Part I
Item No: 0
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Executive Member: Cllr Mandy Perkins,
Ward: All

WELWYN HATFIELD BOROUGH COUNCIL
CABINET HOUSING AND PLANNING PANEL 17TH MARCH 2016
DEVELOPMENT MANAGEMENT COMMITTEE 31ST MARCH2016
REPORT OF THE DIRECTOR (GOVERNANCE)

RESPONSE TO TECHNICAL CONSULTATION ON IMPLEMENTATION OF PLANNING CHANGES

1 Executive Summary

1.1 The government's technical consultation was published on 18th February and closes on 15th April 2016 and follows on from the consultation on changes to the NPPF which closed on 22nd February.

1.2 The document can be downloaded at: https://www.gov.uk/government/consultations/implementation-of-planning-changes-technical-consultation

1.3 It provides more detail than the previous consultation on the proposed approach to implementing the planning measures in the Housing and Planning Bill. The responses to this consultation will inform the detail in secondary legislation.

2 Recommendation(s)

2.1 That CHPP comments on the points set out below and authorises the Head of Planning to agree the final response with the Executive Member for Planning subject to any comments made by Development Management Committee.

2 Explanation

2.1 On 18th February the Department for Communities and Local Government published the government's proposed approach to implementing the measures set out in the Housing and Planning Bill.

2.2 It covers the following areas

- Changes to planning application fees
- Permission in principle
- Statutory register of brownfield land
- Small sites register
- Neighbourhood planning
- Criteria for intervening to ensure Local Plans are in place
- Extending designation approach to include non-major applications

- Testing competition processing planning applications
- Information about financial benefits
- Section 106 dispute resolution service
- Expansion of permitted development rights for new schools
- Improving performance of statutory consultees

Changes to planning application fees

2.3 The government is considering amending planning fees to reflect changes since 2012, when nationally set planning fees were last amended. The government would like to do this in ways which link more effectively to the service which is provided. There is a particular emphasis on innovation and improvement for the benefit of both applicants and authorities.

2.4 The government proposal is that national planning fees will be increased by a proportionate amount, in a way which is linked both to inflation and performance. Future adjustments would continue to be made on an annual basis, if required. In linking this proposed increase to performance the government is considering only applying the increase to those authorities that are performing well. No specific definition of 'performing well' is given, although the example is used of not applying the increase where an authority is designated as under-performing in its handling of applications for major development. Another option may be to limit the increase to only those authorities that are in the top 75% of performance for both speed and quality of their decisions.

2.5 The government wishes to receive views on whether the proposed adjustment of fees in accordance with inflation is supported, but only in areas performing well, and whether the fee increase should not apply where an authority is under-performing, or be linked by alternative means. Finally, whether there should be any delay before this is implemented.

2.6 Response: It is suggested that Welwyn Hatfield Borough Council would be supportive of an increase in planning fees in line with inflation since 2012. The performance of the Council's planning department during 2015 has varied with 90% of major applications determined within time, 48% of minors and 61% of other applications. Having regard to these figures, the likelihood of Welwyn Hatfield Borough Council being able to implement any increase in fees would depend on the methodology used by government to determine 'performing well'.

2.7 Thinking more broadly, it has been accepted for a long time that the nationally set planning application fee is often not sufficient to cover the costs of dealing with a planning application. It could be argued that, for those authorities which are already finding statutory determination periods challenging to meet and therefore under-performing, restricting their ability to increase fees would only perpetuate this difficulty.

2.8 It is considered that a retrospective increase in planning fees in line with inflation since 2012 should be applied to all authorities and that any measure to link this to performance should be delayed until after that initial increase.

Permission in Principle

2.9 The concept of ‘permission in principle’ is one of the measures being brought forward in the Housing and Planning Bill. It would separate decision making on ‘in principle’ issues such as land use, location and amount of development from matters of technical detail.

2.10 The bill provides for permission in principle to be granted in plans and registers and for minor sites on application to the local planning authority.

