

EXPLANATORY MEMORANDUM TO
THE PLANNING (APPLICATIONS FOR PLANNING PERMISSION, LISTED
BUILDINGS AND CONSERVATION AREAS) (AMENDMENT) (ENGLAND)
REGULATIONS 2006

2006 No. 1063

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations amend the definition of “reserved matters” in the Town and Country Planning (Applications) Regulations 1988¹ and amend the Planning (Listed Buildings and Conservation Areas) Regulations 1990 to make provision for design and access statements which are required to accompany applications for listed building consent.

3. Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 The Town and Country Planning (Applications) Regulations 1988 set out what must be included in an application for planning permission under the Town and Country Planning Act 1990. Regulation 3(2) provides that in the case of an application for outline planning permission, details of any proposed reserved matters do not have to be given. “Reserved matters” is defined in regulation 2. Regulation 2 of these Regulations amend the 1988 Regulations by amending the definition of “reserved matters”. This change is consequential to the changes made to the Town and Country Planning (General Development) Order 1995 by S. I. 2006/ [].

4.2 Section 10 of the Planning (Listed Buildings and Conservation Areas) Act 1990 gives the Secretary of State power by regulation to make provision for the way in which applications for listed building consent are to be made. Section 10(4) (inserted by section 42(8) of the Planning and Compulsory Purchase Act 2004) provides that the regulations must require that an application for listed building consent of such description as is specified must be accompanied by a statement setting out the design principles and concepts that have been applied to the works and a statement about how issues relating to access to the buildings have been dealt with. Regulation 3 of these Regulations inserts a new regulation 3A into the Planning (Listed Buildings and Conservation Areas) Regulations 1990 setting out the type of

¹ S.I. 1988/1812.

application to which the requirement for a design and access statement applies and setting out the form and content of that statement.

4.3 This instrument is linked with the Town and Country Planning (General Development Procedure) (Amendment) (England) Order 2006 (S.I. 2006/).

5. Extent

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 These proposals and the accompanying draft legislation were contained in the consultation papers issued in March 2005 - "Changes to the development control system". An analysis of responses has been produced and is available on the Office's website².

7.2 Paragraphs 4.1 - 4.3 set out the legislative background for the introduction of these measures. As explained in those paragraphs, this instrument is linked with the wider amendments to be made in relation applications for planning permission contained in the revisions to the Town and Country Planning (General Development Procedure) Order 1995 ("the GDPO").

7.3 The more far-reaching amendments made in the GDPO provide for a more detailed outline planning permission regime and an accompanying requirement for design and access statements. This is driven by the principles underlying the reformed planning system:

- Greater certainty: for developers, local planning authorities and communities about the planning system and the nature of development. Both to reduce time-scales associated with the planning process and to increase trust amongst parties and in turn, improve support for good development.
- Up-front information and involvement: improving the efficiency of the planning system is a key objective and involvement early on in planning applications, enabled by greater activity upstream in the decision making process is a key means of achieving this.
- Community involvement: more information at outline stage about the nature of development, and the requirement for statements to explain how design and access issues have been thought through support the principle of better community engagement.

² www.odpm.gov.uk

7.4 In addition, the Government is also committed to improving the quality of development which is critical and inseparable from the delivery of sustainable communities. These changes aim to better embed considerations of design and access into the development process.

7.5 The objective in relation to listed buildings is to ensure that local planning authorities have sufficient information to make an informed decision about whether to grant listed building consent. Design is particularly relevant to listed building controls, whilst there are often specific issues regarding listed buildings and access. A design and access statement will ensure consideration of these at an early stage.

7.6 Listed buildings are important parts of the heritage of the UK, and this amendment is a further way of ensuring appropriate development for them. Design and access statements will help to ensure that irreversible and inappropriate developments that affect the setting of a listed building do not happen.

7.7 Responses to the consultation paper accepted, or at least did not object to the general approach proposed, though there was significant comment on the detail of the approach explained in the consultation, the draft guidance and the accompanying secondary legislation. However, comment on the specific requirements in relation to listed buildings was limited - although the approach proposed was supported by English Heritage and the Joint Committee of the National Amenity Societies.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 There may be a small increase cost in resources for local planning authorities in considering the contents of a design and access statement. However, as there will be greater certainty about what is proposed as part of the application there is potential for offsetting savings downstream (and the wider benefit of delivering better design quality and accessibility to development affecting listed buildings) .

9. Contact

Shayne Coulson at the Office of the Deputy Prime Minister (Tel: 020 7944 8716 or e-mail: shayne.coulson@odpm.gsi.gov.uk) can answer any queries regarding the instrument.

FINAL REGULATORY IMPACT ASSESSMENT (RIA)

Title of Proposal

Amendment to the Town and Country Planning (General Development Procedure) Order 1995 (GDPO) - Local Development Orders (LDOs)

Purpose and Intended Effect of Measure

Objective

To provide a faster, more effective planning system through the use of Local Development Orders, with local planning authorities being able to tailor development to local needs and reduce costs for developers.

Background

The proposal to commence the power to make an LDO applies to England only at this point in time. To introduce this measure the relevant sections of the Planning and Compulsory Purchase Act 2004 will be commenced and the detailed framework for the operation of LDOs will be provided by amendments made to the GDPO.

Local planning authorities in 2004/05 received 688,000 planning applications. These range from relatively small works to an individual householder's property to major applications of national importance.

A key aim of the Planning and Compulsory Purchase Act is to provide a speedier and more efficient planning system. The power for a local planning authority to make an LDO is intended to form part of a package of measures contained in the Planning and Compulsory Purchase Act 2004 that will assist in the speeding up of the planning system. LDOs will, in effect, grant permission for the type of development specified in that Order and by so doing, negate the need for a planning application to be made by the developer.

Certain types of development are already permitted without the need for planning permission. These permitted development rights are set out in the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO). This Order grants a general permission for various types of relatively small-scale and normally uncontentious development without the need to make a planning application to the local planning authority. These provisions are designed partially to ensure that people have a reasonable degree of freedom to improve their properties. They also relieve local planning authorities of the need to determine numerous, routine planning applications.

However, these rights are set nationally by Government. LDOs can therefore be seen as an extension of permitted development, but decided upon locally in response to local circumstances.

It will be at the discretion of a local planning authority as to whether to make an LDO. The Order can relate to the whole of the local planning authority area, parts of the area or apply to a specific site. The scope of any LDO would reflect local circumstances and must be used to implement a policy contained in a local development plan document.

Rationale for Government Intervention

This measure is being introduced in order to improve the planning system. Failure to introduce it would deny local planning authorities a useful power to encourage development in line with local needs.

Consultation

The principle power to make LDOs is contained in the Planning and Compulsory Purchase Act 2004. As such the proposals were consulted widely on before the Bill was introduced.

In addition an earlier public consultation was undertaken in October 2003³. Comments on the consultation paper generally tended to relate to whether the respondent was in favour of the overall concept.

The most recent consultation⁴, published in March 2005, sought more specific views on the detail of the proposals. An analysis of responses is available on the ODPM website⁵. Despite many detailed points about how LDOs would and should operate, there was overall support for the notion that there were benefits from the making of LDOs. The 38 positive responses received were from a wide range of consultees - 12 were from local

³ The ODPM's consultation paper "The Town and Country Planning (General Development Procedure) (Amendment) (England) Order 2004 & the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2004".

⁴ The ODPM consultation paper "Changes to the development control system".

⁵ www.odpm.gov.uk/index.asp?id=1161386

planning authorities, 8 from business and 5 from professional associations. Of the 13 responses that stated clearly their belief that there was no benefit to be derived from this power, 9 were from local planning authorities.

The consultation paper specifically asked for information that might better quantify the risks and benefits contained in the Partial Regulatory Impact Assessment. However, there was little specific response on this point.

References below are to the most recent consultation.

Within Government

Defra were involved in the drafting of certain elements of the consultation paper. In addition, a number of government-related organisations responded to the consultation paper. These were: the Highways Agency; the Countryside Agency; English Heritage; the Audit Commission; the Planning Inspectorate; the Commission for Architecture and the Built Environment; English Partnerships; the Commission for Local Administration in England; and the Disability Rights Commission.

Public Consultation

All local planning authorities, and their representative bodies, were consulted. In addition, certain potential developers and other bodies that generally wish to comment on planning issues were specifically consulted.

Options

We considered three options:

i) Do nothing.

ii) Enable local planning authorities to make LDOs, but exclude certain types of development in sensitive locations. This would introduce a power to make an LDO except where development would affect a listed building or where the development was Schedule 1 development under the Environmental Impact Assessment (EIA) Regulations⁶ or was development subject to the provisions of the Habitats Regulations⁷.

iii) Enable local planning authorities to make LDOs largely without the exemptions in Option ii. This would provide greater scope for the use of LDOs by local planning authorities. The one restriction that would remain is that an LDO could not be made to allow the type of development that is covered by Schedule 1 of the EIA Regulations. Development of this kind covers such things as oil refineries and airports and we would wish to see such large-scale development subject to the normal planning process. In practice, local planning authorities would be unlikely to want to make an LDO in such instances.

Option ii is the Government's preferred option.

Costs and Benefits

Sectors and groups affected

None of the options would necessarily impact on one particular group over another. The options do not have any race, health or rural impact.

Breakdown of costs and benefits

As this is a discretionary power for local planning authorities, it is impossible to estimate exact, or at this stage approximate, benefits or costs as we do not know how, or to what extent, it will be used. The type of LDO made will determine what benefits are achieved. Similarly, it will also determine who benefits. Response to the consultation showed no unanimity as to a type of development that was particularly suited to an LDO. Extension of householder permitted development was the most mentioned category. Attention was also drawn to the potential use of LDOs in regenerating particular sites or for permitting certain types of town centre development.

However, we have tried to highlight below areas where the proposed changes under the various options might prove beneficial in a general sense.

⁶ The Town and Country planning (Environmental Impact Assessment) Regulations 1999.

⁷ The Conservation (Natural Habitats, &c) Regulations 1994.

Economic Benefit

Option i - there would be no additional economic benefit from this option.

Option ii - would allow local planning authorities to make LDOs subject to the exemptions outlined above. Developers would benefit through not having to apply for specific planning permission and pay the associated fee. Fees vary by type and size of application as shown by the illustrative examples given in table 1 below.

Table 1: Planning Fees⁸

Fee Category	Average Fee (£)	Maximum Fee (£)
New dwelling	580	5,500
Buildings (<40m ² floor area created)	105	n/a
Buildings (>75m ² floor area created)	2,180	11,000
Erection of plant & machinery	250	11,000
Oil/gas drilling, minerals extraction or waste disposal	n/a	16,500
Change of use	220	220

The planning fee is usually a small proportion of total development costs. This is particularly true given that the maximum fee is infrequently used. But table 1 shows that for some categories of development the savings from not having to pay a planning fee would be significant where the maximum fee would have been charged.

The greater certainty provided by permission already being in place and the ability to deliver development more speedily should also be of benefit to developers. Potentially this could affect anyone who currently applies for planning permission. Generally there is a perception in the business community that the planning system can be slow and relatively costly to navigate and therefore an LDO could potentially be beneficial in partly addressing these concerns. For the period July to Sept 2004 78% of applications were processed within 8 weeks. This means that at least 22% of applications are delayed by more than 8 weeks. What this shows is that there is significant scope for LDOs to reduce the time it takes to progress a development. This is particularly true given that even a delay of less than 8 weeks can be costly to business.

Householders, who could also be developers, could benefit from being able to undertake small scale development without the need to apply for a planning application. For very small scale developments the costs of the planning system may exceed the benefits that it produces.

Additionally, an LDO could be made in relation to development subject to the environmental impact regulations. To do this, before an LDO could be made the regulations would have to be complied with, that is, an environmental assessment would have to be carried out. By not restricting LDOs in this way an Order could be made, for example, to bring forward major housing developments.

Although local planning authorities will entail costs in producing an LDO it could be possible that in the longer-term it may be more resource efficient to do so, for example, by removing the requirement to consider planning applications that are generally granted, for example, by extending permitted development for small scale householder development.

Also, development covered by an LDO would provide a reduction in the administrative burden on developers in completing the planning application form and providing any other supporting information.

