



Rt. Hon. John Prescott MP  
Office of the Deputy Prime Minister  
4/H3 Eland House  
Bressenden Place  
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Dear Deputy Prime Minister

## **Changes to the development control system - Second Consultation Paper**

We have consulted amongst RIBA Members, with a particular focus on the London Regional Membership, and have put together this response to your consultation document. We have sought to address both the specific questions and wider issues raised by the proposed legislation.

The RIBA broadly welcomes the proposals where they reduce the burden on the over-stretched planning system and promote high quality design of the public realm. We have specific concerns regarding the proposed changes:-

- The need to prevent these changes creating additional work outside of the existing Development Control workload (through production of LDO guidelines) unless additional resources are provided.
- The distinction between Outline and Detailed Planning Permissions needs to be clear so that Outline Planning Consent still has a demonstrable development benefit, or else no Outline Applications will be sought.
- A balance needs to be struck whereby developers can assess viability at a reasonable cost and risk, and Local Authorities can ensure development meets local objectives and delivers good quality design.
- In support of the Government's objective of sustainable communities, we propose more comprehensive design/access statements (p.8/9 below)

The RIBA, with its charter to promote design quality and enhance the public realm, has urbanism close to its heart. The Institute and its members are able and willing to assist in helping to achieve this balance.

We trust you find the enclosed useful and look forward to future consultation and correspondence. If it would be helpful, I would be happy to arrange a meeting between your team and Members who drafted this paper to discuss our concerns.

Yours sincerely

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## **Introduction**

In this response from the RIBA, we have sought to address both the specific questions and wider issues raised by the proposed legislation.

The RIBA supports the approach of the Government in seeking to reduce the necessity for planning authorities to use time and resources in the administration of non-contentious planning applications.

Matters considered on the following pages follow your framework and are

- 1.0 Local Development Orders
- 2.0 Outline Planning Permission, reserved matters and design & access statement
- 3.0 Electronic Payment of Planning Fees
- 4.0 Decision Periods for Major Applications
- 5.0 Validity Criteria

## **Response**

### **1.0 Local Development Orders**

It is clear that LDOs are targeted at the two ends of the planning system scale:

- a. To allow modifications on a local basis to permitted development rights, at a small scale, and
- b. To enable local authorities to promote particular types of development, or development in particular areas at a large or significant scale.

**The RIBA supports the overall objectives of a more efficient and speedier planning system.** We have discussed the impact of these measures at these varying scales and comment as follow:

#### **1.1 Permitted Development**

The RIBA is broadly in favour of enabling greater freedom to development at a smaller scale. In particular this will assist private residential applications / development or modifications to small business premises.

It is unfortunate that many applications for smaller schemes that are not in conflict with local plan policies become ensnared in the same evaluation system that has to resolve complex and contentious applications.

A cautious extension of the General Permitted Development Order system (the GPDO system) would therefore allow more developments to be granted consent recognising the more limited effect smaller schemes have both on the environment and upon society.

## **Skills**

There is also the matter of competence in planning evaluation where lay members of planning committees can more readily appreciate the issues of smaller developments, but perhaps not major planning applications. Committee time can sometimes therefore become distorted in debating smaller applications to the detriment of detailed evaluation of major schemes.

We refer to the House of Commons Environmental Audit Committee Report – “Housing: Building a Sustainable Future” (Cm 6575 May 2005) and the Government’s Response. The committee was concerned that:-

‘If the shortages of skills are not properly addressed as a matter of urgency it is increasingly likely that we will end up with a large number of badly built houses in poorly designed communities with limited transport infrastructure that have severe environmental impacts, rather than the sustainable communities that are the stated aim.’

The skills shortage may be seen as applying to all those involved in delivering sustainable communities, including both professionals and lay members of the planning system. This will need to be addressed, especially considering the scale of proposed change. We are particularly concerned that the appreciation of design issues be raised amongst all those involved in the planning system. The RIBA can play a part in this, but we are also aware of numerous recent initiatives that aim to enhance design skills and understanding. The ODPM and other bodies, including the RIBA, could play a more active role in co-ordinating this effort and making information relating to the many training programmes more freely available.

