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Llywodraeth Cymru
Welsh Government

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Consultation Document

Secondary legislation for development management

Date of issue: **19 June 2015**
Action required: Responses by **11 September 2015**

Overview

This consultation seeks your views on the detail to be provided in subordinate legislation supporting development management provisions contained in the Planning (Wales) Bill, including:

- Invalid applications: notices and appeals
- Decision notices
- Notification of development
- Appeals under section 217 of the Town and Country Planning Act 1990

Your views are also being sought on proposed changes to post-submission amendments and applications made under section 73 of the Town and Country Planning Act 1990.

Following analysis of the responses to the consultation paper "Frontloading the development management system", we are now seeking views on detailed aspects of pre-application fees.

How to respond

The closing date for responses is 11th September 2015. You can respond in any of the following ways:

email Please complete the consultation form at Annex 1 and send it to: planconsultations-i@wales.gsi.gov.uk

(Please include "Secondary legislation for DM" in the subject line)

post Please complete the consultation response form at Annex 1 and send it to:

Secondary legislation for development management consultation
Development Management Branch
Planning Directorate
Welsh Government
Cathays Park
Cardiff CF10 3NQ.

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Positive Planning – Proposals to reform the planning system in Wales

www.wales.gov.uk/consultations/planning/draft-planning-wales-bill/?status=closed&lang=en

Contact details

For further information:

Email: planconsultations-i@wales.gsi.gov.uk

Tel: Kristian Morgan on 02920 823360

Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to

release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Secondary Legislation for Development Management

1.0 Purpose of this Consultation

1.1 This consultation seeks your views on subordinate legislation needed to implement the following sections of what is currently the Planning (Wales) Bill (the Bill):

- Non-Validation Appeals (s.29)
- Decision Notices (s.33)
- Notifications (s.34)
- Consultations etc. in Respect of Certain Applications for Approval (s.37)
- s.217 Appeals (s.48)
- Statutory pre-application fees (s.18)

1.2 This consultation paper is not seeking opinions in respect of the primary legislation included in the Bill as this has already been approved by the National Assembly for Wales, and is due to receive Royal Assent in July.

1.3 The secondary legislation proposed in this consultation document, may not be taken forward in the same order. Some provisions may be contained in an updated version of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (DMPO), whilst other provisions may be contained in separate orders, or in regulations, for example, provisions associated with appeals.

1.4 The sections of the Bill discussed in this paper are reproduced in the appendix for reference purposes.

1.5 Your views are also sought on detailed proposals outlining the proposed fees that will be made payable to local planning authorities when providing a statutory pre-application service (section 18 of the Bill).

1.6 This is in response to the analysis of the consultation paper “Frontloading the development management system” which provided an opportunity to comment on setting a standard national fee level for a statutory pre-application service.

Other Issues

1.5 Your opinion is also being sought in respect of legislation that will:

- mitigate the effect that post-submission amendments have on the efficient processing of planning applications for major development
- simplify the process of making applications that fall within section 73 of the Town and Country Planning Act 1990 (TCPA).

1.6 Powers are already available under the Town and Country Planning Act 1990 (TCPA) to make such provision in secondary legislation, and therefore no additional powers were required in the Planning (Wales) Bill. The provisions for post-submission amendments and applications that fall within section 73 detailed in this consultation paper are intended to support the provisions in the Bill to make the planning system more efficient.

2.0 Invalid Applications: Notices and Appeals

2.1 Section 29 of the Bill introduces a mechanism for appealing against an LPA's decision not to validate an application for planning permission. Amendments were made to section 29 during its passage through the Assembly, so that it also allows appeals against decisions not to validate an application for any consent, agreement or approval required by condition or limitation subject to which planning permission has been granted.

2.2 Section 29 amends the TCPA to provide for:

- the giving of a notice by a LPA that an application is not valid
- the appeal by the applicant against the notice and the information that is to accompany an appeal.

Contents of the notice

2.3 Under the TCPA as amended by section 29 if an LPA think the application is not valid they must give the applicant notice to that effect. The notice must identify the requirements or information in question and the reasons why it is not valid. The legislation allows provisions to be made in a development order about the giving of a notice under the section, including provision about information to be included within the notice and how and when the notice is to be given.

