INSTITUTE OF HISTORIC BUILDING CONSERVATION

Technical consultation on planning

Questionnaire response

Section 1

Question 1.1: Do you agree that regulations should require an application for a neighbourhood area designation to be determined by a prescribed date? We are interested in the views of local planning authorities on the impact this proposal may have on them.

We agree with this.

Question 1.2: If a prescribed date is supported do you agree that this should apply only where:
• the boundaries of the neighbourhood area applied for coincide with those of an existing parish or electoral ward; and
• there is no existing designation or outstanding application for designation, for all or part of the area for which a new designation is sought?

The reasoning at paragraph 1.14 is unclear to us. It is recognized that there is potential for difficulties if there are overlapping proposals. But electoral wards and parishes often do not have coterminous boundaries. Thus there is as much potential for problems in an area in which an electoral ward encompasses more than one parish as there would be if two parishes in separate wards were involved.

The Parish is a fairly sound unit of public administration, but electoral wards are merely a device to balance electorates and often have no community significance. We therefore consider that the parish should be the only area designation unless the area is unparished, in which case the electoral ward might be a proxy.

Question 1.3: If a date is prescribed, do you agree that this should be 10 weeks (70 days) after a valid application is made? If you do not agree, is there an alternative time period that you would propose?

10 weeks seems adequate.

Question 1.4: Do you support our proposal not to change the period of six weeks in which representations can be made on an application for a neighbourhood area to be designated? If you do not, do you think this period should be shorter? What alternative time period would you propose?

We agree with this.

Question 1.5: We are interested in views on whether there are other stages in the neighbourhood planning process where time limits may be beneficial. Where time limits are considered beneficial, we would also welcome views on what might be an appropriate time period for local planning authority decision taking at each stage.

We think that time limits for all phases of the development timetable would be beneficial. It would enable This would better enable groups preparing neighbourhood plans to programme their work and consultation periods.

Question 1.6: Do you support the removal of the requirement in regulations for a minimum of six weeks consultation and publicity before a neighbourhood plan or Order is submitted to a local planning authority?

We are unsure of the wisdom of this. There is a clear benefit to be had in the possibility of last-

minute changes to the plan before submission and not having a stipulated period for this risks this period being used as a catch-up for time lost elsewhere in the process, to the detriment of the soundness of the plan.

Question 1.7: Do you agree that responsibility for publicising a proposed neighbourhood plan or Order, inviting representations and notifying consultation bodies ahead of independent examination should remain with a local planning authority? If you do not agree, what alternative proposals do you suggest, recognising the need to ensure that the process is open, transparent and robust?

Yes.

Question 1.8: Do you agree that regulations should require those preparing a neighbourhood plan proposal to consult the owners of sites they consider may be affected by the neighbourhood plan as part of the site assessment process? If you do not agree, is there an alternative approach that you would suggest that can achieve our objective?

Yes, but this is implicit in the preparation of a deliverable plan in any event.

Question 1.9: If regulations required those preparing a neighbourhood plan proposal to consult the owners of sites they consider may be affected by the neighbourhood plan as part of the site assessment process, what would be the estimated cost of that requirement to you or your organisation? Are there other material impacts that the requirement might have on you or your organisation? We are also interested in your views on how such consultation could be undertaken and for examples of successful approaches that may have been taken.

The availability of development land in plan preparation is so fundamental a consideration that the cost of ascertaining this is scarcely relevant. However, as the availability of land will usually depend on its value/cost for development, the cost of professional guidance will usually have to be found from somewhere. Removing the requirement to assess because of the possible cost will only make the process more difficult for the neighbourhood plan group.

Question 1.10: Do you agree with the introduction of a new statutory requirement (basic condition) to test the nature and adequacy of the consultation undertaken during the preparation of a neighbourhood plan or Order? If you do not agree, is there an alternative approach that you would suggest that can achieve our objective?

Yes, we agree, and the test should cover consultation at all the relevant stages.

