BPF RESPONSE TO DLUHC'S CONSULTATION ON ACCELERATING THE PLANNING SYSTEM

CONSULTATION RESPONSE

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British Property Federation

1. The British Property Federation (BPF) represents the real estate sector – an industry which contributed more than £116bn to the economy in 2020 and supported more than 2.4 million jobs. We promote the interests of those with a stake in the UK built environment, and our membership comprises a broad range of owners, managers, and developers of real estate as well as those who support them. Their investments help drive the UK's economic success; provide essential infrastructure and create great places where people can live, work, and relax.

2. We welcome the opportunity to respond to this consultation on measures to accelerate the planning system. The BPF are fully supportive of the government's broad aspiration to accelerate planning timescales for commercial development to support wider economic growth and jobs. We first provide a number of general comments on the proposed Accelerated Planning Service in response to question one before addressing the rest of the relevant consultation questions.

Question 1. Do you agree with the proposal for an Accelerated Planning Service?
Yes / No / Don't know

General comments on the proposed Accelerated Planning Service

3. **The focus on speeding up the planning process for commercial development is welcome however there is a disconnect between the aspiration for a ten-week determination period under the proposed accelerated service and what is achieved in practice in the present day:** Our members very much welcome the government's emphasis on improving planning timescales for commercial forms of development and also the consultation paper's specific reference to the need to accelerate the planning process for the commercial property sector to aid wider economic growth.

   However, members also noted that as currently proposed, the new Accelerated Planning Service will not be applicable to certain parts of the commercial property sector such as the delivery of strategic industrial and logistics development (given these schemes are typically subject to EIA). For other parts of commercial property which could benefit from the accelerated service (such as the development of industrial and logistics in inner London), the proposed determination period of ten-weeks feels unrealistic given current average timescales. Recent analysis from our members, Quod, has shown that in London industrial and logistics non-EIA- development is tracking at a mean of 48 weeks from application to decision.

   This demonstrates the scale of the challenge in bringing certain forms of non-EIA commercial development timescales down to the proposed determination period of ten-weeks. We believe a more effective approach to reform would be for the system to be much stricter on a decision within 16 weeks for EIA development and 13 weeks for non-EIA for many more applications rather than striving for a more accelerated service for particular schemes. Getting a decision within 13 weeks for non- EIA and 16 weeks for EIA development for many more development schemes would represent a step-change to

where we are currently. Even getting timescales substantially down from the average of 28 weeks (noted in the consultation) would also represent progress. In many ways, it is also less about arbitrary national targets and more important that local authorities and applicants work together towards a pre-agreed appropriate determination deadline.

4. The need for any new system to focus on quality as well as a timely approval: Some members questioned the extent to which a ten-week period for a planning approval could be achieved in practice given the variables which are key features of our planning consenting system. In particular, the extent to which S106 agreements could be agreed in this time period as well as the realism of hearing back from relevant statutory consultees in the necessary timeframe were cited as particular constraints on a planning approval within ten-weeks. It was also noted that the blunt instrument of a strict ten-week timeframe ran the significant risk of local authorities refusing more schemes to keep to the accelerated deadline.

   Members also noted that practices could emerge which would make in reality any ten-week approval period more like the standard approval period. For example, it was noted that delays in the validation stage of a planning application may become more prevalent before the ten-week period commences. Such an outcome would in practice undermine any notion of a speedier service in overall terms.

5. Expansion and improvement of Planning Performance Agreements (PPAs) could prove a more effective route to accelerate planning decisions for more forms of development: We received feedback that instead of creating a new accelerated planning route for certain forms of commercial development with a decision within ten weeks, a more effective means to speed up the planning system would be to focus on expanding and reforming PPAs. Members suggested that reform could focus on standardising PPAs so there is more of a consistency in terms of fees and service as well as making it compulsory for all authorities to offer one.

   The main advantage of focusing on strengthening the current system of PPAs is that they could be applied across a wider variety of development (including EIA) compared to the new accelerated service proposed in the consultation paper. We received feedback from members that central government policymakers should not be preoccupied with achieving a planning decision within ten weeks rather than the typical 16 or 13. This is to say if we could strive for a system where there would be certainty of a decision within a 16 or 13 week timeframe, facilitated through an enhanced PPA arrangement, then that would be something the development sector would value more greatly rather than a rushed decision within ten weeks.

   It was noted that for an accelerated planning route (through an enhanced PPA arrangement) to work, substantive pre-application advice from LPAs and statutory consultees would be vital in order to flesh out technical issues. Too often under the existing system the pre-application process covers the core principles of development rather than the detailed technical matters with the more technical matters dealt with during the course of determination. For any accelerated planning process to work, greater emphasis will need to be placed on a more comprehensive pre-application process by both the applicant and the relevant local authority. Government could support this by providing guidance to both applicants and local authorities on what constitutes comprehensive pre-application engagement.

