



City of Westminster

Planning & City Development Committee

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Report of: Director of Town Planning and Building Control

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1. Executive Summary

- 1.1 This report provides an update on recent and ongoing consultations by the Department for Levelling Up, Housing and Communities (DLUHC) on changes to planning fees and performance monitoring, permitted development rights, future changes to the current CIL and S106 regimes and the replacement of Environmental Impact Assessments with Environmental Outcome Reports.
- 1.2 The amendments proposed to planning fees and performance monitoring and permitted development rights are likely to have more immediate impacts on the planning service and decision making and the Committee is therefore invited to focus its consideration on these elements of the report. Proposals by government relating to the introduction of a new Infrastructure Levy and reform of the process for environmental assessments represent longer term aspirations and are reported for the Committee's information at this stage.

2. Recommendation

- 2.1 Members are asked to consider the contents of this report, including possible implications these may have for planning decision making in Westminster.

3. Increasing Planning Fees and Performance

- 3.1 The consultation was launched by the DLUHC on 28 February 2023¹. It seeks views on proposals to increase planning fees and improve the performance of local planning authorities. The principal changes proposed are:
 - to increase planning fees by 35% for major applications and 25% for all other applications;

¹ <https://www.gov.uk/government/consultations/increasing-planning-fees-and-performance-technical-consultation/technical-consultation-stronger-performance-of-local-planning-authorities-supported-through-an-increase-in-planning-fees>

- introduce additional fees for bespoke or 'fast track' services;
- to make an annual inflation-related adjustment to planning fees;
- ring-fencing of additional fees income;
- double fees for retrospective applications;
- removal of the 'free-go' for repeat applications;
- introduction of a prior approval fee for the permitted development right allowing the Crown to develop sites within the perimeter of a closed defence site;
- to build planning capacity and capability within local authorities, including addressing challenges in recruitment and retention, and how these can be addressed;
- to reduce the Planning Guarantee period (after which planning fees are refunded on request) from 26 weeks to 16 weeks for non-major applications, and;
- improve the quality of the local authority planning service by monitoring more performance measures.

- 3.2 The fee increase proposed would be the first increase in statutory planning fees since January 2018. Prior to that, statutory planning fees were increased in 2012. In the period since January 2018 Consumer Price Index (CPI) inflation has risen 20%, meaning that a proportion of the increases currently proposed will only serve to off-set inflation since 2018. The consultation proposes to avoid this sporadic approach to increasing statutory planning fees in future by introducing an annual increase in planning fees that matches the CPI rate of inflation for the previous year.
- 3.3 To better recompensed Local Planning Authorities (LPAs) for work undertaken to identify and remedy unauthorised development, the consultation proposes that fees for retrospective applications would in future be double the normal application fee.
- 3.4 Currently applicants may make a second application within 12 months of an initial application (irrespective of the outcome of the first application) without a fee being required where the second application is substantially the same as the first application. This can cause LPAs significant expense as a result of assessment and processing costs. The 'free go' is often used by applicants to avoid seeking pre-application advice (by using the first application to secure advice). The consultation proposes to remove the 'free go' for repeat applications.
- 3.5 In addition to amendments to fees the consultation addresses current resourcing, capacity and diversity challenges across LPAs, albeit the consultation seeks ideas on how to resolve these issues from respondents rather than offering firm proposals or commitments to additional resources or strategies.
- 3.6 Allied to proposals to increase statutory planning fees, the consultation sets out significant proposals for changes to performance indicators that the DLUHC uses to monitor LPA performance. The consultation proposes 'tightening' the existing Planning Guarantee, which currently allows applicants to secure a refund for their planning application fee where the application is not determined in 26 weeks. The consultation suggests that it should be reduced to 16 weeks for non-major applications.
- 3.7 The consultation identifies the government's contention that some LPAs have used extensions of time (EOTs) as a device to 'mask' slower performance in terms of speed of decision making. To address this, the consultation proposed exclusion of EOTs and Planning Performance Agreements (PPAs) from LPA performance metrics for speed of decision making in future.
- 3.8 There are changes proposed in the consultation to the way in which data is captured within current performance indicators, so that non-major applications are monitored separately

where they comprise Householder development or relate to a proposal to approve details pursuant to a condition.

- 3.9 The final section of the consultation focuses on new performance metrics that the DLUHC may in future introduce to monitor the performance of LPAs. These include a new form of metric to measure the quality of decisions linked only to the success of appeals and not all applications, separate measurement of the use of extensions of time, measurement of how quick applications are booked in following initial receipt, monitoring of enforcement performance and separate assessment of the proportion of applications reported to planning committee and the proportion refused that are subsequently lost at appeal. The consultation identifies the DLUHC's longer term desire to develop a further measure which focuses on measurement of customer experience. Such a metric would align with the Council's desire that the planning service is focused on customers.
- 3.10 The DLUHC consultation on planning fees and performance closes on 25 April 2023 and the Council's formal response will be circulated to the Committee in advance of the committee meeting.

