Llywodraeth Cymru
Welsh Government

Development Management Manual

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Development Management Manual

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This manual is an online 'living' resource that will be updated as required over time. Where revisions are made they will be identified in the revisions table contained in section 24.

Abbreviations

CIL	Community Infrastructure Levy
DAS	Design and access statement
DCLG	Department for Communities and Local Government
DM	Development management
DMPWO	The Town and Country Planning (Development Management Procedure) (Wales) Order 2012
DNS	Development of National Significance
ECHR	European Convention on Human Rights
EIA	Environmental impact assessment
EWN	Enforcement warning notice
GPDO	The Town and Country Planning (General Permitted Development) Order 1995
HMO	House in multiple occupation
HSA	Hazardous substances authority
HSE	Health and Safety Executive
LB&CA	Listed Buildings and Conservation Areas
LDO	Local development order
LPA	Local planning authority
MCHLG	Ministry of Housing, Communities and Local Government
NDF	National Development Framework
NDP	National Development Plan- Future Wales The National Plan 2040
PAC	Pre-application consultation report
PEDW	Planning and Environment Decisions Wales
PPW	Planning Policy Wales
SDP	Strategic Development Plan
SPZ	Simplified planning zone
TAN	Technical advice note
UCO	The Town and Country Planning (Use Classes) Order 1987
UNESCO	United Nations Educational, Scientific, and Cultural Organization

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Part 1 – Development and Planning Permission

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PART 1 – DEVELOPMENT AND PLANNING PERMISSION

Section 1

Introduction to Development Management

1.1 Introduction

1.1.1 Development Management (DM) is a positive and proactive approach to shaping, considering, determining and delivering development proposals. It is led by the local planning authority (LPA), working collaboratively with those proposing developments and other stakeholders. It is undertaken in the spirit of partnership and inclusiveness and supports the delivery of key priorities and outcomes.

1.1.2 The development plan sets out a vision for the LPA area of how land uses will be distributed, to achieve sustainable development and support the goals set out in the Well Being of Future Generations (Wales) Act 2015. It is the role of DM to deliver that vision; guiding public and private investment to suitable locations using national and local policies to provide the jobs, homes and infrastructure that we require to meet the needs of citizens of Wales both now and in generations to come.

1.1.3 DM covers a number of stages of the implementation of a development project. The LPA may prepare a masterplan for a site, working with the developer to guide the development design from project inception. Alternatively, the authority may be presented with a final design submitted by a developer as a planning application. A legal framework supports DM activity and sets out the procedures around the premise that to carry out 'development' requires planning permission.

1.1.4 This Development Management Manual ('the Manual') focuses on the procedural aspects of DM describing the minimum requirements set out in law. It sets out guidance for all participants in DM procedures to encourage greater fairness, transparency and consistency across Wales. However, if improvements to the DM service are to be realised, the Manual needs to be read in conjunction with best practice guidance and guides to the non-statutory aspects of DM, such as the production of masterplans.

1.1.5 Following this guidance, while embracing the principles of management rather than control, will result in an effective, enabling system which best serves the people of Wales in the 21st century.

1.2 Using the Development Management Manual

1.2.1 The Manual briefly describes each step of DM procedure, referring to more detailed annexes where appropriate and provides a link to legislation or additional guidance, which will provide further assistance on the topic.

1.2.2 As a procedural guide, the Manual does not contain policy or guidance about what form or distribution of development is necessary to achieve the sustainable development of Wales. Future Wales: the national plan 2040 (NDF) sets out how the planning system at a national, regional and local level can assist in delivering

these requirements through Strategic Development Plans (SDPs) and Local Development Plans (LDPs). Planning Policy Wales (PPW), supplemented by a series of Technical Advice Notes (TANs), Circulars, and policy clarification letters, provides the national planning policy framework for Wales.

1.2.3 Whilst the Manual contains some elements of Welsh Government policy about how DM procedures should be carried out, that is procedural policy, the majority continues to be set out in PPW, particularly chapters 1 and 3, and certain TANs..

1.2.4 Where the Manual cancels Circulars and sets out equivalent updated guidance in their place, the status and weight given to the guidance when taking planning decisions is unchanged. A list of cancelled Circulars is provided in Section 23.

1.2.5 The guidance set out in the Manual represents the current considered views of the Welsh Government but interpretation of the law is ultimately for the Courts.

1.2.6 The Manual is a living document that will be added to and updated on an ongoing basis as new guidance is published, or existing guidance is superseded. The objective is that over time the Manual will become a first point of reference for Welsh Government DM guidance, and will replace all relevant Circulars, Circular Letters, Dear Chief Planning Officer Letters and other guidance notes. A log of all changes made with each published version of this Manual is provided in Section 24.

1.3 Planning Consolidation Bill

1.3.1 Current primary legislation is contained in the Town and Country Planning Act 1990 (the 1990 Act), as amended by the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004, the Planning Act 2008, and the Planning (Wales) Act 2015. Relevant provisions are also found in other Acts.

1.3.2 Later this year, Planning (Wales) Bill ('the Bill') will be introduced to the Senedd. The purpose of the Bill is to consolidate legislation related to planning in Wales, creating one principal act underpinning the planning system in Wales. Once commenced, the 1990 Act and associated primary legislation will no longer apply in Wales.

1.3.3 The Law Commission's report on Planning Law in Wales demonstrated the need for the Bill, highlighting issues with the accessibility, quality, and complexity of the law affecting the planning system's operation.

1.3.4 If the Bill is passed by the Senedd and receives Royal Assent, the Manual will be revised accordingly to align with the new legislative framework upon its commencement.

Section 1 Annexes None
Further Guidance Planning Policy Wales (Edition 12) Future Wales: the national plan 2040 Technical Advice Notes
Relevant Legislation Well Being of Future Generations (Wales) Act 2015 Town and Country Planning Act 1990 Planning Act 2008 Planning (Wales) Act 2015 Planning and Compensation Act 1991 Planning and Compulsory Purchase Act 2004

Section 2

What is Development?

2.1 Introduction

2.1.1 The definition of development is important because it sets the extent to which the town and country planning system, including DM, can influence the pattern of land uses and the size and types of buildings placed on that land.

2.1.2 'Development' is defined by section 55 of the 1990 Act as:

> 'The carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.'

2.1.3 The 1990 Act identifies two aspects of development: operational development (physical changes to land including buildings); and material changes of use (operational changes to the way land is used). There are a wide range of activities that can be subject to DM. However, section 55 goes on to specifically exclude some operations and uses from the definition, notably:

- Works only affecting the interior of a building.
- Works that do not materially affect the appearance of the building.
- Road maintenance.
- Use of land around a dwellinghouse for any purpose incidental to the enjoyment of the dwelling.
- Use of land for agriculture or forestry.

2.1.4 Intervention by DM should be proportional to the scale and complexity of the potential impact of the development on the public interest. This is illustrated by figure 1 below, which shows the different procedural steps as the size and complexity of development increases from left to right.

2.1.5 The first step in considering DM intervention in respect of works is the question 'is it development?' Where works or uses do not fall within the definition of development they remain generally outside the influence of DM. However, where operations or uses are development, section 57 of the 1990 Act becomes relevant as it requires planning permission for the carrying out of all development.

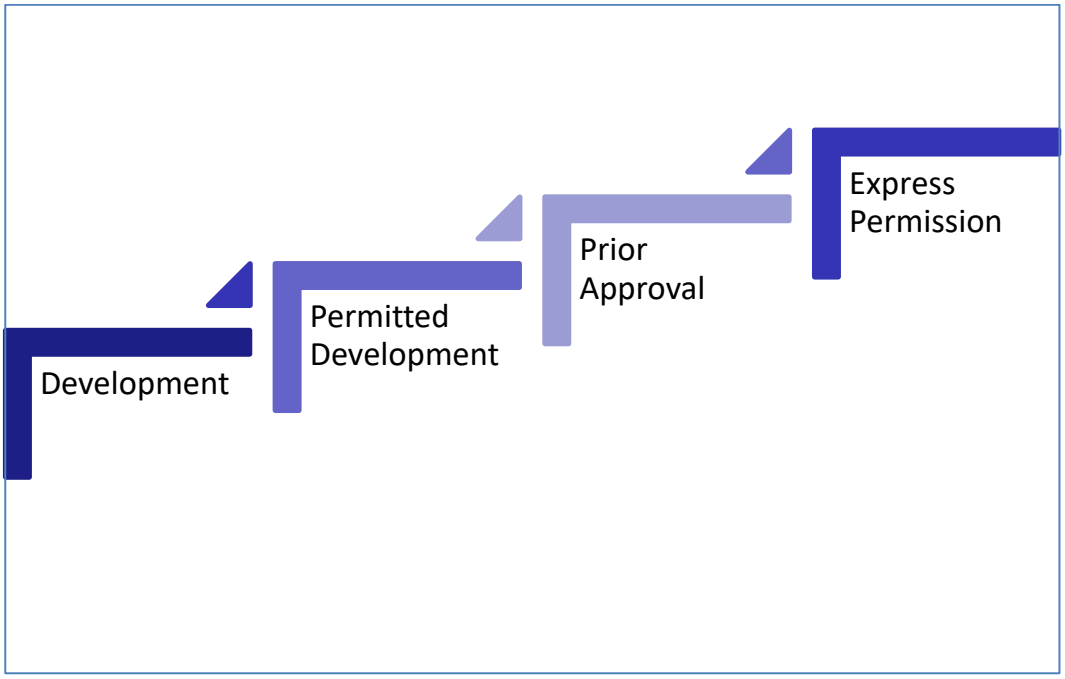
2.1.6 Planning permission can be granted in a number of ways, but mainly on a national basis by a development order; or locally through a local development order or the approval of a planning application.

2.1.7 The planning permission granted by a development order is often referred to as a 'permitted development right', which is explained in section 3 of the Manual and represented by steps two and three in figure 1. This allows a developer to carry out development without seeking approval from the LPA. However, there are some permitted development rights, such as those for agricultural buildings, which require the prior approval of some details such as appearance or siting from the LPA before the development can commence.

2.1.8 If steps 2 or 3 in figure 1 are not relevant to a proposed development, then it will need 'Express Permission' either through a local development order made by the

LPA (see section 4) or through the submission of a planning application (see sections 5-9) to the LPA.

Figure 1 - The Proportionality Hierarchy



(Sheppard A, UWE, 2015)

2.2 Lawful Development Certificates

2.2.1 Anyone can apply to an LPA for a certificate that confirms whether operations or uses are lawful for existing or proposed developments. Section 192 of the 1990 Act allows an LPA to certify that existing operations are lawful in that they either do not need planning permission or would be within the limitations of an existing planning permission. Section 192 of the 1990 Act enables a certificate to be issued in respect of existing development. Existing operations and uses may also become 'lawful' where they have become immune from enforcement action.

2.2.2 Guidance on enforcement time limits can be found in Welsh Office Circular 24/97: Enforcing Planning Control: Legislative Provisions and Procedural Requirements.

Section 2 Annexes None
Further Guidance Welsh Office Circular 24/97: Enforcing Planning Control: Legislative Provisions and Procedural Requirements
Relevant Legislation Town and Country Planning Act 1990

Section 3

Permitted Development

3.1 Introduction

3.1.1 DM should be positive in outlook and facilitate, rather than frustrate appropriate development. Permitted development rights reduce the number of minor, uncontentious planning applications that LPAs need to deal with. This releases LPAs to concentrate on more complex applications and helps to stimulate economic activity and innovation by reducing unnecessary regulation.

3.2 Permitted Development Order

3.2.1 Permitted development is development that can be carried out without the need to apply for planning permission, as it is already granted by the Town and Country Planning (General Permitted Development) Order 1995 (GPDO), as amended for Wales.

Householder permitted development

3.2.2 If a householder wishes to make a range of improvements and alterations to their home without the need to apply for planning permission, the works need to fall within the criteria set out in Part 1 of Schedule 2 to the GPDO.

3.2.3 To determine whether a proposed householder development is permitted development, a sequential approach is required. It must first fall within the description of a development class (for example Class A 'The enlargement, improvement or other alteration of a dwellinghouse'). The development is then tested against each limitation of that class in turn. If the development is within all the limits for that class, the final question is whether it is capable of being carried out so as to comply with all the conditions attached to that development class. If the development exceeds any limitation, or cannot comply with any condition, then it is not permitted development. A planning application will therefore need to be submitted to the LPA to gain planning permission for the development.

3.2.4 'Technical guidance on permitted development for householders' (Version 2, April 2014) is available on the Welsh Government website.

Permitted development rights for industry, businesses, educational institutions and hospitals

3.2.5 Schedule 2 to the GPDO includes permitted development rights for industrial and warehouse development (part 8), schools, colleges, universities and hospitals (Part 32), shops, financial or professional services establishments (Part 42).

3.2.6 A Welsh Government Guidance Note (April 2014) has been issued on these permitted development rights and is available on the Welsh Government website.

Agricultural and forestry permitted development

3.2.7 Extensive permitted development rights apply to agricultural units of 5 hectares or more and on forestry land (Parts 6 and 7 of Schedule 2 respectively). However, the

rights cannot be used until the farmer or other developer has applied to the LPA to determine whether prior approval will be required for certain details (see section 3.3).

3.2.8 More limited permitted development rights exist on smaller agricultural units of less than 5 hectares (but no smaller than 0.4 hectare). These are not subject to the prior approval procedure, except on land specified in article 1(6) of the GPDO, e.g. where the procedure applies to extensions and alterations of buildings and the provision, re-arrangement or replacement of roads.

3.3 Article 4 Directions

3.3.1 In exceptional circumstances, the planning permission which the GPDO grants for a class of development may be withdrawn in a particular area by a direction made by the LPA or by the Welsh Ministers under article 4 of that order. As a result, a planning application would be required for the prescribed development. Such action will rarely be justified unless there is a real and specific threat supported by evidence that demonstrates localised intervention is necessary. Similarly, conditions should only be imposed on a planning permission to restrict or withdraw permitted development rights in exceptional circumstances. The Welsh Government's policy on the use of article 4 directions to manage local housing is provided in section 4.2 of PPW.

3.3.2 The Town and Country Planning (General Permitted Development etc.) (Amendment) (Wales) Order 2022 simplified the process through which LPAs make an article 4 direction. New Schedule 2A to the GPDO sets out the new procedures that must be followed when making, varying or withdrawing any direction that is made under article 4(1). Schedule 2A set out two types of direction - an expedited direction known as 'direction with immediate effect' and a 'direction without immediate effect'. The previous requirement for the Welsh Ministers to confirm directions before they can take effect has also been removed.

Directions with immediate effect

3.3.3 If the LPA or the Welsh Ministers are satisfied it is expedient that development described below should not be carried out unless an application for planning permission is granted by the LPA, they may make a direction that planning permission granted by article 3 of the GPDO does not apply immediately. Development for which directions with immediate effect can be applied are:

- development within the curtilage of the dwellinghouse (Part 1 of Schedule 2);
- minor operations (Part 2 of Schedule 2);
- changes of use, excluding development permitted by paragraphs (b)(i) and (c)(i) of Class I (Part 3 of Schedule 2);
- temporary buildings and uses (Part 4 of Schedule 2); and
- demolition of buildings (Part 31 of Schedule 2).

3.3.4 Additionally, due to the importance of protecting the amenity of conservation areas, there is greater flexibility to make a direction that takes immediate effect within the whole or part of a Conservation Area. The development to which this applies is prescribed in paragraph 2(3) of Schedule 2A.

3.3.5 The prescribed procedure for making, varying or withdrawing any direction made under the article 4(1) is set out in Schedule 2A. A direction with immediate effect

would last six months beginning with the date on which it takes effect unless confirmed by the LPA following public consultation (see paragraphs 1(8) and (9) of Schedule 2A) before the end of the six month period. :

Directions without immediate effect

3.3.6 If a LPA would like to remove permitted development rights within classes of development other than those listed in paragraph 3.2.11 and 3.2.12 above , a direction without immediate effect will need to be issued. Such directions do not come into effect immediately and a different process is followed in their making.

3.3.7 The prescribed procedure for making, varying or withdrawing a direction without immediate effect is set out in Schedule 2A. This includes publicity and consultation requirements.

Varying or withdrawing a direction

3.3.8 A LPA can withdraw an article 4 direction by making a subsequent direction. A direction can be varied by withdrawing the existing direction and replacing it with a new one. In both cases the relevant procedures for making an article 4 direction will apply.

The role of the Welsh Ministers

3.3.9 The previous need for directions to be confirmed by the Welsh Ministers has been removed. LPAs confirm all article 4 directions (except those made by the Welsh Ministers) in the light of local consultation.

3.3.10 In most cases, a LPA must however, as soon as practicable after confirming an article 4 direction, give notice to the Welsh Ministers of the confirmation and provide a copy of the confirmed direction.

3.3.11 The Welsh Ministers have a reserve power to make a subsequent direction to withdraw or vary a direction made by a LPA at any time before or after it is confirmed.

3.3.12 The Welsh Ministers may also make both directions with immediate effect and directions without immediate effect to remove permitted development rights.

3.4 Prior Approval

3.4.1 Some classes of permitted development within the GPDO may require prior approval from the LPA before development can commence. The prior approval process is a middle ground between permitted development rights and express permission (applications for planning permission). It is the ‘third step’ in the proportionality hierarchy set out in figure 1. It is used to facilitate development that has national importance, delivering infrastructure for the agriculture, forestry and telecommunications sectors. Provided all GPDO requirements are met, the principle of the development is not for consideration but the large variety of development configurations mean that unacceptable planning impacts could occur and need to be mitigated.

3.4.2 Where prior approval may be required, before commencing such a development, the developer must apply to the LPA for a determination as to whether prior

approval of the authority will be required, known as prior notification. The detail that must accompany the application is prescribed within each relevant class of the GPDO. Only in cases where the authority considers that a specific proposal is likely to have a significant impact on its surroundings would the Welsh Government consider it necessary for the authority to require the formal submission of details for approval.

3.4.3 When considering a prior approval application, the LPA can only consider specific issues, such as the siting, design and external appearance of a proposed new agricultural or forestry building and its relationship to its surroundings.

3.4.4 LPAs should always have full regard to the operational needs of the agricultural, forestry and telecommunications industries, the need to avoid imposing any unnecessary or excessively costly requirements, and the normal considerations of reasonableness. They will also need to consider the effect of development on public amenity, the conservation of landscape, habitat, wildlife, historic sites and listed buildings and their settings. Irrespective of whether they follow the prior approval procedure, developers intending to exercise their permitted development rights should also take these considerations into account[1]

3.4.5 LPAs should also consider whether an application for prior approval of a development is likely to have significant effects on a European Protected Species (EPS). Regulation 9(3) of the Conservation of Habitats and Species Regulations 2010 also requires that LPAs assesses the development in accordance with the Habitats Directive[2]. Section 3 Annex ' Prior Approval' provides additional guidance including a flow diagram showing how consideration of the Habitats Directive should be applied to each step.

3.4.6 Where prior approval has been given, development must begin not later than, the expiration of five years beginning with the date on which approval was given, or in any other case not later than the expiration of five years beginning with the date on which the prior notification was submitted to the LPA.

3.4.7 Further details on the prior approval process specifically for agriculture, forestry, Telecommunications Code System Operators and demolition under Parts 6, 7, 24 and 31 of Schedule 2 to the GPDO is available in Section 3 Annex: 'Prior Approval'.

3.5 Use Classes Order

3.5.1 The Town and Country Planning (Use Classes) Order 1987 (UCO) is intended as a deregulatory instrument, helping to reduce the burden on business and the planning system whilst balancing the need to control activities in the public interest.

3.5.2 The UCO establishes groups of uses with similar planning impacts. The order describes these as classes. Changes between uses within the group (class) would not result in any significant change in planning impact so there is little benefit in requiring a planning application for the change. Therefore, changes of use within classes do not require planning permission but changes to uses in different classes or to uses not in a specified class do require permission if there is a 'material change of use'.

1

2 European Council Directive 92/43/EEC 'on the conservation of natural habitats and of wild fauna and flora' ("the Habitats Directive")

3.5.3 Part 3 of Schedule 2 to the GPDO provides for further deregulation by allowing certain changes between classes to take place without the need for planning permission. The general rationale for allowing changes of use between classes is that the changes result in environmental improvements, for example, the permitted change from Class A3 (food and drink) to A1 (shops) is less likely to affect amenity.

3.5.4 The different land uses are grouped into four use classes while some remain 'unique uses' (formerly know as 'sui generis')

Class A

- Class A1 – Shops
- Class A2 – Financial and professional services
- Class A3 – Food and drink

3.5.5 Class A covers uses generally found in shopping areas. TAN 4 'Planning for Retail and Commercial Centre Development' provides guidance on how the UCO should be used to deliver national planning policy and the development plan vision for town centres.

3.5.6 Identifying which use class a specific use falls within is a matter of fact and degree in each case. In Class A1 for example, sandwich bars are included within this use class but shops for the sale of hot food fall within the A3 use class. In considering where such a use should fall, it is the primary purpose that should be considered (see also paragraph 3.5.28). A sandwich bar does not cease to fall within Class A1 merely because it also sells hot drinks or if a few customers eat on the premises.

3.5.7 Whilst hairdressing is within Class A1, health and beauty salons (including nail bars) are not specifically listed and therefore do not fall within this use class. The Town and Country Planning (Use Classes) (Amendment) Order 1991 amended the UCO by including in Class A1, use for the washing or cleaning of clothes or fabrics on the premises. However, use as a launderette (for example a use involving self-service, coin-operated machines) continues to be excluded as a unique use.

Class B

- Class B1 – Business
  - B1(a) Offices excluding those in A2 use
  - B1(b) Research and development of products or processes
  - B1(c) Light industry
- Class B2 – General Industrial
- Class B8 – Storage or distribution

3.5.8 Class B1 brings together uses which are broadly similar in their environmental impact and which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

3.5.9 The Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2002 amended the UCO to exclude from Class B8 (Storage and distribution) use of a building or other land for the storage of or as a distribution centre for radioactive material or radioactive waste, as defined in the Radioactive Substances Act 1993.

Class C

- Class C1 – Hotels
- Class C2 – Residential institutions
- Class C2A – Secure residential institutions
- Class C3 – Dwellinghouses, used as sole or main residences
- Class C4 – Houses in multiple occupation
- Class C5 – Dwellinghouses, used otherwise than as sole or main residences
- Class C6 – Short term lets

3.5.10 The Town and Country Planning (Use Classes) (Amendment) Order 1994 amended the UCO order by excluding from the specified classes use as a hostel.

3.5.11 Class C2A was introduced by the Town and Country Planning (Miscellaneous Amendments and Modifications relating to Crown Land) (Wales) Order 2006.

3.5.12 The Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2016 amended the UCO to:

- introduce Class C4 (houses in multiple occupation).
- change Class C3 (dwellinghouses) to:
  - include a definition of "single household" which applies to use Class C3(a) only
  - remove from the scope of Use Class C3(c) houses in multiple occupation falling in Use Class C4

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

3.5.14 Part 3 (changes of use) of Schedule 2 to the GPDO grants planning permission for changes of use from buildings used as a small scale houses in multiple occupation (Class C4) to use as dwellinghouses (Class C3). The provision enables uses in Class C4 to revert to Class C3 without requiring planning permission but does not allow a change from Class C3 to C4.

3.5.15 The Welsh Government has published Practice Guidance on HMOs to assist LPAs utilise the town and country planning tools available to them, including the UCO, in order to manage the impacts of HMOs in their areas.

3.5.16 The Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2022 amended Class C3 (dwelling houses) to (dwellinghouses; used as sole or main residences) which limits the use as a dwellinghouse as a sole or main residence, which is occupied for more than 183 days in a calendar year (i.e. "primary homes"). It also introduced two new use classes, Class C5 (Dwellinghouses; used otherwise than as sole or main residences) which covers use as a dwellinghouse other than as a sole or main residence and occupied for 183 days or fewer in a calendar year (i.e. "second homes"); and Class C6 (Short-term lets) which covers use of a dwellinghouse for commercial short-term letting not longer than 31 days for each period of occupation. This provided a new legislative framework for managing the use of dwellinghouses in Wales.

3.5.17 Part 3 (changes of use) of Schedule 2 to the GPDO provides permitted development rights for changes of use between properties within Class C3, Class C5 and Class C6. Specified changes of use to and from a mixed use are also provided. These permitted development rights can be dis-applied within a specific area by an article 4 direction made by a LPA on the basis of robust local evidence (see Section 3.2).

Class D

- Class D1 – Non-residential institutions
- Class D2 – Assembly and leisure

3.5.18 The Town and Country Planning (Miscellaneous Amendments and Modifications relating to Crown Land) (Wales) Order 2006 added use as a law court to Class D1.

