Cymdeithas Llywodraeth Leol Cymru
Welsh Local Government Association

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WLGA

Planning Handbook

A Guide for Members

May 2022

Welsh Local Government Association - The Voice of Welsh Councils

We are The Welsh Local Government Association (WLGA); a politically led cross-party organisation that seeks to give local government a strong voice at a national level. We represent the interests of local government and promote local democracy in Wales.

The 22 councils in Wales are our members and the 3 fire and rescue authorities and 3 national park authorities are associate members.

We believe that the ideas that change people's lives, happen locally.

Communities are at their best when they feel connected to their council through local democracy. By championing, facilitating, and achieving these connections, we can build a vibrant local democracy that allows communities to thrive.

Our ultimate goal is to promote, protect, support and develop democratic local government and the interests of councils in Wales.

We'll achieve our vision by

- Promoting the role and prominence of councillors and council leaders
- Ensuring maximum local discretion in legislation or statutory guidance
- Championing and securing long-term and sustainable funding for councils
- Promoting sector-led improvement
- Encouraging a vibrant local democracy, promoting greater diversity

Supporting councils to effectively manage their workforce

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Preface

This handbook has been produced to assist elected Members in understanding the planning system and as an aide-memoir whether or not they have regular contact with planning as active Planning Committee Members. It can be used as a reference document with the advice that Members can always seek more specific guidance from their own officers.

The guidance is necessary given the critical role that the planning system plays in the design, conservation and development of the built communities and natural landscapes of Wales. Planning guides and controls building development, protects and conserves the environment, supports business and economic development, promotes the redevelopment or re-use of derelict land and buildings, conserves the architectural heritage and encourages high standards in building design and environmental management. More than ever the planning system is a significant delivery vehicle in dealing with major issues such as climate change, better use of natural resources and sustainability. The planning authorities in Wales are continually being challenged by the Welsh Government to work with it to reform the planning system to deliver a transparent, effective and imaginative system which both adapts to, and drives, forces of change.

In 2015 the Welsh Government published the 'Positive Planning Implementation Plan' setting out the phased programme of improvements being implemented based on measures and changes set out in the Planning (Wales) Act 2015 and the 'Positive Planning: Proposals to Reform the Planning System in Wales' consultation published in 2013.

The process has involved the Welsh Government working in collaboration with the main deliverers of the planning system - i.e. the twenty-five Local Planning Authorities (LPAs), its representative group known as the Planning Officers Society for Wales (POSW), the Planning Inspectorate for Wales (now known as Planning & Environment Decisions) (Wales – PEDW) and other key stakeholders - to continue to modernise public services and ensure that the planning system:
is open, fair and transparent;

- is user friendly, taking account of customer needs, barriers that they may face and is accessible in the language of their choice;
- inspires public and business confidence;
- delivers improved quality and efficiency;
- integrates with other plans, processes and actions;
- meets the Welsh Government's objectives; and
- influences the way in which development faces the challenges of climate change

The elected Member is central to the planning system, whether as a member of the Planning Committee taking key decisions on planning applications or as a Ward Member representing and balancing the sometimes conflicting expectations of constituents. Members need to be well briefed, confident in their roles, principled and fair in attitude and in conduct. The pressure of these roles can be intense. It is in the interests of all that Members are supported and have access to information to assist in the understanding of the planning system and in making reasonable and well considered decisions.

This handbook provides the basic information on the workings of the planning system with advice on how to manage personal conduct in complex and sensitive situations. Whilst the use of some technical terms is unavoidable, it has been drafted to allow for ease of reading and interpretation. A theme which runs through the handbook is how closely the approach to planning matters is determined by the Code of Conduct for Members.

Finally, it is important to reiterate that whilst the handbook provides information and guidance, Members should continue to work closely with their Planning Officers who will be able to give help, clarify issues and provide further information.

First produced for the WLGA in 2012, and updated in 2017, the handbook has been fully updated again for 2022 by Alan Southerby Planning Ltd.

Introduction

It may seem an obvious question but why do Members need to know about the planning system? The answer is simply because all Members, whether on the Planning Committee or not, will encounter issues relating to planning as part of their regular council workload and responsibilities. Planning is a highly visible service area and one where local people are increasingly demanding to have a say in what goes on around them.

Planning proposals involve development, which in turn creates 'change'. This is usually in the form of new building and the use of land. Because planning decisions tend to have a significant and lasting impact this often leads to concern and the need for the community to both know and have a say in what is going on.

Development can be either small or large scale. Minor proposals, such as house extensions, can raise issues and tensions with neighbours on matters including scale, design and overlooking. Major schemes on the other hand can have far-reaching consequences in terms of new buildings, altering traffic flows, employment creation, community facilities and environmental impacts. Such schemes can form vital components of the regeneration of an area, linking with other Council strategies and proposals.

Because the vast majority of planning decisions are taken locally it is inevitable that all Members will become involved to some extent at any particular time. A basic understanding of why the planning system exists and how it works is therefore needed.

Before there was any public control over the use and development of land, landowners were very much free to do what they wished with their land subject to any common law restrictions. Nowadays it is accepted that society requires control over the use of land for the public good of the community rather than purely private gain. The use and development of land should also be in the long term interest of the community as a whole.

The foundations for the modern planning system were laid in the Town & Country Planning Act 1947. It was based on the principle that, before the development rights for almost all land can be exercised, planning permission must be obtained from local or central government. The planning system aims to: protect and enhance the environment for current and future generations; guide appropriate development to the right place, as well as preventing development which is not acceptable; and address the potential tension between individuals / companies who want to develop their own land, the impact on neighbours and others, as well as wider considerations.

However, in its role of regulating the development and use of land in the public interest, it has to deliver Welsh Government's objectives and achieve its sustainable development purpose. This has been expressed as;

- Living within environmental limits
- Ensuring a strong, healthy and just society

- Achieving a sustainable economy
- Promoting good governance
- Using sound science responsibly

Value of Planning

The planning system in Wales can produce significant benefits for society. It can bring economic, social and environmental improvements. Planning can also provide confidence in the market to allow successful investments to take place. It can deliver the necessary infrastructure and improve the supply of land available for development. A well-functioning planning system is fundamental for sustainable development, contributing to economic development, the conservation of Wales' natural assets and the health, well-being and quality of life of individuals and communities.

Welsh Government believes that the planning system plays a crucial role in helping it achieve its key targets, including building homes, including affordable homes, in well-spaced attractive, welcoming environments, reducing carbon emissions and improving the prosperity of Wales. In doing so, it has emphasised the importance of Local and Strategic Development Plans, urging planning authorities to work together to set out a shared vision across a region to inform and guide important regeneration initiatives. By working together, the planning system can be visionary, evidence based, connected, efficient and valued by communities, businesses and politicians. Welsh Government understands that for a more sustainable Wales, the value of planning, including the economic value that it creates, must be recognised.

Therefore, whilst economic challenges continue to place significant pressures on local government budgets, it is vital that the planning process is adequately funded so that the true value of planning can be realised, now and for the benefit of generations to come.

Members are very much part of the planning system hence the need for an appropriate level of understanding of its workings, particularly for Planning Committee Members, to ensure that decisions are reached in the public interest in accordance with the planning framework of policy and legislation.

To assist in this understanding the following two chapters look at the planning legislation that lies at the heart of the planning system and at planning policy which forms the basis for local decision making.

Chapter 1 – The Planning Legislative Framework

The operation of the planning system is controlled by legislation and regulations from the UK Parliament and the Welsh Government, including from Europe-wide directives that have been converted into domestic law following the UK's withdrawal from the European Union (EU). The legal framework is made up of Acts and Regulations, the interpretation of which is often determined through the courts. The planning system is very much quasi-judicial in nature.

Over the years and due to the wide ranging impact and effects of development on land and people the system has become very complex with a substantial amount of 'non planning' legislation having an influence on its operation. Given the demands on, and the expectations of, the planning system a substantial amount of legislation has evolved in order to control and manage development, produce policies, safeguard the environment and operate the system.

Planning Acts

The principal Act regulating the development of land in Wales is the **Town & Country Planning Act 1990** as amended by the **Planning and Compensation Act 1991**, which strengthened planning enforcement and development management powers. It has since been further amended by various acts including the **Planning (Wales) Act 2015**.

The **Planning and Compulsory Purchase Act 2004** introduced the Local Development Plan system, (the previous being Unitary Development Plans); a statutory duty requiring the Welsh Government to prepare the Wales Spatial Plan (now replaced by the National Development Framework) and various reforms to development management provisions in the Town and Country Planning Act 1990.

The **Planning Act 2008** introduced Nationally Significant Infrastructure Projects (NSIPs) and the Community Infrastructure Levy (CIL).

The **Planning and Energy Act 2008** enabled local planning authorities in Wales to set requirements for the generation of energy from local renewable sources and low carbon energy and for energy efficiency in local development plans. This primary legislation has been produced through the Parliamentary process in Westminster and covers all authorities in Wales and England. The principle and general framework is the same, although there are different structures of government between Wales and England meaning that the operation and delivery of the system can differ.

Dedicated Welsh Legislation

There has been a body of work looking to create a Planning Code for Wales as part of a long term plan to create Codes of Welsh law. The Welsh Government has said that planning law will be simplified and modernised through a consolidation Bill, bringing together provisions from the multiple, heavily amended Acts that currently set out the main framework.

The **Government of Wales Act 2006** gave Welsh Government 'measure powers' to set its own primary legislation in relation to planning.

This was a very significant milestone in the development of the land use planning system in Wales. It permits the revision and creation of relevant primary legislation allowing Welsh Government to pursue a fully comprehensive approach in the continued development of a distinctive land use plan system that more appropriately meets the needs of Wales and its communities. The powers will allow the Welsh Government to continue to update and adapt the land use plan system in Wales.

The **Planning (Wales) Act 2015** introduced a series of Wales specific measures, such as a statutory purpose for planning and requiring decisions to contribute to the goals of the **Well-being of Future Generations (Wales) Act 2015**, in line with the Welsh Government duty to carry out sustainable development.

The Act also includes provision for:

- The Welsh Language, particularly around plan making
- A 20 year land use framework known as the National Development Framework for Wales (NDF), to replace the Wales Spatial Plan, which Welsh Ministers have now prepared, entitled Future Wales – The National Plan 2040
- Strategic Development Plans (SPDs) to complement existing Local Development Plans (LDPs), prepared at a more regional level and in accordance with the NDF
- Time-bound LDPs to help ensure timely reviews
- Developments of National Significance (DNS), with applications made direct to the Welsh Ministers
- Joint Planning Boards, where planning authorities are required to work together, or possibly merge (but see Corporate Joint Committees (CJC) section below)
- Statutory pre-application advice procedures
- Improved enforcement powers
- Town and Village Greens - the act has also restricted applications for town and village greens where the site is subject to planning permission. The existing protection for registered town and village greens remains unchanged.

The **Environment (Wales) Act 2016** introduced new legislation to help position Wales as a low carbon, green economy to help it adapt to the impacts of climate change.

The **Historic Environment (Wales) Act 2016** introduced new measures to support the positive management of change in the historic environment.

Whilst there are many hundreds of provisions within the various Acts, there are two definitions from the legislation which are particularly important to raise at this stage. These refer to:

- the definition of development; and

- the importance of policy documents in decision making.

The **Local Government Elections (Wales) Act 2021** provides the framework for establishing four Corporate Joint Committees (CJCs) across the whole of Wales whose purpose will include the preparation and adoption of a Strategic Development Plan (SDP) (see Chapter 2 below).

The Definition of Development

A definition of development is important because without such a definition there would be arguments as to whether any particular action requires planning permission or not. The definition is set out at Section 55 of the Town and Country Planning Act 1990 (as amended). The term 'development' is central to the power of local planning authorities to control the use and development of land.

The definition has remained consistent and states that development consists of:

a) The carrying out of building, engineering, mining or other operations in, on, over or under land; or

b) The making of any material change in the use of any buildings or other land.

The two forms of development can be separate or combined. In a) it could comprise of works which will alter a building or land, for example:

- demolition of buildings;
- erection of new buildings; or
- structural alterations or extensions to existing buildings.

In b) the change of use of a property or land could, for example be the:

- change of use of land from agriculture to outdoor sports; or
- change of use of a building from shop to estate agents.

There is no statutory definition of a material change of use - ultimately, it is for the Courts to decide.

The system works on the basis of defining development, as set out above, with all such development requiring planning permission. Some forms of development, however, are permitted by virtue of secondary legislation (known as 'permitted development' (PD) which relate to 'permitted development rights (PDRs) - see more below), or by Local Development Order (LDO - also see below). Only when a scheme meets the definition of development, and is not PD, and not subject of a LDO, is a specific grant of planning permission required via a formal planning application. Any scheme that an elected or appointed Member may become involved in (either as a local Member or as a Member of a planning committee) could include all such cases.

As the definition of 'development' is very wide it is important to note also that there are some specific exemptions set out in the 1990 act whereby certain actions or

works are excluded from development and thus do not require planning permission, such as:

- alterations to a property (internally and externally) as long as the external appearance is not materially altered (for example re-roofing or the painting of the exterior);
- the demolition of certain types of buildings;
- use of a building and land for activities incidental to main occupancy as a home (for example most forms of working from home, sheds and greenhouses);
- changing the use of buildings or land to another use within the same 'use class'; and
- some maintenance and/or improvement works within the bounds of a highway.

These matters are addressed in greater detail later in Chapter 3 (The Development Management System).

The Primacy of the Development Plan

The second important legislative provision relates to the development plan and the weight to be applied to planning policy in assessing a particular planning application proposal. This is set out at Section 38(6) of the Planning and Compulsory Purchase Act 2004. It is significant because day to day planning decisions should be consistent and in accordance with the relevant development plan.

The legislation states:

'For the purpose of any determination under the Planning Acts, the determination must be made in accordance with the Plan unless material considerations indicate otherwise.'

It is important to be aware of its significance when it comes to decision making. The statutory Development Plan is made up of a hierarchy of plans beginning with the NDF (Future Wales), followed by Strategic Development Plans, once adopted (SDPs) and then Local Development Plans (LDPs) or, where these are not yet adopted, to existing Unitary Development Plans (UDPs). The 2004 act also specifies that in the event of any conflict between various plans that together comprise the Development Plan, that which is most recent must take precedence.

Other UK Legislation Relevant to Planning

It is worth noting that there are other areas of **primary legislation** that impact upon the procedure and determination of planning applications, including:

- **Planning (Listed Buildings and Conservation Areas) Act 1990** Listed buildings and conservation areas represent the best of the UK's built heritage and are given special protection and very detailed legal requirements as to how they should be dealt with.

- **Planning (Hazardous Substances Act) 1990**

  This Act was introduced to consolidate certain enactments relating to special controls in respect of hazardous substances bringing them under the control of the LPA.

- **Environment Act 1995**
  The Environment Act has particular relevance to development within the National Parks and that in assessing proposals regard must be had to their statutory purposes. If there is conflict then greater weight needs to be given to the need to conserve and enhance their natural beauty.

- **Wildlife and Countryside Act 1981** This Act has significant implications as to how to deal with development which may affect a Site of Special Scientific Interest.

- **Countryside and Rights of Way Act 2000**
  Amongst other things this imposes a statutory duty on local authorities to have regard to Area of Outstanding Natural Beauty (AONB) purposes.

- **Badgers Act 1991**
  This provides safeguards against cruelty to badgers but of particular relevance to planning is the protection of badger setts which show signs of current use by badgers.

- **Electricity Act 1989**

  Under S36, electricity generating stations producing under 50MW were determined by local planning authorities and larger generating stations were dealt with by the relevant UK government department in consultation with the LPA. However, the consenting regimes have now changed in light of the Planning Act 2008, the Planning (Wales) Act 2015 and with the Wales Act having now received Royal assent (see section on Future Decision Making Hierarchy in Chapter 10).

- **Crime and Disorder Act 1998**
  Section 17(1) imposes a duty on local authorities to exercise their functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

- **Equality Act 2010**

  The Act identifies a number of 'protected characteristics', namely age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership. Having due regard to advancing equality involves removing or minimising disadvantages suffered by people due to their protected characteristics, taking steps to meet the needs of people from protected groups where these differ from needs of other people, and encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

- **Localism Act 2011**

  The Localism Act is mainly relevant to England only. However, changes have been made that are critical to how Members should behave with regard to a matter that they may have previously lobbied or campaigned on or have expressed a view on. These changes are relevant in Wales. In simple terms, pre- determination occurs where someone has a closed mind, with the effect that they are unable to apply their judgement fully and properly to an issue requiring a decision. The mere fact that a Member has given a view on a proposal or campaigned on an issue or made public statements does not in itself indicate a closed mind but rather evidences pre-disposition.

However, the pre-disposed view should be made with regard to a matter that is relevant to the decision (as opposed for example based on the ethnic origin of the applicant).

The pre-determination clause does not just relate to the topic matter of the decision to be made but also relates to anything a Member might have done which might show directly or indirectly which view might be taken. For example, if a Member is involved with a particular society, it will not necessarily follow that they have a pre-conceived view of any issue that relates to the society's specialist area.

This differs from "bias" which would be relevant where Members have a personal interest in the decision, or have some financial interest in a proposal.

Only strong evidence of a firmly closed mind will now amount to pre- determination rather than pre-disposition. However, Members should be reminded of the consequences should they have pre- determined an issue and still voted.

European derived legislation

Previous European legislation has had major implications on planning in connection with both human rights and environmental protection.

The Human Rights Act was brought into force to incorporate the provisions of the **European Convention on Human Rights** into UK law. In general there are three principles that can have an impact on how the planning system is operated and applied. These are that:

- Everyone is entitled to the peaceful enjoyment of their possessions;
- Everyone is entitled to a fair and public hearing in respect of their civil rights; and
- Everyone has a right to respect for their private and family life.

Some of the implications of human rights on the planning system will become apparent in subsequent chapters.

Another European impact on domestic planning law arises from the previous need to implement **EU Directives on the Conservation of Wild Birds and the Conservation of Natural Habitats, Wild Fauna and Flora**. These have been transposed by the Conservation of Habitats and Species Regulations 2017 (as amended). The regulations apply to sites which have been designated as Special Areas of Conservation (SACs) and Special Protection Areas (SPAs), referred to collectively as 'European Sites'.

The result is that there are strict controls over development which may affect these areas and infringement can carry substantial penalties.

Environmental Assessment derives originally from the European Council Directive (85/337) issued in 1985 on the assessment of the effects of certain public and private projects on the environment. This Directive was amended by 2011/92/EU of December 2011. Certain types of development that are likely to have significant effects on the environment due to their nature, size or location must be accompanied by a formal Environmental Impact Assessment (EIA) prepared in accordance with the 2017 Regulations mentioned below. The information required can be substantial and wide ranging and this is dealt with in greater detail in subsequent chapters.

Secondary Legislation

Secondary legislation takes the form of **Regulations and Orders**, generally deriving from parent Acts, which determine how planning applications are dealt with. Some significant ones that Members may encounter are briefly mentioned below and will also be referred to in subsequent chapters.

- **Town and Country Planning (Use Classes) Order 1987 (as amended)** This clarifies whether a specific grant of planning permission is required for changing the way in which premises are used. The current Order was issued in 1987 and, other than some modest changes, has remained in place. Some potential changes may come about as a result of the Coronavirus pandemic, in order to aid economic recovery. In addition, a current Welsh Government consultation (as at early 2022) is looking at changes that would see second homes and/or short-term holiday lets become separate use classes whereas, generally speaking, they are in the same use class presently as houses.
- **Town and Country Planning (Applications) Regulations 1988**

These Regulations specify the requirements for applications for planning permission and also provide for the giving of directions by the LPA for further information.

- **Planning (Hazardous Substances) Regulations 1992**
  These regulate the storage and use of hazardous substances by type and volume.

- **Town and Country Planning General Regulations 1992 (as amended)**
  Permit a local authority to make an application to itself for planning permission within its area.

- **Town and Country Planning (Control of Advertisements) Regulations 1992** Applications for advertisements are determined under a separate set of regulations. These regulations are quite complex with a large number of different categories, or 'classes', of advert. They also explain the types of advertisement that do not require formal consent subject to certain conditions.

- **Town and Country Planning (General Permitted Development) Order 1995 (as amended)**
  Mentioned briefly above, the GPDO sets out a range of 'permitted development rights (PDRs) and clarifies whether a specific grant of planning permission is required for a variety of development proposals including domestic extensions, industrial development, agriculture and development by local authorities, or whether the development can proceed as 'permitted development', without the need to apply for planning permission. Some temporary changes were made as a result of the Coronavirus pandemic, with potential further changes to aid economic recovery.

- **Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (as amended)**
  The DMPO sets out the way in which planning applications should be processed by local planning authorities, including pre-application submissions; setting out the requirements for information to be provided to accompany and explain an application; and who needs to be consulted and the decision-making process.

- **Town and Country Planning (Pre- Application Services) (Wales) Regulations 2016**
  These require all LPAs to offer a mandatory pre-application service.

- **Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017**
  These set out the procedures for determining whether a proposal will have sufficient impact to warrant the inclusion of an Environmental Impact Assessment as part of the application documentation.

- **Town and Country Planning (Local Development Plan) (Wales) Regulations 2005**

These regulations inform LPAs on how to produce their LDP.

- **The Conservation of Habitats and Species Regulations 2017 (as amended)** The Habitats Regulations ensure that activities in the UK are carried out in accordance with the requirements of a previous European Habitats Directive, now transposed into domestic law.
- **The Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012 (as amended)**

Planning Legislative Framework Recap

The above will have provided some guidance and explanation on the source of planning powers and the complex nature of related legislation and regulation.

To recap this legislative framework section, the fundamental point is that whilst some works and changes of use of buildings and/or land can proceed without the need for planning permission, this can only be on the basis that any such scheme does not meet the statutory definition of development; the reason being that all development defined as such by the 1990 act requires planning permission. The vast majority of all schemes will meet the definition, meaning that planning permission is required.

It is important to understand, however, that a significant array of minor developments, including both building works (also known as 'operational' development) and material changes of use, although meeting the definition of development, can be carried out under secondary legislation without the need to formally apply for planning permission; the regulations effectively grant the necessary consent, subject to meeting certain criteria. This permission is granted by an Order and is known as 'permitted development' (PD).

When a scheme meets the definition of development and is not PD, a specific grant of planning permission is required for which a formal planning application needs to be submitted to the local planning authority (LPA), of which there are 25 in Wales (22 Councils and 3 National Park Authorities).

It is most likely that this is when elected and appointed Members will become involved in individual planning cases, either as a 'local representative' or as 'decision-maker', during the processing of the application by officers of the LPA up to and including the point of decision / recommendation.

It should also be noted that when making a decision on any planning application, the law requires the determination to be made in accordance with the statutory development plan, unless material considerations indicate otherwise - this is known as the 'plan-led' system; the statutory basis on which decisions on planning applications are made.

Rather than a single document, the statutory development plan is currently made up of a hierarchy of two documents - Future Wales:
The National Plan 2040 (the National Development Framework (NDF)), which sits at the top, and the individual Local Development Plan (LDP) or Unitary Development

Plan (UDP) of the LPA concerned. In future, there will also be a further, third part to the development plan hierarchy sitting between the two existing documents - the Strategic Development Plan (SDP) for the region.

