

**PC 456/24**

## **NEW FOREST NATIONAL PARK AUTHORITY**

### **PLANNING COMMITTEE MEETING – 16 APRIL 2024**

#### **ACCELERATED PLANNING SYSTEM CONSULTATION – NPA RESPONSE**

**Report by:** David Illsley, Policy & Conservation Manager

#### **1. Introduction**

- 1.1 On 6 March 2024 the Department for Levelling Up, Housing & Communities launched a consultation proposing, ‘...new measures for an accelerated planning system that will provide greater certainty to applicants and enable delivery partners to bring forward much needed housing, commercial and infrastructure development at greater pace. This will be achieved through a new Accelerated Planning Service for major commercial development, new measures to constrain the use of extension of time agreements and identifying local planning authorities who are using these excessively.’ Further details are available at [An accelerated planning system - GOV.UK \(www.gov.uk\)](https://www.gov.uk) and the consultation runs to 1 May 2024.
- 1.2 The main proposed measures contained within the consultation are set out below. Section 2 of this report provides further detail on each of these main proposals.
  - The introduction of a new Accelerated Planning Service which would offer a new application route, with accelerated decision dates for major commercial applications and fee refunds wherever these are not met.
  - Changes relating to extensions of time agreements, including a new performance measure for speed of decision-making against statutory time limits, and an end to the use of extension of time agreements for householder applications and repeat agreements for the same application for other types of application.
  - An expansion of the current simplified householder and minor commercial appeal service for more written representation appeals.
  - Detail on the broadening of the ability to vary a planning permission through section 73B applications and on the treatment of overlapping planning permissions.

#### **2. Summary of the main consultation proposals**

- 2.1 The consultation document emphasises that the latest proposals are part of the Government’s wider agenda to streamline the development management process and support decisions which are timely, transparent and of high quality. The consultation highlights the recent increase in planning fees and a range of new funding streams through the Government’s capacity and capability programme - including the £29 million Planning Skills Delivery Fund - as helping to provide local planning authorities with the additional resources they need to deliver a high-quality and timely planning service.
- 2.2 The table below sets out the main elements of the latest proposals.

Measure	Summary of proposed measure	Rationale
Accelerated Planning Service for major commercial applications	<p>Planning authorities will be required to offer an Accelerated Planning Service for major commercial applications. The applicant would pay a higher planning fee to the planning authority which, in exchange, will be required to determine these applications within 10 weeks (rather than the 13-week statutory time limit), with a guarantee that the fee would be refunded if the application is not determined within this timescale. The payment of higher planning application fees would cover the full cost to the planning authority to deliver an accelerated service.</p> <p>The Accelerated Planning Service would initially apply to applications for major commercial development which create 1,000 sqm or more of new or additional employment floorspace. Over time, the Government is keen to explore the extension to major infrastructure and residential developments. It is proposed to exclude applications subject to Habitats Regulations Assessment.</p>	<p>This proposal is described as ‘a prompt service or your money back’. The Government wants to reduce the decision-making times for major commercial developments and provide greater certainty to the development sector.</p>
Changes to extensions of time agreements	<p>To address Government concerns about the high use of extension of time agreements, they propose introducing a new performance measure for speed of decision-making for the proportion of applications determined within the statutory time limit only. The new performance thresholds would be: (a) major applications – 50% or more of applications determined within the statutory time limit; and (b) non-major applications – 60% or more of applications determined within the statutory time limit, as well as the previous thresholds of applications determined within the statutory time limit or an agreed extended period (60% of major applications; 70% for non-major applications). A planning authority would be at risk for designation for poor performance if either or both measures were not met. The current thresholds in relation to quality of decisions would continue to apply. The proposed thresholds do not preclude the use of extension of time agreements in exceptional circumstances, with the exception of householder applications where these would no longer be allowed to be applied.</p>	<p>Extension of time agreements can be used by authorities to compensate for delays in decision-making, which is considered by the Government to mask poor performance and does not incentivise authorities to determine applications within the statutory time limits.</p>
Expansion of simplified appeals service	<p>Proposals to establish a simplified process, which mirrors the existing “fast track” Householder Appeal Service, for the following written representation appeals relating to refusing planning permission or reserved matters; listed building consent; refusing works to protected trees; refusing lawful development certificates; refusing the variation or removal of a condition; refusing the approval of details reserved by a condition; the imposition of conditions on approvals; refusing modifications or discharge of planning legal agreements; refusal of consent under the Hedgerow Regulations; appeals relating to anti-social high hedges.</p>	<p>There is scope to expand the simplified appeals procedure to cover more written representation appeals. This would reduce pressure on planning authorities &amp; the Inspectorate in processing written representation appeals, as a planning authority would not need to submit an appeal statement, instead relying on the decision letter and officer report.</p>

