

PLANNING COMMITTEE

1 JUNE 2016

PERFORMANCE REPORT: 1 JANUARY 2016 TO 31 MARCH 2016

Report from: Richard Hicks, Director
Regeneration, Culture, Environment & Transformation

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Summary

This report is presented quarterly to committee informing members on current Planning performance and the Local Plan.

1. Budget and Policy Framework

- 1.1 There are no budget and policy framework decisions arising directly from this report. This is an information item for the Planning Committee.

2. Background

- 2.1 Performance relating to the processing of planning applications is collected as National Indicator 157. The NI157 targets are:

Major developments: to determine 60% of applications within 13 weeks.

Minor Developments: to determine 65% of applications within 8 weeks.

Other Developments: to determine 80% of applications within 8 weeks.

- 2.2 Government have recently carried out a technical consultation on implementation of quite radical changes to the planning system. Medway has responded to the consultation and a copy of this response is attached (Appendix G).

Proposed changes include:

- Changes to planning application fees. Fees would be set in accordance with performance
- Enabling planning bodies to grant permission in principle
- Statutory register of brownfield land suitable for housing

- Small sites register
- Neighbourhood planning
- Local Plan
- Changes to the threshold for performance
- Introducing competition in the processing of planning applications
- Duty on LPA's to consider financial benefits as a result of proposed development
- Introduction of a dispute resolution for Section 106 agreements
- Permitted development rights for state funded schools
- Changes to statutory consultation process

3. Performance

- 3.1 See attached charts in Appendices A to G for performance concerning the processing of planning applications, benchmarking, appeals, enforcement activity, Tree Preservation applications and a breakdown of complaints received.
- 3.2 During the period 1 January 2016 to 31 March 2016 the authority received 407 planning applications; this is compared to 371 for the same period in 2015. For the year 2015/16 the authority received 1426 applications, this compares to 1399 in 2014/15.

Performance for applications is split between those subject to an extension of time and those not. An extension of time can be in the form of a Planning Performance Agreement (PPA) or a Planning Extension Agreement (PEA).

Performance for major applications **not** subject to an extension of time during the quarter is 66.67%. Applications subject to an extension of time is 100%. This is against a target of 60%.

Performance for minor applications **not** subject to an extension of time during the quarter is 80%. Applications subject to an extension of time is 79%. This is against a target of 65%.

Performance for other applications **not** subject to an extension of time during the quarter is 94%. Applications subject to an extension of time is 91%. This is against a target of 80%.

Appendix A, figure 2, 3 and 4 shows performance against target (including those not subject and those subject to an extension of time) for majors, minor and other applications for the year.

Comparing performance against the latest data available nationally (October to December 2015), Medway performed slightly below the national average for major applications but above the national average for minor and other applications (see Appendix B).

Pressure on officer resources has been carefully managed in order to meet national performance targets. This pressure continues and with

the added pressure of annual leave, maternity leave and vacancies, the workload will need to be carefully managed if performance is to continue to be maintained.

- 3.3 During the quarter 60 Planning Extension Agreements were completed this compares to 53 in the previous quarter (see Appendix C). Comparing performance against national data for the period October to December 2015, 83% of applications were determined within the agreed extended timeframe nationally compared to 97% by Medway.
- 3.4 Four Planning Performance Agreements (PPA) were entered into during the quarter. These related to:
- Land to the East of Mierscourt Road/South of Oastview, Rainham re MC/15/4539
 - Land between Roman Way and Knight Road (Temple Waterfront) re MC/16/0600
 - Former RHM Frozen Foods Ltd, 22 Centurion Close, Gillingham Business Park re MC/16/0872
 - Damhead Creek II CCGT Generating Station, Rochester MC/16/10104
- 3.5 The percentage of appeals allowed during the quarter is 16%, this compares to 18% of appeals upheld during the same period in 2014 and 29% for the last quarter. Appeals decided comprise 8 delegated decisions and 4 committee decisions. 1 Committee overturn to refusal was allowed at appeal. 2 Committee overturns to refusal were dismissed at appeal and 1 Committee overturn was withdrawn. There were no applications for costs (See Appendix D).
- 3.6 The administration of tree preservation applications is undertaken by the Administration Hub. The post of Senior Tree Officer remains within Planning. The number of TPO applications received and performance against target time is reported in Appendix E.
- 3.7 Medway has not had to return any fees and all applications are and will be carefully monitored to ensure this does not occur.
- 3.8 An independent review of the local plan programme and timetable was carried out through the Planning Advisory Service (PAS) in March.

DCLG acknowledged this independent review of the local plan programme as important in demonstrating that there would be limited value achieved through intervention in the plan making process, and that the council had been pro-active in considering options to shorten the plan making timetable.

- 3.9 The Planning Service successfully gained re-certification of its ISO accreditation in December. The next external assessment is scheduled for June 2016.

4. Advice and analysis

- 4.1 This report is submitted for information and enables members to monitor performance.

5. Consultation

- 5.1 Medway Council's Planning Service is a member of the Planning Quality Framework (PQF), organised by the Planning Advisory Service, to improve the way Council Planning departments work.

- 5.2 Changes to planning legislation are constantly being introduced. These changes and their implications are discussed with major developers, agents and staff via forums and team meetings. Planning will provide training on legislation to the residual service and members of the Customer Contact and Administration hubs. Attendance of representatives from the hubs at service meetings will be crucial in keeping staff up to date with changes to legislation.

- 5.3 Liaison with major house builders within Medway and the Planning Service continues to assist them to meet commitments. This has resulted in the negotiation of payment plans to assist developers to meet their S106 developer contributions. During the quarter £60,810 has been received via S106 contributions. As encouraged by CLG Medway Council continues to meet with developers to work with them to ensure developments with planning permission start on site and developments continue. This includes considering appropriate amendments to developments and viability assessments. .

- 5.4 The annual meeting with Major Developers has been organised to take place during May 2016. This meeting provides developers with an opportunity to meet with Members of the Planning Committee and Senior Officers within the Planning Service.

6. Risk Management

- 6.1 The risk register for the service rates the risk against service vulnerability, triggers, consequence of risk and mitigation.

- 6.2 Performance is regularly monitored to ensure that the Council's Development Management function meets its monthly, quarterly and annual targets. In addition comparisons are undertaken with all other authorities to assess performance against the national average.

- 6.3 Monitoring of all appeal decisions is undertaken to ensure that the Council's decisions are being defended thoroughly and that appropriate and defensible decisions are being made by Committee and under delegated powers. The lack of any monitoring could lead to more decisions going contrary to the Council decisions resulting in poorer quality development and also costs being awarded against the Council.

- 6.4 Within the Enforcement team measures and procedures are in place to ensure that appropriate enforcement action will be taken where necessary and that decisions taken are defensible to challenge.
- 6.5 The section continues to retain ISO accreditation for its processes, which ensures a quality and consistency of decision making that enables the majority of challenges/complaints against decisions not to be upheld. Where complaints are justified then the reasons for that are reviewed and appropriate action/changes are made.
- 6.6 In negotiating Planning Performance agreements, the Head of Planning and Planning Managers will try to negotiate backfilling payments with developers, which enable the developer to get an enhanced service and also enable Medway Council to use the payments to bring in additional staff to deal with the greater workload demands.
- 6.7 An Internal Audit of the Planning Service was carried out during the last quarter and the final report issued in March concluded the overall opinion on the planning process is Strong. The audit found the quality management framework works well and provides value for money.

7. Financial and legal implications

- 7.1 Development Management procedures are constantly being reviewed to reflect new ways of working.
- 7.2 Planning income during the quarter is £307,437 compared to £153,369 in the previous quarter. Total income for the year 2014/15 is £845,256. Total income for the year 2014/15 was £1,224,303. See Appendix A, Figure 5.
- 7.3 If the Local Planning Authority is designated as non-performing then applicants would have the choice of submitting applications to the Planning Inspectorate, which would include the fee. This would not only take control away from the LPA but would reduce income.
- 7.4 There are no legal implications arising directly from this report.

8. Recommendations

- 8.1 This report is submitted for information to assist the committee in monitoring Development Management activity and therefore there are no recommendations for the committee to consider.

Appendices

- A) Applications
- B) Benchmarking
- C) Appeals
- D) Enforcement
- E) Tree Preservation Order Applications
- F) Complaints

G) Technical consultation response

Lead officer contact

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Background papers

General Development Control Return PS1
General Development Control Return PS2

Appendix A : Applications

Figure 1 *Number of applications received and determined 2013/14 to March 2016*

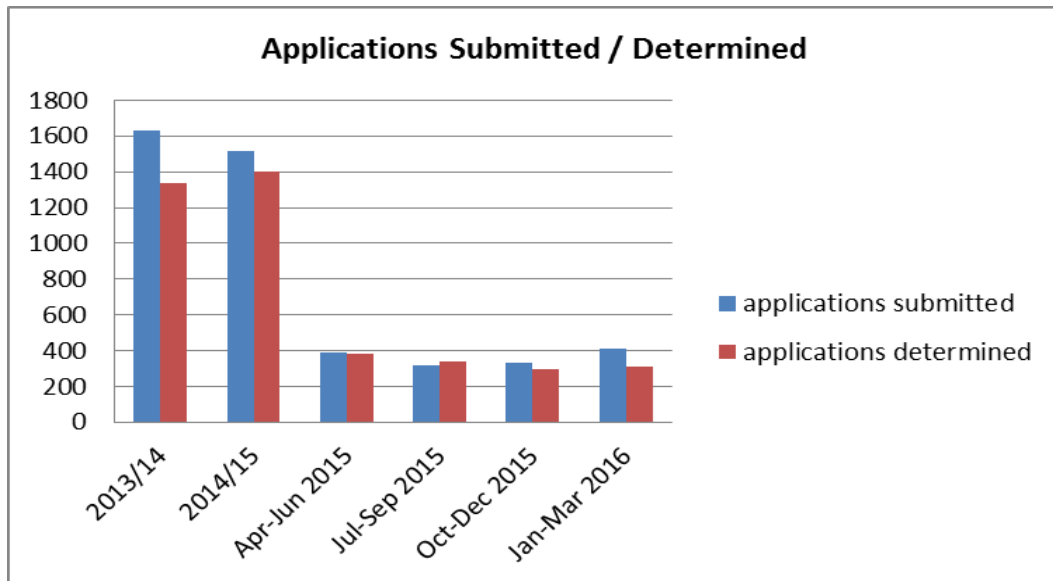


Figure 2 *Percentage of “Major” applications determined against performance target January 2015 to March 2016*

