

Appendix B. Recommendations

CHAPTER 5. INTRODUCTORY PROVISIONS

Recommendation 5-1

We recommend that a provision should be included in the Bill, to the effect that, in the exercise of any of their function under the Code, the planning authority, a strategic planning panel or, as the case may be, the Welsh Ministers:

- 1) must have regard to the development plan, so far as relevant to the exercise of that function; and
- 2) must exercise that function in accordance with the plan unless any other relevant considerations indicate otherwise;

but that this duty should not apply to the exercise of functions relating to the formulation of the development plan, the determination of applications for certificates of lawfulness or claims for compensation, and the making of subordinate legislation.

Recommendation 5-2

We recommend that:

- 1) the Bill should not include a definition of the term “relevant [or material] considerations” or a list of examples; and
- 2) the word “relevant” should be used in place of “material” in the provisions of the Bill corresponding to sections 62(4A), 70(2), 70A(1), 70A(6), 91(2), 92(6), 97, 102, 172 and 177(2) of the TCPA 1990.

Recommendation 5-3

We recommend that a provision should be included in the Bill, to the effect that, in the exercise of any of their functions under the Code, a planning authority, a strategic planning panel or, as the case may be, the Welsh Ministers must also have regard to any other relevant considerations.

Recommendation 5-4

We recommend that

- 1) a provision or provisions should be included in the Historic Environment Bill to the effect that a public body exercising any function in relation to any historic asset or its setting must have regard to the desirability of preserving or enhancing the asset, its setting, and any features of special interest that it possesses; and
- 2) a provision should be included in the Planning Bill to the effect that planning authorities, strategic planning panels and the Welsh Ministers, when exercising any function under the Planning Code and the Historic Environment Code must

have special regard to the those matters so far as relevant to the exercise of that function;

- 3) “public body” should include:
 - the Welsh Ministers;
 - any Minister of the Crown;
 - any public body (including a local authority, a national park authority, a strategic planning panel, and a joint committee);
 - any statutory undertaker (as defined in Part 11 of the TCPA 1990),
 - any person holding public office (as defined in section 85 of the Countryside and Rights of Way Act 2000);
- 4) “heritage assets” should include world heritage sites, scheduled monuments, listed buildings, conservation areas, registered parks and gardens, and such other categories of land as the Welsh Ministers may prescribe.

Recommendation 5-5

We recommend that a provision should be included in the Bill to the effect that:

- 1) the relevant considerations, to which a planning authority, a strategic planning panel or, as the case may be, the Welsh Ministers must have regard (in accordance with Recommendation 5-3) when exercising any function under the Code – other than those relating to the determination of applications for certificates, or claims for compensation – should include the likely effect, if any, of the exercise of that function on the use of the Welsh language, so far as that is relevant to the exercise of that function; but
- 2) the duty to consider the effect of the exercise of a function on the use of the Welsh language is not to affect:
 - whether regard is to be had to any other consideration when exercising that function or
 - the weight to be given to any such consideration in the exercise of that function.

Such a provision would replace section 70(2)(aa) of the TCPA 1990 and sections 60B(2), 60I(8), 62(6A) of the PCPA 2004.

Recommendation 5-6

We recommend that a provision should be included in the Bill, to the effect that:

- 1) the relevant considerations, to which a planning authority, a strategic planning panel or the Welsh Ministers must have regard (in accordance with Recommendation 5-4) when exercising any function under the Code – other than those relating to the determination of applications for certificates, or claims for

compensation – should include the policies of the Welsh Government relating to the use and development of land, so far as they are relevant to the exercise of that function; but

- 2) the duty to consider Welsh Government policies is not to affect:
 - whether regard is to be had to any other consideration when exercising that function, or
 - the weight to be given to any such consideration in the exercise of that function.

Recommendation 5-7

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

Recommendation 5-8

We recommend that a comprehensive series of reference to duties in non-planning legislation that may be relevant to the exercise of functions under the Code should be included at appropriate points within Ministerial guidance, and be made available on the Welsh Government and Planning Portal websites.

Recommendation 5-9

We recommend that section 53 of the Coal Industry Act 1994 (environmental duties in connection with planning) should be repealed.

Recommendation 5-10

In the light of the previous proposals in this Chapter, we do not recommend that the Bill should contain a provision explaining the purpose of the planning system in Wales.

Recommendation 5-11

We recommend that persons appointed by the Welsh Ministers for the purpose of determining appeals, conducting inquiries and other similar functions should be referred to in the Planning Bill as “inspectors”.

Recommendation 5-12

We recommend that the Bill should not include the provisions currently in Part 1 of the TCPA 1990 enabling enterprise zone authorities, urban development corporations and housing action trusts to be designated as local planning authorities.

Recommendation 5-13

We recommend that the term “planning authority” should be used in the Planning Code in place of the term “local planning authority” and “minerals planning authority” in existing legislation.

CHAPTER 6. FORMULATION OF THE DEVELOPMENT PLAN

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.

Recommendation 6-2

We recommend that:

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

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.

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.

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.

CHAPTER 7. THE NEED FOR A PLANNING APPLICATION

Recommendation 7-1

We recommend that the power of the Welsh Ministers to remove certain categories of demolition from the scope of development, currently in TCPA 1990, section 55(4)(g), should not be restated in the new Bill, but that the same result should be achieved by using the GPDO.

Recommendation 7-2

We recommend that the extent of minor building operations that are not excluded from the definition of development by TCPA 1990, s 55(2)(a), currently in the proviso to s 55(2)(a) and in s 55(2A) and (2B), should be clarified with a single provision to the effect that the carrying out of any works to increase the internal floor space of a building, whether underground or otherwise, is development.

Recommendation 7-3

We recommend that the Bill should not include a definition of “engineering operations”.

Recommendation 7-4

We recommend that the Planning Bill should provide for the approval of use classes regulations by the negative resolution procedure.

Recommendation 7-5

We recommend that section 55(3)(a) of the TCPA 1990 should be clarified by providing that the use as one or more dwellings of any building previously used as a different number of dwellings is a material change in the use of the building and of each part of it that is so used.

Recommendation 7-6

We recommend that section 55(2)(d) to (f) should be clarified by providing that the following changes of use should be taken for the purposes of this Act not to involve development of the land:

- 1) the change of use of land within the curtilage of a dwelling to use for any purpose incidental to the enjoyment of the dwelling as such;
- 2) the change of use of any land to use for the purposes of agriculture or forestry (including afforestation) and the change of use for any of those purposes of any building occupied together with land so used;
- 3) in the case of buildings or other land which are used for a use within any class specified in regulations made by the Welsh Ministers under this section, the change of use of the buildings or other land or, subject to the provisions of the regulations, of any part of the buildings or the other land, from that use to any other use within the same class.

Recommendation 7-7

We recommend that section 58 of the TCPA 1990 (ways in which planning permission may be granted) should not be restated in the new Planning Bill in its present form, but that a comprehensive list, regularly updated as required, should be included in guidance.

Recommendation 7-8

We recommend that section 61 of the TCPA 1990 (largely relating to the applicability of pre-1947 legislation) should not be restated in the new Planning Bill.

Recommendation 7-9

We recommend that sections 88 and 89 of the TCPA (planning permission granted by enterprise zone scheme) should not be restated in the new Planning Bill.

Recommendation 7-10

We recommend that sections 82 to 87 of and Schedule 7 to the TCPA (simplified planning zones) should not be restated in the new Planning Bill.

Recommendation 7-11

We recommend that the provisions relating to time limits and certificates of lawfulness, currently included in TCPA 1990, sections 171B and 191 to 196, should be included in the new Planning Bill alongside the other provisions relating to the need for planning permission. They should be drafted along the lines of TCPA 1990, section 64(1) (including a reference to the need for a planning application to be submitted, in the light of general and local development orders, but not to enterprise zone or simplified planning zone schemes).

