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Dear Sir/Madam

Department of Levelling Up, Housing & Communities Consultation - An Accelerated Planning System

This response has been prepared by Kent County Council, a two-tier planning authority with responsibility for mineral and waste management (county matters) development and the Council's own community development. The Council draws attention to the following matters in response to the consultation for an accelerated planning system.

Question 1. Do you agree with the proposal for an Accelerated Planning Service?

The need for the delivery of high-quality sustainable development in a timely manner is recognised as a common aspiration for all parties working within the planning process. An accelerated planning system may have potential, subject to mutual agreement by both applicant and local planning authority but needs to address concerns that it: raises the risk of creating a two-tier planning system, with accelerated applications prioritised due to the financial risks; the possibility of more refusals at the applicant's cost; and poorer quality development on the ground.

In particular, an accelerated planning service needs to consider why applications currently take longer than the statutory period to determine and the impact that this has on the delivery of developments, in terms of time, quality and local democracy. Applications typically take longer to determine

due to the need to provide further information or amend schemes to address issues raised by stakeholders during the planning process. These involve re-consultation and add substantial time to the determination process.

Planning authorities currently address issues raised through the planning process with positive and proactive discussion and negotiation to resolve concerns. Extension of Time Agreements are an important and effective part of the toolkit to allow sufficient time to resolve concerns raised and to make development that has the potential to be permitted, acceptable. Should the local planning authority be at risk of losing the planning fee (of potentially thousands of pounds) as proposed in the consultation, there is a significant risk that the planning authority will no longer be able to work positively and proactively, but will have little choice from a financial perspective to refuse an application that could have been made acceptable, so that it the planning authority retains the planning fee to part cover its costs. With the current financial pressures on local government, a planning authority cannot afford to lose the contribution to the planning service from planning fees. This proposal risks creating a perverse situation where an attempt to speed up the system causes delays, with an increase in second applications and appeals. A perverse unintended outcome could also be removing funding from planning services, with local authorities unable to offset lost planning fees with revenue from any other part of the precarious local authority budgets. This could lead to fewer available and trained staff to manage the applications in the desired timely manner.

An accelerated planning system also needs to recognise that there are often delays in issuing a decision notice due to actions not within the control of the planning authority. For example, a decision notice can be delayed due to the time needed to complete a s106 legal agreement, following a resolution to grant planning permission. It is not uncommon for this to exceed the statutory processing time, given the number and nature of parties involved. Without a mechanism to prevent, there is also the potential for a landholder/applicant to delay the signing of the agreement post the proposed 10-week period to trigger a refund of the planning fee. It is important that any new system prevents this scenario from occurring. A mechanism is also required to ensure that the referral process arising from the Town and Country Planning (Consultation) (England) Direction 2024 that affects a wide range of planning proposals is factored into any accelerated planning process. The referral process occurs post resolution to permit and can add weeks (at least the 21 days in the statute) to the planning process. The Planning Authority has no control over this timescale and is unable to issue a decision pending resolution of the referral process. Similarly, there are delays and little control from the planning authority over the timescale arising from engagement with Natural England regarding Habitat Regulations Assessment (HRA) matters, which need to be satisfied prior to the issuing of a planning decision.

A common cause for the delay in determining planning applications is the capacity of technical and statutory consultees which are already stretched to respond within the current regime. These parties would need additional resources if they were to be effective in delivering an accelerated system.

Question 2. Do you agree with the initial scope of applications proposed for the Accelerated Planning Service (Non-EIA major commercial development)?

Yes - It is agreed that minerals and waste development should be excluded from the scope of the Accelerated Planning Service. Clarification is sought as to how local authority community development (Regulation 3 development) would be affected and notes that some public service infrastructure is already measured against a 10 week period, but without a higher fee to ensure that resources are available for an accelerated service. This would appear to be an inconsistency that should be addressed. The limited scope could provide a useful trial period.

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

The scale and complexity of EIA development does not lend itself to an Accelerated Planning Service. Any changes to performance criteria, should also recognise that further information and changes to these types of applications are not uncommon, triggering statutory timescales for additional publicity (30 days) and press adverts, outside the control of the planning authority. If an accelerated process is introduced, it may be more appropriate to guarantee to process the application within the statutory timeframes (i.e.16 weeks) rather than an accelerated process.

