Accelerated Planning Service Consultation – The Vale of White Horse District Council's response

May 2024

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

Yes / **No** / Don't know

We understand the need for timely determinations and in principle support measures that will help to speed up decisions but have concerns the delivery of such a service would be unachievable until such time as our statutory consultees are able to provide full responses within relevant timescales, the standard of application submissions is better and any S106 legal agreement progress can streamlined and completed within shorter timescales

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

Yes / **No** / Don't know

Again, we have concerns about our ability to determine non-EIA major commercial projects within 10 weeks if statutory consultees are unable to provide full responses within relevant timescales and we are dependent on the quality of an applicant's submission.

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

Yes /**No** / Don't Know. If yes, what do you consider would be an appropriate accelerated time limit? **These are inevitably more sensitive sites, involve more complex considerations and could well trigger the need for referral to the council's planning committee for determination which will add several weeks to the determination period**

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?

Yes / No / Don't Know **Because these inevitably involve a wider range of consultations and more complex considerations**

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

Yes / **No** / Don't know. If not, please confirm what you consider would be an appropriate accelerated time limit

Until such time as statutory consultees are able to provide full responses within relevant timescales and S106 legal agreements can be streamlined and completed with shorter timescales we are not confident that we can deliver appropriately robust decisions within shorter timescales. Applicants will also need to raise their game to ensure the quality of applications can be dealt with quickly and we have no confidence this can be achieved given our experience to date of poor quality submissions with missing information and incorrect plans. Where such applications need to be referred to the council's planning committee for determination the timescale is considered unrealistic.

b) encourage pre-application engagement

Yes / No / Don't know

c) encourage notification of statutory consultees before the application is made

Yes / No / Don't know

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

Yes / No / Don't know. If yes, please specify what percentage uplift you consider appropriate, with evidence if possible – **a minimum of 50%.**

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) The council will have already devoted time and its resources to assessing the application - so we do not support refunding any part of the fee if the application is determined under 13 weeks.

e. don’t know

Please give your reasons – d – none - **The council will have already devoted time and resources to consulting on and assessing the application - so we do not support refunding any part of the fee if the application is determined under 13 weeks.**

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

Please explain **By providing full and timely responses at both the pre application and planning application stage and being responsive to questions. In addition, we need them to engage in discussions and be proactive in suggesting how objections can be overcome within relevant timescales.**

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

a. major infrastructure development

Yes **/ No** / Don’t Know

b. major residential development

Yes/ **No** / Don’t know

c. any other development

Yes / **No** / Don’t know. If yes, please specify

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

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

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?

We need better quality submissions at the outset that reflect pre application advice

Evidence of engagement with statutory consultees

Evidence of meaningful consultation with communities

Draft Heads of Terms for any Legal Agreements

3. Planning performance and extension of time agreements

34. An extension of time agreement is a mechanism by which an applicant can agree with the local planning authority an extended time period to determine a planning application, beyond the statutory time limit. This allows more time for the consideration of unforeseen issues raised during the application process and to enable amendments to schemes which may make a scheme acceptable when otherwise it would not be. Currently, if an application is determined within an agreed extended time period, it is deemed to be determined 'in time' and does not count against the overall performance of a local planning authority.

35. While extension of time agreements can offer benefits to both a local planning authority and applicant, the government knows that extension of time agreements can also be used by authorities to compensate for delays in decision-making, which masks poor performance and does not incentivise local authorities to determine applications within the statutory time limit.

36. Use of extension of time agreements for major applications has increased from 42% (2 years to March 2016) to 75% (2 years to March 2023), and from 9% to 41% during the same period for non-major applications. Approximately only 10% of local planning authorities determined 70% or more non-major applications within the statutory 8-week time limit, and 1% of local planning authorities determined 60% or more of major applications within the statutory 13- or 16-week time limits. This falls below government expectations for decision-making.

37. Recognising this, the government has published a new Planning Performance Dashboard. This dashboard displays performance figures over a 12-month period and includes performance within statutory time limits, excluding extension of time agreements, so a true picture of local planning authority performance figures is accessible. We expect local planning authorities to report on their data from the Planning Performance Dashboard to their planning committees and other stakeholders, in order to drive continual improvements in performance, identify areas of weakness at an early stage, and help inform priorities for service delivery.

