

Section 1 Changes to planning application fees

Question 1.1: *Do you agree with our proposal to adjust planning fees in line with inflation, but only in areas where the local planning authority is performing well? If not what alternative would you suggest?*

Question 1.2: *Do you agree that national fee changes should not apply where a local planning authority is designated as under-performing, or would you propose an alternative means of linking fees to performance? And should there be a delay before any change of this type is applied?*

Question 1.3: *Do you agree that additional flexibility over planning application fees should be allowed through deals, in return for higher standards of service or radical proposals for reform?*

SHBC Response

Surrey Heath BC (SHBC) would welcome the ability to increase fees. However there would need to be guidelines to determine how the top 75% of performance is measured - is this just on speed or also on the quality of the decision. The proposal may also have an impact on staff resources within Development Management departments. In addition there is concern that this approach could have an impact on the Committee decision making process in respect of applications meeting Committee time tables.

There should also be flexibility to apply discounts to allow for extended time periods where applicants are in agreement in particular for householders who may be willing to accept an extended time period for a discounted fee.

Fast Track planning applications

Question 1.4: *Do you have a view on how any fast-track services could best operate, or on other options for radical service improvement?*

Question 1.5: *Do you have any other comments on these proposals, including the impact on business and other users of the system?*

SHBC Response

Whilst the principle of a fast track service is recognised there needs to be more clarity as to what types of applications this would refer to. There should be some standards for the approach to fast track services in the regulations, particularly around statutory consultation periods. There needs to be clarity regarding applications that may, due to local interest or type of application, need to be determined by a Planning Committee rather than through delegated powers.

2 Permission in Principle

Question 2.1: *Do you agree that the following should be qualifying documents capable of granting permission in principle?*

- a) *future local plans;*
- b) *future neighbourhood plans;*
- c) *brownfield registers.*

SHBC Response

SHBC considers that the approach to planning permission in principle already exists through sites or areas designated in Local Plans or in Neighbourhood Plans and that as such they are already qualifying documents. SHBC has concerns regarding brownfield registers granting planning permission in principle as these will not have been tested through an Examination in Public as a document capable of allocating sites in the same way that Local Plans and Neighbourhood Plans are.

Question 2.2: *Do you agree that permission in principle on application should be available to minor development?*

SHBC Response

This approach already exists in policies that designate land uses set out in Local Plan documents. Paragraph 2.16 of the consultation proposes that smaller sites (up to 10 units) should be allocated in a qualifying document. The existing local plan process through the use of land use designation policies already provides a degree of certainty for smaller sites. Having to allocate sites of between 5-10 units and possibly windfall sites of up to 5 units will add a layer of complexity to the system with no further certainty of delivery and will remove flexibility in the Local Plan process. It is considered that smaller sites should be determined through the existing planning application process.

With regard to major development sites SHBC consider that these should be determined under the current system of Full, Outline and Reserved Matters applications.

Question 2.3: *Do you agree that location, uses and amount of residential development should constitute 'in principle matters' that must be included in a permission in principle? Do you think any other matter should be included?*

Question 2.4: *Do you have views on how best to ensure that the parameters of the technical details that need to be agreed are described at the permission in principle stage?*

SHBC Response

The consultation indicates that only location, use and amount of development should be considered at the in principle stage. There is a risk of approving a site through permission in principle which then cannot be taken forward at the technical details stage due to constraints not identified at the earlier stage. As such issues such as access and infrastructure requirements should be dealt with at the permission in principle stage. This is of particular relevance where there are environmental constraints such as those under the Habitats Regulations. In order for these constraints to be addressed there would be the requirement

for further information to be provided at the planning in principle stage such as an indication of the number of bedrooms to be provided. Within the Thames Basin Heaths Special Protection Area the avoidance measures is in the form mitigation by the provision or contribution to Suitable Alternative Natural Greenspace (SANG) and by the payment of a Strategic Access Management and Monitoring (SAMM) Fee. SANG capacity is allocated on a per person basis.

