Department for Communities and Local Government

Planning performance and the planning guarantee

Government response to consultation

June 2013
Department for Communities and Local Government

This publication is also available on our website at
https://www.gov.uk/government/organisations/department-for-communities-and-local-government

Any enquiries regarding this document/publication should be sent to us at:

Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 030 3444 0000

June 2013

ISBN: 978-1-4098-3902-6

Contents

Introduction

1. In November 2012 the Government published a consultation on "Planning performance and the planning guarantee". This report summarises the comments received during the consultation period and sets out the Government's response.

2. The consultation was in support of clause 1 in the Growth and Infrastructure Bill that was before Parliament at the time, and which would allow planning applications to be submitted directly to the Secretary of State if a local planning authority was designated on the basis of poor performance. The Bill received Royal Assent in April this year, with the relevant provisions contained in section 1 and schedule 1 to the Growth and Infrastructure Act 2013.

3. This reform will give applicants the choice of an alternative application route, where a local planning authority has a record of failing to decide applications for major development on time[1], or where a significant proportion of the authority's decisions have been challenged successfully at appeal. This will allow decisions to be made more quickly, or which stand a better chance of being 'right first time', thereby supporting growth and providing greater certainty for local communities. Our proposals for its implementation are also designed to improve transparency where more time to decide applications is genuinely needed, and to ensure that authorities which are designated get the support they need in order to improve.

4. The consultation sought views on the proposed criteria for assessing local planning authority performance, what thresholds might be used for any designations, how designations would be made and the consequences of such a designation (including the procedures that would apply where an application is submitted to the Secretary of State, and the basis on which a designation would be lifted). Views were also sought on a related proposal to require a refund of the planning application fee in cases where applications are not determined within 26 weeks.

5. The consultation closed on 17 January 2013. An initial analysis of the comments received was deposited in the libraries of the House of Commons and the House of Lords at the end of February 2013.

[1] Applications for major development should be determined within 13 weeks (unless they are subject to environmental impact assessment, in which case a 16 week limit applies). Applicants may already appeal to the Secretary of State if the local planning authority fails to decide their application within the statutory period; section 1 in the Growth and Infrastructure Act extends this principle by giving applicants the option of applying directly to the Secretary of State from the outset, but only in those cases where the authority has a track record of failing to meet the statutory target.

6. Alongside this report the Government is publishing the detailed criteria that it intends to use for designating local planning authorities and for lifting such designations[2]. The criteria have been informed by the response to the consultation which is summarised here.

7. Other aspects of section 1 in the Growth and Infrastructure Act will be implemented through a combination of secondary legislation and guidance on the procedures for making applications directly to the Secretary of State. The intention remains to make any initial designations of local planning authorities by the end of October this year (and to enable applications for major development in those areas to be made directly to the Secretary of State from the same time).

[2] Department for Communities and Local Government (June 2012) Improving planning performance: criteria for designation under section 62B of the Town and Country Planning Act 1990

Overview of responses

Comments received

8. In total 227 replies were received. Two thirds (67%) of responses were from local planning authorities; a further 12% were from local government, professional or environmental organisations; and around 12% were from development interests or business groups. The remaining 9% were from individuals.

9. Some responses were not clear 'yes' or 'no' replies – instead offering further questions or raising wider issues. These answers are classified separately in the summary of responses to each question that follows.

10. Furthermore, responses to some questions raised issues about matters covered elsewhere in the consultation document. In the interests of clarity and to avoid duplication, this report summarises the issues raised in responses under the questions to which they most appropriately relate.

11. Many responses raised broader issues than those covered by the consultation questions, in particular the rationale for the proposals contained in the Growth and Infrastructure Bill and the implications of those measures. These matters were considered by Parliament during the passage of the Bill, but the main points raised by the consultation responses are summarised below.

General points

12. Many responses commented on how the proposals relate to local decision-making, and in particular the steps which the Government has taken to give councils and communities more control over the way that development takes place in their area. Related questions were about the extent to which additional data collection and monitoring would be required, and the importance of ensuring effective community engagement in planning decisions that may not in future be made by the local planning authority.

13. As the Government made clear during the passage of the Bill, it remains committed to devolving power and to planning decisions being made locally wherever possible. Section 1 in the Growth and Infrastructure Act is designed as a safeguard, to be used only where the local planning service is not being delivered effectively. Indeed, the Bill was amended by the Government in the House of Lords to put its potential use beyond doubt[3].

14. Importantly, the measure does not remove any powers from local planning authorities; it merely gives applicants for planning permission the choice of an alternative service in situations where this is justified. The Government intends to work closely with the Local Government Association and the Planning Advisory Service, to ensure that any authorities that have been designated can draw on appropriate sector-led support, and to allow designations to be lifted as quickly as possible.

15. The system of assessing performance that the Government proposed in the consultation, and with which it intends to proceed, is designed to make as much use as possible of existing information rather than imposing significant new reporting requirements. As detailed later in this report, we have also taken care to ensure that local communities will continue to have a say, where any applications are in future made directly to the Secretary of State.

16. A number of responses pointed to the potential reasons for slower decisions being made on applications for major development during recent years, common views being that it lay in a combination of a perceived move away from a focus on the speed of performance by the Government; the time needed to negotiate positive outcomes on some proposals; and in some cases the impact of the economic downturn on local planning authority resources.

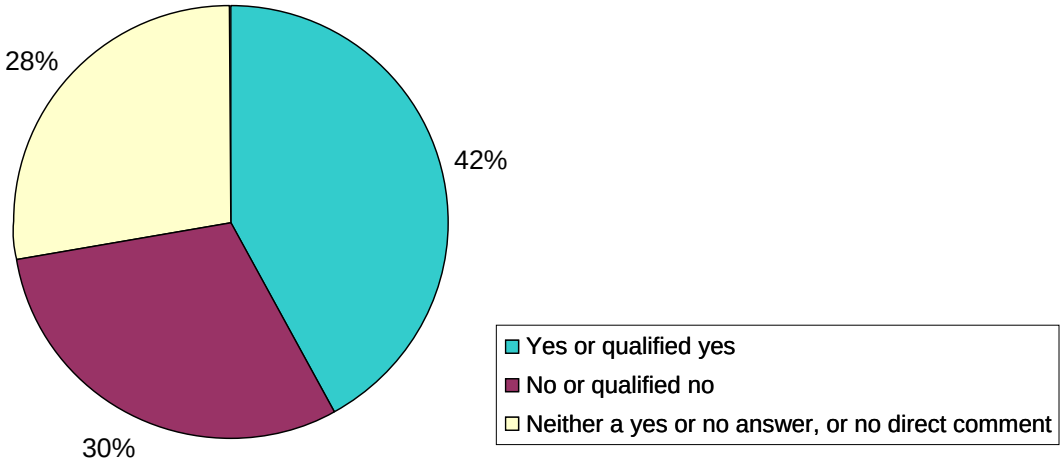
17. The Government accepts that there can be various reasons for the decline in performance against the statutory time limit for determining applications for major development. Nonetheless, as the consultation document explained, timely and well-considered decisions on planning applications are important for both the economy and for local communities. The Government's proposals for implementing section 1 in the Growth and Infrastructure Act are designed to ensure that sufficient priority is given to dealing with major planning applications on time, while increasing transparency where more time is genuinely needed to deal with complex proposals.

[3] A local planning authority may be designated only if, by reference to criteria in a published document, "the Secretary of State considers that there are respects in which the authority are not adequately performing their function of determining applications" (section 1 of the Growth and Infrastructure Act 2013).

Responses to specific questions

Overall approach

Question 1: Do you agree that local planning authority performance should be assessed on the basis of the speed and quality of decisions on planning applications?



18. As the chart shows, agreement or qualified agreement was the most common view, although many responses to this question dealt more broadly with the overall approach in the consultation.

19. Where there was disagreement, a common issue was the scope of the proposed criteria – in particular, whether they would present too narrow a view of performance, for example by missing other causes of delay such as at the pre-application stage. Various other criteria were suggested – predominantly as alternative indicators of 'quality' – and are discussed alongside the responses to question five. There was also the suggestion that local planning authorities should be assessed on the basis of a combination of speed and quality, rather than these being considered separately.