Unique Uses (formerly sui generis)

3.5.19 The UCO sets out that the following uses do not belong to a specific class:

a) a theatre,
b) an amusement arcade or centre, or a funfair,
c) a launderette,
d) for the sale of fuel for motor vehicles,
e) for the sale or display for sale of motor vehicles,
f) for a taxi business or business for the hire of motor vehicles,
g) a scrapyard, or a yard for the storage or distribution of minerals or the breaking of motor vehicles,
h) for any work registrable under the Alkali, etc. Works Regulation Act 1906,
i) a hostel,
j) a waste disposal installation for the incineration, chemical treatment (as defined in annex IIA to Directive 75/442/EEC under heading D9), or landfill of waste to which Directive 91/689/EEC applies,
k) a betting office.

3.5.20 Uses which do not fit comfortably within the classes defined in the UCO should be deemed to be unique uses.

3.5.21 A use may also be deemed to be a unique use if it is composed of two primary uses which are operated together within a planning unit, without evident physical distinction. Whilst one or both of the uses considered individually may fall within a defined use class, their joint operation is held to mean that the combined use does not. It is also known as a mixed use.

3.5.22 The change of use from one unique use to another does not necessarily result in a material change of use, and hence the submission of a planning application. LPAs must consider whether a material change of use has occurred.

De minimis

3.5.23 Case law (Kwik Save Discount Group Ltd v Secretary of State for Wales (1980) 42 P & CR 166, CA) has established that where a use of land is de minimis (small enough to be ignored legally), it may be disregarded for the purposes of the UCO.

Material change of use

3.5.24 Not every change of use results in a material change for planning purposes. A change of use is not material merely because it involves a change from a use falling within one use class to a use which happens to fall within another. The Courts have held that for a material change of use to have occurred, the new use must be substantially different from that which preceded it. This is a matter for determination in each individual case as a matter of fact and degree depending on the particular characteristics of the use.

3.5.25 Case law has established two main tests to assess the materiality of a change of use:

- whether there has been a change in the character of the use itself, including the land where it is located;
- the effects of the change upon neighbouring uses and the locality.

3.5.26 If material changes are identified by both tests, there is very little doubt that as a matter of fact and degree a material change of use has occurred.

3.5.27 Intensification is also a test for deciding the materiality of a change of use, however, intensification alone is not sufficient to result in a material change of use if it does not change the character of the land or cause an impact.

3.5.28 Additionally, LPAs should consider more than simply the amount of floorspace occupied by the different uses; this point may be of particular importance in considering, for example, in the case of a warehouse used partly for storage and partly for retail sales. It is the main purpose of the use that is to be considered.

Operation of the Use Classes Order on the subdivision of planning units

3.5.29 Planning permission is not required for the subdivision of premises (other than dwellinghouses) provided that both the existing and proposed uses fall within the same use class. Intensification of a use within a class in the Order has been held by the courts not to constitute development unless and until its effect is to take the use outside that class altogether.

3.5.30 If a building is used for purposes falling within a use class and that building is subdivided without physical works amounting to development, and each of the new units was to be used for purposes which also fell within the same class, development requiring planning permission would be unlikely to have been involved. This is even though any associated intensification might be a material change of use.

3.5.31 Planning permission would be required if subdivision of a building used for a purpose not within any use class was accompanied by intensification amounting to a material change of use. Planning permission would also be required if subdivision of a building were to result in the primary use of any resulting part not continuing within the same use class as the use to which the whole building was before subdivision.

3.6 Planning Control over Demolition

3.6.1 Demolition falls within the definition of development as it is listed in section 55(1A) of the 1990 Act as a building operation. However, the demolition of any description

of building will be excluded from control if specified in a direction made by the Welsh Ministers under section 55(2)(g) of that Act.

3.6.2 The current extant direction, the Town and Country Planning (Demolition - Description of Buildings) Direction 1995, is contained within Welsh Office Circular (31/95) Planning Controls over Demolition. A 'Dear Chief Planning Officer letter' was issued on the 18 April 2011 to clarify the implications of the Court of Appeal judgment, which quashed paragraphs 2(1)(a)-(d) of the Direction, the remainder of which remains extant.

3.6.3 Where demolition is development, it may benefit from the permitted development rights set out in Part31 of Schedule 2 to the GPDO. The permitted development rights are subject to a prior approval procedure unless demolition is urgently necessary in the interests of safety or health. Procedural guidance on the prior approval process is set out in Section 3 Annex ' Prior Approval'.

3.6.4 LPAs should consider whether any demolition project presented to them is likely to have significant effects on the environment and require a screening opinion to be issued, as such projects can be Environmental Impact Assessment (EIA) development under The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017. An example is provided by a Court of Appeal judgment[3], which indicates that demolition can be EIA development under Schedule 2 paragraph 10(b) (urban development projects) to the EIA Regulations.

3.7 Simplified Planning Zones

3.7.1 Section 82 of the 1990 Act provides that the adoption or approval of a simplified planning zone (SPZ) scheme has effect to grant in relation to the zone, or any part of it specified in the scheme, planning permission:

- for development specified in the scheme;
- for development of any class so specified.

3.7.2 Planning permission under a SPZ scheme may be unconditional or subject to such conditions, limitations or exceptions as may be specified in the scheme. Any conforming development started within 10 years of making the scheme does not require a separate planning application.

3.7.3 Anyone can ask an LPA to make or alter a SPZ. LPAs are required to notify Welsh Ministers that they intend to make or alter an SPZ scheme. However, if the LPA refuse, or fail to make a decision within three months, the applicant can require the request to be referred to the Welsh Ministers, who may direct the LPA to make or alter the scheme.

3.7.4 Further detail on the procedures for setting up or altering SPZ's is contained in Technical Advice Note (TAN) 3: Simplified Planning Zones.

3.7.5 There are no restrictions on the size of SPZs. However, they may not be set up in National Parks, Areas of Outstanding Natural Beauty, Sites of Special Scientific Interest, Green Belts, conservation areas or any other area excluded by an order

[3] R (On The Application Of SAVE Britain's Heritage) (Appellant) v (1) Secretary Of State For Communities & Local Government (2) Lancaster City Council (Respondent) & Mitchells Of Lancaster (Brewers) Ltd (Interested Party) [2011] EWCA Civ 334

made by Welsh Ministers. SPZ schemes cannot grant planning permission for development which would require EIA.

3.7.6 SPZ schemes should set down the basic criteria for development, for example, scale, height, materials, parking standards, to ensure that a satisfactory form and scale of development is delivered.

3.7.7 SPZ schemes cannot grant:

- listed building consent,
- scheduled monument consent,
- hazardous substance consent,
- consent for the display of advertisements,
- stopping up or diversion of a right of way,
- consent for works covered by Tree Preservation Orders

Section 3 Annexes Prior Approval
Further Guidance Technical Advice Note (TAN) 3: Simplified Planning Zones (1996) Technical Advice Note (TAN) 4 'Planning for Retail and Commercial Centre Development Technical Advice Note (TAN) 6: Planning for Sustainable Rural Communities (2010) Welsh Officer Circular 31/95: Planning Controls over Demolition Houses in Multiple Occupation: Practice Guidance (February 2016) Letter to all Chief Planning Officers, Planning Control Over Demolition (18 April 2011) Technical guidance on permitted development for householders (Version 2, April 2014)L Letter to all Chief Planning Officers, Changes to planning legislation and policy for second homes and short term lets (September 2022)
Relevant Legislation Town and Country Planning Act 1990 The Conservation of Habitats and Species Regulations 2010 The Town and Country Planning (Use Classes) (Amendment) Order 1991 The Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2002 The Town and Country Planning (Use Classes) Order 1987 The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 The Town and Country Planning (Use Classes) (Amendment) Order 1994 The Town and Country Planning (General Permitted Development) Order 1995 The Town and Country Planning (Miscellaneous Amendments and Modifications relating to Crown Land) (Wales) Order 2006 The Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2022 The Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2016

Section 4

Local Development Orders

4.1 Introduction

4.1.1 A Local Development Order (LDO) grants permission for the type of development specified in the LDO and by so doing, removes the need for planning applications to be made by the developer.

4.1.2 LDOs can be seen as an extension of permitted development, but decided upon locally in response to local circumstances. LDOs allow LPAs to act proactively to implement a planning policy within their area.

4.1.3 As LDOs remove the need to apply for planning permission the potential developer is able to progress with greater speed and certainty (subject to the development complying with the terms and conditions of the LDO). Associated costs may well be lower as there is no requirement for a planning application fee or need to commit the resources associated with the preparation of an application.

4.1.4 Powers to make LDOs are in sections 61A to 61C of the 1990 Act. The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (DMPWO), sets out the procedural requirements for making LDOs, including preparation, notices, publicity, consultation, and adoption.

4.1.5 Compensation may be payable should an LDO be subsequently withdrawn. There are two statutory instruments that provide for this:

- The Planning Permission (Withdrawal of Development Order or Local Development Order) (Compensation) (Wales) Order 2012
- The Town and Country Planning (Compensation) (Wales) Regulations 2012

4.1.6 Guidance on the procedures relating to the use of LDOs is contained in Welsh Government Circular 003/2012: Guidance on using a Local Development Order. There is also Design Commission for Wales guidance on design quality issues in LDOs.

Section 4 Annexes None
Further Guidance Welsh Government Circular 003/2012: Guidance on using a Local Development Order Local Development Orders, Impacts and Good Practice (January 2014) Site and Context Analysis Guide: Capturing the value of the site (March 2016) Design Commission for Wales, Design Quality in Local Development Orders (2014)
Relevant Legislation Planning Compulsory Purchase Act 2004

Planning Act 2008
The Planning Permission (Withdrawal of Development Order or Local Development Order) (Compensation) (Wales) Order 2012
The Town and Country Planning (Compensation) (Wales) Regulations 2012
The Town and Country Planning (Development Management Procedure) (Wales) Order 2012

Section 5

Planning Application Hierarchy - Development Types

5.1 Introduction

5.1.1 Development proposals come in many forms, from the largest chemical processing plant to a householder extension. Section 2 of the Manual explains the proportionality hierarchy, from no permission required to express permission. This section explains how express permission in the form of planning applications are similarly dealt with in a proportionate way.

5.1.2 Avoiding a one size fits all approach has significant benefits:

- For applicants applying for planning permission it will mean that they are clear at the outset about the level of information that needs to be submitted with the planning application and how and when it will be decided, making it easier to navigate the planning system.
- For LPAs and statutory consultees it will allow resources to be prioritised towards applications which have the greatest potential benefits and impacts.
- For communities it means more opportunities to become involved, ensuring that development reflects the needs of current and future generations.

5.2 Hierarchy of Development

5.2.1 The way in which planning applications are processed and scrutinised depends on whether they have potential benefits and impacts which are of national, major or local significance. Figure 2 outlines the different way each development type is handled. Excluded from Figure 2 are nationally significant infrastructure projects which are currently consented by the UK Government.

Developments of National Significance

5.2.2 Developments of National Significance are determined by the Welsh Ministers. Guidance on Developments of National Significance can be found in section 18.

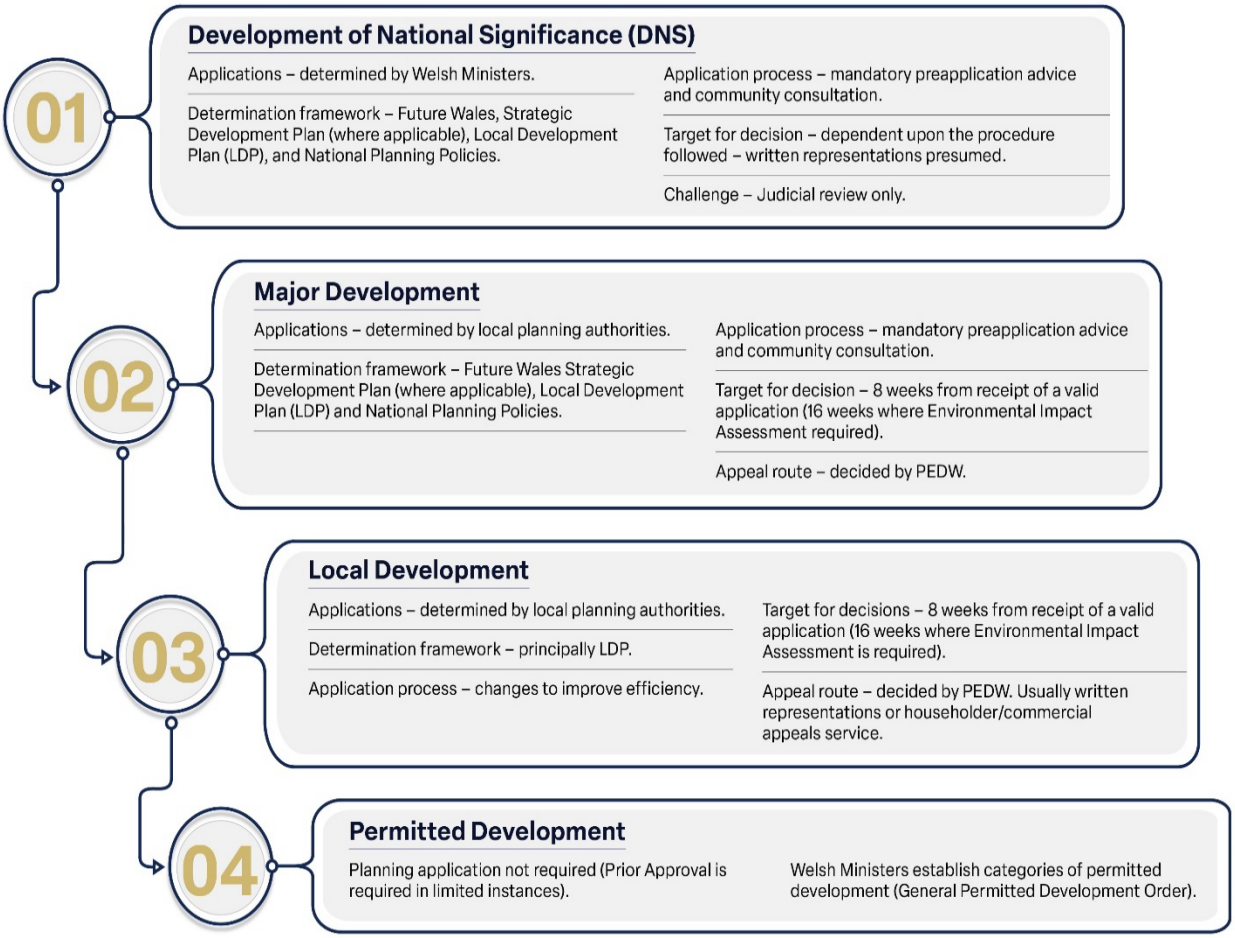
Major Developments

5.2.3 Major developments are of a large-scale where the potential benefits and impacts are significant, although not of national importance. They are determined by LPAs and include many of the developments that are essential for our economic prosperity. They must be prioritised by LPAs and statutory consultees.

Local Developments

5.2.4 The vast majority of planning applications are for ‘local development’ and form the bulk of the work load for LPAs. They include smaller housing schemes, commercial developments and some householder improvements. The benefits and impacts of these developments are likely to be local in nature, often not extending beyond the immediate area. There should be no need for most local developments to be considered by planning committee.

Figure 2 - Hierarchy of Development



5.2.5 The thresholds and criteria for the application categories are described in Section 5 Annex 'Planning Application Classifications – Thresholds and Criteria'.

Section 5 Annexes Planning Application Classifications – Thresholds and Criteria
Further Guidance None
Relevant Legislation None

Section 6

Pre-application Procedures

6.1 Introduction

6.1.1 Pre-application procedures aim to ensure that planning applications proceed smoothly and quickly once they are formally submitted to the determining authority. The idea is that any significant planning issues are raised prior to the submission of a formal application. This provides applicants with the opportunity to consider these issues and, if necessary, amend their proposals before they are finalised and submitted as planning applications. Another key benefit of pre-application procedures is that it provides the community with an opportunity to engage with developers at an early stage in the development process.

6.1.2 At pre-application stage, developers should consider whether their development proposal could possibly be environmental impact assessment (EIA) development. Section 6.2 provides guidance on EIA. The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 ('the EIA Regulations') make provision for the developer to seek a screening opinion from the LPA on whether EIA is required. Developers are advised to secure a screening opinion early on, before they undertake any statutory pre-application publicity and consultation.

6.1.3 The Planning (Wales) Act 2015 introduced pre-application requirements into the 1990 Act. These include a new statutory requirement for LPAs to provide pre-application services to applicants (see sections 61Z1 of the 1990 Act) and a duty on applicants to carry out pre-application consultation with the community and specified consultees (see sections 61Z of the 1990 Act).

6.2 Environmental Impact Assessment (EIA)

6.2.1 Some applications for large or complex development will be subject to EIA. The requirement originates from European Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment.

6.2.2 The EIA Regulations define the projects that are subject to EIA and the specific procedures that apply to the applications in respect of those projects. There are five broad stages to the EIA process.

Screening

6.2.3 Screening determines whether a proposed project falls within the remit of the EIA Regulations. All projects listed in Schedule 1 to the EIA regulations require an EIA. For projects listed in Schedule 2, the need for EIA is considered on a case by case basis. The LPA have to decide whether the project is likely to have significant effects on the environment. If it is, then EIA is required. There is a right of appeal to the Welsh Ministers.

Scoping

6.2.4 Scoping determines the extent of issues to be considered by the assessment and reported in the Environmental Statement. This is a discretionary stage, where the applicant can ask the LPA for their opinion on what information needs to be included (a 'scoping opinion').

Preparing an Environmental Statement

6.2.5 Where an application is subject to EIA, the applicant must compile the information reasonably required to assess the likely significant environmental effects of the development. The information is compiled into an Environmental Statement, which must include a non-technical summary.

Making a planning application and consultation

6.2.6 The Environmental Statement and the application for development to which it relates must be publicised. Statutory 'Consultation Bodies' and the public must be given an opportunity to give their views about the proposed development and the Environmental Statement.

Decision making

6.2.7 The Environmental Statement, together with any other information which is relevant to the decision, comments and representations made on it, must be taken into account by the LPA in deciding whether or not to give consent for the development. The public must be informed of the decision and the main reasons for it.

6.2.8 Further guidance on EIA is available in Welsh Office Circular 11/99: Environmental Impact Assessment.

6.3 Local Planning Authority Pre-application Service

6.3.1 LPAs are required to provide a statutory pre-application service for those who request it. LPAs will provide a written response to an applicant, containing certain information as a minimum. A fee is payable to the LPA for this service according to a national fee schedule based on the size and scale of the proposed development.

6.3.2 LPAs can offer additional written responses, meetings etc. should an applicant request further pre-application advice beyond the statutory minimum requirements. Discretionary fees can be charged for these services.

6.3.3 The procedure associated with the service is set out in The Town and Country Planning (Pre-Application Services) (Wales) Regulations 2016 ('the pre-application services regulations').

6.3.4 Practice Guide: Realising the potential of pre-application discussions (Welsh Government, 2012) provides information on:

- the benefits of a pre-application service;
- providing a pre-application service;
- processes and tools for pre-application discussions; and
- checklists for planning authorities and applicants.

6.3.5 The flow diagram below (Figure 3) sets out how the statutory pre-application process should work.

Publishing requirements

6.3.6 LPAs must publish on their website a statement that indicates the pre-application services offered by them, a pre-application enquiry form and the fee schedule. Should the authority also provide additional discretionary services, these should be clearly set out on the website. The website statement should include:

- that a statutory pre-application service is available from the LPA;
- the information and fee an applicant needs to submit to use this service; and
- an indication of what the applicant will receive in return and the expected timeframe for a response.

6.3.7 A downloadable version of the statutory pre-application enquiry form is available on the Welsh Government's website.

Qualifying applications

6.3.8 The statutory pre-application service relates to development proposals that would require applications for planning permission to be implemented. This does not include applications for planning permission for development already carried out (section 73A of the 1990 Act). It also does not include applications for listed building consent or advertisement consent. However, the LPAs discretionary service should be used to obtain advice for these consent types.

Submission of a pre-application enquiry form

6.3.9 Applicants will be required to complete a pre-application enquiry form to access the pre-application service.

6.3.10 Applicants must provide LPAs with the following information within the pre-application enquiry form:

- contact details of the developer / agent (name, address, telephone number and email address);
- a description of development, which will include the volume of floorspace and number of units being created;
- site address;
- location plan (on an Ordnance Survey base); and
- plans, additional supporting information and reports that will assist the LPA to provide a helpful, focussed response.

6.3.11 An applicant may provide information in addition to the requirements above to help an LPA provide an informed response based on all available information.

6.3.12 The statutory pre-application service is subject to payment of a standard fee, based on the size and scale of a proposed development. The LPA's decision is final when determining the appropriate fee. The fee scale, as set out in The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2016, is:

Householder - £25
Minor Development - £250
Major Development - £600

Large major development[4] - £1000

Valid Pre-Application Request

6.3.13 LPAs are only required to respond to requests for pre-application advice that are submitted on the pre-application enquiry form and where the relevant information has been provided (see paragraph 6.3.10). Full payment of the appropriate fee is also required to be submitted with a pre-application enquiry form before it is deemed valid.

6.3.14 If an applicant fails to provide either all of the relevant information outlined in paragraph 6.3.9 or the correct fee, the LPA should write to the applicant and request the information that is missing from their pre-application enquiry form and / or the relevant fee.

6.3.15 When a pre-application enquiry form has been validated, LPAs are required to send an acknowledgement letter to the applicant, informing them they have received and validated their enquiry form and outlining the date by which a written response will be provided.

Timescales for responding

6.3.16 As part of the statutory pre-application service, LPAs have 21 days to provide a written response to the applicant.

6.3.17 Extensions of time are permitted, subject to both the LPA and the applicant agreeing in writing a revised date for a written response to be returned to the applicant.

6.3.18 If after initial consideration of the request, an LPA requires more than 21 days to respond but the applicant does not agree to the proposed extension of time, the LPA must provide a written response within 21 days. The response should include whatever information it can provide within the timescale to meet the requirements set out in regulations 7 and 8 of the pre-application services regulations.

6.3.19 If an applicant pays for the pre-application service by cheque, the LPA is expected to accept this as immediate payment and begin the pre-application process accordingly, rather than waiting for the cheque to clear. Where a cheque has been submitted as payment and is subsequently dishonoured, the pre-application process immediately stops, including the 21 day written response time (or any agreed extension of time) and does not begin again until the LPA is satisfied they have received the full amount of the fee from the applicant.

Written response from the local planning authority

6.3.20 For enquiries relating to householder development, a written response from the LPA will contain, as a statutory minimum, the following information contained in section 7 of the pre-application services regulations:

a) the planning history of the land;
b) the relevant development plan policies against which the development proposal will be assessed;

[4] Large major development is defined as development exceeding 24 dwellings, or 0.99 hectares, or 1,999 square metres.

c) relevant supplementary planning guidance (e.g. design considerations, conservation and biodiversity);
d) any other material planning considerations; and
e) the views of the case officer that address the merits of the proposal in the context of points (a)-(d) – such views should be made without prejudice to the formal determination of any subsequent planning application

6.3.21 For all other statutory pre-application enquiries, a written response from the LPA will contain, as a minimum, the same information identified within paragraph 6.3.19, as well as whether any Planning Obligation or Community Infrastructure Levy contributions are likely to be sought and an indication of the scope and amount of these contributions.

6.3.22 Any assessment of the proposed development by the case officer should be made without prejudice to the formal determination of any subsequent planning application.

6.3.23 It is important that pre-application advice provided by an LPA is consistent, as it will be used by applicants to inform their development proposals. Consistency, and the effectiveness of pre-application discussions, can be improved if LPAs ensure that suitably experienced officers conduct negotiations and provide advice. LPAs should also seek to provide continuity in officer involvement so that any related planning applications are dealt with by the same officer.

6.3.24 The Design Commission for Wales contributed to a Welsh Government guidance document 'Site and Context Analysis Guide: Capturing the value of your site'. The guide includes a series of questions requiring consideration of how the analysis will inform the development proposal. These questions can serve as prompts for planning officers in pre-application discussions with applicants and their project teams regarding what analysis has been undertaken and how the emerging proposals respond to the unique features of the site. The guide can aid a constructive and informed dialogue at the pre-application stage and sets out a clear expectation of meaningful analysis at an early stage.

