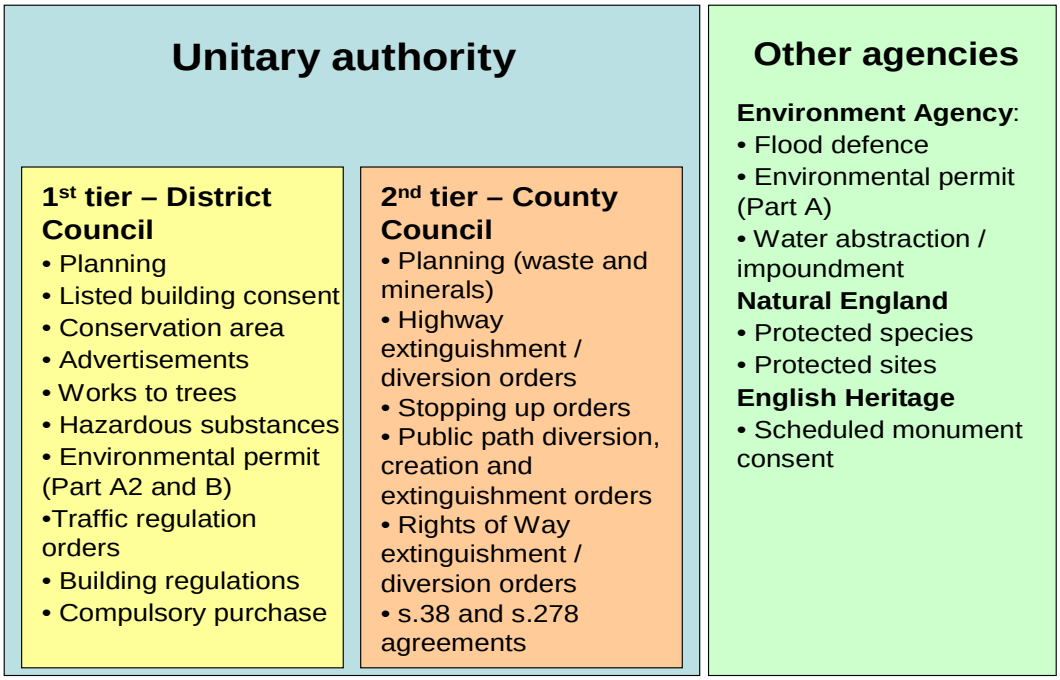
- Those involving a number of regulators, where their differing and sometimes contradictory roles and objectives can cause confusion and lead to delays; and
- Those associated with the absence of formal frameworks to enable effective discussions and project management.

2.29 There have been a number of recent attempts to tackle the problems described above. In broad terms though, there appear to be two levels where changes can be made to deliver more effective co-ordination and governance. At institutional level, there is scope to extend formal development management practices, which appear to have worked well in some local authorities, and serve as a template of good practice; whilst existing tools, such as planning performance agreements (PPAs) offer opportunities to improve governance at the level of individual cases.

2.30 As illustrated in Figure 3, local authorities are responsible both for planning decisions and for many of the non-planning consents seen by businesses as high priorities for improvement. This gives them an exceptional

vantage point across the end-to-end development process and means that they are uniquely placed to co-ordinate development-consenting activities, even where individual non-planning consent decisions rest with another body. Bolstering the co-ordinating role of the local authority, both in terms of cultural approach and formal underpinning through enhancing pre-application discussions and making more extensive use of PPAs, should improve developers' experience.

Figure 3: Decision makers for planning, principal non-planning consents and related regimes



2.31 In recent years, the traditional 'development control' approach to processing planning applications and enforcing contraventions, which often took a reactive and cautious approach, has evolved into the concept of development management. Development management is typically led by the local planning authority, working closely with those proposing developments and other interested parties, and consists of a positive and pro-active approach to shaping, considering, determining and delivering development proposals. Its current focus is principally on planning but, given the way that planning and non-planning consents interact, the Review believes there is a strong case for extending the concept to encompass non-planning consents. The collaborative, inclusive approach that characterises development management is clearly highly relevant to the co-ordination and management of the range of development consenting regimes – whether or not they fall within the ambit of local authorities.

2.32 At its simplest, development management is a set of working practices, led from within the local authority, aimed at delivering a co-ordinated and customer-focused service to businesses which are embarking on development projects. It is not a new proposition. Work done in the late 1990s

under the sponsorship of the then Department for the Environment, Transport and the Regions piloted the use of a 'one-stop shop' for businesses looking to expand or move to new premises. Four local authorities piloted a 'development team' concept to provide a more co-ordinated and customer-oriented approach to development projects. As a minimum they provided:

- A single point of initial advice for all relevant approvals given by the local authority and those given by other bodies, such as water companies and the Environment Agency;

- A co-ordinated approach to pre-application discussions;

- A case officer to guide the applicant through the various approval processes;

- Arrangements, where appropriate, for liaising with other consent-giving bodies;

- Arrangements, where appropriate, to co-ordinate enforcement visits by both the local authority and relevant external agencies in relation to the design and construction of the development; and

- Publicity to raise awareness of the facility and arrangements to obtain feedback from users.

2.33 The work resulted in publication of what was effectively a guide[10] for local authorities wanting to use the approach. The benefits of the pilots were summarised as:

- Potential cost savings for both developers and the local authority through the identification of issues and problems at an early stage leading to quicker identification of mutually acceptable solutions, better quality of submitted applications and, in some cases, work being discontinued on unrealistic proposals;

- Greater user satisfaction from comprehensive information and advice being more readily available from a single advice point and the case officer;

- A more positive image for the authority which is seen as helping to identify possible solutions to problems rather than erecting bureaucratic barriers;

- Improved communication within the authority and with external bodies as the relationships between different consent regimes became better understood; and

[10] CLG, 'The One-stop Shop Approach to Development Consents' (June 1997) http://www.communities.gov.uk/publications/planningandbuilding/onestop

- Better relationships with developers as a result of the various consent processes being better integrated and streamlined.

2.34 The work done over a decade ago demonstrates that much can be done by local authorities within the existing framework to improve the end-to-end service they offer to developers. Since then, development management has evolved and, although the basic elements remain fundamentally unchanged, there is a growing body of good practice associated with it. In a recent exercise to test and extend the concept, for example, Cheshire East Council, working closely with other local councils, fire and police services, focused on how they could streamline their development-related processes, by challenging all aspects of the way they deliver services. This resulted in proposals for extensive transformation of their working practices. The key features of their approach are described in Box 2.

Box 2: Development Management in East Cheshire

Key features of the approach were:

- Information technology – resolving capacity and reliability issues; data migration from various legacy computer and paper-based systems being consolidated into a single IT system; new pre-application, enforcement and land charges modules;
- Customers / access – surveys indicated that 94 per cent of users preferred telephone contact; the most frequent query was: 'What is the status of my application?'; work has begun on a new customer contact process;
- End-to-end processes – Planning application process was reviewed and an original 179-step process is to be reduced using lean techniques; work to implement improved enforcement, pre-application, monitoring and land charges processes underway;
- Performance Management – started from what customers wanted and developed a suite of indicators covering accuracy (percentage applications invalid), hits on website, communication (percentage using e-mails), timeliness of determination and quality of decisions (percentage of appeals lost and percentage approved with pre-application advice), staff training and development;
- The Web – online survey drew up customer wish list, moving to web forms to comment on planning applications and submit enforcement complaints;
- Development Team – multi-disciplinary team to offer pre-application advice on major schemes and will be tested shortly; and
- Income Generation – creation of 'development solutions package', including pre-application advice surgery, 'While U Wait' validation of applications, mediation/community facilitation service, design and access statement surgery.

2.35 The holistic approach that local authorities, such as Cheshire East, have adopted has the potential to bring benefits for all parties involved in development projects. The Review sees particular merit in local planning authorities appointing, as a matter of course, a designated development co-ordinator for major or complex projects in order to monitor and manage the consideration of all non-planning consent applications alongside planning in a systematic manner. This service could be made available for a fee payable by the developer and so the costs could be recouped. The benefits to developers are clear as, for major or complex projects, they would be provided with a resource – from within the local planning authority – focused on helping to ensure that the planning and non-planning consent processes are well managed. The Review therefore concludes that this facility should be made more widely available.

Pre-Application discussions

2.36 Good practice, including that outlined above in relation of development management, gives considerable weight to pre-application discussions within the planning process. Pre-application discussions give the planning authority, working with non-planning consenting bodies and developers, an early opportunity to identify the critical risks associated with a proposal and to minimise the time and effort expended on projects which are not capable of achieving consent agreement or where the costs of securing consent agreement would make it unviable. In certain cases, non-planning consenting bodies are statutory consultees of the planning process and involvement in pre-application discussions gives them their first chance to identify potential 'show-stoppers' for developments so that applicants can take them into account.

2.37 To maximise the benefits of pre-application discussions, it is essential that the key non-planning consenting bodies relevant to a particular development should be involved from the outset (as well as other interested parties, such as the National Amenity Societies[11] in the case of heritage consents). Such discussions should be proportionate to the scale and complexity of the development and reflect the resources available and the willingness to engage of the parties involved. Positive pre-application discussions can help to give a developer a realistic understanding of the chances of their application succeeding and the changes they may need to make in order to comply, thus enabling them to manage associated risks effectively.

[11] National Amenity Societies (The Ancient Monuments Society, Council for British Archaeology, Society for Protection of Ancient Buildings, Georgian Society, Victorian Society Twentieth Century Society and the Garden History Society) cannot determine non-planning consent applications but offer advice to help councils reach an informed decision about the suitability of proposals relating to heritage.

2.38 At present, pre-application advice is not binding and the Review recognises that, notably within local authorities, some degree of flexibility is necessary between advice at pre-application stage and the determination of a finalised application. However, as a minimum, it is essential that there is as much consistency as possible in the service provided and that, where a non-planning consent decision is not determined consistently with pre-application advice, a clear explanation is given.

2.39 Additionally, it is common practice when they grant planning permission for local planning authorities to remind applicants, through what are known as 'informatives,' of the additional consenting processes applicants need to undertake. The Review sees merit in asking planning authorities to provide such notification as part of pre-application discussions.

Planning Performance Agreements (PPAs)

2.40 PPAs are a relatively new concept, introduced in April 2008, following a successful pilot. A PPA is essentially a framework agreed bilaterally between a local planning authority and an applicant for the management of development proposals. It allows both parties to agree a project plan and programme, which includes the allocation of appropriate resources to enable the application to be determined according to an agreed timetable. Agreeing the timetable up front encourages early discussion of the issues and processes to be followed. Their use is currently being supported by the Advisory Team for Large Applications (ATLAS)[12], who have an active programme of providing independent PPA 'inception days' for major schemes.

2.41 Whilst they have been welcomed by developers, they have not been used as extensively as anticipated. Informal views acquired in the course of the Review have mirrored reservations expressed to the Killian Pretty Review[13]. Potential users said that they regard PPAs in their current guise as too formal and resource intensive to be widely applicable. There is, nevertheless, merit in applying many of the good practice techniques of PPAs to a wider range of developments, provided a proportionate approach is taken, and for extending their scope to encompass non-planning consents as well as planning. In applying PPAs to non-planning consents, it is, however, important that the timetable and performance standards that apply to planning are not extended or diluted.

[12] ATLAS was set up in 2004 as a pilot scheme by the then Office of the Deputy Prime Minister to provide an independent advisory service to local authorities under pressure from increased development activity. The team is hosted and delivered through the Homes & Communities Agency. ATLAS offer local authorities advice on a broad range of issues relating to the delivery of large projects ranging from general project management guidance to advice on the planning process. Further details are available at:
http://www.atlasplanning.com/page/index.cfm

[13] See Footnote 6

2.42 The Review believes that PPAs are a useful tool and the Government should take further steps to encourage their use. In particular it should make it clear that the full approach to PPAs set out in recent guidance[14] is designed to provide a framework for the most complex schemes, but a more streamlined and proportionate approach, centred on an agreed timetable which is kept under review, should be used where appropriate and acceptable. Thus for smaller and less complex schemes, a much simpler approach to a development performance agreement, centred around an agreed timetable, may be all that is required.

Recommended actions

2.43 Whilst there is now extensive experience of development management in parts of local government, the evidence received by this Review indicates that the good practice identified has not been universally adopted. Further efforts by central Government and the Local Government Association to promote these ways of working are an essential step if developers are to get the benefits of improved services and local authorities are to make the most of hard-pressed resources. The Review concludes that adoption of existing good practice in development management will go a long way towards providing the improved co-ordination and governance that businesses said they would welcome. Such measures would lead to a reduction in delays, increased certainty and greater consistency in processing and consideration of consent applications as a result of increased transparency and improved handling of applications and earlier identification of potential problems.

Recommendation B – To make the development consenting process more effective and improve the co-ordination and governance of decisions involving multiple consenting bodies or consultees Government should:

- Encourage local authorities to adopt 'development management' good practice, including:
  - Appointment of a designated development co-ordinator for major projects to monitor and manage the taking forward of consideration alongside planning of all non-planning consent applications in a systematic manner; and
  - Extending the use of planning performance agreements (PPAs) for major developments by enabling non-planning consent issues to be included within them and reinforcing the principle that a more proportionate approach to PPAs is acceptable for smaller proposals.
- Take steps to ensure that non-planning consenting bodies, including local authorities, include a clear statement in their 'quality development code' (see recommendation A) about the guidance and advice that they offer at the pre-application stage.

[14] CLG, ATLAS, 'Implementing Planning Performance Agreements. Guidance Note' (April 2008)
http://www.atlasplanning.com/page/topic/index.cfm?coArticleTopic_articleId=98&coSiteNavigation_articleId=98

Addressing resource pressures

2.44 Respondents to the call for evidence recognised resource pressures in consenting bodies as a contributing to delays in the non-planning consent process. As the interim report acknowledged, resource pressures exist, to a greater or lesser extent, for all non-planning consents. Pressures are expected to grow as steps to tackle the national deficit take effect across all parts of the public sector. The onus, therefore, will be on finding innovative ways to make the best possible use of existing staff; introducing fees or other forms of charging to enable the provision of additional services; and identifying opportunities to change the non-planning consent regimes so that they are less 'resource hungry'. The latter are dealt with in Chapter 3.

2.45 For local authorities, their small size and relatively low transaction numbers mean that it can be difficult to maintain the breadth and depth of expertise needed to fulfil all consent-giving responsibilities. Even national consenting bodies, where it is easier to maintain a pool of specialist expertise, can experience difficulty in maintaining capacity and resilience within the context of shrinking budgets.

Resources and skills in the field of heritage related consents

2.46 Respondents to the Review identified heritage consents as an area of particular concern, in terms both of absolute resource levels and of availability of expertise. English Heritage has taken a lead in addressing these issues and there is now a body of research in the heritage field and some emerging good practice. This shows that:

- Although central guidance[15] requires local authorities to have appropriate expertise to consider heritage-related consents, the situation is not consistent across all local authorities. One recent report[16] concluded that 'Building conservation staffing is variable across England; in some local authorities, building conservation is well-provided for but others appear to lack any specialist provision at all';

- There are examples of innovative working arrangements to maximise resource usage among some local authorities;

- There is a role for professional bodies (such as the Royal Institute of Chartered Surveyors and the Institute of Historic Building Conservation (IHBC)) in monitoring the situation and setting appropriate competence standards; and

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[15] CLG, 'Planning Policy Statement 5: Planning for the Historic Environment' (March 2010) http://www.communities.gov.uk/publications/planningandbuilding/pps5

[16] English Heritage, Association of Local Government Archaeological Officers, Institute of Historic Building Conservation, 'Implementing the Heritage Protection Reforms: A Report on Local Authority and English Heritage Staff Resources' (May 2009) http://www.english-heritage.org.uk/publications/implementing-heritage-protection-reforms/implementing-hpr-staff-res-20090507152928.pdf/

- English Heritage has become a central focus of expertise, training and advice as well as being a mechanism for sharing good practice amongst local authorities.

2.47 English Heritage's role is crucial. The interim report noted its comprehensive approach to improving its own service delivery and culture as an example of good practice in addressing performance shortfalls. It has also been instrumental in helping to strengthen heritage-related skills in local authorities. For example, its historic environment local management (HELM) initiative, working with key partners, aims to provide the tools to manage change in the historic environment with increased skill and confidence. HELM provides accessible information, training and guidance to decision makers in local authorities and national organisations whose actions affect the historic environment.

2.48 The skill requirements for conservation officer roles in local authorities include, but go beyond, technical and professional skills in design, construction methods and understanding of the historic environment. The IHBC, for instance, lays down eight core conservation competences for full membership, that include finance and economics alongside competences related more directly to conservation itself. Whilst recognising that an over prescriptive or rigid approach to professional standards could run the risk of making skills shortages worse or add unnecessarily to costs, the Review strongly supports greater recognition of the need for appropriately trained and qualified professionals to deal with non-planning consent applications. This will ensure the right quality of advice is in place, reduce the need for rework of consent matters and lessen the likelihood of important issues not being identified at the outset.

2.49 Looking at the resource situation specifically in the heritage field, the Review draws a number of conclusions that apply more generally across consenting regimes: the adequacy and consistency of regulatory resources available in local authorities is a cause for concern; there are a number of key actors – Government, regulators, professional bodies and those with a wider interest in the consenting area under consideration – who need to be involved in evaluating and determining the appropriate technical skills necessary; and that these problems can be addressed (if not definitively solved) by close evaluation, standard-setting and innovation in the usage of both public and private sector resources.

Sharing resources and skills in local authorities

2.50 The Review has found examples of pooling and sharing resources, especially in areas requiring technical knowledge or specialist skills. At a basic level, some local authorities are sharing resources and skills where the workload does not support their employing a full-time officer. For example, Wokingham Council has been receiving advice on a consultancy basis from a conservation officer at Windsor and Maidenhead, who also provides advice to Bracknell Council. They also have a joint archaeology contract with six other local authorities based in Reading. Their experience of sharing resources is a

positive one in terms of reducing costs and working more efficiently and the Review sees merit in seeking to mainstream this type of activity.

2.51 Again, the planning system has useful experience to offer. The Planning Advisory Service has been actively involved in supporting and monitoring activities by local authorities to make better use of available resources[17]. Box 3 gives more information about their work. They list a number of examples reported by councils of successfully using partnerships established with internal and external local service providers to provide additional knowledge and skills. These include:

- Sharing officer appointments between housing and planning functions to increase resources for affordable housing work;
- Using the property management department to provide viability information;
- Sharing posts with other authorities;
- Jointly commissioning consultants;
- Restructuring corporate budgets to allow for project based working; and
- Sharing evidence with local partner organisations in order to assess the likely outcomes from a proposed development.

Box 3 – Role of Planning Advisory Service (PAS) in encouraging resource sharing

PAS worked with planning authorities in Surrey, Hampshire and the Isle of Wight, Blackburn and Hyndburn and Northumberland between 2006 and 2008 to stimulate resource sharing. In each case PAS responded to initial contacts from the local authorities who needed support, to explore the potential for more effective joint working including collaborative service delivery.

During this period, PAS developed a methodology for exploring the ideas through facilitated workshops with staff. The process was deliberately inclusive in the belief that people are more likely to support changes which they have had a hand in creating. This led to the 'Real Collaboration'[18], the PAS guide to setting up collaborative working relationships in planning.

PAS has further proposals for working with local authorities on shared service development within its business plan for the current year. This work will build on the earlier collaboration projects and also the work being done to encourage better service management and efficiencies within the delivery of planning services[19].

