BRIDGEND COUNTY BOROUGH COUNCIL

REPORT TO DEVELOPMENT CONTROL COMMITTEE

31st March 2016

REPORT OF THE CORPORATE DIRECTOR – COMMUNITIES

New Development Management Procedures introduced by the Welsh Government

1. Purpose of Report

1.1 To update Development Control Committee Members on the Welsh Government's new Development Management Procedures that came in to force on 25th February, 1st March and 16th March, 2016. The report is for noting.

1.2 A member workshop session on the new procedures (and the WLGAs Draft Planning Committee Protocol plus our draft response to that consultation) will take place before the Planning Committee meeting on 31st March, 2016.

2. Connection to Corporate Improvement Plan / Other Corporate Priorities

2.1 The changes to the development management system apply to all Welsh Local Planning Authorities as part of implementing the Welsh Government's wider positive planning programme. The delivery of the County Borough's statutory planning function has links to the Council's Corporate aims in particular 1. Supporting a successful economy.

3. Background

3.1 A letter issued by the Welsh Government (WG) on 1st February, 2016 advised Local Planning Authorities of the impending changes to the development management system in Wales (see Appendix 1). WG subsequently hosted workshops with both the public and private sectors during February, 2016. Council officers notified local planning agents/architects of the impending changes on 29th February, 2016.

3.2 The changes will cover the following areas of Planning:

- Development Management Procedures
- Permitted Development and Use Classes – Houses in Multiple Occupation
- Enforcement
- Environmental Impact Assessment Regulations

3.3 The following subordinate legislation came into force on 16th March 2016.

- The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2016 ("the Order")
- The Town and Country Planning (Validation Appeal) (Written Representations Procedure) (Wales) Regulations 2016
- The Town and Country Planning (Pre-Application Services) (Wales) Regulations 2016

3.4 These bring into effect and provide the detail for various provisions set out in the Planning (Wales) Act 2015.

3.5 Some of the provisions being commenced contain transitional arrangements. These are set out in the Planning (Wales) Act 2015 (Commencement No.3 and Transitional Provisions) Order 2016. In addition a number of amendments have also been made to development management procedures set out in The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (DMPWO) using existing powers in the Town and Country Planning Act 1990.

4. Current Situation

4.1 The main changes to Development Management Procedures are as follows:

- It is proposed to implement a mandatory **pre-application consultation** process for major developments;
- The changes require that all local planning authorities in Wales must provide a **statutory pre-application advice service**;
- **Design and Access Statements** will only be required for the major developments or applications for some developments in Conservation Area's/World Heritage Sites;
- Applicants can **appeal against the invalidation of an application** within 2 weeks of the notice letter;
- Where a LPA receive an application for the approval of conditions or reserved matters they will have the **discretion to decide whether to consult statutory consultees for their views**;
- **Statutory Consultees must provide a substantive response** to a consultation within 21 days unless a longer period is agreed with the LPA;
- Any **post submission amendments** to a scheme for a major development will be the subject of an extra fee (£190) and the period to determine that application will be extended by a statutory additional 4 week period;
- **Decision notices** will be updated, issued to the applicant and published on the register every time a condition is discharged, or a reserved matter is approved or a condition is varied or removed;
- Applicants/developers for major developments are **required to notify the LPA of the proposed date for the commencement of development** and **display a site notice and a plan** of the site area confirming the planning permission;
- The introduction of a new use class C4 for the use of a dwellinghouse as a small **House in Multiple Occupation** where it is occupied by 3 to 6 unrelated people who share one or more basic amenities. The provision enables use class C4 to revert to use class C3 without requiring planning permission;
- LPAs will be able to **decline to determine an application for planning permission** if an enforcement notice has been issued;
- An **Enforcement Warning Notice** can be served by LPAs to ensure the submission of a retrospective application where the unauthorised development could be made acceptable by the imposition of a condition(s);
- **Landowners will not be able to appeal against an Enforcement Notice on Ground A** (i.e. that planning permission should be granted) if planning permission has already been refused and the decision has been upheld at appeal;

- The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016 **raise and amend the thresholds at which certain types of developments will need to be screened to determine whether EIA is required**;
- Any applicable **screening threshold now applies to the development as a whole** and not just to the change or extension; and,
- Requirement for the LPA to **provide a screening opinion**, indicating that an assessment is required (a 'positive screening opinion') or is not required ('a negative screening opinion'). The 1999 EIA regulations did not require the provision of a negative screening opinion.

4.1 A summary of the main changes and their implementation dates is attached at Appendix 2.

5. Next Steps

5.1 WG has released a document highlighting frequently asked questions about the new development management procedures (see Appendix 3) and they intend to publish additional information in a 'Development Management Manual'.

6. Effect upon Policy Framework & Procedure Rules

6.1 The new Development Management Procedures are part of the statutory planning framework and will be implemented by all LPAs in Wales.

7. Equality Impact Assessment.

7.1 An Equality Impact Assessment Screening has been undertaken and the proposed recommendations are unlikely to have an impact on equality issues.

8. Financial Implications

8.1 None.

9. Recommendations

9.1 That Members of the Development Control Committee:

(1) Note the content of this report on the new Development Management procedures as implemented by the Welsh Government.

Mark Shephard
Corporate Director Communities
31st March 2016

Contact Officer
Mr. Rhodri Davies
Development and Building Control Manager
Telephone Number: 01656 643152, e-mail: rhodri.davies@bridgend.gov.uk

Background documents
Appendix 1: Dear Chief Planning Officer letter from the Chief Planner, WG dated 1st February 2016
Appendix 2: Summary of the main changes that will affect LPAs
Appendix 3: Frequently Asked Questions about the new Development Management Procedures

APPENDIX 1

Adran Cyfoeth Naturiol
Department for Natural Resources

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/L/CS/0222/15
To: Chief Planning Officers
cc. Statutory Consultees

1 February 2016

Dear Colleague

This letter provides information on a number of changes to the development management system on March 16th. The changes will cover the following areas of Planning:

- Development Management Procedures
- Permitted Development and Use Classes – Houses in Multiple Occupation
- Enforcement
- Environmental Impact Assessment Regulations

Development Management Procedures

The following subordinate legislation has been laid before the National Assembly for Wales today, and will come into force on the 16 March 2016.

