

Committee(s)	Dated:
Planning & Transportation	05/04/2016
Subject: City Corporation response to DCLG technical consultation on the implementation of planning changes	Public
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Summary

In February 2016, the Department of Communities and Local Government issued a consultation document seeking views on how planning measures set out in the Housing and Planning Bill should be implemented. Responses to the consultation will inform the detail of secondary legislation that will be prepared once the Housing and Planning Bill receives Royal Assent.

The consultation document proposes significant changes to the planning system and could have significant impacts on the way that the City Corporation's planning service is provided, including the potential for a reduction in planning application fee income. The key areas of change cover:

- a) Introduction of Planning Permission in Principle – giving in principle permission for housing development on sites allocated in local plans, neighbourhood plans and sites identified on a brownfield register, with detailed issues of access, layout and design being considered through a later technical consent phase.
- b) Local Plan Performance – introducing new measures to monitor the progress of local plans and introducing a new housing delivery test to ensure planned housing is delivered.
- c) Planning application targets - enhanced targets for monitoring planning application performance, including for minor applications and tightening of targets for schemes which are allowed at appeal.
- d) Testing competition in the processing of planning applications – detailed proposals for the introduction of approved provider processing of planning applications as an alternative to the local planning authority.

Whilst some elements of these proposals can be supported, such as the granting of planning permission in principle on sites allocated in local plans, other proposals could have a significant effect on the City Corporation's planning service. A key area of concern is the proposal to test competition in the processing of planning applications, which seems to assume that the planning process is a purely regulatory process and ignores the role of consultation, negotiation and Member involvement in the development of acceptable schemes.

Recommendation

Members are recommended to agree the comments in this report and that they should form the basis of the City Corporation's response to the DCLG technical consultation on implementation of planning changes.

Main Report

Background

1. In February 2016, the Department of Communities and Local Government issued a consultation document seeking views on how planning measures set out in the Housing and Planning Bill should be implemented. Responses to the consultation will inform the detail of secondary legislation that will be prepared once the Housing and Planning Bill receives Royal Assent.
2. At your meeting on 2nd February 2016, you received a report of the Remembrancer which outlined the key housing and planning implications for the City of London arising out of the Housing and Planning Bill. Subsequently, the Remembrancer has provided a briefing to Members of the House of Lords in their consideration of the Bill as it passes through Parliament.

Current Position

3. The technical consultation on the approach to implementation of planning changes was issued in February 2016. It seeks responses on 13 main areas of change to planning policy and implementation, asking for comments in response to 77 consultation questions.
4. The questions concern the detail of how measures contained in the Housing and Planning Bill should be implemented. The consultation does not seek comments or views on the principle of the measures being proposed as these are being considered as the Bill passes through Parliament. Nevertheless, in responding to the questions raised it is considered appropriate to address the potential implications of the primary legislation for the City of London and request, where appropriate, that the specific circumstances of the City be considered when secondary legislation is prepared.

Proposals

5. Whilst the Government's consultation questions address 13 areas of planning, the key changes for the City are in 4 areas of the planning system: the granting of planning permission in principle, amendments to improve local plan performance, further measures to address the speed of decision on planning applications, and testing of the introduction of competition in the processing of planning applications.

Planning Permission in Principle

6. The Housing and Planning Bill proposes to introduce a 2 tier approach to the grant of planning permission for new housing development, with the potential to grant permission for housing in principle, separate from consideration of detailed technical matters.
7. The consultation indicates that planning permission in principle could be granted through the allocation of a site for housing in either a local plan or a neighbourhood plan, through the identification of a site on a brownfield register, or upon application for small scale housing development. When preparing local plans or neighbourhood plans, the local planning authority or neighbourhood forum would have the ability to identify suitable sites for housing which would carry with it an 'in principle' permission. This permission would cover location, land use and amount of residential development. All other matters, including access, layout and design would be considered at a later technical consent phase. Sites to be granted planning permission in principle would need to be specifically identified in the plan, rather than this being a default permission for all site allocations. This provision would only apply to plans adopted after the Housing and Planning Bill receives Royal Assent.
8. An alternative mechanism would be the grant of planning permission in principle for housing sites identified on a brownfield register. This would be published and maintained by the local planning authority, using evidence underpinning the production of the local plan, but updated on an annual basis. For sites identified on the register, the local planning authority would be required to undertake environmental impact assessment (EIA). The consultation indicates that sites included on the register must be available for development within 5 years, capable of supporting 5 or more dwellings and capable of development (free of constraints). Sites identified for alternative uses in a local plan would not be considered suitable or available and would be excluded from the register.
9. A third approach proposed is for applicants for minor development to receive planning permission in principle, with a requirement to submit a minimum of information to the local planning authority, covering location, land use and amount of residential development.