Question 4. Do you agree with the proposed exclusions from the Accelerated Planning Service – applications subject to Habitat Regulations Assessment, within the curtilage or area of listed buildings and other designated heritage assets, Scheduled Monuments and World Heritage Sites, and applications for retrospective development or minerals and waste development?

The County Council agrees with the list of application types excluded from the accelerated planning service, particularly minerals and waste development. The list should also be extended to include any application that requires agreement and/or material inputs from third party consultees to complete (i.e., actions that are outside the scope of the planning authority to directly control / deliver (including s106 / legal agreements, referrals)) and proposals affecting “non-designated heritage assets of archaeological interest of equivalent significance to Scheduled Monuments.

Question 5. Do you agree that the Accelerated Planning Service should:

a) have an accelerated 10-week statutory time limit for the determination of eligible applications
b) encourage pre-application engagement
c) encourage notification of statutory consultees before the application is made

a) No, the complexity of issues raised during the planning application process and community and stakeholder expectations do not lend themselves to a 10 week determination period. The difficulties planning authorities have in meeting the current statutory requirements of 8 and 13 weeks and the necessary use of extension of time requests illustrates the complexity of planning matters to be addressed. With retention and recruitment of experienced planning officers within the public sector at an all-time low, particularly those with mineral and waste experience, the reduction in processing time is counterproductive in accelerating planning decisions that will deliver high quality development on the ground. If a timescale is to be set, the 13 and 16 week timescale would be more appropriate.

b) If an accelerated system is introduced, then chargeable pre-application engagement should be made mandatory. Where that advice is not followed, then the accelerated service should not be an option. The pre-application should include securing the advice of key consultees**.** If an accelerated timeframe is going to be practicable for major development, the application process will need to be more like the consideration of a Development Consent Order (DCO) (i.e., all key matters explored prior to the submission of an application).

c) The notification of statutory consultees is unlikely to secure timely advice to achieve the 10-week determination periods. As referred to above, pre-application advice will be necessary from key consultees, and applicants will be required to follow the advice in any fast tracked application. At present, statutory consultees typically don't have the resources to comment on the volume of existing applications and often are delayed in responding or delayed in indicating they don't have the resource to comment. In our experience they rarely engage in pre-app discussions, unless costs are recoverable, and they have staff available to accommodate a request.

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

The fee for an accelerated service should be set at cost recovery. We recommend DLUHC establish the number of hours of officer time an average major application requires to determine, including administration and legal time / costs to benchmark an appropriate cost. This work will illustrate the cost to the local authority of determining, administrating, monitoring and enforcement existing development proposals.

Question 7. Do you consider that the refund of the planning fee should be:

a. the whole fee at 10 weeks if the 10-week timeline is not met
b. the premium part of the fee at 10 weeks if the 10-week timeline is not met, and the remainder of the fee at 13 weeks

c. 50% of the whole fee at 10 weeks if the 10-week timeline is not met, and the remainder of the fee at 13 weeks
d. none of the above (please specify an alternative option)
e. don't know

Returning all (or significant amounts of the fee) would increase the likelihood of applications being refused on the basis of insufficient information due to time restraints being imposed. However, if it is to be implemented, we propose that the premium paid be returned at 13 weeks and the remainder should the determination period go beyond an agreed extension of time. However, it is important that any delays outside of the planning authority's control (e.g. an applicant delaying the signing of a s106 post committee resolution or a referral to the Secretary of State) does not trigger the return of the fee. A key element of any new system needs to incorporate a mechanism which prevents the return of fees where the delay is not caused by the planning authority.

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

For the accelerated planning system to be effective, adequate resources will need to be available to the statutory consultees. This is not currently the case, with key consultees struggling to respond in detail to a consultation within the current timescales. Charging a fee to cover the cost of responding so that the services are adequately resourced would assist the process. The monitoring and performance reporting of consultees may also assist.

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

a. major infrastructure development
b. major residential development
c. any other development

If yes to any of the above, what do you consider would be an appropriate accelerated time limit?

