

**GOVERNMENT RESPONSE TO THE  
PENFOLD REVIEW OF NON-  
PLANNING CONSENTS**

03 NOVEMBER 2010



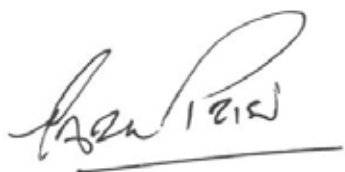
# Foreword

In the Comprehensive Spending Review the Government set out the ambitious growth policy that we are pursuing. Our objective is to deliver strong, sustainable and balanced long term growth in income and employment.

Fundamental to delivering this objective is the understanding that Government has a significant impact on the environment within which business and investors operate. Our ambition is that the UK's business environment competes with the best internationally. To deliver this, the Government will facilitate efficient and competitive markets and minimise the burden of regulation upon businesses operating in those markets.

The planning and development consent system is central to delivering that vision. The Government recognises that, sometimes, the process of obtaining all the necessary consents can be complex and costly for business. Adrian Penfold's work has provided a valuable insight into how these regimes interrelate, and the difficulties that can occur for developers. In his Review, published in July, he set a challenge to all relevant Government departments to create a business-friendly environment. This is the formal Government response to that Review, setting out how we will approach the implementation of Adrian Penfold's recommendations.

In particular, the Review challenged Government to improve the interaction between the planning and development consent systems, to remove duplication and to take a more proactive approach to understanding the impact of new development consents upon business and the wider planning system. We will, in line with the Government's commitment to a 'one-in, one-out' approach to regulation, seek to identify balancing simplifications where there are newly proposed non-planning consents, such that the overall burden of non-planning consent regulation upon developers does not increase. We will consider how related consents might be streamlined and simplified and we will continue to examine how best to manage the boundary between development consents and the planning system. BIS and CLG will work with other Government departments to drive forward implementation and Government will provide a further update on implementation in spring. We offer our thanks again to Adrian Penfold for initiating a programme of work that we and our partners in Government will take forward to simplify the consents landscape and enable private sector growth.



**MARK PRISK**

**Minister of State  
Department for Business,  
Innovation and Skills**



**BOB NEILL**

**Parliamentary Under-Secretary of State  
Department for Communities  
and Local Government**

# Overview

The Government welcomes the Penfold Review of non-planning consents as an important contribution to improving both the delivery of consenting regimes and the experience of developers who must obtain development consents.

Consents and permissions – that are obtained alongside or after, and separate from, planning permission – are in place to deliver a range of important Government and social objectives, such as protecting endangered species, tackling climate change, delivering a well functioning road network and protecting the health and well-being of local communities.

However, the process of applying for and obtaining development consents can cause unnecessary complexity and burden for business. The Government is committed to providing a regulatory environment that effectively delivers our policy commitments but minimises unnecessary delay, complexity and cost for business and other applicants. Encouraging such an environment in the planning and development consents systems is crucial in ensuring the UK develops a competitive business environment that underpins business success, attracts investment and ultimately promotes economic growth.

The Government therefore welcomes the recommendations of the Penfold Review and will begin work to develop concrete reforms of the development consents system based upon the findings of the Review. Our ambition is to use this Review as a base from which to drive a programme of streamlining and simplification in the planning and development consents systems.

The Government will take a phased approach to implementing the Review's recommendations. The Government will place initial priority upon those recommendations for practical action, for example by convening fora to share 'best working practices' amongst consenting bodies and to examine sharing knowledge and skills amongst themselves. Other recommendations require a greater degree of policy consideration before Government departments and other agencies can apply reforms to working practice. The Review dealt with a broad and complex landscape covering large numbers of consents, public sector bodies and stakeholders. For recommendations which cover fundamental aspects of the planning and consenting landscape (for example, the boundary between planning and development consents), the Review recognised that the Government will need to take undertake further policy consideration and review the evidence before announcing any necessary proposals for change. Issues and areas which Government departments will examine are listed in the detail of the Response.

To ensure transparency, the Government will publish a further update to this Response in spring 2011. This will give a progress update on implementing practical changes and will report upon the outcomes and progress of developing some of the more fundamental recommendations into concrete proposals for change.

## The rest of this document

The Summary of the Government Response in the next section outlines the Government's approach in response to the four core themes identified by the Review. A more detailed formal response to each recommendation is given in the Annex of this document.

The four themes are as follows:

1. Changing working practices
2. Simplifying the landscape
3. Improving the interaction between planning and non-planning consents; and
4. Managing the landscape and making change happen

# Summary of the Government response

## Changing working practices

The Review made recommendations to build on existing good practice within consenting bodies, focused upon improving the ‘service’ provided to applicants.

The Review found concern from developers who were experiencing uncertainty about the timing of decisions from consenting bodies, difficulty in resolving differences between consenting bodies and a lack of responsiveness. The main causes for this as expressed by businesses were a lack of a service culture within consenting bodies and a lack of co-ordination between them, a lack of skills and resources and limited co-ordination of information. On the consenting bodies’ side, it was recognised that the variable quality of applications in particular impinged on resources and there was a need to help the developer “get it right the first time”.

