



2010-11 Annual report to the
Department for Communities and
Local Government

The Environment Agency's
timeliness on responses to
planning consultations in England

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Published by:

Environment Agency
Horizon house, Deanery Road
Bristol BS1 5AH
Tel: 0117 934 4000
Email: enquiries@environment-agency.gov.uk
www.environment-agency.gov.uk

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Executive summary

This report details our performance as a consultee in the spatial planning system in England. Specifically, it reports on our performance against the statutory duty to respond to planning application consultations from local planning authorities (LPAs) and pre-application enquiries from developers, within a set time period; 21 days or such other period as may be agreed in writing ('the 21-day duty').

The main findings are as follows:

- In 2010/11, we made 34,589 consultation responses on planning applications and pre-planning enquiries, up from 33,397 in 2009/10.
- Of these, 80% (27,830) were on planning applications and 20% (6,759) were on pre-planning enquires.
- The response rate for all consultations was 96% within 21 days or such other period as may be agreed in writing; those for planning application consultations 96%, and those for pre-application enquiries 94%. This represents a slight improvement on the last reporting period, (for 2009/10 the figures were all consultations 95%, planning application consultations 95% and pre-application enquiries 93%).
- The results do not include responses provided via our system of Standing Advice to Local Planning Authorities, on proposed developments considered to be at low risk of or vulnerability to flooding.

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1 Introduction

This report is the sixth annual submission by the Environment Agency on our performance against the 21-day duty. **It covers the period 1 April 2010 to 31 March 2011.** The requirements of the 21 day duty, including the requirement to prepare an annual report, are outlined in Annex 1. The scope of the report is also described in Annex 1.

This monitoring report applies to England only.

The Environment Agency's planning consultee role is outlined in Annex 2.

This report considers both the consultations that we respond to under our **statutory obligation** and those we respond to for other development types.

2 Performance

In this reporting period we made over 34,000 consultation responses on statutory and non statutory planning applications and pre-planning enquiries.

When we are consulted by a Local Planning Authority (LPA) or by a developer, the task of producing a consultation response lies with one of our 20 Area Planning Liaison teams across England. In some cases our Planning Liaison Officer will be able to respond directly to the LPA or developer. However, in the majority of cases the receipt of a consultation is the start of an internal consultation process with our specialists in flood & coastal risk management, water quality, waste, biodiversity, contaminated land, water resources, groundwater or process industry regulation. At the end of this internal consultation, a Planning Liaison Officer will co-ordinate the internal replies and deliver the Environment Agency's response.

Table 1 details our performance in responding to pre-application enquiries and planning application consultations within 21 days or an extension agreed in writing with the consultor, as required under ODPM Circular 08/2005¹.

Table 2 provides a brief summary of reasons why the statutory deadline has not been met in all cases, as proposed in government guidance². In 2010/11, we failed to meet the statutory deadline in 1,504 cases compared with 1,670 in 2009/10, and 2,858 in 2008/09.

¹ ODPM Circular 08/2005 'Guidance on changes to the development control system' (para 51).

² ODPM Circular 08/2005 indicates that a brief summary of reasons why the statutory deadline has not been met in all cases need only be provided 'if appropriate' (para 50).

Table 1: Timeliness of responses on planning application consultations and pre-planning enquiry consultations

	2008/09		2009/10		2010/11	
	Total responses within the reporting period	Responded to within 21 days or negotiated extension	Total responses within the reporting period	Responded to within 21 days or negotiated extension	Total responses within the reporting period	Responded to within 21 days or negotiated extension
Planning application consultations from LPAs	28,378	26,207	26,718	25,498	27,830	26,749
% Planning application consultations from LPAs		92%		95%		96%
Pre planning enquiry consultations	7,317	6,630	6,679	6,229	6,759	6,336
% Pre planning enquiry consultations		91%		93%		94%
<i>Total</i>	35,695	32,837	33,397	31,727	34,589	33,085
% Total		92%		95%		96%

Table 2: Summary of reasons why statutory deadline has not been met

Reason for response being late	No of responses 2010/11	% of Reponses 2008/09	% of Reponses 2009/10	% of Reponses 2010/11
Unknown	31	5%	5%	2%
Complex application/enquiry	101	10%	11%	7%
Delayed response due to low risk to environment from proposed development ³	1,295	73%	70%	86%
Background information received late	22	1%	2%	1%
Oversight/error	41	11%	11%	3%
System fault	14	0%	1%	1%
Total	1,504			

³ The following applictaions are treated as lower priority:
 - Those we consider to have low risk to the environment, based on their nature, size, or location.
 - Those smaller and low risk developments where the Local Authority should apply Flood Risk Standing Advice.
 - Those that are outside our remit.'

