



PLANNING COMMITTEE – 5 NOVEMBER 2014

SUBJECT: WELSH GOVERNMENT CONSULTATION ON POSITIVE PLANNING

REPORT BY: HEAD OF PLANNING AND REGENERATION

1. Welsh Government (WG) is currently running a number of consultations about changes to the planning process with a view to making it more positive. The deadline for the submission of comments is 16 January 2015. A summary of the proposals is provided below, along with comments from officers. Should members agree with the officers' comments, they will then be adapted for completing the standard consultation form from WG.
2. Frontloading the Development Management System
 - 2.1 Frontloading aims to ensure that planning applications proceed smoothly and quickly once they are formally submitted to the determining authorities. The idea is that any significant planning issues are raised prior to the submission of a formal application. Duties would be imposed on applicants and the local planning authority (LPA).
 - 2.2 Developers would be required to carry out pre-application consultation on major development to:
 - Ensure that the local community is provided with the opportunity to comment on development proposals, and consult specified consultees, before planning applications are formally submitted to LPAs.
 - To impose a duty on statutory consultees to ensure that they respond to pre-application consultation requests within specified timescales, provide substantive responses to pre-application consultation requests, and report their performance to the Welsh Ministers.
 - To require developers to submit a "pre-application consultation report" with any subsequent planning application.
 - 2.3 LPAs would be required to provide pre-application services to accommodate the consultation by developers.
 - 2.4 The requirement for design and access statements would be removed.
 - 2.5 Officers' comments

Major development means development involving any one or more of the following:

- (a) the winning and working of minerals or the use of land for mineral-working deposits
- (b) waste development;
- (c) the provision of dwellinghouses where
 - (i) the number of dwellinghouses to be provided is 10 or more; or
 - (ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i);
- (d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or
- (e) development carried out on a site having an area of 1 hectare or more.

- 2.6 These proposals are welcomed as they will involve both statutory bodies and the community in the evolution of a scheme before it is submitted formally for planning permission. It is proposed that the publicity procedure broadly follows that currently carried out at the planning application stage, with the minimum being site notices and letters to neighbours, all local ward members, and any town or community councils. Twenty-one days would be given for comment, with an opportunity for extension.
- 2.7 It is proposed that any plans and supporting information should be located at the LPA offices, but that would place an additional burden on councils. Such information should be available within the community that will be affected by the proposals, in halls and libraries, and hosted by the developers or their agents.
- 2.8 The developer will have to produce a pre-application consultation report (PAC) which will provide:
- (i) A photocopy of the site notice, publicity letter and letters to local members, town councils, parish councils, and statutory consultees.
 - (ii) A list of addresses of those persons notified of the proposal.
 - (iii) Details of any additional non-statutory notification.
 - (iv) A summary of the material planning issues raised by respondents
 - (v) Copies of responses from specified consultees.
- This would be helpful in reassuring the LPA and the community about the extent of the pre-application consultation.
- 2.9 There will also be a standard requirement for pre-application enquiries to LPAs, which reflects the service that this council provides at present. Such enquiries should be recorded, which this council also does at present. LPAs will be expected to reply providing information specified by the legislation, within 21 days, and offering a meeting to discuss that response. Within 7 days of the meeting the LPA will provide a note of it to the developer. Officers consider that the timetable should be subject to alteration by mutual agreement.
- 2.10 LPAs will be allowed to charge for the service, on the basis of standard national fees. At present, fees vary from authority to authority and so a standard fee is welcomed, but it needs to be based on robust research of costs, and the pre-application service should not be introduced until the charges are in place. In view of the number of enquiries this LPA receives from householders, it is considered that a charge should be raised for them as well.
- 2.11 Statutory consultees will be required by legislation to provide responses to pre-application queries, planning applications, and post permission work within 21 days, which is welcomed. They will also have to provide performance reports on their responses to WG.

3. Design in the planning process

3.1 It is proposed to:

- Retain design and access statements (DAS) as a communication tool, but only as a mandatory requirement for applications within certain categories (e.g. listed buildings/designations) and above certain dwelling/size thresholds (e.g. over 10 dwellings)
- Expand the Building Regulations (Part M), which covers access to buildings to include all external areas within the boundary of the development.
- Introduce a suite of national development management polices which would address design
- Promote area and site specific plans to facilitate development and improve design
- WG will produce practice guidance on the process of site analysis
- Enhance the role of design in pre-application discussions
- Encourage inclusive access to development
- Set up the Planning Advisory and Improvement Service (PAIS), which along with the Design Council for Wales will assist in disseminating good practice.