Based upon this evidence, the Review made a number of recommendations focused upon improving the provision of information to applicants, improving the co-ordination between consenting bodies, and examining the case for greater sharing of skills and resource between consenting bodies.

The Government accepts the principle of these recommendations. They build upon existing work taking place, reflecting Government’s ongoing commitment to promoting good working practices amongst consenting bodies.

The Government considers that there are several examples of good practice amongst consenting bodies in providing guidance and information to developers. For example, the Review commends the work that Natural England (NE) and English Heritage (EH) are both doing around pre-application advice. However, we accept that work such as this is not always brought together in the most coherent fashion. Central Government departments will therefore work with consenting bodies to see how **existing information provision** can be better co-ordinated and where there are gaps in this information that they are filled.

Government will work with the Local Government Association to examine how to share existing **good practice in joint-working between councils**, which has the potential to unlock greater resource and capacity in providing development consents. Government will also convene a meeting of the relevant professional bodies, representing those undertaking planning and non-planning consents, to identify the opportunities for them to work together to break down any cultural or practical barriers to **smooth working between professions**.

The Government established the Planning Portal to be the primary source of information about the planning system. Elements of the Planning Portal work programme are under review following the Spending Review settlement. CLG, colleagues operating the Planning Portal and

other departments will consider how best to involve the Planning Portal and other Government support such as Business Link, in improving **accessibility to information**. In particular, there are opportunities through the Planning Portal to identify and share best practice by local planning authorities around provision of information, which can be replicated elsewhere.

The Highways Agency will provide a **'named' point of contact** to work with the developer, Local Planning Authority and Local Highways Authority with developing proposals. BIS will work with other consenting bodies to take up this principle and report back in spring.

To incentivise a positive service culture, the Government is **promoting transparency** across departments and agencies: we will encourage councils and other public bodies to publish performance data and support the Local Government Association's work to develop benchmarking tools that will enable the public to compare the performance of different local authorities.

Consenting bodies will also review the value and feasibility of **charging for premium services** where appropriate.

The Review was alive to the cost of implementing changes. The Government therefore is committed to ensuring that action taken to implement this recommendation is proportionate – in cases where consent applications are few for example, the extra costs associated with radical changes may be disproportionate.

## Simplifying the landscape

Development consent regimes deliver a number of important environmental, economic and social objectives. As the Review, and this Response, recognises, there are opportunities to streamline and simplify the processes surrounding applying for and obtaining these consents. However it is also right that Government considers whether the development consent regimes themselves can be simplified and reduced. The Government is committed to reducing the burden of regulation upon business (for example through our commitment to observe a ‘one-in, one-out’ rule when introducing new regulation) and ensuring that regulation is designed in such a way that it delivers its policy objective effectively and with minimum burden (for example through the Impact Assessment process and the scrutiny provided by the new Reducing Regulation Committee within Government).

Therefore, measures the Government proposes include:

- CLG has launched a **“Cut Red Tape” initiative**, which invited members of the public to identify housing and planning guidance, legislation and regulation that could be revoked. This has elicited 2000 proposals to date, which CLG is currently assessing. Progress will be reported on in the spring update.
- DCMS supports the recommendation to **merge conservation area consent with planning permission** and will work with CLG to identify an appropriate opportunity to implement this. In the absence of legislation to create a new heritage protection system, DCMS and English Heritage will work together to ensure that the existing heritage consent regimes operate as effectively and efficiently as possible.
- Defra welcomes the recommendation to **expand the Environmental Permitting (EP) framework** to water abstraction and impoundment consents and is seeking legislative vehicles to do so. Defra will also continue both to examine whether other consent regimes can be brought within the EP framework and to implement permitting aspects of upcoming EU Directives via EP regulations. This work will be reported upon in the spring update.
- Defra and DECC are working with the Environment Agency to streamline their **consenting process for renewable energy infrastructure** to help facilitate the large increase in renewable energy needed over the next few years, while continuing to safeguard the local environment. A progress report will be included in the spring update.
- Defra will consider whether any changes to the **village greens registration system** are required as part of the Government’s commitment to create a new designation to protect green areas of particular importance to local communities.

CLG will also include in the spring update detail of further measures to simplify the planning system. This will include detail of proposals for a new **National Planning Policy Framework** to provide a simple and consolidated framework covering all forms of development.



## Improving the interaction between planning and non-planning consents

The Review also concluded that clarifying the boundary between planning and non-planning consents was vital in ensuring certainty for developers and removing duplication. In particular, the Review advocated a model by which those matters which related to whether or not a development could go ahead or not (the “if” decision) were considered at the same time, as part of or alongside the planning application process. That decision (of “if” the development can go ahead) is then distinguishable from the subsequent consideration of matters relating to “how” the development is built or operated – none of which relate to whether the development may be built or not.

The Government agrees that the boundary and inter-relationship between planning and development consents should be made as clear as possible.

