

WLGA

Planning Bulletin

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On 4th December 2013, the Minister Carl Sargeant published the Planning (Wales) Bill together with the consultation paper Positive Planning.

In his address to the Wales Planning Forum on 4th December, the Minister stated “I want to unlock the potential of planning to bring about change by enabling the delivery of the homes, jobs and infrastructure that Wales requires. For too long planning has focussed on regulating development, being perceived by many as negative and reactionary. I want to change this by empowering planning to once again become a visionary activity which is proactive and enables rather than holds back development. Planning must become a tool to drive growth across Wales”

This bulletin summarises the proposals to reform the planning system in Wales.

Introduction

- Business as usual is not an option.
- WG will continue to press the UK govt for further devolution in areas such as consenting energy projects over 50mw and CIL
- The consultation period is until 26 February and the Bill introduced to the National Assembly in summer 2014.
- The consultation document proposes 43 questions
- The proposals in the consultation documents are grouped into 4 themes:
 - Supporting Culture Change

- Active Stewardship
- Improving Collaboration
- Improving Local Delivery

Evidence Base

- WG has commissioned a body of evidence which is available on their website
<http://wales.gov.uk/topics/planning/planningresearch/publishedresearch/?language=en>
- Some of this research was not completed in time for lawyers to incorporate proposals into the draft Planning Bill but the proposals are set out in the consultation document

Supporting Culture Change (Pages 11-15)

- It is not possible to legislate for culture change
- LPAs must ensure seamless integration between development plan and development management functions. This requires co-location of teams and breaking down any professional barriers that have emerged
- WG reassert the need for LPAs to have up to date adopted LDPs in place
- Culture change includes all those who have a stake in the planning system -
 - LPAs, WG, developers, consultees, educational institutions and professional bodies
- Planning reform agenda is seeking to reduce the complexity of the planning process
- WG propose the formation of a national planning advisory and improvement service (PAIS) hosted by WG, steered by an external advisory board. The establishment of the PAIS including its steering group will be the subject of further consultation. One of the reasons given for hosting by WG is that it will be cost neutral as existing resources will be redirected.
- The PAIS would:

- Identify and disseminate good practice and standards, assist sharing of expertise and resources between LPAs
- Identify, promote and target training requirements for planning practitioners and members (working with stakeholders)
- Provide targeted, specialist advice and mentoring
- Publicise, disseminate and educate about WG planning initiatives
- The service would have a procurement arm to address specific technical issues and training needs
- WG also propose to consider existing arrangements for the built environment sector with a view towards reducing duplication and increasing efficiency
- A national competency framework is proposed for practitioners and elected representatives setting out skills, knowledge and behaviours necessary to ensure planning becomes a positive enabling activity.
- PAIS will have a leading role in developing this competency framework
- Positive Planning is not specific on whether the competency framework is directed at LPAs only or across all planning practitioners, nor is it specific on its status as a mandatory or discretionary framework

Active Stewardship (Pages 17-42)

- Proposes that WG should play a more active role in the delivery of planning services to reduce duplication, increase consistency and improve performance
- WG will:
 - Prepare a national land use plan- National Development Framework (NDF) that identifies proposals of national significance including infrastructure over a minimum of 20 years. The NDF will have development plan status and complement the WIIP and provide a framework for Strategic Development Plans and LDPs
 - Review and restate national planning policy
 - Establish a development hierarchy to ensure applications are dealt with in a proportionate way at the appropriate level of government

- Improve planning appeal procedures

National Development Framework

- Only those aspects of national significance should be addressed through the NDF. The NDF will not set a national housing target, this will be for SDP and LDPs.
- As the NDF is an expression of WG policy, WG does not consider it appropriate to scrutinise the plan through a traditional examination process and will therefore be subject to a 12 week consultation.

National Planning Policy

- Proposed to combine Minerals Planning Policy Wales and Planning Policy Wales into one document
- WG propose to assess the number of TANs
- WG propose to produce a suite of national DM policies that could be used by all LPAs

Development Hierarchy – Development of National Significance

- The proposed development hierarchy will introduce Development of National Significance which will be determined by Welsh Ministers. A list of these are described in Annex B.
- WG will receive the fee for these applications. There will be a duty on WG and /or appointed persons and LPAs to provide pre application advice upon request regarding DNS. LPAs will also be expected to complete a Local Impact Report (LIR) including draft conditions and legal requirements. WG will be responsible for determining any subsequent renewal application which requires the principle of development to be revisited, whilst LPAs retain responsibility for other post determination decisions including variation or removal of a condition, the discharge of conditions and enforcing against breaches of planning control.
- Developers will be required to submit a report on the outcome of consultation – Statement of Pre-application Consultation (SPC) regarding applications for DNS
- To minimise the number of separate applications, a developer will have the option of submitting certain connected applications to be considered by