2.4 The determination of appeals against these notices is intended to be a quick exercise; therefore the notice would effectively be an LPA's only opportunity to state their case as to why they consider the application to be invalid. There would not be an opportunity, once an appeal has been submitted, to produce a statement to counteract an appellant's grounds of appeal as there currently is with other types of appeal. Therefore, the notice should be clear and the decision not to validate an application well considered. Any information that an LPA consider supports their decision should be included with the notice. Only the matters identified in the notice can be appealed against, and only the grounds identified by the appellant would be considered at appeal. If an LPA failed to identify all reasons why an application is not valid, this could result in them having to issue a second notice at a later date, which increases the likelihood of the LPA exceeding the statutory determination period if the appeal is successful (as the period would run from when the application was received.

2.5 We propose to set out in secondary legislation that a notice issued pursuant to section 62ZA TCPA as inserted by section 29 of the Bill (that an application is not valid) should:

a) include the allocated application number and description of the application to which the notice relates;
b) identify the requirement under section 62 of the TCPA and the DMPO (if relevant) under which an application for planning permission is invalid;

c) 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,;
d) identify reasons why it does not comply with these requirements;
e) provide a brief description how the applicant can comply with the requirements; and
f) be accompanied by an explanatory note explaining the appeal process.

Q.1. Do you agree that a notice that an application is not valid should include criteria a) to f)?

Q.2. Is there any additional information you think should accompany a notice of non-validation? If so, why is this information necessary?

Determination periods and the right to appeal

2.6 If an applicant does not receive notice that their application is not valid, they will be able to appeal against non-determination after a period of 8 weeks (or 16 weeks if subject to EIA) if a decision has not been made in respect of the application. Article 8 of the DMPO states that the authority must, as soon as is reasonably practicable, send to the applicant an acknowledgement of the application where it complies with validation requirements. If after sending this acknowledgement, the LPA consider the application is invalid they must, as soon as reasonably practicable, inform the applicant of that decision.

2.7 Article 22 of the DMPO states that a valid application must be taken to have been received when the application, the necessary documents, particulars or evidence and any fee required have been lodged with the LPA. After the introduction of appeals under section 62ZB TCPA as inserted by section 29 of the Bill, this will mean that, if an appeal is successful, the 'start-date' of an application will be when the original application was received by the LPA. Articles 8 and 22 will therefore work with the introduction of appeals by section 29 of the Bill to encourage a quick decision by LPAs as to whether an application is invalid. Appendix 1 of this consultation paper shows the likely typical time line associated with an appeal against a notice of non-validation.

2.8 We propose for consistency, that the regulations associated with appeals against an LPA's decision to issue a notice that an application is not valid should so far as possible be consistent with that of other types of appeals. Appeals against a notice that an application is not valid will be determined through written representation only. Furthermore, in order to support the quick resolution of these appeals, it is proposed to limit the period within which to appeal to 14 days of the date of the notice, except in exceptional circumstances where Welsh Ministers will

be able to use their discretion to accept late appeals. The period for determination of the appeal by Welsh Ministers is proposed to be limited to 21 days from the start of the appeal period i.e. when an appeal is submitted. Regulations associated with appeals under section 62ZB TCPA as inserted by section 29 of the Bill will require:

- an explanatory note detailing the appeal process to accompany the notice – the requirements of what this explanatory note should include will be contained within the regulations;
- the appellant to appeal to the Welsh Ministers by way of a statement in writing within 14 days of the date of the notice which:
    a) includes a copy of the non-validation notice issued to them;
    b) specifies the grounds on which the appeal is being brought; and
    c) sets out briefly the facts to support those grounds.

  In exceptional circumstances Welsh Ministers may use their discretion to accept later submissions;
- the Welsh Ministers, must notify the LPA in writing that a valid appeal has been submitted and copy to them the appeal statement;
- the Welsh Ministers, must notify the LPA and appellant of their decision in writing and their reasons for reaching that decision with 21 days of the receipt of a valid appeal.

Q.3. Do you agree that a period of 14 days for the applicant to submit their appeal is sufficient time given the desired quick turn around of appeals against notice of non-validation?

Q.4. Do you agree that the Welsh Ministers should be required to determine appeals within 21 days of the start of the appeal period?

Arrangements for returning a fee

2.7 In current practice, the application fee is normally returned to the applicant by the LPA when the requested information considered necessary for validation of the application is not forthcoming. Where there is no appeal under section 62ZB as inserted by section 29, LPAs will be expected to follow their existing procedure; however we are seeking views on when the application fee should be returned to the applicant if they decide to submit an appeal against a notice of non-validation. Because of the intended quick appeal process, the preference is for the LPA to retain the fee until the appeal has been determined.