Recommendation 7-12

We recommend that the Bill should not include a provision to the effect that an application for planning permission should be assumed to include an application for a CLOPUD or a CLEUD; but that Welsh Government guidance should remind planning authorities to consider, when validating applications, whether planning permission is actually required for the proposal in question and, if it is, whether it is granted by a development order.

CHAPTER 8. APPLICATIONS TO THE PLANNING AUTHORITY

Recommendation 8-1

We recommend that:

- 1) the provisions of the TCPA 1990 relating to outline planning permission should be retained in the Bill, but made clearer, and brought into the same part of the Act as those relating to detailed planning permission, currently in sections 62 and 70;
- 2) when the DMP(W)O is next updated, consideration should be given to whether additional categories of matters should be added to the list of those that are currently capable of being reserved for subsequent approval.

Recommendation 8-2

We recommend that section 327A of the TCPA 1990 – providing that planning authorities must not entertain applications that do not comply with procedural requirements – should not be restated in the Bill.

Recommendation 8-3

We recommend that section 65(5) of the TCPA 1990 (ownership certificates) should be restated in the Bill in its present form.

Recommendation 8-4

We recommend that the requirements of section 65(2) of the TCPA 1990 and secondary legislation made under that provision as to the notification of planning applications to agricultural tenants and the notification of minerals applications be redrafted to make clear the limited circumstances in which they apply.

Recommendation 8-5

We recommend that section 70A of the TCPA 1990 (power to decline similar applications) should be restated in the Bill in the form in which it applies in England following amendment by the PCPA 2004 and the Planning Act 2008, and as amended by the P(W)A 2015.

Recommendation 8-6

We recommend that section 78A of the TCPA 1990, enabling a period of dual jurisdiction between the planning authorities and the Planning Inspectorate, should be restated in the Bill, but not section 70B (which effectively prevents twin-tracking).

Recommendation 8-7

We recommend that the Bill should include a provision requiring each planning authority to prepare a statement specifying those categories of people and organisations within the community (including community and town councils) whom it will seek to involve in the determination of planning applications.

Recommendation 8-8

We recommend that no amendment should be made to the DMP(W)O in relation to representations relating to a planning application that are received after the end of the 21-day consultation period; any obligation to take into account later representations should remain, as at present, a matter of good practice.

Recommendation 8-9

We recommend that the term “condition” should be defined so as to include “limitation”.

Recommendation 8-10

We recommend that:

- 1) the Bill should contain a general power for planning authorities to impose such conditions [or limitations] as they see fit, provided that they are:
 - necessary to make the development acceptable in planning terms,
 - relevant to the development and to planning considerations generally,
 - sufficiently precise to be capable of being complied with and enforced, and
 - reasonable in all other respects;
- 2) applicants should be afforded a right to see draft conditions proposed by a planning authority determining an application, with a limited period in which to respond, with a duty on the authority to have regard to any comments made.

Recommendation 8-11

We recommend that, in addition to the general power to impose conditions referred to in Recommendation 8-10, the Bill should only include an explicit power to impose conditions of a particular type where statutory authority is required – for example, in order to enable such a condition to be enforced against a person other than the applicant; otherwise, advice as to conditions should be contained in guidance.

Recommendation 8-12

We recommend that the Bill should not include a provision enabling the imposition of conditions to the effect that:

- 1) the approved works are not to start until some specified event has occurred (a *Grampian* condition); or
- 2) the approved works are not to be carried out until:
 - a contract for some other development has been made; and
 - planning permission has been granted for the development for which the contract provides,

but that Welsh Government guidance should include advice as to the circumstances in which such conditions would be appropriate.

Recommendation 8-13

We recommend that:

- 1) the Welsh Government should issue guidance discouraging the creation of any unnecessary burdens by the imposition of inappropriate conditions, and in particular by the drafting of conditions by reference to the commencement of development;
- 2) no legislative change should be made to enable pre-commencement conditions to be definitely categorised (as per *Hart Aggregates*);
- 3) where permission is granted subject to one or more conditions requiring that the development in question may not be commenced until certain matters have been resolved, an applicant should be able to apply for a certificate stating that all of those conditions have been complied with; and
- 4) where development has commenced in breach of a condition precedent, and is as a result deemed to be immune from enforcement action, the permission that would otherwise have authorised it is deemed to have been granted with the omission of the condition in question, such that the remaining conditions may subsist and be enforceable.

Recommendation 8-14

We recommend that a provision should be included in the Bill setting out that:

- 1) development authorised by permission granted in response to an application must be commenced by the date or dates specified in any relevant condition; and
- 2) in the absence of any such condition the development must be commenced within five years of the grant of permission.

Recommendation 8-15

We recommend that the Bill should include a provision to the effect that planning authorities may impose conditions providing that the development or use of land under the control of the applicant (whether or not it is land for which the application has been made) should be regulated to ensure that the approved development is and remains acceptable in planning terms.

Recommendation 8-16

We recommend that the Bill, or regulations under the Bill, should enable the imposition of conditions where permission has been granted for a limited period, to the effect that:

- 1) at the end of the period the buildings or works authorised by the permission be removed, or the authorised use be discontinued, and
- 2) works be carried out at that time for the reinstatement of land.

Recommendation 8-17

We recommend that a provision equivalent to section 72(3) of the TCPA 1990 (as to time-limited conditions) should be retained in the Code, but drafted so as to make clear that it applies only in the case of:

- 1) permissions issued between 29 August 1960 and 31 December 1968; and
- 2) time-limited permissions issued under what is now section 72(1)(b).

Recommendation 8-18

We recommend that the Bill should enable the imposition of conditions to the effect that:

- 1) particular features of the building or land to which the permission relates be preserved, either as part of it or after severance from it;
- 2) any damage caused to the building or land by the authorised works be made good after those works are completed; or
- 3) all or part of the building or land be restored following the execution of the authorised works, with the use of original materials so far as practicable and with such alterations as may be specified.

Recommendation 8-19

We recommend that the Bill should clarify the existing law and procedures as to the approval of details required by a condition of a planning permission, whether imposed at the request of an applicant (in relation to matters not sufficiently particularised in the application) or instigated by the authority itself.

Recommendation 8-20

We recommend that a provision should be included within the DMP(W)O enabling a planning authority to decline to determine an application for the approval of a reserved matter or an approval required by a condition unless further details are supplied, by a procedure analogous to that in article 3(2) of the DMP(W)O 2012.

Recommendation 8-21

We recommend that the Bill should clarify the existing law and procedures as to the approval of details required:

- 1) by a condition of a permission granted by a development order; or
- 2) by a planning authority following a notification of proposed works under a development order.

Recommendation 8-22

We recommend that no change should be made to the law regarding the time limits within which authorities should respond to notification of development permitted by certain Parts of the GPDO (for example, those relating to buildings for agriculture and forestry).

Recommendation 8-23

We recommend that section 73 of the TCPA 1990, governing the procedures for seeking amendments to conditions attached to a planning permission, should be restated in the Bill in an amended form so as to allow the making of an application for any amendment to a permission, including but not limited to a change of conditions, provided that:

- 1) in considering such an application, the planning authority should be under a duty to consider only the part of the planning permission to which the variation application relates;
- 2) if it decides that the proposed amendment is sufficiently minor that it could have been dealt with by an application under the provision restating section 96A (non-material minor amendments), the authority can treat the application as if it had been made under that provision; and
- 3) if it decides that the proposed amendment should be the subject of a new application, it should notify the applicant as soon as possible.

Recommendation 8-24

We recommend that the Bill should make it clear that the scope of the provision restating section 96A (approval of minor amendments) includes the making of non-material minor amendments to the details of a development approved in response to a condition of a permission.

