British Aggregates Association
10 Brookfields
Calver, Hope Valley
Derbyshire S32 3XB

Tel/Fax: 01433 639879
Mobile: 07711 492 378
phuxtable@british-aggregates.com
www.british-aggregates.co.uk

28th August 2008

Phelim Rowes
Communities and Local Government,
Zone J10
Eland House
Bressenden Place
London SW1E 5DU

reviewofplanningapplicationprocess@communities.gsi.gov.uk

Dear Phelim

The Killian Pretty Review

Thank you for the opportunity to comment on these proposals.

The British Aggregates Association (BAA) represents the interests of some 80 members of which 60 are independent and privately-owned SME quarry companies throughout the UK with some 10% of national output and who operate out of over 100 sites. We are part of the consultation and lobbying process both in the UK and Europe – and are also represented through the CBI (Confederation of British Industry) Minerals Group and CPA (Construction Products Association). We have individual member representation on all the ten Regional Aggregates Working Parties (RAWPs) in England and Wales, and through the national steering groups; and work closely and constructively with other stakeholders including the Planning Officers' Society (POS).

We are fully supportive of the input on this review that is being prepared by both the CBI and for the CBI Minerals Group. Our members' interests are mostly confined to the relatively narrow area of minerals and waste planning at County (Unitary) rather than District level.

Our SME members have been increasingly concerned at the increasing time, cost, and volume of input required as part of a minerals (and/or waste) development proposal; together with the frustrations and delays involved with the subsequent delivery of planning decisions.

In particular we have concerns on the resourcing of planning departments to process the applications and Environmental Statements; on the delays associated with internal and external consultations and the problems in securing planning obligations and legal agreements in a reasonable period of time following determination.

We have documentary evidence from several members on specific delays and I mention a few of them as a snapshot picture of the range of problems as follows:

- Lincolnshire. December 2004, ownership change on quarry, small application without EIA. Approved May 2008 – dealt with by a part time officer.
- Oxfordshire. Small extension approved July 2005 subject to S106 – only finalised August 2008.
- Yorkshire. December 2006 extension application submitted, still un-determined. Internal consultees failed to respond in proper time period. Resource shortages.
- Derbyshire. Extension approved December 2007, draft S106 submitted. Still incomplete, resource shortages and part-time employees in planning department.

Generally applicants are reluctant to apply too much pressure to avoid any re-allocation of priorities in the planning departments.

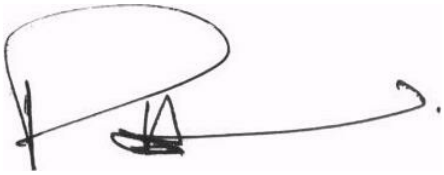
This is all against the backdrop in the summary of the Act that *"The Planning and Compulsory Purchase Act 2004 is a key element of the Government's agenda for speeding up the planning system"*.

However, we would strongly recommend that no further new legislation is introduced to enable some time for the system to settle down. We actually need somewhat less control – combined with a significant increase in resource for and a more pragmatic and simple approach from the authorities. Imposing a policy of deemed assent for a nil response from consultees in the given time would be a positive first step!

I have appended our response to your specific questions.

If you require any further information or clarification, or would like to discuss any aspects further please do not hesitate to contact me.

Yours Sincerely



Peter Huxtable
MA(Cantab) CEng FIQ FIMMM
Secretary

The Killian Pretty Review – A Call for Solutions. **BAA Questionnaire Response**

Proportionately

Q1 Most minerals proposals need to be full planning applications. However Permitted Development Rights (PDR) is routinely removed by conditions leading to unnecessary minor applications for ancillary and secondary plant, machinery & buildings etc. PDR should only be removed when there is specific site specific justification – eg National Parks & AONBs.

Q2 Local Development Orders have limited applicability to minerals planning. However keeping existing PDR also applies here.

Q3 Staffing recruitment and retention is a major problem with many Unitary authorities and needs urgent attention. The balkanization of Counties into Unitaries has not been beneficial to minerals planning. Whilst there is enormous potential benefit in using the facility of say the larger County minerals authorities where they may have more experienced officers, the experience from the examples we have quoted show that serious resource and staffing problems (or priority setting) are also evident here.

Complexity

Q4 The volume of information required to support minerals applications has grown exponentially in recent years without much evidence that either the quality of applications or quality of decision making is improved. Sometimes the sheer weight of detailed supporting information obscures the key planning issues, with the process becoming more and more bogged down in detail. Some of the worst examples of unnecessary information concern ecological assessments, but also concern traffic impacts, archaeology and flood risk. The imposition of a Flood Risk Assessment for all applications with a site area over 1ha is good example of an arbitrary requirement that may serve no useful purpose. The guiding principle should be the provision of sufficient information to enable the authority to determine the application. Unfortunately this process has become a box ticking exercise with little professional judgment exercised. Officers need to agree what is required with applicants, and not automatically accede to requests for often spurious information from consultees.

There is no outline-detailed staged approach for minerals application, and therefore any deferred information must be reserved by condition. Too often, detailed material is required at the application stage that could be reserved by planning condition.

Q5 The use of formal pre- application discussions involving key consultees and organised by the planning authority is good practice.

Q6 Professional judgment needs to be exercised regarding the appropriate scope and content of applications. Most minerals application, even for relatively small scale extensions, requires ecological and archaeological assessments for example. However some authorities are more pragmatic than others so there is a postcode lottery. Hopefully the recent Good Practice Guidance for archaeological pre-determinations may eliminate much of the problems for certain specific geographic areas.

Culture

Q7 Development Control and Development Management amount to the same thing. Minerals applications will be made and be processed. There is an obvious need for up to date development plans to establish sound principles, but the track record is not good. Some minerals development plans are in danger of becoming an extension of a negative development control approach and are seen as a vehicle of restricting further minerals development regardless of the economic consequences.