[17] Further details are available on the website of Planning Advisory Service at: http://www.pas.gov.uk/pas/core/page.do?pageId=342238#contents-1
[18] See: http://www.pas.gov.uk/pas/aio/46853
[19] See: http://www.pas.gov.uk/pas/core/page.do?pageId=589910

2.52 In Scotland, GL Hearn recently undertook a pilot project[20] to study the level of engagement in the development process between North Ayrshire Council, Perth and Kinross Council and the statutory consultees. This sought to define core business priorities of development management in line with planning reform; identify more effective, efficient and proportionate ways of working between councils and agencies; suggest improvements to business processes, including a more joined up approach to guidance and advice; and identify the necessary skills and knowledge required to build capacity and deliver the core business. A wide ranging package of recommendations included specific ideas in the skills and resources field. The project concluded that dedicated provision needed to be made for skills programmes within annual budgets; there was a need, in particular, for project management and key specialist skills (e.g. ecology, urban design and financial appraisal; and that shared capacity should be built through a programme of inter-agency and planning authority training, secondments and outsourcing within the Scottish Government and local authorities.

2.53 In order to optimise the resources and skills currently available, the Review is of the view that Government should do more to encourage local authorities to make the most efficient and effective use of the overall resources available. Wider sharing of support staff, technicians and others who could potentially work across boundaries would enable local authorities to free up resources to be used elsewhere and would also make it easier to identify and manage potential skills shortfalls. The Review strongly believes that more active promotion of the benefits of joint working with other councils and the private sector will help to mainstream good working practices in resource sharing and lead to a more efficient and effective utilisation of available resources and skills.

Fees and charges

2.54 Another way to address resource shortages for all decision makers is by charging fees for certain services. As outlined in the interim report, whilst primary legislation is usually needed to enable public bodies to levy a charge, many of the relevant regulators in the planning and non-planning consent field already have such powers. The Local Government Act 2003[21] gave local planning authorities the power to charge for services that the authority has the power, but is not obliged, to provide, such as pre-application advice. The income raised must not exceed the cost of providing the service. However, use of this power by local planning authorities is far from universal.

2.55 In April 2007 the Planning Advisory Service conducted a study[22] of local authorities, some of which did and some did not charge for planning pre-

[20] GL Hearn, 'Development Management: Business Change' (February 2010) http://www.glhearn.com/aboutus/pages/newsarticle.aspx?article=49
[21] Local Government Act 2003 http://www.opsi.gov.uk/acts/acts2003/ukpga_20030026_en_1
[22] Planning Advisory Service, 'A material world – charging for pre-application advice' (April 2007) http://www.pas.gov.uk/pas/aio/40105

application advice. The study found that those local authorities which did charge believed that it helped to filter out speculative and poorly thought out development proposals, and that promoters of schemes were generally happy to pay if they thought they would receive timely access to a planning officer and carefully considered written advice at the end of the process. Authorities found that adoption of pre-application fees provided an opportunity to better manage enquiries and significantly improve on previous response times through the adoption of explicit service standards. Barnet and Westminster Councils both reported a drop in refusals as unsatisfactory schemes were 'filtered out' and Westminster reported a drop in the number of large cases taken to appeal. Both authorities reported that charging had helped to fund extra posts or fill posts that would otherwise have been left vacant, thus enabling them to enhance the service they provided. Those local authorities that had opted not to charge were concerned that it might discourage development, particularly in those parts of the country where the economy was less buoyant. There was also evidence that some local authorities were reluctant to charge when neighbouring authorities did not as it might put them at a competitive disadvantage.

2.56 It is also worth noting that some planning authorities are now charging for all pre-application discussions, even for small scale domestic developments. This marks a distinct change in attitude since charging was first introduced when local residents were generally exempted from charges.

2.57 As well as charging for pre-application services, some local authorities also offer other development-related services in exchange for a fee, typically in relation to large or complex schemes. For example, the London Borough of Islington entered into a formal agreement with the developer of Arsenal Football Club's new stadium. This provided financial support to back-fill posts which would not otherwise have been filled, establish a local forum, facilitate local engagement and enable scrutiny of impact reports. The arrangement ensured a high level of focus could be given to the project management and consideration of the proposals, within an already very busy planning service. The agreement was drawn up to safeguard the interests of the community and ensure transparency by separating the additional funding from the posts that were dealing directly with the proposals. The arrangements also gave flexibility to fund budget commitments across more than one financial year.

2.58 Some national consenting bodies, likewise, charge fees for enhanced services. The Environment Agency, for example, provides fifteen hours pre-application advice as part of the application fee for more complex industrial applications and one hour for standard permit applications, but has powers to charge to extend this, with the applicant's agreement. The services provided under 'advice' can extend to a project management role to co-ordinate and progress all aspects related to obtaining the relevant Environment Agency permitting decisions for a development.

2.59 More fundamentally, the Environment Agency is also prepared to enter into broader agreements with developers, setting out the services they can expect in return for a fee. Box 4 describes the arrangement agreed between the Environment Agency and the developer in relation to projects at Hinkley Point and Sizewell nuclear power stations.

Box 4: Environment Agency and Nuclear New Build Projects:

In consultation with potential developers, the Environment Agency has developed a template[23] for agreements with any nuclear new build company that wishes to take up the Agency's offer of providing advice and guidance in relation to an authorisation under the Radioactive Substances Act 1993 (now under the Environmental Permitting Regulations) or other environmental permit applications.

The details are set out in a project-specific programme, setting out timetabling and information provisions and a dispute resolution mechanism. Its scope includes action to co-ordinate the inputs needed from the various parts of the Agency.

The charge-out rates in the agreement are based in legislation and the Agency's charging scheme has to be agreed annually by Defra. The rates are indicative of the skills required in the nuclear sector. The agreement sets a renegotiable cap on costs.

Such an agreement is in place for EDF's proposed developments at Hinkley Point in Somerset, and Sizewell in Suffolk. At these sites EDF's subsidiary, 'New Nuclear Build Generation Company', intend to build new twin 'EPR' nuclear power stations: in total providing enough low carbon electricity to power around 7 million homes.

For the regulator, the agreement enables early influence on the design, when change is easier to implement. For the developer, it provides greater confidence that their proposals should be acceptable. In addition, by encouraging design detail to be provided upfront, it helps develop greater certainty about the overall costs and timescales of these large and complex projects.

2.60 A key benefit of charging fees for services (apart from the obvious direct financial benefit to the consenting body) is that it reinforces a service culture. Once customers are paying for a service, they are more likely to hold the supplier to account and the supplier is similarly more likely to seek to provide an improved level of service.

2.61 Care, of course, has to be taken to ensure the increased use of fees does not become anti-competitive by favouring large, incumbent firms and creating a two tier system where small businesses receive an inferior service

[23] Environment Agency, 'Radioactive Substances Regulation: Management Arrangements on Nuclear Sites' (September 2009) http://www.environment-agency.gov.uk/static/documents/Business/GEHO0709BQXB-E-E.pdf

if they do not pay the charges. The need for an adequate 'basic' or 'standard' service that is not subject to an additional fee is a fundamental pre-requisite before a fee could be charged for a discretionary enhanced service. Furthermore, it is important to guard against giving the impression of developers effectively purchasing permits by ensuring that funding arrangements are transparent. It might also be argued that passing additional costs on to developers at a time of already high cost and risk would hinder rather than help the situation.

2.62 However, both charging and asking for contributions are already an established feature of planning so there is no point of principle at stake. And the majority of businesses contributing to the Review appear to be broadly supportive of this approach. The Review is therefore of the opinion that charging fees for discretionary services above a set minimum standard is a useful means of meeting developers' desire for improved service without exacerbating existing public sector resource pressures or adding significant costs for developers.

2.63 As noted above, there are existing precedents for charging fees and a number of other areas where the use of fees could be more widely considered in return for an enhanced service. These include pre-application advice; the provision of a project/development co-ordinator to proactively assist in the planning and non-planning consent application process; making available a 'fast track' application process; and a validation service of application forms before submission.

2.64 Although the Review supports the wider use of fees in exchange for enhanced services, steps need to be taken to ensure that the charging of fees does not create unfair advantage, dis-incentivise development or cause other undesired effects. Those steps are outlined in Box 5.

Box 5: Criteria for broadening the use of fees

Local planning authorities and other regulators should ensure that the following criteria are met before making wider use of charging fees for services. They should:

- Ensure that the standard level of service provided to developers (free of charge or for the standard fee) is set out clearly;
- Make clear the specific areas of the consent application process where an enhanced service is offered in exchange for a fee;
- Determine what developers can expect – for example, an enhanced service; faster processing; more engagement - in exchange for their fee;
- Establish an appropriate recourse for developers to pursue if they feel that the enhanced service was not provided despite payment of the charge;
- Ensure communications about paying for an enhanced service avoid giving the false impression that developers can effectively 'buy' consents; and
- Comply with Chapter 6 of HM Treasury's Managing Public Money.

Recommended actions

2.65 This Review is not seeking to make recommendations around fees and charges for 'standard' non-planning consent services – such charges often exist already and any recommendations around increases in such charges would need to be balanced with the need to reduce the burden on developers and considered against the Government's rules on fees and charges – for example, the need to ensure that the fee charged does not exceed the cost of provision. As outlined above, the Review does, however, see merit in charging for additional discretionary services, over and above the standard service offered and expected, which can make gaining non-planning consents easier for the developer.

2.66 The Review has therefore concluded that greater use should be made of charging for services by local authorities and national consenting agencies in order to meet developers' requests for an improved service but without adding to the clear resource pressures being faced by local authorities and national consenting agencies.

Recommendation C – Recognising that additional resources will not be available, Government should explore ways to mainstream good working practices in resource sharing, behaviour and culture in order to optimise use of resources and skills currently available and promote appropriate use of fees for discretionary services by:

- Requiring Departments to encourage local authorities to fully exploit opportunities for joint working with other councils and the private sector;
- Expecting that non-planning consent decision makers should continue to seek ways, working with and alongside professional bodies, to examine the resource and skills requirements in relevant non-planning consenting departments with a view to identifying opportunities for more efficient use of resources as well as addressing potential shortfalls; and
- Encouraging and enabling consenting bodies to make more extensive use of powers to charge for discretionary services ('premium services') such as the development co-ordination role, over and above minimum standards (such services should be optional for developers).

Improving accessibility of information on non-planning consents

2.67 Although extensive information on non-planning consents is available on the internet and through other channels, it is fragmented across many sources and can be difficult for inexperienced users, such as small businesses, to find. In its interim report, the Review concluded that improving the availability and accessibility of information about non-planning consents seemed likely to be a 'quick win', bringing benefits in particular for those businesses which are infrequent promoters of development projects. Phase 2 of the Review has therefore sought to look at ways to improve the accessibility and availability of information about non-planning consents and what developers need to do to secure the necessary consents as smoothly as possible, with a view to benefiting small businesses in particular.

Existing sources of information

2.68 The main sources of information for businesses about planning and non-planning consents are:

- **Business Link**[24] consists of three elements: a website; face to face advice; and telephone advice. The website has information for start-up businesses about planning and building control requirements and houses a 'regulation toolkit' which helps businesses find out about those regulations and licences are likely to apply to them. However, the regulation toolkit is quite separate from the information on planning and building control, and is not easy to find for a business that is looking up information on setting up in the UK.

- **The Planning Portal**[25] is owned by CLG and consists of a website and a network of regional managers. The portal provides advice, guidance and facilities for on-line planning applications (including standardised application forms ('1App') that cover listed building consent, conservation area consent and lawful development certificates as well as planning). Around forty five per cent of planning applications are currently submitted on-line through the Portal. It also contains information on building control and hosts the Building Control 'Approved Documents'. It does not currently provide an on-line application service for building regulations applications. It does offer an e-consultation hub for statutory consultees and other interested parties to comment on planning applications; a Portal Director's blog; and a message board.

- **NetRegs**[26] is a website run by the Environment Agency, the Scottish Environment Protection Agency and the Environment & Heritage Service in Northern Ireland. It contains guidance on environmental legislation in the UK, with advice split by business sector. On-line applications for environmental permits are available. The Environment Agency also has a National Customer Contact Centre, acting as the public face of the Agency. The contact centre provides information and guidance on all environmental matters; checks applications; works closely with Agency staff to ensure accurate and timely permits are issued and acts as a twenty-four hour, seven day a week incident communication centre.

- **Natural England** has a dedicated wildlife management and licensing enquiry service including a telephone helpline. It includes application forms; general guidance and 'handy hints' for obtaining a licence; information on service standards for time taken to deal with a licence; and frequently asked questions (FAQs). In March 2009, relevant guidance notes and FAQs covering the process for European protected species mitigation licences were drawn together to produce a single

[24] See: http://www.businesslink.gov.uk/bdotg/action/home
[25] See: http://www.planningportal.gov.uk/
[26] See: http://www.netregs.gov.uk/

document called ‘How to Get a Licence’ to make it easier for developers and their consultants to find the information they need.

- **English Heritage** publishes a ‘Charter for English Heritage Planning and Development Services’[27] that covers, amongst other things, the role of English Heritage, the legislation governing English Heritage advice, the role of English Heritage in statutory consultations, pre-application discussions, the role of the developer, e-planning and information that may be required in connection with a development proposal.

The potential for a ‘one-stop shop’ for non-planning consents

2.69 It is clear that much information is available to developers about the various non-planning consents. However, it is currently fragmented, available on different websites in different formats, with differing levels of detail, e-enablement and so on. The closest there is to a ‘one-stop-shop’ of information and advice on such consents for developers at present is the regulation toolkit on Businesslink.gov, although even this does not link up with the information provided to businesses about planning permission and building control, and the developer still has to go onto the websites of the individual consenting bodies to find out more information about how to apply for each consent. Additionally, there is no comprehensive electronic or web-based system for enabling consultation and comments to be input from those involved in the overall development consenting process – whether as statutory consultees in the planning process or as consenting authority.

2.70 Equally fundamentally, the existing location, shape and format of the guidance available about non-planning consents does not recognise the fact that, especially for non-frequent developers, the first port of call for information and advice about a development proposal will usually be the local planning authority.

2.71 In an ideal world, there would be a one-stop shop for developers, where they could find out what consents they needed for a particular development, where and how to apply for them and advice about issues of sequencing if they could not all be applied for at the same time. In order to make it easy for all types of developer to understand, it would ideally contain some interactive elements[28] and would be supported by the ability to make applications on-line, in a standardised format. Local planning authority websites could provide a link to this site to complement their own planning information with minimal additional resource and with only one centre to maintain up-to-date and relevant information.

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[27] English Heritage, ‘Charter for English Heritage Planning and Development Services’ http://www.english-heritage.org.uk/publications/charter-for-planning-development-advisory-services/charter_6pp.pdf/

[28] A good example of existing interactive services is the interactive house and terrace available on the Planning Portal http://www.planningportal.gov.uk/cymru/government/lpas/helpyou/lpa21interactivehouse

2.72 However, there are a number of difficulties arising from seeking to move rapidly towards what the Review sees as the desirable ultimate goal of an e-enabled 'one-stop' information and application system for planning and widely-used non-planning consents alike. It would constitute a substantial cross-Whitehall information and facilitation project involving significant implementation costs. Equally, to ensure information remains up to date and relevant, it would be essential that 'ownership' of web content remained with individual consenting bodies. For these practical reasons, the Review cannot recommend Government moves immediately to set up such a service.

A stepped approach to information and transactional change

2.73 There are, however, a number of relatively straightforward and light-touch steps by which the information and e-enablement situation can be improved in the near future. The core to progress in this field already exists in the shape of the 1App planning application form launched through the Planning Portal in 2007. As well as providing a single on-line form for planning applications to all local authorities, it brings together a number of different consenting requirements. In order to facilitate bespoke single applications depending on the types of consent required, there are over twenty varieties of the 1App form, including ones for combined listed building consent and planning permission and for combined conservation area consent and planning permission. Whilst undoubtedly a valuable tool, the Review is not convinced that the 1App approach is being exploited to its full potential and believes that it should be possible to extend the 1App approach to a wider range of non-planning consents than currently covered.

2.74 Some respondents have, however, expressed concerns about the 1 App form becoming increasingly unwieldy and unhelpful if it were simply expanded to include ever more consents and the information related to them. A more practical way forward might be to create a 'book of consents' from which developers could select those they needed to apply for and wanted to see handled together, providing core information once and only providing additional information when it was required to meet the regulatory needs of specific consent regimes. This concept is similar to that used by HM Revenue & Customs for their income tax self-assessment process, where taxpayers specify which parts of the overall form they need to fill in according to their personal circumstances.

2.75 There are clearly cost considerations associated with expanding 1App to incorporate more non-planning consents. Equally, it would not be appropriate to include within the Planning Portal applications for non-planning consents which are not associated with a planning application. Notwithstanding these issues, the Review is strongly supportive of the principles underpinning 1App and believes that continued efforts should be made to ensure that it delivers real benefits to developers and local authorities alike. The Review concludes that the possibility of the further expansion of 1App should be fully explored to identify the relative costs and benefits.

2.76 In addition, the Killian Pretty Review[29] noted that the Planning Portal had two important further roles to play in the field of information and e-enablement in relation to planning. The first of these involved identifying and sharing good practice on information provision. The report urged the development of stronger links between the Portal and local authorities to help them enhance the quality of information on planning on their websites. Similarly, in relation to electronic consultation, the role of the Planning Portal in developing the national e-consultation service for planning was noted and Killian Pretty strongly supported the continued and speedy implementation of that service. In view of the close interaction of planning and non-planning consents in the development process, this Review concludes that the Planning Portal should now take on similar roles in relation to non-planning consents.

2.77 The Review also considers that the information available on businesslink.gov about non-planning consents should be expanded and tied together with the information provided on planning and building control. This could be through improvements to the regulation toolkit and better links made between that and the planning/building control information. For example, small businesses in particular need help to identify, quickly and easily, which non-planning consents they may need to obtain when planning a business development. A simple web-based toolkit that took them step-by-step through the factors that influence whether or not a non-planning consent is needed would prove extremely useful. Figure 4 illustrates the concept for listed building consent and works to trees. Simply publishing the list of non-planning consents contained in this Review's interim report on BusinessLink and the Planning Portal could raise awareness of the possible need to get non-planning consents.

