



Department for
Communities and
Local Government

Planning performance and planning contributions

Consultation

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The consultation process and how to respond

Scope of the consultation

Topic of this consultation:	The Autumn Statement 2013 included a commitment to consult on a new threshold for designating local planning authorities as underperforming, and on a proposed new 10-unit threshold for section 106 affordable housing contributions.
Scope of this consultation:	In relation to planning performance, the consultation seeks views on changes to the threshold for the speed of decisions, as well as proposing to clarify the way in which exceptional circumstances affecting performance will be taken into account. The consultation also suggests possible changes to section 106 planning obligations policy.
Geographical scope:	These proposals relate to England only.
Impact assessment:	An impact assessment is not required because the impact on business is considered to be minimal.

Basic information

To:	This is a public consultation and it is open to anyone with an interest in these proposals to respond.
Body responsible for the consultation:	The Department for Communities and Local Government is responsible for the policy and the consultation exercise.
Duration:	This consultation will run for 6 weeks. It will begin on 23 March 2014 and end on 4 May 2014.
Enquiries:	planning.consultation@communities.gsi.gov.uk

How to respond:	<p>Please respond to this consultation by email to: planning.consultation@communities.gsi.gov.uk</p> <p>Alternatively, please send postal responses to:</p> <p>Rosie Bennet Department for Communities and Local Government 1/J1 Eland House Bressenden Place London SW1E 5DU</p>
Additional ways to become involved:	N/A
After the consultation:	A summary of responses to the consultation will be published.

Background

Getting to this stage:	<p>The Autumn Statement 2013 can be found at: https://www.gov.uk/government/topical-events/autumn-statement-2013</p>
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Introduction

About this consultation

1. The Government has already taken steps to transform the planning system into a simpler, more transparent and locally driven process, through which homes can be delivered and business investment secured. The National Planning Policy Framework streamlined over 1,000 pages of planning policy into a clear, easily accessible statement of national policy. Through the Localism Act 2011 and the Growth and Infrastructure Act 2013, important reforms to simplify and speed-up planning procedures have been taken forward.
2. Our reforms have given significant additional power to local authorities and communities in deciding the scale, location and form of development in their areas. But with this power comes a responsibility to exercise planning functions properly. We are making good progress. Since the introduction of these reforms, decision making performance has improved and local residents have seen the positive impact of Section 106 contributions. There remains some way to go, however, before every local authority uses its powers effectively to encourage appropriate development.
3. This consultation proposes some additional improvements to ensure further progress is made on decision making and housing delivery. Views are sought on proposals relating to the following two areas:
 - Ensuring there are further improvements in the speed of decisions on planning applications for major development;
 - Promoting housing delivery by introducing a threshold for Section 106 affordable housing contributions.
4. We would welcome comments from any individuals or organisations with an interest in these proposals, which apply to England only. The closing date for responses is 4 May 2014.

What are we proposing?

5. We are proposing that the threshold for designating authorities as under-performing, based on the speed of deciding applications for major development, should increase to 40% or fewer of decisions made on time. The threshold may be raised further at a future stage. Authorities that have dealt with an average of no more than two applications for major development, over the two year assessment period, would be exempt from designation based on their speed of decisions. The document setting out the criteria for designation would set out the types of exceptional circumstances that may be taken into account, prior to designations being confirmed.
6. We are also proposing to introduce a 10-unit and 1,000 square metres gross floor space threshold for affordable housing contributions through section 106 planning obligations. This will aid the delivery of small scale housing sites. Rural Exception Sites will be excluded from this threshold.