Q.5. Where an application is considered to be invalid and an appeal submitted in respect of a notice of non-validation, do you agree that the fee should be retained by the LPA pending the outcome of that appeal?

3.0 Decision Notices

3.1 The Bill is making several changes to decision notices:

- section 33 of the Bill amends the TCPA 1990 to require that decision notices must specify the plans and documents in accordance with which the development is to be carried out
- section 71ZA TCPA as inserted by section 33 also requires decision notices to be updated and a revised version issued where consents are given or conditions changed
- decision notices must also set out the duties imposed on developers by section 71ZB TCPA as inserted by section 34 of the Bill i.e. to notify the LPA of the date development is to begin and to display a notice of the decision

3.2 Section 71ZA TCPA enables provision to be made in secondary legislation as to:

- the form of decision notices
- the manner in which decision notices are to be given
- the particulars to be contained in decision notices
- details to be contained in revised decision notices

3.3 Article 24 of the DMPO already prescribes that notice of a decision must include a range of information, including that it must:

- clearly and precisely state full reasons for the refusal or any condition imposed, specifying all policies and proposals in the development plan relevant to the decision
- provide details of any direction or opinion made by Welsh Ministers
- be accompanied by notification set out in Schedule 5 (i.e. details of appeal)
- include a statement that the environmental statement has been taken into account where one has been submitted and the LPA grant permission.

3.4 In terms of the content of a revised version of the notice of decision to grant planning permission, the intention is that it will be updated to take into account subsequent amendments or approvals.

3.5 Where either details required by a condition or the removal or variation of a condition are approved then the decision notice will be updated to reflect this and should include:

- the date the details were approved, and
- the relevant application reference

as shown in the example below where details required by condition have been approved:

> *Prior to the construction of the building hereby approved details of the materials to be used in the construction of the external surfaces of the building shall be submitted to and approved in writing by the local planning authority. The Development shall be carried out in accordance with the approved details.*

On approval of the required details the condition will become:

> *Prior to the construction of the building hereby approved details of the materials to be used in the construction of the external surfaces of the building shall be submitted to and approved in writing by the local planning authority* ***[Date Details Approved: xx/xx/xx, Application Reference No: xxxxxx]****. The Development shall be carried out in accordance with the approved details.*

Q.6. Do you agree that when a decision notice is revised it should include

a) the date of the approval; and
b) the relevant application reference in the updated version of the notice?

3.6 Where an appeal is made under section 78 of the TCPA in respect of a condition attached to a decision to grant planning permission, the Planning Inspectorate subsequently issue a decision letter which, if the appeal is successful, will remove or amend the condition. In this case, it will then be necessary for the LPA to issue a revised decision notice which takes into account the outcome of the appeal. Any amended condition included in the revised decision notice should include the date and reference number of the Planning Inspectorate's decision. If a condition is removed, either as the result of an appeal or an application under section 73 of the TCPA it should clearly be identified that the condition was removed, on what date this decision was made and the relevant reference number.

3.7 The DMPO will be amended to require the most up to date version of the decision notice to be placed on the planning register. This will ensure that the public

and any interested party can keep themselves fully informed of any changes to the planning permission.

Q.7. Do you agree that the DMPO should be updated to require LPAs to keep a copy of the most recent decision notice on the planning register?

4.0 Notification of Development

4.1 Section 34 of the Bill inserts section 71ZB into the TCPA to require developers to notify LPAs of the date a development is to begin. It also requires developers to display a notice of the decision to grant planning permission at or near to the development site at all times when it is being carried out. It is intended that such notifications will only be required for major developments and developments of national significance. Section 71ZB enables provision to be made in secondary legislation as to:

- the content and form of the notice to be provided to the LPA
- the form of the notice of decision which is displayed at or near the development site, and how it must be displayed
- what description of development the requirements apply to

4.2 Planning permission will be deemed to be granted subject to a condition that the duties set out in section 71ZB(1)-(3) TCPA must be complied with. Non-compliance will therefore represent a breach of condition and can be subject to enforcement action. Written notice, including through electronic communications, of the date the development is to begin, and identification of the application reference number is considered sufficient information to be provided to the LPA prior to the commencement of development.

4.3 Secondary legislation will require that:

- the notice of decision to be displayed on site is the most up to date version of notice
- the notice should be visible and legible to anyone passing by without having to enter the site
- if the notice is removed, destroyed or deteriorates to a condition where it is no longer legible then it must be replaced.

