

Government Response:

Stopping Up and Diversion Orders: Reform of the Application Process for Local Highways

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Introduction

1. In July we launched a consultation detailing options to improve the application process for highway stopping up and diversion orders; this response should be read alongside the original consultation document.
2. Stopping up and diversion orders are typical of non-planning consents that are required alongside or following principal planning permission in order to allow development. They play a vital role in driving through investment and growth in our local communities.
3. These non-planning consents can have a serious impact on the efficient and effective delivery of developments. The complexity of the consents landscape and design of individual consents within this framework can lead to an inconsistent and rigid regime that relies on different legal bases, has many elements, and involves various agencies in the application and decision-making process. Navigating through the various levels of bureaucracy creates uncertainty and delay in the overall development process, as highlighted by the Penfold Review of non-planning consents published in 2010.
4. The Penfold Review was established to explore whether the process for obtaining non-planning consent is delaying or discouraging business activity and identify areas where there is scope to support investment by streamlining processes, removing duplication and improving working practices.
5. Policy options in the consultation were to permit applications for a stopping-up or diversion order to be submitted at the same time as applying for planning permission, and to devolve decision-making to the local authority level. The proposals apply to England only.

Summary of Responses

- 6.** We received a total of 72 responses, which are summarised by group below:

Developers / Planning Consultants / Advisors	13
Local Authorities	36
National bodies / utility providers / interest groups / members of the public	23

- 7.** The Government is grateful for the responses, which were both comprehensive and well informed. There was a wide range of respondents representing the three main groups, namely: those making stopping up and diversion applications; those handling applications; and those affected by applications.
- 8.** To offer a brief tour of the responses, this section will describe the general consensus and any key points: there was general support for a statutory time limit for negotiating objections; however the favoured period for a time limit was such as to make a limit nugatory. There was overwhelming consensus that a speedier application process would offer reduced costs and greater benefits and almost everyone agreed that a concurrent application process should be introduced.
- 9.** On the proposal to devolve the application process to local authorities, the prevailing view was that if we were to devolve stopping up orders then it would be more appropriate to devolve to local highway authorities, believing them better placed than local planning authorities. The majority felt that any devolution should be accompanied by a charging regime and should devolution be to a local planning authority, then local highway authorities should be a statutory consultee.
- 10.** Finally, most felt that more use should not be made of section 116 of the Highways Act 1980, preferring instead reforms to the Town and Country Planning Act 1990.

Summary of Government Response

- 11.** As Adrian Penfold says in the foreword of his final report, ‘there is a renewed drive – right across the economy – to deregulate and remove barriers to economic growth’ and this drive has been foremost in our minds while reviewing the consultation responses and in making proposals. We know we need the right decisions about development to be made for the right reasons, in an efficient and effective way.
- 12.** With that in mind, the Government has decided not to introduce a statutory time limit for negotiating objections and not to devolve the stopping up and diversion order process to a local level. Consultation responses suggested that any devolution should be accompanied by a charging regime; additional costs and charges would be borne by both local authorities and those making applications, with no guarantee of a simpler and faster process. The Government does not feel that placing additional burdens on local authorities and costs on developers is right at this time. Additionally, we do not propose to reform or encourage a greater use of section 116 of the Highways Act 1980.
- 13.** It should also be remembered that the application process for stopping up and diversion orders has been improved significantly since Adrian Penfold published his report. The process is already much faster and allowing stopping up and diversion applications to be made alongside planning applications will remove a significant barrier to growth that will speed up the process and allow a reduction of burdens on both applicants and local authorities, as both applications can be processed and considered concurrently. Legislation currently in Parliament, as part of the Growth and Infrastructure Bill, has introduced this measure.
- 14.** Adrian Penfold goes on to explain that in considering improvements to non-planning consents: ‘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.’

15. We feel that our proposals support this:

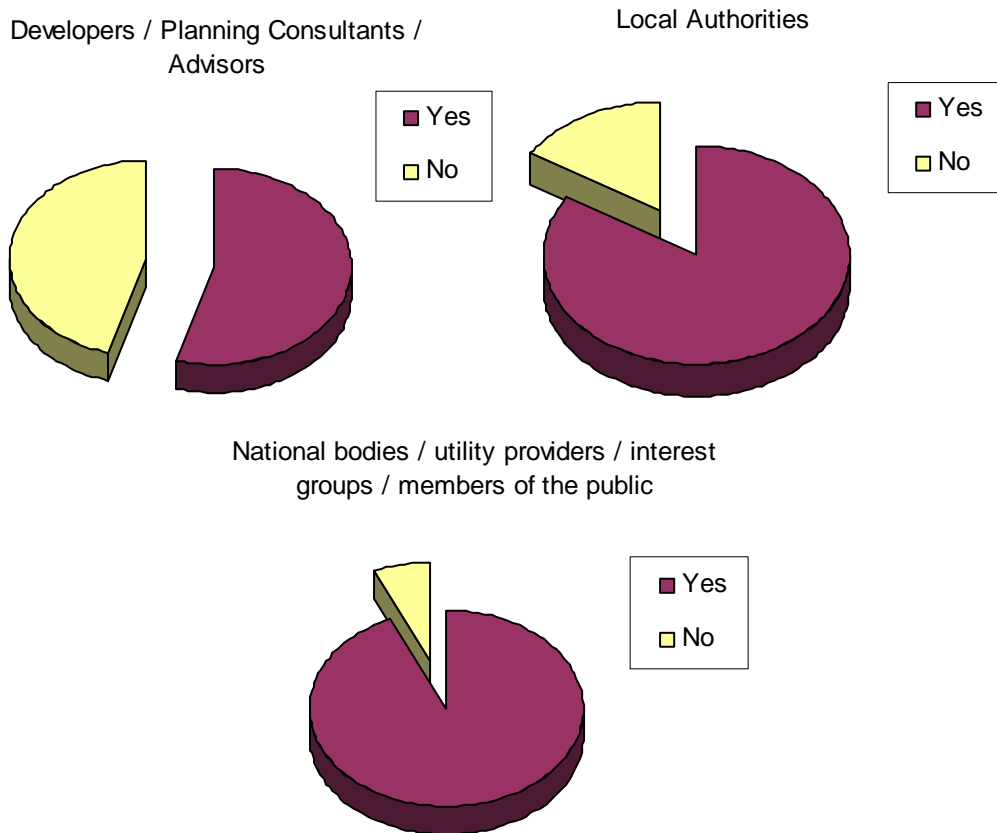
- Efficient: retaining the processing of applications within the Department for Transport will be much cheaper than devolution, with costs borne centrally, and in the past year the speed of processing applications has increased considerably.
- Effective: as noted by some respondents, the Department's stopping up team have a concentration of skills and expertise, at a single point, and offer an independent and consistent service that is well established and already works.
- Does not create additional burdens and barriers: there will be no additional charging, local authorities will not need additional resources, developers can decide to make an application when it suits them and those who are affected by applications maintain the right to object and to be heard.