<p>Broadening the ability to vary a planning permission</p>	<p>Section 73 of the Town &amp; Country Planning Act 1990 enables applicants to vary a planning condition imposed on a permission. Recent caselaw confirmed that Section 73 cannot be used to amend the description of the permission, limiting the scope to make minor material amendments. The Government responded by legislating under the Levelling-up and Regeneration Act 2023 for a new route (section 73B) which enables material variations to permissions. A developer would be able to make an application for development which can be a variation of both the description and conditions of an existing permission, providing the development was not substantially different from the existing development. Proposals are also put forward in relation to overlapping consents.</p>	<p>The ability to vary permissions in a proportionate manner is an important feature of the planning system. Without it, development risks being delayed or abandoned as the only option would be the submission of a new application, creating delay and further costs.</p>
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### 3. Proposed New Forest National Park Authority consultation response

#### (i) Accelerated Planning Service for Major Commercial Applications

- 3.1 The consultation emphasises that under the Accelerated Planning Service proposals, communities and statutory consultees would still get at least 21 days to consider and make representations on an application. With the 21-day consultation period remaining unaltered, it is the planning authority's assessment and decision on the application that will need to be completed quicker, a reduction of three weeks. The rationale behind the proposals is that the higher planning fee – described as a 'premium fee' - will ensure authorities have the resources to do this. Planning fees are currently set centrally by the Government and cannot exceed the cost of providing that service. In order to maintain a fair and consistent approach to fee-setting the method of fee calculation would continue to be set centrally under the Accelerated Planning Service proposals.
- 3.2 The consultation acknowledges that in maintaining the principle of nationally set fees to ensure consistency across all planning authorities in the country, '...it may not achieve full costs recovery in every case'. This is a concern in an area like the New Forest National Park, where the breadth and complexity of material planning considerations is greater than in many other parts of the country. This is partly recognised within the consultation proposals, which confirm that developments subject to Environmental Impact Assessment or Habitat Regulations Assessment or which directly impact on designated heritage assets will not be eligible for the Accelerated Planning Service. The range of internationally designated sites in the New Forest – and recognised impact pathways from new development to site integrity – means the scope for applicants to use this service in the New Forest National Park would be more limited. However, the consultation proposes that local planning authorities would be required to provide this service and there is the possibility that some development could fall within this category.
- 3.3 The consultation confirms the Government's aim to prioritise these applications and this could have implications for other areas of an authority's planning service (without a concurrent increase in resources). While the consultation states that the full cost of processing such applications would be met, if an application were not determined within the 10-week period the fee would be refunded. Major commercial schemes are likely to require a Section 106 legal agreement and our experience of negotiating such agreements is that this would be unlikely to take place within 10 weeks.

3.4 Planning authorities are also reliant on consultees responding in a timely manner and there could be a risk of an increase in refusals or non-determination if these are not received promptly. Alongside setting a new performance target for speed of decision-making, the other aspects of the planning application process need to be addressed to enable it to be successful. In themselves, higher fees would be unlikely to address the current shortage of experienced, qualified planners and would not address delays due to negotiating Section 106 legal agreements where applicants seek to try and reduce obligations which are necessary to make the development acceptable in planning terms.

*(ii) Extension of Time agreements*

3.5 The proposals for changes to ‘extension of time agreements’ are based on the Government’s assumption that such agreements are being used by planning authorities to compensate for delays in decision-making and to mask poor performance. This is a misrepresentation of matters and presents authorities in an unduly negative light. Extension of time agreements are routinely used by planning authorities across the country to enable sufficient information to be submitted and the views of consultees to be fully considered and responded to. Such agreements can only be used with the consent of the applicant and the agreements are used to enable a positive decision to ultimately be reached, in accordance with national planning policy. The New Forest National Park Authority uses extension of time agreements in this manner and current approval rates are over 90%, with a high level of delegated decisions (also over 90%).