Monitoring

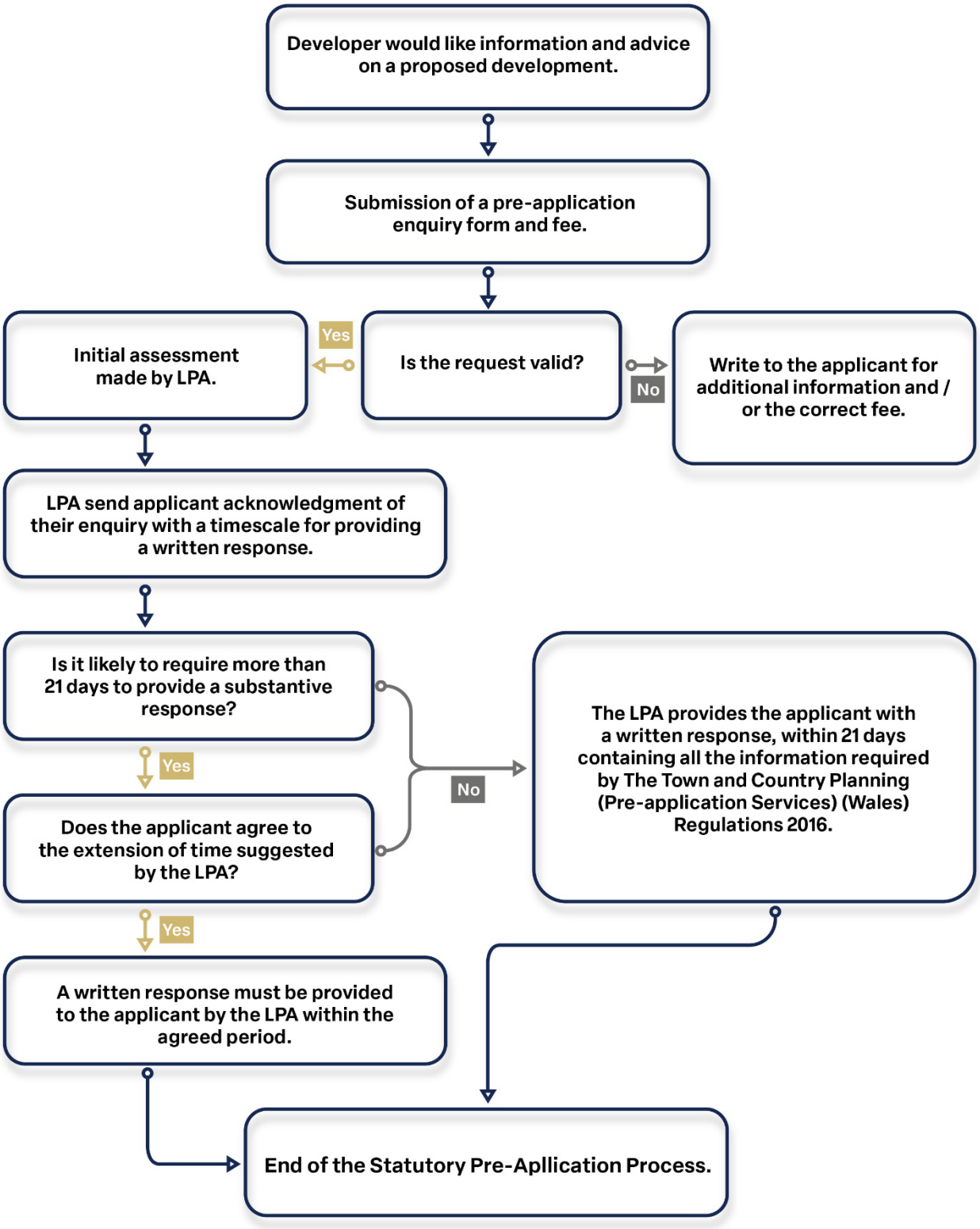
6.3.25 Regulation 9 of the pre-application services regulations requires LPAs to keep records of all valid pre-application enquiries they receive, including identifying the land to which each application relates. This is for internal use only to ensure consistency. LPAs should also record written response times for each valid pre-applications enquiry, indicating:

- the date a pre-application enquiry was validated;
- the date a written response was due (either 21 days or an agreed extension of time); and
- the date a written response was returned to the applicant.

Beyond the statutory pre-application service

6.3.26 The statutory pre-application service is intended to act as a starting point for pre-application discussions and LPAs are encouraged to offer services such as additional written advice and / or meetings that go beyond the statutory minimum.

Figure 3 - How the Statutory Pre-application Service Works



If a developer requests further written advice or meetings, local planning authorities should offer these services in addition to the statutory pre-application service and have the ability to charge discretionary fees.

6.3.27 LPAs will be able to charge discretionary fees for any additional services beyond the statutory pre-application service; however, they must only be charged on a cost recovery basis.

6.4 Pre-application Consultation by Developers

6.4.1 The requirement to undertake pre-application consultation, set out in Part1A of the DMPWO, applies to all planning applications for 'major' development, whether for full or outline permission. The definition of 'major development' is in article 2 of the DMPWO and reproduced in Section 5 Annex 'Planning Application Classifications – Thresholds and Criteria'. The requirement does not apply to applications:

- for applications to vary conditions;
- for retrospective applications
- for reserved matters
- for non-material amendments;
- for minor material amendments.

6.4.2 Prior to submitting an application for major development, the developer must:

- publicise a draft of the application;
- consult community and specialist consultees; and
- write a report about the pre-application consultation undertaken.

6.4.3 The Welsh Government has published best practice guidance to assist developers with the legal requirements when undertaking pre-application consultation.

Display of a Site Notice

6.4.4 The developer should display site notices on or near the site. They should be visible and legible to anyone passing by without the need to enter the site. A large site, bounded by several roads and footpaths or with more than one frontage will normally require more than one notice.

6.4.5 The site notice is required to contain all the information set out in the form contained in Schedule 1B to the DMPWO.

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

Letter to Owner or Occupier of Adjacent Land

6.4.7 Developers will need to make a judgement on a case-by-case basis on who comprises an 'adjoining owner or occupier' for the purpose of directly notifying them of the consultation. Developers should bear in mind the benefits of maximising publicity at the pre-application stage.

6.4.8 Letters should be addressed to "the owner and/or occupier" of land adjoining the site. The letter is required to contain all the information set out in the form contained in Schedule 1B to the DMPWO. In considering the format of a letter, developers are

reminded that English and Welsh are both official languages and should be treated equally.

6.4.9 The letter must identify that there is a minimum period of 28 days to allow representations to be made. Developers have flexibility to consider a longer period. The 28 day period starts from the date of service of the letter.

Making the Draft Planning Application Information Publicly Available

6.4.10 The site notice and letters are required to identify a location in the vicinity of the site where all information will be made available. That is the information that would be required to be submitted as part of a formal planning application. This includes:

- Scaled plans, with north arrow, to identify the land to which the application relates.
- All other scaled plans, drawings and information that would be required to describe the proposed development – this includes any technical documents that would be needed in order to validate any subsequent application.
- Design and Access Statement.
- Any information that would be needed in order to comply with any local validation requirements of the relevant LPA.
- Draft Environmental Statement (if relevant – see paragraph 6.4.34).

6.4.11 The information must be available for the full duration of the 28 day publicity period.

Consultation with Community and Specialist Consultees

6.4.12 Developers are also required to undertake pre-application consultation with 'community consultees' and 'specialist consultees'.

6.4.13 'Community consultees' comprise:

- each community council (this includes both town and community councils) in whose area the proposed development would be situated
- each county or county borough councillor representing an electoral ward in which proposed development would be situated.

6.4.14 'Specialist consultees' refer to the list of consultees included in Schedule 4 of the DMPWO. The specific consultees required will vary depending on the type of development.

Town and Community Councils

6.4.15 Developers are required to inform any town and community councils responsible for the area in which the proposed development is located. If the proposed development is located in an area where more than one town or community council operates, both should be notified.

6.4.16 The developer must contact the relevant town and community council by e-mail or letter. The correspondence must contain the information set out in the notice in Schedule 1B to DMPWO.

6.4.17 Town and community councils must be provided with a minimum period of 28 days to allow representations to be made in response to the notification. Developers

have flexibility to consider a longer period. The 28 day period starts from the date on which the notice is given.

Local Members

6.4.18 Developers are required to inform all county and county borough councillors responsible for the electoral ward in which the proposed development is located.

6.4.19 If the proposed development straddles a number of electoral wards, all local members within those wards will need to be notified by letter. The letter will need to contain the same information as provided in the site notice and the letter to neighbours (see Schedule 1B to the DMPWO).

Web based material

6.4.20 For the purposes of publicity and consultation, the use of web-based information can have significant advantages, in terms of speed and convenience, for both the developer and those with computer access. Not all developers may have the technical resources to upload plans and supporting material to a website. Whilst this is not a requirement, developers are encouraged to use web-based material when such technology is available.

Location for public viewing of plans and supporting information

6.4.21 The developer's notification letter is required to specify a location where plans and supporting information will be made available for public viewing. The developer has flexibility on the choice of venue(s) but should, as a minimum, allow the public access during normal working hours for the full 28 day notification period.

6.4.22 In cases when the developer has made the relevant information available on a website, the location for public viewing can be a library or other public building where computer facilities are made freely available to the general public. If the developer has not made the relevant information available on a website, then a hard copy needs to be made available.

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

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

Additional publicity and notification

6.4.25 Pre-application community consultation provides an opportunity for developers to promote the benefits of their scheme and respond to any public concerns. This process can reduce conflict at the planning application stage, facilitating quicker decision making. In order to maximise the benefits of this process, developers may

wish to consider additional methods of publicity such as exhibitions and public meetings, particularly when large-scale, more complex schemes are proposed.

6.4.26 Developers should also consider consultation with other stakeholders in the planning system, this can improve the quality of applications and help reduce the time taken to deal with a formal application. Such stakeholders include the Design Commission for Wales, police crime prevention design advisors and access groups. The relevant LPA will hold contact details for these groups.

6.4.27 There is no statutory requirement for developers to notify the owner and occupier of the proposed development land that a pre-application consultation is being undertaken, although developers are encouraged to do so. Statutory notice is required however of the intention to submit a planning application.

Specialist consultees

6.4.28 The developer is required to consult a specialist consultee listed in the table to Schedule 4 of the DMPWO when the proposed development meets the corresponding 'description of development' listed in column 2 of that table. The consultation notification from the developer to consultees must contain the information set out in the notice in Schedule 1C to DMPWO.

6.4.29 The developer must provide the following directly to the consultee, or direct the consultee to a website which contains this information:

- All information that would be required to be submitted as part of a formal planning application. This includes all the information on the relevant planning application form, except the ownership certificates.
- Scaled plans, with north arrow, to identify the land to which the application relates.
- All other scaled plans, drawings and information that would be required to describe the proposed development. This includes any technical documents that would be needed in order to validate any subsequent application.
- Design and Access Statement.
- Any information that would be needed in order to accord with any local validation requirements of the relevant LPA.

6.4.30 The developer should provide specialist consultees with this information electronically, as this is the most efficient and cost-effective method. In cases when information is posted to statutory consultees, developers should consider using recorded delivery. It will be necessary to take account of the time taken to deliver the information in determining when the 28 day period will start and end.

6.4.31 On receipt of the requisite notice specified by article 2D of the DMPWO, the specialist consultee is required to provide a 'substantive response' to the developer within the prescribed 28 day period, or within such period that has been agreed in writing with the developer.

6.4.32 A 'substantive response' is one which:

- States that the specialist consultee has no comment to make.
- States that the specialist consultee has no objection to the proposed development and refers the applicant to current standing advice by the specialist consultee on the subject of the consultation.

- Advises the applicant of any concerns identified in relation to the proposed development and how these those concerns can be addressed.
- Advises the applicant that the specialist consultee has concerns and that it would object to an application for planning permission made in the same or substantially the same terms and sets out the reasons for those objections.

6.4.33 In some cases, particularly when considering more complex and technical schemes, the specialist consultee may require an extension of time to fully consider the proposed development. Developers have discretion on whether to accept an extension of time but should note that gaining a comprehensive, informed understanding of technical issues at this stage can facilitate quicker decision making at the planning application stage.

Environmental Impact Assessment (EIA)

6.4.34 If a development proposal is EIA development, the developer must make available draft reports and information that would be used to form an Environmental Statement as part of the statutory pre-application process.

Process for dealing with responses

6.4.35 All comments received within the specified timescales need to be considered by the developer. There is no requirement for developers to consider representations that are received after the end of the period specified in the relevant notice.

Pre-application consultation report (PAC)

6.4.36 All planning applications for development proposals that are subject to statutory pre-application consultation must be accompanied by a pre-application consultation report (PAC) in order to be valid.

6.4.37 The PAC must contain:

a) a copy of the site notice;
b) a declaration that the site notice was displayed in accordance with the statutory requirements, i.e. in at least one place on or near the development site for no less than 28 days;
c) a copy of the notice sent to owners and occupiers of adjoining land;
d) copies of all notices provided to councillors, town and community councils, and specialist consultees;
e) a summary of all issues raised in response to the statutory publicity (i.e. site notice and letters to owners, occupiers) – the developer must confirm whether the issues raised have been addressed and, if so, how they have been addressed; and
f) copies of all responses received from specialist consultees with an explanation of how each response has been addressed by the developer.

6.4.38 The developer has flexibility to determine the most effective way to present the pre-application consultation report providing the points in (a) to (f) above are addressed. However, under the Data Protection Act 1998, the addresses and other contact information of private individuals must be redacted in the PAC before it is submitted.

6.4.39 If developers undertake publicity or consultation that exceeds the minimum statutory requirements, they are encouraged to report the outcome of this pre-application engagement in the PAC.

Section 6 Annexes None
Further Guidance Welsh Office Circular 11/99: Environmental Impact Assessment Practice Guide: Realising the potential of pre-application discussions (May 2012) Site and Context Analysis Guide: Capturing the value of your site (March 2016) Pre-application Community Consultation: Best Practice Guidance for Developers (December 2021)
Relevant Legislation Data Protection Act 1998 Planning (Wales) Act 2015 Town and Country Planning Act 1990 The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) (Amendment) Regulations 2016 The Town and Country Planning (Pre-Application Services) (Wales) Regulations 2016

Section 7

Submission, Registration and Validation

7.1 Introduction

7.1.1 This section provides guidance on the submission of a planning application, including use of the Standard Application Form (more generally referred to as '1APP') for planning permission and other associated consent regimes. It also provides guidance on the information which must be provided to accompany a planning application, including the relevant fee, so that the LPA can register and determine the validity of the application.

7.1.2 The Standard Application Form provides a consistent approach to the submission of planning applications across Wales and enables a single application to be submitted for a range of consents, directly saving applicants' time. A standard approach is welcomed by many applicants who submit applications to different planning authorities, as the consistency of approach enables them to be clear about the extent of information required for an application to be considered and determined.

7.1.3 All LPAs across Wales have been using the Standard Application Form to accept electronic applications. The DMPWO made the use of the Standard Application Form mandatory for some consent types. Although it is possible to use the form to submit applications on paper, the full benefits of standardisation will only be realised through its use as part of the electronically based process. The Welsh Government therefore encourages use of the electronic version wherever possible.

7.1.4 The Standard Application Form can assist in timely processing of planning applications, with the objective of minimising delays resulting from applications being incomplete or missing vital information. Use of the Standard Application Form in combination with pre-application services and other published information requirements should offer:

- Greater certainty for applicants about what is required
- Reduction in duplicated information
- Sufficient information at the start of the determination process to enable LPAs to make decisions within the relevant statutory periods
- Thorough consideration of all design aspects of the proposal to encourage greater quality of development before submission.
- Quality decisions that contribute to sustainable development.

7.2 Submitting the Application

Digital Submission of Planning Application Forms and Associated Consents

7.2.1 The use of electronic communications to submit planning applications offers many advantages to both applicants and LPAs.

7.2.2 Previously, the Welsh Government employed a contractor to provide a single digital point of access for the provision of online planning applications and associated consents through the "Planning Applications Wales" website.

7.2.3 As set out in the Dear CPO letter dated 11 November 2024, the Welsh Government no longer funds or manages this service. Instead, these will be offered by a private company, as is already the case for such applications in England. The technology supporting the service largely remains the same.

7.2.4 PortalPlanQuest Ltd (PPQ), a subsidiary of TerraQuest, is currently the sole provider via their website the 'Planning Portal' however, other service providers may enter the market and provide the same service in the future.

Format of the Application

7.2.5 Applicants can submit an application electronically, in paper format to the LPA, or a hybrid of both where necessary (see section 7.2.8). The planning portal enables electronic submission of planning applications to every LPA in Wales. Applicants are encouraged to apply electronically. However, online submission of supporting information may not always be possible. In these circumstances, information can be submitted to the LPA in hard copy, or electronically (e.g. on a CD, USB storage device or via email).

Obtaining the Application Form

7.2.6 Planning (and most other) applications must be made on a standard application form published by the Welsh Ministers, or a form substantially to the same effect. This requirement is set out in article 5 of the DMPWO and the forms are made available through digital service providers (see section 7.2.4 above), published on the Welsh Government website and in some cases LPA websites. The application form must be accompanied by information necessary to describe the application.

Number of copies of an application form

7.2.7 Applicants who apply for planning permission or consent on a paper copy of the Standard Application Form must provide the original plus three copies of the form and any accompanying plans, drawings or information associated with the application (a total of four copies) unless the LPA indicates fewer are required. LPAs may request additional copies above the statutory requirement, but failure to provide these, would not be a basis for refusing to register the application as valid.

7.2.8 Electronic submission of supporting information may not always be possible because of its volume and variety. In these circumstances, information can be submitted in hard copy even if the application form has been submitted electronically, but applicants who submit supporting information in hard copy must provide the original plus three copies (a total of four copies).

Multiple applications

7.2.9 Use of the Standard Application Form on the Planning Portal allows applicants to apply for multiple consents at the same time. The form has been designed so the questions that appear will not be repeated where the same information is required for more than one consent regime. A fee (where applicable) will apply to each consent sought.

7.2.10 Use of the form for multiple applications which come under different consent regimes is intended to streamline the application process. However, it does not alter the fact that these applications are legally distinct and their validity and

determination should be treated as such by the LPA. LPAs will need to consider the most appropriate procedures for handling multiple applications.

7.2.11 At the end of the determination process, LPAs are advised to send the applicant a decision letter for each consent regime to which the application relates. However, where a decision letter combining consents is sent, the different consents must be differentiated within the letter as they are still legally distinct from one another.

7.2.12 The following table (Figure 4) lists the consent types for which the use of the Standard Application Form is mandatory. Although some of the application submission requirements remain constant, the Standard Application Form will vary for each consent type to accommodate the different information that is relevant for the determination of each case.

Figure 4 – Use of the Standard Application Form for Different Consent Types

Consent types for which use of Standard Application Form is Mandatory
• Outline and Full Planning Permission (including Householder Developments) • Approval of Reserved Matters • Removal or Variation of Conditions • Non-Material Amendments • Lawful Development Certificates • Consent under Tree Preservation Orders • Advertisement Consent • Listed Building Consent • Conservation Area Consent
Consent types which can be made using the Standard Application Form, but where this is not mandatory
• Applications for Prior Notification/Approval under the Town and Country Planning (General Permitted Development) Order 1995 (GPDO) • Approval of Planning Conditions
Examples of consent types for which the Standard Application Form cannot be used, and applications should continue to be made on a form provided by the LPA
• Applications for Mining Operations or the Use of Land for Mineral-working Deposits • Hazardous Substances Consent

Validating and Registering Applications

7.2.13 For most applications, the Standard Application Form together with additional documents referred to on the form (for example flood consequences assessments), will provide both certainty for applicants and sufficient information for LPAs. LPAs

should apply a consistent and proportionate approach, reflecting the scale and complexity of the development, to the determination of information requirements.

7.2.14 Checking by the LPA, whether all required items have been submitted (commonly called 'validation'), is important. Validation identifies whether the information requirements for the application type have been met. Section 7 Annex 'Planning Applications - Lists of Validation Requirements' provides information listing what is required for each application type and reflects the legal requirements set out in the DMPWO and the other listed statutory instruments. The requirements apply irrespective of whether the application is made on paper or electronically.

7.2.15 For electronic applications it will be acceptable for applicants to produce a typed signature on the form in block capitals of their name or the Agent's details if signed on the applicant's behalf.

Certificates of ownership

7.2.16 In order for the LPA to validate any application for planning permission or listed building and conservation area consent, it must be accompanied by ownership certificates. The requirement for ownership certificates comes from article 11 of the DMPWO and Regulation 6 of the Listed Buildings and Conservation Areas (Procedure and Interest Rate) (Wales) Regulations 2024 . The certificate is confirmation that where the applicant does not own the land, or there are other landowners, those with a legal interest in the land have been notified that the planning application will be submitted. Such notification is also required where agricultural tenants occupy land that will be the subject of a planning application.

7.2.17 The prescribed certificates are published by the Welsh Ministers as part of the Standard Application Form.

Signatures

7.2.18 A written ink signature will be needed on any paper version of the certificates within the Standard Application Form but for any electronically submitted certificate, a typed signature of the applicant's name is acceptable.

Validating Applications for Planning Permission

7.2.19 Where the application is for planning permission, an LPA is required to give the applicant notice of its decision for determining the application within a specified timescale. Article 22 of the DMPWO defines what a 'valid' planning application is for the purpose of triggering the statutory determination period and 'validation' is part of the process within which an LPA decides whether an application has been received which fulfils these requirements.

7.2.20 On receipt of a Standard Application Form, acknowledgement must be given to the applicant in writing in the same terms (or substantially the same terms) as set out in Schedule 1 of the DMPWO. The letter should also notify applicants of their right of appeal following the expiry of the relevant determination period (see section 11) unless they are informed in writing by the LPA that their application is invalid.

7.2.21 Applications should be clearly marked with the date of receipt as this will assist in identifying the start of the determination period, if the application is checked for validation purposes at a later date. LPAs are encouraged to validate applications on

the day they are received, however it is expected that applications will usually have been assessed against the validation requirements within 5 working days of receipt. LPAs are also encouraged to resolve minor validation issues as soon as possible by way of a telephone call ore-mail.

7.2.22 Validating planning applications should essentially be an administrative process. The Standard Application Form should be checked to ensure all relevant questions have been answered. If an LPA is satisfied it has received an application that meets the requirements set out in the Standard Application Form, including additional assessment documents, other legal requirements such as those in the DMPWO, and any published local validation requirements (for major applications), it must be registered as a valid application. The LPA should then determine the application within the relevant time periods set out in article 22 of the DMPWO.

7.2.23 Similar validation requirements exist for listed building consent applications.

Identifying omissions and inaccuracies

7.2.24 In order to help LPAs to assess applications effectively and expeditiously, it is important that applicants answer all the relevant questions on the Standard Application Form and provide all the accompanying information requested. LPAs should seek any information necessary at the earliest opportunity after receipt of the application and not make repeated requests to applicants.

7.2.25 Clear omissions will result in the application being determined as invalid. However, where the information is a matter of subjective judgement, the quality of the information should have no bearing on the validity of the application for the purpose of article 22 of the DMPWO. Similarly, the quality of additional assessments submitted as part of the application process should have no bearing on the validity of the planning application during the validation process, unless there are clear omissions or inaccuracies.

7.2.26 Where a question on the Standard Application Form or an entry in published local validation requirements (for major applications) specifies information that is not relevant to the type of development, applicants should be encouraged to provide written justification as to why it is not appropriate in the particular circumstances, for example it may be covered in documentation already supplied. LPAs should not automatically determine an application invalid if information is missing from the Standard Application Form or to meet local validation requirements unless they can justify the need for the information in each particular case.

7.2.27 Applicants are encouraged to agree information requirements with the LPA prior to submission through pre-application discussions so that where possible, the information sought is proportionate to the nature of the scheme. It is particularly important that LPAs only seek information that is necessary for a decision to be made and, in accordance with section 62(4A) of the 1990 Act, not require a level of detail to be provided that is unreasonable or disproportionate to the scale of the proposal, or would not be a material consideration in its determination.

Notification where application invalid

7.2.28 Where there are clear omissions, the LPA will be entitled to determine that the application is invalid. The authority should notify the applicant using the template provided by the Welsh Government.

7.2.29 A notice that an application is invalid should:

- include an allocated application number and description of the application to which the notice relates;
- identify the requirement under section 62 of the 1990 Act and the DMWPO (if relevant) under which the application for planning permission is invalid;
- in the case of an application for consent, agreement or approval required by a condition or limitation subject to which a planning permission has been granted identify reasons why it does not comply with these requirements;
- provide a brief description how the applicant can comply with the requirements; and
- be accompanied by an explanatory note explaining the appeal process

7.2.30 The notice may also include:

- the name of the applicant;
- the application reference number and description of development;
- the date by which the appeal must be made and how to make the appeal.

