PLANNING APPLICATION VALIDATION CHECKLISTS

Departmental Response to Public Consultation

October 2024

Department for **Infrastructure**

An Roinn **Bonneagair**

Depairtment fur **Infrastructure**

www.infrastructure-ni.gov.uk

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Departmental Response to Public Consultation- Planning Application Validation Checklists

1   Introduction

This consultation formed part of the Department's on-going Planning Improvement Programme aimed at creating an efficient, effective and equitable planning system trusted to deliver high quality, sustainable, inclusive and healthy places.

In 2022 a series of reports highlighted the need to improve the quality of planning applications entering the planning system and the potential benefits this could bring in terms of improving processing times, the quality of decisions and in turn the delivery of development on the ground. These included reports on the Northern Ireland planning system by the Northern Ireland Audit Office (NIAO) (February 2022), and the Public Accounts Committee (PAC) (March 2022), which both referenced the need for, and benefits of, the introduction of validation checklists.

In addition, in January 2022 the Department published its first Review of the Implementation of the Planning Act (NI) 2011 (the Review) which contained 16 recommendations aimed at improving the planning system. The Review, which was informed by a wide range of stakeholders, recognised the importance of front-loading the planning application process to ensure applications are accompanied with all necessary supporting documentation needed to reach a decision at the point of submission.

The Review considered that validation checklists, which are part of the planning legislation framework in other jurisdictions, could be an important tool in improving the quality and completeness of planning applications coming into the system. In this respect, a key action to emerge from the review was:

The Department will bring forward proposals to introduce 'validation checklists' and will seek to advance policy development at the earliest opportunity.

2 Purpose and Context

The purpose of this consultation was to seek stakeholder's views on the Department's proposal to amend The Planning (General Development Procedure) Order (NI) 2015 to provide for the introduction of 'validation checklists' to address 'poor quality' or 'incomplete' applications entering the planning system. The public consultation issued on 4 November 2022 and closed on 6 January 2023, and was opened to anyone to respond.

The proposed amending Order would enable councils to prepare and publish 'checklists', above the current minimum statutory requirements which would remain unchanged, setting out the additional supporting information / evidence which would be required to accompany different types of planning application e.g., specific to its siting, the type of development proposed etc. There would, however, be flexibility for individual councils to take an approach that suits their local area and planning issues.

3 Objective

The overall objective of such an amendment is to enhance the quality of applications entering the system and to front-load the decision-making process, which should result in better processing times and more efficient consultee responses. Applications will not be considered valid until they comply with the required information contained in the published checklists and, therefore, the clock will not start ticking in terms of meeting statutory processing time targets. Ultimately, the requirement to ensure applications are accompanied by all necessary information should result in overall improved planning performance.

4 Validation Disputes

Legislation in England & Wales provide applicants with a right to dispute 'non-validated' applications – these are applications where there is a dispute between the applicant and the planning authority as to whether the application is 'valid'.

The Department is of the opinion that the introduction of validation checklists here would also require a similar 'validation dispute' mechanism, otherwise the only recourse available to an applicant would be judicial review proceedings. Including a dispute mechanism within the amending Order would avert the need for such challenges and would uphold an applicant's Article 6 rights under the European Convention on Human Rights.

5 Questions

The public consultation invited respondents to answer the following 3 key questions, and (if possible) to provide reason(s) for those answers:

- **Question 1:** Do you agree with the proposal to provide a statutory basis for planning authorities to introduce a Validation Checklist for planning applications?
- **Question 2:** Do you agree that a 'dispute mechanism' should be available to applicants who disagree with the information/evidence requirements to be submitted with an application?
  (If a respondent answered 'Yes' to Q 2:)
- **Question 3:** Would you prefer a dispute mechanism linked to 'non-determination' of the application as in England or a 'stand-alone' approach as in Wales?

6 Overview of Consultation Responses

The Department received a total of **39** responses from a range of stakeholder interests including local Councils, Business and Development Organisations Resident/Community Groups/Voluntary Organisations, Environment and Heritage Groups, Architect/Planning Consultancy/Agents, and Political Parties. All responses have been considered in preparation of this report.

Who Responded?

Category	No.	%
Council	11	28%
Business & Development	6	15%
Resident/Community/Voluntary	5	13%
Environment & Heritage	5	13%
Other	12	31%
Total	39	100%

Overview of Responses to Key Questions

- Key Question 1: 39 of 39 respondents answered this question;
- Key Question 2: 37 of 39 respondents answered this question; and
- Key Question 3: 31 of 39 respondents answered this question.