Option iii - would have the benefits outlined above, but would not be restricted by the specified exemptions. In the period July to September 2004 there were 9,400 planning decisions made on listed building consents. This means that this option may allow around another 40,000 additional applications a year to benefit from the faster planning process offered by LDOs.

Environmental Benefit

Option i - there would be no additional environmental benefit from this option.

Option ii - there would be no additional environmental benefit from this option.

⁸ The Planning Service: Costs and Fees, November 2003.

Option iii - it is so far unclear as to whether this could deliver environmental benefits. We are seeking views on this point, for example, as to whether LDOs could be used to encourage development that would further the conservation and enhancement of environmentally sensitive areas.

Social Benefit

Option i - there would be no additional social benefit from this option.

Option ii - in so far as local planning authorities may choose to use LDOs to aid rejuvenation/regeneration policies that they are pursuing, LDOs may deliver social benefits to the wider community. However, at this stage it is impossible to predict or quantify the likely outcomes.

Option iii - the same assessment applies as for ii above, although the greater freedom to make LDOs could possibly deliver greater benefit.

Economic Costs

Option i - there are no additional economic costs.

Option ii - local planning authorities wishing to use LDOs to assist in the delivery of their local development policy will incur costs. Much of this cost is likely to be related to the production of an LDO prior to it being made. It is possible that an authority may choose to make an LDO even where the resource costs exceed any savings in the longer-term. However, this is a discretionary power and in such circumstances local planning authorities would only be doing so where they believe that the cost is worthwhile in that it is proportionate to the benefit delivered through the better implementation of local planning policy.

Where a local planning authority chooses to make an LDO there may be possibilities for sharing the costs of producing an LDO with developers where the Order relates to a specific site that a developer, or developers, are interested in developing.

In addition, local planning authorities will lose the fee income where development can be carried out without applying for planning permission. Total fee revenue for England in 2002/03 was £174m⁹. If, for example, we assume that 5% of fee income is lost because of LDOs the lost revenue would be around £9m a year. However there is no way of knowing, a priori, the extent to which fee incomes would fall. The reduction in costs for LPAs could mitigate, and perhaps cancel out, any lost fee income.

Option iii - the same reasoning as to likely costs is as for those outlined in the above option.

Environmental Costs

Option i - there are no additional environmental costs.

Option ii - there are no additional environmental costs. Although an LDO could be made in relation to non-Schedule 1 EIA Regulation development, the requirements in those regulations would still need to be complied with, thus ensuring the environmental impacts are properly considered.

Option iii - as this option largely removes the exemptions contained under option ii it could be viewed that proper existing controls over development relating to the national or heritage environment could be reduced. However, the legislative framework protecting these environments would remain in place, for example, to seek listed buildings consent (although these additional hurdles before development could proceed would potentially reduce the savings deliverable through LDOs).

Social Costs

There are no social costs under options i-iii.

Small Firms' Impact Test

The power to enable Local planning authorities to make LDOs could benefit small firms by potentially removing both regulation and costs. Small business organisations that responded to the consultation are listed below with a summary of their response:

⁹ The Planning Service: Costs and Fees, November 2003.

Organisation	Summary of Response
Federation of Master Builders	The thrust of the response was positive - they were “in favour of the principle of Local Development Orders and would certainly like to see them become a useful tool in the planning system”. However, they thought further clarification might be needed on certain aspects of their operation.
National Farmers Union	The response recognised the potential of LDOs to deliver a better planning system. LDOs may also “have the potential to facilitate investment by SMEs”. LDOs would also enable local planning authorities to “offer businesses a measure of deregulation that is tailored to accommodate local circumstances”.

Competition Assessment

The markets that could potentially be affected are any of those sectors where firms currently apply for planning permission. As a discretionary power, it is impossible to therefore make a definitive assessment, however, it is possible to make certain assumptions.

Generally, firms will not have a greater than 10% market share. As a deregulatory measure the proposals will not cost some firms more than others, although firms in the locality where the power is used may benefit from reduced costs the proposals do not impose barriers to entry between local markets. The proposals are unlikely to change the market structure, impose higher set-up or ongoing costs for new firms. The proposal is unlikely to target a market that is characterised by rapid technological change or to restrict the ability of firms to choose the price, quality, range or location of their products.

On the basis of the above, no detailed competition assessment is necessary.

Enforcement and Sanctions

Local planning authorities will only be allowed to make an LDO that reflects a policy in accordance with a local development document. Such a document will necessarily be subject to proper consultation. In addition an LDO will require full consultation with those that could potentially be affected. In practice, therefore, we expect the two consultation processes to be carried out in tandem, thus reducing the costs for everyone involved. In addition, before an LDO can be made, a local planning authority must refer a draft of the LDO to the Secretary of State. Unless the Secretary of State seeks to intervene the LDO may come into force 21 days after it has been submitted to the Secretary of State.

Where a developer carries out development not permitted by the LDO a local planning authority will have the same enforcement powers as they have to deal with development breaching normal planning permission or in contravention of normal permitted development.

Implementation and Delivery Plan

This measure is being implemented alongside a number of other changes to the development control system and it will come into force in May 2006. Guidance on these measures will be contained in an ODPM Circular that will be published prior to commencement of this measure and which will be freely available from the Office’s website.

Post-Implementation Review

We will continue to monitor how the introduction of this power is working in practice at a local planning authority level. Local planning authorities are already required to report to the Secretary of State annually on the implementation of their local development scheme and whether the policies in the local development documents are being achieved. As part of this process, the local planning authority should report on the extent to which the LDO has been successful in delivering the objectives it was made for in the report on the development plan document(s) it relates to.

Summary and Recommendation

LDOs are a discretionary power for local planning authorities to use to assist them to implement the policies contained in their local development plan. Potentially, they can prove beneficial to local planning authorities, businesses and the wider community. On balance, it therefore seems desirable to enable them to be made in the widest number of circumstances, subject to certain, very clear controls remaining in relation to the protection of the natural and heritage environment.

Option ii is therefore the preferred option. However, Option ii in the Partial Regulatory Impact Assessment originally proposed that LDOs would also not be able to be made in conservation areas. However, we now believe this exemption should not apply. By not preventing LDOs in conservation areas, for example, the potential benefits of making an LDO could apply to a wider area. There are some 8,000 or so conservation areas in England and there are around 3,600 applications a year. Local planning authorities are not restricted from granting planning permission in such areas and this option would likewise not prevent an LDO (subject to proper checks and consultation) being made in such areas. Given that conservation areas are a local, discretionary power it is unlikely that a local planning authority would propose an LDO that might harm such an area. In addition LDOs can only be made to implement a policy in a local development document, following consultation and after approval by the Secretary of State.

Declaration and Publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed Kay Andrews

Date 5th April 2006

Baroness Andrews, Parliamentary Under Secretary of State, ODPM

FINAL REGULATORY IMPACT ASSESSMENT (RIA)

Title of Proposal

Amendments to the Town and Country Planning (General Development Procedure) Order 1995 (GDPO) - outline planning permission, reserved matters, design and access statements. Amendments to the Planning (Listed Buildings and Conservation Areas) Regulations 1990 (the Listed Building Regulations) - design and access statements.

Purpose and Intended Effect of Measure

Objective

The move towards a more detailed outline planning permission regime and the requirement for design and access statements is driven by the principles underlying the reformed planning system:

- **Greater certainty:** for developers, local authorities and communities about the planning system and the nature of development. Both to reduce timescales associated with the planning process and to increase trust amongst parties and in turn, improve support for good development.
- **Upfront information and involvement:** improving the efficiency of the planning system is a key objective of the Planning and Compulsory Purchase Act 2004 and involvement early on in planning applications, enabled by greater activity upstream in the decision making process is a key means of achieving this.
- **Community involvement:** more information at outline stage about the nature of development, and the requirement for statements to explain how design and access issues have been thought through support the principle of better community engagement.

In addition, the Government is also committed to improving the quality of development which is critical and inseparable from the delivery of sustainable communities. These changes aim to better embed considerations of design and access into the development process.

Background

The proposal to commence the requirement for design and access statements and amend the outline planning permission regime applies to England only at this point in time. To introduce these measures the relevant section of the Planning and Compulsory Purchase Act 2004 will be commenced and amendments made to the GDPO and Listed Building Regulations.

Three key changes are proposed in terms of:

- Information that must be submitted with the outline application.
- The list of reserved matters.
- Design and access statements accompanying the outline or detailed application.

In addition, we seek to amend the Planning (Listed Building and Conservation Areas) Regulations 1990, to require a design and access statement for applications for listed building consent.

We deal with design and access statements, outline planning permission and reserved matters and listed building consents together for two reasons:

- These policy amendments are inter-related.
- They are also driven by the same underlying principles which include more certainty for developers and the community about what is expected as part of the planning process and more upfront consideration of design and other issues that affect the nature of development.

Design and access Statements - applications for planning permission

The main objective is to ensure that local planning authorities have sufficient information to properly consider design and access issues against relevant policies in their local development documents.

Promotion of design and access statements through this amendment is a critical planning tool in the delivery of Government policy on high-quality design across the country. High quality design underpins the delivery of sustainable communities, and is essential in creating and maintaining quality places where people want to live and work, and can enjoy.

Poor design in the past has often resulted in sprawling commercial development and soulless housing estates without any real sense of community focus and inadequate local amenities. It is the quality and inclusiveness of the design that makes the difference in creating places that will stand the test of time, and be valued by their community. Well designed, inclusive and accessible places last longer and are easier to maintain, so the costs of good design is an investment repaid over time.

Good design also has an important part to play in generating acceptance and support for new development from local communities. Some opposition to development stems from perceptions about poor design. Design and access statements represent a commitment to good design at an early stage and demonstrate that key design related issues have been thought through, giving communities greater confidence in the nature of development in their local area.

Buildings and spaces have a major contribution to make in ensuring socially inclusive and sustainable communities. It is therefore essential to consider the accessibility of any proposed project (where appropriate). We want a system that promotes an inclusive environment and fully considers the needs of those with disabilities throughout the planning system. Places with good access for the disabled also provide better access to others with mobility problems and parents with young children.

Design and access statements -applications for listed building consent

The main objective is to ensure that local authorities have sufficient information to make an informed decision about whether to grant listed building consent. Design is particularly relevant to listed building controls, whilst there are often specific issues regarding listed buildings and access. A statement will ensure consideration of these at an early stage.

Listed buildings are important parts of the heritage of the UK, and this amendment is an important tool in ensuring appropriate development for them. The history of a place will often create a sense of identity for a local community, contributing to the creation of sustainable communities. Listed buildings have an important part to play in this, and good design for proposed alterations or developments is crucial in not detracting from this. Design and access statements will help to ensure that irreversible and inappropriate developments that affect the setting of a listed building do not happen.

Design and access statements for listed buildings will also ensure consistency across the development control system.

Outline planning permission and reserved matters

Outline planning permission was retained on the basis that applicants for outline planning permission would be required to provide sufficient information to provide the opportunity for greater community involvement and a level of information which will enable local authorities to assess all the significant environmental impacts of the proposed development. It is now proposed that applications for outline planning permission should include information on:

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- Indicative layout (where layout is a reserved matter);
- Scale parameters (where scale is a reserved matter);
- Indicative access points (where access is a reserved matter).

The level of information provided would be appropriate to the complexity of the scheme.

Changes in the level of information provided at outline stage mean that it is necessary to rethink reserved matters and what is expected at this stage of the process.

Rationale for Government Intervention

This measure is being introduced to improve the planning system. Failure to introduce it would undermine the ability for the planning system to deliver the principles of increased certainty, front-loading and community involvement in the planning process and hinder the delivery of high quality, inclusive development.

Consultation

Within Government

The policies contained in the then Planning and Compulsory Purchase Bill were cleared across Government. In addition a number of government-related organisations responded to the March 2005 consultation paper¹⁰ that sought views on the detail of the proposals. These were: the Highways Agency; the Countryside Agency; English Heritage; the Audit Commission; the Planning Inspectorate; the Commission for Architecture and the Built Environment (CABE); English Partnerships; the Commission for Local Administration in England; and the Disability Rights Commission.

