Planning performance and the planning guarantee

Consultation

November, 2012
Department for Communities and Local Government

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The consultation process and how to respond

Scope of the consultation

Topic of this consultation:	The Growth and Infrastructure Bill will allow applicants for planning permission to apply directly to the Planning Inspectorate, where a planning authority has been designated as poorly performing. This consultation seeks views on our proposals for how this measure would be implemented, and for related proposals for the planning guarantee.
Scope of this consultation:	The consultation sets out the criteria that might be used to assess planning authority performance, what thresholds might be used, how any designations would be made and the consequences of such a designation (including the procedures that would apply where an application is submitted to the Planning Inspectorate, and the basis on which a designation would end). It also proposes a refund of the planning application fee in cases where the planning guarantee is not met.
Geographical scope:	These proposals relate to England only.
Impact assessment:	The Impact Assessment for the Growth and Infrastructure Bill can be viewed at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/14682/growth_and_infrastructure_bill_-_impact_assessment.pdf

Basic information

To:	This is a public consultation and it is open to anyone with an interest in these proposals to respond.
Body responsible for the consultation:	The Department for Communities and Local Government is responsible for the policy and the consultation exercise.
Duration:	This consultation will run for 8 weeks. It will begin on Thursday 22 November 2012 and end on Thursday 17 January 2013.
Enquiries:	E-mail: robert.shane@communities.gsi.gov.uk

How to respond:	Please respond to this consultation by email to: PlanningPerformance@communities.gsi.gov.uk Alternatively, please send postal responses to: Robert Shane Planning Performance Consultation Department for Communities and Local Government 1/J1 Eland House Bressenden Place London SW1E 5DU
Additional ways to become involved:	N/A
After the consultation:	A summary of responses to the consultation will be published.

Background

Getting to this stage:	The Growth and Infrastructure Bill can be viewed at: http://www.publications.parliament.uk/pa/bills/cbill/2012-2013/0075/cbill_2012-20130075_en_1.htm The Planning Guarantee was announced in the Plan for Growth in March 2011: http://cdn.hm-treasury.gov.uk/2011budget_growth.pdf
Previous engagement:	Further details of how the planning guarantee could be implemented were announced in July 2011.

Introduction

About this consultation

1. An effective planning system plays a vital part in supporting growth – promoting and enabling the homes, jobs and facilities that communities need, and minimising uncertainty and delay for those proposing or affected by development.

2. The Government has already taken important steps to ensure that the planning system fulfils this potential – in particular by publishing the National Planning Policy Framework in March 2012. This not only represents a radical simplification of national policy, but also emphasises the need for a positive approach to both plan making and decision taking, while retaining important protections. A number of reforms to simplify and speed-up planning procedures have also been announced, including the planning guarantee – that applications should take no more than a year to decide, including any planning appeal.

3. Our reforms have given significant additional power to councils and communities in deciding the scale, location and form of development in their areas. But with this power comes a responsibility to exercise planning functions properly. The Growth and Infrastructure Bill, introduced to Parliament on 18 October, contains a number of additional proposals that build upon our existing reforms. They include a measure to enable quicker and better decisions where there are clear failures in local planning authority performance, by giving applicants the option of applying directly to the Planning Inspectorate.

4. This measure is aimed only at those few situations where councils are clearly failing to deliver an effective service. Applicants for planning permission can reasonably expect timely and good quality decisions – justice delayed is justice denied. Where there is clear evidence of very poor performance we want to give applicants the choice of a better service, but will also want to ensure that those authorities have access to the support they need in order to improve as quickly as possible.

5. This consultation asks for views on our proposals for implementing this measure once the Bill is enacted. This will help to inform debate on the clause as it progresses through Parliament. The measure would be implemented through policy and secondary legislation, the final form of which will need to reflect Parliament's decisions on the Bill. The consultation also sets out our further proposals for implementing the planning guarantee, which is closely related to the provisions in the Bill.