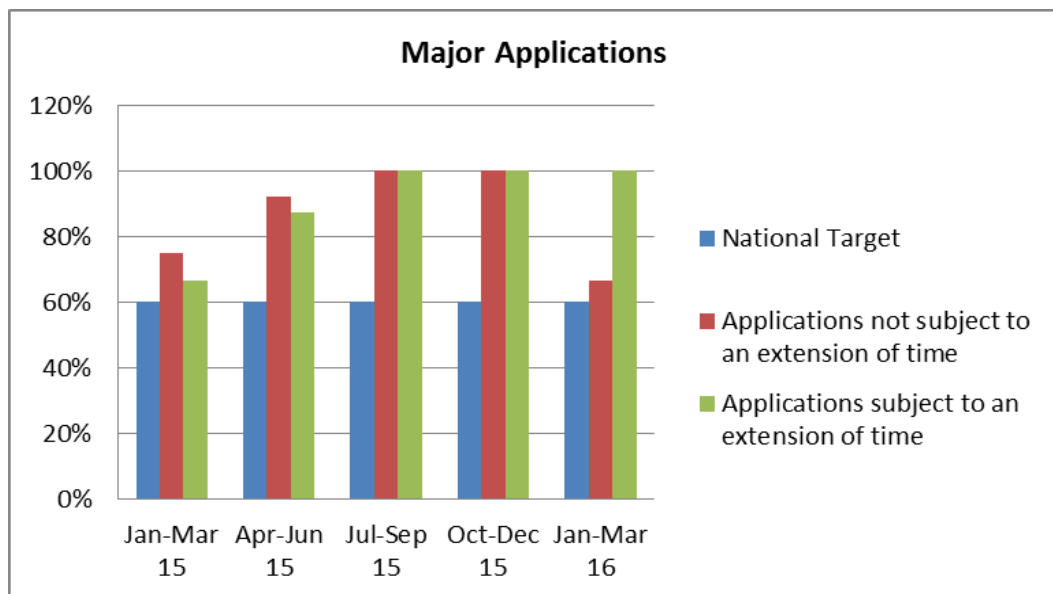


Figure 3 Percentage of “Minor” applications determined against performance target January 2016 to March 2016

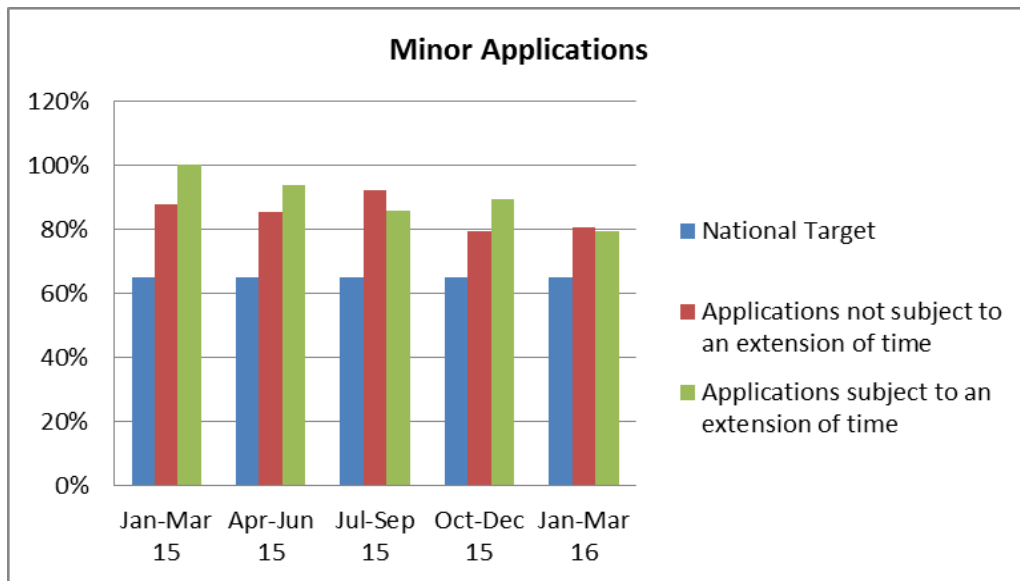


Figure 4 Percentage of “Other” applications determined against performance target January 2016 to March 2016

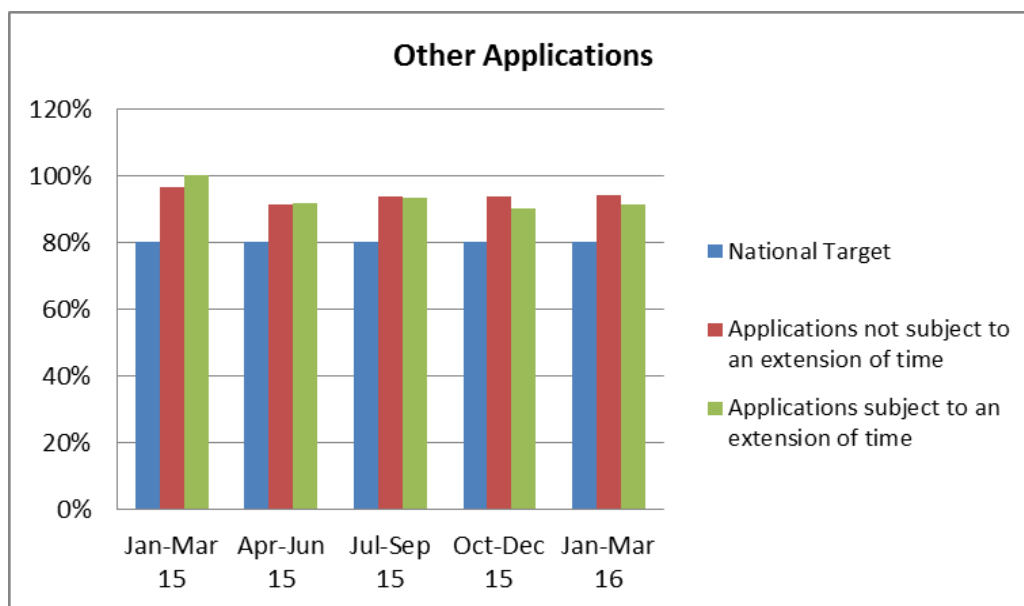


Figure 5 Planning application fees received showing 2013/14, 2014/15 and April to March 2016

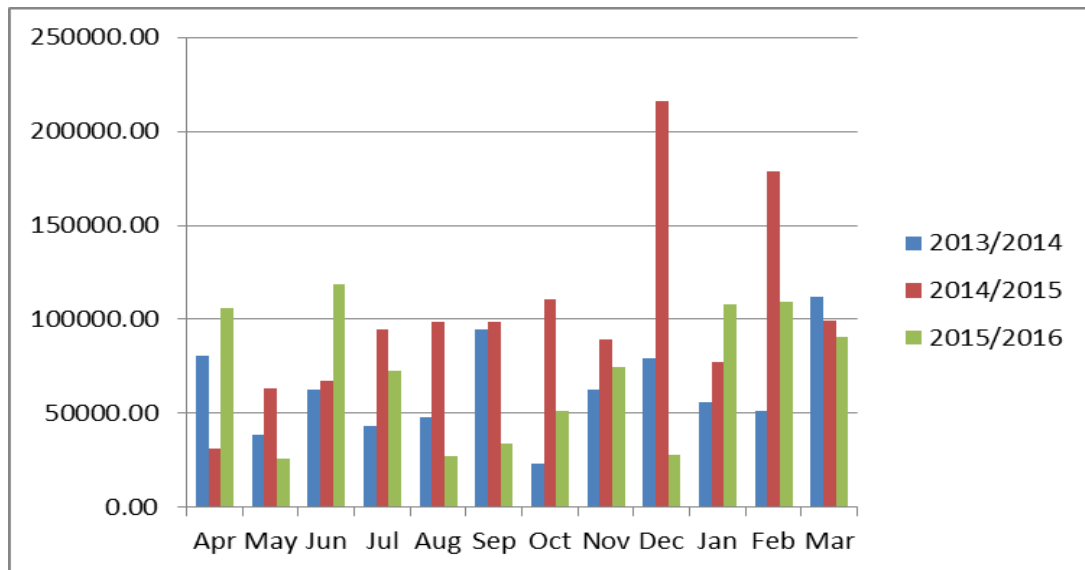
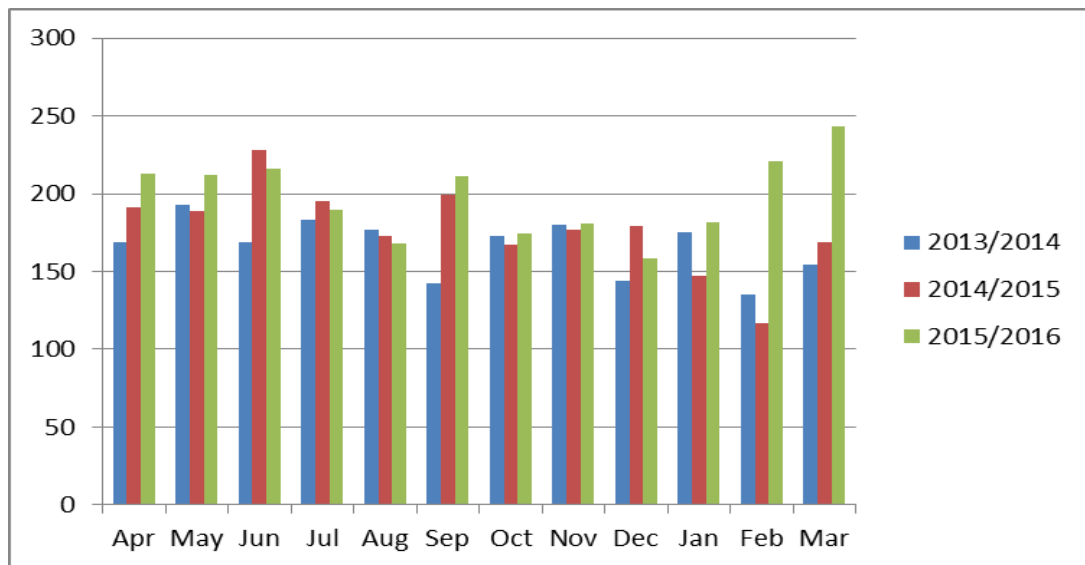


Figure 6 Planning Applications received showing 2013/14, 2014/15 and April to March 2016



Appendix B : Benchmarking

Figure 1 – Planning applications determined within the statutory timeframe

Government produced statistics and league tables compares performance to the national average. The chart below compares the performance with other unitary planning authorities for the quarter October to December 2015.

