

Changes to the current planning system consultation
Ministry of Housing, Communities and Local Government
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Re: Changes to the current planning system consultation

Dear Madam/Sir,

The Chartered Institute for Archaeologists (CIfA) and Council for British Archaeology (CBA) are concerned about the timing and content of these proposed changes to the current planning system. We believe that changes proposed in this consultation unhelpfully pre-empt the wider planning reforms proposed in the *Planning for the Future* White Paper. In taking a significant step towards implementing a more permissive planning system as an 'interim' measure, these changes to the current planning system are bypassing the parliamentary and public scrutiny that the White Paper proposals will face.

We believe that the proposal to expand the use of Permission in Principle (PiP) to major development is flawed and will compromise the ability of the planning system to achieve sustainable development. In the context of the White Paper, we are committed to helping government build appropriate planning policies and safeguards which ensure that the process such as PiP are able to deliver streamlining reform while also allowing development proposals to be appropriately assessed for impacts on the historic environment, and for the mitigation of that impact where necessary.

This consultation, in contrast to the White Paper, has none of these same opportunities to protect against harmful impacts. We therefore judge this consultation to be ill considered and inappropriate. We therefore urge the Government to resist introducing further untested and potentially damaging changes to the planning system at this stage.

Archaeology and permission in principle

When Permission in Principle (PiP) was proposed in 2015, we raised concerns that the process did not secure appropriate safeguards for the historic environment because there was no provision made for archaeological assessment and evaluation prior to the granting of PiP. This effectively removed the existing mechanism for securing the assessment of archaeological heritage assets on land proposed for development that is required to inform determination of planning applications.

Although archaeology is very rarely the sole reason for in-principle objections to development, the PiP process substantially increases the risk of harmful impacts upon heritage assets, including nationally important assets. It does this by interrupting the process of early archaeological assessment of sites by developers, making it more likely that developers will not adequately understand and address site specific needs.

Because PiP has not been extensively used by developers and developments have been of the 'minor' category, the specific evidence of the impact on the historic environment is limited. However, we have many examples¹ of cases where the absence of adequate information to inform decision making has led to the unexpected discovery of archaeology during development that caused problems, such as delays to the development programme and/or the need for additional resources. Conversely, we have case study evidence that shows that pre-determination assessment/evaluation consistently contributes to both new knowledge gained about heritage assets, and effective management of heritage assets (as well as enabling effective risk management for developers).

Although many archaeological impacts can be mitigated at a technical details consent stage, the fact remains that the PiP process inherently increases the risk of delay to development resulting from unexpected archaeological discoveries at technical details consent stage and removes the realistic possibility of refusing development which is objectionable in principle by reason of its harmful impact upon heritage assets, including nationally-important assets, unless compensation to the developer is paid.

Extending PiP to major developments allows this route to be used far more widely and on more complex and sensitive sites where the likelihood of encountering hitherto unknown heritage assets would be much higher.

We object to this significant widening of the PiP route without the addition of further safeguards which we discuss in the answers to the consultation questions.

The *Planning for the Future* White Paper addresses similar objectives to PiP. In response, ClfA and CBA are proposing policies which would minimise risks of the type outlined here. It would be perverse to significantly widen the operation of PiP before these discussions have taken place and without the opportunity to introduce appropriate new safeguards. These safeguards should include baseline data to be available for local plan preparation, derived from enhanced and statutory Historic Environment Records to help inform 'in principle' decisions, and strengthened guidance to encourage or policies to require developers to undertake archaeological assessment to inform design on PiP sites.

Consultation questions

¹ <https://historicengland.org.uk/images-books/publications/archaeology-and-planning-case-studies/>

Q24: Do you agree that the new Permission in Principle should remove the restriction on major development?

No.

The impacts resulting from major development have the potential to be far more complex than for most sites currently subject to PiP routes. We objected to the introduction of PiP in 2016 on the basis that in the absence of mechanisms to ensure assessment or evaluation of heritage assets at an early enough stage in the process, LPAs did not possess sufficient information to judge whether the principle of development was acceptable, and without the ability to attach conditions to that permission, there was a danger that archaeological evaluation could be ignored by developers.

Major development sites need to be subject to an evidence-based approach to determining the principle of development. A new planning system based on the proposals in the White Paper has the potential to mitigate this concern by improving baseline data and allocation procedures for sites to be granted permission in principle or outline consent, but the proposed changes to the current system do not.

It might be possible to extend PiP to major development if there were increased evidence requirements or a more robust process for suitability testing and front-loading of assessment. For example, currently, for applications for major developments, many local authorities would request an archaeological desk-based assessment and field evaluation as a standard condition, due to the high likelihood of archaeological remains being found on many sites of requisite size for major development. This condition would enable mitigation through changes to design/layout at technical details consent stage. This front-loading of the system should also be supported by guidance including the application of conditions, which currently can only be attached at technical details consent stage.

However, given that the consultation proposes wishes to make changes to the planning system by the end of the year, and currently recommends no amendments to the current PiP process, we do not believe that there will be scope to accommodate such changes which would the sensitivities, or exploit the opportunities, of sites where there may be complex heritage (or eg ecology) potential.

