PLANNING COMMITTEE – 09TH SEPTEMBER 2015

SUBJECT: **CONSULTATION FROM WELSH GOVERNMENT ABOUT SECONDRY LEGISLATION FOR DEVELOPMENT MANAGEMENT**

REPORT BY: **INTERIM CHIEF EXECUTIVE**

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1. Welsh Government (WG) has consulted on secondary legislation for development management. It is seeking the LPA's views by 11 September 2015 on:

   - Invalid applications: notices and appeal
   - Decision notices
   - Notification of development
   - Consultations etc. in respect of certain applications for approval
   - Urgent Crown development
   - Appeal against a notice issued in respect of land adversely affecting amenity (unsightly land)
   - Post submission amendments
   - Applications that fall within Section 73 of TCPA 1990, and
   - Pre-application fees

   The proposals are summarised below, and answers suggested to the questions raised by WG.

2. Invalid applications

   Section 29 of the Planning (Wales) Bill amends the TCPA to provide for:

   • the giving of a notice by an LPA that an application is not valid
   • the appeal by the applicant against the notice and the information that is to accompany an appeal.

   LPAs will be given the power to issue a notice of invalidity that will specify the following:

   a) the allocated application number and description of the application to which the notice relates;
   b) identify the requirement under the appropriate legislation (if relevant) under which an application for planning permission is invalid;
   c) in the case of an application for consent, agreement or approval required by a condition or limitation subject to which a planning permission has been granted;
   d) identify reasons why it does not comply with these requirements;
   e) provide a brief description how the applicant can comply with the requirements; and
   f) be accompanied by an explanatory note explaining the appeal process.

   WG question: Do you agree that a notice that an application is not valid should include criteria a) to f)?

   Yes.

WG question: Is there any additional information you think should accompany a notice of non-validation? If so, why is this information necessary?

No.

3. Applicants will be given 14 days to appeal, and Welsh Ministers will be given 21 days in which to determine it. If appeals are successful, the date the application will be considered valid will be the date on which it was first submitted.

WG question: Do you agree that a period of 14 days for the applicant to submit their appeal is sufficient time given the desired quick turnaround of appeals against notice of non-validation?

Yes

WG question: Do you agree that the Welsh Ministers should be required to determine appeals within 21 days of the start of the appeal period?

Yes. Should the appeal be allowed the period for the determination of the application should commence on the date of that decision, not the original submission of the application. LPAs should be encouraged to make sound validation decisions, but they should not be penalised where they decide to ask for more information based on their fair assessment of the legislation. Validating the application from the date of the original submission may encourage LPAs to accept poorer quality information.

4. It is proposed that the LPA should retain the planning application fee until the appeal against validity is determined. In the event that the appeal is dismissed, the fee could then be returned.

WG question: Where an application is considered to be invalid and an appeal submitted in respect of a notice of non-validation, do you agree that the fee should be retained by the LPA pending the outcome of that appeal?

Yes

5. <u>Decision notices</u>:

The Bill amends the TCPA 1990 to require that decision notices must specify the plans and documents in accordance with which the development is to be carried out, for decision notices to be updated and a revised version issued where consents are given or conditions changed, and to specify the need to notify the LPA of the date development is to begin and to display a notice of the decision

An example of the requirement to update decision notices is given below:

Prior to the construction of the building hereby approved details of the materials to be used in the construction of the external surfaces of the building shall be submitted to and approved in writing by the local planning authority. The Development shall be carried out in accordance with the approved details.

On approval of the required details the condition will become:

Prior to the construction of the building hereby approved details of the materials to be used in the construction of the external surfaces of the building shall be submitted to and approved in writing by the local planning authority ***[Date Details Approved: xx/xx/xx, Application Reference No: xxxxxx]****. The Development shall be carried out in accordance with the approved details.*

WG question: Do you agree that when a decision notice is revised it should include a) the date of the approval; and
b) the relevant application reference in the updated version of the notice?

No. It would be easier to just add a sentence below the relevant condition stating when and what details were approved.

