Department for Communities and Local Government

# Technical consultation on planning

## Consultation response form

We are seeking your views to the following questions on the proposals to streamline the planning system.

### How to respond to this consultation

Please email your response to the questions in this consultation by **26 September 2014** to planning.consultation@communities.gsi.gov.uk.

Alternatively you can write to:

Planning Consultation Team
Department for Communities and Local Government
1/H3 Eland House
Bressenden Place
London SW1E 5DU

When you reply please confirm whether you are replying as an individual or submitting an official response on behalf of an organisation and include:

- your name,
- your position (if applicable),
- the name of organisation (if applicable),
- an address (including post-code),
- an email address, and
- a contact telephone number

## (i) Your details

| | |
|---|---|
| **Name:** | **Helen Gregory** |
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## (ii) Are the views expressed on this consultation an official response from an organisation you represent or your own personal views?

Organisational response √ subject to approval and endorsement at 13 November Economic Development & Culture Committee

Personal views ☐

## (iii) Please tick the one box that best describes you or your organisation

**Public Authority:**

District/Borough Council ☐

London Borough Council ☐

Unitary Council √

County Council ☐

National Park/Broads Authority ☐

Parish/Town Council ☐

Other public sector (please specify) ☐

**Voluntary/Community:**

Designated neighbourhood forum ☐

Community organisation ☐

Voluntary/charitable sector ☐

Residents Association ☐

Other (please specify)

**Retail (A1) and Financial and Professional Services (A2) Business:**

Bank/Building society ☐

Estate agent ☐

Professional service ☐

Betting shop ☐

Pay day loan shop ☐

Existing A1 retail/shop ☐

Other A2 (please specify)

**Other:**

Land Owner ☐

Developer/House builder ☐

Developer association ☐

Professional institute/professional e.g. planner, consultant ☐

Professional Trade Association ☐

Local Enterprise Partnership ☐

Other (if none of the options in the lists above apply to you, please specify here)

# Contents

# 1. Neighbourhood planning

Please refer to the relevant parts of the consultation document for narrative relating to each question.

**Would you like to respond to the consultation on neighbourhood planning?**

Yes √ No ☐

**Time limit for taking decisions on the designation of a neighbourhood area**

**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.

**Comments**

The setting of a 'prescribed date' for all neighbourhood area applications is not supported.

A set time period for deciding such applications from forums or multiple parishes could be problematic, raise a community's expectations and could undermine good relations between communities and the Local Plan Authority (LPA). Whilst an indicative time period (if not the removal of the need to apply) could be set for single parish applications where the parish falls entirely within one local planning authority (eg does not fall in part within a national park and other LPA), in all other respects alternative approaches are likely to be more beneficial.

The following bullets set out the key objections:

- The legislation requires a neighbourhood area be designated (in whole or part; as one or more areas) where a valid application has been made. This assumes a neighbourhood area can be designated if only 21 unelected people seek designation irrespective of the views of the rest of the community within the area. This should be removed if a 'prescribed date' is to be introduced to enable the LPA ability to refuse a neighbourhood area application which has received significant objection and is not supported by the general community OR the minimum 21 forum members should be increased so that community support is evident (eg a minimum of a quarter/third or half of the specified 'people' within the proposed neighbourhood area). Otherwise the introduction of a 'prescribed date' may either give rise to a failure in meeting the deadline in order to resolve disputes and reach some form of community consensus or the designation of a disputed neighbourhood area. In respect of the latter this is unlikely to be in the community's interest or make the neighbourhood planning process more effective. It may lead to competing neighbourhood forum applications. These may be refused leading to delay in the neighbourhood planning process or the

designation of a forum that does not have the support of its community and thus a lack of support for any subsequent plan.

- Whilst in many authorities the Executive may have delegated decisions on these designations to others in the authority this is not true for all LPA's who need to designation applications to be considered by Committee. Recent experience at BHCC has indicated 6 months to be the earliest a designation is likely to be made.
- It should be acknowledged neighbourhood planning is not a 'quick fix' solution to planning issues within an area. A more productive approach to 'quickening up' the process would be to provide guidance which indicates realistic timeframes for each stage. An onus should be placed on forums to obtain wide spread support from the community within the whole proposed area before submitting an application because objections to an application often arise from people who were not aware of the proposals and therefore do not feel their views are represented within the proposed area.
- The cost of resourcing neighbourhood planning needs to be better acknowledged by central government. The Officer time requirements in respect of supporting and assessing the application process and providing expertise and advice to neighbourhood planning groups has been underestimated. If the government wishes to speed up the neighbourhood planning system and place more onus on the local planning authority to achieve ambitious time limits then it needs to ensure continued financial support is available to local government.

Other key issues of relevance:

- There may not be sufficient detail on a forum to determine whether it is a qualifying body. If a time period is introduced then it needs to be clear it does not start from the date of submission but that it starts from the date the application is validated or first publicised and that the submitting body must submit all necessary information alongside a neighbourhood area application to demonstrate it is a qualifying body.
- The eligibility of the submitting body may come into question during consultation. In view of the legislation which requires a neighbourhood area be designated following the submission of an application the setting of a 'prescribed date' could be fraught with legal issues.
- If the consultation period is retained then there needs to be recognition the 'prescribed date' does not have to be met if the application is subject to significant objection. Indeed it could be in the community's interest to delay determination in order to resolve a dispute or explore issues raised in consultation responses. If a time limit is introduced this may hinder effective engagement and could undermine the objectives of neighbourhood planning.
- This consultation does not confirm what penalties will be incurred if the LPA fails to meet the prescribed date. In view that there is not an appeals process, to which proposals could be passed when the prescribed date is missed, the 'penalties' need to be clear. It is not considered the penalty should be financial (as indicated in paragraph 1.16) or 'designation as submitted' (as indicated in paragraph 1.18). Indeed non-determination within a prescribed timeframe is more likely to arise when the area is met with a lack of community support, it would therefore be perverse for such areas to automatically be designated. A reduction in funding for LPA that fail to meet the deadline is likely to favour the

LPA's that are largely parished because such applications tend to be less contentious and quicker to determine and penalise the LPA's who have to undertake additional work to resolve disputes and amend boundaries.

- Placing additional sanctions upon LPA's potentially places an undue onus on a LPA to resolve community disputes and may increase forums 'blaming' the LPA rather than actively seeking community engagement and resolution. A forum must recognise the responsibility for gaining support for its proposals rests with them.

**Question 1.2:** If a prescribed date is supported do you agree that this should apply only where:

i) the boundaries of the neighbourhood area applied for coincide with those of an existing parish or electoral ward; and

ii) there is no existing designation or outstanding application for designation, for all or part of the area for which a new designation is sought?

**Comments**

The introduction of a prescribed date is not supported.

However should one be introduced it is felt it should only apply to a neighbourhood area that coincides with the boundaries of a single parish within just one LPA area and submitted by the Parish Council for the area. If a prescribed date is to be introduced for electoral wards then the second bullet is supported subject to it being made clear that 'outstanding application' also includes the submission of any subsequent application prior to designation.

