



## PLANNING COMMITTEE – 6<sup>TH</sup> NOVEMBER 2019

**SUBJECT: WELSH GOVERNMENT CONSULTATION ON THE DELIVERY OF HOUSING THROUGH THE PLANNING SYSTEM**

**REPORT BY: INTERIM CORPORATE DIRECTOR - COMMUNITIES**

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### 1. PURPOSE OF REPORT

- 1.1 To provide information to Members of the Planning Committee on the content of the recent Welsh Government consultation on the Delivery of Housing through the Planning System.
- 1.2 To seek the views of Members of the Planning Committee on the draft consultation response included in Appendix 1.

### 2. SUMMARY

- 2.1 The Welsh Government is consulting on changes to Planning Policy Wales, together with consequential changes to Technical Advice Note 1: Joint Housing Land Availability Studies (TAN 1) and the Development Plans Manual.
- 2.2 The key changes to the document proposed are:
  - To remove the requirement in *Planning Policy Wales* for local planning authorities to provide a five-year supply of land for housing.
  - To consequently revoke TAN 1 in its entirety.
  - To replace the monitoring of housing land supply by the monitoring of housing delivery based on the LDP housing trajectory, to be reported through the AMR.
- 2.3 The draft response to the consultation is included in Appendix 1 of this document. If agreed the comments will be forwarded to Welsh Government before the deadline of 20<sup>th</sup> November 2019.

### 3. RECOMMENDATIONS

- 3.1 That Planning Committee notes the content of the Welsh Government consultation

on the delivery of housing through the planning system.

- 3.2 That Planning Committee considers and offers any views on the content of the draft consultation response prior to its submission to Welsh Government by the deadline of 20<sup>th</sup> November 2019.

#### **4. REASONS FOR THE RECOMMENDATIONS**

- 4.1 To ensure Members of the Planning Committee are aware of potential changes to National Planning Policy.
- 4.2 To ensure a response is submitted on behalf of the Council that reflects the views of the Planning Committee by the closing date of the consultation.

#### **5. THE REPORT**

- 5.1 Welsh Government is currently undertaking a review of housing delivery through the planning system and as part of this has issued a consultation setting out key changes to national planning policy as set out within Planning Policy Wales, together with associated documents.
- 5.2 The consultation document highlights that as of 1<sup>st</sup> April 2018, nineteen out of the twenty-five local planning authorities were unable to demonstrate a five year land supply. As a result, a number of local planning authorities have reported an increase in speculative planning applications for housing developments on sites which are not allocated in LDPs.
- 5.3 Welsh Government raise concerns about the Joint Housing Land Availability Study (JHLAS) process, which is set out in TAN 1, as they consider that developers are using it to query the deliverability of allocated sites, which can cause a local planning authority's 5 year land supply to be detrimentally affected.
- 5.4 The consultation document proposes the following changes to national planning policy:
- To remove the requirement in Planning Policy Wales for local planning authorities to provide a five-year supply of land for housing.
  - To consequently revoke TAN 1 in its entirety.
  - To replace the monitoring of housing land supply by the monitoring of housing delivery based on the LDP housing trajectory, to be reported through the AMR.
- 5.5 If the planning policy and associated changes proposed in this consultation were to be made, it is anticipated that they would come into effect in Spring 2020.
- 5.6 The consultation sets out four questions for stakeholders to set out their views and the draft response contained in Appendix 1 identifies a number of comments and concerns in respect of each of these consultation questions.
- 5.7 The key areas of concern are as follows:

- At the time that the adopted LDP for Caerphilly County Borough was prepared, there was no requirement for local authorities to include housing trajectories within their LDPs. As a result, Caerphilly has no trajectory against which to assess housing delivery and will not have until such time as a Replacement LDP is adopted. It is considered that the proposed changes should not take place until all LAs have up to date LDPs with trajectories included.
- It is not clear how a trajectory would be updated over the plan period to take into account changing circumstances.
- There is a need for recognition that some allocated housing sites have not been developed due to external factors - global economic uncertainty, Brexit, developer circumstances etc. rather than because of the failure of the plan.
- Where LDPs are being reviewed, this is a 3.5 year process. There is no clear policy in place to deliver housing in the interim in those areas where delivery is low.
- The policy vacuum will result in the reduction of the delivery of both market and affordable housing in areas where housing is needed, and will create uncertainty and potentially deter investment. It is not considered that the existing Joint Housing Land Availability Studies process is failing, but the residual method used to calculate the five year land supply requires review due to the undesirable consequences of this for future housing delivery. TAN 1 should be reviewed, rather than revoked.