7.2.31 Where an LPA requests an item of information it must give full consideration to whether the information in question is really necessary and relevant to the application.

7.2.32 The determination of appeals against a notice of non-validation is intended to be an expeditious process. Therefore, the notice will be the only opportunity for the LPA to state their case as to why they consider the application to be invalid. There will not be an opportunity, once an appeal has been submitted, to produce a statement to counteract an appellant's grounds of appeal. Any information that an LPA consider supports their decision should be included with the notice.

7.2.33 If the missing information is not forthcoming within a reasonable time period set in the notification, or the applicant has not exercised their right to appeal against a notice that their application is invalid, then the LPA should return the application and any fee to the applicant.

Appeals against notice that application is not valid

7.2.34 Guidance on appeals against a notice that an application is not valid can be found in section 12.2.

Requests for further information

7.2.35 Changes to the validation procedures do not affect the LPAs ability to request clarification or further information during the determination process. However, an applicant's failure to respond to such a request does not in itself invalidate the planning application. See section 9.3 for further guidance.

Information requirements for Planning Applications

7.2.36 Article 5 of the DMPWO contains requirements for an application for planning permission to be valid. This includes 'the particulars specified or referred to in the form'. The particulars include the specific questions on the Standard Application Form and the additional information referred to, such as the need for a transport assessment in certain circumstances. A requirement for additional information is

included on the form where there is a clear trigger based in national planning policy. Assessments are not required in all circumstances but where an applicant fails to include the information where required, the LPA can issue a notice that the application is not valid. The information requirements of LPAs should be consistent and proportionate to the size and complexity of the development proposed.

7.2.37 The assessments that may be required to make a planning application 'valid' for the purpose of articles 5 and 22 of the DMPWO are:

- Biodiversity Survey and Report
- Design and Access Statement
- Environmental Statement
- Flood Consequences Assessment
- Coal Mining Risk Assessment
- Noise Assessment
- Retail Impact Assessment
- Rural Enterprise Dwelling Appraisal
- Transport Assessment
- Tree survey

7.2.38 The information needed by LPAs to properly consider applications for smaller scale development such as those undertaken by householders is likely to be similar across Wales, while applications for major developments are more likely to raise locally distinct issues. Therefore Lists 1 to 3 in Section 7 Annex 'Planning Applications - Lists of Validation Requirements' reproduce the requirements for applications for planning permission that vary according to the scale of the development:

Applications for householder development

7.2.39 These are defined as the carrying out of operations (including the erection of a building) within the curtilage of an existing dwellinghouse, for purposes ancillary to the enjoyment of the dwellinghouse as such, or the erection or construction of gates, fences, walls or other means of enclosure along a boundary of the curtilage of an existing dwellinghouse and require the information reproduced in List 1 in Section 7 Annex 'Planning Applications - Lists of Validation Requirements'.

Applications for minor development:

7.2.40 Such applications are for development that does not fall within the categories of householder or major development and require the information reproduced in List 2 in Section 7 Annex 'Planning Applications - Lists of Validation Requirements'.

Applications for major development:

7.2.41 Major development is defined in article 2 of the DMPWO, which is reproduced in Section 5 Annex 'Planning Application Classifications – Thresholds and Criteria'. Such applications require the information set out in List 2 in Section 7 Annex 'Planning Applications - Lists of Validation Requirements' and the 'local validation requirements' if published by the LPA on its website (see the requirements of article 8(1)(f) and 8(2)(a) of the DMPWO).

7.2.42 For major development proposals that straddle LPA boundaries where local validation requirements differ, applicants may have to provide different information

to each authority. The applicant should use pre-application discussions (see section 6.3) to agree with each LPA the information they will require to validate the application.

Applications for major development – local validation requirements

7.2.43 For major planning applications, in addition to the requirements specified in the Standard Application Form, the LPA may adopt 'local validation requirements'. If the LPA has local requirements they should be published on the LPA's website. It will be up to the LPA to specify exactly what information is required for major planning applications to ensure that the applicant supplies the correct supporting information. Section 62(4) of the 1990 Act provides that any local requirement must not be inconsistent with the provisions made in the DMPWO.

7.2.44 In preparing or reviewing their local validation requirements, LPAs should take into account the principles and criteria set out in Section 7 Annex 'Principles and criteria for preparation of local validation requirements'.

7.2.45 Where an LPA has existing guidance setting out its requirements, it should review the list to ensure it reflects the requirements set out in this guidance and if changes are necessary consult on the revised guidance before using it to validate planning applications.

7.2.46 LPAs can produce their local validation requirements at any time, as there is no statutory deadline. An LPA should consult statutory consultees and the local community, including planning agents, on its draft proposals for a period of at least six weeks. However, unless and until the LPA has completed consultation and published its final version on its website, any local information requirements will have no bearing on the validity of applications. Where local validation requirements have yet to be advertised, the LPA can only assess the application's validity against the information noted in List 2 in Section 7 Annex 'Planning Applications - Lists of Validation Requirements'.

7.2.47 LPAs should configure the electronic application system on the Planning Portal, and that of any future service supplier, with their local validation requirements for major applications to ensure that the form reflects up to date information requirements for each LPA.

Applications for Express Consent for the Display of Advertisements, Listed Building Consent, Conservation Area Consent and Consent under a Tree Preservation Order

7.2.48 Applications relating to advertisement, listed building, conservation area or tree preservation order consents, have to be made on the Standard Application Form.

7.2.49 LPAs have eight weeks from the date of the receipt of a valid application to determine each application in the same way as applications for planning permission. The process for determining that a valid application has been received should follow the procedures set out in paragraph 7.2.19 onwards, substituting references to the DMPWO, with the provision from the relevant statutory instruments listed at the end of this Section. The main information requirements are summarised in Section 7 Annex 'Planning Applications - Lists of Validation Requirements'; however for the full requirements LPAs should refer to the relevant statutory instrument.

'Prior Approval' Applications under Parts 6, 7, 24 and 31 of Schedule 2 of the Permitted Development Order

7.2.50 Applications to determine whether the 'prior approval' of the LPA is required for aspects of development are specified in the relevant part of schedule 2 to the GPDO. While such an application can be made using the Standard Application Form and therefore benefit from electronic submission, the GPDO only requires it to be made in writing.

7.2.51 Section 7 Annex 'Planning Applications - Lists of Validation Requirements' summarises the main requirements of each part of Schedule 2 to the GPDO but LPAs, when determining whether a valid application has been received, should refer to the full requirements contained in the relevant part.

7.2.52 See section 3.3 and Section 3 Annex 'Prior Approval' for further guidance regarding the prior approval process.

Power to decline to determine an application

7.2.53 Section 70A of the 1990 Act grants LPAs the power to decline to determine a planning application provided:

a) within the period of two years ending with the date on which the application is received, Welsh Ministers have refused a similar application made to them under section 62D, 62F, 62M or 62O, or referred to them under section 77, or have dismissed an appeal against the refusal of a similar application; and

b) in the opinion of the LPA there has been no significant change since the refusal or, as the case may be, dismissal mentioned in paragraph (a) in the development plan, so far as material to the application, or in any other material considerations.

7.2.54 The application must be registered and a fee is payable in the normal way before the LPA come under any duty to determine it. The LPA is not however required to refund the applicant's fees in the event of the authority deciding to decline to determine the application.

7.2.55 The LPA must notify an applicant that they will be exercising the power to decline to determine their application so that the right to appeal to the Welsh Ministers against non-determination of the application is extinguished.

7.2.56 Further guidance is set out in Welsh Office Circular 44/91: Planning and Compensation Act 1991.

7.2.57 Section 70C of the 1990 Act enables LPAs to refuse to determine an application for planning permission where an enforcement notice has been issued before the application is submitted.

7.2.58 Note that a similar power also exists in section 93 of the Historic Environment (Wales) Act 2023 enabling a LPA to refuse to consider an application for listed building consent under certain circumstances.

7.3 Design and Access Statements

Planning Applications requiring a Design and Access Statement

7.3.1 The requirement to submit a Design and Access Statement (DAS) with a planning application applies to the following:

- All planning applications for 'major' development except those for mining operations; waste developments; relaxation of conditions (section 73 applications) and applications for a material change in use of land or buildings.
- All planning applications for development in a conservation area or World Heritage Site which are for the provision of one or more dwellings or the creation of floorspace of 100 sq. m. (gross) or more.

7.3.2 For those applications which do not require a DAS, LPAs have the ability to request further clarification or information on design if it will assist them in determining applications under development plan design policies.

7.3.3 'Major' development is defined in article 2 of the DMPWO.

7.3.4 'Conservation Area' is defined in section 210 of the Historic Environment (Wales) Act 2023 as an area designated under section 158 of that Act.

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

7.3.6 An application for approval of reserved matters is not an application for planning permission and, as such, a DAS is not a statutory requirement. However, for a DAS to follow the 'living document' approach, an application for approval of reserved matters should be accompanied by a progress statement updating what changes, if any, have occurred since the original DAS was submitted at outline stage. It may also be appropriate for conditions relating to matters contained in the DAS to be imposed when the outline permission is granted.

Content of a Design and Access Statement

7.3.7 A DAS accompanying a planning application must:

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

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

7.3.9 Further guidance is available to assist in the preparation and consideration of DAS in Design and Access Statements for Wales prepared by the Design Commission for Wales.

Validation of a Planning Application requiring a Design and Access Statement

7.3.10 Relevant planning applications will be considered invalid unless they are accompanied by a DAS which contains the information outlined in paragraph 7.3.7 above. An LPA must not enter an application on the Planning Register unless accompanied by a DAS (where one is required) which meets the requirements of the regulations.

7.3.11 When considering whether the content of a DAS is sufficient to meet the requirements of the legislation, LPAs should consider whether the information is proportional to the complexity of the proposed development.

7.3.12 In some circumstances the quality of the supporting information may be a concern. This is not a ground for invalidating applications, but applicants are encouraged to submit information to a good standard as this will assist the determination process. LPAs have the ability to request further clarification or further information during the determination process.

Requirements for listed building consent applications

7.3.13 A heritage impact statement is required for listed building consent applications. Guidance is provided in section 20.

Applications not requiring a Design and Access Statement

7.3.14 A DAS is not required for applications relating to advertisement control, tree preservation orders or storage of hazardous substances.

7.4 Fees

7.4.1 A fee is payable for most types of permission. The fees are set nationally and must accompany the submission of the application. Fees are currently set by The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015. ('the fees regulations'). The regulations were amended by the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) (Amendment) Regulations 2020**,** increasing planning fees payable by approximately 20%.

7.4.2 The Welsh Government has consulted on further increases to planning fees, proposed to be introduced in 2025, with a pathway to achieving full cost recovery. The consultation can be viewed on the Welsh Government website.

Payment

7.4.3 Without payment of the appropriate fee, an application is not valid[5]. As part of the validation process, the LPA should make certain it has received the correct fee. If, in the opinion of the LPA, an application is submitted without the correct fee, the LPA should explain to the applicant as soon as possible that the application process cannot begin until it has been received. The correspondence should identify what payment is due and if after a reasonable period of time the fee is not received, the LPA may return the application.

[5] Article 22 of the Town and Country Planning General Development Procedure) Wales Order 2012

7.4.4 If a fee is paid by cheque and the cheque is subsequently dishonoured, the eight (or sixteen if it is an application subject to EIA) week determination period will be suspended between the date the LPA notifies the applicant the cheque has been dishonoured and the date it receives the appropriate fee. Whilst it is unnecessary to wait until cheques have cleared before beginning to process applications, an authority may wish to satisfy itself that the appropriate fee has been paid before the applicant is notified of their decision.

Disputes and invalid or unnecessary applications

7.4.5 If there is a disagreement between applicant and LPA about the amount of the fee payable, the authority should not return the application (unless asked) and try to resolve the dispute with as little delay as possible. There are no dispute resolution procedures in the fee regulations.

7.4.6 The fee due in respect of an application must accompany the application when it is submitted to the LPA, and it must be refunded if the application is rejected as invalid, and (if relevant) any subsequent appeal for non-validation (see section 12.2) is unsuccessful and the additional information required is not submitted. If a planning fee is paid and it is subsequently realised that the application was unnecessary (for example, where the relevant works or change of use could have been carried out as permitted development), there is no statutory obligation to refund the fee.

Calculating the fee

7.4.7 The fee is calculated in accordance with the fee regulations. Section 7 Annex 'Calculating the Fee' provides detailed guidance on how to calculate the fee. In addition, the Planning Portal provides an online fee calculator that can assist in determining the cost of an application.

Altering a planning application

7.4.8 Wherever possible, planning applicants should try to ensure that their proposals are fully developed before submitting an application to the LPA. Information on pre-application advice and the fees to accompany the process is contained in section 6.3.

7.4.9 It is recognised that issues may come to light only after the application has been submitted. Applicants may wish to make minor amendments to the scheme before an LPA makes a decision on the proposal. Where the change is to a planning application for major development these changes are subject to the formal post submission amendment procedure, which requires a fee. Where the application does not relate to major development, no fee is required for these amendments.

7.4.10 Where the LPA deem that the amendment has a significant impact on the application submitted, they may request that a new application be submitted. Where the LPA insist on a fresh application, this may or may not benefit from the 'free go' arrangement. See paragraphs 11.10 to 11.15 of Section 7 Annex 'Calculating the Fee'.

Refund of the application fee

7.4.11 Once a planning application has been validated, the LPA should make a decision on the proposal as quickly as possible, and in any event it is expected that 80% of applications should be determined within the statutory time limits.

7.4.12 Where a valid application has not been determined within the relevant statutory period (or such other period as has been agreed in writing between the LPA and the applicant), the applicant has a right to appeal to the Welsh Ministers against non-determination. Where a planning application takes longer than the statutory period to decide, and an extended period has not been agreed with the applicant, the LPA has failed to provide the service that was paid for by way of the application fee. Therefore, where the applicant has not exercised this right of appeal, and the application remains undetermined after a set period of time, then the fee paid by the applicant will be refunded to them (unless a longer period for the decision has been agreed).

7.4.13 The time period that must elapse before a fee must be returned begins the day after the determination dates specified in articles 22 and 23 of the DMPWO. The time periods are:

- 8 weeks for householder applications
- 8 weeks for the approval of conditions
- 8 weeks for car parks and accesses incidental to existing single undertakings
- 16 weeks for all others

7.4.14 As the start of the period of refund starts from the determination date set out in article 22 of the DMPWO. This means that where an applicant and LPA agree in writing to extend the time period, the refund period starts after that agreed extension of time lapses.

Section 7 Annexes Calculating the Fee Planning Applications - Lists of Validation Requirements Principles and criteria for preparation of local validation requirements
Further Guidance Welsh Office Circular 44/91: Planning and Compensation Act 1991 Design Commission for Wales, Design and Access Statements in Wales (2017)
Relevant Legislation Historic Environment (Wales) Act 2023 Listed Buildings and Conservation Areas (Procedure and Interest Rate) (Wales) Regulations 2024 Town and Country Planning Act 1990 The Town and Country Planning (Control of Advertisements) Regulations 1992 The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2014 The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2015

The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015
The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) (Amendment) Regulations 2020
The Town and Country Planning (General Permitted Development) Order 1995
The Town and Country Planning (Trees) Regulations 1999

Section 8

Publicity and Consultation

8.1 Introduction

8.1.1 Where a valid application for planning permission has been submitted, there is a statutory obligation for LPAs to undertake publicity and consultation. The term 'publicity' refers to giving notice that an application has been received so that neighbours and other interested parties can make their views known. 'Consultation' invites the views of specialist bodies on particular types of development.

8.2 Publicity

8.2.1 Applications for planning permission (excluding some applications that fall within section 73) must be publicised in accordance with article 12 of the DMPWO. The DMPWO makes provision for 4 basic types of publicity:

- Site notice display on or near the land to which the application relates.
- Publication of a notice in a newspaper circulating in the locality.
- Serving notice on any adjoining owner or occupier.
- Publishing information on an LPA website.

8.2.2 LPAs have discretion over how they inform communities and other interested parties about planning applications, although article 12 of the DMPWO sets out the minimum statutory requirements based on the above methods. The Listed Buildings and Conservation Areas (Procedure and Interest Rate) (Wales) Regulations 2024 make procedural provisions for applications for listed building consent and for conservation area consent. The requirements differ depending upon the type of proposed development and are summarised in figure 5.

Figure 5 – Statutory Publicity Requirements for Planning and Heritage Applications

Type of development	Site notice or neighbour notification letter	Site notice	Newspaper advertisement	Website*
Applications for major development as defined in article 2 of the Development Management Procedure Order	X		X	X
Applications subject to Environmental Impact Assessment which are accompanied by an environmental statement		X	X	X
Applications which do not accord with the development plan in force in the area		X	X	X
Applications which would affect a right of way to which Part 3 of the		X	X	X

Wildlife and Countryside Act 1981 applies				
Applications for planning permission not covered in the entries above e.g. non-major development	X			X
Applications for listed building consent where works to the exterior of the building are proposed		X	X	
Conservation Area Consent		X	X	x
Applications to vary or discharge conditions attached to a listed building consent or conservation area consent or involving exterior works to a listed building.		X	X	

* Where the LPA maintain a website for the purpose of publicising applications (article 12(7) DMPWO). Publishing information online in an open data format can help facilitate engagement with the public on planning applications.

8.2.3 Note: Section 6.2 guidance on Environmental Impact Assessment sets out further publicity and consultation requirements for applicants where this is relevant.

8.2.4 In cases where publicity can be either putting up a site notice or direct neighbour notification, the LPA will need to consider the circumstances of the proposed development, such as the size of the site or nature of the development.

8.2.5 Neighbour notification should be the more appropriate method where interested parties are limited to those living in the immediate vicinity. In many cases, the development will only be of interest to close neighbours, whose main concern may be about loss of light or privacy. Site notices can be effective where there is doubt about who interested parties are, for example, if the ownership of adjoining land is uncertain, or because the sitting or design of the proposed development is likely to be of interest to more than immediate neighbours. They allow information about the proposed development to be passed by word of mouth to a larger audience than might otherwise be possible.

8.2.6 Neighbour notification should be addressed to ‘the owner and/or the occupier’ of land adjoining the proposed development site.

8.2.7 Notices should be displayed on or near the site and should be visible and legible to anyone passing by without the need to enter the site to be read. A large development site that may have several roads and footpaths leading to it, or with more than one frontage, will normally require more than one notice.

8.2.8 Occasionally, a site notice may be removed, obscured or defaced prior to its expiration (21 days) without any fault or intention of the LPA. In these instances, the LPA will be treated as having complied with the legislative requirements of the DMPWO if they have taken reasonable steps to protect the notice and, if need be, replace it.

8.2.9 Most LPAs maintain a website for the purpose of publicising applications for planning permission. Where this is the case, the following information must be published:

(a) the address or location of the proposed development;
(b) a description of the proposed development;
(c) the date by which any representations about the application must be made, which must not be before the last day of the period of 14 days beginning with the date on which the information is published;
(d) where and when the application may be inspected; and
(e) how representations may be made about the application.

8.2.10 Representations to an application for planning permission can be made up to and including 21 days from the date the application was first publicised. However, any relevant comments received after this period should also be taken into consideration, if the application has not been determined. All representations should be made in writing (email is acceptable) for them to be formally considered.

8.2.11 It is at the LPAs discretion as to whether they should undertake an additional publicity exercise if an application is amended, or additional information is submitted once the publicity and consultation periods have passed but the application has not been determined.

8.2.12 If further consultation is deemed to be required by an LPA, they must make a judgement on what publicity requirements are sufficient. For example, it may be appropriate to undertake a consultation exercise that encompasses a press release, neighbour notification and site notices, or if the amendment is minor, neighbour notification could be sufficient.

8.3 Access to Information

8.3.1 The public are able to view planning applications as they are required to be placed on Part 1 of the Planning Register. The register must be available for inspection by the public at all reasonable hours. Further guidance on the Planning Register can be found in section 11.3.

8.3.2 Article 12 of the DMPWO requires LPAs to publicise details of all planning applications on their website if they have one for that purpose. The requirement is to explain how each planning application can be viewed and how to make representations. The planning application or supporting information is not required to be published electronically, however LPAs are encouraged to do so to assist public participation in the DM process.

8.4 Statutory Consultees

8.4.1 Article 14 of the DMPWO requires LPAs to consult relevant specialist consultees when the proposed development meets a ‘Description of Development’ listed in Schedule 4 to the DMPWO.

8.4.2 Section 54 of the Planning and Compulsory Purchase Act 2004 (‘the 2004 Act) places a duty on specialist consultees to respond, providing a ‘substantive response’ to consultations within 21 days and report annually to the Welsh Ministers in meeting this duty. The 21 day period starts from the date on which the notice is received by the consultee.

8.4.3 The duty to provide a 'substantive response' is slightly different depending on whether the development proposal was subject to mandatory pre-application consultation with the statutory consultee. Where no mandatory pre-application consultation has taken place, a 'substantive response' is one which:

(a) states that the consultee has no comment to make;
(b) states that the consultee has no objection to the proposed development and refers the person consulting to current standing advice by the consultee on the subject of consultation;
(c) advises the person consulting of any concerns identified in relation to the proposed development and how those concerns can be addressed by the applicant; or
(d) advises that the consultee objects to the proposed development and sets out the reasons for the objection.

8.4.4 A 'substantive response' where pre-application consultation has taken place (and the consultee has given a response in accordance with article 2E of the DMPWO is one which:

(a) states that the consultee has no further comment to make in respect of the proposed development and confirms that any comments made under article 2E remain relevant;
(b) advises the person consulting of any new concerns identified in relation to the proposed development, why the concerns were not identified in the response given in accordance with article 2E and—
    (i) how the concerns can be addressed by the applicant; or
    (ii) that the consultee objects to the proposed development and sets out the reasons for the objection.

Annual Reporting

8.4.5 Article 15B of the DMPWO requires each consultee to submit an annual report to the Welsh Ministers on their compliance with their legal duties at each stage of the planning application process. The report will need to contain for the reporting period, the number of occasions when a substantive response was requested, the number of substantive responses provided, and the time taken to provide the substantive response.

8.4.6 The reporting period will cover 12 months, beginning on 01 April in each year. The report will need to be submitted to the Welsh Ministers by 01 July of each year, beginning with 01 July 2017, for the preceding reporting period. Reports can be submitted by email to Planning.Directorate@gov.wales.

Section 8 Annexes None
Further Guidance None
Relevant Legislation Planning and Compulsory Purchase Act 2004 Town and Country Planning Act 1990 Historic Environment (Wales) Act 2023 Listed Buildings and Conservation Areas (Procedure and Interest Rate) (Wales) Regulations 2024

The Town and Country Planning (Development Management Procedure) (Wales) Order 2012
The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2016

Section 9

Assessing and Determining the Planning Application

9.1 Introduction

9.1.1 Section 70 of the 1990 Act sets out that where an application is made to an LPA for planning permission they may grant planning permission, either unconditionally or subject to such conditions; or they may refuse planning permission.

9.1.2 Applications for planning permission must be determined in accordance with the development plan for the area, unless material considerations indicate otherwise[6]. Material considerations could include current circumstances, policies in an emerging development plan, and planning policies of the Welsh Government. PPW sets out policies on taking planning decisions including that all applications should be considered in relation to up to date policies.

9.2 Time Period for Determination

9.2.1 In order to provide certainty in the planning system, it is essential that applications for planning permission are determined efficiently and effectively with a clear pathway for communications between applicant and LPA in order to manage expectations. Applications should not be left to drift for long periods of time with little or no progress being made towards issuing a decision.

9.2.2 LPAs should start the determination process as soon as a valid application is received. The time period from application to decision begins the day on which a valid application and the correct fee (where applicable) have been received regardless of whether the application is submitted electronically or in paper format.

9.2.3 It is important that development proposals are handled efficiently and the Welsh Government expects each LPA to determine 80 per cent of its planning applications within 8 weeks of receipt of a valid application. Improved efficiency of decision making should not compromise the quality of either the decision making process or the development.

9.2.4 If for any reasonable reason LPAs are unable to determine an application within the prescribed timeframe, they may request an extension of time from the applicant. The applicant is however under no obligation to agree to such a request.

9.2.5 LPAs should be mindful of the refund provision in regulation 9 of the fee regulations, which are explained in section 7.4

9.2.6 In addition, under section 78 of the 1990 Act an applicant may appeal to Welsh Ministers if the LPA fails to issue a decision within the prescribed timeframe. Further information on appeals is contained within section 12.

