
Cymorth Cynllunio Cymru

Ymgysylltiad y gymuned a chynllunio

Planning Aid Wales

Community engagement in planning



Consultation response to 'Planning Law in Wales'

To: planning_wales@lawcommission.gov.uk

Date: 27th February 2018

1. About Planning Aid Wales

1.1 Planning Aid Wales (PAW) is the charity supporting communities and planning authorities to work better together in shaping places. We are core funded by Welsh Government but retain a high degree of freedom to act independently on behalf of communities.

1.2 Planning aid is about giving people the information and support they need to understand and engage positively with planning. We work to help local communities in Wales to understand and engage more effectively with planning. We do this by explaining the planning process from a community perspective and building capacity for constructive community engagement through our information, advice and training services.

1.3 We also work with the planning profession, planning authorities and Welsh Government to encourage more effective community involvement in the planning process. PAW was pleased to be able to arrange a seminar entitled 'The New Planning Code for Wales' during the consultation period, jointly with Cardiff University Department of Geography and Planning. This attracted a wide range of participants with an interest in the Law Commission's proposals, and trusts that this will lead to better informed responses.

1.4 When responding to consultations such as this, our aim is to identify potential barriers which might prevent effective or manageable community involvement in planning.

1.5 We are happy for our response to this consultation to be made public.

2. General comments

2.1 As an organisation that seeks to improve understanding of, and accessibility to, planning processes, PAW strongly supports the proposals to clarify and simplify statutory planning provisions.

2.2 PAW urges the Law Commission to take particular care to include appropriate references in primary legislation to the duty of Planning Authorities to ensure that plan-making and decision-making is carried out in the public interest and that public participation achieves effective engagement with all sections of the community.

3. Responses to consultation questions

3.1 Our responses to specific consultation questions are given in italics below:

CHAPTER 5. INTRODUCTORY PROVISIONS

5-4 to 5-8: The inclusion of some, but not all, relevant matters.

Whilst agreeing specifically that “material (relevant) considerations” should not be defined (Question 5-2(1)), care will be needed when express reference is made to consideration of the likely effect, if any, of the exercise of planning functions on the use of the Welsh language (Question 5-5) and Welsh Government policy (Question 5-6). The absence of specific reference to other statutory duties (Question 5-8) and the different nature of the duty regarding historic assets (Question 5-4) means that overall the question of what is “relevant” may still be unclear.

In relation to Qu 5-6 we consider that it would be helpful for “Welsh Government policy” to be clarified as meaning “PPW, TANs and Ministerial Statements”. PAW favours an approach which signposts all steps in decision making, even if all details will not be included in the legislation.

5-7: We (the Law Commission) provisionally consider that it is not necessary for the Bill to contain a provision, equivalent to section 2 of the P(W)A 2015, to the effect that any public body exercising some of the functions under the Code must do so as part of its duty under the Well-being of Future Generations (Wales) Act 2015 to carry out sustainable development.

PAW considers that sustainable development is an important concept for Planning, and that Planning is a vital means of delivering sustainable development, as recognised by Part 2 of the Planning (Wales) Act 2015. As it has been included in Welsh planning law so recently, PAW suggests that the duty to promote and encourage sustainable development must be included in the Planning Code.

CHAPTER 8. APPLICATIONS TO THE PLANNING AUTHORITY

8-1: We provisionally consider that the law as to planning applications could be simplified, by:

- (1) abolishing outline planning permission;
- (2) requiring that every application for planning permission for development – whether that development is proposed, or is under way, or has been completed – being accompanied by plans, drawings and information sufficient to describe the proposed development;
- (3) enabling the items to accompany applications to be prescribed in regulations, so as to include (so far as relevant) details of: - the approximate location of all proposed buildings, routes and open spaces, - the upper and lower limit for the height, width and length of each building proposed, and - the area or areas where access points will be situated;
- (4) an applicant being able to invite the planning authority to grant permission subject to conditions reserving for subsequent approval one or more matters not sufficiently particularised in the application;
- (5) an authority being able (whether or not invited to do so) to grant permission subject to such conditions; and (6) an authority being able to notify the applicant that it is unable to determine an application without further specified details being supplied.

Do consultees agree?

PAW agrees that a distinct category of outline permissions is unnecessary and that the focus should be on the extent to which matters are specified or left for later approval. However, public participation and proper engagement must cover the details of a proposed development (i.e. matters likely to be the subject of one or more conditions). We suggest that the extent of consultation on the conditions - and subsequent approval of matters governed by them - must be stated clearly in the new Planning Code.

8-2: We provisionally propose that section 327A of the TCPA 1990 – providing that planning authorities must not be entertain applications that do not comply with procedural requirements – should not be restated in the new Bill. Do consultees agree?

No, explicit provision for a planning authority to refuse to register an application would underline the need for sufficient information to be supplied so that the planning authority, statutory consultees and third parties can understand what is proposed and its context, and are in a position to comment on the plans. The provision should be phrased in a way that requires sufficient information but not superfluous information or duplication.

8-7: We provisionally consider that it would be helpful to include in the Bill a provision requiring each planning authority to prepare a statement specifying those within the community whom it will seek to involve in the determination of planning applications. Do consultees agree?

PAW strongly supports this proposal. We consider that the process leading to preparation of this statement should allow interested people and communities to notify the planning authority of their interest in being consulted on applications in a particular area and/or of a particular type. It would be helpful if this statement was required to be reviewed at regular intervals (e.g. every 5 years).

8-9: We provisionally consider that the distinction between conditions and limitations attached to planning permissions should be minimised, either:
1) by defining the term "condition" so as to include "limitation", or
2) by making it clear that planning permission granted in response to an application or an appeal (as opposed to merely permission granted by a development order, as at present) may be granted subject to limitations or conditions.

