

Government Response: interim report
considering implementation of Option 1

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.
2. This interim report is considering only option 1, and therefore responses to question 3 of the consultation. The remaining options, and consultation responses, will be considered and a formal response and proposals for a way forward will be published by the end of November.
3. The foundation of all three of the main policy options is a speeding up of the process by allowing stopping up and planning applications to run concurrently, namely option 1. Therefore, we intend to seek an early legislative opportunity to implement this 'quick-win', which is clearly deregulatory.
4. Stopping up and diversion orders are typical of non-planning consents that are required alongside or following principal planning permission in order to facilitate operational development. They play a vital role in driving through investment and growth in our local communities.
5. These non-planning consents can have a serious impact on the efficient and effective delivery of development. 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.
6. The Penfold Review was established to explore whether the process for obtaining non-planning consents, those consents which have to be obtained alongside or after and separate from planning permission in order to complete and operate a development, is delaying or discouraging business investment; and to identify areas where there is scope to support investment by streamlining processes, removing duplication and improving working practices.

Summary of Responses

- 7.** We received a total of 70 responses to the consultation, which are summarised by group below:

Developers / Planning Consultants / Advisors	17
Local Authorities	33
National bodies / utility providers / interest groups / members of the public	20

- 8.** 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 planning applications; those handling planning applications; and those affected by planning applications.
- 9.** For this interim report, we are only considering question 3, which sought views on the proposal to introduce a concurrent process to allow applications for stopping up or diversion orders to be considered alongside planning applications; we called this option 1.
- 10.** 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.
- 11.** However, the Byways and Bridleways Trust was completely against this option, feeling that it would: 'not allow meaningful negotiation and may be prejudicial to the interests of the wider public'.
- 12.** 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.

Government Response

- 13.** The Government welcomes 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.
- 14.** We would like to reassure the Byways and Bridleways Trust, and others that the application process will remain the same and 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.
- 15.** 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 to make, 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.
- 16.** 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 granted until planning consent has been received.
- 17.** Because submitting concurrent applications is optional, we do not feel a pilot is necessary; the broad support for implementing this option supports this decision.
- 18.** Finally, we would like to reassure respondents that this interim response, and the implementation of option 1, is very much a 'quick win' first step; the next stage will include full consideration of responses to the remaining options and proposals for other improvements to the stopping up application process.

Responses to Question 3

- 19.** Below is a summary of responses to question 3, the only one that we are considering in this interim report. A complete formal response considering all questions and options will be published by the end of November.
- 20.** Responses have been reduced in length to make them more concise and on occasions words have been added to aid clarity; the latter are indicated by [square brackets]. We are happy to correct any misrepresentations or important omissions.
- 21.** Not everyone who responded to the consultation responded to this particular question; a full list of consultation respondents follows this section. A copy of the full responses to this question is available upon application; please email: penfold.review@dft.gsi.gov.uk

<i>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.</i>	
<i>Respondent</i>	<i>Response</i>
Rowtac Limited	Simplification can and should go further ...
Daventry District Council	The Council strongly supports this proposal. It more likely that key project risks would be resolved earlier and development would be more likely to proceed.
Herefordshire Council	Herefordshire Council considers that there is merit in dealing with applications in parallel with planning permission in terms of increased speed and certainty. [...] However, the precise nature and extent of highway to be stopped-up may not be known (or agreed) until consultation with the Local Highway Authority has been undertaken.