Planning performance

Context

7. Timely and well-considered decisions on planning applications are a key part of delivering an effective planning service. Applicants, as well as local communities, should be confident that a decision on proposals will be reached within a reasonable time – whether that is within the statutory timescale or a longer period agreed transparently with the local planning authority.
8. Equally, all parties should have confidence in the quality of the decisions made on applications for development – that all relevant considerations are being taken into account, and that the weight being given to different considerations is reasonable in the context of national and local policies.
9. The Growth and Infrastructure Act 2013 gives the Secretary of State power to designate local planning authorities, if he considers that their performance in handling planning applications has fallen below an acceptable standard. Where this happens, the Act gives applicants for major development the option of applying directly to the Secretary of State (although they may if they wish apply to the local planning authority in the usual way). In addition, support is made available to designated authorities to help them improve as quickly as possible.
10. Any designations of local planning authorities must be made by reference to criteria published by the Secretary of State (the ‘criteria document’¹). The published criteria relate to the speed and quality of decisions on applications for major development.
11. The Government believes that the thresholds for acceptable minimum standards of performance against these criteria should be kept under review, to take into account changing circumstances and encourage continuing improvement in service standards. This consultation proposes changes to the threshold for speed, as well as proposing to clarify the way in which any exceptional circumstances affecting performance will be taken into account.
12. Following this consultation we will consider whether changes should be made to the criteria document; if so, a revised document will be laid before Parliament for a statutory 40 day period before any changes can come into effect. None of the changes to the thresholds proposed here will affect the first designations of ‘county matter’ authorities scheduled for April 2014 (for which the thresholds in the existing criteria document will apply).

¹ Improving planning performance: criteria for designation (June 2013) <http://tinyurl.com/odqu8v8>

Speed of decisions

13. The existing threshold for identifying under-performance in the speed of determining applications is low, at just 30% or fewer of an authority's decisions on applications for major development made on time. 'On time' means within the statutory period of 13 weeks (or 16 weeks for applications subject to Environmental Impact Assessment), or such longer period as has been agreed in writing between the local planning authority and the applicant.
14. A low threshold was used originally for a number of reasons. Because the two year period over which performance was to be assessed started before the announcement of the policy (and local planning authorities could not remedy past failings), the threshold was set at a level that would only affect cases of very poor performance, in the context of a national average of fewer than 60% of major decisions being made on time. The low threshold also reflected the fact that prior to April 2013 the data recorded by DCLG did not fully reflect agreed extensions of time² (although this is something that could be taken into account in assessing any claims for exceptional circumstances; see paragraph 20 below).
15. The next full round of designations, due to be made in October 2014, will be based on performance from July 2012 to June 2014. The intention to designate under-performing authorities has been known for the great majority of this assessment period, as have the thresholds that might be applied and the Government's intention to raise the threshold for speed of performance after the first year³. The majority of the data used to inform designations in October this year will also reflect agreed extensions of time on applications for major development.
16. Since this policy was first announced there has also been a positive improvement in the percentage of applications for major development decided on time – the performance of district matter authorities improved from around 57% when the Growth and Infrastructure Bill was introduced (October 2012) to 69% in July-September 2013⁴.
17. Taking these changes into account – and to encourage further improvement – we think it would be appropriate to raise the threshold for designating authorities as under-performing, based on the speed of decisions, from 30% to 40% made on time. This threshold would be used for any designations in October 2014, for both district and county matter authorities.

² Previously the recorded data reflected agreed extensions of time made through Planning Performance Agreements, but not those agreed once an application had been submitted.

³ *Planning performance and the planning guarantee: consultation* (November 2012), page 13
<http://tinyurl.com/d8hm66l>

⁴ For county matter authorities, over the same period, there has been an improvement from around 50% to 53% decided on time.

Question 1: Do you agree that the threshold for designating authorities as under-performing, based on speed, should increase to 40% or fewer of decisions made on time?

18. We expect the extent to which applications for major development are decided on time to continue to improve, especially if more effective use is made of Planning Performance Agreements. In that context it would be appropriate for the definition of under-performance to continue to change as well. How quickly this happens will depend on the overall trend in performance, but we are interested in your views on when and by how much the threshold might rise in future, beyond the move to 40% proposed above.

Question 2: Do you think there is scope to raise the threshold for under-performance above 40% (for example to 45% or 50%); and, if so, by when?