6. Members did recognise that there would be challenges in delivering any enhanced PPA service as an alternative route to the proposed accelerated planning service. Upskilling across local authorities would clearly need to be a focus if all local authorities are to be in a position to offer a PPA. Equally, what the repercussion for when the level of service as set out under a PPA is not adhered to would also be a challenge. On the one hand, given an applicant is investing money for an enhanced level of service is seems reasonable to consider refunds as is proposed in the consultation paper for the accelerated planning service for commercial development.

   However, creating a system whereby local authorities are exposed to refunds for underperformance naturally also exposes authorities to financial risk and does not feel in tune with wider policy ambitions to put our local authority planning departments on a stronger footing. It was suggested by members that PPAs can secure resource from Pre-App through to decision which may be one mechanism to build more certainty on resource and timeframes which could guard against this particular tension in the system.

   It is worth noting that within the planning consenting regime, a significant factor which leads to delays is hearing back from relevant statutory consultees. For any accelerated planning service to work in practice – whether the proposals through this consultation paper or an enhanced PPA offering – making sure statutory consultees are included will form an important part of getting any reform right.

   We also received feedback that delays caused by non-statutory consultees are also a key barrier to speeding up the planning process. Increasingly local authority planners are required to delay a decision until they have heard back from an internal department who has no accountability in the process. In certain circumstances, the matter the local planning officer is waiting to hear back on is highly technical meaning a local authority may only have one or two specialists able to offer internal advice. This situation inevitably leads to delays and bottlenecks in the system. The solution to this issue is to empower planning officers (through more training and national guidance) to make their own judgements on certain technical matters when they have the expertise and experience without having to consult the internal council department. An example might be a change of use which demonstrably results in the same/less traffic movements – a planning officer should be given the autonomy to come to the conclusion that the traffic impact is acceptable without requiring a highways specialist to confirm this.

7. Further general comments on the proposals included:

   - The challenges noted in the consultation paper on effectively resourcing any accelerated planning service reinforce the point that the additional planning fees from the fee increase in December 2023 should have been ringfenced for planning departments in legislation. For any accelerated service to work, any associated increased fees must be used for processing the planning application in question.

   - Some members expressed concerns over a 'two tiered' development management service in practice. There could be a danger that schemes that do not qualify for the accelerated service

do not get the necessary local authority time as resource has been diverted to the accelerated service.

- Members fully support government's aspiration for a more accelerated planning system however it was noted that perhaps government time would be better spent making sure the existing planning consenting system is more efficient rather than having to introduce a separate accelerated route. As noted above, if central government policymakers would instead focus on creating an environment whereby 16 weeks for major application was delivered more consistently that might be a more effective outcome.

- It was also noted that whilst the consultation paper discusses the need for accelerated planning timeframes it is less strong on addressing some of the symptoms which explain why our planning system is slow. This is to say that if policymakers focused on improving the complex layering of policy and requirements across multiple facets of our planning system then perhaps planning timescales would improve naturally as the overall system will have become more efficient and proportionate.

Question 2. Do you agree with the initial scope of applications proposed for the Accelerated Planning Service (Non-EIA major commercial development)?
Yes / No / Don't know

8. As noted above, the general preference of BPF members would be for policymakers to instead focus on improving the existing system of PPAs rather than introduce a new bespoke accelerated planning route.

9. However, given government's approach, trialling any new system with certain forms of commercial development is sensible as commercial development is typically less contentious than for example a residential scheme. If lessons can be learnt through this new planning route which could be improved on (if and when it gets expanded to more forms of development), then that would be a welcome approach.

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

Yes /No / Don't Know. If yes, what do you consider would be an appropriate accelerated time limit?

10. As noted in our general comments, members believe perhaps the focus should be on delivering on the 16-week period for EIA development. Analysis undertaken by some of our members of the Industrial Committee demonstrates that for some major industrial and logistics development going back to 2017, local authorities are taking 88 weeks on average to determine applications and this has increased to 115 weeks post-COVID.

11. These timescales reinforce the point that before looking at going quicker than 16 weeks for EIA developments, the focus should instead be on getting closer to this target in the first instance for many more major commercial schemes.

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 / No / Don't Know

12. We received feedback that there should be no reason for applications within the curtilage or area of listed buildings or other designated heritage assets to be excluded from the accelerated planning service.

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

13. As inferred above, we believe that ten weeks is perhaps a bit too ambitious. With the consultation paper noting the current average determination period for major applications is 28 weeks getting closer to 16 weeks for EIA or 13 weeks for non-EIA development for many more schemes would represent a material improvement.

b) encourage pre-application engagement

14. Yes. Effective pre-application could also be delivered through PPAs which would provide more financial resource and certainty to LPAs looking to upskill.