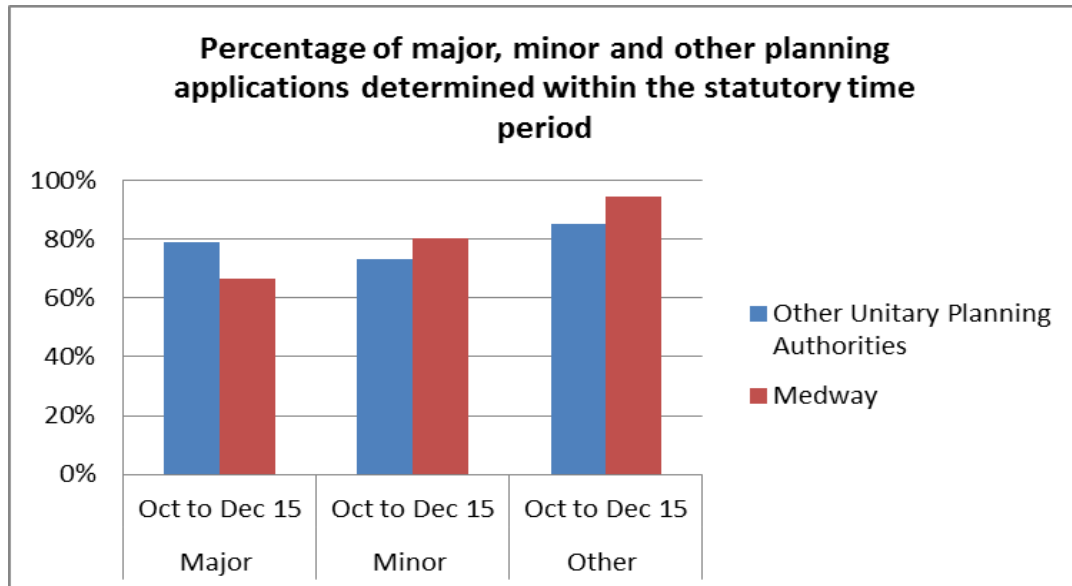
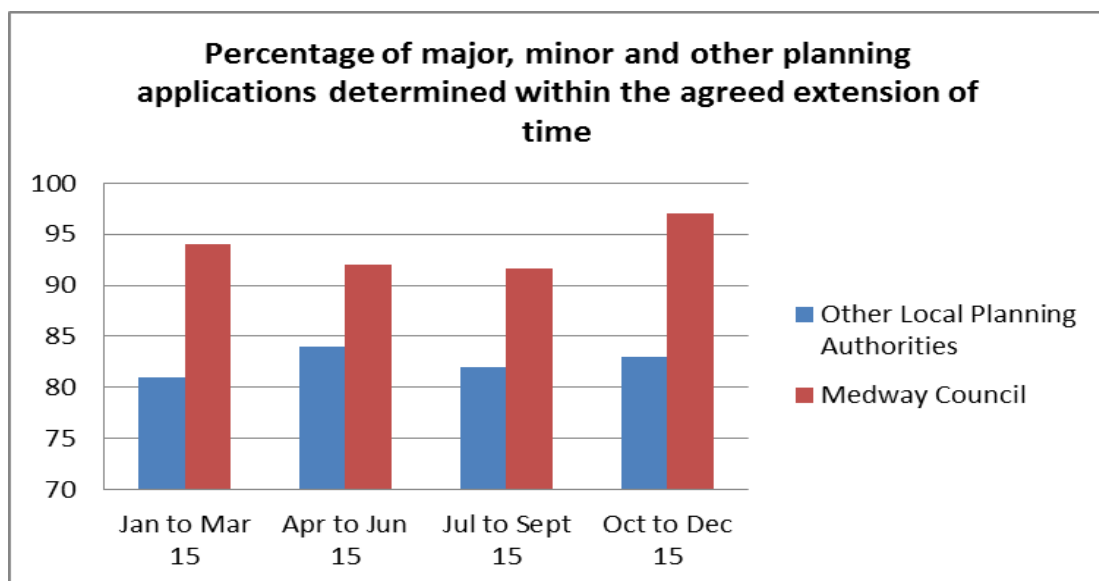


Figure 2 - Applications with a Planning Extension Agreement

Government produced statistics and league tables compares performance to the national average. The chart below compares the performance with other local planning authorities for applications with a Planning Extension Agreement.



Appendix C : Appeals

Figure 1 *Number of appeals received from January 2015 to March 2016*

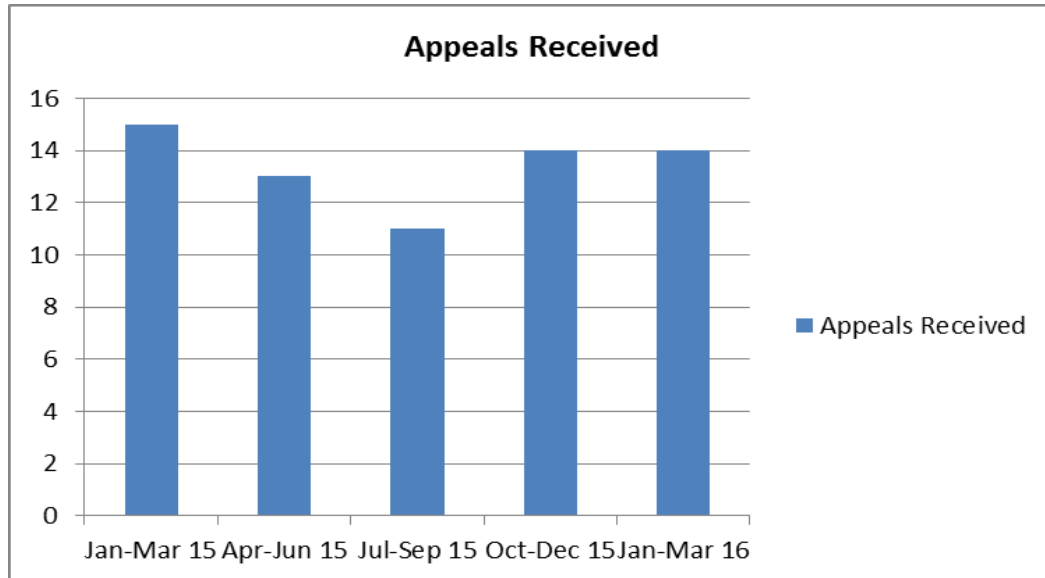
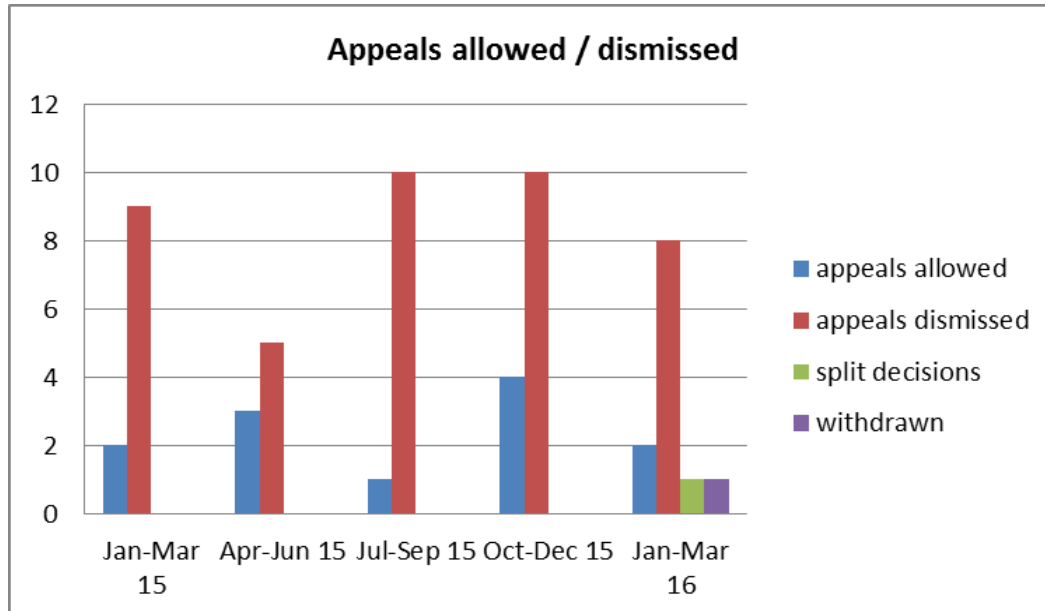
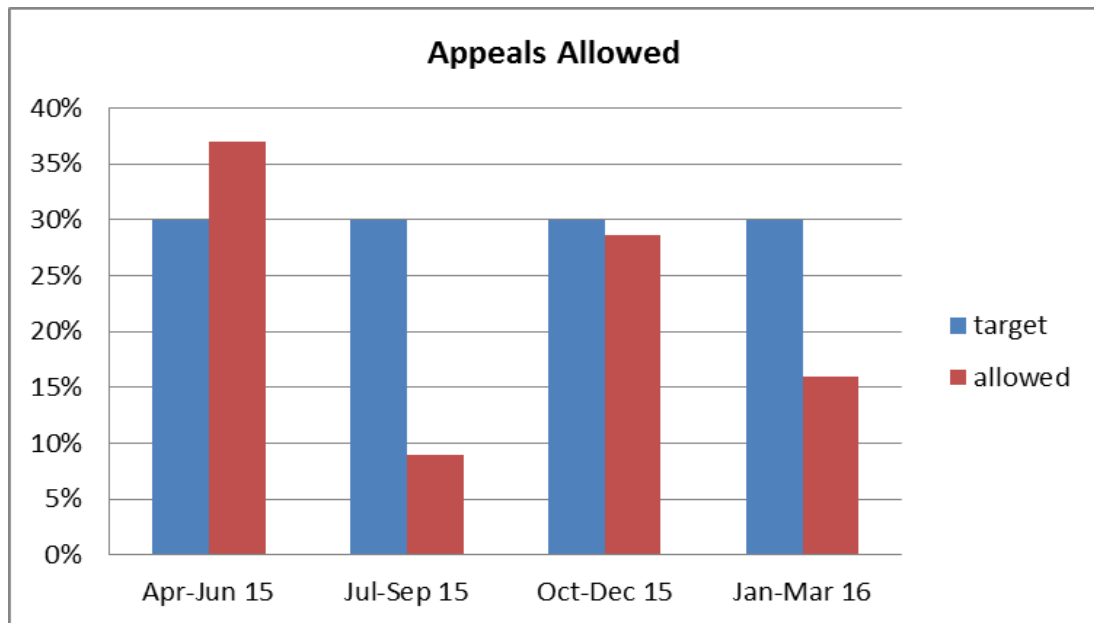


Figure 2 *Number of Appeals allowed / dismissed January 2015 to March 2016*



**Figure 3 : Percentage of appeals allowed against target of 30%
April 2015 to March 2016**



Appendix D : Enforcement

Figure 1 *Number of enforcement notices served and prosecutions January 2015 to March 2016*