[6]Section 54A of the Town and Country Planning Act 1990, and section 38(6) of the Planning and Compulsory Purchase Act 2004

9.3 Requesting Additional Information

9.3.1 Where information has been provided to satisfy the minimum legal requirements for a valid planning application, but the LPA requires supplementary information in order to make a fully informed planning decision, or the quality of the information provided by the applicant may require challenge, the LPA may request additional information from the applicant. Section 62(4A) of the 1990 Act requires all requests to be reasonable having regard, in particular, to the nature and scale of the proposed development; and only if it is reasonable to think that the matter will be a material consideration in the determination of the application.

9.3.2 The need for any additional information should be identified early in the application process and any subsequent extension of time agreed cooperatively with the applicant. The 'clock' continues to run for the purpose of article 22 of the DMPWO while the authority seeks the additional information. An applicant's failure to respond to such a request does not in itself invalidate the planning application.

9.3.3 Normal determination periods should continue to apply unless a longer period is agreed in writing between the applicant and LPA. A request to the applicant to provide further information should be made only when necessary to assist the LPA in its determination of an application.

9.3.4 If an application previously considered valid for the purpose of article 22 of the DMPWO, but is later found to be invalid following registration, the determination period should take no account of the time which elapsed between submission of the application and when the LPA receives the required information (including any additional fee). Therefore, the new time period for processing the application should start on the date the additional information (and/or any additional fee) requested by the LPA is received enabling them to validate the application. However, in cases where the fee has been paid by cheque which is subsequently dishonoured, the time between the date when the LPA sent the applicant written notice of the dishonouring of the cheque and the date when the authority are satisfied they have received the full amount of the fee should be excluded from the determination period.

Outline applications

9.3.5 If an LPA is of the opinion that, in the circumstances of the case, an outline application should not to be considered separately from all or any of the reserved matters, article 3(2) of the DMPWO provides them a month from receipt of the application to request the further information.

9.4 Material Considerations

9.4.1 Section 38(6) of the 2004 Act requires that if regard is to be had to the development plan for the purposes of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

9.4.2 Factors to be taken into account in making planning decisions (material considerations) must be planning matters; that is, they must be relevant to the regulation of the development and use of land in the public interest, towards the goal of sustainability.

9.4.3 Material considerations must also be fairly and reasonably related to the development concerned. The Courts are the final arbiters of what amounts to a material consideration in relation to any particular application, but they can include the number, size, layout, design and appearance of buildings, the means of access, landscaping, service availability and the impact on the neighbourhood and on the environment. The effects of a development on, for example, health, public safety and crime can also be material considerations, as, in principle, can public concerns in relation to such effects.

9.4.4 Where development plan policies are not directly relevant to the development proposal, material considerations will be of particular importance.

9.4.5 The weight to attach to material considerations is a matter of judgement, however the LPA must demonstrate in the planning officers or committee report that, in reaching its decision, they have considered all relevant matters.

9.4.6 Generally, greater weight is attached to issues supported by evidence rather than solely by assertion.

9.4.7 In terms of private interests, the planning system does not exist to protect the private interests of one person against the activities of another. Therefore, proposals should be considered in terms of their effect on the amenity and existing use of land and buildings in the public interest. The Courts have ruled that the individual interest is an aspect of the public interest, and it is therefore valid to consider the effect of a proposal on the amenity of neighbouring properties. However, such consideration should be based on general principles, reflecting the wider public interest (for example a standard of ‘good neighbourliness’), rather than the concerns of the individual.

9.4.8 When determining planning applications LPAs must take into account any relevant view on planning matters expressed by neighbouring occupiers, local residents and any other third parties. While the substance of local views must be considered, the duty is to decide each case on its planning merits. As a general principle, local opposition or support for a proposal is not, on its own, a reasonable ground for refusing or granting planning permission; objections, or support, must be based on valid planning considerations. It is for the LPA to decide whether, upon the facts of the particular case, the perceived fears are of such limited weight that a refusal of planning permission on those grounds would be unreasonable.

9.4.9 Unless otherwise specified, a planning permission runs with the land and it is seldom desirable to provide for any other arrangement. Exceptionally, even though such considerations will rarely outweigh the more general planning considerations, the personal circumstances of occupiers, personal hardship or the difficulties of businesses which are of value to the local community, may be material to the consideration of a planning application. In such circumstances, permission may be granted subject to a condition that it is personal to the applicant (see Welsh Government Circular 016/2014 The Use of Planning Conditions for Development Management). LPAs should bear in mind that personal permissions will hardly ever be justified for works or uses that will remain long after the personal circumstances of the applicant have changed.

Emerging development plans

9.4.10 Material considerations could include current circumstances, policies in an emerging development plan, and planning policies of the Welsh Government. All applications should be considered in relation to up to date policies. An LPA should be able to determine through monitoring and review whether policies in the adopted development plan are outdated for the purposes of determining a planning application.

9.4.11 In making development management decisions, the weight to be attached to an emerging draft Local Development Plan (LDP) will in general depend on the stage it has reached, but does not simply increase as the plan progresses towards adoption. Following the submission of a LDP to the Welsh Ministers for examination, the appointed Inspector is required to consider the soundness of the whole plan in the context of national policy and all other matters which are material to it. Policies could be amended or deleted from the plan even though they may not have been the subject of a representation at deposit stage (or be retained despite generating substantial objection). Certainty regarding the content of the plan will only be achieved when the Inspector delivers the binding report. In considering what weight to give to the specific policies in an emerging LDP that apply to a particular proposal, LPAs will need to consider carefully the underlying evidence and background to the policies. National planning policy would be a material consideration in these circumstances.

9.4.12 During the period between submission of a draft LDP for examination and its adoption, the existing development plan remains the extant development plan for the purposes of decision making. However, the evidence to support the policies in an emerging LDP could be used as a material consideration when making decisions.

Development affecting internationally designated sites

9.4.13 The Conservation of Habitats and Species Regulations 2010 place restrictions on the granting of planning permission for development which is likely to significantly affect a European site or European offshore marine site, and which is not directly connected with or necessary to the management of that site.

9.4.14 The regulations require an appropriate assessment where there is a probability or risk that the plan or project (either alone or in combination with other plans or projects) will have a significant effect on the conservation objectives of a European site or European offshore marine site.

9.4.15 If the LPA cannot ascertain that there will be no such adverse effects, it may only grant permission if certain derogations apply. Further guidance is available in TAN 5: Nature Conservation and Planning (2009).

Protected species as a material planning consideration

9.4.16 The presence of a protected species is a material consideration when an LPA is considering a development proposal that, if carried out, would be likely to result in disturbance or harm to the species or its habitat.

9.4.17 It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the

planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.

9.4.18 Further guidance is available in TAN 5: Nature Conservation and Planning (2009).

Human Rights

9.4.19 The general purpose of the European Convention on Human Rights (ECHR) is to protect human rights and fundamental freedoms and to maintain and promote the ideals and values of a democratic society. It sets out the basic rights of every individual together with the limitations placed on these rights in order to protect the rights of others and of the wider community. The Human Rights Act 1998 makes it unlawful for a public authority to act incompatibly with a right within the scope of th ECHR rights except where, as a result of primary legislation, it could not have acted differently. The Human Rights Act 1998 has implications for the planning system.

9.4.20 The specific articles of the ECHR relevant to planning include article 6 (Right to a fair and public trial within a reasonable time), article 8 (Right to respect for private and family life, home and correspondence), article 14 (Prohibition of discrimination) and article 1 of Protocol 1 (Right to peaceful enjoyment of possessions and protection of property).

9.4.21 The planning system by its very nature respects the rights of the individual whilst acting in the interest of the wider community. It is an inherent part of the decision-making process for the LPA to assess the effects that a proposal will have on individuals and weigh these against the wider public interest in determining whether development should be allowed to proceed. In carrying out this balancing exercise the LPA should be satisfied that it has acted proportionately.

9.5 Scheme of Delegation

9.5.1 Section 70 of the 1990 Act provides LPAs with the power to determine an application for planning permission. Section 101 of the Local Government Act 1972 allows the local authority to arrange for the discharge of its functions, including the determination of an application for planning permission, by a committee, sub-committee or by delegation to an officer of the authority (normally the Head of Service in the case of planning decisions).

9.5.2 Every LPA has a scheme of delegation setting out the development types or other criteria of planning applications which will be determined by planning committee. It identifies the circumstances in which applications can be determined by the Head of Service under delegated powers. These circumstances normally relate to issues such as the type of development, the number of objections received, and who submits the application.

9.5.3 The delegation of decision-making to officers has benefits for all stakeholders in terms of simplifying procedures and freeing up committee members to concentrate on major development, policy issues or controversial cases, removing applications which typically would not elicit member discussion and evaluation at committee. Where there is no need to await a committee cycle and decision, time can be saved in dealing with planning applications.

9.5.4 A scheme of delegation should ensure that the right type of application is determined at the right decision level, reflecting the complexity and conformity of the proposal with planning policy. It should allow minor applications and those in conformity with the development plan, a straightforward route to determination since the LPA's policy position is already stated in the local development plan which is in the interests of efficient and consistent decision making.

9.5.5 Sections 319ZA to 319ZD of the 1990 Act enable the Welsh Ministers to make regulations that would introduce a national scheme of delegation and prescribe the size and composition of planning committees in Wales. No regulations have been made to date.

9.6 Planning Committees

9.6.1 Members are elected or appointed to the planning committee to represent the interests of the authority as a whole, to create and implement policy, and to act in the wider public interest.

9.6.2 An effective scheme of delegation means that the planning committee can then concentrate on the more sensitive, strategically important schemes. Such schemes can be technically complex and controversial, involving a number of issues and conflicting interests. It is therefore important that committee members understand the relevant planning and legal framework under which they must operate in order to make sound decisions in the public interest.

Member Training

9.6.3 All Members of the planning committee must undertake training in accordance with the relevant training scheme before participating in any decision making at meetings.

9.6.4 In addition to the initial introduction to the planning system, Members should participate in regular ongoing training throughout their tenure on the planning committee. This continuous training is essential for them to perform their duties effectively. It may cover topics such as new or emerging legislation, relevant case law, or specialized knowledge needed for upcoming applications.

9.6.5 LPAs are encouraged to allocate a suitable budget for member training. Additionally, it should be part of the Chair's responsibility to monitor training attendance.

Size and composition

9.6.6 The Size and Composition of Local Planning Authority Committees (Wales) Regulations 2017 have introduced a structure for planning committees to ensure their size and composition supports efficient and effective decision-making.[7].

9.6.7 Regulation 4 of the Size and Composition of Local Planning Authority Committees (Wales) Regulations 2017 requires planning committees to contain no fewer than 11 members but no more than 21 members. They must also contain no more than

[7] RTPI Cymru. Study into the Operation of Planning Committees in Wales. Final Report. Fortsimere Associates with Arup. July 2013.

50% of the authority members (rounded up to the nearest whole number), however, national park authorities are excluded from this requirement.

9.6.8 A planning committee must always have a minimum of 11 members appointed to the committee to make decisions. Where an LPA has a planning committee of 11 and a member resigns from the committee, creating a vacancy, the committee cannot take decisions until that vacancy is filled, returning the committee to 11 'members in seats'. This also applies if a member of the planning committee is suspended, temporarily reducing the size of the planning committee to less than 11 members. A new member must be appointed to the planning committee during that period to ensure there are 11 'members in seats'.

9.6.9 Where wards have more than one elected member, regulation 6 of the Size and Composition of Local Planning Authority Committees (Wales) Regulations 2017 prevent more than one of those members from being part of the planning committee. This allows at least one of the ward members to perform the representative role for local community interests without the particular constraints which accompany planning committee membership, including taking up a campaigning role on planning issues affecting their constituents (see the role of members in paragraph 9.6.17 below).

9.6.10 The restriction on the minimum number of members does not apply where an LPA comprises solely of multiple member wards. Where political balance could be achieved, such LPAs could seek to implement a one member per ward policy to achieve the benefits set out above.

Failure to comply with the Size and Composition of Local Planning Authority Committees (Wales) Regulations 2017

9.6.11 'Relevant functions' as defined in section 319ZD of the 1990 Act cannot be passed to a committee or sub-committee to discharge if that committee does not comply with the regulations. If a decision is made by a committee when it does not comply with the regulations, the decision will be invalid, as section 319ZB(3) of the 1990 Act dis-applies paragraph 43 of Schedule 12 to the Local Government Act 1972. Delegation arrangements to officers, if made before the Planning Committee became non-compliant, or if made by the full council would be unaffected.

Quorum and the Use of Substitute Members

9.6.12 There is a risk of inconsistent decision making and the democratic process being called into question if Planning Committee attendance is low or substitute members are used. The Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2017 require planning committees to achieve a quorum of 50% at relevant planning meetings to make decisions and prevents the use of substitute members at such meetings.

Code of Conduct

9.6.13 The Welsh Government's 'Model Code of Conduct for elected and co-opted members of county/county borough councils, community councils and national park authorities' sets out recommended standards of conduct they should follow in the performance of their duties. All relevant authorities are required to adopt the Code and all members must give written undertakings to be bound by it. A breach

of the Code may constitute maladministration, misconduct or both. Guidance on the Code is issued by the Public Services Ombudsman for Wales.

9.6.14 Elected members must declare any pecuniary or personal interest in any application before them and in most cases should not speak or vote on any proposal where they have such an interest. Officers are expected to observe their authority's employees' code of conduct and relevant professional codes in performing their duties.

9.6.15 The Planning Advisory Service (PAS) published Probity in Planning' which is a useful guide that clarifies how members can get involved in planning discussions on applications, on behalf of their communities in a fair, impartial and transparent way.

Committee Protocol

9.6.16 Most LPAs have adopted a planning committee protocol which expands upon their adopted code of conduct and focuses on the procedural aspect of taking decisions as a member of a planning committee, covering issues such as public speaking, running order, site visits and voting.

Distinguishing between the decision-maker and local representative roles at committee

9.6.17 There are obvious and understandable tensions associated with being the local member for an application being discussed at committee. If a local member taking part in the committee were to support and represent those local views, this could conflict with the prevailing policy or wider public interest. Members that are part of the planning committee should be asked to make a conscious decision as to whether they wish to act as a local member or remain as a decision-maker on the committee. When acting as a local member they should step down from the planning committee table and join the public gallery for those applications where they wish to address the committee on their constituents' behalf.

9.6.18 Members who are not part of the planning committee should be able to speak at committee meetings on applications within their local area. However, they should form part of the public speaking element of the decision-making process and should not appear to be part of the committee.

Procedure for overturning officer recommendations or deferring decisions

9.6.19 Planning committees should have good reasons if they approve a development that is a departure from the development plan, contrary to the Welsh Government's planning policies, or goes against the written advice of its officers. These reasons must be recorded in the Committee's minutes. Where planning permission is refused, the LPA must state clearly the reasons for the refusal.

9.6.20 Where necessary, planning committees should defer applications by using a 'cooling off period' to the next committee meeting when minded to determine an application contrary to an officer recommendation. This is in order to allow time to reconsider, manage the risk associated with this action, and ensure officers can provide additional reports and draft robust reasons for refusal or necessary conditions for approval.

Member Site Visits

9.6.21 LPAs should have a clear and consistent approach on when and why to hold a site visit and how to conduct it. Site visits should only be held on an exceptional basis where the benefit is expected to be substantial. Where required they should be identified in advance of the committee meeting at which the application is due to be discussed and the site visit should occur no more than a week in advance.

9.7 Planning Application Reports

9.7.1 The Courts have held that part of a planning officer's expert function in reporting to the committee must be to make an assessment of how much information needs to be included in his or her report in order to avoid burdening a busy committee with excessive and unnecessary details. Its purpose is not to decide the issue, but to inform the members of the relevant considerations relating to the application. It is not addressed to the world at large but to council members who, by virtue of that membership, may be expected to have substantial local and background knowledge. There would be no point in a planning officer's report setting out in great detail background material, for example, in respect of local topography, development planning policies or matters of planning history if the members were only too familiar with that material[8].

9.7.2 The Welsh Government considers that a planning officer's report, whether to a planning committee or as part of delegated decision making by officers, also has a role upholding the transparency of the planning system, explaining the material considerations and their relative weight in coming to a recommended decision.

9.7.3 Reports should be clear and concise. The use of 'planning jargon' should be avoided when possible to ensure that a member of the public with no knowledge of the planning system can understand the issues that the LPA must consider.

9.7.4 A basic structure for how an officer's report could be set out is provided in Figure 6 below.

Description of development

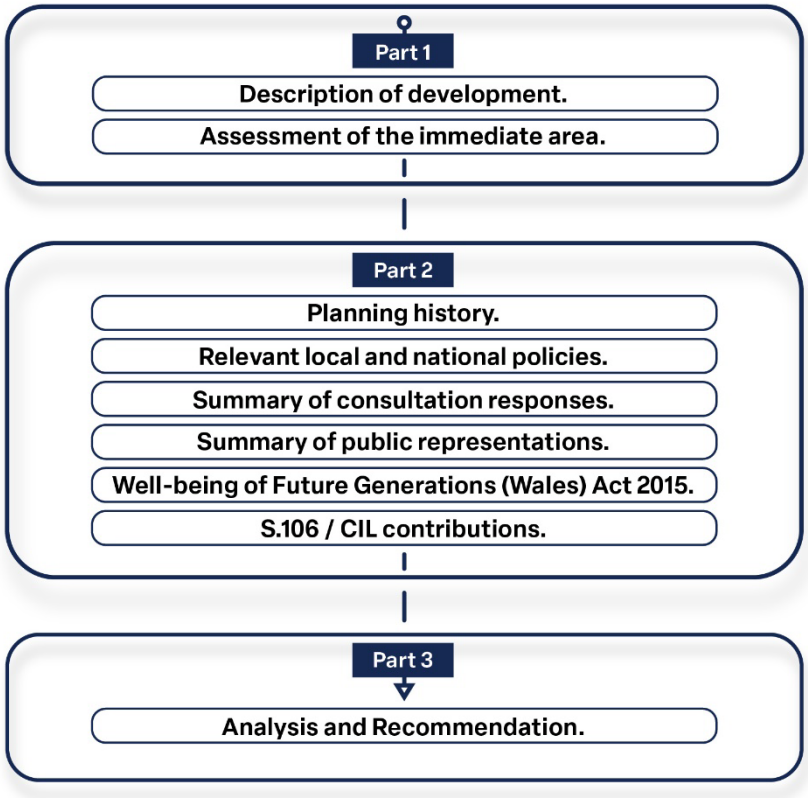
9.7.5 The LPA should ensure that all aspects of the proposed development for which planning permission is sought are clearly stated. In respect of an outline application, all matters which are reserved for future consideration should be clearly identified.

9.7.6 Any relevant link to previous or other applications should also be referenced.

9.7.7 For committee reports, the reason why the application is being reported to the planning committee (i.e. the development is of a type/scale outside of the scope of the scheme of delegation), chief officer referral or member call-in, should also be clearly stated at the start of the report. If the application is being reported to the planning committee due to the local member exercising their right to call-in the application, the reason provided by the member for doing so should be recorded.

[8] R v Mendip District Council ex parte Fabre *(2000) 80 P & CR 500*

Figure 6 – Basic Structure of a Planning Officer Report



Assessment of the immediate area

9.7.8 Officers should use their judgement when considering the level of detail necessary. Essentially, the level of detail required will vary based on the type and scale of the proposed development. Whilst a particularly detailed site and local area assessment will be necessary for some major applications, others, particularly householder, will only require a very brief statement.

9.7.9 Any designation that the application site is within, such as a conservation area, Site of Special Scientific Interest, flood zone etc. should be clearly stated.

Planning History

9.7.10 The summary of the planning history should be brief, with only relevant applications included.

Relevant local and national policy

9.7.11 Reference should be made to all relevant policies but they should not be repeated. This includes all LDP policies, SDP policies (where applicable), supplementary planning guidance, and national policies such as PPW and associated TANs. When referencing sections of PPW, it is recommended that the relevant paragraph numbers are stated for ease of reference for elected members and the public.

Well-being of Future Generations (Wales) Act 2015

9.7.12 LPAs must demonstrate, for each planning application determined, they have considered how the development complies with the Well-being of Future Generations (Wales) Act 2015. Chapter 2 of PPW sets out how decision making can achieve the goals of the Act.

9.7.13 In order to reduce the risk of challenge through the Courts, it is recommended that each officer's report makes specific reference to how the development meets the requirements of the Act. However, section 2(5) of the Planning (Wales) Act 2015 affords protection to decisions taken under Part 3 of the 1990 Act, in that the Well-being of Future Generations (Wales) Act 2015 does not alter whether regard is to be had to any particular consideration under section 70(2) of the 1990 Act or the weight to be given to any consideration to which regard is had under that subsection. This means the provisions of the development plan, so far as material to the application, and any other relevant other material considerations remain the primary considerations when determining planning applications.

Consultee responses

9.7.14 When a statutory consultee is consulted on an application they must provide a substantive response (see section 8.4). The substantive response provided should be included in the report, however this can be summarised if the response is particularly detailed. When summarised, a copy of the full response should be included as an annex to the report, to ensure that the decision maker is fully informed of all material considerations.

Public representations

9.7.15 The number of representations received, including a breakdown of those that support/object to the development, should be recorded in the report and accompanied with a summary of those representations.

Planning Obligations/Community Infrastructure Levy

9.7.16 If the development is liable for Community Infrastructure Levy (CIL), how this has been calculated should be included. The heads of terms for any planning obligations should also be identified at this stage, together with an indication of the anticipated timescale within which any obligation will be signed. A recommendation for approval subject to a planning obligation should seek delegated authority for the Head of Service (or equivalent) to be able to refuse permission should the planning obligation not be signed within an identified period.

Analysis and recommendation

9.7.17 The final section of the report should be a critical analysis of the development assessed against all identified policy considerations and other material considerations. It must be appropriately detailed so that, in the case of planning committee reports, members are able to make an informed, evidence-based decision, which is supported by a professional assessment of the identified issues.

9.7.18 It should be clear to all that read the report how the development complies (or does not comply) with the polices stated in stage 2 of the report. Any material considerations not identified at stage 2 must be referenced and validated.

9.7.19 It should demonstrate that the LPA have considered all of the matters raised by consultees, and those raised by the public. Whilst an LPA is not required to comply with the recommendation of a consultee, it must provide reasonable material planning considerations to justify an opposing opinion.

9.7.20 It is considered best practise that the recommendation, including any conditions, are placed at the end of the report to give members the opportunity to read the full assessment of the proposed development and understand why that particular decision has been reached prior to seeing the recommendation.

9.8 Applications Referred to or Called in by the Welsh Ministers

9.8.1 Although planning applications are usually decided by LPAs, some applications are referred to (or called in to) the Welsh Ministers for determination instead. The Welsh Ministers will consider whether to call in an application when a request is submitted by any person or organisation, or, where an LPA refers an application they are minded to grant permission for a development type which is outlined in one of the Notification Directions (see section 9.9)

9.8.2 The procedure for references to the Welsh Ministers are set out in legislation (see paragraph 12.2.20).

9.9 Notification and Consultation Directions

9.9.1 The Welsh Ministers have a number of powers of direction available which allow them to require LPAs to notify them of applications, restrict the granting of permission and require LPAs to consult with specified persons before determining applications. Such directions can apply to individual applications or to categories of applications.

9.9.2 Article 14(3) of the DMPWO gives the Welsh Ministers the power to issue directions to LPAs requiring them to consult with specified persons before granting planning permission for certain types of development.

9.9.3 Article 18(1) of the DMPWO gives the Welsh Ministers power to issue directions restricting the grant of planning permission in respect of specified development, either indefinitely or for a specified period.

9.9.4 Figure 7 sets out some of the non-site specific directions currently in force.

Figure 7 – Non-Site Specific Directions Currently in Force

Direction	Guidance
Town and Country Planning (Safeguarded Aerodromes, Technical Sites and Military Explosives Storage Areas) Direction 2002	National Assembly for Wales Circular 01/03: Safeguarding Aerodromes, Technical Sites and Military Explosives Storage Areas: The Town and Country Planning (Safeguarded Aerodromes, Technical Sites and Military Explosives Storage Areas) Direction 2002
The Town and Country Planning (Notification) (Wales) Direction 2012	Circular 07/12 (The Town and Country Planning (Notification) (Wales) Direction 2012)
The Town and Country Planning (Notification) (Coal and Petroleum) (Wales) Direction 2018	The Town and Country Planning (Notification) (Coal and Petroleum) (Wales) Direction Guidance 2018
Town and Country Planning (Major Residential Development) (Notification) (Wales) Direction 2020	Town and Country Planning (Major Residential Development) (Notification) (Wales) Direction Guidance 2020
The Town and Country Planning (Flood Risk Area Development) (Notification) (Wales) Direction 2025	Guidance on The Town and Country Planning (Flood Risk Area Development) (Notification) (Wales) Direction 2025

Section 9 Annexes
None

Further Guidance
Technical Advice Note (TAN) 5: Nature Conservation and Planning (2009)
Technical Advice Note (TAN) 15: Development, flooding and coastal erosion (2025)
Planning Advisory Service (PAS), Probity in Planning (December 2019)
See Figure 7 for guidance on non-site specific directions currently in force

Relevant Legislation
Human Rights Act 1998
Local Government Act 1972
Planning and Compulsory Purchase Act 2004
Planning (Wales) Act 2015
Town and Country Planning Act 1990
Well-being of Future Generations (Wales) Act 2015
The Conservation of Habitats and Species Regulations 2010
The Local Authorities (Model Code of Conduct) (Wales) Order 2008
The Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2017

The Size and Composition of Local Planning Authority Committees (Wales) Regulations 2017
The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015
The Town and Country Planning (Development Management Procedure) (Wales) Order 2012

Section 10

Conditions and Obligations

10.1 Introduction

10.1.1 Conditions and planning obligations can enable development proposals to proceed where it would otherwise be necessary to refuse planning permission.