Only one site notice will be required through legislation, however, if an LPA consider that the site is of a size to require more than one notice, they can require this through a condition and can also specify the location of the notice if they consider it necessary.

Q.8. Are there any other requirements which you think should be made of the developer in respect of the form, content or display of a notification of development?

4.4 It is intended that these provisions would only apply to major developments, as defined in the DMPO, and developments of national significance, as these are likely to contain a larger number of pre-commencement conditions. In instances where an LPA considers such notification would be useful for smaller sized developments they are able to use their existing powers to grant conditional planning permission to require it.

5.0 Consultations etc. in Respect of Certain Applications for Approval

5.1 The purpose of section 100A TCPA as inserted by section 37 of the Bill is to place statutory requirements on consultees to respond to consultations where an LPA decide to consult them in respect of:

- applications for consent, agreement or approval required by a condition subject to which planning permission has been granted ;
- applications for the approval of reserved matters, and;
- applications for the approval of non-material amendments.

Section 100A provides that consultees must provide a substantive response to consultation requests within a specified time period and that they report to the Welsh Ministers on their compliance with these requirements. An LPA does not have to consult when these type of applications are submitted, and the duties detailed in the legislation only take effect where consultation is carried out.

5.2 The majority of the secondary legislation for section 100A has already been consulted on in the consultation *'Frontloading the Development Management System'*[1] which closed on 16 January 2015. The consultation explained the preferred approach for certain aspects of consultation procedures and asked the following questions:

- whether respondents agreed with the preferred requirements of a 'substantive response' (Q.15)
- whether respondents agreed that 21 days is a reasonable timescale for consultation responses to be provided in (Q.16)
- invited comments on the content of the performance reports (Q.17).

[1] http://gov.wales/consultations/planning/frontloading-the-development-management-system/?status=closed&lang=en

5.3 The responses to these questions have been analysed and the majority of respondents agreed with or supported proposals, or agreed subject to further comments.

5.4 Section 100A also allows Welsh Ministers to make provisions in a development order to ensure local planning authorities (LPAs) do not determine an application for approval before the end of a specified period. Therefore we propose that where discretionary consultation occurs, LPAs must not determine the associated application until 21 days after consultation, or when all consulted bodies have provided a substantive response, which ever is the sooner. We also propose to allow for extensions of time to be agreed where appropriate between LPAs and consultees.

Q.9. Do you agree that LPAs shall not determine an application subject to consultation until any of the following periods have elapsed:

a) a period of 21 days; or

b) until all statutory consultees have provided a substantive response, whichever is the sooner, or

c) subject a longer period if agreed in writing between the LPA and consultee?

Urgent Crown Development

5.5 Article 15 of the DMPO applies in relation to applications made to the Welsh Ministers under section 293A of the TCPA for urgent Crown development.

5.6 The Welsh Minsters are required to consult bodies in Schedule 4 of the DMPO where an application for urgent Crown development is made to them in the same way as other planning applications. Article 15 prevents Welsh Ministers from making a decision in respect of these applications until at least 14 days after giving notice of the application to the consultee. Because of the urgent nature of these applications, it is not proposed to extend this period to 21 days as proposed above for other applications.

Q.10. Do you agree that earliest time that Welsh Ministers can determine an application made under s.293A of the Town and Country Planning Act 1990 (TCPA) should remain as 14 days after giving statutory consultees notice of the application, as stated in Article 15 of the DMPO?

6.0 Appeal Against a Notice Issued in Respect of Land Adversely Affecting Amenity (Unsightly Land)

6.1 Section 48 of the Bill amends section 217 of the TCPA. The changes transfer responsibility for determining appeals against notices, issued under section 215 in respect of land adversely affecting amenity, to the Welsh Ministers from the Magistrates' Court. Section 48(6) amends section 217 to make provision for regulations to be made prescribing the appeal procedure and for the information to be provided for the purposes of the appeal. It is intended that regulations will specify the type of information to be submitted.

6.2 We propose that, for consistency, the appeal procedure should so far as possible be consistent with the current appeal process for enforcement appeals, whilst maintaining the existing grounds of appeal identified under section 217. This can be achieved by amending the existing enforcement appeal regulations[2] so that they also apply to appeals made under section 217 of the TCPA.

Q.11. Do you agree that appeals determined by Welsh Ministers under s.217 of the TCPA should follow the same format as existing enforcement appeals?

