

Committee: Planning

Date of Meeting: 10th March 2010

Title of Report: **DCLG Consultation on Improving Engagement by Statutory and Non-Statutory Consultees**

Report of: **Andy Wallis**
Planning and Economic Development Director

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This report contains	Yes	No
Confidential information		✓
Exempt information by virtue of paragraph(s) of Part 1 of Schedule 12A to the Local Government Act 1972. (If information is marked exempt, the Public Interest Test must be applied and favour the exclusion of the information from the press and public).		✓
Is the decision on this report DELEGATED?	✓	

Purpose of Report:

To advise Members of the Planning Committee on the content of the above DCLG Consultation Paper.

Recommendation(s):

Members are recommended to note and endorse the Planning and Economic Regeneration Director's responses to the consultation questions.

Corporate Objective Monitoring

Corporate Objective		Impact		
		Positive	Neutral	Negative
1	Creating A Learning Community		√	
2	Creating Safe Communities		√	
3	Jobs & Prosperity		√	
4	Improving Health & Well Being	√		
5	Environmental Sustainability	√		
6	Creating Inclusive Communities		√	
7	Improving The Quality Of Council Services & Strengthening Local Democracy		√	
8	Children & Young People		√	

Financial Implications

None

Departments consulted in the preparation of this Report

None

List of Background Papers relied upon in the preparation of this report

DCLG Consultation on Improving engagement by statutory and non-statutory consultees

The Government have published a suite of consultation papers in response to recommendations made by the Killian Pretty Review of the planning application process. They are:

- Development Management: Proactive Planning from Pre-Application to Delivery
- Improving the use and discharge of planning conditions
- Improving engagement by statutory and non-statutory consultees

Full consultation documents can be accessed via the Department of Communities and Local Government website at

<http://www.communities.gov.uk/corporate/publications/consultations/>

This report deals with the latter - Improving engagement by statutory and non-statutory consultees.

Effective engagement is a key element of the Development Management approach from pre-application to implementation stages. Statements of Community Involvement will set out how communities can expect to be involved in wider decision making, in a way that avoids duplication and consultation fatigue and maximises the opportunities available to influence outcomes in an efficient and effective manner.

This consultation paper sets out the proposed changes to arrangements for statutory and non-statutory consultees on planning applications. The proposals seek to improve the process for consultation so that it is clearer which organisations need to be consulted and at what point in the process, to define what response is needed and how the local authority should take account of the response. There is no proposal to change the existing arrangements for neighbour notification.

Statutory consultees are organisations and bodies, defined by statute, who must be consulted on relevant planning applications. Key organisations include Environment Agency, Natural England, English Heritage and the Highways Agency.

Non statutory consultees are organisations and bodies, identified in national planning policy that should be consulted on relevant planning applications. These include some statutory consultees and others such as the Police Architectural Liaison Officers.

What's proposed?

It is proposed to establish a single source of information which clearly defines who needs to be consulted and when; to set up a new Government policy statement and voluntary code of practice for statutory and non statutory consultees that details the obligations and expectations for consultees and to set up a system to monitor performance. It is also proposed to change some of the types of application that some of them are consulted on, having regard to new criteria.

Local planning authorities (LPAs) will be required to:

- Use e-communications wherever possible;
- Send information promptly;
- Be explicit about why they are consulting on a particular application, for example, what aspect of the proposals or the site the LPA need views on;
- Provide all necessary information to the consultee to enable it to give a

- substantive reply;
- Identify the timescale for a response;
- Appoint a compliance officer who will be responsible for embedding the code and practice within the authority and investigate any complaints about compliance of the authority; and
- Develop bespoke arrangements with consultees to provide a more tailored approach to consultation locally that is consistent with the code of practice.