- The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2016 ("the Order")
- The Town and Country Planning (Validation Appeal) (Written Representations Procedure) (Wales) Regulations 2016
- The Town and Country Planning (Pre-Application Services) (Wales) Regulations 2016

These bring into effect and provide the detail for various provisions set out in the Planning (Wales) Act 2015 ("the 2015 Act"). In addition a number of amendments have also been made to development management procedures set out in The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (DMPWO) using existing powers in the Town and Country Planning Act 1990 ("the 1990 Act"), as part of implementing the Welsh Government's wider positive planning programme.

An explanation of the main changes to the development management process is provided below. It is our intention to publish additional information in a

‘Development Management Manual’ in March to coincide with the coming into force of the above legislation.

Pre-Application Consultation

Detailed guidance on the requirement for pre-application consultation under Section 17 of the Planning Wales Act 2015 is contained in **Annex 1** to this letter.

It is important to note that whilst the provisions contained within the DMPWO for pre-application consultation in respect of applications for major development will come into force in March 2016 the requirement for applicants to submit the pre-application consultation report (PAC) will not be a validation requirement for applications made before 01 August 2016.

This transition period will allow prospective applicants who will be submitting after the 01 August to undertake pre-application consultation, and will place a duty on statutory consultees to provide substantive responses within 28 days to these requests. However, it will not prejudice applicants who are due to imminently submit a planning application, and would find that it would not be valid because the statutory requirements of the pre-application process have not been undertaken.

REFERENCE

Article 4 of the Order introduces a new Part 1A into the DMPWO in relation to pre-application consultation. Part 1A sets out the requirement to carry out pre-application consultation, how such consultation must be publicised, who must be consulted, a duty for specialist [statutory] consultees to respond to such a consultation, and the form and content of pre-application consultation reports.

Local Planning Authority Pre-application Services

The Town and Country Planning (Pre-Application Services) (Wales) Regulations 2016 require all local planning authorities (LPAs) in Wales to provide a statutory pre-application service.

Applicants must submit a completed pre-application advice enquiry form containing information on their proposal to enable a response from the LPA. As a minimum they will be required to provide:

- Name, address and contact details
- Description of the proposal (including an indication of increase in floor space, and/or number of new units proposed)
- Site Address
- Location Plan

- Fee

The fees that can be charged for statutory pre-application services are the same across Wales, although vary depending upon the size and scale of the proposed development:

Householder - £25
Minor development - £250
Major development - £600
Large major development - £1000

The regulations require LPAs to provide a written response to all valid pre-application enquiries within 21 days, unless an extension of time is agreed between the authority and applicant.

As a minimum, applicants for householder developments should expect to receive the following information within their written response:

- The relevant planning history of the site
- The relevant development plan policies against which the development proposal will be assessed
- Relevant supplementary planning guidance (i.e. design, conservation etc.)
- Any other material planning considerations
- An initial assessment of the proposed development, based on the information above

For all other development proposals, applicants should receive all the information outlined above, as well as 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.

Without payment of the appropriate fee, the LPA will be under no obligation to accept a pre-application enquiry form.

If, in the opinion of the LPA, a pre-application enquiry form is submitted without the correct fee, the LPA should explain to the applicant as soon as possible in writing that the pre-application service cannot begin until the correct fee is received and identify what payment is due.

If a fee is paid to the LPA but the pre-application enquiry is subsequently rejected as being invalid for any reason except for payment of an incorrect fee, the fee must be refunded.

A model template of a pre-application enquiry form is provided as **Annex 2** to this letter.

We intend to collect information on the number of enquiries received and the time authorities take to respond via the Development Management Quarterly Survey from end of March 2016.

REFERENCE

Section 18 of the 2015 Act inserts section 61Z1 (Wales: pre-application services) and section 61Z2 (Pre-application services: records and statements of services) into the 1990 Act. The Town and Country Planning (Pre-Application Services) (Wales) Regulations 2016 make provision for:

- the provision of statutory pre-application services by LPAs in Wales;
- the retention of records of the pre-application services requested and provided; and
- publication on the LPA website of information on the type of pre-application services provided and details of the fees payable for the different types of development.

Design and Access Statements

The requirement for a Design and Access Statement (DAS) will change on the 16 March 2016. The requirement to submit a DAS with a planning application will only apply to the following:

- All planning applications for "major"[1] development except those for mining operations; waste developments; relaxation of conditions (section '73' applications) and applications of a material change in use of land or buildings

- All planning applications for development in a conservation area[2] or World Heritage Site[3] which consist of the provision of one or more dwellings or the creation of floorspace of 100 sq. m. (gross) or more.

For those planning applications that do not require a DAS, LPAs have the ability to request further information about the design during the pre-application and determination processes if it will assist them in making a decision on the application in light of development plan design policies. However, any information required must now be both material to the determination of the application, and reasonable relative to the nature and scale of the proposed development[4].

<u>Content of a Design and Access Statement</u>

The DMPWO has been amended so that a DAS must:

- explain the design principles and concepts that have been applied to the development.

- demonstrate the steps taken to appraise the context of the development and how the design of the development takes that context into account.
- explain the policy or approach adopted as to access and how policies relating to access in the development plan have been taken into account
- explain how specific issues which might affect access to the development have been addressed.

The scope of a DAS should be agreed wherever possible at the pre-application stage of development to ensure all relevant issues are covered.

REFERENCE

Article 9 of the Order will substitute Article 7 of the DMPWO with a new version. This sets out that Design and Access Statements will be required for major development, or in a designated area (i.e. conservation area or World Heritage Site) for one or more dwelling or a building with a floor space greater than 100 square metres. This will only apply to planning applications made on or after the 16 March 2016.

[1]"Major" development is defined in article 2 of the DMPWO.

[2]"Conservation Area" is defined in section 91 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (c.9) as an area designated under section 69 of that Act.

[3]"World Heritage Site" is defined as property appearing on the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention Concerning the Protection of the World Cultural and National Heritage.

[4]Section 62(4A) of the 1990 Act now applies in Wales in respect of applications for planning permission made on or since 16 March 2016.

Invalid Applications: Notice and Appeal

Notice - Local Planning Authorities

New provisions that allow for an appeal against the decision of a LPA that an application is invalid come into force on 16th March. This provision applies to

both applications for planning permission and for any consent, agreement, or approval required by any condition or limitation subject to which planning permission has been granted.

If the LPA considers that an application for planning permission (or anything accompanying it) does not comply with a validation requirement (see Section 62 of the 1990 Act) they must give a notice to the applicant informing them that the application is invalid.

This notice must identify the particular requirements in question (in relation to Section 62 of the 1990 Act) and explain why the application does not comply with the validation requirements.

