

Chapter 6: Formulation of the development plan

INTRODUCTION

- 6.1 The Town and Country Planning Act (“TCPA”) 1990 originally contained (in Part 2) all of the primary legislation relating to the formulation of the development plan. The PCPA 2004 then introduced new systems for England and Wales; Part 6 of that Act contained the development plan system for Wales. More recently it has been significantly amended by the Planning (Wales) Act (“P(W)A”) 2015.
- 6.2 The development plan includes national, regional and local policies and proposals for land use within the relevant area. In Wales, it consists of
- 1) the national development framework (the NDF) (the successor to the Wales Spatial Plan),¹
 - 2) strategic development plans (where they exist),² and
 - 3) local development plans.³
- 6.3 Each of these is used to help guide planning authorities and inspectors when making determinations of planning applications, and in a number of other situations (see Chapter 5).
- 6.4 Each of the components of the development plan listed above relates to a different tier of governance. The national development framework is a statement of the Welsh Government’s national policies as to the use and development of land, and developments of national significance. Strategic development plans contain the working out of those policies at a regional level, while local development plans refer to the policies and plans of local planning authorities.

INCLUSION IN THE CODE

We provisionally proposed that Part 6 of the PCPA 2004 (development plans), as amended by the PWA 2015, be restated in the Planning Code, subject to any necessary transitional arrangements relating to the Wales Spatial Plan and to the proposals in the remainder of the Chapter (Consultation Question 6-1).

- 6.5 In Chapter 6 of the Consultation Paper, we noted that changes had only recently been made by way of P(W)A 2015, some of which had not yet come into effect. We therefore suggested that it would be premature to make recommendations as to any

¹ Sections 60 to 60C of the PCPA 2004, amended by section 3 of the P(W)A 2015.

² Sections 60D to 60J of the PCPA 2004, amended by sections 4 to 6 of the P(W)A 2015.

³ Sections 61 to 72 of the PCPA 2004, amended by sections 11 to 15 of the P(W)A 2015.

further major changes; and that very little reform is required for this area of the law at this stage.⁴

- 6.6 We also noted that the final text of the NDF is likely to be published in 2020, and that no strategic development plans have yet been produced;⁵ and that the Welsh Government was undertaking a review of the law relating to regional governance. Each of those might lead to further pressure for legislative change, but to consider possible changes now would be inappropriate.⁶
- 6.7 Consultation questions therefore focused on the restatement of the current law, or made recommendations for amendments of a more detailed nature. And our principal proposal was thus that the statutory provisions relating to the formulation of the development plan should once again be integrated into the main planning Act.
- 6.8 All 42 consultees who provided a response to this consultation question were in principle supportive of this approach. Many urged us to review the expiry date for local development plans, with Sirius Planning recommending a requirement be inserted for local development plans to be reviewed every five years. Cardiff Council suggested that “the expiry date...should be deleted”. Huw Williams (Geldards LLP), on the other hand, suggested that an additional requirement that local plans are no more than 100 pages “would help focus policy planner’s minds”.
- 6.9 We understand the desire for a statutory requirement as to the duration of a plan. However, it is unlikely to be suitable for primary legislation. If such requirements are (at least on paper) too restrictive, they have to be accompanied by a mechanism to enable out-of-date plans to be “saved”; such procedures are used all too often, so that the requirement is ineffective. We therefore consider that strongly-worded guidance is more appropriate.
- 6.10 We note that the Welsh Government is currently undertaking a review of its local development plan manual. This document is likely to contain detailed guidance about the desirable duration and size of a local development plan, and it would therefore be more appropriate for these matters to be addressed directly in that context.
- 6.11 We therefore still consider that the new Bill should contain the provisions of the PCPA 2004 relating to the formulation of development plans, as amended or substituted by the P(W)A 2015, subject to appropriate formatting changes to bring them into line with the remainder of the Bill. This will be simply a restatement of the existing law, but their inclusion in the main Planning Bill will be a significant improvement.

⁴ Consultation Paper, para 6.6.

⁵ The areas for which strategic development plans were predicted included Cardiff, Swansea, and the A55 corridor in North Wales.

⁶ Consultation Paper, paras 6.12 to 6.26.

Recommendation 6-1.

We recommend that Part 6 of the PCPA 2004 (development plans), as amended by the P(W)A 2015, should be restated in the Bill, subject to any necessary amendments relating to the Wales Spatial Plan and to the proposals in the remainder of the Chapter.

DEVELOPMENT PLANS: OTHER PROVISIONS

We provisionally proposed that the provisions currently in the Planning and Energy Act 2008 should not be restated in the Bill; and that consideration should be given in due course to including equivalent provisions in guidance, and making appropriate amendments to the Building Regulations (Consultation Question 6-2).

