

**STANDING ORDER 31 STAGE 2 DEBATE 23 JANUARY 2007:
AMENDMENT TO THE GENERAL DEVELOPMENT
PROCEDURE ORDER 1995 (PLAYING FIELDS)**

FEASIBILITY REPORT BY WELSH ASSEMBLY GOVERNMENT

**Original Initial Motion NNDM 3186 tabled by Lisa Francis
AM, and debated, and agreed in Plenary on 4 October 2006**

To propose that the National Assembly for Wales, acting under Standing Order 31.2, supports in principle legislation to:

*Amend Article 10(2) of the Town and Country Planning (General)
Development Procedure) Order 1995, to:*

*extend the definition of a Playing Field to include any land in the open air
which is used for the purposes of physical education or recreation; and revise
the definition of a Playing Pitch to remove the minimum size requirement in
relation to a delineated area.*

Summary

To report to National Assembly Members on the feasibility of making changes through regulations and statutory guidance to current arrangements for developments affecting playing fields and playing pitches. The report responds to a Standing Order 31 Debate by Assembly Members on 4 October 2006 when there was a vote in favour of an agreement in principle to the aims of the motion.

This Feasibility Report recommends a way forward to put the principle behind the motion into practice through a phased approach:

- To amend the Town and Country Planning (General Development Procedure) Order 1995 to reduce the threshold for local planning authorities to refer planning applications affecting playing fields to the Sports Council for Wales for their consideration, from 0.4 hectares to 0.2 hectares.
- To re-consult on broadening within policy the definition of 'playing fields' on which local planning authorities should consult the Sports Council for Wales on proposed developments affecting land caught by the definition.
- Consult on introducing a policy requirement for local planning authorities to undertake an Open Space Assessment (currently preparation of such assessments is advisory in the draft TAN 16 *Sport Recreation and Open Space*).

Objective

1. The purpose of this Feasibility Report is to respond to the original Initial Motion as agreed in Plenary on 4 October 2006, and to set out my proposed way forward to strengthen the protection of playing fields through the planning system.

Background

Planning Policy

2. The Assembly Government's planning policies for sport and recreation are set out in *Planning Policy Wales*, published in March 2002. It recognises the importance of recreation in making our urban areas more attractive places to live, and as a means of addressing social and environmental issues. The guidance encourages the creation of sustainable patterns of open space and recreation facilities in places well served by sustainable means of travel. Local planning authorities are advised to consider including in their development plans their own standards of provision based on their assessment of need.
3. The policy favours the protection of playing fields (as defined in the *Town and Country Planning (General) Development Procedure) Order 1995*). *Planning Policy Wales* also states that open spaces with significant recreational and amenity value should be protected from development, particularly in urban areas. Playing fields should be protected from development except where:
 - i. facilities can best be retained and enhanced through the redevelopment of a small part of the site
 - ii. alternative provision of equivalent community benefit is made available; or
 - iii. there is an excess of such provisions in the area.

Planning Decisions

4. Whilst existing national planning policy offers protection to playing fields and recreational open space, responsibility for the day-to-day operation of the planning system in Wales lies with local planning authorities. These authorities are required to take national planning policies into consideration when preparing their development plans. Planning decisions should then be based on these development plans, unless material considerations lead the authority to decide otherwise.
5. Planning authorities that decide to grant permission contrary to policies in the development plan may do so. These are considered "departures" from the plan, and an application which the authority is minded to approve and considers to be a significant departure from the plan, should be referred to the Assembly Government, which can call in the application for its own determination. Similarly, anyone may request an application be called in.

The Town & Country Planning (General Development Procedure) Order 1995

6. Under the 1995 Order, local planning authorities are required to consult the Sports Council for Wales on certain planning applications, affecting playing fields. The current definition of a playing field in the 1995 Order is a marked sports pitch, of 0.4 hectares or more, including surface runoff area, used for any of a list of organised team games.
7. Notification of the Sports Council for Wales gives the Council the opportunity to comment on the sport and recreational merits of the application. Local planning

authorities are required to take any comments into consideration when considering a planning application, including those made by statutory consultees, but can still grant permission contrary to advice received.

8. If the Sports Council for Wales strongly disagrees with a proposal, then it may request the Assembly Government call in the application. The Assembly Government would consider such requests in the same way as other call-in requests.

Further considerations

Welsh Assembly Government Consultation on Local Planning Authority Notifications to Sports Council for Wales

9. The Assembly Government is currently considering consultation responses on proposed changes to the Development Control system, and this includes proposed amendments to this part of the 1995 Order, reducing the threshold for notifying the Sports Council for Wales about developments affecting playing fields from 0.4 hectares to 0.2 hectares.
10. Preliminary analysis of the responses received by the 28 September 2006 deadline show support for the reduction in the threshold to 0.2 hectares. Subject to consideration of responses to the second round of consultation, secondary legislation changes will be programmed for Autumn 2007.

