



**SUBJECT: RESPONSE TO THE PLANNING (WALES) BILL – POSITIVE
PLANNING FOR A BETTER FUTURE**

MEETING: Planning
DATE: 6th January 2015
DIVISION/WARDS AFFECTED: All

1. **PURPOSE:** To provide Planning Committee with a briefing on details of the Welsh Government's proposed changes to the planning system in Wales to enable Members to respond to the consultation exercise.
2. **RECOMMENDATIONS:** That Planning Committee as the Local Planning Authority responds to the consultation questions as set out in Appendices 1-4, on behalf of the Council.
3. **BACKGROUND:**
The Planning (Wales) Bill was introduced to the National Assembly on 6th October 2014 together with the Explanatory Memorandum and five consultations on secondary legislation.

The Assembly's Environment & Sustainability Committee is consulting on the general principles of the Planning (Wales) Bill as part of the Stage 1 scrutiny.

The Bill is seeking powers for the Minister to enact through secondary legislation and policy. The Bill has provisions on:

- Development Planning – National Development Framework, Strategic Planning, Blighted Land, Local Development Plans (Members should note that this topic area was subject to a consultation exercise during the early part of 2014 under the 'Positive Planning Proposals to reform the planning system in Wales' paper that was reported to Planning Committee on 4th February 2014)
- Pre-Application Procedure – Pre-application consultation and pre-application advice service
- Applications to Welsh Ministers – Developments of National Significance, option for direct application to Welsh Ministers
- Development Management – Validation, retrospective applications, decision notices, LPA functions (including committee and delegation functions)
- Enforcement & Appeals
- Town & Village Greens

This briefing focuses on the development management aspects of the Bill.

4. **KEY ISSUES:**

Pre-Application Procedure

The Bill seeks powers to bring in regulations to require applicants (on specified developments – the intention that these are for major developments as defined in current

planning legislation e.g. applications for ten or more houses) to undertake pre-application consultation. As part of this the applicant would have to submit a pre-application consultation report (PAC) with the planning application, including information on the method and scope of consultation, a summary of the material issues raised by respondents, an indication of whether the scheme has been amended to respond to those issues, copies of responses from specified consultees, and how the comments have been taken into account. The Positive Planning consultation proposed that this would apply to major applications and Developments of National Significance. Subsequent planning applications which qualify for the mandatory pre-application consultation process would not be made valid without a supporting PAC.

There will also be a requirement for LPAs to offer a pre-application advice service (which is not presently mandatory) on proposals where the applicant considers that planning permission is required [note that Monmouthshire's Planning Team already provides such a service and has set its own service levels, standards and fees following public consultation]. The current 'Frontloading the Development Management System' consultation has set out a number of proposals regarding how the new statutory service should be delivered in terms of written responses, meetings, personnel to be involved and also seeks views on a nationally-set charging schedule.

As part of their responses to any statutory pre-application advice service or in respect of responses to planning applications and related applications, statutory consultees will be required (i.e. they will have a statutory duty) to provide timely, substantive responses to LPAs when consulted. The 'substantive' response is proposed to be one which effectively:

- (a) states that the consultee has no comment to make;
- (b) states that, on the basis of the information available, the consultee is content with the development proposed;
- (c) refers the LPA to current standing advice by the consultee on the subject of the consultation; or
- (d) provides advice to the LPA.

Applications to Welsh Ministers – Development of National Significance

Development of National Significance (DNS) will be made to the Welsh Ministers instead of the local planning authority. Currently there is no definition as these would be specified in regulations but WG predict that there will be no more than 10 applications per annum and will be in line with the list contained in the Positive Planning document which proposed development such as Underground Gas Storage Facilities, LNG facilities, airport related development, harbour facilities, railways, dams & reservoirs and hazardous waste facilities. Welsh Ministers would also determine secondary consents connected to the DNS and again there is no definition.

LPAs would still be expected to undertake a significant amount of work including submitting a Local Impact Report to Welsh Ministers and discharge of conditions. The proposal is that the developers would pay the LPAs direct for the work involved in the DNS application work but the full scope of this work is not entirely clear. For example, where does the responsibility (and cost) lie to commission additional information which would inform the Local Impact Report?