Defra and CLG have commissioned a project to draft a protocol and guidance to improve the **interface between environmental permitting and planning permission**. The study is examining the co-ordination and working relationships between planning authorities and consenting bodies. It is seeking to make recommendations and a protocol such that duplication is reduced and the application process made smoother for developers, and less burdensome for the planning authorities and consenting bodies. It is hoped that lessons from the study will be replicable elsewhere in the planning and consenting landscape. BIS, CLG and Defra will consider what lessons can be learnt and report back in light of experience gained from the adoption of the protocol and guidance 12 months after they come into use. The Government will provide an update on progress of the likely areas for consideration in the spring update.

The Government accepts the Review’s recommendation for incremental change rather than a wholesale move to a unified system whereby consents and planning permissions are combined. CLG will continue however with a unified consenting regime for major infrastructure schemes. CLG will keep under review the operation of **Development Consent Orders** and their applicability to other parts of the planning and development landscape.

The Government is keen to take an approach that identifies cases in local areas of existing good practice in defining the boundary between planning and development consents. These cases can then be tested for their applicability to other areas. In particular:

- CLG Ministers have established a “barrier-busting” team which supports the Big Society agenda across government. The team works with '**vanguard communities**' to identify and overcome individual bureaucratic barriers, including those relating to planning and non-planning consents regimes. CLG will consider how the lessons learned can be applied more widely and report relevant update in spring.
- CLG will hold initial discussions with the Local Government Association, the Planning Officers Society and the Royal Town Planning Institute to establish a way of actively promoting the adoption of existing **good practice in development management**, including pre-application advice, across all authorities that take decisions on planning and non-planning consents. The Government will report back on progress in spring.

## Managing the landscape and making change happen

The Review concluded one reason for the complexity that can characterise the landscape covering the planning and non-planning consents regimes is the lack of a single strategic oversight. The review recommended that Government establish a mechanism to ensure that departments and all non-planning consent decision makers work together to provide this oversight.

The review also recommended that the Government develop an Action Plan to monitor the progress of the implementation of the review's recommendation.

The Government accepts these recommendations. The development landscape covering both planning and non-planning consents is broad and covers many Government departments and agencies delivering multiple policy objectives. Whilst CLG has overall ownership for planning policy, policy underpinning the non-planning consents landscape is undertaken by the Government departments relevant to the policy objective being delivered.

CLG hosts a **cross-departmental task force** that considers the interface between planning policy and the remit of other Government departments. The role of this task force will be expanded to consider the impact of newly proposed development consents upon developers, and will advise Ministers accordingly. Furthermore, BIS will examine additional means of embedding this recommendation around Whitehall, for example through the principles of good-policy making.

The Government has committed to a 'one-in, one-out' approach to regulation and has established the **Reducing Regulation Committee** to ensure that regulation is only used as a last resort and when it is used, that it conforms to the principles of better regulation. Both mechanisms are aimed at driving better policy-making so that the experience for developers when going through non-planning consents regimes is simple and free of unnecessary burdens.

Through both of these measures Government will seek to identify offsetting simplification measures where there are newly proposed non-planning consents, such that the **overall burden of non-planning consent regulation upon developers does not increase**. This approach complements broader Government commitments on regulatory reform and reducing the burden of regulation.

The Government has also developed an **Action Plan** to monitor progress against the commitments made in this Response. A Programme Board of officials from the relevant Government departments owns the Action Plan, and progress on delivery will be reported at the time of the spring update of this Response. BIS will, with relevant Government departments, work with industry and developers to test evidence and implementation plans.

# Annex A

Annex setting out the Government's response to each recommendation.

Recommendation	Government response
<p><b>A</b>  <b>Reinforcing a service culture (paragraph 2.27)</b>            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:</p>	<p><b>The Government accepts this recommendation. It builds upon existing good practice taking place, which the Review recognised.</b></p> <p><b>However the Government recognises that this practice is not always brought together in a coherent fashion, and BIS and other Government departments will therefore convene meetings with consenting bodies to enable greater sharing of best practice.</b></p> <p><b>Furthermore, to incentivise a positive service culture, the Government is promoting transparency across departments and agencies: we will encourage councils and other public bodies to publish performance data and support the Local Government Association's work to develop benchmarking tools that will enable the public to compare the performance of different local authorities.</b></p> <p><b>The Government supports production of a single Quality Development Code which consolidates existing standards and advice in a proportionate and accessible fashion.</b></p>
<p><b>A1</b>            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;</p>	<p>The Government is committed to rebalancing the economy in favour of sustainability and Green Growth; these feed through into the work of consenting bodies as appropriate. To do so will require public bodies to co-operate with businesses to ensure that real change is delivered by the private sector within the existing regulatory framework.</p> <p>In particular, the Environment Agency will actively support businesses that promote environmentally friendly development.</p>
<p><b>A2</b>            Publish a 'Quality Development Code' containing:</p>	<p>Government is committed to provision of clear and coherent advice to business. By spring BIS will produce a single Quality Development Code which draws together existing information</p>

