Arun District Council

REPORT TO:	Planning Committee 17 April 2024
SUBJECT:	An Accelerated Planning System Consultation
LEAD OFFICER:	Neil Crowther
LEAD MEMBER:	Cllr Hamilton
WARDS:	All

CORPORATE PRIORITY / POLICY CONTEXT / CORPORATE VISION:

The recommendations support:-

- Delivering the right homes in the right places;
- Supporting our environment to support us.

DIRECTORATE POLICY CONTEXT:

The proposals will help to enhance the quality of the natural and built environment, protect the district's natural and heritage assets and to promote economic growth in a sustainable manner, striking a balance between the need for development and the protection of scarce resources.

FINANCIAL SUMMARY:

Not applicable at this stage but there is potential financial consideration should some of these measures be implemented.

1. PURPOSE OF REPORT

1.1 The government have published a consultation setting out some further proposed changes to the planning system. This includes a new service for major commercial development, limiting the use of Extensions of Time, simplifying the written representations appeal process, and introducing a new process for varying planning permissions. The consultation closes on 1 May 2024.

2. RECOMMENDATIONS

To note the proposals within the consultation and to agree the response to the consultation contained in Appendix 1.

3. EXECUTIVE SUMMARY

3.1 This consultation seeks views on proposals to:

- introduce a new Accelerated Planning Service for major commercial applications with a decision time in 10 weeks and fee refunds if this is not met.
- change the use of extensions of time, including ending their use for householder applications and only allowing one extension of time for other developments,

which links to a proposed new performance measure for local planning authority speed of decision-making against statutory time limits.
- expand the current simplified written representations appeals process for householder and minor commercial appeals to more appeals.
- implement section 73B for applications to vary planning permissions and the treatment of overlapping permissions.

4. DETAIL

Accelerated system for major commercial development

4.1 The consultation proposes to introduce a bespoke planning process for the determination of major commercial developments. This would result in a higher application fee in return for a decision being reached within 10 weeks. If a decision is not made, the application fee will be returned.

4.2 The consultation does not state what the application fee would be, but it does state that in certain areas where there are environmentally sensitive issues, the 10-week period would not apply. It would also exclude applications that are subject to a Planning Performance Agreement.

4.3 These proposals are very poorly conceived, and it is hard to imagine that any developer or local planning authority would support this proposal. The result of this proposal will clearly be that applications for large scale commercial development will be refused planning permission before 10 weeks expires. The 10-week period is an entirely unreasonable time in which to resolve issues such as highways, environmental and flood risk. It will not give any time for consultees to engage with applicants and it will not give time for applicants to respond to consultee comments. The inevitable result will simply be an increase in refusals because of there being unresolved outstanding issues. The proposal will simply result in multiple refusals which will not benefit anyone.

4.4 The consultation states that local authorities (and consultees) would be expected to prioritise work in relation to such applications in return for the higher fees. However, unless and until the authority know that an application is going to be submitted and is aware how much resources it needs, it will be impossible to simply drop everything to deal with these applications. It will also be impossible to ensure that external consultees similarly prioritise this work and if there are going to be resources identified to allow them to do so.

4.5 This proposal would impact upon only a handful of applications within Arun. Only those applications over 1,000sqm would be included.

Panning Performance & Extensions of Time

4.6 These proposals include the following;

- A lowering of the national performance targets to 50% for majors and 60% for non-majors.
- An intention to publish national performance with and without the use of Extensions of Time.

- The removal of obtaining Extensions of Time for householder applications.
- The ability to obtain Extensions of Time on other applications to be limited to only one.

4.7 These proposals are supported and will not result in any significant change in how we work in the Planning Department. Arun has all but ceased obtaining Extensions of Time on householder applications in recent years.

4.8 The government have published data for 2023 where Extension of Time have and haven't been sought. This data shows that.

- Arun determined 94% of householder applications within 8 weeks. Out of all authorities in England (335), Arun has the third best performance data.
- It secured the fewest Extensions of Time for non-major development of any authority in England.
- Arun secures Extensions of Time on only 8% of all minor applications and this compares to a national average of 41%.

4.9 As part of the data released by the government through this consultation, there are also some other notable bits of data worthy of inclusion in this report;

- Arun has 93% of decisions delegated to officers. That is 279th out of 335 authorities in England. Arun has a very low level of delegation relative to others.
- Arun determined the 30th most applications for major development. This shows that the number of majors we get is very high.
- Arun determined the 32nd most major applications within 13 weeks (37%). Only one authority with better performance determined more applications though.