2.11 The government considers that this proposal would have the following benefits:

- Increase the number suitable sites being developed
- Reduce the number of detailed applications that are unsuitable in principle
- Limit the amount of time reappraising the principle of development.

2.12 The bill makes provision for permission in principle to be granted in two ways

a) On allocation in a locally supported qualifying document that identifies sites as having permission in principle ; and

b) On application to the local planning authority.

2.13 a) For the first route to be followed a qualifying document must have followed a process for preparation, public engagement and have regard to local and national policy. The document must indicate that a particular site is allocated with permission in principle. Whilst the choice about which sites to grant permission in principle is a local one the expectation is that this will be used in most cases. The allocation must contain ‘prescribed particulars’ which will form the basis of the permission. This process may not be suitable, however, for some sensitive sites where proximity to heritage assets, contamination and flood risk may be an issue.

2.14 The consultation document advises that Local Planning Authorities will not be able to impose any conditions and therefore it would be important to describe the proposal in sufficient detail to ensure that the parameters within which subsequent applications for technical detail consent must come forward is absolutely clear.

2.15 Qualifying documents would comprise:

- Future local plans
- Future neighbourhood plans
- Brownfield registers

2.16 b) The second route would relate to proposals for minor development only and would not apply to householder proposals or applications for major development. Such applications are considered to require less detail than an outline application as the consent authorising the development is not secured until technical details consent is obtained. Where permission in principle is refused there would be a right of appeal.

2.17 Full permission will only be secured once technical details consent has been obtained. The parameters of the technical details consent that need to be agreed will have been described at the permission in principle stage. All the details must be contained in a single application and whilst the principle of the development cannot be reconsidered technical consent can be refused and would be subject to appeal.

2.18 Technical details would include the provision of infrastructure and affordable housing as well as design and layout. Planning Obligations would be negotiated and CIL would apply at the technical details consent stage.

2.19 This scheme would apply to residential schemes or uses which are compatible with residential use where they are part of a housing led development. The amount of residential development can be expressed as a range to give flexibility to address technical issues which may emerge.

2.20 The timescales for determining applications for permission in principle and technical details consent are as follows

Application:	Determination period:
Permission in principle minor application	5 weeks
Technical details consent for minor sites	5 weeks
Technical details consent for major sites	10 weeks

2.21 The government has posed a number of question relating to the operation of the different types of permission in principle and the time scales involved for determining applications, the process for public consultation, the requirements for information, the duration of the permission in principle, the approach to sensitive sites and the requirement for Environmental Impact Assessments would work in conjunction with the requirement for a Local Planning Authority's taking a more pro-active role in bringing forward sites.

2.22 Response: In order to be allocated in a local plan a site should be suitable in principle however the permission in principle is likely to require a more rigorous assessment of a site's suitability for a number of dwellings, as once established this will not be able to be revisited. There will be an additional burden for the Local Planning Authority of having to carry out an Environmental Impact Assessment which will have resource implications and be likely to slow down plan making. Although there is flexibility to provide a range of dwelling numbers the Local Planning Authorities are likely to take a cautious approach in the absence of any details making it more likely that an applicant would want to submit a full application rather than a technical details consent in order to maximise the value of their site.

2.23 The intention is that this should apply to the majority of sites within the Local Plan but as the permission only lasts for five years this would appear to be of little value as the principle will need to be revisited for the majority of sites. The government has suggested that there might be the possibility of some local variation based on triggers such as the delivery of local infrastructure. This option would make more sense as it would better fit with the Local Plan strategy. The

‘permission in principle on application’ will be valid for a shorter period either one year or three whilst the technical detail consent would be valid for three

2.24 Whilst it is considered that the different routes for Permission in Principle are appropriate it is considered that the response should express a number of concerns. Firstly the requirement that a number of dwellings will need to be specified at this stage (even though this could be a range) without the benefit of any details poses a huge risk for the local planning authority as the number cannot be revisited at a later stage. This is likely to lead to the LPA taking a cautious approach setting a lower number than could be achieved however because the landowner will want to maximise the value of the site they will be less likely to move straight to the technical details consent stage. The consultation document’s suggestion that sensitive sites may not be appropriate for permission in principle is supported.