Detailed Responses to Questions

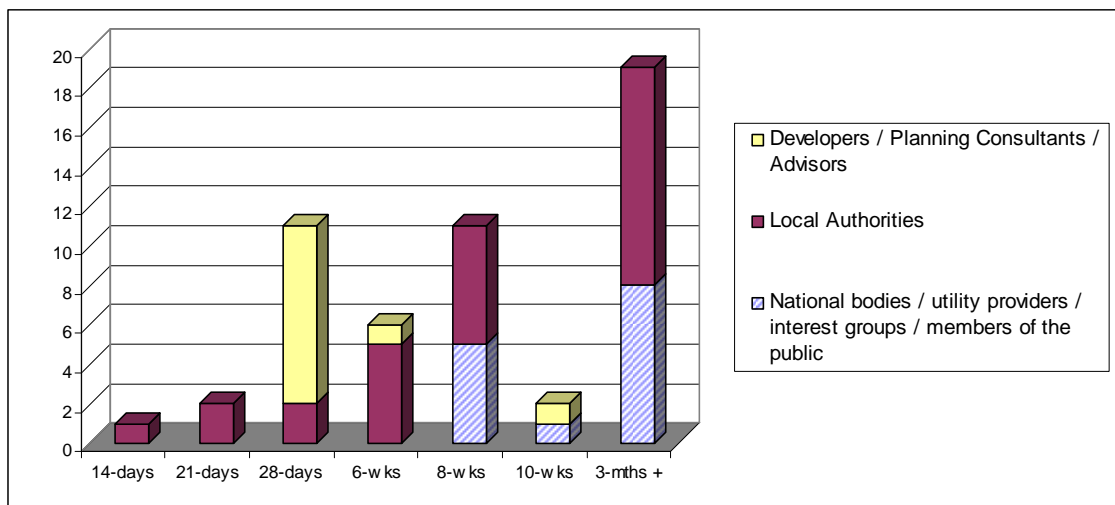
Question 1: The Government seeks views on the proposal to introduce a statutory time limit for negotiating objections to stopping up and diversion applications. What would you consider to be a reasonable time limit for negotiating objections?

16. Summary of responses: Of the 72 responses to the consultation, 64 responded to this question. 46 were broadly supportive of a time limit against 11 who thought it would not be helpful. The remaining 7 provided comments, but did not give an opinion either way.

17. A breakdown of support can be seen in the following charts:



- 18.** In general, the majority of local authorities and those affected by planning proposals were in favour of a time limit (26 out of 31 and 14 out of 15, respectively); for developers, this was more evenly split (6 for and 5 against).
- 19.** The question of a reasonable time limit received a mixed response with 52 suggestions, as indicated by the graph below: (note: those responses that did not fit exactly with those below, were placed in the nearest appropriate column.)



- 20.** In general terms, those affected by planning proposals favoured a longer time limit, along with the majority of local authorities. The majority of developers favoured a limit of around 28-days.
- 21.** Regardless of whether those responding were for or against the proposal, many provided comments: many were concerned that an automatic referral may not be the best way to speed up the process and that any time limit should 'enable' a reference to be made, rather than compel it; another suggestion was that flexibility be allowed in cases where agreement was close and referral to public inquiry would be unnecessary.
- 22.** However, some thought that the proposal would encourage third party objectors to engage expeditiously and reduce delays in the process. Another view was that an increase in the number of public inquiries was a reasonable cost to pay so that applications are determined promptly, with an incentive to settle matters and deliver with greater certainty, clarity and consistency for all parties.

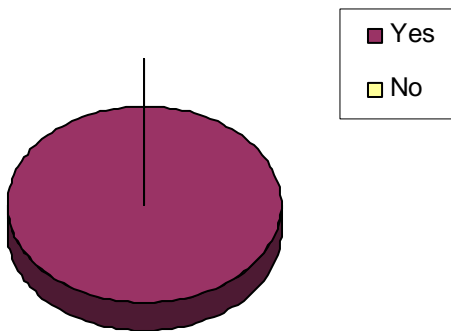
23. Some were concerned that a time limit would encourage objectors to delay knowing a public inquiry could be achieved, with the aim of frustrating the process. It was suggested that only those objectors who have affected property interests, such as owners of buildings fronting the highway or utilities with equipment in the highway, should be able to force a reference to public inquiry. Another suggestion was that objections be subject to a test of 'reasonableness'.
24. There was also concern that any time limit would lead to an increased number of public inquiries, with additional burdens being placed upon developers, local authorities and the Planning Inspectorate.
25. A number highlighted the importance of pre-application consultation and engagement in ensuring objections were both reduced and resolved early.
26. There were also questions on how any time limit would work and be enforced; will there be penalties and how will actions be tracked and parties be made to adhere? Furthermore, some were concerned that this proposal would lead to an increasingly litigious approach to the resolution of disputes.
27. Finally, the point was made that it should not be assumed that time delays can always be attributed to objectors; many objectors felt frustrated by the process and time delays.
28. Government response and proposals: having considered responses, the Government feels that the imposition of a time limit would be counter-productive and that pre-application consultation and engagement is a far better way of achieving time savings. Furthermore, the favoured time limit, of in excess of 3-months, would be unlikely to speed up the process. The Government does not propose to introduce a time limit.

