

# Shelter's response to the Communities and Local Government consultation – Greater flexibility for planning permissions

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# Shelter

Shelter is a national campaigning charity that provides practical advice, support and innovative services to over 170,000 homeless or badly housed people every year. This work gives us direct experience of the various problems caused by the shortage of affordable housing across all tenures. Our services include:

- A national network of over 20 advice centres
- Shelter's free advice helpline, which runs from 8am-8pm
- Shelter's website which provides advice online
- The Government-funded National Homelessness Advice Service, which provides specialist housing advice, training, consultancy, referral and information to other voluntary agencies, such as Citizens Advice Bureaux and members of Advice UK, which are approached by people seeking housing advice
- A number of specialist projects promoting innovative solutions to particular homelessness and housing problems. These include housing support services, which work with formerly homeless families, and the Shelter Inclusion Project, which works with families, couples and single people who are alleged to have been involved in anti-social behaviour. The aim of these services is to sustain tenancies and ensure people live successfully in the community.
- A number of children's services aimed at preventing child and youth homelessness and mitigating the impacts on children and young people experiencing housing problems. These include pilot support projects, peer education services and specialist training and consultancy aimed at children's service practitioners.
- We also campaign for new laws and policies - as well as more investment - to improve the lives of homeless and badly housed people, now and in the future.

## Introduction

Shelter strongly supports the proposal to extend the time limits on existing planning permissions for major developments for a temporary period. We hope the quick implementation of this measure will encourage much-needed housing development.

Our one area of concern is that, as the consultation recognizes, this measure may have the perverse effect of incentivising developers to delay implementing permission within three years, in the expectation of rising land values as the market recovers. We therefore suggest that, when applying for an extension to planning permission, developers should be required to provide the reason for the extension. Local planning authorities should only consider an extension where they are satisfied that it would be financially unviable for the developer to build out the site before the original planning permission lapses. We also support the proposal that the effect of this measure should be kept under review.

As affordable housing is often delivered as a result of section 106 agreements and unilateral undertakings it is important that extensions to time limits, which effectively result in the grant of a new permission, continue to be bound by the same provisions relating to affordable housing. We would not wish to see this measure used as a means for developers to avoid affordable housing requirements negotiated under the original planning obligation or undertaking. We therefore support guidance to this effect.

## **Question 1 – Do you agree that extensions of the time limits for implementing existing planning permissions for major schemes should be permitted for a temporary period?**

Yes. We strongly support the proposal to extend the time limits on existing planning permissions for major developments for a temporary period. We note that this measure would be introduced by secondary legislation via a change to the General Development Procedure Order and implemented on 1 October 2009. The consultation proposes that the extension will apply only to permissions granted on or before this date and that only one extension per permission will be possible. The local planning authority will have the discretion to refuse the extension and require a new application for planning permission instead.

### **Slowdown in build-out and need to encourage housing development**

The consultation highlights the dramatic slowdown in the build-out rate of major schemes with existing planning permission, with many existing permissions for major schemes lapsing every month. We agree that this measure is important to avoid the delay and additional costs that would result from a new planning application for schemes where planning permission has expired.

The consultation suggests<sup>1</sup> that *a further potential benefit of this measure is that some development might be encouraged to come forward earlier, contributing to the meeting the Government's objectives on raising housing supply.* We therefore support the quick implementation of this measure in the hope it will encourage much-needed housing development.

England is facing a severe shortage of affordable homes, a problem that lies at the heart of the country's housing crisis. Recent Shelter research<sup>2</sup> estimates that 3.5 million new homes need to be added to the housing stock by 2020 to meet newly arising need and demand. The recession poses a serious challenge for the stability and capacity of the house-building industry. Total housing starts were down 44 per cent in the first three months of 2009 compared to the same period in 2008. It is therefore vital that every possible measure is taken to encourage housing development.

