Accelerated Planning System
Historic England Consultation Response

Historic England is the government's statutory adviser on all matters relating to the historic environment in England. We are a non-departmental public body established under the National Heritage Act 1983 and sponsored by the Department for Culture, Media and Sport (DCMS). We champion and protect England's historic places, providing expert advice to local planning authorities, developers, owners and communities to help ensure our historic environment is properly understood, enjoyed and cared for.

We welcome the opportunity to submit a response to the consultation on the Accelerated Planning System (APS).

We have restricted our response to those questions covering matters which have a greater bearing on the historic environment.

Options for an Accelerated Planning Service

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

Historic England supports the proposal to exclude EIA development from the scope of the Accelerated Planning Service (APS) given the likely scale and complexity of such proposals.

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

It would not be prudent to include EIA development within the scope of the APS at this stage.

As a new route to planning permission there are potential unknowns, and associated risks, in how the new system may operate. These risks are potentially amplified by both the driver for local planning authorities (LPAs) to deal with applications on an accelerated timescale and the potentially significant impacts for major development.

It may be instructive to trial options for an APS on a pilot 'test-and-learn' basis before its introduction. Given that an APS will require secondary, and possibly primary, legislation it might be possible for a number of LPAs to simulate handling a sample of major applications via a system which would mirror any APS options to see the outcomes; including on speed and quality of decisions, and applicant/LPA and statutory consultee experience.

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?

Historic England welcomes the exclusion of designated heritage assets from the proposed APS and the recognition, within the consultation, that assessing the potential impacts on these assets requires "special consideration" (paragraph 13). We also welcome the statement that there "would be no loss in scrutiny or special consideration for these applications" (paragraph 16).

It would be useful to clarify that all designated heritage assets fall within this exclusion, including conservation areas, registered parks and gardens, registered battlefields and protected wreck sites.

In addition to the land itself (of a designated heritage asset) we note that the intention is for this exclusion to apply to the "curtilage" of a designated heritage asset rather than development within their setting. We note that that legal and policy protections apply[1] (or will apply[2]) to the full range of designated heritage assets and their settings and it would be clearer to align the APS (special) considerations with those in planning legislation and policy.

An assessment of whether an application is within the setting of a designated heritage asset could be made at pre-application or validation stage.

We recommend consideration should also be given as to whether (non-EIA) development in the buffer zone of a World Heritage Site should be eligible for the APS route.

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

a) have an accelerated 10-week statutory time limit for the determination of eligible applications

b) encourage pre-application engagement

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

Paragraph 17 highlights the processes which LPAs will need to have in place before dealing with accelerated applications, and the intention for higher planning fees (from the APS process) to address those requirements. We recognise the overall objective of incentivising LPAs to meet an accelerated timescale for dealing with applications under the APS. However, if applications were not decided within the statutory 10-week period, the refunding of fees may leave LPAs without resources to meet the statutory time limit; both in terms of the APS application and with a potential knock-on effect on the quality and timeliness of dealing with other planning applications.

We would also highlight that a high proportion of archaeological heritage assets are non-designated and some of these are of equivalent significance to a scheduled monument so should be accorded equivalent policy protection (NPPF 2023, para

[1] Under the Planning (Listed Buildings and Conservation Areas) Act 1990.

[2] Levelling-up and Regeneration Act 2023 (legislation.gov.uk)

206, footnote 72[3]. Undertaking archaeological assessment and any necessary field evaluation can require more time than is likely to available within the proposed 10-week period. There is a risk of applications with insufficient information being submitted which could add additional pressures on LPAs when attempting to deal with applications in a 10-week timeline. We suggest that to address these concerns it is made clear that the local Historic Environment Record must be consulted and its advice taken as part of pre-application consultation - and that this requirement is built into the APS validation processes. It is worth noting that it is the intention to give Historic Environment Records a statutory underpinning under section 230 of the Levelling Up and Regeneration Act 2023.

We agree that applications should be of good quality and contain the right information, however this should be the case for all applications and the nature and extent of the additional information required (under the APS) is not detailed in the consultation. Whilst all applications will be different, it may be helpful to applicants to include an indication of the minimum level of information required. Pre-application consultation with statutory consultees, not just the LPA should be required, however this does raise the question of whether additional resources will be available to the relevant statutory consultees to fulfil this role. Clarification on this would be welcome.

The consultation also advises applicants to notify "key statutory consultees" but provides no indication of who these are. It would be helpful to provide a list of anticipated key statutory consultees. It is not clear whether this requirement would be to notify the relevant statutory consultee that an application has been submitted or notify in the sense of providing full information of the proposals, in advance of a formal consultation by the LPA. The former may serve little purpose (in some circumstances) and the latter may cause issues; in that it would occur pre-validation of any application (i.e. the information submitted to the statutory consultees may be subject to change due to requests by the LPA at validation stage).

