Southern Housing consultation response

Southern Housing's response to DLUHC's consultation on accelerated planning

About Southern Housing

Southern Housing was formed in December 2022 following the merger of Optivo and Southern Housing Group.

We're one of the largest housing providers in the UK with more than 78,000 homes across London, the South East, the Isle of Wight and the Midlands, giving over 167,000 people somewhere affordable to call their own.

Consultation Questions

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

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

No. We agree with the ambition to accelerate the processing of major planning applications. However, we do not believe the Accelerated Planning Service as currently designed is the right way of achieving this aim for a number of reasons.

Firstly, there is a risk of further delaying applications not eligible for the Accelerated Planning Service. Local Planning Authorities could conceivably meet the 10-week target by dedicating extra resource to accelerated planning applications. Indeed, the prospect of repaying fees should they fail to meet the 10-week deadline actively encourages them to prioritise such applications. But this would almost inevitably lead to the current 28-week average increasing for non-fast-tracked applications. Major residential planning applications are already subject to a prolonged journey through the planning system – research by planning consultancy Lichfields shows developments of 1,000 homes or more take, on average, five years to get detailed planning permission. So, any further delay to these would be especially unwelcome.

Secondly, there is a risk of creating perverse incentives. The prospect of repaying fees due to failure to meet the 10-week deadline could encourage councils to turn down applications without proper consideration. This would increase uncertainty and costs for developers, even more so given the recent removal of the 'free go' (which means developers will be liable for extra fee payments where they make resubmissions).

Thirdly, it is highly doubtful under-resourced Local Planning Authorities will be able to hit the expedited timeframes. As the consultation acknowledges, it takes approximately 28 weeks on average to determine major planning applications. It is

difficult to see how this can be reduced to 10 weeks (let alone the current 13-week statutory time limit) with a modest percentage uplift in the application fee.

Finally, and most fundamentally, the Accelerated Planning System does not address the fundamental issue of under-resourcing within Local Planning Authorities. Government has recently increased planning fees and invested in the Planning Skills Delivery Fund. But this has yet to translate into a tangible improvement in performance, partly because of the stretched nature of local authorities' budgets more generally. Government's priority should be on improving the planning service in the round before it turns its attention to a fast-track system for selected applications.

To reiterate, our preference would be for Government to focus on accelerating the planning service in the round, rather than introducing a new fast-track route. Should it proceed with the option of an Accelerated Planning Service, we feel this should apply first and foremost to major residential applications to avoid further slowing housing delivery. There is a hint in paragraph 15 of the consultation that the Accelerated Planning Service is initially being confined to commercial applications partly to determine its applicability to other forms of development: "*Over time, we are keen to explore the extension of the Accelerated Planning Service to similar major infrastructure and residential developments*." If the aim is to test the APS before wider roll-out, we feel this would be better achieved by applying it to major residential development and trialling it with a handful of local authorities or applying it to only the very largest residential planning applications, rather than applying it initially to commercial development.

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

No. An Accelerated Planning Service for which major residential development is ineligible would slow the delivery of new housing. If such a service is to be introduced, major housing developments should be eligible for it.

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?

Yes. Were an Accelerated Planning Service to be introduced, EIA development would also benefit. Given the added complexities of these developments, we suggest the deadline for determining applications could be 13 weeks, with Local Planning Authorities liable to refund 50% of the fee after 16 weeks (see also our answer to question 7).

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

No comment.

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
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

a) In principle, we support the ambition for 10-week time limit. However, we note the consultation document offers no explanation as to why this period has been selected, nor any evidence to demonstrate why it might be achievable in practice. As we've argued in relation to question 1, specifying too short a deadline could have unintended consequences including increasing the rate at which planning applications are refused and further slowing determinations for non-accelerated applications.

b) Again, we agree with the principle of designing the Accelerated Planning Service in such a way to encourage pre-application engagement. However, Local Planning Authorities' pre-application services can be slow, non-committal and lacking clear advice. For example, one South London council recently took a year to get back to us on a pre-application enquiry only to request more information before it could provide a full response. With resources limited, many local authorities are confining their pre-application services to only the largest applications. This trend will need to be reversed – through greater resourcing – if any Accelerated Planning Service is to work.

c) Similarly, we agree with the principle but have doubts over whether encouraging notification of statutory consultees at the pre-application stage will have the desired effect. Bodies that must be consulted over planning applications, such as the Environment Agency and the Forestry Commission — are also understaffed and underfunded, which means even seemingly straightforward housing applications can take a significant amount of time.

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.

Yes. A percentage uplift on the normal planning application fee seems like the most sensible approach. Any increase will need to strike a balance between:

- the promised acceleration in planning determinations (compared to the statutory 13-week limit)
- the need to generate extra financial revenue to deliver the Accelerated Planning Service
- the fact developers will bear the increased cost of pre-application engagement and notification of statutory consultees necessary for the Accelerated Planning Service to function.