Allied to this, the Welsh Government has now legislated to enact the creation of four Corporate Joint Committees (CJCs) across Wales - Mid Wales, North Wales, South East Wales, and South West Wales. In a planning sense, the work of each CJC is due to include the creation of an SDP for the region. SDPs or joint LDPs can also come about voluntarily via two or more LPAs working together, provided the Welsh Government approves such an approach.

This is also when elected and appointed Members may become involved in the planning system, again either as a 'local representative' or as 'decision-maker', during the formulation of planning policy.

The next section looks in greater depth at Planning Policy. The section after that considers the Development Management aspect of planning, i.e., the implementation of planning policy through decision-making on individual planning applications.

Chapter 2 – Planning Policy

This is an area where there is due to be considerable change in the coming years. This chapter sets out the framework in which policy is created and describes how Members are involved in the process.

Statutory Development Plan

As mentioned above, the planning acts work on the basis of requiring decisions on planning applications to be made in accordance with the development plan unless material considerations indicate otherwise. There is further detail in Chapter 3 on material considerations and the weight that can be given to them, but it is equally important to note that planning policy can also represent a material consideration in this sense too; the distinction being planning policy contained within the statutory development plan on the one hand, and that which is contained in another form of policy document, such as Planning Policy Wales (PPW) and Supplementary Planning Guidance on the other (more below).

In other words, planning policy against which individual planning applications are judged and decided can either take the form of the statutory development plan, taken as a whole, or as a material consideration to weigh in the balance if not part of the development plan. Either way, the statutory basis on which decisions on planning applications are made allows for this; the point being that it is where the evidence takes the decision-maker.

Primacy of the development plan relies on it being up-to-date and in line with national policy. When there is a hierarchy of layers making up the development plan, as will increasingly be the case now in Wales, primacy in the event of any conflict between the various layers derives from that which is most up-to-date.

Future Wales

As already mentioned, at the top of the development plan hierarchy for all of Wales is the National Development Framework (Future Wales - The National Plan 2040). This was published by the Welsh Government in February 2021, when it became a formal part of the statutory development, meaning that it must be taken into account when assessing all planning applications. The extent to which it might be relevant in individual cases is a matter to be addressed as part of the consideration of a planning application.

Future Wales (as it is known) can reasonably be regarded as a ‘broad-brush’ development plan policy document, setting out the Welsh Government’s aspirations for the nation in terms of all planning matters, including climate change, placemaking, homebuilding, economic resilience and nature recovery. A fundamental aspect of the document and approach is that it designed to be the planning policy embodiment of all influences on the planning system in Wales, particularly at the national level, including alignment with legislation such as the Well-being of Future Generations (Wales) Act 2015.

A further fundamental aspect of Future Wales is that it sets out strategic and spatial choices in terms of the Welsh Government's overall planning objectives, including at the regional level. In doing so, it has polices and approaches that are distinct for each of the four regions it has identified - North, Mid Wales, South West and South East.

Strategic Development Plans (and Corporate Joint Committees)

The next level in the hierarchy of the statutory development plan is now set to be Strategic Development Plans (SDPs). The Welsh Government has legislated to create a Corporate Joint Committee (CJC) for each of the four regions identified in Future Wales, with specific statutory duties around transport planning, economic development and, importantly, strategic, regional plan preparation. The role of the CJC will therefore include to develop and produce an SDP for the region.

CJC establishment regulations for South East Wales are due to come into force in early 2022 and for the rest of Wales (South West, Mid Wales and North) later in 2022. Each CJC will be made up of Members of its constituent Councils and National Park Authority and must appoint a Chairperson and vice-chairperson from its Council Members. There are prescribed governance and constitutional arrangements as well, including those which relate to staffing and scrutiny.

The relevant secondary legislation is contained within the **Town & County Planning (Strategic Development Plan) (Wales) Regulations 2021**.

An SDP must contain a coherent, overarching and deliverable vision and strategy, with clearly defined roles for places, to include a settlement hierarchy based around the role and function of those places, with sustainability and placemaking at the heart of the approach to growth. Amongst other detailed matters, an SDP must also establish overall housing provision levels for each of its individual planning authority areas, the scale and location of opportunities for economic growth and related infrastructure requirements.

An SDP must be in conformity with Future Wales.

Once adopted, decisions on individual planning applications will need to have regard for its policies. An SDP stands to be a key development plan document in the future, reflecting a regional focus, with opportunities for involvement by Members at both its formulation stage and when making decisions on planning applications against its provisions.

Local Development Plans (LDPs)

LDPs represent the longest standing component of the statutory development plan in Wales, having existed for a considerable number of years, replacing Unitary Development Plans (UDPs) before them. Of the 25 LPAs in Wales, all but two have an adopted LDP in place. Previously, LDPs (and UDPs before them) had no end date. More recent LDPs do, however, have a cessation date, after which there would be a local policy 'vacuum', with national and/or regional planning policy then taking precedence.

Work on replacement LDPs is continuing at the present time, in advance of the SDPs to be produced, although the future looks set to see them replaced by documents known as LDP-lites, a form of local allocation document by each LPA putting the detail on the strategic policies and provisions of the SDP, once that has been adopted.

LDPs and LDP-lites will need to be in conformity with Future Wales and the relevant SDP for the region.

Development Plan Preparation

It is clear from the above that emerging in Wales is a 3-tier statutory development plan system, with considerable scope for Members to become involved in the preparation of both SDPs and LDPs / LDP-lites.

An overview of how plans are prepared and how Members are involved in the process is provided next. Whilst based primarily on LDP production, it is nonetheless considered representative of the process that will be involved in SDP production too, and to some extent LDP-lite production as well.

Basis for LDP production

Plans produced at both the regional and local level must be in conformity with Future Wales, and all other forms of national planning policy such as Planning Policy Wales (see below).

Advice on the preparation of development plans is provided by the Welsh Government in its publication entitled Development Plans Manual - Edition 3 (March 2020). The guidance seeks to enable the swiftest production of development plans focussed on the delivery of key planning objectives both at the regional (CJC) and local (LPA) level through the implementation of site specific land-use allocations and detailed policies designed to ensure the most appropriate forms of development.

As a matter of principle, development plans should be clearly related and central to other levels of plan making and effective in delivery of local aspirations, hence the relationship with the community strategy, proposals of infrastructure providers and Future Wales. They are intended to be straightforward to process and responsive to change with regular monitoring and updating.

Above all they should act as an effective tool for the delivery of sustainable development, and as a basis for rational, consistent and transparent decision-making on planning applications - the ‘plan-led’ system - providing public confidence and trust.

Content

Plans should comprise a strategy and integrated set of policies, and site specific proposals, based on prudent use of resources with a clear understanding of the economic, social, environmental and cultural needs of the area, and any constraints on meeting those needs.

Development plans should not repeat national policy but rather explain how it is to be implemented at the more local level.

Development plans take the form of a written document setting out the vision, strategy and policies to help implement and deliver both the growth and protection of an area, and a set of proposals maps providing a spatial appreciation of the plan and its objectives.

In preparing a development plan, a significant amount of data and evidence needs to be gathered to provide a clear basis and justification for the policies and proposals. The plan will be tested on its 'soundness' at examination, conducted by an appointed Planning Inspector from the Planning and Environment Decisions (PEDW) branch of Welsh Government.

Preparation

The timescale for preparing and adopting development plans has generally been around 4 years (although it is anticipated that future LDP-lites will have a shorter preparation time of around 2 to 2.5 years) and the general steps for the 5 stages are:

Pre-Deposit stage (Year 1)

The local planning authority (LPA) drafts a 'Delivery Agreement' which sets out a timetable and how it is going to engage the community - known as a Community Involvement Scheme. When Welsh Government is satisfied with the agreement, the LPA then starts gathering social, economic and environmental information, produces a sustainability appraisal report and sets the objectives for the plan. A series of pre-deposit documents are published which are subject to a consultation period, generally set at 6 weeks.

Deposit stage

A Deposit plan (a full draft of the development plan) is produced based on the information gathered and the community's response to the pre-deposit documents. This presents the 'preferred strategy' as agreed or amended, proposals for key areas of change, regeneration or protection, and specific sites to be used for particular purposes, together with other specific policies and proposals. It will be accompanied by a consultation report outlining how comments at the previous stage have influenced the plan.

Once placed on deposit the LPA cannot change it. There is a further consultation period for representations to be made and alternative sites suggested. The LPA then publishes any alternative sites or boundaries that have been suggested and there is a further 6 weeks to comment on the alternatives.

Examination stage

A final Consultation Report is published by the LPA and all the relevant documents are then subject to examination by a Planning Inspector who will decide what issues

will be discussed at the examination. The Inspector considers all the issues with the purpose of deciding whether or not the Plan is 'sound'.

After the Examination, the Inspector will review all the relevant information and consider what changes, if any, the LPA should make to the development plan. The Inspector then publishes their Report outlining these changes and explaining the reasons for them. The Inspector's views are binding and the LPA must make any changes recommended.

Adoption stage (Year 4)

Within eight weeks of receiving the Inspector's Report, the LPA prepares an 'Adoption Statement', and advertises the fact that the development plan has been adopted.

Monitoring and Review

Once the Local Development Plan is adopted, the LPA sends an Annual Monitoring Report to the Welsh Government each year. It will consider how successful the plan has been in meeting its objectives. This enables the authority to compare the actual effects of the development plan against what was intended. There will be a major review of the Plan at least every four years. This may involve re-writing certain sections, or even replacing it.

Member involvement

There are two typical circumstances when Members become involved in the process:

1. Commenting upon issues and draft plan policies as an elected Councillor, or appointed Member, on a working party preparing the plan, or, as a Member approving the Deposit version of the plan.

2. Being lobbied by land owners seeking parcels of land to be included in the plan for development or local residents opposed to proposed site allocations.

Members are urged to become involved and engaged in plan preparation. A lack of appreciation of the content and significance of the development plan can make life difficult when responding to constituents and in decision making. Good information leads to better advice and help to constituents while a lack of, or misleading, information can give rise to unrealistic expectations when faced with local development proposals.

Planning Policy other than the Statutory Development Plan

Supplementary Planning Guidance

Supplementary Planning Guidance (SPG) is interesting in that whilst it takes an existing policy of (currently) an LDP or UDP, to provide additional detail as to how a specific local planning policy is to be interpreted and implemented, for example, it is not part of the development plan in a statutory sense. It is a distinction worth noting.

SPG can include Place Plans, a mechanism for communities to be involved in the creation of a new aspect of planning policy seeking to influence decisions at the local level.

National Planning Policy and Guidance

The main policy sources for Members to have regard to are:

- Planning Policy Wales (PPW)
- Technical Advice Notes (TANs) and Circulars
- Ministerial Statements
- Dear CPO letters

Planning Policy Wales: Edition 11 (Feb 2021)

Planning Policy Wales (PPW) sets out the land use planning policies of the Welsh Government and provides the policy framework for the preparation of statutory development plans, be it Future Wales, SDPs or LDPs, or LDP-lites.

PPW may be material to decisions on planning applications too taken by LPAs. It is also taken into account by the Welsh Government when determining Developments of National Significance (DNS) and 'called-in' planning applications, and by Planning Inspectors determining applications on appeal.

PPW is monitored and reviewed in relation to Welsh Government objectives for Wales and is now in its 11th Edition since it was first published in 2002.

The themes from PPW are linked to other Welsh Government policies, strategies and legislation, such as the Well-being of Future Generations (Wales) Act 2015.

The purpose of PPW is to set a clear context for sustainable land use planning policy, within which SDPs and LDPs are prepared, forming the basis for day to day development management decisions on individual applications and any subsequent appeals. Its primary objective is to ensure that the planning system contributes towards the delivery of sustainable development and improves the social, economic, environmental and cultural well-being of Wales. In a change of emphasis from earlier versions, rather than containing a range of topic based chapters, it encourages a wider, problem solving outlook which focuses on integrating and addressing multiple issues rather than on an approach which is fragmented, un-coordinated and deals with issues in isolation. In doing so, it takes forward and promotes the concept of placemaking in its widest context, which is ultimately about achieving the right development in the right place, for all parts of Wales.

PPW also covers a whole range of land use issues and topics related to planning such as the development management system, sustainability, conservation of the natural and built heritage, housing, economy, transport, tourism, sport and recreation,

retail, infrastructure, minimising environmental risk and minerals, but with an increased focus around 'places'.

In July 2020, the Welsh Government published **Building Better Places**, which sets out its commitment to placemaking in a post-Covid world, including measures it plans to take forward to aid economic recovery.

There is also a section on minerals, which sets out land use planning policy guidance in relation to mineral extraction and related development, including all minerals and substances in, on or under land extracted either by underground or surface working.

Also relevant in this sense are the Minerals Planning Guidance (MPG) notes and two Minerals Technical Advice Notes (MTANs) – Wales 1: Aggregates (2004) and Wales 2: Coal (2009).

The guidance should be taken into account by planning authorities in the preparation of their local development plans and may be material to decisions on individual planning applications, including mineral review applications.

Technical Advice Notes (TANs)

TANs produced by the Welsh Government expand on or clarify guidance provided in PPW, particularly to show how policy should be applied in preparation of development plans and in development management decision making.

The current list of TANs is:

TAN 2 - Planning and Affordable Housing (2006)
TAN 3 - Simplified Planning Zones (1996)
TAN 4 - Retail and Commercial Development (2016)
TAN 5 - Nature Conservation and Planning (2009)
TAN 6 - Planning for Sustainable Rural Communities (2010)
TAN 7 - Outdoor Advertisement Control (1996)
TAN 10 - Tree Preservation Orders (1997)
TAN 11 - Noise (1997)
TAN 12 - Design (2016)
TAN 13 - Tourism (1997)
TAN 14 - Coastal Planning (1998)
TAN 15 - Development and Flood Risk (2004) (A new version together with a new flood map for planning was due to be brought-in in 2021 but has been postponed until June 2023 to enable further work on its implications for development policies to be undertaken by LPAs)
TAN 16 - Sport, Recreation and Open Space (2009)
TAN 18 - Transport (2007)
TAN 19 - Telecommunications (2002)
TAN 20 - Welsh Language (2017)
TAN 21 - Waste (2014)
TAN 23 - Economic Development (2014)
TAN 24 - The Historic Environment (2017)

Circulars

There are numerous circulars which provide advice and guidance on the interpretation and implementation of legislation and procedures. There are far too many to list but some significant examples are given below.

- **WGC 016/2014** advises on the use of planning conditions attached to planning permission. It cites instances where conditions would or would not be appropriate and provides a number of model conditions as examples. Importantly it sets out six tests to determine the validity of conditions. This is because unnecessary or unreasonable conditions place unjustifiable burdens on applicants. This is dealt with in greater detail in the Chapter 3 (The Development Management System).

- There is a similar circular which refers to **planning obligations (C13/97)** and where they may be appropriately sought.

- **WGC 003/2012** provides guidance on using a Local Development Order (LDO). In broad terms, LDOs provide the legal basis for giving planning permission for certain types of development without the need to apply for planning permission.

- **WGC 07/2012** provides guidance on the **Town and Country Planning (Notification) (Wales) Direction 2012**, which introduces new categories of planning application to be referred to Welsh Ministers when planning authorities are minded to approve them, now further strengthened by the **Town and Country Planning (Notification) (Unconventional Oil and Gas) (Wales) Direction 2015,** the **Town and Country Planning (Notification) (Underground Coal Gasification) (Wales) Direction 2016** and the **Referring planning applications for major residential development to Welsh Ministers (Direction and Circular 001/2020)**.

- The provision of **Gypsy and Traveller sites** is a contentious issue and Welsh **(Direction and** Government offers guidance in its Circular **WGC 005/2018**.

Ministerial Statements

Sometimes Welsh Government issues Ministerial statements which are used to 'clarify' policy interpretation. Ministerial Interim Planning Statements were used prior to the updating of planning policy but these have all now been incorporated into PPW. However, from time to time, Welsh Ministers make speeches or announcements relevant to planning policy in Wales and may include policy changes which can significantly impact upon the outcome of applications and appeals.

'Dear Chief Planning Officer' letters Policy and new regulations can also be clarified by letters sent from Welsh Government to LPAs and these are known as 'Dear Chief Planning Officer' letters. These provide very useful updates and clarification which may arise from uncertainty or key court decisions over interpretation of policies and regulations. They will often be sent out to accompany the publication of new guidance and advice.

Member involvement in Welsh Government policy documents

The Welsh Government's policy documents are prepared with full stakeholder involvement, and each is subject to full consultation before it is issued. Officers should make Members aware of, and wherever possible give them the opportunity to comment on, the draft national policy and guidance which will provide the framework for their development plans and development management decisions.

Planning Policy Recap

In Chapter 1, dealing with planning legislation, there was reference to the importance of the statutory development plan in determining applications. The development plan has been described in more detail in this chapter, including how it will now become a 3-tier system with Future Wales at the top, produced by the Welsh Government. At the next level will be SDPs, produced by the newly created Corporate Joint Committees (CJCs) for the four regions now established in Wales - South East, South West, Mid Wales and North. The lower level will continue to be existing LDPs, which in the future are set to become LDP-lites, taking forward detailed aspects of the regional SDP.

As stated, when assessing a planning application, the starting point must always be the development plan and thus it is crucial that Members recognise the importance of their own plans in decision making. Whilst there are occasions when decisions are taken contrary to approved policies and plans, these should be exceptional and fully justified with good planning reasons, reflecting why a decision contrary to the development plan is warranted.

It is important for Members to recognise, therefore, the primacy of the development plan when determining planning applications. Members should be aware of, and have access to, the key policy documents and the weight to be attached to them.

The adoption of development plans, prepared with full public involvement and subject to detailed scrutiny, should provide the basis for decisions which are consistent, transparent and fair. Decisions founded on clear policy reasons will reduce the risk of inconsistent development and accusations of unfairness which can undermine public confidence in the planning system and ultimately the Council itself.

Consequently, when making decisions, the focus should be on the policies within the development plan. If those policies are relevant, then decisions should be made in accordance with them unless there are clear planning related material considerations that outweigh the development plan.
These are discussed further in Chapter 3 but for now, it is also worth expressing the fact that such material considerations can include other policy documents that whilst not part of the development plan, can nonetheless have an influence on decision making. These can include PPW, TANs and the SPG of the relevant LPA. This may well be the case when documents of the development plan are not in line with current national planning policy, and not up-to-date. Therefore, and to avoid such a situation, a major focus of the Welsh Government's approach is to ensure an up-to-date development plan for all areas of Wales that is fit for purpose and can be relied upon.

In terms of Member involvement, Members must also abide by the provisions of the Code of Conduct during the development plan process. It is essential that they exercise their own responsibility to declare any personal interests such as land ownership or business interests when plans are in preparation. Failure to do so undermines planning policies and weakens public confidence in it as a decision making tool.

Chapter 3 – The Development Management System

It is clear from the above that planning policy and the statutory development plan in particular is critical for day to day land use decision making, and that it is set at the national, regional and local level. This chapter considers the process known as development management, the mechanism by which planning policy in all senses is implemented.

Development management (DM), previously referred to as development control (DC), is a part of the planning system that is often seen as the 'sharp end' of the system for it is here that the day to day decisions that directly affect local communities are made. Many people do not become involved in the development plan consultation process, and development management is often their first experience of the planning system, i.e., when a planning application is submitted in their locality. It is quite natural for people to want to know what is going on and be concerned if they feel that development will in some way impact on them.

This chapter looks at planning applications, how they are dealt with, how decisions are made and how development is managed.

In the autumn of 2016, the Welsh Government published its Development Management Manual, updated in May 2017. This focuses on the procedural aspects of DM and sets out the minimum requirements set out in law. It describes each step of DM procedures and includes a number of detailed annexes. It also provides links to legislation and additional guidance on certain topics. It is an invaluable resource for all those involved in the process.

Notification and publicity for applications

The implications of planning proposals and decisions at all levels can have a significant impact, both positively and negatively, upon the lives of residents. They may not wish to see new homes or commercial development being built close to them or have concerns about traffic, noise, drainage or other matters.

Given that there is a perception that the planning system can also dramatically increase or decrease the value of property, it is understandable that there is a high level of public interest. It can place Members in difficult and delicate situations where they are torn between the need to represent the local community and the upholding of Council policies.

As representatives of the people, Members need to have an awareness of the way in which this part of the planning system works to help them respond to constituents and undertake their obligations to the authority.

There are a number of ways in which Members may be drawn in to the planning process and this can happen at any time. This is because of the manner in which information about planning proposals is communicated within the local community. Generally, this happens via direct notification from the authority or from 'third parties'.

Firstly, most authorities operate a system of notifying Ward Members of applications

in their area. This is known as '**Application Notification'**.

It is also a requirement for authorities to either put up a site notice to inform local people of a proposed development and/or send out individual notifications. On certain application, notification is also required in the local press and on the Council's website.

Members will often be contacted by a **local resident** who has received written notification of a planning application. This is quite a common way in which an application will be brought to Members' attention and applies to all Members, not simply those on the Planning Committee. Often a constituent will have little experience of the planning system and will look to their elected representative to explain the scheme, how they can comment, how they can obtain further information and the relevant timescales.

The **local press and media**, who have been made aware of an application and are looking for local interest stories may also seek comments from the local Member. Each planning department produces a "weekly list" of applications received that are published on LPA websites and distributed to a range of organisations including the local press. Quite often the response has to be immediate because of publishing deadlines.

Occasionally larger projects involve **public meetings** that Members (in particular Ward representatives) will be invited to and expected to attend. These can get quite lively with strong and often conflicting opinions being expressed, all with expectations of support from the local Member.

In addition, **developers or applicants** will often contact a local Member or Planning Committee Member directly regarding a proposal. This could be to test the likely response locally, to seek advice or to obtain support from the Member for the scheme. Local Members are also consulted on specific applications at Pre-Application Consultation stage directly by the applicant/ agent. This is referred to in more detail below.

This has always been a difficult area for Members as they must be seen to be fair to all, i.e., 'both sides', but at the same time be careful that they are not being perceived as being too close to developers. It is a dilemma because clearly Members are there to represent the interests and concerns of the local community but on the other hand, there may be opportunities to influence development by being part of the pre-application discussion and negotiation process.

While accepting that in practice there may be difficulties, in any of the above situations it is essential that Members:

- do not advise applicants or their agents about the likely acceptability of an application;
- do not put pressure on staff to make a particular recommendation in their report;
- do not 'pre-determine' the application but even if a view of the proposal is held, that an open mind is kept to consider all issues; and

- keep notes of any meetings held with any parties involved and make these available to officers.

Finally, when a proposal is ready to go to Planning Committee, the **agenda** must be made public at least 3 working days in advance of the committee date. As a Member of the Planning Committee making a decision on an application, then he or she may well be approached by objectors or supporters of the proposal when the recommendation on the proposal is known. Members have to be particularly cautious because if they feel that they no longer have an open mind on a particular application when it comes to committee, they should act as if they have a personal interest and withdraw from the meeting.

Members, whether members of planning committee or not, must always be guided by the Code of Conduct when considering how they respond.

Consultation

Notification and publicity for applications is distinct from 'consultation'. There are certain bodies that need to be formally consulted on an application in accordance with the Development Management Procedure Order. These include Town and Community Councils, the Highway Authority, Dŵr Cymru Welsh Water and Natural Resources Wales (NRW), and others depending on the nature and scale of the proposal.

