

Title: STREAMLINING THE APPLICATION PROCESS ON STOPPING UP AND DIVERSION ORDERS IA No: DfT00161 Lead department or agency: DEPARTMENT FOR TRANSPORT Other departments or agencies:	Impact Assessment (IA)				
	Date: 30/04/2012				
	Stage: Consultation				
	Source of intervention: Domestic				
	Type of measure: Primary legislation				
Contact for enquiries: Anne Stanford , Local Directorate, DfT.					
Summary: Intervention and Options					RPC: RPC Opinion Status

Cost of Preferred (or more likely) Option				
Total Net Present Value £m	Business Net Present £m	Net cost to business per year (EANCB on £m	In scope of One-In, One- Yes	Measure qualifies as OUT

What is the problem under consideration? Why is government intervention necessary?
 The Penfold Review, commissioned by the Government to look at speeding up the planning process and delivery of development in order to facilitate economic growth, identified potential delays from processes for stopping up or extinguishment of highways orders required before planning permissions could be acted on. The Department undertook to formally consult on ways of streamlining the application process for orders under Sections 247 and 248 in the Town and Country Planning Act 1990.

What are the policy objectives and the intended effects?
 The objective is that planning permissions for development should be available to be acted on more quickly or without delay. The effect of the policy objective is to enable actions for growth to take place more quickly. This objective was set out in the Government's response to the Penfold Review.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
 Options considered are: Do nothing; Option 1. Enable concurrent application for stopping up with planning applications; Option 2. Devolve stopping up orders to local highway authorities, (with reference to Secretary of State on outstanding objections); Option 3. Devolve order making powers to local planning authorities (with reference to Secretary of State on outstanding objections). A fourth option was considered and rejected: A proposal to merge applications for stopping up orders within the planning regime. It would introduce a single unified approach when considering both planning and stopping up applications. This proposal has been rejected as an option, because there would be no public right to a fair and independent hearing of objections. Objections to the stopping up element of a planning application would be considered in the same manner as objections to the planning application, without the right of members of the public to a fair and independent process (such as a planning inquiry).
 There is no preferred option at the present.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 09/2016					
Does implementation go beyond minimum EU requirements?				No	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes	< 20 Yes	Small Yes	Medium Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded: N/A	Non-traded: N/A

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible
SELECT SIGNATORY:

Date

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Description: Consultation Option 1 Enable concurrent application for stopping up with planning applications

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: N/Q

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/Q	N/Q	N/Q

Description and scale of key monetised costs by ‘main affected groups’

There are no key monetised costs in this option. The only difference from the current process is the bringing forward of costs: The local highway authority would bring forward the cost of considering the highways proposal, namely when the planning and highways applications are submitted at the same time. The developer has to bring forward the preparation of the stopping up order.

Other key non-monetised costs by ‘main affected groups’

There are no other key monetised costs.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/Q	N/Q	N/Q

Description and scale of key monetised benefits by ‘main affected groups’

The developer gets certainty on his stopping up order earlier than at present. He therefore can start work on his development earlier - reducing costs/bringing expenditure forward, maximising value.

Other key non-monetised benefits by ‘main affected groups’

The highway authority would get to know of planning applications that might affect highways earlier than at present and would not have to deal with affects on highways at both the planning and stopping up application stages. The early engagement with the planning authority could result in more accurate and acceptable applications for both planning and stopping up. The local authority gets the benefit of earlier delivery of development and any benefits from consequent economic growth e.g. increased business rates.

Key assumptions/sensitivities/risks

Discount rate

There is a risk of abortive work if, due to lack of discussion with planning authority prior to submission of application, the stopping up order is erroneous or if planning application has to be altered in such a way that changes to the stopping up proposal are required.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m: Costs: N/Q	Benefits: N/Q	Net:	In scope of Yes	Measure OUT
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Description: Consultation Option 2 - Devolve stopping up orders to local highway authorities, (with reference to Secretary of State on outstanding objections)

FULL ECONOMIC ASSESSMENT

Price Base	PV Base Year	Time Period	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: N/Q

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/Q	N/Q	N/Q

Description and scale of key monetised costs by ‘main affected groups’

It is assumed that developers would have to pay for the administrative costs incurred by government in making stopping up orders, in contrast to current situation in which the costs are borne by Central Government. Based on current administration costs, business would incur £225,000 per annum (less than £1,000 per application).

The reason is that LAs have powers to charge for their services: Local Authorities would have to process the stopping up order - inserting advertisement, putting up notices, considering any objections received, passing objections to applicant and making unopposed order.

Other key non-monetised costs by ‘main affected groups’

No non-monetised costs have been identified.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/Q	N/Q	N/Q

Description and scale of key monetised benefits by ‘main affected groups’

Local Authorities could recoup their costs of administering stopping up orders from developer applicants, therefore the work would be cost neutral to Local Authorities.

Central Government benefits from not having to process stopping up orders that do not have objections which need to be heard at a Public Inquiry. This would reduce considerably the £225,000 administrative costs.