Comment

10. The concept of granting planning permission in principle to allocated sites in local and neighbourhood plans is one that can be supported. Plans will be subject to detailed consultation and examination over several iterations and subject to sustainability assessment. The requirement for an explicit statement of planning permission in principle would also enable the Corporation to determine where such an approach would apply. Sites or areas where there is potential for adverse impact on the City's business cluster could be excluded from this approach and full submission of planning applications required.
11. The granting of planning permission in principle through brownfield registers is more problematic. Although registers would be developed and maintained by local planning authorities, they would not be subject to the same level of scrutiny

and public consultation as local plan allocations and would not be considered through public examination. Local planning authorities would be responsible for undertaking EIA of sites identified in the register, a function that to date has been the responsibility of applicants. Local planning authorities will also be expected to update the registers annually, which is likely to have significant resource implications. For the City, an additional concern is that it remains unclear whether areas (as opposed to sites) identified as suitable for office development would be excluded from the register. This raises the possibility that suitable office sites could be identified and then granted planning permission in principle for residential use. This approach is at odds with the City's exemption from national permitted development rights for the change of use of offices to residential and the provisions of both the City's Local Plan and the London Plan. Clarity should be sought that only sites which are in accordance with policies in the Local Plan can be granted planning permission in principle in this way.

12. The potential to grant planning permission in principle for sites capable of minor residential development through application is also problematic and could again impact on the City's beneficial cluster of offices. Permissions in principle through this route must have regard to the provision of adopted and up to date local plans.

Local Plan Performance

13. The Government proposes to introduce performance targets for local plan preparation and intervene in the production of local plans where they are out of date. Plans will need to be kept up to date and reviewed at least every 5 years. Progress in local plan preparation will be measured through 6 monthly monitoring of progress against targets set out in local development schemes prepared by each local planning authority. Where progress against these targets is considered insufficient, or plans are out of date, the Government intends to intervene by appointing an external party to work with local communities in preparing a local plan.
14. The Government is also concerned at the pace of housing delivery on sites allocated in local plans and intends to introduce a housing delivery test, to ensure delivery against local plan targets.

Comment

15. The City of London Local Plan was adopted in January 2015 and work has commenced on a review, with the aim of completing it by 2019. This will ensure that the City's local plan remains up to date and relevant in providing for the City's future planning needs. The City is unlikely to be considered to be designated as underperforming in terms of local plan progress, but nevertheless the proposed 6 monthly monitoring against the local development scheme seems excessive. There is a danger that it could divert resources required to ensure delivery against agreed targets. Rather than seeking to impose targets and a 6 monthly monitoring regime, the Government should require local planning authorities to prepare realistic local development schemes, in consultation with local communities and any monitoring against these schemes should be undertaken on a maximum of an annual basis, rather than 6 monthly. There also

needs to be a commitment that intervention would be on the basis of the impact of slippage against targets rather than the fact of a slippage itself.

16. In relation to the proposed housing delivery test, the consultation document provides no details on how this would work, or the sanctions that would be considered where progress is considered to be failing. Whilst not objecting to the principle, any monitoring should be on the basis of the specific roles and responsibilities of local planning authorities, i.e. related to the delivery of planning permissions on sites in a local plan, rather than the delivery of the units themselves, as this is outside of local planning authority control.