Recommendation 8-25

We recommend that there be available an expedited procedure for the determination of an application to vary a permission – under the provisions restating either section 96A or section 73 – where the implementation of the permitted development is imminent or under way, limited to cases that have not attracted representations in relation to the part of the development now sought to be varied.

Recommendation 8-26

We recommend that the Bill should include a provision that empowers Welsh Ministers to:

- 1) make regulations requiring applications in a particular category to be notified to them, and
- 2) make a direction requiring a particular application to be so notified, so that they may decide whether to call it in for their decision.

Recommendation 8-27

We recommend that, where the Welsh Ministers decide to call in an application for planning permission, they (rather than the planning authority) should be under a duty to notify the applicant.

Recommendation 8-28

We recommend that the following provisions currently in the TCPA 1990 should not be restated in the Bill, but that equivalent provisions should be included in secondary legislation if considered necessary:

- 1) section 71(3) (consultation as to caravan sites); and
- 2) section 71ZB (notification of development before starting, and display of permission whilst it is proceeding)

and that such secondary legislation takes account of the special features of development in particular categories, including in particular minerals.

Recommendation 8-29

We recommend that the following provisions currently in the TCPA 1990, which appear to be redundant (at least in relation to Wales), should not be restated in the Bill:

- 1) section 56(1) (the initiation of development);
- 2) in section 70(3), the reference to the Health Services Act 1976 (applications for private hospitals);
- 3) section 74(1)(b) (to make provision for the grant of permission for proposals not in accordance with the development plan);
- 4) section 74(1A) (planning applications being handled by different types of planning authority);
- 5) section 76 (duty to draw attention to certain provisions for the benefit of disabled people); and
- 6) section 332 (power of Welsh Ministers to direct that planning applications should also be treated as applications under other legislation).

Recommendation 8-30

We recommend that the power to determine an application for planning permission, currently in section 70(1) of the TCPA 1990, should be clarified to make explicit the power of an authority to grant permission for all or part of the development that is the subject of the application.

Recommendation 8-31

We recommend that there should be a duty on planning authorities to provide a reason for a decision to grant planning permission in the face of a recommendation by officers to refuse permission.

Recommendation 8-32

We recommend that the provisions in the TCPA 1990 relating to the service of completion notices be restated in the Bill, amended so as to refer to a notice being “issued” rather than “served”.

CHAPTER 9. APPLICATIONS TO THE WELSH MINISTERS

Recommendation 9-1

We recommend that sections 62M to 62O of the TCPA 1990, enabling a planning application to be made directly to the Welsh Ministers in the area of an underperforming planning authority should be restated in the new Bill, subject to appropriate adjustments to reflect our recommendations in Chapters 7 and 8.

Recommendation 9-2

We recommend that the law relating to pre-application consultation and pre-application services in connection with developments of national significance should be reviewed and, where appropriate, clarified.

Recommendation 9-3

We recommend that the power to appoint assessors to assist inspectors to determine DNS applications that are the subject of inquiries or hearings should be extended to allow their appointment in connection with applications determined on the basis of written representations.

Recommendation 9-4

We recommend that sections 62D to 62L of the TCPA 1990 should be restated in the new Planning Bill, subject to appropriate adjustments to reflect our proposals in Chapters 7 and 8.

Recommendation 9-5

We recommend that section 101 of and Schedule 8 to the TCPA 1990 (planning inquiry commissions) should not be restated in the new Planning Bill.

CHAPTER 10. THE PROVISION OF INFRASTRUCTURE AND OTHER IMPROVEMENTS

Recommendation 10-1

We recommend that the statutory provisions relating to CIL, currently in Part 11 of the Planning Act 2008 as amended by the Localism Act 2011, should be incorporated into the Planning Bill, pending any more thoroughgoing review that may take place in due course.

Recommendation 10-2

Subject to the following recommendations in this Chapter, we recommend that provisions relating to planning obligations, currently in sections 106 to 106B of the TCPA 1990, should be incorporated into the Planning Bill, pending any more thoroughgoing review that may take place in due course.

Recommendation 10-3

We recommend that the rules as to the use of planning obligations, currently in regulation 122 of the CIL Regulations, should be included within the Planning Bill.

Recommendation 10-4

We recommend that any future review of the law relating to planning obligations should consider introducing a provision whereby a planning agreement (under what is now section 106 of the TCPA 1990) could in certain circumstances include provision that could be included in an agreement under section 278 of the Highways Act 1980.

Recommendation 10-5

We recommend that any future review of the law relating to planning obligations should consider bringing the breach of a planning obligation under section 106 of the TCPA 1990 within the definition of a breach of planning control.

Recommendation 10-6

We recommend that section 106(12) of the TCPA 1990, which empowers the Welsh Ministers to provide regulations whereby the breach of an obligation to pay a sum of money would result in the imposition of a charge on the land to facilitate recovery from subsequent owners, should not be restated in the Planning Bill.

Recommendation 10-7

We recommend that the use of standard clauses in planning obligations should be promoted in Welsh Government guidance.

Recommendation 10-8

We recommend that any future review of the law relating to planning obligations should consider introducing a procedure to resolve disputes as to the terms of a section 106 agreement, possibly along the lines of Schedule 9A to the TCPA 1990.

Recommendation 10-9

We recommend that any future review of the law relating to planning obligations should consider the introduction of a procedure for the Welsh Ministers to impose restrictions or conditions on the enforceability of planning obligations as they relate to particular categories of benefits.

Recommendation 10-10

We recommend that a planning authority should be given power, when granting planning permission for the development of its own land, to pass at the same time a resolution setting out the terms of an obligation that will be deemed to have been entered into by any third party acquiring the land within a specified period.

Recommendation 10-11

We recommend that a person other than the owner of land (including but not limited to a person considering entering into a contract for the purchase of it) should be able to enter into a planning obligation relating to the land, which would take effect if and when a relevant interest is actually acquired by that person. Any permission linked to such a provisional obligation should be subject to a condition that, in the event that the land passes into the hands of a third party, the permitted development is not to be started until an agreement in the same or substantially the same terms has been concluded with the authority.

CHAPTER 11. APPEALS AND OTHER SUPPLEMENTARY PROVISIONS

Recommendation 11-1

We recommend that section 79(1) of the TCPA 1990 should be incorporated in the Planning Bill broadly without amendment.

Recommendation 11-2

We recommend that the Bill should clarify that all appeals (including those relating to development proposals by statutory undertakers) are to be determined by inspectors, except for:

- 1) those in categories that have been prescribed for determination by Welsh Ministers; and
- 2) those that have been recovered by Welsh Ministers (in case-specific directions) for their determination.

Recommendation 11-3

We recommend that the power to appoint assessors to assist inspectors to determine appeals and other proceedings that are the subject of inquiries or hearings:

- 1) should be widened so as to be exercisable by inspectors as well as by the Welsh Ministers; and
- 2) should be extended to allow the use of assessors in connection with such proceedings determined on the basis of written representations.

Recommendation 11-4

Subject to our recommendations in Chapter 13 relating to listed buildings and conservation areas, we recommend that the changes proposed in recommendations 11-1 to 11-3 should apply equally to:

- 1) appeals against enforcement notices;
- 2) appeals relating to decisions relating to applications for listed building consent or conservation area consent, express consent for the display of advertisements, and consent for the carrying out of works to protected trees; and
- 3) appeals against listed building and conservation area enforcement notices, advertisements discontinuance notices, tree replacement notices, and notices relating to unsightly land.

Recommendation 11-5

We recommend that the Bill should provide that, in a case where there has been an appeal to the Welsh Ministers, the period within which a purchase notice can be served runs from the date of the decision of the Welsh Ministers on the appeal.

Recommendation 11-6

We recommend that the Bill should clarify that a purchase notice may not be amended, but that a second or subsequent notice served in relation to a single decision should be deemed to supersede any earlier such notice.