19. We have looked again at whether it is appropriate to exempt authorities that have dealt with very small numbers of applications for major development from designation. In principle it should be possible to deal with all such applications 'on time', whether this is within the relevant statutory period or – where necessary – within a longer period agreed with the applicant. At the same time we accept that one or two decisions that run over time during the assessment period are insufficient to point to a record of under-performance. We therefore propose to exempt authorities that have dealt with no more than two major applications per two year assessment period from designation.

Question 3: Do you agree that authorities that have dealt with no more than two applications for major development, over the two year assessment period, should be exempt from designation based on their speed of decisions?

Exceptional circumstances

20. Before any decisions to designate authorities are confirmed, they will be given an opportunity to explain any exceptional circumstances which, in their view, would make a designation unreasonable. What constitutes an 'exceptional circumstance' cannot, by its very nature, be defined fully in advance, but we think it would be helpful to set out the general tests that will be applied in considering such cases.
21. Consequently, we propose to include the following tests within the criteria document:
- (a) Whether the issue significantly affects the reasonableness of the conclusions that can be drawn from the recorded data for the authority, over the assessment period;
 - (b) Whether the issue had a significant impact on the authority's performance, for reasons that were beyond its control.

22. We will, in considering the first of these tests, take into account corrections that need to be made to the data, where authorities can provide clear evidence that such changes are justified.

Question 4: Do you agree that the tests set out at paragraph 21 of this consultation are appropriate for taking exceptional circumstances into account, prior to designations being confirmed?

Amending section 106 planning obligations

Affordable housing contributions on small sites

23. A significant proportion of all planning obligations are affordable housing contributions. Previous research⁵ found that affordable housing accounted for approximately half of the value of all planning obligations. The Government considers that such contributions for small scale sites, including for those wishing to build their own home, can make a scheme undeliverable.
24. In its 2013 Autumn Statement, the Government made a commitment to reduce the planning costs to developers; including through a proposed new 10-unit threshold for section 106 affordable housing contributions. This is to help address the disproportionate burden being placed on small scale developers, including those wishing to build their own homes, and which prevents the delivery of much needed, small scale housing sites.
25. This consultation proposes that before any request for affordable housing contributions can be considered as part of a section 106 planning obligations agreement, authorities will have to have regard to national policy that such charges create a disproportionate burden for development falling below a combined 10-unit and maximum of 1,000 square metres gross floor space threshold. We also intend to make clear that, having regard to such disproportionate burdens, authorities should not seek affordable housing contributions for residential extensions or annexes added to existing homes.
26. This change in policy would restrict the use of section 106 planning obligation contributions where sites contain 10 units or less with a maximum combined gross floor space of 1,000 square metres and for residential extensions or annexes. It is proposed to include a maximum total floor space in combination with a unit threshold to avoid creating a perverse incentive in terms of construction density.
27. The Government is committed to providing access to affordable housing in rural communities. Rural Exception Sites provide affordable housing in rural areas

⁵ Crook ADH, Henneberry, JM, Rowley S, & Watkins CA with the Halcrow Group (2006), *Valuing Planning Obligations in England*, London, Communities & Local Government.
<http://webarchive.nationalarchives.gov.uk/20120919132719/http://www.communities.gov.uk/archived/publications/planningandbuilding/valuing-planning>

Crook ADH, Henneberry, JM, Rowley S, Smith RS, & Watkins CA (2008), *Valuing Planning Obligations in England; Update Study for 2005-06*, London, Communities & Local Government.
<http://webarchive.nationalarchives.gov.uk/20120919132719/http://www.communities.gov.uk/document/s/planningandbuilding/pdf/obligationsupdatestudy.pdf>

Crook ADH, Dunning R, Ferrari ET, Henneberry, JM, Rowley S, Watkins CA, Burgess G, Lyall-Grant F, Monk S, & Whitehead CME (2010), *The Incidence, Value and Delivery of Planning Obligations in England in 2007-08*, London, Communities & Local Government.
<http://www.cchpr.landecon.cam.ac.uk/Downloads/VPO3%20final%20report.pdf>

on land that would not otherwise be acceptable for development. These tend to be developments of ten or fewer homes. These sites are crucial in providing cheaper land for affordable homes in areas where development costs tend to be higher. National policy will make it clear that Rural Exception Sites are outside the scope of the proposed 10-unit and 1000 square metres gross floor space threshold.