Statutory consultees will be required to:

- Where possible, develop standing advice linked to thresholds for more minor proposals, ensuring they are carefully framed to avoid any unnecessary or unduly onerous advice;
- Develop guidance on their information requirements for different types of development
- Make all standing advice and guidance publicly available on the organisation's website to inform all relevant parties, including applicants and LPAs.
- Publish an annual report detailing performance, to be made available on their website

A substantive response to consultations should be provided within 21 days and resources should be made available to participate in pre-application discussions.

Statutory consultees should categorise their responses as when raising fundamental concern, substantive concern or raising a material consideration. Where a point of substantive concern is identified wherever possible a change or course of action should be suggested that would overcome their concern. If any fundamental concerns are raised the consultee should provide necessary support and advice at application and appeal stage.

It is proposed to review national policy recommendations for consultation when updating the relevant policy.

Proposed changes to GDPO

Table A of the consultation sets out 13 proposed changes viz:

1. The GDPO currently requires consultation to take place on applications where development is likely to affect land in a local authority other than the determining planning authority. The purpose of specifying a threshold of 250 metres is to provide a clearer basis for consultation based on a geographical threshold within which consultation should take place on a statutory basis.
2. This change updates the relevant body to be consulted in the case of developments outside national parks but potentially affecting them. The consultee is currently specified as the county planning authority, we are proposing to change this to the National Park Authority concerned who are now the planning authority in the case of national parks.
3. This change takes forward a government commitment to make the Greater London Authority statutory consultees on certain applications outside of London, as specified in paragraph 5.58 of GOL circular 01/2008.

4. This change has been taken forward to provide greater clarity on what applications should be referred to the Environment Agency. It expands the definition of 'oils' to include bio-fuels.
5. This change has been taken forward to be more specific about which developments involving the use of land for storage or recovery of waste need to be referred to the Environment Agency. It should have the effect of removing very minor applications from consultation, and to allow the Agency to focus its resources and efforts on more strategic applications.
6. The purpose of changing 'trade waste' to 'trade effluent' is to be more specific about what applications get referred to the Environment Agency, and to avoid unnecessary consultation.
7. This change specifies a threshold in terms of the number of burial plots upon which applications for developments involving the use of land as a cemetery are referred to the Environment Agency. It should have the effect of removing very minor applications from consultation, and to allow the Agency to focus its resources and efforts on more strategic applications.
8. This updates the name of the body, from 'English Nature' to 'Natural England'.
9. This updates the body to be consulted - in the case of waste development or development involving mining operations or the use of land for mineral working deposits, to Natural England or, in any other case, the Secretary of State for Environment, Food and Rural Affairs.
10. This change tightens up the thresholds upon which consultation takes place on developments in proximity to former landfill sites, to allow the Environment Agency to focus resources and efforts on applications likely to have the greatest environmental impact.
11. This article is to be deleted as most applications for fish farming are referred to the Environment Agency as the result of the Environmental Impact Assessment Regulations.
12. This seeks to clarify when consultation is necessary by adopting the 150 metre consultation zone already recommended informally by British Waterways into statute.
13. This article seeks to close a loophole where the Highways Agency is currently consulted on all new access proposals to a trunk road, except where the speed limit is lower than 40mph.

Other Changes

The Killian Pretty Review proposed that the Government should clarify the situation over the award of costs against statutory consultees in the event of unreasonable behaviour. Circular 03/2009, Part D explains the circumstances where a statutory consultee may be treated as a separate party liable to an award of costs. This consultation seeks to test whether further clarification of the arrangements is needed.

The CLG propose improvements to the monitoring of performance of statutory consultees:

- from July 2010, all statutory consultees required to publish an annual report, should publish that report on their website
- from July 2010 CLG will publish annually a list of all statutory consultees who have submitted an annual report that year and a list of those consultees that have not
- from July 2010 CLG will publish a summary table of performance of all organisations operating nationally similar to that set out in Annex A of this consultation paper
- a commitment on the part of statutory consultees, in signing up to the code of practice, to set and keep under review targets for performance in handling requests for comments at both pre-application and application stage of the process and to publish their annual report on their website and
- CLG will continue to monitor the performance of statutory consultees, and if necessary, will review what further steps could be taken to address poor performance.