In the case of an application for a consent, agreement, or approval (required by any condition or limitation subject to which planning permission has been granted) the LPA must give notice that an application is not valid if they consider that the application does not comply with the terms of the planning permission, because the applicant has failed to include information in the application or to provide documents or other materials with it. The notice in this case must identify what information, documents or materials are required to be submitted.

A notice that an application is not valid must inform the applicant that they have a right to appeal to the Welsh Ministers via the Planning Inspectorate within two weeks of the date of the notice, and include the relevant contact details for the applicant to make an appeal if they so choose

A template model notice is attached as **Annex 3** to this letter to assist LPAs.

<u>Making an Appeal – Appellants</u>

Following the receipt of a notice that an application is invalid an applicant has a period of two weeks from the date of the notice to submit an appeal against the invalidation of their application to the Welsh Ministers.

The appeal must be made by submitting a form published by the Welsh Ministers (this will available via the Welsh Government website before the 16 March 2016) and submit alongside it the following information:

- A copy of the notice served by the LPA
- A copy of the application made to the LPA
- A copy of the forms, documents, plans, drawings, statements, declarations, certificates, particulars or evidence which were submitted to the LPA in connection with the application
- A copy of the notice of the decision to grant planning permission *(note this is only relevant where the appeal relates to an application for a consent, agreement, or approval required by any condition or limitation subject to which planning permission has been granted)*

The appellant must also send to the LPA, as soon as reasonably practicable, a copy of the form (and documents) served on the Welsh Ministers so that the

authority is aware that an appeal has been made, and what information has been lodged in challenge to the notice The LPA therefore knows to take no further action on the application until the outcome of the appeal is known.

Whilst appeals can be lodged in hardcopy and by post, appellants are encouraged to submit all information electronically to make the process as efficient as possible.

When the Planning Inspectorate receive an appeal (on behalf of the Welsh Ministers) they will write to both the appellant and the LPA to inform them of the appeal reference number. The Welsh Ministers have set a target of 21 days for the Planning Inspectorate to consider and determine appeals against the invalidation of applications.

If the appeal is upheld then the information that is being sought by the LPA does not need to be submitted in order for the application to be found valid. If the appeal is dismissed the applicant must decide whether to submit the information or withdraw the application. The applicant is encouraged to contact the local planning authority to inform them of their intention, and the likely timescale.

Where an appeal is dismissed, and the information required has not been submitted within a reasonable timescale, or the applicant has simply not informed the LPA of their intentions, then the authority should return the application and associated fee to the applicant.

REFERENCE

Article 13 of the Order makes various amendments to Articles 8, 22, and 23 of the DMPWO to define the meaning of a valid application, and to introduce the information that must be given to an applicant where a (non-validation) notice is made by the local planning authority under Section 62ZA of the 1990 Act.

Article 13 also inserts Article 24C into Part 5 of the DMPWO. Article 24C prescribes how an applicant can appeal to the Welsh Ministers against a notice that their application is invalid and prescribes the time limit of two weeks to do so from the date of the notice.

The Town and Country Planning (Validation Appeal) (Written Representations Procedure) (Wales) Regulations 2016 prescribe how appeals are to be dealt with once received by the Welsh Ministers (or a person appointed by the Welsh Ministers), and include that the appeal notice and documents that accompany it comprise the appellant’s representation, and the non-validation notice issued by the local planning authority comprise their representation in relation to the appeal.

Consultation in Respect of Certain Applications

Local Planning Authorities discretion to consult

Where a LPA receive an application for the approval of conditions, or reserved matters from the 16 March 2016 they will have the discretion to decide whether to consult statutory consultees for their views.

Where a LPA choose to consult they will be required to provide the following information to a consultee in order for it to be a valid consultation, and trigger the 21 day timescale for response:

- A copy of the application form
- The reference number allocated by the LPA to the original application
- Any drawings in connection with the relevant application; and
- Any report issued to the LPA in connection with the relevant application

The statutory consultation period of 21 days will commence either on the day on which the views of the consultee are sought, or where there is more than one document the day upon which the last of those documents is received by the consultee if sent at different times.

It is not proposed to require consultation to take place by a particular method (e.g. hardcopy or electronic) and therefore how each LPA currently chooses to consult statutory consultees should not need to change. However, where a LPA writes or emails statutory consultees to inform them that these details can be found on the authorities website (rather than email the information as attachments or provide hardcopies) the 21 day period will only be taken to have commenced when the last of these documents is available to view on that website.

Duty of Statutory Consultees to respond

Upon receiving a consultation from the LPA, a statutory consultee must provide a substantive response to the consultation within a period of 21 days unless they agree in writing with the LPA an alternative time period.

For the purposes of a consultation on the approval of conditions or reserved matters a substantive response is one which:

- States that the consultee has no comment to make
- States that the consultee has no objection to the matters which are subject to the consultation and refers the person to standing advice
- Advises of any concerns identified in relation to the matters which are the subject of the consultation, and how those concerns can be addressed; or
- Advises that the consultee objects to the matters which are the subject of the consultation and sets out the reasons for the objection.

Each statutory consultee must provide to the Welsh Ministers not later than 01 July each year (commencing July 2017) a report setting out their compliance with providing a substantive response within the statutory timescale.

REFERENCE

Article 8 of the Order inserts Article 15C and 15D into the DMPWO. Article 15C specifies that for the purposes of consultation under Section 100A of the 1990 Act there is a 21 day period for a statutory consultee to respond to the LPA once the document(s) have been received. Article 15D sets out the information that a LPA must provide to a statutory consultee, including a copy of the application form relating to the relevant application, the reference number allocated to the original application, any drawings in connection with the relevant application, and, any report in connection with the relevant application.

List of Statutory Consultees

The Order has updated Schedule 4 of the DMPWO to redefine the thresholds for consultation with existing statutory consultees, and has introduced Water and Sewerage Undertakers as a statutory consultee on certain planning applications.

Section 73 Applications (to remove or vary a condition)

Article 10 of the Order inserts Article 15ZA into Article 15 of the DMPWO 2012, which introduces the provision that the LPA may (not must as the case now) consult a statutory consultee (falling within Schedule 4 of the DMPWO) where a Section 73 application has been made.

Post Submission Amendments

From the 16 March any applicant who has submitted a major planning application, who wishes to amend their proposal, will be required to pay a fee of £190 when they submit an amendment.

Upon receipt of all the documents accompanying the amendment and the fee the local planning authority will have a statutory additional 4 week period (if required) in which to consider the new information before making a determination.