10.2 Planning Conditions

Applying conditions to applications

10.2.1 Policy and guidance on applying conditions to applications is set out in Welsh Government Circular 016/2014: The Use of Planning Conditions for Development Management. The Circular provides guidance on:

- The power to impose conditions.
- The six tests for the validity of planning conditions
- Drafting, agreeing and discharging conditions.
- The regulation of development
- List of model conditions

Applications Made Under Planning Condition

10.2.2 The procedure for seeking consent, agreement or approval required by a condition or limitation attached to a grant of planning permission is set out in article 23 of the DMPWO. Further guidance can be found in paragraphs 4.28 to 4.32 of Circular 016/2014, which should be read together with the following advice on fees for such applications.

Fee

10.2.3 Regulation 15 of the Fees Regulations provides that where an application has been submitted under article 23 of the DMPWO (that is not a reserved matters application) then the application shall be accompanied by a fee. The fee is per request so an applicant may submit multiple conditions to be considered at the same time for this single fee. Details of the fee to be paid is set out in Regulation 15 of the Fees Regulations.

10.2.4 Regulation 15 also requires that the fee is refunded if the LPA fails to determine the application within 8 weeks after the statutory determination period ends. As with planning application fees, the start of the period of refund starts from the determination date, as set by article 23 of the DMPWO. Therefore, the provisions to extend the time period also apply to applications to approve matters required by condition.

10.3 Planning Obligations and Community Infrastructure Levy

10.3.1 Developers may be asked to provide contributions for infrastructure in several ways. This may be through the Community Infrastructure Levy (CIL) or planning obligations in the form of an agreement under section 106 of the 1990 Act. LPAs should ensure

that the combined total impact of such requests does not threaten the viability of the proposal and scale of development identified in the LDP.

Community Infrastructure Levy (CIL)

10.3.2 Introduced through the Planning Act 2008, CIL was designed to provide a more flexible and predictable funding mechanism compared to traditional section 106 agreements. The levy allows LPAs to raise funds from developers undertaking new building projects in their area and the money can be used to fund a wide range of infrastructure needed as a result of development.

10.3.3 The Wales Act 2017 devolved CIL, enabling the Welsh Ministers to legislate for the specific needs of Wales. The Community Infrastructure Levy Regulations 2010 (as amended) provide the framework for how the levy operates, including the process for setting rates and collecting funds.

10.3.4 The Welsh Government has published guidance for LPAs on producing a charging schedule:: Community Infrastructure Levy - A Guide to the Production of a Charging Schedule.

10.3.5 The letter to Chief Planning Officers, Community Infrastructure Levy: Affordable housing and 'meaningful' amount (08 April 2013), provides further guidance with regard to passing on the 'meaningful amount' of 15% of CIL revenues to town and community councils. The letter also explains LPAs should continue to consider best practice in using section 106 agreements to help to provide affordable homes.

Planning Obligations

10.3.6 Welsh Office Circular 13/97 Planning Obligations provides procedural guidance on the role of planning obligations in mitigating the site specific impact of unacceptable development to make it acceptable in planning terms. Such obligations created under section 106 of the 1990 Act can:

- restrict the development or use of the land in any specified way;
- require specified operations or activities to be carried out in, on, under or over the land;
- require the land to be used in any specified way;
- require a sum or sums to be paid to the authority on a specified date or dates or periodically.

10.3.7 Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. The legal tests for when planning obligations can be used are set out in regulation 122 and 123 of the Community Infrastructure Levy Regulations 2010. The tests are:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

Section 10 Annexes
None

Further Guidance
Welsh Government Circular 016/2014: The Use of Planning Conditions for Development Management
Welsh Office Circular 13/97 Planning Obligations
Community Infrastructure Levy - A Guide to the Production of a Charging Schedule (2011)L
Letter to Chief Planning Officers, Community Infrastructure Levy: Affordable housing and 'meaningful' amount (08 April 2013)

Relevant Legislation
Planning Act 2008
Town and Country Planning Act 1990
The Community Infrastructure Levy Regulations 2010
The Community Infrastructure Levy (Amendment) Regulations 2015
The Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2017
The Town and Country Planning (Development Management Procedure) (Wales) Order 2012
The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) (Amendment) Regulations 2016
The Size and Composition of Local Planning Authority Committees (Wales) Regulations 2017

Section 11

Issuing a Decision Notice

11.1 Introduction

11.1.1 Once a decision has been made on a planning application either under delegated authority or at planning committee the LPA must formally notify the applicant of their decision using a written decision notice and record the decision on the Planning Register.

11.2 Decision Notices

11.2.1 When an LPA gives notice of a decision or determination on an application for planning permission or for approval of reserved matters, article 24 of the DMPWO requires the written notice of the decision to contain a range of information, including:

- clear and precise reasons for the refusal or any condition imposed, specifying all policies and proposals in the development plan relevant to the decision;
- details of any direction or opinion made by Welsh Ministers;
- a statement that the environmental statement has been taken into account where one has been submitted and the LPA grant permission; and
- notification set out in Schedule 5 giving details of appeal and purchase notice.

11.2.2 Where planning permission is being granted, additionally the decision notices must specify the plans and documents in accordance with which the development is to be carried out

11.2.3 Section 71ZA of the 1990 Act requires decision notices to be updated and a revised version issued where consent is given for details required by a condition (including reserved matters applications), or approval is given for the removal or variation of a condition. The purpose of these provisions is to make the decision notice a “live” document that reflects the current position of the planning permission, so that it is easier for developers and the public to identify the scope of the permission and whether conditions have been complied with. This will allow the public and any interested party to quickly identify what conditions remain to be approved, what information remains to be submitted and where changes have been made to the original application.

11.2.4 Article 24A of the DMPWO requires the most up to date version of the decision notice to be issued to an applicant and placed on the planning register for public access. Such a revised notice must include the reference number, date and effect of the decision, the name of the body that made the decision and the revision number.

11.3 Planning Register

11.3.1 Article 29 of the DMPWO prescribes that each LPA must keep a register in three Parts of every application for planning permission and every local development order (if any) relating to their area.

11.3.2 Part 1 of the register must contain every submitted application for planning permission and reserved matters not finally disposed of. Article 15(2) of the DMPWO defines what is meant by 'finally disposed of' and includes withdrawn or six months has elapsed since it was decided.

11.3.3 Part 2 of the register must contain all planning applications and the decision made by the LPA in respect of them, as well as any subsequent appeal decisions made by the Welsh Ministers.

11.3.4 Part 3 of the register must contain any Local Development Orders either in draft form, adopted or revoked.

11.3.5 Additionally, the register must contain certificates of lawfulness and details of simplified planning zones.

11.3.6 The whole of the register must be kept at the principal office of the LPA or that Part of the register which relates to land in part of that authority's area must be kept at a place within or convenient to that part. To enable any person to trace any entry in the register, every register must include an index together with a separate index of applications for development involving mining operations or the creation of mineral working deposits. Where the register kept by a LPA under this article is kept using electronic storage, the authority may make the register available for inspection by the public on a website maintained by the authority for that purpose.

11.3.7 Every entry in the register must be made within 14 days of the receipt of an application, or of the giving or making of the relevant direction, decision or approval as the case may be.

Section 11 Annexes None
Further Guidance None
Relevant Legislation Town and Country Planning Act 1990 The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2016

Section 12

Appeals and References to the Welsh Ministers

12.1 Introduction

Appeals

12.1.1 Where a party is aggrieved by a planning decision, non-validation, non-determination or enforcement action taken by an LPA, that party may appeal to the Welsh Ministers against that action. Appeals are made to and administered by the Planning and Environment Decision Wales ("PEDW"). In most cases the appeal is decided by PEDW on behalf of the Welsh Ministers.

References to the Welsh Ministers

12.1.2 Although planning applications are usually decided by LPAs, some applications are referred to (or called in to) the Welsh Ministers for determination instead (see also section 9.8).

12.2 Procedures

12.2.1 The procedure for appeals and references to the Welsh Ministers are set out in legislation. Guidance is also available on the Welsh Government website. .

Planning and Related Appeals

12.2.2 The majority of appeals in Wales comprise of 'Planning and Related Appeals'. The main appeal types within this category include appeals against:

- planning decisions or the failure to take such decisions (excluding householder and commercial appeals, defined in paragraph 12.2.9);[9]
- listed building consent and conservation area consent decisions or the failure to take such decisions[10];
- hazardous substances consent decisions or the failure to take such decisions[11];
- refusal or failure to give a decision on applications for certificates of lawful use or development[12];
- the approval subject to conditions of express consent for advertisements or its non-determination[13]; and
- decisions or the failure to take such decisions for consent under tree preservation orders[14]

[9] Section 78 of the Town and Country Planning Act 1990
[10] Section 100 of the Historic Environment (Wales) Act 2023
[11] Section 21 of the Planning (Hazardous Substances) Act 1990
[12] Section 195 of the Town and Country Planning Act 1990
[13] Section 78 of the Town and Country Planning Act 1990 (as applied by regulations made under section 220 of that Act)
[14] Section 78 of the Town and Country Planning Act 1990 (as applied by regulations made under section 198(3)(c) of that Act)

12.2.3 The procedure for Planning and Related Appeals is mainly set out in the Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017. For any planning or related appeal, the applicant should first discuss with their LPA whether any changes to their original application would make it more acceptable and likely to gain planning permission before submitting their notice of appeal. In some circumstances, a further planning application may be submitted without charge (see paragraphs 11.10 to 11.15 of Section 7 Annex 'Calculating the Fee').

12.2.4 Applicants must be mindful there is no ability to make amendments to an application following notice of appeal against a decision made by their LPA, except where the amendment corrects an error in the application and which does not affect the substance of the application.

12.2.5 Furthermore, the appellant may not raise any new matters following notice of appeal, except where:

- it can be demonstrated the matter could not have been raised at the time the application was being considered by the LPA and could only have been raised following the notice of appeal; or
- it can be demonstrated the matter being raised following the notice of appeal was a consequence of exceptional circumstances.

12.2.6 Where it is decided to appeal, appellants are required to submit all the evidence and information they intend to rely upon, as part of a full statement of case, along with their notice of appeal. When a valid appeal has been received, PEDW must notify the appellant and LPA of the start date and procedure timetable. The timescales for an appeal commence from the start date. Appeals must be brought within 6 months of the date of the decision by the LPA (or 4 weeks in the case of Tree Preservation Orders and 8 weeks for appeals against the approval subject to conditions of express consent for advertisements). In the case of non-determination, an appeal may be made at any time following the expiration of the statutory time limit within which the LPA must make a decision.

12.2.7 Following the start of the appeal, the LPA will be required to submit an appeal questionnaire to PEDW and notify interested parties of the appeal within 5 working days of the start date. Any full statements of case made by the LPA or interested parties in response to the appellant's must be submitted to PEDW within 4 weeks of the start date of the appeal. Any final comments each party (including the appellant) has on another party's full statement of case must be made within 6 weeks of the start date of the appeal.

12.2.8 Following the initial procedure for an appeal, PEDW may require further representations from any party. This may be through a request for word-limited representations, appearance at a hearing, appearance at an inquiry, or a combination of any two or more of those methods.

Householder and Commercial Appeals

12.2.9 For minor appeals, an expedited process is set out in Part 3 of the Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017. This applies to appeals against the refusal of:

- planning permission for the enlargement, improvement or other alteration of a dwellinghouse, or development within the curtilage of a dwellinghouse, or a change of use to enlarge the curtilage of a dwellinghouse[15]
- planning permission for the enlargement, improvement or other alteration of an existing building of no more than 250 square metres gross external floor space at ground floor level, or any part of that building, currently in use for certain operations[16]
- express consent to display an advertisement[17]

12.2.10 Householder and commercial appeals must be made within 12 weeks of decision (8 weeks for appeals against the refusal of express consent to display an advertisement). In the case of such an appeal, there is no requirement for the appellant to submit a full statement of case.

Invalid Application Appeals

12.2.11 Where an LPA issue a notice which states an application is invalid, there is a right of appeal against the notice. This applies to any application for any consent, agreement or approval required by condition or limitation subject to which permission has been granted.

12.2.12 To appeal, appellants must submit a statement in writing to the Welsh Ministers within 14 days of the date of the notice.

12.2.13 The Town and Country Planning (Validation Appeals Procedure) (Wales) Regulations 2016 set out how validation appeals are administered once received by the Welsh Ministers.

12.2.14 A flowchart which maps the invalid application appeal process is contained in Section 12 Annex 'Invalid Application Appeals'.

Enforcement and Related Appeals

12.2.15 Where an LPA considers expedient, they may issue a notice which requires the cessation of unauthorised works and their remediation (see section 14). A person may appeal against that notice before its effective date. Those are enforcement and related appeals, which include appeals against:

- planning enforcement notices;
- listed building or conservation area enforcement notices;
- hazardous substances contravention notices;
- the enforcement of duties as to replacement of trees;
- notices requiring the proper maintenance of land; and
- advertisement discontinuance notices

[15] Regulation 3 of the Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017.
[16] Regulation 3 and Schedule 1 of the Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017.
[17] Regulation 3 of the Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017.

12.2.16 The procedure for Enforcement and Related Appeals is mainly set out in the Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017.

12.2.17 Where it is decided to appeal, appellants are required to submit all the evidence and information they intend to rely upon, as a full statement of case, along with their notice of appeal. However, in some enforcement and related appeals, this evidence and information can be submitted up to 7 days following the submission of notice of appeal. The appeal will not start until this information has been received.

12.2.18 Where the appeal relates to a deemed application and requires a fee to be paid, the appeal will also not start and no action will be taken on the appeal until such fee has been paid.

12.2.19 Paragraphs 12.2.7 and 12.2.8 apply in the case of all enforcement and related appeals.

References to the Welsh Ministers

12.2.20 Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017 set out the procedure in relation to the following proceedings:

- planning applications which are referred to the Welsh Ministers[18];
- listed building consent and conservation area consent applications which are referred to the Welsh Ministers[19]; and
- hazardous substances consent applications which are referred to the Welsh Ministers[20].

12.2.21 Where the Welsh Ministers determine an application must be called in for their determination, the LPA must issue a notice of referral to the applicant as well as a copy of the application file to PEDW, who will examine the application on behalf of the Welsh Ministers. The appellant has the opportunity to submit to PEDW a full statement of case which sets out all the evidence and information they intend to rely upon when examining the application. Any statement of case must be submitted within 4 weeks of the notice of referral. Proceedings will not start until the 4 weeks have elapsed.

12.2.22 Paragraphs 12.2.7 and 12.2.8 apply in the case of references to the Welsh Ministers, with the exception of the requirement on the LPA to submit an appeal questionnaire.

12.3 Costs

12.3.1 All parties are expected to behave reasonably to support an efficient and timely process. Where a party has behaved unreasonably, and unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense, they may be subject to an award of costs.

[18] Section 77 of the Town and Country Planning Act 1990

[19] Section 94 of the Historic Environment (Wales) Act 2023

[20] Section 20 of the Planning (Hazardous Substances) Act 1990

12.3.2 Complete guidance relating to the award of costs is contained in the Section 12 Annex Awards of Costs. As of 5 May 2017, Welsh Office Circular 23/93: Awards of Costs incurred in Planning and Other (Including Compulsory Purchase Order) Proceedings is cancelled.

12.4 Recovered Appeals

12.4.1 Most planning appeals are determined by Planning Inspectors under powers transferred to them by the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Wales) Regulations 2015.

12.4.2 Welsh Ministers have powers to recover jurisdiction over planning appeals from Inspectors. Those powers are likely to be used in relation to:

- residential development of more than 150 houses or on more than 6 hectares of land;
- retail developments of over 10,000 square metres;
- major proposals for the winning and working of minerals;
- proposals for major developments which could have wide effects beyond their immediate locality;
- proposals giving rise to substantial controversy beyond the immediate locality;
- proposals which raise novel planning issues;
- proposals which raise significant legal difficulties;
- proposals to which a Central Government Department has objected; or
- cases that can only be decided in conjunction with a case over which an Inspector has no jurisdiction.

12.5 Further Guidance

12.5.1 Further guidance in relation to appeals and references to the Welsh Ministers can be found on the Welsh Government website.

Section 12 Annexes Awards of Costs Invalid Application Appeals
Further Guidance Planning appeals and called-in planning applications - procedural guidance Planning appeals
Relevant Legislation Town and Country Planning Act 1990 Historic Environment (Wales) Act 2023 Planning (Hazardous Substances) Act 1990 The Planning (Hazardous Substances) (Wales) Regulations 2015 The Listed Buildings and Conservation Areas (Procedure and Interest Rate) (Wales) Regulations 2024 The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 The Town and Country Planning (Control of Advertisements) Regulations 1992 The Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2017 The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015

The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) (Amendment) Regulations 2020
The Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017
The Town and Country Planning (Trees) Regulations 1999
The Town and Country Planning (Validation Appeals Procedure) (Wales) Regulations 2016

Section 13

Amendments to Permissions

13.1 Introduction

13.1.1 Once planning permission has been granted, its implementation must be in accordance with the permission and any conditions attached to it. If the developer wishes to make changes to the use or design of the development they should first apply to amend the permission. There are a number of ways to do this depending on the complexity of the proposed change.

13.2 Non-material Amendments

13.2.1 Where a change to approved development is so small or insignificant in its planning impacts it is a 'non-material amendment'. There is no formal definition of a non-material amendment because what is a significant change in terms of town and country planning will vary depending on the circumstances of the case.

13.2.2 Section 96A of the 1990 Act enables LPAs to make a change to any planning permission if they are satisfied it is not material. In deciding whether a change is material, an LPA must have regard to the effect of the change, together with any previous changes made under this section, on the planning permission as originally granted.

13.2.3 Section 96A of the 1990 Act enables new conditions to be imposed or existing conditions to be removed or altered providing the resultant effect is a non-material change.

13.2.4 The applicant should be informed as soon as possible if an LPA considers that the proposal falls outside the scope of Section 96A and will require a new planning application (under section 73 to vary the original permission).

13.2.5 Further detail on key features and the legal requirements of applications that fall within section 96A can be found in the Welsh Government document Planning Guidance: Approving Non-material Amendments to an Existing Planning Permission.

13.3 Section 73 Applications

13.3.1 Section 73 of the 1990 Act allows applications to be made for planning permission without complying with conditions previously imposed on an extant planning permission. Where a section 73 application is granted, its effect is to grant a new planning permission.

13.3.2 Section 73 applications can be broadly separated into three different application types, based on their intended purpose. These are to:

- Extend the time limit of an existing permission (commonly referred to as a 'renewal' application).
- Allow 'minor material amendments' to planning permissions.
- Allow the variation or removal of any other condition attached to a planning permission.

13.3.3 The renewal of a planning permission occurs through an amendment of the time limit condition imposed on a planning permission by section 91 or 92 of the 1990 Act.

13.3.4 A section 73 application is achieved through the amendment of the plans condition imposed on a planning permission by section 71ZA of the 1990 Act. Where this condition does not exist (for example, as the permission was granted before the 01 March 2016) a condition specifying the plans may first be inserted by making a non-material amendment using section 96A to insert the relevant condition.

13.3.5 The variation or removal of any other condition relates to lessening restrictions set by the grant of planning permission. For example, a shop owner may want to open for longer but would need to revise a condition that restricts opening hours of their takeaway.

Limitations of section 73

13.3.6 The Court of Appeal in Finney v Welsh Ministers [2019] EWCA held that section 73 of the 1990 Act does not permit changes to the description of the development. It only allows for changes to the conditions under which the original permission was granted. Therefore, LPAs can only consider the conditions and not the fundamental aspects of the development itself. It is good practice for LPAs to engage with applicants to ensure that the description of the development on a planning application does not include specific identifiers or numbers, such as unit numbers or the amount of floor space. These details cannot be amended under a section 73 application and will form part of the original permission.

Submitting the application

13.3.7 An application made under section 73 must be made on the standard application form. Guidance on the form can be found in section 7.

13.3.8 The requirements for supporting information to accompany a section 73 application are the same as those for any other planning application. These are set out in Section 7 Annex 'Planning Applications - Lists of Validation Requirements'. The validation requirements made by LPAs on all section 73 applications should be proportional to the change proposed. They will depend on the proposed change and any changes in circumstances since the original application. Pre-application advice can help ensure that developers only submit information necessary to determine the application.

13.3.9 Where an application is submitted which the LPA considers falls outside the scope of a section 73 application, they must notify the applicant as soon as possible that the submission of an application for planning permission in its own right is required.

Consultation and notification

13.3.10 Articles 12(4a) and 15(ZA) of the DMPWO set out the consultation and notification requirements for applications that fall within section 73. These are different to those for other planning applications.

13.3.11 Except where the application is for EIA development, or affects a public right of way (to which Part 3 of the Wildlife and Countryside Act 1981 applies) (see article

12(2)(a) or (c) of the DMPWO), the LPA must display a site notice but has full discretion over the notification of neighbours on the application. The provisions within article 2(1) of Schedule 1A to the 1990 Act to notify the Town or Community Council still apply to the application.

13.3.12 Except where the application is for EIA development, article 15ZA of the DMPWO, provides that the LPA may consult a statutory consultee (falling within Schedule 4 of the DMPWO) but this is not compulsory. When an LPA does undertake notification or consultation, the LPA must wait at least 21 days before making their decision. The LPA must take any representations into account.

Determining the application

13.3.13 As applications submitted under section 73 are applications for planning permission, section 9 of the Manual provides guidance on how planning applications should be considered and determined by the LPA. In addition to this information, there are specific requirements set out in the legislation that is detailed below.

Specific matters relevant to section 73 applications

13.3.14 Sections 73(2) and (4) of the 1990 Act restrict the LPA in their determination of section 73 applications. The effect of the provisions is to limit the LPA to considering the question of whether the conditions identified in the section 73 application should apply as originally stated, would be acceptable if modified or it would be acceptable to remove them. The LPA cannot revisit the original permission and reconsider whether it should have been granted in the first place. However, as a section 73 application is a planning application in its own right, it is necessary to assess what material changes there may have been in terms of policy since the original permission was granted in order to ensure that all relevant material considerations have been assessed.

13.3.15 The LPA can grant permission unconditionally or subject to different conditions. They can refuse the application if they decide that the original conditions should continue. The original planning permission will continue whatever decision is taken on the section 73 application.

Attaching fresh conditions

13.3.16 In granting permission under section 73 the LPA may impose new conditions upon the consent – provided the conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission.

Time limits for commencement

13.3.17 When an LPA grants planning permission, if they do not attach a condition setting a timescale for the commencement of the development, then either section 91 or 92 of the 1990 Act applies a deemed condition upon the consent. This applies a standard timescale of 5 years or 3 years for full or outline planning permission respectively. There are specific provisions within these sections in respect of section 73 applications. The effect of the provision is, unless an LPA apply a new timescale to planning permission granted in respect of a section 73 application, the new permission will only last for the unexpired period of the original permission.

13.3.18 When granting consent, that does not expressly seek an extension of the time limit, the LPA may wish to consider whether a variation in the time period could assist in the delivery of development. For example, where non-commencement of a development has adverse planning impacts, a shorter time period may be appropriate in circumstances where it would encourage commencement. A longer time period may be justified for very complex projects where there is evidence that the time remaining is not long enough to allow all the necessary preparations to be completed before development can start.

The decision notice

13.3.19 A developer is able to decide whether to be bound by the original permission, or the one issued under Section 73. Therefore, to assist with understanding which consent is being implemented, section 73 consents should be issued with their own decision notice and the section 73 application number on it.

13.3.20 When issuing a permission after a condition has been removed or amended, that decision notice should refer to all the terms of the original permission, to avoid the possibility of the new permission being interpreted as having no conditions or only those that were amended. The LPA should therefore copy across all the relevant conditions (which they consider necessary) from the original decision notice.