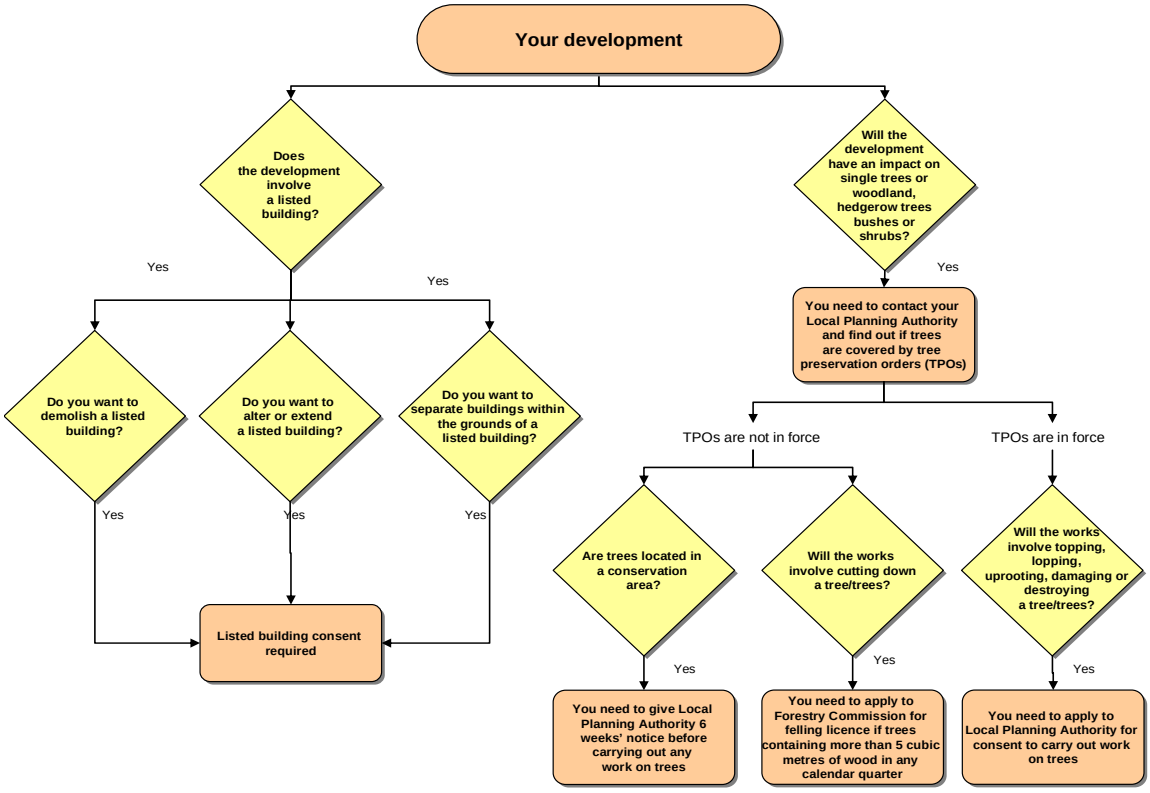
2.78 The central role of the local planning authority as the first port of call for many small developers also needs to be acknowledged and strengthened. Local authorities are vital to the overall advice and information provision available on non-planning consent issues. As such, the Review concludes that local authorities should be encouraged to review the information they provide in the light of identified good practice to ensure that they give the advice that applicants need, or a suitable signposting service, in a readily accessible form.

2.79 Finally, the private sector may have a part to play in facilitating the co-ordination and provision of information to business about non-planning consents. This role is already undertaken in respect of large developments by development consultants and others advising major developers in preparing proposals. However, there may also be a role for the private sector to develop information provision or services about non-planning consent procedures tailored to the needs of small and medium sized enterprises and priced accordingly. This could include, for instance, a basic check on the types of

[29] See Footnote 6

non-planning consent likely to be needed in connection with any particular development.

Figure 4: Illustrative approach to identifying whether a non-planning consent is needed



Recommended actions

2.80 Key benefits of streamlining information and transactional facilities in the manner described for non-planning consent matters will arise from time saved by businesses when looking for information about and applying for non-planning consents. Benefits from this approach may also arise from more firms conforming to regulations due to the greater accessibility and availability of information about consents and procedures. There will be one-off costs for regulators in reviewing, extending and modernising information and transactional provision and, on an ongoing basis, in the maintenance and updating of this. More significant long term benefits will arise for business and consenting authorities from the moves towards a single point of contact for both information provision and consent applications and the role this can play in streamlining the overall non-planning consents regime.

Recommendation D – To make the process of applying for non-planning consents simpler Government should ensure the following steps are taken to improve the quality of advice, information and e-transactions available for all users of the development consenting system:

- The Planning Portal should identify and publicise existing good practice by local planning authorities around provision of information about planning and non-planning consents;
- Local authorities should be encouraged to review the information they provide in the light of identified good practice to ensure that they give the advice that applicants need, or a suitable signposting service, in a readily accessible form;
- the Planning Portal should take forward its programme of work to allow greater consultation electronically on non-planning consent applications, rather than by paper;
- BusinessLink and the Planning Portal should work together to support and encourage the development of a high quality internet based information system which allows developers to establish accurately and quickly whether and, if so, what non-planning consent applications are required for commercial development (this consideration should take into account an enhanced role for the private sector in information provision about non-planning consents); and
- CLG should actively explore with non-planning consenting bodies the extent to which it is possible to further develop the 1App planning application facility to provide for the concurrent submission of additional non-planning consent applications alongside planning applications.

Chapter 3 – Simplifying the Landscape

The existing non-planning consents landscape

3.1 Some of the concerns identified in the interim report arose not from the actions of decision making bodies but rather from the complexity of the overall non-planning consents landscape and the design of individual consents within it. The Review's initial survey of the landscape identified that there is no overall 'system' of non-planning consents: they are fragmented in their ownership, purpose and operation. The list of non-planning consents included in the interim report, whilst long, is not exhaustive. That said, it give a more comprehensive snapshot than ever before of the range of consents to which business developments may be subject.

3.2 Non-planning consents support a wide range of policy objectives, including tackling climate change, protecting the natural and historic environment, maintaining well-functioning infrastructure, promoting public safety or preserving public amenity. They all aim, in some way, to protect the public interest and thus play a critical part in ensuring that the UK remains a first rate place in which to live and do business. European legislation, especially in the environment field, has exerted a strong influence over the non-planning consent landscape, such that about 30 percent of current non-planning consents have their roots in Europe.

3.3 Most business-related developments – those that need to be encouraged to rebalance the economy – have to obtain at least one non-planning consent, in the shape of building regulations approval. Complex manufacturing developments, for example in the chemicals sector, may need as many as thirty. Small developments may also have to obtain multiple non-planning consents, depending on their location and impact and the nature of their business.

3.4 The interim report divided non-planning consents into three broad groups, according to the nature of the authorisation at stake, as illustrated in Table 1. These were:

- **Permissive** – giving permission to a developer to carry out a time-limited activity required to complete a development, such as listed building or advertisement consent or road traffic orders;

- **Operational** – giving permission to the applicant for on-going activity required to enable the development to start being used for its intended purpose, for example hazardous substance consent, environmental permits and business specific licences;

- **Enabling** – giving permission which allows the developer to take action about existing rights or designations, for example the compulsory purchase of land or the stopping up or diversion of existing rights of way.

Each group raises different considerations in terms of the extent of their impact on developers and other interested parties and hence the need for local accountability and the need to ensure they are determined through proportionate and transparent processes.

Table 1: Principal non-planning consents by policy objective and effect

	Permissive	**Operational**	**Enabling**
Climate Change, Environment and Ecology	Flood defence; works to hedgerows and trees; protected species; protected sites, including Sites of Special Scientific Interest	Environmental permits; water abstraction, discharge, impoundment; air quality; noise; carriage of waste	Compulsory purchase;
Transport and Energy	Traffic regulation		Public path / Right of Way creation and diversion; stopping-up; highways extinguishment and diversion
Heritage	Listed buildings; conservation area; scheduled monuments		
Health and Safety / Quality Standards	Building regulations	Hazardous substances	
Business Sector Specific		Business related licences	

3.5 Businesses told the Review that they would welcome a reduction in the complexity of these arrangements, as a means to increase certainty and reduce costs. The sheer number and diversity of the non-planning consent regimes, in terms of their policy purpose, legal basis, decision-making arrangements and associated processes make simplifying the overall landscape very challenging. The commitment in the Government's Coalition Programmeto deregulation, by 'sunsetting' regulations and regulators and introducing a 'one-in-one-out' rule for departments bringing in new regulation, has the potential to give real impetus to action to simplify the landscape and is welcomed by the Review.

Reducing the number of consents – repeal

3.6 One way of simplifying the non-planning consents landscape would be to reduce the number of consents, either through repeal or amalgamation of groups of consents. It is striking that many of the consents identified during the first phase of the Review are used relatively infrequently. About 65 per cent of the consents lists in Annex C of the interim report are used less that 500 times a year; whilst about 40 per cent are used on fewer than 100 occasions a year (against the Review's estimate of about 146,500 planning applications within scope in 2009). Many of the consents, dealing as they do with issues such as the safety of over-ground pipelines and the manufacture and storage of explosives, are narrow in scope as well as highly specialist and technical.

3.7 In the vast majority of cases, it is easy to see the public interest rationale for non-planning consents, whether that be to protect the environment, promote public safety or support well-functioning infrastructure. Most also exist for reasons separate from their use in controlling business-related development and are needed for other purposes. For example, footpath diversion orders are used when changes of route are caused by coastal erosion; listed building consent is required by householders making changes to the interior of a listed building for their own use; and traffic regulation orders are used to manage parking.

3.8 These features make it difficult to identify large numbers of consents from the list as suitable for immediate repeal. That said, there are some provisions – such as the consent under the 1938 Green Belt Act outlined in Box 6 – that may have outlived their useful life and where further consideration by policy owners and decision makers could lead to proposals to remove existing consents. Other candidates for reform or abolition might be consents under section 8 of the Allotments Act 1925[30] and those under section 3 of the Caravan Sites and Control of Development Act 1960[31]. The Review sees merit in departments reviewing little used non-planning consents to consider whether they are still needed and, if so, whether the protections they afford could be achieved by other means. Carrying out a broad-brush examination of this kind would be consistent with the Coalition Programme commitment to deregulation.

[30] Allotments Act 1925 http://www.opsi.gov.uk/acts/acts1925/pdf/ukpga_19250061_en.pdf
[31] Caravan Sites and Control of Development Act 1960 http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1960/cukpga_19600062_en_1

Box 6 – Consents under the 1938 Green Belt Act

The Green Belt (London and Home Counties) Act 1938 specified how land was to become Green Belt within the areas of the London, South East and East Government Office regions. It operates through deeds and covenants between local authorities and private owners. The Act dates from a time when ownership of land was the key means of controlling appropriate uses in the Green Belt. Any land within designated Green Belt would still enjoy full protection through the planning system.

Section 5 of the Act restricts the sale, exchange or appropriation of the relevant land, and applies to local authority owners. A local authority has to seek the Secretary of State's consent if it wishes to sell, exchange or appropriate 1938 Green Belt land for other purposes.

Section 10 of the Act restricts building on 1938 Green Belt land. It applies to any owner, who has to get the consent of the Secretary of State to authorise most constructions works.

Section 12 requires local and highway authorities and statutory undertakers to get the consent of the Secretary of State to erect buildings or construct or improve roads on 1938 Green Belt acquired from a private owner.

The Government Office for the West Midlands (GOWM) has acted for the Secretary of State on casework under sections 5 and 10 of the Act since April 2008. In 2007 there were 17 applications; in 2008 there were 9; and in 2009, 5. No section 10 cases have been received since 2008. No applications have been refused in the last five years.

If repeal of the 1938 Act is feasible, it would remove an apparently unnecessary consent for the sale of land, and simplify the regime for the development of such land. It would save administrative costs for landowners, applicants, local authorities and the Government, and save advertising costs for local authorities handling section 5 applications.

Amalgamating themed groups of consents

3.9 The possible removal of some little used consents, whilst welcome, is not going to transform the experience of businesses investing in expansion or other development. As business contributors to the Review emphasised, they want to see action taken to reform those regimes that they experience as most problematic, namely heritage consents, highways orders and related regimes and environmental consents.

Heritage Consents

3.10 Heritage consents were cited by business contributors to the Review (especially small businesses) as being particularly problematic. Businesses that operate out of or otherwise use listed buildings have to obtain listed building consent before they can carry out alterations, improvements or other works that affect the significance of the building. Whilst favourably disposed towards the objectives of the regime, their view was that getting the necessary consents can be complex, time-consuming and expensive – to the point where the need to get consents is believed to deter some businesses from

investing and to drive others to avoid the requirements of the consent regime. Scheduled monument consent was seen as giving rise to some specific problems (for example, a consent is required for any work whatsoever to a scheduled monument, however necessary or minor); whilst conservation area consent was widely regarded as ripe for abolition.

3.11 The last Government carried out a wide-ranging review of heritage protection and proposals for changes to the heritage consent regimes were included in a draft Heritage Protection Bill[32]. They were not pursued because of a lack of Parliamentary time. The proposals aimed to reduce the bureaucracy of the current heritage protection system and improve the transparency of decision-making. Specific proposals included merging conservation area consent with planning permission; creating a single designation system for all heritage assets; and creating a single 'heritage asset consent' (to replace listed building consent and scheduled monument consent), with local planning authorities made responsible for its administration.

3.12 The Review is persuaded that these proposals would represent a useful step forward as a means of simplifying the non-planning consents landscape (by removing one and combining two other consents). They would bring benefits in terms of administrative savings for local authorities and developers, which would no longer have to handle separate conservation area consents; and for DCMS from no longer needing to handle scheduled monument consents. There would, however, also be costs associated with the transition to a revised regime, including training for those taking on new work in local authorities and the on-going costs of doing that work.

Highways Consents

3.13 The group of consents that concern the road network and other public rights of way is particularly complex and fragmented. Orders for works to roads are split between legislation in the Town and Country Planning Act 1990[33], the Highways Act 1980[34] and the Planning Act 2008[35]. Policy is owned by the Department for Transport (DfT). If the road concerned is part of the strategic road network then the Highways Agency will promote the project concerned by means of a Development Consent Order[36]. If, however, the road concerned forms part of the local network, the relevant local highways

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[32] DCMS, 'Draft Heritage Protection Bill' (2009) http://www.official-documents.gov.uk/document/cm73/7349/7349.pdf

[33] Town and Country Planning Act 1990 http://www.opsi.gov.uk/acts/acts1990/Ukpga_19900008_en_1.htm

[34] Highways Act 1980 http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1980/cukpga_19800066_en_1

[35] Planning Act 2008 http://www.opsi.gov.uk/acts/acts2008a

[36] A Development Consent Order combines the grant of planning permission with a range of other consents that in other circumstances have to be applied for separately for nationally significant infrastructure projects in the fields of energy, transport, water and waste. Further details are available at: http://www.planninghelp.org.uk/planning-system/planning-for-major-infrastructure-projects/major-infrastructure-development-consent-orders

authority[37] can promote Highways Act orders. Alternatively, any tier of local authority can promote a planning application for changes to a highway. In addition to the non-planning consents that authorise works to roads, businesses also have to enter into section 278 agreements with the relevant highways authority to agree funding for the works. Whilst not strictly a non-planning consent, such funding arrangements play their part in the overall legislative system for the controlled development of land through the planning process[38]. Policy on rights of way and public footpaths is owned by Defra with legislation again split between the Town and Country Planning Act 1990 and the Highways Act 1980.

3.14 The complexity of this landscape suggests that there may be scope for simplification. That said, the main concerns raised with the Review were around the operation of these consents, rather than their structure. In particular, they are seen as a significant source of risk and cost from delay because they are normally dealt with after planning permission has been granted and because there is no timetable set for decision makers' consideration of applications.

Environmental Consents

3.15 The Environmental Permitting Programme, led by Defra and the Environment Agency, has already done much to streamline the operation of certain environmental consents operated by the Agency and local authority partners – indeed, changes made in April 2010 have removed four consents from the list published in the Review's interim report. The programme has amalgamated a wide range of different, premises-based consents into a single regime, reducing the number of consents many operators have to obtain and associated paperwork for users and consent-givers.

3.16 The Review strongly commends the programme especially for its risk-based approach, which ensures that activities having a low impact are subject to less stringent scrutiny than those whose impact is expected to be greater; the creation of a common administrative framework, to which future consents, if needed, can be added; and the reduction in and simplification of legislation and hence of related guidance. The impact assessments prepared to accompany the first two phases of the programme indicated that substantial net benefits would accrue to both decision makers and applicants.

3.17 In the second phase of the Environmental Permitting Programme, total savings to businesses from integration of regimes due to harmonisation of permit applications, permit modifications and site inspections are now estimated at £30m (discounted over 10 years). Defra and the Environment Agency are currently working on the next phase of the programme, to bring water abstraction and impoundment consents, amongst other things, within the environmental permitting regime. The Review strongly supports this

[37] In either a unitary authority or second tier authority (County Council).
[38] Regina Ex Parte Powergen Plc -v- Warwickshire County Council (July 1997) http://www.bailii.org/ew/cases/EWCA/Civ/1997/2280.html

further work. Box 7 illustrates the potential further savings that could be achieved from bringing water abstraction and impoundment into the regime.

Box 7: Integration of Environmental Permitting Regimes Cost Savings – Worked Example[39]

It is estimated that 5,938 (26%) of the total 22,856 Water Abstraction and Impoundment (WAI) permits are for sites that also hold other permits.

The model assumes that where a permit is held on a site with one other permit, then under a common permitting approach (and assuming the requirements were identical for both permits) the administrative burdens could be cut in half. In this case, effectively 50% of the associated costs for each regime would be avoided. Similarly, where a site holds three permits, the implication is a 67% overlap (the same tasks repeated under each regime). In the case of this WAI example, since some sites have two permits and others have three or four etc., the weighted average overlap is calculated to be 57%.

This overlap then has to be moderated by the degree of common ground between the different permitting regimes. In terms of time spent transferring permits, the common ground between regimes is estimated to be 60% of the full transfer process.

Furthermore, the probability that the individual regime permits would naturally be transferred at the same time is, also in this case, estimated to be 60%.

Overall, these factors suggest that savings of 5% (26% × 57% × 60% × 60%) from the total baseline permit transfer costs are possible under a common permitting approach. With baseline annual industry transfer costs at £184,000, total annual industry savings for this activity within this one regime are just over £9,000 per annum. Additional savings will be achieved by avoiding replication at the Environment Agency.

Recommended actions

3.18 With deregulation high on the agenda of the new Government, the time is right to consider the potential for removing non-planning consents. Whilst the opportunities for immediate repeal seem limited, the Review is persuaded that departments should reconsider little used non-planning consents to assess whether they are still needed and, if so, whether the protections they afford could be achieved by other means.

3.19 The Environmental Permitting Programme illustrates the benefits that can be obtained from concerted work to integrate similar or related consents into a single regime. The consents brought together within the environmental permit regime share certain characteristics – they are all premises-based operational consents for activities that are capable of being categorised according to a reasonably objective and consistent assessment of risk and are capable of being handled under a common administrative framework. The

[39] Explanatory Memorandum to the Environmental Permitting (England and Wales) Regulations 2010 - Annex B Impact Assessment, p. 27
http://www.defra.gov.uk/environment/policy/permits/documents/draftsi-envper010125-memo.pdf

Programme has established an approach, which may be capable of being applied to other groups of related consents, in an effort to reduce the number of consents that businesses may have to contend with and to simplify their operation.

3.20 It is not the only example of a 'thematic' approach whereby different consents with some common features have been brought together in such a way as it make them easier for applicants to use and for decision makers to operate. Changes to premises licensing introduced under the Licensing Act 2003 had a similar effect, bringing together procedures governing applications and the granting of what had previously been separate licences into a common regime.

Recommendation E – Government should simplify the non-planning consents landscape and reduce the number of non-planning consents that apply to business developments by:

- Carrying out a 'light touch' review of all those non-planning consents which have not been the subject of substantive review for more than 10 years to consider whether they are still needed and, if so, whether the protection they offer could be achieved by other means that reduced or removed the regulatory burden;
- Bringing forward legislation, at the earliest opportunity, to merge conservation area consent with planning permission; and to combine listed building consent and scheduled monument consent into a single historic assets consent, determined by local authorities;
- Going ahead, as soon as possible, with the next phase of the Environmental Permitting Programme to amalgamate water abstraction and impoundment consents, amongst others, with the environmental permitting regime; and
- Actively considering whether other groups of related consents, such as those dealing with species licensing; highways orders; creation, diversion or extinguishment of public rights of way; or categories of business specific licensing, are capable of being reformed using the principles and approach adopted by the Environmental Permitting Programme.

3.21 Changes flowing from recommendation E would take another four consents out of the list of non-planning consents published in the Review's interim report. Taken together with the removal of four consents as a result of the second phase of the Environmental Permitting Programme, which came into force on 6 April 2010, the modest proposals contained here would reduce the overall number of consents by about 10 per cent. The Government's commitment to 'sunsetting' regulations and to introducing a 'one-in-one-out' rule when Departments introduce new regulations should give momentum to work to consider further reducing the number of consents and the Review is optimistic that further drop can be achieved.

