

The Penfold Review of Non-Planning Consents: Call for Evidence

INTRODUCTION

As the country emerges from the deepest international downturn for almost a century, the focus must now turn to ensuring a quick return to sustainable economic growth. Helping to drive this growth means creating the right conditions for private enterprise and strengthening the UK's reputation as one of the best places in the world to start and grow a business.

Modern, innovative and sustainable development is central to our national success. It is key to all sectors of economic activity and society, whether that be housing, retail, industrial, leisure or the provision of essential public services. The construction industry, which depends heavily on development investment, is a major contributor to the UK economy – in 2007, accounting for an estimated 9% Gross Value Added, directly employing more than 2.2 million people and engaging almost 300,000 businesses in the industry.

A well functioning planning and consents environment is therefore an essential component in encouraging and facilitating investment in development. Striving for a regime that seeks to minimise the cost, time, bureaucracy and uncertainty attached to planning and consent applications has been, and continues to be, a key priority for government.

There has been a great deal of progress in recent years to modernise and simplify the planning system. This work includes, among other things, the Barker review of land use planning in 2006¹, the planning White Paper in 2007² and the subsequent Planning Act 2008³ (and associated Infrastructure Planning Commission). The Killian-Pretty review, published in November 2008⁴, moved these reforms on by making a range of recommendations for further improving the planning regime. However, the focus of much of this work was on the planning application process itself – not on those consents which have to be obtained alongside or after, and separate from, planning permission in order to complete a development ('non-planning consents').

The Penfold Review has therefore been established to explore whether the process for obtaining non-planning consents is delaying or discouraging businesses from investing.

¹ Barker Review of Land Use Planning, Final Report – Recommendations, December 2006, <http://www.communities.gov.uk/planningandbuilding/planning/planningpolicyimplementation/reformplanningsystem/barkerreviewplanning/barkerreviewfinal/>

² Planning for a Sustainable Future: White Paper, May 2007, <http://www.communities.gov.uk/publications/planningandbuilding/planningsustainablefuture>

³ Planning Act 2008, <http://www.opsi.gov.uk/acts/acts2008a>

⁴ Killian Pretty Review, final report, "Planning Applications: A faster and more responsive system", November 2008,

<http://www.communities.gov.uk/planningandbuilding/planning/planningpolicyimplementation/reformplanningsystem/killianprettyreview/>

The review is being led by Adrian Penfold - the Head of Planning and Environment at British Land and board member of British Land Corporation Ltd.

It will assess the impact of non-planning consents with a view to identifying areas where there is scope to support investment by streamlining the process and will report its initial findings and recommendations in Spring 2010.

ABOUT THIS DOCUMENT

This document sets out the issues on which the review team would particularly welcome responses. The review's conclusions will be rooted in evidence from a range of sources, including quantitative data; surveys and views of representative groups; visits and seminars; as well as interviews and individual case studies. The objectives for this call for evidence are to:

- Provide evidence to enable the review team to gain a full and representative understanding of the non-planning consents environment and to develop its overall analysis; and
- Highlight key issues on which the review should focus its attention with a view to issuing recommendations for improvement or further investigation.

It is aimed at all those with an interest in improving the operation of non-planning consents. This includes: private sector developers; industry representatives; individual businesses; the academic and research community; government departments and agencies; local and national regulatory and enforcement bodies; regional bodies; NGOs and other interested parties.

SCOPE OF THE REVIEW

The term 'non-planning consents' is not one for which there is an agreed definition. For the purposes of the review it will be interpreted broadly to include any consents a developer has to obtain **alongside** or **after**, and **separate from**, planning permission in order to bring a development into its first operational use. At this stage of the review, it is seen as including, for example:

- 'Operating consents', such as environmental permits or those associated with hazardous substances, required to enable the development to start being used for its intended purpose;
- Land acquisition and heritage consents, such as compulsory purchase orders, listed building and conservation area consents;

- Road, rail and waterways consents, such as for changes to road or public footpaths, required after planning permission has been given; and
- Building standards and health and safety consents, such as building controls and fire approvals, required to ensure minimum standards are observed.

The review will **not** consider issues arising from the process of getting planning permission itself, which were addressed in detail by the Killian Pretty Review. It will, however, be interested in the interaction between the process for getting planning permission and the need to get other consents where this causes difficulties for developers. Where responsibility for particular consents has been devolved, the review will only look at practice in England and, where appropriate, Wales.

The list of potential consents is wide-ranging. Although the review will consider all the issues raised by respondents, an early task will be to identify those which have the greatest impact on investment decisions for immediate further study and those which can be addressed over a longer period.