6. Where permission is granted to remove or amend a condition by an LPA or at appeal, an amended decision notice will have to be issued.

WG question: Do you agree that the Development Management Procedure Order should be updated to require LPAs to keep a copy of the most recent decision notice on the planning register?

Yes - this will make it clear which is the correct decision notice from a statutory point of view.

7. Notification of development

The Bill inserts a section into the TCPA to require developers to notify LPAs of the date a development is to begin. It also requires developers to display a notice of the decision to grant planning permission at or near to the development site at all times when it is being carried out. It is intended that such notifications will only be required for major developments and developments of national significance. Secondary legislation will specify that:

- the notice of decision to be displayed on site is the most up to date version of notice
- the notice should be visible and legible to anyone passing by without having to enter the site
- if the notice is removed, destroyed or deteriorates to a condition where it is no longer legible then it must be replaced.

The LPA will by condition be able to require that more than one notice be displayed if the site is particularly large.

WG question: Are there any other requirements which you think should be made of the developer in respect of the form, content or display of a notification of development?

No.

8. Consultations etc. in respect of certain applications for approval

Consultees in respect of planning applications will be required to provide substantive responses within a specified time period. Where discretionary consultation occurs, LPAs must not determine the associated application until 21 days after consultation, or when all consulted bodies have provided a substantive response, which ever is the sooner. It will be possible for extensions of time to be agreed where appropriate between LPAs and consultees.

WG question: Do you agree that LPAs shall not determine an application subject to consultation until any of the following periods have elapsed:
a) a period of 21 days; or
b) until all statutory consultees have provided a substantive response, whichever is the sooner, or
c) subject to a longer period if agreed in writing between the LPA and consultee?

Yes

9. Urgent Crown development

Where Welsh Minsters consult bodies in respect of urgent Crown Development, replies must be made within 14 days, rather than 21. It is not intended to change that period due to the urgent nature of such work.

WG question: Do you agree that earliest time that Welsh Ministers can determine an application made under s.293A of the Town and Country Planning Act 1990 (TCPA) should remain as 14 days after giving statutory consultees notice of the application, as stated in Article 15 of the DMPO?

No. Whilst this matter is of little concern to this LPA, as a matter of equity, all developers should be treated the same, and a 21 day period would be appropriate.

10. Appeal against a notice issued in respect of land adversely affecting amenity (unsightly land)

Appeals against these notices, commonly known as section 215 notices, are currently to the Magistrates' Court. It is intended to amend legislation to allow the appeal to be made to the Welsh Ministers.

WG question: Do you agree that appeals determined by Welsh Ministers under s.217 of the TCPA should follow the same format as existing enforcement appeals?

Yes.

11. LPAs would be given four weeks in which to provide a statement in support of their case. The presumption would be that most appeals would follow the written procedure, but it would be up to Welsh Minsters to decide in each case.

WG question: Do you agree that a four-week period for LPAs to write their appeal statement is reasonable? If you consider an alternative period is more appropriate for s.217 appeals, please state why.

No. If the intention is to make the procedure similar to the enforcement one, and overall to simplify the planning system, all appeals should have the same deadlines i.e. six weeks.

12. Post-submission amendments

Developers often amend schemes once an application is submitted. Where the alteration are complex, it is proposed to extend the determination period of the planning application by four weeks either from the date of the receipt of the proposed amendment or from the end of the statutory period for determination whichever is the latest. Where the LPA does not accept that the proposed amendment is minor in nature and in fact a new application is required, no extension will be provided as making this decision should not have any significant impact upon the overall time taken to determine the application.

WG question: Do you agree that where an amendment is submitted in relation to major development applications, LPAs should be given an additional four weeks to determine the planning application?

Yes, but this should not be confined to major applications. All types of application can be amended, and require further consultation, and so the additional time period should apply in all cases. Also some schemes go through a number of amendments before they are found to be acceptable. Will an additional four weeks be allowed for each amendment?