The existing planning system allows for the granting of an outline planning permission which in itself establishes permission in principle with detailed matters being dealt with at Reserved Matters stage. The outline stage requires more information to be provided at this stage than the proposed permission in principle approach. This gives certainty to the developer, decision maker and community as to what will be required to make the scheme acceptable in planning terms.

The proposed approach on permission in principle with technical details approved provides less certainty than the current system to developers, decision makers and the community.

Question 2.5: *Do you have views on our suggested approach to a) Environmental Impact Assessment, b) Habitats Directive or c) other sensitive sites?*

SHBC Response

SHBC raises concerns that the approach set out in the consultation would not meet the Habitats Regulations Assessment. In order to meet the requirements there would need to be some form of unilateral agreement or legal agreement at the planning in principle stage to ensure the requirement for SANG and SAMM contributions are met.

The consultation indicates that an Environmental Impact Assessment (EIA) would only be required at the planning in principle stage. SHBC consider that an additional EIA may also be required at the technical details stage and this should be made clear in any future implementation measures or secondary legislation.

Question 2.6: *Do you agree with our proposals for community and other involvement*

SHBC Response

SHBC consider that there should still be consultation at the technical detail stage of an application. Paragraph 2.35 of this consultation indicates that this would not be the case and therefore the community will not be able to comment on the technical details such as design and access and layout. These issues can be of particular relevance to the community.

Whether permission in principle is granted on allocation or application, communities and other interested parties should have the opportunity to comment on the principle of whether a site should be developed for housing and the appropriate scale of development on the site. There should be an appropriate opportunity for further engagement when the technical details are considered, while minimising any unnecessary duplication.

Smaller sites are often more constrained, owing to their size and the nature and proximity of surrounding uses; as such, schemes on smaller sites often require careful assessment.

Question 2.7: *Do you agree with our proposals for information requirements?*

SHBC Response

The approach of applying for permission in principle consent and then applying for technical detail consents adds a layer of complexity to the submission and determination of minor development proposals. These types of proposals may be better considered through the submission of an application for Full Planning permission which would give more certainty. The proposal may also have an impact on staff resources within Development Management departments as there may be the requirement for more staff.

Question 2.8: *Do you have any views about the fee that should be set for a) a permission in principle application and b) a technical details consent application.*

SHBC Response

Fees should reflect any locally set fee proposals.

Question 2.9: *Do you agree with our proposals for the expiry of on permission in principle on allocation and application? Do you have any views about whether we should allow for local variation to the duration of permission in principle?*

SHBC Response

1) Expiry on permission in principle on allocation

Local Plans generally set out the strategy and policies to address future development over a 15-20 year period. They cover a range of issues, including policies on employment, green infrastructure and countryside policies which would not be impacted by the permission in principle approach. Reviewing plans over a 5 year period does not give long term certainty to developers, decision makers and the community. If the approach of a five year review is taken forward then it should be through a partial review of a Local Plan in relation to the permission in principle allocations only and should reflect the Planning Inspectorates approach to partial reviews to ensure that an Examination in Public is carried out within a shorter timescale than the existing Examination in Public timescales.

With regard to Neighbourhood Plans and allocating permission in principle sites the timescale reflects the current time period for a review of Neighbourhood Plans.

2) Expiry of permission on application.

This should reflect the current approach of expiry of permission after three years.

Question 2.10: *Do you agree with our proposals for the maximum determination periods for a) permission in principle minor applications, and b) technical details consent for minor and major sites?*

SHBC Response

SHBC raise concern with the proposed dates for the determination of

- Permission in principle minor applications 5 weeks
- Technical Detail consent for minor sites 5 weeks
- Technical Detail consent for major sites 10 weeks

The statutory period for comments on planning applications is 21 days and the proposed determination dates in respect of minor applications will not allow for any negotiation or amendments with the applicant in the case of planning in principle applications. In addition there is concern that this approach could have an impact on the Committee decision making

process in respect of applications meeting Committee time tables. Timescales should reflect current timetables for decision making. There should also be the recognition of the need to have flexible determination dates over statutory holiday periods, particularly Christmas.