Kent County Council	This is the best way of streamlining, albeit with the risk of potentially abortive work.
Leicestershire County Council	This proposal is welcomed. However, there would be a need for developers to enter into an abortive costs undertaking because local authorities would be progressing stopping up or diversion orders at risk [...] There would also be a need to actively promote pre-application discussions to establish the need for stopping up/diversion orders early in the application process.
Bell Cornwell LLP, Chartered Town Planners	This would obviously improve the application process ...
Members of the Worcestershire Local Access Forum (not a formal response from WLAF)	This prima facie appears to have merit. [However it] gives rise to a concern that, if by being “considered alongside planning permission applications” offers the possibility that a path may be stopped up or diverted in advance of the granting of the planning consent ...
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	This seems a sensible way to proceed, but it is important that there is full consultation with user groups ...
Walsall Council	Real benefits would be achieved by a concurrent application process that requires / encourages early dialogue between all interested parties.
Hertfordshire County Council	I would support this proposal [...] it would assist in reducing the delay between grant of planning permission and obtaining a stopping up or diversion order ...
Sainsbury's	We support the proposal for concurrent stopping up and planning applications but it might also be advisable to also allow them to run separately under certain circumstances.

Airport Operators Association	The AOA strongly supports this proposal. Streamlining will save time and money for our members and businesses in general.
Forsters LLP	This is essential.
Surrey County Council	The introduction of a concurrent application process would be welcomed and would be the most significant step in speeding up the process ...
The Open Spaces Society	It could become unworkable if a planning permission is refused or modified in a way which affects the highway.
West Berkshire Council	There would still be uncertainty about whether or not a stopping up/diversion will be successful, and if the Planning Permission fails, the abortive stopping up /diversion work would have been a waste of time.
Bristol City Council	We consider that allowing the Stopping Up Process to run in parallel with the planning application process has some merits. [...] it would mean a developer could start building, say, two months earlier.
Cable & Wireless UK	C&WUK considers there is potential merit in this approach, as there would be the opportunity for C&WUK to consider this as one.
Birmingham City Council	This proposal may lead to much abortive work. [...] If a concurrent process is pursued, then carrying out a pilot on a range of Local Authorities should be carried out before applying it throughout the country.
Staffordshire County Council	A concurrent application would be more beneficial to the developer in terms of timescale [...] Any diversion / stopping up application would be considered in the context of the whole development, which would potentially have a more positive outcome for the highway / rights of way network.

The British Horse Society	The BHS has no objection to a concurrent application process, however the confirmation of any stopping up or diversion order should only take place once the planning permission has been implemented.
East Riding of Yorkshire Council	This may speed up the process for simple sites but probably not for more complicated applications. It is appropriate that the concurrent submission would not be mandatory.
Herefordshire Local Access Forum	The typical timescales for the Planning Application element are so much longer than the typical timescales for a (unopposed) Stopping-up Order that there is relatively little to be gained by running the two applications concurrently or with a short lag but there is some increased risk of resulting higher potential costs.
ADEPT Rights of Way Managers' Working Group	The ROWMWG agrees that the application process should be concurrent.
Dorset County Council	Dorset County Council supports this proposal and considers that in the majority of instances that this will result in a speedier implementation of development.
Devon County Council	A concurrent process whereby developers must address public rights of way issues at the same time as the submission of planning applications is strongly supported.
Country Land and Business Association	Option 1 does not go far enough in amending the current system.
Sandwell MBC Highway Authority	I am sceptical that concurrent applications will work ...
Network Rail	The proposal seems very sensible and is generally supported as it would certainly seem to meet the objective of speeding up the process, but it could lead to abortive costs.

London Borough of Camden	[...] this seems appropriate if the developer is willing to take this risk in discussion with an authority. [...] However, officers consider that authorities should have the discretion to run concurrent processes where appropriate ...
Sheffield City Council Highways Officers	[...] we are supportive of Option 1, provided that: the risks of abortive consultation [...] are very clearly outlined; and any charging framework allows for adequate re-charging for any re-consultation work, etc.
East Riding of Yorkshire & Kingston Upon Hull Local Access Forum	Allowing stopping up orders to be made in parallel with a relevant planning application, as well as ensuring that there is wide consultation with statutory recreational user groups [...] should help to reduce any such unnecessary delays ...
Brighton & Hove City Council	It is our view that introducing a concurrent application process for stopping up or diversion of highways, to run alongside planning permission applications, will reduce the time developers have to wait for both to be in place. Our concern would be the resourcing of additional work and any time spent on abortive work.
Cambridgeshire County Council	We agreed that the timing of planning applications versus diversions and stopping up applications is a key problem [...] We observe that there would still be potential costs for a developer if a PPO does not go ahead.
Oxfordshire County Council	OCC generally agrees to option 1 [...] Option 1 offers a benefit to applicants [...] Concurrent applications would have the greatest impact on reducing the procedure time, thus giving the greatest return to political and commercial aspirations driving this consultation.