It will also be normal for an authority to consult with non-statutory bodies such as internal consultees, local wildlife and amenity groups, conservation societies, access and tourism bodies.

These provide valuable information to assist the authority in making decisions based on good and relevant advice and local knowledge.

Making a Planning Application

Having earlier explained why a planning system exists together with the legislative framework and regulatory requirements, it is now important to consider how a planning application is made and determined.

The procedural requirements for making an application are set out in the regulations which were referred to in Chapter 2 and which apply to all LPAs.

Applications are made on a form provided by the LPA or through the Planning Portal, now referred to as Planning Applications Wales, hosted by the Welsh Government.

Traditionally, applications have been submitted in hard copy format. However, the vast majority are now submitted electronically via the Planning Applications Wales website. The numbers of applications submitted in this way has increased significantly as more and more agents get used to this more efficient way of submitting documents and plans. In fact, during the Coronavirus pandemic, most if not all Councils and National Park Authorities made a decision to not deal with any paper submissions or correspondence.

Essentially there are three types of planning applications for development - outline, reserved matters and full. There are other types of applications and these are referred to later.

Outline Planning Applications

In simple terms, an outline application seeks to establish the principle of a use on a site. It has the advantage of being cheaper to prepare as most of the details are 'reserved' for subsequent approval, thus allowing the developer to ascertain the principle before committing to preparing full details which can be costly.

Historically, an outline application could be very basic. For example, it was often acceptable to submit a red line plan showing the site and apply for the use of the land for the development proposed. If the application was approved and thereby established the principle of the development, then the detailed information on access, siting, design, external appearance and landscaping (known as the reserved matters), would be submitted later.

However, there are now requirements for outline applications to be accompanied by a greater amount of supporting information so that a better indication of the impact that the development would have can be identified. This could include traffic, environmental, visual impact, energy, waste and ground condition information together with the submission of a Design and Access Statement (DAS), where needed, such as with major schemes. This has, in effect, reduced the difference between outline and detailed full submissions. Outline applications can be submitted with some, or all, matters reserved for future consideration. These are called 'reserved matters'.

Reserved Matters Applications Following the grant of outline permission, applications can be made for the approval of the details of the proposal. These are the matters which have been 'reserved' for subsequent approval. Conditions on the outline will specify the timescales for their submission but usually these are within three years of the date when consent was granted.

Legislation provides that the following are reserved matters:

(a)access;

(b)appearance;

(c)landscaping;

(d)layout; and

(e)scale.

The important consideration is that the details submitted are both acceptable and do not change the character of the original outline permission.

Full Applications

Applications that are submitted in detail from the start are known as ‘full applications’. In effect, this means that the LPA is provided with all (or most) of the information to allow a decision to be taken on the proposal.

The level of information submitted varies according to the nature of the proposal, although the Development Management Procedure Order has created increased certainty as to what is required to make an application valid. Some authorities have adopted a local list of requirements for ‘major’ applications.

For householder applications to extend or alter a property the following information needs to be submitted:

- planning application form;
- certificate of ownership;
- location plan;
- drawings of proposed changes; and
- application fee.

For a larger proposal, for example a new housing development, retail centre, commercial or industrial development the information will be much more detailed:

- planning application form;
- certificate of ownership;
- location plan;
- drawings of existing site and buildings;
- drawings of proposed building and site lay-out highlighting access routes and landscaping;
- planning statement to justify the proposal in policy terms;
- design and access statement;
- energy statement;
- waste management plan;
- flood risk assessment;
- contaminated land survey;

  retail statement to show there is a need for the proposal and that the location is suitable;
- transport statement to explain the vehicular generation and access by different modes of transport; and
- application fee.

The above are indicative lists only and are not exhaustive or comprehensive.

It is suggested that Members check with their own authorities with regard to individual proposals, if they so wish.

Other applications

There are a number of other types of application which Members will be requested to comment upon or determine. The most common are:

- **Listed Building Consent** – works to any part of a listed building or its grounds (known as its curtilage);
- **Conservation Area Consent** – the demolition or alteration to buildings in a conservation area;
- **Advertisement Consent** – permission is required for the display of advertisements and signs under the Advertisement Regulations;
- **Certificates of Lawfulness** – to establish whether an existing or proposed use or development is lawful or requires permission. These relate to matters of fact and if proven on the balance of probabilities then a certificate must be issued;
- **Variation/Removal/Discharge of Conditions** – (these are generally technical and are dealt with by officers); and
- **Non-material Amendments** – these allow some minor changes to be made to existing approved schemes. If the change is more than minor, i.e., 'material' then a new planning application is required, often referred to as a 'Section 73' application.

A **'Section 73' application** is so-called as it is an application for either full or outline planning permission made under Section 73 of the TCPA 1990, which allows applications to be made to vary or modify conditions that have already been imposed on an earlier consent, provided that consent is 'extant', i.e., still implementable, or has already been implemented in some way. Typical uses for this provision are applications seeking the renewal of planning permission and those seeking a variation of the stated approved plans in order to secure permission for 'material' minor amendments. There are others, but an important point is that if an amendment goes above and beyond a reasonable interpretation of the scope of the existing permission, the Section 73 approach cannot be utilised and an all-new application is required. A permission granted under Section 73 is also a planning permission in its own right.

Under Section 73A of the TCPA 1990, an applicant can seek planning permission **retrospectively**, i.e., for development already carried out, or partly carried out. When dealing with retrospective applications in this way, the LPA must approach the case in exactly the same way in which it approaches applications made prospectively, meaning that little weight can typically be given to the fact that development has already taken place.

Pre Application Consultation (PAC)

The mandatory pre-application consultation (PAC) process requires all schemes for major developments to be the subject of pre-application consultation by the developer. This is distinct to pre-application planning advice being offered to applicants by LPAs.

The PAC process operates on the basis that once a qualifying scheme is ready for submission, an applicant must undertake consultation with all community and statutory consultees, and any other bodies an applicant considers relevant whereby consultation would be beneficial. This would have included the relevant fire and rescue authorities, although they have now been added to the Welsh Government list of statutory consultees. These include NRW, Welsh Government Highways, the local highway authority, and Cadw. A community consultee includes the Town or Community Council (T&CC), the local County Councillor/Member and any local residents. A site notice also needs to be displayed.

The process provides all consultees with 28 days within which to make comments. Online availability of documentation is preferred (mandatory during the earlier stages of the pandemic) and engagement beyond the minimum is encouraged. At the end of the process, the applicant must complete a PAC report outlining who was consulted, the comments received and how these were taken into account in the formulation of the final scheme. Any comments provided will be made public when included in the PAC Report.

One of the challenges with the PAC process is that it cannot commence, by law, until any such qualifying scheme is ready for submission via what would be a complete and valid planning application, as opposed to a scheme that is still in formulation, although there is nothing to prevent an applicant engaging with the community and consultees earlier, provided resources permit meaningful engagement in this way. This has been found on occasion to reduce the appetite to amend schemes significantly once the PAC process has been finalised. In addition, there could be some uncertainty as to whether or not the extent of any changes made as a result of the PAC process would result in a scheme that is markedly different to that which was the subject of the PAC, sufficient, for example, for an all-new PAC process to be undertaken once again, which could be seen by applicants as a delay.

A further challenge concerns the extent to which Members feel constrained when engaging in the process. For a potential decision-maker in the future, for example, this is understandable, given the need to retain an open mind at all times when making a decision, although has been found to be no overriding harm in holding a preliminary view. For others, acting as local representatives, for example, engagement is encouraged. Any engagement by Members needs to be in line with the Code of Conduct (see below). If in doubt, and/or in the event that advice is needed, a Member should always seek guidance from their Authority's Monitoring Officer.

All things considered, the process is well-meaning and provides a focus for developers when formulating their proposals, in the knowledge that there will be prior scrutiny of schemes in this way. In turn, this allow for certain aspects to be 'ironed-out' and considered in more detail prior to formal submission as a planning application, saving

both time and resource. It also provides an opportunity for engagement with the community and key 'players', which in turn provides the further opportunity for an applicant to set out in detail how this has shaped a scheme, for the benefit of the community.

The Application Process

Registration and Validation

When an application is submitted to the LPA, the standard initial steps taken by Officers will include:

- registration and validation – checks are carried out to ensure that all the required information, plans and the correct fee are included. A national 'validation check list' now applies although it is possible for LPAs to require additional information for 'major' applications, in addition to those set out in regulations and guidance;

- Depending on the Authority's notification protocol, letters of notification are sent to: (i) immediate neighbours and others whom the LPA considers will be most directly affected; (ii) the relevant internal departments (planning policy, highways, environmental health, etc) and (iii) external bodies (e.g. Community or Town Council, Natural Resources Wales, CADW, etc). The period for comments is usually 21 days from notification;

- site notice – a notice is placed on or adjacent to the site informing of the application, indicating that comments can be made within 21 days of the date of the notice. As a result of the pandemic, this responsibility has temporarily transferred to applicants at the request of some LPAs;

- press notice – certain applications are publicised in local newspapers depending on the type/scale of the proposal;

- publication of details on the planning website; and

- application is allocated to a Planning Officer.

Officer Consideration

The Planning Officer will visit the site and assess the proposal and draw together the responses arising from the consultation process, and the nature and extent of any representations made by local residents. The key issues raised by the effect of the proposal will be assessed and a recommendation made based on the adopted development plan and any other material considerations.

In respect of **householder** applications, the sorts of issues to take account of can include:

- the relevant policies in the development plan and in national policy and

guidance (Planning Policy Wales and TANs);

- the appropriateness of the scale of the proposal;
- the design and use of materials; and
- consideration of any adverse impact on neighbours.

Issues regarding **larger proposals** would include:

- the relevant policies in the development plan and in national policy and guidance (Planning Policy Wales and TANs);
- the appropriateness of the scale of the proposal;
- design;
- traffic generation;
- accessibility of the site to non-car users;
- relationship with existing shopping provision (in respect of retail development);
- how many jobs that will be created;
- landscaping;
- closeness of the site close to other existing development such as residential properties and will they be affected (e.g. by noise);
- the previous or existing use of the site;
- the amount of renewable energy generated on site;
- how waste is dealt with and treated;
- how surface water is disposed; and
- the likely presence of wildlife and any need for habitat and species surveys.

The basis of judging an application It has already been stated that there is a statutory requirement for applications for planning permission to be determined in accordance with policies in the adopted statutory development plan for the area, unless material considerations lead an LPA to decide otherwise.

The statutory development plan therefore provides the primary basis for the consideration of any development proposal. Decisions must also take account of other material considerations, including the Welsh Government's national planning

guidance and material representations from interested parties.

Put simply, the requirements of the legislation mean that the following needs to be taken into account when considering a proposal:

- Whether the proposal meets the requirements of policies within the development plan; and

- Weigh up all the other planning considerations to see whether they outweigh the conclusion of the development plan.

Whilst this may seem straightforward, it is important to note that the relevance of the development plan depends upon what stage of preparation it has reached, i.e.;

- pre deposit consultation;
- deposit;
- examination; and
- adoption

Even if the Plan is adopted there may still be questions to be asked such as whether it reflects national policy and is 'up-to-date' or whether there have been significant changes in national planning policy. The plan may also be due for review.

Once the relevance of the policies and the status of the plan have been established the 'other material (planning) considerations' then need to be assessed to determine which are material to the application and the weight that can be attached to them.

Material considerations

As mentioned earlier, there is a legislative requirement for planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. It is therefore important to understand what material considerations are. These can be wide ranging and include any planning considerations which are relevant to a particular application.

PPW states that 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. They must also be fairly and reasonably related to the development concerned. The Courts are the final arbiters of what may be regarded as material considerations in relation to any particular application.

These will often include:

- housing land delivery trajections;
- layout and design of buildings;
- impact upon neighbourhood;
- access arrangements;
- traffic generation;
- landscaping;
- wildlife;
- job creation;

- service availability;
- flooding; and
- opening hours.

The effects of a development on, for example, health, public safety and crime can also be material considerations, as, in principle, can public concerns or perceptions in relation to such effects.

There is no legal weighting which applies to these considerations so it is largely a matter of judgement for the Officers and Members, providing that no factor is given either too much or too little weight to make a decision irrational. For example, depending upon the local economic situation this will alter the weight to be attached to the employment creation potential of a scheme. However a 'jobs at all costs' approach would clearly not be appropriate.

Material considerations do not include any representations and comments which are not about planning, or are not relevant.

The most commonly cited examples are:

- the potential impact upon the value of a property;
- personal circumstances; and
- the loss of a view.

It is easy to see how Members could be placed under significant pressure from local residents concerned with the impact upon property prices or loss of view and being told it is not relevant. Loss of view, however, should not be confused with a wider landscape impact that a proposal may have.

The planning system does not exist to protect the private interests of one person against the activities of another. 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.

When determining planning applications, local planning authorities 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. There may be cases where the development proposed may give rise to public concern. The Courts have held that perceived fears of the public are a material planning consideration that should be taken into account in determining whether a proposed development would affect the amenity of an area

and could amount to a good reason for a refusal of planning permission. It is for the local planning authority 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.

In conclusion on 'material considerations', it may well be appropriate to consider any matter as material; the important point being the weight that can reasonably and justifiably be given to any such matter. If not of sufficient or overriding weight, the policies and provisions of the development plan must prevail.

The Decision

Decisions on straightforward planning applications are normally made by officers under 'delegated authority', whilst some major or contentious proposals are more often dealt with by Planning Committee. There are some instances where a small panel will look at an application to decide whether it should be determined by committee or under delegated powers.

Delegated powers

All Councils have delegated the power to determine straightforward, less-contentious proposals, (which comprise the vast majority of applications), to the Head of the Planning Service or equivalent.

The extent of these delegation powers varies between authorities with Welsh Government encouraging as many applications as possible to be dealt with in this way. As a guide a delegation rate of 90% should be achievable.

Applications determined under delegated powers are generally processed more quickly as they are not delayed by the time constraints of meeting the Committee cycle, preparation of detailed Committee reports, agenda preparation and distribution to Members, which can add significant extra time to the determination process.

A proper record of all delegated decisions should be kept on file and available for the public to view.

In most cases the Ward Member has the opportunity, if they consider it appropriate and have good reason, to request that a particular proposal is presented to the Committee and not delegated.

Committee decision

Applications which are reported to Committee are presented to Members in the form of an agenda with each proposal having a detailed report containing in the main:

- a description of the proposal;
- a description of the site and its surroundings;
- the planning history of the site;
- a list and summary of consultation responses;

- relevant development plan policies (Future Wales, SDP, LDP or LDP-lite, or UDP);
- relevant other planning policies (SPG, PPW, or TANs);
- identification of main issues and considerations;
- assessment of the proposal against the development plan and any other material considerations; and
- recommendation to grant or refuse permission.

If the development is proposed for approval, then the reasons why it is to be approved and any conditions to be attached must be stated.

If proposed for refusal, then the reasons for refusal must be stated clearly and precisely and recorded in the Minutes of the meeting.

Typical committee procedures

Committee procedures may vary slightly amongst authorities but typically would take the form of the following:

- a summary of the report by a Planning Officer;
- increasingly the applicant and objectors are allowed to address the Committee (usually three minutes or thereabouts, sometimes depending on the scale of the proposed scheme);
- Ward Councillors invited to address the committee;
- Committee Members debate the application publicly and may ask questions of officers;
- officers respond as appropriate, e.g., planning, highways, legal;
- a motion of recommendation is proposed and seconded and a vote taken;
- in some controversial cases a recorded vote is taken whereby it is minuted as to how each Member's vote has been cast;
- in the event of a tied vote the Chair has a casting vote;
- occasionally, items may be deferred to allow for further information to be submitted and the proposal considered again at a future Committee or, provided that details are satisfactory, delegated authority is granted to the Planning Officer to issue the decision; and
- Some LPAs in Wales webcast a number of their meetings, including the Planning Committee. As a result of the pandemic, most if not all planning committee meeting

have been conducted ‘virtually’.

Delegation to a Chairman’s Panel

There is a ‘third’ way where the Chair of the Planning Committee together with the Head of the Planning Service have the joint authority to determine an application, without reverting to the committee. There are various forms that this can take with a common option being a small Panel comprising of the chair, vice chair and one other member of Committee and the Head of Planning.

Case officers usually present the applications to the Panel making sure that it is aware of all relevant information, the policy context and consultation responses.

For transparency a proper record of how the decision was reached is made and kept on file for public inspection.

Decisions made against Officer Recommendation

On occasion, Members may disagree with the advice of their officers and make decisions contrary to their recommendation. It may be that they attach greater weight to material considerations or disagree with the interpretation of policy.

If the Members’ view is that the proposal should be refused then the reasons should be stated clearly as the decision may well be the subject of an appeal. If the reasons are not well founded and defensible on planning grounds then it is likely that the appeal will be allowed with the risk of costs being awarded against the Council.

Members should also have good reasons if they decide to approve a planning application which departs from the development plan, the Welsh Government’s planning policies, or the written advice of their Officers. Where this happens they should clearly state the planning reasons for their decision and ensure that these are recorded in the minutes of the meeting. Approvals cannot be appealed but they may be open to challenge through judicial review and/or subject to complaints to the Local Government Ombudsman for Wales.

Planning Conditions

When granting planning permission the development can be subject to conditions that control the way in which the development is implemented and/or operated, improve the quality of development and enhance public confidence in the planning system. Depending upon the application there could be a wide range of conditions and the power to impose them is very wide. Guidance is available in **Circular 016/2014** which states that if used properly, conditions can enhance the quality of development and enable many development proposals to proceed where it would otherwise have been necessary to refuse planning permission. The objectives of planning are, however, best served when that power is exercised in such a way that conditions are seen to be fair, reasonable and practicable.

The circular sets out six tests which lay down the general criteria for the validity of planning conditions which essentially derive from court decisions. These tests seek to ensure that conditions are:

- necessary;
- relevant to planning;
- relevant to the development to be permitted;
- enforceable;
- precise; and
- reasonable in all other aspects.

A reason needs to be attached to each condition to explain why the condition has been imposed. The applicant has a right of appeal against any condition.

Some conditions, such as those imposing time limits for commencement of development are obliged to be attached to any outline or full planning permission after which the approved development will lapse if it is not started. An outline permission will require the submission of details for approval within 3 years with a further 2 years for development to commence. Development on a full permission should be commenced within 5 years. These timescales can be altered if there are good reasons for doing so, such as seeking an early start of a scheme.

Examples of Planning Conditions are shown below.

Conditions where further details are required:

- Full details of the layout and operation of the parking areas will be submitted to, and approved by, the LPA and will be implemented prior to the development being used.
  (Note: Where further details are required to be approved before development starts these are known as pre-commencement conditions and developers must ensure that all such conditions are adhered to in order to avoid problems of the validity of the permission – see further note below).

- A transport plan identifying measures proposed to encourage public transport use will be submitted to, and approved by, the LPA and will be implemented at all times following the first use of the approved development.

Full particulars, including details of colour and texture of materials which will be used on all external surfaces will be submitted to, and approved by, the LPA. The works shall thereafter be carried out and retained in accordance with the approved details.

Restriction or limitation to operation permitted:

- Demolition/construction/building works will only be carried out between the hours of 08:00 and 18:00 on Mondays to Fridays and between 08:00 and 13:00 on Saturdays.

- Unless the LPA agree otherwise in writing the premises to which the permission relates will not be open outside of the hours: 09:00 to 23:00 or 07:30 to 24:00.

Compliance with approved plans:

- The development shall be carried out and thereafter retained strictly in accordance with the approved plans, reference numbers ** and received on **.

Note on compliance with conditions:

- Once planning permission has been granted, it can only be carried out in accordance with the approved plans and the planning conditions. This is significant because if works on a development commence before all necessary planning conditions have been met in full, or is otherwise not in accordance with approved plans and conditions, then the permission may not be valid.

- A relevant court decision is known as the Henry Boot case and this found that the effect of commencing development without complying with a pre-commencement condition was that the whole development will not have the benefit of planning permission. This is because the development is not in compliance with the planning permission as granted. The current legal position is that provided the planning condition has been properly imposed the local planning authority has no power to waive any conditions except following a formal application to remove or amend the condition under section 73 of the Planning Act.

This is a complicated area and many developers rely on informal contact with the local authority to progress schemes. It is also a problem for the planning authority as many amendments to a scheme could quite easily be agreed by submission of details and formal exchange of correspondence. The Welsh Government has now introduced a formal application process for dealing with minor changes to schemes, known as non- material amendments. It has also introduced a formal process for dealing with the discharge of planning conditions.

Negative or Grampian Conditions

The validity of this form of condition (which required that development, for which planning permission had been granted, was not to be commenced until works were carried out on land outside the applicant's control or ownership) was recognised by the decision of the House of Lords in the case of Grampian Regional Council v Aberdeen District Council (1984).

An example of a Negative Condition is as follows;

> “Development shall not be commenced until a visibility splay has been constructed at the junction of Hawthorns Road and May Road in accordance with the drawing lodged with the LPA on 3 March 2012 reference WC 1234/94”.

Time Limiting Conditions

Occasionally an LPA will grant planning permission on the condition that it is for a temporary period of time. This usually happens because the structure which is proposed to be built or the change of use is of a temporary nature and there is a need to have the ability to remove it or the use to cease when it is no longer required.

Temporary planning permission may also be granted when the LPA is unsure about the impact of a building or a use of land and wish to review the decision at a later date. Such conditions have been used in respect of temporary accommodation to give time for an agricultural or other rural enterprise to demonstrate that it is a viable proposition sufficient to justify the grant of a permanent dwelling.

At the end of the temporary period the applicant may apply to retain the building or extend the period of a use either for another temporary period or permanently. Temporary permissions should not be regularly renewed but either refused or given a permanent approval.

Unacceptable Conditions

The following are examples of conditions which are not acceptable:

1. To require that a development shall be completed within a time limit. (This is because it may be difficult to enforce because if the reason for not completing is financial then enforcement is not going to succeed in getting it finished).

2. To require that a site is kept tidy at all times. (This is vague and unlikely to be capable of enforcement).

3. To require that no adverts are displayed on site. (Adverts are controlled by separate Regulation).

Informatives

Sometimes it is appropriate to attach notes or 'informatives' to a planning decision notice. These are not conditions but provide advice to the developer of the need for additional consents or approvals from other bodies.

Examples would include the need to apply for a footpath diversion or to have regard to the Party Wall Act before development commences. Notes and responses of Welsh Water Dŵr Cymru or the Environment Agency are also often appended to decision notices.

Section 106 Agreements

Whilst most planning applications can be dealt with simply by the issue of a permission with conditions attached to it, it is quite common for the LPA to have concerns which cannot be effectively dealt with by condition. Those concerns may in certain circumstances be met by the developer accepting obligations under section 106 of the Town and Country Planning Act 1990. It should be noted that these obligations are sometimes referred to as S106 agreements. These obligations are contained in a contract and bind not only the developer but also all existing and

future owners of the land in question. The obligations may:

- Restrict the development or use of the land in a specified way;
- Require specified operations or activities to be carried out;
- Require a specific use of the land; and
- Require monies to be paid to the LPA.

Most section 106 obligations are entirely straightforward and uncontroversial.