Questions asked as part of the consultation

Q1 Do you agree with the policy principles guiding the statutory and non-statutory consultation process?

Response: Yes

Q2 Does the draft policy statement provide a suitable policy framework for statutory and non-statutory consultation?

Response: Yes

Q3 Are any of the proposed policies too prescriptive?

Response: No

Q4 Are there any important policy omissions?

Response: Non apparent

Q5a. Are the provisions of the Code in respect of statutory consultees workable and proportionate?

Response: They appear to be so from a local authority perspective.

5b. Are any requirements unreasonable, and if so, please explain why?

Response: No

5c. Are there any requirements missing, and if so, please explain why?

Response: No

Q6 Point 17 of the Code for statutory consultees, seeks to ensure that there is a strong commitment to achieving and maintaining high levels of performance. How might this element of the Code be strengthened, whilst recognising that current levels of performance by statutory consultees varies considerably and we want to encourage all statutory consultees to sign up the Code without delay?

Response: Incentives could be offered for signing up to the Code

Q7a. Are the provisions of the Code in respect of local planning authorities workable and proportionate?

Response: Yes, although additional resources may be required to deal with performance information and compliance issues

7b. Are any requirements unreasonable, and if so, please explain why?

Response: No

7c. Are there any requirements missing, and if so, please explain why?

Response: No

Q8 Do you agree with the changes set out in Table A? If not, please specify what change is of concern and why?

Response: Yes

Q9 Are there further changes that could cut down unnecessary consultation?

Response: The use of standing advice and guidance will reduce response times and lead to fewer consultations being required.

Q10 Do you agree that we should review national policy recommendations for consultation when we are updating the relevant policy?

Response: Yes

Q11 Do you agree that there should be greater clarity and consistency in the way statutory consultees provide advice on applications? Do you agree with approach we propose and the categories of advice we have identified?

Response: Yes

Q12 Do you support the development of this consultation information resource on the Planning Portal? Do you find the format of the information useful? Is there any additional information that should be provided on this site which would be particularly useful?

Response: Yes, links to LPA validation checklists would be useful so that developers know what is required when submitting an application and can contact consultees at pre-application stage to discuss options

Q13 Are there other ways, in addition to a new site on the Planning Portal, that we can encourage good practice? Are there other examples of good practice that should be included on the Planning Portal site?

Response: Yes, each LPA could receive a briefing from the consultee outlining their role in the application process, what factors they consider, common problems they come across.

Q14 What are the main blockages preventing greater use of e-consultation between local planning authorities and statutory consultees? Are there simple and cost effective ways that the greater use of e-consultation could be encouraged?

Response: Sefton Council has advocated the use of electronic communication for some years. The use of the Planning Portal's eConsultation portal could provide a useful tool for all involved in the process if funding was made available to integrate it with the consultor/consultees back office systems.

Q15 Should any changes be made to Circular 03/2009 to further clarify the award of costs regime in relation to statutory consultees? If so, what changes are necessary, and why?

Response: No

Q16 Do you agree with these measures to improve the monitoring of the performance of statutory consultees?

Response: Yes

Q17 Are there any further measures which would strengthen the monitoring of performance?

Response: No Comment

Q18 Local planning authorities, statutory consultees and applicants: do you agree with the assumptions used in the IA evidence base (Annex B) to calculate the costs and benefits of these new proposals?

Response: It should be taken into account that some local authorities already use electronic communication with statutory consultees. Costs relating to copying of applications should be amended to reflect this. Some statutory consultees have already published standing guidance on their websites which has led to a reduction in numbers.

Q19 Is there any evidence which you would like to submit to challenge the assumptions outlined in the impact assessment?

Response: No

Q20 Are there other options that can be suggested which would bring about the Government's objectives?

Response: The introduction of best practice guides and training courses

may aid the process.