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

15. Yes, however what is more important is the identification and remedying of any issues that would likely cause the statutory consultee to object to the planning application.

16. Under the current system, most statutory consultees notify but not many respond. Instead, perhaps a paid for service where applicants can pay for pre-app advice from statutory consultees could prove very useful.

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

17. Member feedback to this question primarily focused on the challenge that the cost of determining major applications will differ across the country. If a centrally set fee is set too high, then that could prove a disincentive in parts of the country such as the North West where even PPAs are typically not considered worthwhile from a cost perspective.

18. In terms of a general figure, some members suggested a 25% uplift sounds about right.

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
Please give your reasons

19. Local planning authorities need more resources not less and full refunds are only likely to lead to LPAs refusing applications where issues are not resolved to ensure they do not lose income.

20. Refunding the premium part only if the timescale is not met after ten weeks feels the most appropriate. It does not feel constructive to be taking away anything more even if the decision is delayed.

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

21. The role of statutory consultees is fundamental to the operation of an effective and efficient planning system. However for the majority of these government bodies planning is only one small part of their core functions on behalf of government. Giving planning more prominence within statutory consultee bodies would arguably do more to bring about a more effectively functioning planning system than any policy changes proposed through this consultation.

22. The BPF fed in extensively to the government's review of the planning process and statutory consultees earlier this year and we look forward to the findings and any next steps. We are also supportive of the measures within the Levelling Up and Regeneration Act to enable statutory consultees to recover costs and start charging for planning advice. If any new accelerated planning service is going to work in practice, then it will be imperative for all aspects of the planning system to have the resources they need to adhere to the agreed timescales. Hearing back from statutory consultees is regularly cited as a key reason for delay so it will be important that how they interact with an accelerated service is considered in detail.

23. Members suggested one solution would be to have an extended PPA that binds statutory consultees to a minimum of two workshops at the pre-application stage to discuss the issues that culminates in an agreed Statement of Common Ground prior to submission on a number of technical issues (trips rates, run-off rates, standard conditions, etc). The overall PPA fee would need to encompass fees for statutory consultees such that they feel the impact in any refunding of fees or other method of penalisation.

24. Members also fed back on more general frustrations regarding statutory consultees commenting on planning applications. One of the most frustrating scenarios is when an applicant finally receives back a consultee response on a planning application and it is dated three or four weeks previous.

25. Members have suggested there could be simple technology solutions which guard against this situation where the statutory consultee response has been sitting idly in a local authority case officer's inbox. It was suggested during our roundtable that some sort of 'dropbox' system could be introduced whereby as soon as the statutory consultee has offered their advice it is immediately available in the 'dropbox folder'. Both the applicant and the relevant local authority case officer would receive an email notification when a document has been 'dropped into the folder'. Little changes like this would make big differences in terms of the efficiency of the entire planning approval process.

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

a. major infrastructure development

b. major residential development

c. any other development

26. The overall principle of an accelerated planning service for more forms of development is strongly supported. The danger perhaps as any accelerated service is expanded is that if more and more forms of development opt for the accelerated route, then the benefit could be diluted if there are resourcing challenges that cannot be overcome.

Question 10. Do you prefer:
a. the discretionary option (which provides a choice for applicants between an Accelerated Planning Service or a standard planning application route)
b. the mandatory option (which provides a single Accelerated Planning Service for all applications within a given definition)
c. neither
d. don't know

27. Members fed back that any new accelerated service should be discretionary to give applicants greater flexibility. For example, in certain parts of the country where an applicant is dealing with a proactive local authority, it may simply make sense for an applicant to go down the normal planning route given the local authority is one that performs its development management duties effectively.

28. We would reiterate the points raised in our general comments section in terms of the extent to which this could create a two-tiered system for certain forms of commercial whereby developments under the accelerated system are prioritised at the expense of applications following the standard planning route. As noted, if a new planning route is to be introduced, it will be important that it is resourced effectively and thus does not affect the wider planning functions across a local authority in a negative manner.

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?

29. Clear instruction on what the planning statement should cover should be provided. For example, draft heads of terms to speed up S106s.

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?

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 / No / Don't know If not, please specify what you consider the performance thresholds should be.

30. Government initiatives to improve the monitoring of planning performance for speed of decision-making are broadly welcomed. Applicants and communities want timely decisions that are robust so there is perhaps an argument that these new performance measures miss the point. A crucial element also is the proportion which are then subsequently turned over at appeal?

31. It has been suggested by members that planning performance timescales could also be improved by a greater proportion of decisions being taken by delegated powers, particularly when an application is consistent with a local plan. This was recently highlighted by the Competition and Markets Authority's housebuilding market study. We also received feedback that scheme of delegation (i.e. what triggers committee) should be made more consistent across local authorities. In some LPAs, one objection triggers committee but in others it is 20 which prevents more decisions being taken by delegated powers.