2.25 Secondly concern should be expressed that a requirement that sites identified in the Local Plan/Neighbourhood Plan or the Brownfield Register might require an Environmental Impact Assessment alongside the Strategic Environmental Assessment is likely to slow down plan-making and add an additional financial burden on authorities. It is therefore likely that authorities will decide that permission in principle should not apply to such sites.

2.26 Thirdly it is considered that the requirement that the most of the sites should have permission in principle does not sit well with the duration of five years for the permission in principle. The five year time scale would allow for change in circumstances to be taken into account. It would therefore seem sensible that only the first five years supply of housing sites should be eligible for the Permission in Principle concept. This would also fit with requirement for the delivery of infrastructure to have been addressed for the first five years of a plan.

<u>Brownfield Register</u>

2.27 The government has proposed the introduction of a brownfield register which would follow a nationally set format and 90% of sites on the register would have ‘a permission in principle’ attached to them. The Local Planning Authority would be required to keep the register up to date. The Strategic Housing Land Availability Assessment would be a key piece of evidence for the register but should also include sites with extant planning permission or Local Development Orders.

2.28 Local Planning Authorities would be expected to carry out a call for sites for inclusion in the registers although this maybe unnecessary for those authorities who have recently undertaken their SHLAA. Sites will then be assessed for their suitability. Sites which are allocated for other uses in an up to date local plan are unlikely to be suitable.

2.29 The register would also be subject to consultation. There would be a requirement to provide a consistent set of information which would include planning status including its history and site constraints.

2.30 There would be a requirement to publish the register on-line and make it available at the council’s offices and to carry out public consultation on the assessment. It is expected that the register would be updated at least once a year. Progress towards compiling the register would be assessed from 2017.

2.31 Response: The process for assessing the suitability of such sites is supported. The requirement to consult on the register and to maintain and update it at least once a year will have resource implications and this should be drawn to the attention of the government.

Small Sites Register

2.32 The government considers that development on small sites can deliver a range of economic and social benefits and including providing opportunities for self build. The government considers a register of small sites will help to promote small sites. Small sites would be defined as sites suitable for between 1 and 4 plots in size. However such sites will not have been assessed for their suitability so as not to place an unreasonable burden on local authorities.

2.33 Response: There is no reference to the requirement to carry out consultation on this register however it is considered that even though there would be no assessment of suitability there will be resource implications. Not least because concerns will be raised in the community that unsuitable sites will be given permission for development. It is considered that an interim target for the brownfield register is unnecessary.

Neighbourhood Planning

2.34 The government is proposing to set various time periods for local planning authority decisions on neighbourhood planning relating to decisions on the designation of neighbourhood plan area, decisions to hold a referendum following receipt of the Inspector's report and decisions relating to the designation of a neighbourhood forum.

2.35 The government is now proposing that in certain circumstances a local planning authority must designate the whole of the area applied for as a neighbourhood area. This would apply where a parish council applies for the whole of the area to be designated or where a local authority fails to make a decision within the prescribed periods.

2.36 Response: It is considered that the response should object to the proposal that town/parish areas should automatically be designated a neighbourhood plan area. Whilst this would be appropriate in the majority of cases there are situations where strategic sites are being brought forward which cross local planning authority and parish council boundaries and adjoin settlements outside the parish council boundary. In such circumstances it is considered that it may be appropriate to exclude the strategic site from a neighbourhood plan area.

Local Plans

2.37 The government has made clear its expectation that all local planning authorities should have a Local Plan in place. Local Plans are also expected to be kept up to date to ensure policies remain relevant. A plan will not be considered up to date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites. Furthermore guidance sets out that most Local Plans will require updating every five years.

2.38 On average Local Plan that have been adopted post NPPF make provision for 109% of household projections compared to only 86% pre-NPPF.

