

PENFOLD | Review of non-planning consents

**Interim Report
March 2010**

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Foreword by Adrian Penfold

A great deal of work has been done in recent years to modernise and simplify the planning system. Much has changed since the Barker Review of Land Use Planning in 2006 and the 2008 Planning Act. More recently, the recommendations made by the Killian Pretty Review in 2008 are leading to further reforms.

This work is important, since a well functioning planning system is central to ensuring that the right decisions about development are made for the right reasons. Whilst the planning application process has recently been under the microscope, those consents that have to be obtained alongside or after, and separate from, planning permission in order to complete a development have had less attention. These ‘non-planning consents’ (as this Review has termed them) can have a serious impact on how efficiently and effectively the overall development process operates. As such, they are a sizeable factor in determining the investment climate in the UK.

This Review has focused on identifying elements of the non-planning consent landscape that appear to cause potentially avoidable delay, are expensive to operate or impose unnecessary burdens, costs and risks. However, I wish to stress that the Review has not sought to question the wide-ranging policy objectives that underpin the consents. Non-planning consents play an important role across a large range of issues – be it protecting endangered species, tackling climate change, delivering a well functioning road network or protecting the health and wellbeing of local communities.

The Review has tried to identify where problems and difficulties exist and to consider how obtaining non-planning consents can be made simpler and more cost-effective. The key is to find the appropriate balance between the outcomes non-planning consents are designed to deliver and the need for timely and efficient decision-making about development proposals. In doing so, the Review builds on much good work already underway in the consent giving bodies. It is also worth stating that the efficient operation of a consent regime relies on the behaviour of the applicant as well as the decision-maker.

The call for evidence that the Review issued in December 2009 received an enthusiastic response from a wide range of interested groups. I am very grateful to all of the respondents and to those individuals and organisations who took time to speak to me and members of the Review team.

It was very clear from the comments we received that, whilst there exists a broad appreciation of the need for non-planning consents, those who are ‘users’ of these regimes, and in many cases the consent giving bodies themselves, feel that improvements are both needed and achievable.

The issues covered by this Review are complex in nature and it is vitally important that any recommendations for change have been thoroughly analysed and tested. This Interim Report therefore seeks to present the

Review's findings to date and propose areas for further consideration in a second phase of work, which we aim to publish in the summer.

As the UK emerges from the global economic downturn, establishing non-planning consents regimes that are more responsive to the needs of all users and stakeholders and that interact clearly and simply with the planning process is very important in helping to drive sustainable economic growth. I hope that this Interim Report is the first step towards that vision.

Finally, I would like to sincerely thank everybody who has taken the time and effort to contribute to the Review. Particular thanks must go to the members of my Sounding Board, who have helped to refine the issues and ideas generated by the Review. I would also like to pass on my gratitude to the members of my hard working Review Team, who have assisted me at every step of the way.



ADRIAN PENFOLD

Executive Summary

Context and approach

As the UK emerges from the largest global financial crisis and deepest international downturn of the post-war era, the imperative now is to focus on equipping people and businesses to return the economy to sustainable growth. This means creating the right conditions for private enterprise and business investment.

A well functioning planning and consents regime that promotes investment and sustainable economic growth is an essential component of an attractive business environment. This Review builds on recent and on-going reforms, which have focused on the planning system and particularly the planning application process, to look at those consents which have to be obtained alongside or after, and separate from, planning permission in order to complete a development: 'non-planning consents'.

The Review has sought to take a practical, developer-focused approach to identifying and assessing the impact of non-planning consents, with the term 'developer' encompassing the wide array of individuals and businesses whose investment decisions will help the UK economy return to growth.

At this interim report stage, the Review has analysed evidence gathered from interested groups, including policy owners; consenting bodies; developers and wider industry; the professions; and non-government organisations with interests in conservation and the environment. It has:

- Identified issues arising from the operation of the non-planning consents landscape as a whole and made an initial assessment of their impact on developers;
- Identified non-planning consents viewed as particularly problematic by developers and other interests and considered how obtaining such consents might be made simpler and more cost effective; and
- Suggested further work for the Review to take forward.

The non-planning consent landscape

The Review's survey of the non-planning consents landscape identified that there is no overall 'system' of non-planning consents: they are fragmented in their ownership, their purpose and their operation.

The Review identified 86 non-planning consents and a further 37 business specific operating consents. These are administered by about twenty different types of consenting bodies, including central government departments, agencies, non-departmental public bodies and local authorities, where decision-making is split across different tiers of local government and different departments within local authorities.

Non-planning consents support a wide range of policy objectives, including tackling climate change, protecting the environment and maintaining well-functioning infrastructure. They all aim, in some way, to protect the public interest. European legislation, especially in the environment field, has exerted a strong influence over the non-planning consent landscape, such that about 30 percent of current non-planning consents have their roots in Europe.

Whilst some non-planning consents will only apply to a handful of developments each year; others have extremely wide coverage. Most business-related developments have to obtain at least one non-planning consent (building regulations approval). Complex manufacturing developments, for example in the chemicals sector, may need as many as 30 non-planning consents. Smaller developments may also have to obtain multiple non-planning consents, depending on their location and the nature of their business.

Some have a significant bearing on whether or not a development should be allowed to go ahead, which is central to planning permission; others are focused more narrowly on how the development should be built and operated.

Recent changes to the non-planning consents landscape have seen bundles of non-planning consents pulled together with planning and considered in a single, unified process – for example by the Infrastructure Planning Commission and under the Marine and Coastal Access Bill – whilst the Environmental Permitting Programme, led by the Environment Agency, has brought existing consents under the umbrella of a standardised regime.

At the same time, new non-planning consents are still being created, adding to the complexity of an already complex landscape. Whilst complexity may be inevitable, given the nature of the long term challenges non-planning consents address, it is essential that Government make every effort to ensure both that the overall landscape is as simple and coherent as possible and that new and existing consents operate as efficiently and effectively as possible.

The Review has concluded that the Government needs to put in place cross-department oversight of the non-planning consents landscape and carry out further work in order to ensure that it operates as coherently, efficiently and effectively as possible.

The developer's experience

The nature of business development, whether undertaken by a small business, a large retailer or a commercial developer, is the management of risk in return for profit. Planning permission and non-planning consents are important sources of risk for developers at different stages of a development project.

Planning is the occasion when the development proposal is looked at in the round, balancing a range of public and private interests, and is always a 'make or break' issue: without it the development cannot go ahead. Costs committed to getting planning permission have to be written off, in whole or in

part, if that permission is not forthcoming; and significant delay in obtaining planning permission can also delay benefits, such as jobs or new homes.

Non-planning consents typically look at a single aspect of a development proposal, often in isolation from other considerations. That does not mean they are without risk for developers. Failure to get a non-planning consent can stop some developments, for example in the mineral extraction sector, in their tracks. For developments in general, though, the main sources of risk associated with non-planning consents arise from complexity and uncertainty around the timing of decisions.

Developers' ability to manage risk effectively will depend on a number of factors. Access to expertise and other resources is important. Large businesses, and those who are regularly involved in development, are more adept at negotiating the consents maze. They have access to in-house expertise or can afford to buy it in from specialists. As a consequence they tend to regard non-planning consents as costly, but by and large manageable, even if some delay and extra cost is involved.

Smaller businesses and those that promote developments occasionally are less able to navigate the consents maze and the costs of carrying out a risk assessment or study related to a specific non-planning consent are likely to form a higher proportion of the costs of the development as a whole. Anecdotal evidence presented to the Review indicated that unforeseen costs associated with non-planning consents can act as a deterrent to investment by small and medium-sized businesses.

Unnecessary delay is the other main risk associated with non-planning consents. Developers, of all sizes and in all sectors, would welcome greater certainty about the timing of decisions to enable them to plan related activity and assess costs with confidence.

However well-advised or experienced a developer may be, non-planning consents can also generate unforeseen risk after planning permission has been granted. Issues can arise as a result of a change in circumstances, or of an application by a third party, for example, to list a building on a site or to have part of it designated as a town or village green; or of a change in legislation or policy.

Whilst the absence of data has made it impossible to verify the extent to which these risks become issues or to quantify their impact, the consistency of the evidence provided was sufficient to convince the Review that non-planning consents can be a source of unnecessary delay and cost for developers and can affect investment decisions. Action to improve their operation would bring benefits for all those involved by providing greater certainty about the timing of decisions and freeing up resources.

Interaction between planning and non-planning consents

Information and procedural overlap exist because of the interaction between planning and non-planning consents. Perceptions of overlap and duplication have been fuelled by the expansion of planning policy to encompass wider

issues than ‘place and space’. For example, the growing focus on tackling climate change has led to an expectation that, as well as considering implications for the location of development and the provision of infrastructure, the planning process will also look in detail at the energy efficiency of buildings and to demands from planners for more detailed design, increasing developers’ costs at a time of high project risk.

Action to streamline procedures is already in hand in some areas, for example, through the environmental permitting programme. This is welcome and may be capable of being extended through further standardisation of non-planning consent processes.

In addition, confusion can arise from the dual role played by many consenting bodies as statutory consultees for planning purposes and, separately, as decision-makers for non-planning consents.

The complex interaction between planning and non-planning consents raises a wider question about how the boundary between the two might be clarified. Greater clarity might be achieved by recognising that planning permission considers those aspects of non-planning consents that have a bearing on whether or not a development should go ahead. As a result, planning permission confers legitimacy on a development and it is reasonable to presume that non-planning consents determined after planning permission has been granted will focus on matters of detail about how the development will be built and operated, rather than whether it should go ahead. This approach would enable the discussion around obtaining any given non-planning consent to focus on problem-solving; give developers greater certainty; and limit the amount of detailed design work needed to obtain planning permission.

Working Practices

Many respondents to the Review reported experiencing uncertainty about the timing of decisions; difficulty in resolving differences of view across and between consenting bodies; and lack of responsiveness, caused – in their judgement – by a mix of resource pressures and the absence of a service culture.

Whilst acknowledging examples of good practice within consenting bodies, developers were keen to see mechanisms put in place to improve the governance round decisions involving more than one consenting body and more comprehensive activity to promulgate and embed a service culture.

Contributors to the Review were aware of and sympathetic to resource constraints within consenting bodies. They recognise the need to find ways to enable decision-makers to make the best possible use of existing staff and find innovative ways of making scarce resource stretch as far as possible. This might include sharing specialist resources across authorities and comprehensive action on skills.

Some consenting bodies have considered the possibility of charging for some services that are currently free, such as pre-application advice, and a number

of local planning authorities are already operating such a system. One of the advantages of charging is that it can reinforce a service culture, but it may act as a barrier by favouring larger developers and can also give the impression to local communities of developers paying for consents.

There is of course more that developers themselves can and should do to ensure swift and efficient decision making. The Review recognises that those who fail to provide the complete information or who fail to engage appropriately with consenting bodies must share responsibility for any subsequent delay.

Other Challenges

Contributors to the Review raised concerns about the way the statutory undertakers (principally utility and railway companies) can add time and cost to the development process. They were most concerned about the time taken to obtain electricity connections and difficulties faced when having to deal with railways, for example when building a bridge over the tracks or developing next to the railways.

The Review identified these issues as outside its scope and does not propose to investigate them further. It has, however, alerted the relevant regulators to developers' concerns, encouraged them to pursue on-going activity to tackle them and will report on progress in the next phase of the Review.

Opportunities for improvement

The Review sees a number of opportunities to improve the operation of non-planning consents and proposes to pursue these during its second phase.

First, further consideration should be given to **simplifying the non-planning consent landscape**. Some regimes may be capable of being absorbed into the planning process. Others might be rationalised whilst remaining separate from planning. And the fact that local authorities are decision-makers for several consents, including footpath diversions and local highways orders, opens up the possibility of merging some consents into planning if doing so suits the applicant. The diversity of the regimes in the landscape means that each needs to be looked at on its own merits or as part of group of related consents in order to determine how, if at all, it could be rationalised.

Secondly, the Review sees opportunities to build on work already underway in the consenting bodies and further **improve the efficiency and effectiveness of their consenting activity** by:

- Clarifying the boundary between planning and non-planning consents;
- Improving the accessibility and availability of information about non-planning consents;
- Considering further the interaction between consenting bodies' roles as statutory consultees in the planning process and as decision-makers for particular non-planning consents;

- Improving the support available for developers so that it encompasses non-planning consents;
- Standardising some processes across groups of consents.

Finally, the Review has found that there is scope to build on action already in hand in many consenting bodies to create a more **responsive culture** and to **address resource pressures** by:

- Setting appropriate service standards for delivery of timely, transparent and efficient consenting services by consenting;
- Improving the governance round decisions involving multiple (public sector) stakeholders;
- Building on existing models for pooling and sharing expertise across consenting bodies, especially in areas requiring deep technical knowledge or specialist skills;
- Promoting and sharing good practice across consenting bodies;
- Considering fee structures and other financial arrangements as a means of addressing resource pressures in consenting bodies; and
- Promulgating information about what developers need to do to ensure that the system works for them.

Conclusions and next steps

The first phase of the Review has identified areas where problems appear to exist and opportunities for improvement. The outcome the Review is now working towards is a non-planning consent landscape that is less complex for developers and investors; where unforeseen delays are fewer and shorter in duration but where the important policy objectives underpinning specific non-planning consents continue to be upheld

With this in mind, and building on the findings of this report, the key work streams for phase two will breakdown in to four areas aimed at:

- Simplifying the non-planning consent landscape;
- Improving the interaction between planning and non-planning consents;
- Changing working practices and addressing resource constraints in consenting bodies; and
- Identifying appropriate owners and mechanisms that will be required to implement changes.

The Review will issue a Final Report in the summer.

Glossary and Abbreviations

Glossary	
Consent	A permission granted following a formal decision-making process by a competent public body (the decision-maker), on the basis of a written application submitted by the applicant (a developer, as defined below, or his agent).
Developer	Any business or individual that is involved in promoting a development (as defined below), whether for its own use or for the use of third parties.
Development	(As defined by the Town and Country Planning Act 1990) The carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.
Non-planning consent	Any consent a developer has to obtain alongside or after, and separate from, planning permission in order to bring a development into its first operational use.
Plan-making	The planning system in England is plan-led. This involves preparing plans that set out what can be built and where. There are currently two main levels of plan: Regional Spatial Strategies – each Regional Planning Body prepares a Regional Spatial Strategy. This sets out things such as how many homes are needed to meet the future needs of people in the region, or whether the region needs a new major shopping centre or an airport. Local Development Frameworks – each local planning authority prepares a Local Development Framework. This is a folder of documents that sets out how a local area may change over the next few years. It incorporates other plans covering issues such as crime reduction, transport infrastructure and how to deal with waste.
Section 106 agreement	A legally binding agreement made under Section 106 of the Town and Country Planning Act 1990 between local planning authorities and developers, which is a way of addressing matters that are necessary to make a development acceptable in planning terms. Section 106 agreements are increasingly used to support the provision of services or infrastructure, such as highways, recreational facilities, education, health and affordable housing.
Section 278 agreement	An agreement under Section 278 of the Highways Act 1980 between the highways authority and the developer about payment for highways works that are needed to implement a development scheme.

Abbreviations	
BERR	Department for Business, Enterprise and Regulatory Reform
BIS	Department for Business, Innovation and Skills
BRE	Better Regulation Executive
CLG	Communities and Local Government
DCMS	Department for Culture, Media and Sport
DECC	Department of Energy and Climate Change
Defra	Department for Environment, Food and Rural Affairs
DfT	Department for Transport
DTI	Department of Trade and Industry
DWP	Department for Work and Pensions
EH	English Heritage
EPP	Environmental Permitting Programme
HET	Historic Environment Traineeship
HSE	Health and Safety Executive
LA	Local Authority
LBRO	Local Better Regulation Office
LPA	Local Planning Authority
MPS	Marine Policy Statement
NDPB	Non Departmental Public Body
NGO	Non-governmental Organisation
NPS	National Policy Statement
ODA	Olympic Development Authority
ODPM	Office of the Deputy Prime Minister
Ofgem	Office of the Gas and Electricity Markets
OFT	Office of Fair Trading
Ofwat	Water Services Regulation Authority
ORR	Office of Rail Regulation
PINS	Planning Inspectorate
PPA	Planning Performance Agreement
PPS	Planning Policy Statement
RDA	Regional Development Agency
SMC	Scheduled Monument Consent
SuDS	Sustainable Drainage Scheme
TVG	Town or Village Green
TWA	Transport and Works Act 1992
WAG	Welsh Assembly Government

Chapter 1 – Introduction

Context of the Review

1.1 As the UK emerges from the largest global financial crisis and deepest international downturn in the post war era, the imperative now is to focus on equipping people and business to sustain and speed the recovery. Despite recent signs of a return to economic growth for the economy as a whole, it is now clear that the recession has hit business investment hard – in the last quarter of 2009 total business investment is provisionally estimated to have fallen by 5.8 per cent from the previous quarter. This is part of six successive quarters of decline, totalling 27 per cent – the largest cumulative fall since records began in 1965¹. The impact of the economic downturn on investment in new and existing infrastructure is demonstrated by the drop in construction output. Total annual construction output declined by 11.5 per cent in 2009, the largest annual fall since 1974, with privately funded output shrinking by 20.3 per cent in 2009 compared with the previous year².

1.2 The Government has made clear that future growth needs to be environmentally sustainable, balanced and resilient to economic shocks to enable the UK economy to compete and prosper in the long term. The Government's recent growth strategy document³ emphasised that driving growth means creating the right conditions for private enterprise and strengthening the UK's reputation as one of best places in the world to start and grow a business.

1.3 In 2009 the UK was ranked fifth in the world by the World Bank⁴ for 'ease of doing business' and number one in Europe. The Government has set itself a new ambition to make Britain the best country in the G20 in which to set up and run a business, and therefore one of the most attractive places in the world to invest.

1.4 A well-functioning planning and wider consents regime is an essential component of the overall attractiveness of the business environment in the UK. The planning system is charged with helping to deliver critically important objectives, such as providing attractive places to live, learn and work and well functioning infrastructure; tackling climate change; and protecting the natural and historic environment. In recent years, the Government has set in train a number of reforms of the planning system and of specific elements within it,

¹ Office for National Statistics, 'Statistical Bulletin: Business investment – provisional results Fourth quarter 2009' (February 2010). Figures for business investment cover acquisitions less disposals of vehicles and other capital equipment together with expenditure on leased assets and new building work. Spending on land and existing buildings is excluded.

<http://www.statistics.gov.uk/pdffdir/bi0210.pdf>

² Office for National Statistics, 'Statistical Bulletin: Output in the Construction Industry - Fourth Quarter 2009' (March 2010) <http://www.statistics.gov.uk/pdffdir/oec0310.pdf>

³ BIS, 'Going for Growth: Our Future Prosperity' (January 2010) <http://www.bis.gov.uk/wp-content/uploads/2010/01/GoingForGrowth.pdf>

⁴ World Bank, 'Doing Business 2010' (2009)

<http://www.doingbusiness.org/documents/fullreport/2010/DB10-full-report.pdf>

with the aim of making it more efficient and effective – precisely to ensure that it is not acting as a barrier to investment and sustainable development.

1.5 The Barker Review of Land-Use Planning in December 2006⁵ and the subsequent Planning White Paper⁶ led to a number of changes made through the Planning Act 2008⁷. The Act streamlined the planning application, Local Development Framework and appeals processes and established the Infrastructure Planning Commission⁸. The latter change is perhaps the most far-reaching. The Commission is charged with taking planning decisions in relation to nationally significant infrastructure projects, such as railways, large wind farms, power stations, harbours, airports and sewage treatment works, with the aim of improving the opportunities for all interested parties to contribute to decisions, reducing the time taken to reach decisions and cutting the costs of delivering national infrastructure.

1.6 These reforms were closely followed by the Killian Pretty Review⁹, which examined in detail the development management process to identify reasons for delay in deciding planning applications and to make recommendations for dealing with these and for reducing unnecessary burdens for all parties involved in the process. Work to implement the Killian Pretty recommendations is on-going.

Penfold Review – terms of reference

1.7 The focus of recent reforms has been on the planning system and the planning application process – not on those consents which have to be obtained alongside or after, and separate from, planning permission in order to complete a development: ‘non-planning consents’. It is important to ensure that these broader development-related consents do not create unnecessary barriers to economic development. With work on the planning system itself well underway, the Government decided it was time to investigate the other consents which developers have to negotiate in order to complete a development project.

1.8 The Penfold Review was therefore established to explore whether the process for obtaining non-planning consents is delaying or discouraging businesses from investing, with a view to identifying areas where there is scope to support investment by streamlining the process. The terms of reference for the Review are at Annex A.

⁵ HM Treasury, ‘Barker Review of Land Use Planning, Final Report – Recommendations’ (December 2006) <http://www.communities.gov.uk/documents/planningandbuilding/pdf/154265.pdf>

⁶ CLG, DEFRA, DTI, DfT, ‘Planning for a Sustainable Future White Paper’ (May 2007) <http://communities.gov.uk/documents/planningandbuilding/pdf/planningsustainablefuture.pdf>

⁷ Planning Act 2008 <http://www.opsi.gov.uk/acts/acts2008a>

⁸ Information about the Infrastructure Planning Commission is available from <http://infrastructure.independent.gov.uk/>

⁹ CLG, ‘The Killian Pretty Review: Planning Applications: A Faster and More Responsive System, Final Report’ (November 2008) http://www.planningportal.gov.uk/uploads/kpr/kpr_final-report.pdf

Scope of the Review

1.9 The term ‘non-planning consents’ has no agreed definition. For the purposes of the Review’s call for evidence¹⁰, the term was interpreted broadly to include ‘any consent a developer has to obtain alongside or after, and separate from, planning permission in order to bring a development into its first operational use’.

1.10 Underlying this definition is a number of distinct elements. First, the ‘developments’ with which the Review is concerned are as defined by the Town and Country Planning Act 1990¹¹. With a few exceptions – for example some changes to listed buildings and the majority of scheduled monument consents – this means they are also subject to the planning process. Secondly, the term ‘developer’ encompasses any individual or business that is involved in promoting a development for business purposes, whether for their own use or for the use of third parties. The Review team are aware that the term ‘developer’ is one which can carry pejorative overtones but has used the term to refer to all those individuals and businesses whose investment decisions will help the UK economy return to growth. Finally, implicit in the term ‘consent’ are a number of characteristics, including:

- An applicant, responsible for providing complete and accurate information to enable a decision to be made;
- A formal decision making process, resulting in a written decision;
- A competent public body (the ‘decision-maker’) to consider the consent application; and
- Sanctions arising where an activity is undertaken without the necessary consent.