An additional exception should be included which states "Forum membership is demonstrated to be genuine and is greater than the number of objectors" (for example names and addresses of all forum members could be required). The key reasons for the lack of support for the introduction of a prescribed date for electoral wards are similar to those detailed in 1.1 above and:

- A parish is covered by a 'qualifying body' whilst electoral wards are not. In general Parishes are rural and cover recognisable village communities whilst electoral Wards tend to be urban where the boundaries can be less recognisable and can cut through 'neighbourhoods'. Parishes and electoral wards for the purposes of neighbourhood planning should not therefore be considered the same. Electoral wards do not normally define local communities but are drawn based on achieving an even population split. The designation of an electoral Ward, within an urban location, as a neighbourhood area is much more likely to be subject to significant objection in respect of what forms a 'neighbourhood' area boundary.

**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?

**Comments**

If a prescribed date is to be introduced it is considered it should be longer than 10 weeks. Indeed paragraph 1.12 in the consultation document indicates the average timescale for designation is 4-5 months (126 days/18 weeks) whilst some have taken over a year to determine (400 days/57 weeks) at the same time it highlights that many authorities have delegated such decisions. It is not clear what the average is for authorities with delegated powers versus those without.

The time period depends on the type of applications it is to be applied to. As a minimum the time period should be 12 weeks to enable the consultation period to run for longer that the minimum 6 weeks during national holiday periods and time to analyse representations and where necessary help to resolve disputes. However in view of the average time period and the benefits of ensuring a community supports the proposal 20 weeks would be more appropriate and manage 'expectations'.

A prescribed date approach needs to take into account appropriate timelines for committee decisions where a LPA has chosen not to designate under delegated decision making powers.

As raised in response to 1.1, it must be clear when the time period is to start. If it is to apply to electoral wards it is suggested the start date should be when the application is validated or first publicised. In addition to this, outside of parishes, the submitting body must be required to submit all necessary information alongside a neighbourhood area application to demonstrate it is a qualifying body (alternatively amend guidance/legislation to require that an area and forum application have to be submitted together). It is also suggested an additional requirement should be placed on the submitting body to ensure they have consulted the community. (For example an application should only be submitted after the submitting body has leafleted everyone within the area about the proposed application and where support and forum membership combined outnumber any objection received).

Given that a deadline is more likely to be missed where an application proves to be contentious the potential penalty indicated in paragraph 1.16 in the consultation document, eg a reduction in funding to the LPA, appears perverse unless the legislation is amended as indicated in the response to 1.1 above and/or caveats are included (eg amended so that an can just be refused or forum membership a proportion of those in the area). A LPA should not be penalised for delaying a designation in order to find the most appropriate solution when substantial objections are received.

Brighton & Hove City Council object to the further measures indicated in paragraph 1.18 in the consultation document (eg automatic designation upon non determination within deadline) if this is introduced without an amendment to the legislation to remove the requirement to designate a neighbourhood area (in full or

part, as one or more areas) once an application has been submitted. This could result in overlapping and duplicate areas being 'unlawfully' designated and a forum of 21 members obtaining area designation even when the wider community does not support the proposal (in view that most electoral wards in Brighton & Hove have around 10,000 residents this appears to conflict with the principles of neighbourhood planning). It could perversely de-incentivise small forums from consulting the wider community prior to submitting area applications in the knowledge that something has to be designated even if the wider community object. This could result in a forum consisting of 21 members submitting an area application without any community engagement.

**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?

**Comments**

- The current requirement for a minimum of 6 weeks consultation is considered reasonable and consistent with other development plan type consultations. It should not be shortened or amended. It is important flexibility is retained to ensure sufficient time is provided to undertake proper consultation so that:
    - The consultation time period can be extended should the application be submitted during a national holiday period
    - If a time period for determination is to be introduced sufficient time must be allowed to enable the LPA to analyse representations should it be subject to significant objection
- If the intention is to speed up the process and parishes are nationally considered to form appropriate neighbourhood areas then, in view that parish councils are the qualifying body and do not need to be formally designated, the need to formally apply could be removed for single parish / parish boundary proposals. The application could be replaced by a notification letter to the LPA stating the Parish Council is undertaking neighbourhood planning and that the Parish boundary forms the neighbourhood area. Both the LPA and Parish Council could then be required to publicise the neighbourhood area on their websites.
- If the intention is to speed up the process and electoral wards are nationally considered to form appropriate neighbourhood areas then the guidance should make this clearer, however:
    - Electoral Wards should retain a minimum consultation period because they tend to be less widely recognised areas and require the formation of a new qualifying 'neighbourhood forum' which may not give rise to support and can be subject to significant objection. The community may wish to progress two or more neighbourhood areas within one electoral ward especially in Brighton and Hove where the population within a ward is approximately 10,000.

**Further measures**

**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.

**Comments**

No comment

**Pre-submission consultation**

**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?

**Comments**

No, Brighton & Hove City Council does not support the removal of the pre-submission consultation. In view that a neighbourhood plan performs the same function of land allocation as a local plan, it should be on a similar footing regarding consultation stages to a local plan (notwithstanding the referendum). Unless there is an explicit requirement upon the community to undertake a consultation on the draft Neighbourhood Plan or Order with a requirement to send a copy to the LPA it is likely to hinder the quality of the submitted plan or Order and increase challenges relating to strategic environmental assessment and/or Habitat Regulations.

As raised in the consultation the qualifying body is expected to undertake consultation and submit a consultation statement it is not therefore felt this formal pre-submission consultation is unduly onerous. It helps to highlight the importance of consultation. Many neighbourhood plans have been significantly changed between the pre-submission stage and submission stage in order to include community views and to resolve conflicts with strategic policies. It helps to make a more robust neighbourhood plan going forward to examination. If this stage is removed it is likely to reduce the support for the submitted plan and increase objections relating to conflicts with strategic policies.

As a minimum a Forum should have 21 members from within the area it therefore has good capacity to undertake the pre-submission consultation (all members likely to belong to a number of local networks, greater capacity than a LPA which may have one officer working on neighbourhood planning)

The pre-submission stage is key in ensuring EU obligations are being met. If they

are not being met then it enables this to be resolved prior to submission eg screening invited and/or acts as a process to show options considered if full SEA needed.

The matters and basic conditions that an independent can considered are limited so unless the matters for the examiner are changed they could have significant representations at submission raising relevant matters affecting the outcome of a subsequent referendum that fall outside the remit of the examiner.

**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?

**Comments**

Does not need to be the LPA but recognise it reduces/removes the risk of challenge to a PC/forum that may overlook consulting for example a statutory consultee. If there is to be one regulated consultation period on a neighbourhood plan and the LPA is take the lead there must be an explicit requirement on the qualifying body to provide the contact details of all respondents to their consultation and for raising awareness of the consultation and invitation to submit representations.