Simplified Process for Written Reps Appeals

4.10 The proposals essentially extend an existing appeals process for householder proposals to all written representations appeals. This would mean that there is only one opportunity to submit an appeal statement with there being no opportunity to provide additional information.

Varying Planning Applications

4.11 This proposal is included because of the inability to vary the description of an application through the current Non-Material Amendment or s73 processes. A new section 73B has been included within the Levelling Up Bill which enables material amendments to applications. The consultation is seeking views on the use of s73B as well as how to deal with proposals for 'drop in' schemes that are for only a part of a larger scheme.

4.12 The government are proposing to set out consequential legislation to deal with consultation, information, procedure, fees and CIL for s73B applications. It is envisaged that this route will be used to vary permissions and the existing s73 route would only be used to vary conditions.

4.13 A relatively recent court case has confirmed that you are unable to have a ‘drop in’ permission on part of a larger site if that results in the original (larger) permission not able to be implemented. The government believe that the new s73B provide a way to resolve this issue.

5. CONSULTATION

5.1 None

6. OPTIONS / ALTERNATIVES CONSIDERED

6.1 N/A

7. COMMENTS BY THE GROUP HEAD OF FINANCE/SECTION 151 OFFICER

7.1 No financial implications at this time.

8. RISK ASSESSMENT CONSIDERATIONS

8.1 N/A

9. COMMENTS OF THE GROUP HEAD OF LAW AND GOVERNANCE & MONITORING OFFICER

9.1 N/A

10. HUMAN RESOURCES IMPACT

10.1 N/A

11. HEALTH & SAFETY IMPACT

11.1 N/A

12. PROPERTY & ESTATES IMPACT

12.1 N/A

13. EQUALITIES IMPACT ASSESSMENT (EIA) / SOCIAL VALUE

13.1 N/A

14. CLIMATE CHANGE & ENVIRONMENTAL IMPACT/SOCIAL VALUE

14.1 N/A

15. CRIME AND DISORDER REDUCTION IMPACT

15.1 N/A

16. HUMAN RIGHTS IMPACT

16.1 N/A

17. FREEDOM OF INFORMATION / DATA PROTECTION CONSIDERATIONS

17.1 N/A

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BACKGROUND DOCUMENTS*:*

An accelerated planning system - GOV.UK (www.gov.uk)

Question 1. Do you agree with the proposal for an Accelerated Planning Service?

No

Question 2. Do you agree with the initial scope of applications proposed for the Accelerated Planning Service (Non-EIA major commercial development)?

Yes

Question 3. Do you consider there is scope for EIA development to also benefit from an Accelerated Planning Service?

No

Question 4. Do you agree with the proposed exclusions from the Accelerated Planning Service – applications subject to Habitat Regulations Assessment, within the curtilage or area of listed buildings and other designated heritage assets, Scheduled Monuments and World Heritage Sites, and applications for retrospective development or minerals and waste development?

Yes

Question 5. Do you agree that the Accelerated Planning Service should:
a) have an accelerated 10-week statutory time limit for the determination of eligible applications

No. This is a completely unrealistic time period and will simply result in multiple refusals which is something neither the applicant or local authority want.

b) encourage pre-application engagement

Yes. But it has to be meaningful and fully resourced. Applicants need to have a requirement upon them to submit full details for comments. If only skeletal details are submitted, the response will not be meaningful.

c) encourage notification of statutory consultees before the application is made

Yes. But encourage and require are two very different things. Unless there is a requirement to provide minimum service standards for these types of proposals and that is fully resourced, the 10 week period will be meaningless and just result in an even slower route to gaining permission, which will be the opposite of what is being proposed.

Question 6. Do you consider that the fee for Accelerated Planning Service applications should be a percentage uplift on the existing planning application fee?

Yes. This needs to accurately reflect the need for speedy consideration from all stakeholders; not just Planning Departments.

Question 7. Do you consider that the refund of the planning fee should be:
a. the whole fee at 10 weeks if the 10-week timeline is not met

b. the premium part of the fee at 10 weeks if the 10-week timeline is not met, and the remainder of the fee at 13 weeks
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 an alternative option)
e. don't know

None of the above. The proposal to require a refund of application fee is simply gong to result in multiple refusals and a longer process.

Question 8. Do you have views about how statutory consultees can best support the Accelerated Planning Service?