4. Permitted Development Rights Changes: Renewable Energy

- 4.1 The consultation was launched by the DLUHC on 28 February 2023². It seeks views on proposals to make various amendments to permitted development rights related to campsites, renewable energy and film making. Whilst changes related to campsites and film making would not have significant impacts in Westminster, the proposals to relax rules that apply to when planning permission is required for solar panels in conservation areas and World Heritage Sites are relevant.
- 4.2 The changes proposed to permitted development rights for solar equipment follows a commitment the Government made in its British Energy Security Strategy to review the existing permitted development rights for rooftop solar, as well as consider the best way to make use of public sector rooftops. The broad aim of the consultation proposals is to increase the amount of solar equipment installed on buildings, reducing the pressure for solar installations in greenfield settings.
- 4.3 At present there are a number of permitted development rights that allow the installation of solar equipment at roof level on domestic properties, provided the installation accords with criteria controlling the appearance of the equipment. The consultation proposes relaxing the criteria controlling the appearance of solar equipment so that they can project 0.6 metres above flat roofs on domestic buildings. The consultation also proposes to allow solar equipment on a wall of a domestic property which fronts a highway in a conservation area, which is currently precluded. It asks whether LPAs support these changes and if so whether there are any limitations that should be imposed on their appearance.
- 4.4 There are existing permitted development rights for the installation of stand-alone solar equipment within the curtilage of a dwellinghouse or a block of flats. The existing rights are subject to a number of limitations and conditions, for example the rights do not apply where the development would result in the presence of more than one stand-alone solar or where the surface area of the solar panels forming part of the stand-alone solar would exceed 9 square metres. The rights do not apply in conservation areas if the stand-alone solar would be installed closer to the highway than the dwellinghouse. The consultation

² <https://www.gov.uk/government/consultations/permitted-development-rights-supporting-temporary-recreational-campsites-renewable-energy-and-film-making-consultation/permitted-development-rights-supporting-temporary-recreational-campsites-renewable-energy-and-film-making-consultation#scope-of-the-consultation>

proposes the removal of the limitation on their provision in conservation areas, meaning that in future stand-alone solar structures could be constructed between a domestic building and a highway within a conservation area. There are similar existing rights for stand-alone solar equipment in the curtilage of non-domestic properties and the consultation also proposes allowing these within conservation areas in future.

- 4.5 For solar equipment on non-domestic buildings, currently where a building is in a conservation area or a World Heritage Site, solar equipment which generates electricity up to 1MW cannot be installed on a roof slope which fronts a highway. Where the electricity generated is up to 50kW the solar equipment cannot be installed on a wall which fronts a highway in a conservation area or World Heritage Site. The consultation proposes the removal of these limitations to maximise deployment of solar panels on the roofs and walls of non-domestic properties in conservation areas.
- 4.6 Solar equipment installed under expanded permitted development rights will continue to be required to comply with building regulations and will need the approval of the building owner.
- 4.7 The DLUHC consultation on changes to permitted development rights changes closes on 25 April 2023 and the Council's formal response will be circulated to the Committee in advance of the committee meeting.

5. New Infrastructure Levy

- 5.1 The consultation was launched by the DLUHC on 17 March 2023 and closes on 9 June 2023³. It seeks views on the design of a future Infrastructure Levy (IL), which is proposed to be introduced via future secondary legislation pursuant to the Levelling Up and Regeneration Bill (LURB) once it has made its way through Parliament. The IL is currently expected to be introduced in the early 2030's and is intended to replace the current CIL and Section 106 mechanisms as a single method for capturing contributions from new development towards the delivery of infrastructure, including affordable housing provision.
- 5.2 The intention of IL is to make sure that local authorities receive a fairer contribution as a proportion of the money that typically accrues to landowners and developers as a result of new development to ensure they can deliver supporting infrastructure. Like CIL, it will retain a neighbourhood share. It is proposed that IL will be charged on the value of the property at completion per square metre and applied above a minimum threshold. Levy rates and minimum thresholds will be set and collected locally, and local authorities will be able to set different rates within their area. This approach is intended to allow developers to price the value of infrastructure contributions into the value of the land and for Levy liabilities to be reflected in market conditions. By basing the IL liability on the GDV at completion, the intention is that local authorities will be able to share the uplift where GDVs are higher than anticipated.
- 5.3 The LURB requires local authorities to prepare Infrastructure Delivery Strategies. These will set out a strategy for delivering local infrastructure and spending Levy proceeds. The LURB will also enable local authorities to require the assistance of infrastructure providers, the local community, and other bodies in devising these strategies and their development plans.