Barratt Developments PLC	This Company welcomes the principle of concurrent applications. However, the Company has views about the procedures and timescales ...
The Royal Borough of Kensington and Chelsea	We consider there is little doubt that the current process can delay development [...] The proposal seems sensible.
Central Bedfordshire Council	The concurrent process should be optional – with developers still being able to apply once planning consent has been granted.
Norfolk County Council	Ideally yes, but in order to know whether a stopping up will be required the applicant or LPA will need to know whether the proposed development will require part of the highway. [...] We agree it would lead to increased efficiency. However, possibly there is a need to consider (separate?) method for advertising/informing residents that a diversion or stopping up will ensue and its potential impact.
Byways and Bridleways Trust	BBT does not support option 1, it would not allow meaningful negotiation and may be prejudicial to the interests of the wider public.
Westminster City Council	We consider that there would be benefits to the developer although the disbenefits would be abortive work ...
Leicestershire Local Access Forum	No objection in principle to the proposal [...] We do not want to see Rights of Way stopped when planning consent is given only for the actual development to be put off for years.
Malvern Hills District Footpath Society	Changes of detail will inevitably arise during planning [...] Thus there is a benefit in having an approved baseline for one application before deciding essential changes to the other application. [...] Thus we do not support the concept of allowing concurrent consideration of stopping up or diversion orders and of associated planning applications.

Warrington Borough Council	[...] it is considered an assumed risk by the Department for Transport that abortive work could be an issue [...] Such matters, if realised, could only increase the overall cost of an application and lengthen timescales ...
English Heritage	Greater integration between 'development management' and consideration of non-planning consents has the potential to improve decision making, development quality and delivery.
Manchester Airport	We welcome this proposal [...] and consider that this will facilitate a more expedient and coherent planning process that will provide development consents more quickly. This measure will undoubtedly remove an unnecessary time constraint currently created by associated non-planning matters and seems entirely appropriate [...] We therefore fully support this measure.
Derbyshire County Council	The Council considers that there is merit in dealing with applications in parallel in terms of increased speed and certainty.
The Local Government Technical Adviser Group and The Planning Officers Society	We support this proposal and consider that in the majority of instances that this will result in a speedier implementation of development.
The Association of Consultant Architects	We agree with this proposal.
Reading Borough Council	This is a very sensible approach and allows planning applications to be modified before determination to incorporate any changes required as a result of objections to a proposed stopping up / diversion.
Bond Pearce LLP	We welcome the proposal that an application for a closure may be submitted, even if not determined, before the grant of planning permission.

Law Society's Planning & Environmental Law Committee	We support the aim of better integrating applications for stopping up or diversion orders with the planning application process and would welcome the introduction of a concurrent application process.
Leicester City Council	It seems sensible to suggest that the two processes run concurrently, particularly given the delay that the stopping up process can add follow[ing] the grant of planning permission.
South Lincolnshire and Rutland Local Access Forum	The Local Access Forum agrees with this proposal ...
British Property Federation	Option 1 does not go far enough [...] In a few cases, however, it may not be appropriate to process the applications concurrently...
W M Everitt (Personal response)	[...] To undertake the two considerations concurrently inevitably further complicates the process even if it speeds up the decision making. Because of the increased complexity of the process, I do not believe the potential timescale benefits perceived for a concurrent application process are likely to be realised.
Institute of Public Rights of Way and Access Management	IPROW agrees that this is a logical improvement if it causes developers to engage with local HAs at an early stage in the development.
Kirklees Council	A concurrent application process will undoubtedly ensure that developers obtain their permissions quicker than the existing process [...] However, it increases the likelihood of abortive work and it also increases the potential for errors or omissions, as orders will be drafted on the basis of a work in progress [...] The process will place greater emphasis on developers taking pre-application advice from relevant council departments, which may or may not happen, and some councils may struggle to resource this.

