



PLANNING COMMITTEE – 7TH OCTOBER 2015

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

REPORT BY: INTERIM CHIEF EXECUTIVE

1. Welsh Government (WG) has consulted on secondary legislation for development management. It is seeking the LPA's views by 26 October 2016 on:

- Statutory Consultees
- Design and Access Statements, and
- Houses in Multiple Occupation

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

2. Statutory consultees

The following are statutory consultees for planning applications as defined by the Development Management Procedure Order

- Local Planning Authorities
- Community or Town Councils
- The Health and Safety Executive
- The Office for Nuclear Regulation
- The Welsh Ministers
- Railway Network Operators
- The Local Highway Authorities
- Road Concessionaires
- The Coal Authority
- The Natural Resources Body for Wales (now known to the wider public as Natural Resources Wales)
- The Theatres Trust
- The Sports Council for Wales (now known to the wider public as Sport Wales); and
- The British Waterways Board (now known to the wider public as The Canal and Rivers Trust)

3. It is intended to change the thresholds that trigger the consultation of some of those bodies. At present The Coal Authority is consulted on any building or pipeline within an area of coal working notified to the local planning authority (LPA). It is proposed to change that to development, other than householder development, within an area which has been notified for the purpose of this provision to the LPA by The Coal Authority because of the presence of land instability risks from coal mining. Welsh Ministers at Cadw are consulted about development that is likely to affect the site of a scheduled monument. The changes would require consultation on development which has a direct physical impact on a scheduled monument; development likely to be visible from a scheduled monument subject to a number of criteria; development likely to affect the site of a registered historic park or garden classified as Grade I, II* and II, or its setting; development within a registered historic landscape that requires an Environmental Impact Assessment; and development likely to have an impact on the outstanding universal value of a World Heritage Site.
4. The Theatres Trust is consulted about development involving any land on which there is a theatre. The threshold would be extended to include development involving, any land on which there is a theatre; residential development (excluding householder development) within 50 metres of a theatre; and a proposed theatre. With regard to Natural Resources Wales it is proposed to remove a current requirement to consult then on development involving the use of land for the deposit of refuse or waste, or for the purposes of fish farming. The consultation requirement would be refined to include development on land designated as Flood Zone C2; involving or including emergency services development or highly vulnerable development on land designated as Flood Zone C1; or on land that has been notified to the local planning authority by Natural Resources Wales for the purpose of this provision. Highly vulnerable development includes housing.

WG questions 1, 2, 3, and 4 ask whether these amendments are acceptable.

LPA recommended answer: Yes.

5. It is proposed to make water and sewerage undertakers (in this area Dwr Cymru Welsh Water) statutory consultees. It would be consulted in the following cases: development involving new residential development (including single units), major development, which is not in accordance with the development plan, or involving the use of land for the provision of renewable energy. It also proposed to require consultation on development relating to the use of land as a cemetery.

WG question 6: are these thresholds acceptable?

LPA recommended answer: Yes.

WG question 7: are there any other thresholds that should be included?

LPA recommended answer: No.

6. Design and access statements

Design and Access Statements (DAS) were introduced in 2009 as a communication tool to explain how both good and inclusive design principles have been considered and applied from the outset of the development process and how they will be achieved. However they have proved burdensome because they are required for most applications apart from householder developments. It is proposed to amend legislation so that a DAS would only be required for major development, which for these purposes is defined as:

- (a) 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 subparagraph (c)(i);
- (b) 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
- (c) development carried out on a site having an area of 1 hectare or more.

It is also proposed to exclude applications for permission to develop land without compliance with conditions previously attached, and for a material change in use of land or buildings.

WG question 7: Are these amended thresholds for DASs acceptable?

LPA recommended answer: Yes.

7. There would be exceptions to those new requirements, where a site would be within a conservation area or World heritage site where the need for a DAS would be triggered by:

- (a) the provision of one or more dwellinghouses; or
- (b) the provision of a building or buildings where the floor space created by the development is 100 square metres or more.

Applications for listed building consent will continue to require a DAS.

WG question 8: Do you agree with our proposals to have different thresholds in Conservation Areas and World Heritage Sites? If not, to what other sensitive areas, if any, should a smaller threshold apply?

LPA recommended answer: Yes.

WG question 9: Do you agree with our proposed threshold for Design and Access Statements in these sensitive areas? If not, what would be an appropriate threshold?

LPA recommended answer: Yes.

8. The Historic Environment (Wales) Bill is currently being considered by the National Assembly for Wales and includes improved measures for the sustainable management of designated and registered historic assets. Alongside the Bill, a pre-consultation draft of planning policy for the historic environment has been published on the Cadw website and a new Technical Advice Note will be produced. These set out proposals to introduce Heritage Impact Assessments (HIAs) to accompany applications for Listed Building Consent (LBC), Conservation Area Consent and Scheduled Monument Consent.
9. It is proposed that issues relating to design and access should be incorporated into a broader consideration of the impact of a proposal on heritage significance, through the HIA. It is proposed that an HIA will require a statement on access in certain circumstances and in proportion to the scale and nature of the proposal. For example, a proposal to replace historic windows in a listed building would normally require an HIA as part of the application for listed building consent but is unlikely to require a statement on access. However, the conversion of a listed historic chapel into a restaurant would require a statement on access.