Other key non-monetised benefits by ‘main affected groups’

Local Authorities may be better placed to make more effective decisions for their local area through improved intelligence and better understanding of the needs of communities.

Key assumptions/sensitivities/risks

Discount rate

We have assumed that

- 1) local authorities would have the capability and capacity to process stopping up orders at the same speed and quality as the current centralised teams,
- 2) the imposition of charges would not change the behaviour of developers e.g. they won't put off developers from making an application,
- 3) local authorities will pass on administration costs to developer through an application fee.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:	In scope of	Measure
Costs: N/Q	Yes	OUT
Benefits: N/Q		
Net:		

Description: Consultation Option 3 - Devolve order making powers to local planning authorities (with reference to Secretary of State on outstanding objections)

FULL ECONOMIC ASSESSMENT

Price Base	PV Base Year	Time Period	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/Q	N/Q	N/Q

Description and scale of key monetised costs by ‘main affected groups’
 It is assumed that the developer would have to pay for the administrative costs incurred by government in making stopping up orders, in contrast to current situation in which the costs are borne by Central Government. Based on current administration costs, business would incur £225,000 per annum (less than £1,000 per application).
 The reason is that LAs have powers to charge for their services: Local Authorities would have to process the stopping up order - inserting advertisement, putting up notices, considering any objections received, passing objections to applicant and making unopposed order.

Other key non-monetised costs by ‘main affected groups’
 No non-monetised costs have been identified.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/Q	N/Q	N/Q

Description and scale of key monetised benefits by ‘main affected groups’
 Local Authorities would recoup costs but not make a profit on stopping up orders processes. Developers benefit from the quicker decisions enabling earlier start of development. Central Government benefits from not having to process stopping up orders that do not have objections which need to be heard at a Public Inquiry .This would reduce considerably the £225,000 administrative costs.

Other key non-monetised benefits by ‘main affected groups’
 Local Authorities may be better placed to make more effective decisions for their local area through improved intelligence and better understanding of the needs of communities.

Key assumptions/sensitivities/risks	Discount rate
We have assumed that 1) local authorities would have the capability and capacity to process stopping up orders at the same speed and quality as the current centralised teams, 2) the imposition of charges would not change the behaviour of developers e.g. they won't put off developers from making an application, 3) local authorities will pass on administration costs to developer through an application fee.	

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:	In scope of	Measure
Costs: N/Q Benefits: N/Q Net:	Yes	OUT

Evidence Base (for summary sheets)

A) PROBLEM UNDER CONSIDERATION

Stopping up orders are a form of non-planning consents which are made to close a road for redevelopment purposes, providing certain planning permissions have been granted. Once a stopping up order is made, the carriageway and/or footway concerned ceases to be public highway and may be built upon. Together with land-use planning they play a vital role in enabling investment and therefore growth in local communities.

Typically, planning permission determines whether a development should be permitted while stopping up or diversion orders provide permission to move or block a public way in order to carry out the development. Without a stopping up order, the developer is constrained in the extent to which he can develop his site since the grant of planning permission does not automatically grant permission to obstruct a public highway.

Legislation covering stopping up/extinguishment orders where planning permission is in place is set out in section 247 - 248 of the Town and Country Planning Act 1990 (TCPA (1990)). Stopping up orders authorise the extinguishment (stopping up) or diversion of any highway where it is no longer needed or permits development to proceed. The provisions apply to all highways and authorise their stopping up or diversion where the decision maker is "satisfied that it is necessary to do so in order to enable development to be carried out" (where planning permission has been granted). In 2010 the Government commissioned the Penfold Review of Non-Planning consents, with the Department for Business Innovation and Skills (BIS) taking the lead interest as representative for the business community.

The Review found that non-planning consents make an important contribution in protecting public interest through the delivery of a wide range of policy objectives, on the other hand, the various consents that concern highways matters can be complex and fragmented. In particular, it found that the operation of the existing regime rather than its structural framework contributes the greatest risk of additional costs and delays.

The Review recommended a package of measures which remove unnecessary bureaucracy and reflect a clearer and streamlined application process. BIS co-ordinated and led the Government's response to the Review, in November 2010. The Government's response was to welcome all the recommendations of the Review. Work during 2011 identified the ways in which departments would respond to the Review recommendations. The Department for Transport made a commitment, at the Autumn Statement, to issue a consultation on the options for speeding up and simplifying the process for stopping up orders which is one of the consents that concerns highways, by the end of 2011-12.

BIS and Cabinet Office continue to emphasise the need for action in implementing changes to the non-planning consent system to facilitate growth. The work on transport set out in this Impact Assessment is vital to making those changes.

B) RATIONALE FOR INTERVENTION

Section 247 - 248 of the Town and Country Planning Act (TCPA (1990)) gives powers to the Secretary of State for Transport to stop up or divert any highway where it is no longer needed or permits development to proceed. The statutory protection of highways is required because of the right of the public to use them. As the powers lie with the Secretary of State for Transport it is her authority to alter them that is required.

The Penfold Review considered that the current process for obtaining permission to stop up highways after grant of planning permission puts constraints on developers and consequently on growth, as stopping up orders can in many cases be the determinants of investment in local areas.