#### Consulting landowners

**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?

**Comments**

Do not agree the regulations should require those preparing a neighbourhood plan proposal to consult the owners of sites they consider may be affected. This opens the 'qualifying body' up to legal challenge. Some owners do not have clear contact details or may not engage with a neighbourhood plan with proposals they disagree with. This will enable them to challenge the plan on the basis they were not consulted eg an unreasonable onus would be on the qualifying body to 'demonstrate' the owner 'received' a consultation letter.

Whilst guidance should instruct that every effort should be made to consult all owners of sites that may be affected especially sites to be designated this should not be requirement in legislation. Indeed anyone, both freeholders and leaseholders, within the area could be affected by the neighbourhood plan. If this becomes a

requirement then land registry should be required to provide the necessary information free of charge.

A requirement could be that the qualifying body must consider all proposals from landowners to develop their land and provide a rationale for any exclusions.

**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.

**Comments**

No comment – except to note the comment above that if this becomes a requirement then there should be a requirement placed upon land registry to provide the necessary information free of charge.

**Introducing an additional basic condition to test the extent of consultation**

**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?

**Comments**

Support the introduction of the proposed new statutory requirement which should also include a requirement to take responses into account when preparing the final plan, especially if the pre-submission consultation is to be removed. This could be included within the consultation statement.

**Strategic Environmental Assessment**

**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?

**Comments**

Partially agree.

Agree with the proposal that it should be a statutory requirement to provide either a statement of reasons (determination report) or an Environmental Report. The need to consider whether the SEA Directive applies to Neighbourhood Plans is not clear or explicit in the current Neighbourhood Planning Regulations. Having the statutory requirement within the Regulations to either submit a screening report which states why an SEA is not required, or submit an SEA at stage of submission to the LPA would clearly set out this requirement

However, by only requiring this at submission stage may result in a screening or SEA that is carried out once the plan has already been produced and therefore does not inform the plan's development. See also, response to question 1.2 below.

Do not agree with the third potential scenario: "to provide an explanation of why the plan is not subject to the requirements of the Strategic Environmental Assessment Directive" for the reasons detailed below.

The Environmental Assessment of Plans and Programmes Regulations 2004 Regulation 2 states that a plan or programme is subject to the provisions of the SEA Directive if (a) it is subject to preparation or adoption by an authority at local level, and (c) it is required by legislative, regulatory or administrative provisions.

Neighbourhood Plans meet the requirement of Regulation 2 (a) as they are adopted by an authority at local level. With regards to Regulation 2 (c), reference to Paragraphs 24 to 32 of the Bruxelles Judgement 22.03.2012 for case C-567/10 should be made. This judgement indicates that the wording "required by" should be interpreted as "regulated by" meaning that plans which are not compulsory fall under the jurisdiction of the Directive. This includes Neighbourhood Plans which are not compulsory, but are regulated by legislative and regulatory provisions.

In accordance with this judgement and interpretation, Neighbourhood Plans will always be subject to the requirements of the SEA Directive and would therefore always require a screening determination in accordance with Regulation 9 of the Environmental Assessment of Plans and Programmes Regulations 2004. There would be no occasions where the suggested scenario of "*to provide an explanation of why the plan is not subject to the requirements of the Strategic Environmental Assessment Directive*" would apply.

**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?

**Comments**

Clear guidance/legislation as to when a screening (determination) should be carried out is needed. Also, guidance which indicates that a screening may need to be carried out at various stages is also needed (e.g. in the case where an initial screening indicated an SEA was not required, but major changes to the objectives or proposals put forward in a plan took place which increased the likelihood of significant environmental effects).

Clear guidance as to when an SEA should be carried out is needed and would help to clarify that an SEA should be carried out alongside and inform the plan preparation. The current requirement under Regulation 15 (2) (d) of the Neighbourhood Planning Regulations for a Neighbourhood Forum to submit a statement which explains how they have met the basic conditions (e.g. it is compatible with EU obligations including the SEA Directive) at submission stage is too late and could result in an SEA being carried out after the plan has been produced. The requirement to carry out an SEA, if required, should be earlier in the regulations e.g. at pre-submission stage.

Further guidance as to the types of scenarios whereby Neighbourhood Plans are being subject to Judicial Review on the grounds of non-compliance with the SEA Directive would be helpful.

**Further measures**

**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.

**Comments**

Brighton & Hove City Council can see there is merit in exploring amendments in respect of parishes. In view that Parish Councils are the only qualifying bodies within parishes then the amendments could recognise not only Parish Councils as a 'qualifying body' but also the Parish boundary as a 'qualifying neighbourhood area'. Thus removing the need for a Parish Council to apply to have its Parish boundary designated a neighbourhood area. However it is not considered the same recognition should be given to electoral wards because they are not covered by a

‘qualifying body’.

**Question 1.14:** Are there any further comments that you wish to make in response to this section?

Yes ☐ No √

**Comments**

# 2. Reducing planning regulations to support housing, high streets and growth

Please refer to the relevant parts of the consultation document for narrative relating to each question.

**Would you like to respond to the consultation on reducing planning regulations to support housing, high streets and growth?**

Yes √ No ☐

**Increasing Housing Supply**

**Question 2.1:** Do you agree that there should be permitted development rights for:

(i) light industrial (B1(c)) buildings and

Yes ☐ No √

(ii) storage and distribution (B8) buildings to change to residential (C3) use?

Yes ☐ No √

**Comments**

There are serious concerns about the further erosion of the council's ability to maintain a supply of needed employment land; the detrimental impact on established business/ industrial parks through piecemeal change of use and the quality and standard of living accommodation likely to be created.

Through a plan-led, managed approach to loss of such employment sites, those that are poorly located, of poor quality and clearly redundant for modern employment use are released to alternative uses with the majority redeveloped for residential use.

Monitoring figures for the period 2000/01 to 2011/2012 show an average annual loss of B1c, B2 and B8 of c. 4,200 sqm. Whilst the majority went to residential there were also conversions to other employment uses (health, education for example).

However, the city does not have a large stock of older industrial sites or premises. Indeed recent evidence points (Employment Land Study Review 2012) to a particularly tight industrial market with a market perception that the there is limited spare capacity. Given the demand for industrial space in the city, there is an increasing pressure on the remaining space to accommodate the City's economic activity. In light of the positive, modest forecast requirement and market demand for

new industrial floorspace the approach in the Submission City Plan is to safeguard key industrial estates and premises. Removing the LPA's ability to maintain this supply of industrial space is not considered to be sustainable and would risk harming activities which form an important part of the city's functioning economy. This would be contrary to aspirations for the Greater Brighton City Region where a stated priority is to create attractive employment space for businesses to grow and thrive.

There would be a loss of affordable workspace which is important to support spin-off, start up and smaller businesses as well as businesses that support the city's service-based economy. Furthermore, some of the identified growth sectors the City is seeking to expand and attract (eg environmental technologies) through City Deal/ City Region programmes and strategies will require industrial premises.