They need to have minimum service standards set and they need to be resourced to provide these.

Question 9. Do you consider that the Accelerated Planning Service could be extended to:

a. major infrastructure development

No

b. major residential development

No

c. any other development

No

Question 10. Do you prefer:
c. neither

Question 11. In addition to a 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?

Public consultation
A completed Legal Agreement

Question 12. Do you agree with the introduction of a new performance measure for speed of decision-making for major and non-major applications based on the proportion of decisions made within the statutory time limit only?

Yes

Question 13. Do you agree with the proposed performance thresholds for assessing the proportion of decisions made within the statutory time limit (50% or more for major applications and 60% or more for non-major applications)?

Yes

Question 14. Do you consider that the designation decisions in relation to performance for speed of decision-making should be made based on:

a) the new criteria only – i.e. the proportion of decisions made within the statutory time limit.

It would be the most reasonable approach

Question 15. Do you agree that the performance of local planning authorities for speed of decision-making should be measured across a 12-month period?

Yes

Question 16. Do you agree with the proposed transitional arrangements for the new measure for assessing speed of decision-making performance?

Yes

Question 17. Do you agree that the measure and thresholds for assessing quality of decision-making performance should stay the same?

Yes

Question 18. Do you agree with the proposal to remove the ability to use extension of time agreements for householder applications?

Yes

Question 19. What is your view on the use of repeat extension of time agreements for the same application? Is this something that should be prohibited?

Yes. However, there are often very good reasons that may be outside of the control of the local authority for why a further extension may be required. For example, a s106 agreement, an application having to be determined at Planning Committee etc.

Question 20. Do you agree with the proposals for the simplified written representation appeal route?

Yes

Question 21. Do you agree with the types of appeals that are proposed for inclusion through the simplified written representation appeal route? If not, which types of appeals should be excluded form the simplified written representation appeal route?

Yes

Question 22. Are there any other types of appeals which should be included in a simplified written representation appeal route?

No

Question 23. Would you raise any concern about removing the ability for additional representations, including those of third parties, to be made during the appeal stage on cases that would follow the simplified written representations procedure?

Yes. Circumstances may change from the determination of the application to the appeal stage such that third parties may wish to make additional comments. They would be denied that opportunity.

Question 24. 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?

Yes

Question 25. 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 representation planning appeals be introduced?

Yes

Question 26

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 section 73)?

No

Further guidance on descriptors of development would be welcomed, but we do not agree that section 73B should become the route to make general variations to planning permissions (rather than section 73). We consider that the existing system for dealing with revisions to schemes under Section 73 and 73A is fit for purpose and already provides a mechanism for considering development that is not substantially different to that for which permission has already been granted. It is well understood by local planning authorities and developers, alike, and we feel there is no need to amend the current system simply for the sake of it.

The proposed 73B route will introduce further complication, confusion, lack of clarity and scope for legal challenge around the “substantially different” test and we cannot see that this will do anything to accelerate planning decisions – particularly given the fact that government does not intend to provide prescriptive guidance on this. A common approach is required, otherwise it could actually slow down the planning system through a series of appeals and involvement of the High Court.

Question 27. Do you have any further comments on the scope of the guidance?

If the original permission was subject to a legal agreement, there would still remain a requirement for this to be linked to a new permission under S73B, via a Deed of Variation or other means. This would especially be the case if the S73B application

increases approved dwelling numbers or amends the housing mix. The suggestion that this would improve transparency is not agreed.

Question 28. Do you agree with the proposed approach for the procedural arrangements for a section 73B application?

No

The proposed approach to publicity and consultation is agreed, as is the continued requirement for EIA, HRA, BNG (where applicable). However, the suggestion that an application under Section 73B would never be required to include a Design and Access Statement is not considered sensible, given that the section 73B route could be used to increase overall dwelling numbers, which, in itself, could impact on the previously accepted design approach. The applicant should be required to provide a D&AS, where necessary, to show how the impacts of their proposed changes to the scheme would impact on its overall design ethos and quality.

Question 29. Do you agree that the application fee for a section 73B application should be the same as the fee for a section 73 application?

No

The level and amount of work in processing a Section 73 application can be very significant and, as recognised in the consultation document, the current flat fee for this (£293) very rarely (if ever) captures the real cost of processing by the Local Planning Authority. We consider that a fee equivalent to 50% of the planning fee paid in respect of the original, approved planning application would represent an appropriate level.