5.8 Overall, there are significant concerns regarding the proposed changes to PPW and TAN 1 due to the: uncertainty this will cause, potential impact on housebuilding (including the delivery of affordable housing) and the prematurity of this proposal, as not all local authorities have a housing trajectory.

## **6. ASSUMPTIONS**

6.1 No assumptions have been made in the preparation of this report

## **7. LINKS TO RELEVANT COUNCIL POLICIES**

7.1 Changes to Planning Policy Wales, Technical Advice Notes and the Development Plans Manual will need to be considered as part of the Council's adopted Local Development Plan and any future reviews of the Local Development Plan.

### **Corporate Plan 2018-2023.**

7.2 The proposed changes to national planning policy could impact on the delivery of Objective 3 of the Corporate Plan - Address the availability, condition and sustainability of homes throughout the county borough and provide advice, assistance or support to help improve people's well-being

## **8. WELL-BEING OF FUTURE GENERATIONS**

8.1 The Well-being of Future Generations is enshrined in Planning Policy Wales, and the document contributes to all seven wellbeing goals:

- A prosperous Wales
- A resilient Wales
- A healthier Wales
- A more equal Wales
- A Wales of cohesive communities
- A Wales of vibrant culture and thriving Welsh Language
- A globally responsible Wales

## 8.2 Planning Policy Wales demonstrates the five ways of working:

- Long Term – The importance of balancing short-term needs with the need to safeguard the ability of future generations to meet their long-term needs;
- Prevention - How acting to prevent problems occurring, or getting worse, may help public bodies meet their objectives;
- Integration – Considering how the public body’s well-being objectives may impact upon each of the well-being goals, on their other objectives, or on the objectives of other public bodies;
- Collaboration – Acting in collaboration with any other person (or different parts of the body itself) that could help the body to meet its well-being objectives;
- Involvement – The importance of involving people with an interest in achieving the well-being goals, and ensuring that those people reflect the diversity of the area which the body serves.

## 9. EQUALITIES IMPLICATIONS

9.1 As this is a Welsh Government consultation, any Equality Impact Assessment will be completed as part of their Consultation exercise.

## 10. FINANCIAL IMPLICATIONS

10.1 There are no financial implications

## 11. PERSONNEL IMPLICATIONS

11.1 There are no personnel implications.

## 12. CONSULTATIONS

12.1 All responses from consultations have been incorporated into the report.

## 13. STATUTORY POWER

13.1 The Planning (Wales) Act 2015

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Consultees: Cllr E. Stenner – Cabinet Member for Environment & Public Protection  
Cllr L. Phipps – Cabinet Member for Homes and Places  
Cllr Mike Adams - Chair of Planning Committee  
Cllr Andrew Whitcombe - Vice Chair of Planning Committee  
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Rhian Kyte - Head of Regeneration and Planning  
Tim Stephens – Planning Services Manager  
Dave Lucas – Team Leader, Strategic and Development Plans  
Richard Crane – Senior Solicitor  
Shaun Couzens – Chief Housing Officer

Background Papers: Welsh Government Consultation Document – Delivery of housing through the planning system: revisions to Planning Policy Wales and associated advice and guidance

Appendices:

Appendix 1 – Draft Response

## Delivery of housing through the planning system

### Q1. Planning Policy Wales – Policy on housing trajectories

It is proposed that the policy of maintaining a five-year housing land supply is replaced by the use of LDP housing trajectories to monitor housing delivery, with the consequential revocation of TAN 1 and amendments to the Development Plans Manual.

To what extent do you agree or disagree that LDP housing trajectories as part of the AMR process provide an effective means of monitoring the delivery of LDP housing requirements?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	<i>Don't know</i>	<i>No opinion</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you disagree, please tell us why and tell us about any changes you think should be made.