<p>Ramblers</p>	<p>It seems to us that this process would be difficult to operate in practice [...] A planning application may well be subject to modification which would impact on the highways which cross the site proposed for development.</p>
<p>Newcastle City Council</p>	<p>Submission of concurrent applications [...] would operate effectively with our Unitary authority. [...] This would join up the process effectively and be of benefit to the developer.</p>
<p>Bath & North East Somerset Council</p>	<p>A concurrent process might incentivise developers to reach an agreed solution with all parties earlier.</p>
<p>National Grid</p>	<p>National Grid supports the proposal [...] Enabling an earlier start to the consultation process on the stopping-up orders as part of the planning application process will have benefits for both the applicant and consultees who would be notified of the proposals earlier. [...] The concurrent consideration of applications could enable the resolution of a significant number of issues as part of the scheme development process and pre-planning application phase of a project.</p>

List of Respondents

1. Rowtac Limited
2. Daventry District Council
3. Herefordshire Council
4. Kent County Council
5. National Housing Federation
6. LARA (Land Access and Recreation Association)
7. Leicestershire County Council
8. Bell Cornwell LLP, Chartered Town Planners
9. Members of the Worcestershire Local Access Forum (not a formal response from WLAF)
10. Richard Adam
11. 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
12. BADFA (Bushey and District Footpaths Association)
13. Walsall Council
14. Hertfordshire County Council
15. Sainsbury's
16. Airport Operators Association
17. Forsters LLP
18. Surrey County Council

19. The Open Spaces Society
20. West Berkshire Council
21. Bristol City Council
22. Cable & Wireless UK
23. Birmingham City Council
24. Staffordshire County Council
25. The British Horse Society
26. East Riding of Yorkshire Council
27. Herefordshire Local Access Forum
28. ADEPT Rights of Way Managers' Working Group
29. Dorset County Council
30. Devon County Council
31. Country Land and Business Association
32. Sandwell MBC Highway Authority
33. Network Rail
34. London Borough of Camden
35. Sheffield City Council Highways Officers
36. East Riding of Yorkshire & Kingston Upon Hull Local Access Forum
37. Cumbria County Council
38. Brighton & Hove City Council
39. Cambridgeshire County Council
40. Oxfordshire County Council
41. Barratt Developments PLC
42. The Royal Borough of Kensington and Chelsea

43. Central Bedfordshire Council
44. Norfolk County Council
45. Byways and Bridleways Trust
46. Westminster City Council
47. Leicestershire Local Access Forum
48. Malvern Hills District Footpath Society
49. Warrington Borough Council
50. English Heritage
51. Manchester Airport
52. Derbyshire County Council
53. The Local Government Technical Adviser Group and The Planning Officers Society
54. The Association of Consultant Architects
55. Reading Borough Council
56. Bond Pearce LLP
57. Law Society's Planning & Environmental Law Committee
58. Leicester City Council
59. South Lincolnshire and Rutland Local Access Forum
60. British Property Federation
61. W M Everitt (Personal response)
62. Institute of Public Rights of Way and Access Management
63. Kirklees Council
64. Ramblers
65. South Staffordshire Water plc
66. Newcastle City Council

67. Bath & North East Somerset Council
68. Central Bedfordshire and Luton Joint Local Access Forum
69. UK Power Networks
70. National Grid