This last point is especially important. Developers will not only have to pay a premium fee for accelerated determinations, but also shoulder much of the groundwork to streamline Local Planning Authorities' decision-making processes. Any premium should, therefore, be fairly modest.

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

Please give your reasons

a) the whole fee at 10 weeks if the 10-week timeline is not met is likely to be the best option. While this could risk applications 'going to the back of the pile' once the 10-week deadline has elapsed, the alternatives are too complex.

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

Please explain

If the Accelerated Planning Service is to work, Government will need to place obligations on statutory consultees to respond promptly at all stages of the planning process from pre-app to decision. Without their co-operation, there is little hope of providing an expedited service and Local Planning Authorities will be unfairly penalised for delays outside of their control.

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?

Our preference would be for Government to focus on accelerating the planning service in the round, rather than introducing a new fast-track route. Should it proceed with the option of an Accelerated Planning Service, we feel this should apply first and foremost to major residential applications to avoid further slowing housing delivery. Paragraph 15 of the consultation implies the Accelerated Planning Service is initially being confined to commercial applications partly to determine its applicability to other forms of development. If the aim is to test the APS before wider roll-out, we feel this would be better achieved by applying it to major residential development. The consultation document rightly suggests there are significantly more residential applications (than commercial) and often a larger number of matters to be considered with residential applications. But this could be overcome at this testing phase by trialling the APS with a handful of local authorities or applying it to only the very largest residential planning applications.

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

a) Applicants must be able to choose whether to opt in to the Accelerated Planning Service or follow the standard application route. Providing applicants with a choice is especially important given: a) the Accelerated Planning Service's enhanced fees (which those developing schemes just above the major threshold may be less inclined to pay), and; b) the fact much of the additional burden required to make the service work falls on developers (in terms of the likely necessity of pre-applications, notification of statutory consultees and provision of additional prescribed information).

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

Decisions over additional information requirements (beyond those already specified) will need to be made on a case-by-case basis. The Local Planning Authority will only validate an application if all necessary reports are provided. Most major planning applications already require a planning statement. Given this, there seems little point in setting a baseline information requirement for opting into the service.

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

Yes, in principle. Publishing the proportion of Local Planning Authority decisions within statutory timeframes will facilitate scrutiny and could drive a modest improvement in performance through benchmarking and best-practice sharing. It is unclear whether the number of applications subject to the Accelerated Planning Service will be reported separately, with performance compared against the 10-week timeframe. Performance against the timeframes associated with the Accelerated Planning Service should also be subject to scrutiny given the premium fees charged.

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.

The proposed performance thresholds are too low to encourage Local Planning Authorities to consistently determine planning applications on time without use of Extension of Time or Planning Performance Agreements. A 50% threshold would be especially low for applications expedited through the Accelerated Planning Service. If developers are paying for a premium service (and doing additional groundwork to streamline authorities' decision-making process), they deserve better than a 50:50 chance their application will be determined on time.

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) the new criteria only. Measuring performance based on the proportion of decisions made within the statutory time limit is the simplest and most transparent solution. Making the metric

exclusive of extension of time agreements would mean Local Planning Authorities would no longer be able to use these as a delaying tactic – requesting extensions simply because they've not had the chance to consider an application rather than because they genuinely want to work with the applicant to agree a positive outcome.

If the process described in paragraph 46 is to be successful, the Planning Inspectorate will need to be sufficiently resourced to deal with the uplift in applications where councils are designated. Otherwise, the speed of decision-making will continue to be slow.

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

As the consultation points out, assessing speed of decision-making over a 12-month period will enable quicker identification of any improvement or deterioration in performance. Most Local Planning Authorities receive an ample number of applications annually for figures to provide an accurate picture of performance over this period.

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

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

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

No comment

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?

Extension of time agreements should either be prohibited or retained on the proviso performance is measured exclusive of such agreements (i.e. within the statutory time limit). If extensions are retained, it should be possible to agree more than one extension for the same application.

Where extensions are agreed, we suggest adopting a further assessment criterion – the proportion of applications with extension of time agreements that go on to be approved. This would help reveal whether Local Planning Authorities are using

such agreements as intended to facilitate the delivery of positive outcomes rather than compensate for delays in decision-making. This in turn would help reduce scenarios where applicants wait for prolonged periods for a decision only to receive a refusal. Misuse of extension of time agreements should be discouraged as much as possible given their impact on construction. Refusals outside of statutory timeframes slow the delivery of development as it is necessary for the developer to start over once they receive a refusal.

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

Yes / No / Don't know

No comment

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 form the simplified written representation appeal route?