Welsh Ministers at the same time. The call in policy and procedure will be amended to permit Welsh Ministers to call-in identified application types if they are considered to be connected with an application for DNS (page 32)

- Welsh Ministers will have discretion to determine the most appropriate method for examining the DNS application

Development Hierarchy – Major & Local

- LPAs retain the responsibility for determining major and local developments.
- It is considered that there should be no need for most local developments to be considered by planning committee and LPAs should be able to achieve delegation rates of over 90%
- Proposals to consider permitted changes between use classes through a review of the use class order including the use of agricultural buildings

Planning Appeals

- Proposal to require appellant to submit their full statement of case when an appeal is made and also a submission of a draft Statement of Common Ground when an appeal is made, where a hearing or inquiry is requested
- LPA and interested parties are to submit their response to the appeal and formal comments on the draft Statement of Common Ground within 4 weeks of the start of the appeal
- And appellant to submit comments on the LPAs response within 6 weeks of the start of the appeal
- PINS will in future take a more pro-active role in determining how an appeal is handled
- The right to appear before an Inspector to be removed
- Welsh Ministers will deal with an application in the form it was considered by the LPA
- The 6 month maximum time limit for appeals for non determination by the LPA will be removed. The LPA will continue to have the power to determine an application which is subject to non-determination appeal within a prescribed timescale set out in secondary legislation following the submission of an appeal

- Currently costs awards can only be made in appeals where an inquiry or hearing is held, proposed that the costs regime be extended to appeals conducted by written representations
- Mechanisms are to be introduced to enable Welsh Ministers to recover their own costs resulting from the submission of an appeal
- Also propose to establish a Commercial Appeal System (CAS) to follow a similar procedure as the HAS for small scale commercial applications
- No third party right of appeal to be introduced

Improving Collaboration (Pages 43- 53)

- Disappointment expressed that collaborative arrangements have not gone as far as WG hoped
- Evidence supports need for change and do not have to wait until the outcome of the Williams Commission
- Advocating the merger of local planning services and proposes to update existing powers to enable WG to reduce the number of LPAs to increase the efficiency and sustainability of local planning services. No indication of which LPAs to merge.
- Merger is seen as a means of responding to fresh demands and diminishing resources
- Current legislation excludes power over National Parks, the updated proposal will include National Parks.
- Update legislation will enable a joint planning board to perform all modern LPA functions such as preparation of a LDP and collection of CIL
- Membership of the joint planning board would be drawn from contributing local authorities on a proportionate basis linked to population
- A final view on whether NPA should retain a planning function has not been reached

Strategic Development Plans

- Strategic Development Plans proposed for 3 areas – Cardiff, Swansea and A55 corridor. The precise physical extent is not specified

- SDPs are to be prepared in areas where matters such as housing, employment, transport are greater than local significance
- The National Development Framework will specify key issues that SDPs will have to cover
- Proposed preferred governance arrangement for SDPs is a 'Panel' comprising locally elected members with representation reflecting the population of the LPAs
- The 'Panel' will have relevant statutory development plan making powers.
- Funding and resource arrangements to support operational activities will be for the 'Panel' to determine. The 'Panel' will be a corporate body
- It is envisaged that experts from constituent LPAs will be seconded/employed to undertake the preparation of the SDP
- WG considering reserve provisions so that, if necessary, the leadership of technical experts could be a person appointed by WG
- An alternative (but not preferred by WG) governance arrangement is a completely separate body with plan making and decision making powers
- The SDP will be subject to a public examination led by an independently appointed Planning Inspector from PINS
- SDP will be subject to an Annual Monitoring Schedule (AMS) to be determined by the 'Panel'
- LDPs should conform to relevant SDP which should result in a much slimmer LDP in scope and content. Where there is no SDP, the LDP should be prepared in conformity with the NDF and PPW

Improving Local Delivery (Pages 55- 90)

- Acknowledge that improving performance is challenging at a time when resources are diminishing.
- Each LPA will be obliged to produce an Annual Performance Report (APR)
- APR will allow individual planning authorities to consider identified issues and undertake self-improvement