20. Some responses thought that the proposed approach was not needed at all, because existing powers available to the Secretary of State to 'call-in' important planning applications for his own determination already exist; or because applicants can already appeal against non-determination once the statutory time period for a decision has elapsed.

21. Among the alternative approaches suggested, there was some support for a system of rewarding good performance as a means of incentivising improvement; or offering guidance and support where under performance is identified. Other, more punitive, approaches were also proposed, such as penalties for council chief executives in cases of under performance, or mandatory training for members of planning committees.

The Government's response

22. Having considered the responses to the consultation we intend to retain the proposed approach of looking separately at the speed and quality of decisions by local planning authorities.

23. We accept that there are other factors that can be considered in assessing the performance of local planning authorities (as the consultation document acknowledged). Nonetheless the speed and quality of decisions are important indicators of the service which is being delivered, and the consultation responses did not reveal any consensus around particular alternative approaches.

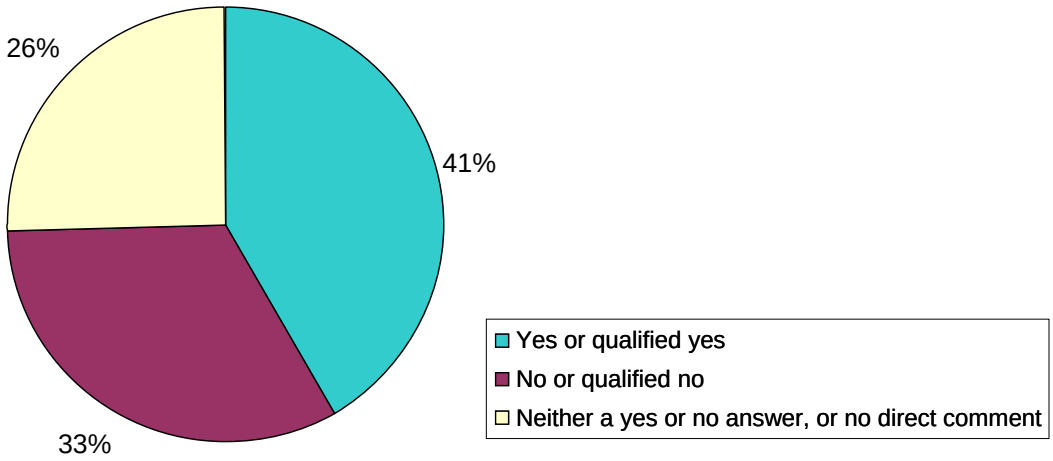
24. We also consider that it is important to look at performance against these measures separately, as poor performance against either could hinder the efficiency and effectiveness of the service being received by applicants and local communities, and ultimately act as a brake on investment and growth.

25. While some other safeguards already exist – in particular the right to appeal against non-determination once the statutory period has elapsed – we consider that applications for major development should not have to risk being delayed unnecessarily where the local planning authority has a clear track record of poor performance; and that in these situations it is reasonable to have the choice of an alternative application route rather than having to wait for the statutory period to elapse before an appeal can be made (or to wait to hear whether the case will be called-in by the Secretary of State).

26. Other approaches to penalising or rewarding performance have been considered, but again there was no apparent consensus around alternatives in the responses that we received. Equally, we believe that the approach that we have proposed strikes an appropriate balance between targeting genuinely poor performance, extending choice for applicants where this is justified and maintaining firm control of the public finances.

Speed of decisions

Question 2: Do you agree that speed should be assessed on the extent to which applications for major development are determined within the statutory time limits, over a two year period?



27. The pattern of responses was similar to question one, in that many of the comments offered qualified support, but with some reservations about the overall approach; and with a significant minority of responses opposing the particular measure proposed.

28. The primary concern expressed was that a focus on the speed of decision making might lead to perverse outcomes, by encouraging authorities to refuse permission for development to meet targets, instead of taking the time to negotiate positive outcomes.

29. It was also argued that data on the speed of decisions made by local planning authorities might not give the full picture, because other parties can cause or contribute to delays. A related suggestion was that local planning authorities should be given an opportunity to set out any extenuating circumstances prior to a designation being made.

30. Some responses argued that any assessment of performance should not rely on past data, so that authorities have an opportunity to improve; an alternative view being that the trajectory of an authority's past performance should be taken into account in deciding whether a designation is appropriate.

31. There was also the suggestion that a longer determination period should be allowed for in London, due to the additional procedural steps when the Mayor considers whether to call-in applications of potential strategic importance. Furthermore, it was suggested that allowance should be made for the impact on performance of the Mayoral Community Infrastructure Levy in April 2012, which was seen as having led to an upsurge in applications prior to the levy being introduced.

32. There was a limited call for reassessing the existing 13 week statutory target or for making particular allowances for specific forms of development, such as wind farms.

The Government's response

33. Having considered the responses to the consultation we have concluded that the measure proposed in the consultation document is appropriate.

34. There will be safeguards in place to limit any risk that local planning authorities might refuse applications prematurely in order to meet the 13 week time limit for processing applications for major development. First, applicants and local planning authorities may already enter in to a planning performance agreement or agree to a post-submission extension of time, where it is clear that more time than the statutory period is genuinely needed to determine the application. Such extended time periods will be taken into account in the performance figures, provided they are documented and set out a timescale for determination (see response to question 3 below).

35. Second, local planning authorities will be at risk of an award of costs against them if a planning application is refused without good reason and then goes to appeal. And third, a local planning authority would risk such refusals being overturned at appeal, increasing their chances of being designated on the basis of the 'quality' measure discussed below (question 5).

36. We accept that parties other than the local planning authority can be a cause of delay – but such circumstances again point to the need for bespoke timetables to be agreed between the parties where justified. And while some data that pre-empts the Government's announcement of the Growth and Infrastructure Bill will be taken into account in the first assessments of performance, we have deliberately set a low threshold initially to account for this.

37. We do not consider there to be a case for reassessing the existing 13 week time limit for decisions on applications for major development. This is well-established and, in most cases, achievable (despite some recent declines in average performance against this limit, the majority of applications for major development are still determined within 13 weeks).

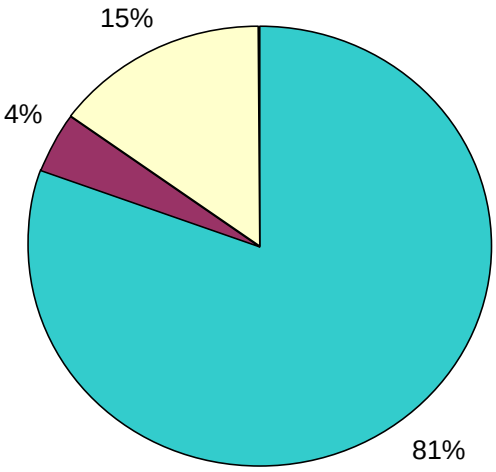
38. Nor do we consider that an extended time limit is justified in London. Referrals to the Mayor involve only limited categories of planning applications, and if appropriate an extension of time should be agreed if it is clear that an application will take longer than the statutory period to determine. While the Mayoral Community Infrastructure Levy may have led to a temporary increase in application numbers in some London Boroughs, the effect of this should be diluted by the two year assessment period that we intend to use (and the fact that the Levy will have been in place for well over a year by the end of the two year assessment period).

The role of planning performance agreements

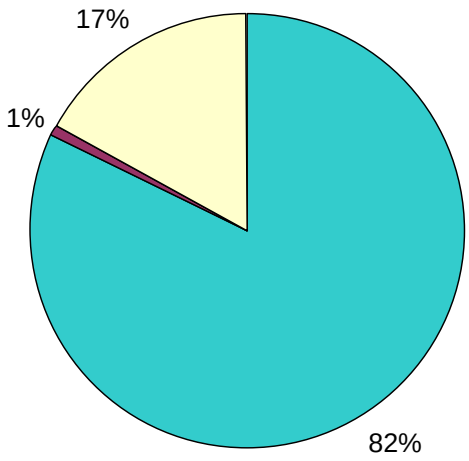
Question 3: Do you agree that extensions to timescales, made with the written consent of the applicant following submission, should be treated as a form of planning performance agreement (and therefore excluded from the data on which performance will be assessed)?