### **Risk of incentivising developers to delay – 'land banking'**

Our one area of concern is set out in the impact assessment of the consultation: *that there can be no certainty that this measure will bring forward development – it may have the perverse effect of incentivising developers to delay implementing permission within three years, in the expectation of rising land values as the market recovers* (page 34). Despite this concern, we note that the consultation assumes that the net effect of an extension on the timing of the development will be neutral.

The Housing Green Paper 2007<sup>3</sup> reported anecdotal evidence of developers delaying the completion of housing development on land that already has planning permission in the hope that the land value will increase. This was despite the time limit on the validity of planning permission being reduced from five to three years. The 2007 Calcutt Review<sup>4</sup> found that house-builders had around 2.5 years supply of land with implementable planning permission in their land banks. It concluded that 'land banking' was not widespread, although there were some individual cases where house-builders hold land for longer than they need. We recognise that it is possible that

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<sup>1</sup> Annex 3: impact assessment, page 34

<sup>2</sup> Holmans, A., Monk, S. And Whitehead, C. (November 2008), *Homes for the future: a new analysis of housing need and demand in England*, Shelter

<sup>3</sup> Department for Communities and Local Government (July 2007), *Homes for the Future: more affordable, more sustainable*, page 111, paragraph 38

<sup>4</sup> Communities and Local Government (November 2007), *The Calcutt Review of housebuilding delivery*, page

developers may be reluctant to build out land with planning permission if they bought the land when prices were at their height.

We therefore support the extension of the time limit on existing planning permissions being at the discretion of the local planning authority. We suggest that, when applying for an extension to planning permission, developers should be required to provide the reason for the extension. Local planning authorities should only consider an extension where they are satisfied that it would be financially unviable for the developer to build out the site before the original planning permission lapses. We also support the proposal that the effect of this measure should be kept under review (paragraph 10, page 7).

**Question 2 – Do you think it would be desirable to introduce a similar procedure which could be used to extend the time limits for implementation of a listed building consent or conservation area consent?**

We have no comment to make on this issue.

**Question 3 – Do you agree with the proposed approach to information requirements associated with an application to extend, and that applications for extension should be exempted from the requirement to provide design and access statements?**

Yes. We agree with this approach because, as the consultation states, in the vast majority of cases a design and access statement will have been provided at the time of the original application; it would have been fully considered at that stage; and, by definition, no changes are being sought to design and access.

**Question 4 – Do you agree that the fee associated with an application to extend should be in line with the fee chargeable for a s.73 application, i.e. a flat fee of £170?**

We have no comment to make on this issue.

**Question 5 – Do you agree that extensions should only be possible for major development schemes?**

No. We see no reason why extensions of time limits should not be possible for smaller housing developments of fewer than ten dwellings or on sites of less than 0.5 hectare. Small housing developments can be a vital source of much-needed affordable or family-sized housing. This is particularly true in rural areas where small development can help to alleviate housing need in particular villages.

**Question 6 – Do you agree that, except where the application for extension is an EIA application, local planning authorities should have discretion to decide which statutory consultees should be consulted?**

Yes. We are in support of local planning authorities having the discretion over which statutory consultees should be consulted when an application to extend is received, other than where the scheme requires an environmental impact assessment. This is because consultation will have already taken place when the initial application was being considered.

**Question 7 – What are your views on the White Young Green Options 1-3? Do you have any other suggestions for feasible options?**

We have no comment to make on the three proposed option for future changes to primary legislation.

**Question 8 – Do you agree that, except where the application under s.73 is an EIA application, local planning authorities should have discretion to decide which statutory consultees should be consulted?**

Yes. As with question 6 above, we are in support of local planning authorities having the discretion over which statutory consultees should be consulted when an application under section 73 is received, other than where the scheme requires an environmental impact assessment. This is because consultation will have already taken place when the initial application was being considered.

**Question 9 – Do you agree with the proposed approach on notification and representations for non-material amendments?**

Yes. We note that CLG does not propose to provide a definition of 'non-material' and that this will be a matter of discretion for local planning authorities. We also note that the proposal is that local planning authorities should be required to notify anyone who was notified in respect of the previous application and take into account any representation they make within 14 days. In addition, they will have the discretion as to how they inform or seek the views of other interested parties. We consider this to be a proportionate approach.

