



Department for
Communities and
Local Government

Explanatory Memorandum to

Improving Planning Performance: Criteria for Designation (Revised 2016)

Presented to Parliament pursuant to section
62B of the Town and Country Planning
Act 1990



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1. Introduction

- 1.1. This explanatory memorandum has been prepared by the Department for Communities and Local Government to support the document “Improving Planning Performance: Criteria for Designation (Revised 2016)” (“the Criteria Document”) presented to Parliament on 22nd November 2016.

2. Purpose of the document

- 2.1. The Criteria Document sets out revised criteria and thresholds to be applied when the Secretary of State considers whether to designate or de-designate local planning authorities under section 62A of the Town and Country Planning Act 1990 (“the 1990 Act”).

3. Matters of special interest to Parliament

- 3.1. None

4. Legislative Context

- 4.1. Section 62A of the Town and Country Planning Act 1990¹ (“the 1990 Act”) gives the Secretary of State the power to designate local planning authorities. The Criteria Document sets out the criteria to be used by the Secretary of State for designation and de-designation under section 62A.
- 4.2. Section 62A was amended by section 153 of the Housing and Planning Act 2016 to enable the designation regime to be extended beyond local authority performance in determining applications for major development, by permitting the Secretary of State to prescribe those types of application which may be covered by a section 62A designation. The Town and Country Planning (Section 62A Applications) (Amendment) Regulations 2016 prescribe applications for non-major development as a separate category of applications in respect of which a local planning authority can be designated, alongside applications for major development. Subject to exceptions set out in these regulations relating to householder applications and retrospective applications, where a local planning authority is designated, a person wishing to obtain planning permission has a choice: they can submit their application to the local planning authority in the normal way, or they can submit it to the Secretary of State.
- 4.3. Under section 62B of the 1990 Act, the criteria to be used for designation or de-designation must be set out in a document to be published by the Secretary of State and laid before Parliament for a period of 40 days. The Criteria Document takes effect if, at the end of this period, there has been no resolution in either House that the document should not be approved. The

¹ Inserted by section 1 of the Growth and Infrastructure Act 2013 (“the 2013 Act”).

Secretary of State may revise the criteria for designation at any time, subject to a revised Criteria Document being published and laid before Parliament for the statutory 40 day period.

- 4.4. Once the criteria have effect, section 62B(1)(b) of the 1990 Act stipulates that a local planning authority may be designated only if “by reference to those criteria, the Secretary of State considers that there are respects in which the authority are not adequately performing their functions of determining applications under this Part”.

5. Extent and Territorial Application

- 5.1. The Criteria Document applies to England only.
- 5.2. The territorial application of this Criteria Document is England.

6. Policy background

What is being done and why

- 6.1. Delays in determining planning applications can increase costs for developers, reduce developers’ confidence to invest in sites and provide greater uncertainty for communities. Local planning authorities have a responsibility to determine applications on time.
- 6.2. The most recent statistics indicate that the designation regime introduced in the 2013 Act has been effective in speeding up applications for major development. 83 per cent of major applications were determined on time in April to June 2016, compared with 57 per cent in July to September 2012, the quarter in which the designation regime was first announced. This is despite budget pressures and an increase in planning applications.
- 6.3. The Government announced in the Productivity Plan² its intention to extend the designation regime to include an assessment of local planning authorities’ performance on determining applications for non-major development.
- 6.4. The Government laid *Improving Planning Performance - Criteria for Designation* before Parliament on 3 June 2013, which introduced two separate and independent measures against which the performance of local planning authorities would be assessed:
 - the speed with which applications for major development are dealt with;

² “Fixing the Foundations: Creating a more prosperous nation” July 2015 – available online at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/443898/Productivity_Plan_web.pdf

- the extent to which such decisions are overturned at appeal (as an indicator of the quality of the decisions made by local planning authorities).
- 6.5. The thresholds for designation were set for the speed measure at 30% of an authority's decisions made within the statutory determination period³ and for the quality measure at 20% or more of an authority's decisions on applications for major development being overturned at appeal. Subsequent revisions have increased the threshold for the speed of decisions from 30 per cent to 40 percent in 2014 and 40 per cent to 50 per cent in 2015. The threshold for the quality of decisions has remained at 20 per cent.
- 6.6. This revision of the Criteria Document sets out the thresholds for designation and introduces new separate thresholds for designation for applications for non-major development; in particular Table 1 on page 5 sets out an overview of the thresholds and assessment periods.
- 6.7. The criteria document also clarifies the Government's approach to considering if any exceptional circumstances exist prior to confirming a designation. This enables the Secretary of State to take into account other interventions: specifically any directions relating to, or intervention in the local authority's development scheme or local plan⁴ during the 24 month assessment period, where likely to impact on performance. We have also removed the fixed exemption threshold: previously designation was not considered in respect of local authorities who had determined only a small fixed number of applications or fewer. This will now be considered by the Secretary of State in the context of exceptional circumstances i.e. whether the number of applications determined by the authority in the assessment period is so low that it would make a designation unreasonable.