Streamlining the operation of non-planning consents

3.22 Representatives of small businesses in particular argued that, in addition to reducing the complexity of the overall consents landscape by reducing consent numbers, action needs to be taken to ensure that non-planning consents operate in ways that are proportionate to the impact of the activities they are regulating. As resources within decision-making bodies become ever tighter, it will become increasingly important that they concentrate their efforts on those proposals that matter most in terms of achieving the policy objective that underpins the consent. Consciously looking for ways to make non-planning consent regimes more proportionate has the potential to make them less 'resource hungry' and help ease resource pressures in consenting bodies.

3.23 There are a number of possible approaches to improving the proportionality of non-planning consent regimes, either by taking low risk activities out of them altogether or by ensuring that they are subject to less stringent requirements. These approaches include:

- **Risk-based regulation** – the Environmental Permitting Programme has reduced the number of applications that the Agency and local authorities have to process, in part, by taking low impact activities out of the consent regime altogether, whilst reducing the level of scrutiny given to all but the highest impact operations, as illustrated in Box 8. This approach is most appropriate for operational consents, where different levels of impact can be objectively defined, but could be extended, for example, to listed building consent by clearly defining a wider range of works that can be undertaken without consent or are subject to streamlined administrative arrangements.

- **Deemed consents** – a few non-planning consents, notably flood defence consent, are deemed to be approved at the end of a set period after an application is received if a decision has not been received in this time. This approach does not distinguish readily between levels of risk and, if applications are incomplete or of poor quality, the decision maker may have no option in the time available than to refuse and ask the applicant to reapply. For these reasons, it is not suitable for all types of consent but, if accompanied by appropriate guidance, the approach could also be applied to relatively low impact permissive consents such as those dealing with advertisements and works to trees.

- **Self-certification** – the use of approved inspectors within the building regulations regime provides a model that the Review believes could be applied more widely. In particular, in the case of permissive consents where technical expertise is important and in short supply, such as listed building consent, this approach could ease some of the pressures on decision makers, whilst ensuring that standards are maintained.

- **Prior approval** – where multiple non-planning consents are required on an on-going basis in relation to a particular site, for example for works under the listed building and scheduled monument regimes (see Box 9),

then management agreements between owners and decision makers offer potential benefits in terms of eliminating the need for close regulation of defined categories of change and reducing the number of applications that have to be made and processed.

Box 8: Risk-based categorisation of environmental permits

The Government's aim is to take the risk to people and the environment into account when determining the appropriate regulatory approach for potentially polluting activities, within the confines of the (usually EU) legislative framework. The approaches broadly fall into four categories. The extent of intervention required (both in terms of the process and cost of obtaining the consent or registering the exemption, and in terms of subsequent enforcement) differs at each level. The levels are:

Unregulated – some activities' impact is so minor that they are not considered to require any intervention by government;

Exemption – at the next level, activities are prescribed as low risk but businesses are asked or required to register them as exempt from the need for a permit;

Standard permits – for activities that can meet a defined set of standard rules which a generic risk assessment has demonstrated will achieve the required level of environmental protection; and

Bespoke permits – are needed for higher risk or complex activities that need site-specific risk assessment taking local characteristics into account.

The Environment Agency and local authorities have arrangements in place for monitoring the operation of the different categories of permit and adjusting the thresholds of each level in the light of experience.

Box 9: Heritage Partnership Agreements (HPAs)

HPAs are optional management agreements for use by the owners of large estates or complex sites including local authorities, educational establishments and government departments. The draft Heritage Protection Bill proposals (April 2008) envisaged HPAs being agreed by all those involved in the management of a particular site, such as owners, local authorities, amenity societies, and approved by English Heritage. An HPA would give the owner permission to carry out certain types of work on the site (usually repetitive and/or small-scale works) without applying for specific consent for each time and so replace the need for repetitive consent applications, reducing administrative burdens for owners and local authorities, and providing certainty on the long-term management of the site.

There are about 250 listed building sites in England that have made 6 or more consent applications in the last 3 years. There are, in addition, an unknown number of applications made by owners of multiple sites who would be helped.

3.24 Another source of complexity in the non-planning consent landscape is the bespoke way in which the various regimes have been designed. The fact that different consents operate in different ways is not surprising given their different legislative underpinning, objectives and origins. It has, however, led to a situation where different regimes have tailored procedures for what are common stages in the overall process, for example, application, consultation, determination and appeals. Simultaneously standardising and simplifying resource-intensive shared elements of the processes associated with different non-planning consents has the potential to deliver savings for both decision makers and applicants.

3.25 For example, the Review sees scope for achieving benefits from standardisation of appeals and inquiries, particularly those that are dealt with by PINS. Further benefits to the appeal and inquiry process could also be realised by attempting to resolve objections or disputes without the need for an inquiry, such as by written procedure; ensuring that inquiries are focused on the key elements in dispute as opposed to the scheme as a whole; and timetabling when key actions and decisions are taken. In some cases, introducing an expedited appeals mechanism could both simplify the operation of a consent and act as an incentive for regulators and applicants alike to address issues of disagreement early and seek to reach a satisfactory compromise wherever possible.

Recommended actions

3.26 The Review sees the potential for substantial benefits to be gained from asking policy owners to review the operation of non-planning consents, in consultation with users and other key interested parties, to ensure that they are designed to operate in a proportionate, risk-based way. A more risk-based approach could reduce the administrative costs associated with low-risk activities for both operators and consenting bodies. Whilst there would also be one-off costs associated with making changes to the regimes, they should be outweighed by on-going savings.

3.27 Likewise, the Review sees merit in taking a concerted look at the operation of common elements of related non-planning consents processes, starting with appeals and inquiries, in order to standardise and simplify them, where that makes sense.

Recommendation F – While acting within constraints, such as those imposed by underpinning EU legislation, Government should actively seek to improve the proportionality of widely used operational and permissive non-planning consents and to standardise and simplify common elements of the consenting process by:

- In appropriate cases, substantially increasing the number of small scale, commercial developments and other minor non-residential developments that are treated as de minimis (falling below designated thresholds requiring a consent application);
- Identifying those current consent requirements suitable for a process below formal consent application (for example, simple registration); or where 'deeming' consent is appropriate; or where the use of self-certification or prior authorisation would reduce the need for applications relating to low impact activities;
- Reviewing the operation of inquiry and appeal processes for planning and non-planning consents, with a view to standardising and simplifying related processes; and
- Seeking further opportunities to standardise and simplify application, consultation and determination processes.

Chapter 4 – Improving the Interaction between Planning and Non-planning Consents

Extension of the planning system's remit

4.1 The changes recommended in the previous chapter, if applied systematically, have the potential to simplify the consents landscape by reducing the overall number of widely used consents and, more importantly, ensuring that non-planning consents are designed to operate in a proportionate and streamlined way. They do not, however, address a key problem that developers reported facing – namely confusion and duplication between planning and non-planning consents. To a large extent, enabling more effective sequencing of the way in which matters that are critical to any given development's viability will go a long way to realising these benefits.

4.2 The Review's interim report identified overlap between planning and non-planning consents as a source of inefficiency and asked how the boundary between them might be clarified in order to improve certainty for developers. The Review recognises that non-planning consents are also required for projects that do not require planning permission and has focused on those proposals where planning permission is needed as well as certain non-planning consents and on how the interaction between them can be improved.

4.3 As previously noted, the extent of blurring between planning and non-planning consents has grown as the remit of the planning system has expanded to embrace sustainable development and a wider range of environmental impacts, partly in response to new European Directives (as identified in the Barker Review Interim Report[40]) and partly in response to the extended use of the Environmental Impact Assessment process. There is also an increased expectation that planning will look at a development in the round to balance different objectives, public and private interests, and this has been strengthened by growing public interest in planning applications. Increasing use of judicial review to challenge decisions has encouraged both applicants and local planning authorities to take a 'safety first' approach and to 'gold plate' applications and their consideration. All these factors have contributed to a situation where issues that would not previously have been viewed as relevant to planning are now routinely addressed in the planning process.

4.4 Furthermore, the non-planning consent landscape as a whole has not undergone the same kind of concerted reform as planning, most recently following the Barker[41] and the Killian Pretty[42] Reviews. Many non-planning consents have their roots in an earlier age. It made sense to have multiple

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[40] HM Treasury, 'Barker Review of Land Use Planning, Interim Report – Analysis' (July 2006) Section 1.25 http://www.communities.gov.uk/documents/planningandbuilding/pdf/151105.pdf

[41] HM Treasury, 'Barker Review of Land Use Planning, Final Report – Recommendations' (December 2006) http://www.communities.gov.uk/documents/planningandbuilding/pdf/154265.pdf

[42] See Footnote 6

consents looking at specific aspects of a development at a time when planning decisions were principally concerned with a relatively narrow range of 'land use' issues. In a world where planning is routinely weighing economic, environmental and other factors, the role of separate non-planning consents, considering very similar individual aspects of a development, needs to be crystal clear to avoid duplication and to give greater certainty.

Clarifying the boundary between planning and non-planning consents

4.5 The new Government's commitment to simplifying the planning policy framework creates an opportunity to clarify the respective roles of planning and non-planning consents in considering proposals for development. As a starting point, the Review considers it important that the revised policy should recognise that planning and non-planning consents are elements of a single system of 'development management' with a shared objective to manage sustainable development effectively. Stating this clearly in the planning policy framework as a principle underpinning the current arrangements would provide a firm foundation on which to build a clear understanding of the different but interdependent roles that planning and non-planning consents play in delivery of sustainable development.

4.6 At present, with a few exceptions, planning and non-planning consents operate in silos. There is widespread acknowledgement, however, that their contribution to sustainable development needs to be a joint one that collectively addresses both whether a development should be allowed to go ahead (the 'if' decision) and how it should be built and operated (the 'how' decision(s)). This distinction between 'if' and 'how' decisions was discussed in a joint Defra / CLG study[43] looking at the interaction between planning and pollution control and published in 2007. That work concluded that: 'the questions of 'if' and 'how' are not really separable, and essentially constitute two aspects of one decision-making process'.

4.7 Conceptually it is attractive to suggest that the planning system should be the sole arbiter of the 'if' decision and non-planning consents should confine themselves to dealing with 'how' a development should be built or operated. Making such a distinction across the board, however, would be fraught with practical and legal problems and necessitate a massive overhaul of multiple regimes which would be difficult to justify. Instead, the Review has looked at how, in general terms – and in some specific cases detailed later in this Chapter – the interaction between planning and non-planning consents can be made to work more effectively.

[43] Defra, CLG, 'Planning and Pollution Control – Improving the way the regimes work together in delivering new development' (September 2007)
http://www.defra.gov.uk/environment/waste/controls/documents/planning-pollution-control.pdf

4.8 To improve certainty for developers and remove duplication (which has benefits for both applicants and decision makers), the following principles should apply:

- As far as possible, all factors relevant to deciding whether a development can go ahead (the 'if' decision) should be considered at the same time, as part of or alongside the planning application process;

- So long as all the non-planning consent issues which might affect the 'if' decision have been considered by the relevant decision maker in parallel with planning permission, and have informed the decision on planning permission, then the decision in principle as to whether the development can proceed should be considered to have been dealt with.

- Thereafter, the determination of non-planning consents should be concerned with 'how' a development is built or operated rather than whether it can go ahead, unless:

  - There has been a significant change in circumstances or policy;

  - A critical issue that was not material[44] to planning arises and has therefore not been previously considered;

  - The planning decision maker has acted unreasonably; or

  - Following more focused and detailed consideration, previously unforeseen issues of substance come to light.

- Consequently, the consideration of the 'if' decision should, in most cases, lead smoothly on to a more detailed consideration of 'how' the development should be built and operated;

- Planning and non-planning consent decision makers should only ask for the level of detail that is essential to enable them collectively to reach an informed 'if' decision; and

- Developers should have the flexibility to bring forward applications for non-planning consents that deal with 'how' questions at the same time as planning.

4.9 Critically, then, the Review maintains that, insofar as it is possible, all the factors that have a bearing on whether the development can go ahead should be considered at the same time. For some proposals, this will happen as a matter of course, because planning is expected to look at the development proposal and its impacts on the environment, economy and local

[44] The word 'material' is used here to describe all the issues that can be relevant to consideration of a planning application.

communities in the round. For example, Planning Policy Statement 23[45] on planning and pollution control makes clear that where pollution issues are likely to arise, planning authorities should have sufficient information on which to base their development control decisions and that discussions at an early stage with the developer, planning authority and any other relevant agencies should 'provide an opportunity to consider the principle of development, minimise the potential for conflict and duplication between control regimes, and streamline the application procedure'. The way that listed building consent is currently dealt with is a good example of this type of integrated approach – although the decisions are still formally separate, the process of considering planning and listed building consent applications, using appropriate expertise from within and beyond the local planning authority, has been aligned.

4.10 In other cases, questions about 'how' the development will be built or operated can be critical to the decision whether to allow it to go ahead in that specific location. Typically, such 'how' questions will arise where a development proposal requires an operational non-planning consent, such as an environmental permit or a hazardous substances consent, which deals with the acceptable on-going operation of the development and with impacts that spread beyond the immediate site of the development. The Review believes that where an aspect of how a proposed development is to be built or operated is likely to be a 'show stopper' (in the sense that failure to obtain the related non-planning consent will mean that the development cannot go ahead), it needs to be considered in sufficient detail as part of or at the same time as the planning application to enable an informed and balanced decision.

4.11 So, for example, where a business is proposing to build a chemical factory or a waste processing plant it is essential that, as part of its decision, the planning authority is satisfied that the development will meet environmental standards and will not have an unacceptable impact on its neighbours or on the environment more widely. In this instance, 'how' the development will operate is a key factor to be taken into account in determining whether or not it should be allowed to go ahead. The Review would argue that the planning authority cannot sensibly take an authoritative decision without a clear understanding of the view the environmental permit decision maker is likely to take when considering whether the development is acceptable and, if so, whether the work needed to mitigate its impact is likely to involve major costs. If the environmental permit decision maker advises that the proposal is unlikely to be capable of meeting relevant standards, it is difficult to see the planning authority giving planning permission.

4.12 From the applicant's perspective, considering all factors relevant to the 'if' decision at the same time raises concerns that they may be asked to provide more detail (and so incur more costs) than is needed for planning permission alone. This is undoubtedly a risk but is one that can be managed through positive pre-application discussion and/or detailed published

[45] See http://www.communities.gov.uk/documents/planningandbuilding/pdf/planningpolicystatement23.pdf

guidance, which should highlight where potential problems lie and clarify what the developer needs to do to resolve them. It should also be a rule of operating in this way that planning and non-planning consent decision makers should only ask for the level of detail that is essential to enable them collectively to reach an informed 'if' decision. Where more detail about how a development is to operate is needed, after a concerted position has been reached on the 'if' decision, then it should be dealt with through the relevant non-planning consent or conditions attached to the planning consent.

4.13 A developer may also face 'how' risks if particular local circumstances mean the potential impact of the development is greater than usual and needs additional mitigation measures. Whilst granting of a non-planning consent might be possible in principle, provided that the developer undertakes the necessary measures, the additional costs could make the project unviable. To reduce this risk, developers need to identify any local factors that might affect viability of the project and seek advice from the appropriate consenting body at an early stage in parallel with the planning application to determine what mitigation measures may be needed.

4.14 Case law has already established that there are strong links between the planning decision and subsequent non-planning consents. The courts have ruled[46] that emissions issues are material to planning, as is the existence of the environmental permitting regime. Also in the environmental field, the judgment in the Harrison case[47] concluded that even if a development can secure the appropriate environmental permit, that fact does not mean that planning permission has to be granted. Case law similarly establishes[48] that, unless circumstances have changed significantly or that a planning decision has been reached unreasonably, local highways authorities should cooperate in implementing a planning permission by attempting to reach a section 278 agreement with the developer where all relevant highways safety issues have been considered at the planning stage. Significantly, the judgment in the Cardiff case said 'It is … possible to discern …a broad principle (subject to variations in detail) that where a formal decision has been made on a particular subject matter or issue affecting private rights by a competent public authority, that decision will be regarded as binding on other authorities directly involved, unless and until circumstances change in a way which can be reasonably found to undermine the basis of the original decision'.

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[46] Gateshead Metropolitan Borough Council v Secretary of State for the Environment [1994] 1 P.L.R. 85

[47] Harrison v Secretary of State for Communities and Local Government and Cheshire West and Chester Council [2009] EWHC Admin 3382 http://www.bailii.org/ew/cases/EWHC/Admin/2009/3382.html

[48] Powergen plc, R v Warwickshire County Council [1997] EWCA 2280 and Sears Group Properties Ltd, R v Cardiff County Council [1998] EWHC Admin 320 http://www.bailii.org/ew/cases/EWCA/civ/1997/2280.html and http://www.bailii.org/ew/cases/EWHC/Admin/1998/320.html

4.15 Central to the success of this proposed model is ensuring the smooth transition between the planning stage and subsequent non-planning consents. Making sure that all factors that may affect the ability of the developer to go ahead are considered at the same time requires planning and non-planning consent decision makers to work together and with the applicant from the start of the process at pre-application stage. It also means that, where it is critical to the 'if' decision, the substantive issues relevant to non-planning consents should be clearly identified and dealt with alongside the planning application.

4.16 Where such early collaboration has happened, planning decision makers will have a clear indication of whether the non-planning consent is likely to be granted, either because the relevant non-planning consent is being dealt with in parallel to planning or because the non-planning consent body, acting as a statutory consultee on the planning application, has identified any 'show-stoppers' or mitigation measures likely to result in significant costs. If failure to get the consent is critical (as it may well be in the case of listed building consent or environmental consents or hazardous substance consent) the applicant will, at that stage, want to consider whether or not to proceed. Likewise, the planning decision maker should factor the criticality of the non-planning consent into their decision. The system breaks down when new issues arise late in the planning stage or after a successful planning decision when the developer and a range of public authorities have already committed significant resources. The quality of input by non-planning consent decision makers, acting as statutory consultees becomes ever more important.

4.17 This model does create some challenges. Where there is no formal non-planning consent application but issues related to that consent are important to the 'if' decision, some non-planning consent decision makers are reluctant to commit resources that they currently cannot recover to considering those issues. This is on the grounds that they may end up putting time and effort into proposals that then will not go ahead because planning permission is not granted. This is undoubtedly a risk but one that the Review believes can be mitigated to a degree where local authorities have clear local development plans in place, to enable businesses and consent giving bodies to understand what sort of development is likely to be permitted; and where pro-active pre-application discussions are a normal part of the process.

4.18 Another concern raised by some non-planning consent bodies is that their decision might in some way be fettered by the actions of other decision makers. The Review would contend that this is not the case. As already indicated, the decision to allow a development to go ahead should not be taken in isolation from consideration of critical non-planning consents, particularly where the issues considered in planning are very similar to those dealt with by the non-planning consent. Effective collaboration between non-planning consent decision makers and planning authorities will continue to be paramount. The non-planning consents decision maker will need to be able to make clear to the planners its position on the 'if' questions to the point where it is, in effect, declaring that it is 'minded to' grant a permit or not.

4.19 Similarly, some concerns have been raised about one consent 'trumping' another. As the case law cited above indicates, planning decisions

can take a broader view by, for example, rejecting a proposal even though it is clear an environmental permit is likely to be granted. The Review would argue that the opposite case – a negative non-planning consent decision over-riding a positive planning decision, once made – should not arise unless one or more of the factors listed in paragraph 4.8 applies.