1.11 The breadth of the definition ensured that the remit covered a wide range of business investment types, including building, manufacturing, waste management, power generation, mining and other operations, as well as material changes to use of buildings and other land. The call for evidence explicitly excluded those significant national infrastructure projects, which are or will in future be subject to ‘development consent’ by the Infrastructure Planning Commission; and those marine developments, which will be subject to the regime introduced by the Marine and Coastal Access Act 2009¹², on the grounds that these new arrangements are as yet untested. Because of the Review’s focus on business investment, the call for evidence also excluded

¹⁰ The Penfold Review of Non-Planning Consents: Call for Evidence (December 2009)
<http://www.berr.gov.uk/files/file54043.doc>

¹¹ Town and Country Planning Act 1990, Section 55 defines development as “the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land”

http://www.legislation.hmso.gov.uk/acts/acts1990/Ukpga_19900008_en_1.htm

¹² Marine and Coastal Access Act 2009

http://www.opsi.gov.uk/acts/acts2009/pdf/ukpqa_20090023_en.pdf

householder applications from the scope of the Review. The Review has focused on practice in England.

1.12 Elaborating the definition of non-planning consents, as discussed in paragraph 1.10, narrowed the scope of the Review to exclude certain other concerns and issues raised by respondents. As a result the Review has not given these concerns detailed consideration. Instead, it has logged them and alerted the relevant regulator to those raised most frequently. The latter are discussed briefly in Chapter 6. The wider development-related matters raised by participants in the Review included:

- Utilities supply, the practical need for delivery of affordable water, electricity and gas supplies to development sites, in line with a reasonable development timetable for a project;
- Infrastructure owners, such as the railways, from whom licences must be obtained to build over or alongside land owned by them;
- Easements¹³, such as ‘rights to light’ established under complex rules laid down in case law providing compensation and injunction remedies for those affected by a development which obstructs natural light to surrounding properties;
- Restrictive covenants on land which limit how that land may in future be developed;
- Bespoke consenting regimes relating to particular types of property – such as the dedicated ecclesiastical consenting regimes for proposed alterations to churches and cathedrals;

Approach to the Review

1.13 The Review has sought to take a practical, developer focused approach to considering non-planning consents and the extent to which they discourage or delay positive investment decisions. In particular, the Review has:

- Taken a view in the round of non-planning consent regimes (rather than focussing in detail on individual consents);
- Included the development process in its entirety – from the inception of a development idea to the opening of premises for business;
- Explored the culture within bodies called upon to decide non-planning consent applications – the policy imperatives that drive the regulatory

¹³ The Law Commission is currently undertaking a study into the general law of easements, covenants and profits à prendre (rather than specific rights such as rights to light) and plans to publish a final report and draft Bill in late 2010 / early 2011. See <http://www.lawcom.gov.uk/easements.htm>

organisations involved, the resource constraints upon them, good practice and improvement plans already in place;

- Recognised the importance of the interface between the non-planning consent regimes and other key factors in determining whether a development will proceed, such as planning decisions, private property rights, funding issues and practical matters such as delivery of a power supply to new trading premises; and
- Looked to understand the entirety of non-planning consent processes from the developer's eye view – as part of a far wider package of considerations and issues with which the developer is faced when turning a business idea into a working investment.

1.14 The Review has gathered evidence from a wide range of interested groups, including policy owners in central government; consenting bodies, both local and national; developers; wider industry and commerce; professions; and non-government organisations with interests in conservation and environment. In the course of the Review it has become apparent that other stakeholders, such as local communities, would also value and benefit from easy to understand and transparent non-planning consents.

1.15 The call for written evidence, issued to several hundred stakeholders in December 2009, generated 71 direct responses and 15 other pieces of correspondence. In addition, the Review team has held meetings with about 60 individuals and in small groups; held larger group discussions in London, Sheffield and Newcastle; and used a focus group to test understanding of the issues and explore ideas for improvements. A Sounding Board, with representatives from all the main stakeholder groups met twice to consider emerging findings and areas for improvement. A full list of contributors to the Review is given in Annex B.

1.16 The Review has been hampered in its desire to assess the economic impact of non-planning consents by the absence of consistent, centrally available data about many of the consents concerned. It has therefore not been possible to quantify the impact of individual or groups of non-planning consents. Instead, the Review has used examples or comments received from respondents to illustrate the problems developers have experienced arising from non-planning consents and their impacts. The Review does not present these examples as verified fact but as contributing to an illustrative account of the types of issues that developers claim to have experienced.

1.17 Because of the nature of the remit, the Review has looked at issues principally from the developers' perspective and their focus has inevitably been on those aspects of non-planning consents they find problematic. That said, they have also been quick to recognise that there is a lot of work going on within consenting bodies and policy departments to improve individual consent regimes and related service delivery. The aim has been to complement other on-going work, sharing evidence and contributing ideas where relevant, not to duplicate it.

1.18 Nor has the Review sought to challenge the underpinning rationale for non-planning consents – whether that be protecting the environment or our national heritage or the health and welfare of citizens. Instead, it has sought to ask how well the overall system (and those individual non-planning consents considered problematic by users) meet the principles of better regulation¹⁴ (see Box 1) and to identify areas where there is room for improvement. Just as the consent regimes must be customer focused and acknowledge the need to support the economy, so too developers must understand that broader social objectives, such as tackling climate change, are important.

Box 1: Principles of Better Regulation:

The five principles of better regulation state that regulation should be:

- Transparent
- Accountable
- Proportionate
- Consistent
- Targeted – only at cases where action is needed

1.19 At this interim report stage, the Review has analysed evidence collected and:

- Identified issues arising from the operation of the non-planning consents ‘landscape’ as a whole and made an initial assessment of the impact of non-planning consents on development decisions;
- Identified non-planning consents viewed as particularly problematic by developers and other interests and considered how obtaining such consents might be made simpler and more cost effective; and
- Suggested further work for the Review to take forward.

1.20 Adrian Penfold and the Review team, based in the Better Regulation Executive (BRE) in the Department for Business, Innovation and Skills (BIS) are grateful to all the organisations and individuals who have provided invaluable input throughout the course of this Review, through call for evidence responses, informal discussions and provision of supporting information.

¹⁴ BIS, Better regulation <http://www.bis.gov.uk/policies/better-regulation>

Chapter 2 – The Non-planning Consents Landscape

Overview

2.1 As the Review discovered when it started to survey the non-planning consents landscape, there is no overall ‘system’ of non-planning consents: they are fragmented in their ownership, their purpose and their operation. This makes them difficult to navigate, especially for small businesses.

2.2 The Review has engaged with Government Departments, scrutinised legislation in the field and considered views expressed by respondents to identify those non-planning consents which meet the definition outlined in paragraph 1.10 above. This exercise discovered the list of 86 non-planning consents set out at Annex C, together with a further 36 business specific operating consents administered by local authorities¹⁵ listed in Annex D. The Review has concentrated on those consents listed in Annex C.

2.3 The Review recognises that these Annexes are not exhaustive – it is the case, for example, that additional consents may be required under legislation affecting specific locations¹⁶ – but rather they illustrate the breadth and range of matters governed by non-planning consents, the variety of Government Departments involved and the number of regulators.

2.4 In the absence of easily accessible data about many non-planning consents, the Review has used planning statistics to estimate the number of developments within scope. On the basis of figures for successful planning applications¹⁷, in the financial year 2008-09, it is estimated that about 146,500 developments were in scope (down from 168,200 in the financial year 2007-08). Evidence considered by the Review indicates that between 11 per cent - 30 per cent of projects receiving planning permission also require a heritage consent and that 7 per cent-15 per cent need one or more environmental consents.

2.5 Apart from some simple change of use planning applications, all business development types requiring planning permission will also require at least one non-planning consent, in the shape of building control approval, before completion. Some complex manufacturing developments, for example in the chemical industry, may require as many as 30 separate consents spread across different phases of the development process.

2.6 Whilst closely linked to development, many non-planning consents have an existence that is independent of their role in the development process. For example, footpath diversion orders may be needed to authorise

¹⁵ Business Link’s website provides a useful source of information about operating licences <http://www.businesslink.gov.uk/bdotg/action/detail?type=RESOURCES&itemId=1074441915>

¹⁶ For example, the London Squares Preservation Act 1931

¹⁷ CLG, ‘Development Control Statistics: England 2008-09’ Table 1.4 (October 2009)

<http://www.communities.gov.uk/publications/corporate/statistics/developmentcontrol200809> and CLG, ‘Development Control Statistics: England 2007-08’ Table 1.4 (August 2008) <http://www.communities.gov.uk/publications/corporate/statistics/developmentcontrol200708>

a change in route necessitated by coastal erosion; and village green registrations can be applied for by a third party at any time.

History of non-planning consents

2.7 There has been no co-ordinating driver behind the evolution of the non-planning consents landscape. A number of the concepts, regulating bodies and legislation underpinning the present system have a long history. For example, an early form of building regulations was promulgated in 1667 following the Great Fire of London, intended to avert the harm which might arise from future conflagrations; the Society for Protection of Ancient Buildings, formed in 1877, continues to have a formal role in considering certain heritage-related consents today; and the Factories Act 1833 was the forerunner of modern legislation designed to protect health and safety in the workplace.

2.8 There are, however, two more recent influences that are worth highlighting as strong determinants of the way that the existing system has been shaped. They are:

- **Relationship with planning law** – Certain non-planning consents, notably those dealing with listed buildings, conservation areas and hazardous substances, are governed by legislation that is closely interwoven with planning law. As part of the 1990 exercise to consolidate town and country planning legislation, based on recommendations of the Law Commission, three distinct but linked statutes emerged which continue to govern these areas:
 - The Town and Country Planning Act 1990¹⁸;
 - The Planning (Hazardous Substances) Act 1990¹⁹; and
 - The Planning (Listed Buildings and Conservation Areas) Act 1990²⁰.

A study by the Society of Advanced Legal Studies²¹ in 2001 described the position in the following terms: ‘In each case ... the administrative principles are the same, and the policy tests applying to the determination of the various applications are (or should be) more or less identical; and in practice the relevant local authority committee or central Government inspector usually deals with all the applications together’.

¹⁸ Town and Country Planning Act 1990
http://www.opsi.gov.uk/acts/acts1990/Ukpga_19900008_en_1.htm

¹⁹ Planning (Hazardous Substances) Act 1990
http://www.opsi.gov.uk/acts/acts1990/uksfa_19900010_en_1

²⁰ Planning (Listed Buildings and Conservation Areas) Act 1990
http://www.opsi.gov.uk/acts/acts1990/Ukpga_19900009_en_1

²¹ Society of Advanced Legal Studies, Planning and Environment Reform Group, ‘The Simplification of Planning Legislation’ (January 2001)

- **Effect of European legislation and international conventions** – about 30 per cent of non-planning consents identified by the Review implement international obligations. Work done by consultants Halcrow Group²² in 2004 listed the relevant European legislation and identified a threefold effect on the non-planning consent landscape, notably that it led to the creation of new consenting regimes, such as those relating to waste management or wildlife habitats; created new designations of significance to existing consenting regimes, such as special protection areas; and imposed an additional layer of environmental impact assessment upon existing consenting regimes.

Policy intent and objectives of non-planning consents

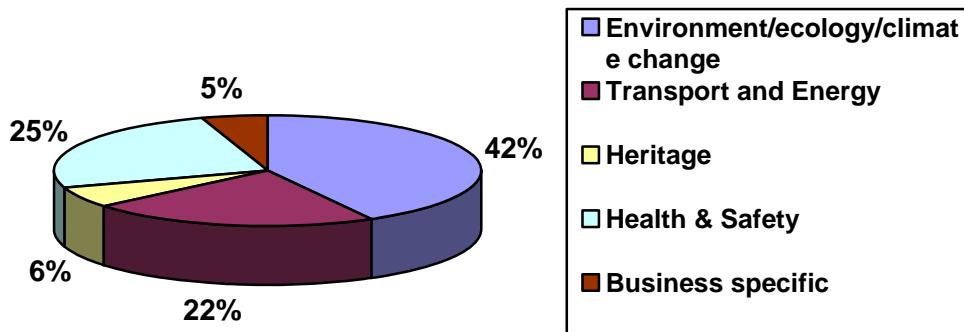
2.9 The non-planning consents landscape covers a wide range of policy objectives, which may generally be grouped under five subject headings:

- **Climate change, environment and ecology** – protecting against risks to the environment and human health such as flood and pollution; preserving greenbelt land or sites of special scientific interest; protecting endangered wildlife species; and ensuring third party rights, such as access to water, are maintained;
- **Transport and energy** – maintaining and developing well-functioning road, rail, waterways and energy infrastructure, including approving the detail, for example, of changes to individual road layout and design;
- **Heritage** – managing change to the historic environment, through considering the effects of a proposed development in relation to its impact on a specific building, monument or locality;
- **Health and safety / quality standards** – protecting human health against risks arising from activities such as use and storage of hazardous substances; and also maintaining or improving the performance of buildings by specifying quality standards for building materials, construction and design;
- **Business sector specific** – promoting consumer protection and wider social objectives by regulating the way that different types of business operate, whether they be public houses, restaurants, casinos, pet shops or retailers of food. Successfully obtaining any one of these licences can be a key consideration in an individual development proposal.

The distribution of the non-planning consents listed in Annex C across these five broad policy categories is shown in Figure 1.

²² Halcrow Group Ltd, ODPM, ‘Unification of Consent Regimes’ (June 2004)
<http://www.communities.gov.uk/documents/planningandbuilding/pdf/148205.pdf>

Figure 1: Distribution of non-planning consents by policy objective



2.10 In addition to the wide reach of the policy objectives supported by non-planning consents, they all aim in some way to protect the public interest and achieve their effect in different ways, falling into three broad groups:

- **Permissive** – giving permission to a developer to carry out a time-limited activity required to complete a development, such as listed building consent;
- **Operational** – giving permission to the applicant for on-going activity required to enable the development to start being used for its intended purpose, for example consents permitting the use of hazardous substances;
- **Enabling** – giving permission which allows the developer to take action which over-rides existing rights or designations, for example the compulsory purchase of land or the stopping up or diversion of existing rights of way.

Table 1 shows how the non-planning consent regimes listed in Annex C are distributed against these categories.

2.11 Another fundamental characteristic of non-planning consents, which may have implications for the landscape as a whole, is that some consents have a significant bearing on whether or not a development should be allowed to go ahead, which is central to planning permission; others are focused more narrowly on how the development should be built and operated. This distinction is explored in more detail in Chapter 4.

Table 1: Non-planning consents by policy objective and effect

	Permissive	Operational	Enabling
Climate Change, Environment and Ecology	Flood defence Works to hedgerows and trees Connection with public sewer Protected species, sites of special scientific interest	Environmental permits Drilling operations Water (e.g. abstraction, discharge) Greenhouse gas emissions Waste carrier; Highways drains Coal permits, etc. Organic pollutants Pesticides Clean air Trade effluent	Greenbelt land; Compulsory purchase; Common land and village greens; Pollution and noise; Allotments
Transport and Energy	Power station decommissioning Bridges and tunnels over/under waterways Watercourse diversion Traffic regulation	Electricity supplier's licence Toll orders	Local transport schemes, inland waterways, navigation rights Crossrail Public path (creation and diversion) Stopping-up orders
Heritage	Listed buildings Conservation area Scheduled monuments Historic wrecks		
Health and Safety / Quality Standards	Hazardous substances Building regulations Pipelines (construction, alteration, etc.) Coal mines (vehicles)	Hazardous substances registration Radiological protection Explosives (manufacture, storage, port operators)	
Business Sector Specific		See, for example, 36 business related licences listed at Annex D	

Regulatory bodies

2.12 The non-planning consents landscape is complex in terms of the number, range and policy intent of the consents within it. Similarly complex is the range of different types of regulators involved in approving non-planning consents. There are around twenty different types of consenting bodies, with a mix of national and local remits and a wide range of different funding, management and reporting arrangements.

Local authorities

2.13 The largest group is the local authorities. The structure of local government varies from area to area in England. In some there are two tiers – a district council and a county council. In others there is just one – a unitary authority. In London, each borough is a unitary authority, with the Greater London Authority (the Mayor and Assembly) providing strategic city-wide government. In addition, there can be a town or parish council, covering a much smaller area which will also have an interest in development issues. There are 398 English local authorities responsible for consideration of both planning applications and a variety of non-planning consents, such as most listed building consents, premises licences, removal of countryside hedgerows and those related to clean air from chimneys or furnaces. Within local authorities, responsibility for non-planning consents will, in practice, be devolved to a number of different departments and across both tiers of local government (so, for example, some highways matters are delegated from county to district level). The role of local authorities is further complicated by the fact that some of their functions, notably building control, can be undertaken by the private sector.

2.14 Additionally, in the course of determining planning applications, local authorities will have to take into account as a ‘material consideration’ issues that are the subject of other non-planning consent procedures – for instance related to archaeological matters that are also the subject of separate heritage consents. This issue was substantively considered in the Woolley case²³ in relation to protected species. The judgment makes clear that planning authorities, in exercising their planning and other functions, must have regard to the requirements of the EC Habitats Directive²⁴ where there is a reasonable likelihood of European protected species being present, notwithstanding that, if an offence is likely to be committed, such species are also likely to be the subject of a separate non-planning consent application to Natural England.

Government Departments

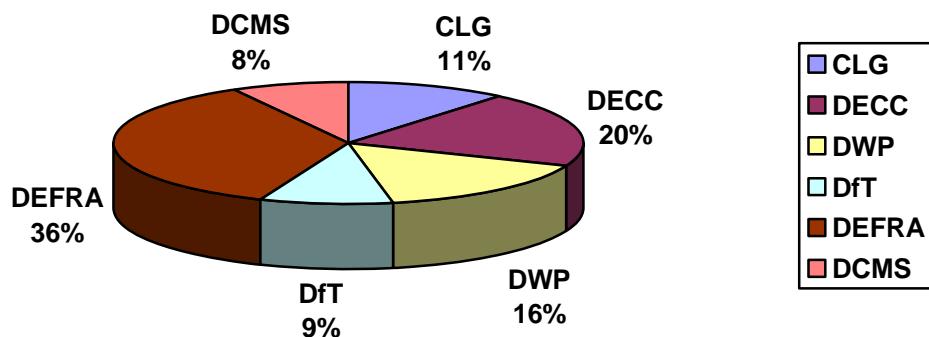
2.15 No less than six Government departments – Communities & Local Government (CLG), Department for Environment Food & Rural Affairs (Defra),

²³ Woolley, R (on the application of) v Cheshire East Borough Council and Millennium Estates Limited (2009 EWHC Admin 1227) <http://www.bailii.org/ew/cases/EWHC/Admin/2009/1227.html>

²⁴ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992L0043:EN:HTML>

Department of Energy & Climate Change (DECC), Department for Culture Media & Sport (DCMS), Department for Work & Pensions (DWP) and Department for Transport (DfT) – own policy on and have a substantive role in determining non-planning consent applications. The distribution of non-planning consents across policy departments is shown in Figure 2. Their roles can range from deciding on the application in the first instance, such as the role played by the responsible Secretary of State in relation to schemes proposed under the Transport and Works Act or DCMS in relation to scheduled monument consents; or an appellate role such as that played by Defra in relation to licences to obstruct, impede or impound water. Even where the Secretary of State is the primary determining authority, the extent to which the Department will be involved will vary considerably. For instance, in practical terms substantive consideration of scheduled monument consent applications is delegated to English Heritage rather than undertaken directly by DCMS.

Figure 2: Distribution of non-planning consents amongst policy departments



Agencies / Non-departmental Public Bodies (NDPBs)

2.16 The public bodies listed in Table 2 below are the main national organisations responsible for determining non-planning consents. Each body operates under a distinct and separate management and reporting regime. They also have wide ranging objectives. In every case, the operation of the non-planning consent processes for which they are responsible is only part of their wider activities. With the exception of the Planning Inspectorate, they are all also statutory consultees for the purposes of planning. Thus they fulfil different roles at different stages of the development process, offering advice which is considered in the round at the culmination of the planning process; and acting as decision-makers in their own right for the non-planning consents they own.

Table 2: Principal National Consenting Bodies²⁵

Regulator	Type of Body	Principal Objectives	Operating Costs/Staff Numbers
Environment Agency	Non-departmental public body - principal sponsor is Defra (WAG in Wales) Operates under a financial memorandum issued by Defra and WAG	To protect and improve the environment, and to promote sustainable development	£1.2 billion 12,000 staff
Natural England	Non-departmental public body funded primarily by grant in aid from Defra	To conserve and enhance the natural environment, for its intrinsic value, the wellbeing and enjoyment of people and the economic prosperity that it brings	£234 million 2,500 staff
Highways Agency	Executive Agency of DfT	To operate, maintain and improve the strategic road network in England on behalf of the Secretary of State for Transport	£5.3 billion 3,400 staff
English Heritage	Executive non-departmental public body sponsored by DCMS - funding agreement, signed with DCMS, CLG and Defra	To protect and promote England's historic environment and ensure that its past is researched and understood	£180 million 2,000 staff
Health & Safety Executive	Non-departmental public body with Crown status, sponsored by DWP	To secure the health, safety and welfare of people at work and protect others from risks to health and safety from work activity	£275 million 3,500 staff
Planning Inspectorate (PINS)	Executive Agency of CLG	To process planning and enforcement appeals, hold inquiries into local development plans and deal with other planning related casework	£55.3 million 750 staff

National Amenity Societies

2.17 The Ancient Monuments Society, Council for British Archaeology, Society for Protection of Ancient Buildings, Georgian Society, Victorian Society, Twentieth Century Society and the Garden History Society (for registered parks and gardens) are primarily involved in listed building

²⁵ Source – annual reports for 2008-09

applications, although they also have some lesser involvement with conservation area and scheduled monument consents. They must be notified by local planning authorities in England and Wales of listed building applications that involve demolition, or alteration with an element of demolition. This amounts to about 6000 notifications each year. The National Amenities Societies cannot determine applications, but offer advice to help councils reach an informed decision about the suitability of proposals. The Societies bring to the planning process specialist skills and knowledge about the care, repair, investigation and alteration of historic sites and structures. The National Amenity Societies are all charitable bodies. Their specialist knowledge is provided free to both local planning authorities and applicants.

