An Accelerated Planning System Consultation

1. Purpose of Report

1.1 For members to agree the consultation response set out in this report to be returned to the Department for Levelling Up, Housing and Communities (DLUHC).

2. Executive Summary

2.1 The report sets out details of a recent consultation published by DLUHC proposing a series of reforms designed to accelerate the planning system. The proposed reforms relate to the development management process and involve a number of complex changes to the speed of determination of planning applications, particularly for major commercial planning applications. The consultation also proposes changes around the use of Extensions of Time (EoT), which are agreements reached between applicants and Local Planning Authorities (LPAs) to agree to extend statutory planning application determination periods and changes to the measurement of performance around the use of EoTs (i.e. measurements of total determination period for planning applications rather than just recording the number of applications determined within statutory periods or within agreed EoTs). It is felt by DLUHC that the overuse of EoTs may be masking poor overall planning performance in the development management process. Some of the proposed reforms pose a risk around fee returns if planning applications are not determined within specified periods. The report sets out a series of balanced consultation responses to the specific questions set out in the consultation, responses that are realistic in terms of the resources available within the development management service and reflect our approach to constructive engagement with applicants and in particular our collaborative and pro-active approach to handling major planning applications.

3. Recommendations

3.1 It is recommended that the relevant Committee:

1. Approves the proposed consultation response to the DLUHC consultation (An Accelerated Planning System: closing on 4 May 2024) set out in this report and delegates authority to the Head of Development Management to return the consultation response on behalf of the Council.

2. That the financial risks to the Council identified within the consultation response be noted.

4. Reason for Recommendations

4.1 It is important that the proposed reforms are bought to the attention of the Members through this report and that Derbyshire Dales District Council (DDDC) responds to the consultation response positively but realistically to ensure that it can help to contribute to and influence the future of planning services. It is also important to highlight some of the risks the proposed reforms pose to best practice, the financial implications and for resourcing the planning service.

5. Report Background

5.1 Derbyshire Dales District Council recognises, and agrees with the Government, that it is essential to operate a consistently high performing development management service and that this is one of the most important drivers of local development and economic growth which can deliver the homes and jobs that are needed locally. As such it is important that the Council's planning team use the right tools to deliver its development management service, including appropriate use of EoTs and that wherever possible planning applications are processed and determined within statutory time frames.

5.2 On 6th March 2024 DLUHC launched an open consultation on proposed reforms to the development management system titled 'An Accelerated Planning System'. The consultation proposes a series of reforms and contains specific questions which it is seeking responses to from across the development sector. The following paragraphs summarise the proposed reforms and consultation questions and sets out a series of proposed responses for Members to agree. The full document and consultation response forms can however be accessed through the link below:

https://www.gov.uk/government/consultations/an-accelerated-planning-system-consultation/an-accelerated-planning-system

5.3 **Summary of Proposed Reforms:**

The DLUHC consultation proposes the following broach changes to the development management process.

1) Introduce a new Accelerated Planning Service for major commercial applications with a proposed decision time of 10 weeks with a full refund of the applicant's fee if this target is not met. The proposed 10-week determination period would exclude development screened as Environmental Impact Assessment (EIA) development, minerals and waste, and other heritage assets such as World Heritage sites and Scheduled Ancient Monuments. A premium fee is proposed for this reform. The premium fee route would be a new service available, with a nationally set uplift for the fee and the use of Planning Performance Agreements (PPAs) would not be necessary under this process. To

improve the speed of consultation responses from government bodies, such as the Environment Agency (EA), Natural England (NA), Historic England (HE), and National Highways (NH), DLUHC is currently working with these bodies to improve their consultation response times on planning applications. Recognising the lack of incentive to the LPA if applications under this process are not determined within 10 weeks, the consultation proposes a phased fee return or 50% at 10 weeks and the remainder 50% at 13 weeks regardless of whether an EoT has been agreed. The consultation also considers whether to make the accelerated process with fee uplift discretionary for applicants (so have the option of applying under the existing process) or mandatory for all forms of qualifying developments. Under the process a nationally set proscriptive information requirements would be required at validation stage to ease the determination process and if this information is not submitted the application would remain to be determined under existing processes. The reforms would require changes to legislation for implementation. It is proposed to allow sufficient time to the overall approach to bed in following primary legislation and other changes around improved consultation responses from national bodies for example.