Question 2: The Government welcomes views on the costs and benefits of a speedier application process, supported with evidence wherever possible.

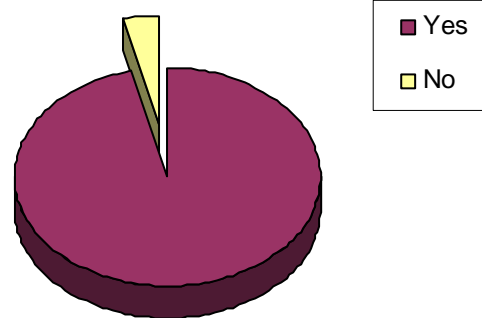
29. Summary of responses: Of the 72 responses to the consultation, 56 responded to this question. 44 agreed that a speedier application process would reduce costs and offer benefits, against 2 who did not agree. The remaining 10 provided comments, but did not give an opinion either way.

30. A breakdown of support can be seen in the following charts:

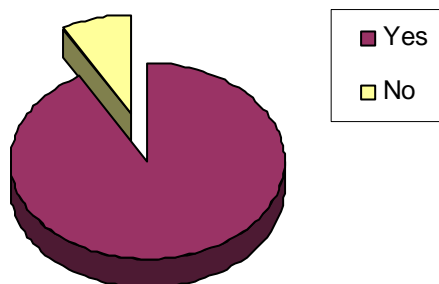
Developers / Planning Consultants /
Advisors



Local Authorities



National bodies / utility providers / interest
groups / members of the public



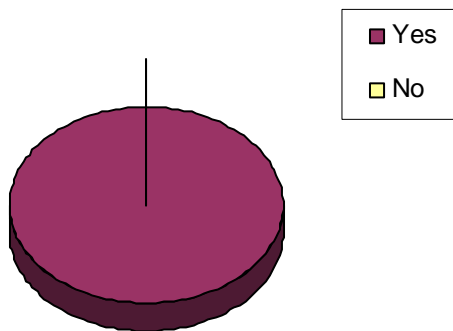
31. Of those offering an opinion, the majority of local authorities and those affected by planning proposals (25 out of 26 and 11 out of 12, respectively) and all developers thought that a speedier application process would bring down costs and add benefits.
32. Regardless of whether those responding agreed or disagreed, many provided comments: most agreed that those making stopping up and diversion applications would be the prime beneficiaries. However, there was some concern that this would be at the cost of giving appropriate consideration to objections with concerns that a speedier process would not allow meaningful negotiation and could lead to more objections and public inquiries.
33. In general, benefits were thought to include more up to date highway records alongside reduced delay, cost savings and more certainty for developers. While some thought that a speedier application process would present increased costs for local authorities.
34. Government response and proposals: the Government is grateful for the views and evidence offered; they support the case for the speedy introduction of legislation enabling stopping up and diversion applications to be made alongside planning applications.

Question 3: The Government seeks views on the proposal to introduce a concurrent application process to allow applications for stopping up or diversion orders to be considered alongside planning permission applications.

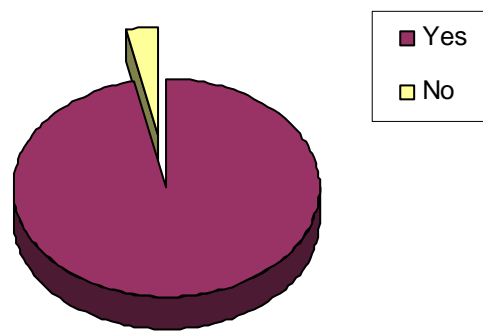
35. Summary of responses: Of the 72 responses to the consultation, 64 responded to this question. 52 were broadly supportive of this proposal against 4 who thought it would not be helpful. The remaining 8 provided comments, but did not give an opinion either way.

36. A breakdown of support can be seen in the following charts:

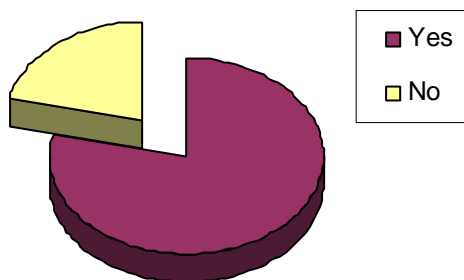
Developers / Planning Consultants /
Advisors



Local Authorities



National bodies / utility providers / interest
groups / members of the public

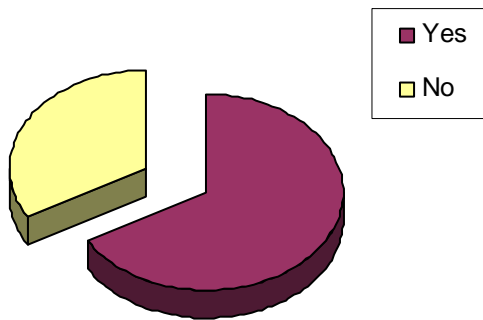


37. Of those offering an opinion, the majority of local authorities and those affected by planning proposals (30 out of 31 and 11 out of 14, respectively) and all developers supported the proposal to allow applications for stopping up or diversion orders to be considered alongside planning permission applications.
38. Regardless of whether those responding agreed or disagreed, many provided comments: there was overall broad support for allowing stopping up and planning applications to run concurrently, with agreement that it would speed up the process and reduce burdens.
39. Some were concerned that this option would not allow meaningful negotiation and may be prejudicial to the interests of the wider public, while more widely there were some concerns that the process may become more complicated and could lead to abortive work and increased costs for both developers and local authorities, especially for larger developments and when plans change. Some respondents, while supporting the option, felt it did not go far enough and one suggested a pilot to test the concept.
40. Government response and proposals: we welcome the broad support for option 1 and the comments and suggestions that this will both simplify and speed up the process; both are key aims of the Penfold Review. We have introduced measures in the Growth and Infrastructure Bill, currently before Parliament, to allow this. We would like to provide reassurance that the procedures for negotiation and objections will remain unchanged, including the option of holding a Public Inquiry and having the Secretary of State for Transport make the final decision.
41. We understand that running concurrent applications for both stopping up and planning may lead to abortive costs where plans are initially unclear or subject to potential change; dialogue between developers and local planning and highway authorities before application should help reduce this risk. Our proposal does not mean both applications have to be made at the same time and that is why deciding when to submit a stopping up order application will be for the developer, considering progress of their planning application. Submitting stopping up orders at the same time as, or alongside, planning applications will remain entirely optional and may not be beneficial in all cases.
42. We appreciate concerns that stopping up orders granted before planning consent could lead to work 'on the ground' affecting a highway for a planning application that may not be successful. For this reason, we are not proposing to change this element of the current process; while applications can be made early, a stopping up order will not be made until planning consent has been received.