Ministerial targets for the administration of the DNS process will be set annually.

Applications to Welsh Ministers – Direct applications to Welsh Ministers

The Bill will give the Minister power to publish conditions by which major applications can be made to Welsh Ministers instead of a LPA. One of the proposals is when the LPA is designated as a poorly performing LPA. The criteria to be used by Welsh Ministers to define poor performance are not yet established, although it is anticipated that they will include timeliness and quality of decision making.

Development Management

The Bill makes a number of changes to the Development Management process including the removal of the legal requirement for a Design & Access Statement to accompany applications for planning or listed building consent (following widespread criticism from all sectors that they do not add substantially to the quality of planning submissions and lead to delays in validating applications), changes to information placed on decision notices, a requirement for the developer to notify the LPA when work starts on the development, introduction of the right to appeal if the LPA fails to validate the application and greater responsibility on statutory consultees to provide a timely and substantive response during the actual application process (see the pre-application process above).

The Bill introduces powers for the Minister to issue regulations on the size and composition of a Planning Committee and on a national scheme of delegation. The proposal for a national scheme of delegation was contained in the consultation document Positive Planning. Of those who directly answered the question, a slight majority 53.5% agreed that there should be local variation within a national scheme of delegation and the RTPi research into planning committees also recommended local variation. The Welsh Government in the current consultation on 'Planning Committees, delegation and joint planning boards' categorically state that they do not agree with this approach as they do not consider it will achieve greater consistency in decision-making across Wales. The proposals set out in the current consultation paper 'Planning Committees, delegation and joint planning boards' are:

- The size of the planning committee shall be a minimum of 11 members and a maximum size of 21 members but no more than 50% of the total number of authority members (excluding National Park Authorities)
- Where wards have more than one elected member, only one should sit on the planning committee, in order to allow some members to perform the representative role for local community interests
- Introduce a quorum for decision making – suggested 50% of the committee
- No substitute members (on the basis that there could be abuse through deliberate substitution, a substitute member is less likely to be trained to the high standard of a regular Committee Member and inconsistencies can arise where applications are deferred to a subsequent meeting, leading to inconsistent decision-making).

The Welsh Government considers that planning committees' should not be concerned with small-scale, non-controversial development proposals which can be more efficiently considered by officers under delegated arrangements. It considers the **committee's role** to be:

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.

The national scheme of delegation should consist of the following exceptions:

- Departure proposal or development contrary to the adopted development plan (where officers are minded to approve)
- Applications involving an Environmental Impact Assessment
- LPA employee/ Council member has an interest in the application
- Above a specified development threshold (possibly set as per 'major development' which is defined in current legislation, although the paper discusses raising this threshold to enable a greater degree of delegation)
- Above a specified objection threshold (possibly set at 20 letters from different addresses)
- Member call-in (subject to i) possible scrutiny and authorisation for the application to be heard at Committee by the Chair/ Vice-Chair of Committee, or ii) objection thresholds and/ or iii) development thresholds).

The Welsh Government considers that there may be circumstances in future where it would be necessary to merge local planning authority functions in order to provide more efficient and resilient local planning services. Existing powers to merge local planning services lie within Section 2 (**Joint Planning Boards**) of the Town and Country Planning Act 1990. It provides the Welsh Ministers with powers to establish a Joint Planning Board as the local planning authority for two or more areas, each of which is the whole or part of a Welsh county or county borough. The current legislation is not considered to be fit for purpose as it does not extend to the inclusion of all modern local planning functions such as the preparation of a Local Development Plan or the collection of the Community Infrastructure Levy. The Draft Planning (Wales) Bill and accompanying consultation paper set out proposals to extend the powers for Joint Planning Boards to include all local planning authority functions.

The Positive Planning Consultation Paper proposed that a Joint Planning Board 'would be served by a single planning department' and that membership 'would be drawn on a proportionate basis linked to population'. In addition to proposals in this consultation paper to define the size and make-up of planning committees, consideration has been given to how Joint Planning Boards will operate in practice, alongside planning committees.