38. The current criteria and thresholds for local planning authority performance are set out in the Improving Planning Performance: Criteria for Designation (updated 2022). The document sets out how the performance of local planning authorities is assessed against 2 measures - speed and quality of decision making. Any revisions to the performance criteria and thresholds or assessment periods would require an update to this document.

39. Where a local planning authority is designated, applicants may apply to the Planning Inspectorate (on behalf of the Secretary of State), rather than the local planning authority, for the category of applications (major, non-major or both) for which the authority has been designated.

Proposal

Monitoring speed of decision-making against statutory time limit

40. In order to address our concerns about the high use of extension of time agreements, we propose introducing a new performance measure for speed of decision-making for the proportion of applications that are determined within the statutory time limit only. The statutory time limits for applications for planning permission are set out in article 34 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended). The statutory time limits are 8 weeks for applications for non-major development, 13 weeks for major development or 16 weeks where an application is subject to an Environmental Impact Assessment.

41. It is proposed that the new performance thresholds would be:

- major applications – 50% or more of applications determined within the statutory time limit; and
- non-major applications – 60% or more of applications determined within the statutory time limit

42. The proposed thresholds do not preclude the use of extension of time agreements and planning performance agreements, but the expectation is that such agreements are used only in exceptional circumstances. The proposed threshold is also lower for major applications in recognition that, in more instances, extension of time agreements may still be required due to the more complex nature of the applications and major applications are also more likely to be subject to a planning performance agreement.

43. We intend to continue to publish performance data on the proportion of major or non-major applications that are determined within the statutory time limit or an agreed extended period, which is the measure against which performance of local planning authorities is currently monitored.

44. Following a transition period, it is proposed that we measure performance against both the current measure, which includes extension of time agreements and planning performance agreements, and the new measure, which would cover decisions within statutory time limits only. We would continue to measure major and non-major applications separately.

45. Local planning authorities would be at risk of designation for speed or decision-making in the following circumstances:

1. if a local planning authority does not meet the threshold for the current measure, inclusive of extension of time agreements and planning performance agreements (as per current regime), **or**

2. if a local planning authority meets the threshold for the current measure, inclusive of extension of time agreements and planning performance agreements, but does not meet the new threshold for the proportion of decisions within the statutory time limit, **or**

3. if a local planning does not meet the threshold for both the current and the new measure

46. Where a local planning authority is designated, applicants may apply to the Planning Inspectorate (on behalf of the Secretary of State), rather than the local planning authority, for the category of applications (major, non-major or both) for which the authority has been designated.

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?

Yes / **No** / Don't know

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)?

Yes / **No** / Don't know If not, please specify what you consider the performance thresholds should be - **30% or more for major applications and 50% or more for non-major applications if extensions of time are restricted**

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 – **a council should be allowed to explain its approach and be able to take into account customer feedback. We are frequently asked by applicants to 'hold' their application whilst they try to resolve objections with their objective being to achieve a permission and avoid an appeal.**

Assessment period for performance for speed of decision-making

47. We currently assess performance for speed of decision-making across a 24-month assessment period. The length of this assessment period means that underperformance may be identified later in the process as it is concealed by previous good performance. Assessing performance across a 24-month period also makes it difficult for authorities to demonstrate improvement in performance data, with previous poor performance concealing positive progress. To ensure that both improvement and underperformance are identified effectively at an earlier stage, we propose that performance for speed of decision-making should be assessed across a 12-month assessment period.

48. Performance in relation to quality of decision-making is measured by the proportion of decisions that are allowed at appeal. The number of relevant cases is lower than that for the speed of decision-making and if measured over 12 months would represent too few cases to provide an accurate measure of performance. It is therefore proposed that the assessment period for the quality of decision-making continues to be 24 months.

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?

Yes / No / Don't know

Transitional arrangements for assessment of the speed of decision-making

49. We recognise that local planning authorities will currently be working to the performance regime that is in place, and that time will be required to adjust to a new regime. We also acknowledge that it would be unreasonable for us to make designation decisions against the proposed new measure until a whole 12-month assessment period following introduction of the new measure has occurred. In light of this, our proposed transitional arrangements are set out below. This allows for the continuation of the current regime until September 2024, with data collection for the new 12-month assessment period for the new performance measure beginning from

1 October 2024. Our intention would be for the first designation decisions against the new performance measure to take place in the first quarter of 2026.