4.20 There will be some issues that have a significant bearing on whether a development should go ahead that are unlikely to be able to be dealt with by planning. For example, the issue of whether 'passing trade' to a shop will be adversely affected by a right of way diversion[49]. Despite this, the Review is of the opinion that the factors dealt with by many non-planning consents are already intrinsically linked to the planning decision and, therefore, the interaction between them should be clarified.

4.21 Those non-planning consents that deal solely with questions about 'how' a development is to be built and/or operated can continue to be handled after planning permission has been granted. So, for example, building regulations approval is not normally applied for until projects are about to begin construction; advertisement consents may not be needed until late in the development process, once information about tenants is available; and considering the 'how' elements of species licences may have to be delayed because timing of mitigation measures affects detail of what is required.

Conditions for success

4.22 The considerations outlined above put a premium on effective collaborative working between those responsible for planning, non-planning consents and applicants. Creating the conditions in which this sort of collaborative working is the norm will mean making sure that:

- CLG have put in place a clear national policy framework that explicitly asserts the principle that plan making and the development management process are the key mechanisms for determining whether development should go ahead (the 'if' decision), while recognising that non-planning consents may also play a critical role in this;

- All local authorities have robust local development plans in place to give clear guidance to businesses and consent-granting bodies about the broad type of development the local authority wants to promote in which locations, and to reduce applications that are not in line with plans;

- Planners and developers make the most of pre-application discussions, involving developers, planners, relevant non-planning consent decision makers and other interested parties as appropriate, in order to identify and resolve areas of potential controversy or high risk for the developer and to discourage inappropriate applications going forward;

[49] Vasiliou v Secretary of State for Transport [1991] 2 All ER 77

- There are clear rules of engagement in place for planning and non-planning consent decision makers so that, where appropriate, the latter make a substantive input to the 'if' decision, either as a statutory consultee or because the process has identified the need for them to be involved;

- Local communities and other interests are able to make a timely and informed contribution to the 'if' decision. Appropriate weight is given to community and other interests' involvement in the development process in order to retain confidence;

- Care is taken to avoid duplication between planning conditions and issues dealt with by non-planning consents, in line with changes proposed as a result of the Killian Pretty Review[50] (see Box 10); and

- Planning decision makers strengthen the skills they need to take 'if' decisions, including drawing together different sources of expertise to inform decisions, weighing different factors and treating planning as part of an end-to-end process for delivering sustainable development.

Box10: Planning conditions

The current policy on planning conditions[51] states that: 'A condition which duplicates the effect of other controls will normally be unnecessary, and one whose requirements conflict with those of other controls will be ultra vires because it is unreasonable'. It also states that conditions should only be used if they meet six key tests, namely that they are:

- Necessary;
- Relevant to planning;
- Relevant to the development to be permitted;
- Enforceable;
- Precise; and
- Reasonable in all other respects.

It goes on to state, when detailing how the six tests will be judged, that:

'Some matters are the subject of specific control elsewhere in planning legislation, for example advertisement control, listed building consent or tree preservation. If these controls are relevant to the development in question, the planning authority should normally rely on them, and not impose conditions on a grant of planning permission to achieve the same purposes as a separate system of control.'

[50] See Footnote 6
[51] CLG, 'Circular 11/95 The Use of Conditions in Planning Permission' (July 1995) http://www.communities.gov.uk/publications/planningandbuilding/circularuse

Recommended actions

4.23 The Review recognises that many of these elements are already part of good practice within the existing development management approach advocated by CLG. The changes needed represent a sharpening up of current policy and guidance and action to ensure that the policy objective of these principles is delivered through the processes on the ground.

Recommendation G – Government should clarify the boundary between planning and non-planning consents by:

- Ensuring that the revised national planning policy framework being developed by CLG confirms the centrality of the planning process in determining whether a development should go ahead, while recognising that non-planning consents may also have a critical role in this;
- Ensuring that local authorities have robust local development plans in place to inform businesses and consenting bodies about the types of proposals that are likely to be acceptable in specific locations;
- Promoting the use of pre-application discussions, that bring together the planning authority, other consent decision makers and the applicant, as a means to identify and resolve areas of potential controversy associated with the application and stop inappropriate applications going forward;
- Putting in place clear rules of engagement between planning authorities and the different non-planning consent decision makers to ensure that, where appropriate, the latter give substantive advice to the planning decision maker(s), identifying 'show-stoppers' and significant mitigation costs to help inform their decision of principle; and
- Emphasising that, so long as all the non-planning consent issues which might affect the 'if' decision have been considered by the relevant decision maker in parallel with planning permission, and have informed the decision on planning permission, then the decision in principle as to whether the development can proceed should be considered to have been dealt with. Thereafter, the determination of non-planning consents should be concerned with 'how' a development is built or operated rather than whether it can go ahead, unless the factors listed in paragraph 4.8 apply.

Addressing specific issues

4.24 As indicated above, whilst it does not advocate attempting to draw a clear distinction between 'if' and 'how' questions across the board, the Review has identified a number of areas where applying the distinction would open up opportunities to address specific concerns raised by contributors. In particular, it could help to address concerns about:

- **Applications for special designation (of buildings or land) made by third parties** – any individual may apply at any time for a building to be listed or ask that an open area be designated as a town or village green. Dealing with such applications for designation takes time, during which

work on site may have to stop; and , if successful, requires the developer to reapply for a further consent before development can proceed;

- **Delay from sequencing of consents** – some consents include provisions that mean they cannot be considered until after planning permission has been granted, adding to the total elapsed time needed to get all consents;

- **Duplication** – the extension of the remit of planning has led to some specific areas where duplication is built into the current arrangements, for example around species licensing and highways consents;

- **Detailed design work required to obtain planning permission** – respondents to the Review perceive a trend towards planners asking for ever more detailed design work, especially in relation to the energy efficiency of buildings, before granting planning permission.

Town and Village Green (TVG) registration and spot listing of buildings

4.25 During the first phase of the Review, contributors raised concerns arising from the use of the designation process for listed buildings and for town and village greens, sometimes solely as a means to frustrate developments that have already received planning permission. Where their effect is to delay the progress of a development, they can be a source of significant risk to developers. Whilst these designation processes are not non-planning consents, they are clearly relevant to the 'if' decision about whether or not a development should be allowed to go ahead.

4.26 The listed building regime uses Certificates of Immunity (see Box 10) as a mechanism to enable developers to achieve certainty about the status of building for a specified period. Whilst it carries risks, in that the outcome of applying for a Certificate of Immunity may be a decision to list the building concerned, it appears to provide a reasonable safeguard for developers whilst offering other interested parties the chance to preserve buildings of historic interest. (That said, the Review would argue that the current requirement that an application for a Certificate of Immunity from listing can only be made where a planning application has been made should be removed as it provides yet a further restriction on developers).

4.27 A similar approach might be an option to protect developers against applications for TVG registration. Alternatively, applying the principles set out in paragraph 4.8, would mean that questions about TVG registration should be raised at the same time as and as part of the planning process, as a factor relevant to the 'if' decision. Where planning has dealt with an 'if' issue, the Review would argue that that issue should not be re-opened. Thus, where the possibility of TVG registration has been considered as part of planning, the Review would contend that granting planning permission should then provide protection from TVG registration for the duration of that permission. Such an approach would enable all the relevant issues to be weighed together, rather than the merits of TVG registration being considered in isolation, as is the case now.

Box 10 – Listed building Certificates of Immunity

When planning permission is being sought or has been granted, any person may apply to DCMS for a 'Certificate of Immunity'.

- If a certificate is granted, the building cannot be listed (and the local authority cannot issue a building preservation notice) for five years;
- If the certificate is not granted, the building will normally be added to the statutory list.

An application for a certificate can only be made where an application has been made for planning permission for development, which involves the alteration, extension or demolition of the building, although the applicant for that permission and the applicant for immunity from listing need not be the same person.

Diversion of public rights of way

4.28 The diversion of a public right of way cannot be considered formally by a local authority until after planning permission has been granted. It will normally be dealt with by the local highways authority, rather than the local planning authority. In some areas, the two will be in different tiers of local government. As a result, despite the relevance of questions relating to public rights of way to the 'if' decision, and the fact that the issues will generally, but not always, be considered as part of the planning process, the need to get a separate consent after planning permission has been granted generates delay and uncertainty. If objections to the diversion are received, the consent must be referred to the Planning Inspectorate (PINS) for determination or withdrawn by the local authority. These processes can add further delay and uncertainty.

4.29 At its simplest, this difficulty would be addressed by ensuring that CLG's advice to planners is consistent with Defra's advice to rights of way officers in emphasising that public rights of way should be considered as part of planning (because it is relevant to the 'if' decision they are taking) and encouraging early liaison between the developer, planning and highway authorities, local amenity groups, prescribed organisations and affected individuals. Issues such as the impact on 'passing trade' to a shop that a diverted right of way would have, whilst not generally material to the planning decision and therefore not part of that consideration, should however be dealt with in parallel with the planning decision to ensure that the developer has a greater degree of certainty. It should though be made clear that, where all matters material to the decision have been considered in the planning process and approved, there should be a presumption in favour of granting the consent for the footpath diversion unless there has been a significant change in circumstances or policy; the planning decision maker has acted unreasonably; or following more focused and detailed consideration, previously unforeseen issues of substance come to light.

4.30 Another approach might be to allow a rights of way diversion/extinguishment order to be made and published before planning permission for the development is granted, with confirmation of the rights of way order (conditional or unconditional) being actuated with the granting of the planning permission. One potential obstacle would be that the reasons for diversion/ extinguishment would have to still be applicable to the scheme described on the order and the actual planning application submitted or granted (to ensure that a developer could not propose a scheme, make an order for diversion based on it, get no objections and then radically revise the development scheme). However, there will continue to be the right of objection to a rights of way order and consequent submission to the Secretary of State.

Species licences

4.31 There is currently duplication between the consideration of the statutory tests by planning authorities as material considerations in judging impacts on protected species and the subsequent consideration of the same issues (in greater detail) by Natural England where a licence is required. The law currently requires both competent authorities to consider these aspects independently. Consideration should be given to examining whether this overlap could be reduced or removed by enabling local authorities to determine the substance of the first two tests (the 'over-riding public interest' and 'no satisfactory alternative' tests, which go to the heart of the 'if' decision) and allowing Natural England to consider only the third 'favourable conservation' test, which focuses on 'how' to mitigate or compensate for the impacts on any protected species present on the site, once the 'if' decision has been taken. However, when considering the feasibility of such a change, which would require investment in planning authorities' expertise, it would be important to make sure that the costs did not outweigh the potential benefits. The complexity of making the necessary legislative change, whilst also ensuring the requirements of the EU Habitats Directive continue to be met, would also needs to be taken into account.

Highways consents

4.32 In applications for developments where, for example, a connection to an existing highway is needed, the issue of whether the connection can be made is dealt with as part of the planning process. However, under current processes, the developer is then required to seek a subsequent highways consent which will consider the same issues dealt with at planning permission stage. Most highways consent applications go to public enquiry, which even in the most straightforward cases takes around 7-8 months. Recognising that planning addresses the 'if' issues and allowing developers to apply for highways consents as part of planning permission would help to overcome these issues, and could create significant time and cost savings. Legitimate objections could still be made, during the planning applications process.

Energy efficiency of buildings

4.33 The Review's interim report noted concerns that the extension of the remit of planning has led to increasing requests for detailed design work to inform planning decisions, adding to costs at a time of high project risk. The trend was most marked in relation to energy efficiency, driven by the policy objective of transition to zero carbon buildings. It could be countered if CLG's policy guidance made it clear that, where planning authorities can demonstrate sound local development frameworks supporting a particular policy approach, they can specify the energy efficiency objectives they expect developers to achieve by reference to nationally set standards, such as the Code for Sustainable Homes or BREEAM[52]. However, they should leave consideration of the detail of how the standards are to be achieved to the building control regime and any reference to these national standards should avoid a piecemeal application of them to help prevent further uncertainty. This approach would maintain the current momentum towards zero carbon whilst enabling the market to develop products to meet rising standards in an orderly fashion, but would remove the requirement for planners to consider most detailed design at the planning stage and so reduce costs for applicants.

Sequencing of non-planning consents

4.34 To enable all non-planning consents to be considered alongside planning permission, in line with the principles set out in paragraph 4.8, the remaining barriers to choice over the sequencing of non-planning consents in relation to planning need to be removed. There are in fact few legal impediments to developers applying for non-planning consents before or in parallel with planning, where that makes sense. Annex E sets out the timetabling provisions for selected non-planning consents.

4.35 Whilst highways orders are generally dealt with after planning permission has been granted, this is a matter of custom and practice rather than a legal requirement. As noted above, diversion orders for public rights of way do have to follow planning permission and this is a constraint that the Review believes could usefully be lifted in order to facilitate the early consideration of rights of ways issues.

4.36 Likewise, environmental permits for certain types of waste facility cannot be granted until after planning permission has been given (the so-called 'planning bar'). The Review considers that this requirement should be removed.

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[52] BREEAM (Building Research Establishment Environmental Assessment Method) is a widely used environmental assessment method for buildings. It sets the standard for best practice in sustainable design and enables the measurement of a building's environmental performance. Further details are available at: http://www.breeam.org/page.jsp?id=66

Recommended action

4.37 These suggestions, if acted upon, would address a number of the specific concerns about individual non-planning consents raised during the first phase of the Review. They would go some way towards improving certainty, by reducing the risks associated with TVG registrations and diversion of public rights of way; would remove duplication in the habitat licensing process; and provide greater clarity about the respective roles of local planning authorities and building control in relation to energy efficiency.

Recommendation H –. Government should improve the interaction between planning and non-planning consents in specific instances to clarify what should be viewed as material to planning and non-planning consent regimes, remove duplication and reduce the need for detailed design work to obtain planning by:

- Reviewing the operation of registration of town and village greens in order to reduce the impact of the current arrangements on developments that have received planning permission;
- Ensuring that the impact of a planning application on rights of way is considered as part of the planning process to reduce the risk of delay arising from challenge to any subsequent diversion (or other) order;
- Reviewing the operation of species licensing to assess whether it is appropriate to reduce or remove duplication in the respective roles of the planning authorities and Natural England by enabling the former to determine the 'over-riding public interest' and 'no satisfactory alternative' tests and the latter to focus on the 'favourable conservation test';
- Exploring the options for merging highways consents with planning permission;
- Clarifying the roles of planning authorities (setting objectives and standards) and building control (ensuring objectives and standards are met) in relation to energy efficiency to reduce the need for applicants to carry out detailed design work at the planning permission stage;
- Removing the remaining legal barriers to the flexible sequencing of non-planning consents in relation to planning whilst taking account of constraints such as underpinning EU regulations; and

In addition, Government should pro-actively consider whether there are other opportunities, not mentioned above, that could be taken to remove duplication between planning and non-planning consents and to reduce the need for detailed design work to obtain planning permission.

Integration of planning and non-planning consents by local authorities

4.38 Taking the action outlined above could remove specific examples of duplication, reduce the complexity of current arrangements and make the process more efficient in specific areas. At the same time, the Review sees an opportunity for local authorities that want to attract investment by businesses to improve their own efficiency and offer improved service to developers

through the progressive alignment and integration of planning and non-planning consents.

4.39 At its simplest, integration of planning and non-planning consents can be achieved through the type of changes to organisation and working practices, led by the local authority and aimed at offering a co-ordinated and 'customer-focused' service to businesses which are embarking on development projects, that are described in paragraphs 2.32 to 2.35. Following existing good practice in development management goes a long way to enabling local authorities to offer an integrated service covering planning and necessary non-planning consents needed by particular developments.

4.40 Beyond this integration of 'service delivery', there are also opportunities open to local authorities to integrate planning and related non-planning consent processes. As discussed in paragraphs 2.78 to 2.81, the core of such process integration already exists in the shape of the 1App planning application form launched through the Planning Portal in 2007. If the principle of greater integration can be achieved at the application stage, then it should be possible to extend it into other parts of the processes for determining the range of development consents. There would be advantages, for example, in facilitating a single consultation process covering all the different aspects of a development. Not only could this offer savings in time and effort to developers and decision makers alike, it could also be helpful to local communities and other interested parties in giving them a rounded picture of the development proposal from the start, rather than expecting them to contribute separately on different elements of a scheme.

4.41 Integration of service delivery and processes should bring benefits for applicants in terms of the quality of service they receive and for decision makers in terms of their ability to streamline the processes involved. Fundamentally, though, the consents remain legally separate and require separate determination – as is the case today with listed building consent or conservation area consent, which may be applied for and handled together with a planning application but remain subject to separate consideration. The final stage of a progressive integration of non-planning consents with planning would see the decision-making function brought together in one place so that local authorities were able to offer substantive decisions on non-planning consents aligned with the planning decision.

4.42 Such integration is facilitated by the fact that the majority of those non-planning consents identified by contributors to this Review as a priority for reform and improvement are administered and determined by local authorities. This opens up the possibility of extending integration further to provide a streamlined process for consideration of multiple consents.

4.43 In most places, planning authorities, as a matter of practice, already determine planning applications, listed building consent and conservation area consents at the same time though (as noted above) they remain formally distinct. Further integration would involve amalgamating other decisions made

by the local authority, including those relating to public rights of way, highways, and Part A2 / B environmental permits, with the planning decision.

4.44 This closer integration between planning and non-planning consents could be achieved by making greater use of existing powers of delegation, for example, by encouraging upper tier highways authorities to empower lower tier authorities to determine relatively minor highways related consents. To be effective, planning authorities would need to be able to draw on expertise available in other teams to inform the decision-making process.

4.45 Relying on delegation between parts of local authorities would set a natural limit on the extent of possible integration. For the long term, and in the light of experience, it would be worth exploring the possibility of enabling suitable local authorities to take on more extensive decision-making powers, to enable them to determine consents that are currently the responsibility of other consenting bodies as an integral part of the planning process. Such an approach would be in line with the new Government's focus on localism but requires careful consideration of the legal and practical issues that arise. Factors that would need to be taken into account are discussed in Box 12.

Box 12 – Factors influencing whether decision-making should be local or national

Principle – Decisions should be taken at the lowest level possible, commensurate with the efficient and effective operation of the consent under consideration, in order to achieve local accountability for and transparency of decisions.