Question 5: Is the Government's objective of aiding the delivery of small scale housing sites and expanding the self build housing market supported by:

- **the introduction of a 10-unit and 1000 square metres gross floor space threshold for section 106 affordable housing contributions; and**
- **the exclusion of domestic extensions and annexes from section 106 affordable housing contributions?**

28. The Government has already amended Community Infrastructure Levy regulations explicitly to exempt self-build, extensions and annexes. However, this may lead to a situation where self-build development could be subject to section 106 tariff-style contributions in councils which have not yet adopted the Community Infrastructure Levy; whereas, such charges would not be levied in councils where tariffs had been incorporated into the levy. This is inconsistent. Moreover, the fact that the Community Infrastructure Levy is not levied on self-build provides a strong argument for not levying any tariff-style contributions via Section 106 mechanisms either, given the desire of the Government to reduce burdens on self-builders

Question 6: Should the proposed exemption apply beyond affordable housing to other tariff style contributions based on standard formulae?

Excluding buildings brought back into use from section 106 affordable housing contributions

29. The Government has recently introduced amended regulations for the Community Infrastructure Levy which extend an existing exemption for vacant buildings being brought back into use from the levy. This exemption applies either where buildings are brought back into the same use, or for a change of use provided they have not been "abandoned" and have been in use for at least six months in the last three years. In either case the levy is only charged on any increase in floor space.
30. As with the amendment to the levy the intention of this change in national policy is to reflect the reduced impact on local infrastructure likely to arise from bringing a building back into use and to provide a clear incentive to brownfield development. It is also intended to reflect the often higher costs of conversion and refurbishment and bringing an existing building back into use.
31. This consultation proposes an amendment to national policy so that local authorities should consider that section 106 affordable housing contributions

should not be applied to buildings brought back into any use, other than proportionately for any increase in floor space. This would be on the basis of incentivising brownfield development in accordance with national policy and that such development has a limited impact on local infrastructure.

Question 7: We would like your views on the impact on the Government's policy objectives to incentivise brownfield development through proposed national policy change. This would reduce the financial burden on developers by requiring that affordable housing contributions should not be sought where buildings are brought back into any use – other than proportionately for any increase in floor space.

Consultation questions

Planning Performance

Question 1: Do you agree that the threshold for designating authorities as under-performing, based on speed, should increase to 40% or fewer of decisions made on time?

Question 2: Do you think there is scope to raise the threshold for under-performance above 40% (for example to 45% or 50%); and, if so, by when?

Question 3: Do you agree that authorities that have dealt with no more than two applications for major development, over the two year assessment period, should be exempt from designation based on their speed of decisions?

Question 4: Do you agree that the tests set out at paragraph 21 of this consultation are appropriate for taking exceptional circumstances into account, prior to designations being confirmed?

Amending section 106 planning obligations

Question 5: Is the Government's objective of aiding the delivery of small scale housing sites and expanding the self build housing market supported by:

- the introduction of a 10-unit and 1000 square metres gross floor space threshold for section 106 affordable housing contributions; and
- the exclusion of domestic extensions and annexes from making section 106 affordable housing contributions?

Question 6: Should the proposed exemption apply beyond affordable housing to other tariff style contributions based on standard formulae?

Question 7: We would like your views on the impact on the Government's policy objectives to incentivise brownfield development through proposed national policy change. This would reduce the financial burden on developers by requiring that affordable housing contributions should not be sought where buildings are brought back into any use – other than proportionately for any increase in floor space.