The current statutory time frame for major applications is 13 weeks or 16 weeks if the application is accompanied by an Environmental Statement (ES) (i.e. for Environmental Impact Assessment (EIA) development). Fees are only returned under the current Planning Guarantee if major planning applications (10+ dwellings or 1000sqm + other including commercial floor space, or other development on more than 1ha site area) are not determined within 26 weeks of valid receipt or within an agreed EoT reached at any time in the determination process (regardless of the 26 week period).

2) Ceasing the use of EoTs for householder planning applications and only allow for one EoT for all other forms of application or risk fee returns which would not change but are set at 16 weeks for non major planning applications or 26 weeks for other (non commercial – see above) major planning applications.

   The current practice allows for an unlimited number EoTs to be agreed between the applicant and the LPA for all types of planning application and that an agreement of any EoT at any time in the determination process protects the entire planning fee from refund to the applicant however long it takes to determine the planning application.

3) Expand the current simplified written representations appeal process for householder and minor commercial appeals to more appeals.

The current simplified appeal process applies to written representation appeals only, not to Hearings or Inquiries, and only relates to householder or other very minor appeals.

4) Implement Section 73B of the Town and Country Planning Act 1990 (as amended) to allow applicants more scope to vary planning permissions and to simplify the treatment of overlapping planning permissions.

   The current restrictions around the use of S73 permissions means that only minor changes to conditions of planning permissions to remove or vary conditions are permitted. This means that if applicants want to make anything more than very minor changes to existing permissions (Non Material Amendments) they are required to apply for full planning permission for the whole development again incorporating any proposed changes. The purpose of a revised S73B process is to allow more scope to make changes without having to revisit the whole principle of already consented developments.

5.4 **Proposed consultation response to Accelerated Planning Service (10 weeks for major commercial applications):**

Q1. *Do you agree with the proposal for an Accelerated Planning Service?*

Yes, No or Don't know (for all questions)

Recommended answer – No

Reason: Planning resources cannot be turned on or off depending on how large an initial fee is paid. The development management service has implemented and is bedding in a new structure with a stable staff head count. If a discretionary fast track service were introduced the service would struggle to respond in time and would have to de-prioritise other applications. There is no proposal here to simplify the number of issues that need to be addressed in the determination of planning applications and scant detail as to how the relevant government bodies will respond in time. For example, if a proposal involves part of the strategic road network and there is often considerable delay in receiving consultation responses from Highways England, there are also considerable delays in receiving consultation responses from the Environment Agency.

From an applicant's perspective the free-go for repeat planning applications has already been abolished following earlier reforms introduced to the fee regulations on 6 December 2023. The proposed reforms would incentivise LPAs to issue rapid refusals of permission within 10 weeks with multiple reasons for refusal (some based on lack of response from relevant consultees) and then the applicant would be left with the need to apply for plan permission again rather than allow for an agreed EoT with the LPA to continue

a pro-active, collaborative approach to handling the planning application.

Q2. *Do you agree the initial scope of applications proposed for the Accelerated Planning Service (Non-EIA major commercial development)?*

Recommended answer: No – see above.

Q3. Do you consider there is scope for EIA development to also benefit from an Accelerated Planning Service?

Recommended answer: No – see above.