3.6 The table below is a summary of the ‘Planning Performance Dashboard’ data relevant to the New Forest National Park Authority available at [Planning Performance Dashboard: draft live table - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118111/Planning_Performance_Dashboard_draft_live_table_-_GOV.UK.pdf). It indicates that over half of planning applications submitted to the Authority were subject to extension of time agreements in the period September 2022 – September 2023. Members will recall that during this period the Authority was migrating information to the new Agile system.

	Overall			Major Applications		Non-major applications	
	Applications received	% granted	% of applications with Extension of Time (EoT) agreements	% decisions within 13 weeks or agreed EoT	% decisions within 13 weeks	% decisions within 8 weeks or agreed EoT	% decisions within 8 weeks
NFNPA	639	94%	60%	100%	20%	88%	34%

3.7 These figures for the New Forest National Park Authority reflect the general national picture. For example, the South Downs National Park Authority used agreed extensions of time on 58% of their applications in the same reporting period; determined 88% of the major applications within 13 weeks or to the agreed extension of time deadline, but this fell to 16% if the statutory period of 13 weeks is used. Similarly, for non-major applications their figures in the period were 89% determined within 8 weeks or with an agreed time extension, falling to 36% if the statutory 8-week time period is applied.

3.8 Under the consultation proposals, extension of time agreements would only be used in ‘exceptional circumstances, when used to the benefit of all parties to facilitate the delivery of positive outcomes.’ Despite the inference in the consultation document that extension of time agreements are being used to compensate for delays in decision-making, the reality is that such agreements – which must be agreed with applicants – are being used to enable schemes to address legitimate considerations raised by planning officers and consultees. The ability to negotiate allows the high quality and

beautiful development advocated in the NPPF within the National Park landscape to be pursued. There is a risk that the proposed approach will restrict planning authorities in negotiating on submitted schemes and simply lead to an increase in refusals within the statutory deadlines. A consequence of this would be more appeals and greater pressure on an already overstretched Planning Inspectorate. The appeal process currently takes considerably longer than negotiating a revised scheme with the planning authority and planning permission being secured through that route.

- 3.9 A key point in this consultation for the work of the New Forest National Park Authority is that extension of time agreements would not be allowed for householder development. Householder development comprises a high proportion of schemes processed by the Authority (68% in the quarter ending 31 December 2023). The proposals could potentially penalise local authorities with a higher percentage of householder development. As above, extension of time agreements are generally used to allow negotiations on schemes - for example to allow the submission of amended plans to enable a positive outcome to be achieved. They are also used in the event that an application requires consideration at Planning Committee. With the new proposed performance measures, there would be a significant risk of designation (unless measures were put in place immediately), with consequent loss of planning application fee if applicants chose to apply to the Planning Inspectorate for determination of applications. While it is recognised that there is a need for timely decisions, approval rates are also considered to be an important factor in assessing performance.
- 3.10 Furthermore, the proposed new measures do not reflect the current complexity of planning, particularly in the highly protected landscape of the New Forest National Park with multiple ecological designations covering extensive areas. Processing of non-major applications (for example, proposals for up to nine dwellings) can often involve Habitat Regulations Assessment, assessment of nutrient budgets and the delivery Biodiversity Net Gain amongst other matters. The complexity of planning, as well as performance thresholds, all put pressure on planning officers and the proposals would further increase this pressure with potential implications for staff retention.
- 3.11 Another factor behind the current use of extension of time agreements is the input of statutory consultees. Although paragraph 41 of the NPPF (December 2023) states that statutory planning consultees should take an, ‘...early, pro-active approach and provide advice in a timely manner throughout the development process...’ this is not always the case. Many extension of time agreements have been agreed with applicants to enable the views of statutory consultees to be considered and responded to. The consultation document acknowledges that the determination of some planning applications can be held up by continued discussions with specific statutory consultees on particular matters; and that this is outside the control of the local planning authority. The Government has begun an independent review of the role of national statutory consultees in the planning application process which will make recommendations about how their performance can be improved and this is welcomed.

*(iii) Expansion of simplified appeals service*

- 3.12 The consultation document highlights that the introduction of expedited written representations procedures through the Householder Appeals Service in 2009 and the Commercial Appeals Service in 2013 has provided a simplified process for determining less complex, small-scale cases. These processes remove opportunities for the main parties and other interested parties to provide additional information at appeal stage and 25% of planning appeals are currently dealt with through this procedure.