6. We would welcome comments from any individuals or organisations with an interest in these proposals, which apply to England only. The closing date for responses is Thursday 17 January 2013.

What are we proposing?

7. The legislation will allow applications to be submitted to the Secretary of State where a local planning authority is designated for this purpose. We intend that this power would be used only where there is a track record of very poor performance in either the speed or quality of the decisions made by an authority; and that clear benchmarks are used to define what this means in practice.

8. Where an authority is designated, we propose that applications would be submitted to the Planning Inspectorate (on behalf of the Secretary of State), where the applicant chooses this route. This ability would be limited to those seeking permission for major development[1]. A designated authority would need to demonstrate a sufficient degree of improvement before the designation is lifted.

9. Apart from its direct effects, we anticipate that the legislation will stimulate an increased focus on performance across planning authorities generally, and will help to ensure that the planning guarantee is met. As a further means of ensuring that decisions are made within the guarantee period, we are also proposing a refund of the planning application fee, should an application remain undetermined after 26 weeks. This would apply to all planning applications, and be implemented through a change to secondary legislation.

10. These proposals are set out in detail in the remainder of this consultation, along with a number of questions (which are summarised at the end of the document).

[1] 'Major development' is defined in The Town and Country Planning (Development Management Procedure) (England) Order 2010, as amended. It includes housing schemes of 10 or more houses (or 0.5 hectares or more where the number of dwellings is not yet known); development involving 1,000 square metres or more of new floorspace or a site area of 1 hectare or more; and development involving minerals and waste.

Context

Why positive and timely planning decisions matter

11. Obtaining planning permission is a key step for those wishing to carry out development – whether house builders proposing new homes, businesses with plans to expand or individuals hoping to make significant changes to their property. Delays in the process can mean frustration, unnecessary expense and the loss of investment and jobs. It can also create uncertainty for communities with an interest in the proposals.

12. In 2011-12 local planning authorities made 435,000 decisions on planning applications[2]. Some 87% of these were approved, and the majority – 78% overall – were determined within the statutory time limits.

13. However the picture is far from uniform. In particular there has been a decline in the speed with which applications for major development are decided, despite a decrease in workload: over the past four years the proportion of major applications determined within the statutory 13 week time limit has fallen from 71% (2008-2009) to 57% (2011-12) – despite an 18% drop in major decisions during the same period.

14. In the past year over a fifth of applications for major development took more than half a year to determine, and 9% took more than a year; any subsequent appeal against a refusal of permission would add further time. Some 43% of planning appeals involving major development were successful in the past year.

15. There are also big variations in the performance of individual planning authorities. For example over 25 authorities decided more than 80% of applications for major development on time in 2011-12; whereas 14 authorities dealt with fewer than 25% on time. Appeal success rates against local authority decisions ranged from 14% to 80% (excluding authorities that had five or fewer appeals).

16. We recognise that there can be good reasons for some delays, in particular where authorities and applicants have both recognised that more time than the statutory period is required to negotiate the right outcome on large or complex proposals. This is not the issue that we wish to tackle; rather it is the instances of <u>unnecessary</u> delay and of poor quality decisions on applications that add to costs, and which delay or deter investment and growth.

17. The quarterly survey of home builders conducted by the Home Builder's Federation consistently cites 'planning delays' as one of the most

[2] Excluding 'county matter' applications, such as decisions on minerals and waste schemes.

significant constraints on homebuilding; in June 2012, 77% of respondents considered such delays to be a major constraint.

18. The costs of delay can be substantial. It has been estimated that the financing costs to developers of holding onto land and other assets while their projects are being evaluated amounts to £1 billion per year, with further substantial costs associated with land holdings that are required due to the uncertainty of the planning process and as a consequence of sites that fail to gain consent. This could push financing costs from £1 billion to over £2 billion[3].