We welcome the fact that APS applications will be subject to the same statutory requirements for publicity and consultation, and that "statutory consultees would still get at least 21 days to consider and make representations on the proposals" (paragraph 16).

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

a. the whole fee at 10 weeks if the 10-week timeline is not met

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

c. 50% of the whole fee at 10 weeks if the 10-week timeline is not met, and the remainder of the fee at 13 weeks

d. none of the above (please specify an alternative option)

e. don't know

[3] NPPF footnote 72: 'Non-designated heritage assets of archaeological interest, which are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets.'

We do not have detailed comments on the nature or rate of the refund of any planning fee. However, as highlighted in our response to Question 5, we are concerned that the requirement to return fees may have resourcing issues for LPAs and affect the timeliness and quality of the decision-making process (both for applications via the APS and on other planning functions). There is a risk that the shorter timescale could result in poor decisions being made to avoid fees having to be refunded. Set against this background there are concerns that historic assets may be affected detrimentally in order to avoid refunding fees (whether in full or part thereof).

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

As per our response to Question 5, we suggest applicants should be required to seek pre-application advice, including pre-application advice from the relevant statutory consultees. Requiring applicants to seek advice from the relevant statutory consultees prior to submitting an application will enable applicants to consider fully the impact on heritage assets at the earliest opportunity and potentially prevent delays later in the process. This should help LPAs in meeting the shortened 10-week timeline, and in the delivery of the main objective of the APS. Such an approach does however raise issues around funding statutory consultees to provide this service, especially with the possible expansion of the APS.

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

a. major infrastructure development

b. major residential development

c. any other development

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

The current consultation is concerned mainly with major commercial developments as well as mixed use developments (paragraph 11) and also indicates that over an unspecified timeframe the APS may be applied to major infrastructure development, major residential development and any other development. Such developments are likely to be more complex and increase the likelihood of negative impacts on the historic environment, including the setting of designated heritage assets. Before extending the APS we recommend a review of the effectiveness of the system and further consultation regarding its expansion when such a review is undertaken.

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

As a general observation, there may be applicants who do not wish to pay an additional fee to utilise the APS process and there may be LPAs who are not equipped to deal with all (non-EIA) major applications through the APS route; so an element of discretion may be advisable. Consideration should also be given to smaller LPAs who may not deal with a significant number of major applications each year and may not have the infrastructure in place to meet the additional requirements of dealing with some, or all, major applications via the APS. Similarly, there may be a number of (non-EIA) major applications of such complexity that an LPA may not wish to determine them using the APS timeline. Would LPAs have the discretion to decline applications via the APS route; either individual applications (under discretionary option a, above) or across the board (i.e. opting out of mandatory option b)?

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 are unclear why, if an applicant opts for the discretionary option, “additional prescribed information” is required to enable the application to be determined in the 10-week timeframe. However, if the mandatory option (also a 10-week period) is followed no additional prescribed information is required. The provision of additional information should ensure applications are of good quality and contain the right information to enable the application to be fully understood and determined more quickly (Paragraph 19). As highlighted in our response to Question 5, it is also unclear what additional information will be requested. Information needs are likely to increase if/when the APS service (either discretionary or mandatory) is expanded (Paragraph 15). Clarification on additional information is needed.

Monitoring speed of decision-making against statutory time limit

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

We understand the desire to monitor extensions of time and encourage LPAs to address issues around timeliness. However, for more complex cases, sometimes involving historic environment impacts and/or where applicants submit incomplete or

poor information, there may be legitimate reasons for agreeing extensions to the timelines for determining planning applications. Any current or future targets should allow for those instances.

Whilst timely decision-making is a key determinant in confidence, trust and support of the planning system, it is not the only one. Quality of decision making, and planning services, should also be factored into any assessment of planning performance; including protection and enhancement of the historic environment, design quality and place shaping, community engagement, enforcement outcomes, etc.

Performance thresholds will offer an indication of one aspect of performance and would hopefully encourage LPAs to meet any new measures, but this should not be at the expense of other outcomes, such as enforcement. The absence of indicators for those other outcomes may mean they are more likely to be overlooked in a bid to achieve improved thresholds around determination times.