We also note that:

- Where permitted development is extended in terms of scale, there may be a detrimental impact in terms of quality of design and appearance of properties – the greater the extent of development without review, the greater the potential impact.
- Local authorities will need to exercise caution in the manner in which they review permitted development rights. A small shift might create a big change in the nature of some areas or in respect of certain types of property.
- Where permitted development rights are amended, there will be a period needed for settling of precedents and clarifying the meaning of any additional guidance. In the short term this might lead to an increased burden on the planning

departments in undertaking dispute resolution and /or pursuing enforcement action where works exceed permitted development rights. Potentially this might offset any financial / time benefit gained from reviewing permitted development rights in the first place.

- Permitted development rights which vary from authority to authority will create less certainty for consultants in the advice they are able to provide – information on specific variations needs to be clearly available, preferably online, and maintained up to date.
- The effect on a more densely populated community of apparently small development changes will be more pronounced. The second consultation itself states that ‘it is difficult to say who will be affected’. For this reason, the content and detail of an LDO needs to be comprehensive or else many sensitive aspects of a proposed development will be neglected.

## **1.2 Larger Scale Development**

It is widely recognised that delays in undertaking large scale or significant development occur frequently within the planning process. These are costly to all parties involved and can result in development failing to proceed.

Creating certainty in the ability to undertake development is therefore to be welcomed, and we would support the generation of more flexible systems. We recognise that further consideration of how LDOs might work is currently being undertaken, and offer the following comments:

- Design standards, which are normally reviewed as part of the planning process, must be maintained within LDOs. We perceive that the faster development of poor quality schemes under LDOs will undermine efforts to maximise broader benefit through development. As quality of design is being placed rightly in a position of importance, it is a high-risk strategy to reduce the potential influence of a planning authority.
- There is some concern that, no matter how clearly expressed within the LDO itself, each piece of legislation will be open to some degree of interpretation. Much of this interpretation will be through the proposed building designs, and great skill will be required in producing LDOs to ensure that sufficient information is available to guide development and design appropriately.
- There is also concern that the burden of responsibility for complying with the requirements of an LDO is passed from the local authority to the design team, and in particular the architect or lead consultant. Without any audited sign off procedure, there are risks for both the Local Authority and for the developers that proposals may – at a later stage in development – be deemed inappropriate. For

the local authority, this risk may deter development, and for the design team issues of liability are obviously raised.

- Assuming that compliance with LDOs becomes the responsibility of the client / design team, and given that each LDO may be significantly different in terms, conditions and objectives, guidance will need to be developed on internally auditing compliance. At this point, the cost of ensuring compliance is passed from the Local Authority to the design team and thus to the client.
- Impact analysis of adjoining or competing developments might be appropriate. LDOs appear to have the potential impact of undermining the economic viability of other (local) developments excluded from the LDO's benefits.
- LDOs should be supported by good quality Urban Design and high quality public realm. LDOs should ensure that the development undertaken within their remit delivers wider benefit and proves sustainable in the long term. This might require the preparation of master plans or, for example, specific guidance documents on streetscape strategy.
- The principal query is whether an LDO should replace both an outline and detailed application. By using an LDO only to replace an outline consent there could be more certainty of land use, development areas and economic returns.
- RIBA members, individually or as team leaders on more complex planning matters, are able to support planning authorities in preparing LDOs.
- There is the risk that a loosely framed LDO will create significant problems. If a planning authority seeks to apply conditions retrospectively to an LDO, there is scope for compensation to a developer. As para 1.45 demonstrates, any developer may well be advised not to proceed for 12 months to ensure that the LDO does not carry any conditions. Similarly in para 1.46 local authorities are not expected to intervene by changing an LDO on a scheme which has started. Freely available and comprehensive best practice exemplars will be invaluable in helping LPAs to maximise the benefit from changes resulting from this review.
- This suggests that either a poorly framed LDO will be allowed to remain without modification - even if it produces an adverse result, as the consequential costs to a local authority may be too expensive to accept. Alternatively, late changes will be made and the local authority will be faced with compensation payments. This procedure poses considerable financial risks to a local authority if all consequential costs of changes from development returns, professional fees, legal consequences etc. are included in the compensation.