Whilst we agree that housing trajectories could form an important part of the AMR process in future, it must be recognised that not every local authority has trajectories in place within their current LDPs and therefore changes to the current approach may adversely affect housebuilding in these LAs by causing uncertainty. We strongly believe that these significant changes should not be brought in until such time as all local authorities in Wales have adopted LDPs with housing trajectories included.

Caerphilly, together with other authorities who adopted LDPs early in the process, does not have a housing trajectory, as there was no requirement in national planning guidance to include one at the time of plan preparation.

Guidance is provided on how LAs without a trajectory should address this, with the consultation document stating that these authorities would need to use a simple calculation based on their housing requirement to derive an average annual figure against which to assess delivery.

The guidance on the calculation indicates that LAs would need to measure completions against the average annual housing requirement set out in the plan, and consider the cumulative completion rate. Both figures would need to be included in the AMR in numerical and percentage terms. This calculation is very simplistic as it only considers one year of completions rather than considering what could realistically be delivered in the next 5 years to provide a greater understanding of supply. Our existing AMR already goes beyond what is proposed, considering completions in the context of the 5 year land supply using both the residual and past build rates method, as well as monitoring affordable housing. It will, however, require Caerphilly to separate out the monitoring of completions on allocated and windfall sites, which will in any event be useful information to inform an LDP Review.

The proposed revision to PPW indicates that “under-delivery against the trajectory can itself be a reason to review a development plan.” This should be amended to indicate that this is under-delivery over consecutive years. Furthermore, the reasons for under-delivery should be a consideration as low housing delivery rates may be due to external circumstances e.g. the global economic crisis, the impacts of Brexit etc, rather than the failure of the plan itself.

Over-delivery should also be considered – if sites are coming forward earlier than anticipated, or there are a greater number of windfall sites and small sites, this could potentially have implications for the delivery of housing later in the plan period.

Where a plan is under-delivering and the LPA commences a review based on recommendations in the AMR, this is a 3.5 year process. Welsh Government need to explain how housing can be delivered in the interim, in those areas where delivery is low, as the change in national planning policy would no longer support the role that speculative sites have in increasing the delivery of market and affordable housing. This is explained further in relation to Question 4.

## Q2. Development Plans Manual (Chapter 5) – Preparing a housing trajectory

To reflect the changes proposed to Planning Policy Wales, changes are required to Chapter 5 of the Development Plans Manual (Preparing an LDP – Core Issues).

To what extent do you agree or disagree that the guidance on how to prepare a housing trajectory is clear?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	<i>Don't know</i>	<i>No opinion</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you disagree, please tell us why and tell us which aspects you think should be changed and in what way.

The guidance is clear in terms of what should be included in the housing trajectory that is to be embedded in an LDP, with build rates being agreed through Statements of Common Ground and ultimately by the Inspector. Diagram 16 is a useful presentation of the figures.

One point of clarification, however, is Para 5.67 - Table 21 – Column L – the anticipated annual build rate includes the deduction of the flexibility allowance, which is listed as a percentage rather than a numerical figure and this figure hasn't been included elsewhere in the table. Flexibility allowance should be included as a new row and expressed as a figure rather than a percentage.

However, we disagree with paragraph 5.66, which states that “*windfall rates will usually be an annualised flat rate over the plan period.*” Whilst this is an appropriate approach for small sites, windfall sites, by their nature, are unknown and are therefore very unlikely to be constant across the plan period. Windfall rates are more likely to increase as the plan period progresses, as sites that may have been occupied by another use at the start of the plan period may become available as circumstances change. A constant figure for windfall sites is likely to skew the overall completion assumptions. It is not clear how a windfall site would be defined and counted where you have a site that was a windfall site within a previous development plan, but the completions are included within an LDP review trajectory? For those authorities with trajectories including a windfall assumption, it would be worthwhile for Welsh Government to undertake some research on how rates change as a plan progresses to inform this section of the manual.

Under previous guidance, local authorities needed to demonstrate that they had a five year land supply at the time of plan adoption. This undoubtedly influenced the site selection process with sites that could be developed quickly being favoured over sites with longer lead in times (such as sites requiring significant infrastructure works or remediation), which may not be the most sustainable approach in the longer term. It would appear under the proposed revisions that this would no longer be a requirement and this is welcomed, although we assume an Inspector may require evidence that housing is distributed appropriately throughout the plan period.