Regulatory Practice

2.18 The Hampton Review²⁶, published in 2005 and part of the wider drive within Government to improve regulatory standards, considered how to reduce unnecessary administration for businesses, without compromising the UK's regulatory regime. It led to a programme of reviews of regulatory bodies, aimed at encouraging good practice and continuous improvement among regulators, overseen by the Better Regulation Executive within BIS. The approach is illustrated in Box 2. The programme has covered 36 regulators²⁷, including the Environment Agency, Health & Safety Executive, Gambling Commission, Forestry Commission and Natural England, all of which have specific regulatory functions in relation to non-planning consents.

2.19 In parallel, the Government published 'The Regulators' Compliance Code'²⁸, which came into force on 6 April 2008. The Code asks regulators to perform their duties in a business-friendly way, by planning regulation and inspections in a manner that causes least disruption to the economy. Amongst other things, it asks regulators to consider:

- **Supporting economic progress:** performing regulatory duties should not impede business productivity;
- **Data requirements:** collaborating with other regulators to share data and minimise demand on businesses; and
- **Accountability:** increasing their transparency by asking them to report on outcomes, costs and perceptions of their enforcement approach.

²⁶ HM Treasury, 'Reducing administrative burdens: effective inspection and enforcement, report by Philip Hampton' (March 2005) <http://www.hm-treasury.gov.uk/d/bud05hamptonv1.pdf>

²⁷ Copies of all Hampton Implementation Reports published are available on the BRE website, http://www.berr.gov.uk/whatwedo/bre/inspection-enforcement/implementing-principles/reviewing-regulators/HIR_per_cent20Reports/page52313.html

²⁸ BERR, 'Regulators' Compliance Code, Statutory Code of Practice for Regulators' (December 2007) <http://www.berr.gov.uk/files/file45019.pdf>

Box 2: Hampton Review of Natural England²⁹

In March 2009, Natural England underwent a Hampton Review. The review team's report identified a number of key findings, some of which commended Natural England's work in reducing burdens; whilst others related to work in progress or made recommendations related to burdens identified by the team and by Natural England's stakeholders.

Natural England have drawn up a post-Hampton review work plan which identifies and commits it to on-going improvement to its regulatory business processes. The proposals take advantage of good practice that has been used successfully by other EU Member States

Wildlife Management & Licensing

Process changes include:

- Reduced reliance on paper documentation and a more streamlined approach to modifications to documents;
- Further embedding of risk-based approaches to wildlife licensing, including plans to introduce 'Class' licences for low to medium risk activities; and allowing suitably qualified people to operate under Codes of Conduct;
- Gathering views from focus groups to input into priorities; and
- Preparing statutory guidance, which will reduce the risk of prosecution for offences that have trivial impacts on European protected species, thus helping developers avoid the costs/burden of precautionary applications where the risk of offences is low.

2.20 The Hampton principles and Regulators' Compliance Code lay down a robust framework by which regulatory activities may be assessed. They rightly recognise the important bearing that regulatory decisions and behaviour can have on the economic environment and business investment. A number of the nationally organised regulators responsible for non-planning consents have already engaged constructively with this process and are using the results of the Hampton Reviews to drive performance. This is to be welcomed.

2.21 Some regulatory functions undertaken by local authorities are excluded from the scope of the Code and local authorities themselves are not subject to Hampton Implementation Reviews. However, the Government created the Local Better Regulation Office (LBRO) in 2007, which aims to improve the performance of local authority regulatory services. The LBRO is a statutory non-departmental public body with powers to deliver improved targeting and consistency. In particular, the LBRO works with local authorities to deliver consistent, risk-based enforcement, reducing burdens on business. The LBRO's role is to improve local authority enforcement of environmental health, trading standards, licensing and fire safety services.

²⁹ BIS, 'Natural England: A Hampton Implementation Review Report' (July 2009)
<http://www.berr.gov.uk/files/file52316.pdf>

Previous consideration of non-planning consents

2.22 Although this Review is the first Government-instigated study to look at the full range of non-planning consents, there have been other pieces of work undertaken in the past decade which have considered parts of the non-planning consent landscape.

Society of Advanced Legal Studies

2.23 The Society of Advanced Legal Studies looked at simplification of planning legislation in 2001³⁰. This study, focusing on heritage related consents, outlined the overall complexity of the non-planning consent landscape. It saw a significant layer of complexity that arose from the fact that 'there has evolved a multiplicity of different consents, each with its own statutory code of primary and secondary legislation'.

2.24 Principal amongst its recommendations was that virtually all consents for works related to listed buildings and scheduled monuments, demolition in a conservation area and advertising should be merged with planning. The study also acknowledged that other types of consent might be included within a unified consent system of this nature, although it stated it was less clear as to the overall benefits of this.

Halcrow Report

2.25 In 2004, consultants Halcrow Group produced a report for the Office of the Deputy Prime Minister (ODPM) on 'Unification of Consent Regimes'³¹. Halcrow's report considered 12 consent regimes, split into three categories:

- **Core Regimes** – planning, listed building and conservation area consents;
- **Other Prescribed Regimes** – advertisements, building control, scheduled monument consent, hazardous substance consent and tree preservation consents;
- **Additional Regimes** – protected hedgerow and footpath consents (together with works within a site of special scientific interest).

2.26 The study brief expressly stated that the separate consent regimes '...are considered by some to duplicate each other and the different arrangements that apply to each are seen as confusing, unnecessarily complicated and time-consuming for all concerned'. The report concluded that there was a case for unifying some regimes. In particular, it recommended amalgamating the 'core' consents into a unified regime. The report suggested different methods by which this might be achieved – either through proceeding directly to unification or through a series of stepped changes, beginning with merging the conservation area consent regime with planning permission. Finally, the report made the case for changes to working practices

³⁰ See Footnote 21

³¹ See Footnote 22

falling short of legislative change. An example it cited was greater use of ‘management agreements’ to reduce the number of consent applications required in respect of historic buildings, which are large and subject to frequent change.

2.27 Some of these ideas were picked up in the subsequent Heritage Protection White Paper³² and included in the draft Heritage Protection Bill, which has not proceeded, however, because of lack of Parliamentary time.

Barker Review of Land Use Planning

2.28 The Barker Review³³ in 2006, picked up themes identified by Halcrow’s report, but took a slightly different approach to categorising the various consent regimes, defining them in terms of:

- **Core regimes** – planning permission, listed buildings and conservation area consents;
- **Other regimes** – such as building regulations, highway works and felling licences; and
- **Infrastructure regimes** – such as in relation to harbour developments, rail and waterways.

2.29 The Barker Report made two recommendations that went to the heart of non-planning consents issues:

- Recommendation 11: Significant Infrastructure projects – rationalisation of consent regimes to ensure that infrastructure projects of major significance be treated holistically under the authority of a proposed new independent Planning Commission; and
- Recommendation 16: Unified consents regime - The Government should formally commit to the gradual unification of the various consent regimes.

Recent developments across the non-planning consent landscape

‘Unification’ of consent regimes

2.30 Both the Barker and Halcrow reviews concluded that there were benefits to be had from ‘unifying’ planning and non-planning consents. The concept of a regime that pulls together a bundle of related consents in order to facilitate a particular class of development is already well established. The Transport and Works Act 1992 (TWA) (see Box 3) enables the promoter of guided transport projects, such as railways or tramways, to apply for most of the required planning and non-planning consents in a single application. TWA

³² DCMS and WAG, ‘Heritage Protection for the 21st Century’ (March 2007)

http://www.culture.gov.uk/images/consultations/hrp_whitepaper_doc1.pdf

³³ See Footnote 5

Orders are not a regulatory control mechanism as such, rather they give promoters of schemes covered by the regime the enabling powers they need to carry out the development. Hence they are permissive rather than restrictive in nature. The TWA Order does not, however, provide a complete ‘one-stop shop’ for promoters as certain non-planning consents still have to be dealt with separately. For instance, they may also need to obtain a protected species licence from Natural England or a certificate from the relevant Secretary of State authorising the provision of exchange land for any open space or common land which is to be compulsorily acquired.

Box 3: Unified application – Transport and Works Act³⁴ Orders

An Order under the Transport and Works Act 1992 is the usual means of authorising guided transport projects, such as railways, tramways and guided bus-ways. Promoters of such schemes are usually public sector bodies such as local authorities or passenger transport executives.

TWA Orders typically authorise construction and maintenance works, compulsory purchase and other interferences with property rights. When making a TWA Order, the Secretary of State can at the same time deem the grant of planning permission. Also, any linked applications for listed building and conservation area consents (which are often necessary for schemes affecting historic town centres) are automatically referred to the Secretary of State and are decided alongside the TWA Order.

Consideration of TWA Orders involves weighing up the benefits of the scheme (such as improved transport facilities, reduced car journeys, economic/regeneration benefits) against disadvantages (for example local impacts on property or the environment) in order to decide whether, overall, it is in the public interest for the scheme to proceed. Whilst many businesses and individuals are likely to gain from improved public transport facilities, which can stimulate business investment in an area, others may be adversely affected by construction or operation of the scheme.

2.31 The creation of the Infrastructure Planning Commission, outlined in Box 4, extends this approach by unifying a bundle of eight consents into a single process, with the aim of improving the opportunities for all interested parties to take part; reducing the time taken to reach major decisions; and cutting the costs of delivering national infrastructure. From the developer’s perspective, the change provides greater certainty about the timetable for decision making and reduces the number of consents required (though, as with TWA Orders, developers may still need to get non-planning consents). The process ‘front loads’ costs related to gaining the development consent and the risk remains, of course, that the consent will not ultimately be granted.

³⁴ Transport and Works Act 1992 http://www.opsi.gov.uk/Acts/acts1992/ukpga_19920042_en_1

2.32 The impact assessment accompanying the legislation³⁵ gave some insight into the expected costs and benefits of unifying consents in this way. It showed that the benefits stem from taking a holistic approach: it is the improved certainty achieved through revised guidance, having a single decision-maker working to a defined timetable and better project guidance which create benefits, rather than just amending the specific regulatory regime. The most significant benefits fall to society, in the shape of earlier development supporting wider economic activity, and to developers in the form of reduced administrative burdens whilst the costs fall predominantly to Government.

Box 4: Infrastructure Planning Commission

The Planning Act 2008³⁶ created a new system of consents for nationally significant infrastructure projects related to energy, transport, water, waste water and waste. The system is overseen by an independent body, the Infrastructure Planning Commission, which makes decisions on applications in accordance with Government produced National Policy Statements (NPS). The Commission gives ‘development consent’ in the form of an order, which may also confer upon developers certain rights for the purpose of facilitating the project. These rights may include the compulsory acquisition of land, where there is a compelling case in the public interest. The new system started to be able to receive applications for energy and transport projects on 1 March 2010.

The Act sets a timetable for examination of applications and decisions. The Commission has a 28 day period following an application to accept or reject it. Once accepted a maximum of six months is allowed for carrying out the examination procedure with a further three months for making a decision or where an NPS is not available a recommendation to the Secretary of State. The impact assessment prepared on introduction of the Planning Bill to the House in November 2007 estimated benefits of up £300m a year arising from implementing the new regime.

2.33 In similar vein, the Marine and Coastal Access Act 2009³⁷ introduces a new strategic and forward looking approach to managing marine developments. The first step is the Marine Policy Statement (MPS) which will provide the policy framework for preparing marine plans and taking decisions in the marine area. Marine plans will then set out how the MPS will be implemented in specific areas. The Act establishes an independent body, the Marine Management Organisation, which will be responsible for drawing up marine plans for the English offshore and inshore regions. The Act also provides for a more streamlined licensing regime. A number of considerations

³⁵ CLG, ‘Planning Bill – Impact Assessment’ (November 2007)

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/561912.pdf> and CLG, ‘Annex to the Planning Bill Impact Assessment: Royal Assent’ (January 2009)

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/anneximpactassessment.pdf>

³⁶ See Footnote 7

³⁷ See Footnote 12

taken into account by existing consent regimes (for instance in relation to Harbours Orders and electricity consents) are merged into the new regime, which comes into effect in Spring 2011.

2.34 The common thread linking these recent changes is that they aim to improve the efficiency and effectiveness of the overall consent regimes for certain, mostly large, projects by pulling several consents into a single regime. They have stopped short of providing a ‘one-stop shop’, however, and it is too early to tell whether they will deliver the intended benefits for Government or for developers. Nonetheless, their creation raises questions about the case for extending this kind of approach to other types of development with, for example, the local authority as the single decision-maker. The Review will explore this further during phase two.

Other forms of streamlining

2.35 In parallel with the changes being made to the consents arrangements for certain major projects, there are other on-going initiatives to reform, rationalise and streamline areas of the non-planning consents landscape. Most far-reaching is the work of the environmental permitting programme in the Environment Agency. This is systematically bringing a number of existing environmental consents under the umbrella of a standardised regime, as outlined in Box 5 below. In addition to Defra simplifying the relevant legislation, the programme is reducing burdens on applicants by, for example, enabling operators to have a single permit where previously they would have had several. The estimated net benefit of the programme as a whole is £121m (discounted over 10 years).

Box 5: The Environmental Permitting Programme

The Environmental Permitting (England and Wales) Regulations 2007³⁸ brought the Pollution Prevention and Control Regulations and the Waste Management Licensing Regulations into a single permitting regime. They implement the requirements of 14 EU Directives, including those dealing with Integrated Pollution Prevention and Control, Large Combustion Plants, Waste Incineration, Solvent Emissions, Petrol Vapour Recovery, and Waste Framework Directives, as well as 41 pieces of domestic legislation.

The second phase of the programme, with legislation due to come into force in April 2010, will bring in water discharge consenting, groundwater authorisations, radioactive substances regulation, permitting aspects of the Mining Waste Directive, the Batteries Directive and revised waste exemptions. This will replace a further 8 separate statutory instruments and transpose the requirements of a further 7 EU Directives.

The aim of the programme is to streamline the mechanics of permitting and monitoring compliance for a wide range of regulated activities. The approach is capable of being extended in future to cover other existing or new permits.

³⁸ Environmental Permitting (England and Wales) Regulations 2007
http://www.opsi.gov.uk/si/si2007/ksi_20073538_en_1

New non-planning consents

2.36 It is not, however, the case that the sole direction of travel of recent initiatives has been to reduce the number or scope of non-planning consents or to create arrangements that ‘unify’ bundles of them into a single regime. In some cases existing regimes are being extended in scope. For instance, building regulations³⁹ have been expanded: electrical safety was added in January 2005 to reduce the number of deaths, injuries and fires caused by faulty electrical installations; and amendments made in April 2006 addressed the energy efficiency of buildings, as part of the Government’s response to climate change.

2.37 Elsewhere, there remain policy pressures to create additional non-planning consents. Recent examples include:

- Sustainable Drainage System (SuDS) consents, being introduced in the Flood and Water Management Bill⁴⁰, currently nearing the end of the Parliamentary process. These are intended to ensure rainwater from new developments and redevelopments is managed more effectively to reduce the risk of surface water flooding, improve water quality, and protect and improve the environment. They may also aid control of water supplies and water conservation. Respondents to this Review have raised concerns about whether the associated consent processes will genuinely be capable of advancing in parallel with a planning application, as opposed to being undertaken after planning application. Equally, they suggest the practical operability or otherwise of the proposed new regime will depend greatly on its detail;
- The Mining Waste Directive⁴¹ introduces new requirements for the management of mineral mining and quarrying waste, which until now has been controlled under the planning system. Government consulted on implementation options, including using the planning system, and decided that the most cost-effective and cost-efficient option was to implement the requirements through the Environmental Permitting Regulations administered by the Environment Agency. Respondents to the Review have raised concerns that: ‘this new layer of legislative burden administered by a new regulator will lead to duplication, confusion, delay and increased costs without any tangible environmental benefit’.

³⁹ Building regulations lay down standards for most aspects of a building’s construction, including its structure, fire safety, sound insulation, drainage, ventilation and electrical safety. They apply to most new buildings and many alterations of existing buildings in England and Wales, whether domestic commercial or industrial. See <http://www.communities.gov.uk/planningandbuilding/buildingregulations/>

⁴⁰ See <http://www.defra.gov.uk/environment/flooding/policy/fwmb/>

⁴¹ Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC - Statement by the European Parliament, the Council and the Commission <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006L0021:EN:NOT>

2.38 In some circumstances, new regimes and the additional complexity they bring are justified. Indeed, some increase in complexity across the planning and non-planning landscape is perhaps inevitable, as a result of long term changes such as globalisation, technological and demographic trends as well as the shift towards greater environmental protection. If so, this increases the onus on Government to ensure that necessary consents regimes operate as efficiently and effectively as possible and that consenting bodies operate in line with Hampton principles. Whilst new regimes are individually subject to extensive consultation and regulatory impact assessment, there is currently no mechanism in place to consider the way in which they interact with existing consents or to consider their cumulative effect on users. As a result, there is a risk that the landscape will continue to become ever more crowded and complex, with adverse consequences for investment in the UK.

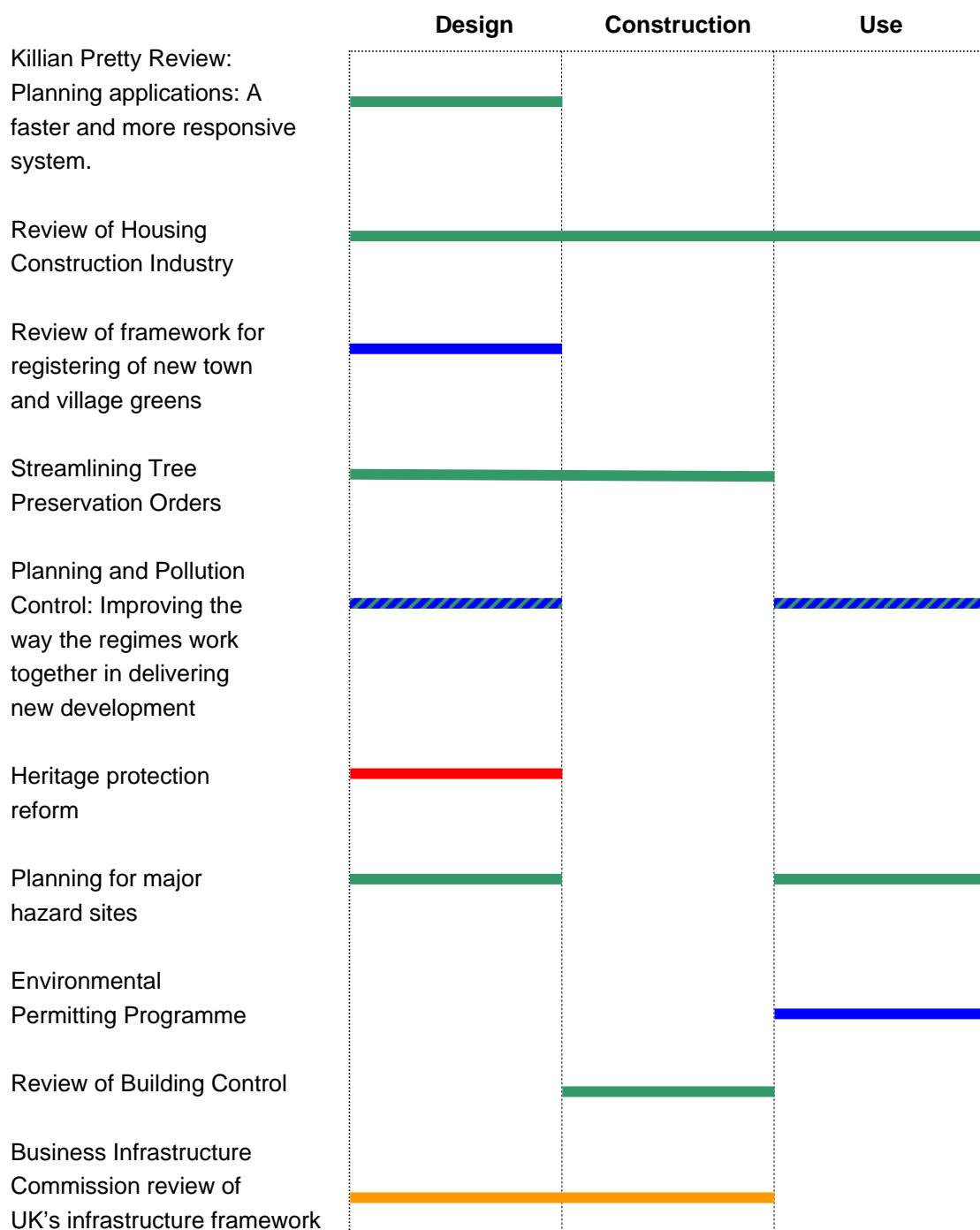
Other relevant on-going work

2.39 During the course of the Review, the team has encountered a wide range of other work going on across central government and beyond which has a bearing on the non-planning consents landscape. Figure 3 gives a snapshot of that activity as it relates to the main stages of a development project. It shows that there is a lot of work looking specifically at the planning process, work to address the way planning and some non-planning consents interact and work on individual non-planning consents. Much of the work related to improving the planning process is intended to implement the Killian Pretty Review⁴² and is relevant to the operation of non-planning consents. A number of the other pieces of work reflect a welcome recognition of the need to improve the way different consent regimes interact. For example:

- Defra and CLG are working together and with other relevant organisations to look at how the planning and pollution control regimes can work better together in delivering new development;
- Defra is reviewing the framework for registering new town and village greens, recognising the need to address difficulties arising from registration of land that is subject to a planning application or permission;
- CLG's work on the future of building control is considering ways to improve building control to make it more efficient and effective, to raise compliance, reduce burdens on business and ensure the system is capable of meeting future needs. It includes a work stream to identify the interfaces between building regulations and other regimes which have an impact upon the development, construction and refurbishment of a building and identify areas of duplication and inconsistency; and
- CLG's review of housing construction is looking holistically at the industry in seeking to identify the barriers to growth and investment.