Any major development could reasonably by subject to a premium and standard service, subject to the major considerations being adequately raised and addressed at pre-application stage and no (or limited) negotiations or changes to the application during the application process. Without this, the accelerated process will likely result in faster decisions, but will not deliver much needed development on the ground more quickly. Development that could have been made acceptable with negotiation and revised information (and subsequent consultation) will be refused. This will lead to an increase in appeals, on an already stretched Planning Inspectorate, repeat applications, and slower decisions on other types of development proposals as resources are prioritised to those falling within the accelerated regime.

It is also considered that the gradual shift towards including further development types into a 10 week decision period whilst tightening extension of time ability and stricter performance measures for speed may lead to all round frustration and dissatisfaction with the system, rather than improvement.

Question 10. Do you prefer:

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

Should an Accelerated Planning Service be implemented, it should be a discretionary and charged for option for the applicant to choose.

Question 11. In addition to a planning statement, is there any other additional statutory information you think should be provided by an applicant in order to opt-in to a discretionary Accelerated Planning Service?

Should an accelerated system be introduced, the following should be addressed/ provided by the applicant and tested as part of the validation process:

a) Pre-application engagement should be made mandatory, including with statutory consultees with information provided as part of the application. The failure to follow the pre-application advice should prevent an applicant from being eligible for the accelerated service.
b) All information required by national and local list, agreed in advance in writing by the planning authority.
c) A full suite of information on BNG, including draft Net Gain Plan and where necessary a draft legal agreement to secure the implementation of the plan and its delivery for 30 years.
d) If a s106 is required, the application needs to include a draft agreement and agreement to cover abortive legal costs, so that the legal process can be progressed in tandem with the application. The planning authority should not be penalised if a legal agreement delays the process due to delays by the applicants or third-party legal teams. Strict timeframes for negotiations and completion of legal agreements would be necessary.

Consideration should be given as to whether the premium service should operate more aligned to the DCO process in terms of information prepared in advance of an application.

DLUHC should also consider whether the service should allow the applicant to submit further supporting information once the application is valid and at what stage this is acceptable. Where the submission of further supporting information is allowed, this needs to be no later than a specific period in the timeframes so that it allows scope for the Authority to re-consult as necessary within the 10 week timeframe and not be penalised as a result.

In practice, if a 10 week decision is to be made, there is very little scope in the timescale for an application to be amended or new material submitted. Consideration should therefore be given to a requirement on the applicant to prepare and submit further supporting information within a set period of a request (say 2 weeks max.), otherwise the fee returns process needs to take account of any delays caused by the applicant.

The consultation references the possibility of 'stopping the clock' when further supporting information is required. Officers are unaware of the legislation that would enable this to happen and asks DLUHC expands on this proposal in guidance.

An approach that enables the 'clock to stop' would only work if there is still time left in the original timeframe for the authority to consider (and re-consult) on any further details submitted (i.e., the clock could only reasonably be stopped within the first few weeks of the application process, otherwise there would be insufficient time remaining). Our recommendation would be that as a minimum, additional time needs to be added to the target timeframes, or realistically the clock should be reset. This should be the case for all applications including those outside any accelerated service or the subject of an appeal. A material change to the application or the supporting information means that the authority (or an inspector) is being asked to consider a different application that could reasonably result in a different outcome. The Council considers that it is important to engage positively and proactively with applicants to deliver high quality development, to negotiate over applications and for additional information to be received and considered, however authorities should not be penalised in terms of reputation or financially for doing so.

Question 12. Do you agree with the introduction of a new performance measure for speed of decision-making for major and non-major applications based on the proportion of decisions made within the statutory time limit only?

No – There are a number of concerns with the suggested approach.

The focus on delays and the suggestion that this is principally due to planning authorities, assumes incorrectly that applications when received are fit for purpose in the first instance every time. Even with local validation lists in place, it is difficult to establish the quality of a submission and be satisfied that the application addresses the detail required for determination (for example a poor-quality flood risk assessment or noise survey means either an application is refused or the timeframes are extended to allow for redrafts).

The proposed performance indicator focuses on the speed of a decision not the quality. In our experience, whilst there can be delays due to officer resources, administration, or committee cycles, the key reason is the need to negotiate with the applicant over material considerations raised by statutory consultees, as a result of public opinion or due to poor quality applications and reports. This is particularly relevant where an applicant needs to carry out further supporting assessments to address material matters raised. The new performance measures and guidance could usefully address this matter and provide guidance on how this should be addressed within the measures proposed without the need to refuse an application due to insufficient information.

