

Research summary

Building Safety Regulator: Planning Gateway One insight

Insight and Service Design Team, Health and Safety Executive
Research conducted by Kantar Public

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Commissioning

This report summarises the findings of a qualitative research study conducted by Kantar Public between 28th September and 25th October 2022. The research was commissioned by the Insight and Service Design team in the Health and Safety Executive (HSE). The content of the report, including any opinions and/or conclusions expressed, are the views of the agency alone and do not necessarily represent the views of the HSE.

Background and objectives

Business context

Following the Grenfell Tower fire, Dame Judith Hackitt led a review of the system for ensuring the safety of high-rise residential buildings (HRBs). Recommendation 2.5 from the *Building a Safer Future* review centred on the role of the planning system in the safety of new HRBs.

This recommendation was implemented through Planning Gateway One (PGO), which was introduced in August 2021 as a way of prompting early consideration of fire safety matters in the building development cycle.

The new process involved HSE becoming a statutory consultee at the planning stage for 'relevant buildings' that are at least 18m tall or have at least 7 storeys and contain 2 or more dwellings or educational accommodation units.

Applicants must now produce, and submit, a fire statement to the Local Planning Authority (LPA) as part of the application for planning permission. The LPA then requests a consultation response on the fire statement from HSE, which seeks to provide a substantive response within 21 days of receipt of the consultation request. The LPA and local Planning Committee then use HSE's response to inform the decision as to whether to grant planning permission for the application.

HSE currently provides a free pre-application advice service for applicants.

Research objectives

Research was commissioned to understand experiences of the PGO process and gather early indications of its impact.

There was a particular focus on understanding LPAs' experiences of the PGO process, their views on HSE's consultation responses and any changes or improvements they would like to see in the future. The research also sought to understand the experiences of developers who had been through the PGO process.

Research methodology

Phase one

Phase one involved 7 one-hour-long online depth interviews with key government stakeholders and a document review.

Participants were:

- 7 internal HSE stakeholders
- 2 Department for Levelling Up, Housing and Communities (DLUHC) stakeholders

Phase two

Phase two comprised 27 interviews, lasting between 60 and 90 minutes, conducted among LPAs and PGO applicants in England.

Participants were:

- 15 local planning authority employees - of whom 7 were from London boroughs, 3 borough councils, 3 unitary authorities, 1 Metropolitan district council and 1 Metropolitan borough council. Participants were a mix of Team Leaders, Principal Planners, Senior Planning Officers, and Planning Officers.
- 12 PGO applicants - of whom 5 were planning consultants, 4 were fire consultants, 2 were developers and 1 was an architect.

All participants had experience of submitting or considering at least one PGO application in England.

Applicants had experienced a range of different outcomes regarding their application, in relation to the responses they had received from HSE and whether they had subsequently been granted planning permission by the LPA. In addition, one participant had received pre-application advice from HSE.

Main findings

Planning context

Research participants described the planning system as being complicated, changeable, and somewhat under pressure. Different areas of the country had different issues and priorities affecting planning decision-making over time (participants highlighted fire safety and sustainability as a current focus of interest). Resources were often limited and there was a lack of confidence around fire safety.

In this context, participants felt that any changes to the planning system requiring a greater focus on fire safety needed to be relatively straightforward, and communicated clearly, so that professionals working in this area could engage with them effectively.

LPA participants explained their role in the planning process as facilitating expert opinions, to inform decision-making on planning applications by lay people (Planning Committee members). This meant that LPAs wanted to interpret HSE's consultation responses accurately and, if any issues were highlighted, understand what they meant for local authorities' decision-making on these applications.

Some LPA participants were more experienced and confident than others in managing HRB applications, especially those in densely populated urban areas, due to the higher volume of applications that they dealt with every year. Participants from borough councils outside larger cities tended to feel that they needed extra support when considering HRB applications, as they received them less frequently.

Awareness and understanding of PGO

LPA participants tended to be more aware of the details of the PGO process than applicant participants. However, there was some variation in this. Urban LPA participants dealing with higher volumes of HRB applications were more aware of the process than those dealing with lower volumes. Fire consultant participants were more aware of the process than other applicant groups.

The rationale for PGO was understood to be the prevention of developments with inadequate fire safety measures. Many participants spontaneously mentioned a range of other perceived benefits, such as: centralising and standardising approaches to fire safety; gaining an independent perspective on the fire safety measures set out within individual applications; and reassuring decision makers about the safety of applications.

The overall intent of PGO was strongly supported across all participant types. However, participants tended to feel that the issues applicants were required to consider to meet PGO criteria exceeded the usual boundaries of the planning system. Many were concerned that issues previously managed at the building control stage now needed to be considered at the planning stage. Some LPA participants felt that this was beyond the remit of planning policy and took the focus away from the sole consideration of land use. Some applicants were also concerned that this could increase the cost and risk level of their HRB applications.

Generally, there was clarity over which buildings were within the scope of PGO, although some LPA participants spontaneously mentioned not always knowing how to treat applications to remove or vary a planning condition, made under section 73 of the Town and Country Planning Act 1990. Also, applications for prior approval made under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015).