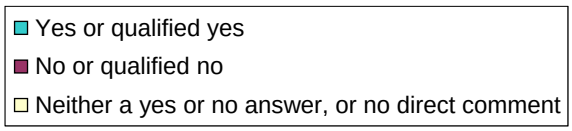
Question 4: Do you agree that there is scope for a more proportionate approach to the form and content of planning performance agreements?

Question 3



Question 4





39. Questions three and four drew mainly positive responses. The majority welcomed the proposed approach to discounting applications subject to agreed extensions of time from the assessment of planning performance, although some felt that they should be taken into account (as part of an approach that assesses whether applications have been determined 'on time' or not). It was noted that the statistics collected from local planning authorities would need to change if agreed extensions of time were to be reflected, and there was also a call for an allowance to be made in the data for the past use of such agreements.

40. Some responses suggested that there was insufficient incentive for applicants to agree to bespoke timetables, while others thought there was potential for planning authorities to take hasty decisions to refuse planning permission in cases where an applicant was reluctant to agree a bespoke timetable.

41. Other suggestions included making the use of planning performance agreements mandatory for applications for major development, or introducing a tick box option on the standard application form for applicants to signal their willingness to agree a bespoke timetable.

42. There was strong support for ensuring that planning performance agreements are easy to use. There were many cases reported of local planning authorities already using tailored approaches, and some included helpful examples. Other responses made suggestions for the scope and content of a standardised, simplified agreement; and there was also some desire for guidance or templates on what constitutes a proportionate approach for different types of application. The potential role of the Advisory Team for Large Applications (ATLAS) in taking forward this work was raised in several responses, as was the role of the Planning Advisory Service.

The Government's response

43. Having considered the responses to the consultation we have concluded that it is right for planning performance agreements and post-application extensions of time to be taken into account (although, in the interests of transparency, they should be in writing and specify a timescale for the decision).

44. However we also agree with the suggestion that rather than excluding such agreements from the performance figures, it would be more accurate to take them into account so that what is measured is the extent to which decisions have been made 'on time' – whether within the statutory period or such extended period as has been agreed.

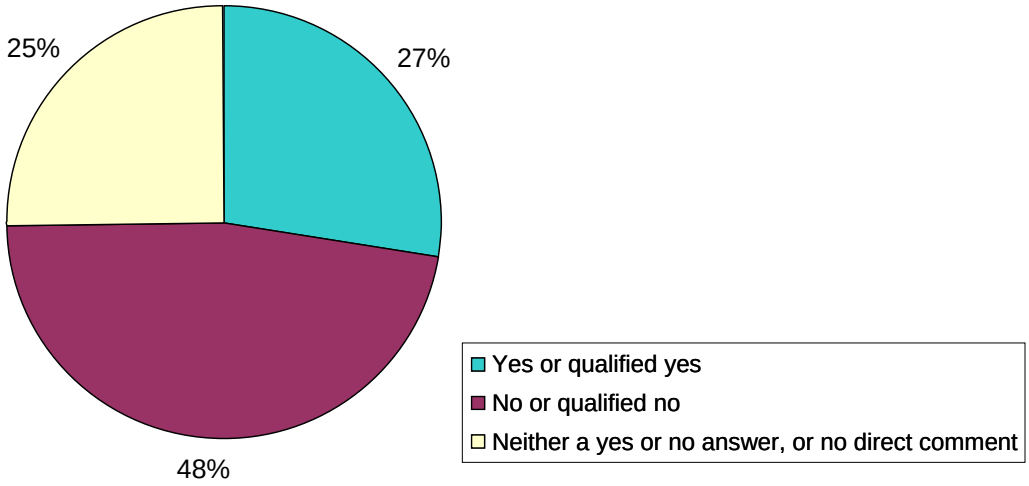
45. The existing data on planning performance agreements supplied to the Department for Communities and Local Government allow this approach to be used, but hitherto the Department has not collected similar data on extension of time agreements. This will change from the first quarter of 2013-14. It does mean that historic use of extensions of time will not be taken into account for the majority of the assessment period for any initial designations (which will be the two years to the end of June 2013). However past recording of extension of time agreements by local planning authorities has varied, so it would be difficult and potentially inequitable to attempt to take them into account retrospectively. The low threshold that we intend to use for any initial designations is also partly a reflection of this.

46. We hope that applicants or indeed other parties involved in progressing a planning application would be willing to enter into a planning performance agreement or an extension of time, where it is genuinely needed and there is a clear timescale agreed for resolving the issues involved. We do not think that the standard application form needs to be amended for this purpose, or that agreements should become mandatory. If an applicant or statutory consultee were to behave unreasonably in refusing to agree an extended timetable, they could be liable for an award of costs at appeal if the planning application were then to be refused.

47. We will bring forward fresh guidance on the use of planning performance agreements – as well as extension of time agreements – in the light of the Taylor Review of planning guidance being conducted at present. This guidance will be in place by October this year, and will draw upon the many helpful suggestions made through the consultation responses.

Quality of decisions

Question 5: Do you agree that quality should be assessed on the proportion of major decisions that are overturned at appeal, over a two year period?



48. Many suggested that the particular measure proposed could be too narrow or would risk of penalising authorities unfairly where they deal with few major applications. However others accepted that it would give an indication of the robustness of the local decision making process.

49. It was clear from the responses that there were misunderstandings about how the measure would be applied, with many requesting clarification or appearing to believe that the measure would simply make use of the overall success rate for appeals involving applications for major development.

50. There were other comments about the appropriateness of the measure. In particular some questioned the relationship to the Government's localism agenda, with some responses suggesting it implied that the Planning Inspectorate's decisions were 'always right', and that a Planning Inspector's approach to an application might be different to but not necessarily better than a local planning authority's.

51. A number of alternative measures were suggested, but without any strong support for any particular alternative. The suggestions included:

- Whether a local planning authority has an up-to-date Local Plan;
- The number of costs awards made against an authority at appeal;
- The results of customer satisfaction surveys;
- The proportion of officer recommendations overturned by an authority's planning committee;
- The cost of delivering the planning service per head of population;
- Homes delivered annually compared to planned needs; and
- The percentage of dwellings built on previously developed land.

52. There were also questions about how performance might be recorded and assessed, with a suggestion that the measure should only apply to decisions made since the National Planning Policy Framework was introduced. Others argued that it should be applied only to certain types of development, such as major business proposals. One specific question was how 'split' appeal decisions would be taken into account (if an Inspector allows one aspect of an appeal).

The Government's response

53. Having considered the responses to the consultation we have concluded that the measure proposed in the consultation document is appropriate.

54. We accept that the overall appeal success rate would be too crude a measure, which is why the proposal is to look at all decisions on applications for major development made by a local planning authority, and to relate this to the number of these decisions that are both refused and then lost at appeal. This allows the overall pattern of decisions on applications for major development to be taken into account, giving a measure which is proportionate and which provides a reasonable indicator of the quality of decisions made by the authority.

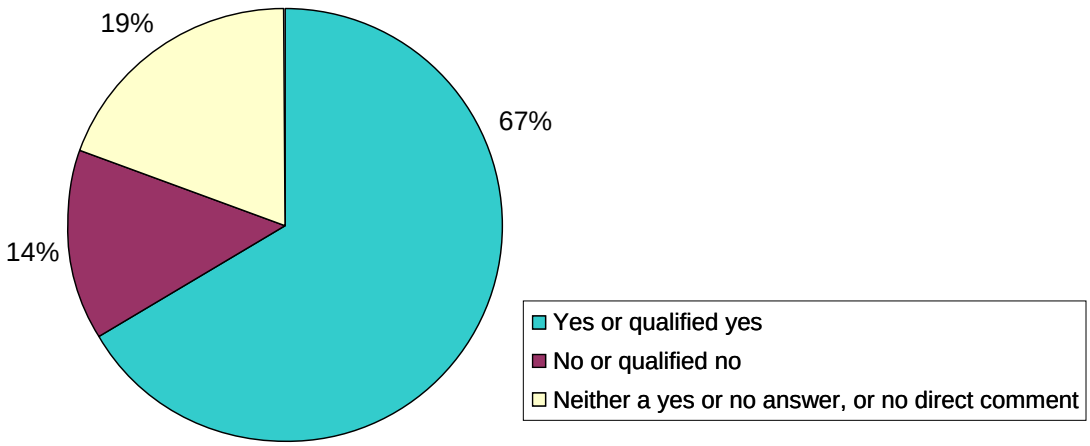
55. As the consultation document made clear, individual appeal outcomes can turn on small differences of view, which is why the measure and the threshold proposed will affect only those authorities that have a record of decisions being overturned at appeal – and why we accept that an exemption for authorities that deal with very small numbers of major applications is appropriate (see response to question 7 below). We have also considered the position of 'split decisions' at appeal (where the appeal is only partially allowed), and agree that these should not be regarded as local planning authority decisions that are overturned.