The proposed performance measure would not reflect the complexity of many planning applications, committee and governance processes. Similarly, it does not reflect the willingness of mineral and waste applicants to work with planning authorities to address issues raised through the planning process with an agreed use of time extensions to secure a positive outcome and 'good growth'. The use of extension of time agreements are not a tool to mask inefficient planning authorities, but an effective and constructive mechanism to enable applicant and planning authority to resolve issues raised by the planning process, particularly consultees and local community concerns, without the need for resubmitted applications and appeals.

In practice, the relatively small number of mineral and waste development decisions taken by a county planning authority means that a performance measure based on the proportion of decisions made within the statutory time limit (13 or 16 week or both) only would be a poor measure. If a county planning authority has a small number of applications in a 12 month period that do not achieve a statutory timescale because they have agreed an extension of time, they will have a performance issue and be at risk of designation.

As a consequence, the performance measures as proposed are likely to lead to greater rates of refusals requiring applicants to resubmit amended applications, which creates delays, or an increase in the rate of appeal.

In developing new performance measures, these could usefully take into account the quality of the assessment and decision. We consider that the data captured on performance should include whether an authority engaged positively with the applicant and enabled the applicant to amend / amplify the application documents in response to concerns and objections raised, leading to a more thorough consideration of an application, a better quality decision and as a result, avoiding a refusal due to insufficient information, an appeal (which diverts resources away from the determination of applications) or the need for revised applications. DLUHC could reasonably seek to capture more information on the decision process and the reason for delays – for example were there minor / material / or significant changes to the application or supporting documents?

Question 13. Do you agree with the proposed performance thresholds for assessing the proportion of decisions made within the statutory time limit (50% or more for major applications and 60% or more for non-major applications)?

The County Council does not agree with the proposal. A measure of 50% is set too high, and is not likely to improve speed any further than is currently the case. It is also not likely to improve quality.

The preamble to the question notes that only 1% of local planning authorities determine 60% or more of major applications within the statutory 13- or 16-week time limits, with the average indicated at approximately 28 weeks. It is recommended that further work is carried out to establish why applications take longer to process before imposing restricted timeframes. If the target is faster decisions, consideration should be given to changing the system to ease the burden on the planning system to make decision making more straightforward. The system is required to balance an expanding and increasingly demanding range of expectations, and this takes time, and requires adequate supporting information and resources to consider thoroughly. Without changes to the decision-making process, the outcome is likely to be increased rates of refusal (because outstanding matters cannot be resolved in the time available or stronger local list requirements resulting in more applications being returned as invalid – both of which are likely to result in delays)**.**

Question 14. Do you consider that the designation decisions in relation to performance for speed of decision-making should be made based on:

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

Please give your reasons

None of the above. Whilst a timely decision is relevant, a quality decision is more important than speed. The Council considers that an 'agreed delay' to try resolve matters during the planning application is time well spent if it results in the right decision, avoiding delays and costs (to all) through the appeals process or the need to resubmit an application. It is right that there should be a cut off where an authority has allowed enough time for an applicant to address matters arising, however strict timeframes appear counterproductive and will put further pressure on an under resourced and stretched planning authorities.

In relation to county matter (mineral and waste) development, it is noted there are too few county matter applications to measure effectively on speed, whilst at the same time also reducing the ability to request an extension of time, without adversely affecting quality measures. The impact of having a lower number of decisions is recognised elsewhere in the consultation in respect of not amending the quality measure, (paragraph 48) and therefor this should also be recognised in respect of speed measure for county matter development.

Question 15. Do you agree that the performance of local planning authorities for speed of decision-making should be measured across a 12-month period?

No – 12 months is considered too short a period to measure for mineral and waste development where there are relatively fewer numbers of applications. For these developments, the performance measure is more easily skewed by smaller numbers of delayed applications, which could be a minor issue rather than an indication of a particular problem within the authority's decision making process. If 12 months is used, the Minister's discretion to take into account exceptional circumstances that a planning authority can justify should remain and there should be an opportunity to address any issues identified over the following six months.