Examples of such obligations are:

- The provision of affordable housing in a residential development;
- The restriction of goods which can be sold in a retail development;
- The payment of money to enable the LPA to carry out improvements to off-site infrastructure made necessary by the development;
- Contribution to increased school capacity; and
- The payment of money to upgrade open space/play areas nearby.

It should be noted that such requirements can be effected by the developer through a Unilateral Undertaking which does not require the LPA to sign up to the agreement.

Obligations under section 106 are a reasonably simple and effective way of ensuring that any residual problems in some applications can be adequately addressed and dealt with, so as to ensure that permission can be granted rather than refused. Section 106 obligations are also registerable against the property and disclosed on land charge searches. However, it is the case that LPAs in conjunction with developers have become involved with planning obligations that, whilst they do result in benefits to the community, can give rise to the suspicion that the underlying planning permission has been 'bought' by the developer or conversely 'sold' by the LPA. Any such practice is unlawful and a serious abuse of the planning system. This aspect is examined in more detail in Chapter 7 - The Planning System and the Members' Code of Conduct).

Section 106 agreements can only be changed by mutual agreement but a formal application to amend can be made after 5 years. If the Council refuse to alter the agreement then there is a right of appeal to Welsh Government.

Some provisions in relation to Section 106 Agreements have changed with the introduction of the Community Infrastructure Levy (CIL). Although it is discretionary whether Authorities use CIL (see below), the ability to accumulate funds has been reduced.

Decision Timescale

The target period for determining an application is 8 weeks from the date of receipt of a valid planning application, or 16 weeks if an Environmental Impact Assessment accompanies the application.

However, the Welsh Government has now introduced a procedure whereby extensions of time can be agreed with applicants, to provide increased flexibility. It has also brought about provision for the planning application fee to be refunded in some cases, following an unacceptable delay.

LPAs are expected to make a decision on 80% of applications within target / agreed timescales (known as the 'statutory period'). This recognises that up to 20% of applications are more complex and could fall outside this period.

The Welsh Government publishes the development management performance of each LPA. There has been significant improvement of late following the ability for LPAs to agree extensions of time with applicants.

Refusal of permission

When a development is unacceptable or cannot be made acceptable through the imposition of conditions then the application should be refused with reasons given for the decision.

There may be one or a number of reasons for refusal but, regardless of how many there are, they must be clear and based on land use planning considerations which relate to the statutory development plan and/or any relevant material planning considerations.

Reasons which are based on other material considerations must be equally well founded and justified. Inappropriate reasons can not only be challenged through appeal, but costs can also be awarded against the authority if they are not substantiated.

Permitted Development

It is worth repeating the legal definition of 'development' as set out in the legislation section above, which is:

> "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."

This definition shows that 'development' can be either physical works affecting land (known as '**operational development'**); or the change of use of buildings or land ('**change of use'**) so long as it is a 'material' change.

It is also worth noting at this stage that the term 'building operations' includes anything normally undertaken by a builder, and a 'building' means any structure or erection, for example, a wall or monument, the test being 'size, permanence and physical attachment to the land'

The definition of development is so broad that it encompasses almost anything which

affects land physically or its use in practice. If every development were to require a specific planning consent this would be a serious and over-controlling restriction on the day to day lives of residents, but it would also be an undue restriction on the operations of business and statutory undertakers. Also, if the definition were left unqualified, it would mean that the planning authorities would be swamped with applications at enormous cost to the community.

Therefore, it has always been recognised that some works or developments do not in actual fact constitute development in a legal sense and as a result, do not require planning permission.

For example, certain works and changes are specifically excluded from the definition of 'development'. For example, operational development which consists of works to the interior of any building or which do not materially affect its external appearance are excluded. Another example is works by a highway authority on highway land done for the purpose of maintaining or improving the road. As regards change of use, some changes within a specified category set out in the Use Classes Order 1987 are also exempted. This latter exception is explained more fully in the relevant sections later within the document. It is important to understand that these changes are specifically stated to be outside the control of 'development' and therefore are outside the planning system entirely.

In addition, many minor works and changes are given automatic permission by the General Permitted Development Order (GPDO). Such development is called 'permitted Development' (PD)". For example this automatic permission is granted for:

- extensions to factories and warehouses within certain limits;
- statutory undertakers to do work connected with their undertaking. For example, railway operators can carry out development on their own operational land which is required for rail traffic;
- minor changes to a residential property;
- some minor micro renewable energy installations;
- certain types of agricultural development; and
- a range of telecommunications development.

Removal of Permitted Development Rights

Permitted development rights may be removed by the LPA issuing an 'Article 4 Direction'. This will mean that there is a need to apply for planning permission to carry out work that would otherwise have been permitted development. An Article 4 Direction is generally issued for an area of land rather than an individual property.

Article 4 Directions are issued by the LPA in circumstances where specific control over development is required, primarily where the character of an area of acknowledged importance would be threatened. They are therefore more commonly applied to development within conservation areas.

The effect of such a Direction is to remove permitted development rights, thereby necessitating a planning application to be made.

Permitted Development Rights may also be removed by a condition when permission is granted. In both instances the planning authority must have very good reasons for removing a right already permitted by law.

Extension to Permitted Development Rights

On the other hand, PD rights can be extended for a range of works and changes by virtue of 'Local Development Orders' (LDOs). These need to be prepared by individual LPAs and can remove the burden for a range of developments that would otherwise need a specific grant of planning permission.

Changes of Use

As mentioned earlier, the definition of development includes the way in which land and buildings are used. To ensure that planning applications are not required for every change of use, there is a system which seeks to introduce some movement between uses for landowners.

The **Use Classes Order** places activities into groups so that a move between activities within the same group is permitted and does not require planning permission. The distinct use classes are grouped as set out below:

A1 Shops (for the retail sale of goods
- including most shops, post offices, sandwich shops, hairdressers, travel agents)

A2 Financial & professional services (including banks, buildings societies, estate agents, betting offices, employment agencies)

A3 Food & drink (including restaurants, cafes, bars, take-aways, public houses)

B1 Business (including offices, light industry which is compatible with a residential area, research and development)

B2 General industrial (includes industrial processes)

B8 Storage & distribution (storage, warehousing and distribution uses)

C1 Hotels (including guest houses)

C2 Residential institutions (provision of residential accommodation and care to people in need of care other than in a dwelling house)

C3 Dwelling houses

C4 Use of a dwelling house as a House in Multiple Occupation (in broad terms, the occupation of tenanted properties by three to six people as their sole or main residence, who are not related and who share one or more basic amenities)

D1 Non-residential institutions (including medical or health services, crèche/ nursery, education, public worship)

D2 Assembly & leisure (including cinema, bingo, dance hall, swimming pool, gymnasium, concert hall)

The regulations allow, subject to limitations in some cases, the changes between uses within the same class without requiring planning permission. For example:

- Shoe shop to travel agent (within Class A1)
- Bank to an estate agent (within Class A2)
- Public house to restaurant (within Class A3)
- Light industry to office (within Class B1)
- Cinema to Bingo (Class D2)

Some uses do not fall within any of the specified use classes and the Latin phrase 'sui generis' is commonly used to describe such a use, also now known as Unique Uses. Examples include launderettes and scrapyards and no change to other uses is automatically permitted without planning permission.

Footnote:

Note that this is a very brief synopsis of a fairly technical aspect of the planning system. Reference should always be made to the GPDO and the Use Classes Order in individual cases, and to officers of the planning authority.

Note also that listed buildings and land within sensitive areas such as Conservation Areas, National Parks and Areas of Outstanding Natural Beauty are treated as special cases, and special and different rules apply.

Another area to keep an eye on, as mentioned earlier in the document, is the scope for future changes to the Use Classes Order, for example seeking more control over 2nd and holiday homes.

Community Infrastructure Levy

The Planning Act 2008 introduced the Community Infrastructure Levy (CIL) which came into force in April 2010. It had been a non-devolved matter in Wales but is now

a matter for Welsh Government.

It allows local authorities to raise funds from developers undertaking new building projects in their area. The money can be used to fund a wide range of infrastructure that is needed as a result of development. This includes new or safer road schemes, flood defences, schools, hospitals and other health and social care facilities, park improvements, green spaces and leisure centres.

This is a tariff-based approach providing a framework to fund new infrastructure to unlock land for growth. It is considered to be a fairer, faster and more certain and transparent system than through planning obligations which can cause delay as a result of lengthy negotiations. Levy rates will be set in consultation with local communities and developers and will provide developers with much more certainty 'up front' about how much money they will be expected to contribute. This gives local communities flexibility to choose what infrastructure they need to deliver their development plan.

Local authorities are required to spend the levy's funds on the infrastructure needed to support the development of their area and they will decide what infrastructure is needed. The levy is intended to focus on the provision of new infrastructure and should not be used to remedy pre-existing deficiencies in infrastructure provision unless those deficiencies will be made more severe by new development. The levy can be used to increase the capacity of existing infrastructure or to repair failing existing infrastructure, if that is necessary to support development.

The Council must produce a charging schedule setting out the levy's rates in their area. Charging schedules will be a new type of document sitting alongside the local development plan but will not be part of the statutory development plan.

The rate at which the levy is charged should not put at serious risk the overall development of the area. In setting the rate the authority will need to draw on the infrastructure planning that underpins the development strategy for their area and use the evidence to strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential effects of the levy upon the economic viability of development.

A charging schedule must be examined in public by an independent person appointed by the authority. The format for the levy's examination hearings is similar to those in the development plan examination process.

The levy is intended to provide infrastructure to support the development of an area rather than to make individual planning applications acceptable in planning terms. As a result, there may still be some site specific impact mitigation requirements without which a development should not be granted planning permission. Some of these needs may be provided for through the levy but others may not, particularly if they are very local in their impact. Therefore, there is still a legitimate role for development specific planning obligations, i.e. S106, to enable a local planning authority to be confident that the specific consequences of development can be mitigated.

National Infrastructure Planning

The Planning Act 2008 introduced Nationally Significant Infrastructure Projects (NSIPs), the process for which is dealt with by the Planning Inspectorate as part of a UK approach. The purpose is to streamline the consenting process for projects considered to be of such scale that they are termed NSIPs. In Wales most likely projects remaining to be considered under this process would be those in relation to energy and harbour developments for example that go above and beyond the thresholds that have been set for Developments of National Significance (DNS).

Developments of National Significance

DNS applications are determined directly by Welsh Government. The newly created Planning and Environment Decisions Wales (PEDW) will deal with DNS applications, making a recommendation to the Welsh Ministers. DNS applications will include all large-scale on-shore wind farms, other energy projects between 10 and 350MW and most other large-scale infrastructure projects, such as reservoirs.

It is important to note that there is still a significant role for the local planning authority (LPA) to undertaken with DNS applications. For example, the LPA must undertake its own consultation and also produce a Local Impact Report (LIR) to assist the appointed PEDW Planning Inspector in their consideration of the application. Under current legislation for DNS proposals, the LIR needs to provide a factual, objective view of the likely impact of the proposed development on the area, based on the LPA's local knowledge and robust evidence of local issues. The impacts need to be presented in terms of their positive, neutral and negative effects. In line with current PEDW guidance on the preparation of LIRs, there is no representation made on the merits of the DNS proposal as part of the LIR, nor a balancing of the planning issues undertaken, as that is the role of the Planning Inspector. Representations, however, including from any interested party, organisation, Member, or the Authority or Council itself, may be made separately to PEDW. There may also be a requirement for the LPA to be represented at any hearing or inquiry that is arranged to consider the evidence, or part of the evidence. Responsibility for discharging and/or monitoring compliance with any conditions that an Inspector may impose when DNS applications are approved also falls to the LPA.

Called-in applications

While most planning applications are best determined locally by people who best know their areas, the Welsh Government has powers to intervene, although these are used only where it is necessary to do so. This is known as the 'call in' of an application.

Anyone has the right to ask the Welsh Government to use its power to call in any planning application. Call-in is used only in those few instances where an application is considered to raise planning issues of more than local importance. It could be used for applications which conflict with national policies, could have wide effects beyond the local planning authority area, give rise to substantial and widespread controversy, are likely to affect sites of scientific or historic importance, or raise national security or other significant planning issues.

In addition, LPAs have a duty to notify the Welsh Government of certain planning

applications that they intend to approve, and which are departures from the development plan where they are minded to grant planning permission. These relate to applications such as major residential schemes (in excess of 10 houses), applications for vulnerable development in flood zones and certain minerals and waste schemes, including unconventional gas (fracking). LPAs should also consult the Welsh Government before granting planning permission for certain significant retail developments. The Welsh Government has 21 days within which to decide whether the issues raised warrant intervention.

Only a handful of planning applications are called in each year. When it happens, the Welsh Government becomes the planning authority responsible for determining the application, following a recommendation from PEDW who deal with such cases on their behalf, and can, via PEDW, decide on the procedure to be followed - written representations, hearing or public inquiry, or a combination.

Appeals

If permission is refused, then the applicant can appeal to the Planning and Environment Decisions Wales (PEDW) (a branch of the Welsh Government). In Wales an appeal must be lodged within six months of the refusal, although for householder and minor commercial schemes, and adverts, the deadline in which to appeal is reduced to 12 weeks. Appeals can also be lodged if the LPA fails to determine the application within the prescribed time, or agreed extension of time. There are three methods of appeal with the most straightforward being by the exchange of written representations by the appellant and the LPA.

Alternatively an appeal can be heard by an informal hearing or the more formal public inquiry. These are described more fully below.

- On average, around 1 appeal in 3 is successful for an applicant / appellant, with the planning authority being able to successfully defend around two thirds of the appeals it faces. Success rate for an appellant can increase further when the appeal is dealt with via a hearing, and further again at public inquiry.

Written representations

- this involves the applicant (appellant) and LPA producing written statements setting out their submissions, with an opportunity to comment upon each other's case. Other interested parties (e.g., local residents) who commented on the original application can make comments;

- the Inspector will visit the site, often accompanied by representatives of the appellant and LPA, but sometimes unaccompanied;

- the Inspector will issue a decision several weeks later; and

- the target time for an outcome, from lodging an appeal, is 16 weeks (12 weeks for householder appeals).

Hearing

- often known as an ‘informal hearing’;
- the appellant and LPA prepare evidence, which is exchanged 4 weeks before a hearing is held;
- the Inspector leads a ‘round table’ discussion on the key issues;
- interested parties can attend; and
- the Inspector will issue a decision several weeks after the hearing ends; and
- the target time for an outcome from lodging an appeal is 22 weeks.

Public Inquiry

- more similar in format to a ‘court’ procedure, with barristers often representing the appellant and LPA, and sometimes other parties known as ‘rule 6’ parties;
- the appellant and LPA prepare evidence, which is exchanged 4 weeks before the inquiry is held;
- each witness can be cross-examined;
- the Inspector issues a decision several weeks after the Inquiry ends; and
- the target time for an outcome from lodging an appeal is 30 weeks.

Also now introduced are Validation Appeals, which consider only the validity of a planning application. This process was introduced by the Welsh Government to deal with potential inconsistencies in the way in which applications are validated by LPAs and to give an applicant the means to challenge.

Determination of the appeal

The vast majority of cases are decided by the Inspector appointed by Planning and Environment Decisions Wales (PEDW) taking into account the evidence submitted. Some major appeal decisions are referred to Welsh Ministers for determination to allow or dismiss the appeal. Where it is allowed it is likely to be subject to conditions in the same way as permission granted by the LPA. If dismissed then the reasons will be made clear in the Inspector’s report or decision letter.

The decision can only be challenged on a point of law through application to the Courts or through judicial review. (See below).

Costs

The appellant and the LPA normally have to pay their own expenses for the appeal, whether it is decided by the written procedure, a hearing or an inquiry. The appellant can ask the Planning Inspector (or Welsh Government) to order the LPA to pay all or some of the costs. The LPA can also ask for the appellant to pay some or all of their costs.

If an application for costs is made, the Planning Inspector (or Welsh Government) make an award of costs where one party has behaved `unreasonably' and has caused another party to incur unnecessary expense as a result.

An award of costs is always at the discretion of PEDW (or Welsh Government) and would normally be made if:

- One of the parties has applied for costs at the appropriate stage;
- A party has behaved ‘unreasonably’; and
- This ‘unreasonable’ behaviour has caused the applicant and/or LPA to incur costs or waste expense unnecessarily.

Costs are not automatically awarded to the successful party, only on the demonstration of unreasonableness causing unnecessary expenditure. For example if a reason for refusal on an application related to an issue on which the LPA did not have any evidence, then this could be considered as unreasonable in considering the appeal.

Conversely, an LPA could claim costs, for example, where new information is introduced at the appeal hearing/ inquiry without sufficient time for this to be considered, although this practice should now be largely eliminated following changes made by the Planning (Wales) Act.

As such, it is important to realise that costs are not awarded just because an appeal goes in favour of one or other party; it is only where unreasonable behaviour resulting in unnecessary expense has been demonstrated, and generally where an award has been sought, although an appeal Inspector can unilaterally decide to awards costs as well.

Judicial Review

It is important to note that decisions of the Welsh Government (on call-in applications and appeals) and LPAs (on applications) can be challenged in the courts. However, this can only relate to a point of law, such as misapplied procedures, and not simply someone’s grievance at the outcome.

This type of challenge on Appeal to the High Court under S288 of the 1990 Act is usually only open to either the appellant or the LPA.

It may be possible for a third party to challenge a decision in the High Court if they are

an ‘aggrieved person’. However, the claimant must first make an application to the Administrative Court for permission to proceed with the claim. The purpose of this preliminary procedure is to filter out any unjustified or frivolous challenges given that the public sector can be vulnerable to such actions.

Any legal challenge must be made within six weeks of the decision being made.

Enforcement

There is little point in having a system of planning control if there are no powers to deal with development which proceeds without, or is in conflict with, a lawful permission. Where this does happen it is referred to as ‘unauthorised development’ and is subject to enforcement by the LPA.

Carrying out development without planning permission is not a criminal offence but clearly such action is to be discouraged. The LPA is not bound to take action in every case. Enforcement action is discretionary and should be used as a last resort and only when it is ‘expedient’ to do so, in the public interest. However, the fact that it is discretionary should not be taken as condoning the wilful breach of planning controls.

Advice on the enforcement of planning control is contained in PPW, Circular 24/97 and the newly published DM Manual.

The guidance describes a number of scenarios where unauthorised development could be made acceptable through conditions or negotiations on alternative sites and in situations where acceptable, but unauthorised development has been carried out. It also makes it clear that where unauthorised development causes unacceptable harm and there is no prospect of it being resolved satisfactorily then vigorous enforcement action should be taken immediately.

It also describes the various enforcement options and procedures in more precise detail and it is important that its guidance is followed in any proceedings that may be appropriate.

The following paragraphs describe the types of Notices that are often used to resolve planning land use contraventions. Note that failure to respond to a Notice is a criminal offence and subject to financial penalty.

It is also important to note that any planning enforcement action can only be taken if the timescale for taking action has not expired, which is 4 years from ‘substantial completion’ in the case of ‘operational development’, 4 years in the case of the unauthorised use of a building as a single dwelling and 10 years in all other cases, including another unauthorised material change of use having taken place.

Planning Contravention Notice

In deciding whether or not to serve an enforcement notice the LPA must be sure of its facts. Section 330 of the Planning Act enables the authority to demand information from the occupier of the land as to his or her interest. This is known as a Planning

Contravention Notice (PCN) and is the first step in the enforcement process.

- A PCN is served on the landowner/ operator to obtain information about suspected unauthorised development;
- Information provided is used to decide whether further action is required; and
- Failure to reply to the Notice can lead to a fine of up to £1000 upon conviction.

Enforcement Notice

Enforcement is an action of last resort and should be taken only when all other options to remedy a situation have failed.

- Enforcement is used when serious unauthorised development has occurred and requires the unauthorised development to be rectified within a specified timescale. It must state the steps needed to rectify the breach.
- The person(s) served with the Notice has 28 days to appeal against the Notice.
- An appeal can be determined by written representation, inquiry or hearing by an independent planning inspector. In many cases an inquiry is necessary and evidence is given on oath. If an appeal is dismissed, or no appeal is made, failure to comply with the requirements of the Notice will usually result in prosecution, the maximum fine being £20,000.

Direct action powers are available to the Council as a last resort, if a person does not or cannot comply with the requirements of an enforcement notice. The LPA can enter the land and undertake work to comply with the notice. The cost is then charged to the landowner/ operator, but in many cases this would have to be borne by the Council in the short term before being recovered. In the long term, it would be registered as a ‘charge’ against the land in the event of continued non-compliance.

Enforcement Warning Notice

This is intended for use where the LPA considers that an unauthorised development could potentially be made acceptable with control.

Breach of Condition Notice

The Breach of Condition Notice (BCN) is a powerful tool available to the LPA because it is generally simpler to prepare. It is mainly intended as an alternative to an enforcement notice in situations where there has been a failure to comply with a condition. A notice may be served on any person who is carrying out the development or any person having control of the land.

As a planning condition should only have been imposed out of necessity, it is likely that a failure to comply with it will be damaging and justify action to remedy the situation.

However, circumstances may have changed since the original condition was imposed and the planning authority will need to assess the current situation.

Like all enforcement action, a BCN can only be served within the specified time limits set out above.

The BCN requires a landowner/operator, or anyone with an interest in the land, to comply with planning permission conditions which they have breached, within a specified time-scale, which must be at least 28 days. Significantly there is no right of appeal and failure to comply could result in prosecution and a £1000 fine.

Stop Notices

In extreme cases it may be necessary to stop an unauthorised development continuing and the Council can then use the provisions of Section 183 of the Planning Act.

- Stop Notices can only be issued as an adjunct to a contemporaneous or pre-existing enforcement notice which has not yet taken effect.

- A 'draconian' measure used only in exceptional circumstances where it is essential that:

  a) activities cease immediately to safeguard amenity or public safety in the neighbourhood; or

  b) activities cease immediately to prevent serious or irreversible harm to the environment.

- Cannot be used to prevent the residential use of a building.

- There is no right of appeal. Non- compliance with a Stop Notice is an offence which carries a maximum fine of
  £20,000.

- LPAs are very cautious about serving Stop Notices because if the unauthorised development is later deemed to be acceptable through the grant of planning permission, either by the Authority or on appeal, then the Authority could be open to a substantial costs claim. However, an enforcement appeal under 'ground a' (for example, where a case is made that planning permission should be granted) is not a ground or compensation.

Temporary Stop Notice

This would be used in cases where it is expedient for unauthorised development to be stopped immediately, pending an enforcement response being arranged.

Completion Notice

Completion Notices can encourage the completion of a development that is causing harm by not being progressed and can also render any further development

unlawful, thereby effectively taking away planning permission.

Injunction

Injunctions may be sought in the most exceptional cases. This is done through the County or High Court, to restrain persons from carrying out or continuing unauthorised development.

The contravention of an injunction is contempt of court and the court can levy an unlimited fine or impose a custodial sentence.

The Enforcement Register

Every LPA must keep a Register of Enforcement Notices, Stop Notices and Breach of Condition Notices. The Register must be available for public inspection at all times.

Section 215 Notice: Dealing with Untidy Land

Section 215 Notices have often been referred to as wasteland notices. These are a discretionary power designed to remedy the condition of land or buildings which may have become derelict or an eyesore. They are generally only used when the site has been a problem for some time.