56. The measure can also draw upon information which is already collected by the Planning Inspectorate and the Department for Communities and Local Government, without imposing any new burdens on authorities.

57. We do not consider that any of the alternative measures proposed would be as effective in indicating the quality of development management decisions. And nor can we see a case for not employing any historic data in making initial assessments, given that local planning authorities should aim to make sound decisions regardless of the national (or indeed local) policy framework in place; and in view of the low threshold for designation that we intend to use.

Having the right information

Question 6: Do you agree with the proposed approach to ensuring that sufficient information is available to implement the policy?



58. There was a generally positive response to this question, with many acknowledging that data on planning decisions should already be provided by local planning authorities.

59. Some suggested that there was a risk of measuring an authority's performance in inputting data rather than its actual performance in handling applications for major development. Others expressed concern that the data could be open to manipulation by authorities to avoid being designated, for example by saving up overdue applications and reporting them in a single quarter.

60. There was a call for there to be an opportunity for authorities to explain missing data or extenuating circumstances, and some concern about the potential for fluctuations in the data – both as a result of variations of numbers of applications made and the performance of authorities in considering them.

61. There were a number of comments made about the definition of 'major' development, with some suggesting that it is too open to interpretation and may lead to some forms of development being incorrectly categorised. Clarification was also sought about the approach to recording and assessing particular types of decision, such as cases referred to the Secretary of State, appeals against non-determination and applications or appeals subject to legal proceedings.

62. More generally there were requests for reporting processes and timeframes to be clear and to support electronic data submission.

63. A number of comments were received on the proposed approach to ensuring that data is submitted, although there was no consensus around any alternative to that proposed in the consultation. Suggestions made included:

- Variations on the number of quarters for which missing data would be allowed before an authority was designated automatically;
- Making it compulsory for local planning authorities to provide the information, with a fine for failing to do so.

The Government's response

64. Having considered the responses to the consultation we have concluded that the broad approach to having the right information proposed in the consultation document is appropriate.

65. Local planning authorities should already be supplying quarterly information on planning applications to the Department for Communities and Local Government. As well as being part of the Single Data List of data sets that local authorities must submit to central government, the returns are an important means of promoting transparency about each authority's workload.

66. Where data have not been supplied we will use a system of imputation (as described in the accompanying document setting out the criteria for designation) to fill gaps in the data for district matter authorities, prior to applying penalties to discourage non-returns. From the responses received we do not think that there is a case for an alternative penalty system to that proposed in the consultation, other than applying it over a two year period rather than one year (to match the period over which performance will be assessed). The two year assessment period will allow any fluctuations in quarterly performance to be evened-out. Any authorities potentially 'at risk' of designation in the first year will also be given an opportunity to fill any gaps in the data record before final decisions are made (but beyond this first year we will expect authorities to be supplying a full data record in the normal course of business, as they are required to do).

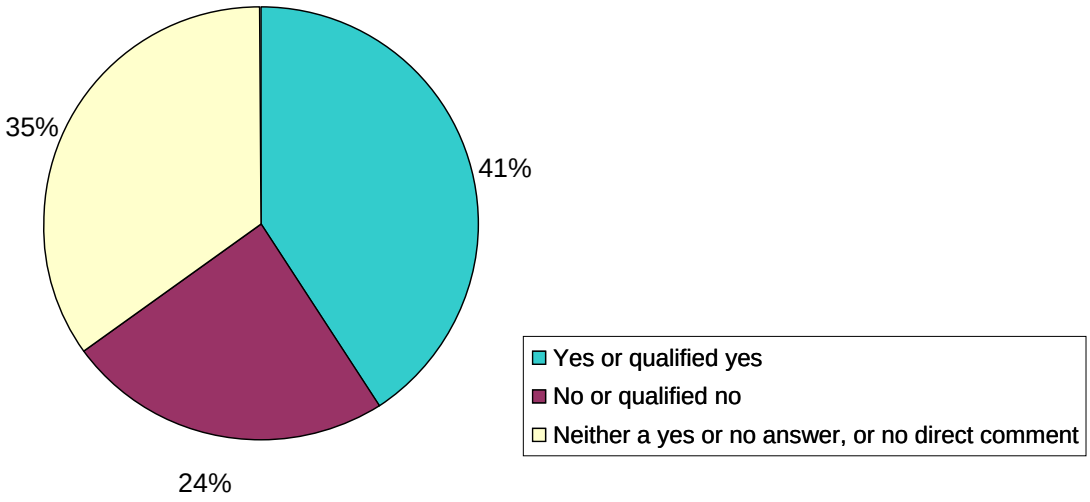
67. Applications for planning permission will, in most cases, be treated in the same way as each other for the purpose of assessing performance and applying the thresholds. Details of the proposed approach are set out in the criteria document that has been published alongside this consultation response. However applications that have been called-in by the Secretary of State will not be counted in assessing performance, as the ultimate decision is then out of the local planning authority's hands.

68. Where appeals against non-determination are made, the local planning authority similarly does not make a ‘decision’ on the application so these cases will also be excluded when assessing the authority’s speed of performance. In legal terms the authority is, however, regarded as having made a deemed refusal, and these refusals will be taken into account in assessing the proportion of decisions overturned at appeal.

69. In the light of the responses we do not consider there to be a need for any fundamental changes to the way that applications for major development are defined for statistical purposes, but we will keep this matter under review.

Thresholds for designation

Question 7: Do you agree that the threshold for designations should be set initially at 30% or fewer of major decisions made on time or more than 20% of major decisions overturned at appeal?



70. There was an acceptance by many that the thresholds proposed are reasonable if the intention is to capture few authorities. At the same time, many of the responses to this question raised broader issues about the purpose and potential effects of the policy (see pages 6 and 7).

71. Those who felt that the thresholds were pitched at the wrong level suggested a variety of alternatives although there was no consensus of opinion around specific proposals. Suggestions included:

- Setting both thresholds at 33%;
- Increasing the thresholds for speed, quality or both (with a wide range of specific suggestions being made);
- Reducing the threshold for the speed of decisions to 20% in year one;
- Relating thresholds to how many applications for major development a local planning authority receives or the type of development involved.

72. There were specific calls to make an allowance for authorities that deal with small numbers of major applications to avoid a disproportionate impact upon them.

The Government's response

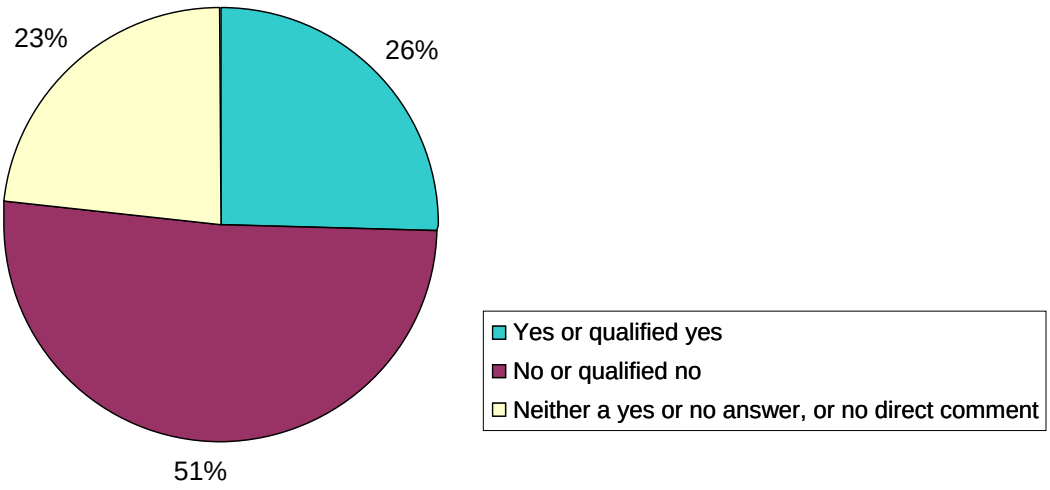
73. Having considered the responses to the consultation we have concluded that the thresholds proposed in the consultation document are appropriate.