6.3 For these appeals, as proposed for other appeals in *Positive Planning*, the Welsh Ministers will prescribe the method of appeal. There will be a presumption in the favour of written representations and it is anticipated that most of these appeals will follow that procedure. However, it will be for the Welsh Ministers to decide what form of appeal is most suitable on a case by case basis.

6.4 In line with current enforcement appeal procedures, it is proposed that the appellant will give the Welsh Ministers notice of an appeal by identifying the grounds upon which they wish to appeal, and setting out the facts to support those grounds. Currently an LPA has 6 weeks from the start of the date of the appeal to submit their statement. Due to the less complicated nature of unsightly land cases, we propose that a period of four weeks is sufficient time for an LPA to prepare this statement.

Q.12. Do you agree that a four week period for LPAs to write their appeal statement is reasonable? If you consider an alternative period is more appropriate for s.217 appeals, please state why.

[2] Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003; Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003; Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003; Town and Country Planning (Enforcement) (Determinate by Inspectors) (Inquiries Procedure) (Wales) Rules 2003;

7.0 Post Submission Amendments

7.1 Our intention to speed up the planning application process means that the effect of post-submission amendments must be addressed. A good quality proposal that has benefited from pre-application procedures is likely to be determined efficiently by LPAs. However we recognise that a need to amend a planning application after it has been submitted may arise due to unforeseen circumstances and we therefore consider it necessary to retain the ability to make post-submission amendments. However, we want to address the additional administrative burden they create in terms of additional staff resources used by LPAs to consider the changes and the additional time required such as that needed to re-consult.

7.2 Currently, LPAs are able to agree amendments to all types of planning applications at any time up to their determination. However, planning permission cannot be granted in relation to a development which is substantially different to the application sought[3].

Time period for decision

7.3 Depending on the complexity of the post-submission amendment, additional time may be necessary to determine the application, especially if those consulted on the application and those who may be affected by the amendment, are to have the opportunity to comment on the final development proposal. We therefore propose to extend the determination period of the planning application by four weeks where such a change is submitted, either from the date of the receipt of the proposed amendment or from the end of the statutory periods for determination set out in article 22 of the DMPO and the Town and Country Planning (Environmental Impact Assessment) Regulations 1999, whichever is the latest. Where the LPA does not accept that the proposed amendment is minor in nature and in fact a new application is required, no extension will be provided as making this decision should not have any significant impact upon the overall time taken to determine the application.

Q.13. Do you agree that where an amendment is submitted in relation to major development applications, LPAs should be given an additional four weeks to determine the planning application?

Additional resource

7.4 The submission of new details will mean officer time will be spent considering the amendments, although in many cases the change is likely to be very small. We propose to set a fee that recoups the cost involved. Section 303 of the TCPA enables the Welsh Ministers to prescribe fees or charges in connection with planning functions. The process would be similar to that for considering a minor material

[3] Bernard Wheatcroft Limited v Secretary of State for the Environment (1982) 43 P& CR 233

amendment under section 73 of the TCPA. Proposals in the recent consultation *'Review of Planning Application Fees'*[4] set out that applications for minor material amendments will cost £190, although this is subject to the analysis of consultation responses. Therefore a fee of £190 is also considered appropriate for post submission amendments (or £166 at current rates).

Q.14. i) Do you think a fee should be charged for minor material amendments to major applications which have yet to be determined?

ii) If yes, do you agree that £190 is an appropriate fee to charge in light of the recent consultation on planning application fees?

8.0 Applications that fall within Section 73 of the TCPA 1990

8.1 In the 'Positive Planning' consultation paper we outlined our general proposals for renewals and minor material amendment applications. We proposed bespoke procedures for both consent types in order to keep the amount and complexity of information required with applications proportional to the issues raised. Both the renewal of a planning consent and a minor material amendment are achieved by varying a condition attached to the consent, and therefore such applications are submitted under section 73 of the TCPA. Such applications are to develop land without compliance with conditions subject to which a previous planning permission was granted.

8.2 Applications made under section 73 can be broadly separated into three types:

- renewal applications – those that extend the time limit referred to in conditions that place a limit on commencing the development
- minor material amendments to planning permissions - such as changing the design of the proposed schemes; and,
- the variation or removal of a condition attached to a planning permission that does not fall within the above categories - such as the opening hours of an establishment.