WG question 10: Do you agree with the proposal to incorporate the requirement for a statement on design within an HIA when preparing an application for listed building, scheduled monument or conservation area consent?

LPA recommended answer: Yes, but the corresponding legislation for planning applications needs to ensure that a related application for planning permission does not then require a DAS, otherwise there will be a duplication of work.

WG question 11: What do you consider should be the circumstances in which an HIA would also need to be accompanied by a statement on access?

LPA recommended answer: Where development is going to be occupied or visited by people, and the need to provide access for all had implications for the historic asset.

10. It is also proposed to simplify the requirements for the content of a DAS that are set out in legislation. At present they are required to explain:
- the design principles and concepts which have been applied in respect of:
 - environmental sustainability,
 - movement to, from and within the development,
 - character; and
 - community safety;
 - how access issues have been taken into account,
 - how any access issues have been addressed; and
 - how access features within the development are to be maintained.

11. The proposal is to:
- remove the requirement to explain the specific design principles that have been applied to “environmental sustainability”, “movement to, from and within the development”, “character” and “community safety”;
 - remove the requirement to give details concerning maintenance in respect of access features; and
 - reduce the number of statutory definitions (such as ‘character’ and ‘context’) in respect of DAS.

WG question 12: Do you agree with our proposals to simplify the statutory content of Design and Access Statements?

LPA recommended answer: No. The burden of the DAS requirement will be significantly reduced by limiting the type of application that will have to be accompanied by them. However, some certainty is needed through legislation as to their content to prevent

disagreement between applicants and LPAs, especially in view of the introduction of the right of appeal against the validation of a planning application.

12. Houses in Multiple Occupation

Some areas of Wales, particularly where there are universities, experience high concentrations of HMOs, leading to the following perceived issues:

- Increases in anti-social behaviour, burglary and other crime;
- Reduction in the quality of the local environment due to increased litter, refuse, disrepair and prevalent lettings signs;
- Increased pressure on parking;
- Loss of community balance;
- Reduced opportunities for first-time buyers and other owner occupiers due to increased house prices and competition from landlords; and
- Reduction in the provision of community facilities such as schools.

It is therefore proposed to introduce a new use class (Class C4) to cover HMOs which would be described as follows:

‘Use of a dwellinghouse by not more than six residents as a “house in multiple occupation.’

For these purposes and HMO would have the same definition as in the Housing Act 2004. The current definition of a dwelling house in the Town and Country Planning (Use Classes) Order 1987 (Class C3) is:

‘Use as a dwellinghouse (whether or not as a sole or main residence) by:
(a) a single person or by people to be regarded as forming a single household;
(b) not more than six residents living together as a single household (including a household where care is provided for residents).’

It is proposed to amend that to state:

‘Use as a dwellinghouse (whether or not as a sole or main residence) by:
(a) a single person or by people to be regarded as forming a single household;
(b) not more than six residents living together as a single household where care is provided for residents; or
(c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).

In summary, the main difference between Classes C3 and C4 would be the opportunity for up to six people to live together as a single household under the former class, but if they do not live as a single household, they would fall into the latter.

13. This is not a significant issue in this borough and so it is not proposed to raise any objections to the changes, although they do raise a number of questions such as how would you determine whether a group of individuals living together are a single household; and if seven people live together as a single household, would it represent a material change of use?

WG question 13: Do you agree that a new use class C4, whereby planning permission will be required for HMOs with fewer than seven residents, should be introduced?

LPA recommended answer: Yes, but guidance is needed as to how to distinguish between groups of individuals who live together as a single household and those who don't. Also, the question of materiality has to be considered, e.g. would two people living together but not as a single household immediately fall into Class C4 rather than C3 despite the minimal impact on the character of the property or the locality? It has been held under the existing Class C3 that seven people living together as a single household would not necessarily represent a material change of use; would the same apply to seven people living together in an HMO, i.e. would that necessarily be a sui generis use in every case?

WG question 14: Do you agree with our proposal to align the definition of an HMO for planning purposes with the housing definition set out in section 254 of the Housing Act 2004?

LPA recommended answer: Yes.

WG question 15: Do you agree with our proposal to enable small Houses in Multiple Occupation (new use class C4) to revert to use as a dwellinghouse (Class C3) without requiring planning permission by amending the Town and Country Planning (General Permitted Development) Order 1995?

LPA recommended answer: Yes.

WG question 16: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please make further comment

LPA recommended answer: No further comments.

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