ITEM 9c

Planning White Paper – General Comments to Consultation

Derby City Council welcomes the opportunity to comment on the White paper. However, whilst many of the proposals for the planning system are welcomed, the Council is extremely disappointed that the White Paper does not properly address the very real problems of the new LDF system. We feel that this is a real missed opportunity and very much hope that more will be done to improve the system. More detailed comments on this are set out within this response.

This said, many of the proposals are positive. In particular:

- the proposed changes to the national planning policy framework;
- strengthening guidance on climate change and economic development;
- improvements to the procedures for Local Development Frameworks;
- closer integration of development plans with Community Strategies;
- the new proposals for planning performance and further resourcing planning through the Housing and Planning Delivery Grant (HPDG) and changes to planning fees; and
- some of the proposed changes to planning application procedures should help to improve the performance and quality of the planning system.

Other areas of concern beyond the inadequate response to dealing with concerns over the LDF system are:

1. The planning system's ability to secure zero carbon development will be limited unless it is mandatory on the development industry to build to these standards. Derby City Council is concerned that although the Code for Sustainable Homes has already set a path towards Zero carbon new residential development by 2016 the code does not apply to new commercial buildings. This has drawn an artificial distinction between residential and commercial uses. All new development should respond to climate change by 2016 and when planning applications are made for building refurbishment and other alterations, powers should be available to allow action to be taken to reduce the climate change of existing developments as most of the built environment will be made up of existing stock.
2. The proposed relaxation of the 'need' and 'impact' tests for retail development is of serious concern and we will be submitting a separate joint statement with our '3 cities' partners of Nottingham and Leicester. Although this was recommended in the Barker report, Kate Barker has since stated she has re-thought this aspect of her report. Town centres have experienced significant growth and development since the wave of out of centre shopping development in the 1980s, due in no small part to the introduction of the need and sequential tests into retail policy in PPG6 from 1996 onwards. There are already serious public concerns about the threat to local choice posed by a few very large retail operators, which the Competition Commission inquiry has been investigating. The current retail planning policy requirement for a developer to demonstrate what effect a new shopping development will have has served the City well and should not be weakened. Demonstrating 'need' is an integral part of assessing impact and changing the test could lead to its watering down and ultimately to the detriment of local shopping choice.
3. The new PPS on economic development is welcome as the current policy is nearly 15 years old, but care needs to be taken that it does not override the plan-led approach to decision making.
4. There are concerns about the proposed changes to householder permitted development. Whilst changing to the impact approach may result in less applications it appears to raise uncertainty and a need for an arbitrator regarding impact, this may add an additional level of bureaucracy for local authorities in determining impact.

Also the proposed voluntary neighbour agreements could be open to abuse whereby neighbours may be pressurised into not objecting to a proposal.

5. In terms of the new HPDG, it is important that this retains an award for performance on planning applications since this has become an important measure for most planning authorities in the UK.

Planning White Paper - Proposed Response to Consultation

Overall, the proposals to reform the way the planning system deals with **national infrastructure** projects should be welcomed, although it is unlikely that given the scale of the projects affected by these reforms they would impact on Derby City. The proposals do appear to strike a balance between streamlining the decision making process and ensuring proper public scrutiny of schemes. There is a need to ensure that local authorities will have a role to play and that they will be listened to at every stage in the process. In particular, the publication of **national policies**, simplifying the consent regimes and removing decisions from Ministers to an independent commission are positive and should be welcomed. 32 out of the 40 consultation questions in the White Paper relate to these proposals. Rather than set out a detailed response to each question the City Council confirms its broad support.

The White Paper's emphasis on meeting the challenges of **climate change**, and its recognition of the role of planning in achieving this, are strongly supported. Core Strategies will play an important role in this, especially in considering cross cutting issues and encouraging different stakeholders to work together. Planned release of housing land to meet needs is supported and the Council is committed to its growth point status. We do, however, feel that the White paper should acknowledge and tackle other constraints on housing supply – not least land banking which may be more important to releasing housing supply.

Continued support for **Town Centres** is welcomed, although we do have serious concerns over any relaxation of the needs test as mentioned earlier. We also have concerns about the statement in Paragraph 7.52 that development should be considered acceptable if it would not detrimentally impact on the town centre. The terminology is far too vague. How significant would an impact need to be before it would be considered to be detrimental? In practice, it is extremely difficult to demonstrate that any one individual development would undermine a centre as a whole and as a result inappropriate out of centre retailing has been permitted in the past – with detrimental implications both for existing centres and for sustainability more generally.