50. The proposed assessment periods and measures of performance for speed of decision-making are set out in the table below:

Measure and type of Application	Threshold and assessment period LPA decisions: October 2022 to September 2024	Threshold and assessment perio LPA decisions: October 2024 to September 2025
Speed of major Development (District and County)	60% of decisions within statutory time limit or an agreed extended period (extension of time or planning performance agreement)	Either or both of: 60% of decisions within statutory time limit or an agreed extended period (extension of time or plannir performance agreement) OR 50% of decisions with statutory tim limit only
Speed of non-major Development	70% of decisions within statutory time limit or an agreed extended period (extension of time or planning performance agreement)	Either or both of: 70% of decisions within statutory time limit or an agreed extended period (extension of time or plannir performance agreement) OR 60% of decisions with statutory tim limit only

Quality of decision-making

51. As set out above, as the number of relevant cases for quality of decision-making is lower than that for the speed of decision-making, it is proposed that the assessment period continues to be 24 months and that the threshold remains at 10% of an authority's total number of decisions that are allowed at appeal for both major and non-major development.

52. The proposed assessment periods and measures of performance for quality of decision-making are set out in the table below:

Measure and type of Application	Threshold and assessment period LPA decisions April 2022 to March 2024 (including appeals to December 2024)	Threshold and assessment period LPA decisions April 2023 to March 2025 (including appeals to December 2025)
Quality of major Development (District and County)	10%	10%
Quality of non-major Development	10%	10%

53. The current criteria and thresholds for local planning authority designation are set out in the Improving Planning Performance: Criteria for Designation (updated 2022). The document sets out how the performance of local planning authorities is assessed against two measures - speed and quality of decision making. Any revisions to the performance criteria and thresholds or assessment periods would require an update to this document. We will continue to review performance thresholds in the future in line with the government's priorities for local authority efficiency and to support wider objectives for housing delivery and economic growth.

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

Yes / No / **Don't know – we think this would complicate the picture**

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

Yes / No / Don't know

Removing the ability to use extension of time agreements for householder applications and for repeat agreements on the same application for other types of application

54. We recognise that there is a role for extension of time agreements in exceptional circumstances, when used to the benefit of all parties to facilitate the delivery of positive outcomes. We are however concerned that extension of time agreements are being used for smaller and less complex householder applications, without good reason, to compensate for delays in decision-making and poor performance. In order to ensure that local planning authorities focus on efficiently determining householder planning applications, we propose to remove the ability to use extension of time agreements for householder applications.

55. Extension of time agreements enable matters to be resolved prior to decision without the need for an applicant having to submit a new planning application. This may include the requirement for additional material from the applicant or comments from statutory consultees. It also allows completion of section 106 agreements. However, local planning authorities are also encouraged to agree realistic timetables to determine applications in the shortest time period possible, including for the signing of a section 106 agreement where a resolution to approve planning permission has been received from planning committee. We are therefore interested in views on the use of repeat extension of time agreements for the same application and whether this is something that should be prohibited.

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

Yes / **No** / Don't know

We agree that their use should be exceptional, but they are useful where more days are required to resolve issues and issue a permission thereby avoiding the time and cost associated with an appeal

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?

Again their use should be by exception and appropriately justified circumstances

4. Simplified process for planning written representation appeals

56. A fair and transparent appeal process is central to the operation of our planning system. Timeliness of appeal decisions is essential to give certainty to developers and other appellants and also to communities that need to know what development

is acceptable in their areas. A balance needs to be struck between opportunities in the appeal process to provide relevant evidence to the Planning Inspectorate and the need for timely decision making.

57. The introduction of expedited written representations procedures, the Householder Appeals Service (HAS) in 2009 and the Commercial Appeals Service (CAS) in 2013, has provided a simplified process for determining these less complex, small-scale cases by removing opportunities for the main parties and other interested parties to provide additional information at appeal stage.

58. The HAS and CAS appeals service accounts for about a third of all written representation planning appeals (around 5,000 per year). Overall, of all planning and trees appeals handled by the Planning Inspectorate, 70.5% are handled through the standard written representation procedure, 25% through the simplified HAS/CAS procedure, 3% by hearing and 1.5% by inquiry.