**Question 10 – Do you agree with the proposed approach on information requirements for an application for a non-material amendment?**

Yes. We note that the proposed information requirements will be limited to the ownership certificate, sufficient information to identify the relevant permission and any information necessary to explain the proposed amendment. We consider this to be a proportionate approach.

**Question 11 – Do you agree that, for non-material amendments, a decision should be made within 28 days of receipt of the application?**

Yes. This time limit appears to be reasonable in allowing enough time to notify those affected and receive representations, without unnecessarily delaying the development as a result of a non-material amendment.

**Question 12 – Do you agree that the fee associated with an application for a non-material amendment should be a flat fee of £170, with the exception of non-material amendments to householder applications, where it should be a flat fee of £25?**

We have no comment to make on this issue.

**Question 13 – Do you have any comments on the guidance which has been included in this consultation paper? Is there anything else that you would like to see covered by guidance?**

We particularly support the following aspects of the guidance on extensions to time limits for implementing planning permissions:

- *As most section 106 agreements/unilateral undertakings are linked to a named planning application, there may well be a need to consider a supplementary deed or a fresh obligation so that the new planning permission will be bound by the same provisions* (paragraph 15, page 9). As affordable housing is often delivered as a result of such agreements and undertakings it is important that extensions to time limits, which effectively result in the grant of a new permission, continue to be bound by the same provisions relating to affordable housing. We would not wish to see this measure used as a means for developers to avoid affordable housing requirements negotiated under the original planning obligation or undertaking.
- *In current circumstances, local planning authorities should take a positive and constructive approach towards applications which improve the prospect of sustainable development being taken forward quickly* (paragraph 17, page 9). We agree that local planning authorities should generally be encouraged to look positively at applications for extensions if they will result in increases in housing completions after the original planning permission has expired.
- *While the courts have recognised that both a planning authority and the Secretary of State (in the event of an appeal) retain jurisdiction to determine an application even if the original permission has expired after the application was made but before determination, applicants are recommended not to leave submission of an application to the last possible date* (paragraph 20, page 9). As highlighted in response to question 1 (above), this measure must not have the unintended consequence of allowing developers to 'land bank' in order to wait for the market to improve. We therefore agree that the guidance should recommend that applications are made in good time.

As argued in question 1 (above), this measure must not be used by developers to 'land bank' whilst waiting for the market to improve. We would therefore like the secondary legislation and guidance to require developers to submit their reasons for the extension and local planning authorities to only grant an extension only where they are satisfied that it would be financially unviable for the developer to build out the site before the original planning permission lapsed.

### **Questions about the impact assessment**

#### **Do you think the impact assessment broadly captures the types and levels of costs associated with the policy options?**

We have no comment to make on this issue.

#### **Do you think the impact assessment broadly captures the types and levels of benefits associated with the policy options?**

We note that, in the case of extensions to time limits for existing planning permissions, it is not straightforward to assess how many of the estimated 15,000 major permissions would have their lifetime extended. The impact assessment (page 33) suggests a number of reasons for this, namely:

- *Some development will proceed within the default three-year period of permission, regardless of any change.*

- *Some development will drop out of the system altogether because it is no longer economically viable – an extension to the permission would not rescue the scheme.*
- *In some cases, the developer or planning authority or both may still insist on a fresh application, e.g. because of a significant change in the development plan or to national policy since the original grant of permission, or a renegotiation of planning obligations.*

However, we note the estimate, based on discussions with the British Property Federation, that developers may seek to extend time limits for between 5 and 20 per cent of the 15,000 schemes potentially affected – so, between 750 and 3000 schemes over a three-year period from October 2009.

**Do you think that the assumptions underpinning the impact assessment are reasonable?**

Yes. In relation to the benefits of the extension to time limits for existing permissions, the underpinning assumptions appear to be reasonable, as they are based on Planning Portal data and discussions with stakeholders, such as the British Property Federation. We have no comment to make on the other assumptions underpinning the impact assessment.

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