2.39 The government has announced its intention to intervene where no Local Plan is in place. It is proposing the following criteria;

- There is under delivery of housing in areas of high housing pressure
- The least progress in plan-making has been made
- Plans have not been kept up to date
- Intervention will have the greatest impact in accelerating local plan production.

2.40 The proposals for a housing delivery test which formed part of the proposals set out in the consultation on changes to the NPPF would be used to identify whether an area was one of high housing pressure. Decisions will also be informed by the wider planning context of an area. And to this end the government intend to publish progress on local plan making on a six monthly basis. This will take place from June 2016.

2.41 Account will also be taken of where authorities are engaged in strategic plan making or neighbourhood planning.

Expanding the Approach to Planning Performance

2.42 The government sets out its proposals in relation to thresholds for assessing planning performance, the approach to designation and de-designation and the effects of designation in respect of applications for non-major development.

2.43 In terms of the thresholds for assessing performance, through the Housing and Planning Bill, the government is proposing the introduction of performance measurements for non-major development to run alongside the existing approach to major development. 'Non-major development' would constitute applications for minor developments, changes of use (where the site area is less than one hectare) and householder developments.

2.44 It is proposed that the thresholds at which authorities would become liable for designation in relation to non-major development should fall within the range of 60-70% in terms of speed of decision and 10-20% in terms of quality (percentage overturned on appeal).

2.45 In terms of major developments, the government has already raised the designation threshold in terms of speed of decisions, to 50%, and now proposes to reduce the threshold for quality to 10%.

2.46 In terms of the approach to designation and de-designation, it is proposed that the designation and de-designation will, for non-major development, mirror that which already exists for major development. This will not be aggregated and so an authority could be designated for one, but not the other. The government does wish to highlight an exceptional circumstance which may be taken into account, that being where appeals have been allowed despite the authority considering that its initial decision was in line with an up-to-date plan.

2.47 In terms of the effect of designation in respect of applications for non-major development, as is currently the case with major development, the government proposes to allow applicants the option to seek the determination of their application by the Planning Inspectorate (on behalf of the Secretary of State) for

non-major applications. This is with the exception of householder developments due to their small size and high volume. A detailed improvement plan would also have to be provided by the authority.

2.48 Turning to the potential impacts of this section of the consultation, this will present a challenging regime to all councils, including Welwyn Hatfield. Performance within the development management team will need to be monitored carefully and it will be important to ensure that adequate resources are in place to enable on time decision making. Based on the performance during 2015 the council could be subject to designation for non-major developments.

Testing competition in the processing of planning applications

2.49 The government sets out in the consultation that it is keen to explore the introduction of competition in the processing of planning applications, but states that this does not include any changes to decision making on planning applications which it is intended will remain with the local authority whose area the application falls within. The government is at pains to make clear that this consultation is only about testing this idea in a small number of pilot areas, for a limited period of time and, within those areas, applicants will have the choice of either applying to the local planning authority or an 'approved provider'. An 'approved provider' is considered to be a person who has the expertise to manage the processing of a planning application. The government sets out that competition could be either between local authorities and private providers, or between local authorities themselves. The first questions that the government asks in relation to this are, who should be able to compete for the processing of planning applications and which applications could they compete for?

2.50 The answer to this will depend on exactly which elements of the processing of the application are concerned. For example, it may be that the planning application validation process could be undertaken outside of the council. This is the part of the process which deals with the registration of applications, getting application documents onto the website and undertaking consultations with neighbours and others. The other part of the process that could be involved is the consideration of the application, a task which is currently undertaken by the council planning officers. It is considered that the first of these two parts of the process could be undertaken by any party, provided that they have some experience of planning application validation, and the consultation processes which are required. In this regard, there may be an opportunity for Welwyn Hatfield Council, along with others in Hertfordshire, to combine this service. With regard to the second part of the process, currently undertaken by planning officers, it is suggested that, depending on the nature of the planning application concerned, this could be undertaken by another planning professional, potentially from the private sector. This concept does come with some risks, particularly with regard to conflict of interest if a private sector organisation is involved in both submitting and handling applications.