Q4. *Do you agree to exclude from the Accelerated Planning Service – applications subject to Habitat Regulations, within the curtilage or area of listed buildings and other designated heritage assets, Scheduled Monuments and World Heritage Sites, and applications for retrospective developments or minerals and waste?*

Recommended answer: Yes

Q5. *Do you agree that the Accelerated Planning Service should:*

a) *Have an accelerated 10-week statutory time limit for determination for eligible applications?*

Recommended Answer: No; and time limit should remain as already in place with current allowance for agreed EoTs between applicant and LPA. The onus should be on the applicant to request an EoT so that they can work to overcome objections from consultees with officers and other stakeholders.

b) *Encourage pre-application engagement?*

Recommended answer: Yes – effective pre-application engagement should be standard practice, but the pre-application process can never be a full 'dress rehearsal' for the planning application assessment process and issues will often arise that were not anticipated at the pre-application stage; hence why it is necessary to maintain practices such as Planning Performance Agreements (PPAs) and appropriate use of EoTs to resolve issues where possible.

c) *Encourage notification of statutory consultees before application is made?*

Recommended answer: Yes.

Q6. *Do you consider that the fees for Accelerated Planning applications should be a percentage uplift of existing fees?*

Recommended answer: Yes – if the system is introduced, recommend 50% uplift.

Q7. *Do you consider that the refund of the planning fee should be:*

a) The whole fee at 10 weeks if the 10 week time limit is not met?

b) The premium part of the fee at 10 weeks with the remainder at 13 weeks if the decision is not made?

c) 50% of the whole fee at 10 weeks if the 10 week timeline is not met, and the remainder of the fee at 13 weeks?

d) None of the above (please specify alternative option)?

e) Don't know.

Recommended answer d) none of the above. The whole premise may well lead to perverse outcomes such as rapid refusals at 10 weeks to protect the fee and associated increase in appeals; over complex validation procedures and potential disputes at validation stage; a diversion of resource from other non-accelerated planning applications where there is less risk of fee return and an overall non-responsive and non-pro-active development management process. The applicant gains nothing from a quick refusal in 10 weeks with multiple reasons for refusal. They would then need to spend additional time and resource preparing a new planning application which under current fee regulations requires a whole new fee since the complete abolition of the free go in earlier reforms introduced on 6 December 2023.

Q8. *Do you have views about how statutory consultees can best support the Accelerated Planning Service?*

Recommended answer: They should be properly resourced to enable timely and thorough responses. Perhaps some of the planning fee could be diverted to external bodies as part of this resourcing.

Q9. *Do you consider the Accelerated Planning Service could be extended to:*

a) Major infrastructure development?

b) Major residential development?

c) Any other development?

Recommended answer: No

Q10. *Do you prefer a discretionary, mandatory, neither or Don't know for Accelerated Planning Service?*

Recommended answer: Neither – see above

Q11. *In addition to Planning Statement, is there any other additional statutory information you think should be provided by an applicant in order to opt-in to a Discretionary Accelerated Planning Service?*

Recommended answer: Yes, all relevant technical documents required to enable a one-consultation response from all relevant technical consultation that leaves no scope for ambiguity and no ability request additional information from the applicant during the determination process.

5.5 **Planning Performance and Extension of Time Agreements:**

This proposal is for a new performance measure for speed of determination of planning applications to measure the proportion of planning applications determined within statutory time limits only, i.e. within 8 weeks or 13 weeks for major applications (16 weeks for EIA development). This is designed to enable DLUHC to gather data on underperforming LPAs who may using EoTs to mask overall poor performance. The recommended thresholds are 50% for major applications and 60% for non-major applications. In the longer term LPAs that fall below these thresholds would be at risk of falling into the special measures designation. For designated authorities, applicants may apply directly to the Planning Inspectorate PINs to process their planning applications, avoiding the LPA altogether.

5.6 **The consultation questions and recommended answers are set out below:**

Q12. *Do you agree with the introduction of a new performance measure for speed of decision-making for major and non-major applications made within the statutory time limits only?*

Recommended Answer: Yes.

Q13. *Do you agree with the proposed performance thresholds for assessing the proportion of decisions made within the statutory time limits (50% or more for major applications and 60% or more for non-major applications)?*

Recommended answer: Don't know. It is important to understand the starting point, it is highly likely that for many LPAs including DDDC that current practice is considerably below these thresholds therefore many LPAs would be at risk of designation straight away. The performance measure is necessary, but a trial year should be introduced across the sector based on current unreformed practiced before judging what thresholds would be appropriate. The trial year

should be excluded from the designation decision to establish realistic thresholds.