- These are served on a landowner when the poor condition and appearance of a property or land is detrimental to the surrounding area/neighbourhood.
- Notice requires proper maintenance of the land/property in question, and steps are stated to remedy the problem.
- Cannot be used if the complaint arises out of the lawful use of the land.
- Failure to comply could result in prosecution and a fine of up to £1,000.
- There is now a right of appeal to the Welsh Government.

Certificate of Lawfulness for an Existing Use or Development (CLEUD)

Sometimes it is necessary to establish whether an existing use is lawful or not and this is often the case when a particular use or development is subject to enforcement investigations. This is done by a formal procedure under section 191 of the Town and Country Planning Act 1990 whereby a local planning authority can issue a Certificate of Lawfulness for an Existing Use or Development, known as a ‘CLEUD’.

Lawfulness derives from the period for taking any enforcement action having expired, and/or the scheme not needing planning permission in the first place, or that it was ‘permitted development’ as described above.

Generally such an application is made because planning permission does not exist

for the use or development and this is a way of making the use or development lawful.

There are other circumstances where a person might want to establish that planning permission was not required in any event for the use or development, or that planning permission actually existed.

One example would be that a house had an extension built without permission despite it being required. After four years a person could apply for a CLEUD but would need to submit satisfactory evidence to demonstrate that it has been there at least four years preceding the application. Such evidence would need to be at least a Statutory Declaration made by a person or persons having first hand personal knowledge of the structure. This could be the current owner, the builder, a neighbour or perhaps a former owner. Any other further evidence would assist the application, such as photographs, invoices or documentation indicating the length of time it has been there.

A second example is where a use of land has been occurring without planning permission. This might be the use of a dwelling house for a number of bedsits or using the land for a different purpose. In this case the applicant would need to show that the use had been occurring continuously for at least ten years prior to the date of the application.

Satisfactory evidence would again be a Statutory Declaration together with additional evidence in the form of rent books, tenancy agreements, Council Tax invoices, Housing Benefit receipts and utility bills.

The onus is strictly on the applicant to provide all of the necessary evidence. As the matter is a legal determination the submission is reviewed on matters of fact and whether there is sufficient evidence to issue a Certificate. If there is not then it will be refused.

Any representations relating to the planning merit of the development will not be relevant to determination of the application but third parties may submit evidence that counters that of the applicant.

Certificate of Lawfulness for a Proposed Use or Development (CLOPUD)

The purpose of this is to establish whether a use or development (which has not yet occurred) needs planning permission.

An application should contain as much information as possible about the proposal and reasons why it does not need permission. As with a CLEUD the planning merits of the case are irrelevant.

Note that Lawful Development Certificate applications are not the same as a planning application. They are considered solely on matters of evidence and law. The planning merit cannot be considered. Therefore third parties cannot ‘object’ but they may wish to participate by submitting evidence that counters that of the

applicant.

Control of Advertisements

Advertisements, such as shop signs, hoardings, banners, etc. are controlled by the Town and Country Planning (Control of Advertisements) Regulations 1992. These are a complex set of regulations where advertisements are split into many different categories or “classes”. These differentiate between minor advertisements which are exempt from control, those which have the benefit of deemed permission provided they comply with specified restrictions, and those for which express consent must be applied.

Very briefly;

- Certain types of advertisement do not need consent, but illuminated advertisements and advertisements at first floor level or above, generally require consent.

- In general, an advertisement should be appropriate for the site or building on which it is to be displayed, with particular care being taken if the building is of historic or architectural interest. The aim should be to incorporate the advertisement into the overall character of the building, rather than to superimpose a standard of inappropriate design.

The LPA has a range of powers to control the unlawful display of advertisements.

Tree Preservation Orders (TPOs)

LPAs have specific powers to protect trees by making Tree Preservation Orders, although NRW is responsible for the control of felling for larger areas of trees (over 5 cubic metres).

A Tree Preservation Order is an order made by an LPA which in general makes it an offence to cut down, top, lop, uproot, wilfully damage or wilfully destroy a tree without the LPAs permission. The purpose of a Tree Preservation Order is to protect trees which make a significant contribution to their local surroundings.

This is particularly important where trees are in immediate danger and the LPA can, if it chooses, make an order which will come into effect immediately and will continue for six months, or until it is confirmed, whichever comes first.

When the LPA confirms the order it can modify it, for example by excluding some of the trees. Once confirmed, for any works to/removal of the tree(s) other than to dead, dying or dangerous wood, consent will be required from the LPA. The wilful destruction of a protected tree is a criminal offence and prosecution action can be instigated in such cases.

Anyone who wishes to fell, lop or top, or uproot trees within a conservation area, must give the Council six weeks’ notice in writing unless a tree is dying, dead or

dangerous or is a nuisance. It is an offence to carry out the work within that period without the consent of the Council.

Most TPOs have now been in place for many years and the LPA may need to periodically review and update them.

Chapter 4 – Conservation

Conservation of the Natural Environment

Natural heritage is not confined to statutorily designated sites but extends across all of Wales - to urban areas, the countryside and the coast. The Welsh Government's objectives for the conservation and improvement of the natural environment are to:

- promote the conservation of landscape and biodiversity, in particular the conservation of native wildlife and habitats, and reverse its decline (also known as nature recovery);
- ensure that action in Wales contributes to meeting international responsibilities and obligations for the natural environment;
- ensure that statutorily designated sites are properly protected and managed;
- safeguard protected species, and
- promote the functions and benefits of soils, and in particular their function as a carbon store.

A key role of the planning system is to ensure that land requirements are met in ways which safeguard and enhance the environment.

Whilst this can pose challenges, careful planning and design can often minimise conflict and successfully integrate conservation and development needs. In some cases new opportunities for sustainable development can also be created. For example, new development on previously developed land provides opportunities to restore and enhance the natural environment through land rehabilitation, landscape management and the creation of new or improved habitats.

It is important that biodiversity and landscape considerations are taken into account at an early stage in both development plan preparation and development management. The consequences of climate change on the natural environment and measures to conserve and enhance the landscape and biodiversity should be a central part of this.

Some sites are protected through statutory nature conservation designations which include Sites of Special Scientific Interest (SSSIs) and European derived designations such as Special Protection Areas (SPAs) and Special Areas of Conservation (SACs). Many species such as bats and badgers are also protected by legislation. A much higher level of control is exercised in these areas with Natural Resources Wales (NRW) becoming closely involved. The penalties for damaging these sites can be significant.

Other wildlife sites may have local designations and whilst these are not as significant there is nonetheless a need to pay particular attention to them in the decision making process.

Section 6 of the Environment (Wales) Act 2016, known as the 'Section 6 duty', requires public authorities to seek to maintain and enhance biodiversity in the exercise of their functions, including the planning function, and in so doing promote biodiversity and the resilience of ecosystems, so far as consistent with the proper exercise of those functions. In addition the UK Biodiversity Action Plan (UKBAP) includes objectives to conserve, and, where practicable, enhance wildlife habitats and species. The Welsh Government supports the preparation of Local Biodiversity Action Plans (LBAPs) by local authorities and these are an important source of information that can assist in designing quality development that meets habitat and species protection and enhancement.

Planning guidance on nature conservation is provided in TAN 5 'Nature Conservation and Planning' revised in 2009.

In general, all the countryside should be protected for its own sake and LPAs need to work with other stakeholders, in particular Natural Resources Wales (NRW) which has a statutory role in both the preparation of development plans and development management, and will provide specific advice on landscape and nature conservation issues.

Phosphates

A significant current issue relates to the state of the nation's rivers, some of which are designated SACs. Recent studies have found them to be too high in relation to phosphate levels. NRW have set new standards for these rivers across Wales. As a result, any proposed development within the riverine SAC catchments that might increase the amount of phosphate in the river, which could in turn lead to increased damaging effects, are effectively ruled out of gaining planning permission. This can also have an impact of developments being undertaken as 'permitted development (PD). Importantly too, the situation is having an impact on the delivery and adoption of development plans.

The **Conservation of Habitats and Species Regulations 2017** (as amended) requires a proposed development to be screened for 'likely significant effects'. If these cannot be ruled out, the LPA (or PEDW on appeal / Welsh Government on DNS/called-in applications) must undertake what is known as a Habitats Regs Assessment (HRA) if it is minded to approve an application. Any potential mitigation can only be taken into account at this HRA stage, known as Appropriate Assessment, and not at the initial screening stage. If, despite any mitigation, adverse effects on the SAC remain likely, the HRA can only reasonably conclude that the proposed development would be unacceptable in terms of its impact on biodiversity, a known and accepted material planning consideration. This would mean that the application should be refused. NRW have provided guidance on the issue, although it is fair to say that understanding around impacts and solutions is a developing area.

Conservation of the Historic Environment

It is important that the historic environment, which encompasses archaeology and ancient monuments, listed buildings, conservation areas and historic parks, gardens and landscapes (collectively known as designated and non-designated heritage

assets), is protected. The Welsh Government's objectives in this field are to:

- positively manage change affecting the historic environment, recognising its contribution to economic vitality and culture, civic pride and the quality of life, and its importance as a resource for future generations; and specifically to;

- protect archaeological remains, which are a finite and non-renewable resource, part of the historical and cultural identity of Wales, and valuable both for their own sake and for their role in education, leisure and the economy, particularly tourism;

- ensure that the character of historic buildings is safeguarded from alterations, extensions or demolition that would compromise a building's special architectural and historic interest; and to

- ensure that conservation areas are protected or enhanced, while at the same time remaining alive and prosperous, avoiding unnecessarily detailed controls over businesses and householders.

LPAs have an important role in securing the conservation of the historic environment while ensuring that it accommodates and remains responsive to present day needs.

LPAs must work with the Welsh Government and other agencies having particular responsibilities and powers in respect of the conservation of the historic environment. The government's executive agency CADW: Welsh Historic Monuments has responsibility for protecting, conserving and promoting an appreciation of the historic environment of Wales.

Together with the Historic Environment (Wales) Act and TAN 24, the Welsh Government and CADW have published a series of documents aimed at providing increased guidance to areas relevant to the historic environment and the management of heritage assets.

Listed Buildings

Our best buildings of architectural or historic interest are statutorily protected and graded as Listed Buildings. The most important are Grade I followed by Grade II* and Grade II and any alterations are subject to first obtaining **Listed Building Consent, (LBC)**.

The consent procedure equally applies to demolition. Also, the 'setting' of a listed building can be just as important and is given its own statutory protection by virtue of Section 66 of the **Planning (Listed Buildings and Conservation Areas) Act 1990**. Some non-listed buildings which affect the setting also come under control. There is a general presumption in favour of preserving listed buildings, and their settings.

Any planning decision will have to have particular regard to the features that warranted the listing and these include internal features and fittings. Demolition or alteration without listed building consent is a criminal offence which highlights the importance of

protecting our heritage. In extreme cases there are powers available to the LPA to serve both an Urgent Repairs Notice and/or a Repairs Notice on the owner and also to undertake urgent emergency works to safeguard unoccupied listed buildings which are in a serious condition. In the latter case the authority can seek to recover costs from the owner. In the absence of an owner acting on the Repairs Notice an authority can seek to purchase the building under compulsory powers.

Authorities also have the power to serve a Building Preservation Notice (BPN) in respect of unlisted buildings which are considered to be of special architectural or historic interest and in danger of demolition, or alteration which would detrimentally affect their character.

In some cases, the LPA may have produced a local list of buildings of interest; these do not have the same level of protection but may be subject to supplementary planning guidance.

Conservation Areas

LPAs are obliged to designate as a conservation area any 'area of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance'. Authorities consult with Cadw when conservation areas are designated.

Conservation area status protects these special architectural or historic areas of interest. They are generally much appreciated by residents and visitors alike. Many have active local civic societies that comment on proposals within the areas.

Applications for planning permission for new development in conservation areas are more rigorously assessed to consider whether proposals preserve or enhance the special character or appearance of the conservation area. This legal duty, set out at Section 72 of the **Planning (Listed Buildings and Conservation Areas) Act 1990**, is generally elaborated in the policy guidance contained in a council's development plan and any supplementary guidance.

Within these areas there are tighter controls over planning permission for new development as well as additional planning controls to protect the area's special interest.

Additional powers include:

- Full or substantial demolition of buildings and most structures requires separate Conservation Area Consent from the Council. It is illegal to undertake demolition without consent.

- Trees in conservation areas are protected. For trees not already protected by a specific Tree Preservation Order (where separate rules apply), notice must be submitted to the Council for any works to a tree in a conservation area.

- Conservation areas often include individually listed buildings for which normal listed building controls apply to protect both the interior and exterior.

- Minor works that normally occur as ‘permitted development’ (PD) without the need for permission are likely to require planning permission from the LPA. This covers most minor household structures and alterations affecting external appearance, including replacement windows.

- Some areas are subject to ‘Article 4 Directions’ which take away certain permitted development rights (PDRs).

Archaeological remains

The desirability of preserving an **ancient monument** and its setting is a material consideration in determining a planning application whether it is scheduled or not. Where scheduled monuments are likely to be affected by proposed development, there should be a presumption in favour of their physical preservation in situ. In cases involving lesser archaeological remains, local planning authorities need to weigh the relative importance of archaeology against other factors, including the need for the proposed development. The regional archaeological trusts in Wales are consulted as well as Cadw and provide valuable information and advice.

Chapter 5 – Minerals

Minerals are a valuable national resource and vital to a modern economy. They are essential raw materials which underpin the manufacturing industry, construction and agriculture. Society enjoys important benefits from their extraction and use through their contribution to wealth creation, our infrastructure, housing and consumer needs. However, the extraction of minerals can have significant impacts on the landscape, environment and the quality of life of people living nearby.

Minerals are defined in Town and Country Planning legislation as ‘all substances in, on or under land of a kind ordinarily worked for removal by underground or surface working, except that it does not include peat cut for purposes other than for sale.’

Control over minerals development is the responsibility of the "Mineral Planning Authority", i.e. any local authority with responsibility for planning control over mineral working.

Mineral working is different from other forms of development in that:

- extraction can only take place where the mineral is found to occur;
- it is transitional and cannot be regarded as a permanent land use even though operations may occur over a long period of time;
- wherever possible any mineral workings should avoid any adverse environmental or amenity impact;
- where this is not possible working needs to be carefully controlled and monitored so that any adverse effects on local communities and the environment are mitigated to acceptable limits; and when operations cease land needs to be reclaimed to a high standard and to a beneficial and sustainable after-use so as to avoid dereliction, and to bring discernible benefits to communities and/or wildlife.

Because of the long term nature of most minerals developments, authorities have to undertake periodic reviews of planning permissions to ensure that they are kept up to date.

The main aims of minerals planning as expressed in Planning Policy Wales are:

- Social progress which recognises the needs of everyone: to provide for the benefits of increased prosperity through an adequate supply of minerals that society needs now and in the future, together with protecting and improving amenity.
- Effective protection of the environment: to protect things that are highly cherished for their intrinsic qualities, such as wildlife, landscapes and historic features; and to protect human health and safety by ensuring that environmental impacts caused by mineral extraction and transportation are within acceptable limits; and

to secure, without compromise, restoration and aftercare to provide for appropriate and beneficial after-use.

- Prudent use of natural resources: to help conserve non-renewable resources for future generations through efficient use, recycling and minimisation of waste; to protect renewable resources from serious harm or pollution; and to promote the use of appropriate alternative materials.

- Maintenance of high and stable levels of economic growth: to ensure an adequate supply of minerals that are needed at prices that are reasonable; and to safeguard mineral resources for future generations.

- The planning responsibilities of minerals planning authorities (MPAs) are essentially threefold **Forward Planning**: The MPA will be responsible for formulating policies and plans to guide future development and these will be expressed as policies in the LDP. Supplementary Planning Guidance may also be produced.

- **Development Management**: Regulating individual developments that are proposed through deciding planning applications. The MPA will seek to minimise any adverse impacts caused by development and will have regard to national, regional and local policies for the supply of minerals. The overall aim is to meet the justified need for minerals, as far as practicable, at the least social, economic and environmental cost. Wherever possible, areas of designated landscape, nature conservation or heritage value are protected from mineral development.

Monitoring and Enforcement: MPAs will monitor and inspect existing developments to ensure that they are working within any legal constraints and conditions contained within the planning permission. Many minerals workings operate under permissions granted as long as 50 years ago when controls and methods of working were a lot different. There is a process known as the **ROMP** (Review of Old Minerals Permissions) whereby the MPA has a duty under the Environment Act 1995 to review and update mineral planning permissions granted after 1948. These reviews allow for updating the older mineral planning permissions by imposing modern operating, restoration and aftercare conditions upon the site. Like standard planning applications for minerals development the applications for new schemes of conditions (ROMPs) go through statutory consultation and publicity procedures. However, unlike standard planning applications, refusing an application for updated planning conditions is not an option. Normally ROMP applications will be accompanied by an Environmental Statement which assesses the likely environmental impact of the development.

Joint Working

The minerals (and waste) services of the LPAs is an area which has been subject to review in the past. This is a specialist area of planning which performs better on a broader regional level than existing local authority boundaries. In North Wales this has already been set up to operate as one body covering North Powys, Wrexham, Flintshire, Denbighshire, Conwy, Gwynedd, Ynys Mon and Snowdonia National Park with Carmarthenshire taking the lead in South and West Wales.

Regional Aggregates Working Party Two regional working parties are established in Wales which comprise members and officers of the MPAs and industry representatives. Their purpose is to gather information and monitor the supply of aggregates to ensure that an appropriate sustainable level of supply is maintained. The information is valuable for future forward planning.

Chapter 6 – Local Authority Performance Measurement

The Welsh Government is committed to supporting the delivery of effective and efficient public services that meet the needs of people in Wales. All local authorities and National Park authorities have a duty to make arrangements to secure continuous improvement in the exercise of their functions. The aim is for authorities to enhance the sustainable quality of life and environment for local citizens and communities, and to foster improved placemaking for the benefit of all.

As part of the approach, the Welsh Government has created a **Planning Performance Framework** designed to measure the performance of LPAs in helping to achieve Welsh Government's overall planning objectives. Welsh Government itself produces an all-Wales **Annual Performance Report**, the last being 2018-19. The reason for not producing a more recent version is because of the focus being diverted away from performance as a result of the pandemic, although the need to be measured against targets remains, with full reporting and submission of performance data to commence again for the 2021/22 year.

The Planning Performance Framework works on a traffic light system and measures performance against key indicators centred around: development plan-making, efficiency, quality, engagement and enforcement. There is also a development management (DM) quarterly survey report produced looking at the speed within which decisions on planning applications are made; the latest published data involving the quarter Jan to March 2021.

Welsh Government has also stated previously that where there is significant variation in performance among authorities, the Welsh Ministers will have the power to designate an LPA as poorly performing. When and if this occurs, applicants will be able to submit certain types of planning applications direct to the Welsh Ministers.

Each local planning authority must publish an annual assessment of its performance and should also:

- Use both qualitative and quantitative data to monitor and review performance, using the results to secure continuous improvements to the service;
- communicate effectively, giving clear, full information about how people can participate in planning matters;
- ensure that all interested parties are fully consulted, particularly on development plans and planning applications;
- make services easily available to all who need them, using technology to the full;
- use resources effectively, working with others to provide coordinated services, treating everyone fairly; and
- have an effective, easy to use complaints system which allows matters to be put right quickly and effectively.

Performance measurement is a key management tool in helping to achieve improvements in local services. The Welsh Government, Local Government Data Unit-Wales, Welsh Local Government Association and other partners have worked together to provide a consistent and coherent set of measures for the Welsh Government, local government, the public and other stakeholders.

Performance targets for planning applications are established in law. There is a statutory duty for LPAs to determine planning applications within 8 weeks of the receipt of a valid planning application (or 16 weeks where applications require an Environmental Statement), or within such extended period as has been agreed.

The target figure requires 80% of applications to be determined within these periods. Along with qualitative data produced annually, Development Management quantitative data in relation to decisions made within these timescales is published by the Welsh Government on a quarterly basis as stated above.

Factors that influence the determination period

The ability of an LPA to achieve the target figure is influenced by factors such as:

- the quantity of applications received;
- seeking to improve the quality of the application during its processing;
- resourcing – having the right staff numbers and skills;
- working practices;
- effective performance management;
- availability and quality of IT systems;
- the complexity of applications;
- the opportunity for pre application discussions;
- the response times of consultees (all statutory consultees are now required to give a ‘substantive’ response within a certain timescale);
- the extent of delegation to the Chief Planning Officer; and
- Committee cycles.

Importance of the determination rate

The proportion of applications determined in time has been used for some years as a way of identifying ‘under-performing’ LPAs and benchmarking their ability to improve.

- However, speed is not the sole indicator of performance and clearly getting the

decision right is seen by many as the most important. There are other ways of measuring performance and the quality of service delivery. This can include how the service interacts with its customers, how easy it is to obtain information and whether the information is kept up to date. Many authorities have a forum where representatives of users of the planning service can be listened to and views exchanged.

For the development sector the opportunity for meaningful and constructive pre-application discussions is critical and highly valued.

Other criteria indicate whether an adopted development plan is in place and the number of advertised departure applications approved by the Authority. The importance of the development plan as the basis for planning decisions has already been stressed. It continues to be essential to prepare and adopt plans as soon as possible so that a firm, clear, consistent basis for a decision exists. A plan, prepared with full public consultation and Member involvement, increases an Authority's ability to provide the improved services. It should lead to a reduction in Member lobbying, departure applications, and may lead to fewer appeals and complaints to the Local Ombudsman, resulting in better quality planning decisions.

Appeal success rates are also measured. In addition, a range of effective enforcement indicators is being developed in conjunction with LPAs and other stakeholders.

As a final note, it is also important to note that Audit Wales undertakes reviews of individual LPA planning services to consider their effectiveness in delivering key planning objectives of the Welsh Government. In June 2019, it also published an over-arching report that considered **The Effectiveness of Local Planning Authorities in Wales**, concluding that they were both under-resourced and under-performing, recommending a series of initiatives to help improve performance. These included: better stakeholder involvement, the need for more collaborative working, the requirement to strengthen decision-making and the establishment of clear and ambitious visions for their areas.

In addition, the Public Services Ombudsman for Wales considers complaints concerning the handling of planning applications by LPAs, which is an aspect of their performance, publicising their findings and recommendations for action.

Chapter 7 – The Planning System and the Members' Code of Conduct

Each local planning authority is required to prepare a Code of Conduct for Councillors in accordance with **The Local Authorities (Model Code of Conduct) (Wales) Order 2008 (as amended)**. This includes a specific requirement that Members should approach planning decisions with an open mind, fairly and impartially, and be seen to do so.

The Code is considered necessary particularly given the pressures that Members can experience. Local issues can swiftly emerge once a development is proposed and these can be highly emotive and locally controversial and local Members will need to be receptive to residents' concerns and at the same time have regard to planning policies and guidelines. It can be easy to get caught in a groundswell of popular public opinion and be swayed by perceived impacts as opposed to actual impacts. However, poor decisions, lack of fairness and impartiality can damage the reputation of both the planning system and the Council. The Code exists to safeguard against improper conduct.