Recommendation 11-7

We recommend that the powers currently in section 247, 248, 253 to 257 of the TCPA 1990 (relating to highways affected by development) should be restated in the Planning Bill, but those in section 116, 118 and 119 of the Highways Act 1980 should not.

Recommendation 11-8

We recommend that sections 249 and 250 of the TCPA 1990 (relating to orders extinguishing the right to use vehicles on a highway, in conjunction with a proposal for the improvement of the amenity of an area) should not be restated in the Bill, in view of the parallel provisions in section 1 of the Road Traffic Regulation Act 1984.

Recommendation 11-9

We recommend that decisions relating to orders under section 252 and Schedule 14 of the TCPA 1990 should generally be made by inspectors rather than by the Welsh Ministers, subject to a power for them to make a direction to recover a particular case for their decision.

CHAPTER 12. UNAUTHORISED DEVELOPMENT

Recommendation 12-1

We recommend that the provisions currently in sections 171C and 330 of the TCPA 1990 should be combined into a single power for the Welsh Ministers or a planning authority to serve a “planning information order” (or “planning information notice”) on anyone who owns or occupies the land, anyone who has an interest in it, any person who is carrying out operations or other activities on the land or is using it for any purpose, and anyone who is authorised to manage it. The power should be exercisable where the Welsh Ministers or the authority believe that there may have been a breach of planning control, or where the information is needed to make any order, issue, or to serve a notice or any other document under the Act.

The order-making power should include the features mentioned in section 171C(3) (information required to be supplied) and 171C(4) (offer of a meeting to discuss); and where it is believed that there may have been a breach of control, the order must contain the information specified in section 171C(5) (as to possible enforcement action).

Recommendation 12-2

We recommend that the restriction on entering property for enforcement purposes only after giving 24 hours’ notice, currently in section 196A(4) of the TCPA 1990, should be clarified to ensure that it applies in relation to any property in use as a dwelling.

Recommendation 12-3

We recommend that:

- 1) Welsh Government guidance should draw clear attention to the common law principle highlighted in *Welwyn Hatfield Council v Secretary of State* [2010] UKSC 15, [2011] 2 AC 304; and
- 2) the “planning enforcement order” procedure, introduced in England by the Localism Act 2011, should not be included in the Bill.

Recommendation 12-4

We recommend that section 173ZA of the TCPA 1990 should be restated in an amended form such that, where an enforcement warning notice has been issued, the period for taking other enforcement action starts on the date on which the notice was served, but that the time limit cannot be extended further by the issuing of additional enforcement warning notices in relation to the same matter.

Recommendation 12-5

We recommend that the restriction on issuing a temporary stop notice, currently in section 171F(1)(a) of the TCPA 1990, should be clarified to ensure that it applies in relation to any dwelling.

Recommendation 12-6

We recommend that:

- 1) a temporary stop notice (TSN) should come into effect at the time and date stated in it, which will normally be when a notice is displayed on the land in question;
- 2) it should then remain in effect for 28 full days (starting at the beginning of the day after the day on which it is displayed);
- 3) the notice to be displayed on the land, as near as possible to the place at which the activity to which it relates is occurring, should:
 - state that a TSN has been issued;
 - summarise the effect of the TSN; and
 - state the address (and, if applicable, the website) at which a full copy of the TSN can be inspected;
- 4) the authority should have a power (but not a duty) to serve copies of the TSN on the owner and occupier of the land and on others as may seem appropriate; and
- 5) Welsh Government guidance should emphasise that, following the display of the notice, copies of the TSN should be served within a reasonable time on the owner and occupier of the land, if either are known to the planning authority.

Recommendation 12-7

We recommend that:

- 1) it should be an offence to contravene a temporary stop notice that has come into effect (rather than, as at present, one that has been served on the accused or displayed on the site);
- 2) it should be a defence to a charge of such an offence to prove that the accused
 - had not been served with a copy of the notice; and
 - did not know, and could not reasonably have been expected to know, of the existence of the notice.

Recommendation 12-8

We recommend that the provisions relating to breach of condition notices, currently in section 187A of the TCPA 1990, should be restated in an amended form such that a notice is to be “issued”, to come into force on the date stated in it, with copies being served on those apparently responsible for the breach (rather than, as present, a separate notice being served on each such person, coming into force on a date specified by reference to the date of service).

Recommendation 12-9

We recommend that section 173(4) of the TCPA 1990 should be restated in an amended form to make it clear that a local authority can require steps to be taken in respect of both of the specified purposes, as set out in *Oxfordshire CC v Wyatt Bros (Oxford) Ltd* [2005] EWHC 2402 (QB).

Recommendation 12-10

We recommend that there should be an explicit provision in the Bill, incorporating the principle in *Murfitt v Secretary of State* (1980) 40 P&CR 254 and *Bowring v Secretary of State* [2013] JPL 1417 to the effect that, where an enforcement notice is served alleging the making of a material change of use of land, the notice may require that certain works be removed in addition to the cessation of the unauthorised use, provided that those works were carried out at or after the time of the making of the material change of use and were integral to the making of the change or the subsequent operation of the new use.

Recommendation 12-11

We recommend that Welsh Government guidance should include guidance as to the implications of the principle in *Mansi v Elstree RDC* (1964) 16 P&CR 153 to the effect that an enforcement notice does not restrict the rights of any person to carry out without a planning application any development that could have been carried out lawfully immediately prior to the issue of the notice.

Recommendation 12-12

We recommend that that the Bill:

- 1) should omit section 177(5) and (6) of the TCPA 1990, relating to the application for planning permission deemed to have been made by an appellant relying on ground (a) in section 174(2) (permission ought to be granted for any matter stated in the enforcement notice as constituting a breach of control); and
- 2) should provide instead that the Welsh Ministers, on determining an appeal under section 174, may do all or any of the following:
 - in relation to any of the matters that form the basis of an appeal under ground (a), grant planning permission or discharge any condition or limitation that is alleged to have been breached;
 - in relation to any of the matters that form the basis of an appeal under grounds (c) or (d), issue a certificate of lawfulness, insofar as they determine that those matters were in fact lawful.

Recommendation 12-13

We recommend that ground (e) on which an appeal can be made against an enforcement notice (under section 174 of the TCPA 1990) should refer to copies of the notice not having been served as required by the provision restating section 172(2) (which refers to service on owners and occupiers etc) rather than as required by the provision restating section 172 as a whole (which also refers to time limits for service).

Recommendation 12-14

We recommend that section 174(4) of the TCPA 1990 (requirements as to the statement to be submitted with appeal against an enforcement notice) should be amended so that it does not duplicate the requirements of the relevant secondary legislation.

Recommendation 12-15

We recommend that there should be included in the part of the Bill dealing with enforcement a provision equivalent to section 285(1) and (2) of the TCPA 1990, to the effect that an enforcement notice is not to be challenged, other than by way of an appeal to the Welsh Ministers, on any of the grounds on which such an appeal could have been brought.

Recommendation 12-16

We recommend that the restriction on issuing a stop notice, currently in section 183(4) of the TCPA 1990, should be clarified to ensure that it applies in relation to any building in use as a dwelling.

Recommendation 12-17

We recommend that the provisions relating to stop notices, currently in section 184 of the TCPA 1990, should be restated in an amended form such that a notice is to be “issued”, to come into force on the date stated in it, with copies being served on those apparently responsible for the breach of control (rather than, as present, a separate notice being served on each such person, coming into force on a date specified by reference to the date of service); and where a notice is to be displayed on the land, it is to be as close as reasonably possible to the location at which the offending activity is occurring.