Question 1.11: Do you agree that it should be a statutory requirement that either: a statement of reasons; an environmental report, or an explanation of why the plan is not subject to the requirements of the Strategic Environmental Assessment Directive must accompany a neighbourhood plan proposal when it is submitted to a local planning authority?

As it is clear that some neighbourhood plans will fall below the Directive's thresholds, it makes sense to allow for a streamlined assessment of this. We are content with the proposals.

Question 1.12: Aside from the proposals put forward in this consultation document are there alternative or further measures that would improve the understanding of how the Environmental Assessment of Plans and Programmes Regulations 2004 apply to neighbourhood plans? If there are such measures, should they be introduced through changes to existing guidance, policy or new legislation?

Most neighbourhood planning groups will require professional support to make assessments under the Regulations. Guidance would also be useful.

Question 1.13: We would like your views on what further steps we and others could take to meet the Government's objective to see more communities taking up their right to produce a neighbourhood plan or neighbourhood development order. We are particularly interested in hearing views on:
• stages in the process that are considered disproportionate to the purpose, or any unnecessary requirements that could be removed
• how the shared insights from early adopters could support and speed up the progress of others
• whether communities need to be supported differently
• innovative ways in which communities are funding, or could fund, their neighbourhood planning activities.

We have no expertise on which to venture an opinion on further measures.

Section 2

Question 2.1: Do you agree that there should be permitted development rights for (i) light industrial (B1(c)) buildings and (ii) storage and distribution (B8) buildings to change to residential (C3) use?

No, we do not agree with this. We think that it has the potential to be damaging to local economies. This is because the value of buildings for housing can be higher than for commercial uses and there is a strong possibility business uses being discontinued because of this and of consequent negative impacts on neighbouring businesses because of changes to the character of business areas.

If the proposal were to be subject to an economic/business impact assessment as suggested by Question 2.2, there would be little difference between the requirements of this and for an application for planning permission in the normal way and thus little difference in terms of obligation/workload for either applicants of LPAs. We think this should continue to be the process for this type of development. Approval, subject to proper consideration of the issues, could be strongly encouraged by guidance.

Question 2.2: Should the new permitted development right (i) include a limit on the amount of floor space that can change use to residential (ii) apply in Article 1(5) land i.e. land within a National Park, the Broads, an Area of Outstanding Natural Beauty, an area designated as a conservation area, and land within World Heritage Sites and (iii) should other issues be considered as part of the prior approval, for example the impact of the proposed residential use on neighbouring employment uses?

The proposal should certainly exclude all Article 1(5) land where there is the greatest potential for adverse visual impact. To aspect III we respond "yes" but the process should also include assessment of the impact of remaining businesses (and what they might become) on the proposed housing. Nobody wants to see existing businesses being troubled by operational constraints emanating from complaints from newly developed housing.

Question 2.3: Do you agree that there should be permitted development rights, as proposed, for laundrettes, amusement arcades/centres, casinos and nightclubs to change use to residential (C3) use and to carry out building work directly related to the change of use?

We are reasonably happy with this aspect but, in relation to the building work, it should not be permitted on Article 1(5) land. This is because, for example, the removal of a traditional shopfront of a launderette and its replacement with an ill-considered domestic replacement could be very damaging to the character and apprearance of a conservation area.

Question 2.4: Should the new permitted development right include (i) a limit on the amount of floor space that can change use to residential and (ii) a prior approval in respect of design and external appearance?

Yes on both aspects, especially on Article 1(5) land.

Question 2.5: Do you agree that there should be a permitted development right from May 2016 to allow change of use from offices (B1(a)) to residential (C3)?

No. We disagree for the same reasons we give in 2.1 above. Town centres particularly are vulnerable to changing patterns of use and the sudden reduction in footfall could have damaging impacts. There would be a tendency to undermine business confidence if changes of use became a free-for-all in town centres which are already facing difficulties for communities and investors alike. The Government should issue guidance but leave decision-making to local analysis.