The concern is that the current framework is rigid and bureaucratic. It presents a barrier to growth that would otherwise start soon after planning permission has been granted. The existing process, set out in detail in primary legislation, adds substantial time and therefore cost to the overall development as it can only commence once planning permission has been granted.

The Department receives over 300 applications to stop up or divert local highways each year. The average timeframe for making an order from the date of receipt to the date the order is made is 13 weeks where there are no objections or where objections are withdrawn. This means a developer who has received planning permission may be required to wait a further 13 weeks before he receives a decision on his stopping up application to allow him to carry out the development. This delay may involve the developer in considerable costs.

Following the Autumn Statement the Government announced plans to ensure development consents identified by the Penfold Review are processed within 3 months (13 weeks). The trigger for measuring the time is the receipt of all relevant information to make a decision. This commitment applies where the Government is the order-making authority.

About 2 - 3% of the total number of applications is referred for a public inquiry. A public inquiry is held when an objection is not withdrawn following discussions with the developer. There are separate processes involved in setting up a Public Inquiry held by an independent Inspector, appointed by the Planning Inspectorate, which add further delay before the planning permission granted can be acted upon.

(All figures are from statistics kept by the Department for Transport 's team handling these applications.)

Potential Groups Affected

The groups who would be affected by these proposals are:

Developers. They are the applicants for the stopping up or extinguishment orders associated with the granting of planning permissions. They are affected by the speed of decision making on the orders which influences how quickly they can begin work on a development.

Local Authorities They have to consider the affect of the planning permission on the public highway and have to discuss the matter with developers. Local Authorities are also affected by the speed of the delivery of the development – as affected by the proposals - in terms of economic growth for their areas and the income generated from business rates (a proportion of which will be retained by the local authority under government plans).

Department for Transport. The Department manages the stopping up process at the moment and would under the first option continue to do so. It would also be involved in dealing with orders where objections were outstanding and consideration had to be given of holding a public inquiry

Planning Inspectorate The Planning Inspectorate is responsible for setting up and holding public inquiries when so instructed by the Department.

The Public. The public have rights of way over public highways. The public likely to be affected by these proposals would be those who use or have an interest in a section of public highways to be stopped up or extinguished. The public's rights of objection to matters affecting the public highway would be unchanged. The introduction of a time limit in which developers should negotiate objections or a public inquiry would be held may alter the behaviour of some objectors.

Consideration has been given to the equalities impacts of the options in this consultation. Based on the information available we assess that there will be no negative or adverse impact that could disadvantage people with the protected characteristics. This is because the proposals affect businesses seeking stopping up orders in connection with development and not individual groups of people.

C) POLICY OBJECTIVE

The objective is to implement the Government's response to Penfold, which accepted the recommendations of the Penfold review on non-planning consents in respects of highways. These proposals would streamline the application process for highway and transport consents and contribute to the Coalition Government's growth agenda.

The primary objectives for the proposed reform are: to improve the application process and introduce a streamlined service that encourages investment and provides early certainty on timing of applications.

D) RATIONALE AND EVIDENCE THAT JUSTIFY THE LEVEL OF ANALYSIS USED IN THE IA (PROPORTIONALITY APPROACH);

This impact assessment is at consultation stage. The only statistics for the stopping up orders are those kept for management reporting purposes by the DfT National Casework Team in Newcastle. We have established with DCLG and Local Government Association that there are no statistics held by Local Authorities on these matters. The consultation asks for information about the time benefits that might be derived from a speedier application process, and other information to fill the knowledge gaps – these are listed in (G) at the end of this document. Therefore there should be more evidence about the costs and benefits of the options when the responses to the consultation are received and to inform the decision following the consultation.

E) DIRECT COSTS AND BENEFITS TO BUSINESS CALCULATIONS (FOLLOWING OIOO METHODOLOGY);

The policies in this document are within the scope of One In One Out as they affect businesses, namely developers. Planning applications for development and therefore for the associated stopping up orders may be sought by any size of business, but whatever the size the required procedures, costs and delays are the same.

Each development is individual – with particular costs and financial risks. There is no central source of average cost to business of the delay in executing a granted planning permission, nor of the work in making an application for a stopping up order.

The benefits to developers are difficult to quantify - depending on the time gain from concurrent procedures, and the funding of the development (price of money etc). An indication of the benefits can be seen in the table below which sets out the potential time taken under the various options, covering simple and large planning cases and stopping up orders without objections and with objections (and hence Public Inquiry). Local Authorities have a target to deal with simple planning applications within 8 weeks and to deal with larger ones within 13 weeks. The table shows that any of the options would deliver a time saving to business over the current process, whatever the size of the planning application. The timings are explained under each the description of the current process and each option.