Our responses to formal questions in this respect are as follows:

- a. There may be benefits to local authorities and developers if some relaxation of the GPDO system towards an LDO is permitted. The benefit to the wider community is more doubtful as there is a risk of unsightly developments being permitted, which might have previously been subject to control. An LDO has to be both site specific and detailed in order to address potential adverse effects from development. It should be detailed to avoid the need for later correction and imposition of conditions with risks of compensation. There is a need for a comprehensive approach to all issues normally addressed by planning. With these requirements it is difficult to see how such a change will benefit local authorities or developers in terms of time taken to take a scheme from inception to implementation.
- b. An LDO covering extensions and modifications to low density housing will have the least risk of adverse effects as householders will be unlikely to over develop or construct a poor quality extension on their own land.
- c. The conditions 1.13 to 1.20 are reasonable but point to a general flaw in the system. If conservation areas, listed buildings, protected habitats and Schedule 1 EIA schemes are excluded because of their value, by implication it is accepted that all other types of development have a lesser value. At a time when design awareness should be across the total environment, this seems a mixed message. Many attractive High Streets and housing areas are not formed of listed buildings, and are not conservation areas. These areas would be at risk from an LDO.
- d. For reasons explained above, if a Schedule 2 scheme can be included, this poses problems of scale and complexity. A scheme would not be on Schedule 2 unless it potentially posed risks to interests of acknowledged importance. It is too great a leap from a relaxation of GPDO rule to encompass a Schedule 2 scheme. The LDO for such a scheme would be so large that it is hard to believe it would bring any benefits above the existing system in either time or resources.
- e. As noted above in relation to the House of Commons Environmental Committee report, there are widespread and serious concerns regarding the delivery of new sustainable communities within the existing system. Achieving housing development more effectively by removing controls that would have given effect to Government policy is not the way to proceed. As noted above, an LDO would be so complex to deal with all the issues of a sustainable development, or the conditions attached so substantial, that an LDO would not achieve its goal.
- f. The details covered in para 1.7 show that the preparation of an LDO is a time consuming and expensive exercise. If Design Codes and Conditions are included in the guidance, it can be seen that the preparation of such a document for many sites will put a large burden on planning authorities. It would be far simpler to

make an LDO as the first stage in removing the need for an outline consent. This would leave the responsibility for the preparation of a development proposal to a developer's team that can meet all conditions. By this means the planning authority only needs to consider the quantum, general form and access issues of development.

- g. In respect of a Partial RIA, as noted in para d. above, there is no benefit in making Impact Assessment more complex by selective omissions. Option 3 (ii) (the Government's approach) is supported as the more logical approach.

## **2.0 Outline Planning Permission, reserved matters and design and access statement**

### **2.1 Outline Planning Applications**

We recognise that the current format of Outline Planning Applications has long been unsatisfactory, and are pleased to support the review of this aspect of the planning process.

However, given that in most Local Authorities guidance as to suitable development is not particularly detailed, it is important that where development is proposed, some guidance as to what may be deemed suitable is delivered economically and within a reasonable time frame.

The proposals for reform of outline planning are therefore greeted with a degree of caution, as it is essential that a balance is struck between encouraging responsible development, and discouraging development at all.

There are a number of issues to be considered:

### **2.2 Specified Requirements:**

We have reviewed the revised submission requirements in terms of usage, quantum, indicative layout, scale parameters, appearance and access points. We note with some concern that public realm proposals are not included in either the outline or design statement sections of the requirements, and advise that these be considered.

- The extent of the requirements is clearly much greater than the current outline application. We are concerned (see design statements below) that, given the early stage of design of most projects, the binding nature of the submission at this stage may be detrimental to later development of the design. For example, decisions will be made on the basis of what provides greatest certainty of being viable rather than what is actually the best solution.

- The specified requirements will require greater investment by developers in establishing exact site parameters and conditions, and may mean that survey and analysis of the site will need to be commissioned earlier in the development process than would be the case at the current time. This increases the developer's at risk costs.
  
- A major concern for designers will be the level of design development required to adequately explore the proposals. For instance, heights, lengths and mix of use will need to be more carefully considered to avoid committing a development to unachievable parameters. Mixed use or complex typologies in particular will be prone to the impact of minor design changes at a later stage. This will require greater commitment of resources and more developed designs at an early stage of the development.

### 2.3 Design and Access Statements

It is currently the norm that large, detailed planning applications are supported by detailed design statements, and we recognise the benefit of formalising this approach with all planning applications. Certainly, clear and concise statements (e.g. in plain English) will help in consultation and public ability to comment on proposals.

Access should be considered as one of the primary design criteria and should be addressed within the design statement. It is not separate from the design but an integral part of it. The statement should thus be titled a 'Design Statement', which includes Access as one of the issues to be addressed.

In order to promote high quality design, a thorough and rigorous design process should be evident in the design statement. The RIBA recommends design statements should address the additional items below. These would probably be additions to section **1. Response to context** and would deliver a more rigorous design statement.