Recommendation	Government response
<ul style="list-style-type: none"> <li>- indicators of 'satisfaction with the non-planning consent application service' for their non-planning consent activity;</li> <li>- a clear statement about the availability of guidance and opportunities to access pre-application advice;</li> <li>- Information about complaint processes;</li> <li>- information about technical and other standards expected of consent applicants (and their agents) and appropriate means of fulfilling these;</li> </ul>	<p>and advice which is available from the relevant bodies and consolidates it in one place. This will include Natural England's advice on wildlife licensing, a link to Transport and Works Act guidance and English Heritage's '<i>Charter for English Heritage Planning and Development Advisory Services</i>'. Underpinning this guidance will be a commitment to publish clear and recognisable timescales and complaints procedures for each consent.</p> <p>The Planning Inspectorate will improve its service delivery by publishing its internal casework targets online and extending its annual statistical report to cover non planning consent work. The Inspectorate will also review its provision of advice, notably pre-application advice, to ensure that this meets standards expected by developers. Improvements will be measured by peer review and an annual survey of business stakeholders.</p>
<p>A3</p> <p>Publish annual statistics of performance against their 'satisfaction' indicators and the operation of the complaints processes; and</p>	<p>A new Public Sector Transparency Board (established in June 2010) will drive forward the Government's transparency agenda for releasing key public datasets and setting open data standards across the public sector. The intention is to make public data available and easy to find through a single easy to use online access point (<a href="http://data.gov.uk">data.gov.uk</a>). The Government will encourage councils and other public bodies to publish performance data and supports the Local Government Association's work to develop benchmarking tools that will enable the public to compare the performance of different local authorities.</p> <p>Building upon existing work, and in light of the transparency agenda, agencies and Government Departments involved in granting non-planning consents will work to publish data on their websites (where they do not already do so) relating to their performance against timescales and customer satisfaction, and the relevant complaints processes.</p>
<p>A4</p> <p>Undertake periodic surveys of customer satisfaction</p>	<p>Government Departments and Agencies involved in granting of consents provide applicants with means by which to provide feedback on the application process. Government will consider the extent to which this, and other customer survey information, may be made public, in the interests of promoting transparency and benchmarking levels of service.</p>
<p>B</p> <p>Improving co-ordination and governance (paragraph 2.43)</p> <p>To make the development</p>	<p><b>The Government supports good "development management" practice and will seek to further this as outlined below. When proportionate, we will also seek to better signpost existing pre-application stage guidance</b></p>

Recommendation	Government response
<p>consenting process more effective and improve the co-ordination and governance of decisions involving multiple consenting bodies or consultees, Government should:</p>	<p><b>and advice for non-planning consents to make processes as accessible as possible.</b></p>
<p>B1</p> <p>Encourage local authorities to adopt 'development management' good practice, including:</p> <ul style="list-style-type: none"> <li>- appointment of a designated development co-ordinator for major projects to monitor and manage the taking forward of all non-planning consent applications in a systematic manner; and</li> <li>- 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</li> </ul>	<p>The Highways Agency will provide a 'named' point of contact to work with the developer, Local Planning Authority and Local Highways Authority with developing proposals. BIS will work with other consenting bodies to take up this principle and report back in spring.</p> <p>CLG will hold discussions with the Local Government Association, the Planning Advisory Service and the Advisory Team on Large Applications (ATLAS) to explore how best to implement this recommendation, and report on progress in the spring update.</p> <p>CLG and Defra are working on a project to improve co-ordination between planning and consenting bodies on complex or strategic developments, for instance through joint technical assessment or consultations. They will feedback within 12 months of project completion on how lessons learned from this project could be applied to the wider non-planning consents arena.</p>
<p>B2</p> <p>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.</p>	<p>The Environment Agency will link their customer charter with pre-application guidance. They are also updating their advice and guidance for pre-planning application, planning consultation and pre-permit application for activities that also need an environmental permit.</p> <p>DfT and Highways Agency will aim, so far as appropriate, to meet the relevant standards in the Quality Development Code.</p> <p>The Quality Development Code will reference all guidance and advice provided at the pre-application stage.</p>
<p>C</p> <p><b>Addressing resource pressures (paragraph 2.66)</b></p> <p>Recognising that additional resources will not be available, Government should explore ways to mainstream good working practices in resource sharing, behaviour and culture in</p>	<p><b>The Government sees the promotion of joint-working across local planning authorities and between councils and other consenting bodies as crucial and will continue to work with the Local Government Association and other professional interlocutors to promote this, with more detail to follow in spring.</b></p> <p><b>This work will include exploration of ways to tackle</b></p>