Transitional arrangements for assessment of the speed of decision-making

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

Whilst we understand the government's aims to speed up the planning system and ensure, where necessary, the performance of LPAs improves, it is of particular importance that quality of decision-making is not lessened in order to achieve numerical targets. For example, it is important that any targets or indicators recognise the important objective that the planning system delivers; such as protection of the historic environment for the benefit of all. The drive for a speedier system should not be to the detriment of historic assets and/or their settings which are rightly recognised in the National Planning Policy Framework (NPPF) 2023 as being an irreplaceable resource (NPPF, paragraph 195) and that protection of the historic environment is a fundamental component of the environmental objective in delivering sustainable development (NPPF, paragraph 8).

Whilst it may be a useful proxy, the measure of LPA decisions overturned on appeal is not necessarily a true measure of the overall quality of decision-making. It is only a measure of a small proportion of decisions made, i.e. those that are refused and are then appealed. It does not capture applications that are approved where the outcome (e.g. in terms of design quality, place shaping or impact on the historic environment) are suboptimal. Neither does it capture the quality of outcome for refusals which are not appealed or the extent to which an LPA may have improved the quality of a proposal during the application process. The effectiveness of an LPA may also be a function of the quality of its local plan policies or the skill and capacity of its staff (be they planners, heritage specialists, etc.).

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

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

No

The option for an extension of time should be retained for householder applications which involve designated heritage assets such as listed buildings. Where there are impacts on significance of heritage assets additional considerations come into play and achieving successful outcomes, sometimes through creative solutions, may take longer. Retaining the extension of time will enable the asset owner, LPA and consultees to ensure the most appropriate solutions are found, and that designated heritage assets are conserved for the benefit all. Some householder applications (for works to listed buildings) will be accompanied by listed building consent applications and it is advisable that they are dealt with in parallel, so the timelines for those application processes should be aligned.

Simplified process for planning written representation appeals

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

No evidence has been submitted as to the effectiveness of the existing simplified appeal processes (the Householder Appeals Service (HAS) and Commercial Appeals Service (CAS)); the latter which is only used “for some less complex appeals related to shop fronts and advertisement consent”[4].

We would recommend that evidence is gathered and presented for consideration to enable consultees to respond to this question. We would be interested to know the opinion from appellants, LPAs and PINs on the functioning of HAS and CAS appeal system, including its benefits and wider applicability to different and more complex casework types. Could this be provided?

Whilst the HAS and CAS processes may be appropriate for less complex cases, it would not seem to be appropriate for more complex cases; such as where, for example, there may be a difference of opinion, or interpretation, on a matter which might be better explored more efficiently and effectively through the submission of appeal statements and final appeal comments.

Regardless of the complexity of the case, whilst the LPA’s reasons for refusal would be set out in their report it is possible to envisage a scenario where an appellant could put forward conflicting, contradictory or new information in their “brief appeal statement” (paragraph 65) without the right of reply by the LPA or third parties. It might also complicate the decision-making process for the appeal inspector, who would be denied any counter arguments from the LPA or third parties.

The consultation notes the possible unintended consequence that “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" (paragraph 68). That may be the case, but it is equally likely to place additional burdens on LPA officers when preparing planning reports (and relevant consultees) to ‘appeal proof’ their comments for what may otherwise be fairly standard reasons for refusals.

[4] Paragraph: 007 Reference ID: 16-007-20140306 . https://www.gov.uk/guidance/appeals

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?

As per our answer to Question 20, the simplified written representation process would not seem appropriate for cases requiring nuanced consideration or consideration of complex matters. We would therefore recommend that refusals of listing building consent are not included (and any associated planning refusals), and more complex cases where heritage impacts are a factor.

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.

The simplified written representation process will disadvantage third parties by removing any right to reply or submit additional information in support of any previous comments (see answer to Question 20). This could have a negative outcome on both the timing and quality of appeal decisions.

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.

The Planning Inspectorate should be able to take an independent view as to the appropriate process for considering appeals. This would prevent overly complex cases being considered, inappropriately, via the simplified written representation process, and/or avoid cases where the appellant introduces new or contradictory information in their submission of appeal statement.

Implementing section 73B

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)?

Paragraph 81 requests views regarding the general condition for development to be carried out in accordance with approved plans: this general condition should be retained. It provides certainty regarding submitted and approved plans and enables all stakeholders, including the public, to understand what the final development will look like.

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

Historic England welcomes the procedural arrangements regarding statutory consultees remains the same as those for section 73 (paragraph 84).

The consultation proposes (paragraph 84, first bullet point) that “an applicant will not be required to include specific requirements (such as a design and access statement)”. Whilst section 73B does not apply to development substantially different to that granted by an existing planning permission even small scale changes to an existing permission could have significantly different impacts (e.g. on the historic environment and/or residential amenity). There should, therefore, be a requirement to submit a revise heritage and impact statement, if relevant.

Policy & Evidence: Policy Department

1 May 2024