2.51 Insofar as the type of planning application which could potentially be considered by an 'approved provider' it is suggested that this could only be at the smaller end of the scale, for example small householder planning applications, applications for works to trees or similar. Once applications become larger than this, for example for multiple dwellings, officers have to undertake a lot more work with consultees, for example Hertfordshire County Council and others, where local knowledge, understanding and good relationships are essential. Applications at the larger end of the scale are also more likely to have significant

local interest in which case the council may wish to retain the consideration 'in house'.

2.52 As part of the proposed testing of competition the government has also set out proposed flexibility in application fees with the suggestion that different levels of fee could be levied for different standards of service. It is noted that, where an application is processed by an alternative provider, there will still be some cost for the local planning authority in the decision making part of the process. Given that it is already the case that planning application fees often do not cover the cost of dealing with the applications themselves, a low cost option would be challenging to deliver. It is agreed with the government suggestion that in competition areas it would be appropriate to set fees for both local authorities and approved providers within an agreed range.

2.53 The consultation next considers what role applicants, approved providers and local authorities should be able to undertake. For example, should this include the checking and validating of the application, consultation, community engagement, negotiation and Environmental Impact Assessment Screening. It is then suggested that the determining authority would then have a set period within which to read the report of the approved provider and determine the application.

2.54 The range of activities that the approved provider undertakes does have the potential to impact on the council. For example, the council planning department will have a lot of local knowledge accrued over time which will not necessarily be available to an approved provider. This means there is the potential for the council to have to spend time explaining matters to an approved provider and, as such, duplicating work.

2.55 A specified period for the decision-making authority to make their decision may be reasonable, provided that the decision does not need to be referred to a committee. The flexibility for this form of decision making to take place needs to be built in.

<u>Information about financial benefits</u>

2.56 It is already the case that government guidance in the form of the National Planning Practice Guidance (NPPG) states that local finance considerations may be cited for information in planning committee reports (even where they are not material to the decision). However, the government remains concerned that the potential financial benefits of development may not be being fully set out publicly in planning committee reports and that this prevents local communities being able to take this into account.

2.57 The Housing and Planning Bill proposes to place a duty on local planning authorities to ensure that planning reports, setting out a recommendation on how an application should be decided, record details of financial benefits that are likely to accrue to the area as a result of the development, this would be under the heading of 'local finance considerations' Community Infrastructure Levy (CIL) and New Homes Bonus. The Bill also provides for the Secretary of State to prescribe through regulations other financial benefits that should be listed, including those payable to another body or person. This could include council tax revenue, business rate revenue and Section 106 payments.

2.58 In terms of the impact that this may have on the council, this is likely to be limited to requirements upon officer reports. However, there is potentially a risk that the

council is perceived to be giving too much weight to financial benefits when determining planning applications, even if it is stated explicitly that this is not a material planning consideration.

Section 106 dispute resolution

2.59 The government proposes to introduce a dispute resolution mechanism to be provided by a body on behalf of the Secretary of State and for it to report within prescribed timescales and its decision to be binding on all parties. It is proposed that this mechanism could apply to all scales of planning application where it is likely that the local planning authority would be likely to grant planning permission where there are unresolved S106 issues. Whilst this has the potential to create some delay in the system, significant problems are not envisaged from the council's point of view. It is anticipated that the council would be required to provide evidence similar to that which is required to justify S106 payments in the first place.

2.60 The dispute resolution mechanism can be instigated by either the applicant, local planning authority or another person as set out in regulations. Requests should be made in writing and with full details of the application within the statutory timeframe for the determination of the application. The Secretary of State would then have a statutory duty to appoint someone to help resolve the outstanding issues. The request could be withdrawn by the requesting party within a proposed two week cooling off period.

2.61 It is considered appropriate that another party other than the applicant or local planning authority could instigate the mechanism, however this should be limited to those parties who are either signatories, or may be likely to receive monies, and it should be with the agreement of the local planning authority.