- 6.12 The Planning and Energy Act 2008 provides planning authorities with powers to include “reasonable requirements” in their local development plans, in relation to the usage of local renewable energy or low carbon sources, and compliance with energy efficiency standards.⁷
- 6.13 In the Consultation Paper, we suggested that these provisions should be classified as guidance, as they encourage and permit the inclusion of such policies, rather than to impose any stricter obligations on planning authorities. Of the 33 consultees who submitted a response to this consultation question, 31 agreed with this suggestion.
- 6.14 Amongst those in agreement, there was a difference of view between those, like Carmarthenshire CC, who suggested that the provisions were of no remaining value whatsoever, and others, like Newport City Council, who suggested that they had some remaining value, but should be included in the form of guidance.
- 6.15 Carmarthenshire CC suggested that the duties within the Planning and Energy Act “no longer appear to be needed...in view of the evolution of the national planning policy context and building regulations in Wales”. The Law Society and Huw Williams agreed, noting that “such considerations now fall to be considered...in the discharge of the duties under the Well-Being [of Future Generations] Act 2015”.⁸
- 6.16 Several consultees, including the Planning Officers’ Society Wales (“POSW”), Monmouthshire CC and Pembrokeshire Coast National Park Authority suggested that “planning authorities [would] struggle...if expectations are not enshrined”. This suggests that some continuing value is obtained from the provisions. They also described the provisions as “potential requirements”, which needed to be debated on a national platform, using a national evidence base in order to progress them.
- 6.17 The content and scope of the Welsh Government’s guidance is beyond the scope of this project; but we consider that the matters that are the subject of the Planning and Energy Act 2008 would be more appropriately dealt with there, rather than in

⁷ Section 1, Planning and Energy Act 2008.

⁸ Sections 3(2)(a) and 4, Well-being of Future Generations (Wales) Act 2015.

legislation. As noted above, the WG is currently undertaking a review of the local development plan manual. We therefore remain of the view that the provisions of the 2008 Act should not be included in the Planning Bill, but should simply be repealed.

Recommendation 6-2.

We recommend that:

- (1) the provisions currently in the Planning and Energy Act 2008 should be repealed; and that**
- (2) consideration should be given in due course to:**
 - including equivalent provisions in guidance; and**
 - making appropriate amendments to the Building Regulations.**

Strategic environmental assessment

In the light of the existence of duties to carry out sustainability appraisals of the NDF and strategic and local development plans (currently under Part 6 of the PCPA 2004), we invited views as to whether there is a continuing requirement for a separate appraisal to be carried out of their environmental impact, as currently required by the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004; whether the 2004 Regulations are still required in relation to plans and programmes other than development plans; and whether the 2004 Regulations need amendment or simplification in any way (Consultation Question 6-3).

- 6.18 In our Consultation Paper, we highlighted the overlap between strategic environmental assessments (“SEA”) and sustainability appraisals (“SA”). We asked consultees about the value of having two separate procedures, and invited views as to the possibility of eliminating the SEA requirement, subject to ongoing negotiations regarding the United Kingdom’s impending departure from the European Union.
- 6.19 Seven of the 36 consultees responding to this question argued in favour of removing the requirement for SEAs, largely for the reasons we set out in the Consultation Paper.
- 6.20 However, nine of our 36 respondents submitted lengthy responses highlighting the continued value of SEAs. Among these, the Royal Society for the Protection of Birds (“RSPB”), Pembrokeshire Coast National Park Authority and National Parks Wales all argued that eliminating the procedure would create the “perception of weakening the primary or importance” of environmental considerations. They suggested that SAs, which involve multiple streams of considerations (social, economic and environmental), have less of a direct focus on environmental issues and concerns.

- 6.21 The RSPB also argued that SEAs are prepared for a wider range of plans and programmes than SAs,⁹ and therefore enable a more “joined up” approach. It argued that “it is essential that [the] broader application is retained so the environmental effects of different types of plans (including key Government plans) are fully considered”. And similar arguments were raised in the equivocal responses submitted by 20 other consultees.
- 6.22 Several consultees also noted that the description of the two procedures as being entirely separate do not reflect what occurs in practice. Several respondents, including the Planning Inspectorate, PEBA and Rhondda Cynon Taf CBC, suggested that the two assessments are “essentially undertaken under a combined process”. The same evidence base, information, consultees and report are used to satisfy the statutory requirements both in relation to the preparation of local development plans and the national development framework.
- 6.23 Further, it is likely that the SEA Regulations will be considered in more detail in due course, as part of the review of secondary legislation following the UK’s departure from the European Union.
- 6.24 In the light of these considerations, we make no recommendation to remove the requirement for SEAs in Wales; nor as to any changes to the SEA Regulations.
- 6.25 However, we note that the relevant EU Directive, from which the requirement for SEAs is derived, states that requirements should either be integrated into existing procedures...or incorporated in specifically established procedures...with a view to avoiding duplication”.¹⁰ Several consultees noted that they were unaware that they were able to submit integrated SEA/SA plans, or that they had found it difficult to undertake both plans concomitantly. We therefore encourage the WG to draft any future changes to the development plans manual in such a way as to minimise the regulatory burden of producing SAs.