3.2 Officers' comments

The measures proposed are generally welcomed. The removal of the need for DAS except for more significant applications will help reduce the burden on small developers. National policies as a basis for LDP policies will provide more consistency across the country, including in encouraging access for all. Support from WG, and the new body, PAIS, is also welcomed. However, area or site specific plans would place a further burden on LPAs at a time of reducing staff numbers.

4. Planning committees, delegation and joint planning boards

4.1 Following research by the Royal Town Planning Institute, the following are proposed.

- The introduction of a national planning committee protocol in consultation with the WLGA
- Committee size to be limited to between 11 and 21 members, with only one councillor from any ward, and a quorum of 50%, with no substitute members allowed.
- Planning Committees to deliver the adopted development plan by making locally strategic planning decisions by determining those applications:
 1. that are identified as major development;
 2. that raise policy issues affecting the delivery of the development plan, such as applications departing from the adopted plan ; and
 3. where there is quantifiable, community-wide interest in a development which goes beyond protecting the private interests of one person, or group of people, against the activities of others.
- Introduce a national scheme of delegation which would require the following to be reported to Planning Committee:
 - Departure/contrary to development plan (where officers are minded to approve)
 - Applications involving an Environmental Impact Assessment (EIA)
 - LPA employee/Council member has interest in application
 - Above a specified development threshold
 - Above a specified objection threshold
 - Member call-in

4.2 Joint planning boards (JPB) and strategic planning panels are also proposed because WG considers that there may be circumstances in future where it would be necessary to merge local planning authority functions in order to facilitate more efficient and resilient local planning services. Powers to merge LPAs already exist in the 1990 Town and Country Planning Act, but they need to be enhanced to address modern planning duties such as the production of an LDP.

4.3 The number of elected members on a JPB would be prescribed by Welsh Ministers, and the board would then determine the staff support. Anglesey and Gwynedd councils set up a similar arrangement to prepare their joint LDP.

4.4 In addition to the proposals for JPBs, Strategic Development Plans (SDPs) are proposed to tackle strategic issues in those limited areas requiring a cross local planning authority approach. Responsibility for preparation and approval of the SDP would reside with representatives from LPAs nominated to a Strategic Planning Panel (SPP) by constituent authorities. The boundary of the SDP would be prescribed by regulations made by Welsh Ministers, as well as the number of LPA members and number of other nominated members, which together comprise the SPP. Two thirds of the panel will be drawn from elected members in the constituent LPAs, with at least one member from each authority within the strategic planning area. Elected members eligible for nomination will include those councillors representing an electoral division within the strategic planning area or members of a national park authority so included. The remaining one third of the SPP will be appointed by the panel, following nomination by a body on a list published by the Welsh Ministers. The bodies listed will reflect economic, social and environmental partners. The SPP must appoint a chair and deputy chair, both drawn from the local planning authority members, for no more than one year, though they may be re-appointed.

4.5 Officer comments

The proposals in respect of planning committees, protocols, and powers of delegation would not have a significant impact on Caerphilly CBC because it has amended its procedures over the years, which generally reflect the reforms that are to be introduced. In respect of delegation, the two main changes to this council's scheme would be the introduction of development and objection thresholds.

4.6 Two alternatives are proposed for development thresholds: major development as defined in paragraph 2.5 above, or double the amount specified in that definition. The former is too small and will encompass relatively minor development that this authority would not necessarily refer to a Planning Committee if there were no reason to do so. The latter is more realistic, and reflects the scale of development that officers would consider prudent to refer to Planning Committee in any case. The opportunity for members to call applications to committee is retained.

4.7 The objections threshold is proposed to be 20 letters from different people in different addresses or a petition with 30 signatures. Introducing these numbers could be exploited to require minor matters to be decided by committee. The member call-in would be adequate to ensure that appropriate matters that are of community interest are brought before the committee.

4.8 Working with other LPAs on strategic matters is important, but there are concerns that both the JPBs and the SPPs would dilute the important role that local democracy plays in the process, particularly with the inclusion of non-elected members on the latter.