3.13 The Government considers there to be scope to expand the simplified appeals procedure to cover more written representation appeals. Such a change would reduce pressure on 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. Appeals determined through the simplified route would be based on the appellant's brief appeal statement plus the original application documentation and any comments made at the application stage. 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. There is considered to be merit in these consultation proposals and it is agreed that the current appeals process is resource intensive. However, as there would be no opportunity for the local authority to provide a statement or additional comments, robust officer reports would be essential in all cases and it would be expected that such a change would be accompanied by high quality appeal decisions.

*(iv) Broadening the ability to vary a planning permission*

3.14 The proposals in this element of the consultation would enable a developer to make an application for development which could vary both the description of the development and the conditions of an existing planning permission, providing the development was not 'substantially different' from the existing development (a section 74B application). This would provide greater flexibility than a current section 73 application (restricted to the variation of conditions) and a section 96A application (limited to non-material changes to a permission).

3.15 Implementation of these proposals would require changes to secondary legislation covering the consultation, information requirements, procedural matters, the application fee and other planning legislation. The Government also intends to prepare guidance on the use of the route to aid applicants and planning authorities which would be helpful.

3.16 The consultation recognises that for both developers and planning authorities, a key issue will be the 'substantially different' test. Factors such as location, scope of existing permissions on the site and the nature of the proposed changes could all be relevant. At this stage the Government has indicated it does not intend to provide prescriptive guidance on this matter, as it would risk planning authorities' ability to make a local judgement based on the individual circumstances of the case. However, views are invited on whether guidance should have a role in promoting common approaches across planning authorities and it is recommended the Authority responds accordingly. Views are also invited on overlapping consents and whether the section 74B application route would be appropriate in these circumstances.

## **4. Conclusions**

4.1 This latest Government consultation focuses on measures to streamline the development management process and enable planning authorities to deliver a high-quality service. The proposals aim to enable partners to bring forward development at a greater pace. Implementation of several of the accelerated planning service proposals would require changes to secondary legislation and may require changes to primary legislation, depending on the details of the final model.

4.2 National planning policy already requires planning authorities to work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. We do this through our duty planning officer service, pre-application advice service and approval rate consistently above 90%.

- 4.3 The consultation proposes several measures which could increase pressure on the planning service and which would require sufficient resource. The main points to be highlighted in the Authority's response are summarised below.

**Summary of the main points to be raised in the NPA's consultation response**

- **Accelerated Planning Service for Major Commercial Applications:** It is noted that the proposed exclusions from the 'Accelerated Planning Service' model include applications subject to Habitat Regulations Assessment and Environmental Impact Assessment. This is logical and would mean that the majority of larger applications submitted within the New Forest National Park would be excluded from this application route. However, local planning authorities would be required to provide such a service with potential consequent resource implications.
- **Extension of Time agreements:** Such agreements are currently used by planning authorities to enable a positive decision to be reached and can only be used with the support of the applicant. There is a risk that the proposed approach will restrict the ability of planning authorities to negotiate improvements to submitted schemes and result in an increase in refusals within the statutory deadlines, particularly for householder development and in areas where there are multiple ecological designations and complex matters to assess. This will actually slow down the planning system, rather than accelerate it. The Government's review of the role of national statutory consultees in the application process is welcomed.
- **Expansion of simplified appeals service:** There is merit in the proposals which would enable more appeals to be determined through a simplified appeals procedure provided that the Planning Inspectorate is adequately resourced.
- **Broadening the ability to vary a permission:** It is noted that this proposal follows the relevant enabling provisions in the Levelling Up & Regeneration Act 2023. It would be helpful for planning authorities and applicants to have national guidance on what 'substantially different' means in planning terms to avoid inconsistencies.

**Recommendations:**

- a) **Members note the scope of the Government's proposals to deliver an 'accelerated planning system' that are currently out for consultation; and**
- b) **Members delegate authority to the Executive Director (Strategy & Planning) to submit the formal consultation response on behalf of the National Park Authority, framed around the key principles outlined in the box at paragraph 4.3 of this report.**

**Contact:**

David Illsley, Policy & Conservation Manager  
[david.illsley@newforestnpa.gov.uk](mailto:david.illsley@newforestnpa.gov.uk)  
01590 646672

**Papers:**

**AM 456/24** – cover paper

**Equality Impact Assessment:**

The proposals are not considered to give rise to any impacts on people who share a protected characteristic. Ultimately it is for the Government to decide on which of the proposals will be implemented – rather than the National Park Authority.