59. We believe there is scope to expand the simplified appeals procedure to cover more written representation appeals. Such a change would:

- reduce pressure on local planning authorities by removing the need for them to submit an appeal statement and final comments on these appeals, instead relying on their decision notice or officer's report
- encourage applicants to submit information or amended proposals to local planning authorities instead of appealing, supporting the principle of keeping decisions local
- support the Planning Inspectorate's timely processing of written representation appeals and help sustain its improving performance

60. We would anticipate that similar principles to the HAS and CAS process would apply to other written representation appeals. The planning issues raised in written representation appeals, in most cases, are sufficiently straightforward that the appeals can be considered without the need for further representations. Where this is not the case, the Planning Inspectorate will retain the power where they have it now to change the appeal procedure to a hearing or inquiry or to follow the current non-simplified written representation procedure.

Proposal

61. We propose to establish a simplified process, which mirrors the existing HAS and CAS process, for the following written representation appeals:

- appeals relating to refusing planning permission or reserved matters
- appeals relating to refusing listed building consent
- appeals relating to refusing works to protected trees
- appeals relating to refusing lawful development certificates

- appeals relating to refusing the variation or removal of a condition
- appeals relating to refusing the approval of details reserved by a condition
- appeals relating to the imposition of conditions on approvals
- appeals relating to refusing modifications or discharge of planning legal agreements
- appeals relating to refusal of consent under the Hedgerow Regulations
- appeals relating to anti-social high hedges

62. As with the current service for HAS and CAS appeals, it is proposed that the simplified route would only apply where an application has been determined. Appeals against non-determination or appeals against an enforcement notice would follow the current process to allow further submissions to be made. This is because for appeals against an enforcement notice the application process will not have been followed beforehand and therefore there would have been no opportunity for representations to be made and for appeals against non-determination the application process will not have been completed. There may also be other limited scenarios where the Planning Inspectorate may decide that the simplified route is not appropriate, such as where evidence needs to be tested. In such cases, the appeal would continue by the current process.

63. The Planning Inspectorate would retain the power where they have it now to determine the appropriate appeal procedure, and this would be confirmed upon validation of the appeal. Where an individual case requires a hearing or inquiry all interested parties will be able to provide supporting statements and additional representations in the same way as they do now.

64. In cases where the Planning Inspectorate has the power to determine the procedure, where an appellant initially requests a hearing or an inquiry but the Planning Inspectorate considers that the case should proceed under the simplified written representations procedure, the additional evidence submitted will be returned to the appellant.

65. Similarly to HAS and CAS, it is proposed that appeals determined through the simplified route would be based on the appellant's brief appeal statement plus the original planning application documentation and any comments made at the application stage (including those of interested parties). There would be no opportunity for the appellant to submit additional evidence, to amend the proposal, for additional comments to be made from interested parties or for the main appeal parties to comment on each other's representations.

66. It would be necessary for the local planning authority to notify interested parties at the application stage that there would not be a further opportunity to make comments should the application be decided through the simplified appeal route.

67. It is proposed that all existing time limits for lodging an appeal would remain unchanged.

68. As expanding the simplified appeals service to most written representation planning appeals (except non-determination appeals and appeals against an enforcement notice) would remove opportunities for both parties and other interested parties to provide additional information at appeal stage we are interested in understanding views on the potential impacts this may have on the way in which information is provided and consulted on at application stage. For example, it could lead to an applicant providing more material upfront with their planning application to compensate for this, should they need to appeal the decision. Local planning authorities would also need to ensure that adequate opportunities are made for interested parties to provide additional representations should proposals be amended during the course of the application.

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

Yes / No / **Don't know**

We think it may be appropriate for more straightforward cases but the inability to submit additional information could be significant disadvantage, particularly in cases where the council's Planning Committee has overturned an officer recommendation. Third parties (especially local communities) could feel disadvantaged by not being able to submit additional comments/information at the appeal stage.

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?

Yes / **No** / Don't know

If the proposal is implemented the types should be extended to include cases where a council's planning committee has overturned an officer recommendation.

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

Yes / **No** / Don't know. Please specify.

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?

Yes / No / Don't know. Please give your reasons.

This could disadvantage both the council and third parties where an unforeseen issue arises or additional relevant information comes forward at a late stage in the planning application process (or indeed at the appeal stage).