Planning Application Performance

17. In recent years the Government has set targets for the processing of planning applications, designating as under-performing those authorities where less than 50% of decisions on major schemes are made within specified periods, or where more than 20% of major schemes have been overturned at appeal. The Government is now consulting on new thresholds for the determination of non-major development, setting a threshold of 60-70% of non-major proposals determined within statutory time periods and 10-20% overturned at appeal, and reducing the threshold for major schemes overturned at appeal to 10%. Local planning authorities would continue to be encouraged to enter into agreements to extend time periods with developers, where necessary. Non-major development is defined in the consultation document as applications for minor development, changes of use (where the site area is less than 1 hectare) and householder developments.

Comment

18. Whilst the City Corporation supports the need for timely determination of planning applications and uses the mechanism of agreed extensions of time when statutory periods cannot be met, it is concerned that these proposals place too great an emphasis on the speed of decisions, rather than the quality of development. There is a danger that the focus on speed could lead to more applications being refused to avoid triggering Government thresholds. Monitoring of progress against thresholds also requires staff time and resource which can detract from the actual processing of applications. A particular concern for the City would be that the target for non-major development could include a large number of applications for change of use, as many schemes in the City will fall below the 1 hectare threshold. The consultation document does not provide any evidence to suggest that slow processing of non-major planning applications is impacting adversely on development and particularly housing development.
19. In the absence of evidence that there is a significant problem with the processing of non-major planning applications, the City Corporation should indicate to Government that the proposed changes to performance thresholds are unnecessary and no changes should be made to the current thresholds.

Testing competition in the processing of planning applications

20. The Housing and Planning Bill contains proposals for the testing the introduction of competition into the processing of planning applications. The intention is to allow other local planning authorities or other approved providers to process

planning applications, making recommendations to the host local planning authority who would retain decision making powers.

21. The consultation provides more explanation of the Government's thinking behind this proposal, pointing to evidence from other areas of public service where competition has delivered cost savings of up to 20%. The Government also considers planning application processing to be similar to processes in Building Control where the use of approved providers alongside local authority provision has been in place for a number of years.
22. The consultation does not seek comments on the principle of increased competition, but rather views on the detail of how it would work. The Government accepts that the current fee structure for planning applications will need to change and proposes that approved providers would be able to set their own fees, whilst local planning authorities would continue to be limited to cost recovery. There is acceptance that local planning authorities will incur "small" costs in actually determining applications which have been processed by approved providers.
23. It is anticipated that approved providers would be responsible for undertaking all tasks currently performed by the local planning authority in processing planning applications, including checking and validation of applications, undertaking consultation, discussions with the applicant and negotiating s106 agreements. The role of the local planning authority would be limited to making the final decision and it is expected that this would be 1 to 2 weeks after receipt of a report from the approved provider.
24. There is recognition that approved providers will need to liaise with the local planning authority and that the approved provider would need to provide summary details of applications for entry onto the local planning authority's planning register.

Comment

25. The principle of the testing of competition through the use of approved providers is flawed. In particular, the Government do not seem to have understood the quasi-political nature of the process, or the importance of consultation and negotiation in reaching an acceptable development. The comparison with Building Control processes is misleading as Building Control is principally a regulatory process requiring adherence to nationally set standards.
26. Handing responsibility for all application processing to an approved provider raises questions about whether there would be effective pre-application consultation, effective consultation with the local community and Members, and whether approved providers would have the detailed local knowledge and understanding which underpins planning application decisions. Introducing the potential for approved providers to consider planning applications is likely to be a source of confusion for the public in terms of where to go for information and to provide comment. There is also a danger that recommendations could be seen as being unfair and biased and not provide an impartial service.