REFERENCE

Article 11 of the Order amends Article 22 (time periods for decisions) of the DMPWO, and makes provision for an additional 4 weeks before an LPA must notify an applicant of a decision where an amendment is made to the application prior to its determination.

Regulation 5 of The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) (Amendment) Regulations 2016 inserts regulation 16(A) [Fees for post submission amendments to major development applications] into the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015 to require the payment of a fee of £190

Decision Notices

From the 16 March 2016 LPAs must ensure that new decision notices, issued on or after this date, specify the plans and documents (reference numbers) in accordance with which the approved development is to be carried out.

Where a planning application is approved on or after the 16 March 2016 the decision notice that grants the principle of the development (i.e. outline or full planning permission) is to be updated, and a revised version issued where any subsequent consents are given; such as details required by a condition (including reserved matters applications), or the removal or variation of a condition are approved.

As a minimum the revised version of the notice must include:

- the reference number that has been allocated to the subsequent application (for consent or approval of condition)
- the date on which the decision was made
- the effect of the decision (i.e. how the permission or condition has been changed)
- the name of the body that made the decision (in the event that such a consent or approval was made under an appeal)
- the revision number (so that it is clear that the notice has been amended)

There is nothing in the regulations precluding an LPA from including any additional informative on revised notices that they consider relevant to assist the applicant.

As a Section 73 application if granted results in a new planning permission a new decision notice must be issued rather than producing an amended

version of the original decision notice. Care is needed when subsequent applications are made in respect of the development, to understand against which permission (the original or that made through the section 73 application) that the applicant wishes to gain approval.

As each LPA has different software that produces decision notices we do not intend to impose a template setting out how this information should be set out. Therefore each Local Planning Authority should consider the most effective way for them to meet these mandatory requirements, aiming to make the revisions as easily understood by members of the public as possible.

For clarity the requirement to revise decision notices does not apply to any planning permission where a decision notice was issued prior to the 16 March 2016, therefore this will not apply retrospectively to existing planning permissions.

REFERENCE

Article 12 of the Order inserts Article 24A into the DMPWO which sets out that the person to be notified with a revised decision notice is the applicant, and that such a revised notice must include the reference number, date and effect of the decision, the name of the body that made the decision, and, the revision number.

Notification of Commencement of Development & Display of Notice

The requirement to notify the local planning authority of the commencement of development and to display a notice on site does not apply to planning permissions granted consent before the 16 March 2016.

Notification

When an developer who has the benefit of planning permission for major development wishes to commence their development, they must complete a 'Notification of initiation of development' form, which can be found in Schedule 5A of the DMPWO (**Annex 4**). They must submit the completed form to the relevant LPA (or authorities if a site straddles more than one authority area).

The submission of an incomplete form does not necessarily preclude an applicant from commencing development at the date specified. However, section 71ZB(5) of the 1990 Act ensures that any planning permission is only deemed to be granted subject to the duty to provide notification before development commences. Therefore, an incomplete form would represent a breach of condition and the applicant could be subject to enforcement action by the LPA.

Whilst LPAs are not required to acknowledge the submission of the notification notice a basic confirmation of receipt is encouraged so that developers can proceed knowing that the LPA is aware of when they will be starting on site.

As the requirement to notify is a condition to the planning permission, it is expected that the LPA will place a copy of the notice on the relevant planning file to demonstrate compliance with Section 71ZB(5) of the 1990 Act.

The notification form also acts as a check sheet as the developer needs to identify and confirm that all pre-commencement conditions have been complied with. LPAs should use the opportunity of a notice being served to review compliance with conditions and pursue enforcement action where necessary.

Display of a Notice

As part of the requirements for notification of development, applicants are also required to display a notice which confirms the granting permission of development at, or near the development site, and provide a plan indicating the site area of the development.

The site notice to be used is provided in Schedule 5B **(Annex 5)** of the DMPWO. The site notice must be displayed at the location on the notification of development notice.

The site notice must be displayed at all times while the development is being carried out (this is considered to be while the development is under construction), at the specified location from the date the development commences.

REFERENCE

Article 12 of the Order inserts Article 24B into the DMPWO. This specifies that for major development the notice to be given to a LPA before beginning any development must be in the form set out in Schedule 5A (a newly inserted Schedule) of the DMPWO (or in a form substantially to the like effect). Article 24B also specifies that the notice to be displayed (as required by Section 71ZB of the 1990 Act) at all times when development is being carried out must be in the form set out in Schedule 5B (a newly inserted Schedule) (or in a form substantially to the like effect). The site notice must be firmly affixed and displayed in a prominent place, be legible and easily visible, and, be printed on durable material.

Local Development Order

The Order amends the DMPWO to remove the restriction that a Local Development Order could not be made for development falling within Schedule 2 of the Planning (Environmental Impact Assessment) (Wales) Regulations 2016. It is envisaged that this will be most relevant to urban development projects.

Permitted Development and Use Classes Order

Houses in Multiple Occupation

The Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2016 has been made and comes into force on 25 February 2016. The related Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2016 ("the GPDO Amendment Order 2016") has been laid before the National Assembly for Wales and will also come into force on 25 February 2016.

The Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2016 amends the Town and Country Planning (Use Classes) Order 1987 to:

- amend use class C3 (dwellinghouses) to:
  - include a definition of "single household" which applies to use class C3(a) only;
  - remove from the scope of use class C3(c) houses in multiple occupation falling in new use class C4; and
- introduce a new use class C4 (houses in multiple occupation).

New use class C4, subject to an exception, covers use of a dwellinghouse as a small House in Multiple Occupation as defined in section 254 of the Housing Act 2004. In broad terms, this use occurs where tenanted living accommodation is occupied by 3 to 6 people, who are not related and who share one or more basic amenities, as their only or main residence.

The GPDO Amendment Order 2016 amends Part 3 (changes of use) in Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 to give permitted development rights to changes of use from buildings used as a small scale houses in multiple occupation (new use class C4) to use as dwellinghouses (use class C3). The provision enables use class C4 to revert to use class C3 without requiring planning permission.

Enforcement

Article 5 of The Planning (Wales) Act 2015 (Commencement No. 3 and Transitional Provisions) Order 2016 brings the following sections of the 2015 Act in relation to planning enforcement into force on the 16 March 2016:

Section 32 - Power to decline to determine an retrospective application

LPAs can decline to determine an application for planning permission where an enforcement notice has been issued before the application is submitted (planning applications submitted on or after the 16 March). This has the effect of giving the LPA the discretion whether to consider the same issue twice, first in their decision to issue an enforcement notice and second through the consideration of a retrospective planning application.