Q8 Fortunately, minerals' planning does not suffer too badly from the target culture applied to other applications. Even with the best pre-application consultation, issues arise with complex minerals applications during the application process that cannot be dealt with in a short time frame. The purpose of targets was to speed up the process to benefit applicants. However, the rule of unintended consequences often applies when an applicant wants to extend the period to provide additional information. There should be a mechanism for extending the determination period at the request of the applicant which then takes the application out of the target calculations. Quality is more important than speed.

Engagement

Q9 Minerals applications can be complex and controversial and are rightly subject to wide consultation. It is the quality and speed of consultation responses that gives rise to problems. Case officers should act in a professional and not administrative capacity in dealing with consultee responses, weeding out the important concerns from the over-zealous and frivolous. There is a tendency for any requests for additional information to be simply passed on and not questioned. It is apparent that some consultees do not understand minerals planning or do not read the application in full. Some make responses that raise fundamental issues without making a site visit when this is essential. The approach of some consultees (eg the Environment Agency) appears to routinely object to minerals application on grounds of lack of information (to meet the target response time) leading to a lengthy exchange of correspondence to meet their detailed and ever changing requirements. The planning officers should manage this process more forcefully and not be bullied by the major statutory consultees, and insist on adhering to deadlines. A nil response within the deadline should be deemed agreement with the applicant.

Q10 Councillors are in a difficult position because they need a level of detachment prior to an application being determined. In minerals planning for major proposals it is helpful to have an exhibition where Councillors can attend. It is also good practice for Members site visits to be carried out before Committee's meet. Some Councillors on planning committee's have little knowledge of mineral working and training is an important issue.

Q11 For major minerals proposals pre-application consultation with the local community is good practice. The objective is to inform so that any responses to a proposal are well informed.

Process

Q12 The experience of pre-application consultation is mixed. The best practice is where the MPA calls a meeting of the key consultees and the applicant goes through the draft application with them. The worst is where you simply receive a long list of policies and disclaimers after a long delay and it has been a complete waste of time.

Q13 The most effective way of publicising a planning application is a brightly-coloured, brief, well - written and clear site notice.

Q14 The APP1 form does not apply to Minerals applications that are still submitted in paper form on individual authority forms. There is presently a grey area for applications for ancillary development such as batching or bagging plants which can be submitted on APP1 of the minerals forms. Authorities should ideally have a separate form for ancillary plant which would avoid filling in a long minerals form with most sections being 'not applicable' It is good practice to submit major minerals application on CD. These are cheap to produce and can be distributed widely – and make it easy for the authorities to load onto their websites. For some minor applications electronic submission may be appropriate. The important point is to have the flexibility to submit applications in an appropriate format that provides good public access and does not dictate a particular method. There are obviously a number of teething problems with APP1 – for example regarding fee calculations and information requirements. If there is a benefit in electronic submission it will be used but should not be mandatory.

Q15 Mineral authorities need to be clear what their demands are for S106 agreements early in the process. It is not helpful to have an application approved subject to a S106 and the LPA/MPA then seeking a much more onerous contribution than discussed previously – for example highways contributions. It can also happen that additional S106 requests arise immediately before Committee following the Members/Chairman's briefing and a snap decision has to be made on whether to agree and puts the applicant in a poor negotiating position. Members should be briefed well in advance of a Committee to provide time for proper consideration of late requests.

Q16 In minerals planning it is good practice for MPA's to consult applicants on draft conditions before these are finalised. This can sometimes be hampered by the full conditions being agreed by Committee before applicants have a chance to comment which limits flexibility. Best practice if for the Committee to agree the principles and for the officers to agree the details once there is a resolution to approve. This process can:

- Weed out unnecessary conditions for additional information that has already been provided.
- Delay submission of additional information to an appropriate phase in the development (eg minimise conditions requiring further details approval before commencement).
- Edit out ambiguity

It is in the interests of all parties to have clear, well written and understood conditions to avoid future problems of interpretation and possible enforcement.

MPA's should not automatically impose all the conditions proposed by consultees since many of these will not pass the test for conditions set out in Circular 11/95.

Other issues

Q17 Speed should not be the main driver of the development control process. Most minerals operators do not expect a major application to be dealt with in 12-16 weeks. There are inevitably unforeseen issues arising after submission that need time to be resolved. Time needs to be provided to allow all issues to be properly considered. It is pointless applying a guillotine at a given date since this leads to unnecessary appeals and resubmissions which simply cause additional work for all parties – which is the opposite of what the targets are seeking to achieve.

A significant and increasing problem is Committees not supporting their officers' recommendations. It is accepted that this is a risk of the democratic planning process, and members are not there simply to rubber stamp officer's recommendations. However members need to be properly trained and properly informed. Some of the larger County authorities operate well with experienced and knowledgeable councillors, but this is far from universal. It is not good enough for a small panel of councillors who know little or nothing about minerals planning to be faced with a 20 page committee report and be expected to make a reasoned decision when they have not even seen the site. It is easy to understand in such circumstance the temptation to support the views of objectors who may be well organised and attend the Committee en-masse.

Where a minerals proposal goes to appeal there is often an issue of amended plans – for example to the details of a restoration scheme in response to consultee comments. It is in everyone's interest for the Inspector to consider the best proposal, but this can lead to procedural uncertainty. There needs to be clear guidance on this stage of the appeal process. I have seen a suggestion elsewhere that only the application considered by the Committee should be considered at appeal. This is a bad idea since an applicant may have to take an inferior proposal to appeal, or resubmit and go through the whole application process again just to include minor amendments.