The Public Services Ombudsman for Wales can investigate claims that a Member has failed to abide by a local planning authority's Code of Conduct. The Ombudsman's office has also published its own guidance on the **Code of Conduct for members of local authorities in Wales**, updated in May 2021. The guidance confirms that elected or appointed Members must sign up to the Code as part of their declaration of acceptance of office. It also stresses the need to take advice from the Council or Authority's own **Monitoring Officer** when necessary.

Specifically, the Ombudsman's updated guidance explains the revised two-stage test that would be used to consider when deciding on whether to investigate or to continue with an investigation of a breach of the Code, to the stage of referring the matter to a standards committee or the Adjudication Panel for Wales. It also includes guidance on the use of social media and political expression, and aims to provide assistance to Members on the issue of interests.

In October 2021, the Welsh Government also published a commissioned **Independent Review of the Ethical Standards Framework in Wales**, which proposes a number of changes to the Code around matters such as consistency, public confidence and interests.

Clearly, this is an area that is subject to continued reflection and review. The following section should, therefore, be seen as a guide, and Members should continue to seek advice from their Monitoring Officers, as appropriate. A point worth noting at this stage, however, concerns the use of **Social Media**. The Welsh Local Government Association (WLGA) has produced its own guidance on this entitled 'Social Media: A Guide for Councillors', available on its website: www.wlga.wales. An important point to remember is that whenever something is posted on social media, either a one-off comment or a commentary, it becomes a publication, in the public domain, and is subject to both the Code of Conduct and to various laws.
The main aspects of the Code relate to the principles as set out in the **Conduct of**

Members (Principles) (Wales) Order 2001 (as amended), which can be summarised as follows:

- **Promotion of equality and respect for others**. While there may occasionally be circumstances where personal needs are taken into account in reaching a planning decision, Members must consider applications on the basis of policy and not the identity or personal characteristics of the applicant. Members should not put pressure upon Officers to reach particular decisions. They have a duty to show respect for the impartiality of the LPA's employees.

- **Accountability and openness**. Members have a duty to respect information about planning matters given in confidence. They also have a duty not to prevent anyone gaining access to information.

- **Duty to uphold the law**. Members must not commit a criminal act, or cause one to be committed. They must report any other Member who does so.

- **Selflessness and stewardship**. Members must not use their position to secure an advantage for themselves, their family or friends. This could particularly apply to policy formulation in Development Plans and the consequent determination of planning applications.

- **Objectivity and propriety**. Members have a duty to represent their constituents, but ultimately their responsibility is to the wider community in the authority as a whole. Decisions must be taken on the merits of the proposal, and the requirement to determine applications on the basis of the Development Plan unless material considerations lead them to decide otherwise.

- **Integrity and leadership**. Members have a duty not to accept gifts or hospitality for themselves or for anyone with whom they live so that they are not placed under an improper obligation. This is essential to avoid perceptions that decisions have not been fairly, openly and consistently taken. It could cover applicants providing trips to see developments in other areas, gifts or hospitality provided to Members carrying out site inspections and visits to sporting events. Members should not provide or arrange gifts or hospitality for Officers, since that could be seen to compromise their impartiality.

- **Disclosure and registration of interests**. It is the responsibility of each Member to decide whether they have a personal interest in a planning matter for the wide variety of reasons set out in the Code. If a Member has such an interest they must declare it and not take part in consideration of the matter concerned, unless granted dispensation to do so. Failing to do so undermines the integrity of the LPA's planning services and could eventually open its decision to the possibility of legal challenge.

Roles and Responsibilities

This section describes how the roles and responsibilities of Councillors on a planning committee differ from those that are non- planning committee Members. It also includes a brief word on officers.

Planning committee Members are generally regarded as decision makers. As such and as a general rule they need to ensure that, for example, they:

- Keep an open mind up until the point of decision
- Ensure that there are no personal or prejudicial interests that would prevent them from acting in this way
- Remain impartial and do not discuss a planning application outside of the planning committee process
- Do not allow themselves to be lobbied by, for example, an officer, applicant or a third party
- Do not lobby or influence another decision maker or the planning officer
- Do not become involved in a local support or objection group
- Do not accept any gifts or other hospitality
- Do not accept any material outside of the planning committee process. If this happens, they should inform the planning officer so that the material can be made available to all, independently and by the planning officer
- Do not attend any meeting that is not arranged by the planning officer
- Do not give any commitment
- Do not bring detailed representations to the committee meeting to refer to as this would indicate a closed mind
- Do not take part in the vote if they have not heard all the evidence
- Provide reasons if they go against the advice of the planning officer
- Take no further part if they feel prejudiced, for whatever reason
- Are careful not to express an opinion if calling an application to committee.

A planning committee Member can still play a local representative role but if so, it is important to note that in such circumstances, they cannot continue to be a decision maker.

Non-planning committee Members are generally free to, for example:

- Discuss any planning application with an applicant and/or lobby group
- Attend any meeting arranged by an applicant and/or lobby group
- Attend and speak at a Town and Community Council meeting
- Relay relevant information about an application to the planning officer
- Seek information from the planning officer

But they cannot improperly influence planning officers, who are bound by their own code of conduct, which would prevent this. If members of the Royal Town Planning Institute (RTPI), officers are also bound by a professional code of conduct.

An **officer** must also, for example:

- Act with competence, honesty and integrity
- Fearlessly and impartially exercise their own independent professional judgement
- Discharge their duties to their employer with due care and diligence

- Not bring the planning profession into disrepute
- Decline any gift or hospitality

Officers and Members have different but complementary roles. Officers are bound by professional standards whereas Members can feel responsible to their electorate.

Sometimes, therefore, officers will make recommendations that are at odds with elected Members' views. However, it is important, both for officers and Members alike, to respect each other's respective roles.

Issues to which Members need to have regard

Some of the issues to which Members need to have regard are set out below.

1) Weight attached to residents' concerns

The advice in PPW on the weight Members should attach to local concerns is clear:

"When determining planning applications, local planning authorities 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 a planning permission; objections, or support, must be based on valid planning considerations.

2) Responding to local residents

Members have a duty to listen to the concerns of residents and it is better to think carefully before responding and avoid taking a firm position one way or another before all relevant information has become clear. A good approach would be to take on board the concerns expressed and commit to obtaining more information having passed those concerns on to officers. It may be that further clarification can help allay any fears or assurances can be given that local views will be fully taken account of in the consideration of the proposal. A response from officers on particular aspects or the arrangement of a meeting so that views can be expressed directly to officers could be very helpful. The opportunity for a local representative to speak at Planning Committee will also provide assurance that local views will be heard.

It is important to remember that there will often be a number of different views that need to be taken into account and a supportive, balanced response to local residents is often the best approach.

However, once all the relevant information and facts have become clear, a local Member is quite entitled to take a particular position on a proposal so long as it is recognised that if this amounts to a closed mind to the issue this will preclude that Member from taking part in the decision, ie voting at Committee.

In general the best approach will be to give assurances to the local community that all the issues that they raise will be carefully taken into account before a decision is made.

3) Responding to the media

Ward Members are often contacted by the media for an opinion on planning matters that are considered to be newsworthy. Local journalists will often look for controversy and what is said to them needs to be carefully considered. Sometimes partial quotes can give a misleading view of the context of what is actually said. Whilst the Member is entitled to make known an opinion it may be appropriate to comment on the importance of hearing all the arguments, making reference to the development plan and establishing facts with officers.

It is important that those Ward Members who are also on the Planning Committee do not close their mind to an opinion on the proposal. This will ensure that the outcome is not pre-judged and that the committee will be the correct forum for consideration of the proposal.

4) Party political loyalty

In assessing planning proposals, there is a requirement to balance a number of considerations on policy and other matters before reaching a conclusion. The Planning Committee ought not to be the place for party political voting.

5) Declaration of interest

A member who has any pecuniary interest in a matter about which a decision is being made, whether direct or indirect, should never let their interest influence the decision. It is not enough to avoid actual impropriety. Members should always avoid any occasion for suspicion. Members should disclose any interest and should not speak or vote and, depending upon the Standing Orders, may have to withdraw.

The criteria for determining what a ‘clear and substantial’ interest is whether:

“The public, knowing the facts of the situation, would reasonably think a Member might be influenced by it.”

There is a distinction between a personal interest and a prejudicial interest and the first may not necessarily preclude a Member from taking part in the decision making process.

Members must think how a situation would appear to the public and if they have any doubt they should take a cautionary stance and seek the advice of the legal officer.

6) Pre-Application Discussions

In 2016 Welsh Government made it mandatory for LPAs to offer a pre-application service. It also made pre-application community consultation mandatory for all ‘major' applications. This includes consultation with the local Member. The regulations require applicants and developers to submit a report with their subsequent planning

applications describing how the pre- application community consultation has been taken into account in the final proposals.

As such, the Welsh Government has kept its commitment for elected Members to be involved at the pre-application stage.

Members are not allowed to “pre-determine” their verdicts on applications, meaning that if they are a decision maker, they must enter the committee room with an open mind. This pre-determination rule is not intended to prevent councillors discussing schemes with applicants and others and Members should be able to talk to developers and local people, as long as they do not say anything which indicates that they have made up their mind on how to vote. Councillors have been so concerned about falling foul of the ‘pre-determination’ rule that they often decline to engage with applicants and other stakeholders.

The Localism Act has altered this rule by stating that a decision-maker should not be seen to have had a closed mind when making a decision simply because he or she “had previously done anything that directly or indirectly indicated what view the decision- maker took, or would or might take, in relation to a matter”. Care needs to be exercised here as it may be that the courts could still overturn decisions where they detect that committee Members have closed minds. If Members announce their voting intentions in advance of the meeting, then it is likely to damage the perceived fairness of the planning system.

Therefore, Members must exercise caution in not only what they say but the manner in which they say it.

Members would be best advised to have any meetings in the council offices with officers present and notes kept and placed on file.

The Welsh Government’s “Realising the potential of pre-application discussions” dated May 2012 advises that where local Members seek active engagement in pre-application discussions, their involvement will need to be considered against the local authority’s Code of Conduct. As such, any Member should seek advice in the first instance from their own officers.

Remember that if the Code of Conduct is adhered to then the potential for allegations of corruption, bias, pecuniary interest or other breaches of natural justice ought not to arise.

To conclude, remember that if the Code of Conduct is breached then the potential consequences can be serious and damaging. This could include:

- the matter coming before the courts if corruption is suspected;
- a judicial review on a matter where the law has been misapplied or there has been a breach of natural justice; and
- a complaint to the Public Services Ombudsman for Wales if maladministration has occurred.

A number of example cases of maladministration are listed at Appendix A.

Chapter 8 – National Parks and Areas of Outstanding Natural Beauty

National Parks

The landscape of Wales is particularly varied and contains some of the most important countryside in the UK. The best are protected as National Parks and Areas of Outstanding Natural Beauty (AONBs).

The concept of National Parks arose with the public demand for greater access to the countryside in the early 20th Century including the 1932 Kinder Mass Trespass. In 1945 John Dower's White Paper on National Parks was published which in turn led to the National Parks and Access to Countryside Act 1949. This is the legislation that enabled the designation of National Parks.

There are three National Parks in Wales with the possibility of a fourth anticipated for the Clwydian Range and Dee Valley in north-east Wales. Snowdonia was designated in 1951 followed shortly after by Pembrokeshire Coast in1952 and then the Brecon Beacons in 1957. Whilst the 1949 Act established the Parks their current form as independent authorities evolved much later on in 1996 with the implementation of Part III of the Environment Act 1995. This established them as local planning authorities with additional responsibilities for countryside management. Responsibilities for other services such as for housing, education, highways, social services continue to rest with the relevant Unitary Authorities.

A third of Park Authority members are appointed by the Welsh Government and some or all of these may be on Planning Committee.

The Parks are subject to the same planning legislation and regulation (although with reduced 'permitted development' rights) but have two specific statutory purposes established through the 1995 Act. These are:

- To conserve and enhance the natural beauty, wildlife and cultural heritage the National Parks; and
- To promote opportunities for the public understanding and enjoyment of the special qualities of the Parks.

These two purposes are of great significance as decision makers must have regard to them in deciding on proposals within the Parks.

The natural quality of the Parks are such that if proposed development raises a conflict between these two purposes then conservation should come first. This is known as the Sandford Principle and is interpreted as "where those two purposes cannot be reconciled by skilful management, conservation should come first".

This follows the considerations of the National Parks Policy Review Committee which reviewed the National Parks in the early 1970's and chaired by Lord Sandford.

He stated that;
"National Park Authorities can do much to reconcile public enjoyment with the preservation of natural beauty by good planning and management and the main emphasis must continue to be on this approach wherever possible. But even so, there will be situations where the two purposes are irreconcilable... Where this happens, priority must be given to the conservation of natural beauty."

The Silkin Test

Normally you would not expect to see new major developments in National Parks. Such development should only occur in exceptional circumstances where the Silkin Test is met.

This is a national (UK) planning policy designed to control major developments which will have an impact on National Parks (and AONBs).

The three main criteria state that:

- the development must be in the national interest;
- there is no practicable alternative to development in a National Park; and
- the development must be built in a way that minimises detrimental effects on the environment.

The test was established by Lord Silkin. It states that “Major developments should not take place in these designated areas, except in exceptional circumstances”. This includes major development proposals that raise issues of national significance. Major decisions should also be taken having regard to the National Park Management Plan, which sets out a 20-year strategy and 5-year actions, creating a framework for National Park management and guiding decision- making and priorities for everyone involved.

Because of the serious impact that major developments may have on these areas of natural beauty, and taking account of the recreational opportunities that they provide, applications for all such developments should be subject to the most rigorous examination. Major development proposals should be demonstrated to be in the public interest before being allowed to proceed.

Consideration of such applications should therefore include an assessment of:

i. the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
ii. the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way; and
iii. any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.”

PPW also includes a section on major developments in a National Park, stating that “Major developments should not take place in National Parks or AONBs except in exceptional circumstances.”

It should also be noted that the 1995 Act amended the 1949 Act to introduce a duty on the Park Authority to foster the economic and social well-being of their communities and for other public bodies to have regard to the purposes of the National Parks when carrying out their functions.

As mentioned above, the Parks also have an obligation to produce a Park Management Plan which seeks to coordinate and integrate all other plans, strategies and actions within the park's boundaries. The Local Development Plan should be consistent with the Park Management Plan. The plan promotes coordinated implementation, monitoring and evaluation of activities collectively across a wide range of partners and stakeholders. In essence the plan creates a framework from which park management and guiding principles can be taken.

Future SDPs will also need to have regard for the Management Plan and for the statutory purposes outlined above.

Specific Welsh Government guidance for the Parks is set out in PPW, which states that “National Parks and AONBs are of equal status in terms of landscape and scenic beauty, and must both be afforded the highest status of protection from inappropriate developments.”

Areas of Outstanding Natural Beauty

There are five Areas of Outstanding Natural Beauty (AONB) in Wales (one shares a boundary with England). These are landscapes whose distinctive character and natural beauty are so special that it is in the nation’s interest to protect them. They are designated as such through the National Parks and Access to Countryside Act 1949.

Because of their fragile natural beauty the primary purpose of AONB designation is:

- To conserve and enhance the natural beauty of the landscape.
- There are two secondary aims which complement the purpose:
- To meet the need for quiet enjoyment of the countryside; and
- To have regard for the interests of those who live and work there.

PPW states that AONBs are of equal status to National Parks in a planning sense.

In achieving these aims, like National Parks, each AONB relies on stricter planning controls together with practical countryside management.

Valued and Resilient

In 2018, the Welsh Government published its priorities for National Parks and Areas of Outstanding Natural Beauty in **Designated Landscapes: Valued and Resilient**. The publication outlines the key priority areas following consideration of the outcomes from the Review of Designated Landscapes, Future Landscapes Wales Programme and responses to the Taking forward Wales’ sustainable management of natural

resources consultation. It provides clarity of purpose for the National Parks and AONBs following a period of review, with a renewed commitment to designated landscapes and their purpose.

It highlights the following 10 cross-cutting themes which aim to improve resilience and realise the full value of Wales' landscapes:

• Landscapes for everyone

• Exemplars of the sustainable management of natural resources

• Halting the loss of biodiversity

• Green energy and decarbonisation

• Realising the economic potential of landscape

• Growing tourism and outdoor recreation

• Thriving Welsh language

• All landscapes matter

• Delivering through collaboration

• Innovation in resourcing

Chapter 9 – Environment Impact Assessment

Environmental Assessment (EA) is the process by which information about the environmental effects of a proposal is collected, assessed and taken into account by the LPA in reaching a decision on whether certain types of often major and unneighbourly developments should be approved. The expression 'Environmental Impact Assessment' (EIA) is also in common use and for practical purposes means the same as EA.

An Environmental Statement (ES) is a publicly available document. It sets out the developer's own assessment of the likely environmental effects of a proposed development. It is prepared by the developer and submitted with the planning application. Responsibility for compiling the environmental statement rests with the developer, who is expected to consult those with relevant information.

Public authorities that have such information in their possession are required to make it available to the developer. All environmental statements must include a description of the project and a summary of its likely effects in non-technical language. The Environmental Statement must be publicised, and the public and authorities with environmental responsibilities must be given an opportunity to comment.

EIA is essentially a planning tool for preventing environmental problems which may arise from a development. It seeks to avoid costly mistakes in project implementation, either because of the environmental damages that are likely to arise during project implementation, or because of modifications that may be required subsequently in order to make the action environmentally acceptable.

The aim of the EIA process is to assess the overall impact on the environment of development projects proposed by the public and private sectors.

The objectives of EIA are:

- To examine and select the best from the project options available;
- To identify and incorporate into the project plan appropriate abatement and mitigating measures;
- To predict significant residual environmental impacts;
- To determine the significant residual environmental impacts predicted; and
- To identify the environmental costs and benefits of the project to the community.

The EIA is required under The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017. Guidance is provided in Welsh Office Circular 11/99 "Environmental Impact Assessment".

Development subject to EIA

The statutory provisions apply to two separate types of projects grouped into 'Schedules'.

For 'Schedule 1 projects', an EIA is required in every case. Examples include: crude-

oil refineries; major chemical and steel works; aerodromes with a runway length over 2,100 metres; the storage or disposal of toxic wastes.

EIA is required for 'Schedule 2 projects' only if the particular project in question is judged likely to give rise to significant environmental effects. These could include large pig and poultry rearing units; minerals extraction; metal processing; chemical, food, textile or rubber industry; waste disposal and certain urban infrastructure projects.

Screening

The exercise of determining the need for an EIA is called 'screening'. Where necessary this is done at outline stage or prior to the submission of a full application if no outline is submitted. In some instances, where the detail at reserved matters has revealed new or additional likely significant effects on the environment not identified and/or assessed at outline stage, it will be necessary for a second screening process to be carried out. The approval of reserved matters without obtaining the necessary environmental information is likely to be in breach of the regulations and potentially unlawful.

Usually an applicant will apply to the LPA for a screening opinion as to whether the project falls within the scope of the statutory provisions thereby requiring an environmental statement (ES). The LPA provides a formal response having first carried out consultations with key bodies such as Natural Resources Wales.

Annex 3 of the Regulations provides further guidance on how to assess 'significance' to determine the need for an EIA in the case of Schedule 2 projects.

There are three main considerations to be taken into account when 'screening' or deciding whether a proposal is considered to be an EIA development:

a) Whether the project is a major one of more than local importance especially in terms of its size;
b) Whether the project is intended for a particularly sensitive location, e.g. a National Park, an Area of Outstanding Natural Beauty, or an area of Special Scientific Interest, World Heritage Site or Scheduled Ancient Monument, and for that reason may have significant effects on the environment even though the development is on a smaller scale, (not all Schedule 2 projects in sensitive locations will require an EIA); and
c) Whether the project is thought likely to give rise to particularly complex or potentially hazardous environmental effects, e.g. in the discharge of pollutants.

A developer who disagrees with the LPA's determination that an EIA is required may refer the matter to the Welsh Government.

Scoping

Once it has been determined that an EIA is needed a developer will then ask for a scoping opinion whereby the authority, in consultation with NRW, will respond to confirm the issues that the EIA will need to address. Typical examples of the issues to

be considered include:

- hydrology;
- geology;
- ground contamination;
- noise and disturbance;
- air quality;
- socio-economic impact;
- transport impact;
- visual impact;
- health impact; and
- other effects, including those on population, flora, fauna and heritage.

Certain information is obliged to be included, and this is set out in Schedule 4 of the Regulations.

Advantages of EIA

The advantages of EIA are that it should provide a basis for better decision making.

The process should draw the attention of developers at an early stage to the potential environmental effects of their proposals so that they can incorporate remedial measures into their designs. A further advantage is that the implications of proposed new development should be thoroughly analysed before a relevant planning application is made, and more comprehensive information provided with the application. As a result quicker decisions may also be possible.

The benefit to the public is that by providing a full analysis of a proposal's likely effects, an environmental statement (ES) can help to provide information and allay fears and at the same time inform the community of the main issues which the LPA will have to consider in reaching a decision on the planning application.

Chapter 10 – Other Planning Issues and Considerations

Sustainability

Sustainability and sustainable development are phrases that are now in common use generally, as well as in the planning system. The Well-being of Future Generations (Wales) Act defines it as:

'the process of improving the economic, social, environmental and cultural well- being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the well-being goals'

The Act explains that the sustainable development principle means that a public body must act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

The Welsh Government is committed to promote sustainable development in the exercise of its planning functions and the Planning (Wales) Act stipulates that any public body exercising a planning function must do so as part of carrying out sustainable development, in accordance with the Well- being of Future Generations Act.

The Well-being of Future Generations Act defines a series of well-being goals, as follows:

- A prosperous Wales
- A resilient Wales
- A healthier Wales
- A more equal Wales
- A Wales of cohesive communities
- A Wales of vibrant culture and thriving Welsh language
- A globally responsible Wales

Planning Policy Wales (PPW) sets out a **presumption in favour of sustainable development** and says that all planning policies, decisions and proposals should contribute to the goals of the Well-being of Future Generations Act.

Tackling climate change, one of the most important challenges facing the world, is a fundamental part of delivering sustainable development. Climate change will have potentially profound environmental, economic and social justice implications and failure to address it will make planning for sustainability impossible. The economic imperative to act was set out in the Stern Review and by the UK Committee on Climate Change, where the costs of doing nothing are significantly greater than the expected costs of co-ordinated global action. It is for these reasons that there is such a strong emphasis on sustainability and action through the planning system is one of many ways in which these major global and local challenges are being addressed.

Assessment of sustainability through the planning system

The planning system, through both development plans and the development management process, must provide for homes, infrastructure, investment and jobs in a way which is consistent with sustainability principles. It assesses sustainability by applying a series of assessment criteria used in determining planning applications:

- proximity of new development to public transport;
- housing density;
- Brownfield before Greenfield;
- proximity to support services – shops, health, education, employment;
- potential for reducing car journey lengths;
- opportunities for walking and cycling;
- Green Travel Plan;
- detailed design and site orientation;
- energy efficiency in completed buildings and during construction;
- renewable energy generation on site;
- waste reduction; and
- sustainable drainage.

When considering proposals and making decisions Members should assess sustainability by:

- being aware of the advice in PPW and TAN 12 in particular;
- considering LDP policies;
- thinking how the development relates to other uses;
- considering if the development is accessible by different modes of transport; and
- considering whether it is an efficient use of land.