Section 43 -Enforcement Warning Notices

An Enforcement Warning Notice (EWN) is intended for use where a LPA considers that an unauthorised development could potentially be made acceptable with control through the imposition of conditions if a planning application were made.

The serving of an EWN constitutes the taking of enforcement action under Section 171A of the 1990 Act, therefore further enforcement action can be taken in respect of the breach within four years of the initial notice being issued.

There is no right of appeal against an EWN, however if a retrospective application is submitted as a result of the EWN, an applicant does have the right to appeal either the refusal of planning permission, or the service of an enforcement notice, as with any other retrospective planning application.

Use of an EWN can effectively ensure that an acceptable form of development is achieved without the LPA having to over enforce, making for a swift conclusion to breaches of planning control compared to an enforcement notice, which can be subject to an appeal by the recipient of the notice.

A model EWN is provided as **Annex 6** to this letter.

Section 44 - Appeal against enforcement notice: deemed application for planning permission

Section 44 of the 2015 Act amends the process where an appeal is made under Section 174 of the 1990 Act. The appellant must now identify that they wish to make an appeal under ground (a) and pay a fee for the Planning Inspectorate to consider if planning permission should be granted. If they comply with these steps they will be deemed to have made a planning application.

This would not apply in cases where, before 16 March, an enforcement notice is issued under section 172 of the 1990 Act and not withdrawn under section 173A of that Act.

Section 45 - Restrictions on right to appeal against planning decisions

An appeal cannot be brought if planning permission was not granted under Section 174 of the 1990 Act against an enforcement notice if it would involve the granting of planning permission of matters stated in that notice. This restriction also applies where an enforcement notice is served in respect of a condition that ought to be discharged and it is not discharged under Section 177 at appeal.

Working alongside section 32 of the 2015 Act regarding retrospective applications, this restriction ensures that an enforcement appeal made under ground (a) provides the only route for the landowner/occupier to secure planning permission once an enforcement notice has been served.

This would not apply to an appeal made under section 78 of the 1990 Act before 16 March 2015.

Section 46 - Restrictions on right to appeal against enforcement notice

Section 46 of 2015 Act places a restriction on the right to appeal against an enforcement notice. Where an enforcement notice is issued after a decision to refuse planning permission has been upheld at an appeal for a related development, section 46 prevents an appeal being brought on the ground that planning permission should be granted for the breach identified by the enforcement notice, i.e. section 174(2)(a) of the 1990 Act. Furthermore, an appeal cannot be brought under section 174(2)(a) that a condition should be discharged if the enforcement notice was issued after a decision to grant planning permission subject the condition or limitation was upheld under section 78.

This would not apply in cases where, before 16 March 2015, an enforcement notice is issued under section 172 of the 1990 Act and not withdrawn under section 173A of that Act.

Environmental Impact Assessment Regulations

The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016

The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016 (“the 2016 EIA Regulations”) have been laid before the National Assembly. These Regulations consolidate, update and replace the Town and Country Planning (Environmental Impact Assessment) Regulations 1999, as amended, (“the 1999 EIA Regulations”). These Regulations transpose, amongst other things, the European Directive 2011/92/EU, on the

assessment of the effects of certain public and private projects on the environment into the Welsh planning system.

The 2016 EIA Regulations contain two different commencement dates. All regulations except those relating to LDOs are scheduled to come into force on 01 March. Regulation 38, Schedule 5 and Schedule 9 paragraph 8(3) (which relate to Local Development Orders) will come into force on 16 March. This coincides with the amendments to the DMPWO made by the Order.

Screening thresholds

The regulations change the threshold where a screening should be undertaken on projects that fall within industrial estate development and the urban development project categories. Where projects fall within a sensitive area[1] all projects will continue to require screening.

The category for urban development projects now contains three criteria, where, if any of the criteria are exceeded by the project, the development should be screened for significant impacts on the environment.

In determining whether EIA is necessary for an individual project, the selection criteria set out in Schedule 3 to the 2016 EIA Regulations which are relevant to the proposed development, must be taken into account. LPAs should also be mindful of the amendment to the provision of negative screening decisions detailed below.

REFERENCE

The 2016 EIA Regulations raise and amend the thresholds in Schedule 2 at which certain types of development project will need to be screened in order to determine whether EIA is required under the Directive.

The threshold for industrial estate development projects is raised from areas exceeding 0.5 hectares to areas exceeding 5 hectares (in paragraph 10(a) of the table in paragraph 2 of Schedule 2).

In the case of urban development projects, the existing threshold of 0.5 hectares is raised and amended such that a project needs to be screened if—

- the development includes more than 1 hectare of development which is not dwellinghouse development; or
- the development includes more than 150 dwellinghouses; or
- the area of the development exceeds 5 hectares (see paragraph 10(b) of the table in paragraph 2 of Schedule 2).

A definition of “dwellinghouse” is inserted in regulation 2(1) for clarification in this context

[1]Sensitive area is defined as any of the following—
(a) land notified under section 28(1) (sites of special scientific interest) of the Wildlife and Countryside Act 1981;

(b) a National Park within the meaning of the National Parks and Access to the Countryside Act 1949;
(c) a property appearing on the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage;
(d) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979;
(e) an area of outstanding natural beauty designated as such by an order made under section 82(2) (areas of outstanding natural beauty) of the Countryside and Rights of Way Act 2000;
(f) a European site within the meaning of regulation 8 of the Conservation of Habitats and Species Regulations 2010;

Changes or extensions to existing projects

Changes or extensions to Schedule 1 or Schedule 2 development which may have significant adverse effects on the environment fall within the scope of the Directive. The 2016 EIA Regulations implement a judgment[1] from the High Court of Justice that any applicable screening threshold apply to the development as a whole once modified, and not just to the change or extension as provided in the 1999 EIA Regulations.

Where the change or extension itself would fall within one of the descriptions in Schedule 1, it constitutes a Schedule 1 development and EIA is always required. Otherwise, where the project as a whole exceeds the criteria set in Schedule 1 or 2, and if the project as changed or extended may have significant adverse effects on the environment, it is considered to be Schedule 2 development. A screening opinion is then required on whether the development is likely to have significant effects on the environment.

When the LPA undertake this screening exercise, they must consider the effect of the development as changed or extended. When considering the effect of this development it should be undertaken in the context that development consent already exists for the development as originally granted.

