



Department  
for Business  
Innovation & Skills

**IMPLEMENTATION OF THE  
PENFOLD REVIEW OF NON-  
PLANNING CONSENTS**

Progress update

MARCH 2013

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# Introduction

In November 2011 the Government set out a [programme of action to implement the Penfold Review of non-planning consents](#)<sup>1</sup>. The programme seeks to minimise the burden of complying with non-planning consents through:

- scrapping unnecessary non-planning consents and simplify others
- reforming the remits and working practices of the public bodies granting or advising on non-planning consents
- setting a clear timescale for deciding non-planning consent applications
- making it easier to apply for non-planning consents

Just over a year on and good progress has been made to ensure the non-planning consent regime operates in the most flexible and simplified way possible, whilst delivering the benefits it was established to achieve.

English Heritage, the Environment Agency, the Health and Safety Executive, the Highways Agency and Natural England have published improvement plans setting out their remit for sustainable development and positive steps to improve the working practices in response to statutory consultations.

Legislation is progressing through Parliament to simplify heritage protection; improve the operation of rights of way consents and stopping up orders within the planning system; remove two redundant energy consents and prevent the town and village green registration system stopping or delaying planned development.

Draft legislation has been published to simplify the environmental development consent regime. An ongoing programme to expand class licensing has begun - 900 customers have already been moved from individual licences onto a registration system and organisational licensing is being piloted with the Environment Agency.

Taken together, the measures implemented from the Review will reduce the costs and bureaucracy associated with the non-planning consents regime, speed-up the process and increase certainty; while ensuring the regulatory benefits delivered by non-planning consents are achieved with minimum burden.

This work supports the wider Government agenda to achieve strong and sustainable growth that is more evenly balanced across the country and between industries. Implementation of the Review supports the Government's second Growth Ambition:

1. to create the most competitive tax system in the G20
- 2. to make the UK the best place in Europe to start, finance and grow a business**
3. to encourage investment and exports as a route to a more balanced economy
4. to create a more educated workforce that is the most flexible in Europe

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<sup>1</sup> [www.bis.gov.uk/assets/biscore/better-regulation/docs/i/11-1413-implementation-of-penfold-review.pdf](http://www.bis.gov.uk/assets/biscore/better-regulation/docs/i/11-1413-implementation-of-penfold-review.pdf)

# Scrapping unnecessary non-planning consents and simplifying others

The Government identified measures that would exempt more developments from needing non-planning consents, reduce the information applicants are required to submit and reduce complexity when development consents are applied for at the same time as planning permission. These measures will also allow the public agencies which administer non-planning consents to focus upon the highest risk areas and deliver a more efficient service.

## The heritage protection system

**A1. Enabling the extent of a listed building's special interest to be legally defined in its list entry**

**A2. Enabling developers to seek a Certificate of Immunity (COI) at any time from listing or scheduling, which will be valid for five years**

**A3. Allowing owners of listed buildings and local authorities to enter into Statutory Management Agreements and undertake works included in the agreements without separate applications**

**A4. Removing the requirement for Conservation Area Consent when demolishing unlisted buildings, and making this subject to planning permission instead**

The provisions to implement these measures have been included in the Enterprise and Regulatory Reform Bill, currently in Parliament.

These measures would make the heritage protection system work more efficiently; provide greater certainty about the status of listed buildings; and reduce the number of unnecessary consent applications. This would save time and money for owners and developers of listed buildings and local planning authorities and would help increase the likelihood that development schemes would go ahead to time and budget.

**B1. Consulting on introducing a system of prior-approval for specified types of works to listed buildings**

**B2. Consulting on allowing certification of applications for Listed Building Consent by accredited independent agents**

### **B3. Consulting on legally defining circumstances in which minimum compensation should be payable when listed buildings are subject to compulsory purchase**

The Government consulted on these options over the summer and committed to:

- introducing a system of local and national class consents
- introducing a certificate of lawful works
- introducing a non-statutory system of accredited agents

Amendments to the Enterprise and Regulatory Reform Bill have been made to enable the Government to deliver the first two options. Local and national class consents would reduce the number of listed building consent applications for works that have a limited impact on the special interest of a building. Local planning authorities would be able to adopt this system as and when they perceive an advantage and unilaterally grant consent in advance for certain defined works to types or areas of heritage assets. Of the 30,000 applications currently received for listed building consent about 90 per cent are for small schemes or minor works.