Minimum time taken to process applications for stopping up orders (weeks)

	Current Process	Option 1	Option 2	Option 3
Simple planning, No objection	19	13	13	13
Simple planning objections	19+	16+	16+	16+
Large planning No objection	24	13	13	13
Large planning objections	24+	16+	16+	16+

We believe that the work to streamline non-planning consents for transport counts as an OUT for business – the proposals will reduce the costs associated with delay, although these savings may be partially offset by the imposition of application fees for Stopping Up orders. We have been unable to estimate the value of this benefit to business as we have no data on how delays in issuing Stopping Up orders affect the overall timescales for delivering a development or the costs to developers of having capital tied up for a longer period of time.

The Department for Business, Innovation and Skills (BIS) requires that any proposal that imposes or reduces costs on business is subject to a Small Firms Impact Test. The impact of the three options on small firms has been examined. The key focus of small firms impact test is regulations on businesses that employ less than 20 and less than 50 employees. The proposals in the consultation on streamlining processes for stopping up and extinguishment orders are not regulations and affect all businesses applying for orders to the same extent, whether small medium or large businesses.

F) SUMMARY AND PREFERRED OPTION WITH DESCRIPTION OF IMPLEMENTATION PLAN

There is no preferred option at this stage: consultation. Whatever option is decided upon in the light of the consultation will need parliamentary time – either for primary legislation or legislative reform orders. This need has been logged in submissions to Secretary of State for Transport for consideration of the response to the Leader of the House's call for bids for the third session of parliament. There are several departments who are implementing elements of the Penfold

Review and who would need primary legislation. It may be possible for a joint or over-arching Bill to be sponsored by one department and contributed to by others.

DO NOTHING - Current process

This is the baseline option which entails retaining the current process.

Legislation covering stopping up/extinguishment orders where planning permission is in place is set out in section 247 - 248 of the Town and Country Planning Act (TCPA (1990)). Stopping up orders authorise the extinguishment (stopping up) or diversion of any highway where it is no longer needed or permits development to proceed. The provisions apply to all highways and authorise their stopping up or diversion where the decision maker is “satisfied that it is necessary to do so in order to enable development to be carried out” (where planning permission has been granted). Applications to stop up or divert a local highway are made direct to the Secretary of State. Provisions within the TCPA (1990) permit the Secretary of State to make orders to extinguish (stop up) or divert highways where planning permission has been granted as defined in Part III of the TCPA (1990) or under s293A. These orders may also be used to apply for new or improved highways where the requirement forms part of the planning permission. Powers under section 247-248 of the TCPA (1990) are subject to statutory procedural rules set out in accordance with s252 of the Act. They provide the public and local authorities with an opportunity to consider the application and its impact on their use of the public highway.

Policy on the application process for stopping up orders in London is a devolved matter. Existing provisions allow for stopping up orders in respect of planning to be made by London Boroughs rather than the Secretary of State. In the event of unresolved objections, the matter is referred to the Mayor of London for determination as to whether or not a public inquiry should be held in accordance with section 252 of the TCPA (1990).

The Secretary of State is required to give notice of the intention to make an order as set out in the Act, to statutory consultees, including statutory undertakers and to the public by advertising the order in local papers and notices on site. The draft order is displayed for a minimum period of 28 days from the date of publication and during that time objections may be lodged to the order.

Timescales (weeks) for making Stopping Order from initial planning application

	Current Process	Explanation
Simple planning, No objection	19	Time starts after grant of planning Permission.
Simple planning objections	19+	Objections require Public Inquiry
Large planning No objection	24	Large planning applications can take 13 weeks for decision before Stopping up order can be applied for
Large planning objections	24+	Objections require Public Inquiry

The process for making an order generally takes about 13 weeks from when planning permission is granted but can take significantly longer. Where there are unresolved objections the Secretary of State has powers to call a public inquiry as set out in section 252 (4). The process for planning inquiries is delegated to the Planning Inspectorate who makes recommendations to the Secretary of State.

Where objections to an application to stop up or divert a highway are received, the applicant developer is expected to make every effort to resolve and secure their withdrawal. However if within the objection period objections are raised and not withdrawn then the order cannot be confirmed. The order is then referred to the Secretary of State for determination.

Section 252 (4) and schedule 14 of the TCPA (1990) set out the procedures for deciding to refer objections to a public inquiry. Where an order remains opposed, the Planning Inspectorate is asked to appoint an inspector to conduct an inquiry into the proposals. Parties are afforded an opportunity to present their case and cross examine. The inspector will then make his recommendation to the Secretary of State who will make a final decision.

Monetised and non-monetised costs and benefits (including administrative burden);

There are no costs and benefits associated with the do-nothing as this is the baseline option against which all other options are assessed.

Risks and assumptions;

The risks and assumptions of the analysis relate to the lack of evidence about the costs of delay (as stated in Section E above). The Penfold Review does not quantify the costs in its finding. A development could be a large building redevelopment or new build, which would bring jobs and economic growth to an area. The cost of the delay in delivery of the development may be therefore considerable but there is no centrally held data to provide quantified evidence of this. The developer bears the risk of delay from the stopping up order process - this may be considerable where a development can not yield profit for some months. He also has to maintain development funding for an indeterminate period of uncertainty on the orders.

Wider impacts

There are no wider impacts.