In doing so Members will need to have regard to other considerations such as:

- employment generation;
- whether alternative locations exist for the development; and
- issues facing rural communities (TAN 6).

There will often be a considerable amount of information and detail that Members need to take into account. Sometimes some of the elements may compete against each other to varying degrees and careful consideration needs to be given to the weight to be attached to the different aspects.

Placemaking

PPW describes 'Placemaking' as "…a holistic approach to the planning and design of development and spaces, focused on positive outcomes. It draws upon an area's potential to create high quality development and public spaces that promote people's prosperity, health, happiness, and well-being in the widest sense." It additional describes placemaking as adding "…social, economic, environmental and cultural value to development proposals resulting in benefits which go beyond a physical development boundary and embed wider resilience into planning decisions."

PPW recognises that ultimately, placemaking is about achieving the right development in the right place.

The Design Commission for Wales (DCfW) hosted document entitled 'Placemaking Guide 2020' explains the aims of placemaking as "Placemaking is ensuring that each new development or intervention contributes positively to creating or enhancing environments within which people, communities, businesses and nature can thrive. It places people at the heart of the process and results in places that are vibrant, have a clear identity and where people can develop a sense of belonging." It goes on to say that "The concept of placemaking has developed in response to 'placelessness' within the built environment whereby new development lacks a distinct identity, character, sense of community or collective ownership. Placemaking has grown in importance as the links with health and wellbeing have been more explicitly explored and understood."

The DCfW hosted guide puts forward the concept of three inter-linked aspects that together, in equal measure, help create a sense of place; these being the activity taking place, its physical setting and its meaning.
The concept of placemaking, for example, is at the centre of Welsh Government's drive to have all new housing and homes designed as places where people want to live and where they will thrive.

Placemaking is a major focus of Future Wales - The National Plan 2040.

Design

Design is a hugely important consideration when considering planning proposals and sustainability.

In 2016 the Welsh Government significantly revised its guidance on design in TAN 12 – Design, giving greater emphasis on the role of design as a key tool of the planning system in tackling climate change and delivering sustainable development. It sets out the objectives of good design and most major planning applications and those for listed building consent now have to be accompanied by a Design and Access Statement (generally referred to as a DAS).

This requires developers to explain how the design principles and concepts of the proposed development have been applied, demonstrating the steps taken to appraise the context of the development and how the design takes that into account.

Design is much more than the external appearance of individual buildings and its setting in the rural or urban landscape. It is much broader with the Welsh Government being "strongly committed to achieving the delivery of good design in the built and natural environment which is fit for purpose and delivers environmental sustainability, economic development, and social inclusion, at every scale throughout Wales - from householder extensions to new mixed use communities" (TAN 12).

TAN 12 advises that the appearance and function of proposed development, its scale and its relationship to its surroundings are material considerations in determining

planning applications and appeals.

Developments that do not address the objectives of good design should not be accepted. On too many occasions the visual impact of a proposal has been afforded too little weight in the assessment process. There is a strong need to correct this deficiency in recognition that well designed buildings and public spaces can have an important impact upon the environments where people live, work and enjoy their leisure time, security and community safety. Increasingly however, design has a significant role to play in achieving sustainable development.

The Design Commission for Wales (DCfW) was established to promote good design and continues to influence and disseminate design advice to all those involved in design.

It can provide a design review service allowing early consultation with an independent panel.

Members' approach to design

Design is regarded as a subjective matter and debates on architectural styles often bring strong arguments from supporters and opponents alike. However, there is information available to assist Members.

Many LPAs have design and/or conservation officers to provide some advice on the proposed design and this is particularly important in sensitive locations.

Members can also study the design and access statement that applicants are required to submit to explain their approach to proposed development based on the stated objectives of good design. The objectives of good design are set out in TAN 12. Members can also refer to policies within the development plan and most authorities will have published supplementary guidance to advise applicants and developers on what is generally expected from them.

The DCfW may also be consulted providing an external expert opinion which can be very useful in mediating between opposing views.

Internal training on design may also be available to planning committee Members.

Climate Change and Renewable Energy

The Welsh Government is commitment to tackling climate change and reducing its carbon footprint. In 2019, the Welsh Government declared a 'climate emergency', and reiterated its commitment to achieving a carbon neutral public sector by 2030 and to coordinating action to help other areas of the economy to make a decisive shift away from fossil fuels.

The Environment (Wales) Act 2016 and new associated secondary legislation made under Part 2 of the Act, collectively known as 'the Climate Change (Wales) Regulations 2021', introduce a target to achieve net zero emissions by 2050, with

interim targets at 2020, 2030 and 2040. This means a target reduction of 100% on baseline levels (1990/1995) come 2050.
The Welsh Government continues to emphasise the key role of land use and spatial planning in achieving its overall aims, as set out in Future Wales and PPW. Future Wales includes a progress trajectory chart on page 46. PPW sets out a target for Wales to generate 70% of its electricity consumption from renewable energy by 2030.

The Welsh Government's overall programme to achieve its target is known as Net Zero Wales, with the latest plan being the Net Zero Wales Carbon Budget 2 (2021-25), which makes reference back to the role of planning in achieving the reductions and also includes measures such as the building of 20,000 new low carbon homes.
The challenges of tackling and coping with climate change have already been identified. An element of dealing with it is the promotion and delivery of renewable energy. The planning system has an important part to play in ensuring that the infrastructure on which communities and businesses depend is adequate to accommodate proposed development, to minimise risk to human health and the environment and prevent pollution at source. The aim of moving towards a low carbon economy means that the planning system needs to facilitate the delivery of new and more sustainable forms of energy provision at all scales.

PPW states that:

"The Welsh Government's highest priority is to reduce demand wherever possible and affordable. Low carbon electricity must become the main source of energy in Wales. Renewable electricity will be used to provide both heating and transport in addition to power. The future energy supply mix will depend on a range of established and emerging low carbon technologies, including biomethane and green hydrogen."

Future Wales - The National Plan 2040 sets out the national development plan context for energy and provides specific policies for heat network and renewable energy development.

The Welsh Government has set targets for the generation of renewable energy:

- For Wales to generate 70% of its electricity consumption from renewable energy by 2030;
- For one Gigawatt of renewable energy capacity in Wales to be locally owned by 2030; and
- For new energy projects to have at least an element of local ownership. 5.7.15

PPW recognises that the planning system has an active role to help ensure the delivery of these targets.

For the purposes of planning policy, renewable energy is the term used to cover those sources of energy, other than fossil fuels or nuclear fuel, which are continuously and sustainably available in our environment. This includes wind, water, solar, geothermal energy and plant material (biomass). These sources of energy can be utilised to generate power, heat, fuels (for transport) and cooling through a range of renewable energy technologies such as solar panels and wind turbines.

Low carbon energy is the term used to cover technologies that are energy efficient

(but does not include nuclear).

Renewable and low carbon energy developments will feature in many types of situations such as those that:

- are directly incorporated into the fabric of a building;
- are stand-alone directly connected to the grid;
- are built within a new development (e.g. development scale combined heat and power);
- provide heat for a number of buildings (e.g. district heating);
- provide a fuel for use in transport; and
- provide cooling.

The guidance in PPW is a strong indicator of the need for the planning system to have particular regard to realising and increasing the potential of renewable energy in development proposals.

In the drive for more sustainable and zero carbon buildings, the planning system seeks to ensure that new buildings are energy efficient and benefit from the generation of onsite renewable energy. Technologies seek to get the most out of solar, wind and geothermal resources with developments being designed and orientated to capture as much of this energy as possible. This will often mean new and innovative designs which are different to traditional building styles.

Power can be generated from on shore and offshore wind turbines, tidal energy, biomass, hydro, solar and geothermal sources. These can involve schemes that have other impacts raising a great deal of controversy and emotive local issues. Even schemes where energy generation is incorporated into the design of buildings can be controversial as visually it moves away from traditional perceptions of how buildings should look.

Major schemes are not without their problems with on shore wind farms often generating a great deal of interest and public opposition. Energy from waste generation can be highly controversial and usually raise public perceptions of health risk that Members will find difficult to deal with. It is vitally important that full and accurate information is provided with each application which will inevitably require EIA.

Sustainable drainage

Sustainable Drainage Systems (SuDS) are designed to reduce the potential impact of new and existing developments with respect to surface water drainage discharge. The idea behind SuDS is to try to replicate natural systems that use cost effective solutions with low environmental impact to drain away surface water run-off through collection, storage, and cleaning before allowing it to be released slowly back into the environment, such as into water courses. This is to counter the effects of conventional drainage systems that can result in flooding, pollution of the environment, resultant potential harm to wildlife and contamination of groundwater sources used to provide drinking water.

In January 2019, the Welsh Government introduced a mandatory process which operates under a separate consenting regime to planning but nonetheless can impact

significantly on all schemes for planning permission of more than 1 house or where the construction area is 100sqm or more (which captures most single dwellings as well).
All qualifying SuDS schemes must be approved by the Council acting as SuDS Approving Body (SAB) before construction work can begin. Although not required in law, it is nonetheless advantageous for an applicant to seek SAB approval at the same time as planning permission given that a solution under the SuDS regime could result in changes to a planning scheme that go beyond the scope of the planning permission, for example, where an increase in the size of the site is required to accommodate a drainage area. Otherwise, a further grant of planning permission might be required in order to seek approval for the additional elements needed to comply with SuDS.

Decision making hierarchy

Some particularly significant infrastructure proposals in Wales will continue to be categorised as Nationally Significant Infrastructure Projects (NSIPs) and will remain the domain of UK Ministers. These include, for example, certain energy projects greater than 350 megawatts (MW) and will be determined under the Planning Act 2008.

All other forms of development will continue to be determined in Wales, either by local planning authorities or, if categorised as Development of National Significance (DNS), the Welsh Ministers, under the Town and Country Planning Act 1990, as amended by the Planning (Wales) Act 2015.
As a result of the Wales Act having also now been enacted, together with existing secondary legislation, DNS will include all large-scale on-shore wind farms, other energy projects between 10 and 350MW and most other large-scale infrastructure projects, such as reservoirs.

As outlined above, the development plan system in Wales against which all development proposals will be assessed now consists of the all-Wales National Development Framework (NDF), known as Future Wales - The National Plan 2040, future regional Strategic Development Plans (SDPs) and at the local level Local Development Plans (LDPs), or LDP-lites. This will result in three tiers of development plans.

Across Wales, over 90% of planning applications are granted consent and many LPAs determine over 80% of applications ‘in time’. The Welsh Government has made it clear that LPAs will continue to decide the vast majority of planning applications.

However, it says that there is significant variation in performance among authorities and that the Welsh Ministers will have the power to designate an LPA as poorly performing. Where this occurs, applicants will be able to submit certain types of planning applications direct to the Welsh Ministers.

Economic Considerations

The pandemic and on-going economic challenges has highlighted perceived weaknesses in the planning system in how it responds to rapidly changing circumstances. The effectiveness of existing planning policy for economic

development and renewal has raised the question of how well the planning system serves national economic development objectives.

The role of the planning system in delivering sustainable development should embrace and integrate economic objectives with social and environmental objectives, i.e., the three strands of sustainable development.

Wealth creation, jobs and earnings are hugely relevant to a healthy national and local economy. TAN 23 (Economic Development) sets out a definite view of how public policy can contribute to these objectives to enable the private sector to grow and flourish.

The Welsh Government aims to:

a) create a business-friendly environment; and
b) prioritise certain sectors and activities, which are believed to make an especially critical contribution to economic growth.

Local authorities have a critical role in economic development through activities such as planning not only in how it responds to development proposal but how it can contribute to economic well- being more broadly by being simpler, more transparent, less restrictive and generally more business- friendly.

This can give rise to tensions between competing interests with planning committees being seen to be ‘caught in the middle’. Difficult decisions often have to be made and existing planning policies are often not flexible enough to respond to changing economic circumstances. In those circumstances it is development management that is looked on to do more to support economic development than formal polices, in turn raising issues of compliance with the development plan and hence the need to have regard to genuine material circumstances.

It should be remembered that arguments and good reasons will often be put forward to justify a development on the basis of the need to safeguard and stimulate the local economy. Protecting existing and creating new jobs are hugely important both in terms of quantity and quality and with increasing numbers of opportunities being lost overseas economic considerations are a major issue.

When making decisions these should always be weighed and judged in the balance of all the social, environmental and economic impacts. The amount of weight which should be afforded to each element is a matter for the decision maker but in all cases needs to be supported by clear evidence.

As briefly outlined above, a defined purpose of the newly created Corporate Joint Committees (CJCs) to operate across the four defined regions in Wales will not only have a strategic planning function, but an economic well-being function as well, which will help enable a joined-up approach to these issues and deal with any disparities and conflicts.

Affordable Housing

A community's need for affordable housing is a material planning consideration which must be taken into account in formulating development plan policies and in making decisions on planning applications. Affordable housing is housing where there are secure mechanisms in place to ensure that it is accessible to those who cannot afford market housing, both on first occupation and for subsequent occupiers.

Affordable housing includes social rented housing and 'intermediate housing' where prices or rents are above those of social rent but below market housing prices or rents. All other types of housing are referred to as 'market housing', that is, private housing for sale or rent.

Affordable housing can make an essential contribution to community regeneration and social inclusion. There may be particular issues in rural areas which may require different policy approaches.

Development plans should include either site thresholds and/or site-specific affordable housing targets. This means that residential developments of a certain size will require a proportion of affordable housing to be provided. This normally takes the form of on-site affordable housing contributions. Site specific targets are indicative affordable housing targets for each residential site. In some special cases and subject to any CIL restrictions, local planning authorities may secure commuted sums using a section 106 agreement which is then used solely for facilitating or providing affordable housing on other sites in the area.

However recent experience demonstrates that when the development sector is depressed and land values fall the ability of developers to meet the affordable housing targets and still achieve a viable development is very much restricted. This has led to agreements about the level of affordable housing being renegotiated.

Housing Land Supply

The previous need for LPAs to demonstrate the availability of a 5-year supply of land for housing has been replaced with the need to monitor housing land supply and delivery based on development plan trajectories, to be reported through the Annual Monitoring Report (AMR). As such, the requirement for decision makers to afford 'substantial weight' to the lack of housing supply has been removed. This reinforces the 'plan-led' approach to the delivery of homes, with speculative applications for residential development on unallocated sites no longer benefitting from a demonstrated lack of supply. The process is aided by the **Referring planning applications for major residential development to Welsh Ministers (Direction and Circular 001/2020**), which requires any major residential scheme that the LPA are minded to approve, contrary to any aspect of the development plan, to be referred to the Welsh Ministers before any decision can be taken.

PPW states that the supply of land to meet the housing requirement identified in a development plan must be deliverable. The ability to deliver requirements must be demonstrated through a housing trajectory, as part of the development plan. The trajectory will illustrate the expected rate of housing delivery for both market and

affordable housing for the plan period.

To be 'deliverable', sites must be free, or readily freed, from planning, physical and ownership constraints and be economically viable at the point in the trajectory when they are due to come forward for development. Planning authorities must use their housing trajectory as the basis for monitoring the delivery of their housing requirement. The new approach puts the onus on LPAs to achieve the stated aims of their development plans' looking at a range of delivery options and approaches. Under-delivery can be a reason to review a development plan.

Viability

Viability is a material planning consideration. Reduced profit margins affect the delivery of development.

Given recent economic challenges, the viability of development has become an increasingly important issue, resulting in stalled sites and a lack of housing delivery. The reasons for this situation are many but by way of example, it is often shown to be the case that a drop in land values, together with the extent of community benefit such as affordable housing and any other development costs such as decontaminating brownfield land, have rendered many schemes unable to be developed because of insufficient financial return, i.e., unviable.

This has resulted in many renegotiated schemes and others seeking planning permission without the full range of benefits required by policy.

Welsh Language

The Welsh language is part of the social and cultural fabric of Wales. Substantial differences between the proportions of Welsh speakers exist in different communities varying from below 5% to over 85%. In some areas this proportion is declining while in others it is increasing. The Welsh Government is committed to ensuring that the Welsh language is supported and encouraged to flourish as a language of many communities all over Wales. The future well-being of the language across the whole of Wales will depend upon a wide range of factors, particularly education, demographic change, community activities and a sound economic base to maintain thriving sustainable communities.

TAN 20 provides guidance on both the development plan and development management aspects of the planning process and has been formulated as a national planning policy tool in the light of the Welsh Language (Wales) Measure 2011, which made provision for the official status of the Welsh language.

In terms of the development plan, the mechanism for considering the language insofar as it is relevant to development and the use of land is the Sustainability Appraisal (SA). Where there is evidence of a possible detrimental impact, potential land use planning and mitigation measures should be identified in the LDP. These might include:

- Positive promotion of local culture and heritage
- Planning the amount and the spatial distribution of new development and

infrastructure
- Phasing of strategic housing and employment
- Directing strategic sites to communities where there is evidence that they would benefit the language
- Provision of affordable housing, including sites for 100% affordable housing for local needs
- Provision of employment opportunities and social infrastructure to sustain local communities
- Supplementary Planning Guidance to cover additional measures such as education, through potential use of CIL.

However, policies should not seek to introduce any element of discrimination between individuals on the basis of their linguistic ability, and should not seek to control housing occupancy on linguistic grounds.
The Welsh Language Commissioner is a consultee on LDPs, with the specific role of considering from an early stage the impact of LDP proposals and policies on the Welsh language.

In terms of development management and the determination of individual planning applications, TAN 20 says that they should not be subject to Welsh language impact assessments, as this would duplicate work already undertaken as part of the LDP. It that considerations relating to the use of the Welsh language may be taken into account by decision makers so far as they are material to applications for planning permission.

It also says, however, that language impact assessments may be carried out in respect of large developments not allocated in, or anticipated by, a development plan proposed in areas of particular sensitivity or importance for the language. Any such areas should be defined clearly in the development plan. As with policies in an LDP, decisions on applications for planning permission must not introduce any element of discrimination and should not be made on the basis of any person(s)' linguistic ability. Mitigation and enhancement might be similar to those outlined above in respect of development plan preparation.

As mentioned earlier in this document, there is a current Welsh Government consultation (early 2022) looking at potential planning changes to help control the spread of second homes and holiday homes. In essence, the proposals would work on the basis of creating additional use classes for second homes and short-term holiday lets, rather than them being a general part of the existing residential dwelling use class (C3) as exists at present, meaning that a material change of use would have occurred if the use of a property changes from one to the other. There would be associated changes to secondary legislation to make such changes 'permitted development' (PD), leaving it open to individual LPAs to take away those PD rights via 'Article 4 Directions' in areas where it may be justified to do so, on linguistic grounds for example. It is an area to watch in terms of how the proposed changes develop.

The LPA should also undertake impact assessments when planning new initiatives, or commissioning research. The LPA should assess at an early stage the implications for people within the community who wish to speak Welsh.

Gypsies and Travellers

LPAs are required to assess the accommodation needs of Gypsy families and have policies for the provision of Gypsy sites in their development plans. Circular WGC 005/2018 provides guidance and includes a definition of gypsies and travellers for planning purposes.

Local housing market assessments must include information regarding gypsies and travellers within the local authority area.

This will help identify any unmet need within the locality and the availability or otherwise of sites. Some authorities have appointed specific liaison officers to help in establishing and maintaining contact with the traveller community.

Where there is an unmet need then provision should be made in the development plan so that identified pitch requirements for residential and transit use can be met. In areas where there is no provision temporary permissions have been granted (often on appeal) until permanent provision is available.

In identifying sites regard needs to be had to sustainability issues including the need for families to be close to health, education, shopping, and leisure services plus employment areas and local churches. The opportunity for integration with existing communities is an important factor. When considering proposals it will also be necessary to have regard to the impact on the surrounding area and any local connections that the families have with the locality.

When making planning decisions local authorities should consider human rights issues. The provisions of the **European Convention on Human Rights** should be considered as an integral part of local authorities' decision-making - including its approach to the question of what are material considerations in planning cases. The consequences of refusing or granting planning permission, or taking enforcement action, on the rights of both the gypsy and traveller community and local residents have to be taken into account including whether the action is necessary and proportionate in the circumstances.

Romany Gypsies and Irish Travellers have been recognised by the Courts as being distinct ethnic groups and consequently they are covered by the **Race Relations** Act 1976. Section 19A of the Act prohibits racial discrimination by planning authorities in carrying out their planning functions. It is important that local authorities seek to promote good race relations between Gypsies and Travellers and the settled community.

Waste

Dealing with waste is often a controversial and difficult planning issue to resolve. All LPAs are under an obligation by the EC Framework Directive on waste to make provision for establishing an integrated and adequate network of waste disposal installations.

The Welsh Government’s general policy towards waste management is based on a

hierarchy of reduction, re-use and material recovery (including recycling and composting), energy recovery with effective use of waste heat, and safe disposal.
As a matter of principle, waste should be managed or disposed of as close to the point of its generation as possible, (the proximity principle). This is to ensure, as far as is practicable, that waste is not exported to other regions. In Wales, the aim should be to provide sufficient facilities to treat, manage, or dispose of all the waste produced. Each local authority should consider what facilities are required to manage all waste generated within its area, and this will involve co- operative joint working arrangements to produce regional waste plans. This is necessary to provide Wales with an integrated and adequate framework or network of facilities.

Policies in development plans must meet the objectives of the Waste Strategy for Wales and should either identify sites for waste facilities or areas where such facilities may be suitable. This highlights the need for effective joint working and agreement between individual authorities.

When making decisions the environmental impact of proposals for waste management facilities must be adequately assessed to determine whether a planning application is acceptable. For any major development one of the considerations will be whether adequate facilities have been incorporated into the design for the collection, composting and recycling of waste materials.

Natural Resources Wales (NRW) is responsible for licensing waste facilities. NRW works closely with LPAs to ensure that conditions attached to planning consents are complementary to, but do not duplicate, those attached to waste management licences and any other consents from other pollution control regimes. Many waste proposals, including the recovery of energy and heat, will raise local concerns. Most proposals will be subject to EIA. Specific guidance is provided in TAN 21 (Waste) and its associated Waste Planning Practice Guidance.

Glossary of Terms

Affordable housing
A range of both subsidised and non-subsidised housing designed for those whose incomes generally deny them the opportunity to purchase or rent housing on the open market.

Amenity
A positive element, or elements, that contribute to the overall character of an area. For example, open land, trees, historic buildings and the relationship between all elements in the environment. Sometimes referred to as 'living conditions'.

Ancillary use
A subsidiary use connected to the main use of a building or piece of land, such as storage space within a factory.

AONB
Areas of Outstanding Natural Beauty are areas that are considered of such fine landscape quality that it is in the national, as well as local, interest to protect them. The purpose of AONB designation is the conservation and enhancement of natural beauty.

Article 4 direction
A power available under the 1995 Town and Country Planning (General Permitted Development) Order allowing the LPA, in certain instances, to restrict permitted development rights.

Backland development
Development of land-locked sites, such as rear gardens and private open space, usually within predominantly residential areas.

Biodiversity
The variety and variability among living organisms and the ecosystems in which they occur. Biodiversity includes the number of different items and their relative frequencies; these items are organised at many levels, ranging from complete ecosystems to the biochemical structures that are the molecular basis of heredity. Thus, biodiversity encompasses expressions of the relative abundances of different ecosystems, species, and genes.