REFERENCE

Paragraph 13 of the table in paragraph 2 of Schedule 2 contains an amendment to the provisions relating to changes or extensions to existing development, so that the effects of the development as a whole once modified are considered.

[1]High Court of Justice, R (on the application of Baker) v Bath and NE Somerset Council, 20109 J.P.L. 1498 [2009] A.C.D. 37.

Screening decisions

Having completed a screening exercise, the 2016 EIA regulations require the LPA to provide a screening opinion, indicating either that an assessment is required (a 'positive screening opinion') or is not required ('a negative screening opinion'). The 1999 EIA regulations did not require the provision of a negative screening opinion. The use of a checklist in undertaking screening exercises can assist in ensuring that opinions are proportionate to the development.

REFERENCE

Regulation 4(5) and (7) of the 2016 EIA regulations introduce a requirement for the reasons for negative screening decisions to be provided and placed on Part 1 of the register, to be available for public inspection.

Consultation requirements for multi-stage consents where the Environmental Statement remains valid

The 2016 EIA regulations require applications for multi-stage consents to be screened to

(i) to check if EIA is needed when it had not been required at outline stage; and,

(ii) to check if additional environmental information is required at the subsequent consent stage (i.e. an application for approval of reserved matters) when an Environmental Statement (ES) had already been produced.

This was a requirement in the 1999 EIA regulations. Where an application triggers either (i) or (ii) the public consultation procedures set out in the regulations apply to the ES. Where the environmental statement previously provided remains fit for purpose the public consultation process does not need to be repeated.

REFERENCE

Regulation 8 of the 2016 EIA Regulations limits the requirement for subsequent applications to be subject to the EIA process to those cases where the development in question is likely to have significant effects on the environment which were not identified at the time that the initial planning permission was granted.

European Directive 2009/31/EC on the Geological Storage of Carbon Dioxide

Paragraph 21 of Schedule 1 of the 2016 EIA Regulations includes sites for the geological storage of carbon dioxide. Installations for the capture of carbon

dioxide streams for the purposes of geological storage are included in order to implement requirements in the Directive on the Geological Storage of Carbon Dioxide (Directive 2009/31/EC)

Provide for EIA where LPAs make LDOs for development schemes that comprise Schedule 2 EIA development

Regulation 38 of the 2016 EIA Regulations requires a LPA who propose to make a LDO, to decide whether development is EIA development; and if it is, to take certain steps to enable them to take the environmental information into consideration before making the order.

Modification and discontinuance orders

Regulation 39 applies when a LPA or the Welsh Ministers propose to make either a section 97 order under section 97 or 100 of the 1990 Act, or an order under section 102 or 104 of that Act.

Developments of National Significance

Regulations 27 to 36(2) are provisions relating to applications for planning permission made directly to the Welsh Ministers.

Summary of changes

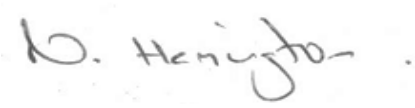
Some of the main changes that will affect LPAs are summarised in the table below:

SUMMARY OF ACTIONS
From 25 February LPAs must: • Determine planning applications for changes of use to Class C4: Houses in Multiple Occupation • Take action against unauthorised changes of use that are unacceptable in planning terms in relation to the new use class.
From 1 March LPAs must: • Use the new screening thresholds for industrial estate and urban development projects • Apply the revised project categories for changes or extensions to EIA projects and for projects concerning the geological storage of Carbon Dioxide • Provide reasons for negative screening opinions • Check whether additional environmental information is required at the subsequent consent stage

• Consider the need for EIA when preparing modification and discontinuance orders
From 16 March LPAs must: • Provide pre-application services when requested to do so • Issue a notice if an application is found to be invalid • Apply the revised thresholds for statutory consultees including the addition of water and sewerage undertakers • Charge for post-submission amendments • Revise decision notices to reflect any subsequent consents • Receive notification from developers that they intended to commence development on site and pursue enforcement action where necessary
From 16 March LPAs may: • Consult statutory consultees in respect of applications for the approval of conditions or reserved matters • Decline to determine retrospective applications where an enforcement notice has been served • Serve an enforcement warning notice • Grant an LDO for a category of development falling under Schedule 2 of the EIA Regulations
From 1 August developers must: • Undertake pre-application consultation for planning applications for major development Provide a report of pre-application consultation in order to submit a valid planning application for major development

If you have any queries regarding any of these provisions please contact Hywel Butts (Head of Development Management) in the first instance.

Yours sincerely



Neil Hemington

Prif Gynllunydd | Chief Planner

Cyfarwyddiaeth Cynllunio | Planning Directorate

Yr Adran Cyfoeth Naturiol | Department for Natural Resources

Appendix 2

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APPENDIX 3

New Development Management Procedures – March 2016

Frequently asked questions about changes to development management procedures introduced in March 2016

Pre-application consultation and pre-application services

1. I intend to apply for planning permission for major development. Do I need to consult the local planning authority and the local highway authority as part of the new pre-application procedures?

Section 61Z of the Town and Country Planning Act (as amended) ("the 1990 Act") requires applicants to consult the specialist consultees listed in schedule 4 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2016 when their proposed development falls within a relevant category. For some development types this may be the local highway authority. The local planning authority does not have to be consulted but the applicant can choose to request advice from its pre-application service.

2. Is the pre-application consultation process a way for developers to obtain the view of the local planning authority before going through the pre-application process and paying a fee?

No. The consultation required by section 61Z of the 1990 Act does not involve the local planning authority. It is anticipated that the pre-application consultation with the local planning authority will be undertaken very early in the process to help inform the content of an application, and to understand its chance of success. The pre-application consultation must be accompanied by a draft application, and therefore will most likely occur at a later point in time.

3. In cases where there is a dispute over the fee to be paid for statutory pre-application service, will the local planning authority's decision be final?

Yes

4. **Will the Development Management Quarterly Survey Statistics only count enquiries that are submitted through the statutory pre-application service?**

Yes

5. **What is the rationale behind the requirement that developers undertake pre-application consultation?**

It is to provide an opportunity for statutory consultees and the public to see development proposals and to raise any issues, or areas of concern that the developer may need to address before submitting an application. It is intended to ensure that such issues are identified from the outset so that all relevant material considerations can be considered by the applicant rather than only being raised when an LPA formally consults on an application.