Public Consultation

As mentioned above, these measures were consulted on in March 2005. All local planning authorities, and their representative bodies, were consulted. In addition, certain potential developers and other bodies that generally wish to comment on planning issues were specifically consulted. An analysis of responses is available on the ODPM website¹¹

While respondents generally accepted, or at least did not object to the general approach proposed, there was significant comment on the detail of the approach explained in the consultation, the draft guidance and the accompanying secondary legislation. Only six respondents out of the 134 received on the consultation were opposed to having to submit design and access statements at all. However, there was some concern generally that the proposed approach required an excessive level of detail in the design and access statement - particularly in relation to applications for outline planning permission.

¹⁰ The ODPM consultation paper "Changes to the development control system".

¹¹ www.odpm.gov.uk/index.asp?id=1161386

Some of the concerns mentioned above related to a misunderstanding of how the policy would operate. The Circular accompanying the introduction of these measures will contain guidance on the operation of these powers. Draft guidance was consulted on and this has been revised significantly in order to provide greater clarity where confusion previously existed. The guidance will also place much greater emphasis on the need for a proportionate approach when thinking about what is required in a design and access statement, particularly in relation to outline planning permission. Although this was touched upon in the draft guidance we intend to make this much clearer and ensure that this proportionate approach runs through the advice we provide. For example, design and access statements require developers to consider how their proposal addresses the local “context”. This “response to context” could potentially relate to the physical, social, economic and policy context. For many types of development some of these considerations will be irrelevant and guidance will make this clear.

In addition, we will also be providing a short document that serves as an introduction to the changes proposed. We envisage this will be of particular use to those developers that might not be aware of the new approach, for example, small businesses trying to come to terms with a new regime. When the general guide for small businesses and planning is revised we will seek to incorporate the information in that advice.

The Commission for Architecture and the Built Environment (CABE) (the government’s advisor on architecture, urban design and public space) are also producing practical guidance for developers and local authorities on how to draw up and assess a design and access statement.

Finally, these provisions will be implemented three months later than the other changes to the development control system to enable developers to come to terms with these requirements.

Options - Design and access statements - applications for planning permission

We have considered three options to address the objectives set out above in relation to design and access and consider option 2 to be the best way forward:

1. Do not make design and access statements a statutory requirement and rely on existing guidance;
2. Require a design and access statement for certain types of application.
3. Require design and access for all planning applications.

Option 1- No statutory requirement for design statement

Design statements are already encouraged through Government and other good practice guidance¹². This option would leave it to applicants and local planning authorities to decide when and under what circumstances a design or access statement might be appropriate. Government would continue to encourage design and access statements where appropriate.

Benefits

Economic: Leaving the current arrangements unchanged ensures that developers and administrators are familiar with the development control procedure. This familiarity should ensure that applications are dealt with relatively quickly and at low cost.

The system currently in place means that it is unlikely that developers are forced to provide design and access information where it is not necessary. The level of detail provided is likely to be proportional to the need for that information.

Environmental: None.

Social: There are already many guides to design and to access. Planning an Access for Disabled People: A Good Practice Guide, ODPM, 2003 and section 76 of the Town and Country Planning Act 1990 already provide that local authorities should bring access for the disabled to certain types of buildings to the attention of developers when planning permission has been granted. There is sufficient information on design readily available providing both local planning authorities and applicants with information to heed Government guidance^{13 14 15}.

¹² DETR and CABE (2000) By Design: Urban Design in the Planning System - towards better practice

¹³ DETR and CABE (2000) By Design: Urban Design in the Planning System - towards better practice

¹⁴ DTLR and CABE (2001) Better Places to Live: By Design. Companion guide to PPG3

¹⁵ ODPM and Home Office (2004) Safer Places: The Planning System and Crime Prevention

Costs

Economic: Local planning authorities and developers may continue to bear costs in time taken to negotiate on design and access issues where design and access aspects are not clear.

There would continue to be uncertainty for developers about what to expect in terms of the requirements for a planning application and uncertainty for the community about what to expect in terms of design quality.

This option is also unlikely to raise the quality of development across the board, and so may incur greater long-term remediation or renovation costs than for high quality development.

Environmental: None.

Social: Continued uncertainty for the community about what to expect in terms of design quality and unlikely to raise the quality of development across the board.

Option 2- Design and Access Statements for specified applications

This option would introduce a statutory requirement to ensure that certain applications are accompanied by a design and access statement. Householder, change of use and engineering and mining operations applications would not be covered by this requirement (applications for development of an individual's property account for approximately half of all planning applications received by local authorities).

A statement would ensure that local planning authorities have sufficient information to ensure that design and access issues are properly considered in determining all planning applications where it is known that design is, or is likely to be, a key issue relating to that application - these are set out in the Order and draft guidance.

Benefits

Economic: It will give applicants the opportunity to explain how they considered the design and access aspects of the scheme. By only applying to applications where design is a key issue this option would add value without unnecessary burdens. The information provided should allow planners to make better decisions, more quickly.

In some cases design and access statements may speed up the decision making process. More easily accessible information available earlier on in the process may allow decisions to be made more quickly. In some cases it might speed up the actual time between a planning application being submitted and a decision being made due to a clear justification as to why what is being proposed is the way it is. This may allow local authorities to be able to determine more quickly the merits of a proposal and remove the need for further requests for information from the applicant - with consequent cost savings for both local authorities and developers. Pre-application discussions between a developer and a local authority may well be aided in a similar manner.

By requiring developers to think about design and access issues early in the planning process this option should help ensure a higher quality of development. Solving design and access issues early should reduce the need for more expensive solutions later in the development process.

Many local planning authorities already require statements of this sort. The requirements vary from one local authority to another. A national requirement is likely to lead to less uncertainty as to what is required where.

Environmental: Planners can check whether developments are designed in such a way as to minimise their impact on the environment. Any environmentally damaging proposals, that do not have the proper justification, can be rejected, or a change negotiated.

Social: Greater certainty for communities over the nature of development and greater opportunity to understand and buy in to proposals for development. As a result of more upfront thought about the design and access of development these statements are also likely to improve the quality of the built environment (including consideration of how well-designed development can help to reduce levels of crime) which is critical to delivering sustainable communities.

Costs

Economic: Applicants will incur a cost in having to actually prepare a statement. However, for relatively routine applications this should be a small amount given that we will stress in guidance that for a straightforward

planning application a statement should be short and easily prepared. Some developers are likely to need to have done more detailed thinking about design and access in order to get to the position where they are able to complete the statement. However, this additional cost here may be offset by not having to respond to requests for further advice from local authorities on these issues at a later stage in the application process. Most developers already do consider these issues though and therefore this would not entail significant extra detail or cost – the statements are designed to make proposals more transparent to the local authority and community.

In considering the potential additional costs of preparing a statement we have consulted with CABE. In order to make an estimate of the cost we first considered how many applications might require a statement. Based on the 645,000 planning decisions made in 2004/05 we estimate that the requirement to produce a statement would fall on approximately 200,000 planning applications. This figure excludes exempted development, that is, householder applications, change of use applications and applications relating to engineering or mining operations and also applications for listed building consent where there is no accompanying planning application (which is dealt with below).

Although most householder development is exempt from the requirement to produce a design and access statement, this exemption is removed in certain more “sensitive” areas such as in a conservation area or a National Park. In such areas local authorities will already require more detailed consideration of design issues when considering an application and therefore there should be no additional burden on these householders.

Similarly, in practice, applications for major development will already be accompanied by additional documentation explaining design proposals and these have therefore also been excluded. This gives a figure of around 180,000 applications. Further to this, CABE estimate that around a half of local authorities already require the submission of some sort of design statement, meaning that the real additional requirement would relate to around 90,000 minor applications.

Given that design and access issues have to be addressed as part of the normal process of drawing up development proposals we do not believe that the production of the statement should, on average, take **more** than an additional 3-4 hours, that is, half a day. Working on the assumption of a fee for providing these services of around £300-350 per day, that is, a cost of around £150-175 per statement.

CABE were also asked to consider how long it would take to prepare a design and access statement for a more straightforward minor planning application. This would provide an indication of how simple a statement can be and how quickly one could be drawn up. Their example, was for a proposal to replace a shop front. The design and access statement they produced is at Annex A for information. They estimate it took approximately 30 minutes to produce. Additionally, it may not be necessary for more straightforward applications (in terms of design and access) to use professional advice to draw up the statement. Even if it were, it seems realistic to estimate the additional cost of producing a very straightforward design and access statement to be no more than £50.

We do not have figures that would allow an estimate to be made of how many applications would require the most straightforward type of statement and how many a relatively more complex one. If we assume half were at the lower limit of cost (£50) and half at the upper-limit (£175) this produces a total cost of around £10million.

There may also be a small administrative cost to local planning authorities in checking for and putting design and access statements on the public register, and commenting on their appropriateness.

Environmental: None

Social: None

Option 3 – Applying design and access statements to all applications

This option would not exclude any planning application from the requirement to produce a design and access statement.

Benefits

Economic: As for option 2, but with information on all applications. This would ensure a level playing field across all types of development.

This option would have the additional benefit of leaving little uncertainty amongst parties about what is required for an application to be determined.

Environmental: As for option 2, but for all types of application.

Social: None

Costs

Economic: This option would place a greater burden on local planning authorities and applicants, particularly in respect of applications for minor domestic alterations. On the basis of historic figures it is likely that this option would require many more design and access statements without providing much more useful or necessary information. The additional statements for this type of application should be more straightforward to produce as design and access issues are not so fundamental a proposal. However, they are also likely to fall on those least able to produce such a statement easily or are unaware of what is required, for example, small businesses and householders. The costs may therefore be significantly higher than under option 2 above.

On the basis of the economic costs detailed under option 2 above, there could be the potential for requiring statements on an additional 400,000 applications. This is based on the assumption that of the additional applications over option 2 (which would be 445,000) around 10% may not face any additional requirement, for example, because they're in a "sensitive" area such as a conservation area where additional information might already be required. Even given that these 400,000 statements would be predominantly relatively straightforward to produce, using the £50 per statement figure used previously might lead to an additional cost, over option 2, of £20million.

Environmental: None

Social: None

Recommendation for design and access statements: Option 2 is recommended. Although there is an economic cost to this option, the wider benefits, although difficult to quantify, are viewed on balance as outweighing the additional burden of producing the statement. The additional cost must also be set against the much greater overall cost of development, that is, preparing the application and paying the appropriate fee, the cost of any professional advice to draw up a proposal (for example architects) and the cost of actually carrying out the work. In light of this a targeted requirement for design and access statements is unlikely to prove a disincentive for business to carry out works.

Options for design and access statements - applications for listed building consent

We have considered three options to achieve the objectives set out above, and believe that option 2 to be the best way forward:

1. Do not have a legislative requirement for design and access statements for listed building consent;
2. Require design and access statements for listed building consent

Option 1 - No legislative requirement

Government, and other good practice guidance, already encourage design statements for planning applications generally, although not specifically for listed building consent. This option would allow local authorities and/or applicants to decide when a design and/or access statement was appropriate. Government would start to explicitly encourage design and access statements for listed building consent.

Benefits

There are already a number of guides to design and to access (although less specifically relating to listed buildings). English Heritage have produced the guidance note 'Easy Access to Historic Buildings' and jointly with CABI produced 'Buildings in Context: New Development in Historic Areas' which gives some guidance on design and listed buildings. As such, there is sufficient information available should applicants choose to take design and access into account in applying for listed building consent.

Economic: Leaving the current arrangements unchanged ensures that applicants and administrators are familiar with the listed building consent procedure.

It is unlikely that developers will choose to provide design and access information, unless absolutely necessary.

Environmental: None

Social: None

Costs

Economic: Local authorities and applicants are likely to bear costs in the time taken to negotiate design and access issues are not clear. In addition, applicants would continue to be uncertain about what information is required in terms of design and access for listed building consent (particularly if design and access statements were required for planning applications), and for the local community would be uncertainty about what to expect in terms of the suitability of any proposal.

This option is also unlikely to enhance the historic environment across the board and long-term maintenance and renovation costs are likely to be incurred as a result.

Environmental: None

Social: There would be no guarantee that design issues had been taken into account in any application for listed building consent. A historic building or asset will often give a focus and identity for a local community and this could be eroded where these were not taken into account.

In addition, if access has not been considered properly, there may be an unnecessary restriction on those who can visit or access the building in question.