There seems little doubt now that three years into the **new plan making system** there are real issues and challenges that need to be addressed. The White Paper is extremely disappointing in that it appears to acknowledge this need, but makes little practical effort to do so. We feel that this is a real missed opportunity and that another look should be taken at measures to streamline the process and consider ways to make it more efficient and effective.

The **proposed removal of 'Preferred Option' stage** is supported and it is agreed that a more streamlined approach can be taken as part of an on going 'Issues and Options' stage with a single period of formal consultation. The continued expression of time periods in which certain milestones should be achieved is extremely unhelpful though. Whilst it is appreciated that this is intended to encourage speedy preparation of documents it has, in effect, undermined the ability of LDS's to properly consider programming as many Authorities have felt compelled to keep to time frames in national guidance. This is a significant reason for Local Authorities failing to keep to LDS milestones.

Revising plans during the process is supported. We agree that the current plan making process can be very inflexible. This was not its intent. The proposal to carry out final formal consultation before submission is sensible and supported. The proposal to seek a way to enable the High Court to order a plan to be sent back to an earlier stage of the process rather than back to the start is also supported. However, a significant opportunity is being missed to enable an Inspector to direct changes to a Plan rather than simply finding it unsound. This is a significant area of inflexibility that must be addressed if the system is to be improved. It is far more important to address this than the High Court issue. There may be scope to keep an Examination open whilst the Local Authority consults on such changes, allowing the Inspector to consider representations before issuing a final report.

An alternative to this would be to Examine Plans in stages. At the moment, Plans have been found unsound on the basis of things that were done or not done right at the beginning of the process. In such cases, considerable time and money is wasted as the Plan proceeds to Examination without the authors realising that it is already unsound. Whilst Government Offices can give some guidance on these matters, they cannot give certainty as to how an Inspector will view tests of soundness. A Plan could be 'examined' at the end of Issues and Options stage and before work is undertaken on the submission document. That way a Local Authority will know that its Plan is on track. It would provide another way of allowing matters of concern to an Inspector to be addressed before Submission and provide much greater flexibility

The need for a robust **evidence base** is not disputed. However, the sheer detail and breadth of coverage that appears to be required is placing undue pressures on resources and is a significant reason for delays. Evidence base requirements need to be less onerous and more focussed on issues of real concern to the plan. In particular, it needs to be recognised that some information, including details of implementation, will only become available as schemes progress to planning applications. Greater clarity is needed on expectations. However, if this issue is not addressed, considerable time, effort and money will continue to slow the whole process down – by which time some of the information will become out-of-date.

The same is true for the requirements of **Sustainability Appraisal (SA).** This goes beyond the requirements of the SEA Directive and whilst it is accepted that including social and economic factors in the assessment is useful, the burden of SA is very resource intensive. The removal of SA requirements for some SPDs is welcomed, but more needs to be done to streamline and simplify the process for DPDs. With regard to the proposals to remove the need for all SPDs to be subject to SA, clarification will be needed as to whether a Strategic Environmental Assessment under the EU Directive might be needed.

The Government has pledged a new commitment to protect the Green Belt. The White Paper makes it clear previously developed **brownfield land** must remain the clear priority for housing development with parks and green spaces protected. Derby City Council is not clear that this position is necessarily the most sustainable in all cases. The City has strong concerns regarding the classification of domestic gardens as brownfield land and therefore suitable in principle for development. This could all lead to unacceptable town cramming and a detrimental change in the rhythm and grain of a particular area or suburb.

Other Comments: Paragraph 8.20 suggests that site allocations documents might not always be needed. Whilst there is merit in considering strategic allocations through the Core Strategy, PPS3 indicates that all sites should be identified. This would result in an inappropriate level of detail in the Core Strategy.

Proposals to reform the Town and Country Planning System
responses to specific questions

Q33 - Delivering more renewable energy

What types of non residential land and property do you think might have the greatest potential for microgeneration and which should we examine first?

It is considered that all non-residential uses would have potential for incorporating microgeneration and should be investigated as part of the review. However, there is clear potential on isolated sites of any particular use. There should be a strong presumption established in government advice that the public sector will take a lead by ensuring that all public building responds to the need to deliver more renewable energy, and that this approach is adopted to school buildings in all sectors.

Q34 - Joined up community engagement

We think it is important to enable more joined community engagement locally. We propose to use the new 'duty to involve' to ensure high standards but remove the requirement for an independent examination of the Statements of Community Involvement (SCIs). Do you agree?

Yes the independent examination of SCIs is unnecessary

Q35 - More flexible response to a successful legal challenge

Do you agree that the High Court should be able to direct a plan to be returned to an earlier stage in its preparation process rather than just the very start?