⁴² See Footnote 9

Figure 3: Current work across the development process



Key:

-  Project led by CLG
-  Project led by Defra
-  Project led by DCMS
-  Project led by British Chamber of Commerce
-  Project jointly led by Defra and CLG

Central oversight of non-planning consents

2.40 An emerging theme running through the research the Review has done is the absence of any central oversight of the way in which the non-planning consent landscape has developed. Individual non-planning consents make good sense in their own terms and there are recent instances where legislators and regulatory bodies have taken steps to streamline both the regimes and related processes – but these are not underpinned by systematic review of the non-planning consent landscape; sharing of good practice; or ‘ownership’ of the regime as a whole within Whitehall. New non-planning consent regimes continue to be developed for different policy reasons, but again there is little evidence of these taking account of the wider development consenting landscape and how these new regimes might best be integrated with existing processes. Finally, there have been a number of calls over the past ten years (see paragraphs 2.22-2.29) for systematic reform of all or part of the non-planning consents landscape. Whilst good progress has been made towards greater unification of consent regimes for some (mainly large) types of development, the pace of change in other areas has been slow – despite the fact that proposals made have generally been greeted positively by Government.

2.41 For all these reasons, the Review concludes that the Government needs to put in place cross-department oversight of the non-planning consents landscape and carry out further work in order to ensure that it operates as coherently, efficiently and effectively as possible. This is something which the Review will explore in more detail in its second phase.

Chapter 3 – The Developer’s Experience

What matters to developers

3.1 The nature of business development is the management of risk in return for profit. Ultimately the decision to invest rests on the ability to make a return on the investment, the developer’s appetite for risk, the level of associated risk and how that can be managed. A successful development will seek to take advantage of its opportunities for business expansion and to deliver into a rising market, increasing income and decreasing yields. Whether the developer is a small business seeking to expand or diversify, a renewable energy generator, mineral extractor or large scale house builder, the key to success is the ability to manage risk over the lifetime of the project.

3.2 Planning permission and non-planning consents are both sources of risk for developers at different stages of development projects. A development project will typically follow four broad stages – preparation, design, construction and use – as illustrated in Figure 4. Pre-application discussions for planning permission may start during the preparation stage and the planning application is likely to be submitted early in the design stage (at D in Figure 4). Planning is recognised as a major milestone in any significant business development and, in most cases, developers will not want to undertake detailed design work until planning permission has been granted.

3.3 Planning is the occasion when the development proposal is looked at in the round and a wide range of public and private interests are balanced against each other. Clearly articulated planning policies and technical standards should reduce risk. They should direct developers away from locations where pursuing aspirations may ultimately be fruitless.

3.4 Planning decisions depend on meaningful consultation, which can be both time-consuming and costly. Without planning permission no project can proceed, so it is always a make or break decision and recent reforms have aimed to ensure the efficient delivery of timely and transparent decisions. Costs committed to getting planning permission will have to be written off, in whole or in part, if that permission is not forthcoming.

3.5 Non-planning consents typically look at a single aspect of a development proposal, often in isolation from other considerations and in greater detail than planning permission. Constraints around the timing of applications vary. This does not mean that non-planning consents are without risk for developers. Nor does it mean that efficient delivery of timely and transparent decisions is unimportant.

3.6 For some development types non-planning consents can be make or break issues. Contributors from the mineral extraction sector pointed out that the type of development they promote can only occur where viable reserves of minerals exist, normally in a rural greenfield location, which may be environmentally sensitive. Other forms of development would not normally be allowed in such locations. It is therefore commonly necessary to address

ecological, heritage and environmental consenting regimes during the planning and development of a minerals extraction operation. Whilst mineral extractors recognise the legitimate public interest in considering all the relevant issues, from their perspective, failure to get one of these non-planning consents can stop a development in its tracks.

Figure 4: Development project work stages⁴³

	Project work stage	Purpose of work
PREPARATION	A: Appraisal	Identification of requirements and possible constraints on development; preparation of studies to facilitate decisions about whether to proceed and to select probable procurement method.
	B: Strategic Brief	Preparation of general outline of requirements, confirmation of key requirements and constraints. Identification of procedures, organisational structure and range of consultants and others to be engaged for project.
DESIGN	C: Outline proposals	Appraisal and recommendation in order to determine form in which project is to proceed. Ensure it is feasible functionally, technically and financially.
	D: Scheme Design & Planning	General approach to layout, design and construction in order to obtain developer approval of outline proposals and submit application for planning approval.
CONSTRUCTION	E: Detailed Design	Completion of brief with decisions on planning arrangement, appearance, construction method, outline specification and cost of project. All approvals to be obtained at this stage, including for building regulations.
	F- H: Production information; tender action	Final decisions taken on every matter related to design, specification, construction and cost. All statutory approvals should be obtained by the end of phase F. Prepare and collate tender documentation. Appraise tenders and make recommendations.
USE	J: Project planning; mobilisation	Building contract let and contractor appointed. Site is handed over to contractor
	K: Construction to practical completion	Contractor programmes work in accordance with contract and works to practical completion (point at which hands ownership of site and completed project back to developer)
	L: Completion	Final inspections are made to ensure specifications have been met.
	M: Feedback	Building handed over to the client for occupation.

3.7 The impact of non-planning consents on investment decisions appears to differ according to business size and sector, with larger companies having

⁴³ Based on the Royal Institute of British Architects plan of work stages, available from <http://www.teachernet.gov.uk>

access to more diverse ‘coping mechanisms’ and more financial resources than small or medium-sized businesses. The Review saw developers falling into three principal groups:

- ‘Professional’ developers, whose business is property development, who are adept at negotiating the non-planning consents landscape. They have in-house expertise or buy it in from specialists. They tend to see planning permission as make or break and, once achieved, for most projects regard other consents as costly but surmountable, and a potential source of unforeseen delays;
- Businesses which routinely engage in development activity, even if it is not a core part of their business, such as supermarkets, and have developed their own or buy in expertise: as one respondent put it, they ‘plan for this activity and try to avoid surprises’;
- Other developers, including those for whom non-planning consents can be make or break and those making a one-off investment in expanding their own business, who may not be familiar with the consents landscape.

3.8 It is this last group which seems most likely to be adversely affected by the risks associated with non-planning consents. Astute developers from whichever group will know the importance of taking mitigating actions, such as carrying out comprehensive research into the consents requirements; providing complete and accurate information to consenting bodies; and having strong project management. Small businesses and those that embark infrequently on a development project are likely to find it more difficult to manage their risks than better resourced, larger, players.

3.9 Whilst planning permission is the major risk for developers, the cost, time and unpredictability of the process required to obtain non-planning consents exacerbates the challenges a developer faces in dealing with planning issues. Where the time and cost required to obtain planning permission is high, the developer’s exposure to delay and rejection at the non-planning stage becomes a significant factor in assessing the viability of a project. Businesses of all sizes and from all sectors would benefit from improvements to the operation of non-planning consents.

Risks associated with non-planning consents – complexity

3.10 The main risks associated with both planning and non-planning consents arise from their complexity and from uncertainty around the timing of decisions – factors that are, to a great extent, outside the developer’s control. The complexity of non-planning consents and their relationship to investment is not immediately evident when examining individual regimes. The landscape, as outlined in Chapter 2, however, contains a large array of consents underpinned by diverse legislation with no oversight at central (or local) government level.

Navigating complexity

3.11 In programming a development proposal, the developer needs to look in the round at all the regulatory requirements that have to be met to complete the project and open for business. The list of consents required in addition to planning permission will vary according to the nature of the development and the site. For a chemicals manufacturer, it will include consents relating to handling and storage of hazardous materials and environmental impacts such as noise, air quality, waste and water abstraction, as well as consents relating to health and safety during the construction phase. It is not unusual for a development of this kind to need around 30 non-planning consents, issued by several different bodies, in addition to planning permission.

3.12 This may not seem unreasonable for a large scale development operating in a field of clear environmental and health and safety risk. But small-scale developments may also have to navigate a range of different consents: for example, small hydropower schemes have to get up to five different types of environmental consent in addition to planning permission; and a dairy farmer diversifying by setting up a cheese manufacturing business or bed and breakfast accommodation in a listed barn will have to obtain at least four non-planning consents, typically involving four different departments within the local authority and three other regulatory bodies.

3.13 For the experienced developer it is relatively straightforward to draw up a checklist of the regulatory requirements. An example of the considerations that a developer building a typical mid-size office development has to take into account is in Figure 5. The checklist is not intended to be exhaustive, but indicates the principal areas on which the developer will be focused from the outset of design of a potential project in order to obtain planning permission and subsequent non-planning consents. It includes both planning-related activities and two areas (utilities and insurance) which are outside the scope of this Review.

3.14 The checklist separates the necessary areas of reports and consents into 14 categories. These are wide-ranging and include:

- Initial studies relating to the archaeology and natural environment of the site and effects on traffic flow, health, education and employment, which feed into the planning decision and may subsequently require non-planning consents;
- Practical matters relating to the actual construction of the site, such as short term closure of roads, noise and disruption during the construction process;

- Long term approvals for actual building – the substantive planning permission (with any conditions imposed and related Section 106 agreement⁴⁴) and detailed financial and other arrangements to undertake related road building;
- Certification related to the standards of the design and construction of the building (building regulations approval), getting utilities connections and meeting insurance requirements; and
- Operational licences, such as premises licences for pubs and bars.

3.15 All of these steps are essential to the successful completion of the project and the developer needs to apply to the relevant consenting body for the various consents at different stages. Throughout this sequence, the design of the project becomes more detailed (and as a result more costly) and plans more firmly fixed. If a non-planning consent has not been obtained at the requisite time, this can delay fixing the design and moving on to the next stage. It is also the case that some consents – for example, building regulation approvals – will only be capable of being addressed when detailed design work has been done, usually well beyond what is necessary to achieve planning permission.

3.16 For the inexperienced, especially small businesses, the range of potential consents required in addition to planning permission may not be obvious. This lack of transparency creates additional risks for infrequent users of the system. As one contributor to the Review, representing small businesses, put it: ‘As to the need for consents, they should be in a consistent and unified format based again on risk analysis and the nature of the consents required in any given case should be capable of identification from the outset, not discovered as an accident or imposed as an afterthought’.

3.17 Whilst Government services such as Business Link and the Planning Portal do a good job of pulling together and signposting general information about regulatory requirements, information about non-planning consents and the circumstances in which they might be needed is fragmented. The Review concludes that improving the availability and accessibility of information about non-planning consents seems likely to be a ‘quick win’, bringing benefits in particular for those businesses which are infrequent promoters of development projects. This is something that the Review will consider in more depth in phase two.

⁴⁴ A legally binding agreement made under Section 106 of the Town and Country Planning Act 1990 between local planning authorities and developers, which is a way of addressing matters that are necessary to make a development acceptable in planning terms. Section 106 agreements are increasingly used to support the provision of services or infrastructure, such as highways, recreational facilities, education, health and affordable housing.

Figure 5: Consents – mid-size office development

Subject	Consultee(s)	Project phases			
		Design	Before Construction	During Construction	Use
Archaeology					
Desk top study / site investigation	LPA/English Heritage/DCMS		Blue	Red	
Noise					
Site survey	LPA		Blue		
Construction method statement	LPA		Blue		
Completion survey	LPA				Green
Soils Contamination					
Desk to study / site investigation	LPA/English Heritage/DCMS		Blue		
Construction method statement	LPA/English Heritage/DCMS		Blue		
Monitoring	LPA/English Heritage/DCMS			Red	
Flood Design					
Site Survey	LPA/Environment Agency		Blue		
Flood Risk Assessment	LPA/Environment Agency		Blue		
Design	LPA/Environment Agency		Blue	Red	
Traffic and Transport					
Site survey / impact assessment	LPA/Highways Authority		Blue		
Mitigation measures	LPA/Highways Authority		Blue		
Monitoring	LPA/Highways Authority			Red	Green
Ecology					
Site survey / impact assessment	LPA/Natural England		Blue		
Mitigation Measures	LPA/Natural England		Blue		
Monitoring	LPA/Natural England		Blue	Red	Green
Socio-Economic: Health, Education, Employment					
Impact assessment/mitigation measures	LPA		Blue		
Legal agreement	LPA		Blue		
Implementation	LPA			Red	Green
Section 106 Agreement					
Heads of Terms	LPA/Highways Authority		Blue		
Legal agreement	LPA/Highways Authority		Blue		
Detailed submissions and approvals			Blue	Red	Green
Road Closure (after planning permission)					
Application	LPA/Highways Agency		Blue		
Advertise draft Order	LPA/Highways Agency		Blue		
Consultation	Public/Hys Agency/Utilities		Blue		
Make Order		Blue	Blue		
Section 278 Highway Works					
Heads of Terms	LPA/Highways Authority		Blue		
Legal agreement	LPA/Highways Authority		Blue		
Implementation	LPA/Highways Authority			Red	
Building Control (NB assumes local authority carrying out the Building Control function)					
Full Plans Application	LA/Local Fire Authority/ Sewerage Undertaker		Blue		
Plans approval	LA/Local Fire Authority		Blue		
On-site inspections	LA/Local Fire Authority			Red	
Pre-completion testing / commissioning	LA/Local Fire Authority			Red	
Energy Performance Certificate	LA/Local Fire Authority			Red	
Completion Certificate	LA/Local Fire Authority			Red	
Utilities					
Gas testing	Utility Company		Blue		Green
Water system approval	Utility Company		Blue		
Electrical test & certificate	Utility Company		Blue	Red	Green
Premises Licensing (if appropriate)					
License application	LPA			Red	
Site Inspection / Court hearing	LPA/Magistrates				Green
Insurance Inspection: Lifts / Fire Prevention					
Testing	Owner's insurers				Green
Certification	Owner's insurers				

Costs of complexity

3.18 It is the case that, whilst there are no fees attached to many non-planning consents, a number involve potentially large consultancy costs. Those applying for heritage consents, for example, may require research into the history and special nature of a listed building at a cost that can reach tens of thousands of pounds. Likewise, whilst Natural England's consents are free of charge but the costs associated with preparing an application can be substantial. For some types of environmental consent, the applicant needs to assess the location-specific risks and propose mitigation measures to address them to the satisfaction of the consenting body. For example, this may involve employing expert consultants in ecology, acoustics or air dispersion modelling, to conduct the assessment. One contributor told the Review that it would cost £10,000 to get consent for an anaerobic digester – more than the cost of the digester itself. Where the costs of getting non-planning consents are a significant proportion of the cost of a project, they may render a development unviable for a small business. Some contributors raised concerns that they may also have detrimental side effects, resulting for example in a listed building standing vacant instead of being refurbished and re-used.

3.19 Some contributors reported that the impact of the increasingly complex non-planning consents required to obtain a 'licence to operate' is leading to the abandonment of potential projects. One response indicated that: 'Some proposals are abandoned in the early stages; others not until after the 'developer' has spent £10,000 on fees before realising that another £20,000 will have to be spent obtaining all the required non-planning consents, entirely at risk because the proposals could not be implemented if one non-planning consent cannot be obtained at the end of the process'.

3.20 Whilst it is impossible to estimate the prevalence of this kind of experience, the evidence presented to the Review suggests that the combined effect of planning and non-planning consents can act as a deterrent both to smaller firms expanding or entering the market, and to development of smaller sites by larger firms.

3.21 A few respondents reported a concern about the cumulative effect of regulation on development. This is something that the Government is looking at separately in relation to house-building. The Pre-Budget Report announced that Government would examine the cumulative impact of different regulations on housing development and establish a baseline against which it would look to manage costs and seek reductions against. An initial report on that work is being published alongside the Spring 2010 Budget.

3.22 There is insufficient data available to the Review to make an informed assessment of the impact of the complexity of non-planning consents on competition. This is something that was looked at in some detail in relation to the planning system in the interim report of the Barker Review⁴⁵ (page 98)

⁴⁵ HM Treasury, 'Barker Review of Land Use Planning, Interim Report – Analysis' (July 2006) <http://www.communities.gov.uk/documents/planningandbuilding/pdf/151105.pdf>

which noted that: ‘the complexity of the system enables incumbent firms to exploit their knowledge of the system when making applications and objecting to proposals from competitors. Large firms are more able to pay for quality consultants and legal fees; while delays provide rival firms with time to react to the threat of entry.’ It seems likely that this is equally true for non-planning consents.

Risks associated with non-planning consents – delay

3.23 Uncertainty around the timing of decisions is the other major source of risk associated with non-planning consents. Whilst they can take steps to mitigate these risks, for example through early engagement with the consenting body and through strong project management, applicants only have limited influence over a process that often lacks transparency. Delay to a development may have a significant impact on the developer’s ability to achieve and retain finance, especially before construction has begun; may lead to a lost tenant; or result in a development hitting a falling market; or, if it means the developer has to postpone ‘opening the door’ for the first time, mean lost income and delay in the creation of new jobs.

3.24 Where decisions are complex and technical, consenting bodies need a reasonable amount of time to deliberate. That said, businesses would welcome a higher degree of certainty than is presently offered by the non-planning consent process. In most cases, the lack of certainty about how long an application is going to take is as problematic as the actual delay. Where a defined timeframe is available a developer can at least calculate the cost of this and plan related activity accordingly. A defined timeline diminishes the uncertainty, and therefore risk and cost, a developer faces. Box 6 provides an example of the kind of uncertainty about timing that can arise. As one respondent to the Review said: ‘whilst ‘known’ issues or consents can be factored into scheme plans and risk assessments, what is far more problematic for investment decisions is ‘out of the blue’ issues ... particularly if these occur after planning permission has been obtained as they can completely destroy a development’.

Box 6: Uncertainty about timing– footpath diversion

The planning approval for a 20,000 sq ft retail store providing 150 jobs required an application for a minor diversion to a Public Right of Way. There was debate over whether this should be done by a Diversion Order or a Dedication Agreement. According to the developer, the Council said that the former would take around six months and the latter a matter of weeks, so the developer opted for the Dedication Agreement. Their application has been with the Council since May 2009 and the diversion has not yet been agreed.

3.25 There have been few attempts to assess the cost of development-related (essentially planning) delay for the economy. Those that exist were reviewed most recently in the interim report of the Barker Review⁴⁶ (page 56) Barker identified unnecessary delay in decision-making as a significant issue for the planning system, as well as highlighting the hidden cost to the economy, including reducing competition within markets by delaying or deterring new entrants.

3.26 Businesses told this Review that, in recent years, it has been rare for large projects to be abandoned after planning permission has been granted due to a non-planning consent, but this may be due to the scope for rising markets to absorb additional costs. Current and immediately foreseeable economic circumstances suggest that the cost of non-planning consents is likely to become a more sensitive factor in the consideration of project viability. This is particularly evident for those consents which have large approval fees or retain bonds for uncertain periods of time. This may be further compounded when regional market variations are taken into account.

Other risks associated with non-planning consents

3.27 However well advised developers are and no matter what steps they take prior to a development proposal to understand the issues, once a development proposal has been made non-planning consent applications that were not originally envisaged can still generate unforeseen further risk and cost. These can arise from a number of sources, including:

- Change of circumstances – for instance, a protected species moving to inhabit a possible development site after planning and other consent applications have been made; or new material evidence brought to the consenting body's attention as a result of public consultation on an application;
- Applications made by others – any individual may apply at any time for a building to be listed or ask that an open area be designated as a town or village green. Dealing with the application takes time, during which work on the site may have to stop. And should that application succeed, then the developer would have to apply for a further consent under the relevant consent regime before development could proceed; and
- Changes in legislation or policy.

3.28 These matters, which are out of a developer's control add to risk and can lead to considerable additional costs, delay and, potentially, to substantial reshaping of the development proposal or its abandonment altogether. Box 7 outlines an example of a project that has been delayed as a result of an application for registration of a village green.

⁴⁶ See Footnote 45

Box 7: Delay – Application for registration of a Town or Village Green (TVG)

One contributor to the Review reported a project which has, they maintain, been severely delayed by a TVG application.

A housing association was granted planning permission to construct eight affordable homes on a rural exception site in February 2008 with a budget of £1.15m, including £311,000 of public funding.

The site lay within a field that, according to the respondent, has been farmed for over 200 years. One month after planning permission had been granted, and after a building contract had been entered into, a local pressure group applied to have the site registered as a village green. Various representations were made to the local authority, including from the parish council and the housing association, opposing the village green application.

The local authority decided there was a serious dispute about the facts and so the matter should be heard at a public inquiry, which will be heard in mid-2010, two and a half years after planning permission was granted.

Assuming the TVG application is rejected, then according to the developer, the knock on effect will be that the units will not be completed until spring 2011, two years later than originally envisaged. The developer is concerned that if the development is delayed further the planning consent, which is valid for three years, will expire.

If the TVG application is successful 10-12 temporary construction jobs will be lost, together with affordable homes for 26 local people.

Chapter 4 – Interaction between Planning and Non-planning Consents

Extension of the planning system's remit

4.1 As illustrated in the previous Chapter, complexity and delay caused by non-planning consents can be sources of additional cost to developers. Better information about non-planning consents is one way of addressing complexity, but will do little to tackle other manifestations of the problem. Perhaps the most important of these, and a recurring theme amongst contributors to the Review, is the level of duplication and overlap that exists between planning and non-planning consents. This is consistent with the findings of previous studies, such as the Halcrow and Barker Reviews.

4.2 Apart from the range and quantity of information and reports necessary, what is clear from the developer's checklist in Figure 5 is that a number of legal and practical issues are interwoven: they do not separate neatly into 'planning', 'non-planning consents' and 'other issues'. In other words, the boundary between planning and non-planning consents can be blurred. As one respondent commented: 'The relationship between planning and the many other consents required....is confused and sometimes chaotic'.

4.3 This blurring seems to reflect the move away from 'land use' planning towards 'spatial' planning which was reinforced by the Planning and Compulsory Purchase Act 2004⁴⁷ together with the increasing importance of environmental issues. Spatial planning, as implemented through Regional Spatial Strategies and Local Development Frameworks, involves integrating land use plans with other policies and programmes, such as economic or housing, health or education, waste or transport plans, which influence places and how they function. This plan-making activity is intended to ensure that information about what development is likely to be acceptable in a particular area is available to local communities, prospective developers and other interested parties alike. One of its effects has been to extend the boundaries of the planning process into new areas.