Question 30. Do you agree with the proposal for a 3 band application fee structure for section 73 and 73B applications?

No

As set out in our response to Question 29, we consider a fee equivalent to 50% of the planning fee paid in respect of the original, approved planning application would represent an appropriate level and would be simple to understand and clear to administer. However, if the 3-band application fee structure for section 73 and 73B applications is introduced, it should ensure that the cost to the Local Planning Authority of processing such applications is properly recognised and accounted for.

The suggestion that the fee for a householder application via this route would be only £86 is a backwards step and will impact negatively on LPA fee income for no justifiable reason. If the government is committed to introducing a 3-band structure, we consider the fee should either stay as it is (£293) or be reduced to the equivalent householder fee (£258). Failing this, a fee of £129 (50% of current Householder fee) would be more palatable than the current suggestion of £86, albeit this may still not fully cover the costs expended by the LPA in dealing with such submissions.

Non-major development includes schemes of up to 9 dwellings and 999sqm of commercial floorspace. If the government is committed to introducing a 3-band structure, £293 (as per the present system) is the absolute minimum fee that should be

payable for S73 and S73B applications in respect to such developments, However, a fee of half the original application fee would be more commensurate with the level of work usually involved and might prompt developers to consider their proposed schemes more thoroughly at the original planning stage so that such post-decision submissions are less frequently required.

We agree that the fee for Major development should be set at a higher level. However, the suggestion that the fee should be proportionate to the work necessary to consider the proposed variations suggests the potential for local fee setting. The reality is that some Section 73 applications will require less officer input, and others will require more, dependent on a range of factors – such as the nature and complexity of the changes proposed, the requirement to engage with internal and external consultees, and whether they can be dealt with under delegated powers or needs to be referred to a Committee for determination, for example. We believe that to avoid confusion or over-complicating matters, Section 73 and Section 73B applications should be subject to a fixed fee that is roughly proportionate to an 'average' such application. Calculating what this level might be, will be fraught with challenges, so our suggestion that the fee is set at 50% that of the equivalent planning application fee for the development in question appears to be as sensible and rational approach as any, and it mirrors the approach taken to fees in respect of applications for a Certificate of Lawfulness for a Proposed Use or Development.

Question 31. What should be the fee for section 73 and 73B applications for major development (providing evidence where possible)?

In view of the very broad range of developments that are classified under the 'major' category (from 10 dwellings up to many thousands of new homes), we believe that providing evidence of what is genuinely a proportionate fee that would never exceed full cost recovery will, in practice, prove to be very challenging. As set out in the responses above, in the alternative we would advocate setting the fee for a S73/S73B submission at 50% of the planning fee paid in respect of the original, approved planning application

Question 32. Do you agree with this approach for section 73B permissions in relation to Community Infrastructure Levy?

Yes. We have no further comments to make in relation to CIL.

Question 33. Can you provide evidence about the use of the 'drop in' permissions and the extent the Hillside judgment has affected development?

The impacts of the Hillside Judgement have mostly impacted upon developers rather than the LPA. As identified within the consultation document the Hillside Judgement has prevented the submission of 'drop-in' applications which would prejudice the delivery of the entirety of the outline approval.

Most 'drop-in' applications are necessary as developers wish to make amendments to proposals. However, developers have responded to the implications of Hillside through the wording adopted in the description of development. This is primarily where the conflict arises. Ensuring flexibility or avoiding overly prescriptive descriptions of development allows for the use of section 73 to amend the format of development without triggering the Hillside conflict.

Amendments under section 73B could not be ‘substantially different’ from the existing permission. Most proposals which result in a Hillside conflict are those which would be deemed ‘substantially different’ such as increasing the quantum of housing at the expense of commercial development. Therefore, section 73B as a mechanism is unlikely to provide a meaningful solution to most Hillside conflicts.

Therefore, resolving the issue through less prescriptive descriptions of development and securing the quantum of development through condition is a more flexible approach which does not require legislative amendments.

Question 34. To what extent could the use of section 73B provide an alternative to the use of drop in permissions?

The proposed section 73B does little to address the primary reason for drop in permissions as most scenarios in which such applications are sought by developers would be deemed substantially different and as such would fall outside the scope of section 73B as proposed.

Question 35. 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?

It is more appropriate to ensure that descriptions of development are not overly prescriptive with conditions instead securing the quantum of development which would allow for the use of existing mechanisms to the support amendment of permissions.