3 Brownfield Register

SHBC Response

Prior to the Government introducing statutory brownfield registers regard will need to be given to the recent High Court judgement *Dartford Borough Council v Secretary of State for Communities & Local Government* (CO/4129/2015). The Deputy Judge found that only residential gardens within the “built-up area” were exempt from the definition of previously developed land whereas, residential gardens outside “built up areas” were “brownfield”.

Government will need to consider amendments to the definition of brownfield sites in the NPPF and in any subsequent statutory brownfield register to clarify the definition of brownfield as to whether it excludes gardens outside of built up areas as brownfield land.

Question 3.1: *Do you agree with our proposals for identifying potential sites? Are there other sources of information that we should highlight?*

Question 3.2: *Do you agree with our proposed criteria for assessing suitable sites? Are there other factors which you think should be considered?*

SHBC Response

SHBC consider that the Strategic Housing Land Availability (SHLLA) process should be the starting point for identifying brown field sites. SHBC consider the proposed criteria relevant for assessing suitable sites.

Question 3.3: *Do you have any views on our suggested approach for addressing the requirements of Environmental Impact Assessment and Habitats Directives?*

Question 3.4: *Do you agree with our views on the application of the Strategic Environment Assessment Directive? Could the Department provide assistance in order to make any applicable requirements easier to meet?*

SHBC Response

SHBC consider that the Habitats directive will be of relevance when preparing registers and that it would be inappropriate for a site to be placed on the register if development was prohibited by the Habitats Directive. Within Surrey Heath all new dwellings need to be able to provide avoidance measure in respect of the impact on the Thames Basin Heaths SPA and as such it is reason. As such there may be only limited scope for sites to be placed on a brownfield register, particularly where permission in principle could be applied.

Question 3.5: *Do you agree with our proposals on publicity and consultation requirements?*

SHBC Response

SHBC has no comment on the publicity of a brown field register. With regard to consultation on a site on the register not suitable for a grant of permission in principle it is not clear what the purpose of this is. Regard would also have to be given to the Habitats Regulation Assessment (HRA) in these instances.

Question 3.6: *Do you agree with the specific information we are proposing to require for each site?*

Question 3.7: *Do you have any suggestions about how the data could be standardised and published in a transparent manner?*

SHBC Response

SHBC agree there should be a consistent approach to data held. With regard to the specific information this should also include any environmental constraints.

Question 3.8: *Do you agree with our proposed approach for keeping data up-to-date?*

SHBC Response

SHBC Agree with the approach of publishing up to date data as open data.

Question 3.9: *Do our proposals to drive progress provide a strong enough incentive to ensure the most effective use of local brownfield registers and permission in principle?*

Question 3.10: *Are there further specific measures we should consider where local authorities fail to make sufficient progress, both in advance of 2020 and thereafter*

SHBC Response

SHBC consider that the proposal that LPAs who do not make sufficient progress against the brownfield objective should not be able to claim an up to date 5 year housing land supply is unnecessary and adds uncertainty to the Local Plan process. The presumption in favour of sustainable development would already apply by virtue of a site being on a brownfield register, particularly having regard to the proposed criteria for inclusion on a register set out in para 3.27 of this consultation.

The brownfield register approach indicates that a site may be suitable for development but does not ensure delivery. This consultation fails to address the issue of housing delivery even if permission is granted.

4 Small Site Register

Question 4.1: *Do you agree that for the small sites register, small sites should be between one and four plots in size?*

Question 4.2: *Do you agree that sites should just be entered on the small sites register when a local authority is aware of them without any need for a suitability assessment?*

SHBC Response

Windfall sites and small sites are normally considered to be sites of 5 dwellings or less. The Small site register should reflect this approach. These sites may be better identified through the SHLAA process.

SHBC raise concern that the approach set out in the consultation would not meet the Habitats Regulations Assessment. In order to meet the requirements there would need to undertake an Appropriate Assessment to ensure the requirement for avoidance measures can be addressed and that SANG and SAMM contributions are met.