The certificate of lawful works to listed buildings is a voluntary mechanism allowing an owner or developer to receive assurances that listed building consent is not required for proposed works. Interpretations of the need for listed building consent can vary and certificates of lawful works would reduce unnecessary applications, reducing the burden on the local planning authority and developer.

The introduction of accredited agents does not need legislation and will be taken forward in consultation with industry to realise the most appropriate way to introduce a light-touch system. 73 per cent of all applications for listed building consent in commercial areas are made by an agent on behalf of the owner/tenant of the property, with proportions significantly higher for non-residential properties. These proposals will allow the independent agent to offer an expert report and recommendation to the LPA, effectively 'validating' the application as acceptable.

### **C) English Heritage will undertake a programme to update the list entries of listed buildings**

English Heritage has started a rolling programme to update list entries to increase certainty for owners and developers by providing clarity on where special interest lies. The prioritised programme started with consideration of the list entries of 20<sup>th</sup> Century office buildings. Subsequent priorities include 19<sup>th</sup> and 20<sup>th</sup> Century commercial buildings, post-war universities, infrastructure buildings and civic buildings as well as projects arising from the public land disposal programme. English Heritage is also carrying out targeted area-based surveys, to respond to development pressures in particular geographical areas.

## Environmental development consents

### **D1. Expanding the Environmental Permit programme - introducing water abstraction and impoundment, flood defence consents and fish pass approvals into the programme**

Legislation to expand the Environmental Permitting programme has been included in the Draft Water Bill. The Draft Bill was presented in July 2012 and is presently the subject of pre legislative scrutiny by the Environment, Food and Rural Affairs Committee. The aim is to present a Final Bill to Parliament early in the third session (May 2013), subject to confirmation.

Once expanded, three more consenting regimes would have been unified into the Environmental Permitting Regulations, further streamlining the process of application and removing burdens to businesses. The ten year net present value benefit to business from the successful implementation of the new regimes into the Environmental Permitting Regulations amounts to £2.75m.

### **D2. Expanding class licensing to allow a single registration for activities that would otherwise require several consent applications**

Natural England has begun expanding its class licensing approach to allow individuals to register once to undertake activities that would otherwise require several consent applications. Further class licences and a registration scheme permitting surveys of dormice and white clawed crayfish were launched in September 2012, moving an additional 900 customers from individual licences onto a registration system.

A suite of bat survey licences was launched at the end of January 2013. When transition to the registration scheme is complete, more than 3500 separate permits (over 70 per cent of all science and conservation activities) will have moved to a simpler system that is more efficient and consistent and improves data sharing.

Scoping of a class licence permitting low impact development works on bat roosts is completed; a consultation and pilot were developed during summer. 37 experienced consultants have been selected using transparent criteria to participate in a pilot designed to test the approach, ensure it is designed to yield maximum efficiency and validate savings estimates. The pilot will be launched in Spring 2013.

Organisational licensing is being piloted with the Environment Agency. A licence is expected to be in place by April 2013 when bird breeding season begins for National Grid's programme of infrastructure maintenance. The pilots will be built on in the coming months, establishing Principles of Organisational Licensing with a view to developing for wider range of customers and activities. Discussions have started with the Canal and River Trust about a licence permitting their site management activities affecting protected plants.

### **D3. Introducing a system of chartered or accredited consultants offering tailored training products to consultants**

A petition by the Institute of Ecology and Environmental Management (IEEM) for Royal Charter was submitted to Privy Council in June 2012. Natural England has expressed strong support for the application. A related Register of Chartered Ecologists with an associated competence framework will be put in place if the Charter is granted. The exact timing is dependent on progress of the petition through Privy Council.

Until the proposed Charter is available, Natural England is focusing on alternative ways of applying 'earned recognition' by piloting a type of class licence to cover low impact works on bat roosts by suitably qualified and experienced customers. As the pilot runs, the Government will work with IEEM to establish how the class licence and proposed Charter will work together to improve standards and streamline the regulatory approach.

Plans to offer training courses on "How to get a licence" have been deferred whilst a major change in licensing processes is piloted and rolled out but are expected in 2013.

### **D4. Issuing guidance on the application of the offence of deliberately disturbing a wild animal**

This guidance is expected to reduce the current precautionary approach to the regulations by reducing the risk of prosecution for offences that have trivial impacts on the conservation status of the species. The legislation in this area is stringent and exacting in its requirements; the Courts and the CPS will be required to take the proposed guidance into account in deciding whether to prosecute, and this is expected to give businesses greater confidence in adopting reasonable avoidance measures to minimise the need for licences in low risk situations.