ADDITIONAL METHOD OF ACHIEVING STOPPING UP

Alternative process for Stopping up Orders through applications to the Magistrates' Courts

There is an additional way of achieving a stopping up or extinguishment order, involving application to the Magistrates Courts. Application to the Courts can only be made by a Local Authority but several make such application on behalf of developers.

Section 116 (1) of the Highways Act (1980) enables local authorities to apply direct to the Magistrates' Court for an order to extinguish or divert a highway. Provisions within the Act require that applications to stop up or divert the highway can only be made by the local highway authority (in the case of two-tier authorities).

Under section 117 (HA 1980), any person including a developer has the right to make a request that a local authority use its powers to make an application on his / her behalf. Existing guidance in the Rights of Way Circular – Guidance for local authorities (Circular 1/09) states "...authorities should make use of other powers available to extinguish or divert... unless there are good reasons for not doing so."

However, many local authorities have extensive knowledge and expertise in the use and application of section 116 procedures. Where they are convinced of its merit, authorities have utilised these provisions including in cases where planning permission has been granted for development.

Provisions in s116 provide for the right to be heard. Highway authorities have a statutory duty to consult not merely those with a direct interest in the stopping up, but rather all parties as set out in schedule 12 of the Act. Anyone on whom notice has been served has a right to be heard.

Further, the magistrate must be satisfied that the applicant has complied with the requirements set out in the schedule.

Typically, authorities charge a fee for the service. The developer paying the charge gets the benefit of certainty quickly about the stopping up.

Option 1 - Permit submission of extinguishment (stopping up order) / diversion application at the same time as submission of planning applications. (Other aspects of the process would remain as now)

The proposals set out in this option apply to all other options within this consultation. Option 1 differs from the current process in two aspects:

- Firstly we propose to consult on the options to permit the submission of the stopping up application at the same time as the application for planning permission. Applicants would continue with the existing framework of submitting two separate applications: planning application submitted to the local planning authority and a separate stopping up application to the Secretary of State. An application to stop up or divert is a requirement stemming from planning permission therefore there would have to be a short time interval between the decisions on the planning application and the stopping up order being made but undertaking some aspects of the application in parallel would reduce the time taken between making the planning application and confirming a stopping up order.
- Secondly we propose to consult on introducing a time limit on the consideration of objections. The statutes stipulate that objections must be made within a 28 day period. But there is no specific period for the consideration these objections. A time limit on the consideration of objections would support the overall policy objective to ‘speed up and simplify the application process’. The proposals will ensure all parties to an objection including the developer and objector engage constructively in a reasonable effort to examine and resolve objections. Details of the time limit that would be helpful in speeding up the process would be developed in response to the consultation. It is likely that the holding of a public inquiry at the end of the negotiation period would be subject to judgement and not automatic.

This option would apply to all areas including London where the power to approve stopping up orders already lies with the local authorities.

Timescales (weeks) for making Stopping Order from initial planning application: option 1

	Current Process	Option 1	Explanation
Simple planning, No objection	19	13	Both applications made at same time. Objection periods run concurrently.
Simple planning objections	19+	16+	The public inquiry needed for objections into stopping up Objections extends the time
Large planning No objection	24	13	The stopping up order takes less time to process, if no Objections, than large planning applications.
Large planning objections	24+	16+	The arrangement of a public inquiry adds to the maximum Time for deciding a large planning application.

As for the alternative route of obtaining Stopping up Orders through applications to the Magistrates' Courts, Option 1 proposes to make no changes to this process. However, under Option 1 the availability of this legal route will be clarified. This may result in additional cases being taken to the Magistrates Courts. The Ministry of Justice has been apprised of this fact, through the completion of a Justice Impact Test. Ministry of Justice have assessed this Impact Test and take the view that the risk posed by the proposal to alter the current guidance on Stopping Up Highways is likely to be low in terms of impact on Magistrates Court resources in view of the small number of cases involved. We have sought information about the numbers of cases taken to the Magistrates Courts. The Court Service has no data and evidence from conversations with a few local authorities indicates that they use the process once or twice a year (and not always in connection with development). The Impact Assessment therefore assumes that there is no change to the number of applications made via this route.

Monetised and non-monetised costs and benefits of the option (including additional administrative burden);

(a) Developers

As with the current system there would no costs to the developers of applying for a Stopping Up order. They would not have to pay for the stopping up application or any attendant public inquiries, nor for any advertising costs associated with notifying the public of the proposed stopping up order, in contrast to the way in which they have to pay for planning applications.

Whilst the applicant would not incur any costs in applying for the stopping up order, the developer would have to bring forward preparation of the documentation and perhaps face revision work in the event of his planning application having to be altered in response to the Planning authority's views. The developer would have to do the stopping up application at least 9 weeks earlier than at present - being the time that is the target for local authorities taking the decision on small planning applications. (for larger applications the target for decision is 13 weeks). There is the risk of abortive work if, due to lack of early discussion with planning authority, the stopping up order is erroneous or if planning application has to be altered in such a way that changes to the stopping up proposal are required. However, under this option the concurrent submission of a Planning and Stopping Up order would not be mandated. Developers could choose to wait until Planning Approval is granted before making an application for the Stopping Up order (as now) if they judge the risks to be too great to outweigh the benefits of an early decision.