Q14. *Do you consider that the designation decisions in relation to performance for speed of decision-making should be based on:*

a) The new criteria (i.e. proportion of applications determined within statutory time limits) only: or

b) Both new and existing criteria (i.e. proportion of applications determined within statutory time limit or within EoTs, currently set thresholds 60% for Major applications and 70% for others)

c) Neither of the above;

d) Don't know

Recommended answer: B, if the reforms are to take place.

Q15. *Do you agree to reduce assessment period for speed of decision from 24 months to 12 months but retain 24 months for quality of decisions (i.e. proportion of major appeals allowed)?*

Recommended answer: Yes – this allows LPAs to improve performance without being hindered by poor performance in the earlier part of the 24-month assessment period.

Q16. *Do you agree with a proposed one year period (October 2024 to October 2025) for data to be collected on new performance indicator to be assessed before any designation decisions are made?*

Recommended answer: Yes, this is a helpful transitional period to allow practice to be embedded but see answer above on trial year outside assessment.

Q17. *Do you agree with transitional arrangements for quality of decisions over a 24 month period?*

Recommended answer: Yes.

Q18. *Do you agree with the recommendation to prevent the use of EoTs for householder applications?*

Recommended Answer: No. Householder applicants are often, once in a life time applicants and this reform prevents their ability to have their applications determined over the longer period to seek to resolve problems that arise throughout the application period. There does need to be measures to prevent the misuse of EoTs by LPAs but this proposal potentially would have the effect of removing a positive, and pro-active use of EoTs for householder applicants.

Q19. *What is your view on the use of repeat extensions of time agreements for the same application? Is this something that should be prohibited?*

Recommended Answer: No. It is necessary to prevent repeat EoTs that mask poor performance. The onus should be shifted to the applicant to decide whether they request an EoT rather than the LPA requesting an EoT at the last minute to enable a decision to be made within statutory period. Perhaps a standard, nationally set EoT format should be agreed whereby the onus is placed on the applicant to request EoTs.

5.7 **Simplified appeal procedures for Written Representation Appeals:**

The proposal here is to expand the simplified Householder Appeals Service (HAS) and Commercial Appeals Service (CAS) for written representation appeals only to include in scope, planning permission and reserved matters refusals, listed building consents, tree works, lawful development certificates, removal or variation of conditions, discharge of conditions, imposition of conditions, variations to legal agreements, hedgerow regulations and high hedges decisions. These reforms would streamline the written representation appeal process for an expanded list of appeals and remove the ability to vary or add information in the appeal process and does mean that third parties cannot add comments during an appeal and only the representations they made at the application stage will be considered by PINs during the appeal process. They would not apply to appeals against non-determination or appeals against an enforcement notice. PINs would determine the appropriate appeal method at validation stage of the appeal, so for example, if they felt evidence needed to be tested, they would not selected the simplified route.

5.8 Consultation Questions relating to this section and recommended answers below:

Q20. *Do you agree with the proposals for simplified written representation appeal route?*

Recommended answer: Yes.

Q21. *Do you agree with the type of applications proposed for this procedure?*

Recommended answer: Yes, this reform would considerably reduce the resource burden that appeal procedures place on LPAs and shift the emphasis to the quality of the initial decision on the planning application.

Q22. Are there any other types of appeals which should be included in the simplified appeal process?

Recommended answer: No.

Q23. *Would you have concerns regarding the ability for additional representations, including from third parties, to be made during the appeal stage on cases that would follow the simplified written representation procedure?*

Recommended answer: No.

Q24. *Do you agree that there should be an option for written representation appeals to be determined under the current (non-simplified) process in cases where the Planning Inspectorate considers that the simplified process is not appropriate?*

Recommended answer: Yes, this provides a safeguard against concerns over third party involvement and complexity of issues.

Q25. *Do you agree that the existing time limits for lodging appeals should remain as they currently are, should the proposed simplified procedure for determining written representations planning appeals be introduced?*

Recommended answer: Yes.