This additional permitted development right would remove any incentive for landowners to invest and retain light industrial/ storage and warehousing premises in an authority where the difference in land values for residential use in Brighton & Hove against those for industrial/ storage uses is so significant.

The unplanned introduction of residential uses into industrial estates is likely to compromise the operation of these industrial areas and hinder the ability of businesses to operate successfully/ expand. Extending permitted development rights could for example hinder the operation and development of waste management facilities. Many modern waste management facilities are light industrial in nature and can be appropriately located close to B1 uses, whilst retaining a 'sui generis' classification. However they may not be suitable for locations proximate to residential dwellings. Allowing more residential developments in areas previously in light industrial use may reduce the number of appropriate sites for the new waste management development that is required to increase rates of recycling and recovery of waste, as well as potentially causing problems for existing facilities through the closer proximity to residential properties – a land use more sensitive to impacts such as noise, odour, dust etc..

It is not clear that this permitted development will achieve the aim set out in paragraph 2.28 of the consultation document: 'to make the best use of existing underused light industrial, storage and distribution buildings to create much needed new homes.' Whilst the city has seen historic factory buildings/ mews successfully converted to mixed use development (eg Maynards sweet factory; Argus Lofts etc) it is difficult to see how the largely low density/ post 1960s purpose built sheds can be as easily converted to residential use or represent the most efficient use of scarce brownfield sites and some of these sites would be in locations not particularly suited to residential use. It is not considered that the prior approval process would adequately ensure that a high standard of residential amenity for new residents is created and the associated amenities and infrastructure are sufficiently addressed.

There is also a concern that prior approval process will be used as a stepping stone for the redevelopment of employment sites which by-pass important policy consideration (e.g. affordable housing and the provision of open space).

**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?

(i) limit on floor space Yes √ No ☐

(ii) apply in Article 1(5) land Yes ☐ No √

(iii) other prior approval issues Yes √ No ☐

**Comments**

Regarding part (i) whilst a floor space threshold could be a seen as a way of managing the loss of employment floorspace, small industrial units are needed to support small and medium sized enterprises and start up businesses.

Regarding part (ii) of this question, such land requires careful management to ensure that inherent qualities are protected and enhanced.

Regarding part (iii) of this question – yes the impact of a proposed residential use on existing and proposed neighbouring employment uses should be considered, including sui generis uses which provide employment. Further, consideration must also be given to residential amenity and local infrastructure requirements if these are large sites. However additional prior approval considerations call into question the appropriateness of dealing with change of use applications through a prior approval process.

Neighbour notification process also seen as essential.

**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?

Yes ☐ No √

**Comments**

Where there is no longer demand for such uses, redevelopment of sites/ premises to residential can be appropriate in certain circumstances. But given the nature of premises and the location of these types of uses, a full planning application approach is considered most appropriate otherwise it is considered that an unmanaged approach could undermine the vitality and viability of shopping centres.

With regard to change of use of casinos/ night clubs/ amusement arcades. These tend to be found in clusters of night time economic activities, which are part of the vitality and viability of seaside towns/ cities. This role could be undermined through the unplanned introduction of residential uses where there are clusters of casinos and nightclubs (e.g. West Street, Brighton, the seafront).

Unclear why launderettes are included in this permitted development right. They provide essential services to some heavily flatted areas/more deprived areas and can act as community hubs for some areas. Change of use to residential could also undermine the viability of the shopping frontage where laundrettes typically found.

**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

Yes √ No ☐

(ii) a prior approval in respect of design and external appearance?

Yes √ No ☐

**Comments**

Yes a size threshold should be included. Given the size and nature of the majority of amusement arcades/centres, casinos and nightclubs, prior approval in respect of design and external appearance would be essential. Along with the need to consider the impact of introducing noise sensitive uses on established neighbouring businesses where these are clustered. The prior approval criteria should take into account the impact of the proposal on the sustainability of the retail centre. However with the additions of these considerations it is difficult to see the benefits of a prior approval approach over a full planning application.

**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)?

Yes ☐ No √

**Comments**

Disagree. The council has serious concerns with the government's proposed intention of making the current temporary permitted development rights permanent and the lack of rationale for removing the current exemptions. There is insufficient evidence provided by the government through this consultation on the impacts of the current temporary permitted development rights.

Recent analysis from the RICS (UK Commercial Market Survey Q2 2104) shows that the amount of commercial space across the UK has declined at its fastest rate in 16 years through the temporary permitted development right particularly in the south east. The potential longer term impact on city/town centres needs close monitoring before this permitted development right is made permanent and this information provided as part of a meaningful consultation exercise.

Monitoring in Brighton & Hove has shown that between 1 June 2013 and 31 March 2014 there were 61 prior approval applications, if all those approved were implemented it would lead to a loss of nearly 14,600 sq m of office space. This is four times the annual average rate of office losses in recent times.

The council is concerned with the long term impact of the unmanaged loss of offices. Evidence clearly demonstrates that city centres such as Brighton are critical to private sector job growth. There is therefore a real need to ensure that office space is genuinely redundant, so that the employment role of cities is not compromised.

These permitted development rights undermine the effectiveness of local plan policies which can not be taken into account in prior approval applications; they remove the ability to negotiate s106 agreements to mitigate the impact of a scheme. Affordable housing and other needs generated by such proposals need to be appropriately considered – schools, health needs etc are not being adequately addressed. Furthermore the prior approval process does not allow for the appropriate consideration of amenity issues and the quality of accommodation created.

It is likely that members of the community will be increasingly frustrated with these changes as residents will have no say.

**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?

Yes √ No ☐

**Comments**

These proposed changes would lead to approach that is neither a plan led approach nor a light touch prior approval process.

The council has serious concerns about how the 'most strategically important' be adequately defined/ assessed within permitted development rights to provide

sufficient clarity and consistency at a local level. The cumulative loss of small local office accommodation serving local needs/ start up businesses may be a strategic issue for many local authorities as much as protecting headquarter offices on established business parks/ town centres.

To be meaningful and consistent, local planning authorities need to be allowed to assess loss of employment space against strategies for employment land/ economic growth set out in their adopted Local Plan/ economic strategies. This would allow for those office sites/ office areas identified and safeguarded through Local Plans because they have been assessed as suitable and needed to meet the needs of modern employment to be retained.

The well-established approach of an office being vacant for a certain period of time, submitted evidence of an appropriate marketing campaign and lack of reasonable offers would appear to be a consistent and appropriate approach in the consideration of economic impact.

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

Yes ☐ No √

**Comments**

Disagree, the amenity impacts of larger extensions allowed are not fully considered under prior approval. Amenity is only currently considered if neighbour objections are not received within the appropriate time period. This does not safeguard the amenity of future residents of adjoining properties, or those of existing residents if they chose not to comment or do not have the opportunity to comment, as there is no objective assessment by the LPA.