3 Analysis of our performance

In 2010/11, we received 34,589 statutory consultations⁴ of which 27,830 (80%) were planning applications and 6,759 (20%) were pre-planning enquires. 96% of responses on planning applications and 94% of pre-planning enquiries were made within 21 days (or longer as agreed). This is an improvement on our performance in 2009/10, when the figures were respectively 95% and 93%.

3.1 Context

The results do not include responses provided via our system of Standing Advice to Local Planning Authorities, on proposed developments considered to be at low risk of or vulnerability to flooding (see box). The report includes all consultations on proposed developments with higher risk of or vulnerability to flooding which are not covered by the flood risk standing advice.

3.1.1 Standing Advice

Standing Advice is designed to provide local planning authorities across England with immediate standard responses on low risk developments thereby avoiding time-consuming bespoke consultation. Flood Risk Standing Advice was introduced by the Environment Agency in 2004/05. Since then the number of consultations received requiring detailed consideration on flood risk grounds has fallen steadily, although this may not be solely due to the use of Standing Advice by Local Planning Authorities (LPAs). LPAs access advice directly via our external web site.

⁴ The figure of 34,589 includes a number of consultations where we are not a statutory consultee – see Annex table 2. Unfortunately at the present time our systems do not allow us to identify these separately. We respond to non-statutory consultations in the same way as statutory consultations, working to the same response timetable. It also includes a number of consultations on Development Consent Orders (Nationally Significant Infrastructure Projects (NSIP)), applications and pre applications which we have not been able to separate out from the other consultations.

4 The way forward - measures to maintain and improve future performance

We are taking a number of steps to maintain and improve our performance:

- We are carrying out a **review** of how we deliver our role in town and country planning (and related) activities to identify ways to deliver a more efficient and effective service, reflecting changes in Government and planning policy and available resources.
- As part of the '**Defra family single voice**' approach, we are working with Natural England to further improve our collaboration on planning consultations. We are also working with Natural England and the Forestry Commission to produce joint advice for developers. This will update each of our existing separate advice documents including our own 'Developers Guide', providing a single set of messages to inform developers.
- A selection of Area Planning Liaison teams have been developing and trialing **external checklists** and working with LPAs to set out which types of development proposals we should be consulted on (see Annex 2, Tables 1 and 2). We are learning the lessons from these tools to further encourage greater clarity and consistency in our role as a statutory consultee and develop a national tool.
- We are **improving our planning application responses that include activities we permit under Environmental Permitting Regulations**. Our aim is to improve permitting advice in our planning consultation responses that is proportionate to the risks posed. This will help to ensure that customers are clearer about our concerns and better placed to prepare higher quality planning and permit applications.

5 Conclusions

The Environment Agency's performance in 2010/11 in meeting the '21-day duty' represents continuing improvement on our 2009/10 performance. We now respond to 96% of pre-planning and planning application consultations within the required timescale. We have put in place further measures to help us maintain and improve our performance as a consultee and we will review the effectiveness of these in the future.

Julie Foley
Head of Sustainable Places
June 2011

Annex 1 – Legislative background

1. On 24th August 2005 a duty on all statutory planning consultees came into effect. It requires statutory consultees to provide a substantive response to planning application and pre-planning application consultations within 21 days of receipt of information, or “any other period agreed in writing between both parties”⁵.
2. The 21 day duty was enacted via an amendment to the Town and Country Planning (General Development Procedure) Order 1995 (GDPO) (now consolidated into the Development Management Procedure Order 2010).
3. Statutory consultees must report annually on their performance against the duty not later than 1 July. The report covers the consultee’s compliance during the 12 month period from 1 April in the preceding year.
4. The scope of the annual report is prescribed to be as follows:

“(3) The report shall contain, in respect of the relevant report year—

(a) a statement as to the number of occasions on which the consultee was consulted by a person other than a local planning authority;

(b) a statement as to the number of occasions on which a substantive response was given to a person other than a local planning authority within the period referred to in section 54(4) of the 2004 Act;

(c) a statement as to the number of occasions on which the consultee was consulted by a local planning authority;

(d) a statement as to the number of occasions on which a substantive response was given to a local planning authority within the period referred to in section 54(4) of the 2004 Act;

(e) in relation to occasions on which the consultee has given a substantive response outside the period referred to in section 54(4) of the 2004 Act, a summary of the reasons why the consultee failed to comply with the duty to respond within that period.”

5. The reasons why the statutory deadline has not been met in all cases, is provided in the form of general comments on why the target has not been achieved in all cases⁶.

⁵ ODPM Circular 08/2005 ‘Guidance on changes to the development control system’, (para 45). The definition of a substantive response is provided at para 43.