### Q3. Development Plans Manual (Chapter 8) – Monitoring housing delivery

Changes are also required to Chapter 8 of the Development Plans Manual (Monitoring, Review and Revision).

To what extent do you agree or disagree that the amended Chapter 8 and the new indicators for measuring housing delivery provide an effective means of implementing the revised policy in Planning Policy Wales and the monitoring of LDPs?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	<i>Don't know</i>	<i>No opinion</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you disagree, please tell us why and tell us which aspects you think should be changed and in what way.

The proposal in Table 29 appears to imply that the AMR would just record a simplistic assessment of completions against the trajectory annual build rate, with another assessment of the components of site supply – site allocations, and large and small windfalls, without any site specific analysis. If the JHLAS process is going to be abolished, then we would expect that the trajectory would need to be updated to record the latest information on site delivery and permissions, rather than simply reporting the headline figures.

It should be noted that the JHLAS is not just a tool for the planning department. Other departments such as health and education use it for their service planning. The housing trajectory will be useful for these organisations at the start of the plan period, but if it is not updated annually (e.g. to reflect new windfall permissions, adjust commencement dates, etc.) it will not be useful in the long term.

Furthermore, the trajectory is a purely statistical exercise and does not give the opportunity to provide commentary on why certain sites have or haven't come forward as anticipated, unlike the JHLAS process, where site proformas are prepared for each site based on liaison with developers.

However, Table 31 on the Content of the AMR indicates that the AMR should state “what sites have been developed or delayed in relation to the plan’s expectations at places and phasing programme (as set out in the trajectory).” It is not clear how this should be done. Is it proposed that Tables 19, 20 and 21 be amended each year in the AMR? If so, how does the LA determine the anticipated phasing of schemes? Is there discussion with the development industry (as per the JHLAS) and who is the arbiter in any disputes? How should any change from the original housing trajectory be identified? Clarification is required.



The consultation provides insufficient guidance on what the trigger point should be where levels of completions are lower than the trajectory, other than stating that wide ranging triggers of 20-30% would not be appropriate.

We welcome the recognition that housing completions should be measured over at least two consecutive years allowing for trends to develop and become clearly identifiable. We consider that a longer period would be appropriate when considering trends, as two years may be too short.

#### Q4. Further comments

Are there any further comments that you would like to make on the proposed revisions to *Planning Policy Wales* and the related advice and guidance

The consultation proposes to delete paragraph 4.2.15 of PPW Edition 10. This paragraph states *“Planning authorities must ensure that sufficient land is genuinely available or will become available to provide a five-year supply of land for housing judged against the general objectives, scale and location of development required in the development plan. This means that sites must be free, or readily freed, from planning, physical and ownership constraints and be economically viable, in order to support the creation of sustainable communities. For land to be regarded as genuinely available it must be a site included in either a Joint Housing Land Availability Study (JHLAS) or, until a JHLAS is required to inform the first Annual Monitoring Report (AMR), in the housing trajectory agreed as part of an adopted development plan. The housing trajectory demonstrates how the planning authority will maintain a five-year supply of housing land over the plan period.”*

The removal of this paragraph essentially removes the need for local authorities to provide a 5 year land supply of housing. Caerphilly CBC have consistently raised concerns about the use of the residual method as advocated in TAN 1 for calculating the housing land supply, The Leader of the Council, Cabinet Member for Planning and senior officials met with Lesley Griffiths AM, Former Cabinet Secretary for Energy, Planning and Rural Affairs, in September 2016 and again in January 2018 to discuss the local authority's concerns around TAN 1. Furthermore we raised concerns about the methodology to calculate the five year housing land supply as part of the consultation on the dis-application of TAN 1 in June 2018. **We did not advocate the removal of TAN 1 or the requirement to provide a 5 year land supply. Our concerns were about the way that the methodology is calculated and the undesirable consequences of this for future housing delivery. It remains our view that consideration should be given to reviewing the methodology for calculating the 5 year land supply, rather than revoking TAN 1 completely.**

A number of LAs without a five year land supply have received speculative applications on unallocated sites, including on sites that are outside the settlement boundary or on land allocated/protected for other sites. We fully support the plan led system, and acknowledge that the process of LAs refusing applications and decisions being made on appeal is not desirable.