13.3.21 Notwithstanding this, in London Borough of Lambeth v Secretary of State for Housing, Communities and Local Government and others [2019] UKSC 33 the Courts determined that even if the original conditions are not incorporated into the new decision along with the varied condition, they continue to have effect. This is as long as they are consistent with the new permission granted and there is nothing in the new permission to stop the conditions operating as intended.

13.3.22 Where conditions require the approval of the LPA and that approval has already been obtained, the LPA should ensure the conditions are redrafted accordingly. The section 73 decision notice will need to refer to the approved details or list of additional plans, drawings, or reports that were submitted to approve such conditions, include the reference number and date of approval and require the development to be built in accordance with these details.

Section 13 Annexes None
Further Guidance Planning Guidance: Approving Non-material Amendments to an Existing Planning Permission (July 2024)
Relevant Legislation Town and Country Planning Act 1990 The Town and Country Planning (Development Management Procedure) (Wales) Order 2012

Section 14

Enforcement

14.1 Introduction

14.1.1 Effective enforcement underpins the whole DM function ensuring that unacceptable development does not prevent the delivery of the vision for the LPA set out in the development plan.

14.1.2 'Unauthorised development' is development carried out without the necessary planning permission or development carried out in contravention of a condition or limitation attached to a planning permission

14.1.3 Procedural guidance describing the legislative tools available to address unauthorised development continues to be set out in Welsh Office Circular 24/97: Enforcing Planning Control: Legislative Provisions and Procedural Requirements. This will be incorporated in due course within Section 14 Annex 'Enforcement Tools'. In the meantime, the annex contains the legislative tools introduced in 2016.

14.2 An Efficient and Effective Process

14.2.1 Responsibility for determining whether proposed development should be granted planning permission rests initially with the LPA; as does the decision on whether unauthorised development should be allowed to continue or should be enforced against. A private citizen cannot initiate enforcement action but may advise the LPA of unauthorised development he or she may believe has occurred.

14.2.2 Although it is not a criminal offence to carry out development without first obtaining any necessary planning permission, such action is to be discouraged. Wilful disregard for the need for planning permission is not to be condoned. The Courts have established that in cases of deliberate concealment, the normal time limits on enforcement do not apply[21]. Powers are available to LPAs to manage unauthorised development and it is for them to decide which power, or combination of powers, to use.

14.2.3 An effective development management process requires LPAs to be prepared to take enforcement action in appropriate circumstances. When considering enforcement action, the decisive issue for the LPA should be whether the unauthorised development would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest. Enforcement action should be commensurate with the planning impacts caused by the unauthorised development; it is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to public amenity. The intention should be to remedy the effects of the unauthorised development, not to punish the person(s) carrying out the operation or use. Nor should enforcement action be taken simply to regularise development for which permission had not been sought but which is otherwise acceptable.

[21] Secretary of State for Communities and Local Government and another (Respondents) v Welwyn Hatfield Borough Council (Appellant) [2011] UKSC 15

14.2.4 Before any person, or persons, carry out development of land, it is advisable that they should discuss with the LPA whether, in the authority's opinion, planning permission would be necessary for the development proposed. The enforcement register should also be consulted to ensure the site is not subject to any prior or ongoing enforcement action that would impact the proposed development. LPAs must maintain a planning enforcement register that is accessible to the general public at their principal office. To enhance accessibility, LPAs should also aim to make the register available online, similar to the existing arrangement for the planning register.

14.2.5 Some unauthorised development is deliberate but, in some cases, works have been carried out in good faith because the developer believed that planning permission was not needed. While that latter factor is not relevant in determining whether or not to take enforcement action, the cost to the developer of responding to enforcement action may represent a substantial financial burden and this should be taken into account by the LPA when deciding how to handle a particular case. It should not, however, prevent action being taken when it is clearly necessary to do so.

14.2.6 Enforcement action taken by an authority to prevent or remedy breaches of planning control needs to be effective and timely. This means that LPAs should look at all means available to them to achieve the desired result. When investigating whether development is unauthorised the aim should be to make an early decision both on the need for planning permission, and if required, on whether the development is acceptable. As part of this investigation phase, the LPA should explore with the owner or occupier of the land, what steps, if any, could be taken to reduce any adverse effects on public amenity to an acceptable level. Negotiation and informal means can bring swift compliance, especially in cases of honest mistakes. However, it is vital that this stage is quick and efficient and not a source of delay or indecision. It is possible to complete this stage with two communications with the developer: an information request and then an informal request for compliance.

14.2.7 Prompt enforcement action means unacceptable unauthorised development is less likely to become well established and difficult to remedy. Also, the statutory time limits for taking enforcement action will be adhered to.

14.3 Where acceptable but unauthorised development has been carried out

14.3.1 Where the LPA's assessment is that it is likely unconditional planning permission would be granted for development which has already taken place, the correct approach is to suggest to the person responsible for the unauthorised development that they should promptly submit a retrospective application for planning permission.

14.3.2 In such circumstances, it should be pointed out to the owner or occupier that if, for instance, they subsequently wish to dispose of their interest in the land and have no evidence of any permission having been granted for its development, this may be reflected in the valuation and give rise to uncertainty about the rights they have over the land.

14.3.3 It will generally be regarded as unreasonable for an LPA to issue an enforcement notice solely to remedy the absence of a valid planning permission. If, on appeal to

the Welsh Ministers, it is concluded that there is no significant planning objection to the unauthorised development as alleged in the enforcement notice, such action by an LPA could result in an award of costs being made against it.

14.4 Where unauthorised development could be made acceptable through imposition of conditions

14.4.1 Where an LPA considers that an unauthorised development causes unacceptable injury to public amenity, or damage to a statutorily designated site but could be satisfactorily removed or alleviated by imposing conditions on a grant of planning permission, it should serve an enforcement warning notice (EWN). The service of an EWN will provide a clear signal to the developer that, if a retrospective planning application is submitted, adequate control could be applied to the development to make it acceptable. Without it, it is unacceptable and further enforcement action is expedient and will be taken.

14.4.2 Use of an EWN to secure a retrospective planning application can ensure that an acceptable form of development is achieved without the LPA having to over enforce. Authority to serve an enforcement notice in the event a retrospective application is not received should be obtained at the same time the decision is made to serve an EWN.

14.4.3 EWNs should not be issued as a means of obtaining an application fee where the LPA do not reasonably expect that planning permission will be granted. The LPA must believe that there is reasonable prospect of the development being granted planning permission. The fact that a EWN is issued and served on an individual in respect of an unauthorised development does not however guarantee that planning permission will be granted. New issues may come to light; the applicant may be unwilling to negotiate, or, despite a recommendation for approval a planning committee could disagree with the recommendation.

14.5 Where unauthorised development would be acceptable on alternative sites

14.5.1 It is not the LPA's responsibility, nor a requirement on it under the enforcement provisions, to identify, or provide, alternative sites to which unauthorised development might be relocated. Nevertheless, if, as part of its economic development functions, the authority is aware of an alternative site, it will usually be helpful to suggest it and to encourage the removal of the unauthorised development to it.

14.5.2 If an alternative site has been suggested, it should be made clear that the LPA expects the unauthorised development to relocate to that alternative site, or some other site acceptable to the LPA. The LPA should set a reasonable time limit within which relocation should be completed. What is reasonable will depend on the particular circumstances, including the nature and extent of the unauthorised development; the time needed to negotiate for, and secure an interest in the relocation site; and the need to avoid unacceptable disruption during the relocation process.

14.5.3 Where an agreed timetable for relocation is ignored, it will usually be expedient for the LPA to issue an enforcement notice. In that event, the period for compliance

with the requirements of the enforcement notice should reflect what the LPA regards as a reasonable period to complete the relocation.

14.5.4 Where a small business or self-employed person is involved, the LPA should be aware of the need to minimise disruption to the business and, if possible, avoid any permanent loss of employment as a result of the relocation. LPAs should also bear in mind that, once an enforcement notice has taken effect, they have the power to withdraw the notice or to waive or relax any requirement in it, including the period for compliance. A reasonable period for compliance, or an extension of the initial period, may make the difference between enabling a small business or self-employed person to continue operating, or compelling them to cease trading.

14.5.5 The Welsh Government remains committed to fostering business enterprise, provided that the necessary development can take place without unacceptable harm to public amenity. LPAs should bear this in mind when considering how best to deal with unauthorised development by small businesses. Nevertheless, effective enforcement action is likely to be the only appropriate remedy if the business activity is causing unacceptable harm.

14.6 Where unauthorised development is unacceptable and relocation is not feasible

14.6.1 Where the LPA considers unacceptable unauthorised development has been carried out, and there is no realistic prospect of its being relocated to a suitable site - either because such a site is not available or the owner or occupier refuses to relocate - the owner or occupier of the land should be informed that the LPA is not prepared to allow the operation or activity to continue at its present level of activity or, if that is the case, at all.

14.6.2 If the unauthorised development provides valued local employment, the owner or occupier should be advised of the length of time the LPA is prepared to wait before the operation or activity must stop. If agreement can be reached between the operator and the LPA about this period and the agreement is honoured, formal enforcement action may be avoided.

14.6.3 LPAs should bear in mind the possibility of intensification of the development amounting to a material change of use after the expiry of the statutory period for taking enforcement action. If no agreement can be reached, the issue of an enforcement notice will usually be justified, allowing a realistic period for the unauthorised operation or activity to cease or its scale to be reduced to an acceptable level. Any difficulty with relocation will not normally be a sufficient reason for delaying formal enforcement action to remedy unacceptable unauthorised development.

14.7 Where unacceptable unauthorised development warrants immediate action

14.7.1 Where an LPA considers that an unauthorised development is causing unacceptable harm to public amenity, and there is little likelihood of the matter being resolved through negotiations or voluntarily, they should take vigorous enforcement action to remedy the breach urgently, or prevent further serious harm to public amenity.

14.8 Unauthorised development by private householders

14.8.1 Where the householder appears to have relied on permitted development rights as authorisation for the development, but a specified limitation has been exceeded in carrying it out, in considering whether it is expedient to take enforcement action, the LPA should have full regard to what would have been permitted if the development had been carried out in strict accordance with the relevant provisions. LPAs should not normally take enforcement action in order to remedy only a slight variation in excess of what would have been permitted by virtue of the GPDO provisions.

14.9 Control over mineral working

14.10 Mineral planning control is well established as part of the general planning system and there are no separate enforcement powers for unauthorised mineral working. The general policies and principles applicable to enforcement apply equally to mineral cases.

14.11 Unauthorised mineral working sometimes poses particular enforcement problems, both in terms of the occasionally irremediable nature of the working and the speed at which damage can be caused, as well as the fact that they will have no arrangements for restoration and aftercare of the land or even an agreed after use. Care also needs to be taken to ensure that, with authorised works, restoration and aftercare is carried out fully in accordance with the terms of the agreed schemes. While the powers available to LPAs are helpful in preventing damage which would otherwise be virtually or totally irremediable, either to the site itself or to its surroundings (and those powers would enable enforcement action to be taken quickly should the need arise), it is clearly preferable for there to be effective liaison and contacts between LPAs and minerals operators, which would avoid contraventions of planning conditions and enable any problems to be resolved through discussion and co-operation.

14.10 Control over waste disposal

14.10.1 The advice in paragraph 14.9.2 above applies equally to waste disposal and landfill sites.

14.11 Organisation within local planning authorities

14.11.1 It is for each LPA to decide how to organise the enforcement of planning control in its area. The organisation should correspond to the volume and complexity of enforcement casework in each LPA area and be sufficiently flexible to adapt to any short term increases in the demand for enforcement. All authorities should ensure that there is a close and co-operative working relationship between the Planning and Legal departments and other departments e.g. building control and environmental health. Although those other departments may be concerned with the enforcement of controls outside the planning regime, they could have information which could be relevant to the identification of possible, or actual, contraventions of planning control.

14.11.2 Without such effective working relationships, formal enforcement action (which depends for its success upon speed of assessment and process) may be hampered by poor communications and misunderstandings. Public criticism is

then likely, especially if statutory time limits for taking enforcement action are allowed to expire because of administrative delay. All LPAs should regularly review the effectiveness of their procedural arrangements for planning enforcement; and, where necessary, introduce revised arrangements.

14.11.3 When complaints about alleged breaches of planning control are received, they should always be properly recorded and investigated. The Public Service Ombudsman for Wales has held, in a number of cases, that there had been maladministration where the LPA had failed to take effective enforcement action which was plainly necessary, and has occasionally recommended a compensatory payment to the complainant for the consequent injustice. While this does not mean that enforcement action should be taken automatically following a complaint, if the LPA decide to exercise its discretion not to take enforcement action where a complaint is made, it should be prepared to explain its reasons to any organisation or person who has asked for an alleged breach of planning control to be investigated.

14.12 Welsh Ministers Enforcement Powers

14.12.1 LPAs are primarily responsible for planning enforcement within their areas. However, the Welsh Ministers hold reserve powers in this regard, allowing them to issue enforcement notices and breach of condition notices following consultation with the relevant LPA. Such a step would override the planning authority's decision on an issue that falls under its responsibility and would be justified solely in exceptional cases, such as when there is a significant failure or dysfunction within an LPA and failure to intervene could harm the broader public interest if left unaddressed.

Section 14 Annexes Enforcement Tools
Further Guidance Welsh Office Circular 24/97: Enforcing Planning Control: Legislative Provisions and Procedural Requirements
Relevant Legislation Planning (Wales) Act 2015

Section 15

Compensation & Purchase Notices

15.1 Introduction

15.1.1 There is no general entitlement to compensation due to the granting or refusal of planning permission. However, where permission has been granted it cannot be taken away without compensation. Circumstances where compensation may arise include:

- modification, revocation or Discontinuance of a planning permission;
- withdrawal of permitted development rights; or
- as a result of the service of a stop notice

15.1.2 Guidance on compensation arising from a stop notice can be found in Welsh Office Circular 24/97: Enforcing Planning Control.

15.1.3 Landowners can claim that their land has been left without any reasonably beneficial use as a result of a planning decision and serve a purchase notice on the LPA, requiring the authority to acquire the land.

15.2 Modification, Revocation or Discontinuance of Planning Permission

15.2.1 Modification and revocation of planning permission apply to development that has yet to be completed, including where the development has not commenced. Discontinuance applies to orders to stop existing uses or remove existing buildings.

15.2.2 Where it appears to the LPA that it is expedient to revoke or modify any permission to develop land granted on an application, the authority may by order revoke or modify the permission to such extent as they consider expedient. The authority shall have regard to the development plan and to any other material considerations.

15.2.3 Where planning permission is revoked or modified by an order under section 97 of the 1990 Act a person with an interest in the land (including any mineral rights) can claim compensation from the LPA where it is shown they:

(a) have incurred expenditure in carrying out work which is rendered abortive by the revocation or modification; or

(b) have otherwise sustained loss or damage which is directly attributable to the revocation or modification.

15.2.4 A discontinuance order can be served using section 102 of the 1990 Act if it appears to an LPA that it is expedient in the interests of the proper planning of their area (including the interests of amenity) that:

- any use of land should be discontinued
- any conditions should be imposed on the continuance of a use of land
- any buildings or works should be altered or removed

15.2.5 Section 115 of the 1990 Act enables compensation to be claimed by any person who suffers damage as a consequence of the order relating to depreciation of an interest in the land or disturbance of their enjoyment of the land.

15.2.6 The Welsh Ministers have reserve powers to make their own Revocation/ Modification or Discontinuance Orders, but only after consultation with the planning authority. Such intervention would overturn a planning authority's judgement on a matter which is, in the first place, its responsibility and may only be justified in exceptional circumstances. The general principle is that such action should be considered only where the original decision is judged to be grossly wrong, so that damage would be done to the wider public interest.

15.3 Withdrawal of Permitted Development Rights

15.3.1 Section 108 of the 1990 Act provides that where an LPA withdraws permitted development rights by giving a direction and subsequently refuses an application required as a result of that direction or approves the application subject to conditions) they may be liable to pay compensation for abortive work or other loss or damage directly attributable to the withdrawal.

15.3.2 Section 108(2A)(a) provides that compensation is payable only if an application for planning permission for development formerly permitted by that order is made within 12 months of the directions taking effect. Sub-sections 108(3B)(a) and (3C) provide that, where planning permission granted by a development order is withdrawn, there will be no entitlement to compensation where the permission was granted for development of a prescribed description, is withdrawn in the prescribed manner and notice of the withdrawal is published not less than 12 months or more than 24 months before the withdrawal takes effect.

15.3.3 The following development is prescribed by The Town and Country Planning (Compensation) (Wales) (No 2) Regulations 2014 for the purposes of sub-sections 108(2A)(a) and (3C)(a):

- development permitted by Part 1 of Schedule 2 to the GPDO (development within the curtilage of a dwelling house);
- development permitted by Class A and E of Part 8 of Schedule 2 (extension or alteration of an industrial building or a warehouse);
- development permitted by Class A of Part 24 (development by electronic code operators);
- development permitted by Part 32 of Schedule 2 (schools, colleges, universities and hospitals);
- development permitted by Part 40 of Schedule 2 (installation of domestic microgeneration equipment);
- development permitted by Part 41 of Schedule 2 (office buildings);
- development permitted by Part 42 of Schedule 2 (shops, financial or professional services establishments); and
- development permitted by Part 43 of Schedule 2 (installation of non-domestic microgeneration equipment.

15.3.4 The Town and Country Planning (General Permitted Development etc.) (Amendment) (Wales) Order 2022 (No.997, W.213) amended the 2014 regulations to also include development permitted by Class I of Part 3 of Schedule 2 (certain changes of use). This was part of the package of measures relating to the management of second homes and short term lets.

15.4 Purchase Notices

15.4.1 Guidance on the serving and processing of Purchase Notices is contained in Welsh Office Circular 22/83 Purchase Notices.

Section 15 Annexes None
Further Guidance Welsh Office Circular 24/97 Enforcing Planning Control Welsh Office Circular 22/83 Purchase Notices
Relevant Legislation Town and Country Planning Act 1990 The Town and Country Planning (General Permitted Development etc.) (Amendment) (Wales) Order 2022 The Town and Country Planning (Compensation) (Wales) (No.2) Regulations 2014 The Town and Country Planning (Compensation) (Wales) Regulations 2012 The Town and Country Planning (General Permitted Development) Order 1995

Llywodraeth Cymru
Welsh Government

Part 2 – Specialist Development and Other Permissions

Development Management Manual

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PART 2 – SPECIALIST DEVELOPMENT AND OTHER PERMMISSIONS

Section 16

16.1 Advertisement Control

16.1.1 'Advertisement' has a wider than normal meaning set out in section 336(1) of the 1990 Act. The regulation of the display of advertisements in the interests of amenity and public safety is enabled by sections 220, 221, 223 and 224 of the 1990 Act. The scope of control and procedures to be followed in managing advertisement display are to be found in the Town and Country Planning (Control of Advertisements) Regulations 1992.

16.1.2 Guidance on the operation of the advertisement regulations is set out in Welsh Office Circular 14/92: Town and Country Planning (Control of Advertisements) Regulations 1992. The guidance is supplemented by Welsh Office Circular 70/94 Town and Country Planning (Control of Advertisements) (Amendment) Regulations 1994.

16.1.3 As of 5 May 2017, the following parts of Welsh Office Circular 14/92: Town and Country Planning (Control of Advertisements) Regulations 1992 have been cancelled:

- The third sentence of paragraph 6
- Paragraph 10
- Paragraphs 39-50 of the Annex
- Appendices C, D and E to the Annex

16.1.4 Also as of 5 May 2017, the Town and Country Planning (Control of Advertisements) Direction 1992 has been cancelled by the Town and Country Planning (Control of Advertisements) (Cancellation) (Wales) Direction 2017. The 1992 direction will continue to apply to certain circumstances. This is set out in the direction contained in Section 16 Annex Cancellation Direction 2017.

16.1.5 The statutory provisions enable LPAs to control the display of advertisements when justified in the interests of public safety and amenity. The control regime does not enable the authority to regulate the subject matter of any advertisement. The test in assessing an advertisement's impact on public safety is whether the advertisement itself, or the exact location proposed for its display, is likely to be so distracting or confusing that it creates a hazard to, or endangers, people in the vicinity who are taking reasonable care for their own and others' safety.

16.1.6 The test in considering an advertisement's impact on amenity is whether it will adversely affect the appearance of the building, or of the immediate neighbourhood, where it is to be displayed. LPAs should therefore consider the local characteristics of the neighbourhood, including its scenic, historic, architectural or cultural features. As the assessment of these factors may

appear to involve some subjective judgement, authorities should be consistent in their assessment of visual impact in similar or comparable neighbourhoods or surroundings.

16.1.7 No advertisement sign should be displayed without the consent of the landowner, and it is an offence to erect or paint signs on any part of a public highway. Unless applicants are able to demonstrate prior highway authority authorisation for the proposed sign(s), then applications to display advertisements on (or overhanging) highway land should be refused automatically. In terms of tourism related signage to be displayed on the highway, guidance is provided by Visit Wales.

16.1.8 Technical Advice Note (TAN) 7: Outdoor Advertisement Control provides further guidance about the control of outdoor advertisements .

Section 16 Annexes Cancellation Direction 2017
Further Guidance Technical Advice Note (TAN) 7: Outdoor Advertisement Control Welsh Office Circular 14/92 Town and Country Planning (Control of Advertisements) Regulations 1992 (see paragraph 16.1.3 above for cancellation information) Welsh Office Circular 70/94 Town and Country Planning (Control of Advertisements) (Amendment) Regulations 1994
Relevant Legislation Part VIII, Town and Country Planning Act 1990 Town and Country Planning (Control of Advertisements) Regulations 1992

Section 17

Crown Development

17.1.1 Applications by the Crown need to be made on the Standard Application Form to LPAs in the first instance. Applications for urgent Crown development under section 293A of the 1990 Act and for urgent works relating to Crown land under section 106 of the Historic Environment (Wales) Act 2023 are submitted direct to the Welsh Ministers. They will be accompanied by a certificate whereby the appropriate authority declares stating that the proposed development is both of national importance and should be carried out as a matter of urgency.

17.1.2 Articles 6 and 28(3) of the DMPWO contain a requirement for certain applications relating to Crown land to be accompanied:

- by a statement that the application is made in respect of Crown land; and
- where the application is made by a person authorised in writing, by the appropriate authority, by a copy of that authorisation.

17.1.3 Further guidance on application procedures and enforcement in respect of Crown development is contained in a Memorandum on Crown Application of the Planning Acts issued to Chief Planning Officers on 07 June 2006.

Section 17 Annexes None
Further Guidance Memorandum on Crown Application of the Planning Acts (June 2006)
Relevant Legislation Historic Environment (Wales) Act 2023 Town and Country Planning Act 1990 Town and Country Planning (Development Management Procedure) (Wales) Order 2012

Section 18

Developments of National Significance

18.1.1 A Development of National Significance (DNS) is a planning application for a large infrastructure project of national importance – for example, a wind farm, power station or reservoir.

18.1.2 An application for DNS differs from an ordinary planning application in the way that it is decided. In most cases, instead of the LPA making the decision, a Planning Inspector examines the application and makes a recommendation to the Welsh Ministers based on planning merits and national priorities. The Ministers then decide whether or not to grant permission. However, since January 2025, the function of determining DNS applications for electricity generating stations between 10-49.9MW is exercised by an appointed person (i.e. PEDW Inspector) rather than the Welsh Ministers.

18.1.3 A summary of the types of DNS developments is set out in Section 5 Annex 'Planning Application Classifications – Thresholds and Criteria'. The full list of DNS projects is defined in The Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016.

18.1.4 Guidance on Developments of National Significance can be found on the Welsh Government website.

18.1.5 The DNS process is subject to the costs regime. Full information on costs is set out at section 12.3.

Infrastructure (Wales) Act 2024

18.1.6 The Infrastructure (Wales) Act 2024 is expected to come into force in September 2025, establishing a bespoke consenting process for devolved major energy and infrastructure projects in Wales that will subsume many DNS projects. This is a new stand alone consenting regime the development of infrastructure in Wales that will sit outside of the current planning system. It replaces several statutory regimes.

18.1.7 The new form of consent will be known as an 'Infrastructure Consent' ("IC") and will be issued in relation to projects which are prescribed as a 'Significant Infrastructure Project' ("SIP"). Categories of infrastructure ascribed SIP status include energy, transport, waste and water, among other infrastructure types. Developers must obtain an IC for a SIP, and the IC is intended to contain the full range of authorisations required to enable development to be implemented.