8.3 When considering any application that falls within section 73 of the TCPA only the question of the conditions imposed on the planning permission can be considered. Therefore the LPA, in determining the application, needs to consider the change and whether there has been any material change in circumstances since

[4] Review of Planning Application Fees: http://wales.gov.uk/consultations/planning/review-of-planning-application-fees/?status=closed&lang=en

previous permission was granted (such as changes in planning policy, changes at the site etc). Section 73 cannot grant permission that is substantially different from the original application as it is limited by case law to grant changes that are 'minor material' in nature.

8.4 The section 73 procedure is a useful tool which provides flexibility, but it was never designed for the wide ranging purposes that it can now be applied to. Given the changes that can be made under this section, it could be considered to place unnecessary demands on applicants to provide information to support their application or put onerous requirements on LPAs in terms of consultation/notification. We seek opinions on proposals to make the system more proportionate to the changes that can be made under section 73.

Validation requirements

8.5 When an application is submitted to the LPA it must be accompanied by a minimum set of documents to be considered valid. In addition to these documents, the applicant may have to provide other supporting information, such as transport or ecology assessment for the LPA to validate the application. The national validation requirements are set out in Welsh Government Circular 002/2012: Guidance for Local Planning Authorities on the use of the standard application form ('1app') and validation of applications[5].

8.6 When a section 73 application is submitted, then the authority should already have a copy of such documents on the original application file. Given the nature of the changes that can be made through section 73 are limited to those that are minor-material, there may be no need to resubmit any additional information with the application. Indeed, the previous mechanism of submitting a renewal application only required the applicant to submit a letter identifying the previous permission.

8.7 Not requiring information to be resubmitted can reduce the complexity of submitting and registering applications, simplifying the process for both applicants and LPAs. Therefore removing the list of national validation requirements from the application form may assist in this process.

8.8 It is recognised that circumstances can change over time, or that a proposed amendment may affect the information previously submitted. LPAs have the right to request additional supporting information following the validation of the application, but only if it is considered necessary for the consideration of the application. This would allow requests for updated assessments (e.g. a transport assessment).

Consultation requirements

8.9 In the same manner that the information submitted with the application may be unnecessary for its determination; the changes proposed through the section 73

[5] http://gov.wales/topics/planning/policy/circulars/welshgovcirculars/1appcircular/?lang=en

application may not have an impact that is sufficient to warrant further consultation. LPAs, having determined the original application and considered the issues that it raised, are going to be best placed to decide who is affected by the change and who should be consulted on an application.

8.10 In these circumstances we do not propose a blanket requirement to consult as this would create additional burden of time and cost to the LPA and consultees. For example, a change to road layout in the centre of an unfinished housing estate may only impact upon the highway authority. In this instance, if LPAs have discretion over the consultation requirements, unnecessary consultation can be avoided and the highway authority would form the sole consultee in this example.

Notification requirements

8.11 We propose that the LPA, in determining the effect of the change should have discretion over who should be notified of the application. Carrying out the same notification of the public as the original application may create unnecessary work, resulting in people notified of applications where the change has no impact upon them – which could cause confusion and misunderstanding over the application. Providing discretion to the LPA over who is notified would allow for a more targeted approach to this process. However general notification on applications would continue through the community council and the use of site notices.

8.12 Given the different types of applications that fall within section 73 and their different impacts and information requirements identified above we seek your opinions on the following:

Q.15. Renewals

i). Should the validation requirements for a renewal application be the same as the original application?
ii). Should the LPA have discretion over the consultation requirements for a renewal application?
iii). Should the LPA have discretion over the notification requirements for a renewal application?

Q.16. Minor material amendments

i) Should the validation requirements for a minor material amendment application be the same as the original application?
ii) Should the LPA have discretion over the consultation requirements for a minor material amendment application?

iii) Should the LPA have discretion over the notification requirements for a minor material amendment application?

Q. 17. Variation or removal of a condition attached to a planning permission that does not fall within the above categories (renewal and minor-material)

i) Should the validation requirements for these applications be the same as the original application?
ii) Should the LPA have discretion over the consultation requirements for these applications?
iii) Should the LPA have discretion over the notification requirements for these applications?

A Section 73 application that follows refusal of a non-material amendment application under section 96A of the TCPA1990

8.13 As part of the Welsh Government's programme of measures to improve the planning application process, we introduced a statutory procedure for approving "non-material amendments" to existing planning permissions (Section 96A of the TCPA)[6]. The changes that can be made under section 96A are those with a non-material impacts. So where an LPA considers a change will have a material impact they must refuse the application under section 96A. Although a change may have a material effect it may still be minor in nature, which is where section 73 offers a more proportionate way to consider that change compare to a whole new planning application. It can do this where a suitable condition has been attached to the planning permission referring to the development being built in accordance with listed plans and assessments. Provisions within the Planning (Wales) Bill will ensure that all permissions have a relevant condition to allow section 73 applications to be made.