19. It is because of the consequences of unnecessary delays – whether those delays arise from slow decisions or poorly judged decisions that are overturned at appeal – that we believe it is right to take action where there is clear evidence that particular planning authorities are performing very poorly. We expect to have to use this power very sparingly. The Government remains committed to decentralising power and responsibility wherever possible, and this measure will not affect the great majority of authorities that already provide an effective planning service, other than to act as a reminder of the importance of timely and well considered decisions.

[3] Professor Michael Ball (November 2011) Memorandum to Communities and Local Government Committee's Inquiry into the Draft National Planning Policy Framework

Assessing performance

Our approach

20. We intend to set out the criteria for assessing performance, and the thresholds for designating any authorities under this measure, in a policy statement that will be published in response to this consultation once the Growth and Infrastructure Bill gains Royal Assent.

21. The performance of planning authorities can be looked at in a number of ways, from a focus on particular indicators to wider measures of the 'quality of service'. The overall service that planning authorities provide to applicants and local communities needs to be efficient, proportionate and effective. It is right that this continues to be the focus of improvement efforts by authorities, supported by organisations such as the Planning Officers' Society and the Planning Advisory Service.

22. At the same time we consider that the basis for identifying any cases of very poor performance needs to be kept relatively simple, so that the approach is transparent, and to avoid placing additional reporting burdens on authorities. For this reason we propose to monitor and assess performance on the basis of two key measures: the speed and quality of decisions on planning applications. These have a direct bearing on the planning system's efficiency and effectiveness for both applicants and communities; and on its contribution to growth.

    Question 1: Do you agree that local planning authority performance should be assessed on the basis of the speed and quality of decisions on planning applications?

Speed of decisions

23. We propose to use the existing statutory time limits for determining planning applications, as in principle all decisions should be made within these periods – unless an extended period has been agreed in writing between the parties. This means a maximum of 13 weeks for applications for major development and eight weeks for all others[4].

24. We also propose, for identifying and addressing very poor performance, to focus only on applications for major development – as these are the

[4] The statutory time limits are set out in The Town and Country Planning (Development Management Procedure) (England) Order 2010, as amended. An extended period of 16 weeks applies for applications subject to The Town and Country Planning (Environmental Impact Assessment) Regulations 2011.

proposals which are most important for driving growth, and which have the greatest bearing upon communities.

25. Some authorities deal with relatively few applications for major development, and performance in dealing with such proposals in any one authority can fluctuate from quarter to quarter, depending on the number and scale of proposals under consideration. We therefore propose that performance should be assessed on the extent to which applications for major development are determined within 13 weeks[5], averaged over a two year period. This assessment would be made once a year (see paragraph 46).

26. We have considered whether an alternative approach – of using the average processing time for determining applications for major development – could be used instead. This would not reflect the obligation to make decisions within the statutory time limits; nor would it address as effectively the minority of decisions that take considerably longer to decide. It would also require a new reporting regime, additional to the existing arrangements for reporting planning performance, to capture the time taken to decide each individual application.

Question 2: Do you agree that speed should be assessed on the extent to which applications for major development are determined within the statutory time limits, over a two year period?

The role of planning performance agreements

27. We want to ensure that we focus on genuinely poor performance, and that authorities are not penalised unfairly for delays that are beyond their control. Some applications for major development do need more than the statutory time period to decide, especially where the issues are particularly complex and involve statutory consultees. Sometimes, delays may be at the instigation of the applicant, such as where a delay is sought to avoid triggering a purchase clause linked to the granting of planning permission.

28. The National Planning Policy Framework encourages the use of planning performance agreements. These involve a bespoke timetable agreed between the authority and the applicant where it is clear – at the pre-application stage – that more time than the statutory period will be required to reach a decision. Such agreements are reported separately by authorities, and are excluded from the statistics on the extent to which decisions are made within the statutory period.

29. Agreements to extend the time for a decision beyond the statutory period sometimes need to be made after an application is submitted (as the Development Management Procedure Order explicitly allows). We

[5] Or 16 weeks in the case of applications subject to Environmental Impact Assessment.

consider that it would be fair to treat these in the same way as planning performance agreements for reporting purposes – so that they are not included in the assessment of the time within which an authority makes its planning decisions.