74. There was no apparent consensus around alternative thresholds, and we consider that the thresholds which we have put forward strike an appropriate balance between allowing for the use of some historic data initially and being set at a sufficiently challenging level to deal with situations where there is a clear track record of under-performance. The thresholds will however be kept under review (see response to question 8 below).

75. On the case for exempting authorities that deal with small numbers of applications for major development, we agree that it is reasonable to exempt authorities from the 'quality' measure where they have dealt with ten or fewer such applications over the two year assessment period. In light of the thresholds for designation that we have proposed, this will avoid authorities being designated on the basis of just one or two appeal decisions that went against them. We do not think the same argument applies to the 'speed' measure, as in principle all applications for major development can and should be decided within the statutory period or such longer period as has been agreed; there is not the same issue that an individual appeal outcome could hinge on a small difference of view between the authority and a Planning Inspector.

Raising the bar

Question 8: Do you agree that the threshold for designation on the basis of processing speeds should be raised over time? And, if so, by how much should it increase after the first year?



76. While some responses agreed with the intention to raise thresholds over time to drive continuous improvement, a common view was that it would be better to assess the initial effects of the policy before committing to do so. It was also argued that a new target that increases after 12 months would not allow time for sufficient improvements in performance to take place.

77. If the thresholds were to be increased, it was felt that this would need to be made clear well in advance, and concern was expressed by some that a continuous raising of thresholds might risk them becoming unrealistic. As an alternative approach it was suggested that a 'sunset clause' is introduced so that the measure could fall away in the event that authorities' performance is such that the measure rarely needs to be used.

78. Those that favoured increasing the thresholds over time made a wide range of specific suggestions, but with no commonly-held views. Similarly varying timescales over which the thresholds might be raised were suggested, but with many favouring changes after the first year.

The Government's response

79. Having considered the responses to the consultation we have concluded that it is right to keep the thresholds under review, with the intention of raising them over time to help drive improvements in performance.

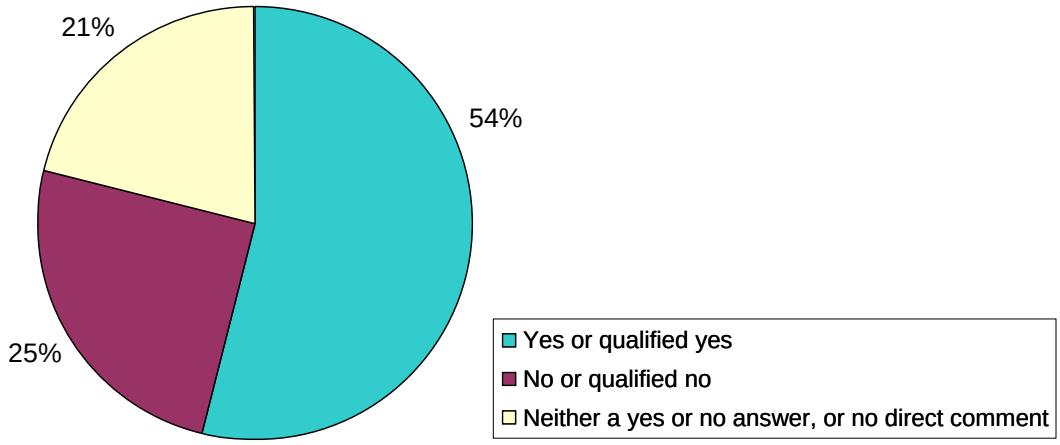
80. However we also note that there are diverse views about the nature of any increases, and accept that it is important to understand how the

policy is working before committing to specific changes, and that any changes should be announced in advance.

81. We will, therefore, look closely at trends in performance over the next year, with a view to announcing any changes in the thresholds at least six months before any year two designations are made. There should, however, be the clear expectation that the thresholds may be raised rather than lowered.

Making a designation

Question 9: Do you agree that designations should be made once a year, solely on the basis of the published statistics, as a way to ensure fairness and transparency?



82. Most responses favoured an annual assessment in the interests of stability, although some linked the frequency of designation to the periods over which performance is assessed: for example it was suggested that if a decision on whether to lift designation is based on one year's performance, then decisions about designation should also be based on a single year's data.

83. Others argued that if designations are based on performance over two years then decisions about de-designation should take the same approach. There were also some suggestions about giving designated authorities the opportunity to move out of designation within a year.

84. Many responses called for a warning process prior to designation to encourage improvement, and for an opportunity to ensure the statistics are correct, before final decisions about any designations are made. For example one suggestion was for a 'yellow card' period in which under-performing authorities would have an opportunity to improve, followed by a 'red card' (i.e. designation) if the necessary improvements were not achieved. Another proposal was that the Government could, during a formal warning period, explore what underlying issues or extenuating circumstances might need to be addressed.

85. Some responses did not agree with the exclusion of some special-purpose bodies from potential designation as proposed in the Growth and Infrastructure Bill. Others suggested that 'county matter' authorities should be exempt due to the particular characteristics of the development with which they have to deal.

The Government's response

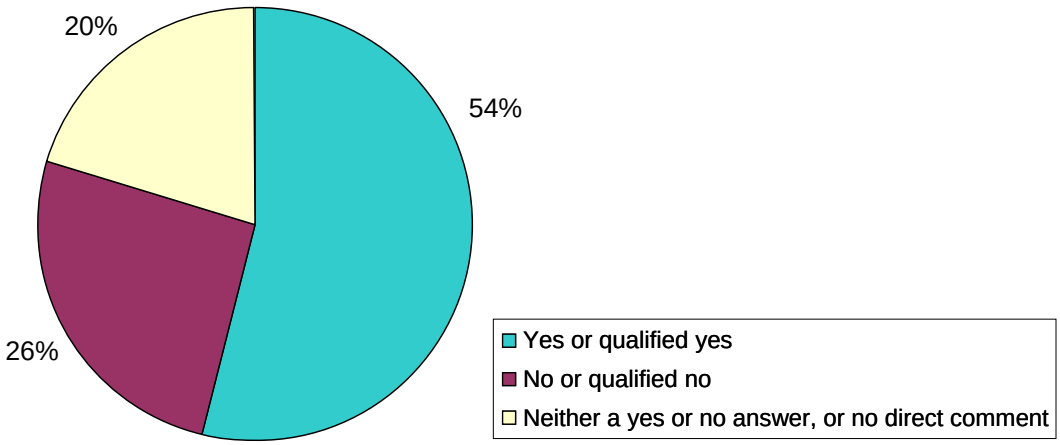
86. Having considered the responses to the consultation we have concluded that it is appropriate to make, and to review, designations once a year. There should be an opportunity for designations to be lifted as quickly as possible, while at the same time allowing time for authorities to improve and avoiding frequent changes in their status. We consider that a one year period strikes the right balance in this respect.

87. A range of organisations have proposed a warning period prior to any designations being confirmed, and we have listened carefully to the arguments for doing so. However a warning period would delay the opportunity for applicants to apply through an alternative route where this is justified, and we do not think that there is a sufficiently strong case for this – especially as applicants may continue to apply to the designated local planning authority if they wish to.

88. The rationale for excluding a small number of special-purpose planning authorities was set out in the consultation, and these exclusions are now reflected in the Growth and Infrastructure Act 2013. We do not think that there is a similar case for exempting 'county matter' authorities, as this would affect virtually all applications for major minerals and waste development.

Focus on major applications

Question 10: Do you agree that the option to apply directly to the Secretary of State should be limited to applications for major development?



89. There was a generally positive response to the specific question – although many responses to this question also raised general objections to the concept of being able to apply directly to the Secretary of State (see pages 6 and 7).

90. Some suggested that the measure should be limited to large scale applications only[4], or to applications of 'economic significance'. Others proposed that applicants for minor development should also be able to apply to the Planning Inspectorate where an authority is designated.

91. An alternative approach proposed for London was that applications for major development should be capable of being made directly to the Mayor of London, rather than to the Secretary of State, in situations where a London Borough is designated (which, it was suggested, would be an extension of the Mayor's existing powers to 'call in' applications of potential strategic importance).