The developer would gain a benefit in having the stopping up order quicker than at present – although the degree of quickness would depend on objections received and any public inquiry necessary. Only 2-3% of stopping up applications are referred to a Public Inquiry.

(b) Local Authorities

There are no monetised costs associated with this option. The only difference from the current process is the bringing forward of costs: the local highway authority would bring forward the cost of considering the highways proposal, namely when the planning and highways applications are submitted at the same time.

The highway authority would get to know of planning applications that might affect highways earlier than at present. The early engagement with the planning authority could result in more accurate and acceptable applications for both planning and stopping up. The local authority gets the benefit of earlier delivery of development and consequent economic growth.

(c) Department for Transport

Central government costs in delivering the stopping up order process would remain the same. The Department bears the costs of the administrative processes - including the costs on any

public inquiry. A team of 6.8 FTEs is involved in delivery stopping up orders, at a cost about £225,000 per year.

(d) Planning Inspectorate

There is unlikely to be much impact on the Planning Inspectorate. Only 2-3% of applications end up being taken to Public Inquiry. Even with the time limit on negotiations this is not likely to increase very much.

(e) Public

There will be no impact on the public: they will still retain the opportunity to object to the proposals and to have their objections, if not withdrawn, heard at a Public Inquiry.

Risks and assumptions;

In informal discussions with some developers in the drawing up the options for the Consultation there was an indication that developers would be prepared to invest in stopping up preparation earlier than now to potentially get the gain of early approval, but no firm evidence of a sector wide acceptance of that exists.

The proposal to institute a time limit for negotiations would have the following risks: that developers would not want to adhere to a time limit for their own process or financial reasons, and that some objectors to the stopping up could refuse to negotiate, knowing that they would then have an opportunity to have their case heard before an Independent Inspector at a Public Inquiry. It is possible that there may therefore be some more Public Inquiries.

It is assumed that the shortening of the timescales from making a planning application to receipt of the Stopping Up order would allow developers to start work earlier than under the current system. This may not be the case if there are other factors which cause delays (e.g. access to finance, other statutory processes) that are not addressed by the Penfold Review or other interventions by the Government.

Wider impacts

None

Consultation Option 2

Devolve stopping up orders to local highway authorities. (with reference to Secretary of State on outstanding objections)

Option 2 is the same as Option 1 except for a partial devolution of the process from central government to local highway authorities. Option 2 would involve, as does Option 1, the concurrent application for stopping up and planning permission, the time limit for negotiating objections and the clarification of the availability of s116 Highways Act 1980 as an alternative route for getting a stopping up order. This option would not apply in London where authority for stopping up orders already lies with local authorities. As with option 1, the planning application and the extinguishment / diversion order would continue to remain two separate decisions in law.

Under this option, authorities would have greater scope to fulfil their duty to maintain and protect the rights of the public to the use and enjoyment of any highway. In two tier authorities, the highway authority would consider the application for a stopping up order while the planning authority would have responsibility for determining the planning application. Unitary authorities as the local highway authorities would determine decisions on stopping up orders in their areas. As both processes are quasi-judicial in nature, authorities who hold both planning and highways powers would have to ensure that the two issues should be considered fully, discretely and independently. In circumstance where objections to the stopping up order cannot be resolved and consequently not withdrawn, the application would be referred to the Secretary of State

who could cause a Public Inquiry to be held by an Independent Inspector. The Secretary of State would then determine the application.

Timescales (weeks) for making Stopping Order from initial planning application: option 2

	Current Process	Option 1	Option 2	Explanation
Simple planning, No objection	19	13	13	Whether the stopping up order is done Central Government or LA the timings are the same.
Simple planning objections	19+	16+	16+	
Large planning No objection	24	13	13	
Large planning objections	24+	16+	16+	

Monetised and non-monetised costs and benefits of option (including administrative burden);

(a) Developers

The developer would have to pay for the stopping up order in contrast to "free service" now. This is essentially a cost transfer from central to local government, but it is likely that local government would recoup their costs from the developer. Based on current administration costs to Central Government this would increase costs to business by £225,000 (less than £1,000 per application on the basis of 300 cases per annum).

As with option 1:

- The concurrent application will reduce the time taken between the initial planning application being submitted and the Stopping Up order confirmed. This will reduce delays in work commencing on development sites and reduce the costs associated with having capital tied up at a particular site.
- There is the risk of abortive work if, due to lack of early discussion with planning authority, the stopping up order is erroneous or if planning application has to be altered in such a way that changes to the stopping up proposal are required. However, developers could wait until the planning application is granted before applying for a stopping up order.

(b) Local Authorities

Local Authorities would have to process the stopping up order - inserting advertisement, putting up notices, considering any objections received, passing objections to applicant and making unopposed order. These are functions currently undertaken by Central Government at an annual cost of £225,000 per annum. Local Authorities have powers to charge for their services. Therefore, we propose that authorities have the flexibility to recover the costs (on a cost recovery basis) they incur in assessing and determining applications for stopping up and diversion orders. It is assumed that all Local Authorities will do this as this is consistent with general practice on Planning Applications.

