

**EXPLANATORY MEMORANDUM TO**  
**IMPROVING PLANNING PERFORMANCE: CRITERIA FOR DESIGNATION**  
**(UPDATED 2022)**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing & Communities to support the document “Improving Planning Performance: Criteria for Designation (Updated 2022)” (“the Criteria Document”) presented to Parliament in October 2022 and is laid before Parliament pursuant to section 62B of the Town and Country Planning Act 1990.

**2. Purpose of the Instrument**

- 2.1 The Criteria Document sets out the latest criteria and thresholds to be applied when the Secretary of State considers whether to designate or de-designate local planning authorities under section 62A of the Town and Country Planning Act 1990 (“the 1990 Act”).

**3. Matters of special interest to Parliament**

- 3.1 None.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument (that is the jurisdiction which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

**5. European Convention on Human Rights**

- 5.1 As this the instrument is subject to a negative resolution procedure and does not amend primary legislation, no statement is required.

**6. Legislative Context**

- 6.1 Section 62A of the Town and Country Planning Act 1990 <sup>1</sup> (“the 1990 Act”) gives the Secretary of State the power to designate local planning authorities for poor performance. The Criteria Document sets out the criteria to be used by the Secretary of State for designation and de-designation under section 62A.
- 6.2 Section 62A was amended by section 153 of the Housing and Planning Act 2016 to enable the designation regime to be extended beyond local authority performance in determining applications for major development, by permitting the Secretary of State to prescribe those types of application which may be covered by a section 62A designation. The Town and Country Planning (Section 62A Applications) (Amendment) Regulations 2016 prescribe applications for non-major development as a separate category of applications in respect of which a local planning authority can be designated, alongside applications for major development. Subject to exceptions set out in these regulations relating to householder applications and retrospective applications, where a local planning authority is designated, a person wishing to obtain planning permission has a choice: they can submit their

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1 Inserted by section 1 of the Growth and Infrastructure Act 2013 (“the 2013 Act”).

application to the local planning authority in the normal way, or they can submit it directly to the Planning Inspectorate (who act on behalf of the Secretary of State).

- 6.3 Under section 62B of the 1990 Act, the criteria to be used for designation or de-designation must be set out in a document to be published by the Secretary of State and laid before Parliament for a period of 40 days. The Criteria Document takes effect if, at the end of this period, there has been no resolution in either House that the document should not be approved. The Secretary of State may revise the criteria for designation at any time, subject to a revised Criteria Document being published and laid before Parliament for the statutory 40 day period.
- 6.4 Once the criteria have effect, section 62B(1)(b) of the 1990 Act stipulates that a local planning authority may be designated only if “by reference to those criteria, the Secretary of State considers that there are respects in which the authority are not adequately performing their functions of determining applications under this Part”.

## **7. Policy background**

### *What is being done and why?*

- 7.1 Local authority planning departments play a crucial role in enabling development to deliver home ownership, building homes that people can afford to buy and supporting economic growth. We want to support and work with local authorities to make sure that the planning system is valued, resilient and capable of providing the service that local people and planning applicants expect and delivering on the increasing challenges being asked of it.
- 7.2 The performance of local authorities in deciding planning applications for planning permission is crucial to achieving this objective. Planning performance is considered annually based on a defined previous 24-month assessment period and separately measures the speed and quality of decision-making. Speed of decision-making is measured by the proportion of applications that are decided within the statutory determination period (8 weeks for non-major applications or 13 weeks for major applications), or an agreed extended period of time. Quality of decision-making is measured by the proportion of total decisions, or non-determinations, that are allowed at appeal.
- 7.3 Underperformance for speed of decision-making is when a local planning authority determines a lesser proportion of applications in time compared to the required threshold. Conversely, underperformance for quality of decision-making (represented by the proportion of applications that are subsequently overturned at appeal) is when a local authority achieves a higher proportion of applications overturned at appeal compared to the required threshold.
- 7.4 Delays in determining planning applications can increase costs for developers, reduce developers’ confidence to invest in sites and provide greater uncertainty for communities. Local planning authorities have a responsibility to determine applications on time.
- 7.5 The most recent statistics indicate that the designation regime introduced in the 2013 Act has been effective in speeding up applications for major development. 85 per cent of major applications were determined within the statutory period or an agreed extended period in January to March 2022 compared with 57 per cent in July to September 2012, the quarter in which the designation regime was first announced. This is despite budget pressures and an increase in planning applications.
- 7.6 The Government laid Improving Planning Performance - Criteria for Designation before Parliament on 3 June 2013, which introduced two separate and independent measures against which the performance of local planning authorities would be assessed:

- the speed with which applications for major development are dealt with;
- the extent to which such decisions are overturned at appeal (as an indicator of the quality of the decisions made by local planning authorities).

- 7.7 The thresholds for designation were set for the speed measure at 30 per cent of an authority's decisions on major applications made within the statutory determination period <sup>2</sup> and for the quality measure at 20 per cent or more of an authority's decisions on applications for major development being overturned at appeal. Subsequent revisions increased the threshold for the speed of decisions from 30 per cent to 40 per cent in 2014 and from 40 to 50 per cent in 2017 and 50 to 60 per cent in 2018. The reason for increasing the threshold for speed of decision-making is to encourage local planning authorities to determine a higher proportion of applications within time. The threshold for the quality of decisions decreased from 20 per cent in 2015 to 10 per cent in 2018. The reason for reducing the threshold for quality of decision-making is because a reduction in the proportion of applications subsequently overturned at appeal indicates better performance of local planning authorities.
- 7.8 The Government announced in July 2015 its intention to extend the designation regime to also include an assessment of local planning authorities' performance on determining applications for non-major development.
- 7.9 The Government subsequently laid a revised Improving Planning Performance - Criteria for Designation before Parliament on 22 November 2016 which set out the thresholds for designation for applications for non-major development. The thresholds for designation were set for the speed measure at 65 per cent in 2017 and 70 per cent in 2018. The threshold for the quality of decisions was set at 10 per cent in 2018.
- 7.10 The Government laid Improving Planning Performance - Criteria for Designation before Parliament in December 2020, retaining the same thresholds for designation as the 2018 publication. This update of the Criteria Document maintains the same thresholds for designation for both major and non-major applications that were included in the 2020 Criteria Document. The only material amendments to the 2020 Criteria Document are to the relevant assessment periods as the assessment periods in the 2020 Criteria Document have now expired. These are set out in Table 1 on page 5 of the Criteria Document.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 The Criteria Document does not relate to withdrawal from the European Union.

## **9. Consolidation**

- 9.1 This Criteria Document replaces the previous Criteria Document and therefore there is no need for consolidation.

## **10. Consultation outcome**

- 10.1 None. This is on the basis that the only material changes made to the Criteria Document are to the relevant assessment periods

## **11. Guidance**

- 11.1 No guidance is required.

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<sup>2</sup> or such extended period as has been agreed in writing with the applicant.

## **12. Impact**

- 12.1 We expect a continued improvement in the speed and quality of decisions on applications for major and non-major development. This is likely to have a beneficial impact on business, charities or voluntary bodies as their applications for development are likely to be processed more quickly with the quality of decisions assured, resulting in greater certainty for applicants.
- 12.2 There is no significant impact on the public sector. Performance will be assessed by reviewing data which local planning authorities already provide.

## **13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses. This update has no adverse impact on small businesses. The burden on business will remain the same whether they apply for planning permission to a local planning authority or, where they so choose, to the Secretary of State.

## **14. Monitoring & review**

- 14.1 The Department for Levelling Up, Housing & Communities publishes data on the performance of local planning authorities quarterly and will review and evaluate the operation of this measure, with a view to amending the criteria document in future if necessary.

## **15. Contact**

- 15.1 Stephen Gee at the Department for Levelling Up, Housing and Communities (Telephone: 0303 444 0013 or email: [stephen.gee@levellingup.gov.uk](mailto:stephen.gee@levellingup.gov.uk)) can answer any queries regarding the Criteria Document.
- 15.2 Lucy Hargreaves, Deputy Director for Planning Development Management at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lee Rowley, Minister of State at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.