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Insights

IMPORTANT PLANNING CHANGES SET OUT IN NEW CONSULTATION

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SUMMARY

Some significant planning changes are proposed in a government consultation on 'An Accelerated Planning System' launched on 6 March 2024 alongside the Spring Budget (which closes on 1 May). These proposed changes cover new processes to speed up planning decisions, details of how the new route to vary planning permissions under s73B TCPA will work and possible solutions to facilitate the operation of overlapping 'drop-in' permissions to prevent Hillside risks arising in large schemes.

THREE NEW PROPOSED MEASURES

Three new proposed measures to speed up planning decisions are included in the consultation comprising:

AN 'ACCELERATED PLANNING SERVICE' PROVIDING DECISIONS IN 10 WEEKS

A new 'Accelerated Planning Service', first announced in the Autumn Statement 2023, would offer a new application route upon payment of a higher application fee, with faster decision dates for major commercial applications and fee refunds when these are not met. Qualifying applications using this route would be prioritised by planning authorities and, using a more efficient case work system, be determined within a new 10-week statutory time limit (rather than the current 13 week).

Eligibility for this service would be limited to planning applications (and including s73 and s73B applications) for more than 1,000 sqm of new or additional employment floorspace, or mixed-use developments with this area of new employment floorspace, which may be on an opt-in or mandatory basis, depending on the consultation outcome.

However, planning applications for EIA development, heritage assets, retrospective development or minerals and waste development, or those that are subject to a Habitats Regulations Assessment

would not be eligible for this service: these are the types of application most likely to suffer most from delays.

A NEW PERFORMANCE MEASURE FOR LOCAL AUTHORITIES TO AVOID DESIGNATION

To address concerns about the high use of extension of time agreements, a new metric to measure the speed of decision-making by local planning authorities is proposed.

It would require 50% or more of major applications and 60% or more of non-major applications to be determined within the statutory time limit, with a local planning authority at risk of designation if these thresholds are not met.

A designation under this performance measure would allow applicants to apply directly to the Planning Inspectorate (on behalf of the Secretary of State), taking decision making out of local control. Changes to the assessment period for speed of decision-making, currently assessed across 24 months, would also be halved to 12-months to improve accuracy.

Extension of time agreements and planning performance agreements could still be used but as an exception.

EXPANSION OF EXPEDITED WRITTEN REPRESENTATIONS PROCEDURE FOR APPEALS

A proposed expansion of the current simplified written representations procedure, currently only available to householder and minor commercial planning appeals, would allow the opportunity for decisions on most types of planning appeals (except non-determination appeals and appeals against an enforcement notice) to be expedited.

This process is simpler and faster than the standard written representations process as it removes opportunities for the consideration of additional information at appeal. However, PINS would retain its power to determine which appeal procedure is appropriate, and in practice it would not be appropriate in all cases.

DETAILS OF THE NEW S73B ROUTE TO AMENDING PERMISSIONS

Important details are also included on the new route to amending planning permissions under s73B Town and County Planning Act 1990 (TCPA) introduced by the Levelling Up and Regeneration Act 2023 (but not currently in force).

Section 73B will allow existing planning permissions to be amended provided the changes are **not substantially different** to the development approved. It will be more flexible than section 73 TCPA (which recent case law confirmed is restricted to the variation of conditions) and section 96A TCPA (which is limited to non-material changes to a permission) as it will allow variations to both the description of a development and to conditions of an existing planning permission.

Interestingly, the consultation suggests that the section 73B route should becomes the default route for making general material variations to existing planning permissions, leaving section 73 applications to be used only for variations to specific conditions.

A single consenting route would certainly be welcomed so that the clunky use of both s96A and s73 could be avoided in cases necessitating an amendment to both the description of development in a permission and planning conditions. However, one can foresee difficulties arising with no guidance proposed on the extent of changes that would satisfy the 'substantially different' definition or introduction of a test. Instead, this will be a matter of judgment for planning authorities and dependent on the scale of the changes required in the context of the existing permission and individual circumstances of the case. Nonetheless, the introduction of guidance has not been ruled out and views are sought on whether this may promote common approaches across local planning authorities.

RESOLVING UNCERTAINTY OVER THE USE OF 'DROP-IN PERMISSIONS'

The consultation explores and seeks views on possible solutions to facilitate the operation of overlapping permissions and prevent *Hillside* risks arising in cases where 'drop in' permissions are used to approve changes to part(s) of a larger development previously granted permission and which continues to be relied upon.

Section 73B is proposed as one possible solution if it were used to vary underlying outline permissions for master-planned schemes and where the changes needed did not fundamentally change the approved scheme.

With determination of s73B applications limited to the consideration of the variation between the original outline permission and the changes proposed, utilising this route is intended to prevent reconsideration of the merits of the whole scheme and (if approved) result in a new permission allowing the remainder of the scheme to be lawfully developed in a way that avoids a *Hillside* risk. However, with this route constrained by the 'substantially different test', it would not be available in all cases.

Another option proposed to overcome *Hillside* situations includes the creation of a framework through a new general development order to grant planning permission for specified development or for a class of development. Limited detail is given about this option. From our own experiences developing similar bespoke frameworks on large commercial development sites, it can be made to work although it would need to be carefully drafted and be very clear about the circumstances when it applies with the detailed changes subject to prior approval.

RELATED PRACTICE AREAS

- Planning & Zoning

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