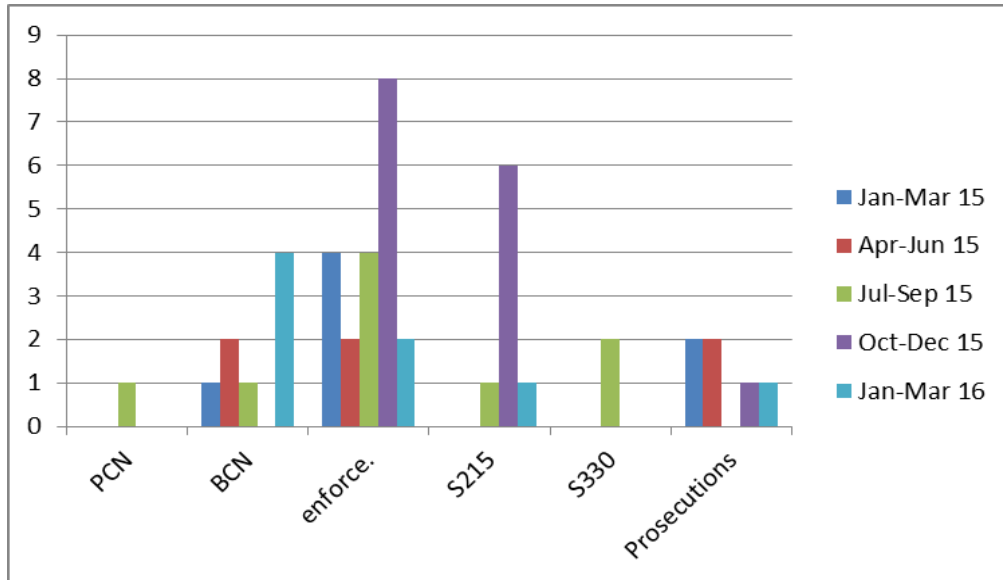
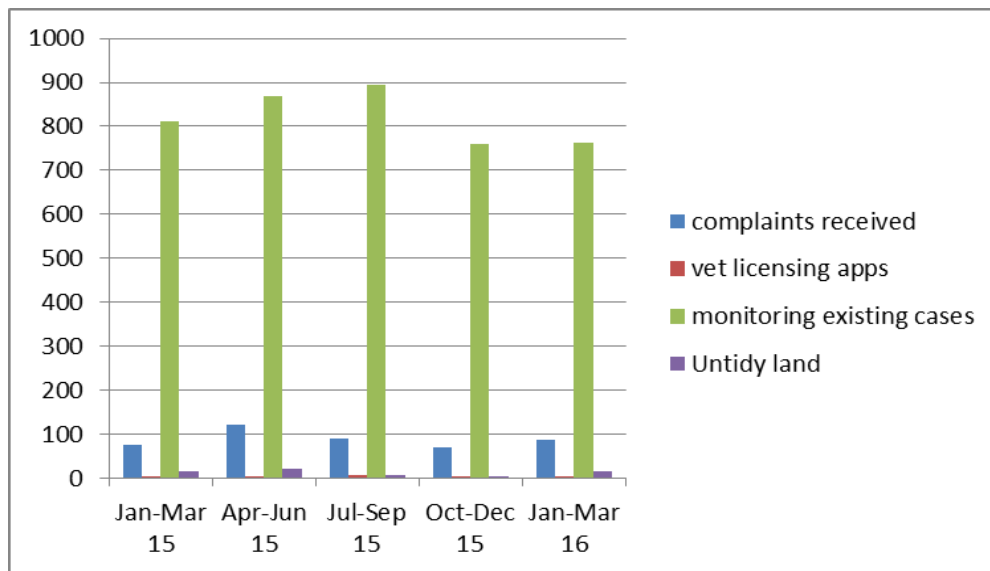


Figure 2 *Number of enforcement related complaints and activities January 2015 to March 2016*



Appendix E : Tree Preservation Order Applications

Figure 1 : TPO applications received from April 2015 to March 2016

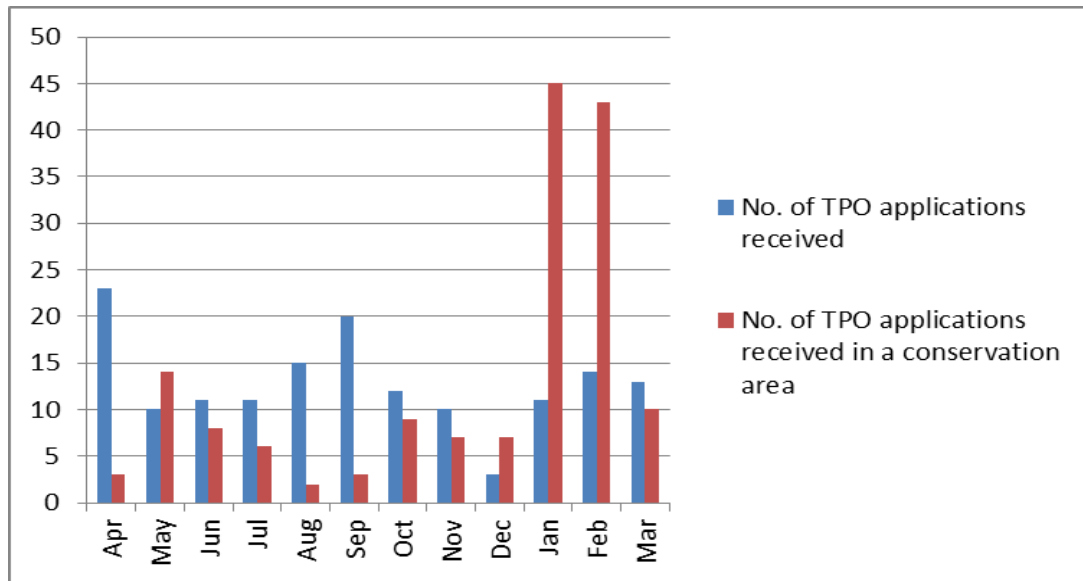
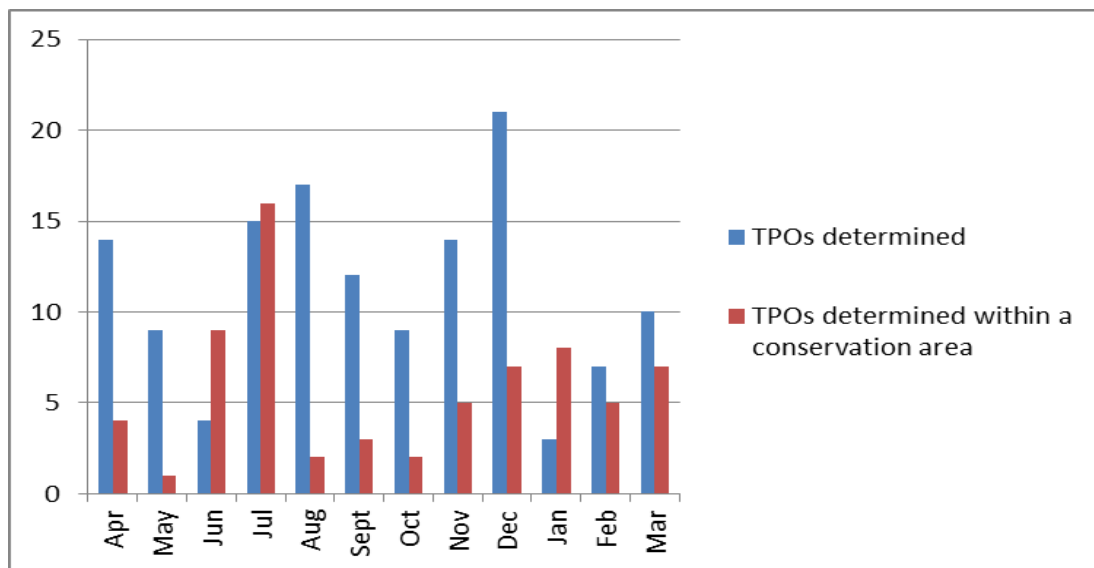


Figure 2 : TPO applications determined from April 2015 to March 2016



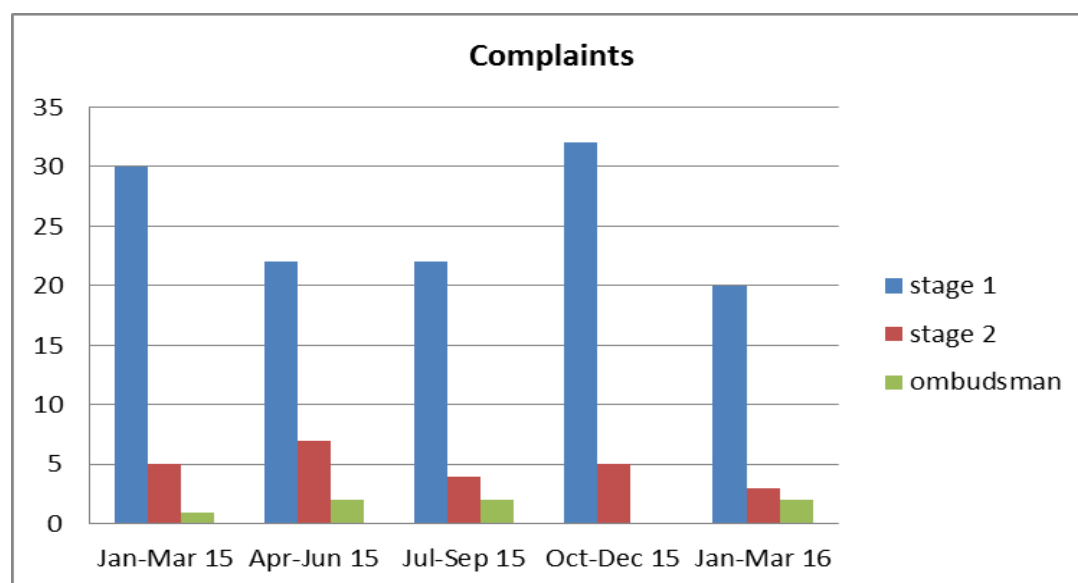
Appendix F : Complaints

Complaints are received by phone, email, e-form, letter, fax or face-to-face at reception. All complaints are logged with a target deadline date of 10 working days. The chart below shows number of complaints responded to.

The corporate complaints procedure involves 2 stages :

Stage 1 : the complainant receives a response from the service manager. The response letter also includes a final paragraph giving ways to contact the Chief Executive's office if the complainant wants to take the matter further.

Stage 2 : the complainant receives a response from the Chief Executive giving details on how to contact the Ombudsman should the complainant remain dissatisfied.



During the quarter 20 complaints were answered, with 95% being answered within the target time of 10 working days, 3 of which had been escalated to Stage 2. 15 complaints were dismissed where no fault was found. 2 were partially upheld due to a delay in officers responding. 3 were upheld, two due to the misuse of the proactive informative as the applicant was not informed in advance that the application was likely to be refused and one due to an error in the case officer report. In all cases the outcome of the application was not affected.

The Ombudsman completed two investigations during the quarter and found no fault in the way the Council made its decision.