Local Authorities would be handling local matters themselves. Developers would have closer relationship to organisation handling both planning and stopping up order applications.

(c) Central Government

There will be a reduction in administrative burden on the Department (not dealing with orders which are not opposed and which therefore do not need to go to Public Inquiry). A team of 6.8 FTEs is currently employed by DfT to deliver stopping up orders, at a cost about £225,000 per year. It is assumed that these costs, less that element related to taking objections to a Public Inquiry, are transferred to the Local Authority who may choose to pass on these to the applicant.

Local Authorities would have to refer opposed orders to Secretary of State for consideration at public inquiry

There will be an increase in function by the local highways authority, although they will be permitted to charge applicants on a cost recovery basis for the administrative work in dealing with stopping up orders. Local Authorities would have greater opportunity to exercise their powers on the local areas, thus fulfilling the localism agenda.

The Department for Communities and Local Government (DCLG) requires a New Burdens Assessment (NBA) to be completed by any Department proposing any alteration to the functions or burdens put on Local Authorities. A New Burdens Assessment has been completed for this consultation option and option 3 below. DCLG have stated that they are content with the NBA at this stage of the proposals. They accept it as an initial NBA, but will require a revised version when costings have been firmed up later, on completion of the consultation.

(d) Planning Inspectorate

There is unlikely to be much impact on the Planning Inspectorate. Only 2-3% of applications end up being taken to Public Inquiry. Even with the time limit on negotiations this is not likely to increase very much

(e) Public

There will be no impact on the public: they will still retain the opportunity to object to the proposals and to have their objections, if not withdrawn, heard at a Public Inquiry.

Risks and assumptions;

The risks are:

- 1) that there is a loss of expertise from moving from a centralised team that handles around 300 cases per annum to a devolved system in which some local authorities process a handful (if any) applications each year. This loss in expertise could potentially lead to increases in delay e.g. due to procedural errors.
- 2) that the unit costs of administering the process increase due to the loss of expertise and economies of scale associated with a centralised process.
- 3) that developers change their behaviour as a result of the imposition of charges. Developers could potentially delay applying for the Stopping Orders until the planning application is granted to reduce the risk of an abortive application (and additional charges). In the worst case the charges could put developers off bringing forward a development although the risks are considered low given the average administration cost is currently less than £1,000.
- 4) that local authorities choose not to pass on the administration costs to developers – this would reduce the costs to developers and increase them for local authorities

Wider impacts

None

Consultation Option 3

Devolve order making powers to local planning authorities (with reference to Secretary of State on outstanding objections)

This is the same as on option 2, except that it is local planning authorities who would benefit from the partial devolution of the process from central government. The two consents would remain separate in law; although in this proposal, the planning authority would make both decisions.

Planning authorities would confirm the stopping up order to the applicant following recommendations from the local highway authorities as statutory consultees. The highway authority as a statutory consultee would have the duty to consider the effect of the order on the local public highway and submit advice/make presentations to the planning authority.

Timescales (weeks) for making Stopping Order from initial planning application: option 3

	Current Process	Option 1	Option 2	Option 3	Explanation
Simple planning, No objection	19	13	13	13	The timings should be the same whether Highway or Planning authority handle the order
Simple planning objections	19+	16+	16+	16+	
Large planning No objection	24	13	13	13	
Large planning objections	24+	16+	16+	16+	

Monetised and non-monetised costs and benefits of each option (including administrative burden);

a) Developers

As with option 1:

- The concurrent application will reduce the time taken between the initial planning application being submitted and the Stopping Up order confirmed. This will reduce delays in work commencing on development sites and reduce the costs associated with having capital tied up at a particular site.
- There is the risk of abortive work if, due to lack of early discussion with planning authority, the stopping up order is erroneous or if planning application has to be altered in such a way that changes to the stopping up proposal are required. However, developers could wait until the planning application is granted before applying for a stopping up order.

As with Option 2:

- The developer would have to stopping up order in contrast to "free service" now. This is essentially a cost transfer from central to local government, but it is likely that local government would recoup their costs from the developer. Based on current administration costs to Central Government this would increase costs to business by £225,000 (less than £1,000 per application on the basis of 300 cases per annum).

b) Local Authorities

As with Option 2 :

- Local Authorities would have to process the stopping up order - inserting advertisement, putting up notices, considering any objections received, passing objections to applicant and making unopposed order. These are functions currently undertaken by Central Government at an annual cost of £225,000.
- There will be an increase in function by the local authority, although they will be permitted to charge applicants on a cost recovery basis for the administrative work in dealing with stopping up orders. .
- Local Authorities have powers to charge for their services. Therefore, we propose that authorities have the flexibility to recover the costs (on a cost recovery basis) they incur in assessing and determining applications for stopping up and diversion orders. It is assumed that all Local Authorities will do this as this is consistent with general practice on Planning Applications.
- Local Authorities would be handling local matters themselves. The Local Authorities would have greater opportunity to exercise their powers on the local areas, thus fulfilling the localism agenda. Developers would have closer relationship to organisation handling both planning and stopping up order applications.

c) Central Government

As with option 2 :

- There will be a reduction in administrative burden on the Department (not dealing with orders which are not opposed and which therefore do not need to go to Public Inquiry). A team of 6.8 FTEs is currently employed by DfT to deliver stopping up orders, at a cost about £225,000 per year. It is assumed that these costs, less that element related to taking objections to a Public Inquiry, are transferred to the Local Authority who may choose to pass on these to the applicant.