Recommendation 6-3.

We recommend that the requirement in the PCPA 2004 as to the sustainability appraisal of development plans should be carried forward into the Bill, but that:

- (1) the guidance on the implementation of that requirement be drafted so as to minimise the burden in practice; and**
- (2) the position as to that requirement be reviewed in the light of any forthcoming review of the SEA Regulations.**

⁹ SEAs are required for all “plans and programmes prepared or adopted at national, local or regional levels” for projects prepared for “agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use”, while SAs are only required during the preparation of local development plans and the national development framework.

¹⁰ Directive 2001/42 on the assessment of the effects of certain plans and programmes on the environment (27 June 2001).

Inquiries

We provisionally proposed that section 114 of the PCPA 2004 (responsibility for procedure at local plan inquiries) should not be restated in the Planning Bill (Consultation Question 6-4).

- 6.26 Section 114 of the Planning and Compulsory Purchase Act 2004 sets out that examinations of local development plans are within the remit of the Council on Tribunals (later replaced by the Administrative Justice and Tribunals Council, itself abolished by the Public Bodies Act 2011). We noted that in practice, however, procedural rules for such examinations are made by the Welsh Ministers.¹¹
- 6.27 All of 24 consultees who responded on this point unanimously agreed with the suggestion that section 114 of the 2004 Act should not be restated in the Planning Bill, as being no longer of practical utility or effect.

Recommendation 6-4.

We recommend that section 114 of the PCPA 2004 (responsibility for procedure at local plan inquiries) should not be restated in the Planning Bill.

Planning blight

We provisionally proposed that Chapter 2 of Part 6 of the TCPA 1990 (blight notices) and Schedule 13 to the Act should be restated in the Planning Bill in broadly their present form (Consultation Question 6-5).

- 6.28 Blight notices arise in circumstances where a proposal for a public project or development – possibly not due to be implemented for some while – renders the land involved virtually unsaleable. One of the qualifying circumstances is where the land in question is indicated or allocated in a development plan. Chapter 2 of Part 6 of the Town and Country Planning Act 1990 permits landowners to compel local authorities to purchase land in the circumstances set out in detail in Schedule 13 to the Act.
- 6.29 We noted in the Consultation Paper that these provisions are only rarely used in practice; but suggested that they needed to remain on the statute book. The 25 consultees who responded to this consultation question unanimously agreed with the proposal to carry forward the law relating to blight notices in its present form.
- 6.30 The CLA, whilst agreeing with our proposal in principle, provided two additional suggestions:
- 1) that the scope of blight notices be extended to include vacant properties, or those used as office blocks, impacted by statutory schemes; and
 - 2) that the upper limit on the annual value be removed or increased.

¹¹ SI 2005/2839.

- 6.31 Blight notices were initially introduced by the Town and Country Planning Act 1959, with the intention of providing relief to “owner-occupiers, whether residential, agricultural or commercial, and in the case of commercial owner-occupiers only the ‘small men’”.¹² While owners of larger non-residential properties are equally affected by depreciation of land values arising from public projects, extending the scope of local authorities’ obligations could be prohibitively expensive and prevent public developments from being pursued.
- 6.32 The limit on the annual value of non-residential property in respect of which a blight notice can be served is set by order – currently the TCP (Blight Provisions) (Wales) Order 2011.¹³ That is updated from time to time.
- 6.33 We therefore consider that the proposal that was the subject of our consultation question should go forward as it stands, as a restatement of the current law.

Recommendation 6-5.

We recommend that Chapter 2 of Part 6 of the TCPA 1990 (blight notices) and Schedule 13 to the Act should be restated in the Planning Bill in broadly their present form.

¹² Davies, *‘Law of compulsory purchase and compensation’* (5th Ed.) (Butterworths, 1994).

¹³ SI 2011 No 435. This will no doubt be updated, in line with the corresponding Order applying in England (SI 2017 No 472).