Option 2 - Require design and access statements for listed building consent

This option would introduce a statutory requirement to ensure that listed building consent applications are accompanied by a design and access statement. It would ensure that local authorities have sufficient information to ensure that design and access issues are properly considered. English Heritage supports this overall approach. Also, the response to the consultation exercise from the Joint Committee of the National Amenity Societies¹⁶ stated that:

“requiring submission of design and access statements in support of listed buildings consent applications will be a significant improvement. We agree that these should be helpful in ensuring that proposals for significant changes to listed buildings are based on an explicit, thoughtful approach to design and a sustainable approach to access.”

Benefits

Economic: It will give applicants the opportunity to explain how they considered the design and access of the proposal. The information provided should allow local authorities to make better, more informed decisions about the appropriateness of granting listed building consent, and allow them to do so more quickly.

By ensuring applicants think about design and access issues early, this option should help to improve the quality of developments affecting listed buildings. It will also help ensure that long-term, or even irreparable, damage to a listed building is avoided. By solving any specific design and access issues early, it should reduce the need for more expensive solutions at a later date.

Environmental: Planners can check whether proposals are designed in such a way as to minimise their impact on the environment. This is particularly important for listed buildings, where the fact that the building is listed will impact on what can be done to minimise impact.

Social: There would be a guarantee that design issues had been taken into account in any application for listed building consent. A historic building or asset will often give a focus and identity for a local community and design statements will help to ensure buildings are maintained and/or enhanced in an appropriate manner that will not erode this.

In addition, if access has not been considered properly, there may be an unnecessary restriction on those who can visit or access the building in question.

¹⁶ Representing the Ancient Monuments Society, The Civic Trust, the Council for British Archaeology, The Garden History Society, The Georgian Group, The Society for the Protection of Ancient Buildings, The Twentieth Century Society and The Victorian Society.

Costs

Economic: Applicants will incur a cost in having to prepare a statement, and may need to seek professional advice. In 2004/05 there were approximately 35,000 decisions made on applications for Listed Building Consent. However, often these applications will be made alongside a planning application. Where this happens, only one design and access statement will be required. We estimate that only around 20,000 of the Listed Building Consent applications would relate to works where there was not also a planning application. Therefore, given the higher estimate of £150-175 per statement used above in relation to the economic costs of design and access statements, there could potentially be an additional annual cost of £3-3.5million by imposing this requirement.

There will also be a relatively minor cost for local authorities in terms of staff resources needed to comment on the appropriateness or otherwise of a design and access statement.

Environmental: None

Social: None

Recommendation: Option 2 is recommended. Although there is an economic cost to this option, the wider benefits, although difficult to quantify, are viewed on balance as outweighing the additional burden of producing the statement.

Options for Outline Planning Permission and Reserved Matters

As described earlier on, changes in the level of information provided at outline stage mean that it is necessary to rethink reserved matters and what is expected at this stage of the process. Applications for outline planning permission should include information on use, amount of development, indicative layout, scale parameters and access.

We have considered three options:

- i) No change to the current arrangements
- ii) Change certain reserved matters to improve tie in with design and access statements
- iii) Change all reserved matters

Option 1 – No change

Benefits

Economic: This option would provide continuity, which would be of particular benefit to applicants for planning permission.

Environmental: None.

Social: None.

Costs

Economic: There will be no direct financial cost to applicants for planning permission or local planning authorities.

This option is unlikely to raise the quality of development and would not fit in well with the requirements for design and access statements.

Environmental: This option would not ensure that enough information is provided about the proposed development to enable environmental impacts to be properly considered and would therefore be counter to Environmental Impact Assessments requirements (EIA). As a result the impact on the environment of development may not be fully minimised.

Social: The opportunity to ensure that sufficient information on the nature of development is provided when the principle of development is decided would be lost with this option. In turn, the opportunity to improve community engagement and buy in to development might also be lost.

Option 2: Greater tie in with design and access statements

This option would leave three of the five existing reserved matters largely unchanged: landscaping of the site, means of access and external appearance (more detailed description provided in the consultation document and draft guidance). It would replace siting and design with two reserved matters which more closely tie in both with Ministerial wishes for more information and design statements. Applicants for outline permission would provide parameters on the scale and layout of their schemes. The final, fixed layout and scale of a development (within these parameters) would be decided at reserved matters stage.

Benefits

Economic: This option should facilitate better quality development by giving certain elements of design greater consideration at an earlier stage in the development process. It should also help to minimise any costly negotiations or changes at a later stage in development.

Environmental: This option should ensure that there is sufficient information available to carry out an EIA. EIAs should help to minimise the impact of development on the environment.

Social: This option would provide a baseline of information about the nature of development that would give the community greater certainty about what to expect and a more informed basis on which to participate in planning decision. This should ensure that opposition to development at the later stages of a planning application is reduced and issues are worked through at an early stage. Better and earlier information about the nature of development will also contribute to improving trust between parties involved in planning applications.

Costs

Economic: There will be no overall direct financial cost to applicants for planning permission or local planning authorities.

However, this option will involve applicants providing more detail at outline stage about the scale and layout of proposed schemes which will entail greater cost on the part of the applicant at an earlier stage of the development process - although this should be offset by a reduced burden later on in the process as more detailed proposals are finalised. Representatives of the development industry have indicated that they are content with this approach for the retention of outline planning permission.

Similarly, there will be additional costs for local authorities in considering outline planning applications which are more detailed, however, there will be less work to be done during the consideration of reserved matters and this should also reduce the need to go back to the applicant for more information as has been the tendency in the past, therefore saving time and costs.

Environmental: None.

Social: None.

Option 3: Complete review of reserved matters

This would involve re-thinking all reserved matters (from first principles) rather than starting from the current position which responds to changes to outline planning permission and the requirement for design and access statements.

Benefits

Economic: None.

Environmental: None.

Social: None.

Costs

Economic: Although this would provide a clean slate, there would be considerable confusion as to why a completely different approach was being proposed. It would look like change for change's sake rather than any

considered approach to improving the quality of the built environment, increasing certainty for parties and improving community engagement early on in the development process.

Environmental: None.

Social: None.

Recommendation for reserved matters: Option 2 is recommended, since it is likely to offer the highest benefits at lowest overall cost.

Equity and fairness

None of the options would necessarily impact on one particular group over another. The options do not have any race, health or rural impact.

The preferred options appear to be fairest on all parties for the following reasons:

- they level the playing field for developers (they should expect the same requirements everywhere)
- the community can expect a minimum level of information about design quality giving them a fairer and more informed basis on which to engage in consultation on proposed development.

Small Firms' Impact Test (SFIT)

The Small Business Service issued a reference to the March 2005 consultation paper in their Newsletter to small business database companies (covering 1700 firms). Only one response was received that questioned requirements related to disabled access - specifically the provision of lifts. However, as a matter relating to the internal workings of a building this matter is not covered by the design and access statements as planning legislation relates to access **to** a building rather than within it.

Small business organisations that responded to the consultation paper are listed below with a summary of their response:

Organisation	Summary of Response
Federation of Master Builders	Expressed concern about the increased level of detail required at the outline stage.
National Farmers Union	Acknowledged need to seek improvements at outline stage, but suggested need for proportionality in what is required at outline stage and in relation to design and access statements.

For the reasons explained in the “Objective” section it is viewed desirable to reform the previous regime. However, concerns about the level of detail required have been listened to - the section on “public consultation” above explains the approach now being taken in light of certain concerns.

Small businesses are also more likely to be carrying out more straightforward type of minor development. The example of a design and access statement at Annex A shows that this requirement should not be onerous for small firms.

Competition Assessment

The competition filter has been completed for each of the three policies and a detailed assessment is not required for any. There is little risk of the regulations having a negative impact on competition in the development market. Although developers may face higher costs these will be equal across incumbents and new entrants. The regulations should not act as a barrier to entry, nor lead to a greater concentration of market share. In fact, these requirements will level the playing field for developers – they can expect the same requirements from all local authorities whereas the practice varies between local authorities at present.

Enforcement and Sanctions

Section 42 of the 2004 Act makes it clear that local planning authorities cannot accept an application without a design and access statement, where one is required.

Implementation and Delivery Plan

This measure is being implemented alongside a number of other changes to the development control system and it will come into force in August 2006. Guidance on these measures will be contained in an ODPM Circular that will be published prior to commencement of this measure and which will be freely available from the Office's website.

Post-Implementation Review

The Government will monitor closely their implementation in discussion with local authorities and developers; the performance of local authorities and developers; and the impact on local communities. As with all policies and measures, it will be subject to review as deemed appropriate and particularly in light of representations made on the operation of the system in practice.

Summary and Recommendation

Design and Access Statements Option	Total cost per annum Economic, environmental, social	Total benefit per annum Economic, environmental, social
1 - No change	<ul style="list-style-type: none"> - costly negotiation where design and access elements unclear - no improvements to design quality - continued uncertainty for LPAs and the community 	<ul style="list-style-type: none"> - familiarity for applicants - existing guidance available (saving costs centrally)
2 - <i>Statutory requirement for certain applications (Preferred Option)</i>	<ul style="list-style-type: none"> - <i>cost of preparing statement on behalf of applicant (estimate of total cost of £10million)</i> - <i>cost of reading and interpreting statement on behalf of LPA</i> 	<ul style="list-style-type: none"> - <i>greater certainty about design and access elements up front, leading to time and cost savings downstream (in the later stages of development control)</i> - <i>help to minimise environmental impacts</i> - <i>contribute to increased design quality</i>
3 - Statutory requirement for all applications	<ul style="list-style-type: none"> - additional costs to applicants where a statement would add little value (this could be in the region of an additional £20million over option 2) 	<ul style="list-style-type: none"> - no uncertainty as to whether statements were required

OPP and Reserved Matters Option	Total cost per annum Economic, environmental, social	Total benefit per annum Economic, environmental, social
1 - No change	<ul style="list-style-type: none"> - insufficient information to consider environmental impacts of development - continued uncertainty to LPAs and community over the nature of proposed development 	<ul style="list-style-type: none"> - continuity for applicants in terms of cost and time
2 - <i>Greater tie in with design and access statements (Preferred Option)</i>	<ul style="list-style-type: none"> - <i>greater cost for applicant in providing more detail about proposals at outline stage</i> 	<ul style="list-style-type: none"> - <i>reduced negotiation at later stages in the development process</i> - <i>sufficient information to carry out EIA</i>
3 - Review of all reserved matters	<ul style="list-style-type: none"> - costly to applicants because of greater uncertainty during the transitional 	<ul style="list-style-type: none"> - none

	phase	
Listed Building Statements Option	Total cost per annum Economic, environmental, social	Total benefit per annum Economic, environmental, social
1 - No change	- missed opportunity to improve design and access outcomes	- familiarity for applicants
2 - <i>Statutory requirement for design and access statements to accompany Listed Building Consents (Preferred Option)</i>	- <i>as above for design and access statements (but the further additional cost could be in the region of £3-3.5million)</i>	- <i>as above for design and access statements</i>

In order to deliver on the underlying principles of more certainty for developers and the community and more upfront consideration of design and other issues that affect the nature of development, the preferred option is a requirement for design and access statements (targeted at those applications where such issues are most important) and corresponding changes to the previous outline planning regime.

However, it has been recognised that additional burdens are being introduced and consideration has been given to the scope for offsetting any potential administrative burden of these new requirements through the simplification or elimination of existing administrative burdens.

Two measures have been identified, which could simplify the planning system, in ways which are directly relevant to these proposals. These are the introduction of Standard Application Forms for planning permission, although it should be noted that this has also been flagged as an offsetting measure for the recent changes to mezzanines regulations (hence the level of offsetting simplification is not as large), and reviewing the process by which appeals concerning Grade I and II* listed buildings are determined. These form part of the ongoing package of reforms of the planning system aimed at providing a better and speedier system.

Standard Planning Application Form - amendments to the GDPO are expected to be introduced in October 2006 requiring the use of standard application forms by April 2007.