8.14 The responsibility for determining whether a proposed change is non-material lies with the LPA and what constitutes a 'non-material amendment' can depend on a number of factors - what may be non-material in one context may be material in another. This can create confusion on behalf of the applicant whether they should apply through section 96A or section 73 to make the amendment. We propose that applicants who pursue the section 96A route should not be penalised if what they apply for has a material effect and they consequently need to re-apply under section 73.

[6] http://gov.wales/topics/planning/policy/guidanceandleaflets/approving-non-material-amendments/?lang=en

8.15 As the LPA will already have considered the merits of the amendment in the s.96A application, the application should not result in significant processing and determination costs. The fee set for a section 96A application is currently set at half the fee for a section 73 application, or £25 for a householder application. As the LPA has already considered the change, it is considered that the fee should reflect that an earlier application was made for the same amendment. The applicant would only be required to pay the difference between the non-material application and that of a section 73 application. As the section 73 application allows greater amendments this process would need to be limited to making the same changes as proposed in the original section 96A application.

Q.18.Should the fee to accompany an application that falls within s.73 submitted after refusal of an application under section 96A of the TCPA only be that required to make up the difference in fee cost?

9.0 Pre-application Fees

Background

9.1 'Positive Planning', the Welsh Government's consultation paper on reforming the planning system in Wales, outlined a number of proposals designed to promote "frontloading" in the Development Management system[7].

9.2 The Bill introduces new pre-application processes that will be key to the delivery of effective frontloading. Section 18 of the Bill introduces a new statutory requirement for LPAs to provide pre-application services to applicants.

9.3 The consultation paper 'Frontloading the development management system'[8] provided detail on how the statutory pre-application service could operate and proposed a duty on LPAs to provide a pre-application service when requested by prospective applicants. The statutory service would apply to development proposals that would need an application for planning permission in order to be implemented.

9.4 Following initial analysis of responses to the "Frontloading" consultation paper we are considering a statutory service that would require LPAs to provide a written response to pre-application enquiries, when submitted on a standardised form with the correct fee, within a given timeframe. Only enquiries submitted on the pre-application enquiry form will be able to access this statutory pre-application service. The minimum requirements to be included in the written response are set out in paragraph 9.10 of this consultation paper.

[7] http://gov.wales/consultations/planning/draft-planning-wales-bill/?status=closed&lang=en

[8] http://gov.wales/consultations/planning/frontloading-the-development-management-system/?status=closed&lang=en

9.5 Any additional written advice or meetings from LPAs to applicants regarding their pre-application enquiry will not form part of the statutory service. However we will encourage LPAs to provide a pre-application service over and above the statutory minimum and recognise that this may be subject to a discretionary charge under section 93 of the Local Government Act 2003.

Scope of this consultation

9.6 This consultation sets out our detailed proposals, including proposed fees, relating to the requirement for LPAs to provide a pre-application service that will be brought forward in subordinate legislation.

9.7 The consultation seeks the views of stakeholders on two aspects of pre-application services::

- Timescales for responding based on development types
- The fee payable to LPAs for a pre-application enquiry

The statutory pre-application service

9.8 When the LPA receives an enquiry, submitted on a completed, pre-application enquiry form, a written response should be submitted to the applicant (subject to the correct fee being paid) within a prescribed timescale.

9.9 The developer will be required to complete a pre-application enquiry form, which will provide the following information:

(i) Contact details of the developer/agent (name, address, tel. no. email address)
(ii) Description of development, to include volume of floorspace, number of units being created
(iii) Site address
(iv) Location plan (on OS base)
(v) Plans, additional supporting information and reports that will assist the LPA to provide a helpful, focussed response. (Developers will benefit from providing the LPA with as much information as possible in order to facilitate an informed response). Enquiries relating to householder development will need to be supported by elevation drawings.

9.10 The intention is that the content of the written response from the LPA will be different for householder enquiries and all other enquiries. As a minimum, the written response will comprise:

Householder enquiries:

1. Relevant planning history.

2. Relevant development plan policies against which the proposal will be assessed.
3. Any relevant supplementary planning guidance.
4. Any other material planning considerations.
5. Views of the case officer that address the merits of the proposal in the context of points 1, 2, 3 and 4.