Recommendation 12-18

We recommend that:

- 1) it should be an offence to contravene a stop notice that has come into effect; and
- 2) it should be a defence to a charge of such an offence to prove that the accused
 - had not been served with a copy of the stop notice, and
 - did not know, and could not reasonably have been expected to know, of the existence of the notice.

Recommendation 12-19

We recommend that:

- 1) where a planning authority decides to withdraw a stop notice, the notice should cease to have effect immediately; and
- 2) such a decision should be publicised as soon as possible after it has been made:
 - by the notification of all those who were notified of the original notice, and
 - where the original notice was publicised by a site notice, by the display of another such notice, at the same location.

Recommendation 12-20

We recommend that where an enforcement notice is served by the Welsh Ministers under the provision restating section 182 of the TCPA 1990, and a stop notice is served by them under the provision restating section 185, and the stop notice is subsequently quashed, any liability to compensation arising under section 186 should be payable by them and not by the planning authority.

Recommendation 12-21

We recommend that:

- 1) the offences under section 179(2) (breach of an enforcement notice) and section 179(5) (subsequent resumption of prohibited activity) should each be reframed so as to provide that a person commits an offence if the person is in breach of an enforcement notice, and
 - the notice was at the time of the breach contained in the relevant register; or
 - the person was aware of the notice, through service of a copy or otherwise.
- 2) the relevant regulations should include, alongside the requirement to include an enforcement notice in the register, a further requirement to record the date on which it was first included.
- 3) Welsh Government guidance should advise users of the planning system to consult the enforcement register before undertaking activities on land that may be subject to planning control, and provide clear directions on how to do this.

Recommendation 12-22

We recommend that section 172A of the TCPA 1990 (assurances as to non-prosecution for breach of an enforcement notice) should be amended so as to enable an authority:

- 1) to give such an assurance simply by giving written notice, as defined in section 329 of the TCPA 1990, to the relevant person rather than necessarily doing so by a hardcopy letter; and
- 2) to give in response to a request from to a person (B), who acquires an interest in land following the issue of an enforcement notice relating to the land, an assurance explaining that, once the enforcement notice had been issued, the authority was required to serve a copy of it on a person (A) from whom B had acquired the interest in the land.

Recommendation 12-23

We recommend that section 180(1) of the TCPA 1990 (relating to the effect on an enforcement notice of a subsequent grant of planning permission) should be restated in an amended form so as to refer:

- 1) to the grant of planning permission following the issue of an enforcement notice or a breach of condition notice, rather than following the service of a copy of the notice; and
- 2) to the grant of planning permission generally for development already carried out; and
- 3) to the grant of planning permission for other development, once that permission has been implemented.

Recommendation 12-24

We recommend that offences of supplying false information in response to a request from a planning authority, currently under sections 65(6), 171D(5), 194(1) and 330(5) of the TCPA 1990, should – in the case offences committed on or after the date of the enactment of the Bill – all be triable either summarily (in the magistrates' court) or on indictment (in the Crown Court), and that the maximum penalty in each case should be in either case a fine of any amount.

Recommendation 12-25

We recommend that the offences of

- 1) reinstating or restoring buildings or works following compliance with an enforcement notice (under the provision restating section 181(5) of the TCPA 1990); and
- 2) failing to comply with a breach of condition notice (under the provision restating section 187A(9))

should, in the case offences committed on or after the date of the enactment of the Bill, both be triable either summarily or on indictment, and punishable in either case by a fine of any amount, to bring them into line with the penalties for other breaches of planning enforcement notices under the TCPA 1990.

Recommendation 12-26

We recommend that sections 57(7), 302 of and Schedules 4 and 15 to the TCPA 1990, relating to historic breaches of planning control, should not be restated in the Code.

CHAPTER 13. WORKS AFFECTING LISTED BUILDINGS AND CONSERVATION AREAS

Recommendation 13-1A

We recommend that the control of works to listed buildings should be simplified by:

- 1) amending the definition of “development”, for which planning permission is required, to include the carrying out of works for the alteration or extension of a listed building in any manner likely to affect its character as a building of special architectural or historic interest;
- 2) providing that planning permission is not required for works to
 - the interior of an ecclesiastical building in ecclesiastical use by one of the exempt denominations; or
 - a scheduled monument.
- 3) ensuring that the carrying out without planning permission of works for the demolition of a listed building, or for its alteration or extension in any manner likely to affect its character as a building of special architectural or historic interest, remains a criminal offence;
- 4) removing the requirement for listed building consent to be obtained for works to a listed building; and
- 5) implementing the additional measures outlined in Recommendations 13-2, 13-3 and 13-5 to 13-8, to ensure that the existing level of protection for listed buildings is maintained.

Recommendation 13-1B

We recommend that the control of demolition in conservation areas should be simplified by:

- 1) removing the requirement for conservation area consent to be obtained for the demolition of an unlisted building in a conservation area;
- 2) ensuring that the carrying out without planning permission of works for the demolition of an unlisted building in a conservation area, remains a criminal offence; and
- 3) implementing the additional measures outlined in Recommendations 13-6 to 13-8, to ensure that the existing level of protection for unlisted buildings in a conservation area would be maintained.

Recommendation 13-2

We recommend that the power to make general and local development orders should be limited so that they may not grant permission for development consisting of

- 1) the demolition, alteration, or extension of a listed building;

- 2) the carrying out of any operational development in the curtilage of a listed building; or
- 3) the construction, rebuilding or alteration a gate, fence or wall bounding the curtilage of a listed building.

Recommendation 13-3

We recommend that heritage partnership agreements should be capable of granting planning permission for development in such categories as may be prescribed.

Recommendation 13-4

Regardless of whether planning permission is unified with listed building consent and conservation area consent, we recommend that the provisions (currently in sections 191 and 192 of the TCPA 1990) relating to certificates of lawfulness should be extended to include works that currently require only such consent.

Recommendation 13-5

We recommend that the Bill should include provisions to the effect that:

- 1) any appeal relating to works to a listed building may contain as a ground of appeal that the building in question is not of special architectural or historic interest, and ought to be removed from the list of such buildings maintained by the Welsh Ministers;
- 2) where a building is subject to a building preservation notice (provisional listing), the notice of appeal may contain a claim that the building should not be included in the list;
- 3) the Welsh Ministers, in determining an appeal relating to a listed building, may exercise their powers to remove the building from the list; and
- 4) in determining an appeal relating to a building subject to a building preservation order, they may state that they do not intend to include it in the list.

Recommendation 13-6

We recommend that the Bill should include provisions to the effect that:

- 1) it is an offence to carry out without planning permission works for
 - the demolition of a listed building;
 - for the alteration or extension of a listed building in any manner likely to affect its character as a building of special architectural or historic interest; or
 - the demolition of an unlisted building in a conservation area;

- 2) such an offence is punishable:
 - on summary conviction by imprisonment for a term not exceeding six months or a fine or both; or
 - on conviction on indictment by imprisonment for a term not exceeding two years or a fine or both; and
- 3) the defence to a charge of such an offence is the same as currently applies in relation to a charge of carrying out works without listed building consent.

Recommendation 13-7

We recommend that the Bill should include provisions to the effect that the categories of development that are subject to time limits as to the period within which enforcement action may be taken exclude works for:

- 1) the demolition of a listed building;
- 2) for the alteration or extension of a listed building in any manner likely to affect its character as a building of special architectural or historic interest; and
- 3) the demolition of an unlisted building in a conservation area.