30. We therefore propose that post-application agreements to extend the timescale for determination should in future be recorded as a form of planning performance agreement, provided there is explicit agreement to the extension of time from the applicant (in writing), and the agreement specifies a clear timescale for reaching a decision.

31. In proposing this, we also consider that the approach sometimes taken towards planning performance agreements needs to change. Existing guidance[6] encourages a very thorough approach that will not always be appropriate. We would like to see a more proportionate approach which is tailored to the size and complexity of schemes and the stage that they have reached in the application process. However agreements should, as a minimum, set out a clear and agreed timescale for determining the application.

Question 3: Do you agree that extensions to timescales, made with the written consent of the applicant following submission, should be treated as a form of planning performance agreement (and therefore excluded from the data on which performance will be assessed)?

Question 4: Do you agree that there is scope for a more proportionate approach to the form and content of planning performance agreements?

Quality of decisions

32. We propose to use the appeal success rate for major development to indicate the 'quality' of decisions made by each planning authority.

33. Successful appeals against planning authority decisions represent cases where the Secretary of State, or an Inspector acting on his behalf, concludes that a different decision should have been reached and the application allowed[7]. As such they provide an indication of whether planning authorities are making positive decisions that reflect policies in up-to-date plans (where relevant) and the National Planning Policy Framework.

[6] Advisory Team for Large Applications (2008) Guidance Note: Implementing Planning Performance Agreements

[7] Where the authority has failed to make a decision within the statutory period, and the applicant then exercises their right to appeal against non-determination, the planning authority is deemed to have refused permission. A small minority of appeals are made against conditions attached to a grant of permission.

34. Some individual appeal outcomes can turn on small differences of view about the application or interpretation of particular policies; or about the weight to be given to different material considerations. Where, however, an authority has a sustained track record of losing significantly more appeals than the average, it is likely to reflect the quality of its initial decisions. For this reason we propose that appeal success rates should be assessed over a two year period.

35. The appeal success rate also needs to be read in context. An authority that acts positively and approves the great majority of its applications for major development, but loses a very small number of appeals brought against it, should not be penalised for 'poor performance'[8]. It follows that the number of appeals lost each year needs to be related to the total volume of applications dealt with. We therefore propose that the measure of quality should be the proportion of all major decisions made that are overturned at appeal, over a two year period.

Question 5: Do you agree that quality should be assessed on the proportion of major decisions that are overturned at appeal, over a two year period?

Having the right information

36. The proposed measures of speed and quality both rely upon accurate data being supplied to the Department on a regular basis (i.e. decisions made within the statutory period, and the total volume of major decisions made so that the proportion overturned at appeal can be calculated).

37. This information is already supplied by local authorities as part of the quarterly returns required by the single data list[9]. At present there are very few gaps in the data provided by authorities, but there is a risk that in future authorities could withhold data for quarters in which their performance has slipped.

38. To discourage this we propose the following:

- Data for a single missing quarter in one reporting (financial) year would be estimated by the Department from the returns for other quarters – based on average performance for the quarters for which information is available.
- Where data for two or three quarters in a reporting year are missing, figures for the absent quarters would be imputed in a similar way, but with a penalty then applied in proportion to the amount of data

[8] An authority could, of course, have also refused applications for sound reasons, such as a clear conflict with up-to-date local or national policies; but these refusals should not result in a high appeal success rate against the authority's decisions.
[9] Department for Communities and Local Government (March 2012) Single list of central government data requirements from local government

missing. We propose that this penalty would be a reduction of five percentage points per missing quarter for the speed of decisions, and one percentage point per missing quarter for decisions overturned at appeal[10].

- Any authority with a whole year of data missing would automatically be designated as very poor performing.