Question 2.6: Do you have suggestions for the definition of the prior approval required to allow local planning authorities to consider the impact of the significant loss of the most strategically important office accommodation within the local area?

We do not have any suggestions for this as there are so many possible impacts taking into account local circumstances (see our response to Question 2.1). To include even a few would render the process as onerous as an application for planning permission which should remain the requirement for such applications.

Question 2.7: Do you agree that the permitted development rights allowing larger extensions for dwelling houses should be made permanent?

We do not think that these PD right should be made permanent without a proper review of their temporary implementation. There should be a consultation that invites comment on its operation so far so that any deficiencies in the process or allowances can be properly assessed.

Question 2.8: Do you agree that the shops (A1) use class should be broadened to incorporate the majority of uses currently within the financial and professional services (A2) use class?

No. We believe that the general weakness in the retail sector has caused an over-dominance of these uses in some places to the detriment on town centre health. We think this should continue to be regulated.

Question 2.9: Do you agree that a planning application should be required for any change of use to a betting shop or a pay day loan shop?

Yes. We believe that the general weakness in the retail sector has caused an over-dominance of these uses in some places to the detriment on town centre health. We think this should continue to be regulated.

Question 2.10: Do you have suggestions for the definition of pay day loan shops, or on the type of activities undertaken, that the regulations should capture?

We are unable to offer a definition.

Question 2.11: Do you agree that there should be permitted development rights for (i) A1 and A2 premises and (ii) laundrettes, amusement arcades/ centres, casinos and nightclubs to change use to restaurants and cafés (A3)?

We agree with this so long as the permission does not extend to physical alterations.

Question 2.12: Do you agree that there should be permitted development rights for A1 and A2 uses, laundrettes, amusement arcades/centres and nightclubs to change use to assembly and leisure (D2)?

We agree with this so long as the permission does not extend to physical alterations.

Question 2.13: Do you agree that there should be a permitted development right for an ancillary building within the curtilage of an existing shop?

We agree with this but think that it should not extend to Article 1(5) land where poor quality developments can affect the character of the are and thus the viability of businesses that depend on the character – e.g. tourist destinations.

Question 2.14: Do you agree that there should be a permitted development right to extend loading bays for existing shops?

We agree with the proposal subject to the limitations suggested in the Consultation.

Question 2.15: Do you agree that the permitted development right allowing shops to build internal mezzanine floors should be increased from 200 square metres?

We are uneasy about this because we think there are potential negative impacts as well as positive ones. We think the proposal should not apply on Article 1(5) land.

Question 2.16: Do you agree that parking policy should be strengthened to tackle on-street parking problems by restricting powers to set maximum parking standards?

We do not object to this.

Question 2.17: Do you agree that there should be a new permitted development right for commercial film and television production?

We do not object to this.

Question 2.18: Do you agree that there should be a permitted development right for the installation of solar PV up to 1MW on the roof of non-domestic buildings?

We do not object to this.

Question 2.19: Do you agree that the permitted development rights allowing larger extensions for shops, financial and professional services, offices, industrial and warehouse buildings should be made permanent?

We do not think that these PD right should be made permanent without a proper review of their temporary implementation. There should be a consultation that invites comment on its operation so far so that any deficiencies in the process or allowances can be properly assessed.

Question 2.20: Do you agree that there should be a new permitted development right for waste management facilities to replace buildings, equipment and machinery?

We do not object to this.

Question 2.21: Do you agree that permitted development rights for sewerage undertakers should be extended to include equipment housings?

We do not object to this.

Question 2.22: Do you have any other comments or suggestions for extending permitted development rights?

We have to say that we are a bit surprised that a Government that champions the business sector is so keen on allowing businesses to undertake developments that, however much they may benefit the business concerned, could negatively affect neighbouring businesses or even the business viability of a location. We think that it is in the interests of businesses everywhere to have the opportunity to comment on developments that may affect them and that a Government that values the commercial

sector would be wanting to continue to allow them to do this through a retention of the requirement for planning permission for many of the current proposals.