4.4 A current example of the way in which planning is being asked to consider ever wider issues is the 'supermarket competition test' proposed by the Competition Commission. The Competition Commission has recommended that Government should introduce a new test into the planning system across the UK. The test would require local authorities to assess, with advice from the Office of Fair Trading (OFT) as a statutory consultee, whether new large supermarket developments over 1,000 square metres or extensions to supermarkets create highly concentrated areas of grocery market share. The OFT would consider the number of supermarket fascias and their market share in a 10 minute drive zone from the proposed new store and inform the local authority if a retailer had met certain objective criteria and therefore

⁴⁷ Planning and Compulsory Purchase Act 2004
http://www.opsi.gov.uk/acts/acts2004/ukpqa_20040005_en_1

whether they had passed the competition test or not. The Competition Commission recommended that the competition test should not override all other planning considerations but should be given a high prominence alongside them. The issue is now with Government for consideration.

4.5 This expansion of the planning remit also appears to be driving respondents' perception of a trend towards more detailed design being required for planning purposes. The effect of this trend, as perceived, is to increase developers' costs at time of high project risk. As one respondent put it: 'The level of detail required to obtain planning permission is ever increasing and the boundary between planning and non-planning consents is becoming less distinct. As a result, there is an increasing amount of duplicated evidence and reports that are submitted in the application process'. The problem is exemplified by the requirement for ever-increasing detail about energy efficiency at the planning stage (outlined in Box 8), driven by the policy objective of transition to zero carbon construction. A number of participants in the Review regarded this as an inappropriately high level of detail for that particular stage of the development process.

Box 8: Energy efficiency – planning and building control boundary

Both planning and building control have essential roles to play in delivering higher environmental standards. Respondents to the Review believe that planning has become increasingly involved with technical details – especially about energy efficiency. This has resulted in the relationship between planning and building control in this area becoming confused. This blurring may in part be explained by the 'Merton rule'⁴⁸ being enshrined in law.

Following consultation, CLG published 'Future of Building Control – Implementation Plan'⁴⁹ stating that 'Although the planning and building control systems are complementary – focused on ensuring appropriate development and buildings are in the right place, and that these buildings are safe, accessible and sustainable – [...] the lack of clarity and effective linkages between the two can cause problems and duplication.' The Implementation Plan sets out measures that CLG will be taking to address this problem.

Clarifying the relationship between planning and building control on energy efficiency would allow planning to focus on key strategic issues, such as the provision of the infrastructure needed to address climate change, and building control to continue to develop technical expertise in energy efficiency. Whilst both planning and building control strive to deliver sustainable outcomes, clearer responsibilities are needed in relation to how competing technologies are evaluated, what advice is offered (and by whom) and to ensure that planning outcomes and sustainable building technologies are compatible.

⁴⁸ The 'Merton Rule' is the planning policy, developed by Merton Council, which requires the use of renewable energy onsite to reduce annual carbon dioxide emissions in the built environment. Following its introduction by Merton it was added to national planning policy guidance. <http://www.merton.gov.uk/living/planning/planningpolicy/mertonrule.html>

⁴⁹ CLG, 'Future of Building Control – Implementation Plan' (September 2009) <http://www.communities.gov.uk/documents/planningandbuilding/pdf/1320090>

Overlap and duplication

4.6 Some duplication is a direct consequence of the interplay between the planning process and non-planning consents. The planning process is a holistic one and is expected to balance public and private interests by looking at a wide range of material considerations. As a result, a number of issues are considered both within the planning process and under a separate non-planning consent regime. This picture is made more complicated by the fact that a number of reports have to be prepared (such as on environmental or archaeological issues) for planning purposes, which contain information relevant to subsequent environmental or heritage consents.

Information and process overlap

4.7 This leads to various forms of overlap and duplication, which add to complexity and risk for the developer. For example:

- Certain non-planning consent decision-makers make it a pre-condition to considering applications that planning consent already be in place. This applies, for instance, to Highways Act consents in relation to construction of highways or to join the road network. Where a developer wishes to join a development to a trunk road and a highways consent is sought from the Highways Agency, this can involve a public inquiry. This leads to a further opportunity for anyone who objected to the proposed development in the planning process to object again. It also often means several months of further delay before the highways related aspects of the development can proceed;
- The items for consideration under a listed building consent and planning permission are identical, though the listed building consent may require greater detail about changes to the inside of a building than would be expected for planning purposes;
- There is a lot of duplication between the information required for the Environmental Impact Statement, which forms part of the planning process, and environmental permits;
- The assessments for habitat requirements (protected species) must be taken into account as a material consideration by the local authority in determining a planning application. Where it is reasonably likely that an offence will be committed under the relevant legislation, there will also then follow a subsequent application to Natural England for a protected species licence. Natural England need to be satisfied that the legal tests for licensing are met, and the detail (and timing) of the mitigation proposal needs to be known, so licence applications are usually made once planning permission is in place and the developer is in a position to provide such detail.

Consenting bodies as statutory consultees

4.8 Some of the overlap between planning and non-planning consents arises from the fact that consenting bodies, such as the Environment Agency and Natural England, are also statutory consultees in the planning process. This means that they are expected to submit comments on any significant matters during the planning application process and then act as regulatory authority in determining the separate non-planning consents for which they are responsible. Whilst for the consenting bodies these are distinct roles, with different terms of engagement attached to them, for developers the distinction can be difficult to understand and a source of confusion.

4.9 Some respondents to the Review thought that, where the developer has yet to apply for environmental consents, the planning-related consultation responses could be too bland, despite the fact that statutory consultees are expected only to respond on matters material to determining acceptability of the proposals in the context of land use planning at this stage. The perception from developers in the minerals and chemicals sectors is that the consenting bodies do not put in a lot of effort at the planning stage because they know they will be able to influence the development when the environmental applications are made later.

4.10 On the other hand, the waste management industry thinks that the Environment Agency should not use its statutory consultation role to raise objections at the planning stage on matters that are best considered at the environmental permitting stage, or as a means to obtain information relevant to the environmental application. They want a clearer distinction between what is material to granting planning permission and what should be left to the environmental consent. The Review concludes that the role and behaviour of consenting bodies that are also statutory consultees for planning purposes deserves more attention.

Action in hand to streamline non-planning consents procedures

4.11 In a number of cases the consenting bodies recognise the issues of overlap and duplication reported to the Review and recorded elsewhere and there have been a number of procedural changes that have sought to make the non-planning consent process easier. These include streamlining of the application process for certain non-planning consent applications made alongside planning applications; revising administrative arrangements to reduce double consideration of issues by consenting bodies; and greater electronic facilitation of planning and related consents processes.

4.12 So, for example, it is possible for developers to apply for planning and listed building or conservation area consents on a single form submitted to the local planning authority. The '1APP' standardised planning application form was launched through the Planning Portal (see Box 9). As well as providing a single online form for planning applications to all local authorities, it brings together a number of different consenting requirements. In order to facilitate bespoke single applications depending on the types of consent required, there are over 30 varieties of the 1APP form, including ones for combined listed

building consent and planning permission and combined conservation area consent and planning permission. Notwithstanding the joint nature of the application, the planning and non-planning consent determinations will remain subject to separate consideration and may give rise to different consultees (for instance, the National Amenity Societies would have a formal role in commenting on listed building or conservation area consents).

Box 9: Planning Portal⁵⁰

The Planning Portal is the first port of call for planning and building information and services on-line. Whilst primarily focused on the planning process, the Portal aims to provide services to citizens, business and all English and Welsh Local Planning Authorities delivering timely, accurate and accessible information and tools to help to demystify planning and certain non-planning consent matters, such as building control.

The Portal's core aim is to help the system become more efficient and transparent using technology as the enabler. This is set against a background of a largely paper-based planning system currently processing some 650,000 planning applications a year. In 2007-08, the Portal estimated that benefits arising from its operation amounted to £25.6m.

The Planning Portal received its first electronic planning application in April 2003. Today 20 per cent of all applications pass through the Portal and it is possible to submit an electronic application to every authority in England and Wales using a standard national form. This is seen as especially advantageous for businesses who submit applications to many authorities.

Looking forward, the Portal will continue to drive take-up of electronic services including developing an online hub that will enable authorities and consultees to share planning application information electronically.

4.13 Likewise, since November 2009, applications for Scheduled Monument Consents (SMC), together with any supporting evidence, are submitted direct to the relevant English Heritage regional office using a standard application form. Many are the product of pre-application discussions between potential applicants and English Heritage. English Heritage provides the Secretary of State for Culture, Media and Sport with advice and a recommendation on each application for SMC, and communicates the decision to the applicant. This represents a significant streamlining of the administration of SMC applications, which previously involved substantial double handling by DCMS and English Heritage. It also ensures that applicants benefit from a single point of contact throughout the SMC process.

4.14 The Environmental Permitting Regulations⁵¹ introduced in 2007 and to be extended in April 2010 are streamlining and simplifying the environmental consenting process, thus reducing administrative burdens and costs for

⁵⁰ Planning Portal, Business Plan 2008-2011 <http://www.planningportal.gov.uk/>

⁵¹ See Footnote 38

- The use of standard permits for many simple, well-defined and controlled activities. The advantage of these is that they consist of standard conditions for different types of activity. The risk assessment has been done generically, reducing the effort needed by the applicant and allowing the applicant to see what the permit will look like before applying. They are quicker to determine as there is no need to consult on individual applications unless they are installations covered by the Integrated Pollution Prevention and Control Directive⁵²;
- Increased harmonisation of guidance, application forms and procedures so that the approach is similar for all types of permit;
- Simpler approaches to demonstrating technical competence, a requirement of some permit types. Previously this was assessed in each case by the Environment Agency but a 'self assessment' approach has been developed for applicants; and
- Operators now have the opportunity to have one joint environmental permit for multiple activities at the same site where previously they would have had to have several.

4.15 These changes have been made across the non-planning consents landscape in a piecemeal way and, whilst welcome in terms of alleviating some areas of duplication, others remain. The environmental permitting programme has probably been the most far-reaching in terms of simplifying bureaucracy and reducing the need to supply the same, or very similar, information across a group of non-planning consents and could be a model for further work. The Review believes there may be opportunities to reduce overlap and duplication further through greater standardisation of processes. This is something it will investigate in more detail in its second phase.

Sequencing of non-planning consents

4.16 Another potential source of confusion between planning and non-planning consents is their sequencing. In some instances, developers can choose when they apply for a non-planning consent; in others, they are expected to apply in parallel with planning permission; and in a third scenario, applications for consents cannot be started until after planning permission has been granted. For example, businesses can choose to apply for a footpath diversion or for environmental consents either in parallel with or after planning permission has been granted; but they are unable to apply for protected species consents or some highways consents until after planning permission has been granted.

⁵² Council Directive 96/61/EC of 24 September 1996 concerning Integrated Pollution Prevention and Control (and further amendments)
<http://ec.europa.eu/environment/air/pollutants/stationary/ippc/legis.htm>

4.17 From the developer's perspective there are a number of factors which will influence a decision about when to apply for non-planning consents. In some instances, the developer will choose to wait until after planning permission has been granted to apply for a type of consent that can be applied for alongside the planning application. This might be because the level of detail required by the planning application is less than the level of detail required in the non-planning consent process, thus postponing the need to incur costs associated with detailed design until the developer has a greater degree of certainty that the development will go ahead. For some developers there are other advantages to maintaining separate consent regimes. For example, tight in-year fiscal considerations for third sector organisations can lead to benefits being gained from early agreement to a listed building consent application for internal works which can then be funded and undertaken before formal determination of a wider planning application.

Clarifying the boundary between planning and non-planning

4.18 Overlap and duplication between planning and non-planning consents are a source of inefficiency in the current arrangements. Despite action taken to address some areas of overlap and duplication, they remain a source of frustration, additional cost and uncertainty for developers. Their continued existence raises questions about what further improvements could be made to the benefit of both developers and the consenting bodies. In part, this is a matter of continuing or accelerating action already in hand to simplify and standardise administrative processes. There is a wider question, though, about how the boundary between planning and other consents might be clarified.

4.19 Planning permission has historically been about the decision in principle whether to allow development to proceed. It should flow from and be consistent with the approach set out in the Local Development Framework. Together, plan-making and the planning application are the opportunity for the full impact of a proposal to be considered in the round. They therefore deal with questions about the 'what, where and why' of development and determine whether or not it should be allowed to go ahead. Both aim to balance public and private interests and provide an opportunity to the local community and other interests, as well as the parties directly involved, to express their views. In contrast, non-planning consents look at an aspect of a development in isolation. Whilst the issues they address may have a bearing on the decision about whether or not a development should go ahead, they also focus on 'how' a development is built and operated. Whilst the need to balance public and private interests remains, for the most part such considerations have already been taken into account within the planning process.

4.20 Given this broad distinction, it seems right that, if due process has been followed, the planning decision should be accorded significant weight in the subsequent consideration of non-planning consents. Indeed, it seems reasonable to suggest that after planning permission has been granted, the discussion around obtaining any given non-planning consent should focus on

problem-solving rather than re-opening the decision of principle to go ahead, which has been made through the plan-making and planning application process. This position is consistent with case law⁵³ which indicates, for example, that – unless circumstances have changed significantly – a local highways authority has no option but to cooperate in implementing a planning permission by entering into a Section 278 agreement⁵⁴.

4.21 The consequence of applying this distinction in practice would be twofold. First, it implies that generally questions of detailed design should only be considered as part of planning to the extent that they are pertinent to the decision about whether or not a development should go ahead. This could counter the trend perceived by some developers towards more detailed consideration, for example of how energy efficiency targets might be achieved, in planning and leave this detail to building control. Instead, the step change in building performance required to achieve zero carbon construction and meet other objectives that involve detailed quality specifications could be handled through the setting of nationally applicable standards, defined to rise over time, and set out in building regulations and documents such as the Code for Sustainable Homes⁵⁵.

4.22 Secondly, it would give developers more certainty that non-planning consents would not de-rail the project after planning permission had been granted. In particular, the ability to deal substantively with issues such as town and village green status, which can disrupt developments late in the overall process, at planning stage would be welcome to developers. What is important to them is that key decisions are taken wherever possible by the same body, or if that is not possible, at the same time. This would enable them to proceed following planning permission with a greater level of confidence and certainty.

4.23 That said, as noted in paragraph 4.17, developers are ambivalent about the question of when it is most advantageous to apply for different consents. Where market conditions or other factors mean a developer is confident about going ahead quickly there are advantages in ‘front loading’ the overall consents process and some respondents expressed a desire to be able to apply for non-planning consents requiring a greater level of detailed design at the same time as planning: ‘There should be scope for businesses to enter into negotiations [for some non-planning consents] simultaneously

⁵³ Powergen plc, R (on the application of) v Warwickshire County Council (1997 EWCA 2280) and Sears Group Properties Ltd, R (on the application of) v Cardiff County Council (1998 EWHC Admin 320) <http://www.bailii.org/ew/cases/EWCA/civ/1997/2280.html> and <http://www.bailii.org/ew/cases/EWHC/Admin/1998/320.html>

⁵⁴ An agreement under Section 278 of the Highways Act 1980 between the highways authority and the developer about payment for highways works that are needed to implement a development scheme http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1980/cukpga_19800066_en_1

⁵⁵ The Code for Sustainable Homes sets the national standard for the sustainable design and construction of new homes. It measures the sustainability of a new home against nine categories, including energy and water use, rating the 'whole home' as a package, using a one to six star rating system to communicate its overall sustainability performance. <http://www.communities.gov.uk/planningandbuilding/buildingregulations/legislation/codesustainable>

with the consideration of a planning permission application'. The risk for the developer is that this 'front loading' means that more time is needed to determine the planning application. For the consenting bodies, there may also be advantages if they can deal with the issues raised in one 'hit' rather than being consulted on the planning application before being asked to consider the detail of a specific consent at a later stage. On the other hand, they may find that they do not have sufficient information to take a decision on the non-planning consent at that stage.

4.24 In other circumstances, however, the balance of risk for the developer makes the early consideration of detailed design unattractive. As a result, from a developer's perspective, the ideal scenario would be the ability to choose when to apply for the various consents needed for any given development, in line with the specific risks attached to individual proposals. As one respondent said: 'there is merit in developers having the option of pursuing a single process that would lead to the grant of a number of separate consents'; whilst another argued that: 'the owner/developer should be allowed to choose when they seek individual consents'.

4.25 The Review concludes that, through clarifying the boundary between planning and non-planning consents as well as considering the overall landscape, it may be possible to make changes which improve the efficiency and effectiveness of the development approvals system as a whole to the benefit of both developers and consenting bodies. It will explore these ideas further during phase two.

Chapter 5 – Working Practices

Timescales for getting decisions

5.1 Non-planning consents often involve highly technical and complex decisions. Sometimes the information needed to support an application is difficult or time-consuming to obtain and, in those cases, it should be recognised that such decisions take time. That said, developers deserve a transparent, value for money service that delivers timely decisions to help stimulate investment and enables them to respond to business opportunities. Consenting bodies too can benefit from efficient processes that free up resources to focus on their highest priorities; whilst other stakeholders, such as local communities, can benefit from the greater transparency and certainty that come from efficient and accountable processes. As indicated in Chapter 3, what developers find difficult to accept is unnecessary delay – a period of time over and above what would be expected under an efficient and effective process – and the uncertainty this creates for them.

5.2 Even the best resourced developers who submitted evidence to the Review said they experienced frustrations arising from what they considered to be unnecessary delays in dealing with non-planning consents. The Review has had insufficient time to quantify the extent to which this occurs, but the groups of regimes which generated the greatest adverse comments on this score were highways; heritage; and environmental permits.

5.3 The evidence gathered from interviewees and the written responses received suggest that the root cause of this frustration is uncertainty about when decisions will be made and many respondents took the view that clarifying the timetable for non-planning consent decisions would be a significant step forward. As one respondent put it: ‘strict time limits should be imposed on bodies responsible for non-planning consents, possibly to the extent that there should be a statutory duty to inform the applicant of their decision within a defined time. Although some time limits do currently exist, there are often situations in which the authority in question is able to unreasonably extend the time frame without sufficient justification’. Some also suggested a ‘deemed consent’ process whereby, if a decision is not given within a defined period after application a consent is deemed to be granted.

5.4 There are a number of reasons why uncertainty around timing may exist. In some cases, such as highways consents, it may stem principally from the absence of any statutory (or other) timetable attached to determination of these consents. However, other consents, such as those issued by the Environment Agency, do have statutory determination targets and the Agency monitors performance against them.

5.5 The Environment Agency determines applications for simpler types of consent largely within the statutory target period (for example, 99 per cent of flood defence and more than 90 per cent of water discharge and water abstraction licenses). However, determination of more technically complex applications, such as those for new waste and industrial activities, often

exceed the statutory determination target of three or four months (depending on application type). The Environment Agency has identified some of the common reasons for extensions:

- Time needed to obtain necessary information from the applicant (especially in the case of novel activities);
- Addressing concerns of statutory consultees and public participation requirements; and
- The need to wait for prior planning permission in specific cases.

5.6 Whilst extensions to determination may be agreed with the applicant, some respondents are frustrated that extensions can become open-ended and they are not kept informed of progress. Simple actions, such as Natural England's practice of informing developers within 10 days if there is likely to be a delay to determination, can help to improve the transparency of this stage of an application.

5.7 This is an issue which the planning system has addressed through the introduction of time based targets for determination of planning applications. As the Killian Pretty Review⁵⁶ noted however, their introduction (in association with planning delivery grant) has produced some perverse consequences. These include pressure on applicants to withdraw applications or face refusal if they go over the target deadline; and lack of flexibility around negotiations to improve schemes because of time constraints. The Killian Pretty implementation team is actively considering options for changing the planning key performance indicator to focus on customer satisfaction, taking account of a range of relevant factors, including the quality and timeliness of the service experienced by the applicant. Developments in this area may provide a useful template for other consenting bodies to follow.

5.8 Another mechanism that the planning system has adopted to encourage timely decision-taking is the Planning Performance Agreement (PPA). The PPA is an agreement between a developer and a local authority setting out who will do what when. It is designed to address problems such as timescales, resources and the quality of applications and decision, by providing a management approach to delivering good quality outcomes. Whilst some respondents were sceptical about the value of PPAs, seeing them as a possible diversion of resources away from consideration of an application itself and lacking teeth, others saw potential for the extension of the PPA concept to include other consenting bodies, both in their role as statutory consultees to the planning process and as decision-makers for non-planning consents in their own right.

5.9 In similar vein, and again currently focused around their participation in the planning process, the Highways Agency is developing a protocol for working with local planning authorities, developers and other stakeholders. Its

⁵⁶ See Footnote 9

purpose is to set a national standard for all teams in the Highways Agency that are involved in the planning and development process. It will lay out an approach, consistent with Highways Agency objectives, explaining what the Highways Agency needs from planning authorities and developers and the service standards they offer. Whilst the focus at present is the planning process, the Agency recognises that it may equally be applicable to non-planning consents.

5.10 The Olympic Delivery Authority has chosen to use this kind of mechanism to streamline its handling of the large number and wide range of non-planning consents it has to obtain. Through its Section 106 planning agreement⁵⁷ it facilitated the setting up and funding of protocols with the four host boroughs, the Environment Agency and British Waterways as the key consenting bodies it has to deal with. Beneath the protocols are joint service level agreements, defining the quality of service to be provided and the service level benchmarks to be met as a condition of, and in return for, related funding. This clarity and the effort put into building relationships with the Environment Agency, for example, has paid dividends, with all of the 170 flood consents applied for approved well within the statutory two month timescale; a memorandum of agreement on waste which has enabled the Olympic Park to be considered as one site; and speedy turn around on other environmental permits required.

5.11 Whilst the Olympics are hardly a typical development, this example shows what can be achieved through the focused use of protocols and agreements, where both sides are positively engaged. The Review sees merit in exploring these ideas further in phase two.

Early engagement

5.12 As noted in paragraph 3.17, finding information about which non-planning consents may be needed for a specific development can be difficult. Once developers have identified which consents are required, they need to pin down the exact requirements for getting each one. Consenting bodies, such as Natural England, the Environment Agency and English Heritage, provide comprehensive guidance on general requirements for their consents, and are seeking to improve its effectiveness under the driver of Better Regulation. But there are particular circumstances where lack of information causes uncertainty, for example, where developers want to use new technologies or where the legal requirements, technical performance and/or environmental impacts of a scheme are uncertain. Some respondents to the Review thought that, in such cases, consenting bodies may take a precautionary approach or prolong the process by seeking more information rather than focusing on risk.