Question 4.3: *Are there any categories of land which we should automatically exclude from the register? If so what are they?*

Question 4.4: *Do you agree that location, size and contact details will be sufficient to make the small sites register useful? If not what additional information should be required?*

SHBC Response

Sites with constraints that could not be overcome should be excluded, such as sites less than 400m from the SPA or within areas of policy constraints.

The small sites register information should reflect that required in the brownfield register criteria.

As set out in Paragraph 4.4 of this consultation back gardens should not appear on this register.

5 Neighbourhood Planning

Question 5.1: *Do you support our proposals for the circumstances in which a local planning authority must designate all of the neighbourhood area applied for?*

SHBC consider that there may be circumstances whereby a Neighbourhood Area application is changed following consultation and the proposals should make allowances for changes following consultation.

Question 5.2: *Do you agree with the proposed time periods for a local planning authority to designate a neighbourhood forum?*

SHBC Response

Designation of a Neighbourhood Forum and designation of a Neighbourhood Area has to be through an Executive Committee decision. Any changes to the Neighbourhood Plan regulations should recognise that they need to reflect the Committee structure of Local Authorities. Timescales should reflect those set out in current guidance.

Question 5.3: *Do you agree with the proposed time period for the local planning authority to decide whether to send a plan or Order to referendum?*

SHBC Response

The decision to send a plan or Order to referendum has to be through an Executive Committee decision. Any changes to the Neighbourhood Plan regulations should recognise that they need to reflect the Committee structure of Local Authorities. Timescales should reflect those set out in current guidance.

Question 5.4: *Do you agree with the suggested persons to be notified and invited to make representations when a local planning authority's proposed decision differs from the recommendation of the examiner?*

Question 5.5: *Do you agree with the proposed time periods where a local planning authority seeks further representations and makes a final decision?*

SHBC Response

SHBC agree with the suggested persons to be notified. With regard to the local planning authority issuing the final decision any changes to the Neighbourhood Plan regulations should recognise that they need to reflect the Committee structure of Local Authorities.

Question 5.6: *Do you agree with the proposed time period within which a referendum must be held?*

Question 5.7: *Do you agree with the time period by which a neighbourhood plan or Order should be made following a successful referendum?*

SHBC Response

The decision to make a Neighbourhood Plan has to be through Full Council. Any changes to regulations regarding the plan or Order coming into legal force should recognise that they need to reflect the Committee structure of Local Authorities

Question 5.8: *What other measures could speed up or simplify the neighbourhood planning process?*

Question 5.9: *Do you agree with the proposed procedure to be followed where the Secretary of State may intervene to decide whether a neighbourhood plan or Order should be put to a referendum?*

SHBC have no comments at this stage.

Question 5.10: *Do you agree that local planning authorities must notify and invite representations from designated neighbourhood forums where they consider they may have an interest in the preparation of a local plan?*

SHBC Response

SHBC agree with this proposal.

6 Local Plans

Question 6.1: *Do you agree with our proposed criteria for prioritising intervention in local plans?*

Question 6.2: *Do you agree that decisions on prioritising intervention to arrange for a local plan to be written should take into consideration a) collaborative and strategic plan-making and b) neighbourhood planning?*

Question 6.3: *Are there any other factors that you think the government should take into consideration?*

SHBC Response

The proposed criteria for prioritising intervention in local plans are vague and require significant clarification. In particular, there is no definition as to what is meant by 'under delivery' or by 'areas of high housing pressure'. These terms should be clearly defined and 'under delivery' should be revised to read 'significant' under delivery, so as to ensure that

Government intervention in the plan making process only occurs when absolutely necessary.

Proposals to introduce Government intervention where 'intervention will have the greatest impact upon accelerating Local Plan production' is particularly vague and currently reads as a catch-all phrase to allow the Government to intervene in plan making in any circumstance it so wishes.

SHBC objects to a criteria relating to Government intervention where plans have not been kept up-to-date. At present, plan policies are deemed 'out of date' where a 5 year housing land supply is not present. This presents a problem for many Authorities that find through the nature of their site supply and/or environmental constraints, their Plan alternates between being 'out-of-date' and up-to-date' on a frequent basis. There should be a more efficient process to update or review a Local Plan. Currently the Local Plan process can take at least three years.