At present local planning authorities produce their own form. Introduction of a standard planning application form will make applying for planning consent much simpler and more consistent across local authority areas. A standard application form offers a number of benefits to local planning authorities who will benefit from improved quality of applications and reduced administrative burden of having to seek information later which should have been provided at the start of the process. Applicants, who submit more than one application, perhaps in different parts of the country, will also benefit from consistency in information requirements so should be able to complete them more effectively. Finally, standardisation will facilitate the electronic delivery of planning which is likely to have long term benefits for society in general in helping to streamline the whole planning process. For the reasons set out above, this measure, once implemented will offer benefits, in terms of reduced administrative costs, to both those applying for planning permission and local planning authorities determining such applications. While it is difficult to quantify the benefit of this measure at this stage, it offers the prospect of offsetting the administrative burden of the new regulation, both directly and in wider terms.

Listed Building Consents and Appeals - A consultation on the process by which listed building consent and listed building enforcement appeals concerning Grade I and II* listed buildings are determined is underway (the closing date for responses to the consultation is 24 May 2006).

The consultation document includes proposals to enable Inspectors to determine the majority of listed building consent appeals. The main benefit from transferring jurisdiction from the Secretary of State to Inspectors would be in terms of time and resource savings, as the administrative and decision making process would be shortened. This change will depend on the outcome of the consultation, but would be expected to reduce the time taken for these cases by about eight weeks, thus considerably speeding up the planning system for these cases.

Declaration and Publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed Kay Andrews

Date 5th April 2006

Baroness Andrews, Parliamentary Under Secretary of State, ODPM

Design and Access Statement for New Shop Front at No 12 High Street, New Town

This statement accompanies planning application xxxxxx.

1. Response to Context

This shop is sited towards the eastern end of the main shopping centre. The shop itself is single story and was built in 1930 but the current shopfront dates from 1965. The surrounding buildings are predominantly 2 storeys and have flats or offices above shops, restaurants and banks. Other buildings in the area are of various ages and there is no clear style in the area. But all together the shopping centre is lively and attractive. It is well used.

The pavement outside the shop is narrow – only around 2m wide. At times this means people get in each others way and there are pedestrian barriers to stop people moving out onto the road outside the shop.

The design of the shopfront as submitted with the planning application is based on our understanding of the character and problems of the site. So although we would like to include a large overhanging canopy we have not as the pavement is too narrow. We have also suggested a relatively large fascia sign as the unit is only single storey and the ones around it are 2 storey. So we think a taller sign will help the shop fit in with its surroundings.

We have read the councils design guide on shopfronts and have included a stall riser, pilasters and set in door as that guidance suggests.

2. Use

Not applicable – this is a shop with A1 use established. We are proposing no change.

3. Amount

Not applicable. This is a single unit and we are not proposing to change the amount of floor space.

4. Layout

There is not much choice in the layout of a shop front. But we have decided to move the door from the eastern to western end of the unit. This is because of the narrow pavement, which is at its narrowest at the eastern end. We think this will make it easier for people to get in and out of our shop, particularly if they have buggies or are in wheelchairs and the street is busy.

5. Scale

The scale of the unit itself is set. But we want a tall fascia to make the building look bigger. We think this will make the parade look better with less of a ‘gap’ at this single storey unit.

The scale of the stall riser and pilasters and glazing bars is based on the manufacturers design. But we have asked them to make the stall riser bigger – so it is now 40cm tall in line with the Local Authorities Shopfront guidance which sets this as a minimum.

6. Access and Inclusivity

We have moved the door as explained above to make access easier. The door itself is 1m wide – enough for a double buggy or a wheelchair. There will be flat access at the door, better than the present shop front which has a step up to a narrow door.

The applicant wants to make sure the internal fit out of the shop will also let everyone use it easily.

7. Landscaping

This is not relevant – there is no space for landscaping. But as the applicant is a florist and the window will be bigger than at present more plants will be visible.

8. Appearance

As there is no particular style or consistent age of shop fronts in the area we are proposing a modern design which highlights the florist's style who presently uses the shop. They like to use black and white in all their products and so want these colours in the shop front.

Final Regulatory Impact Assessment

Changes to Major Application Determination Periods

Purpose and intended effect of the measure

(i) The objective

The aim of this measure is to clarify and harmonize secondary legislation with regards to the processing of planning applications. It aims to clarify procedural differences between government guidance and regulations.

(ii) The background

The Town and Country Planning (General Development Procedure) Order 1995 ('the GDPO') states that valid planning applications that remain undetermined by local planning authorities eight weeks after receipt can be appealed on the basis of non-determination.

The Best Value regime for local planning authorities sets government targets for local planning authorities in their determination of planning applications. Best Value Performance Indicator (BVPI) 109 is a three-part target that states:

- a) 60% of major applications should be determined within 13 weeks (BVPI 109a);
- b) 65% of minor applications should be determined within 8 weeks (BVPI 109b);
- c) 80% of 'other' applications should be determined within 8 weeks (BVPI 109c).

BVPI 109a thus gives authorities 13 weeks in which to determine major applications. In the light of this, it is anomalous that applicants can appeal to the Secretary of State after 8 weeks on the basis of 'non-determination'. Similarly, paragraph 41 of Circular 15/88 ('Environmental Assessment') states that it is government policy to allow local planning authorities 16 weeks to determine EIA cases - which are almost exclusively major applications.

We consulted on these changes and other measures relating to determination periods for planning application in March 2005 as part of the consultation paper *Changes to the Development Control System: Second Consultation paper* which can be found at <http://www.odpm.gov.uk/index.asp?id=1147782>. As well as the issue of major application determination periods, this consultation paper proposed changes to the definition of a valid application form. We proposed that the GDPO defined a valid application as one which includes all data that a local authority has publicly stated as requisite on or before the date at which the application is submitted or within 5 days of receiving that application. Although the vast majority of respondents to the consultation argued that change to the definition of a valid application was necessary, there was little agreement on what needed to be changed. There was no strong consensus that our proposal was the best way forward, with 31 writing in support, 21 against and 5 in favour of a compromise. Those who strongly supported this measure were almost exclusively public bodies (including planning bodies) and those strongly against were from the private sector. Our proposal was criticised in responses from private sector users of the planning system as it did not seem to resolve the question of how to ensure that authorities acted 'reasonably' *in terms of information required prior to validation*. This was because the proposed changes continued to be weighted in favour of authorities by allowing them to request practically anything they wanted before validating an application.

In response to this public consultation we have decided not to implement our recommended option on validity from the partial RIA consulted on in March 2005 but have instead decided to develop our policy thinking in this area further and look into other options which could be brought in alongside the standard application form.

The March 2005 consultation also proposed changes to the GDPO regarding application start dates which will be implemented in the revisions to the GDPO being made in May. However, these changes have no significant impacts on business, charities or the voluntary sector, as they are just changing statistical reporting procedures so that the regulations are in line with current ODPM guidance. As such they will only have a significant effect on local planning authorities and as public sector costs are below £5m pa, an RIA is not needed for this proposal, and it is not discussed further in this RIA.

(iii) Rationale for Government Intervention

There is a need to clarify legislation to better reflect both government recommendations and local authority practice. Government intervention is necessary to clear up confusion over determination periods to ensure that local planning authorities and planning applicants will be working to the same timetable and the same rules for the first time, thereby making the system clearer, more transparent and more efficient.

It is felt to be reasonable to increase the GDPO determination period rather than reduce the target time period as the original government targets, which were originally aligned with the current GDPO (i.e. at 8 weeks for all applications), were criticised as setting an unreasonable timetable for the determination of major applications. Major applications are significantly more complicated than other applications and involve much greater community involvement and wider consultation with statutory consultees. In addition they often require the signing of legal agreements which outline planning obligations required of developers under section 106 of the Town and Country Planning Act 1990. The extension of the target time for major applications to 13 weeks proposed in 2002 was widely welcomed in consultation by both local planning authorities and applicants and so a Central Government suggestion of a reduction of that BVPI target time back to 8 weeks would be unpopular.

Consultation

Within government

Audit Commission
The Planning Inspectorate
English Partnerships
Greater London Authority
Commission for Local Administration in England
Highways Agency
The Countryside Agency

Public Consultation

A 12 week consultation was carried out on these proposals from March to May 2005. Of the 58 respondents who addressed this proposal 48 supported it. The majority of respondents saw it as a sensible step to bring legislation into line with government policy and to provide a clear definition of a major application. The consultation clearly showed that the vast majority of users of the system (both public and private sector) are in favour of these changes.

Analysis of the consultation responses can be found at <http://www.odpm.gov.uk/index.asp?id=1161386>.

Options

1. Do nothing.

2. Reconcile the date on which an applicant for a major planning permission can launch an appeal with the Best Value target. This option would retain performance targets as they currently stand and maintain the same appeal procedures. An implication of this is that ‘major’ applications would have to be clearly defined in the GDPO.

Alternative options considered

Remove the ability for applicants to appeal for non-determination. This option would enable applications to be appealed only if they had been negatively determined by a local planning authority. This was not considered a valid option for the final RIA as the costs incurred to businesses through increased uncertainty and inconvenience are large. With no grounds of appeal against prolonged non-determination, applicants might be expected to either submit secondary applications, attracting extra fees; to withdraw their applications and resubmit them with no guarantee of more success; or, in the worst case, to abandon their hopes to gain planning permission at all. The implications of this option might result in an increase in illegal development or a reduction on overall development. These costs would be borne by all applicants, from business developers to householders. It is difficult to value the cost to applicants. However, it might mean each year as many as 384 fewer permissions approved by the Secretary of State¹⁷ or delayed applications, with consequences for UK economic growth.

Change the BVPI target for Major applications back to 8 weeks. The original target introduced in 2001 gave a target of 8 weeks for the determination of all applications. However both applicants and local planning authorities felt that given the large number of issues which need to be addressed when determining major applications the target of 8 weeks was unreasonable. Major applications are often very complicated and need to be carefully considered. The signing of legal agreements as part of section 106 of the Town and Country Planning Act 1990 and requirements for consultation with the local community and statutory consultees impose significant time constraints on both local planning authorities and applicants. As a result the government consulted on a change to the target for major applications in 2001/02, increasing the target determination period from 8 to 13 weeks and this was widely supported. At present many developers criticise the 13 week period as being too short a timescale for dealing with large applications and so a Central Government suggestion of a reduction to 8 weeks would be unlikely to be well received.

Costs and Benefits

Benefits

(i) Economic

Option 1 yields no additional economic benefits, although secondary legislation would not have to be amended,

Option 2 would clarify the planning process for applicants and local planning authorities and ensure that secondary legislation reinforced, rather than undermined, government policy. Changes would improve transparency and certainty in the planning process. This clarity may reduce costs to applicants who would have to wait 13 weeks before appealing against non-determination instead of 8, thereby reducing the number of appeals that could be made in general, but it is not possible to be specific about the likely increase in numbers. Furthermore the extra time allowed for the authority to determine the application and to work through any issues with the applicant should lead to more considered opinions being given on proposed development, giving rise to less need to appeal.

(ii) Environmental

Option 1 has no environmental benefits.

Option 2 allows local planning authorities more time to determine major applications which have an environmental impact but which are not subject to the full Environmental Impact Assessment procedure (full EIA applications already have a determination period of up to 16 weeks as defined in the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (SI 1999/293)). The extension of the period of investigation for these applications will enable a fuller consideration of their environmental impacts.

(iii) Social

Neither of the options has any significant social benefit.

Costs

¹⁷ In the year ending September 2004, 384 appeals against non-determination were upheld and planning permission granted.

(i) Economic

Option 1 would have no additional economic cost. However, the two separate timetables of appeal (for the applicant) and Best Value (for the local authority) would continue to clash, resulting in the continued potential ambiguity in the planning system.

Option 2 would have no costs for local planning authorities other than minimal start-up costs of amending guidance. It would have a very small effect on applicants for major planning permissions, who tend to be medium to large businesses. It is hard to provide a monetary value for this cost. Approximately 160 appeals on the grounds of non-determination a year could be delayed by up to five weeks¹⁸. However, taking into account the length of the appeals process and the five weeks of extra consideration this option would allow local planning authorities, it is likely that the overall cost to business will be minimal. In addition there may be an overall benefit to the system due to the avoidance of premature appeals.

(ii) Environmental

Option 1 continues the status quo, allowing applicants to appeal for non-determination at an early stage in the consideration of a major application which has some environmental impacts but which is not subject to an EIA as defined by the EIA regulations (SI 1999/293). There is a possibility that this may lead to worse quality decisions in some cases.