Draft guidance has been completed but not yet published as it will now be subject to the wider Habitats and Wild Bird Review. The Review set an action for Defra to review 1,600 pages of current guidance and make proposals for simplification – a further 1,400 pages of related guidance have since been identified for simplification too. This project will lead to clearer guidance, with a more consistent, risk-based approach to implementation that avoids excessive precaution, while being compliant with the Directives. Simplification of the overarching Habitats Regulation Guidance is due to be completed by Summer 2013.

### **D5. Introducing Environmental Account Managers (EAM's)**

The introduction of EAM's is being trialled through specifically identified pilot development projects. These pilots are being offered to businesses as a free service. Two pilots are presently being developed in York and Norfolk. Defra and relevant regulatory authorities have held introductory meetings with the developers to explain the EAM concept. The developers are keen to explore what benefits can be derived from this service although these may take a little while to be realised dependent on the nature and progression of the pilots. An initial review of the pilots will be carried out in April 2013 to review the benefits to business from this new service.

The EAM's concept is also being developed as part of the Liverpool City Deal with oversight by the Cities Policy Unit.

## Highways and transport consents

### **E1. Improving the operation of stopping up orders**

Over the summer the Government issued a consultation on several options to improve the operation of stopping up orders:

- Processing stopping up orders concurrently with planning permission
- Devolving decision-making powers to local highway authorities
- Devolving decision-making powers to local planning authorities

In September 2012 the Government issued its response to option 1, agreeing to enable concurrent applications, as the foundation for the other two options. The final response to the consultation was published in January 2013. The consultation responses suggested that any devolution should be accompanied by a charging regime however this places additional burdens on local authorities and costs on developers, with no guarantee of a simpler and faster process. The Government has therefore decided not to devolve the stopping up and diversion order process to a local level at the current time.

Legislation to permit applications for stopping up orders to be made at the same time as applications for planning permission has been included in the Growth and Infrastructure Bill, currently before Parliament. It would allow for stopping up orders to be assessed concurrently to planning applications, allowing developers to apply for them, at least, eight weeks earlier than at present. By streamlining the process, the changes would allow developers to have earlier certainty of projects and reduce the costs involved.

### **E2. Reviewing the existing working arrangements between developers, local highways authorities and local planning authorities**

The Department for Communities and Local Government has been working closely with local planning and highway authorities as part of its enterprise zone implementation programme and work on unlocking stalled sites. This process has resulted in a better understanding of working arrangements between planning and highway authorities at a local level, and shared at an interdepartmental level.

### **E3. Introducing greater flexibility and enabling local decision-making with Traffic Regulation Orders**

The Government held a consultation on proposals to amend the publicity requirements placed on traffic authorities when they propose and make temporary and permanent traffic orders. The proposals embrace the Government's aim to enable local decision making and will ensure consistency in the requirements placed on Local Authorities and the Highways Agency. The consultation closed on 23 April 2012 and we are carefully considering the pros and cons before announcing the way forward.

## The wider planning system and consent regime

### F1. Piloting a system of prior-approval for Natural England's species licenses

Natural England launched a series of chargeable services in July 2012, including a pre-submission (prior-approval) application screening service for licensing and enabling developers to seek earlier advice on their licence application proposals. This is expected to reduce delays and improve developer certainty. Developers are already showing a keen interest in this, and a number of cases are already benefiting from the service.

For Nationally Significant Infrastructure Projects, Natural England has put in place a process enabling developers to seek advice and assurances that their proposals meet licensing requirements in advance of submission of a Development Consent Order application<sup>2</sup>.

### F2. Reducing duplication between rights of way consents and the planning system

Legislation has been included in the Growth and Infrastructure Bill that would enable applications for planning permission and rights of way orders to run concurrently, reducing the time taken to complete the end-to-end planning process.

The removal of this constraint does not require developers to initiate the rights of way order-making process earlier; it gives them the option of doing so. In most cases doing so would reduce the end-to-end time for obtaining the necessary consents, reducing delay uncertainty and cost. It would also allow early consideration of rights of ways issues, which means that it would be less likely that rights of way issues would prove problematic at a late stage, after planning permission has been granted, when they would be more difficult to resolve.

### F3. Smoothing working practices between licensing authorities and planning authorities

The Review drew attention to the need for a close working relationship between planning and licensing, which has led to close collaborative working between the Home Office and the Department for Communities and Local Government on the intersection between licensing and planning.