**Supporting a mixed and vibrant high street**

**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?

Yes √ with caveats No ☐

**Comments**

Whilst there are some benefits of a broadened use class there are concerns with the potential for clustering of one particular use which can undermine the vitality of shopping areas. For example in the case of Brighton & Hove, with a large student and private rental population, shopping frontages (such as Lewes Road District Centre and London Road Town Centre) can become dominated by estate agents rather than a range of services. Current frontage policies in adopted plans ensure that one particular use does not dominate.

Over-concentration of certain shop types makes high streets less appealing. In the case of other current A2 uses such as banks and building societies, we welcome their inclusion in the A1 use class as an essential service for the high street. Consider that the government should ensure that it is stipulated that 'a display window is maintained' for all that fall under A1 use class to ensure consistency on the high street.

**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 √ No ☐

**Comments**

Welcome this proposal. The city council was increasingly concerned with the lack of powers available to act on community concerns such as the clustering of high streets with payday lenders or betting shops.

Requiring change of use applications is considered appropriate particularly as these types of shops can open up in succession to one another and can be seen to exploit lower income areas. Further, over-concentration of certain shop types makes high streets less appealing. The NPPF should be amended to make clear that local authorities can control the clustering of betting offices/ pay day loan shops in local plans where this is justified.

Localism should be about giving local authorities greater influence in shaping local high streets on behalf of their residents. This proposal would allow for the proper consideration of an application for a change of use instead of the unsatisfactory situation at present where local views very often cannot be taken into account.

Keeping betting shops/ pay day loan shops in their own use class would mean that local authorities can more easily keep check on the number of betting shops in their shopping centres.

**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?

Yes√ No ☐

**Comments**

Any definition would need to be broad enough to ensure a wide range of potential pay day loans, pay day lending activities are caught but not so loose that it captures a much wider range of financial services activities that are proposed to be included in the proposed broadened A1use class.

The government should consider whether the definition of financial services within the broadened A1 use class needs to be more carefully defined. Such a definition needs to address the potential difficulties with businesses who might provide pay day loans as a secondary or ancillary activity which may not be captured.

Suggest:

*Business that loans money, typically high cost short term credit, to visiting members of the public solely or alongside a range of products or services, such as pawn broking, cheque cashing, money transfers, foreign exchange and/or other financial services or a combination of these*.

**Question 2.11:** Do you agree that there should be permitted development rights for:

(i) A1 and A2 premises and

Yes ☐ No √

(ii) laundrettes, amusement arcades/centres, casinos and nightclubs to change use to restaurants and cafés (A3)?

Yes ☐ No √

**Comments**

There needs to be an adequate opportunity for local planning authorities to ensure that shopping frontages particularly primary frontages of town centres have a range of shopping uses and that these are not dominated by A3 uses.

It would also be useful if the use of Coffee Shops were clarified, should they be considered to be A1 or A3 in use class? There are differences in interpretation by particular businesses and across different local authorities – this should be addressed.

These proposed permitted development rights would be subject to a prior approval process including limiting them to premises are less than 150sqm; neighbour notification (although consideration of impact should not be limited to whether

neighbours object) and whether loss would have an adverse impact on the shopping centre.

However this is not considered to be light touch approach and the prior approval fee does not cover the work needed to consider such a prior approvals.

**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)?

Yes ☐ No √ in part.

**Comments**

Disagree with the need to specifically include laundrettes in these permitted development rights, as they are largely small scale units providing a valuable local service.

Would support the proposal regarding change of use of amusement arcades/ centres and nightclubs to D2 particularly in town centres. Prior approval will be important to ensure amenity, car parking aspects etc are taken into account where these may be located close to residential properties and congested areas.

**Supporting retail facilities**

**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?

Yes √ No

**Comments**

Approach seems sensible in supporting the development of click and collect services however concern is raised over the location of some of these ancillary buildings and the lack of appropriate conditions restricting vehicular movements and deliveries creating noise in certain residential areas.

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

Yes √ No ☐

**Comments**

The proposals for allowing existing loading bays to be increased by no more than 20% seems a sensible suggestion in certain circumstances i.e. where multiple supermarket retailers have moved towards smaller format stores on the high street, rather than in out of town locations. These smaller format stores do not always require planning permission so do not have associated infrastructure for associated loading bays. Consequently lorries delivering goods do not always have adequate space for unloading and sometimes the unloading spaces they choose are not always in safe locations for pedestrians, cyclists and other road users. Such a proposal from the government may remedy some situations.

However there needs to be further consideration as to the type and location of new loading bays which would also be allowed through these permitted development rights and whether there would be sufficient safeguards to ensure they are sited in appropriate locations with regard to pedestrians, cyclists and other road users.

**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?

Yes √ No ☐

**Comments**

Agree, but no more than 1,000 sqm in size due to potential impacts if out of centre – which is the location of larger floorplate stores in Brighton &Hove. Town centre stores should not require a threshold and should be supported.

**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?

Yes No √

**Comments**

**Comments on introductory narrative**

The Government consultation includes an introductory narrative plus the specific question on maximum parking standards. There are points raised in the narrative which the City Council, in its role as Local Highway Authority wishes to comment on.

The narrative states that the Government encourages local authorities to improve the quality of parking in town centres and where it is necessary to ensure the vitality, the quantity too. The Council agrees that the quality of parking facilities is essential

to ensure the users experience is positive and safe. It has recently made improvements to the quality of provision of four public car parks within the city centre to the approximate value of £4 million. However, the council's approved City Plan Part One, submitted for Examination in Public, includes Policy CP9 on Sustainable Transport which states that there will be no enlargement of public parking provision in central Brighton. This policy reflects the impact and implication of high levels of car use on the economy, in terms of congestion, and the city centre environment. The council therefore intends to manage its existing public parking through other mechanisms, such as charging. The overall approach to parking management in its widest sense will have an effect on the city's vitality and based on the 2014 Centre for Cities 'Cities Outlook' publication, Brighton & Hove has matched London and Edinburgh in leading the UK out of the economic recession. The council's approach to parking and transport is therefore making a positive contribution to such a result.

The narrative continues to state that the Government wants to understand whether local authorities are stopping builders from providing sufficient parking space to meet demand. Within Brighton & Hove, developers are not prevented from putting forward the level of parking they require, but such provision is often limited by site or ground constraints. Current development standards do include maximum levels to ensure parking does not impact negatively on the city's particular natural and built environments, or road system. Many developers, especially in central areas, choose to achieve higher densities and greater provision of amenity space rather than providing on-site car parking. In areas that benefit from good access to public transport, which the city excels at providing, and complementary on-street parking controls, this would not be considered to warrant a refusal of planning permission on transport grounds.

A final point made within the narrative, is that the Government wishes to ensure that local authorities in their Local Plans have reviewed their parking policies and brought them up to date. The council agrees that this is an important element of developing LDFs and its approved City Plan Part 1 Submission includes a clear commitment within Policy CP9 to update the Council's parking standards and provide new guidance on parking; and this work is currently underway.

