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—
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> (a) planning permission for the enlargement, improvement or other alteration of a dwellinghouse, or development within the curtilage of such a dwellinghouse, or
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> (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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