Recommendation	Government response
<p>order to optimise use of resources and skills currently available and promote use of fees for discretionary services by:</p>	<p><b>resource shortages within consenting bodies and to bridge the knowledge gap between public bodies.</b></p> <p><b>Government believes it is appropriate that consent issuing bodies should have the freedom to charge for premium services where these do not affect minimum standards and will seek opportunities for this in tandem with consenting bodies.</b></p>
<p>C1 Requiring Departments to encourage local authorities to fully exploit opportunities for joint working with other councils and the private sector;</p>	<p>BIS and other Government departments will convene a workshop of relevant bodies, representing those undertaking planning and non-planning consents, to explore opportunities to break down cultural and practical barriers to closer working. This group will explore, amongst other things, examples of good practice in joint working and sharing of resources (see C2). Recommendations from this workshop will be shared in the spring update.</p> <p>The Highways Agency's contract frameworks for special planning services, now being updated, provide for joint working between Local Planning Authorities (LPAs). New frameworks will be in place by the end of 2010.</p>
<p>C2 Expecting that non-planning consenting authorities should continue to seek ways, alongside and working with professional bodies, to address the shortage of resources and skills in relevant non-planning consenting departments; and</p>	<p>Government will use a workshop of professional bodies (see C1) to pursue and discuss ways to build capacity within LPAs and non-planning consenting bodies. These could include, for example, industry secondments, sectoral approaches to consenting, closer monitoring and targeting of specialist resource and building better knowledge bases and toolkits within LPAs. Recommendations from this workshop will be shared in the spring update.</p>
<p>C3 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).</p>	<p>The Government sees an opportunity for public bodies to provide a high quality, value for money offer to applicants through provision of charged 'premium services'. With consenting bodies, we will explore possible revenue making activities such as project management, staged consents and provision of bespoke advice as well as exploring opportunities for local planning authorities to exploit premium services to meet the needs of communities within the localism agenda. More detail will be available in spring.</p>
<p>D <b>Accessibility of information (paragraph 2.83)</b> To make the process of applying for non-planning consents simpler Government should</p>	<p><b>Government accepts the principle of this recommendation. The Government established the Planning Portal to be the primary source of information about the planning system. Colleagues operating the Planning Portal and other departments will consider how</b></p>

Recommendation	Government response
<p>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:</p>	<p><b>best to involve the Planning Portal and other Government support such as Business Link, in improving the accessibility of information.</b></p> <p><b>Elements of both the Planning Portal and Business Link are under review following the Spending Review and the abolition of the Regional Development Agencies, which means that the Government is not yet able to offer a detailed proposal as to how these recommendations will be taken forward.</b></p>
<p>D1 The Planning Portal should identify and publicise existing good practice by local planning authorities around provision of information about planning and non-planning consents;</p>	<p>BIS and CLG, in consultation with other Government Departments, will examine the role for both the Planning Portal and Business Link in delivering this recommendation, subject to the outcome of the review work mentioned above.</p>
<p>D2 Local planning authorities should be encouraged to review the information they provide in light of identified good practice to ensure they give the advice that applicants need, or a suitable signposting service, in a readily accessible form;</p>	<p>The Government accepts the principle of this recommendation and will examine the good practice identified by the ‘barrier busting’ team described in the response to recommendation H7.</p>
<p>D3 The Planning Portal should take forward its programme of work to allow greater consultation electronically on non-planning consent applications, rather than by paper;</p>	<p>Due to re-prioritisation in the Planning Portal’s work programme, this recommendation will not be taken forward.</p>
<p>D4 Business Link 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</p>	<p>BIS and CLG – alongside other relevant Government departments – will examine the role for both the Planning Portal and Business Link in delivering this recommendation, but subject to the outcome of the review work mentioned previously.</p>

Recommendation	Government response
provision about non-planning consents); and	
<p>D5</p> <p>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.</p>	<p>Defra is currently in discussion with the Planning Portal Team and the Welsh Assembly Government regarding the potential use of 1App for drainage applications to the Sustainable Drainage Systems Approving Body with the aim of streamlining with the planning process wherever appropriate. CLG will continue to support these discussions.</p> <p>Together with CLG, DCMS and English Heritage will consider the practicality of making use of 1App for scheduled monument consent applications.</p>
<p>E</p> <p><b>Simplifying the landscape (paragraph 3.20)</b></p> <p>Government should simplify the non-planning consents landscape and reduce the number of non-planning consents that apply to business developments by:</p>	<p><b>While many regimes have already been reviewed in the last ten years, the Government has identified those that have not and will examine them.</b></p> <p><b>We will look for legislative opportunities to simplify existing consent regimes in the areas of heritage, conservation and environmental permitting and also use CLG’s new ‘Cut Red Tape’ initiative to source new ideas for simplification in the area of non-planning consents.</b></p>
<p>E1</p> <p>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;</p>	<p>Defra will actively look at Public Path Orders (that may be made to enable development to be carried out), to consider whether all aspects are still needed and how the regulatory burden might be reduced.</p> <p>CLG’s ‘Cut Red Tape’ initiative, designed to ‘crowd source’ ideas for simplification in the housing and planning field closed in August with around 2000 suggestions from 700 respondents. CLG are actively considering these suggestions and will report on this initiative in spring.</p>
<p>E2</p> <p>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;</p>	<p>DCMS will work with CLG to seek to identify an appropriate legislative opportunity to merge conservation area consent with planning permission.</p> <p>In the absence of legislation to create a new heritage protection system, DCMS and English Heritage will work together to ensure that the existing heritage consent regimes operate as effectively and efficiently as possible.</p>