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 / No / Don't know

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 / No / Don't know

5. Varying and overlapping planning permissions

69. The ability to vary planning permissions in a proportionate, transparent and timely manner is an important feature of the development management system. It is common for developments, particularly if they are large, to require variations to the planning permission in response to further detailed design work, new regulatory requirements, and changing market circumstances. Without this flexibility, development risks being delayed or abandoned as the only option would be the submission of a brand new application for the development which would create uncertainty, delay and further costs.

70. Currently, there are two legislative routes under the Town and Country Planning Act 1990 which allow applicants to propose variations to planning permissions:

- section 73 which enables an applicant to vary a planning condition imposed on a planning permission; and
- section 96A which enables an applicant to make non-material amendments to a planning permission.

71. Both routes are commonly used. In particular, previous guidance first published in 2009 about greater flexibility for planning permissions[footnote 2] suggested that section 73 could be used to deal with minor material amendments to planning permission if there was a condition stating the development shall be carried out in accordance with approved plans. The use of such conditions has since become standard practice. However, recent caselaw[footnote 3] confirmed that section 73 cannot be used to amend the descriptor of the planning permission limiting the scope to make minor material amendments[footnote 4]. The government responded by legislating under section 110 of the Levelling-up and Regeneration Act 2023 for a new route (section 73B) which enables material variations to planning permissions.

72. There has also been recent caselaw about the treatment of overlapping permissions which has cast doubt about the scope to use 'drop in' permissions where a subsequent permission is granted for an alternative development on a

section of a larger development previously granted permission and still being implemented. Such drop in permissions have often been used as a further flexible mechanism to deal with changing circumstances (for instance, a new developer who wants to carry out alternative development on the section).

73. This consultation seeks views on the implementation of section 73B and the treatment of overlapping permissions (including the role for drop in permissions) to ensure there are effective, proportionate and transparent routes to manage post-permission changes to development.

Implementing section 73B

74. The new section 73B route enables an applicant to make an application to a local planning authority for a new planning permission for development which is not substantially different to that granted by an existing planning permission. The key legal features of the route are:

- a section 73B application must identify the existing permission (which cannot be a section 73, section 73A or other section 73B permission, or permission granted by development order), and can propose conditions for the new permission;
- as an application for planning permission to a local planning authority, the determination of a section 73B application is subject to section 70 and other decision-making duties. But the local planning authority cannot grant permission for a section 73B application if the effect of the section 73B permission would be substantially different from the existing permission, and when determining the application, they must limit their consideration to the variation between the application and the existing permission; and
- like a section 73 permission, a section 73B permission is a separate permission to the existing permission (and any other section 73 or 73B permissions related to the existing permission) so the granting of a section 73B permission does not affect the validity of the existing permission (or other section 73 or 73B permissions).

75. Practically, this means that a developer would be able to make an application for development which can be a variation of both the descriptor and conditions of an existing planning permission, providing the development was not substantially different from the existing development. This would provide greater flexibility than a section 73 application (restricted to the variation of conditions) and a section 93A application (limited to non-material changes to a permission).

76. Implementation of the section 73B route requires a package of secondary legislation changes covering the consultation arrangements, information requirements and other procedural matters, the application fee, and consequential amendments to the Community Infrastructure Levy regulations and other planning

legislation. We also want to prepare guidance on the use of the route to aid applicants and local planning authorities.

77. This consultation seeks views on 4f key matters. Following this consultation, we propose to implement the section 73B route as soon as parliamentary time allows.[footnote 5]

General approach

78. Our proposed objective is for the section 73B route to replace the use of section 73 to deal with proposals for general material variations to development granted planning permission (such as the use or design of the development). Section 73 would return to focus on the variation of specific conditions. In other words, if an applicant wants to make some changes to a development granted planning permission (such as minor alterations to the total number of flats and the size of the building of an apartment block following further design work), they would use section 73B (rather than current section 73 route where it is possible); but if an applicant only wants to vary a specific condition (such as a condition about building materials), section 73 would be used.