6. **How is large major development defined? And where is the guidance contained?**

Large major development is defined as development exceeding 24 dwellings, or 0.99 hectares, or 1,999 square metres.
The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) (Amendment) Regulations 2016 adds a new schedule 4 to The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015.

This identifies the fees payable in relation to:

- The erection of dwellinghouses
- The erection of buildings (other than dwellinghouses)
- The making of a material change in the use of building or land

- The winning and working of minerals, or the use of land for mineral working deposits (flat fee of £600)
- Waste development (flat fee of £600)

7. **Why has the criteria for large majors been set at 25 dwellings or more, and not something like 200 dwellings?**

The criteria is to apply on a national basis, and therefore needs to reflect the likely scale of development both in urban and rural locations. Our research found that this threshold is broadly used by many local planning authorities in relation to their discretionary pre-application advice service.

8. **When would you use a discretionary pre-application advice service rather than the statutory pre-application adviceservice introduced by the regulations?**

Discretionary advice would be appropriate, for example when a householder or other party wants to find out if a proposed extension would fall within permitted development limits or not, or wishes to know what surveys may be required.

The statutory pre-application advice service applies to planning applications (householder, outline and full) where the enquirer wishes to discover the relevant planning policies that would be applied by the local planning authority, any other material considerations, an indication of how the proposal would be assessed against the policy and material considerations to be taken into account by the authority (i.e. approved or refused) and any planning obligations (Section 106 of the 1990 Act) or Community Infrastructure Levy payments required, and has submitted a pre-application enquiry form.

9. **Does the statutory pre-application service extend to listed building enquiries and advice on advertisements?**

No. Advice for listed building consent applications and advertisements should be provided through the discretionary service offered by each local planning authority. Article 4 of the Town and Country Planning (Pre-application Services) (Wales) Regulations 2016 stipulates that qualifying applications are applications for planning permission made to a local planning authority for the development of land.

10. **Would advice specifically sought with regard to bats or trees fall under the statutory pre-application advice service?**

No. The Town and Country Planning (Pre-application Services) (Wales) Regulations 2016 identifies that a qualifying application needs to be made on the pre-application enquiry form, and that the local planning authority must provide a response in accordance with Regulations 7 & 8. Therefore any specific survey advice should be sought outside of the statutory pre-application advice service.

11. **Is there any ability for authorities to apply their own local exemptions?**

No – to access the statutory service, an applicant must submit the enquiry form and fee. If they do not do this then the local planning authority may choose to provide advice in accordance with any discretionary service that they offer.

12. **What if they want informal advice?**

If a prospective applicant has not submitted a pre-application enquiry form and paid the requisite fee then the local planning authority does not have to provide the statutory pre-application service, and is free to provide advice on a discretionary basis.

13. The definition of "householder application" does not appear in Article 2(1) of the Town and Country Planning (Development Management Procedure (Wales) Order 2012

The definition was inserted into the Town and Country Planning (Development Management Procedure (Wales) Order 2012 by the Town and Country Planning (Development Management Procedure) (Amendment) Order 2015. Householder application is defined as:

> ""householder application" ("c*ais deiliad ty*") means an application for—
>
> (a) planning permission for the enlargement, improvement or other alteration of a dwellinghouse, or development within the curtilage of such a dwellinghouse, or
>
> (b) change of use to enlarge the curtilage of a dwelling house,
> for any purpose incidental to the enjoyment of the dwellinghouse but does not include—
>
> (i) any other application for change of use,
>
> (ii) an application for erection of a dwellinghouse, or
>
> (iii) an application to change the number of dwellings in a building;";

14: What if the site notice put up by the developer is removed?

Providing developers have taken reasonable steps to protect the site notice and, if needs be, replace it then if the notice is removed, obscured or defaced before the end of the 28 day publicity period then the developer will be considered to have complied with their statutory duties.

15: What is the role of local councillors in pre-application consultation?

Developers are required to inform all local councillors that are responsible for the electoral ward in which the proposed development is located. If the proposed development straddles a number of electoral wards, all local councillors within those wards will need to be notified by letter. The letter will need to contain the same information as provided in the site notice and neighbour letters.

The local councillor(s) should convey the opinion of their constituents.

16: What if the land adjacent to the development site is unregistered?

The Pre-application Consultation Report should identify how the developer has used best endeavours to determine ownership (for example by including the details of a land registry search showing that the land is not registered)

17: Is the publication of the development proposal on a website sufficient to meet the requirements of the legislation in respect of public consultation?

In cases when the developer has made the relevant information available on a website, the location for public viewing can be a library or other public building where computer facilities are made available to the general public.

18: Will the local planning authority be required to host and display pre-application documents on behalf of developers undertaking public consultation as part of the pre-application consultation process?

No. It is expected that the developer will make the information available on a website.

Developers should note that local planning authorities are under no obligation to host or display information within their planning offices as part of this process. Any building that the public is freely able to access can be used. Public buildings such as libraries, community centres and leisure centres would be appropriate as well as buildings used by town and community councils. Offices or shops such as estate agencies or even supermarkets could be used. It will be for the developer/agent to obtain agreement from the property owner to display any hard copy materials.

Local planning authorities should not be expected to answer public enquiries at this pre-application stage. Developers should make it clear in all pre-application material that all queries should be directed to them, or their agents.

Design and Access Statements

19: Is there a requirement to produce an Access Statement where public access involved if there would be a Change of Use?

No.

20: Will TAN12 be updated, and if so when?

Yes, 16th March 2016.

Invalid Application Notices

21: What should happen if an application is found to be invalid at a later date after it has been registered?

The local planning authority would need to serve a notice that the application is invalid.

22: If an appeal is successful, is the start date taken to be the date of the initial submission or the appeal decision date?

The application would be valid from the date it was originally submitted. Therefore local planning authorities will need to issue notices in a timely manner so as to ensure that an application can be processed within the statutory deadline should any appeal be upheld. Authorities will need to take into account the applicants 14 day appeal window, the 21 day period Welsh Ministers have to determine an appeal and then the statutory consultation period for the application should the appeal be successful.

23: Can local planning authorities continue to use an informal approach to solving validation issues with applicants?

It is considered that minor issues such missing red lines, signatures or orientation arrows are better dealt with using informal communication means if they can be resolved in a few days. The Welsh Government expects the validation exercise to be undertaken within five working days after which a notice should have been served if the application is invalid.

Local planning authorities are encouraged to take a proportionate approach when applying the requirements of the standard application form and any local information requirements when deciding if an application (including any other consents, agreements and approvals) is valid.