Recommendation 13-8

We recommend that the Bill should include provisions to the effect that:

- 1) where an enforcement notice is issued in relation to the carrying out of works for
 - the demolition of a listed building; or
 - for the alteration or extension of a listed building in any manner likely to affect its character as a building of special architectural or historic interest;

the grounds on which an appeal may be made against such a notice include grounds equivalent to grounds (a), (d), (i), (j) and (k) as set out in Section 39 of the Listed Buildings Act 1990;

- 2) where an enforcement notice is issued in relation to the carrying out of works for the demolition of an unlisted building in a conservation area, the grounds on which an appeal may be made against such a notice include grounds equivalent to grounds (a), (d), (j) and (k) as set out in Section 39 of that Act, as amended by SI 2012/793;
- 3) the Welsh Ministers, in determining an enforcement appeal relating to a listed building, may exercise their powers to remove the building from the list.
- 4) in determining an enforcement appeal relating to a building subject to a building preservation order, they may state that they do not intend to include it in the list.

Recommendation 13-9

We recommend that scheduled monument consent should not be replaced by planning permission.

Recommendation 13-10

We recommend that the definition of “listed building” should be clarified by making plain that it includes pre-1948 objects and structures if they were within the curtilage of the building in the list as it was

- 1) in the case of a building listed prior to 1 January 1969, at that date; or
- 2) in any other case, at the date on which it was first included in the list.

Recommendation 13-11

We recommend that the Ancient Monuments and Archaeological Areas Act 1979 should be amended so that Part 2 (areas of archaeological interest) does not apply in Wales.

CHAPTER 14. OUTDOOR ADVERTISING

Recommendation 14-1

We recommend that the definition of “advertisement” in the TCPA 1990 should be clarified, and included in the Bill alongside other provisions relating to advertising.

Recommendation 14-2

We recommend that the reference to the display of advertisements currently included in the statutory definition of “advertisement” in the TCPA 1990 should be omitted.

Recommendation 14-3

We recommend that the word “site” should be used in place of “land”:

- 1) in the provisions of the Bill relating to the control of advertisements; and
- 2) in the Regulations when they are next updated; and

that the Bill and the Regulations, where appropriate, should be drafted by reference to advertisements being displayed “on or at” land.

Recommendation 14-4

We recommend that a definition of “person displaying an advertisement” in the TCPA 1990 should be included in the Bill alongside other provisions relating to advertising, to include:

- 1) the owner and occupier of the land on or at which the advertisement is displayed;
- 2) any person to whose goods, trade, business or other concerns publicity is given by the advertisement; and
- 3) the person who undertakes or maintains the display of the advertisement.

Recommendation 14-5

We recommend that a discontinuance notice under the advertisements regulations:

- 1) should contain a notice as to the rights of any recipient to appeal against it;
- 2) should come into force on a particular date specified in it (rather than at the end of a specified period from the date of service); and
- 3) should be “issued” (rather than “served”, as at present), with a copy served on all those deemed to be displaying the advertisement in question.

Recommendation 14-6

We recommend that section 220(2), (2A) and (3) should be replaced with a provision enabling regulations to be made providing for:

- 1) the dimensions, appearance and position of advertisements that may be displayed, and the manner in which they are to be affixed to the land;

- 2) the prohibition of advertisements being displayed or land being used for the display of advertisements without either deemed or express consent;
- 3) the discontinuance of deemed consent;
- 4) the making and determination of applications for express consent, and the revocation or modification of consent;
- 5) appeals against discontinuance orders and decisions on applications for express consent;
- 6) areas of special control over advertising; and
- 7) consequential and supplementary provisions.

Recommendation 14-7

We recommend that deemed consent under the advertisements regulations should be granted for a display of advertisements that has the benefit of planning permission.

Recommendation 14-8

We recommend that the display of advertisements on stationary vehicles and trailers should be brought within control by the Regulations being amended so as to provide that:

- 1) no consent (express or deemed) is required for the display of an advertisement
 - inside a vehicle, or
 - on the outside of a vehicle on a public highway, other than one remaining stationary for more than 21 days;
- 2) deemed consent is granted for the display of an advertisement on the outside of a vehicle not on a highway, provided that the vehicle is normally employed as a moving vehicle and is not used principally for the display of advertisements.

Recommendation 14-9

We recommend that:

- 1) a provision should be introduced in the advertisements regulations to enable a certificate of lawfulness to be issued in relation to a display of advertisements; and
- 2) an appropriate enabling provision should be included in the Bill, in line with the approach indicated in Recommendation 14-6.

Recommendation 14-10

We recommend that Class 13 in Schedule 3 to the 1992 Regulations should be amended to provide that deemed consent is granted for the display of advertisements on or at land that has been used for that purpose for ten years.

Recommendation 14-11

We recommend that the power (currently in section 224(1) (2) of the TCPA 1990) for the Welsh Ministers to include in Regulations provisions similar to those governing enforcement notices should not be restated in the Bill.

Recommendation 14-12

We recommend that the powers currently in section 43 of the Dyfed Act 1987 (removal of other unauthorised advertisements) should be replaced with a new procedure, applying to all areas in Wales, allowing the removal of any unauthorised advertisement other than a poster or placard, subject to:

- 1) no advertisement being removed or obliterated without 21 days' notice having first been given to those responsible;
- 2) a right of appeal being available to recipients of such a notice and to owners and occupiers of the site of the offending advertisement – on grounds relating to the lawfulness of the advertisement, the service of the notice, and the time for its removal;
- 3) compensation being payable by the planning authority for damage caused to land or chattels by the removal of the advertisement (other than damage to the advertisement itself); and
- 4) protection for statutory undertakers to be afforded in similar terms to section 225K of the TCPA 1990).

Recommendation 14-13

We recommend that the maximum sentence on conviction for unauthorised advertising displayed on or after the date of the enactment of the Bill should be increased to an unlimited fine.

Recommendation 14-14

We recommend that it be made clear on the face of the Bill, rather than (as at present) in the Regulations, that all statutory powers relating to advertising should be exercised in the interests of amenity and public safety.

Recommendation 14-15

We recommend that the provisions in section 220 of the TCPA 1990 (relating to advisory committees and tribunals) should not be included in the Bill.

Recommendation 14-16

We recommend that the provisions in section 221(1)(b), (2) of the TCPA 1990 relating to experimental areas should not be included in the Bill.

Recommendation 14-17

We recommend that section 223 of the TCPA 1990, providing for the payment of compensation in respect of the costs of removing advertisements on sites that were in use for advertising in 1948, should not be included in the Bill.

CHAPTER 15. PROTECTED TREES AND WOODLANDS

Recommendation 15-1

We recommend that the Planning Bill should not attempt to define a “tree” or a “woodland”, in the context of tree preservation orders.

Recommendation 15-2

We recommend that the Bill should provide

- 1) that functions under the Code relating to the protection of trees must be exercised in the interests of amenity; and
- 2) that amenity for that purpose includes appearance, age, rarity, biodiversity and historic, scientific and recreational value; and
- 3) that tree preservation regulations may prescribe matters considered to be relevant to amenity.

Recommendation 15-3

We recommend that the Bill should provide that:

- 1) tree preservation orders can in future be made to protect individual trees, groups of trees, or areas of trees;
- 2) that a group or area order protects only those trees that were in existence at the time the order was made;
- 3) that a new area order provides protection only until it is confirmed, at which time it must be converted into an order specifying the trees to be protected either individually or as a group;
- 4) that woodland preservation orders can in future be made to protect woodlands; and
- 5) that a woodland preservation order can protect all trees, of whatever age and species, within the specified woodland, whether or not they were in existence at the date of the order;

and that the new regulations should be drafted accordingly.

Recommendation 15-4

We recommend that new trees regulations should require that a tree preservation order is to be notified to the owners and occupiers of any parcel of land on, in or above which any part of the protected trees is located.

Recommendation 15-5

We recommend that works to trees should not be brought within the scope of development requiring planning permission.

Recommendation 15-6

We recommend that the exemption from the need for consent under a tree preservation order relating to works to “trees that are dying or dead or have become dangerous” (currently in section 198(6)(a) of the TCPA 1990) should be tightened up when the trees regulations are next updated. We recommend it should extend only to the cutting down, topping, lopping or uprooting of a tree, to the extent that such works are urgently necessary to remove an immediate risk of serious harm (or to such other extent as agreed in writing by the authority prior to the works being undertaken).