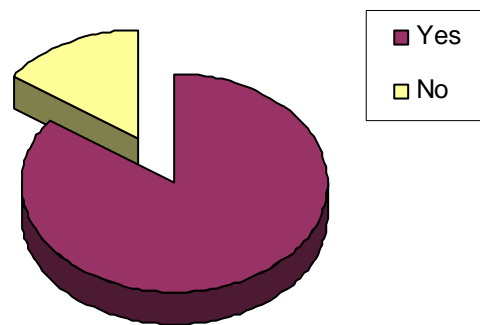
Question 4: The Government invites views on whether local highway authorities should be empowered to determine applications for stopping up or diversion orders.

- 43. Summary of responses: Of the 72 responses to the consultation, 63 responded to this question. 49 were broadly supportive of this proposal against 10 who thought it would not be helpful. The remaining 4 provided comments, but did not give an opinion either way.
- 44. A breakdown of support can be seen in the following charts:

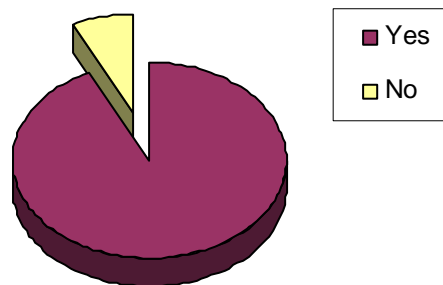
Developers / Planning Consultants / Advisors



Local Authorities



National bodies / utility providers / interest groups / members of the public



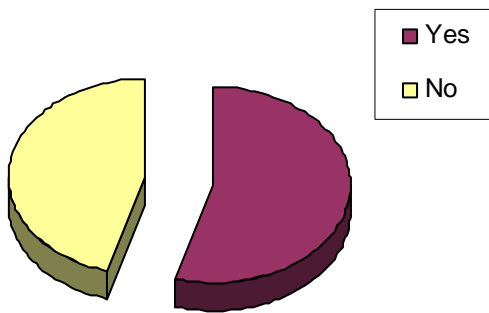
45. Of those offering an opinion, the majority of local authorities and those affected by planning proposals (28 out of 33 and 13 out of 14, respectively) agreed that local highway authorities should be empowered to determine applications for stopping up or diversion orders. For developers, this was more evenly split with 8 agreeing out of 12 responses. Furthermore, a small number of responses supported this option as opposed to doing nothing, but for them it did not represent their preferred option, which was devolution to local planning authorities.
46. Regardless of whether those responding agreed or disagreed, many provided comments: a large number thought that highway authorities were better placed already having responsibility for highways and in particular maintenance, protection and recording. However, some feared that highways authorities would take a 'highways only' view neglecting wider planning considerations and many feared highway authorities would have inadequate resources to conduct this extra work; the charging of fees was proposed to counter this risk. There was a question of process should the highway authority oppose the application themselves or where the application had originated from the local authority.
47. Almost all of those in favour of this option wanted unresolved objections to be determined by the Secretary of State with the Planning Inspectorate continuing to conduct public inquiries. And many voiced the opinion that the current system already provides a simple, clear and efficient way of dealing with stopping up and diversion applications, which was considered likely to be quicker than proposed devolution, and that the Department for Transport should continue to offer this service instead of asking local authorities to provide resources locally. Some also felt that the process remaining centrally would ensure quality and consistency nationally.
48. Government response and proposals: the Government understands the reasons why, should there be devolution to a local level, local highway authorities are better placed to process applications. However, responses to question 5 show a desire that any devolution be accompanied by a charging regime placing additional costs upon developers. Having considered the full range of views and in light of comments that the current arrangements provide a cost effective solution with a degree of consistency and certainty, without placing resource burdens upon local authorities or additional costs upon developers, we do not plan to devolve the process to local highway authorities. In addition the speed of processing applications within the Department for Transport has increased considerably in the past year.

Question 5: The Government seeks comments on whether local authorities should be allowed to recover a fee for stopping up or diversion applications; in particular, on the principle of how such a charging regime might operate.

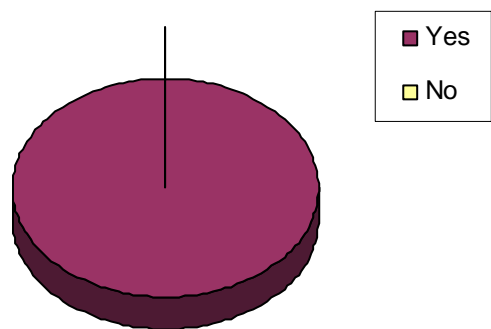
49. Summary of responses: Of the 72 responses to the consultation, 64 responded to this question. 56 were broadly supportive of this proposal against 5 who thought it would not be helpful. The remaining 3 provided comments, but did not give an opinion either way.