⁶ ODPM Circular 08/2005 ‘Guidance on changes to the development control system’, indicates that a brief summary of reasons why the statutory deadline has not been met in all cases need only be provided ‘if appropriate’ (para 50).

Annex 2 - The Environment Agency's planning consultee role

1. Our role as a consultee in the planning system for England (and Wales) is set out in statutory guidance from Defra:

Environment Agency's Objectives & Contributions to Sustainable Development:

“In support of its objectives the Agency is involved with land use planning, including advising on regional planning guidance, development plans and planning applications. Its primary role, subject to any changes in the light of the Planning Green Paper, is to advise on those aspects of draft plans, planning applications, environmental statements and hazardous substances consent applications which relate to its operational functions and particular expertise, using information it already has. The Agency also has a role in providing advice at an early stage in the planning process; both to help shape development briefs and draft plans before they go out to consultation; and to advise prospective applicants on the potential implications of their proposals before an application is made to the local planning authority. If the Agency considers there are gaps in a planning authority's draft plan or appraisal of an application from the wider sustainability point of view, it should draw the authority's attention to this. Where the Agency provides advice it should do so in a timely, consistent, justifiable and understandable way.” (DEFRA, 2002, para 5.3)

2. We are a statutory consultee on a number of types of development, for the purposes of responding on planning application consultations from LPAs and pre-planning enquiries from developers. In addition, we provide consultation responses on some types of development on which we are not a statutory consultee. Table 1 indicates the development types on which we are a statutory consultee, and which are covered by this report.

Table 1: List of application types on which LPAs must consult the Environment Agency, as of October 2010, under The Town and Country Planning (Development Management Procedure) (England) Order 2010 (DMPO).

DMPO Paragraph	Description of Development
L	Development involving or including mining operations.
Q	Development involving the carrying out of works or operations in the bed of or within 20 meters of the top of a bank of, a main river which has been notified to the local planning authority by the Environment Agency as a main river for the purposes of this provision; or the culverting or control of flow of any river or stream
R	Development involving the use of land for the purpose of refining or storing mineral oils and other derivatives
S	Development involving the use of land for the deposit of refuse or waste
T	Development for the retention treatment or disposal of sewage, trade waste, slurry or sludge (other than the laying of sewers, the construction of pump houses in a line of sewers, the construction of septic tanks and cesspools serving single dwelling houses or single caravans or single buildings in which not more than 10 people will normally reside, work or congregate, and works ancillary to those matters)
U	Development relating to the use of land as a cemetery
Y	Development within 250 metres of land which— is or has, at any time in the 30 years before the relevant application, been used for the deposit of refuse or waste; and has been notified to the local planning authority by the Environment Agency for the purposes of this provision
Z	Development for the purposes of fish farming
Zc	Development- involving the siting of new establishments or consisting of modifications to existing establishments which could have significant repercussions on major accident hazards or including transport links, locations frequented by the public and residential areas in the vicinity of existing establishments, where the siting or development is such as to increase the risk or consequences of a major accident
ze	Development, other than minor development, which is to be carried out on land – (i) in an area within Flood Zones 2 or 3; or (ii) in an area within Flood Zone 1 which has critical drainage problems and which has been notified for the purpose of this provision to the local planning authority by the Environment Agency
zf	Any development of land of one hectare or more

NB: In addition to these development types, the Environment Agency is a statutory consultee on development subject to Environmental Impact Assessment under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.

3. Table 2 lists some of the other main environmental issues on which we are a non-statutory consultee, but on which LPAs are encouraged to consult us.

Table 2: Some other Environment Agency consultation issues

These are non-statutory consultations which through current planning policy Local Planning Authorities are encouraged to undertake on a voluntary basis.

<i>Issue</i>	<i>Scope and basis for consultation</i>
1. Groundwater Protection.	The Environment Agency is consulted on development in Groundwater Source Protection Zone 1 as identified by the Environment Agency to Local Planning Authorities. Consultation is made to ensure the Agency can comment on implications of development for ground and surface water and thus help us to meet the requirements of the European Groundwater directive. Planning Policy Statement PPS23 'Planning and Pollution Control', provides relevant guidance on the requirements for consultation in this context.
2. Land Quality	The Environment Agency is consulted on the development of land formerly used for uses such as a transport depot or commercial garage, for the keeping, treatment or disposal of waste, for the storage or distribution of mineral oils or derivatives, for the storage and distribution of chemicals and development of contaminated land which is a Special Site. The aim of consultation is primarily to ensure avoidance of pollution to controlled waters. Planning Policy Statement PPS23 'Planning and Pollution Control', provides relevant guidance on the need for consultation with the Environment Agency.

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