Recommendation 15-7

We recommend that the exemption from the need for consent under a tree preservation order relating to works that are “necessary to prevent or abate a nuisance” (currently in section 198(6)(b) of the TCPA 1990) should not be restated either in the Bill or in new trees regulations.

Recommendation 15-8

We recommend that, when the regulations are next updated, consideration should be given to introducing a new exemption to allow the carrying out without consent of works to a tree protected by a woodland preservation order smaller than a specified size, but only where carried out for the sole purpose of improving the growth of other trees.

Recommendation 15-9

We recommend that a provision should be introduced in the trees regulations (along with an appropriate enabling provision in the Bill) to enable a certificate of lawfulness to be issued in relation to proposed works to a tree or woodland.

Recommendation 15-10

We recommend that planning authorities should be required to acknowledge applications for consent under the trees regulations.

Recommendation 15-11

We provisionally propose that:

- 1) the requirement to plant a replacement tree following the felling of a dangerous tree or following unauthorised works should be limited to the planting of a tree of appropriate species at or near the location of the previous tree (rather than, as at present, in precisely the same place); and
- 2) the requirement to plant trees to replace trees in a woodland that have been lost should be specified by reference to either the same number of trees or the same area of woodland.

Recommendation 15-12

We recommend that there should be introduced an explicit power enabling a planning authority to waive or relax a tree replacement notice.

Recommendation 15-13

We recommend that powers to enable a planning authority to recover any expenses it has incurred in making and enforcing a tree replacement notice should be introduced when the regulations are next updated.

Recommendation 15-14

We recommend that the scope of the matters prohibited by a tree preservation order should be extended to include causing harm to a tree:

- 1) intentionally; or
- 2) recklessly.

Recommendation 15-15

We recommend that the two offences currently in section 210 of the TCPA 1990, relating to works liable to lead to the loss of the tree (subsection (1)) and other works (subsection (4)) should be replaced with a single offence, triable either summarily or on indictment, of contravening tree preservation regulations, punishable on conviction with a fine of any amount.

Recommendation 15-16

We recommend that the offence under section 210 (contravening tree preservation regulations) and under regulations made pursuant to the provision restating section 202A (prohibiting works to a tree subject to a tree preservation order) should be framed so as to require the prosecution to prove that:

- 1) a copy of the order had been served in accordance with the relevant statutory requirements before the start of those works; or
- 2) a copy of the order was available for public inspection at the time of the works.

We also recommend that the regulations should include, alongside the requirement to make the order available for inspection, a further requirement to record on the order the date on which it was first thus made available.

Recommendation 15-17

We recommend that the provision restating section 211 of the TCPA 1990 should empower an authority notified of proposed works to a tree in a conservation area, to:

- 1) allow the works to proceed, with no conditions other than a two-year time limit;
- 2) allow the tree to be felled, subject to planting a replacement tree;
- 3) impose a tree preservation order, and to allow works to the tree other than felling, possibly subject to conditions; or
- 4) impose a tree preservation order, and to refuse consent for the works.

CHAPTER 16. IMPROVEMENT, REGENERATION AND RENEWAL.

Recommendation 16-1

We recommend that section 215 of the TCPA 1990 should be restated so as to make clear that a notice requiring land to be properly maintained can be served where the condition of the land:

- 1) is adversely affecting the amenity of part of the authority's area or the area of an adjoining authority;
- 2) does not result in the ordinary course of events from, the lawful carrying on of continuing operations on that land or a continuing use of that land that is lawful; and
- 3) is not the result of the unlawful deposit of controlled waste or extractive waste in contravention of section 33 of the Environmental Protection Act 1990.

Recommendation 16-2

We recommend that it should be possible to issue a notice (under what is now section 215 of the TCPA 1990) where the condition of the land in question results from the carrying on of operations or a use of the land that were lawful at the time, but are no longer lawful.

Recommendation 16-3

We recommend that a notice under the provision in the new Bill replacing section 215:

- 1) should come into force on a particular date specified in it (rather than at the end of a specified period from the date of service);
- 2) should be "issued" (rather than "served" as at present), with a copy served on all those responsible for the maintenance of the land in question; and
- 3) should contain a notice of the rights of any recipient to appeal against it.

Recommendation 16-4

We recommend that the Bill should make it clear that all appeals against section 217 notices are normally to be determined by inspectors, in line with Recommendation 11-2.

Recommendation 16-5

We recommend that the Bill should include powers, replacing those currently available under section 89(2) of the National Parks and Access to the Countryside Act 1949, to enable a planning authority, in relation to any land whose condition is affecting the amenity of its area or of any adjacent area (or is likely to affect it due to the collapse of the surface as the result of underground mining operations):

- 1) to issue a notice, and serve a copy of it on the owner and occupier of the land and to display an appropriate notice on the land, stating the authority's intention to carry out remedial works;
- 2) to carry out itself the works specified in the notice, either

- on terms agreed between it and the owner and occupier of the land (both as to the carrying out of the works themselves and as to the subsequent maintenance of the land); or
 - where no response is received to the notice;
- 3) to recover the cost of such works from the owner, or to make them a charge on the land; and
 - 4) to acquire the land for the purpose of carrying out such works, using compulsory powers or by agreement.

Recommendation 16-6

We recommend that the new Planning Code should include powers, equivalent to those currently available under section 89(1) of the 1949 Act, to enable a planning authority:

- 1) to issue a notice, and serve a copy of it on the owner and occupier of the land, stating the authority's intention to carry out landscaping works for the purpose of improving the land;
- 2) to carry out itself the works specified in the notice, either
 - on terms agreed between it and the owner and occupier of the land (both as to the carrying out of the works themselves and as to the subsequent maintenance of the land); or
 - where no response is received to the notice; and
- 3) to acquire the land for the purpose of carrying out such works by agreement, or using compulsory powers where the owner cannot be found after reasonable enquiries have been made.

Recommendation 16-7

We recommend that the Bill should contain powers for the Welsh Ministers to make regulations to facilitate the removal of graffiti and fly-posting,

- 1) by enabling planning authorities:
 - to deal with graffiti or fly-posting that is detrimental to amenity or offensive, by requiring the users or occupiers of the land affected to remove it;
 - to deal with persistent unauthorised advertising, by serving a notice on those responsible for surfaces persistently covered with fly-posting, requiring them to take preventive measures to minimise recurrence;
 - in either case, to take direct action where necessary, and recharge those responsible where appropriate; and
- 2) by enabling town and community councils to serve fixed penalty notices in appropriate cases.

Recommendation 16-8

We recommend the amendment of Part 18 of and Schedule 32 to the Local Government, Planning and Land Act 1980 (enterprise zones), and the provisions relating to enterprise zones in the TCPA 1990 and related legislation, so that they no longer apply in relation to Wales.

Recommendation 16-9

We recommend the amendment of the New Towns Act 1981, and the provisions relating to new towns in the New Towns and Urban Corporations Act 1985, the TCPA 1990, the Housing and Regeneration Act 2008, and related legislation, so that they no longer apply in relation to Wales.

Recommendation 16-10

We recommend the amendment of

- 1) Part 16 of and Schedules 26 to 31 to the Local Government, Planning and Land Act 1980 (urban development areas and urban development corporations), and
- 2) the provisions relating to urban development corporations in the New Towns and Urban Development Corporations Act 1985, the TCPA 1990, the Leasehold Reform, Housing and Urban Development Act 1993, and related legislation

so that they no longer apply in relation to Wales.