Appendix G : DCLG Technical Consultation on Implementation of Planning Changes

Response from Medway Council

Introduction

Medway Council fully understands, appreciates and indeed agrees with the main aims of the proposed changes which are as follows:

- To improve the performance of planning authorities in terms of speed and quality of decision.
- To deliver more certainty into the planning process
- To make the planning process simpler
- To help deliver growth
- To ensure that the planning system supports the delivery of sustainable development and quality new homes and the infrastructure required

Medway considers itself to be a regeneration authority that promotes growth and is at the forefront (in Kent and the south east terms) of delivering a planning service that is effective and efficient. In this respect I would provide the following as evidence, which includes measures that could be rolled out to other Authorities:

- The Council has a strong regeneration agenda, leading with promotion of its own brownfield sites at Rochester Riverside, Chatham Waterfront, Strood Riverside, and Strood Waterfront. As well as facilitating and encouraging regeneration on similar private sites at Gillingham Riverside (Victory Pier being developed by Berkeley Homes), Chatham Docks (Peel Holdings), former college site (Countryside), a former quarry site in Strood, Temple Marsh (Redrow), a redundant private sports complex site (Bellway), a former cement works (Redrow) as well as working with the HCA on bringing forward the remaining developable land at Chatham Maritime. All of these sites will deliver 1000's of new homes
- The Council is supporting the DIO in the promotion of Lodge Hill through the call in procedure. This will deliver 5000 new homes as well as associated infrastructure including new roads, schools, playing fields, health centre, business park, community facilities and retail.
- Medway Council is a signatory, and has been involved in the formulation, of "A planning protocol for delivering sustainable growth in Kent and Medway". This protocol is a partnership protocol between the Kent Developers Group, Kent Housing Group and Kent Planning Officers Group (representing all LPA's in Kent and Medway). I can provide a copy of this document if it would be helpful.
- Medway utilise properly and appropriately Planning Performance and Planning Extension Agreements and we have great feedback from the

Development Industry on the way that these are used. PPA's are, in simple terms, used to set service standards for all parties involved in processing the applications and set a programme leading to determination. This brings certainty over timescales and allows all parties to plan for resources. In addition the Development Industry has used these agreements to make additional resource payments to allow for their applications to receive priority (backfilling for workload). While in other circumstances PPA's and payments have been used to shorten timescales for more minor employment development where there was exceptional pressure from the applicants to meet deadlines (outside of planning) and the PPA's have enabled those deadlines to be met and the employment schemes to be delivered. I can provide examples of both types of PPA's as well as contacts within the development industry (such as Berkeley, Bellway, Countryside etc) who have worked with us in partnership and can confirm that the PPA's work from their perspective.

- Medway has ISO procedures covering all parts of our planning process which ensures consistency and certainty.
- Medway has annual meetings with Major Developers and with regular agents where we provide updates on Planning issues, which can include Development Plan matters, changes to planning legislation and our interpretation, presentations from bodies such as Natural England regarding habitat regs etc. We engage formally and informally with developers at these meeting to get feedback on the planning service we offer to enable us to continually look at ways we can improve.
- The Head of Planning and Chairman of the Planning Committee meet with Developers interested in Medway every year to get their feedback on the service they have had or want and consider any suggestions for improvements.
- Developers are encouraged to do presentations to members at pre application stage of large or controversial schemes. This accords with the NPPF. Developers are very supportive of this. It enables them to respond to comments and questions from members early in the planning process and provides a great degree of certainty. In addition members are then fully informed of development proposals when they later come before Planning Committee for determination.
- Medway is preparing its first LDO

Chapter 1: Changes to planning application fees

National fees

Question 1.1: Do you agree with our proposal to adjust planning fees in line with inflation, but only in areas where the local planning authority is performing well? If not what alternative would you suggest?

Medway Council agrees with the need to adjust fees in line with inflation but would urge Government to set fees at a level to cover actual costs. Medway Council has been one of the LPA's working with the Planning Advisory Service to set up systems where this would be possible.

If LPA's are to properly assist Council's to meet the growth needs of their area and to work in partnership with the Development Industry to achieve this, it is important that Planning Services are properly resourced.

Question 1.2: Do you agree that national fee changes should not apply where a local planning authority is designated as under-performing, or would you propose an alternative means of linking fees to performance? And should there be a delay before any change of this type is applied?

Medway express some caution here. While there is an appreciation that withholding the fee may be a way of persuading a Council to work to move out of designated status, this should not result in a poorer service to the customer just to achieve speedier decisions, nor should it result in a LPA being unable to properly resource its service to improve its performance and enable it to move out of designated status.

Medway agree that there should be a delay to enable LPA's to prepare and respond appropriately.

Local flexibility and performance

Question 1.3: Do you agree that additional flexibility over planning application fees should be allowed through deals, in return for higher standards of service or radical proposals for reform?

Medway Council has effectively used Planning Performance Agreements for many years and this would not require further legislation. Medway could provide both examples of PPA's and also comments from the Development Industry expressing how effective and beneficial they are.

In addition to using PPA's for large scale major applications enabling service standards to be agreed and a delivery programme to be set, Medway has used PPA's for smaller schemes to enable those schemes to be fast tracked, which has resulted in employment development being delivered within a very tight timeframe. Again examples of such PPA's and customer feedback can be provided.

Medway remains very skeptical about proposals to trial competition in the planning process. Medway has set ISO procedures for all parts of the

planning process and also adopted consultation practices, set following consultation with users of our service. Competition would not have to adhere to the same procedures and practices, which would result in a more challengeable service and complaints that the LPA would then have to spend public money responding to.

In addition Medway would share the comments of the Planning Officers society as follows:

“The trial for competition in application processing is worrying and is a step towards privatising the planning department. Allowing providers to set their own fees and service standards would not be fair in the market as many private businesses may offer an assessment service as a lost leader to encourage rapport and trust with customers who then use them as agents to submit applications. Where as Councils cannot use such a business model. In addition approved providers would have separate budgets for marketing to detract work where as councils would not have a budget to compete with this.

There are many questions as to how the assessment by a approved provider and final decision be local planning authority would work, how the fee would be split when the LPA is required to do a lot of the gathering data/property history work, would an approved provider be able to carry out legally robust consultation? What happens when LPA officers or councillors take a different view on an application etc. These will be discussed in more detail below in response to chapter eight of the consultation. “

The concern will be from the public, that because planning is not a black and white decision making process (unlike building regs) that competition operated by a non elected company would be open to allegations of unfair practice, even if the final decision still rests with the LPA.

The DCLG should not lose sight of the fact that DM sections do not just process planning applications but are also responsible for Conservation and Enforcement etc and such parts of the service are vital but would be unfairly harmed if the fee paying part of the service is removed from the LPA.

Question 1.4: Do you have a view on how any fast-track services could best operate, or on other options for radical service improvement?

Please see above. Medway supports the idea of a fast track service and there are existing ways of achieving this as demonstrated by Medway, which would not necessitate further legislation.

Question 1.5: Do you have any other comments on these proposals, including the impact on business and other users of the system?

Medway supports the increase in fees to at least meet inflation and for there to be an automatic annual increase in line with inflation.

There are some great practices and service being offered by some LPA's that others could really benefit from adopting. Some of these are currently being operated by Medway Council. A suggestion would be that DCLG seek further information on these good practices and then in looking at LPA's that

have been designated, seek to require them to take on board those practices with a view to dramatically improving service.

While speed of decision is important, as DCLG knows that is not the only factor in a good service and it is important to get the comments from Developers on good Authorities and the practices adopted by those Authorities. It is important that changes are not made or legislation brought in that would impact on those LPA's and the practices they have, that would result in a poorer service.

Medway agrees that fee increase is helpful to address the resource issue, which customers acknowledge is a major issue in the delivery of good service pre, during and post application.

It is suggested that DCLG encourages the great practices undertaken by some authorities, particularly regarding the use of PPA's and that no further legislation is needed at this time, but like all good services, there is a continual review to consider the need for further change.

Chapter 2: Permission in principle

General comments

Currently the planning application process is based around 3 main types of planning application:

1. Outline
2. Reserved matters and
3. Full applications

In recent years there has been a huge increase in prior approval applications with changes in the General Permitted Development Order. This in itself has resulted in the claim that planning is becoming increasingly complicated and confusing, with more inconsistencies around the Country with the way LPA's operate the prior approval process. The concern expressed by customers including developers is that there is no consistency and the planning process is far too complex.

Two of the objectives of the Government and DCLG in looking at planning changes are, rightly, to make the process simpler and to get more consistency.

The proposal to introduce 2 further types of application in the form of permission in principle and technical details consent will only result in further complicating the planning process and also inconsistency in the way it is operated around the Country.

Medway believes that the current system allows for the achievement of the objectives but with further guidance and clarification rather than changes.

An outline application was originally to ascertain the acceptability of the principle of a development and it is only in recent years that this has become

more onerous. Medway would encourage DCLG to think about bringing outline applications back to how they were originally intended and this would effectively be Planning in principle. The reserved matters is then effectively the technical consent. A reserved matters application should not re-consider the principle as that is already set by the outline. There is therefore no need for technical details consent.

A proper and well operated pre application practice – as in all good LPA's - would give clear pre application advice on matters of principle as well. In all good Authorities this is a paid for service, which has service standards attached to it relating to response times.

Medway believe that sites allocated for development in a Local Plan or Neighbourhood Plan are effectively granting permission in principle, unless there are other material planning considerations that justify otherwise – as enshrined in current legislation. If the Local Plan is up to date, there should be no other material planning considerations that would outweigh the allocations, while for older plans, the pre application process should draw out matters that would conflict with the in principle allocation.

Medway are though happy that sites put on the brownfield register, which have come through the right process and assessment, should be considered as acceptable in principle.

The answers on the following questions are therefore qualified by the comments expressed above.

Question 2.1: Do you agree that the following should be qualifying documents capable of granting permission in principle?

- a) future local plans;
- b) future neighbourhood plans;
- c) brownfield registers.

Yes but please note the comments above.

Question 2.2: Do you agree that permission in principle on application should be available to minor development?

Yes but on the basis that it relates to an outline application which was originally intended to consider the principle of development – see comments above. There is no need for a further type of application which will only increase complexity and cause confusion, particularly with the public.

Question 2.3: Do you agree that location, uses and amount of residential development should constitute 'in principle matters' that must be included in a permission in principle? Do you think any other matter should be included?

These are all matters that could be considered in an outline application. Location and uses most certainly should be included. Amount of residential development has implications that the public would wish to see and consider and so would require some form of information to demonstrate that amount of residential development could or may be satisfactorily secured on site.

With outline applications, it is possible for an applicant to ask for further matters to be considered and submit information to cover that.

Question 2.4: Do you have views on how best to ensure that the parameters of the technical details that need to be agreed are described at the permission in principle stage?

Medway do not see the need for technical details consent as essentially a reserved matters application already provides for that process

Excellent planning authorities, who operate a good pre application process leading through to the application process itself will ensure that conditions imposed on outline applications have been agreed with the applicants and are necessary without being unreasonable or onerous and allow the consultees including the public to be clear as to what is being proposed and what will come forward within any subsequent reserved matters approval.