Development types

Respondents are encouraged to think widely about the impact of non-planning consents on different types of development, including building, engineering, mining and other operations as well as material changes to the use of buildings and other land.

Development size

Non-planning consents are relevant to investment decisions taken by a diverse range of businesses, from small and medium-sized enterprises to multi-national corporations. All of these businesses are central to the future growth of the UK economy. The review will, therefore, examine both large and small developments. The review will not, however, cover householder developments.

Recently implemented initiatives

It is important to recognise that the current review takes place as part of a much wider body of work within Government and elsewhere to streamline and improve the development environment. The intention is to complement, add value and learn from existing work and to avoid revisiting territory that has already been covered by other initiatives in related fields.

In particular, the review will **not** consider development regimes that have been subject to recent legislative initiatives, notably;

- **Nationally significant infrastructure projects**, for which a new regime was established in the Planning Act 2008; and
- **Marine developments**, reformed under the Marine and Coastal Access Act 2009.

On-going initiatives

The review will also aim to avoid duplicating other projects underway across Government, such as:

- The work being undertaken by the Construction Innovation and Growth Team⁵ led by the Government's Chief Construction Adviser, Paul Morrell, considering issues such as innovation and assessing key barriers to growth in the UK's low carbon construction sector; and
- The on-going review and reform of the building control regime outlined in "Future of Building Control - Implementation Plan published by CLG in September 2009⁶;
- CLG's study into the house building industry⁷
- The joint initiative between the Departments for the Environment, Food and Rural Affairs (DEFRA), Energy and Climate Change (DECC), the Environment Agency and the Welsh Assembly and Government to rationalise various environmental permitting regimes into a single system with reduced costs and administrative burdens for businesses; and
- DEFRA's review of the framework for registration of new town or village greens.

Instead, the review will aim to draw evidence, as appropriate, from such projects, and to avoid making over-lapping recommendations.

CALL FOR EVIDENCE

The review team would welcome responses to the questions below. Not all questions will be relevant to all respondents – please feel free to skip questions that are not relevant to you. Please include the name and contact details of the person to contact for any follow-up discussions. Representative groups may also wish to give a summary of the people and organisations they represent.

Please include supporting evidence to your answers covering, where possible, the details of specific non-planning consents, the development in question and the impact of any problems encountered.

Questions to consider

1. How important do you consider non-planning consents are in making decisions about whether to invest in development proposals?

⁵ <http://www.berr.gov.uk/whatwedo/sectors/construction/index.html>

⁶ <http://www.communities.gov.uk/documents/planningandbuilding/pdf/1320090>

⁷ Pre-Budget Report 2009, Box 5.2, page 88

2. When applying for non-planning consents, what obstacles do developers encounter in terms of a) administrative burdens; b) costs; c) uncertainty and risk in applying for; and d) the length of time associated with obtaining such consents? Do any obstacles encountered have a particular impact on a specific sector, type of development or size of business? Which obstacles cause most difficulty and why?
3. How do those seeking consents go about identifying what additional consents are needed alongside or after planning permission? What difficulties do they encounter in doing so?
4. Can you give examples of investment options which have not been pursued, have been delayed or have otherwise significantly changed because of non-planning consents? Which consents were integral to the decision to stop, delay or change the development? Can you quantify the impact of the changes for the business affected?
5. What opportunities do you see for reducing a) the administrative burden; b) the cost; c) the uncertainty and risk in applying for; and d) the length of time associated with obtaining non-planning consents? What action can regulators take to improve the service they give to developers when dealing with non-planning consents? Which actions would bring greatest benefit and why?
6. Are there other relevant issues that the review should take into account?

Please give supporting evidence to your answers

HOW TO SUBMIT YOUR RESPONSE

The review team very much look forward to receiving your responses. **Submissions should be sent to the Penfold Review of Non-Planning Consents by 10 February 2010, though earlier responses would be helpful.**

In order to ensure that your submission is given appropriate consideration, please ensure that the number of the questions to which you are responding is clearly stated. Please also include all relevant contact details in case the review team need to seek clarification of your evidence; and indicate whether you would welcome the opportunity to have a follow-up meeting or phone call with the team to discuss your evidence.

We would **prefer electronic submissions** where possible.

Responses should be sent to:

penfoldreview@bis.gsi.gov.uk

or

Penfold Review of non-planning consents

Zone 3136

Department of Business, Innovation and Skills

1 Victoria Street

London SW1H 0ET

CONFIDENTIALITY

Unless you state otherwise (and an automatic disclaimer generated by your IT system will not be taken as such), the review team will assume you are happy for us to publish your response and to share it with Government, regulators and other officials. If you have any queries about confidentiality, please contact the review team using the contact details above.