5.13 Whilst few environmental permits are refused, the degree of mitigation measures needed to ensure satisfactory compliance with legal requirements can cause delays and affect the viability of a development. Developers want

⁵⁷ See Footnote 44

as much certainty about the requirements (as they affect costs) as early in the project as possible. For those non-planning consents whose substance is a consideration in the planning process, there is an opportunity for early engagement at the pre-application or planning application stage (or indeed as part of the plan-making activity associated with the Local Development Framework).

5.14 Informal, non-binding discussions between developers and local authorities are increasingly becoming a recognised part of the process for planning applications. Indeed, the Killian Pretty Review⁵⁸ suggested a number of ways in which these discussions could be strengthened and made a more integral part of the process. Pre-application discussions give an opportunity for the developer and planning authority to identify the wider issues which the application needs to address and to engage other interested parties early on.

5.15 Contributors to the Review – both developers and consenting bodies – noted that early discussions had the potential to remove uncertainty. But they are not without difficulties. The consenting body may be unable to provide a definitive response until sufficient detail is known about the proposed development and its predicted impacts. And developers can be reluctant to embark on more detailed design whilst they are unsure whether or not planning and other consents will be granted.

5.16 Developers identify other problem areas, notably:

- The long timeframe of a typical development project, combined with splitting of work between individuals or departments within the consenting body, can reduce continuity and therefore the benefits of such discussions;
- Consenting bodies' responses in a pre-application stage can be bland, either because of lack of resources or because they have insufficient information to make specific comment;
- Some guidance is too general to be of practical value and more development-specific advice is needed from consenting bodies at an early stage of the project;
- Decision-makers may need input from multiple stakeholders, adding to the complexity of the decision-making process.

5.17 Consenting bodies too see obstacles to providing definitive advice at a pre-application stage:

- Although some consenting bodies have powers to charge for pre-application advice, often there is no specific income for this work so it competes with other priorities within ever-shrinking budgets;

⁵⁸ See Footnote 9

- Public consultation and statutory consultation are legal requirements for some non-planning consents and any decision seen to be made ahead of this requirement could be at risk of legal challenge.

5.18 Nonetheless, early engagement through pre-application discussions gives an opportunity for the developer, the planning authority and other consenting bodies to identify the wider issues which the application needs to address and to engage other interested parties early on. Building on this early collaborative approach – without adding to resource pressures for decision-makers or costs for developers – may bring further benefits. For example, ongoing work involving Defra, CLG and the Welsh Assembly Government is looking at the interface between planning and pollution control and exploring the degree to which consenting bodies can provide clearer statements or guidance on environmental acceptability at the early stages of a project.

Co-ordination

5.19 In part, respondents to the Review believe that the uncertainty associated with getting a decision stems from the need for decision-makers to seek input from multiple stakeholders, sometimes within the same organisation. Clearly the more individuals or bodies that have to be involved, the greater the risk of delay – and the greater the risk of conflicting advice from experts in different aspects of the consent creating difficulties for the decision-maker. Just as there is no oversight of the non-planning consents landscape at national level, there is usually no-one at local level with an overview of their operation and effect on development proposals.

5.20 Respondents to the Review reported that too often the decision-maker simply passes on consultees' responses to the developer and asks what is being done to resolve the issue rather than deciding whether or not the response raises anything of genuine importance. In part, this may be due to risk aversion within the consenting bodies, related to the increasingly litigious nature of society at large. Alternatively, it may reflect resource pressures or lack of expertise.

5.21 The effect is that developers can be left to try and resolve issues which arguably could and should be handled by the consenting body whose authority is being sought. As one respondent to the Review said: 'it can become particularly cumbersome and frustrating when dealing with more than one industry or authority. Often developers will face conflicts between agencies. These are particularly difficult issues to address and cause delay, uncertainty and further costs to the project'.

5.22 Problems can be heightened in circumstances where responsibility is split between different tiers of local government. For example, in the case of highways consents, one respondent stated: 'There is a lack of joined up thinking with highways. They are rarely under the same directorate as planning thus once planning has been agreed it passes to a different team. There tends to be a conflict between planners' aspirations and engineers' specifications'. Unitary authorities have the advantage that they bring all the

authority's functions together under a single management chain. This means that there is more likely to be alignment of objectives across different parts of the authority and that there is a clear escalation route for developers when problems arise. A number of respondents commented that they encountered fewer problems when dealing with unitary authorities.

5.23 Where complex projects cross local authority boundaries, the need for co-ordination can be particularly acute. This is an issue which the Olympic Delivery Authority (ODA) has chosen to address proactively. It faced having to get highways related consents for roads within the Olympic Park agreed with the four host boroughs and with Transport for London. Each authority would have employed its own consultants to consider each consent and the ODA would have had to hold the ring to get agreement on each one. Instead the ODA has persuaded the authorities to delegate their decision-making power to a single independent approval authority, paid for by the ODA. The independent authority works to a set of shared design principles for relevant works, agreed by the ODA, the boroughs and Transport for London. This has streamlined the process for the developer and saved time and effort for the host boroughs and Transport for London.

5.24 Whilst the Olympics are far from a typical development project, it is noteworthy that it fell to the developer to orchestrate this co-ordination and come up with a mutually beneficial solution. The need for this kind of clear, consistent governance for all developments was highlighted by one respondent who said: 'if the authorities established a common structure on governance and dispute resolution then the whole process would gain transparency and assure clients that they are being treated fairly and equally by the authorities'.

5.25 Denmark has developed a system where the equivalent of the local authority holds the ring on development projects (Figure 6) and takes an active part in resolving potential tensions between participants in the process. The purpose of their dialogue is to produce better quality buildings more efficiently; to develop better mutual understanding between the developer and decision-maker about the conditions both are working under; to manage the developer's expectations; set flexible and realistic timetables; and improve the quality of applications. They provide different levels of support according to the size and risk attached to a proposal. Such an approach appears to meet the desire of one respondent to the Review who judged that: 'a one stage master plan of a scheme with all parties involved could assist in reducing costs and provide some certainty to the developer'.

Figure 6: Danish approach to co-ordination



5.26 Again, planning authorities are adopting mechanisms to address difficulties that arise from the need to involve a range of official bodies in planning decisions. The process of plan-making requires them to consult and work with a wide range of interested parties, including other consenting bodies, giving them the opportunity to build constructive relationships and ensure that others understand what development is likely to acceptable in their area. Development control officers explicitly co-ordinate the input of statutory consultees, including environmental health, building control and the local highways authority, during the planning process. Some local authorities are considering taking this approach further by appointing a liaison officer – funded by the developer – to act as a focal point between the developer and the local authority and to ensure that contentious issues are addressed quickly and effectively after planning permission has been granted. Expanding this approach would be welcomed by many of the respondents to the Review.

Service culture

5.27 Developers reported problems arising from inconsistent advice given at different stages of the development process. At one extreme, this can take the form of one consenting body apparently refusing to accept the decision of another – for example, we were told of a case where, from the developer's perspective, it seemed that the Highways Agency and a county council were not initially prepared to take forward a scheme for a trunk road junction which had been approved on appeal by the Secretary of State. The developer reported that this was ultimately resolved by negotiation but resulted in a six month delay. Alternatively, it can also take the form of an individual within the same organisation refusing to accept the judgement of a colleague. Developers perceive that personal opinion is too often allowed to over-ride evidence-based professional judgement and there is need for consenting bodies to devise ways in which to ensure that they speak with a single voice.

5.28 Developers ascribe many of the difficulties they encounter in dealing with consenting bodies, including this inability to speak with a single voice, to the lack of an adequate 'service culture'. For some consenting bodies, giving consents is not a core activity and may not be given the priority within its business plans that developers would like. Simple expedients such as adding a common objective to business plans either about their consenting activity or about supporting sustainable economic development could help to address this.

5.29 A number of consenting bodies have already recognised this issue and engaged in activity designed to promote a service culture and improved delivery. This is to be welcomed. The comprehensive approach taken by English Heritage, for example, is summarised in Box 10.

Box 10: English Heritage – Improvements in Service and Culture

1. The introduction of **case management systems** and a **service charter** has transformed the speed, quality and consistency of EH's responses to consultations by creating standard response templates and developing new ways of working, such that over 95 per cent of planning and listed building consent advice is provided to local authorities within 21 days.
2. **Regulatory focus to target interventions.** EH has worked hard to focus its responses to consultations on the most important or controversial applications. This ensures that straightforward applications are dealt with solely by local authorities, while EH expertise is added to the local authorities' deliberations on more complex applications that require particular attention.
3. **E-enablement of applications and consultation.** EH has invested in systems and training to allow it to handle electronic statutory notifications from local authorities, thus helping to speed up turnaround times and reduce unnecessary generation of paper.
4. **Increased availability of information and education.** The Historic Environment Local Management initiative provides publications, training programmes, and a website aimed at local authority staff and members. Free training and workshops, targeted at heritage professionals, non-heritage professionals in local authorities, elected members etc, are provided in many locations around the country, focused around relevant planning-related topics.
5. **Capacity building.** The Historic Environment Traineeship Scheme was launched by EH in 2008 to train future historic environment practitioners and provide the historic environment sector with the expert skills it needs.
6. **Web site improvements** including updated information to accompany the forthcoming PPS and practice guide on the historic environment. The EH website is undergoing a major upgrade, splitting the public (particularly visitor attractions) side from the professional one..
7. A '**Constructive Conservation' policy** that aims to recognise and reinforce the historic significance of places, while accommodating changes necessary to make sure that people can continue to use and enjoy them.

5.30 Some local planning authorities are also investing considerable effort in building a service culture and improving their service delivery. For example, one planning department in northern England is going out to the local business community actively seeking feedback on the service it delivers; creating business adviser and sector focused roles to tailor the advice they give more closely to the needs of the users of the service; and publishing a ‘planning charter’ for businesses setting out the services standards they can expect. There is a tendency, though, for this activity to focus on planning rather than the full range of consents that are needed.

5.31 There was a marked reluctance amongst business contributors to the Review, for whom development is a routine part of their business activity, to be seen to be complaining about the service delivered by consenting bodies. They were very conscious of the possible effect of complaints on their long-term relationships with organisations and individuals on whom they depend for important decisions. Getting feedback, positive or negative, is essential if consenting bodies are to develop a deep-rooted service culture and is something they should actively be seeking from users of their services.

Skills and Resources

5.32 Contributors experienced the effects of resource constraints within consenting bodies – they spoke, for example, about difficulties in contacting key individuals within consenting bodies; inability to meet to discuss problems for weeks or months; and lack of cover for illness, annual holidays or other absences. Whilst sympathetic, they nonetheless found these kinds of difficulties frustrating as a source of potential delay.

5.33 There are no easy solutions to resource pressures within the public sector. Looking ahead, it is fair to assume that pressures will grow rather than reduce. The onus, therefore, will be on making the best possible use of existing staff, finding innovative ways of making scarce resource stretch as far as possible and considering fees or other forms of charging for services which are currently provided free.

5.34 Some consenting bodies have considered the possibility of charging for services which are currently free, such as pre-application advice, to increase resources or of asking for contributions from developers to resource particular activities. One of the advantages of charging for services is that it reinforces a service culture – once customers are paying for a service, they are more likely to hold the supplier to account. Charging was considered in the Barker Review of Planning⁵⁹, which noted that care would have to be taken to ensure fees did not become anti-competitive through favouring large, incumbent firms, creating a two tier system where small businesses receive an inferior service if they do not pay the cost. Charging can also give the impression in local communities of developers effectively purchasing permits. Furthermore, passing additional costs on to developers at a time of already high cost and risk would clearly need full consideration. That said, both charging and asking

⁵⁹ See Footnote 5

for contributions are already a feature of planning so there is no point of principle at stake and this is an area which seems worthy of further consideration during phase two of the Review, as a means of meeting developers desire for improved service without exacerbating existing resource pressures or adding significant costs on to developers.

5.35 As well as difficulties caused by sheer lack of resources, developers also raised concerns about expertise and experience, particularly in areas requiring specialised or technical knowledge. For example, respondents from the minerals sector thought that the Environment Agency and local authorities lacked staff with the required skills to process complex applications in a timely manner. The absence of the necessary expertise can also exacerbate the overall resource pressures. Box 11 illustrates a case where the respondent believed lack of experience or access to expertise contributed to delay.

Box 11: Skills concerns – footpath diversion

At a historic house, open to the public, the owners needed a minor footpath diversion to enable a flood alleviation scheme to be implemented. Initially the local authority wanted to wait until planning permission had been granted before undertaking the preliminary footpath diversion consultations. The owners pointed out the Government's advice that this consultation should be done at the same time as the planning consultation, which was taken on board. However, even with everyone doing all that they could to facilitate the process, the owners consider it unlikely that they will get approval for the diversion until two months after planning permission is granted. This delays the implementation timetable and leaves the house at risk of flooding for longer. No objections were raised to the planning application or at the preliminary consultation for the footpath diversion.

The owners felt that there was a possible skills issue as Planning Act footpath diversions are normally dealt with by district council staff who, they said, can go years between applications and have this as a sideline to their main job.

5.36 The availability of adequate numbers of staff who are sufficiently trained was raised, in particular, in relation to listed building consents. Respondents referred to:

- **A lack of heritage resource in absolute terms** – not only within local authorities (where between one quarter and one third of local authorities have no dedicated conservation resource at all⁶⁰), but also amongst private sector players. It was felt lack of available expertise in consenting bodies led to an overly “preservationist” approach to negotiations;

⁶⁰ English Heritage, the Association of Local Government Archaeological Officers and the Institute of Historic Building Conservation ‘Implementing the Heritage Protection Reforms: A Report on Local Authority and English Heritage Staff Resources’ (May 2009), http://www.helm.org.uk/upload/pdf/Implementing_HPRStaff_Resources_20090507152928.pdf?1266513639

- **Skills shortages** – Aside from sheer numbers, respondents referred to a lack of proper training and skills and the absence of a coherent conservation profession. Skills, the Review was told, should include economic awareness of heritage issues (the case for development) and negotiating skills.

5.37 The extent of the problem in the heritage field does not affect potential developers evenly. Those owning Grade I and II* listed properties (and big developers) are likely to be equipped with specialist knowledge and have access to English Heritage's extensive expertise. The main problems arise for owners of one Grade II property who deal with local authorities. The role of the third sector (a key player in the heritage world, usually with limited funding) was also raised in this respect.

5.38 Amongst the solutions suggested to resolve heritage staffing and skills shortages were:

- **Better use of resources** - whilst respondents recognised that resources in the field are unlikely to increase in the current public spending environment, they believed the issue could be addressed through sharing of staff between local authorities and better training;
- **Create a coherent conservation profession** – for example, the eight core competencies required for full membership of the Institute of Historic Building Conservation might be used as a starting point for conservation competences.

'Good developers'

5.39 Of course, there are two sides to every story and it would be remiss to imply that developers are always faultless in their part of the consenting process. Those who fail to try and find out about what is required before they start a project, who provide incomplete or inaccurate information, or who leave contact with the consenting body to the last possible moment do not help themselves and must take some responsibility for any delays or additional costs that they incur as a result. There is little guidance available to those undertaking a development for the first time about how to avoid the pitfalls that can arise and this is something that the Review will come back to during phase two.

Chapter 6 – Other Challenges

6.1 Throughout Review, stakeholders have raised concerns about the way the statutory undertakers, principally energy and water companies and railways, can add time and cost to the development process. Whilst not formally within scope, due to the strength of response from stakeholders, the Review has alerted the relevant regulators and feels it appropriate to comment on on-going and future work that could mitigate the problems that were reported to the Review.

Utilities

6.2 The majority of the concerns that were raised about utilities related to the length of time taken for electricity connections, although some problems with gas, water and sewerage connections and adoption were also reported. Developers reported that there was a lack of clarity in the process for engagement with utility companies, no clear timescales and insufficient incentives for the utilities companies to provide a timely response to requests from developers⁶¹. As a result, working with the utilities is seen as another source of risk for developers, requiring disproportionate effort to manage effectively. The issues raised by respondents are summarised in Box [xx]. Developers interpret these problems as a lack of ‘customer focus’ within the utilities and a failure of the current incentives to improve efficiency and effectiveness.

6.3 There is little empirical evidence to underpin these claims. However, a survey by the National Federation of Builders (Utilities Survey 2008⁶²) found that 88 per cent of sites experienced problems with utility companies, 65 per cent of firms had experienced problems due to poor communication from utility companies and more than half of sites (55 per cent) reported experiencing delays with electricity companies.

⁶¹ It should be noted that there are currently some standards in place regarding gas and electricity connections in both the Gas Distribution Licence and the Electricity Distribution Licence and that Ofgem has acted to enforce these standards where appropriate. Further information can be found at www.ofgem.gov.uk. In the water and sewerage industry, Ofwat has powers to determine an agreement in the event of a dispute. Further information can be found at www.ofwat.gov.uk.

⁶² National Federation of Builders, ‘Utilities Survey 2008: The report of a major survey into the utilities’ connections service’ (September 2008)
www.epolitix.com/fileadmin/epolitix/stakeholders/NFB_Utility_Report_2008.pdf

Box 12: Summary of issues raised by respondents

- Poor communication and slow interaction between internal departments of energy companies in determining customer solutions, which in turn results in delays in dealing with developers as customers.
- Disproportionate amount of time taken to provide quotations and deliver service (and a tendency to miss previously agreed timetables).
- Lack of transparency over costs.
- Long lead times for key plant / equipment (such as cables/transformers)
- Legacy problems, such as utility congestion under streets, which slows down installation works and means excavations from sub-stations may have to go via longer, alternative routes to reach development sites.
- Lack of existing capacity to provide the desired level of service.
- Prioritisation of other works can take precedence over needs of developments with no ‘right of appeal’.
- Some firms now employ specialist consultants to manage the engagement process with utility providers, adding to costs of project.
- Where the possibility for competition exists, in some circumstances it either has not evolved or is not yet mature enough to offer real alternatives.
- Experienced developers reported that, because dealing with utility companies was such an open-ended and uncertain process, it was an issue they dealt with on ‘Day 1’ of a development to try to eliminate delays later.

6.4 The respondents to the Review who cited engagement with the utilities as a cause for concern were in broad agreement as to what the solutions needed to be. The suggestions for improvements break down into four categories:

- **Clear and standard processes for engagement:** The principal request was for a much clearer process for engaging with utility companies (and in particular electricity companies). Developers complained that there was no standard process or defined timescales (or indeed a clear price structure or framework for charges).
- **Enhanced customer focus:** It was commonly felt that utility companies did not have a sufficient focus on ‘the customer’ and that, internally, they did not coordinate work effectively to ensure an appropriate level of service. The idea of a single point of contact for developers inside utility companies was put forward as one mechanism for improving the level of service.
- **Stronger enforcement:** Respondents believed that for utility companies to adhere to a standardised process for engagement and to operate on a more ‘customer focused’ basis, there needed to be a greater degree of

regulation and enforcement underpinning the requirements. Service Level Agreements or a similar mechanism could ensure that service levels are maintained.

- **Increased competition:** There was also a view that increased competition was needed in those specific sectors and locations where it is not yet well established. Greater competition in the provision of gas connections than electricity connections (where new entrants have over 50 per cent of the market in gas connections, compared to only 11 per cent in electricity) may explain in part why developers have reported fewer problems in the gas sector.

On-going work to address problems faced

6.5 It should be noted – as indeed it was by many respondents to the Review – that the utility regulators are aware of and acting upon many of the issues raised above. Both Ofgem and Ofwat have done much to address these issues in recent years and are continuing work to put in place solutions to some of these problems.

6.6 This work includes the following activities:

- **Electricity** The current Electricity Distribution Price Control Review 5⁶³ includes many changes that should deliver real benefits for developers. Some of the changes it will bring about are: an upgrade of the electricity supply network; an increased ability to invest speculatively in advance of potential need; the potential for increased competition; and, critically for the purposes of this Review, new and enforced service standards.
- Under the new regime, all electricity distribution companies will have to work to guaranteed and enforced timescales which should greatly improve the customer experience for developers. The proposed regime will provide for guaranteed standards and customers will be entitled to compensating payments if those standards are not met. It will also set an overall licence condition on the distribution companies to meet timescales at least 90 per cent of the time, or be in breach of their licence and face potential fines and/or enforcement action from Ofgem.
- **Gas** Whilst there are already guaranteed standards in place to try and ensure appropriate customer service levels in the gas distribution and supply sector, Ofgem is likely to be looking at making further improvements in terms of customer experience as part of the next Gas Distribution Price Control Review.

⁶³ Distribution Price Control Review 5
www.ofgem.gov.uk/Networks/ElecDist/PriceCntrls/DPCR5/Pages/DPCR5.aspx

- **Water and Sewerage** Ofwat are consulting on the new appointments regime that governs applications to provide water and sewerage services to new sites, and will draw on the findings from this Review as part of that consultation process.

Access to railways

6.7 The rail infrastructure in England, Scotland and Wales is primarily owned and managed by the national infrastructure manager, Network Rail. Network Rail is a not for dividend company which operates, maintains and renews the mainline rail network, reinvesting any surplus it generates into the railway. As well as maintaining track and signalling, Network Rail plans the needs of the network, coordinates investments, produces the timetable and seeks to deliver safe and effective management of the infrastructure.

6.8 The infrastructure includes around 2,500 rail stations, the largest 18 of which Network Rail directly manages, with the rest being leased to the train operating companies. The railway is a regulated industry and both the disposal of railway land and network closures are subject to regulatory controls by the independent Office of Rail Regulation (ORR) (network closure proposals are reviewed by the DfT and are ratified by the ORR). Other bodies regulated in a similar way include London Underground, the Docklands Light Railway and Manchester Metrolink, while many smaller parts of the wider network, such as disused lines, rail yards and their connections, can be owned by any one of a number of bodies.

6.9 Developers have raised concerns about the difficulties of obtaining consent to access the railways, for example to construct a bridge over the tracks, and of gaining consent to develop next to the railways, where there may be a shared boundary or simply proximity to a railway. Whilst there are obviously significant health and safety concerns attached to working close to high voltage lines, for example, developers told the Review that acquiring this consent can be unnecessarily time consuming.