The Council has no particular comments in respect to Government proposals to intervene where little plan-making progress has been made, but if introduced, this should relate specifically to Authorities that have failed to put in place a plan since the introduction of the 2004 Act.

Question 6.4: *Do you agree that the Secretary of State should take exceptional circumstances submitted by local planning authorities into account when considering intervention*

SHBC Response

SHBC agrees that exceptional circumstances should be taken into account when considering intervention. What constitutes an exceptional circumstance should be clearly defined by the Government in order to ensure transparency in the plan making process.

Question 6.5: *Is there any other information you think we should publish alongside what is stated above?*

Question 6.6: *Do you agree that the proposed information should be published on a six monthly basis*

SHBC Response

SHBC consider that the significant and rapid changes in National Planning Policy and Guidance have proved detrimental to maintaining forward momentum in plan making. In particular, this has created uncertainty in the plan making process and has led to significant delays in plan preparation as evidence base documents are revisited to take account of new guidance.

7 Planning Performance

Question 7.1: *Do you agree that the threshold for designations involving applications for non-major development should be set initially at between 60-70% of decisions made on time, and between 10-20% of decisions overturned at appeal? If so what specific thresholds would you suggest?*

Question 7.2: *Do you agree that the threshold for designations based on the quality of decisions on applications for major development should be reduced to 10% of decisions overturned at appeal?*

SHBC have no comments on the proposed changes to thresholds. The complexity of some major planning applications should be taken into consideration. For smaller local planning

authorities the percentage range should be wider as they may be dealing with only a small number of applications. This would prevent distortion of the figures.

Question 7.3: *Do you agree with our proposed approach to designation and de-designation, and in particular*

(a) that the general approach should be the same for applications involving major and non-major development?

(b) performance in handling applications for major and non-major development should be assessed separately?

(c) in considering exceptional circumstances, we should take into account the extent to which any appeals involve decisions which authorities considered to be in line with an up-to-date plan, prior to confirming any designations based on the quality of decisions

Question 7.4: *Do you agree that the option to apply directly to the Secretary of State should not apply to applications for householder developments?*

SHBC agree with point 7c.

8 Competition in planning applications

Question 8.1: Who should be able to compete for the processing of planning applications and which applications could they compete for?

Question 8.2: How should fee setting in competition test areas operate?

Question 8.3: What should applicants, approved providers and local planning authorities in test areas be able to?

Question 8.4: Do you have a view on how we could maintain appropriate high standards and performance during the testing of competition?

Question 8.5: What information would need to be shared between approved providers and local planning authorities, and what safeguards are needed to protect information?

Question 8.6: Do you have any other comments on these proposals, including the impact on business and other users of the system?

SHBC Response

This proposed change sits uneasily with other areas of legislation and local authority responsibilities. The proposed timetables do not have regard to the committee structures and timetabling of local authorities.

There will be the need to ensure that all documents are available to residents and other interested parties both in web form and at a relevant local address.

It is not clear how an Approved Planning Officer (APO) could act on behalf of the local authority in any legal negotiations.

APO's should not provide a recommendation; this should be the role of the Local planning Authority.

Further guidance will be required on how fees would be split with the local authority. There is the risk of APOs cherry picking the most profitable applications leaving local authorities with increased costs for the remainder. In addition non-fee earning work would continue to sit with local authorities as would appeals, compliance and enforcement for such schemes. The issue of liability for any errors made by APOs will need to be addressed. The consultation does not address the question of who the APO would appear for at an appeal and potential conflict of interest. There will be the need for APOs to abide by the same performance standards as local authorities.

The consultation does not address how costs incurred for meetings will be recovered. If fees are set at cost recovery in pilot areas issues around potential state aid will need to be considered.

With regard to the proposal for a decision to be made within a week or two of receiving a recommendation from an APO this will have impacts on Local Planning Authorities committee cycles, including the ability for the decision maker to undertake site visits, particularly when a decision is to be made by the Planning Committee. There needs to be clarification as to whether an APO will need to attend Planning Committee to answer Member questions that may be required before a decision can be made.