Consultation on Revisions to Technical Advice Note 16 "Sport Recreation and Open Space"

11. The Welsh Assembly Government also consulted on revisions to TAN 16 in 2006, which covers playing fields but broadens the focus to open space provision. The draft TAN also provides detailed advice for local planning authorities on preparing an Open Space Assessment, identifying future needs for open space and recreational facilities and incorporating these needs into development plan policies.
12. The consultation draft TAN set out an expanded definition of formal and informal open space, including those types of uses that the Sports Council for Wales is now seeking to encourage, in line with "*Climbing Higher*". The draft TAN advises planning authorities to consider all these uses when preparing their Open Space Assessments.
13. The definitions proposed by Ms Francis go much wider than that used in the draft TAN, but there are concerns about their practical application and operation in relation to the GDPO, regardless of the notification threshold. An alternative definition that captures the intention of Ms Francis' motion and provides the accuracy recommended by lawyers is in hand.
14. Open Space Assessments are a useful exercise for authorities about to undertake work on Local Development Plans. These assessments, proposed as *advisory* in the consultation draft TAN, would also serve to further highlight local responsibility for provision and protection of formal and informal recreational open space.
15. Such Assessments are but one of a series of analyses that local planning authorities need to address to underpin the preparation of their local development

plans. Other analyses include, for example, those relating to housing needs, retailing, and employment land. In order to make Open Space Assessments a *policy requirement* will mean that, as well as the TAN, the Welsh Assembly Government would need to prepare a policy statement (informed by consultations) to effect this change.

Consultations with Lisa Francis AM, and relevant Assembly Subject Committees

16. I have met with Lisa Francis AM to discuss how we can take forward her motion following the Initial SO 31 Plenary Debate on 4 October. I have taken account of the original definition included in the Motion, as well as an amended definition that Ms Francis provided after the Debate. However, having taken legal advice, both definitions are still problematic in ensuring that the legal requirement can be practically delivered. Work is on-going with Legal Services to develop a satisfactory definition.
17. I have also consulted those Subject Committees who have an interest in this issue, by writing to their respective Chairs, namely Environment Planning & Countryside, Education & Lifelong Learning, and Culture, Welsh Language, and Sport Committees. I have invited their views by 10 January 2006.

Proposed way forward

18. I have concluded that a combination of stronger policy protection against the loss of playing fields, together with secondary legislation changes, should successfully deliver the intention of the original motion.
19. Coupled with the original legislation change as proposed in the Welsh Assembly Government's consultation in the summer, will be a proposed new policy requirement for local planning authorities to undertake open space assessments. I believe this package of changes, which will require further consultation, will deliver the protection of playing fields sought by Assembly Members.
20. The package I propose to bring forward under the motion are outlined below :
 - Broadening the definition of 'playing fields' about which local planning authorities would be required to consult the Sports Council for Wales.
 - Consult with stakeholders on proposed changes to national planning policy, widening the definition of playing fields as set out in policy, and introducing a requirement for local planning authorities to undertake an Open Space Assessment, thus requiring them to consult with Sports Council for Wales on applications affecting sites identified in the assessment, of more than 0.2 hectares.
 - Bring forward legislation to reduce the threshold for statutory notification with the Sports Council for Wales on proposed developments that may affect sports pitches, linked to an amended definition, from 0.4 Ha to 0.2 Ha.

Implications

21. There are no financial implications for the Welsh Assembly Government other than those that will be met from existing and future administrative budgets.
22. Depending on the data held by local planning authorities, the resource implications of preparing or commissioning open space assessments could be significant. As such work is not currently a policy requirement, data is likely to vary across Wales. Views on the resource implications of this work will be sought as part of the consultation.
23. A further implication is that this requirement for open space assessments will be an additional task for local planning authorities forward planning to absorb. Preparation of such assessments may delay Local Development Plans which are statutory plans, and which the Assembly Government expects LPAs to secure within a 4-year timeframe.
24. As there is a need to undertake consultation on the proposed policy changes and also to secure legislative amendments to the GDPO, it is anticipated that this package might be delivered by Autumn 2007.

Recommendation

25. Members are asked to consider the proposed outlined in this Feasibility Report and will have the opportunity to discuss these detailed proposals at a Plenary Debate on 23 January 2007.

Carwyn Jones AM
Minister for Environment Planning & Countryside
Welsh Assembly Government