Option 2 has no environmental costs

(iii) Social Costs

Neither of the options has any significant social benefit

Equity and Fairness

Option 1 does not raise any equity issues. As described above, option 2 would affect medium to large businesses. However, as noted above, this impact would be negligible. None of these options have race equality, health or rural fairness impacts.

Small Firms' Impact Test

None of the options appear to create a burden for small businesses as major applications are typically made by large businesses or property companies, directly or through agents. Small business organisations who were consulted are listed below with their response:

Name of business	Response to consultation
Federation of Master Builders	"The FMB welcomes the lengthening of the period before which applicants can appeal major applications on the basis of non-determination." This is because overly short target timescales can lead to the rejection of applications by some planning departments just to hit those targets, which "is not conducive to an effective planning system".
National Farmers Union	Generally supports the proposal although would like 8 week target to remain in place for emergency improvements (e.g. replacement of storm damaged buildings). This suggestion was considered but given that the target times set national standards for all authorities and that these changes are aimed at aligning regulations with those targets, small changes such as this were seen as inconsistent with the overall aims of improving the clarity and transparency of the system.

We have consulted the Small Business Service, who are happy with our approach.

Competition Assessment

¹⁸ In the year 2003-2004, Planning Inspectorate data show that 159 major applications were brought to appeal on the basis of non-determination between 8 and 13 weeks after they were first submitted to a local planning authority.

Neither of the options will influence competition, being restricted to legislative changes among public sector bodies. A competition assessment has not been carried out.

Enforcement and Sanctions

No specific ‘enforcement’ is necessary here, as what is being removed is an entitlement to appeal a major application for non-determination before a local planning authority has had a chance to fully examine it. ‘Enforcement’ of kind would be that the Secretary of State would no longer accept appeals for non-determination of major applications if fewer than 13 weeks had elapsed since the application was registered as valid.

Implementation and Delivery Plan

This policy is being implemented alongside a number of other policy changes to the GDPO which will be commenced in May. Guidance on these measures will be contained in an ODPM Circular that will be published prior to commencement of this measure and which will be freely available from the Office’s website. There will be a ministerial statement and a news release to publicise these changes.

Post-Implementation Review

As this is a relatively minor change which will merely be bringing the GDPO into line with current Central Government targets there will not be a formal 3 year review process. However, the effects of this policy will be measured and monitored by examining any changes to the volume of appeals made to the Secretary of State and any changes to Local Authority Development Control statistics. In addition we will continue to review the planning application procedure to make sure that the system meets government objectives of fairness, openness and efficiency on a yearly basis.

Summary and Recommendation

Option	Total cost per annum Economic, environmental, social	Total benefit per annum Economic, environmental, social
1. Do nothing	None	None
2. Reconcile appeal period and Best Value target	Relative small additional cost to major applicants	Large improvement in clarity of planning system as full environmental impact of development likely to be more deeply considered

Option 2 is recommended as it is seen to bring about benefits to the planning application procedure with negligible associated cost.

Declaration and Publication

I have just read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed ...Kay Andrews.....

Date 5th April 2006

Baroness Andrews, Parliamentary Under Secretary of State, ODPM

Contact point for enquiries and comments:
Laura Ratcliffe, Planning Development Control Division(b), ODPM
 0207 944 3948

FULL REGULATORY IMPACT ASSESSMENT

S49 PLANNING AND COMPULSORY PURCHASE ACT 2004: FLOOR SPACE CONTROL

1. Section 49 of the Planning and Compulsory Purchase Act 2004 amends Section 55(2) of the Town and Country Planning Act 1990, making the development of additional floorspace within a building subject to planning control. A consultation paper, *Planning Control of Mezzanine and other Internal Floorspace Additions* was published in March 2005, and account has been taken of the responses in compiling this Full Regulatory Impact Assessment.
2. To bring this into effect, article 4 of the Town and Country Planning Act (General Development Procedure)(Amendment)(England) Order 2006 (“the draft Order”) will amend the Town and Country Planning (General Development Procedure) Order 1995 to provide that operations which have the effect of providing additional floor space of more than 200 square metres in retail premises involve development .
3. The primary legislation applies to England and Wales, but the draft Order only applies to England. Secondary legislation for Wales is a matter for the National Assembly for Wales.
4. A summary of the responses is attached at Annex A.

Purpose and Intended Effect

Objective

5. The Government's objectives for town centres, are set out in Planning Policy Statement (PPS) 6 *Planning for Town Centres*. Planning plays a key role in facilitating and promoting sustainable and inclusive patterns of development, including the creating of vital and viable town centres. The key objective for town centres is therefore to promote their vitality and viability by planning for the growth and development of existing town centres and by promoting and enhancing existing centres by focussing development in such centres and encouraging a wide range of services in a good environment, accessible to all.
6. The Government's wider objectives for town centres include:
 - to enhance consumer choice by making provision for a range of shopping, leisure and local services, which allow genuine choice to meet the needs of the entire community, and particularly socially-excluded groups, and
 - to promote social inclusion, ensuring that local communities have access to a range of shopping, leisure and local services, and that gaps in provision in areas with poor access to facilities are remedied.
7. The purpose of Section 49 is to bring under planning control any increases in internal floorspace above a specified level, so as to help secure the Government's objectives for town centres and to reduce the likelihood of those objectives being undermined by inappropriate development. The associated secondary legislation defines the circumstances in which an increase of floorspace would require planning permission.

Background

8. The most common method of adding additional floor space within a building is the introduction of a mezzanine floor. Mezzanine floors are levels whose floorplate does not usually extend fully to a building's perimeter. They can be a quick, usually straightforward and flexible method of increasing floor space within a building. Additional floor space within buildings can enable businesses to make better use of buildings and increase productivity from the same footprint, so making more efficient use of land. In the right locations, such development can contribute to the planning policy objective of promoting vital and viable town centres. But, such development can sometimes undermine the aims and objectives of planning policy for town centres set out in PPS6: *Planning for Town Centres*. This may occur, for example, where

“Our research shows that the development of large non-central foodstores can lead to a decline in the turnover of town centre foodstores (38% impact in the case of Tesco in Cirencester). This can and has led to the closure of some town centre food retailers.”

The Impact of Large Foodstores on Market Towns and District Centres DETR 1998

mezzanine or other development is proposed which has the effect of increasing gross floorspace in an out-of-centre location where there is not a need for additional retail floorspace or sequentially preferable opportunities for development exist. While there is no specific research on the effect of mezzanine development, there is clear evidence that development which takes place out of centre can impact on the vitality and viability of nearby town centres¹⁹.

"The obvious drawback to the Centre is its severe impact on local centres and Dudley in particular. Whilst the productive development of a vacant industrial site might be considered worthwhile, this has clearly been at the expense of nearby centres such as Dudley. The cost to these centres has been both a reduction in trade and a decline in environmental quality."

Merry Hill Impact Study HMSO 1993

"In conclusion, we have found that a combination of demographic and social changes have led to the rise of large multiple grocery stores serving primarily the one-stop shop market. This has occurred in a densely populated country, bringing about substantial effects on the vitality of town centres and on the environment which the planning regime seeks to address."

Competition Commission – Supermarkets 2000

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9. A range of types of respondents supported the introduction of planning control, including some retailers (see above) On the other hand, some respondents to the consultation exercise presented evidence to suggest their particular operation has not had an adverse impact on town centres, and it is accepted that not all internal expansions impact on town centres. A range of factors need to be taken into account in determining whether a proposal will contribute to or harm the delivery of the Government's objectives for town centres and circumstances may vary significantly from proposal to proposal. This legislative change will ensure that the individual circumstances of the proposal can be properly assessed having regard to the Governments objectives.
10. Installation of additional floor space within a building, such as building a mezzanine floor, did not previously fall within the definition of development in section 55 of the Town and Country Planning Act 1990 because it would not affect the exterior appearance of a building. Permission was only required if the original permission for the building was granted subject to a planning condition precluding a mezzanine floor or restricting the maximum floor space and that floor space would be exceeded.
11. PPS6 (2005) explains that there may be sound planning reasons for granting planning permission subject to a planning condition setting a maximum floor space limit. Such conditions (or section 106 agreements) apply for the duration of the development, which includes the continued use after completion of the building works, and are thus enforceable even though the development has been completed.
12. Therefore, local planning authorities have powers to control additional floor space through conditions on planning applications. But it became apparent that older permissions, granted before 1995/1996, and some recent permissions, did not include maximum floor space conditions (or similar controls in an obligation), with possible implications for the application of planning policy for town centres and retail development. This has been confirmed by a number of responses from local authorities. It also became apparent that, even where such conditions had been imposed, they have not always been enforceable

¹⁹ Such as: The Impact of Large Foodstores on Market Towns and District Centres DETR 1998
Merry Hill Impact Study HMSO 1993
Competition Commission: Supermarkets 2000

13. Local planning authorities do have powers, under section 97 of the Act, to modify or revoke existing permissions, but such action could require compensation. However, this approach would be costly and time consuming for local planning authorities to identify relevant permissions and then go through the process of modification. And there may be no certainty that they would modify all relevant permissions, either because they overlook them or because they do not consider it expedient to modify the permission in any particular case.
14. The Government introduced a new clause to the Planning and Compulsory Purchase Bill, which is now section 49 of the 2004 Act, to make the creation of additional floor space within a building, such as the installation of mezzanines, subject to planning control. This control has no impact on mezzanine floorspace which has planning permission. The provision also does not seek to prevent new mezzanine development, but to allow authorities to determine such proposals, in the same way as they would for store expansion involving an external expansion of floor space, which would require planning permission. This Regulatory Impact Assessment provides an analysis of the likely costs and benefits of the supporting secondary legislation.

Rationale for Government intervention

15. Prior to the introduction of this new measure, there was an inconsistency in that provision of additional floorspace within a building is not subject to planning control, whereas external extensions of a building are subject to planning control. For the reasons set out in this RIA, this inconsistency, if not addressed, could lead to harm to the delivery of the Government's objectives for town centres.
16. ODPM's initial analysis of VOA data shows that between 1971 and 1996, 17.7 million square metres of new floorspace was built in out-of-centre locations. Nearly 70% of this was built between 1986 and 1996. Of this 70%, 93% consisted of buildings over 500 square metres. Typically, since 1998 out-of-town retail floorspace has grown annually at the rate of 1 million square metres declining to around 800,000 square metres in 2003.
17. In 2003, GVA Grimley undertook a postal survey of 64 retailers on shopping parks, defined for the purposes of their study as "primarily non-bulky goods retail parks" where the majority of occupiers were clothing retailers. The survey found that retailers increasingly seek mezzanine floors in units on shopping parks. 35% of respondents stated they always looked for mezzanine floors and 53% sometimes required mezzanines. Just over half of respondents proposed to use the floors as ancillary space. For most respondents, the preferred size of mezzanine was 30 to 50% of the ground floor area. While this survey was of limited scope, it is consistent with other evidence suggesting that pressure for further expansion of retail floorspace in out of centre locations is likely to continue.
18. There is continued pressure for out-of-centre retail development²⁰ with a widening range of retailers represented in new and existing floorspace. Reflecting these trends, rental levels and sales densities in out of centre locations have increased. Thus the attractiveness of installing mezzanines has increased in recent years. Consultation responses confirm that a number and range of retailers have investment programmes which include the addition of mezzanine floors. Typically mezzanines are used to increase the space available for display of items such as kitchens, bathrooms and home furnishings, or to enable the retailer to expand the range of goods sold (subject to any planning conditions) or to provide for ancillary storage, which can free up space elsewhere in the building for the sale of goods to the public.
19. In short, there is a very substantial stock of out of centre retail development, widening retailer representation in out of centre locations and continued retailer interest in mezzanine development.
20. A 15% informal sample survey in February 2004 of mainly urban local authorities indicated that there was concern about the possible impact of development of mezzanine floors, without planning control, on the policy aims of PPS6. Concern was greatest in those areas with concentrations of out-of-town retailing permitted in the late 1980s and early 1990s, which may not be subject to floorspace conditions. These concerns were repeated in many of the local authority responses to the consultation paper. Of the 48 local authorities responding, 46 indicated clear support for the introduction of planning control.