Agree. Having to start again with the whole plan due to a successful challenge on one policy or proposals in a plan is an unnecessary waste of time and resources which appears to frustrate the whole process. However as stated earlier we feel that this needs to go much further in order to allow more flexibility in the Examination process should a Plan not be found sound.

Q36 - Listing Supplementary Planning Documents in the LDS

Do you agree in principle that there should not be a requirement for SPDs to be listed in the LDS?

Yes. Only the main SPDs providing strategic guidance in support of local plan policies need be listed in the LDS. As with former SPG, documents can carry weight in the decision making process if they have been through proper consultation and taken local and other stakeholder views into account. Planning authorities must have the discretion and expediency to be able to prepare site specific briefs, design guides and masterplans in response to changing local circumstances without the need to await a revision to the LDS.

Q37 - Sustainability Appraisal and SPDs

Do you agree in principle that there should not be a blanket requirement for SPDs to have a sustainability appraisal, unless there are impacts that have not been covered in the appraisal of the parent DPD or an assessment is required by the SEA directive?

Yes - agreed, but neither should there be a blanket requirement for SPDs not to be subject to appraisal.

Q38 - Permitted development for non-domestic land and buildings

Which types of non residential development offer the greatest potential for change to permitted development rights? What limitations might be appropriate for particular sorts of development and local circumstances?

The City Council supports the idea that small changes to commercial property that reduce carbon dioxide emissions should be permitted development provided that any changes do not cause direct harm to public realm or public interest. Permitted development rights for any non-residential development which cannot be seen externally, such as internal courtyard developments or extensions on large hospital, business or industrial sites could be considered for exemption from planning control in terms of their limited visual impact. However, such schemes would have an impact in other ways, such as generating additional trips and car parking.

Q39 - Neighbour Agreements

What is your view on the general principle of introducing a streamlined process for approval of minor development which does not have permitted development rights and where the neighbours to the proposed development are in agreement?

Disagree with the use of neighbour agreements. This would be a less transparent process, which would expose more vulnerable residents to pressure from less scrupulous neighbours and developers and would be open to abuse. Development should either be 'permitted' or require the submission of a planning application. Third party views will be taken into account during the determination process but should not be the determining factor. It also begs the question of who determines matters if there is a subsequent objection by a neighbour to a PD Development. This is likely to lead to increased demand on the enforcement service. The practical issues involved would suggest this is unworkable.

Q40 - Minor Amendments of Planning Permission

Do you agree that it should be possible to allow minor amendments to be made to a planning permission? Do you agree with the approach?

Agree in principle. Recent case law has created an unbalanced position where any minor change to the permitted scheme requires another planning application. Minor amendments to permitted schemes which do not raise any new planning issues or affect the character of the development should be allowed at the discretion of the local planning authority without the need for planning permission. This system used to operate effectively prior to the 'Sage' case and should be re-established. Minor amendments need to be tightly defined to avoid ambiguity and such applications need to be subject to a fee.

Planning Performance Agreements: the new way to manage large scale major planning applications.

Despite our poor experience of the pilot project Derby City supports the use of planning performance agreements to establish the timescales within which major development proposals are considered. Such agreements can enable the authority and applicants to focus resources and make decisions in a relevant time scale appropriate to the complexity of the application rather than being pressed to reach a decision within 13 weeks which can frustrate the developer or result in poor quality outcomes being allowed. It is acknowledged that PPAs can be an effective mechanism to determine a planning application, however, it should be noted that this is not the only route to be followed in ensuring a timely determination of an application and in this respect Derby City Council introduced a Charter to deal with major applications within a set time period that the applicant can sign up to.
Any applications subject to PPA's should be taken out of the BV 109 target regime. Financial penalties should not be prescriptive, and any penalty clauses should be determined locally by the parties involved. It is considered that financial penalties will make PPAs unduly bureaucratic and discourage parties to enter into them.

Planning Fees: Proposals for Change
Proposed Response to Consultation Questions

The Government Consultation paper asks a series of questions and requires a response by **17th August 2007**. The following sets out a proposed response to each question.

Q1 *Would a fee level increase of 25% be reasonable? Should householder applications be largely shielded from that increase?*

It is considered that an increase in fees is absolutely necessary; a 40% increase is preferred (see Q2 below). Such an increase is especially justified in connection with residential development. The fee would increase from the £265 up to £371 per dwelling. Such an increase in fees is not considered to be excessive at all having regard to the higher cost of processing such applications with the additional consultations and wider publicity now given to such schemes and the significantly enhanced value of the development. It is considered that the current fee levels for dwellings are too low and are not reflective of the higher workload involved with such schemes.