Question 16. Do you agree with the proposed transitional arrangements for the new measure for assessing speed of decision-making performance?

A transition period would be required should the new measure for assessing performance be introduced. A start date from 1 October 2024 gives insufficient preparation time for implementation.

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

There should be no change for 'county matter' proposals, because of the relatively small number of applications involved and the complexity of proposals. A change to the measure in relation to speed may have an adverse impact to quality for such applications and perversely a delay in the delivery of important infrastructure if there are a greater increase in refusals and appeals as a result.

Prior to making revisions to the performance regime, consideration should be given to changes to the planning system that assist planning authorities to consider applications at a faster pace. These measures could include: increasing and ring fencing planning authority resources (the recent fee increase does not go far enough to make a material change); a requirement for chargeable pre-application discussions; clear national criteria for validation and information required to determine an application; changes to consultations and engagement process; clearer guidance on balancing competing economic, social and environmental factors; and a simplified appeals process for all applications (without the opportunity for the applicant

to submit further supporting information post determination by the planning authority).

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

The County Council is not responsible for householder applications and makes no comment on this aspect.

Question 19. What is your view on the use of repeat extension of time agreements for the same application? Is this something that should be prohibited?

As indicated in the preamble to this question, extensions of time are an important tool in making good quality decisions and speeding up the planning system that would otherwise risk being 'clogged up' with repeat applications or costly and time-consuming appeals. The use of repeat extension of time requests for an application should not be prohibited, particularly where a planning issue is potentially resolvable. It is noted that an initial time extension could be agreed based on the planning authority expecting the receipt of additional information in a reasonable time period and to address the concerns raised by the consultation and engagement process. It is not uncommon for those expectations not to be met, and without the ability to agree a further extension of time, the planning authority would be penalised if it were to go back to the applicant for further clarification or doesn't receive the information on time. If the ability to request more than one extension of time is removed, it will likely lead to requests to agree a longer period at the outset, resulting in frustration in the system and an increase of withdrawn and repeat applications, refusals and appeals. None of these will achieve an accelerated planning system and quicker development being delivered.

Should planning authorities be restricted to one extension of time request, an alternative proposal where an applicant can seek an extension of time from the planning authority without an impact upon performance targets, should be considered This would have the advantage of providing the time to address issues arisen through the planning process and deliver quality decisions in the swiftest possible time.

In addition, as part of any revised performance process, appellants should not have the opportunity to submit information at appeal that was outstanding when their application was refused on the grounds of a lack of information because a time extension could not be sought. A mechanism to address this is required in any new regime as it could have consequences for the quality performance requirements.

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

Yes – whilst it is not clear if this would relate to 'county matter' development, this proposal has the potential to be a meaningful change that could

significantly speed up the decision process and would serve to focus an applicant's attention on providing sufficient / quality information with an application. This approach could reasonably be extended to the majority of appeals, with further hearings and opportunities to submit further information only available after an inspector has made a decision on the information available to the planning authority when the application was determined. This would reduce costs for all and would enable inspectors to progress appeals at a swifter pace. An award of costs and a poor performance mark for a planning authority is only reasonable if the inspector's decision is made on the same set of documents available to the planning authority when it made its decision. Any changes to these documents or further expert advice / submissions is a different proposal on which an authority could reasonably have made a different decision.

Question 21. Do you agree with the types of appeals that are proposed for inclusion through the simplified written representation appeal route? If not, which types of appeals should be excluded from the simplified written representation appeal route?

In part - as indicated above, there is scope to extend the approach to the majority of appeals as a faster pace approach to the decision process, with hearings limited to special circumstances or situations where an inspector agrees with a refusal (should an applicant wish to pursue the appeal process further).

Question 22. Are there any other types of appeals which should be included in a simplified written representation appeal route?

No.

Question 23. Would you raise any concern about removing the ability for additional representations, including those of third parties, to be made during the appeal stage on cases that would follow the simplified written representations procedure?

No – see comments above. The County Council considers that the inspector should take any decision based on the information available to the planning authority at the time of its decision. This should be limited to information that the authority has had time to publicise and consult on to avoid situations where an applicant submits significant and material information late in the process with a future appeal in mind.