9 Financial benefits

Question 9.1: Do you agree with these proposals for the range of benefits to be listed in planning reports?

Question 9.2: Do you agree with these proposals for the information to be recorded, and are there any other matters that we should consider when preparing regulations to implement this measure?

SHBC Response

SHBC agrees with the proposals in this consultation.

10 Section 106 Dispute resolution

Question 10.1: Do you agree that the dispute resolution procedure should be able to apply to any planning application?

Question 10.2: Do you agree with the proposals about when a request for dispute resolution can be made?

Question 10.3: Do you agree with the proposals about what should be contained in a request?

Question 10.4: Do you consider that another party to the section 106 agreement should be able to refer the matter for dispute resolution? If yes, should this be with the agreement of both the main parties?

Question 10.5: Do you agree that two weeks would be sufficient for the cooling off period?

Question 10.6: What qualifications and experience do you consider the appointed person should have to enable them to be credible?

Question 10.7: Do you agree with the proposals for sharing fees? If not, what alternative arrangement would you support?

Question 10.8: Do you have any comments on how long the appointed person should have to produce their report?

Question 10.9: What matters do you think should and should not be taken into account by the appointed person?

Question 10.10: Do you agree that the appointed person's report should be published on the local authority's website? Do you agree that there should be a mechanism for errors in the appointed person's report to be corrected by request?

Question 10.11: Do you have any comments about how long there should be following the dispute resolution process for a) completing any section 106 obligations and b) determining the planning application?

Question 10.12: Are there any cases or circumstances where the consequences of the report, as set out in the Bill, should not apply?

Question 10.13: What limitations do you consider appropriate, following the publication of the appointed person's report, to restrict the use of other obligations?

Question 10.14: Are there any other steps that you consider that parties should be required to take in connection with the appointed person's report and are there any other matters that we should consider when preparing regulations to implement the dispute resolution process?

SHBC Response

SHBC consider this approach would only be useful where there is only a single issue to resolve such as affordable housing contribution vs affordable housing provision and scheme viability arguments.

SHBC consider the procedure should be reserved for those applications that have a realistic prospect of success and that Local Planning Authorities should not be put to the expense of this process where the application is entirely at odds with planning policy.

SHBC agree with questions 10.2 and 10.3 on the basis of the information provided thus far however the only other party to an agreement that should be able to make a referral should be the County Council or another statutory consultee required to be a party to it rather than requiring the agreement of the applicant.

A two week 'cooling off' period is reasonable.

With respect to skills required these will need to include extensive planning and property experience given that issue they will most frequently be adjudicating on will be the provision/ payment in lieu of affordable housing.

With regard to fees SHBC do not consider a 50/50 split acceptable. There should be the opportunity for the adjudicator to be able to vary the 50/50 approach up to 100% where one party has behaved unreasonably in making the referral or during the dispute resolution process.

SHBC consider a six week period an appropriate timescale to produce the report and among the issues that should be taken into consideration should be planning policy, scheme viability, and local demand for a particular type of housing. A mechanism for amending errors would need to be an imperative part of the dispute resolution process.

11 PD for state schools

Question 11.1: *Do you have any views on our proposals to extend permitted development rights for state-funded schools, or whether other changes should be made? For example, should changes be made to the thresholds within which school buildings can be extended?*

Question 11.2: *Do you consider that the existing prior approval provisions are adequate? Do you consider that other local impacts arise which should be considered in designing the right?*

SHBC Response

SHBC no concern with the proposals, however timescales are short.

12 Statutory Consultation on planning applications

Question 12.3: *What are the benefits and/or risks of setting a maximum period that a statutory consultee can request when seeking an extension of time to respond with comments to a planning application?*

Question 12.4: *Where an extension of time to respond is requested by a statutory consultee, what do you consider should be the maximum additional time allowed? Please provide details.*

SHBC Response

SHBC has no comment on the proposed extension of time

13 Equality

SHBC has no comment on these issues.