Brownfield land / previously developed sites
Previously developed land is that which is, or was, occupied by a permanent structure and associated fixed surface infrastructure. The definition covers the curtilage of the development. Previously developed land may occur in both built-up and rural settings. The definition includes defence buildings and land used for mineral extraction and waste disposal where provision for restoration has not been made through development management procedures.

Classified road
A road as defined within the Highways Act as a class A, B or C road.

CLEUD
Certificate of lawfulness for an existing use or development.

CLOPUD
Certificate of lawfulness for a proposed use or development.

Conservation area
An area designated by the LPA under the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 as possessing special architectural or historical interest. The Council will seek to preserve and enhance the character and appearance of these areas.

Conversions
The sub-division of residential properties into self-contained flats or maisonettes.

Corporate Joint Committee
CJC - a regional layer of local government formed by the Local Government and Elections (Wales) Act 2021, of which there are four across Wales – South East, South West, Mid Wales and North.

Curtilage
An area forming part or parcel with the house or building which it contains or to which it is attached.

Density
Density is a measure of the intensity of use of housing land. It is calculated on the basis of the number of habitable rooms per hectare.

Development
Development is defined under the Town and Country Planning Act as "the carrying out of building, engineering, mining or other operation in, on, over or under land, or the making of any material change in the use of any building or other land." Most forms of development require planning permission before they can be carried out.

Development Management
The process through which the LPA determines how land proposed for development should be best used, taking into account the Development Plan and any other relevant information.

Developments of National Significance (DNS)
A category of development submitted direct to the Welsh Ministers for decision.

District centres
Groups of shops and similar premises offering a range of convenience goods and services along with some durable items. District centres serve a smaller catchment area than major centres.

Dwelling
A self-contained residential unit, occupied by (i) a person or group of people living together as a family, or (ii) by not more than six residents living together as a single

household (including a household where care is provided for residents).

Energy efficiency
The term refers to the practice of constructing and arranging of buildings in such a way as to minimise the use of resources. It can also refer to the operation of machines and engines such as the car. Energy efficiency should reduce both use of resources and damage to the environment due to energy generation and consumption.

Environmental Impact Assessment (EIA)
The process by which information about the likely environmental effects of major projects is gathered, evaluated and taken into account by the LPA in considering whether or not planning permission should be granted.

Fascia
Part of the face of a building, where the shop or occupier's name is usually displayed.

Future Wales
Statutory plan in which the Welsh Government sets out its objectives and priorities for the development and use of land in Wales, and policies to implement them. Part of the statutory development plan hierarchy in Wales, made up of Future Wales, SDPs and LDPs/LDP-lites.

General Permitted Development Order
Identifies types of, usually minor, development for which planning permission is automatically granted and which therefore do not require a planning application to be submitted to the LPA.

Greenfield site
Land which has not already been developed. Greenfield land is undeveloped but has development proposed for it.

Gross and net site area
Net site area is contained within the boundaries of a site. Gross site area is used in calculating residential density. It is net site area plus half the width (up to a maximum of 6m) of an adjoining road (private or public). Where two or more frontages adjoin roads, a quarter of the width (up to a maximum of 3m) of the second and subsequent roads is included.

Habitable rooms
All separate living rooms and bedrooms, plus kitchens with a floor area of 13 square metres or more. Bathrooms, toilets, cupboards, landings, halls, lobbies and recesses are not included.

Household
One person living alone or a group of people (who may or may not be related) living at the same address with common housekeeping, sharing at least one meal a day or occupying a common living or sitting room.

House in Multiple Occupation (HMO)
House or flat occupied by more than one household as bed-sitting rooms or other non-

self- contained accommodation, usually with some sharing of amenities, such as bathrooms and / or toilets. (See definition of Registered Social Landlord). A HMO falls within a C4 Use Class.

Infill schemes
Development of sites which have adjacent buildings and form a continuous row of development.

Integrated transport system
Networks of links (bus, rail, road etc.) rather than individual routes, connected in terms of physical access, ticketing, service frequency, timing and capacity.

Landmarks
A building which has become a point of reference because its height, siting, distinctive design or use sets it apart from surrounding buildings. Examples may include churches and other important civic buildings such as town halls.

Lifetime homes
Dwellings built to a standard that would allow people using wheelchairs full access to, and use of, the entire house or flat. To that end, the dwelling would normally have adjacent parking, a level entrance, adequate circulation space, all rooms designed for easy access and use by people who use wheelchairs, and full access to, and use of, all levels of the building.

Listed buildings
The Secretary of State for Culture, Media and Sport compiles a list of buildings of special architectural or historic interest for the guidance of LPAs in the exercise of their planning functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Town and Country Planning Act 1990. Buildings are graded as follows:

- Grade I - Buildings of exceptional interest.
- Grade II - Buildings of special interest.
- Grade II* - Particularly important buildings of more than special interest.

Local Development Plans
Statutory plans in which all LPAs set out their objectives and priorities for the development and use of land in their areas, and general policies to implement them. Part of the statutory development plan hierarchy in Wales, made up of Future Wales, SDPs and LDPs/LDP-lites.

Major centres
The largest retailing centres in the district offering the widest range of shopping facilities (including durable and comparison goods, large food stores and a number of other goods), acting as a focal point for the community and having a high level of public transport accessibility.

Mixed uses
Provision of a mix of complementary uses, such as say residential, community and leisure uses, on a site or within a particular area.

Monitoring Officer
An officer of the Authority whose role it is to report to the council on matters of governance and potential maladministration, and provide advice.

National Development Framework (NDF)
A 20 year land use plan for Wales that all Local Development Plans (LDPs) and Strategic Development Plans (SDPs) must comply with. Published by the Welsh Government in February 2021, it has now been adopted as part of the statutory development plan for all of Wales.

Natural justice
The concept that there is an inherent quality in law that compares favourably with arbitrary action by a government. It is largely associated with the idea of the rule of law. For natural justice to be present, it is generally argued that no one should be a judge in his or her own case, and that each party in a dispute has an unalienable right to be heard and to prepare their case thoroughly.

Neighbourhood centres
Local shops providing for the day-to-day needs of residents in the immediate catchment area.

Open Plan Housing Estates
These are housing estates that have had planning restrictions imposed on them to preserve the openness of the area. These prevent the enclosure of the gardens to the front of the houses, with fences or walls.

Over development
An amount of development (that is, the quantity of building or intensity of use) that is excessive in terms of demands on the infrastructure and services and impact on local amenities and character.

Parks and Gardens of Special Historic Interest (GSHI)
Parks and gardens containing historic features dating from 1939 or earlier and registered by Cadw. These parks and gardens are graded I, II or II* in the same way as listed buildings.

Permitted development
Minor types of development and certain changes between use classes which are automatically granted planning permission under the General Permitted Development Order and for which no planning application need be submitted.

Placemaking
A holistic approach to achieving the right development in the right place for the benefit of the community, liveability and long-term sustainability.

Place Plan
A form of Supplementary Planning Guidance (SPG) prepared by and for the community for use in decision-making on planning and related applications.

Planning brief
A statement regarding the LPA's views on the opportunities and constraints for the development of a particular site, intended to guide potential developers.

Planning gain
A phrase used to describe a public benefit which will arise directly from a development proposal, if permitted.

Planning obligations
An agreement under section 106 of the Town and Country Planning Act entered into regarding the use or development of land. An obligation can either be made by agreement between the LPA and a developer, or by a unilateral undertaking by the developer. Obligations may be used to enhance development proposals. See definition of section 106 agreement.

Planning Officers Society for Wales
POSW - the collective representative body for public sector planning in Wales.

Planning permission
Formal approval by the LPA, often with conditions, allowing a proposed development to proceed. Full permissions are usually valid for five years; outline permissions, where details are reserved for subsequent approval, are valid for three years.

Pre-application Consultation
PAC - mandatory pre-application consultation that applicants of 'major' applications must undertake prior to being able to submit a planning application.

Primary shopping frontage
Areas of shopping within which the LPA has a policy to protect and retain retail uses.

Private open space
Open space which is usually privately owned and is generally not accessible by members of the public. Some private open spaces are subject to access agreements allowing some form of access.

Public open space
Urban space, designated by the Council, defined where public access is generally not formally established, but which fulfils or is capable of fulfilling a recreational and/or non-recreational role (for example, amenity, ecological, educational, social or cultural). Includes most nature reserves, city farms, cemeteries.

Registered Social Landlord (RSL)
A housing association or a not for profit company registered by the Housing Corporation to provide social housing.

Renewable energy
Energy derived from resources that are regenerative or for all practical purposes cannot be depleted. Types of renewable energy resources include moving water (hydro, tidal, and wave power), thermal gradients in ocean water, biomass, geothermal energy, solar energy, and wind energy. Municipal solid waste (MSW) is also

considered by many to be a renewable energy resource.

Retail use
Any use falling within the definition of a shop under Class A1 of the Town and Country Planning (Use Classes) Order 1987.

Revocation Order
An Order made under the Planning Act to revoke an existing planning permission.

Road capacity
The maximum rate that traffic can pass along a road within a particular set of conditions.

Road hierarchy
Categorisation of roads by function and intended traffic management treatment.

Secondary Shopping Frontages
Areas which lie outside the Primary Shopping Frontage in major and district centres, where a more flexible policy on changes of use from Class A1 to non-retail uses applies.

Section 106 agreement
A binding agreement between the LPA and a developer on the occasion of a granting of planning permission regarding matters linked to the proposed development. See definition of planning obligations.

Sheltered housing
Housing designed to meet the needs of the elderly, including a range of support services, such as an emergency alarm system, communal facilities and a resident warden.

Shopping hierarchy
LPAs develop a classification of shopping centres within the Borough according to the role they play. There are four categories - major centres, district centres, neighbourhood centres and local parades / individual shops.

Special needs housing
Housing aimed at meeting the particular needs, in terms of size and type, of those individuals and groups who may experience particular difficulties in finding accommodation. Such housing can include accommodation which provides an element of care, adapted for the elderly and people with physical disabilities and provision for students. It includes a range of sui generis (see below) hostel provision and all forms of residential accommodation which provide care within Use Class C2.

SSSI - Site of Special Scientific Interest
Areas identified by NRW as being of special interest for their ecological or geological features, SSSIs are the country's very best wildlife and geological sites.

SuDS Approving Body
SAB - a Council function introduced in January 2019 to ensure that drainage proposals

for all new developments of more than 1 house or where the construction area is 100m2 are designed and built in accordance with the national standards for sustainable drainage published by Welsh Ministers.

Town centre management
A scheme where a manager is appointed to improve the links between public and private sector initiatives in a town centre. Town centre management strategies can then be developed which bring forward such initiatives as environmental improvements, street cleaning, recreation and entertainment services, crime prevention, improved pedestrian environment etc.

Traffic calming
Traffic management measures specifically designed to reduce vehicular speed along routes or through areas. Usually associated with improving the local environment and reducing road accidents.

Traffic management
The process of adjusting or adapting the use of a highway to meet specified objectives without resorting to substantial new road construction.

Travel Plan
A plan is aimed at reducing car use for travelling to work and for business travel. A plan is typically a package of practical measures to encourage staff to choose alternatives to single-occupancy car- use, and to reduce the need to travel at all for their work.

Tree Preservation Order (TPO)
Made under the Town and Country Planning Act 1990 by the LPA to protect trees of importance for amenity, landscape and nature conservation.

Unitary Development Plan (UDP)
The old style development plan providing the land use planning policy framework for the control of development.

Use Classes Order
An order which places activities into groups so that a move between activities within a group is permitted and does not require planning permission.

Viability
The extent to which a development remains economically advantageous to develop.

Appendix A

Example Cases of Maladministration

The following cases are summaries of actual findings of maladministration by the Local Government Ombudsman. The Authorities concerned have not been identified.

Personal Circumstances

The Ombudsman considered that a Council's decision to grant permission for a bungalow due to the personal circumstances of the applicant was "flawed". The Ombudsman recognised that a planning committee is within its rights, exceptionally, to grant a personal permission but said that in this case, there was no objective evaluation from officers on which to base its decision. The applicant's reasons for wishing to build a new bungalow included that he was elderly, had disabled status, and that his existing home was subject to multiple flooding. Government advice was that permissions granted just because of the circumstances of the applicant should only be granted "exceptionally". The Ombudsman considered why the committee approved the application, contrary to the substantial planning history, to the Council's own policies and to the officers' recommendation. The recorded reason for the permission says "the development having been permitted due to the personal circumstances of the applicant".

In deciding that permission would not have been granted if proper process had been followed, the Ombudsman took into account the fact that the applicant's then home remained occupied. This suggested that, had members been fully informed of the situation in respect of flooding, they may well have concluded that the case was not made.

Listed Building and Deficient Officer Report

There were "serious flaws" in the way a Council approved a plan to demolish a listed Victorian schoolroom and build new houses on the site. The Ombudsman said: "If the Planning Sub-Committee had been properly advised and directed to the proper considerations for these applications, I believe that it would not have approved the applications."

In response to complaints from residents, the Ombudsman found serious errors and omissions in the report and presentation to the Council's Planning Committee that granted the permissions for the demolition and the new build. The applicants had argued that demolishing the schoolroom and selling the site with planning permission would 'enable' the associated distinctive, listed Chapel to be repaired and refurbished. The Planning Officer accepted this without applying any of the tests required for 'enabling' development and the Sub- Committee were not told of:

- the law requiring them to have special regard to preserving the listed Schoolroom;
- national planning guidance that there should be a general presumption in favour of preserving listed buildings;

- the specific tests that they should have applied before giving permission for the Schoolroom to be demolished; and
- relevant comments from the Council's own conservation specialists.

The Ombudsman said that the failure to give clear, comprehensible professional views and assessments of the two applications was maladministration.

The maladministration caused injustice to the people who complained. The injustice was the potential loss of part of their area's built heritage that contributes to the setting of the distinctive, listed Chapel and the general character of the conservation area.

Contrary to Policy and Failure to Give Reasons

A Council granted planning permission for a new bungalow in the countryside, against both local plan policy and officers' recommendation, without good planning reasons. The Ombudsman considered that there had there been maladministration resulting in the loss of open countryside and change to the character of the area.

The Ombudsman found that the Council was at fault in failing to give adequate reasons for granting the application against officers' advice and against the Local Plan policies. He accepted that councillors were entitled to depart from the officers' advice, but only where they have good reason to do so, based on clear and legitimate planning grounds. In this case councillors failed to provide such justification for the decision and that was maladministration.

Subsequently the Council did not agree to comply with the Ombudsman's recommendations, and so the Ombudsman issued a further report stating that his previous report on the complaints identified clear and significant maladministration. He added that the Council's continuing intransigence in the face of the evidence was disappointing. He remained unconvinced by its reasons for not implementing his recommendations in full and commented "the Council appears to have an inadequate understanding of its responsibilities as a local planning authority."

The Council was absorbed into a new unitary authority and the successor authority, agreed to fulfil the Ombudsman's recommended remedy.

Personal Interest and Councillor Speaking on Behalf of a Colleague The way a Council approved a planning application made by a councillor's son was criticised by the Ombudsman who said that:

"The ill-considered reasons for going against the officers' recommendation failed to address the policy objections and give the appearance of bias and favouritism towards the son of a member of the Planning Committee. The appearance given to complainants was that, had the applicant not been the son of a councillor, the application would have been refused under delegated powers."

The applicant's father did not participate in the decision, but the Ombudsman criticised the actions of a second Councillors on several points. In particular he asked for the application to be considered by the Planning Committee, rather than be decided by officers, when he was neither a member of the Committee nor the representative for

the ward.

The Ombudsman says: “The cumulative effect of [the second councillor’s conduct created the impression that he was at the Planning Committee to represent the views of [the applicant’s father] who was, according to his own declaration and the rules, unable to participate.”

The Council was recommended to refuse planning permission because of the impact of the development on the site’s function as a County Wildlife Site, because of the impact on an old oak tree, because of highway problems, and because the design and layout of the development were unacceptable. In nevertheless granting permission, the Committee failed in its duty to have proper regard to material planning considerations. Development had then commenced.

The Standards Board for England conducted an investigation into the alleged breaches of the Council’s Code of Conduct for members associated with this case.

Inaccurate Information and Failure to Give Reasons

The son of a farmer applied for planning permission for a smithy and stables with a farrier’s cottage and apprentice flat on land adjacent to a complainant’s property who complained that the Council’s planning committee, in approving the application against the officer’s recommendation. He complained that the Council was misled by the presentation of inaccurate information relating to a nearby site and by the omission of extensive photographs supplied the complainant regarding the effect of the proposals on his amenity. Furthermore the Committee approved the development without providing sufficient reasons for rejecting the officer’s recommendation for refusal. In particular the committee failed to explain why this application accorded with the Council’s planning policies or why it should be treated as an exception to those policies.

The Ombudsman found the Council was at fault in failing to give adequate reasons for granting the application against officer advice and against significant local and national planning policies. He accepted that members of the planning committee were entitled to depart from the officer’s advice but only where they have good reason to do so, based on clear and legitimate planning grounds. In this case he found that the members had failed to provide such justification for the decision.

Impact on Residential Amenity

A resident complained that two extensions either side of her property severely affected her amenity as it doubled the length of the house and was very close to the boundary.

She looked out onto a brick wall and felt very enclosed. She also said that her first floor bedroom window was overlooked by the new ground floor dining room window and she needed to erect a fence to screen the extension.

The Ombudsman found fault in that the Council:

a) did not take adequate steps to consider the unique joint nature of the applications and the effect this had on the committee process;

b) did not allow the complainant to speak to the committee before the decision on the first application had been made; and
c) did not give clear reasons why the committee departed from the planning officer's recommendation to refuse both applications.

The Ombudsman said that these failures caused injustice as the complainant was left with a perception of unfairness in the decision-making process and the feeling that, once the decision had been made on the first application, the decision on the second one was a foregone conclusion. This was exacerbated by the failure to provide proper reasons for the decisions.

Failure to Provide Reports on Delegated Decisions

A Council was criticised by the Ombudsman for not preparing reports on decisions to grant planning permission where this is done under delegated powers. It was not sufficient to approve an application without keeping any record of what matters were taken into consideration. In this case, the complainant could not be certain that the effect of the new development on his amenity had been properly taken into account. The Council had failed to notify the complainant of a planning application for a two-storey extension to a property to the rear of his own. He believed the Council failed to take account of the impact of the development on his home when granting it permission.

The Ombudsman considered there was fault in the way the Council dealt with the application and was particularly concerned that the Council had not prepared reports on planning applications that are decided under delegated powers.

Declarations of Interest, Personal Friendship and Political Bias

A Councillor, who should have declared an interest and left a meeting, instead stayed and used his casting vote to give a fellow Councillor and friend outline planning permission in breach of six material planning policies. Other Councillors from the same political party at the Council voted for the application despite strong recommendations from Council officers that it should be refused. The Councillors could give no valid planning reasons for their decisions. This was maladministration says the Ombudsman, who took the unusual step of naming the Councillors involved.

In another example there was a complaint that the Council didn't take enforcement action to require a Councillor to remove a caravan from her land in an area of outstanding natural beauty, and about its decision to grant her outline planning permission for a house in the caravan's place.

The Ombudsman criticised the Councillor, who was then Chairman of the Area Planning Committee, for failing to declare an interest and for failing to withdraw from dealing with the application. He was known to be a friend the Councillor and her husband. Church functions, political events, village gatherings and mutual friends brought the two families together, on average, once a fortnight.

The Code of Conduct, which all councillors agree to abide by, says that a councillor must not use their position "…to improperly confer on or secure for himself or anyone

else any advantage or disadvantage…" The Code also says that a councillor must not take part in a meeting if they have a prejudicial interest. A prejudicial interest is "…one that a member of the public with knowledge of the facts would reasonably regard as so significant that it is likely to prejudice the councillor's judgement of the public interest."' Councillors who belong to a political group must declare a personal interest in any planning application by a member of the same political group. A councillor who only has a personal interest can take part in a meeting and vote.

The Council's officers strongly recommended that the Councillor's application should be refused as it was contrary to national and local policies and could set a precedent for inappropriate development in an area of outstanding natural beauty. At the two meetings of the Area Planning Committee that dealt with the Councillor's application, the vote on whether to grant permission was tied. In each case the three Councillors who voted to approve the application were from the same political party as the applicant Councillor. Of the three who voted against, one was also from the same political party (a different councillor on each occasion) and two were from other parties.

The Chairman of the Planning Committee used his casting vote both times to approve the application. If he had followed the Code of Conduct and left the meeting the planning application would have been rejected by three votes to two.

Commenting on the case, the Ombudsman said:

"It is extremely rare to find Councillors using their position improperly. Cases like this do an enormous disservice to the whole of local government by providing fuel for the misapprehension that 'they are all in it for themselves'. It is deeply regrettable for those Councillors who work selflessly in the best interests of their communities. I consider that the public interest is better served in this case by disclosing the identities of the Councillors concerned."

Lack of Reasoning and Irrelevant Consideration

Complainants lived next door to a development site on which the developer applied to build two semi-detached houses. The application was recommended for refusal because of the impact on Mr and Mrs Smith's bungalow. Members of the Committee made a site visit and voted to refuse the application. They indicated that they would be willing to approve an application for smaller houses on a larger site.

The Council received a second application. It was for two identical-sized houses, which had been moved one metre further away from Mr and Mrs Smith's property. Officers did not think this application was materially different from the previous one and recommended it for refusal. The Committee voted to approve it. The decision was deferred to the next meeting to enable officers to draw up a list of conditions and a statement to explain why the Committee had determined the application against the officers' recommendation. Some Members did so because they believed the development would provide affordable housing suitable for first time buyers, although one of the properties was subsequently marketed for £210,000. The Ombudsman took the view that the Committee decision was flawed because these Members took an inapplicable and therefore irrelevant consideration into account. At the next meeting the statement without debate. The Ombudsman took the view that Members did not

give adequate consideration to this point.

Personal Interest leading to Revocation

The LPA granted planning permission against the advice of the Planning Officer for the construction of a joinery workshop in the garden of a property, which was close to a neighbouring property.

The Members had based their decision largely upon the fact that the existing workshop location had been unsatisfactory, which is an irrelevant consideration.

The Ombudsman criticised a Member who had supported the relocation of the workshop. The previous unsatisfactory location was near his son's house, hence a breach of the Code of Conduct had occurred.

The Council revoked the planning permission and paid compensation to the neighbour.

Development Plan Allocation

A member of the Planning Committee declared an interest in the allocation of a parcel of land for housing in the Council's emerging development plan. However the member had failed to leave the meeting and was considered to have improperly influenced the discussions on the allocation.

The Ombudsman concluded that the Member had breached the Code of Conduct in failing to leave the meeting even though an interest had been declared.

Inappropriate Planning Obligation

Complainants said that the Council should not have granted planning consent for housing which was contrary to development plan policies, and which was recommended for refusal by Planning Officers. They said this had an adverse effect on their outlook, amenities and privacy. They believed that the linkage to provision of a playing field was unnecessary and contrary to Government guidance about planning obligations.

The Ombudsman found that the failure of the Council members to record why they did not follow Officers' advice was maladministration, as was the decision to link the two applications contrary to Government guidance.