Question 2.5: Do you have views on our suggested approach to a) Environmental Impact Assessment, b) Habitats Directive or c) other sensitive sites?

Medway strongly feels that the proposals set out are unnecessarily complex and confusing while it seems to also put forward that in certain cases a LPA would have to undertake an EIA themselves which cannot be right and would be very costly to the public purse.

Question 2.6: Do you agree with our proposals for community and other involvement?

It is agreed that for Local and Neighbourhood Plans and allocations contained within them, that the existing consultation arrangements are appropriate.

In terms of PiP's and Technical Details Consents, Medway is strongly of the view that the customer and in particular the public will find the these additional types of applications very confusing and will not comprehend how to engage properly in the process. The existing system of outline, reserved matters and full applications is clearly understandable and explainable to those members of the public who are consulted or wish to engage. It must be remembered that the majority of the public rarely get involved in planning matters and so when they do, it should be easy to understand both what is being proposed and how they can get involved. This is certainly not clear in the proposals.

Question 2.7: Do you agree with our proposals for information requirements?

Medway consider that if outline applications were stripped back to their original intention, which was to establish the principle of development, then application form, red line site plan and fee could be all that is necessary to support many applications. There are some applications that would require more information before the principle can be established, such as out of town retailing and impact on existing centres, flood risk in appropriate locations etc. However, a good pre application process should identify all that information

that is required to assess the principle and for consultees, including the public, to consider in commenting on matters of principle. Clearly if an applicant were to want more than the principle established then further information maybe required.

With larger scale proposals particularly those that are of a scale to require an EIA far more information is necessary.

On the basis that outline applications represent in principle applications and reserved matters represent technical details consent, then the conditions imposed on the outline will be clear to all as to what is required to be submitted with the reserved matters.

Adding in principle and technical details applications to the existing process and then trying to stipulate what is required for each and differentiating that from outlines, reserved matters et al, really makes the whole planning process far more complex and confusing that it needs to be. It will be confusing to those involved regularly in the planning process and will be bewildering to those members of the public who only engage on a few occasions. There will also be inconsistency between LPA's and that is not the aspiration of the Government or DCLG nor what users of the system like Developers need or want.

In terms of Local and Neighbourhood Plan allocations and sites on brownfield registers, where it is accepted that they represent permissions in principle, then applications that flow from them could be full applications but accepting that applicants do not need to demonstrate acceptability in principle nor that consideration of the principle should form part of the assessment by the LPA.

Question 2.8: Do you have any views about the fee that should be set for a) a permission in principle application and b) a technical details consent application?

For all the reasons set out above the fees should be those that are charged for outline and reserved matters applications.

Question 2.9: Do you agree with our proposals for the expiry of on permission in principle on allocation and application? Do you have any views about whether we should allow for local variation to the duration of permission in principle?

For all the reasons set out above the expiry period should be as that for outline or reserved matters applications, or in the case of an application submitted pursuant to an allocation in the Development Plan or brownfield register the expiry period should be the same as a full application.

Question 2.10: Do you agree with our proposals for the maximum determination periods for a) permission in principle minor applications, and b) technical details consent for minor and major sites?

Medway strongly objects to the suggested timescales which would not allow proper consultation and consideration of the proposals. The current 8, 13 and 16 week timescales should remain with the appropriate use of PPA's and

PEA's to agree different timescales (shorter or longer) between the applicants and LPA.

Chapter 3: Brownfield register

Question 3.1: Do you agree with our proposals for identifying potential sites? Are there other sources of information that we should highlight?

Medway Council is one of the Pilot Authorities involved in the Brownfield Register and very much welcomes this.

Yes Medway does agree with the proposals for identifying sites based around the call for sites process and including sites with extant planning permission and consideration of other sites not previously considered such as public sector land.

Question 3.2: Do you agree with our proposed criteria for assessing suitable sites? Are there other factors which you think should be considered?

Medway welcomes the use of existing criteria in the NPPF.

There is some concern about the proposal to include sites smaller than 0.25 Ha or under 5 units as these probably should go to the small sites register instead.

In addition, Medway is concerned that the register focusses solely on housing as there are some brownfield sites that are not suitable for housing but need to be brought forward for other development such as employment. Therefore Medway recommends that the register should be more than housing and have sections for alternative uses including mixed uses.

Question 3.3: Do you have any views on our suggested approach for addressing the requirements of Environmental Impact Assessment and Habitats Directives?

Medway agrees to a point. Sites should only be placed on the register if they are acceptable in principle for housing. Therefore if it is a schedule 2 development, The LPA should screen the site proposal and if it determines that an EIA is not required then include it. Sites which require an EIA should not be included and LPA's do not have the financial resources to undertake an EIA themselves. It is agreed that a site should not be placed on the register if its development would be prohibited by the Habitats Directive.

Question 3.4: Do you agree with our views on the application of the Strategic Environment Assessment Directive? Could the Department provide assistance in order to make any applicable requirements easier to meet?

Medway agrees with the suggested approach and acknowledge the using of the environmental assessment undertaken during the preparation of the local plan to assess the effects of the brownfield register.

Question 3.5: Do you agree with our proposals on publicity and consultation requirements?

Yes

Question 3.6: Do you agree with the specific information we are proposing to require for each site?

Yes

Question 3.7: Do you have any suggestions about how the data could be standardised and published in a transparent manner?

The collection and publishing of the information should not be a burden upon LPAs, it should be easily obtainable and ideally be able to be updated automatically. The requirement for information should not be unrealistic as many local authorities will not have resources to obtain the exact ownership of a site nor should it be up to the local authority to provide up-to-date contact details of the owners.

The items laid out in paragraph 3.28 (with the addition of the date permission granted/date of expiry) should be formulated into a useable format and on an accessible piece of software so that all LPAs can edit and manipulate data easily. It is essential that LPAs can edit details on a site easily, as they may update information as it becomes available, rather than waiting for an annual review.

Question 3.8: Do you agree with our proposed approach for keeping data up-to- date?

Once a list of brownfield sites has been published, it is unlikely that many new sites would be added, it is more likely that amendments would be made, for example that a LDO or planning permission has been taken forward on the site or a change in ownership from public to private sector.

Medway agrees that it is important that a brownfield register is kept up-to-date, but would argue that an annual review should not be set out in legislation. A LPA could choose a rolling approach throughout the year so it is a constantly live document. Twelve months in the life of a development site could mean the register is quite out of date.

Question 3.9: Do our proposals to drive progress provide a strong enough incentive to ensure the most effective use of local brownfield registers and permission in principle?

While recognising the importance of Brownfield registers and supportive of bringing forward brownfield sites for development, as shown in our regeneration agenda and commitment, Medway is not clear on what is being proposed within this section. If placing a site on the brown field register is effectively granting planning permission in principle then the target of having 90% of sites on a register getting planning permission (which includes planning permission in principle) does not make sense.

If, however, it does not include planning permission in principle, then Medway would be concerned. We are a regeneration authority and we promote development of appropriate brownfield sites for housing, and this will include the register. However, if the LPA is not the land owner then the submission of a planning application is not in their control. Similarly, applications for inappropriate development which would lead to poor quality housing should not be supported and the pressure that just because it does not achieve the 90% target means that it does not have a 5 year housing land supply is completely inappropriate.

This section needs further thought and consideration.

Question 3.10: Are there further specific measures we should consider where local authorities fail to make sufficient progress, both in advance of 2020 and thereafter?

While Medway is very supportive of development on brownfield sites and the production of a register, the comments to the previous question make it difficult to answer this question. Medway would be happy to provide further comments on incentives when this is clarified.

Chapter 4: Small sites register

Question 4.1: Do you agree that for the small sites register, small sites should be between one and four plots in size?

Yes.

Question 4.2: Do you agree that sites should just be entered on the small sites register when a local authority is aware of them without any need for a suitability assessment?

Medway is concerned at paragraph 4.4 which effectively is saying that sites put forward for inclusion will not be assessed for their suitability and will just be put on the register. This has the potential to generate complaints, if someone were to purchase a site on the Council's small sites register, then apply for planning permission only to be refused on the basis that the site was inappropriate.

Medway would recommend that sites put forward should have some form of assessment, so that those looking at the register can have some assurance that the sites included are acceptable in principle. They could then make a full application based on the correct assumption that principle is accepted and need not be considered in the application.

The alternative is for the Government to create a portal where individuals can place sites and where those interested in self build sites can look but it is clear that there is no tacit in principle approval from the LPA.

Question 4.3: Are there any categories of land which we should automatically exclude from the register? If so what are they?

See above comments.

Question 4.4: Do you agree that location, size and contact details will be sufficient to make the small sites register useful? If not what additional information should be required?

The register should include a red line plan defining the site as well as the above information.

Chapter 5: Neighbourhood planning

Question 5.1: Do you support our proposals for the circumstances in which a local planning authority must designate all of the neighbourhood area applied for?

Yes

Question 5.2: Do you agree with the proposed time periods for a local planning authority to designate a neighbourhood forum?

No , with the requirement to publicise and get authority from Cabinet, a 13 week period may not be achievable. In addition for non parished areas where there is not a constituted body to lead the plan there may be conflict on who is best to lead and this will need resolution.

Question 5.3: Do you agree with the proposed time period for the local planning authority to decide whether to send a plan or Order to referendum?

In general Medway supports the approach of securing a time period. However five weeks is not achievable with the need to secure cabinet approval. Medway would suggest the time limit should be increased to eight weeks

Question 5.4: Do you agree with the suggested persons to be notified and invited to make representations when a local planning authority's proposed decision differs from the recommendation of the examiner?

Yes

Question 5.5: Do you agree with the proposed time periods where a local planning authority seeks further representations and makes a final decision?

Yes

Question 5.6: Do you agree with the proposed time period within which a referendum must be held?

Yes

Question 5.7: Do you agree with the time period by which a neighbourhood plan or Order should be made following a successful referendum?

Yes

Question 5.8: What other measures could speed up or simplify the neighbourhood planning process?

An examination test of soundness against the local plan and then a binding report would help the quality of a neighbourhood plan.

Question 5.9: Do you agree with the proposed procedure to be followed where the Secretary of State may intervene to decide whether a neighbourhood plan or Order should be put to a referendum?

Medway would suggest that the examination process should be reviewed to establish if any changes should be made rather than using a SoS call in as a fall back position. If the SoS finds themselves in a position where they need to call in to decide whether a neighbourhood plan or Order should be put to referendum then something has gone wrong in the process. Therefore Medway would suggest that the process be reviewed.

Question 5.10: Do you agree that local planning authorities must notify and invite representations from designated neighbourhood forums where they consider they may have an interest in the preparation of a local plan?

Yes

Chapter 6: Local plans

Question 6.1: Do you agree with our proposed criteria for prioritising intervention in local plans?