6.10 Other issues such as the landscaping of land adjacent to a railway, so that for instance, trees do not drop leaves on to the line, can also involve lengthy discussion. Respondents have suggested that these could perhaps be covered in most instances by generic rules, for example setting a standard required distance of trees from the railway boundary which could be incorporated as a planning condition rather than requiring discussion with the rail infrastructure companies. The Docklands Light Railway has been suggested as an example of where such an approach appears to work well.

6.11 In order to allow developers access to the railway Network Rail has to take possession of the railway. The timing of engineering works is an operational matter for Network Rail under the national possessions regime overseen by ORR. Under this regime the majority of engineering possessions are specifically planned – often up to eighteen months in advance.

6.12 Network Rail plans the timing of possessions as early as possible to maximise their efficiency and to minimise the impact on passenger and freight train operators' services. Minimising the disruption to train operators is Network Rail's priority and hence is an overriding factor when considering how best to also meet the needs of developers. The possessions regime aims to incentivise such early planning and thereby to reduce the amount of compensation payable to train operators for service disruption. All disruptive possessions are compensatable. The earlier that possession appears in a timetable, the greater the discount Network Rail receives on the level of compensation payable. Such advance planning gives train operators time to organise alternative travel arrangements (for example, bus substitution) for passengers.

6.13 Anecdotal evidence suggests that there may be scope for improvement on both sides. Developers could perhaps engage earlier in the process when requesting access to the railway, or reduce the tendency to change dates with minimal notice, which impacts upon the availability of Network Rail engineers and overall cost. Network Rail, is required to give 12 weeks notice to franchise operators, and through this arrangement the general public learn about changes to the train service.

6.14 Feedback gathered by the Review, and discussion with Network Rail and Transport for London, suggests that there is work going on to enhance customer focus, which should be encouraged, and that better communications, perhaps through a dedicated point of contact, would improve the service. The experience reported to the Review indicates that developers want continuity in the personnel with whom they need to deal.

6.15 Given the ongoing programmes of railway maintenance and renewal works there are likely to continue to be competing priorities for rail possessions in the future. Improved communication appears to be key to managing this balance.

6.16 The Review welcomes and encourages the ongoing work by the utility regulators and by railway companies to address the issues that are raised in this report. Whilst not formally within scope of the Review, many respondents cited engagement with utility companies and railways as a common problem area. Although the Review does not propose to investigate them further, it encourages the regulators and infrastructure owners to pursue on-going activity to tackle them and will report on progress in the next phase of the Review.

Chapter 7 – Opportunities for Improvement

Overall assessment

7.1 The Review's investigations have generated an overview of the complex and fragmented landscape occupied by non-planning consents. Whilst no development project will have to deal with all those identified, major developments are likely to need non-planning consents in double figures and smaller projects may also have to contend with multiple consents. The current arrangements, as experienced by users, are too often seen to be neither efficient nor effective. Users perceive that, in some cases, they exhibit shortcomings in terms of:

- **Transparency** – lack of oversight of the ‘landscape’ as a whole by central government; lack of easily available information for occasional investors, in particular, about which non-planning consents may be required for different types of development; and poor communication during the application process.
- **Accountability** – failure by consenting bodies to take timely decisions and difficulties in resolving differences of opinion between experts in different aspects of planning or a consent regime.
- **Consistency** – different judgements reached by individuals within the same organisation leading to unnecessary delay and additional costs because of the need to re-work detailed design.
- **Proportionality** – the requirements to produce technical supporting material sometimes appears disproportionate to the size and potential impact of the schemes involved.

7.2 Whilst the evidence gathered by the Review has largely been anecdotal, the themes that have emerged have been so consistent and widespread among those giving evidence that the Review concludes that they deserve further investigation. Actions to simplify the non-planning consents landscape and to improve their operation have the potential to bring benefits for all developers, whatever their size or business sector, in terms of greater certainty and ability to manage risks effectively; as well as for consenting bodies in terms of improved efficiency.

Simplifying the non-planning consents landscape

7.3 Previous studies have identified benefits from ‘unifying’ consents and recent changes, notably the creation of the Infrastructure Planning Commission and the Marine Management Organisation, have taken a step towards a ‘one-stop shop’ for certain categories of development. However, even they have stopped short of wrapping all the consents necessary for the developments they cover into a single regime. Such changes are consistent with the principles of better regulation in that they simplify the landscape for

the applicant and, by bringing decision-making together in one place, should facilitate greater transparency, consistency and accountability.

7.4 The Review therefore thinks that these changes represent the right direction of travel for those regimes that have a bearing on the decision of principle that is the culmination of the planning process – dealing with what, where and why a development should take place. That said, it is early days for both regimes and there are potential disadvantages for developers in terms of ‘front-loading’ the process in a way which is manageable for large schemes but could generate unacceptable costs at a time of high risk for smaller projects.

7.5 The Review concludes, nevertheless, that there are opportunities to simplify the non-planning consent landscape by reducing their number. For example, there are some regimes which seem capable of being absorbed into the planning process so that they cease to exist as a separate consent – conservation area consent has already been identified as falling into this category. Others form part of a group of consents which might be rationalised whilst remaining separate from planning – for example, there is an existing proposal to merge listed building consent and scheduled monument consent. The fact that local authorities are decision-makers for a range of consents, including footpath diversions and local highways orders, opens up the possibility of merging some consents into planning if doing so suits the applicant. And a fourth group – such as building regulations approval – probably needs to be kept separate from (and follow) planning. This group is mainly concerned with the detail of how a development is completed and there may be aspects currently in planning which would be better considered at a later stage.

7.6 The diversity of the regimes in the landscape means that each needs to be looked at on its own merits or as part of group of related consents. The factors that need to be considered in determining which category a regime falls into include:

- The extent to which the issues it considers are likely to be ‘material considerations’ within the planning process;
- Whether or not those whose interests are affected by the consent would be consulted as a normal part of the planning process;
- The degree of technical detail required in order to determine the consent;
- Who the decision-maker is;
- How distinct (from other non-planning consents) the activities for which the consent are sought are;
- Whether the effects of the consent are permanent or temporary; and
- Whether the consents relate to constructing the development or its on-going operation.

7.7 To make progress, the Review thinks central Government needs to put in place cross-department oversight of the non-planning consents landscape in order both to ensure that the landscape is as coherent as possible and to consider how any new consents can best be integrated into the existing landscape.

Improving the interaction between planning and non-planning consents

7.8 Alongside activity to simplify the non-planning consents landscape, the Review also sees opportunities to improve the operation of non-planning consents further, drawing on lessons learned from recent efforts to improve the planning system. Whilst there is much action being taken within consenting bodies to improve the efficiency and effectiveness of their consenting activity, the Review concludes that further progress can be made by:

- Clarifying the boundary between planning and non-planning consents. This might be achieved by recognising that planning permission considers those aspects of non-planning consents that have a bearing on whether or not a development should go ahead. As a result, it is reasonable to presume that non-planning consents determined after planning permission has been granted will focus on matters of detail about how the development will be built and operate, rather than whether it should go ahead; and that those non-planning consents decisions that go to the principle of whether the development should go ahead at all should be dealt with alongside the planning decision;
- Improving the accessibility and availability of information about non-planning consents, for example by developing a simple checklist of consents to be added to the already comprehensive material about planning on the Planning Portal;
- Considering further the interaction between consenting bodies' roles as statutory consultees in the planning process and as decision-makers for particular non-planning consents, in an effort to identify ways of reducing confusion and overlap between the two;
- Improving the support available for developers so that it encompasses non-planning consents, for example by encouraging local authorities to take a pro-active role in co-ordinating work within the public sector to deliver development projects; and
- Standardising some processes across groups of consents as a means of simplifying the related bureaucracy and reducing the need to supply overlapping information.

Changing working practices and addressing resource pressures

7.9 The Review has been impressed by some of the action in hand in some consenting bodies to improve the service they deliver. It concludes that there is scope to build on that action to create a more responsive culture across all consenting bodies, at the same time as addressing resource pressures. It also recognises the importance of businesses playing their part in the successful operation of consents regimes by, for example, engaging early with decision-makers and providing complete and accurate information in a timely way. The opportunities the Review sees for further improvement include:

- Setting appropriate service standards for delivery of timely, transparent and efficient consenting services by consenting bodies through mechanisms such as business plan targets, planning performance agreements, memoranda of understanding or protocols;
- Improving the governance around decisions involving multiple (public sector) stakeholders, so that developers receive consistent advice and have a clear path for resolving difficulties when they arise;
- Building on existing models for pooling and sharing expertise across consenting bodies, especially in areas requiring technical knowledge or specialist skills;
- Promoting and sharing good practice across consenting bodies;
- Considering fee structures and other financial arrangements as a means of addressing resource pressures in consenting bodies; and
- Promulgating information about what developers need to do to ensure that the system works for them.

Chapter 8 – Conclusions and Next Steps

Conclusions

8.1 The Review was asked to take a practical, developer-focused look at non-planning consents and the extent to which they discourage or delay positive investment decisions. It has found that:

- The non-planning consents landscape is complex, fragmented and difficult for the uninitiated to navigate and would benefit from central oversight;
- Non-planning consents can contribute to unnecessary delay and additional costs for developers and, in some cases, can ‘make or break’ investment decisions;
- There are overlaps and duplication between planning and non-planning consents, such that there is a need to clarify the boundary between the two and to make further improvements to the way they interact; and
- There is scope to build on action already underway in many consenting bodies to create a more responsive service culture, address resource pressures and ensure that developers understand what they need to do to contribute to the efficient and effective operation of non-planning consents.

8.2 Although much of the Review’s evidence is qualitative rather than quantitative, it is so consistent and widespread – coming as it does from large and small businesses and a range of sectors as well as being recognised by consenting bodies – that it makes the case for trying to improve the way in which non-planning consents operate. In the time available the team has not been able to develop its thinking about how to address the issues and the Review’s Ministerial sponsor, Ian Lucas, the Minister for Business and Regulatory Reform at the Department for Business, Innovation and Skills, has agreed to publication of an interim report now and extension of the Review timetable to enable the Review to develop its ideas further.

Next Steps

8.3 The first phase of the Review has identified areas where problems appear to exist and opportunities for improvement. The outcome the Review is now working towards is a non-planning consent landscape that is less complex for developers and investors; where unforeseen delays are fewer and shorter in duration but where the important policy objectives underpinning specific non-planning consents continue to be upheld.

8.4 The aim of the second phase of the Review will be to work up recommendations for changes that will improve the operation of non-planning consents. It will consider where the greatest opportunities for improvement lie and what, in a broad sense, the costs and benefits of possible changes are,

drawing on lessons from work to improve the planning system as appropriate. It will also seek to identify ownership of the activity required to implement options.

8.5 Building on the findings of this report, the key work streams for phase two will loosely breakdown into four areas:

- **Simplifying the non-planning consents landscape**

This interim report highlights the various other reports that have already looked at unifying aspects of the non-planning consents regime. Phase two will build on this work and develop an approach aimed at reducing the number of consents, whether by unifying individual consents with planning; by merging them with other existing consents; or by abolishing them altogether.

The objective of phase two 2 will be to develop a framework that will enable a methodical and evidence-based assessment of which consents could be simplified and in what way.

It will also be important that any future new non-planning consents are properly thought through, in line with better regulation principles, and that consideration is given to how best they can be integrated with the existing landscape. Phase two will investigate the criteria that should be considered before a proposal for a new consent is made.

- **Improving the interaction between planning and non-planning consents**

Phase two will explore ideas to address the interaction between planning and non-planning consents – including exploring the impact of a presumption that once planning permission has been granted non-planning consents should focus on matters of detail about how the development will be built and operate, rather than whether it should go ahead; and considering the possibility of giving developers the choice of dealing with certain non-planning consents alongside planning permission that might otherwise have been dealt with after planning permission.

It will look at ways to improve the accessibility and availability of information about non-planning consents and what developers need to do to secure the necessary consents as smoothly as possible.

Phase two will also aim to identify opportunities to improve the efficiency of consenting processes, including exploring the interaction between statutory consultation in the planning process and the granting of non-planning consents; and investigating possibilities for greater standardisation of processes. Finally, recognising the resource constraints faced by consenting bodies, phase two will look at how increased support for developers – especially those small and medium

sized businesses for whom development is an occasional activity – might be achieved and by whom.

- **Changing working practices and addressing resource constraints in consenting bodies.**

The interim report has shown that, as well as some reported difficulties, there are also many examples of both existing good working practices and on-going improvements in many consent giving bodies. Recognising that additional resources will not be available, phase two will explore ways to mainstream good working practices, behaviour and culture in order to optimise the resources and skills currently available. This includes considering how to promulgate information to businesses about how they can contribute to the efficient and effective operation of non-planning consents.

Because resources pressures are expected to increase, where additional work may be required, it will consider the options for charging for services provided by consenting bodies.

Finally, it will examine ideas for better aligning the business objectives of bodies that need to work collaboratively on non-planning consents; and the use of planning performance agreements, memoranda of understanding and protocols for setting service standards

- **Identifying appropriate owners and mechanisms that will be required to implement changes.**

To ensure that the detailed work required to properly explore implementation options is taken forward following its second phase, the final report will seek to identify both the mechanisms that should underpin that work and the appropriate owners for on-going work streams.

8.6 Since the second phase will again work to a tight timetable, the Review will not produce fully worked-up recommendations for detailed change. Instead it will seek to identify areas where change could be most beneficial to individual or collective non-planning consent regimes. It will also propose the frameworks and ownership arrangements required to take forward the more detailed work required to introduce changes – be they legislative, operational or cultural.

Annex A – Terms of Reference

Background

Government has active work in progress to streamline the planning applications process (following the Killian Pretty review last year). However, there is a perception that obtaining consents which do not form part of the planning process – for example compulsory purchase orders, highway consents, listed building consent, authorisation for pipeline construction and environmental consents for water, waste, and air quality – causes delays and uncertainty for business and holds back investment.

The Penfold Review will therefore gather evidence to assess the role that non-planning consents play in investment decisions, and where any barriers to investment are identified, it will propose ways to address these. It will explore the end-to-end development journey to identify any elements of the process that cause avoidable delays or impose unnecessary burdens or costs and identify options to overcome these. Where necessary, the review will identify ways to improve co-ordination between agencies granting consents in order to streamline the process of meeting relevant requirements. In doing so, it will seek to retain an appropriate balance between the outcomes regulatory regimes are designed to support and the need for fast and efficient decision-making about development proposals.

Terms of reference

The review aims to identify areas where there is scope to support investment by streamlining the process for securing consents obtained alongside or after, and separate from, planning permission ('non-planning consents'). It will do so by:

- a. Identifying non-planning consents which developers and other stakeholders regard as problematic;
- b. Assessing their impact on developers and the development process; and
- c. Considering how obtaining such consents could be made simpler and more cost-effective.

Scope

The review aims to consider those consents a developer has to obtain alongside or after, and separate from, planning permission in order to complete a development project. Following initial analysis, it will identify those consents which have the greatest impact on investment decisions for further study. The review will cover a wide range of development types, including building, engineering, mining and operations as well as material changes to the use of buildings and other land. It will consider all sizes of development except household development and will explicitly exclude consideration of nationally significant infrastructure projects, considered by the Infrastructure

Planning Commission and marine developments, considered by the Marine and Fisheries Agency (due to be replaced by the Marine Management Organisation in spring 2010). Where responsibility for particular consents has been devolved, the review will only look at practice in England and, where appropriate, Wales. The review will aim to avoid duplicating other projects underway across Government. Instead it will draw evidence, as appropriate, from such projects.

Outputs and timing

1.21 The review aims to deliver a report by the 2010 Budget that makes recommendations about:

- a. Priority areas for further work to improve the developer's experience;
- b. Potential options for improving any elements of the process that cause avoidable delays or impose unnecessary burdens or costs;
- c. Potential options for improving co-ordination between agencies granting consents and, where appropriate, increasing consistency in approach; and
- d. Any identified quick wins.

Governance

A steering board chaired by the Managing Director, Regulatory Innovation, Better Regulation Executive will meet periodically with the independent reviewer, Adrian Penfold, to provide direction to the project team on scope and conduct of the review. Members of the steering board will be drawn from the Departments for Business Innovation and Skills (BIS), Communities and Local Government (CLG), Environment, Food and Rural Affairs (DEFRA), Transport (DfT), Energy and Climate Change (DECC), Treasury and Cabinet Office.

Measures of success

The success of the review will be measured against:

- a. Fullness and quality of evidence about non-planning consents gathered;
- b. Understanding of non-planning consents regimes and their impact on investment decisions;
- c. Identification of options for addressing any problem areas identified.
- d. Timely publication of the review report.
- e. Active participation by relevant sections of the business community, regulators and central and local government and non-governmental organisations (NGOs).

Annex B – Contributors to the Review

The Review Team hopes to have included on this list everyone that contributed and apologises if anyone has inadvertently been omitted.

The following organisations and individuals submitted written responses to the call for evidence:

Accessible Retail
Association of Consultant Architects
Barratt Developments PLC
British Chambers of Commerce
British Property Federation
Brixton Society
Burges Salmon LLP
Cathedral Communications Limited
CBI Minerals Group
Centro
Chemical Industries Association
Chief Fire Officers Association
Coal Authority
Confederation of Forest Industries
Confederation of UK Coal Producers
Corporation of London
Council for British Archaeology
Country Land & Business Association
Crest Nicholson Plc
Devon Countryside Access Forum
EDF Energy
English Heritage
Environment Agency
Environmental Services Association
Essex County Council
Federation of Master Builders
Federation of Small Businesses
Flagship
Gatwick Airport
Gerald Eve LLP
GSK
Hastoe Housing Association
Health Protection Agency
Henry Russell
Heritage Alliance
Historic Houses Association
House Builders Association
Home Builders Federation
Homes and Communities Agency
Housing Plus
Institute for Archaeologists
Institute of Historic Building Conservation

Institute of Public Rights of Way and Access Management Ltd
Joint Committee of National Amenity Societies
Lambert & Foster LLP
Law Society
Mineral Products Association
MJCA
National Housing Federation
National Society of Master Thatchers
National Trust
Natural England
Network Rail
Nottingham Community Housing Association Ltd
One North East
Open Space Society
Planning Inspectorate
Prince's Regeneration Trust
Quintain Estates and Development plc
Ramblers
Royal Town Planning Institute
RWE npower
Simons Group
Sustrans
Tesco
Thurrock Thames Gateway Development Corporation
Town and Country Planning Association
Trinity House
Turley Associates
UK Petroleum Industry Association
Worcester City Council

The following organisations and individuals participated in informal discussions:

Aggregate Industries
AmicusHorizon
Barratt Developments PLC
Bircham Dyson Bell
British Land
CBRE
Chelsfield Partners
Chemical Industry Association
Climate Change Capital/Ventus VCT Funds
City of London Corporation
Council for British Archaeology
Country Land & Business Association
DJC 1 Planning Limited
English Heritage
Environment Agency
Enviros
Eversheds LLP

Faithorn Farrell Timms LLP
Federation of Small Businesses
Grant Thornton
Herbert Smith LLP
Highways Agency
Homes and Communities Agency
House Builders Association
Howard Day
Ipswich Conservation & Urban Design Service
Kate Barker
Local Government Association
London Borough of Enfield
Lovells
M3 Consulting
Mineral Products Association
Mace Group
Nabarro LLP
National Planning Forum
Natural England
Network Rail
North East Chamber of Commerce
Novartis
Olympic Delivery Authority
One North East
Pat Thomas Planning law
Pegasus Planning LLP
Planning and Environment Bar Association
Sainsbury's
Sheffield City Council
Society for the Protection of Ancient Buildings
Swindon Borough Council
Tesco
Transport for London
UK Contractors Group
University of Sheffield, Department of Town and Regional Planning
Ward Hadaway
Westminster City Council
Westfield
WRG
Viridor

The following organisations and individuals submitted other written evidence:

Compulsory Purchase Association
Creative Sheffield
Denton Wilde Sapte LLP
Highways Agency
Northumberland County Council
Planning and Environment Bar Association
Planning Inspectorate

Rippon Homes
Rydon Homes Ltd
University of Westminster, Department of Urban Development & Regeneration
Viridor
Yuill Homes

The members of the Penfold Review Sounding Board were:

Matthew Farrow (Confederation of British Industry)
Stephen Radley (Engineering Employers' Federation)
Andrew Cave (Federation of Small Businesses)
Paul Watson (Planning Officers' Society)
Martin Wheatley (Local Government Association)
David Crammond (One North East)
Liz Peace (British Property Federation)
Colette O'Shea (Major Developers' Group)
Andrew Whitaker (Homebuilders' Federation)
Patrick McDonald (Health & Safety Executive)
Steve Bee (English Heritage)

The Penfold Review Team consisted of:

Adrian Penfold, Independent Reviewer, British Land
Alison French, Head of Review team, Better Regulation Executive, BIS
Dorota Denning, Better Regulation Executive, BIS
Maggie Dutton, Environment Agency
Mike Edbury, New Industry New Jobs, BIS
Alison Edwards, Planning Directorate, CLG
Fleur Gorman, New Industry New Jobs, BIS
Peter Paddon, UKTI, BIS
Laura Sharp, Project Pool, BIS
Giles Smith, Project Pool, BIS

Annex C – Non-planning consents

Type of Consent	Legislation	Regulator	EU?	Approx. Annual No.	Regulatory Purpose	Ongoing/recent work
CLG						
1. Greenbelt	Consent under Section 5 and Section 10 of the Greenbelt (London and Home Counties) Act 1938	Government Office West Midlands on behalf of Secretary of State	No	10	Greenbelt protection	Transformation Review - led to centralisation of functions
2. Listed buildings (works)	Consent under Section 8(1), (2) or (3) of the Planning (Listed Buildings and Conservation Areas) Act 1990	Local authorities or Secretary of State	No	30,000	Protection of heritage buildings	Heritage Protection Review has led to proposals in draft Heritage Protection Bill
3. Conservation Area (demolition of unlisted building in conservation areas)	Consent under Section 74(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990	Local authorities or Secretary of State	No	3,500	Protection of conservation areas by requiring consent for demolition of unlisted buildings	Heritage Protection Review led to proposals in draft Heritage Protection Bill