5. Review of planning application fees

5.1 WG considers that it is evident that cost recovery and the customer service provided are affected by the planning fee level, as well as how LPAs use that fee to deliver services in their area. On that basis, they consider that an increase in planning fees alone will not improve the customer service provided by the LPA. It is clear that any increase in fees should compliment sustained improvements in customer service.

5.2 A 15% fee increase is proposed, but that would be on the understanding that there is a commitment by LPAs to review their service delivery. Two measures are proposed that would reflect the fact that service delivery has failed; these are:

- optional direct applications; and,
- refund of the application fee after a certain time period.

Where an LPA performs poorly, applicants would be able to submit proposals to WG. For LPAs to be subject to these 'special measures' they will be seen as poorly performing against the indicators set out within its annual performance report. The indicators are likely to focus on the efficiency and quality of determining applications, which could include being assessed on the basis of the speed within which applications are determined and the extent to which such decisions are overturned at appeal. Appropriate thresholds for designation, and the time period in which they are monitored, are currently under consideration by WG. Proposals on optional direct applications will be the subject of a separate consultation.

- 5.3 The thresholds for the return of a fee would be within 16 weeks on a 'householder' application and within 24 weeks for all others. WG places equal weight on the applicant being timely, responsible and reasonable in the development management process.
- 5.4 Other areas where changes are proposed are as follows.
- fees for the discharge of planning conditions;
 - the introduction of a fee for confirmation that a condition has been discharged;
 - a standard charge for drafting Section 106 agreements;
 - deemed planning application fees;
 - facilitating broadband rollout;
 - amendments to the 'free go';
 - a separate fee category for renewable energy/low carbon applications; and,
 - the division of planning fees for cross authority applications.
- 5.5 Fees of £25 and £83 are proposed for the discharge of householder and other conditions respectively. The same fee would apply where a group of conditions were submitted for discharge. The same fees are proposed for confirming that a condition has been discharged. The Section 106 fee would cover the administrative cost of the LPA legal team responsible for reviewing the agreement.
- 5.6 Deemed planning applications, which are made through the enforcement appeal process currently attract double the fee of a normal planning application, but half goes to The Planning Inspectorate. It is proposed that the full fee is paid to LPAs. Fee regulations for advertisements on broadband cabinets would allow multiple advertisements in one area to be charged one fee.
- 5.7 At present an applicant who gains approval for reserved matters, having paid a fee, can then submit amended reserved matters for free. It is proposed to charge for those subsequent applications. The fee structure for wind turbines will be changed to reflect the amount of work involved in their determination, based on output, number of turbines, site area or height.
- 5.8 A fee for a planning application that straddles LPA boundaries is only paid to the authority that contains the largest part of the site. It is proposed to require a separate fee to be paid to all the authorities involved.
- 5.9 Officer comments

An increase in fees is welcomed, but it should cover the cost of the service, or be part of planned stage increase to eventually achieve full cost recovery. The punitive elements are of concern. LPAs should be encouraged to improve their performance, but removing decision making from councils will appear undemocratic. Whilst WG will make every effort to ensure that the proper consultations processes are carried out, it is by its nature a remote body, which is difficult for communities to access. Repayment of fees is not supported and would reduce the income of a poorly performing authority making it more difficult to improve the service.

5.10 Fees for condition discharge should be based on a sum for each condition to reflect the work involved, and will ensure that larger and more complex schemes attract higher fees. Although broadband coverage needs to be encouraged, it would not appear equitable to give that one form of development preferential treatment over any other at a time when the economy is in general needs support.

6. Proposed amendments to legislation on the power to override easements and other rights

6.1 WG is considering amending, by order, the provisions contained in various acts that provide powers to relevant organisations enabling them to override easements and other rights over land in their ownership to improve the implementation of regeneration projects by removing an impediment to the use of the land. At present, easements and other rights may only be overridden during the erection, construction or carrying out or maintenance of any building or works phase, and not permanently for the new use of the land. That is a threat to the ongoing effectiveness and consistency of the use of compulsory purchase powers in the bringing forward of sites for development.

6.2 Officer comments

This anomaly came to light in a court case in 1999, and there are no objections to the amendment by order.

Recommendation: That officers reply to the questions set out in the consultation on the basis of the comments above, and any additional comments from members.