The factors policy makers should take into account in considering where decision-making should lie include:

- The level of discretion associated with the consent – local accountability for decisions is especially important when there is a high degree of discretion attached to them; where decisions are essentially 'rules based' and there is clear guidance available about how the rules will be applied the need for local accountability is reduced;

- Frequency of use and level of technical complexity – the level of use and technical complexity of consents will be relevant in considering how to ensure they are administered efficiently: highly technical and infrequently used consents may be better handled centrally by a single centre of excellence in order to ensure that appropriate expertise is brought to bear in the most efficient way;

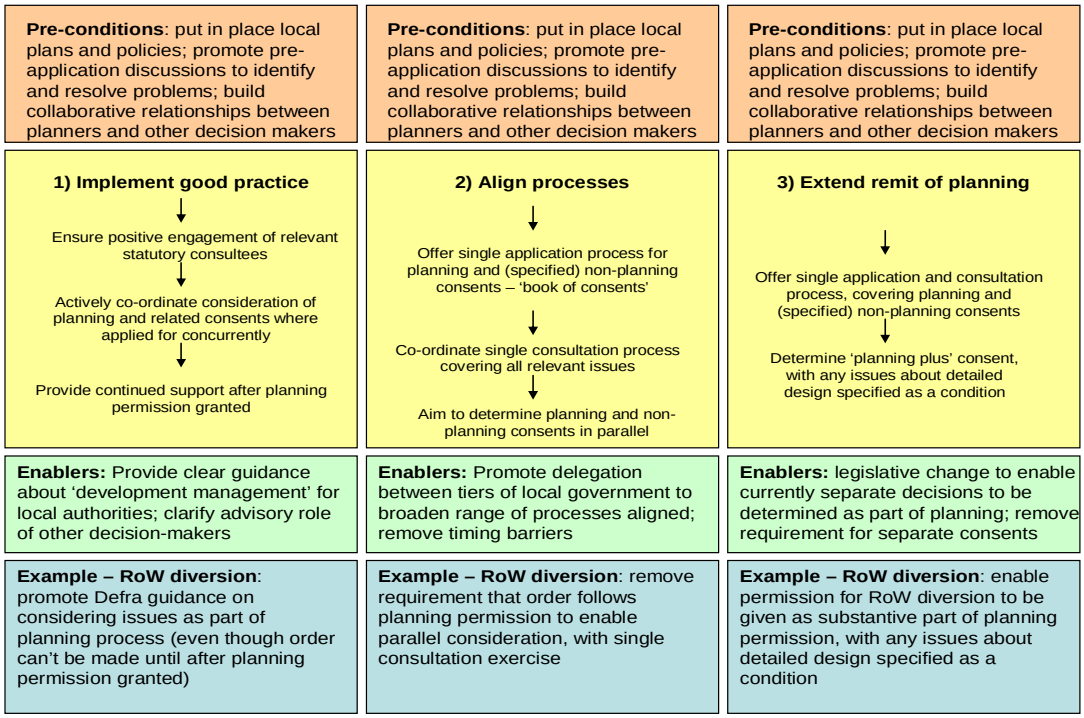
- Extent of public interest in decisions – where a consent is likely to have a significant impact on the neighbours of a development or the wider community, for example because of its effect on traffic, on local air quality or noise levels, it is important that decisions are made locally and in a way that is visible to local people and businesses;

- Capability of decision-making bodies – large organisations may be better placed to take on decision-making than smaller ones whose expertise and available resources are likely to be more thinly stretched.

4.46 Integration of decision-making along these lines would enable local authorities to offer a unified service delivered across relevant areas where it suited them and the developer. In practice, such a service is likely to be most beneficial to developers with large complex schemes, not least because it is likely that local authorities would expect to charge for providing additional services of this sort.

4.47 The benefits available include reduced process duplication and administrative burden for the developer (by removing the requirement to get some separate non-planning consents and enabling the re-use of information); reduced double handling by decision makers; greater choice for the developer over the timing of applications and hence greater flexibility to manage project risks by seeking some consents before others; greater certainty for developers once planning permission is granted; greater transparency for the applicant, and also for local communities and other interests, about the range of issues being considered in relation to the proposal; and increased local democratic accountability by bringing together economic, environmental and social factors relevant to the 'if' decision.

Figure 5: Route map for integration of planning and non-planning consents



4.48 There are possible disadvantages too, in that integrating what are currently separate decisions and extending the range of factors being considered may increase the time taken to reach a decision; similarly it could entail increased upfront costs for the developer; it requires broader expertise to be available to the 'core' decision maker; and the benefits of process

alignment may be offset by the costs of introducing an alternative way of operating and the additional complexity that creates for the decision maker.

Recommended actions

4.49 The Review sees the potential for greater integration of services, processes and decision-making to bring benefits for developers and decision makers alike. Focusing progressively on integrating service delivery, processes and then decision-making could provide a route map for the incremental improvement in the integration of planning and non-planning consents over an extended period, taking advantage of the opportunities to pilot new ways of working and to learn lessons as the process evolves. Figure 5 outlines the steps through which such integration might progress in practice.

Recommendation I - Government should encourage more local authorities to offer an improved, integrated and end-to-end planning and non-planning consents service by

- Actively promoting the adoption of existing good practice in development management across all authorities that take planning decisions;
- Inviting local authorities that want to attract investment to volunteer to pilot the further integration of planning and non-planning consents by extending the 1App approach offered through the Planning Portal to include more non-planning consents, with the facility for developers to opt for consideration of related consents in parallel with their planning application;
- Creating the necessary powers that would enable local authorities to take on a wider role in determining what are currently non-planning consents as part of the planning process.

Unification of consents

4.50 Progressive integration of planning and non-planning consents 'from the bottom up', as outlined above, would offer an incremental and flexible path, with opportunities to learn lessons and streamline processes along the way, to what others have presented as the logical end-point for simplification of the planning and non-planning consents landscape, namely a 'unified' consent. A report produced by consultants Halcrow[53] in 2004 concluded that 'we are clear and convinced that the unification of some of the regimes is to be supported and will achieve real improvements – there is a case for change' and made recommendations intended to bring about the gradual unification of planning and other consents. The Barker Review[54] in 2006 likewise recommended the gradual unification of the various consent regimes it considered.

[53] Halcrow Group Ltd, ODPM, 'Unification of Consent Regimes' (June 2004) http://www.communities.gov.uk/documents/planningandbuilding/pdf/148205.pdf
[54] See Footnote 41

4.51 Unification is something several respondents also called for, though they did not specify in detail what they had in mind. As noted in the Review's Interim report, the concept of a regime that pulls together a bundle of related consents in order to facilitate a particular class of development is an established one. The Transport and Works Act 1992 enables the promoter of guided transport projects, such as railways or tramways, to apply for most of the required development consents in a single application and process. The concept was extended to significant national infrastructure projects by the last Government through the creation of Development Consent Orders (DCOs), which bring together eight separate consents. In both cases, the unified consents are an addition to the existing consents landscape and their scope has been limited to a relatively narrow range of complex projects. The DCO approach is as yet untested but is expected to improve the opportunities for all those with an interest to take part, reduce the time taken to reach decisions and cut the costs of delivering national infrastructure.

4.52 The principal advantages that advocates of a unified consent put forward are that the approach would:

- Give a simple, potentially quicker, administrative process (one process instead of many, as now) giving greater certainty for the applicant and eliminating much of the duplication that exists in the current arrangements;

- Enable the decision maker to balance competing objectives and considerations by formally bringing together the full range of relevant issues for determination at the same time, maximising the ability to truly evaluate the sustainability of any given development;

- Improve the transparency of the process for applicants and for the local community and other interests affected by enabling them to see the full range of competing considerations and how they have been weighed by the decision maker;

- Bring greater local accountability for decisions by bringing together and making decisions more transparent.

4.53 On the other hand, contributors to the Review saw potential disadvantages in the shape of:

- 'Front-loading' of costs for applicants, who would have to satisfy the decision maker on all relevant issues at the same time;

- Possible additional costs for local authorities if a unified consent were introduced as a new element of the current landscape (rather than replacing the existing planning and / or other regimes);

- Whilst itself a simplification, the change would represent a complication of the issues for decision makers at time of extreme pressure on local authorities, such that success would be heavily dependent on the calibre of officers and members;

- Potential for the slowest element of a consent to delay determination of the whole;

- Doubts about whether the approach would provide benefits for smaller developments.

4.54 Overall the groundswell of opinion amongst both businesses and decision-making bodies was against further unification as a viable option at present. Views about the approach may change as experience of DCOs grows. Assuming the benefits of the DCO approach are realised, and irrespective of the pace of the integration changes advocated above, the Review can see value in the Government seeking to extend the use of DCOs 'top down' to a wider range of projects.

4.55 The advantages are likely to be greatest for large, complex and controversial schemes which need to obtain multiple non-planning consents and where the public policy rationale for development is clear and strong. Types of schemes that appear suitable for consideration under the DCO process include infrastructure projects not already covered (including potentially guided transport projects now covered by TWA Orders); large scale housing projects; major manufacturing plant; and significant regeneration schemes.

4.56 It may also be possible to extend the operation of DCOs by offering the decision-making powers associated with DCOs to local authorities which have demonstrated the capability and desire to take on work of this kind.

Recommended actions

4.57 The Review concludes that, whilst unification remains a potentially attractive long term goal, it is too complex a change to make at time when resources are severely constrained and the benefits of DCOs (as a new model of unification) are not yet proven. Instead, Government should proceed with incremental changes in key areas already recommended, to bring quick benefits to businesses and decision makers, and look at replicating the DCO approach in other areas, assuming its advantages have been demonstrated in practice.

Recommendation J – Government should look for opportunities to extend the benefits, if realised, of the introduction of Development Consent Orders by reviewing their operation after 2 years experience and actively considering extending their use to a wider range of projects and / or extending decision-making powers to appropriate local authorities (potentially by building on any future aims to increase local decision making more generally).

Chapter 5 – Managing the Landscape

Oversight of the consents landscape

5.1 One reason for the complex and fragmented nature of the planning and non-planning consent landscape is that there is not – and has never been – strategic oversight of the landscape as a whole. There is no mechanism within central government to ensure that existing non-planning consents operate as effectively and efficiently as possible and interact well with planning. Neither is there a meaningful mechanism to ensure that any new consents are designed and implemented in a way that takes account of the landscape as a whole.

5.2 Individual non-planning consents make good sense in their own terms and there are recent examples of policy owners and regulators working to simplify and streamline the regimes for which they have responsibility. Such reforms have not been underpinned by systematic review of the planning and non-planning consent landscape; sharing of good practice; or 'ownership' of the regime as a whole within Whitehall. As a result, new regimes have been added with little apparent consideration of how they can best be integrated into the landscape; and calls for systematic reform of the landscape as a whole[55] have made limited progress. The consequences of this lack of oversight will only become starker if, in the future, new non-planning consent regimes are developed in isolation of the wider landscape of which they are part.

5.3 The Review therefore concludes that Government needs to establish a mechanism to ensure that departments and other interested public bodies, notably local authorities and national non-planning consent decision makers, work collaboratively to provide strategic oversight of the planning and non-planning consents landscape. The aim of that oversight should be to ensure that the regimes operate as coherently, efficiently and effectively as possible. In particular, the Review contends that it needs to:

- Scrutinise the existing landscape to identify possible barriers and inappropriate burdens and periodically initiate work to identify where improvements can be made;

- Scrutinise potential new non-planning consents or changes to the planning regime to ensure that they are necessary and that they are developed and implemented in ways which impose minimal additional burdens on businesses and decision makers and take full account of their interaction with related consents and regimes;

- Give developers advance notice of changes to all relevant planning and non-planning consent regimes that are in the pipeline; and

[55] See Footnotes 53 and 41

- Monitor the cumulative burden of the regulation that applies to business development, with a view to identifying opportunities for reducing it.

Options for creating a strategic oversight mechanism

5.4 The Review has not been able to identify an obvious existing body or mechanism that could take responsibility for delivering the strategic oversight function outlined above. Furthermore, there does not appear to be a proposed body or mechanism that could absorb the role either.

5.5 The Review is reluctant to suggest creating a new body and suggests, therefore, that the best route available to Government will be to extend the role and remit of an existing body or mechanism. The key responsibility of such a body or mechanism will be to facilitate and encourage collaboration between Government departments and other relevant bodies to ensure that the overall planning and non-planning consents operate as coherently, efficiently and effectively as possible.

5.6 The benefits of this approach will derive from creating a focus in central government on continuously improving the efficiency of the non-planning consent landscape and its interaction with planning. A single body with oversight of the full landscape will allow an improved focus on areas where changes may bring the greatest benefits to business and consenting bodies.

5.7 There will be a small one-off cost associated with putting in place a mechanism and on-going costs associated with running the oversight structure. The latter includes the time of officials involved in preparing for and attending meetings, secretariat support to the group and some effort associated, for example, with maintaining an up to date picture of the overall landscape, scanning for new regulations. These costs can be minimised by attaching new responsibilities to an existing body. There would be no additional direct costs for businesses or consenting bodies.

Recommendation K – Government should put in place a body or mechanism responsible for maintaining central oversight of the planning and non-planning consent landscape, tasked with ensuring individual and related regimes operate effectively and efficiently and with scrutinising potential new consents.

To achieve this, the body or mechanism should:

- Give developers advance notice of significant changes to planning and non-planning consent regimes;
- Scrutinise potential new consents or changes to the planning regime to ensure that they are necessary and that they are developed and implemented into the landscape with minimal additional burden and with full consideration given to their interaction with related consents and regimes;
- Continuously scrutinise the existing landscape for possible barriers / inappropriate burdens and make proposals for periodic improvements; and
- Monitor the cumulative burden of regulation on developers with a view to reducing it.

Making change happen

5.8 The interim report also identified that despite a number of calls over the past ten years for systematic reform of all or part of the non-planning consents landscape, the pace of change has, in general, been slow. With wider changes to the planning regime currently being proposed, the strong drive for deregulation and the emphasis on local accountability for decisions affecting local communities, there is now a rare window of opportunity to drive through changes to the non-planning consent landscape.

5.9 The Review therefore urges Government to use this opportunity to help ensure that the changes argued for in this report are implemented as part of the wider reform that is underway.

Recommendation L – Government should develop an 'Action Plan' to drive implementation of this Review's recommendations and to ensure that reforms to the wider planning regime are delivered in a way that is complementary to the aims of this review. To achieve this, Government should:

- Agree a cross-Whitehall 'Action Plan' setting out exactly how each of the recommendations will be delivered, by whom and in what timescale; and
- As part of that 'Action Plan', make clear how wider planning reforms will take account / incorporate specific Penfold Review recommendations.

Chapter 6 – Other Challenges

6.1 The interim report commented on the difficulties that respondents reported they commonly experienced when dealing with statutory undertakers, principally energy and water companies and railways. Whilst this issue was not formally within scope, because of the strength of the response from contributors, the Review felt it was necessary to report on the issues involved and to comment on work to mitigate some of the problems.

6.2 In Phase 2, the Review team has met the energy, water and rail regulators to discuss the findings of the interim report and received an update on work they are each doing to address some of the problems raised. This Chapter reports on the activity underway.

Utilities

6.3 In terms of utilities, the majority of the problems raised by respondents to the Review during Phase 1 related to the length of time taken for electricity connections, although some issues with gas, water and sewerage connections and adoption were also reported. Developers essentially reported a lack of clarity in the process for engagement with utility companies, no clear timescales and insufficient incentives for the utility companies to provide a timely response to requests from developers[56].

6.4 In summary, the key problems raised by respondents were:

- Poor communication and slow interaction between internal departments of energy companies in determining customer solutions, which in turn results in delays in dealing with developers as customers;
- Disproportionate amount of time taken to provide quotations and deliver service (and a tendency to miss previously agreed timetables), a lack of transparency over costs and inaccurate initial quotations; and
- Where the possibility for competition exists, in some circumstances it either has not evolved or is not yet mature enough to offer real alternatives.

[56] It should be noted that there are currently some standards in place regarding gas and electricity connections in both the Gas Distribution Licence and the Electricity Distribution Licence and that Ofgem has acted to enforce these standards where appropriate. Further information can be found at http://www.ofgem.gov.uk/Pages/OfgemHome.aspx. In the water and sewerage industry, Ofwat has powers to determine an agreement in the event of a dispute. Further information can be found at http://www.ofwat.gov.uk/

6.5 Respondents to the Review expressed a clear desire for improvements in terms of:

- Clear and standard processes for engagement;
- Enhanced customer focus;
- Increased accuracy of initial quotations for work needed;
- Stronger enforcement of standards; and
- Increased competition.

Update on on-going work to address problems faced

6.6 Both Ofgem and Ofwat have done much to address these issues in recent years. Feedback to the Review indicated that problems were far more likely to occur when dealing with electricity companies than with gas, water and sewerage. The Review warmly welcomes the action being taken in the light of the recent electricity Distribution Price Control Review[57], which it believes has the potential to deliver real benefits for developers. The action currently underway in each sector is:

- **Electricity** – From October 2010, all electricity distribution companies will have to work to guaranteed standards and enforced timescales and customers will be entitled to compensating payments if those standards are not met. There will also be an overall licence condition on the distribution companies to meet timescales at least 90 per cent of the time, or be in breach of their licence and face potential fines and/or enforcement action from Ofgem. A 'Quotation Accuracy Scheme' is designed to help ensure that quotations for connections are more realistic. Furthermore, the new regime should help create the potential for increased competition, which should in turn deliver more improvements for developers.

- **Gas** – Whilst there are already guaranteed standards in place in the gas market that seek to ensure appropriate customer service levels in the gas distribution and supply sector, Ofgem expects to look at making further improvements in terms of customer experience as part of the next Gas Distribution Price Control Review. The increased level of competition in the gas market (as compared to the electricity market) may in part explain why developers report fewer problems with gas connections than they do with electricity.

- **Water and Sewerage** – Since publication of the interim report, an Ofwat consultation on its policy and processes relating to the new appointments regime that governs applications to provide water and

[57] Distribution Price Control Review 5
www.ofgem.gov.uk/Networks/ElecDist/PriceCntrls/DPCR5/Pages/DPCR5.aspx

sewerage services to new sites has closed and Ofwat is currently considering the responses. The new policy and process, if implemented, will help to increase the choice of water and sewerage providers for developers and help promote competition. Whilst there are currently no service standards in place for incumbent companies in respect of developers, Ofwat hopes that, as a result of greater competition in the sector, enhanced customer service standards will naturally develop. Whilst the Review welcomes the improvements for developers that a new appointments regime should deliver, it would also encourage Ofwat to explore the possibility of setting guaranteed standards in the water and sewerage market to help ensure appropriate customer service levels for developers.

6.7 The Review is encouraged by the action in hand and optimistic that it will result in improvements to businesses' experience of dealing with utilities in relation to development projects. It urges Ofgem and Ofwat to monitor the performance of providers and to take further action, if necessary, in the light of experience of the new arrangements being introduced.

Access to railways

6.8 The rail infrastructure in England, Scotland and Wales is primarily owned and managed by the national infrastructure manager, Network Rail, which is in turn subject to regulatory controls by the independent Office of Rail Regulation (ORR). During Phase 1 of the Review, developers raised concerns about the difficulty of obtaining consent to access the railways, for example to construct a bridge over the tracks, and of gaining consent to develop next to the railways, where there may be a shared boundary or simply proximity to a railway. Other issues such as the landscaping of land adjacent to a railway, so that for instance, trees do not drop leaves on to the line, can also involve lengthy discussions.

Update on on-going work to address problems faced

6.9 ORR has recently approved templates[58] that provide a model contract for anyone wishing to work with Network Rail. The aim of the templates is to achieve a fairer balance of risk between Network Rail and those it enters into agreements with; deliver faster transactions; and reduce costs through greater clarity and speed of process.

6.10 ORR is also looking at barriers to third parties working with Network Rail and seeking to encourage collaborative behaviours. Elements of the Network Rail 2009-2014 Delivery Plan59 are concerned with improving the service culture and effectiveness of Network Rail and this is to be welcomed.

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[58] ORR, 'Improved template contracts for third party investment' http://www.rail-reg.gov.uk/upload/pdf/investment-template-contracts-letter-050210.pdf

[59] Network Rail, 'More trains, more seats, better journeys: Control Period 4 (2009-14) Delivery Plan 2009' http://www.networkrail.co.uk/aspx/5500.aspx

6.11 Respondents to the Review also suggested that further improvements could be made by developing generic rules, for example setting a standard required distance of trees from the railway boundary which could be incorporated as a planning condition rather than requiring discussion with the rail infrastructure companies. The Review would urge Network Rail and ORR to explore the potential for developing these types of standard rules as they would deliver real benefits for developers.

6.12 The Review believes that businesses themselves could do more to ensure a well functioning relationship by engaging early in the process when developing proposals that require access to the railway; and avoiding the need to change dates with minimal notice, which impacts upon the availability of Network Rail engineers and overall cost.

6.13 Whilst it recognises that developers are not ‘core’ customers of the rail industry, the Review strongly supports work by both ORR and Network Rail to improve the interface with the developer community and urges them to continue seeking to improve communications between the industry and developers, which seems to be essential to managing the competing priorities for rail possessions that will remain in the future.