³ <https://www.gov.uk/government/consultations/technical-consultation-on-the-infrastructure-levy/technical-consultation-on-the-infrastructure-levy>

- 5.4 Government is intending to design IL to deliver at least as much affordable housing as developer contributions deliver now. To do this, a new 'right to require' will enable local authorities to set out what proportion of the Levy they want delivered as affordable homes and what proportion they want delivered as cash. As the developer will be obliged to deliver these apportionments, the 'right to require' is intended to afford greater protection to policy compliant levels of affordable housing.
- 5.5 The consultation focuses on the elements of design of the Levy that will be delivered through regulations, which will follow once the LURB has received royal assent. The consultation is split into chapters addressing specific technical aspects of the proposed Levy. The contents of each chapter are summarised below:

Chapter 1: Fundamental Design Choices

- The scope of the Levy – the types of development it will apply to.
- The types of infrastructure under the Levy – whether the infrastructure is integral to the site or not and how this will impact how it is secured.
- Use of S106 – the extent to which the use of Section 106 agreements will continue to be used to secure infrastructure.

Chapter 2: Levy Rates and Minimum Thresholds

- Rate Setting – the rate at which the Levy should be set and the minimum thresholds below which no Levy is charged.

Chapter 3: Charging and Paying the Levy

- Charging the Levy – when should the Levy begin to be paid by developers.
- Payment of the Levy – how should the payment process be completed once a scheme has been completed.

Chapter 4: Delivering Infrastructure

- Forward Funding Infrastructure – how to develop a process for allowing borrowing against future Levy proceeds to forward fund infrastructure.
- The Infrastructure Delivery Strategy – what should be included in an Infrastructure Delivery Strategy to enable local authorities to take a more strategic and unified approach to infrastructure planning and delivery.

Chapter 5: Affordable Housing

- Affordable Housing - views are sought on the proposed 'right to require' and in what circumstances exemptions from the Levy for registered provider-led schemes could be appropriate.

Chapter 6: Other Areas

- The Neighbourhood and Administrative Share – both a neighbourhood share, and administrative share of the new Levy will be retained to support funding of local community priorities and Levy administration respectively.
- Exemptions and Reduced Rate – what suitable exemptions or reduced rates should be included. The consultation includes proposals to apply exemptions to qualifying small sites and publicly funded infrastructure. Views sought on enforcement mechanisms that could be used.

Chapter 7 Introducing the Levy

- Test and learn – given the substantial change the IL will represent to the existing process for securing infrastructure the consultation seeks views on how best to take a test and learn approach prior to national roll out.
- Transition to the new system – the consultation seeks views on transitional arrangements for sites delivered over the longer term. Development permitted prior to the introduction of IL will be subject to existing CIL and S106 obligations.

5.6 It is currently proposed that IL will be introduced following a series of pilots carried out during between 2025 and 2030, with full national roll out of IL in place of CIL and S106 not expected until the early 2030's.

5.7 The current consultation is a highly technical consultation focusing on the detailed mechanics of the emerging IL system. The consultation runs until 9 June 2023. The Council's response to the consultation can be shared with the Committee following its submission to the DLUHC, which is expected in early June 2023.

6. Environmental Outcomes Reports – Replacement of Environmental Impact Assessments

6.1 The consultation was launched by the DLUHC on 17 March 2023 and closes on 9 June 2023⁴. It seeks views on a proposed new system of environmental assessment ('Environmental Outcomes Reports') to replace the current EU-derived environmental assessment processes of Strategic Environmental Assessment and Environmental Impact Assessment (EIA).

6.2 Whilst relatively rare in Westminster due to the constrained size and scale of many sites within the city, environmental assessments are still required for the very largest redevelopment schemes that come forward. Typically, environmental assessments are required for schemes with comprising 1 hectare or more of urban development which is not dwellinghouse development; or development including more than 150 dwellings; or where the overall area of the development exceeds 5 hectares. Recent examples of schemes requiring an environmental assessment include Church Street Sites A, B and C, Paddington Green Police Station, South Molton Triangle and Ebury Bridge Estate.

6.3 The consultation sets out that government intends to place environmental issues at the heart of the reformed system by introducing what it describes as an 'outcomes-based approach'. The intention is that development will support strategic national level goals that are to be set out in a new Environmental Improvement Plan (EIP). The proposed reforms intend to streamline the current system, so it delivers better environmental outcomes and is more understandable for all participants than the current EIA process, which the government considers has become inefficient, prone to duplication, risk averse, lacking in focus and suffering from the inclusion of questionable data.

6.4 For communities the government contends that its reforms will deliver a more navigable system that will give people a clearer understanding of how development will affect the environment without having to search through high volumes of material for the relevant information. The proposed system is intended to take a stronger approach to mitigation

⁴ <https://www.gov.uk/government/consultations/environmental-outcomes-reports-a-new-approach-to-environmental-assessment/environmental-outcomes-report-a-new-approach-to-environmental-assessment#background-to-environmental-assessment>

to give communities confidence that action will be taken to minimise the environmental effect of large-scale development where they are expected to occur.