92. Some commented that the lack of a right of appeal where an application is made to the Secretary of State would discourage applicants from using this route.

[4] The Department's statistical returns allow the recording of 'large scale major' development. For dwellings, this is one where the number of residential units to be constructed is 200 or more. Where the number of residential units to be constructed is not given in the application a site area of 4 hectares or more is used. For all other uses a large scale major development is one where the floor space to be built is 10,000 square metres or more, or where the site area is 2 hectares or more.

The Government's response

93. Having considered the responses to the consultation we have concluded that it remains appropriate to limit the ability to apply directly to the Secretary of State to applications for major development (and indeed this is now enshrined in the Act, as a result of amendments made by the Government in the House of Lords).

94. The rationale for this was set out in the consultation document, in that it is applications for major development (as opposed to more minor schemes) which are most important for driving growth, and which also have the greatest bearing on communities. And it is with applications for major development that the time taken to determine proposals has fallen most markedly in recent years. Equally we do not think that the policy should be limited to 'large scale major' development, as this would extend the choice of an alternative application route to only a very small percentage of applications.

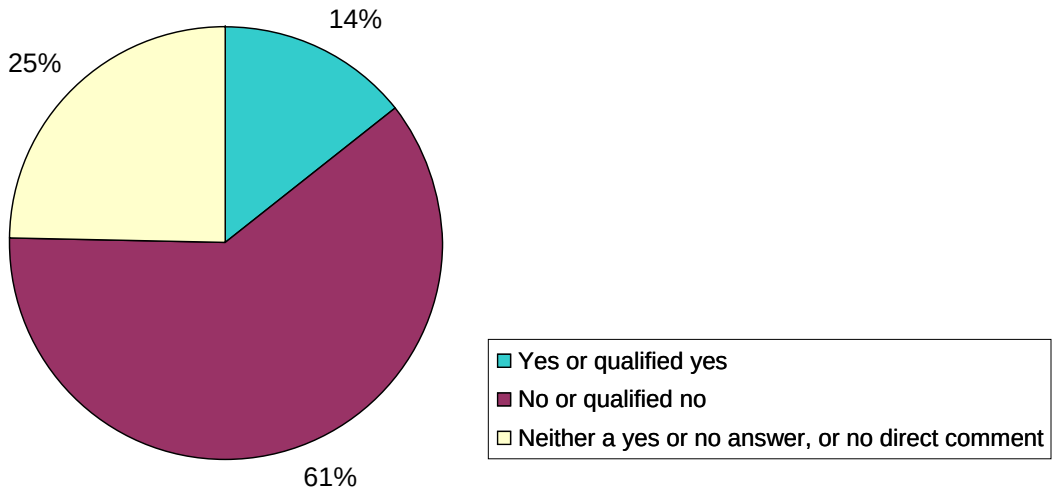
95. We have looked carefully at the various suggestions made in relation to London, and propose that the Planning Inspectorate makes an immediate assessment of any applications that it receives that could constitute an application of potential strategic importance for London. The Mayor of London will then be notified of those applications so that he can decide whether to call-in the application for his own determination.

96. We think this is a better approach than applicants being able to apply directly to the Mayor of London where a local planning authority in London is designated, which would result in the Mayor having to consider a much wider range of applications than covered under the Greater London Authority's existing remit. If an application of potential strategic importance is submitted to a designated local planning authority in London during the period of designation (where the applicant has chosen that route), then the usual arrangements for notifying the Mayor of London – and for him to be able to call it in – will apply.

97. The ability to apply directly to the Secretary of State if major development is proposed in the area of a designated authority does forfeit any subsequent right of appeal, although this is part of the choice that applicants in those circumstances will face.

Application process

Question 11: Do you agree with the proposed approaches to pre-application engagement and the determination of applications submitted directly to the Secretary of State?



98. This question generated a range of comments, in part reflecting a desire to understand more fully the practical arrangements for handling applications where they are made to the Planning Inspectorate (on behalf of the Secretary of State).

99. There were calls for more detail about the approach which the Planning Inspectorate would take to engaging with the public, with some concern that it would lack sufficient local knowledge, skills or capacity for the task. For example, questions were raised about how it would handle queries, decide what sort of local publicity was appropriate, engage with local groups and make information available.

100. Responses also sought further information about how the Inspectorate would work with local planning authorities, including how it would consult an authority where it needs access to information which the authority holds; whether it would share pre-application advice with the authority (to avoid inconsistent advice being given); and how authorities would be able to comment on applications.

101. There was limited support for the proposal that authorities would be expected to carry out some basic administrative tasks in connection with applications submitted to the Inspectorate. Although some responses saw this as a further incentive to avoid designation, a majority did not agree with the approach in principle and raised concerns about the potential cost – with many arguing that designated authorities should receive a proportion of the application fee for any administrative work that they are required to do.

102. The arrangements for dealing with applicants were also probed, including the arrangements for pre-application advice, validating applications, dealing with amendments, handling applications that may be subject to Environmental Impact Assessment, dealing with cumulative impacts and assessing eligibility for the Community Infrastructure Levy. There was a suggestion that the Inspectorate should not charge for pre-application advice, especially where the designated authority does not charge for this service.

103. A particular issue for many respondents was the approach to considering applications that had been submitted. Concern was expressed that considering major applications on the basis of written representations alone would limit local involvement and reduce transparency.

104. It was suggested that there should be an expectation, or even an explicit requirement, for a hearing to be held for all major applications dealt with by the Planning Inspectorate. Additional, more detailed, questions were posed as to the arrangements for and format of hearings that might be held by the Planning Inspectorate, including where they would be held; how they would be paid for, and the approach to allowing objections to be heard.

105. The proposal that designated local planning authorities retain responsibility for negotiating any section 106 obligations was criticised in many responses. Some thought that splitting responsibility for a decision (to the Inspectorate) and negotiating the section 106 agreement (to the designated authority) would be unworkable. In particular, many saw difficulties with the Planning Inspectorate adjudicating on viability arguments or deciding an application in the absence of an agreed obligation.

106. Some doubts were also expressed about the capacity and amenability of a local planning authority to negotiate a section 106 agreement while not being involved in considering the application itself. Suggestions to alleviate these problems included issuing ‘minded to grant’ permissions accompanied by heads of terms for any section 106 agreement required; allowing the Inspectorate to sign-off agreements; or placing a time limit on signing section 106 agreements by the designated authority.

The Government’s response

107. Having considered the responses it is clear that this is an aspect of the proposals where more information is being sought, as well as one which has raised some specific concerns. The procedures for handling applications submitted directly to the Secretary of State will be set out in regulations and procedural guidance, both of which will be in place before any initial designations are made in October this year.

108. We have looked carefully at the various comments and suggestions made about the procedures, and intend to take the following approach in the regulations and guidance:

109. In relation to publicising applications, the Planning Inspectorate will be subject to the same statutory requirements as local planning authorities, except where a specific requirement is placed on the designated local planning authority (see below). Information relating to applications made to the Inspectorate will be available through the Planning Portal, and we will also expect a link to be maintained from the website of the designated authority. Beyond the statutory requirements, the National Planning Policy Framework encourages pre-application discussions between all parties, including engagement by the applicant with the local community.

110. It is not intended that the Planning Inspectorate will share pre-application advice with the designated local planning authority, as such discussions could involve matters that are commercially confidential. Nevertheless the Inspectorate will liaise with the authority if there are specific questions that need to be addressed. The designated authority will be a statutory consultee on any proposals affecting it, once an application has been submitted, and will be able to submit representations to the Inspectorate.

111. Although the proposal that designated authorities be required to undertake some basic administrative tasks drew only limited support, nor was there any consensus around alternative approaches that might be feasible. It is clear that there are a small number of tasks which the designated local planning authority would remain best placed to carry out, but our intention is to keep these to the absolute minimum. These tasks include:

- Putting up site notices and notifying neighbours
- Providing the planning history for the site and information on anticipated cumulative impacts
- Recording the application on the planning register

112. There are also certain things that we think it is reasonable to require the designated authority to provide to the Planning Inspectorate at the time of designation (or when significant changes in circumstances occur), such as confirming the planning policies in force and supplying any standing advice used by the authority.

113. We do not consider that the designated authority should receive a portion of the application fee for these tasks, as they are very limited in nature and should be seen as part of the disincentive to poor performance which the wider policy represents.