Question 2.23: Do you have any evidence regarding the costs or benefits of the proposed changes or new permitted development rights, including any evidence regarding the impact of the proposal on the number of new betting shops and pay day loan shops, and the costs and benefits, in particular new openings in premises that were formerly A2, A3, A4 or A5?

No.

Question 2.24: Do you agree (i) that where prior approval for permitted development has been given, but not yet implemented, it should not be removed by subsequent Article 4 direction and (ii) should the compensation regulations also cover the permitted development rights set out in the consultation?

We think this sounds fair, but are not entirely sure we understand the implications.

Section 3

Question 3.1: Do you have any general comments on our intention to introduce a deemed discharge for planning conditions?

The Institute is in agreement with the Government's concerns over this. However we have reservations over the exact process to be adopted. We do not think that deemed discharge should apply where the LPA has insufficient information to respond coherently. For example, there may be a condition to submit further design details on a matter that was imposed because a concern not to delay the processing of the application. Details submitted in purported compliance may require clarification. In such a case a refusal would be an ill-considered response – a request for clarification would be preferable for both parties. Thus the time-limit should have a clock-stopping element to ensure that the optimum result for the applicant can be achieved.

Question 3.2: Do you agree with our proposal to exclude some types of conditions from the deemed discharge (e.g. conditions in areas of high flood risk)?

Where we exclude a type of condition should we apply the exemption to all the conditions in the planning permission requiring discharge or only those relating to the reason for the exemption (e.g. those relating to flooding)?

Are there other types of conditions that you think should also be excluded?

Yes. We think detailed design conditions in relation to conservation areas should also be included.

Question 3.3: Do you agree with our proposal that a deemed discharge should be an applicant option activated by the serving of a notice, rather than applying automatically? If not, why?

Yes. No-one wants the additional work caused by misinterpreted submissions.

Question 3.4: Do you agree with our proposed timings for when a deemed discharge would be available to an applicant? If not, why? What alternative timing would you suggest?

We agree with the proposed timetable.

Question 3.5: We propose that (unless the type of condition is excluded) deemed discharge would be available for conditions in full or outline (not reserved matters) planning permissions under S.70, 73, and 73A of the Town and Country Planning Act 1990 (as amended).

Do you think that deemed discharge should be available for other types of consents such

as advertisement consent, or planning permission granted by a local development order?

Subject to our caveats already outlined, we agree.

Question 3.6: Do you agree that the time limit for the fee refund should be shortened from twelve weeks to eight weeks? If not, why?

We agree.

Question 3.7: Are there any instances where you consider that a return of the fee after eight weeks would not be appropriate? Why?

We think the fee refund proposal should only apply in relation to the final condition(s) being discharged. We don't think the LPA should be faced with a fee-return penalty in relation to a series of discharge applications on the same proposal when there are other conditions that still require compliance. This is because conditions can often be inter-related and have cross-cutting implications.

Question 3.8: Do you agree there should be a requirement for local planning authorities to share draft conditions with applicants for major developments before they can make a decision on the application?

Yes. This is already good practice.

Question 3.9: Do you agree that this requirement should be limited to major applications?

We think it is good practice for all applications but making it a requirement could delay the issue of consents by requiring consultation on straight forward issues, such as where they relate to matters already proposed in the application.

Question 3.10: When do you consider it to be an appropriate time to share draft conditions:
- **10 days before a planning permissions is granted?**
- **5 days before a planning permissions is granted? or**
- **another time?, please detail**

At least 5 working days.

Question 3.11: We have identified two possible options for dealing with late changes or additions to conditions – Option A or Option B. Which option do you prefer?

If neither, can you suggest another way of addressing this issue and if so please explain your alternative approach?

We prefer Option A. Otherwise negotiations could protract the procedure unduly. The LPA should be under the duty to consult and take into account any comments.

Question 3.12: Do you agree there should be an additional requirement for local planning authorities to justify the use of pre-commencement conditions?