Consultations in Respect of Certain Applications

24: Will local planning authorities be able to determine an application within a statutory target where they request a discretionary consultation under section 100A of the Town and Country Planning Act 1990?

Yes, if a statutory consultee fails to provide a substantive response within the agreed timeframe the LPA will be free to determine the application. The right of the applicant to appeal non-determination is preserved.

As a result of the new legislation, statutory consultees are now required to report to the Welsh Ministers on their performance in providing a substantive and timely response.

Post Submission Amendments

25: Does the fee apply to each individual amendment or can amendments be grouped together?

A £190 fee is payable for each group of amendments submitted at the same time. For example, if four amendments are submitted to the authority together on the same date, a single fee of £190 is payable, however, if amendments are submitted on four different occasions, a fee of £190 is payable per amendment.

26: Do the time and fee measures only apply where the applicant has requested amendments?

No, the measures apply regardless of whether the applicant, local planning authority or statutory consultee requested the amendment. It is for the applicant to decide whether to submit the amendment in the knowledge that this will trigger a requirement of a fee, and additional time.

This provision applies only where a minor material amendment is being made to the application, and will not be relevant where additional or further

information is requested in the form of surveys or reports to justify the design or location of the development.

27: What if an applicant refuses to submit an amendment requested by the local planning authority or statutory consultee?

The local planning authority should determine the application.

28: How will post submission amendments affect reporting on authority performance via the Development Management Quarterly Survey?

Where an amendment triggers a 4 week time extension, as long as the local planning authority determines the application within the 12 week timeframe (or where the 8 weeks has already expired, within 4 weeks of the amendment having been submitted), then the application can be recorded as being determined within the “agreed extension of time” category (Column H of the spreadsheet).

Decision Notices

29: How do we issue approvals of reserved matters applications?

The outline planning permission decision notice should be revised to indicate that reserved matters were approved, the reference number of that approval, the date of the decision, and who made the decision.

If conditions are being attached to the reserved matters approval, this should be made clear on the outline planning permission decision notice. Either the

conditions can be added to the outline decision notice (making clear they relate to specific reserved matters) or a cross-reference can be made to a separate reserved matters decision notice issued under the reserved matters application reference number.

30: How do we issue approvals of Section 73 applications?

A successful application under Section 73 of the Town and Country Planning Act 1990 results in the grant of a new planning permission. A developer is therefore able to decide whether to be bound by the original permission, or the one revised under Section 73. Therefore where an authority has determined that the matters being applied for under a Section 73 application are acceptable, they will issue a new decision notice with the reference number of the Section 73 application on it.

When issuing a Section 73 permission to remove or amend a condition on the original permission, that decision notice should state all the conditions (which they consider necessary)of the original permission, to avoid the possibility of the new permission being interpreted as having no conditions or only those that were amended. Where some conditions have already been discharged then the LPA will need to decide whether to copy across these conditions together with any reference number and date of approval, or to list any additional plans, drawings, or reports that were submitted to approve such conditions and require that development is built in accordance with these details.

31: How do we issue approvals for non-material amendment applications?

An application made under Section 96A of the Town and Country Planning Act 1990 (“the 1990 Act”) is not an application for planning permission as any approval given amends the original planning permission.

Section 71ZA of the 1990 Act specifies where the local planning authority must give a revised version of the decision notice. As a non-material amendment falls within Section 71ZA(4)(b) the authority should update the original decision notice with details of the non-material amendment(s) made. Depending on the nature of the amendment(s), this may include a variation to the specified plans or to conditions attached to the consent.

32: Is there a model decision notice available?

No. Due to the different administration software being used by local planning authorities it is necessary to retain flexibility in the layout of notices that will allow authorities to try out different approaches to select what works best for them.

Enforcement

33: Does the new Section 78(4AA) of the Town and Country Planning Act 1990 prevent a Section 78 appeal from being brought against the refusal of an application for planning permission if the appellant has appealed an enforcement notice served in respect of the same development on grounds other than ground (a) set out in Section 174?

Yes. On determination of an appeal against an enforcement notice, if planning permission was not granted under section 177, the appellant can not subsequently appeal any decision by the local planning authority to refuse retrospective planning permission for the beach of control.

It is anticipated that this situation will not occur that frequently because local planning authorities will now be able to use Section 70C to decline to determine a retrospective application for planning permission where an enforcement notice has been served.

34: How are Enforcement Warning Notices recorded?

Enforcement Warning Notices will be recorded on the local planning authorities register of enforcement and stop Notices, required by section 188 of the Town and Country Planning Act 1990 ("the 1990 Act"). Section 43 of the Planning (Wales) Act 2015 amends section 188 of the 1990 Act to include Enforcement Warning Notices.

35. What 'teeth' is it intended that an Enforcement Warning Notice will have in the planning enforcement process?

Where an Enforcement Warning Notice is issued, it constitutes the taking of enforcement action under Section 171A of the Town and Country Planning Act 1990. Therefore, a local planning authority can take further enforcement action in respect of the breach within four years of the initial notice being issued.

It is also a clear signal that, if a retrospective planning application is submitted, adequate control could be applied to the development to make it acceptable, without it; the development is unacceptable and further enforcement action will be taken.

36. Is the fee for a deemed application in an enforcement appeal payable to the Planning Inspectorate only?

Regulation 10 of the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015 requires fees in respect of deemed applications in enforcement appeals are paid to the local planning authority rather than, as previously the case, half to the local planning authority and half to the Welsh Ministers

37. Should an Enforcement Warning Notice be used as a precursor to an Enforcement Notice, or can the local planning authority move straight to issuing an Enforcement Notice where appropriate?

An Enforcement Warning Notice is only intended for use where a local planning authority considers that an unauthorised development could potentially be made acceptable with control. The authority must believe that there is reasonable prospect of the development being granted planning permission when issuing an Enforcement Warning Notice as oppose to an Enforcement Notice. In instances where the unauthorised development is unacceptable, and unlikely to receive planning permission were a retrospective application submitted, an Enforcement Notice must be issued.

Housing in Multiple Occupation

38: Do Houses in Multiple Occupation (HMOs) benefit from permitted development rights under Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995?

Whether or not a HMO falls within the new C4 use class does not affect whether it has permitted householder development rights. Where a HMO is a dwellinghouse but not a flat, for the purposes of the GPDO it will benefit from permitted changes under Part 1 of Schedule 2

However, if the dwellinghouse is extended using permitted development rights and is then used to accommodate more people, the use of the dwellinghouse may result in a material change of use that would require planning permission.

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