**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?**

Brighton & Hove City Council, in its role as Local Highway Authority does not consider that parking policy should be amended to restrict Local Authority powers to set maximum parking standards. The Highway Authority is of the view that Local Authorities are best placed to determine what the appropriate level of parking is for their locality. This reflects the Government position as detailed in the letter by the Communities & Local Government Chief Planner to Local Planning Authorities dated 14/01/2011. This letter followed the ministerial announcement that outlined the Government's position on parking policy and changed the wording in PPG13 to remove the central requirement to express maximum parking standards. The Highway Authority recognises that PPG13 has been revoked but are of the view that Government policy in relation to parking in new developments has not changed

since 2011, as is reflected by both the National Planning Policy Framework and Planning Practice Guidance. The letter announcing the removal of the central requirement to express maximum parking standards stated that:

*"The Government's position on parking standards is that local authorities are best placed to take account of local circumstances and are able to make the right decisions for the benefit of their communities … Local Authorities will still need to set parking standards for their areas, but it will be for them to determine what that standard should be, depending on individual circumstances."*

The Highway Authority concurs with the Government's position in 2011 that Local Authorities are best placed to set appropriate parking standards. Parking standards should be set by Local Authorities based upon local characteristics, taking into account public transport accessibility, car ownership levels, on-street parking stress, accessibility to local facilities, the nature of the locality (ie urban, suburban, rural) and the proposed land use with a differentiation between origin and destination land uses. All these factors should be assessed by the local authority when setting appropriate standards for their communities.

**Further Justification**

The reasons why parking policy does not need to be strengthened and why Local Authorities are best placed to set their own parking standards are presented in the following paragraphs.

It's important to note that in relation to parking standards one size or approach doesn't fit all scenarios and therefore should be developed by Local Authorities based upon local characteristics. Just as how maximum car parking standards did not work for all areas, minimum standards or no maximum standards would not work in all locations. For example, in Brighton & Hove the management of both public and private parking provision forms part of the overall transport policy for the city; which is focussed on providing choice with an emphasis on measures to promote and provide sustainable forms of transport. The availability of parking, especially for destination land uses (ie non-residential) is an important factor in determining transport choice. Therefore when the management of parking provision is complemented with physical measures such as improvements to the transport network and promotional travel plan type measures this can have a positive impact and encourage people to travel in a sustainable manner.

Appropriate parking standards for a rural location are very different to that of a busy urban location. In a rural location it may not be appropriate to adopt maximum car parking standards. This could be because there are fewer public transport services and higher levels of car ownership. In these areas other potential options should be considered in order to promote sustainable forms of travel, when appropriate.

The above view is acknowledged by the Government within chapter 4 of the National Planning Policy Framework, which states, *"… the Government recognises that different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to*

*rural areas."*

The Highway Authority is also of the view that restricting the power of Local Authorities to set maximum parking standards is not necessarily the best way to tackle on-street parking problems. Maximum car parking standards do not necessarily cause overspill car parking; it is the interpretation and application of them. An alternative way to tackle on-street car parking is to assess the potential for overspill car parking as part of the planning process. If significant overspill car parking is caused from a development which leads to on-street parking problems and road safety issues, and no suitable mitigation is put forward by the applicant, then the application could be recommended to be refused planning permission by the Highway Authority.

Not only is the potential to remove the ability of local authorities to set maximum parking standards not necessary, or the best way to solve on-street parking problems, it could be detrimental to the promotion of sustainable travel and also add to congestion. This is because preventing urban authorities from controlling the level of parking in central areas for new developments would increase the availability of car parking and increase the likelihood of people driving. Therefore potentially further adding to congestion and restricting the free flow of traffic which in turn could cause delay and air pollution issues in some of the most sensitive areas of the road network.

Research undertaken by Atkins in 2008 (http://assets.dft.gov.uk/publications/parking-standards/report.pdf) into the application and effects of maximum parking standards found that:

- restricting parking numbers leads to a reduction in demand
- Restrictive parking policy over a long time period has had no effect upon economic development
- There is a clear link between parking availability and car use
- Maximum parking standards have encouraged the uptake of sustainable transport modes and travel plans.

Therefore, rather than restricting the power of Local Authorities to set maximum car parking standards, the best solution to address on-street parking issues is through a mixture of reducing demand for on-street parking through the provision of car clubs and assessing the potential for overspill car parking from new developments through the planning process to ensure appropriate levels of car parking are provided.

**Supporting growth**

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

Yes √ No ☐

**Comments**

This permitted development right is supported. The city is a popular location for filming and photography and the council is committed to balancing the economic benefits of these activities with the protection of the city environment and prevention of disturbance to local businesses and residents.

Brighton & Hove has always been a vibrant film city. From the Hove pioneers to exciting new talent, the city has been a magnet for film-makers and film production companies who delight in pushing the boundaries of how to make and show film on an international stage.

The city is a thriving centre for creative and digital talent, recognised as a driver for growth and the reason for our status as an economic 'super city'.

Film crews from all over the world are increasingly choosing to make their movies here, attracted by the landscape and diverse architecture but also by a welcoming and can-do approach from statutory services, businesses and residents.

Perhaps most importantly industry and publicly funded development agencies are working with schools, colleges and universities to foster the future of film: the film makers, producing entrepreneurs, technical talent and informed and demanding film audiences that together help to create a film culture that will help preserve and grow our film city.

**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?

Yes √ No ☐

**Comments**

In relation to local policy for sustainability, this proposal is welcomed, as it would streamline processes for delivering renewable energy generation in the city, which is supported by local policy targets adopted in Brighton & Hove.

Local Planning Policy supports and encourages installation of renewable energy generation and technologies which seeks low and zero carbon development. The conditions that would apply under the proposals would reflect current PD rights for technologies for dwellings. These appear to have worked adequately in Brighton & Hove, and are well understood by installers.

Local Plan SU2 expects proposals to achieve a high standard of efficiency in the use of energy, water and materials. It states: 'Proposals will be required to demonstrate how the following factors have been integrated into their siting, layout and design: a). measures that seek to reduce fuel use and greenhouse gas emissions; b). the incorporation / use or the facilitation of the use, of renewable energy resources.

The submission City Plan requires 'all development to incorporate sustainable design features to avoid expansion of the city's ecological footprint, help deliver the principles of the One Planet approach, radical reductions in greenhouse gas emissions, particularly C02 emissions, and mitigate against and adapt to climate change.' Renewables must play a significant role in avoiding expansion in the city's ecological footprint and delivering radical reductions in carbon emissions.

In B&H there is a need to maximise all opportunities for the installation of renewables in order to meet the challenging targets set out in the Sustainable Community Strategy and One Planet Living Plan for carbon reduction and renewable energy generation. This is demonstrated by a background study undertaken for Brighton & Hove City Plan: Brighton & Hove Renewable and Sustainable Energy Study 2012 (AECOM).