Simplified written representations should be the first stage of the appeal process. In deciding on the simplified process an inspector could reasonably indicate whether there is likely to be scope for a hearing or whether the applicant should consider reapplying or not.

Question 24. Do you agree that there should be an option for written representation appeals to be determined under the current (non-

simplified) process in cases where the Planning Inspectorate considers that the simplified process is not appropriate?

Yes – but only in exceptional circumstances. Where new information is introduced, there should be no risk of costs to the authority and depending on the nature of the additional information introduced, the authority should be able recoup additional costs incurred. Limitations on the scope for inspectors to call a hearing would speed up decisions and provide more confidence in timeframes of an appeal.

Question 25. Do you agree that the existing time limits for lodging appeals should remain as they currently are, should the proposed simplified procedure for determining written representation planning appeals be introduced?

Yes – although the timeframes could reasonably be reduced as there would be no need for either party to prepare and submit further information.

Question 26. Do you agree that guidance should encourage clearer descriptors of development for planning permissions and section 73B to become the route to make general variations to planning permissions (rather than section 73)?

Yes – There is support for the flexibility afforded to applicants and planning authorities to vary permissions in the right circumstances and 73B would provide further flexibility. However, as a County Planning Authority managing minerals and waste development that often remain operational for extended periods (some for decades), the section 73 process is well used by site operators and often for changes that are considered as significant by the local community and raise multiple planning considerations. The fees secured for section 73s on major applications for any changes (minor or significant) do not reflect the cost of determining these applications, falling far short of the planning fee. Depending on the change sought applications can lead to consideration of significant matters – for example changes to depth or extent of working to a quarry or landfill, changes to throughput, numbers of HGVs, on site processing and significant new equipment / development. The introduction of 73B could usefully address this through a definition or upper limit on 'not substantially different' and/or introducing a sliding fee scale based on the nature of the changes being sought.

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

The guidance indicates that s73B can only be used to vary the original permission, which cannot be a section 73, section 73A or other section 73B permission, or permission granted by development order. In our experience s73 applications are often used to vary earlier s73 variations, this enables multiple changes and for the latest permission to encompass these changes without uncertainty over which permission is being implemented. If the

proposal is to change this provision it should be considered further to ascertain whether this could have unintended consequences.

As advised above, clear guidance on 'substantially different' should be provided.

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

Yes – however the planning fee should reflect the scale and nature of the change proposed and the scale of the original permission.

Question 29. Do you agree that the application fee for a section 73B application should be the same as the fee for a section 73 application?

Yes, the fee for a section 73 and 73B application should be the same as each other. It should however be noted that for current section 73 applications for mineral and waste the fee is not sufficient and is heavily subsidised by the local authority. See response to Question 31 below. Given the wider and well documented pressures on local authority financing, this cross subsidy is becoming intolerable for a local authority to be able to bear.

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

Yes, but as advised above, the costs proposed are too low and are not set at a level that reflects the work involved.

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

The fee for these types of applications needs to be a fair reflection of the work involved and set at a level so that costs do not fall disproportionally upon the local authority. Despite the recent welcome fee increases, the planning application fee is currently set too low for changes to mineral and waste development. Mineral and waste permissions are often operational for decades and can be subject to a number of significant changes over that period, resulting in multiple s73 applications and associated decisions. Any change to a permission requires the reissue of the base permission, which necessitates a review of all the conditions irrespective of whether they are being varied, to ensure they are still relevant and up to date. For example, it would be unreasonable to issue a s73 decision with (earlier) pre-commencement conditions if these matters have been addressed. The authority regularly spends time working through major decisions that can reasonably have over 50 plus-conditions.

Section 73 applications can be used to seek permission for a wide range of changes including the type and volume of waste streams, changes in processing and operations and changes in operating hours. Typically they bring previously non considered aspects of a development closer to

environmental constraints and communities which need detailed consideration to test the planning merits. Often, the base permissions will have been EIA development, which will need to be considered as part of any s73 determination.