50. A breakdown of support can be seen in the following charts:

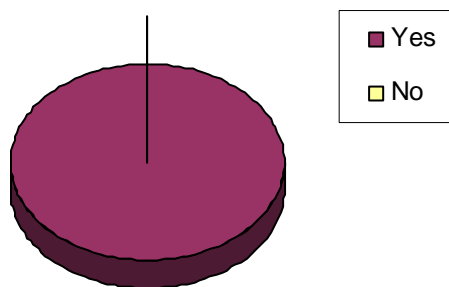
Developers / Planning Consultants /
Advisors



Local Authorities



National bodies / utility providers / interest
groups / members of the public

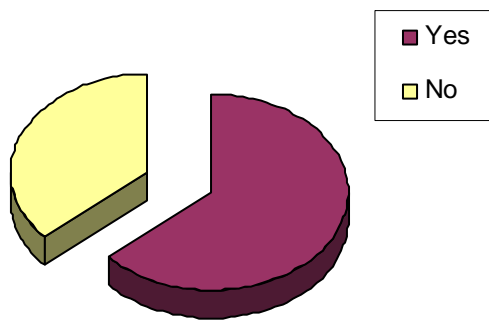


51. Of those offering an opinion, all local authorities and those affected by planning proposals (35 out of 35 and 15 out of 15, respectively) agreed that local highway authorities should be allowed to recover a fee for stopping up or diversion applications. For developers, this was more evenly split with 6 agreeing out of 11 responses.
52. Regardless of whether those responding agreed or disagreed, many provided comments: the majority of those supporting this proposal felt that if local highway authorities were asked to determine stopping up and diversion applications, then they should be able to charge a fee to recover the costs; staff and advertising being cited as particularly costly. Should devolution be to local planning authorities, then the consensus was less clear, with a number explaining that local planning authorities already consider stopping up and diversion orders as a material consideration for planning applications and so the determination of stopping up and diversion applications should be covered by the existing planning charge. Furthermore, some suggested that as local highway authorities already consider implications of the highways network, then additional costs should be small.
53. There was some debate between local, regional or nationally set fees, and whether they should be fixed or determined on size of development, without consensus; although everyone wanted fees to realistically reflect the costs encountered. While many thought that those benefiting from developments should be charged a fee, some suggested there be an element of discretion for local authorities to waive fees for developments that offer benefits to the public or wider community. There was also the suggestion that as devolution to the local level was a transfer from central Government then additional funds should be provided by the Department for Transport to cover local authority costs.
54. Many local authorities suggested costs could be brought down by removing the need to advertise in local newspapers and others would like to see cost-saving efficiencies realised, with a value for money commitment. Furthermore, a number wanted, in return for a fee charging regime, a guarantee that standards would be maintained and that local authorities undertake to respond to applications and consultations in a timely manner. Many developers felt that they already paid enough for the planning application to cover costs at a local level.
55. Government response and proposals: the Government agrees that any devolution should be accompanied by a charging regime; however, the Government is not proposing to devolve the application process.

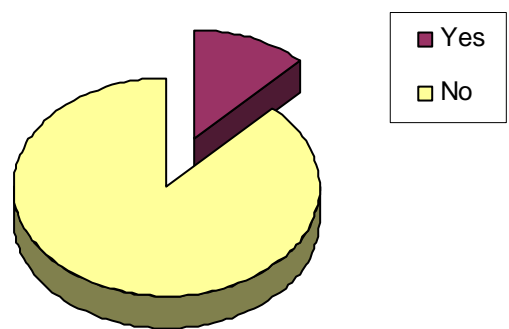
Question 6: The Government seeks views on whether local planning authorities should be empowered to determine applications for stopping up or diversion orders.

- 56. Summary of responses: Of the 72 responses to the consultation, 63 responded to this question. 14 were broadly supportive of this proposal against 47 who thought it would not be helpful. The remaining 2 provided comments, but did not give an opinion either way.
- 57. A breakdown of support can be seen in the following charts:

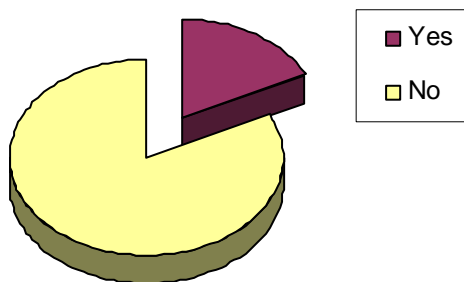
Developers / Planning Consultants / Advisors



Local Authorities



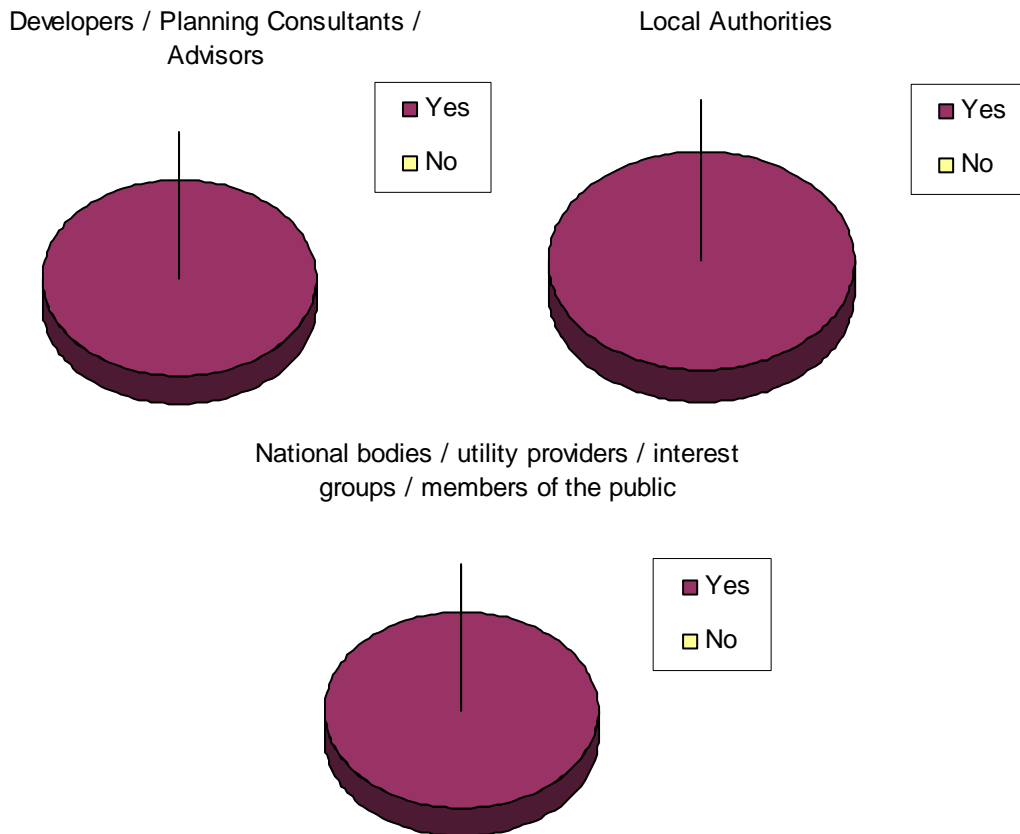
National bodies / utility providers / interest groups / members of the public