7   Analysis

Q1. Do you agree with the proposal to provide a statutory basis for planning authorities to introduce a Validation Checklist for planning applications?			
Total Responses	Total 'YES'	Total 'NO'	Total Non-committal
39	39	0	0

Of those who responded to consultation Q.1, all **39 (100%) agreed with the proposal** to introduce statutory validation checklists for planning applications. In addition, 35 (90%) of those who responded offered various reasons, opinions and caveats.

Q2. Do you agree that a 'dispute mechanism' should be available to applicants who disagree with the information/evidence requirements to be submitted with an application?			
Total Responses	Total 'YES'	Total 'NO'	Total Non-committal
37	31	2	4

Of the 37 responses to consultation Q.2, **31** (83.5%) agreed with the proposal that a 'dispute mechanism' should be made available to applicants who did not agree with the information requirements set by a planning authority. Only 2 respondents (5.5%) disagreed with the proposal. 4 respondents (11%) did not answer this question.

Q3. Would you prefer a dispute mechanism linked to 'non-determination' of the application as in England, or a 'stand-alone' approach as in Wales?			
Total Responses	'Stand-Alone' Approach	'Non-Determination' Approach	Total Non-committal
37	23	8	6

Of the 37 respondents' who answered Q3, 23 (62%) opted for a stand-alone dispute mechanism, 8 (21.5%) opted for a dispute mechanism linked to non-determination of an application, 2 (5.5%) were in favour of a dispute mechanism but did not specify which of the two options they preferred and 4 (11%) did not answer the question.

7.1 Councils

All 11 local councils responded to the consultation, and all supported the proposal to provide a statutory basis for planning authorities to introduce a Validation Checklist for planning applications.

In their support for the proposals, some councils believe current legislation sets the bar too low in relation to the information required to make an application legally valid. Many also are of the opinion that a Validation Checklist would provide guidance about the level and the type of information required to be submitted with a planning application, resulting in a degree of certainty and clarity which in turn would speed up processing times.

They also state a right to appeal is a fundamental part of the process and believe there would be no acceptance of, or confidence in, a process lacking an appeal mechanism.

Of the 11 councils 7 supported a "Stand Alone" dispute mechanism, 3 supported a "Non-Determination" dispute mechanism and 1 was non-committal on the issue.

Those who supported a "Stand Alone" dispute mechanism believe it should deal solely with the consideration of the information requirements and not the merits of the application. They believe this would streamline the process and would result in fewer disputes than the "Non-Determination" dispute method. Supporters of the "Non-Determination" dispute mechanism believe it fits into the end-to-end planning process, is more comprehensive, easier understood, less disruptive and would encourage the applicant to engage more fully with planning authorities.

7.2 Business and Development Organisations

Six responses were received from Business and Development Organisations, all of whom welcome the proposal to provide a statutory basis for planning authorities to introduce a Validation Checklist for planning applications. Within this category, some respondents believe it is necessary to put this on a statutory footing with defined timeframes and should include accountability measures, such as fines, to ensure the process is meaningful and timelines are met. Some also hold the view that checklists need to be consistent and uniform across the various planning authorities, and for this to be achieved it was suggested the Department have an oversight and approval role to ensure that there are not significant differences between local councils.

Some are of the view that the focus must be on reducing timelines for the processing of applications, with a defined timeline so that it does not become an open-ended process. Some within the business sector also believe it would help identify sub-

standard applications in some circumstances, but also state that reputable agents already know what is required to prepare a good quality, valid application, particularly in the minerals and construction products sector. They reference the example of 6no. validation appeals in Wales per year which they feel puts potential benefits into context.

Of the 6 responses received, 4 supported a "Stand Alone" dispute mechanism, 1 supported a "Non-Determination" dispute mechanism and 1 was non-committal on the issue.

Those who favour the stand-alone approach think it appears to be simpler and more efficient as it focuses on the specifics of the validation process, rather than linking to the wider application process. A couple of respondents felt more information on the performance of both systems would have been helpful.

7.3 Resident/Community Groups/Voluntary Organisations

Five responses were received from Resident/Community Groups/Voluntary Organisations, all of whom support the proposal to provide a statutory basis for planning authorities to introduce a Validation Checklist for planning applications.

Some within this sector believe it is an essential process which will clarify what is required and it will bring transparency into the planning system instead of the current vagueness, and that applicants should be allowed to challenge the validity of the checklist as local planning authorities appear to have an inconsistent approach to such matters.

Of the 5 responses received, 2 supported a "Stand Alone" dispute mechanism while 2 supported a "Non-Determination" dispute mechanism.