13. It is intended to introduce a fee (£160 on the basis of the current scale, but £190 when the fees are raised in October 2015) for minor amendments to major development schemes.

WG question: Do you think a fee should be charged for minor material amendments to major applications which have yet to be determined?

ii) If yes, do you agree that £190 is an appropriate fee to charge in light of the recent consultation on planning application fees?

Yes, and the proposed fee is appropriate. However, some schemes go through a number of amendments before they are found to be acceptable. Will a fee be chargeable for each amendment?

14. Applications that fall within Section 73 of the TCPA 1990

Applications made under section 73 can be broadly separated into three types:

- renewal applications – those that extend the time limit referred to in conditions that place a limit on commencing the development
- minor material amendments to planning permissions - such as changing the design of the proposed schemes; and,
- the variation or removal of a condition attached to a planning permission that does not fall within the above categories - such as the opening hours of an establishment.

It is proposed to amend and effectively reduce the validation, consultation and notification requirements for such applications to reflect the fact that they follow the main permissions that would have been accompanied by all the necessary information, and involved the full consultation process.

WG question: Renewals
i). Should the validation requirements for a renewal application be the same as the original application?
ii). Should the LPA have discretion over the consultation requirements for a renewal application?
iii). Should the LPA have discretion over the notification requirements for a renewal application?

Reduced validation requirements would appear reasonable, i.e. the plans and particulars of the original scheme do not need to be submitted, but consideration needs to be given to time sensitive information such as wildlife surveys, which need to be updated every two years or so, Also, how would changes in legislation be accommodated, e.g. if the validation requirements for an outline application are amended to require the submission of more information than at present, shouldn't the same apply to an application to vary a condition to renew an existing outline permission. The requirements for consultation and notification should be at the discretion of the LPA, although consideration should be given as to whether that includes public consultation.

WG question: Minor material amendments
i) Should the validation requirements for a minor material amendment application be the same as the original application?
ii) Should the LPA have discretion over the consultation requirements for a minor material amendment application?
iii) Should the LPA have discretion over the notification requirements for a minor material amendment application?

The validation requirements should only cover those aspects of the scheme that are affected by the minor material amendment. The requirements for consultation and notification should be at the discretion of the LPA.

WG question: Variation or removal of a condition attached to a planning permission that does not fall within the above categories (renewal and minor-material)
i) Should the validation requirements for these applications be the same as the original application?
ii) Should the LPA have discretion over the consultation requirements for these applications?
iii) Should the LPA have discretion over the notification requirements for these applications?

The validation requirements should only cover those aspects of the scheme that are affected by the minor material amendment. The requirements for consultation and notification should be at the discretion of the LPA.

15. Approved developments can be amended in a number of ways. If an amendment is judged to be non-material, e.g. introducing a small window in the side of a new house that does not overlook any neighbours, an application for a non-material amendment can be submitted with a fee of £25 for householder applications, and £83 in other cases. If a minor material amendment is proposed, e.g. the window referred to above overlooks a neighbouring house, a section 73 application to vary conditions specifying the approved plans on the original permission can be submitted with a fee of £166. Major changes would need a further full permission.

16. It is proposed to amend the fee requirements so that if an application for a non-material amendment is refused because it is not non-material, the fee for a subsequent application under section 73 for a minor material amendment would be reduced by the amount already paid.

WG question: Should the fee to accompany an application that falls within s.73 submitted after refusal of an application under section 96A of the TCPA only be that required to make up the difference in fee cost?

No. The developer should have made pre-application queries before submitting the application for the non-material amendment. The subsequent section 73 application is more likely to involve consultation, including neighbour consultation, and would involve far more work than the original application. The Local Planning Authority should not be penalised because the applicant did not make pre-application queries to establish the appropriate process.