Recommendation	Government response
<p>E3</p> <p>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 permit; and</p>	<p>Defra will publish proposals to bring water abstraction and impoundment licensing into the environmental permitting (EP) framework once the necessary Ministerial powers to regulate in this area have been secured through primary legislation. An opportunity to secure such powers is unlikely to arise before the second session of Parliament although other legislative vehicles will be explored in the meantime.</p> <p>Defra will also continue to examine whether other consent regimes can be brought within the EP framework and will implement permitting aspects of upcoming EU Directives via EP regulations, where appropriate.</p>
<p>E4</p> <p>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 same principles and approach as the Environmental Permitting Programme</p>	<p>Defra and Natural England have looked into the scope for applying the EP principles to wildlife species licensing and rights of way orders but have not identified any other related consents or permits which these consents might logically align with. The various consents operate to different rules and purposes and require very different knowledge bases within the decision-making bodies.</p>
<p>F</p> <p><b>Improving proportionality (paragraph 3.27)</b></p> <p>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:</p>	<p><b>There are a number of existing processes in place to reduce the need for consents. For example, the Environment Agency is working to streamline its consenting process for renewable energy infrastructure to help facilitate the Government's plan for Green Growth, while continuing to safeguard the local environment.</b></p> <p><b>As part of the light-touch reviews described in Recommendation E, all Government departments involved in non-planning consents are examining their areas with a view to providing further detail in the spring update.</b></p>
<p>F1</p> <p>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);</p>	<p>The Government will consider how to meet this recommendation and report back in spring 2011.</p>

Recommendation	Government response
<p>F2</p> <p>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;</p>	<p>Natural England is currently exploring the potential for using class licensing and associated registration schemes to reduce the burdens of applications for low impact activities. We expect to pilot this approach before spring 2011 for low risk survey activities, and subject to initial findings, will then consider how we can deploy more widely.</p> <p>The Environment Agency already takes a risk-based approach to permitting within the regulatory framework (as do local authorities for pollution control) and seek, where appropriate, to apply lighter touch forms of permitting such as exemptions and registrations.</p>
<p>F3</p> <p>Reviewing the operation of inquiry and appeal processes for planning and non-planning consents, with a view to standardising and simplifying related processes; and</p>	<p>The Government is committed to continuous improvement in the operation of its consenting procedures. In this spirit Natural England have, as at 1 October 2010, begun sharing ecological assessments with developers in advance of formal judgments in order to minimise delays in preparing resubmissions.</p> <p>The Government is committed to changing the landscape of planning appeal processes. CLG and the Planning Inspectorate are actively examining planning appeals processes to make these swifter and more straightforward. More details will be provided in spring 2011.</p>
<p>F4</p> <p>Seeking further opportunities to standardise and simplify application, consultation and determination processes.</p>	<p>The Government is looking at ways to simplify the planning system including publishing a National Planning Policy Framework, more detail of which is included in the response to recommendation G1. We will be able to provide further details in the spring update.</p> <p>Natural England is exploring opportunities for reducing the information requirements for wildlife licence applications with a low impact on protected species.</p> <p>DCMS and English Heritage are investigating the scope for improving the transparency of the scheduled monument consent regime by:</p> <ul style="list-style-type: none"> <li>· considering the merits and practicality of publishing applications and decisions online; and</li> <li>· exploring the feasibility of consulting the Council for British Archaeology on relevant applications.</li> </ul>
<p>G</p> <p>Clarifying the boundary between planning and non-planning consents (paragraph</p>	<p><b>The Government agrees that the boundary and inter-relationship between planning and non-planning consents should be made as clear as possible. To help deliver this</b></p>

Recommendation	Government response
<p>4.23)</p> <p>Government should clarify the boundary between planning and non-planning consents by:</p>	<p><b>Government will take the actions detailed below.</b></p> <p><b>In particular, Defra and CLG have commissioned a project to draft a protocol and guidance to improve the interface between environmental permitting and planning permission. It is seeking to make recommendations and a protocol such that duplication is reduced and the application process made smoother for developers, and less burdensome for the planning authorities and consenting bodies. It is hoped that lessons from the study will be replicable elsewhere in the planning and consenting landscape.</b></p> <p><b>Furthermore, the Government Programme Board established to drive implementation of these recommendations will also consider this issue further.</b></p>
<p>G1</p> <p>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;</p>	<p>CLG has ambitious plans to reform planning policy and publish a simple and consolidated policy framework covering all forms of development. This framework will include national economic, environmental and social priorities and will be presented to Parliament before adoption. CLG will report on progress in spring 2011.</p>
<p>G2</p> <p>Ensuring that local authorities have robust local development plans in place to inform businesses about the types of proposals that are likely to be acceptable in specific locations;</p>	<p>The reforms to the planning system outlined in the Government publication <i>Local Growth: realising every place's potential</i> and the forthcoming Localism Bill outline the role for Local Development Plans.</p>
<p>G3</p> <p>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 stop inappropriate applications going forward;</p>	<p>CLG will work with the Local Government Association and the Planning Advisory Service to decide how best to implement this recommendation, and will report on progress in spring. It will also be discussed at the workshop with professional bodies noted in recommendation C1</p>