Yes / No / Don't know

No comment

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.

No comment

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.

No comment

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

No comment

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

No comment

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

Yes. We support the ambition to encourage clearer and more specific descriptors for planning permissions. Clearer descriptors will increase the transparency of post-permission variations sought by developers and avoid unnecessary delays while descriptors are agreed at the validation stage. Likewise, we support proposals for section 73B to become the default, more flexible route for making general material variations to existing planning applications. It will be especially useful in cases necessitating variation of both the descriptors of development and conditions of an existing planning permission. However, section 73 should not become the only legislative route to propose variations to planning permissions. Section 73 and section 96A should be retained to enable variation of specific conditions and non-material amendments, respectively.

Question 27. Do you have any further comments on the scope of the guidance?

We have two further observations. Firstly, the consultation highlights the application of section 73 could be limited depending on how Local Planning Authorities interpret the 'substantially different' test. While we understand Government's hesitation to introduce 'prescriptive guidance' (paragraph 82), we feel some guidance would be helpful to increase acceptance of section 73 across Local Planning Authorities. Otherwise, developers risk getting into protracted discussions with councils over the definition of 'substantially different', undermining the overarching aim of accelerating the planning service. Secondly, we note the point in paragraph 81 regarding plan numbers conditions. We believe it is important that these types of conditions are retained to provide clarity and certainty over what has been approved. This clarity and certainty are beneficial for all those involved in the planning process. For all application types, we suggest having a clear set of approved plans (ideally with an electronic date stamp) saved on the council website to ensure all parties know exactly what has been approved at each stage. At present, council online planning files are not well maintained with misfiled documents, which can cause confusion for the public, council officials and developers.

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

Yes. The proposed procedural arrangements are proportionate, allow all parties an opportunity to comment and largely follow the section 73 procedure with which we're familiar.

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

Yes. The section 73B application process essentially mirrors that for section 73, so equalising the fees is the right approach.

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

Yes. A tiered fee structure would better reflect the time Local Planning Authorities spend on different categories of planning applications.

Question 31. What should be the fee for section 73 and 73B applications for major development (providing evidence where possible)?

We agree in principle with the proposal to charge a premium fee for Section 73 and Section 73B major developments. It is important that the fee is not set at a disproportionately high a level, as the changes proposed are often (by definition) minor, and the higher fee should not disincentivise applicants from using these legislative routes. Fees should be based on evidence from Local Planning Authorities on the resources currently used to determine section 73 applications. Time recording from a cross-section of councils across the country should give an accurate indication of the resources involved.

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

Yes / No / Don't know

Yes. This will ensure consistency across the two legislative routes.

Question 33. Can you provide evidence about the use of the 'drop in' permissions and the extent the Hillside judgment has affected development?

The Hillside judgement and subsequent judgement at the Aylsebury Estate mean developers have less flexibility to amend planning permissions for large-scale schemes. This has been especially detrimental for multi-phase developments, which – by their very nature – are more likely to require post-permission variations

to respond to external changes such as regulatory reforms and deteriorating economic conditions. The reduced flexibility slows the delivery of housing and other forms of development as developers must now go through longer processes to amend their schemes. The timescales for promoting a site, obtaining outline planning permission and then reserved maters can already run into decades. Given this, extra flexibility is urgently needed and we welcome the introduction of section 73B as an alternative to the use of 'drop in' permissions.

Question 34. To what extent could the use of section 73B provide an alternative to the use of drop in permissions?

The section 73B procedure should make it possible to amend a variety of aspects of a planning permission, thereby addressing the issues outlined in our response to question 33. Clear guidance is required to ensure all parties have an understanding of the scope of section 73B applications.

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?

Sections 73, 73B and 96A offer a variety of legislative routes for applicants to propose variations to planning permissions. Since these are application types that can be used at any time, they make it possible for a developer to respond to changing circumstances as they arise. The proposed alternative - a General Development Order - would need to be introduced nationally. Without detail regarding the intended approach, we are concerned a nationally applied "blanket approach" would require a complicated set of criteria to cover all possible scenarios. Given the vast number of issues that may arise as a scheme progresses, it seems unlikely a general development order can cover all situations. It's therefore likely that applications would still be required in some instances. The s73B route makes it possible to submit bespoke applications on an ad hoc basis to deal with a particular issue. Therefore, we recommend the emphasis should be on providing clear legislation and guidance on the scope of section 73B to ensure it achieves Government's aim of introducing greater flexibility for amending existing planning permissions.

Question 36. Do you have any views on the implications of the proposals in this consultation for you, or the group or business you represent, and on anyone with a relevant protected characteristic? If so, please explain who, which groups, including those with protected characteristics, or which businesses may be impacted and how. Is there anything that could be done to mitigate any impact identified?

No comment.