Consolidation

- 6.8. The revised criteria document replaces the previous policy document and therefore there is no need for consolidation.

³ or such extended period as has been agreed in writing with the applicant.

⁴ The Secretary of State has powers under Part 2 of the Planning and Compulsory Purchase Act 2004 to direct a local planning authority to amend their local development scheme, or a local development document that the authority is preparing. The Secretary of State has further powers to intervene in the preparation of a development plan document (the local development documents which comprise the local plan), or to prepare a document (or invite another body to do so) where the local planning authority is failing to do so.

7. Consultation outcome

- 7.1. In its Planning Technical Consultation⁵, the Government sought views on what thresholds might be used for designation on applications for non-major development and the general approach to designation and de-designation.
- 7.2. There were 370 responses to question 7.1 which expressed a range of views about the principle of the designation regime and the thresholds for applications for non-major development. Generally, respondents supported the suggested range of 60-70 per cent of non-major applications determined in time for the speed of decisions measure, although local authorities tended to prefer a lower threshold within this range when compared to suggestions by house builders.
- 7.3. Question 7.1 also asked about the threshold for the quality of decision-making measure for applications for non-major development. Developers supported the proposed 10 per cent threshold while local authorities favoured a higher threshold, such as 20 per cent. Several local authority respondents thought that 10 per cent was too low, and risked small authorities with a low number of applications and appeals being designated too easily on the basis of just one or two upheld appealed decisions, which might not represent a failure of the quality of decisions. It was also suggested that a lower threshold increases the risk of perverse behaviour, with local authorities approving poor quality development schemes in order to avoid going to appeal.
- 7.4. There were 338 responses to question 7.2 with a broad range of views as to whether the threshold for quality of decision-making should be reduced to 10 per cent for applications for major development. Many local authorities were against the reduction, citing concerns that authorities determining low numbers of applications were more likely to be at risk of designation than those with higher numbers. However, house builders and industry representatives were more supportive of the reduction believing that the quality of decisions would improve as a consequence. Many respondents objected to the principle of this measurement and provided alternative ways to measure quality including, measuring the number of occasions when costs are awarded against a local authority at appeal.
- 7.5. Generally across all respondents, there was some misunderstanding of how the quality measure is assessed, with respondents mistakenly believing that the measure is calculated as the percentage of appeals that are overturned, whereas quality is actually measured as the percentage of the total number of major decisions made by local authorities that are subsequently overturned at appeal.

⁵ Published on 18 February 2016, available online at <https://www.gov.uk/government/consultations/implementation-of-planning-changes-technical-consultation>

- 7.6. Question 7.3 asked three linked questions about how the designation regime should operate. There were 305 responses to question 7.3(a) with 294 responses and 283 responses to questions 7.3(b) and 7.3(c) respectively. On 7.3(1), there was broad agreement across all respondents that the general operation of the designation regime should be the same for both major and non-major development. A number of local authorities requested further clarification on the definition of non-major development and highlighted possible concerns over the confusion for applicants if an authority was designated for one category and not the other.
- 7.7. On 7.3(b), there was also broad agreement with our proposal to assess performance on major and non-major development separately, with many authorities citing the often significantly higher number of non-major applications determined in contrast to the smaller number of major applications as a reason why combining applications would reduce the effectiveness of the measure. However, some respondents, particularly house builders, said that a combined assessment would ensure that authorities do not focus heavily on one category of applications to the detriment of the other.
- 7.8. On 7.3(c), taking into account the extent to which any appeals involve decisions which authorities considered to be in line with an up-to-date local plan was universally popular with local authorities. In contrast, many house builders and developers believed that this was unnecessary given the requirement for local authorities to already make decisions in line with the development plan. There was also concern from a small number of respondents over the practical application; including concerns that the definition of what is an 'up-to-date plan' needed further clarification.
- 7.9. Question 7.4 received 314 responses. Many respondents across local authorities and community organisations said that all applicants should have the same right to apply directly to the Secretary of State where an authority is designated and therefore householder applications should not be excluded. Other respondents stated that restricting householder applications was acceptable subject to the designated authority's improvement plan directly addressing any under-performance in handling householder applications. Many respondents were concerned about the ability of the Planning Inspectorate to determine the large number of householder applications that could possibly be submitted to them should householder applicants be able to apply directly to the Secretary of State.