39. For the initial introduction of the measure we also propose that planning authorities would be given an opportunity to fill gaps in the existing data prior to any designations being made[11]. Gaps in the existing data which are not filled by authorities in this way will be imputed (and, if necessary, penalised) as described above.

40. The current statistical returns supplied to the Department do not indicate the determination times for district applications which are subject to environmental impact assessment. These could, as a result, be counted against the 13 week time limit for applications for major development, rather than the 16 weeks which the law allows. We propose to amend the returns so that this can be remedied for future data collection. As a transitional measure, any authorities identified for potential designation on the basis of existing data will be given an opportunity to notify us of any environmental impact assessment cases relating to applications for major development during the assessment period, which will be discounted from the calculation of performance.

41. To ensure that the information on which any designations would be based is readily available, the Department will publish quarterly statistics on the extent to which decisions on applications for major development have been overturned at appeal, alongside the existing data on the extent to which decisions are made within the statutory time periods.

Question 6: Do you agree with the proposed approach to ensuring that sufficient information is available to implement the policy?

Setting the bar

42. We wish to set out very clearly what constitutes sufficiently poor performance for a planning authority to be designated once the Growth and Infrastructure Bill becomes law. A minimum standard will provide certainty to authorities about the action they must take where their performance is poor; and make clear to applicants the circumstances in which they can expect the Government to act when there is demonstrable evidence that planning is not being delivered effectively.

[10] For example: an authority that processed 40% of its major decisions within the statutory period over the reporting year as a whole (calculated in part using imputed data), and which had three quarters of data missing, would have its overall figure reduced to 30% for the year.
[11] i.e. information for the two reporting years against which performance will be assessed – likely to be 2011-12 and 2012-13

43. We therefore propose using absolute thresholds below which authorities would be designated, rather than a fixed percentage of authorities that are performing most poorly on the basis of speed or quality.

44. We intend to set these thresholds so that only very poor performance would result in an authority being designated: where 30% or fewer major applications have been determined within the statutory period or more than 20% of major decisions have been overturned at appeal. We consider it important that a designation could be made on the basis of either measure (rather than a combination of the two), so that applicants can access a better service where speed or quality is a significant issue.

45. We also propose raising the bar for the speed of decisions after the first year, to ensure that there is a strong but achievable incentive for further improvement in performance, and to reflect an anticipated increase in the use of planning performance agreements for the more difficult cases as proposed elsewhere in this consultation.

Question 7: Do you agree that the threshold for designations should be set initially at 30% or fewer of major decisions made on time or more than 20% of major decisions overturned at appeal?

Question 8: Do you agree that the threshold for designation on the basis of processing speeds should be raised over time? And, if so, by how much should it increase after the first year?

Making a designation

46. We wish to avoid frequent changes in the authorities to which a designation applies; to provide certainty for both applicants and councils, and to ensure that any designated authorities have sufficient time to improve. We therefore propose that designations would be made once a year, and that those authorities which are designated would remain in that situation for at least a year.

47. Any designations would need to be made fairly and transparently. We therefore propose that the designation process would follow automatically, following the publication of the relevant statistics on processing speeds and appeal outcomes for the year, were an authority to appear below the thresholds that have been set. For the first year, before any initial designations are made, authorities will be given an opportunity to correct any gaps or errors in the existing data (see paragraph 39 above); cases that were subject to environmental impact assessment will also be taken into account (see paragraph 40).

48. It will be clear from each year's data not just which authorities are to be designated (if any), but also which authorities are just above the bar and need to improve to avoid a designation the following year.

Question 9: Do you agree that designations should be made once a year, solely on the basis of the published statistics, as a way to ensure fairness and transparency?