Type of Consent	Legislation	Regulator	EU?	Approx. Annual No.	Regulatory Purpose	Ongoing/recent work
4. Compulsory Purchase Orders	Under various enabling powers. Consent under Acquisition of Land Act 1981.	Relevant Secretary of State	No	100-150	To ensure that compulsory purchase only occurs where there is a compelling case in the public interest; to protect the rights of property owners	Last major changes in the Planning and Compulsory Purchase Act 2004
5. Hazardous substances	Planning (Hazardous Substances) Act 1990, Planning (Hazardous Substances Regulations) 1992, SEVESO II Directive	Hazardous substances authority (usually local planning authority)	Yes	3,000	Hazardous substance risk management	WYG Major Hazard Sites Review - response expected spring 2010
6. Statutory allotments	Section 8 of the Allotments Act 1925	Government Office West Midlands - on behalf of Secretary of State	No	25	Protection of statutory allotments	Local Government consent regime review
7. Caravan site	Caravan Sites and Control of Development Act 1960	Local authorities	No	50	Health and safety - maintain standards on caravan sites	Public consultation on licensing regime and possible changes in 2009

Type of Consent	Legislation	Regulator	EU?	Approx. Annual No.	Regulatory Purpose	Ongoing/recent work
8. Building Regulations approval	Building Act 1984 (as amended) Building Regulations 2000 (as amended) Building Approved Inspectors Regulations 2000 (as amended)	Building Control Bodies Local authorities and private sector Approved Inspectors	Yes – but only in a very small part	3 million (including 2.2million self-certified e.g. new boiler)	Health and safety of people; access; energy efficiency	Future of Building Control Review. Further detailed consultation end 2010.
9. Advertisements	Town and Country Planning (Control of Advertisements) (England) Regulations 2007	Local authorities	No	22,500	Protection of amenity and public safety	New regulations in 2007. Forthcoming amendments for advertisements on Electric Vehicle Charging Points

DECC						
1. Pipelines in streets	A consent under Section 15 of the Pipe-lines Act 1962	Local authorities, highways authorities	No	No central records	Facilitate construction and safe operation of pipelines	None
2. Underground gas storage	Authorisation by an order under Section 4(1) of the Gas Act 1965	Secretary of State - DECC	No	Negligible	Authorisation for the storage of gas by a Gas Transporter in natural porous strata	Consultation on draft public guidance in 2007 (closed awaiting government response)

Type of Consent	Legislation	Regulator	EU?	Approx. Annual No.	Regulatory Purpose	Ongoing/recent work
3. Pipeline construction	A pipeline construction authorisation for longer than 16.093km under Section 1(1) of the Pipelines Act 1962	DECC	No	1-2	Ensure that there is not a proliferation of unnecessary cross-country pipelines	None
4. Pipeline authorisation	Authorisation under Section 14 of the Petroleum Act 1998	DECC	No	400	Ensure compliance with minimum standards for construction and use of offshore pipelines	None
5. Gas transporter pipelines	Approval pursuant to the Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999	DECC	No	4-6	To ensure the supply of gas to domestic and commercial/ industrial users	None
6. Gas/hydrocarbon fuelled generating stations	Notice under Section 14(1) of the Energy Act 1976	DECC	No	6-8	To ensure proper use of gas	None
7. Methane – Offshore Storage	Licence under Section 4 of Energy Act 2008 for activities connected with Offshore storage of carbon dioxide	DECC	No	Less than 5	Bespoke licensing regime for Offshore storage of methane	None
8. Carbon dioxide – Offshore Storage	Licence under Section 18 of Energy Act 2008 for activities connected with Offshore storage of carbon dioxide	DECC	No	Less than 5	Bespoke licensing regime for Offshore storage of CO2	Closed a recent consultation – Government response expected in the spring

Type of Consent	Legislation	Regulator	EU?	Approx. Annual No.	Regulatory Purpose	Ongoing/recent work
9. Electricity supply licence	Licence under Section 6 of the Electricity Act 1989	OFGEM	No	20	Consumer protection, competition, standards	None
10. Gas transporter licence exemption	Sections 5-7 of the Gas Act 1986	DECC/OFGEM	No	Negligible	Gas pipeline regulation	Consultation on new order summer 2010
11. Petroleum -search/bore	Section 3 of the Petroleum Act 1998	DECC	No	Over 100	Fit for purpose licensing protection for petroleum production	Launch of the 26th oil & gas licensing round
12. Offshore Oil & Gas Decommissioning Programme	Part 4 of the Petroleum Act 1998	DECC	No	10	Satisfactory decommissioning of offshore oil and gas facilities	None
13. Greenhouse gas emissions	A permit under the Greenhouse Gas Emissions Trading Scheme Regulations 2005	Environment Agency/Scottish Environment Protection Agency/Department of Environment in Northern Ireland, DECC	Yes	100	Reduce CO2 emissions	EU Directive - significant revisions from 2013

Type of Consent	Legislation	Regulator	EU?	Approx. Annual No.	Regulatory Purpose	Ongoing/recent work
14. Justification of Practices Involving Ionising Radiation	Any justification, decision or determination required under Regulations 9, 10 or 12 of The Justification of Practices Involving Ionising Radiation Regulations 2004	According to nature of application e.g. Dept. of Health for dental practice, DECC for nuclear power station	Yes	3	Radiological protection	None
15. Radioactive substances – keeping and use or accumulation and disposal of radioactive waste	Authorisation under Sections 13 or 14 of the Radioactive Substances Act 1993; Registration under Sections 7, 9 and 10 of the Radioactive Substances Act 1993	Environment Agency	Yes	170	Control of radioactive substances	To be incorporated into Environmental Permitting regime from April 2010. Further regulatory reform being actively considered
16. Coal Authority permits	As owner of coal and former coal mine workings on behalf of the state, the Coal Authority issues permits for site investigation boreholes for non-mining purposes, treatment of abandoned coal mine workings or entries.	Coal Authority (Permissions Department)	No	1,000 (expected to increase)	Ground stability and other public safety. As the Coal Authority is responsible for coal mining related subsidence claims, this function also ensures that its liability is not increased as a result of new developments	Internal review of procedures commenced in 2007-08 and is ongoing. Further automation of the permissions process is being considered due to an expected increase in future demand.

Type of Consent	Legislation	Regulator	EU?	Approx. Annual No.	Regulatory Purpose	Ongoing/recent work
17. Coal Authority licences or agreements	Coal Industry Act 1994. As owner of coal on behalf of the state, Coal Authority has a duty to issue licences or agreements for mining of coal, exploration for coal or deep drilling through coal, underground coal gasification, digging and carrying away of coal during non-coal mining activities, exploration and exploitation of coal methane.	Coal Authority (Licensing Department)	No	100	Regulate activities which intersect, disturb or enter Coal Authority's interests, ground stability	Procedures have been reviewed for Underground Coal Gasification in the last 12 months.

DWP						
1. Pipeline safety (changes)	Notification required under Regulation 22 of the Pipeline Safety Regulations 1996	HSE	No	25	Safety risk management	Pipeline safety regulation currently being amended
2. Pipeline safety (construction)	Notification required under Regulation 20 of the Pipeline Safety Regulations 1996	HSE	No	25	Safety risk management	Pipeline safety regulation currently being amended
3. Pipeline safety (before use)	Notification required under Regulation 21 of the Pipeline Safety Regulations 1996	HSE	No	20	Safety risk management	Pipeline safety regulation currently being amended

Type of Consent	Legislation	Regulator	EU?	Approx. Annual No.	Regulatory Purpose	Ongoing/recent work
4. Gas safety (safety case)	Required under Gas Safety (Management) Regulations 1996	HSE	No	15	Gas safety	Regulations to be reviewed in 2010 (might include removing requirements in certain instances)
5. Drilling operations	Required by Regulation 6 of the Borehole Sites and Operations Regulations 1995	HSE	No	135	Oversight of drilling operations	Consideration being given to extending scope of regulations
6. Petroleum licensing (operators of filling stations)	Petroleum (Consolidation) Act 1928	Petroleum Licensing Authorities (usually local authorities)	No	3,000	Safe storage and dispensing of petroleum	None
7. Explosives manufacture	Manufacture and Storage of Explosives Regulations 2005	DWP/HSE	No	5	Safety and security	Health and safety legislation related to explosives to be reviewed over next two years - although licensing/registration is unlikely to be affected

Type of Consent	Legislation	Regulator	EU?	Approx. Annual No.	Regulatory Purpose	Ongoing/recent work
8. Explosives storage	Manufacture and Storage of Explosives Regulations 2005	DWP/HSE/Police /Local Authorities	No	50	Safety and security	Health and safety legislation related to explosives to be reviewed over next two years - although licensing/registration is unlikely to be affected
9. Explosives harbour operators	Dangerous Substances in Harbour Areas Regulations 1987	DWP/HSE	No	1	Safety and security	Health and safety legislation related to explosives to be reviewed over next two years - although licensing/registration is unlikely to be affected
10. Genetic modification (premises use in)	Genetically Modified Organisms (Contained Use) Regulations 2000	HSE	Yes	30	Monitoring of activities involving genetically modified organisms/micro-organisms	Current amendments to regulations being made as a result of the Callaghan Review.
11. Ionising Radiations Regulations (specified practices)	Authorisation under regulation 5 of the Ionising Radiations Regulations 1999	HSE	Yes	Negligible	Radiological protection	EU governing legislation subject to review and possible recasting
12. Ionising Radiations Regulations (notification of specified work)	Ionising Radiations Regulations 1999 - notification under Regulation 6	HSE	Yes	4,000	Radiological protection	EU governing legislation subject to review and possible recasting

Type of Consent	Legislation	Regulator	EU?	Approx. Annual No.	Regulatory Purpose	Ongoing/recent work
13. Free steering vehicle underground in coal mines	Powers contained in Management of Safety and Health Administration at Mines Regulations 1993	DWP/HSE	No	5	Vehicle safety in coal mines	None
14. Working with asbestos	Licence required under Control of Asbestos Regulations 2006	HSE	Yes	400	Protection from exposure to asbestos risks	None

DfT						
1. Transport and Works Act	An order under Section 1 or 3 of the Transport and Works Act 1992	DfT (or can be DEFRA, DECC - and Welsh Assembly sole authority in Wales)	No	5	Primarily facilitation of guided transport projects. Can also authorise inland waterways projects and works interfering with navigation rights	Secondary legislation reviewed formally between 2002 and 2006. Administrative procedures and guidance kept under review
2. Toll orders	An Order under Section 6 of the Transport Charges &c. (Miscellaneous Provisions) Act 1954 An Order under Section 6 of the New Roads and Street Works Act 1991	DfT (Highways Agency - can also involve local highways authorities or private schemes)	No	Negligible	Regulate tolls of the statutory tolled undertakings	None

Type of Consent	Legislation	Regulator	EU?	Approx. Annual No.	Regulatory Purpose	Ongoing/recent work
3. Stopping-up orders	Section 116 of Highways Act 1980	Highways Authorities (may be local highways authorities or Highways Agency)	No	No central records	To stop up rights of way that are no longer needed	None
4. Highways extinguishment and diversion orders	Section 247 of the Town and Country Planning Act 1990	Secretary of State	No	No central records	To extinguish or divert rights of way to enable development to be carried out	None
5. Crossrail	Crossrail Act 2008	DfT	No	Negligible	Facilitate Crossrail	None
6. Traffic regulation order	Sections 1, 6, 9, 14, 15 and 22BB of the Road traffic Regulation Act 1984	Traffic authorities	No	No central records	Traffic management	Traffic Signs Policy Review reviewing TRO regime.
7. Bridges/tunnels over/under navigable waters	An order or scheme under Section 106 of the Highways Act 1980	Highways authorities (may be local highways authorities or Highways Agency)	No	No central records	Protect waterways, ensure standards of construction	None

Type of Consent	Legislation	Regulator	EU?	Approx. Annual No.	Regulatory Purpose	Ongoing/recent work
8. Watercourses diversion	An order under Section 108 or 110 of the Highways Act 1980	Highways authorities (may be local highways authorities or Highways Agency)	No	No central records	Protect waterways	None

DEFRA						
1. Flood defence	Required under: (a.) Land Drainage Act 1991; (b.) Water Resources Act 1991; (c.) Regional Flood defence byelaws	Environment Agency	No	6,500	Environmental/third party protection	Current review of regime.
2. Hazardous Waste (Premises)	Registration of Hazardous Waste (England & Wales) Regulations 2005	Environment Agency	Yes	173,500	Environmental/third party protection	None.

Type of Consent	Legislation	Regulator	EU?	Approx. Annual No.	Regulatory Purpose	Ongoing/recent work
3. Environmental Permit	Environmental Permitting (England and Wales) Regulations 2007: this incorporates regimes formerly under: (a) Mobile Plant Waste Management Licence - Waste Management Licensing Regulations 1994 (as amended) and the Waste Management Licensing (England & Wales) (Amendment & Related Provisions) Regulations 2005; (b) Prescribed Processes Authorisation - Environmental Protection Act 1990.	Environment Agency/Local authorities	Yes	7,000	Environmental protection and human health	Substantial review and regulatory reform activity in progress
4. Waste carrier registration	Control of Pollution (Amendment) Act 1989	Environment Agency	Yes	30,000	Environmental protection and human health	Currently being reviewed to take account of additional EU requirements
5. Obstruction of watercourse	Consent to obstruct a water course under Sections 23 of the Land Drainage Act 1991	Environment Agency/Local authorities	Part	Not known	Environment protection	None
6. Water abstraction	Section 24 of the Water Resources Act 1991	Environment Agency (also DEFRA/WAG)	Yes	700	Environment protection/ensure water supplies	Ultimately intended to merge with Environmental Permit

Type of Consent	Legislation	Regulator	EU?	Approx. Annual No.	Regulatory Purpose	Ongoing/recent work
7. Inland waters (impounding licence)	Section 25 of the Water Resources Act 1991	Environment Agency (also DEFRA/WAG)	Yes	20	Environment protection/ensure water supplies	Ultimately intended to merge with Environmental Permit
8. Groundwater	Section 32 of the Water Resources Act 1991	Environment Agency	Part	120	Water resource management	Ultimately intended to merge with Environmental Permit
9. Discharge (Water Resources Act 1991)	Sections 88, 89(4), 164, schedule 10 to the Water Resources Act 1991	Environment Agency	Part	8,000	Pollution control	From April 2010, to be merged with Environmental Permit
10. Groundwater discharge	Water Resources Act 1991 and Groundwater Regulations 1998	Environment Agency	Yes	Included in item 9 above	Pollution control	From April 2010, to be merged with Environmental Permit
11. Deposits/vegetation in rivers	Section 90 of the Water Resources Act 1991.	Environment Agency	Part	Few	Environmental protection	From April 2010, to be merged with Environmental Permit
12. Discharge (Water Industry Act 1991)	Section 166 of the Water Industry Act 1991	Environment Agency	Part	30	Pollution control/flood protection	None
13. Hedgerows	Consent under regulation 5 of the Hedgerows Regulations 1997	Local planning authorities	No	No central records	Protect countryside hedgerows	None
14. Works to trees	Forestry Act 1967	Forestry Commission	No	2,000	Maintain woodland/protect environment	Subject to recent Hampton Review. Streamlining Tree Preservation Orders in progress

Type of Consent	Legislation	Regulator	EU?	Approx. Annual No.	Regulatory Purpose	Ongoing/recent work
15. Highways drains	Section 115 of the Water Industry Act 1991	Water and sewerage companies	No	No central records	Environment - provide for sustainable disposal of surface drainage water	Proposals in Flood and Water Management Bill currently before Parliament - relating to sustainable drainage systems in new development
16. Public sewer connection	Section 110A of the Water Industry Act 1991	Water Services Regulation Authority (OFWAT)	No	5	Competition - facilitation of competition between statutory sewerage undertakers	Ofwat will shortly be consulting on the new appointments regime that governs applications to provide water and sewerage services to new sites, and will draw on the findings from this Review as part of that consultation process
17. European Protected Sites (EPS) licensing	Licence under regulation 44 of the Conservation (Natural Habitats, &c.) Regulations 1994	Natural England (WAG for Wales)	Yes	1,300	Protection of species and their habitats (breeding sites and resting places)	Work ongoing to streamline business process following Hampton Review in 2009

Type of Consent	Legislation	Regulator	EU?	Approx. Annual No.	Regulatory Purpose	Ongoing/recent work
18. Wildlife and Countryside Act (protected species licensing)	Licence under Section 16 of the Wildlife and Countryside Act 1981 (Note: This legislation does not enable the issue of licences for development purposes, per se, but a small number are issued for "conservation" purposes in specific circumstances related to development)	Natural England (WAG for Wales)	No	Few related to development (approx. 20 per annum for work in scope of review)	Protection of species	Subject to Hampton Review in 2009 – although no recommendations specifically on the licensing regime
19. Sites of Special Scientific Interest	Sections 28E and 28I of the Wildlife and Countryside Act 1981	Natural England (Countryside Council in Wales)	No	Not possible to identify which relate to dev'ment	Conserve and protect sites of special scientific interest	Subject to Hampton Review 2009
20. Polychlorinated byphenyls	A registration under regulation 9 of the Environmental Protection (Disposal of Polychlorinated Byphenyls) (England and Wales) Regulations 2000	Environment Agency	Yes	Less than 10	Pollution prevention	None
21. Organic Pollutants	An authorisation under regulation 8 of the Persistent Organic Pollutants Regulations 2007	Environment Agency	Yes	None yet	Pollution prevention	None
22. Pesticides	A consent under the Control of Pesticide Regulations 1986	Environment Agency	No	None	Spraying of aquatic weeds	None

Type of Consent	Legislation	Regulator	EU?	Approx. Annual No.	Regulatory Purpose	Ongoing/recent work
23. Clean air - plant for furnaces	An approval under Section 4, 6, 8 and 20 of the Clean Air Act 1993 and in accordance with the Clean Air (Arrestment Plant) (Exemption) Regulations 1969 (installation and arrestment plant for furnaces)	Local authorities	No	No central records	Pollution control/safeguard health and amenity	None
24. Clean air - chimneys	An approval under Section 14, 15 & 16 of the Clean Air Act 1993 and in accordance with the Clean Air (Height of Chimneys) Regulations 1969 (height of chimneys for furnaces)	Local authorities	No	No central records	Pollution control/safeguard health and amenity	None
25. Common land/town and village greens	Sections 16 & 38 of the Commons Act 2006, and Section 19 of, and para 6 of schedule 3 to the Acquisition of Land Act 1981	Planning Inspectorate (WAG in Wales)	No	60	Protection of common land	Review of fees currently underway; Review of framework for registering of new town and village greens proposed
26. Public path creation orders	Sections 25 and 26 of the Highways Act 1980	Local authorities	No	No central records	To enable new rights of way to be created compulsorily or by agreement	None

Type of Consent	Legislation	Regulator	EU?	Approx. Annual No.	Regulatory Purpose	Ongoing/recent work
27. Public path extinguishment and diversion orders	Section 118/9 Highways Act 1980	Magistrates' Courts (on application of Highways Authorities - may be local highways authorities or Highways Agency)	No	No central records	To divert or extinguish existing rights of way	None
28. Rights of way extinguishment and diversion orders	Section 257 of the Town and Country Planning Act 1990	Local authorities	No	No central records	To extinguish or divert rights of way to enable development to be carried out	None
29. Badgers Act	Licence under Section 10 of Protection of Badgers Act 1992	Natural England (Countryside Council in Wales, Scottish Natural Heritage))	No	260	Badger welfare	Underwent Hampton Review in 2009 - although no recommendations were made specifically on the badger licensing regime
30. Noise consents	Section 61 of the Control of Pollution Act 1974	Local authorities	No	No central records	Facilitate development by agreeing methods of working, noise limits, etc.	None

Type of Consent	Legislation	Regulator	EU?	Approx. Annual No.	Regulatory Purpose	Ongoing/recent work
31. Discharge of trade effluent into a public sewer	Section 119 of the Water Industry Act 1991	Sewerage undertakers	Part	No central records	Environment - control of discharges to public sewerage systems	None

DCMS						
1. Licensed premises	Licensing Act 2003	Licensing authorities	No	60,000	Crime prevention, public safety, prevent public nuisance, protect children	Ongoing better regulatory reforms in progress (part of DCMS Simplification Plan)
2. Gambling operator	Gambling Act 2005	Gambling Commission	No	500	Crime prevention, ensure gambling is fair and open, protect children and vulnerable adults	None
3. Gambling premises	Gambling Act 2005	Licensing authorities and, in Scotland, licensing boards	No	9,000	Crime prevention, ensure gambling is fair and open, protect children and vulnerable adults	None
4. Gambling personal licence	Gambling Act 2005	Gambling Commission	No	4,300	Crime prevention, ensure gambling is fair and open, protect children and vulnerable adults	None

Type of Consent	Legislation	Regulator	EU?	Approx. Annual No.	Regulatory Purpose	Ongoing/recent work
5. Scheduled monuments (works)	Consent for works affecting scheduled monuments under Section 2 of the Ancient Monuments and Archaeological Areas Act 1979	DCMS and English Heritage in England	Yes	1000 (mainly non development related)	Protection and conservation of scheduled monuments	Heritage Protection Review led to proposals in draft Heritage Protection Bill
6. Scheduled monuments (archaeological operations)	Notice under Section 35 of the Ancient Monuments and Archaeological Areas Act 1979	Local planning authorities	Yes	No central records	Protection of areas of archaeological importance	Heritage Protection Review led to proposals in draft Heritage Protection Bill
7. Historic wreck sites	A licence to dive on protected wreck sites under Section 1 of the Protection of Wrecks Act 1973	DCMS and English Heritage in England	Yes	Negligible	Protection and conservation of wreck sites of historic, artistic or archaeological importance	Heritage Protection Review led to proposals in draft Heritage Protection Bill

Annex D – Business specific operating consents

Types of business or industry specific licences that may need to be sought to commence trading operations

- Acupuncturist
- Amusement
- Butchers
- Boarding animals
- Caravan site
- Cinema
- Dog breeding
- Door supervision
- Exotic dangerous wild animals
- Food business
- Gambling
- Game dealer
- Gaming machine
- Hackney carriage driver/taxi
- House to house collection
- Hypnotism
- Late hours catering
- Licensing Act
- Lottery
- Motor salvage
- Performing animals
- Pet shop
- Private club
- Private hire driver/operator/vehicle
- Riding establishment
- Scrap metal
- Sex establishment
- Sports ground
- Stalls
- Street cafe
- Street collection
- Street trading
- Sunday trading
- Tattooing, piercing, electrolysis and acupuncture
- Theatre
- Zoo

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