All other enquiries:

1. Relevant planning history.
2. Relevant development plan policies against which the proposal will be assessed.
3. Any relevant supplementary planning guidance.
4. Any other material planning considerations.
5. Whether any Section 106 or Community Infrastructure Levy contributions are likely to be sought and an indication of the scope and amount of these contributions.
6. The information required to enable validation of any subsequent application.
7. The view of the case officer that addresses the merits of the proposal in the context of points 1, 2, 3 and 4.

Timescale for response

9.11 We propose that the timescale for a response to be provided from the LPA to the applicant should be, at the most, 21 days from the receipt of a valid pre-application enquiry. But, taking account of responses to the "Frontloading" consultation paper, and recognising that larger and more complex proposals may take longer to consider, we propose that provision is made to allow an extension of time when this is agreed in writing by the LPA and applicant.

Q. 19. Do you agree that extensions of time should be permitted, subject to both the LPA and applicant agreeing in writing?

Fees for the statutory pre-application service

9.12 We consider that LPAs should be able to recover the cost of providing a statutory pre-application service. However, we recognise that it is important to ensure that fees do not discourage prospective applicants from engaging with LPAs at the pre-application stage.

9.13 The Welsh Government is aware that some LPAs already charge for pre-application advice but the charges vary across Wales. We propose that a standard, national fee should be set for the purposes of the statutory pre-application service.

9.14 Table 1 sets out the proposed fees for different types of development. The proposed fees have been calculated using hourly rates for planning officers and the estimated time required to provide a written response that would address the requirements detailed in paragraph 9.10.

Table 1 – Proposed fees for statutory pre-application service

Type of Development	Description of Development	Proposed Fee
Householder	The enlargement, improvement or alteration of existing dwellinghouses 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.	£25
Minor developments	1 to 9 residential units or a residential site area under 0.5 hectare Non-residential development when the gross floorspace is under 1000 square metres or the site area is under 0.5 hectare Change of use when the gross floorspace is under 1000 square metres or the site area is under 0.5 hectares Mixed use development where the gross floorspace is under 1000 square metres	£100
Major development	10 to 24 residential units or a residential site area is 0.5 hectare or over but under 1 hectare	£300

	Non-residential development when: the gross floorspace is 1,000 square metres or over but under 2000 square metres; or the site area is 0.5 hectares or over but under 1 hectare Change of use when: the gross floorspace is 1,000 square metres or over but under 2000 square metres; or the site area is 0.5 hectares or over but under 1 hectares Mixed use development when the gross floorspace is 1,000 square metres or over but under 2,000 square metres Minerals and waste development	
Large major development	25 or more residential units or a residential site area of 1 hectare or more Non-residential development when: the gross floorspace is 2,000 square metres or more; or the site area is 1 hectare or more Change of use when: the gross floorspace is 2,000 square metres or more; or the site area is 1 hectare or more Mixed use development when the gross floorspace is 2,000 square metres or more	£600

9.15 Any requests for further written advice or meetings from the LPA would be outside the scope of the statutory pre-application service; We note that, as discretionary services, they may be subject to charge under Section 93 of the Local Government Act 2003. If LPAs decide to charge for any additional written advice or meetings beyond the statutory minimum, all charges must accord with the provisions in Section 93 of the Local Government Act 2003.

9.16 LPAs will also be required to provide a pre-application service for Developments of National Significance (DNS). We propose that this service will be subject to a standard, national fee of £1,000. LPAs will have 28 days to provide a response with provision made to allow an extension of time when this is agreed in writing by the LPA and applicant. Further detail on the DNS pre-application process is provided in the current consultation paper "Developments of National Significance"[9].

9.17 We intend to require LPAs to record the length of time taken to respond to all enquires made under the statutory pre-application service and to provide this information to the Welsh Ministers. The existing Development Management Quarterly Survey could provide the means of recording this information. We intend to use the data to monitor and review the operation of the service.

Q. 20. Do you agree with the level of proposed fees set out in Table 1? If not, what should the fee be?

Q. 21. Do you have any other comments to make regarding the statutory pre-application service?

[9] http://gov.wales/consultations/planning/developments-of-national-significance/?lang=en

Appendix 1: Extracts of the Planning Wales Bill

Please follow the link below for the latest version of the Planning Wales Bill

http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=11271

Appendix 2: Non validation notice and appeal timeline