Medway understands the Governments desire to have up to date Local Plans in place. Indeed the development industry wants certainty and this is best secured through an up to date Local Plan. Similarly Medway agrees that the right way to properly plan is through the Local Plan process which involves proper consultation and consideration of options, rather than planning by application and appeal – a position that many authorities find themselves in now, which cannot be right.

In this respect, Medway again understand the Governments need to put pressure on Council's to produce Local Plans and keep them up dated.

Medway sadly, due to Lodge Hill, had to withdraw its core strategy after the Inquiry process and has had to start work again on a Local Plan. This is unfortunate. However, Medway is working hard to deliver the Local Plan as fast as possible following all proper procedures. We are in constant communication with the DCLG and have had our LDS assessed independently by PAS who have confirmed that it could not be done any

better or quicker. In addition we will be arranging meetings with PINS, in association with DCLG, to try to facilitate a smooth passage through the process.

Recognising all of the above, Medway do understand that the Government need to consider intervention and the 4 criteria are similarly understandable. Medway is particularly pleased to see the last criteria that "intervention will have the greatest impact in accelerating local plan production" as that is so important for those Council's, like Medway, who are progressing with all professionalism and haste and working collaboratively with DCLG and PINS.

Question 6.2: Do you agree that decisions on prioritising intervention to arrange for a local plan to be written should take into consideration a) collaborative and strategic plan-making and b) neighbourhood planning?

Medway recognise the importance of the duty to co-operative and are working positively with all our neighbouring authorities. In terms of Neighbourhood planning, Medway are keen to ensure that they are not held back but that they are produced alongside the Local Plan. To this extent, we have agreed the plan area for the one parish that is progressing a neighbourhood plan and regularly meet with them.

Notwithstanding that, Medway recognises that there are limited resources available for intervention and agree that intervention should be focussed on those cases where such action would have greatest impact

Question 6.3: Are there any other factors that you think the Government should take into consideration?

No

Question 6.4: Do you agree that the Secretary of State should take exceptional circumstances submitted by local planning authorities into account when considering intervention?

Most definitely for the above reasons

Question 6.5: Is there any other information you think we should publish alongside what is stated above?

No

Question 6.6: Do you agree that the proposed information should be published on a six monthly basis?

Medway would suggest that in plan-making annual updates would be more meaningful as six monthly is unlikely to show any real progress.

Chapter 7: Expanding the approach to planning performance

Question 7.1: Do you agree that the threshold for designations involving applications for non-major development should be set initially at between 60-70% of decisions made on time, and between 10-20% of decisions overturned at appeal? If so what specific thresholds would you suggest?

Medway welcomes the approach of targets covering the range of planning decision work carried out by an LPA, rather than just majors and this fits in line with Government recognition that minor cases help to deliver housing targets

Medway agrees with the threshold for designations for non major development to be set initially at 60-70% of applications considered in time (statutory or agreed with applicant)

Medway also recognises that speed of decision is only one consideration and that it is important to consider quality of decision. However, while a 20% (of applications received) figure of decisions overturned at appeal is a probably appropriate, reducing that to 10% could have the opposite effect in terms of the quality of decisions, by making some LPA's timid and therefore result in poor schemes being approved.

In addition, LPA's cannot make split decisions while the inspectorate can. This means that an Inspector may allow part of an application and dismiss part. This decision is likely to reflect the LPA's view but it can only refuse the whole scheme, and yet the split decision counts against the Authority. This needs to be reviewed, possibly by allowing LPA's to make split decisions.

Question 7.2: Do you agree that the threshold for designations based on the quality of decisions on applications for major development should be reduced to 10% of decisions overturned at appeal?

Medway considers that the threshold should be left as it is. For some LPA's there are a limited number of major applications and reducing the threshold could result in many being more likely to be designated which in turn results in a fear to make the right decision and some poor schemes could find themselves approved as a result. It should be recognized that planning is often a balancing act and some decisions are finely balanced. This may mean that an Inspector allows an appeal but can totally understand why it has been refused by the LPA.

Question 7.3: Do you agree with our proposed approach to designation and de- designation, and in particular

(a) that the general approach should be the same for applications involving major and non-major development?

(b) performance in handling applications for major and non-major development should be assessed separately?

(c) in considering exceptional circumstances, we should take into account the extent to which any appeals involve decisions which

authorities considered to be in line with an up-to-date plan, prior to confirming any designations based on the quality of decisions?

- a) Yes,
- b) Yes,
- c) Yes.

Question 7.4: Do you agree that the option to apply directly to the Secretary of State should not apply to applications for householder developments?

Yes, however we would note generally that it has been demonstrated that developers are not attracted to making applications direct to PINS. This is where encouraging authorities to adopt best practice in terms of partnership working etc is appropriate

Chapter 8: Testing competition in the processing of planning applications

Question 8.1: Who should be able to compete for the processing of planning applications and which applications could they compete for?

Medway are very concerned about this proposal and in the introduction section to this response and in fee section have set out some of the areas of concern. Medway understands the Governments desire for improvements in planning service and performance and has set out ways already that this can be best achieved. Basically there are lots of examples of well run performing authorities who are accountable for their decisions. Those poor performing Authorities should be encouraged and required to adopt best practice and to raise their performance. The proposal will penalise all Council's potentially including those that are exceptional

Medway is very concerned about this proposal which would essentially start to privatise the planning system. The examples provided to justify this measure are procured partnership arrangements which are very different to planning consultants or providers who are in direct competition with the LPAs. Medway cannot see any benefits to this approach and sees it as an attack on planning.

We are troubled about the comparisons between building control and planing, the two are very different. The building control process has a clear customer (the developer or home owner etc) where as planning serves the whole community and brings in many external aspects from stakeholders outside the LPA area. Building control is very much about structure and is black and white while Planning is not while having a great impact on the whole community.

Many of the approved inspectors for building control often leave local authorities with the non fee earning statutory duties, a similar scenario could be seen for planning. This could have a real impact on LPA resources as many departments may loose income and therefore loose good planning staff. This could impact on Planning Enforcement, which is a vital part of the planning system as recognized in the NPPF. In addition it could impact on

conservation and may result in irreparable damage to important listed buildings and conservation areas.

The details of how this could work are very challenging. Many approved planning providers may have a conflict of interest being used as a planning consultant acting on behalf of a developer. Local authorities and qualified providers of planning processing activity should not be able to apply for planning permission to the same LPA (i.e. an approved provider should not be a service user).

The community and external stakeholders are likely to find the process challenging by having so many different relationships and not being able to build a relationship over time as the approved provider may change frequently and work in different ways.

If an application has been recommended for approval by an approved provider and conditions are attached, is the applicant required to continue to use the approved provider or could they then choose to use the LPA? If the applicant goes to the LPA then they would not have the benefit of being involved in the assessment and consultation/negotiation period of the scheme. This would lead to double handling of a scheme and be hard for an LPA to pick up the scheme quickly. This may lead to frustration for the applicant who would not have the benefit of consistency on a site. Would approved providers be forced to take on any work requested by applicants or would they be able to pick and choose?

Who will keep the fee and how would an approved provider be able to carry out consultation as set out in the authorities Statement of Community Involvement, would they have access to an up-to-date register of addresses. Would Town and Parish Councils need to submit their responses to all different approved providers? If a resident wishes to object to a planning application would they know who to? and who would they address their objections to?

As previously pointed out Medway has adopted ISO procedures for all parts of its planning service as well as adopted consultation practices. Would approved planners have to follow approved Council procedures? Planning by its very nature generates complaints – either by the applicant if refused or objector if approved – who would then deal with these complaints and if an approved planning consultancy has not followed a Council's adopted practices there will be a greater chance of a successful challenge through the complaints process to the ombudsman and then who will be responsible?

All Council's have their own planning systems and are varied from LPA to LPA. Recognising the need to keep the public register and keep on line all information relevant to the application, how could a provider do this? Complete access to the system could not be allowed as there are matters relating to other applications that are sensitive or confidential – such as legal advice – and total access to the system could not be allowed for one application and not another. There would therefore be conflicts of interest as well as breaches of confidentiality and possibly data protection breaches.

Medway are concerned that the suggested deadlines once a provider submits their report would not be achievable particularly where it would require Planning Committee determination. In addition, should those checking the report, including the Committee, not be satisfied with the report and feel it is incomplete, how could that provider be required to do further work and what would happen if the applicant then appealed against non determination as a result. There are huge workload and resource implications attached to addressing this element of concern.

Question 8.2: How should fee setting in competition test areas operate?

The LPA should certainly be able to recover its costs (which it does not do now). An approved provider should be required to recover costs and not undercut the LPAs fees. It would need to be very clear that a proportion of an approved providers fee is received by the LPA.

Medway are concerned that approved providers would cost an application based on a basic service. This would discourage negotiation to get better schemes and good liaison with stakeholders including the wider community. This may result in either poorer quality schemes being recommended for approval or more refusals and appeals being lodged, without it being clear as to who would be responsible for dealing with the appeals, while the outcome could count against the LPA in terms of the possibility of becoming a designated authority.

Question 8.3: What should applicants, approved providers and local planning authorities in test areas be able to do?

In reality it is likely that the LPA would still be required to validate the application, provide reference number and make available on website. It may even be that notification letters are sent out by the LPA. Approved providers would struggle to keep up to date with addresses and make various applications available across a variety of councils on their own website. The consultation also rightly identifies that the LPA would need to review the recommendation and in some circumstances take this through a local democratic process such as committee.

There is also the point about the public register, scanning the application, the receipt of amended plans and the process for dealing with them, including scanning and re-consultation.

As stated above, providing only a week or two from receiving a report to issuing a decision is unreasonable particularly where there is a need for referral to Committee.

Question 8.4: Do you have a view on how we could maintain appropriate high standards and performance during the testing of competition?

The choice of approved provider should not rest with the applicant in the view of Medway Council. Current arrangements do allow a LPA to outsource part of its planning process but then to retain control over quality of performance and process through service level agreements or contracts. This would enable them to dispense with the service of a provider who is not meeting the

required standards of any aspect of the process. This could include working with another LPA.

Question 8.5: What information would need to be shared between approved providers and local planning authorities, and what safeguards are needed to protect information?

This is where the process of an approved provider validating, sending out notification letters, looking at property history, legal agreements etc becomes incredibly challenging. Really most of this information is on the statutory planning register, therefore an approved provider could search for it themselves. However, in order to do the job properly and look at previous case notes/consultee responses etc an approved provider would need access to the back office planning software (acolaid/uniform etc). Much of this data is confidential and may include commercially sensitive data. Again highlighting the point that service users should not be approved providers. It would be very challenging to control how information is used after the test, electronic copies of documents cannot be controlled.