49. Once the Growth and Infrastructure Bill receives Royal Assent we anticipate that the first designations would be made once the necessary secondary legislation is in place (planned for October 2013). The timetable would be:

- April 2013: Response to consultation announced; criteria and initial thresholds for designations confirmed
- July 2013: Performance data for 2012-13 (as well as 2011-12) available, indicating which authorities are liable for designation
- August-September 2013: Opportunity to correct any data errors and account for applications subject to environmental impact assessment
- October 2013: Secondary legislation in place and initial designations made

50. For unitary authorities we propose that 'county matter' applications would be assessed – and any designations made – separately from the assessment of 'district' performance. Because unitary authorities deal with both types of application, taking their average performance across all types of case would not involve the same mix of application types faced by either district authorities or county councils (and so preclude a comparable assessment of performance).

51. The Bill sets out a limited number of planning authorities to which a designation would not apply: the Homes and Communities Agency, Mayor of London, a Mayoral development corporation and an urban development corporation. Where these organisations have responsibility for determining applications, it is specifically for deciding particularly large or complex schemes, so it would not be appropriate to assess their performance in the same way.

Effects of designation

Application process

52. Where a planning authority is designated on the basis of very poor performance, the Growth and Infrastructure Bill would give applicants the option of applying directly to the Secretary of State; applicants could if they wish continue to apply to the designated authority in the usual way.

53. The legislation would allow the Secretary of State to prescribe the types of development to which this choice would apply. As already explained (paragraph 24 above) we propose that it be limited to applications for major development, being those which are most important for driving growth, and which have the greatest bearing upon communities.

54. Where an application is submitted directly in this way, certain related applications may also be made to the Secretary of State at the same time. The Bill makes specific provision for applications for listed building and conservation area consent[12]; we do not intend at present to prescribe any additional categories of related consent.

55. The Bill also allows the Secretary of State to appoint persons to determine applications on his behalf, and we propose that the Planning Inspectorate carries out this role (the Secretary of State would also be able to 'recover' any such cases for his own determination, but we would expect that this power would be used sparingly).

56. Early pre-application discussions can have significant benefits for the overall efficiency and effectiveness of the planning application process, including the prospects for securing timely decisions once a planning application has been submitted. Those applying directly to the Secretary of State would be able (and encouraged) to seek pre-application advice from the Planning Inspectorate, the local planning authority or both. We propose that the Inspectorate would charge for any pre-application advice on a cost recovery basis.

57. The Planning Inspectorate would also receive the application fee (on behalf of the Secretary of State) for any application submitted directly to it, and we propose to amend the regulations so that this would be set at the same level as the fees payable to local planning authorities.

58. We propose that the process for determining applications submitted to the Inspectorate should mirror, as far as possible, that which usually applies when an application is submitted to a local planning authority. The Development Management Procedure Order would be modified

[12] The Enterprise and Regulatory Reform Bill currently before Parliament proposes to remove the requirement for conservation area consent to be obtained

accordingly. A necessary exception to this principle is the planning committee stage, alternative proposals for which are set out below.

59. Where a planning application is submitted directly to the Secretary of State there will be a small number of administrative functions which, for practical reasons, will need to be carried out locally. We propose that these should continue to be undertaken by the designated local planning authority (and the Bill allows the Secretary of State to issue directions to this effect). We propose that these functions would include:

    - Site notices and neighbour notification
    - Providing the planning history for the site
    - Notification of any cumulative impact considerations, such as where environmental impact assessment or assessment under the Habitats Regulations is involved, or there may be cumulative impacts upon the highways network

60. The Planning Inspectorate would specify a timescale for the completion of these tasks. While we think that the planning authority is best placed to do this work, we would welcome views on whether alternative approaches should be considered, such as the use of a local agent.

61. The local planning authority would remain responsible for maintaining the planning register for its area, including details of any applications that are submitted directly to the Planning Inspectorate. The Planning Inspectorate would notify the planning authority of such applications.

62. Most applications for major development determined by local planning authorities are decided at a planning committee meeting, providing an opportunity for the merits of the proposal to be considered in public. The Bill allows the Secretary of State to determine the procedure to be followed where an application is submitted directly to him. We propose that the Planning Inspectorate should choose the most appropriate procedure to employ on a case by case basis (which could be an abbreviated form of hearing or inquiry, or written representations); but that the presumption should be that applications are examined principally by means of written representations with the option of a short hearing to allow the key parties to briefly put their points in person.