The principle of potentially bypassing traditional processes for determining planning applications for such a large percentage of housing development is part of the White Paper discussion and should be subject to parliamentary and public scrutiny before being decided. This is not the time to further complicate the current planning system with additional provisions.

If the Government wishes to revisit PiP as a short-term measure then it should

- conduct research into the current PiP regime to understand its performance, including refusal rates, and appeals, so that it can be better understood whether it does in fact provide a 'more certain' and 'faster way of obtaining planning permission'

- consider options for amending PiP procedures to ensure sustainable decision-making, including by the identification of sensitive areas, including areas of known archaeological potential, the provision of guidance to developers on necessary assessment and evaluation of sites prior to technical details consent application, and advising on where sites should be exempt from PiP by application.

Q26: Do you agree with our proposal that information requirements for Permission in Principle by application for major development should broadly remain unchanged? If you disagree, what changes would you suggest and why?

No.

The proposed extension to PiP makes it more likely that sensitive areas will be subject to development by this route. Larger sites necessary for applications for major developments are much more likely to reveal complex heritage assets and therefore applications for PiP should require an additional degree of information in order to enable decision-making that is consistent with national policy in the NPPF. In addition, heritage assets on such sites are highly likely to have the potential to contribute to the development of successful schemes on complex sites, thus unlocking a heritage dividend for developers and the public. The PiP process has no way to unlock this contribution because evaluation is done late in the process as a measure to 'rescue' assets, rather than utilise their potential for public benefit more creatively.

Alternatively, LPAs should have the ability to attach conditions to PiP that would require developers to undertake archaeological evaluation and produce a written scheme of investigation at the earliest opportunity.

As a minimum, there should be a requirement for extra information when applying for PiP for major developments. For example, where undesignated below-ground heritage assets have been identified on the Historic Environment Record (HER), or where no heritage assets are recorded on the HER and professional judgement identifies a strong possibility that remains may be present, a desk based and/or field assessment should be required. This would help to inform mitigation at technical details consent stage.

Q27: Should there be an additional height parameter for Permission in Principle? Please provide comments in support of your views.

Yes.

However, height restriction is not the only mitigating factor which should be considered as a relevant parameter for major development applications under the PiP route. Other factors such as density and ground disturbance could affect heritage assets and their settings. However, without greater detail provided at application stage (eg a masterplan layout) it will not be sufficient to simply put in place an additional height parameter.

As stated above, we believe that PiP should allow the attaching of conditions to PiP at determination. This would allow for not only height parameters to be set, but also other issues, such as the need for archaeological or ecological evaluation to be secured at this stage. This would also provide greater clarity for developers about what type and level of assessment will be required for each site, allowing for better risk management and preparation for technical details consent application.

Q28: Do you agree that publicity arrangements for Permission in Principle by application should be extended for large developments? If so, should local planning authorities be:

- i) required to publish a notice in a local newspaper?**
- ii) subject to a general requirement to publicise the application or**
- iii) both?**
- iv) disagree**

If you disagree, please state your reasons.

Disagree.

It is concerning that major housing developments could be brought forward under PiP without any public consultation. We believe that PiP for major developments must include opportunity for public comment at determination stage, as well as simply publicising them.

Q29: Do you agree with our proposal for a banded fee structure based on a flat fee per hectare, with a maximum fee cap?

No.

The PiP process puts greater stresses on the LPA to undertake assessment of the suitability of sites for development up front. There should be an expectation that developers seeking to benefit from greater certainty and do less work up front should be willing to contribute to the necessary preparatory work through fees and that these should not be capped at an arbitrary level.

Q30: What level of flat fee do you consider appropriate, and why?

Fees must be sufficient to cover work done by LPA officers to assess site suitability in the absence of information provided by applicants. Additionally, bearing in mind that more work by LPA officers is likely to be required than for a normal planning application, and that the likelihood that more numerous and more complex applications for PiP are likely, any lowering of fees is likely to mean a cumulative impact that could exacerbate already underfunded LPAs.

Q32: What guidance would help support applicants and local planning authorities to make decisions about Permission in Principle? Where possible, please set out any areas of guidance you consider are currently lacking and would assist stakeholders.

We believe that guidance on the following topics would be useful:

- Guidance for applicants on what information is required for PiP applications for major developments (which may be more than is currently required) and what information it may be useful to provide voluntarily to support PiP applications.
- Guidance which sets out expectations for work required to understand the environmental constraints on a given site and how to approach these in advance of technical details consent.
- Guidance for local authorities on how to determine PiP applications. This guidance should include a requirement to consult all relevant datasets and specialists (including HERs & historic environment specialists) and a requirement to advise applicants of where there are potential constraints on development (eg known heritage assets, potential for previously unknown heritage assets to be discovered, flood risk, habitats and species, contaminated land, etc) in order to set realistic expectations for technical details consent.

Thank you for the opportunity to respond to this consultation. If you require any further information, please do not hesitate to contact us.

Yours sincerely,



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