It is also often useful to understand the planning history of the neighbouring sites or a wider area if the site has been subdivided etc. If the LPA are required to provide all of this they would have already gained an understanding of the proposal and the site and may as well assess the scheme. This process will result in duplication and waste of resources. Inevitably planning fees will need to rise, in order to share an amount between two parties and LPAs would need to work very differently in order to provide this information in a timely manner to approved providers.

The majority of planning applications come through the Planning Portal and this data goes straight into LPAs back office systems with no double handling. If the approved providers are not required to have similar technology the planning system would be taking a huge step backwards and introducing massive inefficiencies, increased costs and delays into the process.

Question 8.6: Do you have any other comments on these proposals, including the impact on business and other users of the system?

Medway Council does not see any benefits to this approach. There are many authorities who operate great practices which should be shared with the poor performing authorities. Increasing fees is vital to ensure that planning services are properly resourced and ideally without burden on Council Tax income to a Council.

There is no need for wholesale change to the planning system and working with current types of application, (outline etc), encouraging the appropriate use of PPA's and PEA's and bringing forward Local Plans as quickly as proper process allows, will provide for a planning system that is simple, easy to understand, consistent, provides certainty and facilitates the appropriate development and growth that is required.

The constant changes that have been proposed and are being proposed , including PiP's, PD changes, Starter Homes, competition etc, is and will make the whole planning system far more complex, breed inconsistency between

LPA's, does not create any more certainty and will not necessarily deliver the development and growth required.

In particular members of the public and other stakeholders who have more limited contact with the planning service will find it confusing, certainly not transparent and it will lead to an even greater number of complaints.

The Development Industry, if it is to respond to the Governments desire for increased housing development in particular, wants and needs consistency and certainty and part of this is having a planning system that is simple and easily understood and properly resourced.

Essentially the proposal is suggesting having the work and the income go elsewhere and all of the hassle still with the LPA. This would not be a workable solution. If a local authority planner had a valid application, decent fee and all property history provided without them doing anything they would be able to provide a much better service also.

There will be a tendency for approved providers to sing to their client's tune and always write up schemes for approval. Planning consultants do this already when they promote a scheme that they admit privately to be no hopers. There needs to be disincentives to create conditions where this will be avoided. We would suggest that where an approved provider recommends approval and the LPA refuses, the approved provider is liable for the LPA's full appeal costs if the appeal is dismissed.

There should be a requirement for an approved provider to be required to defend (at their own cost) their advice if it is the substance of a judicial review.

Chapter 9: Information about financial benefits;

Question 9.1: Do you agree with these proposals for the range of benefits to be listed in planning reports?

No. They are not material planning considerations and rather than assisting the wider community to understand the benefits to the community, it will only fuel a belief that such "non planning material financial benefits" have formed the main reason and basis of any approval – i.e that the applicants have bought their permission!

If the services that are required to be provided for council tax and business rate revenue are analysed there is no surplus. There is no profit or additional money for communities to use or for local authorities to use on infrastructure in a community. Council tax from new properties will go towards the additional bin collections, public spaces maintenance, community facilities etc. This is the same situation with business rates, it is likely that local authorities will be required to provide additional services and will need to use the business rates money to do this. It is not right to consider this as an income stream that neighbours of a development site may be able to spend on infrastructure in a local area. A communities expectations should be managed not heightened.

Another reason to manage expectations, is that CIL income goes nowhere near funding the infrastructure an area requires. If, like Medway, an authority does not have a CIL schedule or if affordable housing is required, many applications are presented as being unviable to provide the required infrastructure of affordable housing. Therefore developments are often not covering their infrastructure costs.

Question 9.2: Do you agree with these proposals for the information to be recorded, and are there any other matters that we should consider when preparing regulations to implement this measure?

Medway is surprised and concerned that the Government is suggesting additional burdens on LPAs to add into their reports. The suggested lists includes anticipating council tax amounts, business rates and Government grant. This will all take additional work and research to really know what grant funding may be available etc. It is yet another complexity added to the planning process and another item to add to a report. This is increasing workload for already overburdened planning sections and really we should be working towards making planning simpler and reports shorter.

Chapter 10: Section 106 dispute resolution

Question 10.1: Do you agree that the dispute resolution procedure should be able to apply to any planning application?

Yes

Question 10.2: Do you agree with the proposals about when a request for dispute resolution can be made?

Medway is concerned that the consultation only refers to the 8/13/16 week periods, it has not referenced whether a s106 negotiation process has even started. On the wording in the consultation, a developer on week 7 could submit a drafted s106 for the first time requiring the LPA to sign it by the end of the week or they will be able to go down a dispute resolution route.

Many cases with a S106 are subject to a committee process. Considering a four weekly committee cycle it is likely that many cases are approaching their 8 week date by the time they have completed consultation and been written up for committee.. It is likely that many committee cases will be over the 8/13/16 week dates and have an extension in time to cover this (which will have been agreed with the applicant). The dispute resolution process should take account of extensions in time and if a S106 was only meaningful engaged in once a recommendation of approval had been agreed at committee. Many Planning Performance Agreements build in time for negotiation and production of S106's and this is agreed between the applicant and the LPA.

Any dispute resolution should reflect the above and that meaningful negotiation should be allowed within any proposed timescale.

Question 10.3: Do you agree with the proposals about what should be contained in a request?

Both main parties should be able to provide a statement, otherwise the Secretary of State is only getting one side of the story.

Question 10.4: Do you consider that another party to the section 106 agreement should be able to refer the matter for dispute resolution? If yes, should this be with the agreement of both the main parties?

No, only the two main parties should be able to trigger dispute resolution.

Question 10.5: Do you agree that two weeks would be sufficient for the cooling off period?

Medway would suggest three weeks. Inevitably senior members of staff and legal advisors need to meet to try to resolve issues and ten working days may not be long enough considering how many decision makers may need to be involved.

Question 10.6: What qualifications and experience do you consider the appointed person should have to enable them to be credible?

A qualified person needs to fully understand the planning process. This is not a contractual dispute, but an intrinsic part of the planning decision making process. It is suggested that the appointed person should have a minimum of 10 years experience working in the planning field including experience of assessing S106 or similar agreements. If the Government intend that the dispute resolution should look at how much should be included in S106's rather than just how agreed heads should be delivered, then the appointed person should be someone with the relevant experience of considering viability issues

Question 10.7: Do you agree with the proposals for sharing fees? If not, what alternative arrangement would you support?

The LPA does not have funding for this process. It is usual that an applicant/developer would in submitting a viability assessment would also pay for such an assessment to be independently assessed by a recognized body appointed by the LPA. Similarly, as it is the applicant/developer who is promoting a development then they should meet the full costs of the appointed person.

Question 10.8: Do you have any comments on how long the appointed person should have to produce their report?

While four weeks sounds practicable some of these disputes may be complex and a tightly prescribed period may be in nobody's interest and so the appointed person should be able to formally confirm the timeframe for comment if it is likely to exceed 4 weeks.

Question 10.9: What matters do you think should and should not be taken into account by the appointed person?

It is assumed that the basis for the dispute resolution process relates to where heads of terms have been agreed between the parties and it is a matter of finalizing the wording including matters such as timing etc.

This is on the basis that any disagreement on whether certain heads should be included can be resolved through an appeal against non determination

If it is intended that it should be the latter, then there should be two viability assessments produced, one by the applicants in support of their assertions and the other by an independent assessor acting on behalf of the LPA.

Question 10.10: Do you agree that the appointed person's report should be published on the local authority's website? Do you agree that there should be a mechanism for errors in the appointed person's report to be corrected by request?

Yes we agree that the report should be on the website.

We are a little concerned about the reference to errors and maybe that means that a draft report should be published first but without a decision, because it any errors are fundamental that may change the conclusions.

Question 10.11: Do you have any comments about how long there should be following the dispute resolution process for a) completing any section 106 obligations and b) determining the planning application?

The time period should allow for communication with the Planning Committee if necessary and the LPA time to review the decision. The time period will vary depending on the complexity of the issues. Medway at present remains unconvinced that 2-4 weeks is sufficient.

Question 10.12: Are there any cases or circumstances where the consequences of the report, as set out in the Bill, should not apply?

Medway would suggest that the Government need to be clear on what the options for an LPA are;

- If they accept the findings, to enter into such an agreement and issue the PP
- If they accept the findings, but the developer refuses to enter into such an agreement, to refuse the PP
- If they do not accept the findings, to refuse the PP

We accept that the dispute resolution report will be a material consideration, on its merits, in any subsequent appeal.

Question 10.13: What limitations do you consider appropriate, following the publication of the appointed person's report, to restrict the use of other obligations?

Medway would consider matters that were not raised by the dispute resolution process that emerge and are material cannot be restricted.

Question 10.14: Are there any other steps that you consider that parties should be required to take in connection with the appointed person's report and are there any other matters that we should consider when preparing regulations to implement the dispute resolution process?

No

Chapter 11: Permitted development rights for state-funded schools

Question 11.1: Do you have any views on our proposals to extend permitted development rights for state-funded schools, or whether other changes should be made? For example, should changes be made to the thresholds within which school buildings can be extended?

Medway understand the rationale behind this proposal. We agree with the extension from 1-2 years the existing temporary right and with the proposal to allow temp buildings for 5 years on cleared sites based on the criteria set out in the report.

We are a little nervous about increasing threshold of extensions from 100sm to 250sm based on the need to make sure such extensions do not impact unacceptably on the amenities of neighbouring occupiers.

Question 11.2: Do you consider that the existing prior approval provisions are adequate? Do you consider that other local impacts arise which should be considered in designing the right?

The existing prior approval provisions are adequate.

Chapter 12: Changes to statutory consultation on planning applications

Question 12.1: What are the benefits and/or risks of setting a maximum period that a statutory consultee can request when seeking an extension of time to respond with comments to a planning application?

Medway is sympathetic to the background to this concern but are a little worried that setting a maximum period would imply the proposal is acceptable if no comments are received. The LPA do not have the technical expertise to make that decision and would question whether in doing so would leave any decision challengeable.

Question 12.2: Where an extension of time to respond is requested by a statutory consultee, what do you consider should be the maximum additional time allowed? Please provide details.

This may vary from case to case depending on the complexity of the issue and the reasons behind the request for an extension – there may be a temporary but significant staffing issue that is delaying matters for instance.

Chapter 13: Public sector equality duty

Question 13.1: Do you have any views about the implications of our proposed changes on people with protected characteristics as defined in the Equalities Act 2010? What evidence do you have on this matter? Is there anything that could be done to mitigate any impact identified?

No

Question 13.2 Do you have any other suggestions or comments on the proposals set out in this consultation document?

Medway would again stress that changes should be about making the planning process simpler, consistent and providing greater certainty as well as aiding delivery of growth. For the reasons given, some of the proposed changes are considered unnecessary and would in fact fundamentally not achieve the objectives. There is a lot of good practice being operated by excellent performing authorities and those good practices need to be rolled out to the poor performing authorities, before the Government considers introducing aspects such as PiP's, technical details consents and competition in the planning process.