Chapter 7 – Conclusion

Recommendations package

7.1 The Coalition Government has made supporting sustainable growth and enterprise, balanced across all regions and industries, one of its top priorities. With a renewed drive to deregulate and to reform the planning system underway, the time is right to make changes to the wider consents regime that is such an essential component of the overall attractiveness of the business environment in the UK.

7.2 This Review has made a package of recommendations aimed at achieving greater certainty for developers, speedier decisions and reduced duplication between non-planning consent regimes. There are trade-offs between certainty and speed, on the one hand, and cost, on the other. At a time when public spending is under pressure and the economic recovery is not yet established, it is all the more important to ensure that non-planning consents operate as efficiently and effectively as possible.

7.3 At the heart of the proposals the Review makes is the understanding that planning and non-planning consents are elements of a single system of 'development management' with a shared objective to support and manage sustainable development effectively. In order to improve the interaction between planning and non-planning consents, it proposes a set of principles to ensure that, as far as possible, all factors relevant to deciding whether a development can go ahead (the 'if' decision) are considered at the same time and not later re-opened.

7.4 By applying these principles, the Review identifies a number of opportunities to clarify what should be viewed as material to planning and non-planning consents and to remove duplication between them. More broadly, recognising the centrality of planning in deciding whether a development can go ahead opens up the possibility of merging some non-planning consents with planning and moving to a more integrated model that can evolve incrementally in the coming years.

7.5 In an effort to reduce the complexity of the non-planning consent landscape, the Review recommends a light touch assessment of long-standing consents that are little used; and active consideration of whether groups of related consents can be amalgamated and simplified to achieve the sort of benefits that the Environmental Permitting Programme is currently realising. At the same time, it asks policy owners to consider how they can make individual consents operate in a more proportionate and standardised way in order to reduce the administrative burden on business and consenting bodies alike.

7.6 The concept of development management is becoming increasingly well understood within the planning world and there is growing experience of what works to underpin good practice. Consciously extending the concept to encompass non-planning consents must be helpful, not least because the

planning system has already addressed or is addressing many of the issues raised in relation to non-planning consents. The Review makes recommendations to ensure that many of the basic elements of development management are used consistently. The challenge is then to extend existing good practice so that it becomes the norm across non-planning consent decision makers.

7.7 Much of what the Review has found has been said before, though not in respect of the full range of non-planning consents. Many of its proposals have been made before in other contexts. They have either not been implemented or have been taken forward in ways which mean that the changes proposed have not 'stuck'. With this in mind, the Review has tried to go with the grain of changes already in hand and has called for incremental change rather than radical reform. This is also very much in line with the preferences of businesses and other interests.

Benefits and costs

7.8 The absence of reliable data about many of the non-planning consents the Review has looked at means that it has been impossible in the time available to carry out a full cost and benefit assessment of the recommendations made, although many of the recommendations relate to (or extend) activity that is already regarded as good practice.

7.9 Underpinning the proposals though is an ambition to ensure that all non-planning consent regimes meet the principles of better regulation. Making sure that regimes – individually and collectively – adhere to these principles should deliver a planning and non-planning consents landscape that delivers the outcomes businesses have said they want.

7.10 Businesses would be the main beneficiaries of the proposed changes. Simplifying and streamlining the non-planning consent landscape; strengthening the service culture of consenting bodies; improving the accessibility of information and guidance; integrating processes; and improving the interaction between non-planning consents and the planning regime would all help ensure that developers have greater certainty, speedier decisions, reduced duplication and minimised costs. Whilst many of the recommendations would be of particular benefit to those developers undertaking major or complex projects, there is also much in the report that would aid smaller businesses undertaking less complex developments (such better information provision and a more proportionate approach to applying regulatory regimes).

7.11 The recommendations should also give people in local communities more influence over development proposals that affect them by creating more efficient and accountable processes. Ensuring that all key information relevant to whether a development can go ahead is considered at the same time should make it easier for individuals to take a rounded and informed view of proposals as they come forward.

7.12 The Review recognises that, if adopted in full, individual recommendations would add to the resource requirements of Whitehall departments and consenting bodies, particularly in the short term. For example, there are one-off costs for a number of regulators attached to considering their overall objectives, establishing appropriate 'satisfaction' criteria, putting in place publication mechanisms and creating and promoting a 'quality development code'. Similarly, costs would arise from establishing enhanced pre-application procedures and embedding good practice as regards Planning Performance Agreements. Other recommendations such as the merger of consenting regimes and better integration of decision making will also have resource implications, initially for central departments considering the policy impacts and subsequently for decision makers when changes are implemented. There would, in particular, be a resource pressure on local authorities arising from their proposed strengthened role at the heart of development management.

7.13 Against these costs, though, there are significant medium term resource savings to be had for decision makers in raising the standards of their current regulatory practices. Clear definition of objectives and service standards will lead to consenting bodies focusing resources on what is important. Similarly, there will be a decrease in wasted resource in respect of inappropriate or inadequately submitted consenting applications through developer's adherence to 'quality development codes' and in handling complaints where expectations were not clear.

7.14 There could also be short-term resource savings as a result merging regimes and better integration of decision making. Removing duplication, streamlining consenting regimes and adopting a flexible and more proportionate approach would allow consenting bodies to focus better on their priorities, increasing their effectiveness and freeing up resources. The Review's recommendations about charging fees by consenting bodies for discretionary services also provide a means of easing resource pressures.

Approach to implementation

7.15 Part of the challenge of improving businesses' experience of the development process lies in finding ways to enable the myriad local authorities and national consenting bodies to adopt changes in a coherent and planned way. With wider changes to both the planning regime and local government currently being proposed, there is a window of opportunity to drive through changes to the non-planning consent landscape.

7.16 With this in mind, the Review believes that its recommendations should be seen as a programme of reform to be carried forward in a concerted way over an extended period. Implementation of the recommendations of the Killian Pretty Review has been handled in this way and is perceived by those contributing to the Review as being successful. The aim should be to outline a route map of changes, which go with the grain of the Government's approach to deregulation, to the economy and to planning. That route map should enable central departments to pull together a coherent action plan such that

local authorities, other decision makers and developers can prepare for changes in advance and learn lessons as they go. It will be important to refrain, as far as possible, from making further changes along the way.

7.17 Some of the changes proposed in this report require primary and/or secondary legislation to implement. With plans to reform the planning regime and local government already in the pipeline, it should be possible to make some changes relatively quickly. Others will take longer to work up into legislative proposals and it may be necessary to look for other vehicles to deliver change.

Glossary and Abbreviations

Glossary	
Consent	A permission granted following a formal decision-making process by a competent public body (the decision maker), on the basis of a written application submitted by the applicant (a developer, as defined below, or his agent).
Developer	Any business or individual that is involved in promoting a development (as defined below), whether for its own use or for the use of third parties.
Development	(As defined by the Town and Country Planning Act 1990) The carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.
Non-planning consent	Any consent a developer has to obtain alongside or after, and separate from, planning permission in order to bring a development into its first operational use.
Sustainable development	Development which meets the needs of the present without compromising the ability of future generations to meet their own needs. It has four objectives: social progress which recognises the needs of everyone; effective protection of the environment; the prudent use of natural resources; and the maintenance of high and stable levels of economic growth and employment.

Abbreviations	
ATLAS	Advisory Team for Large Applications
BIS	Department for Business, Innovation and Skills
BRE	Better Regulation Executive
BREEAM	Building Research Establishment Environmental Assessment Method
CLG	Department of Communities and Local Government
DCMS	Department for Culture, Media and Sport
DCO	Development Consent Order
DECC	Department of Energy and Climate Change
Defra	Department for Environment, Food and Rural Affairs
DfT	Department for Transport
EH	English Heritage
EPS	European Protected Sites
FAQs	Frequently asked questions
HELM	historic environment local management
HSE	Health and Safety Executive
IHBC	Institute of Historic Building Conservation
LPA	Local Planning Authority
NPS	National Policy Statement
ODPM	Office of the Deputy Prime Minister
Ofgem	Office of the Gas and Electricity Markets
Ofwat	Water Services Regulation Authority
ORR	Office of Rail Regulation
PINS	Planning Inspectorate
PAS	Planning Advisory Service
PPA	Planning Performance Agreement
PPS	Planning Policy Statement
SSSI	Sites of Special Scientific Interest
TPO	Tree Preservation Order
TVG	Town or Village Green
TWA	Transport and Works Act 1992
WAI	Water Abstraction and Impoundment

Annex A – Terms of Reference

Background

Government has active work in progress to streamline the planning applications process (following the Killian Pretty Review published in 2008). However, there is a perception that obtaining consents which do not form part of the planning process – for example compulsory purchase orders, highway consents, listed building consent, authorisation for pipeline construction and environmental consents for water, waste, and air quality – causes delays and uncertainty for business and holds back investment.

The Penfold Review will therefore gather evidence to assess the role that non-planning consents play in investment decisions, and where any barriers to investment are identified, it will propose ways to address these. It will explore the end-to-end development journey to identify any elements of the process that cause avoidable delays or impose unnecessary burdens or costs and identify options to overcome these. Where necessary, the Review will identify ways to improve co-ordination between agencies granting consents in order to streamline the process of meeting relevant requirements. In doing so, it will seek to retain an appropriate balance between the outcomes regulatory regimes are designed to support and the need for fast and efficient decision-making about development proposals.

Terms of reference

The Review aims to identify areas where there is scope to support investment by streamlining the process for securing consents obtained alongside or after, and separate from, planning permission ('non-planning consents'). It will do so by:

a. Identifying non-planning consents which developers and other stakeholders regard as problematic;

b. Assessing their impact on developers and the development process; and

c. Considering how obtaining such consents could be made simpler and more cost-effective.

Scope

The Review aims to consider those consents a developer has to obtain alongside or after, and separate from, planning permission in order to complete a development project. Following initial analysis, it will identify those consents which have the greatest impact on investment decisions for further study. The Review will cover a wide range of development types, including building, engineering, mining and operations as well as material changes to the use of buildings and other land. It will consider all sizes of development except householder development and will explicitly exclude consideration of nationally significant infrastructure projects, considered by the Infrastructure Planning Commission and marine developments, considered by the Marine and Fisheries Agency (due to be replaced by the Marine Management Organisation in spring 2010). Where responsibility for particular consents has

been devolved, the Review will only look at practice in England and, where appropriate, Wales. The Review will aim to avoid duplicating other projects underway across Government. Instead it will draw evidence, as appropriate, from such projects.

Outputs and timing

The Review aims to deliver a report by the 2010 Budget that makes recommendations about:

a. Priority areas for further work to improve the developer's experience;

b. Potential options for improving any elements of the process that cause avoidable delays or impose unnecessary burdens or costs;

c. Potential options for improving co-ordination between agencies granting consents and, where appropriate, increasing consistency in approach; and

d. Any identified quick wins.

Governance

A steering board chaired by the Managing Director, Regulatory Innovation, Better Regulation Executive will meet periodically with the independent Reviewer, Adrian Penfold, to provide direction to the project team on scope and conduct of the Review. Members of the steering board will be drawn from the Departments for Business Innovation and Skills (BIS), Communities and Local Government (CLG), Environment, Food and Rural Affairs (Defra), Transport (DfT), Energy and Climate Change (DECC), Treasury and Cabinet Office.

Measures of success

The success of the Review will be measured against:

a. Fullness and quality of evidence about non-planning consents gathered;

b. Understanding of non-planning consents regimes and their impact on investment decisions;

c. Identification of options for addressing any problem areas identified.

d. Timely publication of the Review report.

e. Active participation by relevant sections of the business community, regulators and central and local government and non-governmental organisations (NGOs).

Annex B – Contributors to the Penfold Review

The Review hopes to have included on this list everyone that contributed and apologises if anyone has inadvertently been omitted.

The following organisations and individuals submitted written responses to the written call for evidence:

Accessible Retail
Association of Consultant Architects
Barratt Developments PLC
British Chambers of Commerce
British Property Federation
Brixton Society
Burges Salmon LLP
Cathedral Communications Limited
CBI Minerals Group
Centro
Chemical Industries Association
Chief Fire Officers Association
Coal Authority
Confederation of Forest Industries
Confederation of UK Coal Producers
Corporation of London
Council for British Archaeology
Country Land & Business Association
Crest Nicholson Plc
Devon Countryside Access Forum
EDF Energy
English Heritage
Environment Agency
Environmental Services Association
Essex County Council
Federation of Master Builders
Federation of Small Businesses
Flagship
Gatwick Airport
Gerald Eve LLP
GSK
Hastoe Housing Association
Health Protection Agency
Henry Russell
Heritage Alliance
Historic Houses Association
House Builders Association
Home Builders Federation
Homes and Communities Agency
Housing Plus
Institute for Archaeologists
Institute of Historic Building Conservation

Institute of Public Rights of Way and Access Management Ltd
Joint Committee of National Amenity Societies
Lambert & Foster LLP
Law Society
Mineral Products Association
MJCA
National Housing Federation
National Society of Master Thatchers
National Trust
Natural England
Network Rail
Nottingham Community Housing Association Ltd
One North East
Open Space Society
Planning Inspectorate
Prince's Regeneration Trust
Quintain Estates and Development plc
Ramblers
Royal Town Planning Institute
RWE npower
Simons Group
Sustrans
Tesco
Thurrock Thames Gateway Development Corporation
Town and Country Planning Association
Trinity House
Turley Associates
UK Petroleum Industry Association
Worcester City Council

The following organisations and individuals participated in informal discussions during Phase 1 of the Review:

Aggregate Industries
AmicusHorizon
Barratt Developments PLC
Bircham Dyson Bell
British Land
CBRE
Chelsfield Partners
Chemical Industry Association
Climate Change Capital/Ventus VCT Funds
City of London Corporation
Council for British Archaeology
Country Land & Business Association
DJC 1 Planning Limited
English Heritage
Environment Agency
Enviros
Eversheds LLP

Faithorn Farrell Timms LLP
Federation of Small Businesses
Grant Thornton
Herbert Smith LLP
Highways Agency
Homes and Communities Agency
House Builders Association
Howard Day
Ipswich Conservation & Urban Design Service
Kate Barker
Local Government Association
London Borough of Enfield
Lovells
M3 Consulting
Mineral Products Association
Mace Group
Nabarro LLP
National Planning Forum
Natural England
Network Rail
North East Chamber of Commerce
Novartis
Olympic Delivery Authority
One North East
Pat Thomas Planning law
Paul Morrell – Chief Construction Adviser, BIS
Pegasus Planning LLP
Planning and Environment Bar Association
Sainsbury's
Sheffield City Council
Society for the Protection of Ancient Buildings
Swindon Borough Council
Tesco
Transport for London
UK Contractors Group
University of Sheffield, Department of Town and Regional Planning
Ward Hadaway
Westminster City Council
Westfield
WRG
Viridor

The following organisations and individuals submitted other written evidence:

Compulsory Purchase Association
Creative Sheffield
Denton Wilde Sapte LLP
Highways Agency
Northumberland County Council

Planning and Environment Bar Association
Planning Inspectorate
Rippon Homes
Rydon Homes Ltd
University of Westminster, Department of Urban Development & Regeneration
Viridor
Yuill Homes

The following organisations and individuals participated in Phase 2 of the Review:

Pat Aird – English Heritage
Janice Allen – Highways Agency
Linda Allen – Worcester City Council
Shabana Anwar – Bircham Dyson Bell
Lee Argyropoulos – Chemical Industries Association
Mashood Ashraf – Mace
Ian Askew – Highways Agency
Peter Burley – Planning Inspectorate
Sam Corp – Environmental Services Association
Stephen Cowburn – English Heritage
Janet Davis – Ramblers
Steven Durno – Law Society
Mike Etkind – Defra
Aly Flowers – Natural England
Michael Gallimore – Lovells
Laura Gray – Sainsbury's
Brian Hamilton – Entec UK Ltd
Kevin Hartnett – Hastoe Housing Association
Ben Haywood – Cheshire East Council
Alan Heatley – Enviros
Stephen Hodges – Viridor
Roger Humber – House Builders Association
Dave Mansell – M3Consulting
Edel McGurk – Natural England
Charles Mynors – Francis Taylor Building
Robbie Owen – Bircham Dyson Bell
Jaime Powell – Sainsbury's
Steve Quartermain – Chief Planning Officer, CLG
Martin Quinn – Environment Agency
Brian Robson – National Housing Federation
Kevin Rye – Natural England
Phillipa Silcock – Planning Advisory Service
Tim Smith – Law Society
Anthony Streeten – English Heritage
Penny Taylor – Health & Safety Executive
John Walker – Westminster City Council

The members of the Penfold Review Sounding Board were:

Steve Bee – English Heritage
Andrew Cave – Federation of Small Businesses
Jonathan Thompson – Country Land and Business Association
Phil Jones – One North East
Matthew Farrow – Confederation of British Industry
Clive Harris – Local Government Association
Patrick McDonald – Health & Safety Executive
Colette O'Shea – Major Developers' Group
Liz Peace – British Property Federation
Paul Watson – Planning Officers' Society
Andrew Whitaker – Homebuilders' Federation

The Penfold Review Team consisted of:

Adrian Penfold – Independent Reviewer, British Land
Alison French – Head of Review Team, Better Regulation Executive, BIS
Tammy Adams – Planning Directorate, CLG
Dorota Denning – Better Regulation Executive, BIS
Maggie Dutton – Environment Agency
Mike Edbury – Business Environment & Growth, BIS
Alison Edwards – Planning Directorate, CLG
Fleur Gorman – Business Environment & Growth, BIS
Peter Paddon – UK Trade and Investment, BIS
Giles Smith – Better Regulation Executive, BIS

Annex C – Timeliness Targets and Other Performance Indicators

Consenting body	Type of consent	Timeliness targets	Other performance standards
English Heritage – exists to make sure the best of the past is kept to enrich our lives today and in the future	Listed buildings (works) Conservation Area (demolition of unlisted building in conservation areas) Scheduled monuments (works)	28 days – statutory target EH has internal target of 21 days for responding (or an agreed deadline in writing with the local planning authority). Advice submitted to DCMS within 6 weeks (42 days) in accordance with Memorandum of Understanding. In 2009-10, the following percentage of application were dealt with in time: Listed building consent notifications – 98% (6,191 applications) Conservation area consents – 96% (343) Scheduled monument consents – 96% (1,328).	Service standards are set out in 'A Charter for English Heritage Planning and Development Advisory Services'. Covers role of English Heritage, its advisory service, statutory consultation and advice, pre-application discussions, information required from developers and e-planning standards. Planning Policy Statement 5, 'Planning for the Historic Environment', lays down material considerations to be taken into account in development management decisions, overall objectives on heritage issues, enabling development and information requirements from applicants.

Consenting body	Type of consent	Timeliness targets	Other performance standards
Environment Agency – it's our job to look after your environment and make it a better place	Environmental Permit Flood defence	Statutory time limits for determination (up to 4 months), which may be extended if further information is needed or with consent of applicant Deemed consented within 2 months if no decision has been made Performance depends on permit type and whether restrictions such as prior planning requirement applies: Complex bespoke: about 30% in 4 months Standard permits: about 70% in 3 months Water discharge & abstraction: About 90% in 3 months Flood defence: about 95% in 2 months	Customer Service Charter sets out principles of service, standards related to phone, letter and personal contact and how to raise issues of concern. Internal corporate scorecard performance measures, which are determined by customer survey: - customers say we are providing a good service; - customer satisfaction on timeliness, performance, information, attitude and result (i.e. consent is fit for purpose).
Health & Safety Executive – our mission is to prevent death, injury and ill-health in Britain's workplaces	Explosives (manufacture, storage, harbour operators)	Applications for licences vary greatly in complexity. Generally, they also require local authority assent. Time bound delivery schedules are not offered owing to the variation in the level of work necessary before the licence can be granted. The cost of licensing, in the form of a flat fee and an hourly rate, is recovered from applicants and is open to challenge, representing a "check" on the time taken in the processing of the licence.	HSE's website offers the public a variety of means to contact HSE, provide feedback and raise matters of concern. Enquiries made through HSE's Infoline are subject to a Service Level Agreement.