- 58.** Of those offering an opinion, the majority of local authorities and those affected by planning proposals (29 out of 33 and 14 out of 17, respectively) disagreed that local planning authorities should be empowered to determine applications for stopping up or diversion orders. For developers, this was more evenly split with 7 agreeing out of 11 responses.
- 59.** Regardless of whether those responding agreed or disagreed, many provided comments: of those in support of devolution to local planning authorities, many considered that as stopping up and diverting highways form a material consideration for planning applications, then it would add very little to the complexity or cost for a stopping up application to be considered alongside a planning application. This was alongside views that local planning authorities are better placed to understand the full range of benefits and disadvantages of a development and would offer a consistent and less bureaucratic process for those planning developments. For some, this option sat well alongside the Penfold Review's recommendation for simplifying stopping up and diversion applications.
- 60.** However, others were unclear how this proposal would speed up the process and questioned whether local planning authorities had the skills and expertise to make highway decisions. Furthermore, because local planning authorities would need to refer to local highway authorities this would therefore not speed up the process. There were also concerns that a presumption in favour of development might not necessarily allow a proper consideration of highways issues.
- 61.** Government response and proposals: the Government accepts the general view that local planning authorities are not best placed to handle stopping up and diversion applications; however, the Government is not proposing to devolve the application process.

Question 7: The Government seeks views on whether local highway authorities should be identified as statutory consultees where local planning authorities have powers to determine stopping up or diversion orders.

- 62. Summary of responses: Of the 72 responses to the consultation, 59 responded to this question. 56 were supportive of this proposal. The remaining 3 provided comments, but did not give an opinion either way.
- 63. A breakdown of support can be seen in the following charts:



- 64. Without prejudice to their views on whether local planning authorities should be empowered to determine stopping up and diversion orders, everyone agreed that where local planning authorities have powers to determine stopping up or diversion orders then local highway authorities should be identified as statutory consultees.

- 65.** Government response and proposals: while agreeing with responses to this question, the Government is not proposing to devolve the application process.

Question 8: The Government welcomes further ideas or comments on how the application process for stopping up and diversion orders might be streamlined or improved.

66. Summary of responses: because of their number, breadth and length, responses have been reduced to make them more concise and on occasions words have been added to aid clarity; the latter are indicated by [square brackets]. Suggestions that are repeated often or have been made in response to other questions may not have been duplicated here. We are happy to correct any misrepresentations or important omissions.

<i>... it should be possible for an applicant for stopping up to (i) obtain an estimate from affected utilities of the cost of relocating their equipment; (ii) give an undertaking to fund that relocation if the affected highway is stopped up; and (iii) refer questions of price to a mechanism to resolve them if necessary. If such an undertaking was given utilities should not be able to object to a stopping up unless they could show that it would compromise the needs of their customers if the stopping up were permitted...</i>
<i>... developers should be obligated to enter into pre-application discussions with the Local Planning and Highway Authorities ...</i>
<i>... a stopping up order should relate to both the initial planning permission, and to any other consent that the local planning authority accepts is substantially similar in nature. ... statutory undertakers [should be discouraged from] object[ing] to stopping up orders as a mechanism to secure undertakings about diversion costs ...</i>
<i>... if a stopping up or diversion order is obtained it [should] relate to an initial planning permission and also to any subsequent permission that the local planning authority accepts is substantially similar. ... If there are unresolved objections the Secretary of State should be able to determine the application without the need for an inquiry if they consider that the continued objections are unreasonable ...</i>
<i>... We believe that planning applications and applications for stopping up orders could be merged under an overarching objective of delivering sustainable development; and we urge the Government to reconsider its decision not to pursue this recommendation ...</i>
<i>The requirement to advertise in the London Gazette and local press could be replaced by publishing the notice on [local authority] web sites ...</i>
<i>... The planning application form should ask whether there is a recorded or claimed public highway within or adjacent to the development, whether the development may require the diversion of, or some other change ...</i>
<i>... the Department of Transport already seems to be deal with [stopping up and diversion applications] quickly and efficiently, and has its own powers to</i>