Government Response

- 7.10. We believe that it is right to extend the designation regime to applications for non-major development, and consider these separately, so that non-major applicants can have the same certainty in the level of service that applicants for major development receive. Setting the threshold for the speed of decisions on applications for non-major development at 65 per cent for the next designation round in early 2017 is intended to give local authorities time to adjust to the extension of the designation regime to non-major applications. We expect to increase the threshold over time as local authorities'

performance improves to encourage continuous improvement, and have set the threshold at 70 per cent for the following designation round in early 2018.

- 7.11. We have seen continued improvement in the speed with which applications for major development are determined, with the latest figures showing that local authorities decided 83 per cent of major applications within 13 weeks or the agreed extended period in the latest quarter, the highest ever. We are keen to ensure that performance continues to improve and in light of the increasing gap between the threshold and current performance levels, the Criteria Document raises the threshold for the speed of decisions on applications for major development to 60 per cent. However, this will not take effect until the designation round in early 2018 to give local authorities time to prepare for the change and the current threshold of 50 per cent will apply in 2017.
- 7.12. We also consider it appropriate to lower the threshold for the quality of decision making for major development to 10 per cent, and to introduce a threshold of 10 per cent for non-major development. However, we have noted concerns of respondents as to the need for a sufficient lead-in time and therefore we do not intend these thresholds to come into effect until the designation round in early 2018.
- 7.13. We have also noted the concerns from some respondents regarding the practicalities of taking into account whether appeal decisions were in line with an up-to-date plan as an exceptional circumstance under the quality measure and decided not to proceed with this proposal.
- 7.14. Finally, we note the support amongst some respondents for householder applicants to be able to submit applications to the Secretary of State, where the relevant local planning authority has been designated as underperforming in determining non-major applications. It is right that householder applicants should have the same opportunity to access a fast and efficient service from the authority. This needs to be balanced with the need to ensure a proportionate response to underperformance and the resourcing of the Planning Inspectorate. Soon after a designation is made the local authority is expected to prepare an action plan addressing areas of weakness that it identifies as having contributed to its under-performance. An authority's improvement against the action plan is taken into account by the Secretary of State when considering if a designation should be revoked. We consider that ensuring the authority has a robust action plan in place that directly addresses weaknesses in its processing of householder applications, where necessary, provides appropriate protection to applicants and the best access to a timely decision. Therefore, we have decided that householder applicants will not be able to submit their application to the Secretary of State where the relevant authority has been designated as underperforming.

8. Impact

- 8.1. We expect the improvement in the speed of decisions on applications for major development since the first announcement of the regime in 2012 to be reflected in applications for non-major development. This is likely to have a beneficial impact upon on business, charities or voluntary bodies as their applications for non-major development are likely to be processed more quickly with the quality of decision assured, resulting in greater certainty for applicants.
- 8.2. There is no adverse impact on the public sector. Performance will be assessed by reviewing data which local planning authorities already provide.
- 8.3. This Criteria Document brings into effect provisions in the Housing and Planning Act 2016. A full Impact Assessment was published in relation to the impacts on business and public sector of the proposal contained within section 153 of the 2016 Act⁶.

9. Regulating small business

- 9.1. These changes have no adverse impact on small businesses. The burden on business will remain the same whether they apply for planning permission to a local planning authority or, where they so choose, to the Secretary of State.

10. Monitoring & review

- 10.1. The Department for Communities and Local Government publishes data on the performance of local planning authorities quarterly and will review and evaluate the operation of this measure, with a view to amending the criteria document in future if necessary.

11. Contact

- 11.1. Matthew Carney at the Department for Communities and Local Government (Telephone: 0303 444 1230 or email: matthew.carney@communities.gsi.gov.uk) can answer any queries regarding the revised criteria document.

⁶ Available online at <http://www.legislation.gov.uk/ukpga/2016/22/contents/enacted/data.htm>

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