27. The suggested “week or two” period for local planning authorities to make a determination on a recommendation is insufficient. Local planning authorities will need to be satisfied that recommendations from an approved provider are robust and meet the requirements of the adopted local plan before formal consideration by the authority. Sufficient time also needs to be built in to allow for lead in times for committees to make decisions.
28. The consultation makes no reference to the discharge of planning conditions and so it is unclear whether this would be the responsibility of the local planning authority or the approved provider. Similarly, there is no reference to the appeal process, and particularly whether an approved provider would be responsible for defending a decision made in line with its recommendations at appeal, or whether this would fall to the local planning authority. Greater clarity is needed.
29. Within existing regulations there is already scope for local planning authorities to outsource services and use external providers to process applications, but within the control of the local planning authority. There seems to be no need for the proposed changes within the Housing and Planning Bill.
30. In relation to fee setting, the fees that approved providers could charge should reflect the provisions already in place for local planning authorities, with fees set nationally. If there is a move to localise fee setting by approved providers this should be limited to cost recovery. It would be unfair to place restrictions on the fee setting abilities of local planning authorities whilst allowing approved providers the freedom to set fees, which would include an element of profit. The fee setting mechanism also needs to take into account that local planning authorities will remain the decision making body and provision needs to be made for a proportion of fees to be payable to the local planning authority to cover costs incurred in the scrutiny of recommendations from approved providers and the decision making process itself.
31. Finally, in relation to information requirements, the requirement that the approved provider should provide summary details of applications to the local planning authority is insufficient. To ensure that the planning register is a full and complete register of relevant planning applications, all the information submitted with a planning application and copies of all correspondence will need to be provided to the local planning authority. This information will also be needed to inform the decision making process.

Corporate & Strategic Implications

32. The suggested response is in accordance with the Department of the Built Environment Business Plan, particularly the strategic aim to provide an integrated service to City developers and occupiers from pre-construction to demolition; and to improve external communications and actively engage with City residents, workers and visitors;

Implications

33. If implemented in full, the proposed changes could impact on income generation from planning application fees, whilst there would remain a need to provide sufficient staff resource to manage the decision making process. The resource required to deliver the Local Plan and update it more frequently would increase if the City Corporation wishes to avoid potential designation and loss of planning policy control over residential land use decisions.

Conclusion

34. The Government is progressing significant changes to the planning system through the Housing and Planning Bill, which is currently being considered in the House of Lords. The current technical consultation seeks views on changes to secondary legislation necessary to implement key provisions in the Bill.

35. The proposed changes would have a significant impact on the way that the planning service in the City operates and would be likely to increase pressures on funding, with the potential for the loss of fee income from planning applications. The key proposed changes cover:

- a) Introduction of Planning Permission in Principle – the potential use of planning permission in principle on sites allocated in statutory plans, including the local plan, can be supported. The initial emphasis on residential development should mean the impact on the City would be limited. However, the further extension of this principle to sites identified in a brownfield register or minor planning applications could have significant impacts. The brownfield register would not be subject to the same level of scrutiny as the local plan and it is not clear from the consultation whether the strategic priority given to office development in the City would mean that most of the City would be exempt from a register. In relation to minor applications, the level of information required could again result in proposals being considered for planning permission in principle in areas where the City seeks to resist residential development.
- b) Local Plan Performance – although the City of London has an up to date Local Plan and is unlikely to be caught by the proposed performance measures, the suggested 6 monthly monitoring of local plan progress against the local development scheme seems excessive. It is unclear what criteria will be used to inform the proposed housing delivery test, but any measures should be limited to those within the control of the local planning authority, i.e. the timely granting of planning permission rather than actual completion of units, which is outside of planning authority control.
- c) Enhanced targets for monitoring planning application performance, including for minor applications – the proposed measures will further emphasise the importance of speed in the processing of planning applications as opposed to the quality of the decision. They will require greater attention to be paid to negotiated extensions of time with developers and there appears to be little evidence to support the need for the proposed targets.

- d) Testing competition in the processing of planning applications – this could potentially have a significant impact on City Corporation planning fee income if applications were processed by approved providers. However, there would still be costs for the Corporation in scrutinising external recommendations and making decisions and these additional costs do not appear to have been adequately addressed. The principle of competition appears to be flawed and does not seem to be based on a proper understanding of the way that planning applications are processed, the need for effective consultation and negotiation as applications progress and the need for Member involvement.

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