79. The availability of section 73B as a more flexible route to deal with general material variation provides an opportunity to return to clearer and more specific descriptors for planning permissions, helping to improve transparency of development proposals for local communities. In particular, it would halt the increasing tendency, in response to the recent caselaw, for applicants of major developments to propose more generic descriptors for their development without specifying key features such as the number of new dwellings (the idea being that these features would be set out in conditions so they could be amended through a section 73 application if change was required).

80. To achieve this, we propose to use Planning Practice Guidance to encourage clearer, more transparent descriptors of development and the use of section 73B to deal with general material changes to development granted planning permission. We would welcome views about the use of guidance in this way and what else could be done across the sector to reinforce it.

81. It has been suggested that new planning permissions in future should not include the general condition (encouraged by the 2009 guidance) that development shall be carried out in accordance with approved plans, reverting back to earlier practice. This would have the effect of limiting the scope of section 73 applications for changes to plans and drawings, making the section 73B route the default approach. However, the non-imposition of such a general condition would be a significant change. The use of such a condition is now standard practice and helps to support effective planning enforcement, especially in relation to the design of the development. Specific conditions referring to approved plans are still likely to be imposed by local planning authorities. We are not minded to use guidance to discourage the use of this condition, but we would welcome views.

82. We recognise, for both developers and local planning authorities, one key issue for the section 73B route is the ‘substantially different’ test and the extent this test would limit the scope of the route. Section 73B does not define the test; it will depend on the scale of the changes required in the context of the existing permission. Factors such as location, scope of existing permissions on the site and the nature of the proposed changes could all be relevant. We do not think it would be helpful to provide prescriptive guidance on this matter as it would risk local planning authorities’ ability to make a local judgement based on the individual circumstances of the case. However, we would welcome views about whether guidance should have a role in promoting common approaches across local planning authorities.

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 / No / Don’t know

Question 27. Do you have any further comments on the scope of the guidance? **These types of applications tend to confuse third parties who find process difficult to follow. We are not convinced the proposals will help.**

83. **Procedural arrangements:** We want the procedural requirements set out in regulations for a section 73B application to be proportionate reflecting the position that the development proposed in the application is a material variation to an existing permission while still ensuring there is transparency about the proposed variation. Local communities should be aware of proposed variations so they can make representations: the section 73B route is not a mechanism to undermine scrutiny.

84. Accordingly we propose:

- the prescribed **information requirements** for a section 73B application will generally be the same as other applications for planning permission, but an applicant will not be required to include specific requirements (such as a design and access statement) given this is a variation to an existing permission and the focus is on the impact of this variation (similar to the approach for section 73 applications). The section 73B application will also be required to include details of the existing permission and may include any section 73 and 73B permissions related to it
- the **publicity requirements** for a section 73B application will be the same as other applications so the local community are aware of the proposed variation and can make representations. For instance, if the section 73B application is proposed to vary a permission for a major development, the publicity requirements for a major development would apply
- the specific **requirements for consulting statutory consultees** would follow the existing approach of section 73 applications where there is a duty on the local planning authority to consult a statutory consultee if they consider appropriate. This reflects the position that a proposed variation may only engage specific issues which of an interest to only some statutory

consultees and so it would be disproportionate to require those statutory consultees without an interest to respond[footnote 6]

85. Like a section 73 permission, a section 73B permission will be subject to Environmental Impact Assessment and Habitat Regulation Assessment frameworks. A similar approach to section 73 permissions will also be taken for section 73B permissions for Biodiversity Net Gain.

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

Yes / No / **Don't know**. If not, please explain why you disagree **We feel we do not have enough information currently to assess this properly**

86. **Application fee:** We propose that the application fee for a section 73B application should be the same as the application fee for a section 73 application. We have considered the alternative approach of setting a higher fee for a section 73B application. This could be justified if the section 73B route becomes the default route for making general material variations to existing planning applications and a section 73 application focuses on the variation of a specific condition. However, a higher fee could encourage applicants to continue to use section 73 to make general variations which would undermine the purpose of the reform. Therefore we consider having the equivalent fee is more appropriate (at least until the use of section 73B has become established practice).