Material changes to a mineral and waste management development, can require significant consultations, publicity and engagement, including seeking advice from technical consultees at cost to the authority where that expertise is not available in house (such as noise, air quality, geotechnical, landscape advice). Similarly there are legal costs associated with s106 agreements. These applications can require resources similar to those required to consider a fresh application for a new development, when addressing local community objections, negotiation on matters raised, Member involvement, the preparation of a detailed committee report and the drafting of decision notices. Whilst there is scope for minor changes to be covered by a lower fee, at present the s73 process costs the planning authority a significant sum to deliver, which diverts resources available from other parts of the function. For example, the current fee just covers the administration costs of the application. It does not cover costs for consulting on the proposals, attending site, assessing, reporting, or preparing a decision. As you are aware, the current fee for a s73 application is £293.

The following typical examples illustrate the concerns raised:

A simple s73 application to vary two conditions to amend the layout of a waste recovery facility. The planning fee was £234. Following registration and validation, officers consulted 12 consultees and due to the submission of revised information, undertook a second round of consultation with these 12 parties. We received 11 responses to consultation. On this occasion, no comments were received from the local community. All mineral and waste development is major development for the purposes of a statutory press advert, which costs in this instance £20. Due to the nature of the proposed changes, additional technical advice accompanied the application and the County Council incurred £3367 fees seeking advice from its technical advisors on this element of the application. The site was less than 10 miles from the council offices (not typically the case), so mileage cost associated with the site visit was £6. The application was determined under delegated powers, so no committee costs other than an entry to a delegated list at a future committee for governance purposes. Assuming an average hourly rate of £65 (which takes account of the time of a range of officers involved in the process including administration, case officer, supervision and sign off), and a conservative estimate of 25 hours of officer resource of £1625, then the processing of this application cost £5018 some £4784 more than the planning application fee.

Example 2: A s73 application to amend a condition to regularise minor changes to the layout of a waste digester facility and to seek permission for the installation of a biogas storage. The planning fee was £234. Following registration and validation, officers consulted 10 consultees and due to the submission of revised information, undertook a second round of consultation

with these parties. We received 8 responses to consultation. The advert cost was £18 and mileage costs to visit the site were £18. Due to the nature of the proposed changes, the County Council incurred £1269 fees seeking advice from its technical advisors on this element of the application. The application was determined under delegated powers, so no committee costs other than an entry to a delegated list at a future committee for governance purposes. Assuming an average hourly rate of £65 (which takes account of the time of a range of officers involved in the process including administration, case officer, supervision and sign off), and a conservative estimate of 25 hours of officer resource of £1625, then the processing of this application cost £2930, some £2696 more than the planning application fee.

Whilst the principle of mineral or waste use has been established at a site, s73 applications can be as contentious as the original planning applications. They can attract considerable objection and where the base permission had a legal agreement, this will usually need to be revised as part of any new s73 consent. Significant officer time is required to process these applications. In these cases, the processing costs illustrated above are substantially increased as the planning authority seeks to work positively and proactively with an applicant and to those raising concerns to try and achieve an acceptable development. Unresolved material objections result in a committee decision an extensive committee report and the costs of governance processes.

In practice, the current s73 planning fee covers the administrative costs associated with a typical application, but does not address the costs incurred by planning officers associated with assessing the merits of a proposal and the committee and decision making process. In addition, it does not recognise that local planning authorities do not have in house technical resources for specialist areas of expertise required by proposals and that these have to be externally sourced and funded for each application. It is therefore recommended that a new fee is set for mineral and waste management development that more realistically reflects the costs incurred. This could either be on a sliding scale or as a proportion of the original planning application fee, say 50%

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

Yes

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

No

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

No comment

Question 35. If section 73B cannot address all circumstances, do you have views about the use of a general development order to deal with overlapping permissions related to large scale development granted through outline planning permission?

Don't know – there could reasonably be scope for more clarity on the use of drop in permissions. This could include a requirement for the applicant to address how the new application would work with all earlier extant consents and identify which are not compatible, providing a commitment not to implement in tandem that could be conditioned or subject to a legal agreement.

Question 36. Do you have any views on the implications of the proposals in this consultation for you, or the group or business you represent, and on anyone with a relevant protected characteristic? If so, please explain who, which groups, including those with protected characteristics, or which businesses may be impacted and how. Is there anything that could be done to mitigate any impact identified?

No comment

I trust that the above is helpful. If you have any queries, please do not hesitate to contact me.

Yours sincerely

Simon Jones
Corporate Director - Growth, Environment and Transport