Recommendation	Government response
<p>G4</p> <p>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 inform their decision of principle; and</p>	<p>The Government will consider how best to encourage local authorities and non-planning consenting bodies to collaborate in ways that are helpful to would-be applicants.</p>
<p>G5</p> <p>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.</p>	<p>Defra and CLG have commissioned a project to draft a protocol and guidance to improve the interface between environmental permitting and planning permission. The study is examining the co-ordination and working relationships between planning authorities and consenting bodies. It is seeking to make recommendations and a protocol such that duplication is reduced and the application process made smoother for developers and less burdensome for the planning authorities and consenting bodies. It is hoped that lessons from the study will be replicable elsewhere in the planning and consenting landscape.</p> <p>The Government Programme Board established to drive implement these recommendations will also consider this issue further.</p>
<p>H</p> <p>Changes to specific regimes (paragraph 4.37)</p> <p>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:</p>	<p><b>The Government accepts these recommendations and will look to make recommendations on the operation of town and village greens, rights of way and species licensing consents and undertake further exploratory work into the area of highways consents. It is agreed that businesses should generally have flexibility around the sequencing and timing of their planning and non-planning consent applications. However, there are good reasons why determination of the planning permission should precede the non-planning consent in some cases – Government is scoping this area and will detail proposals for action in spring.</b></p>
<p>H1</p> <p>Reviewing the operation of registration of town and village greens in order to reduce the</p>	<p>The Government recognises that a balance needs to be struck between providing high quality open space and allowing legitimate development to go ahead in the community interest.</p>

Recommendation	Government response
<p>impact of the current arrangements on developments that have received planning permission;</p>	<p>We will consider whether any changes to the village greens registration system are required as part of the Government's commitment to create a new designation to protect green areas of particular importance to local communities.</p>
<p>H2 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;</p>	<p>The Government will work closely with local authorities to consider how planning processes and supporting guidance and information can be further strengthened to ensure that the impact of rights of way on a planning application are considered routinely at an early stage in the process and how local authorities can be supported in achieving that.</p>
<p>H3 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';</p>	<p>The Government will review the process with key interested parties exploring whether a division of responsibilities along the lines suggested would provide a more effective regime that adequately balances user needs against the legislative obligations. We anticipate full conclusions being reached in July 2011. Any recommendations will then be taken forward.</p>
<p>H4 Exploring the options for merging highways consents with planning permission;</p>	<p>The Government will continue to look at options for reforming these arrangements. CLG and DfT will report back in the spring update.</p>
<p>H5 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; and</p>	<p>CLG is undertaking an extensive review of the Building Regulations. This includes the relationship between planning and building control. The review is at an early stage at present. CLG will provide an update in the spring update.</p>
<p>H6 Removing the legal barriers to the flexible sequencing of non-planning consents in relation to planning whilst taking account of constraints such as underpinning EU regulations</p>	<p>The Government will consider the issue of sequencing further in light of the protocol and guidance for the planning/permitting interface currently being developed in Defra and CLG's project described in the response to recommendation G5. We will provide an update on progress of the likely areas for consideration by spring 2011.</p>

Recommendation	Government response
<p>H7</p> <p>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.</p>	<p>Ministers have also established a 'barrier-busting' team which supports the Big Society agenda across government. The team works with 'vanguard communities' to identify and overcome individual bureaucratic barriers, including those relating to planning and non-planning consents regimes. CLG will consider how the lessons learned can be applied more widely.</p>
<p>I</p> <p>Facilitating integration of planning and non-planning consents (paragraph 4.49)</p> <p>Government should encourage more local authorities to offer an improved, integrated and end-to-end planning and non-planning consents service by:</p>	<p><b>The Government fully supports this recommendation in principle and will encourage local authorities to better meet the needs of the development community. However, inviting local authorities to pilot an integrated consents regime would be prohibitively costly, for legal and technical reasons.</b></p>
<p>I1</p> <p>Actively promoting the adoption of existing good practice in development management across all authorities that take planning decisions;</p>	<p>CLG will hold initial discussions with the Local Government Association, the Planning Officers Society and the Royal Town Planning Institute to establish a way of doing this. CLG will report back on progress in the spring update.</p>
<p>I2</p> <p>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;</p>	<p>CLG supports this recommendation in principle, but it will not be possible to implement it in the near future, beyond the work on Sustainable Drainage Consents reported under D5, due to the prohibitive cost of developing the necessary IT solution.</p>
<p>I3</p> <p>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.</p>	<p>Whilst supportive of the principle of this recommendation, implementing it through primary legislation would be lengthy and impractical, and building sufficient capacity (e.g. in ecological expertise) would be costly. However, the work of the 'barrier busting' team established by CLG Ministers, referenced in the response to recommendation H7, may identify circumstances where local authorities can take a role in determining or advising on what falls under non-planning</p>