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; or
b) both the current criteria (proportion of applications determined within the statutory time limit or an agreed extended time period) and the new criteria (proportion of decisions made within the statutory time limit) with a local planning authority at risk of designation if they do not meet the threshold for either or both criteria
c) neither of the above
d) don't know

32. The BPF is supportive of a statutory time limit in assessing performance however more important are the agreements on timescales put in place locally between an applicant and the local authority. This is to say what is more important to the applicant is that local timescales (for example agreed in an enhanced PPA arrangement) are strictly adhered to rather than more generic national statistics and measures.

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

33. Performance measures and thresholds have a role in monitoring the performance of local planning authorities. However, reforming the various benchmarks across chapter 3 of the consultation paper without also looking at the fundamental reasons for why so many planning applications are being dealt with in an inefficient manner arguably misses the point.

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

34. 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?

35. As inferred above, for government to crack down on the use of extension of time agreements in isolation is to focus on one symptom of our inefficient planning system rather than the fundamental causes.

36. In an inefficient planning system (which in too many cases is the planning and policy landscape our members are operating in), then extension of time agreements can provide a useful tool for both applicants and local authorities to resolve a specific issue. This is particularly the case since the 'free go' has been removed.

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

37. 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?

38. Yes

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?

39. 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?

40. 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)?

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

41. Members broadly welcomed central government's efforts to provide more clarity in this sphere of planning/amending a permission through the introduction of S73B. How to amend a permission has naturally become a highly debated topic following a number of high profile legal cases. Government's efforts to provide applicants with more certainty on the appropriate avenues to follow is to be commended.

42. Recent case law has confirmed that a permission granted under S73 cannot introduce a condition that creates a conflict or is not consistent with the description of development. It had become standard industry practice to keep the level of detail provided in the overall description of development much broader to reduce the risk of future amendments that could conflict with it. We received feedback that government creating a way in which to remedy this issue could in theory lead to more accurate descriptions of development which will in turn improve the understanding of development proposals amongst communities.

43. However, members also fed back that the key issue is the definition of 'substantially different' and how that will be applied through the process. We received feedback that despite the introduction of S73B,

we are still going through a period of legal and policy uncertainty following Hillside and Dennis. As such, it was noted that applicants may still feel the need to keep development proposals broad and use the existing range of flexibilities under S73 as development proposals are further refined.

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

44. Yes

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?

45. Yes

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

46. Yes.

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

47. The fee for S73 and S73B applications should be proportionate to the amount of work necessary on the part of the local authority to consider the proposed variations. We would assume DLUHC are also consulting with local authorities to source evidence on the amount of time and resources it takes to process S73 and S96A applications. This evidence would in turn inform what a proportionate new fee might look like in practice.

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

48. Yes

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

49. We received feedback from industrial and logistics members on specific challenges in this sphere. In many cases, a local authority will specify (at outline permissions stage) a height restriction on a warehousing development of for example 18 metres. Subsequently, the applicant receives interest from an occupier with a requirement of 21 metres meaning the applicant would like to make a change to that particular parcel of the scheme. The way the applicant would have typically tackled this would be through a 'drop in' application.

50. There is therefore a need for policymakers and local authorities to be able to listen to the market in terms of what industrial and logistics occupiers are asking for regarding height parameters. Indeed, recent research from the United Kingdom Warehousing Association and Savills has highlighted the trend towards increased height of warehouse buildings. There therefore needs to be a recognition that the market does change and if an industrial and logistics developer has an outline permission but then receives interest from an occupier thereafter, then change may be inevitable to respond to their operational requirements and bespoke needs.

51. Other member feedback focused on examples where the relevant local authority has requested a change to the detailed planning consent. For example, in one scenario the local authority has suggested the school is no longer needed and some of the housing. The developer has therefore gone back into the local authority to respond to these requests and change the buildings/layouts under S73/S96A. In this scenario, the flexibility under the existing system has been of great value to enable the developer to respond to what the local authority is asking for. Members therefore believe that such flexibility for applicants and crucially the local authority to make changes should not be lost under the new system.

52. The implications of the recent case law in terms of potential strain on local authority resources needs to be considered carefully. Members fed back that there is a real risk that procedural complexity and uncertainty/ambiguity will put a further additional burden on local planning authorities.

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

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?

53. Following the Dennis case, member feedback in response to these group of questions focused on how the issue of severability is considered which is far from straight forward. It was noted there should be a focus on building in flexibility from the outset. Returning to the points made above regarding the description of development, submitting a more detailed description of development is not going to help with flexibility. Having a permission with some guidance that speaks about what severability is might help overcome some of the challenges flowing from the Hillside and Dennis decisions. Having a willingness to include flexibility within the original permission could limit the need for applicants to reach for later amendments, 'drop ins' or variations down the line.