The Energy Study looked at opportunities for achieving local (and national) carbon reduction targets. This explored potential carbon reduction that could be delivered through a wide portfolio of measures including retrofit, renewables and large scale energy infrastructure. The study set out targets for scenarios to achieve CO2 reduction targets, and assessed opportunities for photovoltaic installations on non domestic buildings. In one of 2 scenarios the study set a target for PV installations on Non domestic buildings at 180kWp to be installed every year between 2013-2030 and a 12MW of 'large scale' solar by 2030. The increase in PD rights may contribute to the achievement of these targets.

**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?

Yes ☐ No √

**Comments**

Currently the provisions require only a 2 m gap between the extension of the boundary where the premise adjoin a dwelling house – this should apply to other uses e.g schools/ hospitals which are noise sensitive uses.

**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?

Yes √ No ☐

**Comments**

The principle of extending permitted development rights for waste management facilities is supported, however there should be more clarity over the particular type of process which is covered by the proposals. Allowing unrestricted PD rights for replacement equipment and machinery may not allow changes to amenity impacts to be fully considered. There are a wide variety of different processes which are covered under the umbrella term 'waste management', particularly as waste streams become more separated to achieve higher rates of recycling/recovery and as technologies evolve. These can have very different noise, odour, dust impacts etc.

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

Yes ☐ No ☐

**Comments**

No comment.

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

Yes √ No ☐

**Comments**

The consultation document illustrates the increasing complexity of the incremental changes to the permitted development rights system. If all the proposals as indicated are introduced it is considered that the opposite effect will be created; a complex and difficult to negotiate planning system, which does not assist either the development industry or businesses and a system which will does not allow local communities to be fully involved.

The experience of Brighton & Hove show that the processes around dealing with a prior notification application are similar to that of a full application, but the fee is set considerably lower meaning that the full costs are not met. If the Government intend to make more use of this procedure the fees should be set at such a level as to cover the cost.

As a result of the changes to permitted development, including the introduction of prior approvals there is less opportunity for local people, elected Councillors and the Council to shape the development of our city. This is considered to be contrary to the aims of localism.

**Implementing the 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?

Yes ☐ No √

**Comments**

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**Article 4 Directions**

**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

Yes ☐ No ☐

(ii) should the compensation regulations also cover the permitted development rights set out in the consultation?

Yes √ No ☐

**Comments**

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| The compensation regulations should cover the permitted development rights set out in the consultation. |

**Question 2.25:** Are there any further comments that you wish to make in response to this section?

Yes ☐ No ☐

**Comments**

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|---|
| See response to 2.22 |

# 3. Improving the use of planning conditions

Please refer to the relevant parts of the consultation document for narrative relating to each question.

**Would you like to respond to the consultation on improving the use of planning conditions?**

Yes √ No ☐

**Deemed discharge for certain types of conditions where the local planning authority does not make a timely decision**

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

Yes √ No ☐

**Comments**

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| Increasingly the Council has been working with developers, with their approval, and negotiating to secure appropriate details to discharge conditions, particularly those relating to major developments. This has resulted in some approvals taking over 8 weeks, rather than the application being refused and further details being resubmitted in a revised application. The introduction of a deemed discharge should enable this to continue if both parties agree. |

**Question 3.2:** Do you agree with our proposal to exclude some types of conditions from the deemed discharge?

Yes √ No ☐

Where we exclude a type of condition, should we apply the exemption to all 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?

**Comments**

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| In these circumstances all conditions should be exempt because other condition discharge issues are often interrelated, particularly on major developments. These are often the subject of a single application to discharge more than one condition.<br><br>The exemption should also apply to contaminated land |

**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?

Yes √ No ☐

If not, why?

**Comments**

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| If introduced, this should take the form of a formal notice to the LPA that can be submitted via the Planning Portal. |

**Question 3.4:** Do you agree with our proposed timings for when a deemed discharge would be available to an applicant?

Yes √ No ☐

If not, why? What alternative timing would you suggest?

**Comments**

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**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?

Yes √ No ☐

**Comments**

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| Should also apply to advertisement consent. |

**Reducing the time limit for return of the fee for applications for confirmation of compliance with conditions attached to planning permissions**

**Question 3.6:** Do you agree that the time limit for the fee refund should be shortened from twelve weeks to eight weeks?

Yes ☐ No √

If not, why?

**Comments**

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| Under the current proposals, a deemed discharge notice could be served by the applicant on the LPA at any time between 6 and 8 weeks from the day after the receipt of the application. If an 8 week period was introduced, this could result in the fee being returned for non-determination before the expiry of the 2 week deemed discharge notice period. |

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

Yes √ No ☐

Why?

**Comments**

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| If the discharge of the condition required input from a technical consultee outside of the local authority over which the LPA has no direct influence e.g. Environment Agency, Southern Water, English Nature. |

**Sharing draft conditions with applicants for major developments before a decision is made**

**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 √ No ☐

**Comments**

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

Yes √ No ☐

**Comments**

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**Question 3.10:** When do you consider it to be an appropriate time to share draft conditions:

- ten days before a planning permission is granted? ☐
- five days before a planning permission is granted? or √
- another time?, please detail ☐

**Comments**

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| 5 days would fit in with the City Council's current arrangements for major applications. Where possible, conditions are shared with applicants before the publication of the committee agenda. In any case, following the publication of the committee report it is possible for changes to conditions to be included in the late representations list which is published prior to the meeting. |

**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?

Option A √ Option B ☐ Neither ☐

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

**Comments**

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| Option A is simpler and would not result in a delay in the determination of the application. Whilst it is obviously desirable for the applicant and LPA to be in agreement on the imposition of conditions, the LPA has the power to impose conditions that comply with the six tests set out in the NPPF. The applicant has a right of appeal against the imposition of a condition. |

**Requirement to justify the use of pre-commencement conditions**

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

Yes ☐ No √

**Comments**

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| The requirement to provide additional justification for the use of a pre-commencement condition will add to the workload on the LPA in the determination of planning applications. Simplification of the process, rather than the imposition of further requirements, is required. |

**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 ☐ No √

**Comments**

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| See comments to Question 3.12. |

**Question 3.14:** What more could be done to ensure that conditions requiring 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?

**Comments**

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| Clear guidance is required from the government to both applicants and LPAs on the imposition, wording and timing requirements of conditions. |

**Question 3.15:** Are there any further comments that you wish to make in response to this section?

Yes √ No ☐

**Comments**

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| Applicants often prefer (and request) a condition, rather than have to submit details with the planning application for reasons of reducing the timescale in determining the application and their costs at the planning application stage. Even when details are submitted with the planning application (usually external materials) some applicants have requested a planning condition requiring the submission and approval of external materials following the grant of permission. This gives the developer flexibility in the future choice and cost of materials, particularly if a particular approved material is not available when the development is constructed. |

# 4. Planning application process improvements

Please refer to the relevant parts of the consultation document for narrative relating to each question.

**Would you like to respond to the consultation on planning application process improvements?**

Yes √ No ☐

**Review of requirements for consultation with Natural England and the Highways Agency**

**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.

Yes √ No ☐

**Comments**

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**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?