Householder applications are proposed to rise from £135 to £145 (7.5%) and this is not unreasonable. It is the case however that processing many domestic extensions costs the authority far in excess of £145, but there will be those proposals which are more straight forward and which would balance this out. It should be noted however, that if the changes to householder permitted development rights being proposed in the separate consultation paper become part of legislation there will inevitably be fewer domestic applications submitted and accordingly fee income will reduce for householder applications, negating some of the impact of the proposed fee increases.

Q2 *Would you prefer that fees go up by the full 40% to provide more resources for planning?*

To ensure that we deliver a top-rate planning service without such heavy reliance on PDG a 40% level is more appropriate than 25%. If Government can't guarantee future HPDG and the highest level of fee increase, then we may not be able to deliver all the items on the ever increasing agenda.

Q3 *What are the likely effects of any of the changes on you, or the group or business or local authority you represent? Will there be unintended consequences, do you think?*

From a local planning authority perspective the benefits are likely to be positive since the fee paid for processing applications will be more reflective of the costs involved.

Q4 *Performance on development control is currently measured against targets to turn around 60% of major applications within 13 weeks, 65% of minor applications and 80% of other applications within 8 weeks. Given the desire for further service improvements flowing from any fee increase – without perverse incentives – what do you think would be the best form of performance measurement for development control and what should be an appropriate benchmark?*

It is considered that the existing measure in BVPI 109 should be retained. This will provide the best illustration of performance consequences of any increased fees. A different standard of performance measure will not provide the opportunity to compare future improvements against performance prior to the fee increases. Government might also wish to consider performance measurement that covers the quality of the final scheme.

Q5 *Are current fee maximums serving any useful purpose?*

No. Generally applications which would generate a fee in excess of the current maximum will be very complex and costly to deal with

Q6 *Do you welcome the proposed fees for discharge of conditions? Do you agree this should not apply to conditions imposed on, say, listed building consents?*

The principle of charging for confirmation that conditions have been met is supported however currently enquirer's are generally more interested that the appropriate permission has been granted and not whether conditions have been satisfied. The Council has a procedure in place to ensure that conditions imposed are fulfilled. This information is publicly available on the planning file and anyone can inspect the information and establish if the appropriate conditions have been discharged or complied with. It is also the duty of the developer to ensure that the conditions of permission are properly fulfilled since breaches can result in penalties. On this basis it is reasonable to charge for officer time in providing the information on all types of application including listed building consents.

Q7 *Will it be useful if the local planning authority can offer a 'premium service'?*

Paying for a premium service can generate additional funds, but it would be necessary to ensure that other applications for which additional fees have not been paid are not penalised in any way. Since the Council is meeting the targets for the majority of applications, the prospect of receiving additional fees for this could assist in providing support services to ensure other applications are also determined in an appropriate time scale. There will be applications however where decisions could not be guaranteed, where for example referrals to the Secretary of State are necessary or where legal agreements require signing by the applicant. This would have to be taken into account in the agreement drawn up between local planning authority and applicant. If an authority enters a premium service agreement but fails to deliver within the reduced timescale, would there need to be refund or compensation arrangements? There is also a danger that with the more controversial cases in which the local planning authority concludes in favour of a development that, however unwarranted, the impression could be given to parties opposed to the development that the additional payment and the provision of 'premium service' has itself been a factor in the authority's decision taking.

Q8 *Currently, Government sets planning fee levels. How do you feel in principle about the idea that each local authority should be able to fix its own (non-profit-making) planning charges in future?*

Welcome this proposal in principle, but care would be needed to ensure some consistency nationally and regionally in the levels at which fees are set, to ensure consistency across local authority boundaries. The danger other wise would be that locally set fees would create confusion for those submitting applications. It is also suggested that any guidance on setting fees locally should include scope for reducing fees for very minor applications.

Changes to Permitted Development Rights for Householders

Proposed Response to Consultation Questions

The proposals are welcome but could go further. They will have resource implications in terms of monitoring compliance arising out of changes in the system and a reduction in applications and income will follow.

Q1 Do you agree with the principle of an impact approach for the permitted development?

Yes as it should free up the presently over subscribed system to allow full assessment of major applications within a reasonable time scale expected by the applicant.

Q2 Do you agree with a restriction on development facing onto and visible from a highway in designated areas?

The term 'visible from a highway' is too ambiguous, however it is agreed that there should be restrictions on development to the front elevations to help control, for instance, the street scene in the public interest

Q3 Should the restriction apply in the same way to types of designated area?