Additional items to be included

- a. Project brief: clearly establish the full project brief, including functional requirements, amount (quantum) of development & site constraints.
  
- b. Physical Context (2.77):
  - clearly demonstrate and appraise existing site conditions
  - dimensionally accurate survey at a recognised scale
  - show neighbouring context to scale
  - site diagrams analysing and explaining the site in relation to immediate surroundings and wider urban or landscape context.

c. Policy context (2.77):

State policies relevant to the project and demonstrate compliance with national, regional and local policies.

d. Sustainability:

Provide a sustainability statement setting out the criteria for the development covering environmental, social, economic and technological sustainability.

e. Access & Impact analysis:

Clearly show how the design of the access has been considered and demonstrate the impact of the brief and function in relation to the site, setting, local and national policies, the relevant community(ies) and the immediate and wider environment.

f. Community consultation:

Consult and show responses from local interest groups and communities.

g. Design Principles:

Clearly describe the ambitions of the project and the design principles and design vision involved. This should be an illustrated design statement, which demonstrates compliance with design principles, including consideration of space, mass, volume, plan, materials and the composition of elements – consistent with the design principles or vision.

h. Project description/illustration:

The application should sufficiently illustrate the design and its expression of the design principles or vision and the wider impact of the development, including any landscaping. Consideration should be given to the scope and the presentation, which may need to include 3D images showing project in context, explanatory diagrams, models, CAD ‘walk throughs’ or any other descriptive media.

## 2.4 Reserved Matters

We have some concerns in relation to the authority of the design statement in the review of reserved matters, and over subsequent design development and exploration. A particular concern is the proposal that the content of the design statement can become the subject of conditions within a granted permission. This creates a series of binding requirements at what has been traditionally an early stage of design.

This will necessitate a significant increase in the extent of design at an early stage of engagement with the development control process, and therefore a greater commitment of resource from developers. We perceive that the difference between outline planning applications and full planning applications may then become so narrow as to make outline planning redundant.

## 2.5 Summary

The balance needs to be struck between an informative and accurate submission that helps guide development at a preliminary stage, without becoming so prohibitive (in terms of either cost or conditions imposed) as to deter this stage of engagement or exploration of development proposals altogether.

The ODPM should consider that development often requires staged financing to proceed, and that outline planning permission has often provided sufficient certainty to enable developers to secure funding from lending institutions. If outline planning permission fails, either through omission or through becoming prohibitive, it is likely that development as a whole will be deterred.

Outline Planning Permission should therefore provide in principle approval of critical elements such as use and quantum. At the same time, other elements of the required design report would be subject to comment from the Planning authority. These can be considered as part of a review of reserved matters, rather than as conditions.

**We believe that there is an opportunity to create a balanced stage of development control, where developers are able to assess viability at a reasonable cost and risk, and where local authorities are able to guide development to meet local objectives.**

## 3.0 Electronic Payment of planning fees.

Electronic payment of planning fees directly from client or agent accounts would deliver benefits in aiding faster delivery of projects into the planning process, would alleviate in many cases the needs for disbursements by agents on behalf of clients, and ensure a clearer audit trail.

We support this proposed measure.

## 4.0 Decision Periods for Major Applications.

RIBA London is in favour of the clarification and harmonisation of periods relating to planning application determination and appeal procedures. Increased certainty may be a greater benefit to the development community than reduced delays. We would welcome the opportunity, together with our partner organisations, to explore how greater certainty can be built into the system, perhaps through a review of the proposals previously developed as part of the 'Planning Delivery Contract'.

## 5.0 Validity Criteria

We support clarification of the validity criteria for planning applications.

In particular, the acceptance of poorly prepared drawings and proposals which can be disingenuous by omission should be discouraged to help ensure that the general public, planning officers and councillors are suitably informed of the decisions which they make.

However, we are concerned about Local Authorities' procedures for publication of validity criteria where an application is only considered valid if it conforms to Local Authority criteria as published on the day of submission.

As a matter of courtesy to applicants and agents, we recommend that any proposed changes to validity criteria are notified at least two weeks in advance of enforcement. This will reduce the number of invalid applications submitted.

The impact analysis identifies that Option 3 would create an additional burden on applicants in the amount of information required – and by implication a direct increase in workload for architects. This should be highlighted within any assessment of impact on businesses, as costs will need to be passed on to clients.