18.1.8 Some development previously determined by the Welsh Ministers under the DNS process will fall outside the scope of the new consenting process, such as energy generating projects below 50MW. Once the Act is commenced, these developments will require planning permission and will therefore be consented under the 1990 Act and determined (upon application) by LPAs.

18.1.9 Further information is available on the Welsh Government website.

Section 18 Annexes
None

Further Guidance
Guidance on Developments of National Significance (Planning and Environment Decisions Wales)

Relevant Legislation
Planning (Wales) Act 2015
Town and Country Planning Act 1990
The Developments of National Significance (Application of Enactments) (Wales) Order 2016
The Developments of National Significance (Fees) (Wales) Regulations 2016
The Developments of National Significance (Procedure) (Wales) Order 2016
The Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016
The Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) (Amendment) Regulations 2016
The Developments of National Significance (Wales) Regulations 2016
Infrastructure (Wales) Act 2024

Section 19

Hazardous Substances

19.1.1 Hazardous substances consent must be obtained before certain quantities of hazardous substances at or above defined limits can be stored on land. The scope and procedures associate with hazardous substance consent are set out in the Planning (Hazardous Substances) Act 1990 and the Planning (Hazardous Substances) (Wales) Regulations 2015.

19.1.2 Consent is obtained from the Hazardous Substances Authority (HSA), which is usually the LPA. Hazardous substances consent is an important mechanism in the overall control of major hazards as it enables the HSA to consider whether the presence of a significant quantity of a hazardous substance is acceptable in a particular location.

19.1.3 Natural Resources Wales and the Health and Safety Executive (HSE) are statutory consultees on applications for hazardous substances consent. NRW's advice is aimed at mitigating the effects of a major accident on the surrounding natural environment.

19.1.4 When advising the HSA on whether or not consent should be granted, HSE will consider the hazards and risks which the hazardous substance may present to people in the surrounding area and take account of existing and potential developments. HSE's advice is aimed at mitigating the effects of a major accident on the population around a major hazard site.

19.1.5 In assessing the application for consent, HSE will produce a map often with three risk contours (or zones), representing defined levels of risk or harm which any individual would be subject to. Should the HSA grant consent, this map defines the consultation distance within which HSE must be consulted over any relevant future planning applications. The methodology used by HSE to provide their advice is explained in their guidance document 'HSE's Land Use Planning Methodology'.

19.1.6 Further guidance on hazardous substances consent is available in National Assembly For Wales Circular 20/2001 Planning controls for dangerous substances.

Section 19 Annexes None
Further Guidance National Assembly For Wales Circular 20/2001 Planning controls for dangerous substances
Relevant Legislation Planning (Hazardous Substances) Act 1990 Planning (Hazardous Substances) (Wales) Regulations 2015

Section 20

Listed Buildings and Conservation Areas

20.1 Introduction

20.1.1 LPAs have an important role in securing the conservation, protection and enhancement of the historic environment while ensuring that any changes to an historic asset or its setting is managed in a sensitive and sustainable way. The Well-being of Future Generations (Wales) Act 2015 places duties on public bodies requiring them to act in accordance with the 'sustainable development principle'. This is a key aspect of local authorities' wider sustainable development responsibilities which must be taken into account when exercising development management functions.

20.1.2 Cadw is a statutory consultee for planning applications affecting the historic environment, and will need to be consulted on applications in accordance with the requirements set out in Schedule 4 to the DMPWO.

20.1.3 Technical Advice Note 24: The Historic Environment ('TAN 24') provides guidance on how the planning system considers the historic environment during development plan preparation and decision making on planning and listed building and conservation area consent applications.

20.2 Listed Building Consent

20.2.1 The Historic Environment Wales Act 2023 and its suite of supporting secondary legislation came into full effect on 4 November 2024. This consolidates the Ancient Monuments and Archaeological Areas Act 1979 and the Planning (Listed Buildings and Conservation Areas) Act 1990 so that they no longer apply in Wales. The new consolidated Act and its suite of supporting secondary legislation provide the legislative framework for the management and protection of the Welsh historic environment.

20.2.2 Once a building is listed under section 176 of the Historic Environment (Wales) Act 2023 ('the 2023 Act"), section 88 provides that work must not be carried out unless authorised under section 89 for works for the alteration or extension of a listed building that would affect its character as a building of special architectural or historic interest or for the demolition of a listed building. It is a criminal offence to carry out such works without consent, which must be sought from the LPA. This is known as Listed Building Consent (LBC).

20.2.3 There should be pre-application discussions between the developer, the planning authority and, where appropriate Cadw, to clarify what works will require LBC, what level of information will need to be provided and what other issues, such as duties towards nature conservation need to be resolved.

20.2.4 Applicants for LBC must be able to justify their proposals and therefore must provide the planning authority with full information to enable them to assess the likely impact. A list of the information required is set out in Section 7 Annex 'Planning Applications - Lists of Validation Requirements'; however, for the full requirements planning authorities should refer to the relevant statutory instrument. The information must include a heritage impact statement, which will be

proportionate both to the significance of the building and to the degree of change proposed. The heritage impact statement may also require an access statement for works which affect the access arrangements to or within any part of a listed building that is not used as a private dwelling. Further guidance on Heritage Impact Assessments can be found in on the Cadw website.

20.2.5 It is preferable if related applications for planning permission and for listed building consent are considered concurrently. When considering planning applications which affect listed buildings or their setting planning authorities are required by section 314A of the 1990 Act to have special regard to the desirability of preserving the listed building, the setting of the building, or any features of special architectural or historic interest the building possesses. Further guidance on setting, how it contributes to the significance of a historic asset and the principles used to assess the potential impact of development or land management proposals within the settings of historic assets can be found in 'Setting of Historic Assets' published by Cadw.

20.2.6 There is no statutory requirement to have regard to the provisions of the development plan when considering applications for listed building consent, since in these cases the Courts have accepted that section 54A of the 1990 Act (superseded by section 38(6) of the Planning and Compulsory Purchase Act 2004) does not apply.

20.2.7 LPAs should not authorise demolition of a listed building to make way for new development unless it is certain that the new development will proceed. This requirement can be secured by condition. Conditions may also be used to require the preservation of particular features and/or to require works to be carried out in a certain way.

20.2.8 A decision taken on a planning application in isolation of an application for LBC cannot be taken as predetermining the outcome of any subsequent decision on the LBC application.

20.3 Conservation Areas

20.3.1 Authorisation is required under section 161(1) of the 2023 Act for the demolition of most buildings within conservation areas. Authorisation is not needed for the demolition of listed buildings or a scheduled monument in a conservation area as they are subject to separate controls.

20.3.2 Section 161(2)(c) of the 2023 Act enables the Welsh Ministers to extend the development categories that are exempt from the requirement for conservation area consent. Regulation 23 of the Listed Buildings and Conservation Areas (Procedure and Interest Rate) (Wales) Regulations 2024 sets out the circumstances where section 161(1) of the Act does not apply.

20.3.3 Applications for conservation area consent will require a heritage impact statement, which should explain why demolition is desirable or necessary alongside a broader assessment of the proposals on the character or appearance of the area. A list of the information required is set out in Section 7 Annex 'Planning Applications - Lists of Validation Requirements' however for the full requirements LPAs should refer to the relevant statutory instrument.

20.3.4 There is no statutory requirement to have regard to the provisions of the development plan when considering applications for conservation area consent, since in these cases the Courts have accepted that section 54A of the 1990 Act (superseded by section 38(6) of the Planning and Compulsory Purchase Act 2004) does not apply.

20.3.5 Consideration of proposals for development in a conservation area should be made on the basis of a full, rather than an outline application. Proposals to demolish unlisted buildings in a conservation area should be assessed against the same broad criteria as proposals to demolish listed buildings. Consent for demolition should not be given unless there are acceptable and detailed plans for redevelopment.

Section 20 Annexes None
Further Guidance Technical Advice Note 24: The Historic Environment Setting of Historic Assets | Cadw Managing change to listed buildings | Cadw Managing conservation areas | Cadw
Relevant Legislation Housing Act 1988 Town and Country Planning Act 1990 The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 Historic Environment (Wales) Act 2023

Section 21

Minerals

21.1 Introduction

21.1.1 The term 'Mineral Planning Authority' is that given to any of the authorities with responsibility for planning control over mineral working and relates to each county or county borough council and national park authority in Wales.

21.1.2 The long-term nature of most minerals developments means authorities have a duty to undertake periodic reviews of planning permissions to ensure they are kept up to date.

21.2 Applications for Mineral Development

21.2.1 Section 336 of the 1990 Act defines 'Minerals' as including all substances of a kind ordinarily worked for removal by underground or surface working, except that it does not include peat cut for purposes other than sale.

21.2.2 Article 2 of the DMPWO defines 'mining operations' as the winning and working of minerals in, on or under land, whether by surface or underground working. It also defines that the winning and working of minerals or the use of land for mineral-working deposits is 'major development'. Therefore, planning applications for the winning and working of minerals will be required to follow the pre-application requirements set out in section 6.4 irrespective of the size of the site.

21.2.3 The table in figure 8 below is taken from Minerals Planning Guidance Note 2: Applications, Permissions, and Conditions and sets out the type of information that should usually accompany a planning application for the winning and working of minerals.

Figure 8 – Information to Accompany a Planning Application for the Winning and Working of Minerals

Land & Minerals Interests	Details of the applicants interest in the site.
	Details of the applicants interest in adjoining land (if any).
	Details of the interests in the application site of other parties (in the land and minerals).
Nature of Development	Is the development for a new site, extension of existing workings, re-opening of a disused working, the removal of material from a mineral working deposit, or variation of conditions.
Nature of the Deposit	The mineral to be extracted.
	Results of any exploration carried out (e.g. borehole sampling, trial pits etc).
	The nature, thickness, and quantities of topsoil, subsoil and overburden mineral to be extracted, waste, or non-saleable material.

	Results of tests undertaken to indicate the quality of the deposit.
	The geology and topography of the site identifying (where relevant) land stability, water table, surface water drainage, watercourses.
Proposed Method	Total quantity of material to be extracted (tonnes) with saleable mineral, waste and overburden stated separately.
	Rate of production in tonnes/annum.
	Proposed depth of working.
	Statement of method of working including details of direction of work, phasing, and the duration of site development works, operations, and restoration.
	Details of plant and machinery for mineral extraction.
	Method for transporting material from the point of extraction to the processing and/or disposal point.
Underground Operations	Details of the extent and impact of any subsidence/instability likely to be caused on the surface by the proposed development.
Processing Materials	Dimensions and types of plant/machinery to be used in processing.
	Tonnage of material to be processed per annum.
	A description of the nature and quantities of processing waste and the proposed method of disposal/recycling.
Transport	Details of transporting minerals from the site (including number of daily vehicle movements and envisaged route).
Environmental Considerations	Details of any blasting, including times, predicted air and ground vibrational effects and noise at site boundaries and the nearest properties.
	Statement on the method of treatment and disposal of any water encountered during any of the works.
	Details of any measures proposed for the suppression of noise and dust from the mining and quarrying operations.
	Indication of the anticipated hours of mineral working, processing, and vehicular movements.
	Details of wheel wash facilities.

	Details of any proposed measures (and phasing) for landscaping works for screening the site.
Restoration, Aftercare, & After-use	Intended after-use or uses (e.g. agriculture, forestry, amenity) with appropriate detail on nature and types.
	Contours and intended final levels of the site.
	Use of soil materials in restoration, together with intended phasing and timescales.
	Amounts, types, and sources of filling materials if reclamation envisages partial or complete filling with on-site or imported waste.
	Details of proposed drainage or the restored land, including details of any permanent water areas.
	Aftercare proposals – to include a summary of the principle items to be included in an aftercare scheme.
Plans and Drawings (where relevant)	Existing surface levels over the extraction area and land in the immediate vicinity.
	General method of working, including details of direction and phasing
	Proposed levels of worked out areas.
	Proposed surface area, height and location of mineral stockpiles, topsoil, subsoil and overburden mounds.
	Details of access to the site, parking, loading/unloading areas.
	Details of landscaping and restoration, including final levels of the restored site.
	Details of services crossing or adjacent to the site (e.g. drainage, gas, electricity etc).
	Details of any public footpaths and bridleways affected by the operations, including any proposed diversions and closures.
	Details of land to remain unworked within the area of the application.

21.2.4 Further guidance on Mineral Planning Matters is contained in a series of Minerals Planning Guidance documents and Minerals Technical Advice Notes.

Section 21 Annexes
None

Further Guidance

- Minerals Technical Advice Note (MTAN) Wales 1: Aggregates (March 2004)
- Minerals Technical Advice Note (MTAN) Wales 2: Coal (January 2009)
- Mineral Planning Guidance 2: Applications, Permissions and Conditions (July 1998) (Paragraphs 7-10 have been cancelled).
- Mineral Planning Guidance 4: The Review of Mineral Working Sites (September 1988)
- Mineral Planning Guidance 5: Minerals Planning and the General Development Order (December 1988)
- Mineral Planning Guidance 7: The Reclamation of Mineral Workings (August 1989) (Paragraphs 3 and 4 have been cancelled. This note was cancelled for aggregates related development by MTAN (Mineral Technical Advice Note) 1: Aggregates and for coal-related development by MTAN 2: Coal)
- Mineral Planning Guidance 8: Planning and Compensation Act 1991 : Interim Development Order Permissions (IDOs) - Statutory Provisions and Procedures (September 1991)
- Mineral Planning Guidance 9: Planning and Compensation Act 1991: Interim Development Order Permissions (IDOs) - Conditions (March 1992)
- Mineral Planning Guidance 10: Provision of Raw Material for the Cement Industry (1991) (Paragraphs 22-31 and 38-63 have been cancelled).
- Mineral Planning Guidance 11: The Control of Noise at Surface Mineral Workings (April 1993) Paragraphs 31-42 have been cancelled in relation to aggregates related development by MTAN (Mineral Technical Advice Note) 1: Aggregates
- Mineral Planning Guidance 12: Treatment of Disused Mine Openings and Availability of Information on Mined Ground (April 1994)
- Mineral Planning Guidance 14 : Environment Act 1995: Review of mineral planning permissions (September 1995)

Relevant Legislation

Town and Country Planning Act 1990
Town and Country Planning (Development Management Procedure) (Wales) Order 2012

Section 22

Trees and Hedges

22.1 Introduction

22.1.1 Section 198 of the 1990 Act enables LPAs, in the interests of amenity, to protect trees and woodlands by making Tree Preservation Orders (TPOs). A TPO must be in the form (or substantially in the form) of the Model Order. A copy of the Model Order for making a TPO is contained in The Town and Country Planning (Trees) Regulations 1999.

22.1.2 The principle effect of a TPO is to prohibit the cutting down, uprooting, topping, lopping, wilful damage or wilful destruction of a tree or trees without the consent of the LPA. The High Court has held that a "tree" is anything which ordinarily one would call a tree.

22.2 Trees and Planning Permission

22.2.1 Applications to fell or carry out work on a protected tree must be made in writing stating the reasons why it is being made and specifying the trees to which it relates and the precise operations for which consent is being sought. The LPA is required to keep a register of all applications for consent, and it must be available for inspection at all reasonable times.

22.2.2 A site visit should be undertaken to consider the work proposed to enable a judgement on whether the works are justified in the context of the amenity value of the trees.

22.2.3 Further guidance on TPOs can be found in Technical Advice Note (TAN) 10: Tree Preservation Orders

22.3 Hedges

22.3.1 Before a hedgerow can be removed, the developer must send the LPA a 'hedgerow removal notice'. The notice can be found in Schedule 4 to The Hedgerows Regulations 1997. The notice must be accompanied by a plan and the evidence mentioned in the model notice. Removal cannot commence until:

(i) the authority have given to the person who gave the hedgerow removal notice written notice stating that the hedgerow may be removed; or

(ii) the period of 42 days (beginning with the date on which the hedgerow removal notice is received by the LPA) has expired without the authority having given to that person a hedgerow retention notice stating that the work may not be carried out.

22.3.2 The hedgerow removal must be carried out in accordance with the proposal specified in the hedgerow removal notice; and it must be removed within the period of two years beginning with the date of service of the notice. Article 4 and Schedule 1 of The Hedgerows Regulations 1997 set out the criteria for determining whether a hedge meets the definition of an 'important' hedgerow.

22.3.3 Part 8 of the Anti-Social Behaviour Act 2003 makes provision for owners or occupiers of a domestic property to complain to the Local Authority that their reasonable enjoyment of their property is being adversely affected by the height of a high hedge situated on land owned or occupied by another person.

22.3.4 A 'high hedge' means so much of a barrier to light or access as:
(a) is formed wholly or predominantly by a line of two or more evergreens; and
(b) rises to a height of more than two metres above ground level.

22.3.5 Section 71 of the Anti-Social Behaviour Act 2003 gives people who are unhappy with a Council's decision to issue a remedial order a right of appeal to the Welsh Ministers. Further guidance about how to appeal a High Hedge decision can be found at 'Appeal a high hedges decision' by PEDW.

22.4 Future Changes to Tree Regulations

22.4.1 Sections 192 of the Planning Act 2008 introduced a new system for protecting trees, which have not yet been commenced in Wales This section and associated transitional provisions (section 193) from the 2008 Act will be incorporated into the Planning (Wales) Bill - (see section 1.3 for more information about the Bill and its anticipated timings).

22.4.2 It is also proposed that a new set of regulations will be made, to be brought into force at the same time as the Bill, providing the fine details of the system. These regulations were subject to a public consultation, which closed on 14 February 2025.

22.4.3 The new system will be more streamlined, whilst retaining the existing level of protection; and it will introduce "woodland preservation orders" alongside TPOs. The regulations will highlight the factors that can be taken into account when making orders and will clarify the exceptions to the need to obtain consent for works.

Section 22 Annexes None
Further Guidance Technical Advice Note (TAN) 10: Tree Preservation Orders Appeal a high hedges decision, PEDW 2022
Relevant Legislation Anti-social Behaviour Act 2003 Town and Country Planning Act 1990 The Hedgerows Regulations 1997 The Town and Country Planning (Trees) Regulations 1999

Section 23

Cancellation of Circulars and other guidance

23.1.1 The table in Figure 9 below lists those circulars and other guidance documents that are hereby cancelled and replaced by the Manual.

Figure 9 – Table of Cancelled Circulars and Other Guidance

Document Cancelled	Date Cancelled
Circulars	
Welsh Government Circular 002/12: Guidance for Local Planning Authorities on the use of the Standard Application Form (1APP) and validation of applications	17/11/2016
Welsh Office Circular 23/93: Awards of Costs Incurred in Planning and Other (Including Compulsory Purchase Order) Proceedings	05/05/2017
Welsh Office Circular 73/92: The Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (No 2) Regulations 1992	17/11/2016
Welsh Office Circular 32/92: Publicity for Planning Applications	17/11/2016
The following parts of Welsh Office Circular 14/92: Town and Country Planning (Control of Advertisements) Regulations 1992 have been cancelled: • The third sentence of paragraph 6 • Paragraph 10 • Paragraphs 39-50 of the Annex • Appendices C, D and E to the Annex	05/05/2017
Welsh Office Circular 24/87: Changes of use of buildings and other land: The Town and Country Planning (Use Classes) Order 1987	17/11/2016
Welsh Office Circular 61/96 Planning and the Historic Environment: Historic Buildings and Conservation Areas	30/05/2017
Technical Advice Notes	
TAN 9: Enforcement of Planning Control (1997)	17/11/2016
TAN 8: Planning for Renewable Energy	24/02/2021
TAN 19: Telecommunications	07/02/2024
Circular Letters	
None	
Practice Guidance	
None	
Other guidance	
None	

Section 24

Change Control

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REVISION TABLES

	DATE	CHANGES
Revision 1	**17 November 2016**	**New Document**
Revision 2	**05 May 2017**	**17 Changes to Main Document, 1 revised annex and 2 new annexes**
Revision 3	**14 May 2025**	**15 Changes to Main Document, 5 revised annexes**

Revision 1 - Issued 17 November 2016

Change 1.1	New Document
Change 1.2	8 annexes included

Revision 2 - Issued 05 May 2017

Change 2.1	Revised Section 7 Annex - Planning Applications - Lists of Validation Requirements – Version 2
Change 2.2	New Section 12 Annex – Awards of Costs
Change 2.3	New Section 16 Annex – Cancellation Direction 2017
Change 2.4	Contents updated
Change 2.5	Revised paragraph 1.2.3 - Using the Development Management Manual
Change 2.6	Paragraph 6.2.2 – reference to the environmental impact assessment regulations updated
Change 2.7	Revised paragraph 8.2.2 – Publicity
Change 2.8	Revised Figure 5 - Statutory Publicity Requirements for Planning and Heritage Applications
Change 2.9	Section 9.6 Committees – revised paragraph 9.6.1; new paragraphs 9.6.3 to 9.6.10 size and composition; consequential renumbering of section 9.6.
Change 2.10	Paragraphs 9.8.5 to 9.8.7 replaced by new section 9.8 Applications Referred to or Called in by the Welsh Ministers; old section 9.8 renumbered 9.9 Notification and Consultation Directions; paragraphs 9.8.1 to 9.8.4 renumbered 9.9.1 to 9.9.4.
Change 2.11	Section 9 summary box – relevant legislation updated
Change 2.12	Section 12 new title – Appeals and References to the Welsh Ministers
Change 2.13	Section 12 replaced
Change 2.14	New paragraph 16.1.3 and 16.1.4 inserted; paragraph 16.1.3 renumbered as 16.1.5 – Advertisement Control
Change 2.15	Section 16 summary box updated

Change 2.16	New paragraph 18.1.5 – Developments of National Significance
Change 2.17	Figure 9 Table of cancelled circulars and other guidance – circular 23/93 added; part of circular 14/92 added.

Revision 3 - Issued 14 May 2025

	Main Document
Change 3.1	Grammar and stylistic changes throughout
Change 3.2	Contents updated
Change 3.3	Abbreviations updated
Change 3.4	Revisions to Section 1 – Introduction to Development Management – including insertion of new subsection 1.3 'Planning Consolidation Bill'
Change 3.5	Revisions to Section 3 – Permitted Development – including subsection 3.2 'Permitted Development Order', subsection 3.3 'Article 4 Directions', subsection 3.4 'Prior Approval', subsection 3.5 'Use Classes Order' & subsection 3.6 'Planning Control over Demolition'
Change 3.6	Revisions to Section 5 – Planning Application Hierarchy - Development Types – Figure 2 amended
Change 3.7	Revisions to Section 6 – Pre-application Procedures –including subsection 6.3 'Local Planning Authority Pre-application Service', & subsection 6.4 'Pre-application Consultation by Developers'
Change 3.8	Revisions to Section 7 – Submission, Registration and Validation – including subsection 7.1 'Introduction', subsection 7.2 'Submitting the Application', subsection 7.3 'Design and Access Statements', & subsection 7.4 'Fees'
Change 3.9	Revisions to Section 8 – Publicity and Consultation – including Figure 5.
Change 3.10	Revisions to Section 9 – Assessing and Determining the Planning Application – including subsection 9.2 'Time Period for Determination', subsection 9.3 Requesting Additional Information', subsection 9.4 'Material Considerations', subsection 9.6 'Planning Committees', & Figure 7 'Non-Site Specific Directions Currently in Force'.
Change 3.11	Revisions to Section 10 – Conditions and Obligations – including subsection 10.3 ' Planning Obligations and Community Infrastructure Levy.
Change 3.12	Revisions to Section 13 – Amendments to Permissions – including subsection 13.2 'Non-materials Amendments' & subsection 13.3 'Section 73 Applications'
Change 3.13	Revisions to Section 14 – Enforcement – including subsection 14.1 'Introduction', subsection 14.2 'An Efficient and Effective Process', & new subsection 14.12 'Welsh Ministers Enforcement Powers'.
Change 3.14	Revisions to Section 15 – Compensation & Purchase Notices – including subsection 15.2 'Modification, Revocation or Discontinuance of Planning Permission' & subsection 15.3 'Withdrawal of Permitted Development Rights'
Change 3.15	Revisions to Part 2 Specialist Development and Other Permissions – including Section 16 'Advertisement Control', Section 18 'Developments of National Significance', Section 20 'Listed Buildings and Conservation Areas', Section 22 'Trees and Hedges', & Section 23 'Cancellation of Circulars and other guidance'.
	Annexes
Change 3.16	Revised Section 3 Annex (including new title) – Prior Approval – Version 2

Change 3.17	Revised Section 7 Annex - Planning Applications – Calculating the Fee – Version 2
Change 3.18	Revised Section 7 Annex - Planning Applications - Lists of Validation Requirements – Version 3
Change 3.19	Revised Section 12 Annex – Award of costs – Version 2
Change 3.20	Revised Section 14 Annex – Enforcement Tools – Version 2