However, many planning authorities have speculative applications that have yet to be determined, together with appeals going through the process. The removal of the need to provide for a 5 year land supply removes a material planning consideration, which, following the disapplication of paragraph 6.2 of TAN 1, is a matter for the decision maker to apply weight to. The removal of the need for a 5 year land supply would leave a policy vacuum on this issue, although we do note that a community's need for affordable housing would remain

a material planning consideration that must be taken into account when determining planning applications. How speculative applications will be considered may ultimately become a matter for the Planning Inspectorate for some time yet.

There is a very real danger that amendments to PPW will have the unintended consequence of reducing housing delivery (including the delivery of affordable housing), as the approach from Welsh Government appears to be to delete all controversial housing policies in national policy and not replace them with an alternative approach that can be applied to all local authorities to actively result in greater housing delivery. This will create significant uncertainty and deter investment.

In the long term, the move to a more plan led approach would be appropriate but until every local authority has an up to date LDP with deliverable allocations and a housing trajectory, this cannot be achieved, and appropriate national policy is needed in the interim on how housing can best be delivered in those areas where the LDP is not delivering at the rates required.

We disagree with the removal of the JHLAS process, as implied by the removal of Paragraph 4.2.15. As LAs will need to record completions, there will still be a need to undertake extensive survey work on small and large sites. The liaison with the development industry through the site schedules acts as a check to ensure that there are no inaccuracies on a site specific basis. As stated in the response to the earlier questions, it is not clear if the housing trajectory will be updated annually or how stakeholders will engage with this process to ensure it is accurate.

The consultation document states *“Evidence suggests that the five-year housing land supply policy and its monitoring through the JHLAS process is providing further opportunities for developers to query the deliverability of allocated sites, which can cause a local planning authority’s five-year housing land supply to be detrimentally affected. Combined with issues regarding whether some of the sites allocated in LDPs were the most appropriate, sustainable and deliverable sites, this opened up the possibility of gaining planning permission for additional sites not allocated in LDPs, contrary to the plan-led approach to managing development.”*

Whilst we accept that the JHLAS does offer developers the opportunity to express concerns about the delivery timescales and rates of certain sites, the concerns raised are often legitimate, as circumstances do change between sites being allocated in a plan, planning permission being granted and work commencing on sites for a number of valid reasons.

Not every site allocated in a plan will have a developer behind it at allocation stage, nor should it be expected to have, particularly as this forms part of the delivery figures for later in a 15 year plan period. Different developers have different products and build to different markets, and therefore may have different build rates, and the process should be flexible enough to reflect this. Developers and contractors can face financial difficulties – for example, a major contractor used by the RSLs for the construction of affordable housing went into receivership, causing significant delays across a number of sites. Furthermore, ground investigations prior to construction may identify constraints that could delay schemes, as can the introduction of new legislation for e.g. the SAB process, which may also have implications for timescales and costs. None of these examples would be known at plan preparation stage when the housing trajectory is set, and an annual review provides the opportunity to assess such matters and respond accordingly.

Ultimately, the JHLAS is an agreed position between a number of parties and where there is a dispute, a Planning Inspector is the decision maker based on evidence, just as is the case

with an LDP. We do not consider that the current system of seeking agreement on the schedule of sites was an issue, but rather the methodology used to calculate the five year land supply.

An issue that is not raised here is that around aspirational sites. It is generally accepted that there are sites that a local authority would wish to see brought forward for development but, due to significant constraints such as the need for reclamation/remediation, are unlikely to come forward during the plan period. Whilst these sites would not be included in the housing trajectory, they would benefit from an allocation designation to assist in securing funding. However, under the proposed monitoring regime any such sites that do come forward would be included in the housing completions and would greatly skew the housing delivery when considered against the housing trajectory, especially if they are large sites. The proposed changes do not reference this scenario and this could result in plans being wildly off in terms of delivering their trajectory suggesting a plan review would be required, when in fact the plan has taken account of this. Guidance is needed in respect of this.

Overall, there are significant concerns regarding the proposed changes to the PPW and TAN 1 due to the uncertainty this will cause, the potential impact on housebuilding (including the delivery of affordable housing) and the prematurity of this proposal, as not all local authorities have a housing trajectory.