5.9 **Varying and Overlapping Planning Permissions:**

A new Section 73B of the Town and Country Planning Act 1990 (as amended) was placed into legislation through the Levelling Up and Regeneration Act 2023 which is designed to enable material variations to planning permissions. Currently if the scope of variation goes beyond minor material amendments (S96b) or variation to conditions (S73) then applicants often need to apply for the whole scheme again including the variations they are seeking permission for. The purpose of S73B is to prevent the whole the need to revisit the whole basis on which the original grant of permission was made. It is designed to limit the scope to the decision maker to consider only the proposed revisions to the proposal and not the whole development again. Applicants would therefore be able to apply to vary conditions of the original permission and introduce other changes to the development that go beyond the scope of the original conditions, such as design changes or changes to the description of development.

5.10 **Consultation Questions and Recommended Answers are set out below:**

Q26. *Do you agree that guidance should encourage clearer descriptors of development for planning permissions and Section 73B to become the route to make general variations to planning permissions (rather than S73)?*

Recommended answer: Yes, this reform would remove the confusion between varying conditions of a planning permission post

completion or before and varying the development itself after the permission has been granted but before full implementation.

Q27. *Do you have further comments on the scope of the guidance?*

Recommended answer: No.

Q28. *Do you agree with the proposed approach for the procedural arrangements for S73B applications?*

Recommended answer: Yes.

Q29. *Do you agree that the applicant fee for a S73B application should be the same as the fee for a S73 application?*

Recommended answer: No – it would depend on the scope of changes proposes and the range of issues to consider so bespoke fees for S73B applications should be introduced.

Q30. *Do you agree with a proposed 3 band application fee structure for section 73 and 73B applications?*

Recommended answer: No – see above.

Q31. *What should the fee for Section 73 and 73B applications for major development (providing evidence where possible)?*

Recommended answer: For S73 applications the fee structure can remain the same, for S73B fees should be proportionate to the scale of changes proposed, i.e. reflecting changes in floor space and quantum of development.

Q32. *Do you agree with this approach for S73B permissions in relation to Community Infrastructure Levy?*

Recommended answer: Yes, the proposal appears to capture any CIL changes that would result from S73B permissions appropriately.

Q33. *Can you provide evidence about the use of 'drop in' permissions and the extent of the Hillside judgement has affected development?*

Recommended answer: No.

Q34. *To what extent could the use of S73B provide an alternative to the use of 'drop in' permissions?*

Recommended answer: The proposed S73B route appears to provide a clearer way forward to enable permissions to be changed in a managed way to avoid the confusion of overlapping permissions for major development sites.

Q35. If Section 73B cannot address all circumstances, do you have views about the use of a general development order to deal with

overlapping permissions related to large scale development granted through outline planning permission?

Recommended answer: No.

6. Issues and Choices

6.1 The purpose of this report is to recommend a realistic response to the DLUHC consultation on proposed planning reforms outlined above. Whilst recognising that the over use of EoTs can mask poor performance, local planning authorities are not likely to respond positively to reforms that are overly punitive, particular in relation to financial penalties such as mandatory fee returns. If the reforms such as the mandatory 10 or 13 week fee return for major commercial applications are introduced, LPAs will be forced by the need to protect fees into practices that do not help the development industry and applicants.

Any proposed reforms designed to improve performance should be balanced with the need for pro-active engagement, collaboration and problem solving. Not to mention democratic oversight of decision making and fitting into Committee cycles. This report and the recommended answers to the consultation seeks to strike the right balance between accepting the need to improve practice, particularly around the mis-use of EoTs but not introducing reforms that place unrealistic timeframes on the determination of complex planning applications.

7. Implications (including financial implications)

7.1 Resources and Financial

7.1.1 Potential increased fee income but potential financial penalties if strict time limits are not reached for decisions.

7.2 Legal

7.2.1 The proposed reforms may require primary legislation and implementation of legislative changes, particularly around the implementation of S73B of the Town and Country Planning Act 1990 (as amended).