114. For applicants who choose to apply to the Secretary of State, the Planning Inspectorate will handle all aspects of the process (except insofar as the Inspectorate requires certain tasks to be conducted by the designated authority). We think that it is reasonable for the Inspectorate to be able to charge for providing pre-application advice on a cost-recovery basis, as local planning authorities are able to do already.

115. When it comes to determining applications submitted to the Secretary of State, the Government agrees that a local hearing will be appropriate in most cases, rather than the written representations proposed in the consultation. This will allow the key issues to be aired in public before the decision-maker.

116. The detailed approach will be set out in the regulations and procedural guidance, but will be modelled on relevant aspects of the local planning committee process. So the hearing will have before it a report on the application and interested parties will have an opportunity to summarise their position. Because there will be no committee debate, and the Inspector will be chairing the proceedings as well as making notes, we intend that the Inspector should have an opportunity to consider all the evidence before arriving at a view, and so a decision on the application would be issued shortly after the end of the hearing.

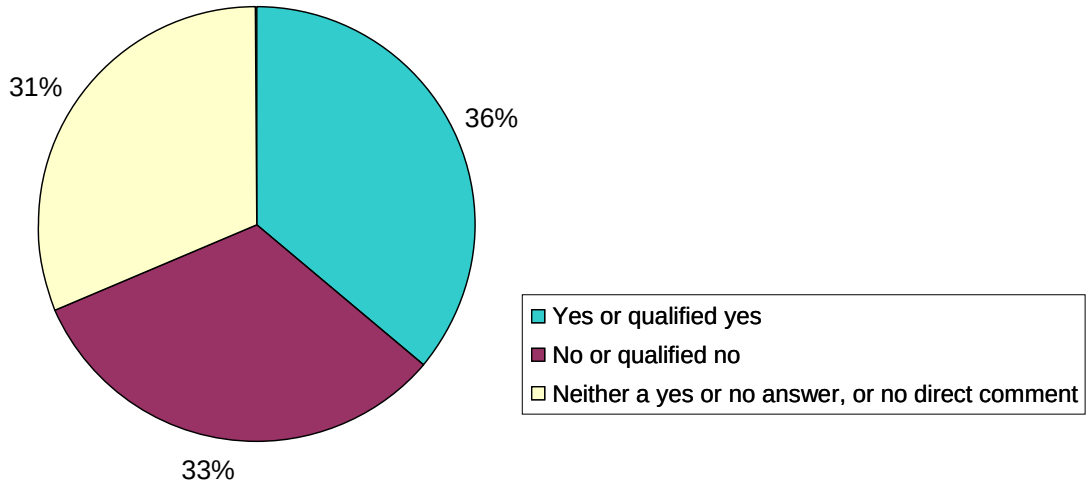
117. We said in the consultation that it would not be appropriate for the Planning Inspectorate to negotiate the content of any section 106 agreements associated with applications made directly to the Secretary of State as these are best determined locally. Having considered the consultation responses we think that this approach is right, but have looked more fully at how it could work in practice.

118. Guidance on the process will encourage early discussion between applicants and the designated local planning authority about the scope and content of any section 106 agreement needed. Applicants will also be encouraged to submit a worked-up agreement when applying to the Inspectorate, so that the impacts and mitigation can be properly assessed, and to minimise delays later on in the process.

119. Where a section 106 agreement is not already completed and signed, the Inspectorate would issue a ‘minded to grant’ decision where it intends to approve the application, giving permission subject to the agreement being signed by the parties within a specified period (and without which permission would be refused). As a fall-back position the applicant could also put forward a unilateral undertaking that does not require the planning authority’s written agreement, although we consider that a negotiated outcome is to be preferred wherever possible.

Supporting and assessing improvement

Question 12: Do you agree with the proposed approach to supporting and assessing improvement in designated authorities? Are there specific criteria or thresholds that you would propose?



120. Responses to this question revealed a general recognition that support would be essential for designated authorities. At the same time there was a desire for more information about what help would be provided and how such authorities would show that improvement had occurred.

121. Some suggestions were made that designation could lead to a 'spiral of decline' in an authority's planning team, because designation would potentially result in them having less experience of deciding major applications, where applicants exercise the option of applying to the Planning Inspectorate.

122. There was a call for a formal support package to be in place before any designations are made, although there was a recognition that the need for support would vary from authority to authority. It was also suggested that any approach should build upon existing opportunities for sector-led support and /or that groups of authorities should be allowed to resolve performance issues between themselves locally.

123. Another view was that the approach to lifting designations could be flawed unless the assessment of improvement was linked to the variables that had led to the designation in the first place. Equally, it was suggested that it would be difficult for authorities to demonstrate improvement if they were not dealing with many applications for major development whilst designated (and that decisions about improvement would be even more difficult to make where a designated authority had a record of dealing effectively with applications for minor development).

124. Others felt that it was unlikely that most, or all, major applications would in practice be submitted to the Planning Inspectorate where a planning authority is designated – allowing improvement to be assessed in the same way as decisions about designation. One suggestion made was that any designation should be lifted automatically if no applications were made to the Planning Inspectorate during the designation period.

125. Some responses called for clarification of how the Department for Communities and Local Government would carry out any qualitative assessment of improvement, with a concern expressed about the Department's capacity to do so. Another view was that the proposed assessment of improvement would require a new set of measures and subjective judgements, which was seen as contrary to the transparency and fairness being pursued in the approach to designation.

126. Some alternative criteria for assessing the potential to lift a designation were suggested, including the authority's performance in dealing with section 106 matters and discharging conditions. But again there was no consensus around specific suggestions.

The Government's response

127. Since the consultation document was published we have had a number of discussions with the Local Government Association and the Planning Advisory Service to set in train the work needed to develop an appropriate package of sector-led support, both for designated authorities and for those potentially at risk of designation.

128. This will build on existing avenues of support, and work on the principle that the support available will be voluntary and tailored to the needs of individual authorities, in terms of:

- What support the authority feels that it needs;
- Understanding the issues that need to be addressed to avoid a potential designation or to allow a designation to be lifted as quickly as possible; and
- Any specific issues or areas of service delivery where changes may be required.

129. We agree it is likely that a proportion of applications for major development will continue to be made to designated authorities in the usual way and this – together with the support which will be made available – should prevent a 'spiral of decline' taking place.

130. As the consultation document indicated, we do not think that it would be appropriate for the criteria for de-designating authorities to be exactly the same as those under which designations are made, especially as designated authorities may be dealing with fewer applications for major development than hitherto. Having considered the responses to the consultation we have concluded that the following criteria for de-designation would be appropriate:

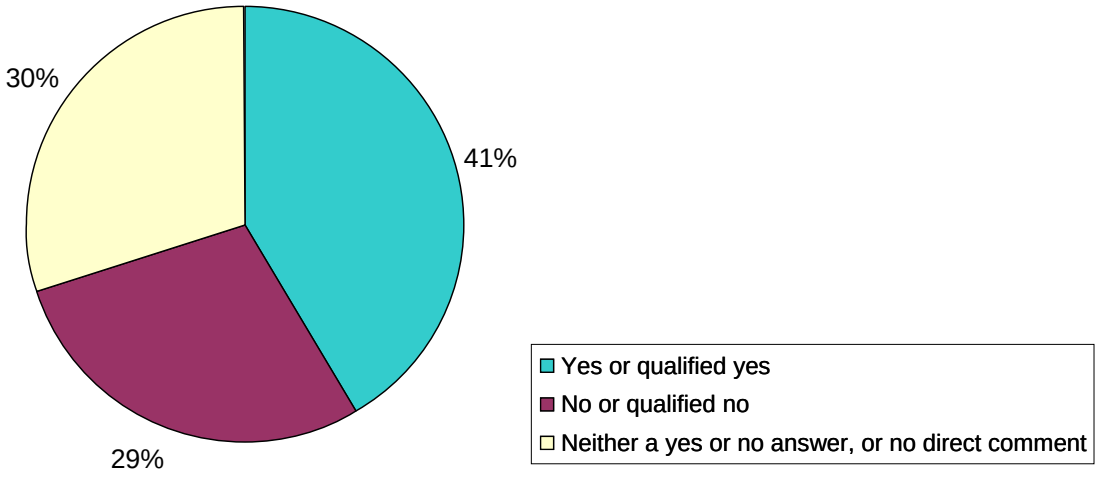
131. A designation will be revoked if the Secretary of State is satisfied that the designated local planning authority has provided adequate evidence of sufficient improvement against areas of weakness identified in an initial assessment of its performance (conducted shortly after the authority is designated); and provided that the designated local planning authority:

- Would not, at the time that decisions about de-designation are made, remain eligible for designation on the basis of the criteria used for that purpose;
- Has completed any administrative tasks required of them – associated with applications made directly to the Secretary off State – on time in at least 80% of cases during the designation period;
- Has not, in the view of the Secretary of State, caused unreasonable delays in signing any section 106 agreements associated with applications submitted directly to him during the designation period.