- 6.5 For developers the consultation sets out the government's new outcomes-based approach, which is intended to provide the certainty developers need to embed environmental considerations into the earliest stages of a project. This certainty is intended to allow developers to focus on delivering for the environment rather than using the environmental assessment process to guard against the risk of legal challenge. The changes are therefore expected to reduce costs and delays from unnecessary work.
- 6.6 For decision-makers the reforms being consulted on set out that clearer information will be submitted allowing decision-makers to make more robust decisions, with greater confidence. By being supported by improved data, the new approach is intended to allow decision-makers to better understand how local decisions play into national priorities. Reforms to the content of assessment reports so that they are shorter and simpler, and a more robust approach to monitoring and mitigation, are intended to increase transparency and ensure greater confidence in decisions.
- 6.7 To support environmental interests the new system is to be designed to establish a golden thread from national commitments through to the individual developments. In future under the proposals, assessments will focus on the critical environmental issues and will be underpinned by better access to robust data. A stronger focus is to be placed on monitoring and ensuring mitigation measures are delivering, so that remedial action can be taken if required.
- 6.8 For policy makers, planning and environmental professionals, government plans to introduce a more navigable framework that will support the creation of a robust evidence base to inform future policies and assessments. Focused reports will pinpoint the most important environmental considerations and ways of managing them. Better access to the most important information will ensure policy makers continuously learn and develop their approach over time.
- 6.9 The core principle set out in the consultation is that the new Environmental Outcomes Reports (EORs) should be focused on measurable outcomes. The consultation document states that Outcomes should:
- drive the achievement of statutory environmental targets and the Environment Improvement Plan;
 - be measurable using indicators at the correct scale;
 - be designed using the knowledge and experience of sector groups and environmental experts;
 - have an organisation responsible for monitoring overall progress of specific outcomes i.e., a responsible 'owner';
 - be reviewed on a regular basis to ensure they remain relevant, and;
 - do not duplicate matters more effectively addressed through policy.
- 6.10 It is proposed that outcomes will reflect national priorities, but that they should be applicable to assessments at various spatial scales, including the project level. The assessment should set out how a development contributes to the delivery of an outcome. Government intends that this will be achieved by the introduction of a national indicator set. It is likely that EORs and the indicators they are assessed against will be

used to amplify government initiatives, such as Biodiversity Net Gain and Local Nature Recovery Strategies.

- 6.12 The consultation seeks views on how best to enhance the content of environmental assessments. Government sets out that the current approach to EIAs is typically too long and duplicitous and the proposals set out steps to streamline environmental assessments and provide additional guidance around assessment of reasonable alternatives.
- 6.13 In addition to review of the format of environmental assessments, the consultation also proposes streamlining of the process for determining whether an environmental assessment is required (often referred to as ‘screening’). The government proposes clearer criteria determining which types and scales of development require environmental assessment to remove current ambiguity and uncertainty around some smaller scale Category 2 scale developments.
- 6.14 The new EOR system will introduce a consistent hierarchy for mitigation in legislation (via the LURB) for the first time:
- Avoidance: Measures that prevent adverse effects on the environment– for example, the avoidance of sensitive sites or use of alternative technologies.
 - Mitigation: Measures that lessen the magnitude or significance of adverse effects on the environment.
 - Compensation: Measures that offset adverse effects on the environment – for example, enhancing a nature site nearby.
- 6.15 Monitoring is required under the current environmental assessment regime. The consultation indicates that the government’s research reveals it can be intermittent and patchy at the strategic level, and inadequate at the project level. The consultation sets out that the government will explore how monitoring of EORs can be better resourced and supported by enhanced powers to require the mitigation measures set out in assessments to be delivered.
- 6.16 The changes outlined to the current environmental assessment regime are reliant on primary legislation set out in the LURB, which is currently progressing through Parliament and has yet to receive Royal Assent. The changes will also require subsequent introduction of secondary legislation and are therefore unlikely to come into force before 2025.
- 6.17 The consultation runs until 9 June 2023. The Council’s response to the consultation can be shared with the Committee following its submission to the DLUHC, which is expected in early June 2023.

7. Financial Implications

7.1 None.

8. Legal Implications

8.1 None.

9. Conclusion

- 9.1 The current range of consultation exercises being undertaken by the DLUHC demonstrates the extent of change that may be expected in future to a wide range of existing planning practices and processes, many as a result of changes to primary legislation set out in the Levelling Up and Regeneration Bill.

If you have any questions about this report, or wish to inspect one of the background papers, please contact: Oliver Gibson (ogibson@westminster.gov.uk / 07971026919)

Appendix

N/A

Background Papers

None.