17. <u>Pre-application Fees</u>

This LPA already provides pre-application advice, and raises a charge for that service. It is now proposed to put that on a statutory basis. The developer will be required to complete a pre-application enquiry form, which will provide the following information:

(i) Contact details of the developer/agent (name, address, tel. no. email address)
(ii) Description of development, to include volume of floorspace, number of units being created
(iii) Site address
(iv) Location plan (on OS base)
(v) Plans, additional supporting information and reports that will assist the LPA to provide a helpful, focused response. Enquiries relating to householder development will need to be supported by elevation drawings.

18. The intention is that the content of the written response from the LPA will be different for householder enquiries and all other enquiries. As a minimum, the written response will comprise:

Householder enquiries:
1. Relevant planning history.
2. Relevant development plan policies against which the proposal will be assessed.
3. Any relevant supplementary planning guidance.
4. Any other material planning considerations.
5. Views of the case officer that address the merits of the proposal in the context of points 1, 2, 3 and 4.

All other enquiries:
1. Relevant planning history.
2. Relevant development plan policies against which the proposal will be assessed.
3. Any relevant supplementary planning guidance.

4. Any other material planning considerations.
5. Whether any Section 106 or Community Infrastructure Levy contributions are likely to be sought and an indication of the scope and amount of these contributions.
6. The information required to enable validation of any subsequent application.
7. The view of the case officer that addresses the merits of the proposal in the context of points 1, 2, 3 and 4.

The timescale for a response to be provided from the LPA to the applicant should be, at the most, 21 days from the receipt of a valid pre-application enquiry. But, provision is made to allow an extension of time when this is agreed in writing by the LPA and applicant for complex cases.

WG question: Do you agree that extensions of time should be permitted, subject to both the LPA and applicant agreeing in writing?

Yes, but the basic timescale needs to lengthened in the first place. Considering pre-application proposals can be as complex as determining a planning applications particularly on more complex applications. Also, developers need to provide more time in the design process for considering planning matters. Four weeks should be allowed for considering householder schemes, and eight weeks in all other cases.

19. Standard national fees are proposed for pre-application advice. These are set out in the table below. They are not dissimilar to those charged by this Council and in some cases are higher.

Type of Development	Description of Development	Proposed Fee
Householder	The enlargement, improvement or alteration of existing dwellinghouses. The carrying out of operations (including the erection of a building) within the curtilage of an existing dwellinghouse, for purposes ancillary to the enjoyment of the dwellinghouse as such, or the erection or construction of gates, fences, walls or other means of enclosure along a boundary of the curtilage of an existing dwellinghouse.	£25
Minor developments	1 to 9 residential units or a residential site area under 0.5 hectare. Non-residential development when the gross floorspace is under 1000 square metres or the site area is under 0.5 hectare	£100

	Change of use when the gross floorspace is under 1000 square metres or the site area is under 0.5 hectares Mixed use development where the gross floorspace is under 1000 square metres	
Major development	10 to 24 residential units or a residential site area is 0.5 hectare or over but under 1 hectare Non-residential development when: The gross floorspace is 1,000 square metres or over but under 2000 square metres; or the site area is 0.5 hectares or over but under 1 hectare Change of use when: the gross floorspace is 1,000 square metres or over but under 2000 square metres; or the site area is 0.5 hectares or over but under 1 hectares Mixed use development when the gross floorspace is 1,000 square metres or over but under 2,000 square metres Minerals and waste development	£300
Large major development	25 or more residential units or a residential site area of 1 hectare or more Non-residential development when: the gross floorspace is 2,000 square metres or more; or the site area is 1 hectare or more Change of use when:	£600

	the gross floorspace is 2,000 square metres or more; or the site area is 1 hectare or more Mixed use development when the gross floorspace is 2,000 square metres or more	

20. For the pre-application service associated with the Developments of National Significance, which would be determined by Welsh Minsters, it is proposed to charge a flat rate fee of £1000.

WG question: Do you agree with the level of proposed fees set out in Table 1? If not, what should the fee be?

Yes apart from it would be reasonable to charge £48 for the householder queries, and £150 for the minor developments.

WG question: Do you have any other comments to make regarding the statutory pre-application service? No.

Recommendation: That Welsh Government is advised of the answers set out in this report.