- Penalties may be imposed in cases of persistent poor performance – these could include direct intervention and taking control of certain aspects of the local planning service, including the submission of planning applications direct to Welsh Ministers
- Designation of a LPA as poorly performing will be based on evidence obtained from indicators of a good local planning service. The designation will be revoked when Welsh Ministers are satisfied that the 'poorly performing' LPA has taken significant measures to improved its performance
- Support for LDPs reasserted with some proposals to implement the results of the LDP Refinement Exercise, introduce an end date, opportunities for community engagement working to prepare Place Plans, prior notification to Welsh Ministers before a LDP be withdrawn
- Welsh Ministers may direct two or more LPAs to produce a Joint LDP
- WG consider that Town & Community Councils are well placed to work with LPAs to produce locally relevant SPG or Place Plans. These could identify priorities for investment in community infrastructure
- Propose to establish a small number of Place Plans pilots drawing on technical assistance from the Design Commission for Wales and Planning Aid Wales. Joint expressions of interest from LPAs and Town & Community Councils will be invited
- Where a development plan has established the principle that a certain form of development is acceptable, this should not be debated again at planning application stage. Proposal for either a new type of planning consent to be introduced for applications which are in accordance with an adopted development plan or no change to consents but all planning applications in accordance with an adopted development plan would be delegated to officers to determine
- WG favour first option where a reserved matters type application would be submitted in respect of development in accordance with the adopted development plan. A further consultation paper will be issued
- Proposing that LPAs have a legal duty to provide a pre-application advice service to prospective clients when requested and that it is reasonable for

an LPA to recover the cost of providing the new statutory pre-application service. Two charging options being considered – fee payable when planning application submitted or fee payable regardless of whether application submitted

- A requirement for pre-application engagement is proposed. When the planning application is submitted to the LPA it should be accompanied by a written account of engagement – a statement of pre-application engagement (SPE)
- To resolve disputes quickly, WG intend to set up a new appeals mechanism that deals solely with whether an application is valid, This will be administered by PINS using written representations by an appointed planning officer rather than an inspector
- Proposal to remove the requirement to submit a design and access statement with a planning application as little evidence that they have been effective
- WG intend to consider further whether current notification arrangements are proportionate, including consideration of removing the requirement to publish a notice in the newspaper
- A duty of statutory consultees is proposed which will require a substantive response to consultation requests and statutory consultees to provide performance reports to Welsh Ministers
- When a statutory consultee provided a response at pre-application stage, limitations will be placed on the type of new issues that statutory consultees will be able to raise through formal consultation
- WG intend to work with stakeholders to implement the establishment of a national planning committee protocol, legislation to define the size of planning committee and establishment of a national programme of member training linked to the proposed competency framework
- It is also proposed that there is a national scheme of delegation
- WG propose to make changes to decision notices and require developers to tell LPAs when development starts.

- WG proposes to introduce a statutory procedure that will allow developers to seek non-material amendments to planning permission and reassure LPAs that they can entertain such changes
- A new dedication application procedure for extending the time limit for implementing a planning permission is proposed. This will have its own submission requirement and fee.
- WG propose to prohibit applications being made to register land as a town and village green where that land has entered the planning system and to enable landowners to submit declarations to the commons registration authority which would have the effect of rendering all use of the land inconsistent with the 'as of right' criterion required of town and village green registration
- The consultation document reinforces the importance of enforcement as part of an effective DM system. WG intend to introduce changes to improve the performance of the enforcement process. These are the introduction of temporary stop notices, changing the title of 'Completion Notices' to 'Termination Notices', transferring responsibility for determining section 215 appeals from the Magistrates to Welsh Ministers
- Additional changes to the enforcement process are providing LPAs with the powers to require the submission of retrospective planning applications and to decline retrospective planning applications where the development is subject to an enforcement notice.
- WG propose to remove the ability to appeal ground (a) where a refusal of planning permission has already been upheld at appeal and against the refusal of retrospective planning permission where a ground (a) has failed
- WG acknowledge the challenges faced in delivering a good local planning service with current resources. It is stated that planning fees have not been raised since 2009 and that the changes to permitted development rights proposed will reduce fee income. Therefore WG considers it appropriate to undertake a review of planning fee levels
- This review will cover whether there should be a general increase in planning application fees, widening the scope of fees to include for example

discharge of conditions and changing how the fee for renewable energy applications are calculated

Financial Impacts (pages 91 – 94)

- A full Regulatory Impact Assessment setting out benefits and costs will accompany the Planning (Wales) Bill when it is introduced to the National Assembly.
- The consultation document does however identify some savings and costs
- The savings for LPAs are very much focussed on collaboration, removal of DNS will require less specialist advice to be bought in and an extension to PDR removing a number of applications from the system
- The costs for LPAs are very much focussed on costs associated with the pre-application service, performance reporting and potential reduction in fees if an LPA is designated has the determination of planning application removed.

Alongside the draft Bill and Positive Planning WG has published on their website initial performance data for each of the 25 local planning authorities.