Yes

Q4 Do you agree that, subject to safeguards to protect householders from abortive costs, that the existing right to compensation for 12 months after any change to the GPDO is made is reviewed?

Yes

Q5 Do you consider that local planning authorities should be able to make an article 4 direction without the need for the Secretary of State's approval at any stage?

Yes as is follows the emphasis of local democracy without having to gain higher approval.

Q6 Do you consider that, subject to safeguards to protect householders from abortive costs, the existing right to compensation as a result of making an article 4 direction should be reviewed?

Yes as Q4 above in terms of timescale following the Article 4 direction

Q7 Should there be a requirement for planning authorities to review article 4 directions at least every five years?

Support the concept of a review period however, this should be at least every 10 years as a 5 year review period would be quite challenging to undertake in terms of resources.

Q8 Would there be benefit in making certain types of permitted development subject to a prior approval mechanism?

No – the present prior approval system for telecommunication proposals is quite difficult for the public to understand and in effect is treated like a planning application

Q9 If so, what types of permitted development should be subject to the prior approval and what aspects of the development should be subject to approval?

None

Q10 Would there be benefit in having a separate development order containing just permitted development rights for householders?

Yes, because this is where the majority of our work load is focussed, and with a national on-line system alongside a guidance manual

Q11 Do you have any comments on the proposed definitions?

No, but there is a need to ensure clarity with no room for misinterpretation or ambiguity

Q12 Do you agree with the proposed limits for extensions?

Yes, in general however,

- 2 and 3 should be complementary, the depths proposed do seem excessive and we have found from experience that 3m and 4m rear extensions (as per 3) are mostly acceptable.

- 7 assumes a 7m rear garden depth is acceptable when we seek to achieve 10m in most cases
- it may be useful to include a distance within 9 where they adjoin a neighbouring property, beyond which the need for obscure glazing or non-opening windows would be permitted (consider the detached property set within substantial grounds).
- Restriction 10 would be problematic for conservatories, which by definition will include glass.

Q13 Do you agree with the proposed limits for roof extensions?

Yes, but it is considered that 1m is too restrictive. 0.5m should be sufficient

Q14 Do you agree with the proposed limits for roof alterations?

Yes

Q15 Do you agree with the proposed limits for curtilage developments?

Yes

Q16 Do you agree that there should be no national restriction on hard surfaces?

Yes

Improving the planning appeal process
Proposed Response to Consultation Questions

The Government Consultation paper also asks a series of questions and requires a response by **17th August 2007**. The following sets out a proposed response to each question.

Q1 *Do you agree with the proposal to fast track householder and tree preservation order appeals?*

This is welcomed, but is likely to result in an increase in appeals following implementation as applicants choose to appeal rather than negotiate improvements to a scheme

Q2 *Do you agree with the proposal to require local authorities to establish Local Member Review Bodies for the determination of minor appeals?*

There is cautious support for local determination however the detail needs careful consideration as usually the local body of interest and involvement in planning matters is the Planning Committee. Other non-planning committee members would have to be part of the proposed Local Member Review Body and therefore have to be trained in relevant planning matters. There is likely to be no better and more experienced councillors in planning matters than those who already sit on the committee and it would not be appropriate for them to be seen as judge and jury in the determination of any appeals.

Q3 *Do you agree with allowing the Planning Inspectorate, on behalf of the Secretary of State, to determine the appeal method for each case by applying Ministerially approved and published indicative criteria?*

Yes this would be much more responsive to the merits of the case rather than the present tendency to give priority to the applicant's wishes

Q4 *Do you agree with the package of proposals detailed in Chapter Two to improve the customer focus and efficiency of the appeals process?*

Yes

Q5 *Do you agree with the changes proposed for the award of costs?*

Yes, however this appears to imply that costs will be applied irrespective of the circumstances and some flexibility is therefore required here. Support the extension of the costs regime to written representation cases.

Q6 *Do you agree that the time limit for appealing against a planning decision should be reduced where there is an enforcement notice relating to the same development, so that in the event both are appealed, to allow the appeals to be linked?*

Agree this is most appropriate

Q7 *Do you agree with the changes proposed for enforcement and lawful development certificate appeals?*

Agree

Q8 *Do you agree with the proposal to charge a fee for appeals?*

Yes because appeals do generate a considerable amount of additional pressure on our already stretched resources.

Q9 *What are the likely effects of any of the changes on you, or the group or business or local authority you represent? Do you think there will be unintended consequences?*

There are likely to be more appeals from those who can afford to appeal as the present length of time during the appeal process is often off putting to some developers

Q10 *Do you have any comment on the outcomes predicted in the partial RIAs (attached at Annex C), in particular the costs and benefits?*

No