87. We recognise, however, the current flat fee for a section 73 application (at £293) does not capture the amount of work often undertaken by a local planning authority in relation to a section 73 application for a major development (which would be the case too for a section 73B application). We propose therefore to restructure the fee for a section 73 or 73B application so that the fee is banded reflecting different development types. In particular, we propose that there are 3 separate fee bands for section 73 and 73B applications related to[footnote 7]:

- householder applications where the fee would be set lower at £86. This lower fee addresses an anomaly that the flat fee for a s73 application is currently higher than the fee for a householder application (at £258.) The figure is double the current fee (£43) for a discharge of a condition or section 93A non-material amendment related to these applications (in recognition of that a s73 or s73B application will involve more work than dealing with a non-material amendment)
- non-major development (other than householder applications) where the fee would remain at £293
- major development where there would be a higher fee. The fee would be less than the fee for the original planning application and be proportionate to the work necessary to consider the proposed variations. The fee also should not exceed full cost recovery. We would welcome views about where this fee should be set, including evidence from local planning authorities for the typical work which is involved dealing with an average section 73 application for a major development

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 **/ No** / Don't know. If not, please explain why you disagree and set out an alternative approach. **A section S73B application is likely to involve more work so it should be proportionate to the size of the application**

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

Yes / No / Don't know

Question 31. What should be the fee for section 73 and 73B applications for major development (providing evidence where possible)? **They should be proportionate to the full application fee**

88. **Community Infrastructure Levy:** We propose that the Community Infrastructure Levy would apply to section 73B in the same way as the levy applies to section 73 permissions. Specifically, if the section 73B permission does not change the CIL liability, the chargeable amount is that shown in the most recent liability notice issued in relation to the previous permission. But if the section 73B permission does change the CIL liability, the most recently commenced or re-commenced scheme is liable for the levy.

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

Yes / No / Don't know

Overlapping planning permissions

89. The treatment of overlapping planning permissions has recently gained attention by the Hillside Supreme Court judgment[footnote 8]. This judgment confirmed existing caselaw that full planning permissions are not usually severable. That is to say, parts of the permission cannot be selectively implemented and that, if a new permission which overlaps with an existing permission in a material way commences, should the carrying out of the new permission make it physically impossible to carry out the rest of the existing permission, it would be unlawful to continue further development under the existing permission. The Court then went on to say, if someone wanted to change part of the development, they should seek to amend the entire existing permission. A subsequent judgement[footnote 9] has considered the implications for outline planning permissions and the question of severability further.

90. These judgments have questioned the ability to use 'drop in' permissions where a subsequent permission is granted for an alternative development on a section of a larger development previously granted permission and still being implemented. Such

drop in permissions have often been used during the implementation of outline planning permissions for large scale phased residential and commercial developments where a new development is proposed through a separate application for a phase outside the scope of the outline planning permission while the rest of the phases continue to be implemented under the outline permission. This approach has provided a flexible way of enabling changes to a specific phase to be managed through planning without having to seek a new planning permission for the entire development, particularly when the scale of change is outside the scope of a section 73 application.

91. The government believes that the new section 73B route provides a new way of dealing with such changes to a specific phase of a large scale development granted through outline planning permission in many cases. While the use of section 73B is constrained by the substantively different test, these changes often continue to fit within the existing masterplan which underpins the outline permission and do not necessarily fundamentally change this permission – for instance, changing a phase of commercial development (use class E) to a cinema (use class – sui genesis) where the outline permission only allows class E uses. In this case, the section 73B application would provide details of the proposed variation to the outline planning permission and the consideration by the local planning authority would focus on the merits of this variation.

92. We recognise, however, there could be circumstances where the section 73B route may not be appropriate – for instance, if the change could be considered to be substantially different or there are wider financial and legal relationships between the master developer, land owners and investors which makes the preparation of a section 73B application difficult. We would welcome views about the extent the section 73B route could be used to grant permission for changes for outline planning permission in practice and what are constraints.

93. If the section 73B route cannot address all the circumstances, we are keen to explore whether there are alternative options to facilitate the operation of overlapping permissions, especially when there are outline permissions for largescale development where phases are clearly identified. One option could be to create a framework through a new general development order. This would deal with overlapping permissions in certain prescribed circumstances. The Secretary of State has broad powers under section 59 of the Town and Country Planning Act to provide for the granting of planning permission through an order, including classes of development. This may be for a specific development or for a class of development. Views would be welcome on whether the focus of such an approach should be on outline permissions for largescale phased development or whether there are any other categories of development which could benefit from an alternative approach.

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? **We are unsure**

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? **Not at this stage**