Recommendation	Government response
	consent regimes.
<p>J</p> <p>Extending 'unification' of planning and non-planning consents (paragraph 4.57)</p> <p>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).</p>	<p><b>The Infrastructure Planning Commission (IPC) has been notified of approximately 50 applications that are expected to come forward during the next 2 years. The abolition of the IPC, and the transfer of its functions back to democratically accountable decision-makers, means that Ministers will be directly responsible for making Development Consent Orders (DCOs). CLG will therefore be monitoring the introduction of DCOs and will be in a position to review how they are working once more have been passed – likely to be in 2 years.</b></p>
<p>K</p> <p>Providing oversight of the planning and non-planning consents landscape (paragraph 5.7)</p> <p>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.</p> <p>To achieve this, the body or mechanism should:</p>	<p><b>The Government accepts this recommendation. The Government has a 'one-in, one-out' approach to regulation and will apply that principle to non-planning consents: i.e. to ensure that the burden of development consents upon developers does not increase by finding offsetting simplification measures whenever a new addition to non-planning consent regimes is introduced.</b></p> <p><b>CLG hosts a cross-departmental task force that considers the interface between planning policy and the remit of other Government departments. The role of this task force will be expanded to consider the impact of newly proposed development consents upon developers, and advise Ministers accordingly.</b></p>
<p>K1</p> <p>Give developers advance notice of changes to planning and non-planning consent regimes;</p>	<p>Relevant policy-makers are expected to engage with interested parties – such as developers – impacted by the policy changes they seek to introduce. BIS has developed an Impact Assessment toolkit for policy-makers which includes guidance on best practice in this respect. Ensuring this happens is a part of the scrutiny of new policy-making undertaken within Government and a part of each department's role in meeting common Government objectives on delivering the principles of better regulation.</p>

Recommendation	Government response
<p>K2</p> <p>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;</p>	<p>The Government is committed to ensuring all policy development is in conformity with the principles of good regulation, and the Reducing Regulation Committee sets a challenge within Government to ensure this ambition is realised.</p> <p>The role of CLG's cross-departmental task force will be expanded to consider the impact of newly proposed development consents upon developers and on the remit of other Government departments (e.g. their interaction with other development consents). The task force will report to Ministers on the likely impact of these new development consents. The aim will be to minimise any additional burdens arising from new consent regimes.</p>
<p>K3</p> <p>Continuously scrutinise the existing landscape for possible barriers / inappropriate burdens and making proposals for periodic improvements made; and</p>	<p>The Government is committed to reducing the burden of regulation and provides an Impact Assessment toolkit to encourage policy-makers to consider the cumulative burden of regulation in a sector before committing to introduce further regulation. At the broadest level, the Reducing Regulation Committee will provide a challenge within Government to ensure the regulatory burden is minimised.</p> <p>The work of the 'barrier-busting' team established by CLG Ministers (see recommendation H7) may identify further opportunities to reduce the burden of regulation on developers.</p> <p>CLG will also begin a process of work to simplify the current array of standards that apply to new housing.</p>
<p>K4</p> <p>Monitor the cumulative burden of regulation on developers with a view to reducing the overall burden.</p>	<p>The Government accepts this recommendation. The Government has a 'one-in, one-out' approach to regulation and will apply that principle to non-planning consents: i.e. to ensure that the burden of development consents upon developers does not increase by seeking offsetting simplification measures whenever a new addition to non-planning consent regimes is introduced</p> <p>CLG's cross-departmental task force will contribute to this through its role as a forum for official-level discussion on planning and non-planning consents, for example by providing support and challenge to help identify simplifications, such that the overall burden of non-planning consent regulation is not increased.</p> <p>Furthermore, in line with Government commitments to increase housing supply, we have committed to reduce the total</p>



Recommendation	Government response
	regulatory burden on the house building industry over the Spending Review period.
<p>L</p> <p><b>Making change happen (paragraph 5.9)</b></p> <p>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 complimentary to the aims of this review. To achieve this, Government should:</p>	<p><b>With the departments that have contributed to this Response, BIS has developed an Action Plan to monitor progress against the commitments made in this Response. A Programme Board of officials from the relevant Government departments will monitor the delivery of the Action Plan, and progress will be reported in the spring update.</b></p>
<p>L1</p> <p>Agree a cross-Whitehall 'Action Plan' setting out exactly how each of the recommendations will be delivered, by whom and in what timescale; and</p>	<p>The Government accepts this recommendation and will implement it.</p>
<p>L2</p> <p>As part of that 'Action Plan', make clear how wider planning reforms will take account of / incorporate specific Penfold Review recommendations.</p>	<p>The Programme Board established to implement the Action Plan will be used as a forum to discuss the impact of broader planning reform upon the delivery of these recommendations. Individual departments have already considered how these commitments fit with the wider programme of planning reform during the process of agreeing the actions outlined in this Response.</p>

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Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills  
1 Victoria Street  
London SW1H 0ET  
Tel: 020 7215 5000

If you require this publication in an alternative format, email [enquiries@bis.gsi.gov.uk](mailto:enquiries@bis.gsi.gov.uk), or call 020 7215 5000.

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