<p><i>alter orders to negate objections. It appears to be a far better way of diverting/stopping up highways ... Perhaps the Dept. of Transport could introduce an 'EXPRESS FEE' that guarantees shorter timescales for a higher fee ... The system already seems to be efficient and reasonable, and would appear to be quicker and less burdensome than if powers were to be devolved to local authorities ...</i></p>
<p><i>... DEFRA and DfT should compliment each other in how [proposals] are implemented and any changes to legislation or Government guidance. Ensuring that all similar orders are processed in similar ways should result in speedier processes as it should allow local authorities and developers to realise efficiencies ...</i></p>
<p><i>... Give local authorities more scope to use their judgement in dealing with insubstantial or irrelevant applications and objections</i></p>
<p><i>... it would be advantageous to notify statutory consultees at planning application stage in order that any representation they may wish to make is taken into consideration as part of the planning permission consideration, rather than only notifying them after permission has been granted as at present, as this would likely result in a lower number of objections if their concerns can be seen to have been considered.</i></p>
<p><i>... It is felt that the process should include the power for highway authorities to agree interim proposals to ensure public access is maintained.</i></p>
<p><i>... Local authorities should be allowed greater freedom to determine how best to consult the public in their areas[, including] formal advertising and any reduction in the degree of prescription.</i></p>
<p><i>If objections are clearly vexatious, the Secretary of State should have the discretion to determine the application and relevant stopping up/diversion orders without recourse to a public inquiry ... we suggest the DfT consider the current CPO objections process as a potential mechanism for dealing with objections. It may be possible to mirror the CPO process in respect of objections.</i></p>
<p><i>[Network Rail] would like to be given a clear role (possibly as powers of direction) in respect of applications by third parties that affect level crossings ...</i></p>
<p><i>... advertis[ing] in a local paper and in the London Gazette seems to add greatly to the time and cost of the whole process ... it is extremely rare for any comments or objections to be generated by this method ... Almost all other aspects of government are now available on the web, so we suggest the legislation be changed to allow publication on the Council's website ...</i></p>
<p><i>... Early consultation should be made an essential requirement ...</i></p>
<p><i>... the current system works well ... no changes are needed and likewise we do not advise any other improvements possible.</i></p>
<p><i>Sections 247 and 257 should be merged so that Planning Authorities can stop-up, divert or adopt an alternative route for the reasons of enabling development to take place ...</i></p>
<p><i>Our experience is that the current system works well and any reduction in tasks might be considered circumventing a system of justice ...</i></p>

<i>Local Access Fora could form a first stage tribunal a bit like the land tribunals of the past ... the local view and the benefit of local knowledge would be on the table from the start of the process which should smooth the passage ...</i>
<i>... There needs to be some specific provision to ensure co-ordination and compatibility of decisions between Authorities when developments or highways cross county or district boundaries.</i>
<i>... We believe that powers should be considered to resolve the current situation whereby outstanding objections almost automatically result in referral to Public Inquiry ...</i>
<i>... developers should be obligated, where a stopping up or diversion of highway is likely to be necessary, to enter into pre-application discussions with the Local Planning and Highway Authorities ...</i>
<i>... any reduction in the degree of prescription [for formal advertising] would likely result in reduced cost. Local authorities should be allowed greater freedom to determine how best to consult the public in their areas.</i>
<i>... the Local Authorities should be in position to determine a stopping up / diversion order and their members should decide if an objection is warranted or not ... the new proposals will not quicken the process when a third party objects to a stopping up / diversion order and does not withdraw there objection as the case will still be sent to the Secretary of State.</i>
<i>... guidance on the application procedure would be welcomed ...</i>
<i>... [should] extend the scope of section 253 of the Town & Country Planning Act 1990 to enable all applications to take advantage of the possibility of initiating the order making process in anticipation of planning permission.</i>
<i>... a stopping up order should relate to the initial planning permission, and to any other subsequent planning permission that is substantially similar in nature ... [also,] the Secretary of State should have discretion to determine the application for the stopping up order without an inquiry.</i>
<i>... The Planning Portal should have clear links to information on all forms of stopping up and other highways agreements ...</i>
<i>The processes for public rights of way and adopted highways ought to be streamlined into one process ...</i>
<i>... at the time that the land the subject of the stopping order is vested in the new owner, there [should be] a statutory requirement to include a clause stating that the land is formerly a street and may contain utility apparatus beneath its surface, the rights for retention of which are set out in an appendix/schedule to the transfer ...</i>

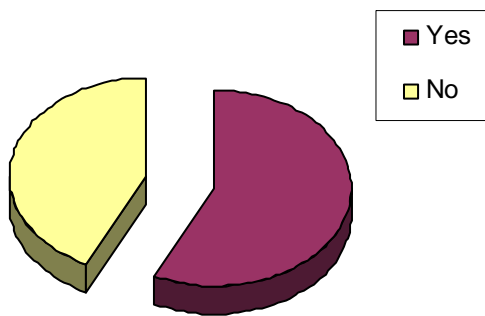
- 67.** Government response and proposals: the Government is grateful for the wide ranging and thoughtful comments. We will consider whether further guidance on the application process would be helpful. The Government also recognises that there is scope for working with statutory consultees to improve the consideration of both applications and objections. Finally, the Government considers that pre-application engagement and consultation is important in ensuring a smooth process.

Question 9: Do you think that more use should be made of section 116 of the Highways Act 1980? How could it be made clearer to authorities that they can already make use of these provisions?

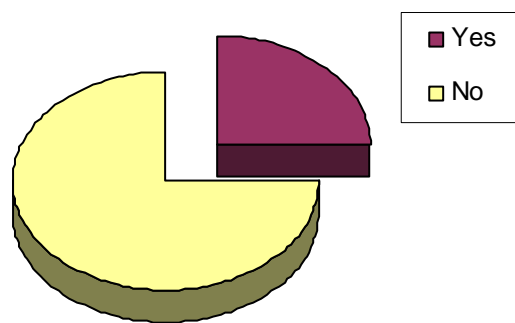
68. Summary of responses: Of the 72 responses to the consultation, 63 responded to this question. 10 were broadly supportive of this proposal against 38 who thought it would not be helpful. The remaining 15 provided comments, but did not give an opinion either way.

69. A breakdown of support can be seen in the following charts:

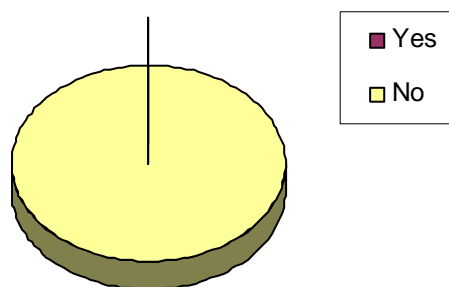
Developers / Planning Consultants /
Advisors