²⁰ Eg Donaldson Press release - http://www.donaldsons.co.uk/pdf/OOT-Stats_aug.pdf, eg article in Retail Week Magazine - 11 February 2005

21. The 2004 survey and more recent evidence indicates that a significant proportion of planning permissions for out of centre development, particularly in the period up to 1996 do not have conditions which control the provision of additional internal floorspace.
22. Whilst not all of these developments would be able to accommodate a mezzanine floor, and some retailers may not want to add mezzanines or other internal alterations, the scale of out-of-centre development has been so substantial, particularly in the 1980's and early 1990's when conditions may not have been imposed, that considerable potential for further expansion of floorspace is likely to remain. The responses from local planning authorities and from a number of other respondents support this view. Some have argued that all the opportunities for mezzanine implementation have been exhausted, although no evidence was given to substantiate this claim. On the other hand, a recent desk survey of a number of retail parks suggest that a significant number of permissions, did not have planning conditions restricting floorspace. Of these permissions there appears to a significant number of units physically accommodating a mezzanine but which do not have one.
23. It has been suggested that the result of the Nene Valley, Northampton Court case (Northampton Borough Council vs First Secretary of State and Land Security Properties Ltd), where the Court upheld a condition limiting the retail floorspace allowed, means the prospect of further development without planning permission has considerably diminished, if not eliminated. This was, of course, a decision about a particular condition. The supporting reasoning and justification may not be universally applicable, and earlier cases show that conditions can be successfully challenged.
24. A lack of adequate control could undermine the delivery of the Government's objectives for promoting the vitality and viability of town centres, improving accessibility, and promoting social inclusion, by:
 - a) Resulting in a greater proportion of the quantitative need for additional floor space being met in out-of-centre locations;
 - b) Reducing the opportunities for promotion of existing centres through new investment; and
 - c) resulting in a greater proportion of development being in locations that are not accessible by a range of means of transport, in particular public transport.

CONSULTATION

25. The legislation was consulted on across Government and was agreed collectively.
26. The formal public consultation began on 4 March 2005 and ran until 26 May 2005. A partial RIA was included as part of the consultation document). The consultation sought views on both the draft amendment to the GDPO and the partial RIA. In addition, the consultation in particular sought views on:
 - a Whether the 200 m2 threshold is an appropriate level to help achieve the Government's objectives.
 - b Whether a different threshold would better achieve the Government's objectives.
 - c Views were also invited on the relative costs and benefits of Option 2, particularly the costs to an average business, and particularly on the costs of any unintended consequences.
27. Over 60% of respondents agreed with the principle of introducing planning control, and about 50% agreed that 200 square metres was an appropriate threshold. A full analysis of the responses to these questions is included within the published summary of responses.
28. The consultation responses contained a range of views on the proposals which have been considered and reflected in the RIA. Relatively little empirical evidence which was directly relevant was submitted by respondents to the consultation paper. Some respondents raised specific concerns in relation to the wording of the proposed secondary legislation and some amendments have been made which are reviewed below. The following analysis also details how we have considered the responses to the consultation in the policy development.

Options

29. This RIA sets out two options:

- a) Option 1: no secondary legislation, the "do-nothing" option;
- b) Option 2: a 200 square metre threshold above which planning permission would be required.

OPTION 1: NO SECONDARY LEGISLATION

30. This would retain the existing definition of development, leaving retailers free to install mezzanine floors or other internal floorspace without the need for planning consent, except where conditions limiting the maximum floor space were imposed. Although authorities do have powers, under section 97 of the Act, to modify or revoke permissions, these are unlikely to be used, as they could involve the payment of compensation.

OPTION 2: LIMITING THE PROPOSALS TO BRINGING ADDITIONAL INTERNAL FLOOR SPACE IN RETAIL PREMISES ABOVE 200 SQUARE METRES WITHIN PLANNING CONTROL

31. This is based on adopting a 200 square metre threshold. Proposals to create more than 200 square metres of additional retail floor space within a building would require planning permission. Additional internal floor space below this size would not require planning permission.

32. The reason for choosing a 200 square metre threshold is primarily to exempt small businesses and shops.

33. On the assumption that a mezzanine would not normally exceed 50% of the ground floor area, the choice of a 200 square metre threshold would mean that any mezzanine development in the vast majority of shops in England would not be subject to planning control. 93% of shop units are smaller than 400 square metres⁽³⁾. A number of respondents have challenged these figures. Some argued that the Valuation Office Agency (VOA) data was skewed as it related to all retail hereditaments including those premises where mezzanines could not physically be installed. Others argued that the standard shop size was unrealistic, and that any threshold should be based on an average size of retail unit, or retail warehouse unit. However, the VOA data is the most comprehensive available, and the standard shop unit was used, not as a standard on which to base the threshold, but as an example to indicate the scale of what 200 square metres represented.

34. Some respondents challenge the assumption that a mezzanine will normally be 50% coverage. Mezzanines may well be up to 100% coverage, but even if that is taken as a norm, a 200 square metre threshold would exempt 85% of shop units. It is likely that a very significant proportion of these units would, in any event, be incapable of internal expansion, particularly in terms of having the necessary clear internal roof height (about 6 metres) to achieve a mezzanine floor.

Other options.

35. This section has been expanded to address the main options identified by consultation responses.

36. Some respondents have argued that planning control should not extend to town centres. While this is consistent with the thrust of policy, it would be very difficult to provide for this without creating uncertainty about whether planning permission was required, other than by including detailed information on the extent of each centre within the order, which would be unworkable. However, it is proposed that local authorities will shortly have powers to make Local Development Orders (LDO) These Orders could permit development of the type specified in the LDO and thereby remove the requirement for a

⁽³⁾ Source: ODPM analyses of VOA data.

planning application. Local authorities could therefore make an LDO that defines clearly the area within which development of this sort would be permitted.

37. Some respondents suggested that planning control should not apply to uses such as bulky goods retail because, it was argued, these were unlikely to impact on town centres as bulky good retailers tend to be based in retail parks, and/or the control should be restricted to specific types of retail activity, in particular foodstores with high turnover and large floor area. Some empirical evidence was provided to support such distinctions but the information was not comprehensive. Such an approach would add considerable complexity; more importantly, there would be no mechanism to control the range of goods sold if there was not an opportunity to attach conditions to a planning application, and the impact of different retail activities varies from location to location. These issues are best addressed locally through consideration of specific proposals by planning authorities.
38. Some respondents have suggested the draft Order could define a threshold in terms of a percentage increase in floor space in relation to the existing building. Suggested percentages varied from 10% to 80%, sometimes in combination with a floorspace limit. But using a percentage would be a blunt tool, which would favour existing large scale development. Clearly a 10% mezzanine in a large store represents a far greater floorspace than 10% of a small shop, yet there is no sound basis, in terms of the Government's town centre objectives, of differentiating between retail operations in this way.
39. About 15% of respondents (mainly local authorities) argued for a lower or zero threshold on the grounds that any mezzanine development had a potential impact on town centres. On the other hand, around 17% argued for a higher threshold. And a further 8% suggested a threshold calculated on a different basis, mainly with a view to reducing the scope of the control. There was a range of views as to what the higher threshold should be – suggestions ranged from 400 to 2,000 square metres. In many instances suggested thresholds were linked with other criteria restricting the scope of the amendment. such as only applying controls to buildings above a certain minimum floorspace threshold, or in out-of-town locations or where certain classes of goods were sold.
40. The impact of additional floorspace of a given scale, may vary significantly depending on a number of factors, including the range goods sold, the location of the proposed development, the vitality and viability of the centres within the catchment. Very few respondents provided any empirical evidence on this issue, perhaps reflecting this complexity. On the other hand, a large number of retail warehouse units comprise around 1,000 square metres of floorspace. An increase in the mezzanine threshold to, eg, 500 square metres would potentially remove a significant number of mezzanine proposals from planning control, thus weakening the effectiveness of the measure. Clearly, adopting a higher threshold, eg 1,000 square metres, would further reduce the effectiveness of the measure.
41. The draft Order in the consultation paper proposed that planning control be applied to internal floorspace increases where (Article 2A(2)(b)) "the effect of the operations will be to provide additional floor space which can be used for the retail sale of goods other than hot food." A number of respondents found this wording confusing, and several argued that the Order should exclude internal floorspace increases intended for ancillary uses, such as staff facilities or storage. Other respondents pointed out that the draft wording might allow mezzanines intended for ancillary uses, but would not prevent their

subsequent use for retail at a future date, which would not, even under the proposed legislation, require planning permission.

42. It is clearly important to address the risk of confusion and uncertainty about the scope of the legislation. This issue has been addressed in the amendment which, in effect, ensures that all increases in floorspace above 200 square metres in retail buildings will be subject to planning control. The accompanying circular makes it clear that local planning authorities need to take the proposed use of the floorspace into account. Where the proposed use is for non retail activities and it will not result in additional retail space being released elsewhere in the building, it is unlikely that there will be a conflict with town centre policy. Where appropriate, local planning authorities should consider limiting the use of mezzanines to specified ancillary uses by imposing suitable conditions on any permission and/or limiting the amount of floorspace within the building that can be used for retail trading purposes.
43. Many local government responses expressed concern that under the draft wording of the order, retailers could install a series of mezzanines just below the threshold that cumulatively breached the threshold without the need for planning permission. It was suggested that the wording of the draft Order be changed so that any internal operations that increase the floorspace more than 200 square metres above the original floorspace area would require planning permission. While it would be desirable to stop any abuse of the situation by repeated installations, the Planning and Compulsory Purchase Act powers do not permit this. In any event, it is unlikely that retailers would constantly want to close their shops to do this²¹.
44. A small number of respondents suggested the Amendment Order should be defined so as to include non retail land uses, but we are not aware of significant development pressure for mezzanine type development, or other forms of internal expansion, for other principal town centre uses, so this option has not been taken forward.

Benefits

Economic Benefits

OPTION 1

45. All retailers (subject to landlord agreement where necessary) could continue to increase internal floorspace, regardless of the location of the development, without planning control, thus making better use of existing buildings and improving the efficiency of their operations. Some respondents advised they were able to install mezzanines without paying additional rent, thus improving their profitability. It was noted that with lower costs, by increasing their efficiency, retailers may be able to offer lower prices. Many retail respondents commented on the importance of the contribution of the retail trade to the country's economy and the need not to fetter its development.
46. There would also be an administrative benefit for local planning authorities of not having to process additional planning applications.

OPTION 2

47. The introduction of a measure of planning control would be likely to result in greater promotion and enhancement of retail activity within town centres, thus contributing to their vitality and viability. Many local authority respondents agreed with this point. In addition, more development within town centres

²¹ See Estates Gazette 23 April 2005 p77

would ensure greater competition between retailers in the same market place, although some respondents disputed this.

Environmental Benefits

OPTION 1

48. Uncontrolled mezzanine development increases the prospect of making productive use of existing development while concentrating the impacts of development in existing locations.

OPTION 2

49. Additional control would improve the prospects of new floorspace being located in areas which are well served by public transport, in particular, in town centres. More town centre development would be likely to result in greater use of public transport, cycling and walking and less use of the private car. This view is supported by many local authority respondents. Local authorities will be able to apply conditions to mezzanine development which will mitigate any adverse environmental impacts.

Social Benefits

OPTION 1

50. Uncontrolled mezzanine development may improve the shopping trip of those able to visit the store, enjoying an improved shopping experience and other qualitative improvements.

OPTION 2

51. Exercise of planning control by local authorities increases the prospect that new development is more likely to take place in town centres and thus serve the needs of the whole community, particularly socially excluded groups, being in locations accessible by a range of means of transport, including public transport, walking and cycling. Local authorities will be able to apply conditions to mezzanine development to promote accessibility and mitigate any adverse impacts.