Recommendation 16-11

We recommend the amendment of

- 1) Part 3 of the Housing Act 1988 (housing action trust areas), and
- 2) the provisions relating to housing action trusts in the TCPA 1990 and related legislation

so that they no longer apply in relation to Wales.

Recommendation 16-12

We recommend the amendment of Part 3 of and Schedule 5 to the Agriculture Act 1967 (rural development boards) and related legislation so that they no longer apply in relation to Wales.

Recommendation 16-13

We recommend that section 231 of the TCPA 1990 (power of the Welsh Ministers to require local authorities to acquire and develop land) should not be restated in the Code.

Recommendation 16-14

We recommend the incorporation in the Bill of provisions equivalent to Part 9 (other than section 231) and sections 251, 258, and 271 to 282 of the TCPA 1990 (acquisition of land for planning purposes).

CHAPTER 17. HIGH COURT CHALLENGES

Recommendation 17-1.

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

- 1) the proceedings are brought by a claim for judicial review; and
 - 2) the claim form is filed:
 - before the end of the period of four weeks in the case of a challenge to the decision of the Welsh Ministers on an appeal against an enforcement notice (other than a decision granting planning permission), a tree replacement notice, an unsightly land notice or a decision refusing a certificate of lawfulness of existing use or development; or
 - before the end of the period of six weeks in any other case,
- beginning with the day after the day on which the relevant decision was made.

Recommendation 17-2.

We recommend that Part 5 of the PCPA 2004 (relating to the correction of minor errors in decisions) should be included within the Bill, but amended so as to allow a 14-day period within which the Welsh Ministers or an inspector can respond to a request to make a correction to their decision, and an applicant can respond to a notification by them that they propose to make such a correction.

CHAPTER 18. MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

Recommendation 18-1

We recommend that:

- 1) the provisions of the Bill applying it to statutory undertakers should be simplified as far as possible, to clarify the identity of those bodies that are statutory undertakers for any or all of the purposes of the Bill and any regulations made under it;
- 2) that a single list of such bodies should be included in Welsh Government guidance, including in relation to each such undertaker:
 - the purpose for which the body is to be a statutory undertaker;
 - the appropriate Minister; and
 - its operational land.

Recommendation 18-2

We recommend that, when the GPDO is next revised, consideration should be given to separating it into two orders, one dealing with permitted development rights relating to dwellings and one covering other cases.

Recommendation 18-3

We recommend that section 283 of the TCPA 1990 (relating to the display of advertisements on the operational land of statutory undertakers) should not be restated in the Code.

Recommendation 18-4

We recommend that section 316A of the TCPA 1990 (which enables regulations to be made relating to planning permission for development by local authorities that are statutory undertakers and the display of advertisements on their operational land) should not be restated in the Bill.

Recommendation 18-5

We recommend that the new Bill should generally use – in place of the term “winning and working of minerals” – the term “mining operations”, defined so as to include:

- 1) the winning and working of minerals in, on or under land, whether by surface or underground working;
- 2) the removal of material of any description from:
 - a mineral-working deposit;
 - a deposit of pulverised fuel ash or other furnace ash or clinker; or
 - a deposit of iron, steel or metallic slag; and
- 3) the extraction of minerals from a disused railway embankment.

Recommendation 18-6

We recommend that Schedule 2 to the Planning and Compensation Act 1991 (minerals permissions granted prior to 1 July 1948) and Schedule 13 to the Environment Act 1995 (minerals permissions granted from 1 July 1948 to 22 February 1982) need not be restated in the Bill, but should remain as they are.

Recommendation 18-7

We recommend that the Bill should include:

- 1) the provisions currently in Schedule 14 to the Environment Act 1995 (periodic review of minerals permissions); and
- 2) those currently in Schedule 9 to the TCPA 1990 (discontinuance of minerals permissions).

In relation to the discontinuance of minerals permissions, the Welsh Government should consider providing guidance on the meaning of “substantial extent” in Schedule 9 to the TCPA 1990.

Recommendation 18-8

We recommend that the provisions of the TCPA 1990 in the form in which they apply as modified by the TCP (Minerals) Regulations 1995 (in relation to minerals development) should be included in the Bill itself rather than in secondary legislation.

Recommendation 18-9

We recommend that the Bill should include

- (1) a power for the Welsh Ministers to provide for a scale of fees for the performance by them or by planning authorities of any of their functions under the Code, by publication rather than prescription;
- (2) a provision equivalent to section 303(10) of the TCPA 1990 (income from the fees so charged not to exceed the cost of performing the relevant function); and
- (3) a provision requiring any proposed scale of fees to be appropriately publicised before being formally published.

Recommendation 18-10

We recommend that there should be a single provision in the Bill providing for the determination by the Upper Tribunal of disputes as to compensation under provisions in the Bill relating to revocation, modification and discontinuance of planning permission, temporary stop notices, stop notices, damage caused by entry for enforcement purposes, tree preservation, highways, and statutory undertakers, under the Land Compensation Act 1961.

Recommendation 18-11

We recommend that guidance relating to planning inquiries and appeals should strongly encourage the inclusion of a suitably worded statement of truth in any witness statement (including in relation to appeals decided on the basis of written representations).

Recommendation 18-12

We recommend that the power to make orders as to the costs of parties to proceedings, currently in section 322C(6) of the TCPA 1990, should be restated in an amended form so as to make it explicit that such an order is only to be made where:

- 1) a party to an appeal has behaved unreasonably; and
- 2) that unreasonable behaviour has led other parties to incur unnecessary or wasted expense.

Recommendation 18-13

We recommend that the Planning Bill should incorporate provisions equivalent to those currently in:

- 1) section 276 of the Public Health Act 1936 (power of a planning authority to sell materials removed in executing works);
- 2) section 289 of that Act (power to require the occupier of any premises not to prevent works being carried out); and
- 3) section 294 of that Act (limit on the liability of landlords and agents in respect of expenses recoverable),

to be applicable to the carrying out by the authority of works required by discontinuance notices, enforcement notices, tree replacement notices, and unsightly land notices.

Recommendation 18-14

We do not recommend that the Bill should provide any further definitions of terms, other than those recommended below.

Recommendation 18-15

We recommend that:

- 1) the provisions of the English language version of the Bill equivalent to sections 55, 171, 183, 196A and 214B and Schedule 3 of the TCPA 1990 should be framed by reference to a “dwelling”, rather than a “dwellinghouse”; and
- 2) the interpretation section of the Bill should include a definition of the term “dwelling”, to the effect that it includes a house and a flat.

Recommendation 18-16

We recommend that the Bill should include a provision to the effect that the curtilage of a building is the land closely associated with it, and that in determining whether a structure is within the “curtilage” of a building, the factors to be considered should include:

- 1) the physical ‘layout’ of the building, the structure, and the surrounding buildings and land;
- 2) the ownership, past and present, of the building and the structure; and
- 3) their use and function, past and present.

Recommendation 18-17

We recommend that the interpretation section of the Bill should contain definitions of the following terms:

- 1) “agriculture” and “agricultural”, along the lines of the definition currently in section 336 of the TCPA 1990, with the addition of a reference to farming in line with those currently in section 147 and 171; and
- 2) “agricultural land” and “agricultural unit”, broadly in line with the definition in Part 6 of Schedule 2 to the GPDO;

and we recommend that no further definitions of those terms should be provided in relation to purchase notices and blight notices.

Recommendation 18-18

We recommend that the following provisions, which appear to be obsolete or redundant, should not be included in the Bill:

- 1) section 314 of the TCPA 1990 (apportionment of expenses by county councils);
- 2) section 335 of the TCPA 1990 (relationship between planning legislation and other legislation in force in 1947); and
- 3) Schedule 16 to the TCPA 1990 (provisions of the Act applied or modified by various other provisions in the Act), other than Part 3, which should be retained in relation to the provision restating section 318 of the TCPA 1990.