Pre-commencement conditions are a way of avoiding the cost of detailed study and design before the grant of permission which would be wasted were planning permission to be refused or to be unimplemented for another reason (perhaps pertaining to the viability of the development). It is in the interests of the applicant that he be not faced with additional cost arising from unsatisfactory post-implementation requirements. The use of pre-commencement conditions should be self-explanatory. For this reason making explanation a requirement would probably not be overly onerous for the LPA and might be beneficial to the applicant.

Question 3.13: Do you think that the proposed requirement for local planning authorities

to justify the use of pre-commencement conditions should be expanded to apply to conditions that require further action to be undertaken by an applicant before an aspect of the development can go ahead?

Yes. If one is justified, the other should be also.

Question 3.14: What more could be done to ensure that conditions that require further action to be undertaken by an applicant before an aspect of the development can go ahead are appropriate and that the timing is suitable and properly justified?

There is already very good advice available on the use of conditions that has stood the test of time. LPAs should be reminded that the number of conditions can be significantly reduced by raising the matters concerned with the applicant as the application is being determined and, if necessary, accepting further information, a planning obligation or agreeing a pre-commencement condition for a series of matters that would otherwise have separate conditions.

Section 4

Question 4.1: Do you agree with the proposed change to the requirements for consulting Natural England set out in Table 1? If not, please specify why.

We agree with the proposal.

Question 4.2: Do you agree with the proposed changes to the requirements for consulting the Highways Agency set out in Table 2? If not, please specify what change is of concern and why?

We agree with the proposal.

Question 4.3: Do you agree with the proposed changes to the requirements for consulting and notifying English Heritage set out in Table 3? If not, please specify what change is of concern and why?

Do you agree with the proposed change to remove English Heritage's powers of Direction and authorisation in Greater London? If not, please explain why?

We do not object to the proposals although, through the removal of the need to notify in respect of Grade II listed buildings and conservation areas, they will place additional burdens on LPAs, especially in Greater London where the consistency of decision-making will be reduced.

We are unsure why the widespread reduction in the need to consult EH is accompanied by the additional requirement to consult on battlefields. Whilst we agree with the importance of battlefields, the logic of this is unexplained.

Question 4.4: Do you agree with the proposed changes to the requirements for referring applications to the Secretary of State set out in Table 4? If not, please specify what change is of concern and why.

We agree with the proposal as it allows for the Secretary of State to focus on the most contentious applications.

Question 4.5: Do you agree with the proposed minor changes to current arrangements for consultation/notification of other heritage bodies? If not, please specify what change is of concern and why.

We understand that the JCNAS has concerns about this aspect and we share them. We agree with the Consultation's substantive point that the NAS's have an important contribution to make to the planning process. However, increasingly, decisions on which

applications to refer are made by LPA staff who are not really qualified to judge the importance of aspects of historic building fabric and that, consequently, some applications which should be referred are not being. It is likely that important features of buildings are being lost as a result. We think that the emphasis on the word "substantial" in relation to part demolition worsens the position. We think there is a case for a more nuanced approach perhaps using words like "...removal of or alteration to important features of..." to try to ensure that reference is made in cases where minor elements of fabric are important components of a building's history. It is not necessarily the extent of demolition (or removal of fabric) that is important, but its significance.

Question 4.6: Do you agree with the principle of statutory consultees making more frequent use of the existing flexibility not to be consulted at the application stage, in cases where technical issues were resolved at the pre-application stage?

Do you have any comments on what specific measures would be necessary to facilitate more regular use of this flexibility?

We do not object to the proposal in principle but we are not clear on the context of the expression "technical issues". We take this to mean the removal of potential objections. If this is the case we would wish to see the Regulations being clear and specific about the approach to amended plans submitted post-consultation.

Question 4.7: How significant do you think the reduction in applications which statutory consultees are unnecessarily consulted on will be? Please provide evidence to support your answer.