Costs

Compliance Costs

OPTION 1:

52. There are no compliance costs.

OPTIONS 2:

53. For retail businesses, needing to obtain planning permission, there would be the cost of applying for planning permission (both the fees payable to the Local Planning Authority and associated costs e.g. legal costs, fees to prepare supporting material, management time) and clearly these would vary depending on the scale of the mezzanine. There is no category covering applications for internal increases in floor space, in the scale of fees in the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989. Applying the fees for category 2 of Schedule 1 to the Regulations there would, where the gross retail floor space to be created exceeds 75 square metres, but does not exceed 3750 square metres,

£265 for each 75 square metres of that area, and, where the gross floor space to be created exceeds 3,750 square metres, £13,250, and an additional £80 for each 75 square metres in excess of 3750 square metres, subject to a maximum in total of £50,000. Few estimates of costs were provided by respondents. One respondent cited an average cost of around £1,500 per application, but did not give a breakdown as to how that was arrived at. A number of respondents did not give a figure for costs but pointed to the additional time needed to achieve planning permission. One respondent suggested this could be as much as six months. Most mezzanine applications, by virtue of their scale, should be determined within 8 weeks.

Economic Costs

OPTION 1

54. The Partial RIA suggested there were no economic costs for option 1 a view supported by a number of retail and property interests who considered there was no evidence to suggest that uncontrolled internal floorspace expansion impacted on town centres. Some retailers commented that they had expanded out-of-town sites without closing nearby town centre sites.

OPTION 2

55. Many respondents who were opposed to the introduction of planning control argued that planning permission would be refused for development proposals of this sort. Many respondents have based their assessment of costs on this assumption. However, as stated at paragraph 2.8, the intention is not to halt mezzanine development. The new control simply ensures that planning permission is applied for and each application will need to be considered on its merits.

56. Local planning authorities will receive more planning applications. Local planning authorities may also incur additional costs not offset by revenue where pre-application discussions are sought. Some respondents raised concerns about local authority resources, however the local authorities responding to the consultation were overwhelmingly in favour of the introduction of planning control. None mentioned a concern about resources. Some noted that the costs were far outweighed by the benefits of planning control.

Environmental Costs/Social Costs

OPTION 1

57. This is likely to lead to more floorspace being created in inappropriate locations, which can result in:

- a) Additional car use resulting in greater congestion and air pollution as these locations are typically poorly served by public transport, although on the basis of the evidence submitted it appears that extensions to existing stores often do not lead to a pro rata increase in car trips.
- b) A need for more parking, although again there is evidence to suggest mezzanine developments are not always accompanied by additional parking provision; and
- c) Social exclusion for those without access to a car or dependent on centres undermined by such development.

58. Therefore, there may be a differential impact on certain lower-income groups.

OPTION 2

59. No direct costs.

60. However, if an application is refused, there may be costs in that shoppers may use private cars to access other sites, resulting in congestion and pollution. There are also opportunity costs in that shoppers may be deprived of additional consumer choice. Some respondents raised concern that, if planning permission were restricted (ie refused), storage facilities may need to be located offsite, creating the need for additional buildings, and involving extra freight journeys.

Costs to business as a whole

61. There will be no direct costs for Option 1.
62. Although the consultation asked for figures of costs, most of those who responded provided commentary and anecdote rather than quantitative evidence. It has proved difficult to assess the impact this proposal may have on business as a whole. We constructed a model that takes into account the costs of making planning applications, staff time, supplementary work involved, and the cost of the delay incurred in making a planning application. We have made a number of assumptions and these are listed at Annex B.
63. Given the degree of uncertainty, we have not settled on a specific figure for costs to business. Rather we have used the model to identify an indicative range of the likely costs to business - see Annex C.
64. Taking the midrange scenario, we expect that the overall potential cost to business is likely to fall within the range £22.2m - £44.3m, to be spread over ten years. That is between £2.2m and £4.4m a year for ten years.

Administration Burden

65. Within that total cost to business, there is an element that can be classed as the administrative burden (see Annex B). Using the same model and assumptions, we estimate the range of administration costs to be within £2.2 and £4.3m, again, over ten years. That is between £217k and £433k a year for ten years.

Offsetting Simplification Measures

66. Careful consideration has been given to the scope for offsetting the potential administrative burden of this new requirement through the simplification or elimination of existing administrative burdens.
67. Two measures have been identified, which will simplify the planning system, in ways which are directly relevant to this proposal. These measures, Local Development Orders and Standard Planning Application Forms, form part of package of reforms of the planning system aimed at providing a better and speedier approach.
68. **Local Development Orders (LDO's).** New powers in the Town and Country Planning Act 1990 will provide discretionary power for local authorities to make an LDO. Planning permission would be automatically granted for types of development specified in the LDO. This new power, once introduced, offers the prospect of much quicker and cost effective delivery of those developments specified in the LDO. Local authorities may also use them to cut down on time spent considering certain types of "routine" applications that they invariably permit. This will be of benefit for a range of applicants, including potentially those proposing retail development specified in an LDO. Savings will include time savings in not having to submit a planning application and cost savings in terms of not having to pay planning application fees or prepare supplementary information to accompany the application.
69. As we make clear in the guidance note that accompanies the new provisions on mezzanines and other internal floorspace, once the power to make LDO's is available, local planning authorities may wish to make LDOs in relation to this form of development in certain locations. Applications for development within primary shopping areas are unlikely to conflict with the key objective of PPS6 to promote the vitality and viability of centres, although they may raise other issues such as access requirements and the need for additional car parking. Where a local planning authority believes that developments involving additional internal floorspace would promote the vitality and viability of its town centre, they may wish to consider making an LDO. Such orders would permit development of the type specified in the LDO and thereby remove the requirement for a planning application. Local authorities could therefore make an LDO that defines clearly the area within which development of this sort would be permitted. If they so wished, the local authority could further refine what is permitted by specifying a threshold above which planning permission would still be required. It should be noted though that LDOs can only be made to implement a policy contained in one or more development plan documents²².
70. As a discretionary power it is difficult to quantify how many local planning authorities may use this power or the extent to which it will be used. Nonetheless it offers the potential for considerable cost savings to many proposing development and may also be used directly to reduce the administrative burden of the new provision in relation to additional internal floorspace provision.

²² Section 61A(1) Town & Country Planning Act 1990

71. **Standard Planning Application Form.** Amendments to the Town and Country Planning (General Development Procedure) Order 1995 are expected to be introduced in October 2006 requiring the use of standard application forms by April 2007.
72. At present local planning authorities produce their own form. Introduction of a standard planning application form will make applying for planning consent much simpler and more consistent across local authority areas. Standard applications forms offer a number of benefits to local planning authorities who will benefit from improved quality of applications and reduced administrative burden of having to seek information later which should have been provided at the start of the process. Applicants, who submit more than one application, perhaps in different parts of the country, will also benefit from consistency in information requirements so should be able to complete them more effectively. Finally, standardisation will facilitate the electronic delivery of planning which is likely to have long term benefits for society in general in helping to streamline the whole planning process. For the reasons set out above, this measure, once implemented will offer benefits, in terms of reduced administrative costs, to both those applying for permission to construct additional internal floorspace and local planning authorities determining such applications.
73. While it is difficult to quantify the benefit of this measure at this stage, it again offers the prospect of offsetting the administrative burden of the new provision, both directly and in wider terms.

Business sectors affected

74. The business sectors affected will be retailers (other than micro, small and medium size enterprises (SMEs), investors in retail property and any mezzanine installation sector.

ISSUES OF EQUITY AND FAIRNESS

75. The choice of a threshold of 200 square metres means that most small and most medium-sized retail operations would be unaffected. The impact would mainly fall on occupiers of large, predominantly out-of-centre stores. But the Order merely introduces the requirement to obtain planning permission and it does not differentiate between different types of shopping floor space or different locations.
76. Shop units in market towns and rural service centres are typically quite small, so the Order is unlikely to apply to the majority of businesses in these areas.
77. There are no race equality, sex equality, ethnicity or other impacts.

CONSULTATION WITH SMALL BUSINESS

78. The proposal is unlikely to have any direct impact on small businesses.
79. We have consulted with the Small Business Service and they concur with our initial soundings with appropriate trade associations and business support organisations that these proposals will not have a significant impact on small businesses. Responses from small business representatives confirm this.

COMPETITION ASSESSMENT

80. The Office has followed the Office of Fair Trading's competition filter, which requires policy makers to consider the impact on relevant markets. Separate assessment was made for the food retail, the DIY retail sector, non-food retail other than DIY.
81. We do not believe the draft Order will distort or restrict competition between firms selling the same or similar products or services. The key provision of the draft Order, to require that additional floorspace above 200 square metres within a building is subject to planning control, applies in all circumstances where

this scale of floorspace is proposed and all three retail sub-sectors are represented in town centre and out of town locations.

ENFORCEMENT AND SANCTIONS

82. This provision will be enforced by local planning authorities through their enforcement powers or by requiring a retrospective planning application.

IMPLEMENTATION AND DELIVERY PLAN

83. There is no formal implementation plan. From when the Order comes into force, those proposing mezzanines and other internal floorspace expansions will be required apply for planning permission. Local planning authorities will need to have regard to the guidance set out in PPS6, as well as to the provisions of their development plan, when considering applications involving mezzanines or other internal floorspace increases.

POST IMPLEMENTATION REVIEW

84. ODPM will monitor and review the effectiveness of this legislation, in line with its approach to other policies, plans and practice. An evaluation of the effectiveness of the legislation will be undertaken within 5 years of implementation. This will help ensure that its objectives are being met. Using secondary legislation enables the power to be changed by Order, even withdrawn, if circumstances change in the future.

SUMMARY AND RECOMMENDATION

85. There has been substantial out-of-town development particularly in the 1980's and early 1990's, and it is clear that a number of planning permissions, especially those before 1996, do not have adequate conditions restricting additional floorspace. There is continued pressure for additional out-of-town retail floorspace, occupied by a widening range of retailers, a growing number of which include mezzanines as a part of their business model.
86. Extensions to premises in out of centre locations, where there is not a need for additional retail floorspace or sequentially preferable opportunities for development exist may undermine achievement of the Government's objectives for town centres in PPS6 *Planning for Town Centres*. External building extensions are already within the scope of planning control and subject to consideration having regard to the provisions of the relevant development plan and other material considerations including national policy. Option 2 would bring all internal floorspace expansions above 200 square metres under that same control.
87. We recommend Option 2, the introduction of planning control, to largely close a loophole in the current system where some expansions are 'development' and subject to the rigours of planning control and others not. This will help the delivery of PPS6 policy objectives by allowing local planning authorities to exercise control over the location of additional floorspace development. It is not intended to halt such development.
88. In addition we recommend the adoption of a threshold of 200 square metres above which planning permission is required. This threshold will mean that mezzanines and similar internal expansions in small shops and small businesses will largely be below the threshold, while the majority of such expansions in retail warehouses and larger shops will be subject to planning control.

Ministerial Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs

Signed*Kay Andrews*.....

Date.....5th April 2006.....

Baroness Andrews, Parliamentary Under Secretary of State, ODPM

SUMMARY TABLE Costs and Benefits		
Option	Benefits (Economic, Social & Environmental)	Costs (Economic, Social & Environmental)
1: No secondary legislation	Retailers could continue to increase internal floorspace without planning control, thus making better use of existing buildings and improving the efficiency of their operations. Uncontrolled mezzanine development increases the prospect of making productive use of existing development while concentrating the impacts of development in existing locations.	This is likely to lead to more floorspace being created in inappropriate locations, which can result in: <ul style="list-style-type: none"> • Less growth and development in existing centres leading to reduced prospects of promoting their vitality and viability • Some additional car use resulting in greater congestion and air pollution as these locations are typically poorly served by public transport. • Some need for more parking; and • Social exclusion for those without access to a car or dependent on centres undermined by such development.
2: a 200 square metre threshold above which planning permission would be required	Planning control would be likely to result in greater promotion and enhancement of retail activity within town centres, improving their overall vitality and viability. Exercise of planning control by local authorities increases the prospect that new development will take place in locations that are likely to be accessible to all and are likely to result in greater use of public transport, cycling and walking. Local authorities will be able to apply conditions to mezzanine development to mitigate any adverse impacts	For retail businesses, needing to obtain planning permission, there would be the cost of applying for planning permission (both the fees payable to the Local Planning Authority and associated costs e.g. legal costs, fees to prepare supporting material, management time). There would also be the cost of the additional time needed to achieve planning permission. Local planning authorities will receive more planning applications. Local planning authorities may also incur additional costs not offset by revenue where pre-application discussions are sought