Consenting body	Type of consent	Timeliness targets	Other performance standards
Highways Agency – responsible for operating, maintaining and improving the strategic road network in England on behalf of the Secretary of State for Transport	Highways consenting activities previously overseen by Highways Agency are now dealt with through the Development Consent Order process	In respect of Highways Agency's role as a statutory consultee in the planning process, statutory duty to respond to planning applications involving a proposal to connect to a trunk road within 28 days (internal target to respond within 21 calendar days).	'The Customer Promise' deals with standards of courtesy, promptness, helpfulness and seeking feedback from customers.
Local Highways Authorities	Variety of highways related consents under, especially, the Highways Act 1980 and the Town and Country Planning Act 1990	No formal timescales applicable to highways consent procedures.	Any additional standards are a matter for each local highways authority.

Consenting body	Type of consent	Timeliness targets	Other performance standards
Natural England – exists to protect and improve England's natural environment and encourage people to enjoy and get involved in their surroundings	European Protected Sites (EPS) licensing Wildlife and Countryside Act (protected species licensing) Sites of Special Scientific Interest	Citizen's Charter – acknowledge within 5 working days, decision within 30 working days (where all relevant information was submitted with the application). Targets met in around 92% of cases. Launch of regular publication of statistics on website planned later this year. Timescales depend on whether it is a SSSI owner or occupier submitting a formal notice proposal; whether it is a public body wanting to carry out activities on or affecting a site; or whether it a public body who has powers to grant consent (e.g local authority granting planning permission) for another party to carry out operations. For instance in respect of operations granted by public bodies, Natural England has 28 days to consider the proposal and give its advice.	Draft Code of Conduct for staff and stakeholders: - includes principles, recognition of ecological consultancy professional judgment, commitment to written feedback where licence declined and means of making complaints if obligations are not fulfilled; - details standards required from stakeholders and ecological consultants in communications to Natural England. Intended to include finalised Code of Conduct in next release of guidance due before autumn.

Consenting body	Type of consent	Timeliness targets	Other performance standards
Planning Inspectorate – our main work is the processing of planning and enforcement appeals and holding examinations into regional spatial strategies and local development plans. We also deal with a wide variety of other planning related casework including listed building consent appeals and advertisement appeals	Listed building consent appeals, conservation area consent appeals, advertisement appeals	Same targets as section 78 planning appeals – 80% decisions issued within 26 weeks of receipt of appeal regardless of procedure.	Quality target requiring all casework to be 99% free from justified complaint or legal challenge (monitored by an independent body, the Advisory Panel on Standards). In 2008-09, performance was 98.9% error free having received 2,264 complaints against 30,218 decisions issued.
	Highways stopping up and diversion orders	Memorandum of Understanding (MoU) with Highways Agency and Department for Transport to appoint an Inspector within 10 working days of receiving the initial inquiry notification.	
	Footpath and bridleway stopping up and diversion orders, rights of way extinguishment orders, stopping up and diversion orders for footpaths and bridleways, public path creation orders	Targets agreed with Defra in Service Level Agreement. 80% of decisions issued within following times from receipt 27 weeks for written representations 29 weeks for hearings 35 weeks for inquiries	
	Environmental Permit appeals, water abstraction appeals, discharge appeals hedgerow appeals	Currently no specific targets for these appeals (very low numbers)	
	TPO appeals (works pursuant to a Tree Preservation Order Act)	Tree preservation orders - internal target 80% of decisions issued within 14 weeks if dealt with by written representation and 24 weeks where a hearing is held.	

Consenting body	Type of consent	Timeliness targets	Other performance standards
	Application to de-register or exchange common land under s16 of 2006 Commons	80% of decisions issued within 52 weeks of advertisement requirements being met	
	Application for works on common land (S38)	80% of decisions issued in accordance with the following timescales:- 12 weeks – no objections 26 weeks if written reps 52 weeks if hearing or inquiry LPAs can request non statutory inquiry – Memorandum of Understanding entered into in each case	
	Applications to register village greens under S15 of 2006 Commons Act		

Annex D – Framework for 'Quality Development Code'

1. Development related services provided by a consenting body

- Full list of development-related areas in which the consenting body is actively involved and services provided in those areas (including role as a statutory consultee for planning and engagement in pre-application discussions)

- Brief explanation of what legislation, government policy and guidance, the consenting body's role is based on

2. Service standards

- High quality services commitment (staff approach, attitude towards users when dealing with enquiries and complaints)

- Commitments to equality and to complying with the Data Protection and Freedom of Information Acts

- Commitment to publishing targets and performance measures

- Commitment to continuous improvement

3. Service timescales

- Timescale for answering phone calls

- Timescale for responding to straightforward written enquiries (acknowledging a letter or an e-mail and providing a full written response)

- Timescale for responding to more complex written enquiries (acknowledging a letter or an e-mail and providing a full written response)

- Timescale for processing applications for consents (including breakdown of different types of consents and different stages of the consenting process)

- Information, as appropriate, on timescales for complex applications

4. Charges

- List of services for which charges are made and the level of charges

5. Information required from a developer

- Specification of what information is necessary at each stage of a consenting process and in what form it may need to be provided. This should include:

- An explanation of purposes for which information/documents will be used
- Clarification of technical terms
- Any technical/specification requirements that apply (including in relation to e-submission of applications/supporting documents)
- Any derogations (for example, *de minimus* applications) where certain information / documents are not required
- Availability of application forms or other standard documentation
- Details of any expert's reports, specialist assessments, etc. that are required

6. Means of communication

- Information on e-applications if available (explanation of what can be done electronically and links to relevant document and information)

7. Contact details

- Relevant contact details, including: postal address, e-mail address, telephone number, contact person name, website address and hours of office working
- Contact details for providing feedback and submitting a complaint

8. Sources of further information

- Information about links to sources of further information and advice

ANNEX E – Schedule of Timetabling Provisions for Selected Non-planning Consents

The Review would like to express its thanks to SJ Berwin LLP for their help in compiling this information

Consent	Legislation	Decision maker	Statutory timetable for decisions	Relationship to planning
CLG				
Listed buildings (works)	S8(1), (2) or (3) of the Planning (Listed Buildings and Conservation Areas) Act 1990	LPA	A right of appeal exists if the LPA has not given notice of its decision within 8 weeks.	No timing constraints in relation to application for planning permission. However, the relationship can be problematic where designation is subsequent to grant of planning permission.
Conservation Area (demolition of unlisted building in conservation areas)	S74(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990	LPA	A right of appeal exists if the LPA has not given notice of its decision within 8 weeks.	No timing constraints in relation to application for planning permission. However, the relationship can be problematic where designation is subsequent to grant of planning permission.
Hazardous substances	Planning (Hazardous Substances) Act 1990; Planning (Hazardous Substances) Regulations 1992; SEVESO II Directive (96/62/EC)	LPA	A right of appeal exists if the LPA has not given notice of its decision, or advised the applicant that the application has been referred to the Secretary of State, within 8 weeks.	When considering the grant of Hazardous Substances Consent the LPA must have regard to the planning status of the land and the land around it; however, any associated planning permission required must be applied for separately.

Consent	Legislation	Decision maker	Statutory timetable for decisions	Relationship to planning
Building Regulations approval	Building Act 1984 (as amended); Building Regulations 2000 (as amended); Building (Approved Inspectors etc) Regulations 2000 (as amended)	Local authorities and private sector Approved Inspectors	A right of appeal exists if no decision has been made within 5 weeks, or if agreed, a maximum of 2 months.	In practice, planning permission obtained before application for Building Regulations approval made.
Advertisements	Town and Country Planning (Control of Advertisements) (England) Regulations 2007	LPA	A right of appeal exists if the LPA has not given notice of its decision within 8 weeks or such longer period as the applicant may agree in writing.	No timing constraints in relation to applications for planning permissions. The LPA must consider the application in respect of amenity and public safety but may also take into account the local development plan.
Highways stopping up and diversion orders	S247 of Town and Country Planning Act 1990	Secretary of State for Communities and Local Government / London Boroughs	None specified as these are orders made by the Secretary of State, or in London by the London Boroughs. The statutory consultation period is 28 days.	The LPA may only make an order under this provision if it is satisfied that such stopping up is necessary to allow development in accordance with a planning permission or by a Government department. In practice, therefore, planning permission will already have been granted.
Footpath and Bridleway stopping up and stopping up orders	S257 of Town and Country Planning Act 1990	LPA	None specified as these are orders made by the LPA. The statutory consultation period is 28 days.	The LPA may only make an order under this provision if it is satisfied that such stopping up is necessary to allow development in accordance with a planning permission or by a Government department. In practice, therefore, planning permission will already have been granted.

Consent	Legislation	Decision maker	Statutory timetable for decisions	Relationship to planning
Rights of way extinguishment orders	S258 of Town and Country Planning Act 1990	Local authorities	The consultation period must be no less than 28 days.	The land must have been acquired or appropriated for planning purposes
DFT				
Stopping up or diversion orders	S116 of Highways Act 1980	Magistrates Court	None specified. The applicant authority must give at least 28 days' notice of its intention to apply to the Magistrates Court for an order and the application shall not be made if, within 2 months from the date of service of the notice, consent to make the application has been refused,	No relationship to any planning application - stopping up or diversion on the basis of current position, not the position following development pursuant to planning permission.
Traffic regulation order	S1, 6, 9, 14, 15 and 22BB of Road Traffic Regulation Act 1984	Traffic authorities	None specified as these are orders made by the Traffic Authorities and/or the Secretary of State. Where consultation is required the statutory consultation period is 21 days.	Not necessarily any relationship to any planning application. Where there is a relationship, planning permission would in practice first be obtained.
Highways agreement (adoption)	S38 of Highways Act 1980	Appropriate HA	None specified as relates to agreements made between the Highways Authority / Minister and a landowner providing for the dedication of private land to be adopted as a highway.	In practice planning permission for the works in question would first be obtained unless the works in question do not require planning permission. The works may be required to comply with a planning condition or planning obligation.

Consent	Legislation	Decision maker	Statutory timetable for decisions	Relationship to planning
Highways agreement (changes to existing roads)	S278 of Highways Act 1980	Appropriate HA	None specified as relates to an agreement with the relevant Highways Authority for the carrying out of works to a public highway.	In practice planning permission for the works in question would first be obtained, unless the works in question do not require planning permission. The works may be required to comply with a planning condition or planning obligation.
Creation of footpath or bridleway by agreement.	S25 of Highways Act 1980	Local Authority	None specified as relates to an agreement between the local authority and the landowner providing for the creation of a footpath of bridleway. There is no public consultation requirement; however, the local authority must consult other local authorities with an interest in the area.	Not necessarily any relationship to a planning application.
Public Path Creation Order	S26 and Schedule 6 of Highways Act 1980	Local Authority or Secretary of State	None specified as these are orders made by the local authority or the Secretary of State. The consultation period must be no less than 28 days; however, Defra recommend a public consultation period of 12 weeks.	Not necessarily any relationship to a planning application.

Consent	Legislation	Decision maker	Statutory timetable for decisions	Relationship to planning
Stopping up of footpaths and bridleways.	S118 of Highways Act 1980	Local Authority or Secretary of State	The statutory consultation period is 28 days. A local authority that receives such an application must determine the application as soon as is reasonably practical; however, if the application has not been determined within 4 months the Secretary of State may require the local authority to determine the application within a certain time period.	No relationship to any planning application - stopping up on the basis of current position, not the position following development pursuant to planning permission.
Diversion of footpaths and bridleways	S119 of Highways Act 1980	Local Authority or Secretary of State	The statutory consultation period is 28 days. A local authority that receives such an application must determine the application as soon as is reasonably practical; however, if the application has not been determined within 4 months the Secretary of State may require the local authority to determine the application within a certain time period.	No relationship to any planning application – diversion on the basis of current position, not the position following development pursuant to planning permission.

Consent	Legislation	Decision maker	Statutory timetable for decisions	Relationship to planning
DEFRA				
Flood defence	Required under: (a) Land Drainage Act 1991; (b) Water Resources Act 1991; (c) Regional flood defence byelaws	Environment Agency	Under s109 of the Water Resources Act 1991 (structures in, over or under a main river) consent will be deemed to have been given if it is neither given or refused within 2 months of the later of the date on which the application for consent was made, or, if a fee is required to be paid, the date on which the liability for the fee has been discharged.	Planning permission (if required) would in practice usually first be obtained.
Hazardous Waste (Premises)	Hazardous Waste (England and Wales) Regulations 2005 (as amended)	Environment Agency	None specified, as it is not the duty of the Environment Agency to notify premises under these regulations; however, when the notification of the premises has been duly made, and the registration fee has been received, the Environment Agency must issue a registration code unique to those premises. A notification will not take effect before the Environment Agency issues the premises code.	No timing constraints in relation to applications for planning permissions.

Consent	Legislation	Decision maker	Statutory timetable for decisions	Relationship to planning
Environmental Permit	Environmental Permitting (England and Wales) Regulations 2010	Environment Agency / Local authorities	Determination must be made: (a) for the transfer of environmental permits, in whole or in part, within 2 months; (b) in the case where public participation is required within 4 months; and (c) in any other case within 3 months of the regulator having received the application.	In relation to waste operations an environmental permit may not be granted if the use of the site for that purpose requires planning permission and this has not been granted.
Waste carrier registration	Control of Pollution (Amendment) Act 1989	Environment Agency	2 months, or except in the case of renewal, such longer period as may be agreed between the applicant and the disposal authority.	No relationship in relation to planning as relates to the registration of persons with the Environment Agency as carriers of controlled waste.
Water abstraction	S24 of the Water Resources Act 1991; Water Resources (Abstraction and Impounding) Regulations 2006	Environment Agency / Secretary of State	4 months in cases where the application requires advertising; 3 months in cases where the application does not require advertising.	Not necessarily any relationship with any planning application.
Inland waters (impounding licence)	S25 of Water Resources Act 1991; Water Resources (Abstraction and Impounding) Regulations 2006	Environment Agency / Secretary of State	4 months in cases where the application requires advertising; 3 months in cases where the application does not require advertising.	Not necessarily any relationship with any planning application.
Groundwater	S198 of Water Resources Act 1991	Environment Agency	Any person who for the purpose of searching for, or abstracting water, proposes to sink a well or borehole below 50 feet should give notice to the Natural Environment Research Council.	Not necessarily any relationship with any planning application.

Consent	Legislation	Decision maker	Statutory timetable for decisions	Relationship to planning
Discharge (including groundwater discharge)	S88, 89(4), 164, Schedule 10 to Water Resources Act 1991; Groundwater (England and Wales) Regulations 2009	Environment Agency	Consent shall be deemed to have been refused if it is not given within 6 months of the date on which the application is received, or such longer period as may be agreed.	Not necessarily any relationship with any planning application.
Hedgerows	Regulation 5 of Hedgerows Regulations 1997	LPA	The Authority should grant or refuse consent within 42 days of the date on which the hedgerow removal notice is received or such longer period as may be agreed	Not necessarily any relationship with any planning application.
Works to trees	Forestry Act 1967	Forestry Commission	If a licence is not granted within 6 months then the application will be deemed to have been refused.	Not necessarily any relationship with any planning application.
Works pursuant to a Tree Preservation Order	Town and Country Planning Act 1990; Town and Country Planning (Trees) (Amendment) (England) Regulations 2008	LPA	A right of appeal exists if the LPA has not determined the application within 8 weeks.	A TPO will not prevent planning permission being granted. However, the LPA must consider the implications for protected trees when deciding planning applications. Once full planning permission has been granted, felling may be carried out which is directly required to enable the development to go ahead.
European Protected Species (EPS) licensing	Regulation 44 of Conservation (Natural Habitats, &c.) Regulations 1994	Natural England	None specified.	Before considering the grant of a licence a full planning permission or outline planning permission must exist with all the conditions or reserved matters relating to wildlife, which can be discharged before the start of development, having been discharged.

Consent	Legislation	Decision maker	Statutory timetable for decisions	Relationship to planning
Wildlife and Countryside Act (protected species licensing)	S16 of Wildlife and Countryside Act 1981 and Conservation (Natural Habitats, &c.) Regulations 1994	Natural England	None specified.	Before considering the grant of a licence a full planning permission or outline planning permission must exist with all the conditions or reserved matters relating to wildlife, which can be discharged before the start of development, having been discharged.
Sites of Special Scientific Interest	S28E and 281 of Wildlife and Countryside Act 1981	Natural England	Natural England must give, or refuse, consent within 4 months of the date on which the notice was sent.	In practice planning permission would usually first be obtained and a contravention of these provisions may be excused if the operation in question was authorised by a planning permission.

Consent	Legislation	Decision maker	Statutory timetable for decisions	Relationship to planning
Common land / town and village greens (works)	S16 & 38 of Commons Act 2006, and s19 of, and para 6 of Schedule 3 to, Acquisition of Land Act 1981	Planning Inspectorate on behalf of the Secretary of State for Environment, Food and Rural Affairs	S16 and s38 Commons Act 2006: No later than 7 days after the making of an application the applicant must publish and post a notice of the application, which must state the date by which representations must be made, which must not be less that 28 days after the application is made available. As soon as possible after the expiration of this deadline the Secretary of State must decide whether the application should be dealt with on the basis of written representations, at a hearing or at a public inquiry and notify the applicant of that decision. If the Secretary of State decides to hold a hearing the hearing should be no less than 6 weeks after notice of the hearing is published. As soon as is practicable the Secretary of State must determine whether or not to grant consent. S19 and Schedule 3 Acquisition of Land Act 1981: none prescribed as relates to Compulsory Purchase Orders.	Not necessarily any relationship with any planning application

Consent	Legislation	Decision maker	Statutory timetable for decisions	Relationship to planning
Common land / town and village greens (registration)	S15 of Commons Act 2006 and Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007	Commons Registration Authority (usually LPA)	On receipt of the application the Authority must publish a notice which must specify a date by which statements of objections must be submitted, which must be at least 6 weeks from the date on which the notice can reasonably be expected to be received, or the date on which the notice is published.	Not necessarily any relationship with any planning application. Defra guidance states that consent under s15 of Commons Act 2006 is a completely separate matter from the consideration of whether or not to grant planning permission.
DCMS				
Scheduled monuments (works)	S2 of Ancient Monuments and Archaeological Areas Act 1979	DCMS and English Heritage	None specified as the Secretary of State will need to consult with English Heritage and a hearing and / or public local inquiry may be required.	Not necessarily any relationship with any planning application.

Consent	Legislation	Decision maker	Statutory timetable for decisions	Relationship to planning
Scheduled monuments (archaeological operations)	S35 of Ancient Monuments and Archaeological Areas Act 1979	LPA	The developer must serve a operations notice on the LPA and must not start work within 6 weeks of serving such a notice. If the LPA chooses to excavate the site it must serve a notice of such intention to the developer, Secretary of State and any affected local authorities within 4 weeks of the date of service of the operations notice. The period allowed for excavations shall then be 4 months and 2 weeks beginning on the date immediately following the end of the 6 week period beginning with the service of the operations notice, or the date of receipt of notification of clearance or any earlier agreed date.	Not necessarily any relationship with any planning application.

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