2.62 The government proposes to set fees for this process that would be shared between the applicant and the local planning authority. Costs could also be awarded for refusing to engage in the process. It is suggested that resolution reports should normally be written within 4 weeks. It is also proposed that there should be a timeframe of two to four weeks, following dispute resolution, within which a S106 should be entered into. It is noted that this timeframe could change depending on the complexity of the issues. It is proposed that, following dispute resolution, the local planning authority would be unable to refuse planning permission for any reason related to the S106 agreement. However, by agreement with the applicant the parties could still enter into an agreement the terms of which differ from those set out in the dispute resolution report, if there is no such agreement then the terms of the resolution report are binding.

Permitted development rights for state-funded schools

2.63 Existing permitted development rights allow certain buildings to change use to a state-funded school, allow for extensions to be added to existing schools, and allow the temporary use of buildings as state-funded schools for up to one academic year, without the need to apply for planning permission. The government is now seeking to build on these rights in order that schools can open quickly on temporary sites and in temporary buildings while permanent sites are secured and developed. It is also intended to allow larger extensions to school buildings without the need for planning permission.

2.64 The specific proposals are to:

- Extend from one to two academic years the existing temporary right to use any property within the use classes for a state-funded school;
- Increase from 100 sqm to 250 sqm the threshold for extensions to existing school buildings (but not exceeding 25% of the gross floorspace of the original building); and
- Allow temporary buildings to be erected for up to three years on cleared sites where, had a building not been demolished, the existing permitted development right for permanent change of use of a building to a state-funded school would have applied

2.65 A concern with this approach as it has been set out is that it may serve to encourage the provision of school buildings in locations that are undesirable. In particular, extending the timeframe for the temporary right may lead to an impression of permanence of schools being sited in locations which are not appropriate for the longer term. In turn, this may act as a discouragement to those schools finding more appropriate locations for their use.

Changes to statutory consultation on planning applications

2.66 The government is concerned that the time taken by statutory consultees to respond to planning application consultations can be too long and risks slowing the determination process. It is noted that agreements to extensions of time for a response often happen and that, on average, these are between 7-14 days. The government wishes to hear views on the proposal to limit the time for statutory consultees to respond to a maximum of 14 days beyond the statutory 21 day limit and asks for views on the benefits and risks that this may have.

2.67 The impact of this proposal will depend on how it is worded and enforced. If it is simply for a response to be given by a certain date then this could be simply a holding response setting out that detailed comments will be given in due course. There may be circumstances which dictate that it is not possible to respond within a set timeframe and it may also be the case that there needs to be ongoing engagement with a statutory consultee during the determination process. It is considered to be high risk to proceed in the determination of a planning application without the comments of statutory consultees as this may impact on the judgements that are made on the application. This may well leave the council open to challenge. Having said all of this, there are circumstances where statutory consultees do take a very long time to respond and so extra encouragement from the government is welcomed. It will be important to ensure however that these consultees are adequately resourced to respond. For example, the Environment Agency have been subject to extensive reductions in resources and this has had an impact on the timescales for their responses.

3 Link to Corporate Priorities

3.1 The subject of this report is linked to the Council's Corporate Priority 3 (Our Places).

4 Legal Implications

4.1 There are no legal implications associated with responding to this consultation.

5 Financial Implications

5.1 There are no financial implications associated with responding to this consultation, other than officer time.

6 Risk Management Implications

6.1 There are no risk management implications associated with responding to this consultation.

7 Security and Terrorism Implications

7.1 There are no security or terrorism implications associated with responding to this consultation.

8 Procurement Implications

8.1 There are no procurement implications associated with responding to this consultation.

9 Climate Change Implications

9.1 There are no climate change implications associated with responding to this consultation.

10 Policy Implications

10.1 There are no policy implications associated with responding to this consultation, although there will be policy implications if changes are made to national planning policy and national planning legislation.

11 Equalities and Diversity

11.1 An Equality Impact Assessment (EIA) has not been carried out in connection with the recommendations in this report.

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Date	March 2016