While the principle and process of PGO were broadly understood, some participants were unclear about where power and responsibility for decision-making lay in relation to PGO. Some LPA participants wanted reassurance about: what they were liable for in this process; what would happen if a decision they made based on a consultation response from HSE was appealed by an applicant; and whether the LPA would be held responsible if there was a fire issue with a building approved at PGO. Applicant participants tended to want clarity on: HSE's remit and powers; the extent to which HSE could provide a 'hard stop' to development at PGO; and what level of detail HSE could reasonably ask for at the planning stage.

Experiences of PGO

LPA participants tended to be relatively positive about PGO, with applicant participants less so. This was because applicants perceived PGO to have often generated additional work and increased their costs.

Delays, attributed to the new PGO process, were the main source of negativity. It was reportedly relatively common for applications to be sent to HSE more than once for comment.

The main reasons given for needing repeat consultations on the same application were:

- Applicant and LPA participants feeling unclear about how to address the concerns raised by HSE, to make the application more acceptable regarding fire safety
- Applicants not fully addressing the issues raised by HSE's consultation response(s)

- Applicant and LPA participants feeling confused by the concerns raised by HSE, having consulted with local authority building control departments and/or Approved Inspectors who had advised that applications as specified would meet current building regulations.

Repeat consultation was perceived as creating inefficiency and delay, both for LPAs and applicants. Repeat consultation was cited as having a key role in shaping attitudes to PGO: even applicant participants whose schemes had received a response of 'content' and had gained planning permission expressed negativity about PGO when they had been affected by delays.

Repeat consultation was often perceived to be driven by LPA participants' view of fire safety as a life safety issue, and an emotive issue for decision makers on Planning Committees. LPA participants ideally wanted applications to receive a 'content' response from HSE, to reassure Planning Committees that buildings were being built to be safe. If this response was not forthcoming on the first round of consultation with HSE, LPA participants stated that they would usually push for further consultation.

Another reported driver of repeat consultation was a perceived lack of engagement between HSE and applicants, after the application had been submitted. While participants understood HSE's desire to retain independence, there was a shared view that some form of dialogue could avoid this process.

A final driver of repeat consultation was a common set of fire safety issues emerging in the first round of consultation. These issues included: single staircases and/or inadequate means of escape; staircases and lifts directly linking basements or car parks to residential floors; and inadequate fire fighter access. HSE consistently raised concerns about these issues, so further revision and re-consultation was needed until they were addressed by applicants.

Most applicant participants felt fairly treated by the PGO process overall, although this was more common among those who: accepted HSE as an expert consultee; had been granted planning permission; had experienced fewer rounds of re-consultation; and/or had experienced a greater number of PGO applications.

Fire consultant participants were more likely than others to be negative about PGO and to question PGO fire assessors' qualifications and expertise. In this research, this was mostly based on HSE's perceived refusal to consider 'fire engineered solutions' or look at Computational Flow Dynamics Modelling.

LPA and applicant participants were generally happy to use their discretion in consulting HSE in relation to less common application types, such as Section 73s and prior approvals. LPA participants expressed a desire to use their professional judgement to consult HSE about these application types when they believed there was a need.

Local Planning Authority participant feedback on substantive responses

LPA participants generally thought that HSE's substantive responses were clear and of an appropriate length. They responded positively to HSE using layman's terms to explain things in a detailed but straightforward manner.

Although LPA participants understood HSE's responses, not all were sure about how to act on them. LPAs thought HSE's responses could better highlight the implications for LPA decision-making, such as whether HSE's concerns were acceptable risks that could be tolerated in a design, were issues that could be resolved at Gateway 2, or whether they need to be fully addressed at PGO.

Some LPA and applicant participants raised concerns that substantive responses were not necessarily consistent. These participants reported receiving different responses over the course of an application (e.g., HSE raising different issues at different rounds of consultation) and across different applications (for example, single staircases accepted in some applications but not others). Additionally, some LPA participants reported inconsistency between HSE's advice, and that obtained from other consultees, such as the fire service and local authority building control departments.

Pre-application advice service

Awareness of the pre-application advice service was relatively low but seemed to be growing. All participants were positive about HSE continuing to provide the service and developing it further.

Impact of PGO

Overall, participants felt that PGO had achieved its intention of bringing forward consideration of fire safety in the development cycle. Participants spontaneously described how PGO has changed what applicants proposed, in terms of:

- Application layouts (fewer applications with single staircases; fewer applications linking basements/car parks to residential floors)
- Inclusion of 'fire engineered solutions' (fewer applications including fire separation/smoke ventilation/Computational Flow Dynamics modelling)
- Materials (less cladding, more masonry construction).

LPA participants believed that PGO was improving confidence in decision-making in local authorities and supporting trust in developments among officers, Planning Committees and

the wider public. LPA participants also expected PGO to reduce the burden on building control departments at Gateway 2, due to fire issues having been designed out of applications at planning stage.

Applicant participants recounted how PGO had affected their ways of working. They reported engaging fire consultants earlier on in projects, working up designs to a greater degree at an earlier stage than before and not presenting 'fire engineered solutions' within initial applications.

Participants generally felt that PGO had a beneficial effect by making building designs safer, educating applicants on fire safety issues, and encouraging innovation and challenge in building design.

However, some applicant participants raised concerns that PGO could increase costs, uncertainty, and risk, and privilege a prescriptive approach to building design that stifles creativity (for example, precluding single staircases in HRBs). There were also some concerns that applicants could 'game' the system by designing applications to pass through PGO, with the intention of changing them at a later stage.

Further information

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