Yes √ No ☐

**Comments**

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**Review of requirements for consulting with English Heritage**

**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?

Yes √ No ☐

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?

Yes √ No ☐

**Comments**

The aim is to avoid unnecessary consultation with English Heritage so that they can concentrate their resources on the heritage assets of greatest significance and the more major proposals. This approach is supported. The majority of the changes only really affect LPAs in London, where there has always been a bigger role for English Heritage, and the changes largely bring London into line with the rest of the country (as far as is possible without amending primary legislation).The proposal is for amendments to the consultation/ notification requirements to English Heritage and the referral arrangements to the SoS on heritage assets.

**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.

Yes ☐ No √

**Comments**

With regard to referrals to the SoS, the consultation again proposes to bring Greater London into line with the rest of the country. But it also proposes a general reduction in the requirements for applications to be determined by the SoS where the LPA is the applicant and owner, in respect of demolition in a conservation area and of listed building consent.

There is a concern about the proposed reduction in the requirement to refer the council's own LBC and demolition applications to the SoS. Currently all such applications are determined by the SoS, but as proposed the majority of council LBC applications for grade II buildings (and for demolition in conservation areas) would be determined by the LPA. The current role of the SoS provides a useful, impartial and checking mechanism which should be retained.

**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.

Yes √ No ☐

**Comments**

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**Further measure to streamline statutory consultation arrangements**

**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?

Yes √ No ☐

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

Yes √ No ☐

**Comments**

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| Agree that for a statutory consultee not to be consulted the application proposal must be the same as at pre-application stage or incorporate amendments requested by the consultee at pre-application stage. The onus must be on the applicant to demonstrate this. |

**Impacts and benefits of the proposals**

**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.

**Comments**

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| Do not consider this would result in a significant reduction as the City Council determines a relatively small number of major applications each year (45 in 2013/14) that require consultation with statutory consultees (excluding English Heritage). |

**Notifying railway infrastructure managers of planning applications for development near railways**

**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?

Yes √ No ☐

**Comments**

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| The City Council currently notifies Network Rail of planning applications that adjoin their land. |

**Question 4.9:** Do you agree with notification being required when any part of a proposed development is within 10 metres of a railway?

Yes √ No ☐

Do you agree that 10 metres is a suitable distance?

Yes √ No ☐

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)?

Yes √ No ☐

**Comments**

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| The measurement should be taken from the boundary of railway land or from each wall of a railway tunnel. |

**Consolidation of the Town and Country Planning (Development Management Procedure) Order 2010**

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

Yes √ No ☐

**Comments**

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| Would welcome the consolidation of this, and other, planning legislation. There have been numerous recent complex changes to legislation. It would benefit all users of the planning system to have these set out in one document, thereby reducing timescales for finding up to date legislation and the potential for error and misinterpretation. |

**Measurement of the end-to-end planning process**

**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?

Yes √ No ☐

**Comments**

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| Development management involves all stages in the development of a site, including pre-application, application, determination, planning conditions, construction, completion, occupation and, where necessary, enforcement. This is a collaboration of involvement by both developers and the LPA. For measurement to be meaningful and to demonstrate the overall timescales on the completion of a development on site, all of these stages should be incorporated. |

**Question 4.12:** Are there any further comments that you wish to make in response to this section?

Yes ☐ No √

**Comments**

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# 5. Environmental Impact Assessment Thresholds

Please refer to the relevant parts of the consultation document for narrative relating to each question.

**Would you like to respond to the consultation on Environmental Impact Assessment Thresholds?**

Yes √ No ☐

**The proposals we are consulting on**

**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?

Yes √ No ☐

**Comments**

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| Agree. The existing thresholds for urban development and industrial estate development outside sensitive areas are low. |

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

Yes √ No ☐

**Comments**

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| The proposed 5ha threshold for both industrial estate development and urban development projects is considered to be too high.<br><br>The consultation paper at paragraph 5.26 suggests that average housing density is 30dph and that the new higher threshold of ha would therefore equate to housing schemes of around 150 units. This is not reflective of the position in Brighton & Hove. The Submission Brighton & Hove City Plan (2013) policy on Housing Density expects residential development in neighbourhood areas to be a minimum of 50 dwellings per hectare. In the Development Area policies of the City Plan, residential development is expected to be a minimum of 100dph. Should the threshold for urban development EIA screening be raised to 5ha, in Brighton & Hove this could potentially mean a residential development of around 500 houses in certain areas of the city falling outside the jurisdiction of the EIA Directive.<br><br>The new threshold for urban development does not take into consideration that high |

density development in the form of a tall building can take place on a relatively small area of land. The environmental effects of a tall building or very high density development could be far greater and more significant than the effects of a much smaller building on the same area of land. These could potentially be un-assessed and undocumented if the screening threshold for urban development is based on site area alone.

In Brighton & Hove, the majority of major development sites are less than 0.5ha with almost 99% of residential completions in the period 2004-2014 on sites less than 0.5ha. The remaining 1.3% of residential completions were on sites between 0.5ha to 5ha in size. If the site size threshold was increased to 5ha, none of the residential development situated outside sensitive areas over the last 10 years would have been subject to EIA. Similarly, 89% of commercial completions in the same period were on sites less than 0.5ha and only 1.5% were on sites greater than 5ha. The EIA process has enabled some positive outcomes for the environment, which potentially would have been missed if the site size threshold had been 5ha.

**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?

**Comments**

For the reasons set out under 5.2, there is not considered to be any scope to raise the screening threshold for residential development above the 5ha proposed. In Brighton & Hove, the 5ha threshold is considered to be too high.

**Question 5.4:** Are there any further comments that you wish to make in response to this section?

Yes ☐ No √

**Comments**

No further comment.

# 6. Improving the nationally significant infrastructure regime

Please refer to the relevant parts of the consultation document for narrative relating to each question.

**Would you like to respond to the consultation on streamlining consents for nationally significant infrastructure projects?**

Yes ☐ No √

**Non-material and material changes to Development Consents Orders**

**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?

Yes ☐ No ☐

**Comments**

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**Making a non-material change**

**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?

Yes ☐ No ☐

(ii) the additional amendments to regulations proposed for handling non-material changes?

Yes ☐ No ☐

**Comments**

**Making a material change**

**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?

Yes ☐ No ☐

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

Yes ☐ No ☐

(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?

Yes ☐ No ☐

**Comments**

**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?

Yes ☐ No ☐

**Comments**

**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?

Yes ☐ No ☐

**Comments**

**Guidance on procedures**

**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?

Yes ☐ No ☐

**Comments**

**The proposal we are consulting on**

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

Yes ☐ No ☐

**Comments**

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

Yes ☐ No ☐

**Comments**

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

Yes ☐ No ☐

**Comments**

**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?

Yes ☐ No ☐

**Comments**

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

Yes ☐ No ☐

**Comments**

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