We have no basis on which to be specific on this. However we know that there has been a significant reduction in the staffing capacity of LPAs in recent years, much of it in technical areas such as conservation, but also in terms of the general experience levels of planning staff. Thus, while the numbers of referrals could be reduced by the proposals, this will not always be replaced by the required expertise at LPA level. This will inevitably give rise to a deterioration in the quality of decision-making and a lessening of the protection of important national interests.

Question 4.8: In the interest of public safety, do you agree with the proposal requiring local planning authorities to notify railway infrastructure managers of planning applications within the vicinity of their railway, rather than making them formal statutory consultees with a duty to respond?

We agree with the proposal.

Question 4.9: Do you agree with notification being required when any part of a proposed development is within 10 metres of a railway? Do you agree that 10 metres is a suitable distance? Do you have a suggestion about a methodology for measuring the distance from a railway (such as whether to measure from the edge of the railway track or the boundary of railway land, and how this would include underground railway tunnels)?

We have no expertise on this aspect.

Question 4.10: Do you have any comments on the proposal to consolidate the Town and Country Planning (Development Management Procedure) Order 2010?

We welcome this. It would be helpful to the planning system and its users if the Statutes and Sis could all be updated in their latest form routinely.

Question 4.11: Do you have any suggestions on how each stage of the planning application process should be measured? What is your idea? What stage of the process does it relate to? Why should this stage be measured and what are the benefits of such information?

We have no view on this aspect.

Section 5

Question 5.1: Do you agree that the existing thresholds for urban development and industrial estate development which are outside of sensitive areas are unnecessarily low?

We do not think thresholds should be raised in respect of Article 1(5) land.

Question 5.2: Do you have any comments on where we propose to set the new thresholds?

We would like to see proper analysis of the risks and benefits before coming to a conclusion on this. The mere fact that a threshold is currently too low to exempt any development is not a criterion for setting any particular new threshold.

Question 5.3: If you consider there is scope to raise the screening threshold for residential dwellings above our current proposal, or to raise thresholds for other Schedule 2 categories, what would you suggest and why?

We do not think the Government has justified the proposed thresholds, so we would not wish to see any even higher.

Section 6

Question 6.1: Do you agree that the three characteristics set out in paragraph 6.10 are suitable for assessing whether a change to a Development Consent Order is more likely to be non-material? Are there any others that should be considered?

No comment.

Question 6.2: Do you agree with:
(i) making publicising and consulting on a non-material change the responsibility of the applicant, rather than the Secretary of State?
(ii) the additional amendments (see above) to regulations proposed for handling non-material changes?

No comment.

Question 6.3: Do you agree with the proposals:

(i) to change the consultation requirements for a proposed application for a material change to a Development Consent Order?

(ii) to remove the requirement on an applicant to prepare a statement of community consultation for an application for a material change?

(iii) to remove the current requirement to publish a notice publicising a proposed application where an application for a material change is to be made?

No comment.

Question 6.4: Do you agree with the proposal that there should be a new regulation allowing the Secretary of State to dispense with the need to hold an examination into an application for a material change?

No comment.

Question 6.5: Do you agree with the proposal to reduce the statutory time periods set out in the 2011 Regulations to four months for the examination of an application for a

material change, two months for the examining authority to produce a report and their recommendation and two months for the Secretary of State to reach a decision?

No comment.

Question 6.6: Are there any other issues that should be covered if guidance is produced on the procedures for making non-material and material changes to Development Consent Orders?

No comment.

Question 6.7: Do you agree with the proposal that applicants should be able to include the ten consents (listed below) within a Development Consent Order without the prior approval of the relevant consenting body?

No comment.

Question 6.8: Do you agree with the ways in which we propose to approach these reforms?

No comment.

Question 6.9: Are there any other ideas that we should consider in enacting the proposed changes?

No comment.

Question 6.10: Do you have any views on the proposal for some of the consents to deal only with the construction stage of projects, and for some to also cover the operational stage of projects?

No comment.

Question 6.11: Are there any other comments you wish to make in response to this section of the consultation?

No comment.

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