63. We do not propose that the Planning Inspectorate would enter into discussions with the applicant about the nature and scope of any section 106 agreement that may be appropriate, as we consider these are best determined locally by the applicant and the planning authority. In determining an application the Inspectorate would take into account, as a material consideration, any planning obligation advanced by the applicant, or any agreement which the applicant has entered into (or is prepared to enter into) with the authority.

64. We want to ensure that the Planning Inspectorate can offer a high standard of service when applications are submitted to it. We propose

that the performance standard for the Inspectorate in dealing with applications would, initially, be to determine 80% of cases within 13 weeks[13] (or 16 weeks in the case of applications for major development which are subject to environmental impact assessment); unless an extended period has been agreed in writing with the applicant. This compares to the current average performance among planning authorities of deciding 57% of applications for major development within 13 weeks. The Inspectorate will provide quarterly data on its performance, and the performance standard will be reviewed annually.

65. The Bill does not provide for any right of appeal once an application has been decided by the Inspectorate, other than judicial review, as the application will already have been considered on behalf of the Secretary of State. This mirrors the position where applicants for planning permission choose to appeal against non-determination. Applicants will be made fully aware of this if they choose to submit their applications directly to the Inspectorate.

66. The discharge of any planning conditions attached to a planning permission issued by the Inspectorate would remain the responsibility of the local planning authority.

Question 10: Do you agree that the option to apply directly to the Secretary of State should be limited to applications for major development?

Question 11: Do you agree with the proposed approaches to pre-application engagement and the determination of applications submitted directly to the Secretary of State?

Supporting and assessing improvement

67. Any authorities designated on the basis of very poor performance will need time to improve, support while they are doing so and a fair opportunity to show when – and to what extent – their performance has improved.

68. We are proposing that any designation would last for at least a year, but would be subject to review well before that year ends, so that the authority has every opportunity for the designation to be lifted at the end of the one year period. During the period of designation we would expect the authority to take maximum advantage of opportunities for peer support and other forms of sector-led improvement (such as those offered through the Planning Advisory Service); and to explore options for radical change such as shared services.

[13] This is in line with a number of existing performance standards for the Inspectorate

69. Designated authorities will not necessarily be dealing with a significant number of applications for major development, so we propose that any assessment of improvement should be based on a range of other considerations that we will set out in policy:

- The authority's performance in determining all those applications for which it remains responsible
- Its performance in carrying out any administrative tasks associated with applications submitted directly to the Secretary of State (see paragraph 59 above)
- A review of the steps taken by the planning authority to improve, and its capacity and capability to deal efficiently and effectively with major planning applications

70. This assessment would be undertaken by the Department for Communities and Local Government.

Question 12: Do you agree with the proposed approach to supporting and assessing improvement in designated authorities? Are there specific criteria or thresholds that you would propose?

The planning guarantee

Principles and scope

71. The planning guarantee was announced in the Plan for Growth (March 2011). The principle is simple: that no planning application – major or otherwise – should take more than a year to decide, even where a planning appeal has been made. It does not replace the statutory time limits for determining applications, which should continue to be met wherever possible, but instead provides a 'longstop' date by which any schemes that take longer (or which involve a planning appeal) should be determined.

72. In practice the guarantee means that cases should spend no more than 26 weeks with either the local planning authority or, in the case of appeals, the Planning Inspectorate. This gives both decision-making bodies an equal maximum time to come to a view, limiting the risk that over-runs with one part of the process might restrict the scope for the guarantee to be met. A similar 26 week limit would in future apply to the Planning Inspectorate where it is determining planning applications submitted to it directly as a result of the proposals in the Bill.