Do consultees agree?

Yes, PAW's preference would be Option (1).

8-10. We provisionally propose that the provisions in the TCPA 1990 as to the imposition of conditions should be replaced in the Bill with a general power for planning authorities to impose such conditions or limitations as they see fit, provide that they are:

- (1) necessary to make the development acceptable in planning terms;
- (2) relevant to the development and to planning considerations generally;
- (3) sufficiently precise to make it capable of being complied with and enforced; and
- (4) reasonable in all other respects.

Do consultees agree?

PAW agrees, subject to the concerns in Qu 8.1 regarding consultation on conditions.

8-13. We provisionally consider that it would be helpful:

- (1) for a planning authority to be given a power (but not a duty) to identify from the outset the conditions attached to a particular planning permission that are "true conditions precedent", which go to the heart of the permission, so that they must have been complied with before the permission can be said to have been lawfully implemented (the second category identified by Sullivan J in *Hart Aggregates v Hartlepool BC*), as distinct from other conditions precedent;
- (2) for an applicant to have a right to request an authority to identify which of the conditions attached to a particular permission that has been granted are true conditions precedent; and
- (3) for an applicant to have, in either case, a right to appeal against such identification, without putting in jeopardy the substance of the condition itself.

Do consultees agree? Is there any other way in which the status of pre-commencement conditions could be clarified?

PAW is concerned that identification at the outset may not be easy and notes that in Hart, Sullivan J observed that whether or not development had commenced may depend on the number of conditions which have not been complied with. If

identifying certain conditions but not others were definitive, it would seem to prevent later reasonable challenge to the question of whether or not development had commenced. However, PAW suggests it could help if Welsh Government Officials worked with the Planning Officers' Society for Wales and representatives of the development industry to produce a set of guidelines on best practice in relation to pre-conditions.

Consultation question 8-19. We provisionally consider that the Bill should clarify the existing law and procedures as to the approval of details required by a condition of a planning permission, whether imposed at the request of an applicant (in relation to matters not sufficiently particularised in the application) or instigated by the authority itself. Do consultees agree?

PAW is of the opinion that clarity and openness is required when approval is required after an initial grant of permission. The question of consultation on the terms of approval and whether matters are sufficiently detailed and whether a proposal would meet the purpose of the condition needs to be addressed. This general concern is relevant to questions below affecting the precise details of the final development (e.g. 8-20 – 8.23, below) and should be taken into account for each, but is not repeated separately.

Consultation question 8-20. We provisionally propose that a planning authority should be able in an appropriate case to decline to determine an application for the approval of one detailed matter without at the same time having details of another specified matter. Do consultees agree?

Consultation question 8-21. We provisionally propose that the Bill should clarify the existing law and procedures as to the approval of details required by: (4) a condition of a permission granted by a development order; (5) a requirement imposed by a planning authority following a notification of proposed works in a relevant category of development permitted by a development order. Do consultees agree?

Consultation question 8-22. We consider that it might be helpful for there to be a time-limit within which the planning authority can respond to a notification of a proposal to carry out development in a relevant category (for example, buildings for agriculture and forestry), such that an applicant can proceed if no response has been received to the notification. Do consultees agree?

Consultation question 8-23. We provisionally consider that it might be helpful to bring together the procedures for seeking amendments to planning permissions, currently under section 73 and 96A of the TCPA 1990, into a single procedure for making an application for any variation of a permission – whether major or minor – which can be dealt with by the planning authority appropriately, in light of its assessment of the materiality of the proposed amendment. We envisage that the authority would be able to choose to permit either:

(1) both the original proposal and a revised version, with the applicant able to implement either; or

(2) only the revised version, which would thus supersede the original.

Do consultees agree?

CHAPTER 9: APPLICATIONS TO THE WELSH MINISTERS

Consultation question 9-2. We provisionally consider that the law relating to pre-application consultation and pre-application services in connection with developments of national significance should be reviewed and, where appropriate, clarified. Do consultees agree?

PAW would be pleased to be involved in any future review of pre-application services in relation to DNS (and/or Major development applications to Planning Authorities).

CHAPTER 10. THE PROVISION OF INFRASTRUCTURE AND OTHER IMPROVEMENTS

Consultation question 10-5. We provisionally consider that it would be helpful to make the enforcement of a planning obligation under section 106 of the TCPA 1990 more straightforward by including the breach of such an obligation within the definition of a breach of planning control. We invite the views of consultees, including as to the practicalities of such a proposal.

Whilst noting that this is not a central issue for PAW we do have concerns about the extent to which the technicalities of enforcing breach of planning control, including time limits, are appropriate for breach of S106 obligations.

CHAPTER 17. HIGH COURT CHALLENGES

Consultation question 17-1. We provisionally propose that the provisions currently in Part 12 of the TCPA 1990 (challenges in the High Court to the validity of actions and decisions under the Act) should be replaced in the Planning Code by new provisions to the effect that a court may entertain proceedings for questioning any decision of a public body under the Code (other than one against which there is a right of appeal to the Welsh Ministers) - and any failure to make any such decision - but only if:

(1) the proceedings are brought by a claim for judicial review; and

(2) the claim form is filed:

- before the end of the period of four weeks in the case of a challenge to the decision of the Welsh Ministers on an appeal against an enforcement notice (other than a decision granting planning permission), a tree replacement notice, an unsightly land notice or a decision refusing a certificate of lawfulness of existing use or development; or

- before the end of the period of six weeks in any other case,

(3) beginning with the day after the day on which the relevant decision was made.

Do consultees agree?

PAW agrees and considers that uniform rules and procedure for challenge aid understanding, and that the existing complexity of the law needs reform.