7.4 Environment and Heritage Groups

Five responses were received from Environment and Heritage Groups, all of whom support the proposal to provide a statutory basis for planning authorities to introduce a Validation Checklist for planning applications.

Some respondents within this category remarked that it would allow for local input to applications, would save time and resources and would result in a more expedient process. It would help provide well defined parameters for the making of planning applications leading to efficiencies in the planning system. Some stated that a checklist for developers could provide clear direction in the making of submissions, but consistency of approach is needed between local authorities and other statutory

consultees. One respondent commented that supporting information, reports and assessments should be completed by competent professionals.

Of the 5 responses received, 2 preferred the "Stand Alone" dispute mechanism. One preferred the "Non-Determination" mechanism, with the view that a "Stand "Alone" mechanism would only look at the process, however, there may be other circumstances to be considered beyond the this. One respondent did not declare which option they preferred and 1 did not answer the question.

7.5 Others

Twelve responses were received from 'Other' categories which included architects/planning agents, industry, retail and some political parties, all of whom supported the proposal to provide a statutory basis for planning authorities to introduce Validation Checklists for planning applications. Various thoughts and ideas on the issue included that; a validation checklist would mean applicants would be aware of what was required, which in turn would lead to front-loaded, higher quality applications entering the system. It would also result in a more efficient planning system and one in which users could have confidence and would improve the quality of applications, leading to better use of resources and bring standardisation to applications in the system. Others felt it would ensure the application documents are present before consultations are issued, which should reduce the need for consultees to request further additional information and reduce the need for re-consultations. Some felt it was important that a checklist is constructed in such a way as to avoid an over rigid approach or implementation by the planning authority.

Of these responses, 7 preferred the "Stand Alone" dispute mechanism. It was believed that a stand-alone approach would be more streamlined and flexible, allowing for the validation issue to be resolved in a timely manner and would allow the planning authority to still decide the application. Of the rest, 1 indicated a preference for a mechanism linked to "Non-Determination while 3 were non-committal on the matter.

8 Conclusion

It is clear from the responses to this consultation, the proposed introduction of validation checklists for councils (on a statutory footing) is welcomed by all respondents. It is seen as a crucial step in improving the quality of applications entering the planning system, which in turn would reduce the need to issue multiple requests to consultees, bring clarity to the process, improve confidence in the planning system, speed up processing times and ultimately result in quality decisions being made.

It was also clear from responses that the facility to appeal a decision made by a planning authority was essential. The planning system in Northern Ireland needs to be as transparent, fair and accountable and the establishment of an appeal system is a key method of ensuring that is the case. The vast majority (84%) of respondents supported the introduction of a dispute mechanism and of that figure, the majority 62% preferred the "Stand Alone" dispute mechanism.

In this regard and under the Planning Act, the Planning Appeals Commission (PAC) is nominated as the appellate body in a range of circumstances. In particular, section 58 of the Act gives the Commission the power to determine appeals against refusal, conditional grant of planning permissions, consents, agreements or approvals of a council or, any approval required under a development order. Following discussions with the Commission, it has agreed to assume the role of arbitrator with regards to validation disputes which arise between an applicant and the relevant council. It should be noted, there are no equivalent powers available under the Planning Act for the Department to undertake such functions.

Subsequent to the public consultation, the Department obtained additional legal advice which indicated that to provide the Department with equivalent legislative powers to prepare and publish validation checklists (for applications where it has jurisdiction/ownership), with an associated dispute mechanism, would require changes to primary legislation and therefore, in the interests of expediency and in the absence of an appropriate legislative Bill to advance such a change, this provision has now been removed from these proposals.

9 S.75 Equality Screening

In tandem with the public consultation on the validation checklists policy proposals, the Department also published it's section 75 Equality of Opportunity Screening Analysis - [Planning Applications, Council Validation Checklists - Screening Form | Department for Infrastructure (infrastructure-ni.gov.uk)](infrastructure-ni.gov.uk)

Respondents to the public consultation did not identify any issues relating to s.75 categories or equality of opportunity.

10 Recommendation

The Department will bring forward legislation to amend The Planning (General Development Procedure) Order (NI) 2015 to enable councils to prepare and publish validation checklists for planning applications above the current minimum statutory requirements. Councils will set out the additional supporting information / evidence which would be required to accompany different types of planning application, specific to its siting, scale and the type of development proposed.

The amending legislation will also introduce a 'stand-alone' dispute mechanism to facilitate applicants who disagree with and wishes to challenge the information requirements set by the relevant council. This will be achieved through subsequent application to the Planning Appeals Commission.

The overall objective is to enhance the quality of applications entering the system, to front-load the decision-making process, resulting in better processing times and more efficient consultee responses.