73. The guarantee applies to the time a valid application spends with these decision-making bodies. It does not cover the period before an application is submitted, after permission is granted, or any time between the local planning authority's decision and any subsequent decision by the applicant to appeal. This is because the behaviour of applicants can have a significant bearing upon the length of these periods; for example, they have up to six months to decide whether to lodge an appeal against a refusal (12 weeks in the case of householder applications).

74. There are a small number of cases which, exceptionally, we propose to exclude from the scope of the planning guarantee. These are:

    - Applications subject to Planning Performance Agreements, due to the bespoke timetables involved
    - Similarly, planning appeals subject to bespoke timetables agreed between the main parties for particularly complex cases (including Secretary of State casework where this applies[14])
    - Planning appeals that relate to enforcement cases (which are often particularly complex with additional evidence coming forward during the course of the appeal); or which involve re-determinations following a successful judicial review

[14] i.e. 'recovered' appeals and call-ins

Question 13: Do you agree with the proposed scope of the planning guarantee?

Delivering the guarantee

75. An initial monitoring report on performance against the planning guarantee was published earlier this year, and we will continue to report on it annually[15]. The great majority of decisions on both planning applications and appeals are made well within 26 weeks, but it is reasonable to consider what further measures could be taken to encourage all decisions to be made within this time (subject to the exemptions mentioned above).

76. The prospect of authorities being designated on the basis of very poor performance in determining applications for major development within the statutory period will help to deliver the planning guarantee, as this should encourage an increased focus on the timeliness of decisions.

77. As the guarantee applies to individual decisions (rather than individual planning authorities) we consider that an additional measure would also help to ensure that the guarantee is met. We therefore propose to amend secondary legislation to require a refund of the planning application fee, where a planning application remains undecided after 26 weeks[16]. This would apply to planning authorities and to the Planning Inspectorate (where it is responsible for determining major planning applications).

78. Applications subject to a planning performance agreement would be excluded from this measure. We would want to avoid any risk of applicants deliberately delaying the determination of an application in order to obtain a refund, or of authorities refusing applications just to avoid the penalty; such behaviour would be taken into account by an Inspector in considering whether to award costs in any subsequent appeal proceedings.

Question 14: Do you agree that the planning application fee should be refunded if no decision has been made within 26 weeks?

[15] Department for Communities and Local Government (September 2012) Planning Guarantee Monitoring Report

[16] Unless the application falls into one of the exempted categories noted above

Consultation questions

Question 1: Do you agree that local planning authority performance should be assessed on the basis of the speed and quality of decisions on planning applications?

Question 2: Do you agree that speed should be assessed on the extent to which applications for major development are determined within the statutory time limits, over a two year period?

Question 3: Do you agree that extensions to timescales, made with the written consent of the applicant following submission, should be treated as a form of planning performance agreement (and therefore excluded from the data on which performance will be assessed)?

Question 4: Do you agree that there is scope for a more proportionate approach to the form and content of planning performance agreements?

Question 5: Do you agree that quality should be assessed on the proportion of major decisions that are overturned at appeal, over a two year period?

Question 6: Do you agree with the proposed approach to ensuring that sufficient information is available to implement the policy?

Question 7: Do you agree that the threshold for designations should be set initially at 30% or fewer of major decisions made on time or more than 20% of major decisions overturned at appeal?

Question 8: Do you agree that the threshold for designation on the basis of processing speeds should be raised over time? And, if so, by how much should they increase after the first year?

Question 9: Do you agree that designations should be made once a year, solely on the basis of the published statistics, as a way to ensure fairness and transparency?

Question 10: Do you agree that the option to apply directly to the Secretary of State should be limited to applications for major development?

Question 11: Do you agree with the proposed approaches to pre-application engagement and the determination of applications submitted directly to the Secretary of State?

Question 12: Do you agree with the proposed approach to supporting and assessing improvement in designated authorities? Are there specific criteria or thresholds that you would propose?

Question 13: Do you agree with the proposed scope of the planning guarantee?

Question 14: Do you agree that the planning application fee should be refunded if no decision has been made within 26 weeks?