Local Authorities



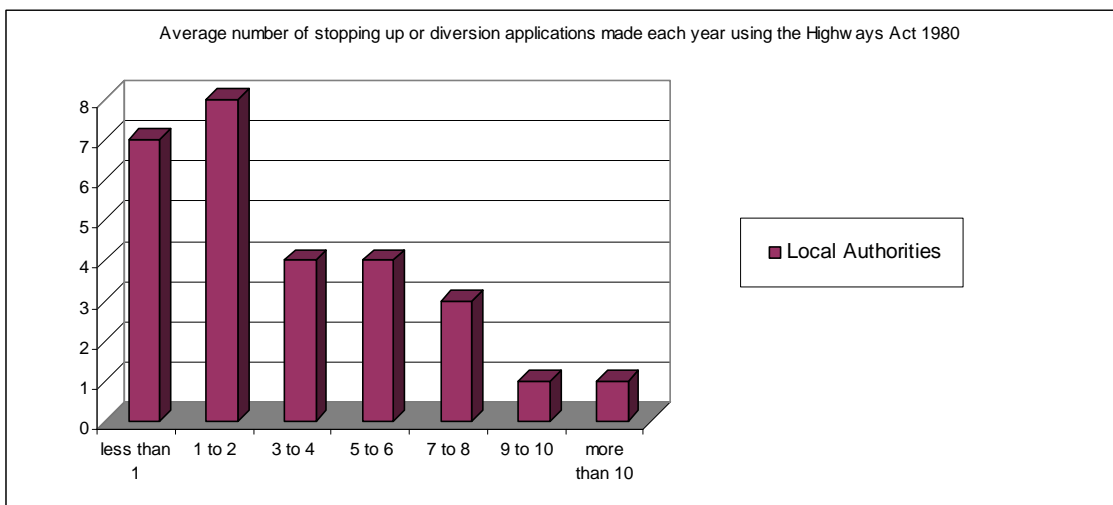
National bodies / utility providers / interest
groups / members of the public



- 70.** Of those offering an opinion, the majority of local authorities and all those affected by planning proposals (18 out of 24 and 17 out of 17, respectively) disagreed that more use should be made of section 116 of the Highways Act 1980. For developers, this was more evenly split with 4 agreeing out of 7 responses.
- 71.** Regardless of whether those responding agreed or disagreed, many provided comments: some of those who wanted to see s.116 encouraged did not want this to be at the expense of pressing ahead with reforms to the Town and Country Planning Act 1990 (TCPA); many considered the TCPA a balanced and fair way of stopping up or diverting highways with the Highways Act being considered remote from the planning process and from those making applications and objections.
- 72.** Many did not like the process through Magistrates Court, where magistrates were rarely experts in highway law, and some thought the process deterred objectors who would not like to present objections in open Court, although for others this was felt to be a useful deterrent to frivolous and vexatious objections. Others thought that the s.116 process should be reformed, with suggestions that District and Parish councils should no longer have a veto over applications being taken to Court.
- 73.** For many, the s.116 process did not offer time reductions, with added costs for those making applications, for local authorities and objectors, although a number disagreed, suggesting that the process offered developers more certainty over timing, even though the outcome was less predictable. Some made the point that should concurrent planning and stopping up applications be allowed, then benefits of the s.116 process would diminish.
- 74.** Government response and proposals: the Government understands that section 116 of the Highways Act 1980 offers benefits in certain circumstances; however, we are not proposing to reform the process and we are not planning to encourage greater use either.

Question 10: The Government seeks information from local highway authorities on the number of stopping up or diversion applications they have made using the Highways Act 1980.

75. Summary of responses: Of the 72 responses to the consultation, 28 local authorities responded to this question. A breakdown of the average number of applications made per year can be seen in the following chart:



76. For most of the local authorities who responded, making s.116 applications under the Highways Act 1980 happened very infrequently, with less than 1 or 2 applications each year. A smaller number made a larger amount of applications, but the numbers are still relatively low. For those making more than 10 applications on average each year, the s.116 process seemed to be preferred to using the Town and Country Planning Act.

77. Government response and proposals: the Government is grateful for local authorities taking the time to provide this important information; it has helped us place the two application processes in context.

List of Respondents

Rowtac Limited
Daventry District Council
Herefordshire Council
Kent County Council
National Housing Federation
LARA (Land Access and Recreation Association)
Leicestershire County Council
Bell Cornwell LLP, Chartered Town Planners
Members of the Worcestershire Local Access Forum (not a formal response from WLAFF)
Richard Adam
Individual members of: Shropshire Local Access Forum, Shropshire Riding & Carriage Driving Forum, Shrewsbury & District Riding Club and Nesscliffe Hills & District Bridleway Association Parish Paths Partnership Group
BADFA (Bushey and District Footpaths Association)
Walsall Council
Hertfordshire County Council
Sainsbury's
Airport Operators Association
Forsters LLP
Surrey County Council
The Open Spaces Society
West Berkshire Council
Bristol City Council
Cable & Wireless UK
Birmingham City Council
Staffordshire County Council
The British Horse Society
East Riding of Yorkshire Council
Herefordshire Local Access Forum
ADEPT Rights of Way Managers' Working Group
Dorset County Council
Devon County Council
Country Land and Business Association
Sandwell MBC Highway Authority
Network Rail
London Borough of Camden

Sheffield City Council Highways Officers
East Riding of Yorkshire & Kingston Upon Hull Local Access Forum
Cumbria County Council
Brighton & Hove City Council
Cambridgeshire County Council
Oxfordshire County Council
Barratt Developments PLC
The Royal Borough of Kensington and Chelsea
Central Bedfordshire Council
Norfolk County Council
Byways and Bridleways Trust
Westminster City Council
Leicestershire Local Access Forum
Malvern Hills District Footpath Society
Warrington Borough Council
English Heritage
Manchester Airport
Derbyshire County Council
The Local Government Technical Adviser Group and The Planning Officers Society
The Association of Consultant Architects
Reading Borough Council
Bond Pearce LLP
Law Society's Planning & Environmental Law Committee
Leicester City Council
South Lincolnshire and Rutland Local Access Forum
British Property Federation
W M Everitt (Personal response)
Institute of Public Rights of Way and Access Management
Kirklees Council
Ramblers
South Staffordshire Water plc
Newcastle City Council
Bath & North East Somerset Council
Central Bedfordshire and Luton Joint Local Access Forum
UK Power Networks
National Grid
National Joint Utilities Group
Leeds City Council