132. While these criteria do require some qualitative assessment to be carried out by the Department, the general approach is similar to other performance improvement regimes operated elsewhere by government (such as the improvement notices issued by the Department for Education prior to statutory intervention).

Principles and scope of the planning guarantee

Question 13: Do you agree with the proposed scope of the planning guarantee?



133. Many responses to this question felt that the concept and suggested scope of the planning guarantee were appropriate, but equally a significant minority were opposed or raised wider questions about the policy and its implications.

134. Some questioned the wider rationale for introducing the guarantee – seeing it as representing a centrally imposed 'arbitrary' target that fails to recognise the time that some complex applications require. Others thought the guarantee should encompass the full 'end-to-end' process including the pre-application stage. Questions were also posed about whether the guarantee would signal a relaxation of the statutory timescales for determining applications, while another opinion was that it was not required because the ability to appeal against non-determination already represented a 'guarantee' of sorts.

135. Another area of contention was whether the scope of the guarantee should be extended to encompass other parties that are seen as contributing to the time taken to determine applications. For example, some responses argued that delays can be caused by statutory consultees, or the Secretary of State (in the case of recovered appeals or called-in applications). A question was also raised as to what penalty would apply to the Planning Inspectorate in the event that it did not determine either an application or appeal within the guarantee period.

136. A commonly expressed view was that the guarantee might lead to perverse outcomes by encouraging authorities to refuse more applications instead of taking time to negotiate where appropriate – and equally that some applicants could seek to delay the determination process in the hope of a fee refund (see question 14). It was also suggested that authorities might become more reluctant to validate applications before being completely satisfied that all the required information had been provided.

137. While many responses agreed with the proposed exemptions from the planning guarantee, others were suggested, or clarification sought as to their treatment, including agreed extensions of time, applications subject to the completion of section 106 agreements and applications requiring other agreements or affected by holding directions.

138. Questions were also raised about the practical application of the guarantee, including:

- Whether at the 26 week deadline the application is automatically deemed a refusal;
- What happens if an applicant refuses to sign an extension of time agreement in an attempt to obtain a fee refund; and
- How applications that are appealed on the basis of non-determination will be dealt with.

The Government's response

139. Having considered the responses to the consultation we have concluded that the concept of the planning guarantee remains appropriate as a 'long stop' time limit by which all applications or appeals should be determined. It does not imply any relaxation of the statutory time limits, as the measures contained in the Growth and Infrastructure Act 2013 make very clear. Nor does it mean that – exceptionally – a longer timescale cannot be employed, but this should always be with the agreement of the applicant and set out either in a planning performance agreement or an agreed extension of time.

140. The fee refund (see question 14) will apply to the Planning Inspectorate where it is responsible for determining planning applications, as well as to local planning authorities.

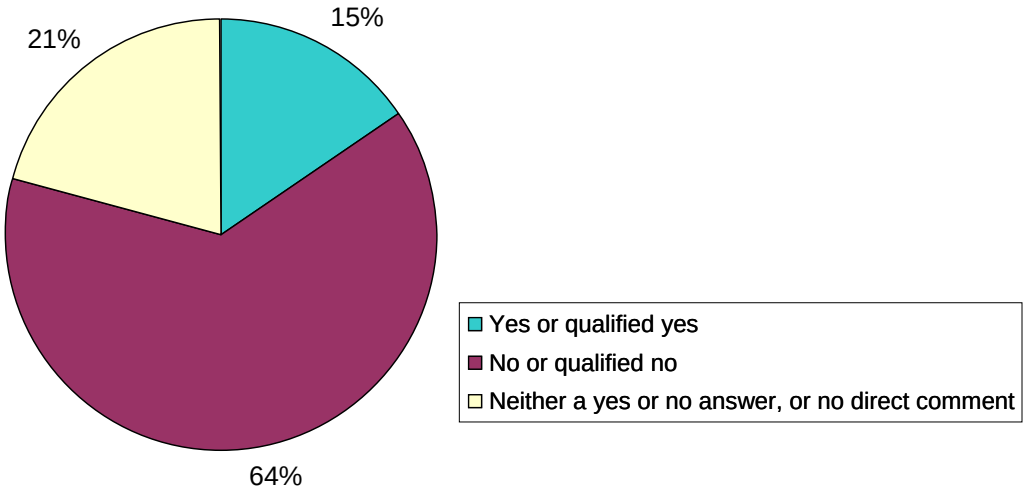
141. We have considered the potential for perverse consequences and any mitigation that may be required, and the principles are similar to those already covered in this report: local planning authorities' ability to enter into planning performance agreements or extensions of time should avert the risk of applications being refused prematurely, while applicants could face costs at any appeal if they are found to have frustrated the determination of their application simply to obtain a fee refund.

142. We do not consider that there is a case for adding further exemptions to those already proposed in the consultation document, but do wish to clarify that agreed extensions of time will fall outside its scope in the same way as planning performance agreements, provided the agreement is in writing and specifies a timescale for determination. Non-determination cases will be treated as planning applications for the purpose of assessing performance against the guarantee, up until the point that an appeal has been made.

143. We have not provided for an automatic refusal of permission where the 26 week limit is not met. This would be unfair to the applicant where the cause of delay rests outside their control. The proposal for a fee refund (see question 14) should provide sufficient incentive for authorities to determine applications within the guarantee period, or such other period as agreed with the applicant.

Delivering the guarantee

Question 14: Do you agree that the planning application fee should be refunded if no decision has been made within 26 weeks?



144. A majority of responses disagreed with this proposal. The argument most often made was that the application fee is paid for the work involved in processing and negotiating an application – not to guarantee a decision within a year. It was also seen as unfair to penalise an authority if the cause of delay could be argued to have been the applicant or another party.

145. It was also suggested that the threat of designation as an under-performing authority (set out in the associated proposals for implementing clause 1 of the Growth and Infrastructure Bill) should be sufficient to improve the speed with which applications are determined without also needing this proposal.

146. As with question 13, some pointed to the possibility of authorities refusing applications instead of taking the time to negotiate positive outcomes; or that applicants would deliberately delay the process by withholding information in an effort to receive a refund of the application fee.

147. Some alternative approaches were suggested, including rewarding good performance or making 'unnecessary delay' in determining an application grounds for an award of costs against local planning authorities at appeal.

148. Others offered suggestions about how the application fee could be paid or refunded to increase the incentive for applications to be decided on time. One method put forward would involve paying the fee in instalments against agreed milestones – with the final balance paid upon determination (provided this occurs within 26 weeks). Another method would be to make a progressive repayment of the fee between 13 weeks (the end of the statutory determination period for applications for major development) and 26 weeks.

149. Some additional exclusions to the fee refund were also suggested, including applications that are already being dealt with, those where an authority has resolved to grant planning permission subject to legal agreements and cases where delays are caused by applicants failing to provide sufficient information.

The Government's response

150. Although the majority of replies were opposed to this proposal, in considering the response we are mindful of the fact that the majority of the replies were from local planning authorities, which will be the bodies most affected by a fee refund where the planning guarantee is not met.

151. We consider that it is right for applicants to expect a decision on an application within 26 weeks at the most (or such other time as has been agreed) – which is double the statutory time limit for applications for major development. The proposal for a fee refund provides a simple and transparent way to underpin this expectation – and we wish to avoid overcomplicating the approach to be employed. The mitigation of potential perverse outcomes is covered under the response to the previous question.

152. Equally, we are not convinced that an effective case has been made for many additional exclusions from the fee refund, although it will not apply in situations where the applicant has already exercised their right to appeal, has initiated legal proceedings, or where the application has been called-in by the Secretary of State for determination.