A key output has been the production of revised guidance on Section 182 of the Licensing Act, which was laid before Parliament in April 2012. This covers the importance of avoiding duplication and inefficiency by ensuring that statements of licensing policy should properly separate out matters dealt with under different legislative regimes.

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<sup>2</sup> Natural England: Notice to developers and developers' consultant ecologists with regard to Nationally Significant Infrastructure Projects (NSIPs) involving European Protects Species  
[www.naturalengland.org.uk/Images/wml-g36\\_tcm6-28566.pdf](http://www.naturalengland.org.uk/Images/wml-g36_tcm6-28566.pdf)

## Energy development consents

### G) Removing two redundant energy development consents

Legislation to remove a redundant requirement in section 14 of the Energy Act 1976 for power station developers to notify the Secretary of State of their intention to use oil or gas has been included in the Growth and Infrastructure Bill, currently progressing through Parliament.

A duplicate provision in the Public Gas Transporter Works (Environmental Impact Assessment) Regulations 1999 for developers to request a determination by the Secretary of State on the need for an environmental impact assessment, will be removed by secondary legislation before the end of 2013.

## Towns and village greens

Legislation has been included in the Growth and Infrastructure Bill to reform Town and Village Green legislation, including interaction with the planning system, by:

- preventing town or village green applications where a planning permission has been granted or where a planning application has been publicised and the decision is still to be made
- preventing Town and Village Green applications for land 'identified for potential development' in local and neighbourhood plans, including draft plans
- allowing landowners to make a statement with the effect that their land cannot be registered as a Town and Village Green
- improving the flexibility we have to set fees for Town and Village Green applications and other applications under Part 1 of the Commons Act 2006

The measures would also protect local communities' ability to promote development in their areas through local and neighbourhood plan-making.

These reforms would give developers and land owners greater certainty and reduce costs. It is estimated that savings to developers/landowners could be around £3.4m per year and to registration authorities could be around £1.3m per year.

# Reforming remits and working practices

The Review recognised the important contribution to sustainable development and economic growth made by the agencies that determine, or advise on, non-planning consents. The Government set out the following measure to encourage the agencies to formally acknowledge that role.

## **H) Reforming the remits of the key consenting and advisory agencies to ensure they promote sustainable development**

The Government aims to ensure that key consenting and advisory agencies contribute to a competitive business environment by considering the impact of their decisions upon sustainable economic growth. Each agency published an improvement plan over summer 2012:

- [The Environment Agency](#)<sup>3</sup>
- [Natural England](#)<sup>4</sup>
- [English Heritage](#)<sup>5</sup>
- [The Highways Agency](#)<sup>6</sup>
- [The Health and Safety Executive](#)<sup>7</sup>

The improvement plans set out each agency's remit for sustainable development, in line with the National Planning Policy Framework. These remits extend to decision-making on development consents and providing statutory advice. They are in addition to the other statutory remits of the agencies, including promoting the environmental and social aspects of sustainability.

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<sup>3</sup> [www.environment-agency.gov.uk/static/documents/Utility/EA\\_Improvement\\_Plan\\_FINAL\\_-\\_July\\_2012.pdf](http://www.environment-agency.gov.uk/static/documents/Utility/EA_Improvement_Plan_FINAL_-_July_2012.pdf)

<sup>4</sup> [www.naturalengland.org.uk/Images/NEAutumnStatementImprovementPlan\\_tcm6-31060.pdf](http://www.naturalengland.org.uk/Images/NEAutumnStatementImprovementPlan_tcm6-31060.pdf)

<sup>5</sup> [www.english-heritage.org.uk/content/imported-docs/a-e/eh-improvement-plan-planning-services-12-13.pdf](http://www.english-heritage.org.uk/content/imported-docs/a-e/eh-improvement-plan-planning-services-12-13.pdf)

<sup>6</sup> [www.highways.gov.uk/our-road-network/planning/improvement-plan/](http://www.highways.gov.uk/our-road-network/planning/improvement-plan/)

<sup>7</sup> [www.hse.gov.uk/aboutus/strategiesandplans/improvement-penfold.pdf](http://www.hse.gov.uk/aboutus/strategiesandplans/improvement-penfold.pdf)

The plans include positive steps to improve the working practices of each agency in response to statutory consultations:

- Culture change:
  - emphasis on staff training and internal culture - supported by regular customer surveys
  - revision of staff instructions to reflect the National Planning Policy Framework and changes to planning legislation
  - closer working with Local Enterprise Partnerships to help facilitate sustainable development and identify strategic opportunities
  - Business support:
    - greater importance placed on transparent pre-application information, through either discussions, guidance or engagement
    - development of standing advice for low priority applications to cut out unnecessary work
    - senior level account managers to increase accountability when responding to requests
- Transparency:
  - include information on responding to requests within agreed timescales in annual reports
  - survey Local Authorities and developers to gauge satisfaction levels and produce a report with actions identified to address concerns
  - introduce industry and customer panels

The improvement plans will be reviewed on an ongoing basis by the agencies to ensure they continue to push a change in working practices towards sustainable development through the delivery of the actions already established and the addition of new actions as and when opportunities are identified.

# Setting a clear timescale

The Review found that developers could face uncertainty over the amount of time it takes to receive a determination of their non-planning consent applications. The Government set out the following measures to support developers by providing clearer timescales on when decisions will be made, and completing that process in the shortest possible time.

## **I. Determining the majority of non-planning consent applications in a maximum of 13 weeks or less when other timetables are agreed**

## **J. Transparency about the performance of consenting agencies in meeting the 13 week timescale**

All agencies involved with deciding or advising on non-planning consents<sup>8</sup> have demonstrated that they are determining the majority of non-planning consent applications within the maximum of 13 weeks or less. Each agency's improvement plan sets out their commitment in delivering this requirement and agencies regularly update and publish their performance against meeting this 13 week target. Agencies annual reports, which are laid before Parliament, also include performance levels, if these do not meet the timescale for the determining applications then agencies are required to explain their performance.

In many cases consenting agencies provide a quicker service - for example by adopting the eight week timescale for non-complex applications and allowing the on-line registration of exemptions

The timescale begins once the consenting agency that makes the decision receives all the relevant information. To allow for flexibility in individual cases the timescale can be extended when the applicant and consenting body both agree.

The only exceptions to the 13 week timescale are:

- consents relating to major projects on a scale similar to those subject to the need for a Development Consent Order
- consents involving factors outside the decision-maker's control (notably where it is necessary to exercise their statutory discretion for an extension in the public interest, holding hearings to ensure procedural fairness, or to conduct public consultation) or the complexities of the application are such that a time extension is necessary

These exceptions make up less than 5 per cent of the total volume of consents applied for each year across all consenting agencies.

The Department for Communities and Local Government has been working with local authorities on implementing the target at local level, including work with the Local Government Association on the use of its 'inform' initiative to increase the number of non-planning consents where information about performance is publicly available.

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<sup>8</sup> The Highway's Agency is exempt from this as it does not have a consenting role in deciding or advising on non-planning consents

# Making it easier to apply

The Review found that the complexity of administering non-planning consents could increase cost and uncertainty to business. To combat this, the Government is implementing the following measures.

## **K. Adding information and web links on major development consents to the Planning Portal**

The Department of Communities and Local Government has improved the guidance available through the online Planning Portal - a 'one stop shop' for all types of planning applications, enabling developers to understand how to engage with the planning system. The improved guidance was introduced in May 2012 and covers non-planning consents that are regularly applied for with planning permission. The guidance helps developers know which non-planning consents they may need to apply for, and how they should go about doing so. The guidance is averaging over 2,000 views per month.

## **L. Evaluating whether further integration of the application process for planning permission and development consents is feasible**

The Department of Communities and Local Government has worked closely with the Environment Agency to scope out improvements in the way electronic information can be shared between the Planning Portal and other consenting authorities. The key was to ensure changes can be implemented in a cost effective way so benefits can be genuinely realised. An evaluation of this work has been completed which shows that, whilst there are some benefits of further integration, there are a number of complexities - in particular regarding data protection, which mean that the cost cannot be justified at this time.

In addition to the scoping work on better practices for sharing information between the Planning Portal and consenting authorities, the Department of Communities and Local Government has also committed to extending the principle of a 'one stop shop' for nationally significant infrastructure projects. Government launched consultation on proposals for delivering this in November 2012. Extending the 'one stop shop' will help deliver a more efficient and effective consents process whilst ensuring interested and affected parties continue to be engaged

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Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills  
1 Victoria Street  
London SW1H 0ET  
Tel: 020 7215 5000

If you require this publication in an alternative format, email [enquiries@bis.gsi.gov.uk](mailto:enquiries@bis.gsi.gov.uk), or call 020 7215 5000.

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