Under powers for Joint Planning Boards sought by the Welsh Ministers, the numbers of elected members who will comprise the Board will be prescribed by the Welsh Ministers through an order. To ensure the number of members elected to the Joint Planning Boards accords with proposals prescribing the size of planning committees, it is proposed that the Welsh Ministers determine the number of decision making members elected to the Joint Planning Board and that this number should fall between the minimum of 11 and maximum of 21 members, in line with recent independent research.

It will be up to the individual local authorities to decide which local authority elected members should sit on the Joint Planning Board, but the numbers of members elected from each contributing authority will be prescribed in order to ensure fairness, transparency and proportionality. It is proposed that a formula based on levels of population will be applied to ensure representative proportionality of Joint Planning Board members elected from each contributing authority. The formula would be calculated as follows:

**Total number of members
on the Joint Planning
Board (as determined by WG)**

Divided by

x

Population for each contributing local planning authority
--

**Combined population
for the contributing local
planning authority**

Totals should be rounded to the nearest whole number

Enforcement & Appeals

The provisions seek to reduce developers from repeatedly submitting applications or appeals where they have failed to obtain planning permission.

Only in exceptional circumstances would new matters be able to be raised during an appeal.

The Bill contains a provision to amend the costs regime relating to appeals. Under the Bill, Welsh Ministers would be able to recover their costs from LPAs; an example given in the Regulatory Impact Assessment is when Section 106 agreements fail to be completed in a reasonable time due to unreasonable behaviour by one or all the parties, leading to the WG taking a leading role in resolving issues. Costs may also be recovered from developers. The costs regime would also be applied to appeals dealt with by way of written representations (currently they are limited to appeals dealt with by way of a hearing or public inquiry).

Review of Fees

The consultation on fee changes suggests the following:

- an increase in application fee levels, in the region of 15% - for example the standard householder fee would rise from £166 to £190; a full application for one new dwelling would then rise from £330 to £380;
- to enable Welsh Ministers to take responsibility for handling major applications where a LPA is judged to be poorly-performing;
- to provide a refund of the application fee where an application remains undetermined after a period of time, suggested at 16 weeks from registration for a householder development and 24 weeks for other types of development, and
- to extend the scope of planning fees, to include applications for discharge of conditions, a standard charge for the drafting of s106 legal agreements and a set fee for the formal confirmation from the Council that a planning condition (or conditions) has been discharged;

- there is a proposal to provide the applicant with a 'free-go' following approval of a reserved matters application;
- there should be some re-apportionment of the application fee on cross-boundary developments so that the planning authority that has the smaller part of the overall site does obtain a fee for their application (currently the fee is only paid to the planning authority which has the larger part of the overall site).

Town & Village Greens (TVG)

Changes proposed include prohibiting applications being made to register the land as a TVG where the land in question has 'entered' the planning system, i.e. a planning application has been submitted relating to that land.

Next Steps

WG's Environment & Sustainability Committee inquiry is likely to conclude in February. The provisional timetable for the Bill is set out below:

- Stage 1 – 6 Oct – 10 Feb - this will include the wider scrutiny of the Bill with evidence sessions and written responses to the Committee. The Welsh Local Government Association & Planning Officers Society for Wales can expect to be invited to give evidence.
- Stage 2 – 11th Feb – 31 March – the Environment & Sustainability Committee can vote on changes to provisions
- Stage 3 – 1 April – 5 May – Full Assembly can vote in amendments
- Stage 4 - May – follows immediately after Stage 3 where Assembly pass the Bill.

Appendices

The respective response forms to the four aspects of the WG consultation are attached as Appendices 1-4 to this Report.

5. RESOURCE IMPLICATIONS:

There are significant implications for current resources, for instance the proposal to set fees for pre-application advice nationally could lead to less responsiveness or flexibility in the service, and potentially loss of income if fees are not set by WG at a realistic level in aiming to recover costs. The right of appeal against the non-registration of 'invalid' applications will inevitably lead to more appeal work. There would be a loss of application income where 'poorly performing' LPAs lose their right to determine major planning applications. However, an increase in application fees is welcomed since fees have not been increased by WG since 2009 which has put additional pressure on stretched local authority budgets.

AUTHOR: George Ashworth – Head of Planning