Local Authorities would have to refer opposed orders to Secretary of State for consideration at public inquiry

(d) Planning Inspectorate

As with option 2 there is unlikely to be much impact on the Planning Inspectorate. Only 2-3% of applications end up being taken to Public Inquiry. Even with the time limit on negotiations this is not likely to increase very much

(e) Public

As with Option 2 there will be no impact on the public: they will still retain the opportunity to object to the proposals and to have their objections, if not withdrawn, heard at a Public Inquiry.

Risks and assumptions;

As with option 2 the assumption is that LAs could increase or find capacity if they charged for service. The assumption is that developers are willing to pay for quicker local service on stopping up orders (as they do for planning applications now).

Wider impacts

The wider impacts would be the same as under Option 2.

Alternative options

A fourth option was considered and rejected: A proposal to merge applications for stopping up orders within the planning regime. It would introduce a single unified approach when considering both planning and stopping up applications. This proposal has been rejected as an option, because there would be no public right to a fair and independent hearing of objections. Objections to the stopping up element of a planning

application would be considered in the same manner as objections to the planning application, without the right of members of the public to a fair and independent process (such as a planning inquiry).

G) Evidence Gaps

There are significant uncertainties and unknowns about the impact of the options particularly in relation to the benefits of speeding up the process for making a Stopping Up order. As part of the consultation we would seek further data on the following assumptions which would allow a more detailed cost-benefit analysis to be constructed to inform final decisions on the preferred option:

- The extent to which delays in the making of Stopping Up orders influence delays in the construction of developments.
- The cost (per week) of delays to developers in commencing the construction of developments e.g. opportunity cost of having capital tied up for longer, improvements in cash flow from bringing forward the sale of units.
- The proportion of developers that would take advantage of the new arrangements by submitting an application for a Stopping Up order at the same time as a planning application.

As part of the process of developing these options and compiling this Impact Assessment we have sought data from a number of sources: Local Government Association, HM Court Service, and Department for Communities and Local Government with limited success. Our judgement is that the risk of proceeding with a consultation now is low given that the evidence gaps primarily relate to the benefits of the option, the costs are relatively small (less than £250,000 per annum), and no preferred option has been identified. Furthermore, the consultation will provide an opportunity to identify any further data sources.

During the consultation period the Department is planning to review its administrative records to develop additional statistics on the time taken to process different types of application in particular those involving a public inquiry (the timescales listed in the sub-sections above are the minimum). This will give us a better understanding of the average time taken to obtain a Stopping Up order and the variation.

THE PENFOLD REVIEW – A SUMMARY

This summary uses text from the Executive Summary of the Penfold Review.

Non-planning consents play an important role in achieving a wide range of government objectives, amongst them, delivering a well functioning road network. They also have a serious impact on how efficiently and effectively the end-to-end development process operations. Together with planning they are a sizeable factor in determining the investment climate in the UK.

The Review was established to explore whether the process for obtaining non-planning consent (those consents which have to be obtained alongside or after and separate from planning permission in order to complete and operate a development) is delaying or discouraging business investment and to identify areas where there is scope to support investment by streamlining processes, removing duplication and improving working practices.

The problems identified were:

- Non-planning consents are numerous and complex,
- Overlaps between planning and non-planning consents are a source of inefficiency and blur the boundary between the decision of principle about whether development should go ahead and detailed decisions about how.
- Non-planning consents can be critical to some investment decisions.

Business contributors to the Review emphasised that they wanted to see action taken to reform, amongst others, highway consents and the Review has sought to make recommendations focused on improving the operation of consents in these specific areas.

The Review makes recommendations that together aim to deliver real benefits to developers by achieving greater certainty, speedier decisions, reduced duplication and minimised bureaucracy:

- Businesses would welcome greater responsiveness from consenting bodies and greater co-ordination between them.
- Businesses would welcome a reduction in the complexity of non-planning consent landscape and the Review makes recommendations for work that could lead to worthwhile simplification.
- Clarifying the boundary between planning and non-planning consents would address the confusion and duplications between the two types of consents.
- Developers should have the flexibility to bring forward applications for non-planning consents that deal with “how” questions at the same time as planning.
- The Review makes recommendations to remove duplication in the consideration of highways consents. The Review believes that progressive integration of services, processes and decision –making would bring benefits for developers and decision makers.
- The Review recommends that the Government establish a mechanism to ensure collaborative working between non-planning consent decision makers and departments to provide strategic oversight.