

**EXPLANATORY MEMORANDUM AND REGULATORY IMPACT ASSESSMENT
TO
THE PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS)
(AMENDMENT) (WALES) REGULATIONS 2009**

1. Description

1.1 This Order amends the Planning (Listed Buildings and Conservation Areas) Regulations 1990 to make provision for design and access statements which are required to accompany specified applications for listed building consent.

2. Matters of special interest to the Subordinate Legislation Committee

2.1 None

3. Legislative background

3.1 The power to make the Amending Regulations in relation to Design and Access Statements is provided by sections 10(3), (4) and (5) and 93 (a1)(b) of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the 1990 Act") as amended by the Planning and Compulsory Purchase Act 2004.

3.2 Section 10 of the 1990 Act confers on the Welsh Ministers a power (exercisable by making regulations) to make provision for the way in which applications for listed building consent are to be made, including documents and other materials which are to accompany applications.

3.3 Section 10(4) of the 1990 Act (inserted by section 42 (8) of the Planning and Compulsory Purchase Act 2004) provides that regulations must require that an application for listed building consent of such description as is prescribed be accompanied by either or both of the following: a statement setting out the design principles and concepts that have been applied to the works, and a statement about how the issues relating to access to the building have been dealt with. The form and content of statements are to be as prescribed by the regulations. Regulation 2(2) of these Regulations substitutes a new regulation 3B into the Planning (Listed Building and Conservation Areas) Regulations 1990¹ setting out the type of application to which the requirement for a design statement applies (i.e. applications for listed buildings consent except in relation to works affecting only the interior of the building) and setting out the form and content of that statement.

3.4 The Planning and Compulsory Purchase Act 2004 (Commencement No. 10 and Saving) Order 2007 (S.I. 2007/1369) commenced the relevant provisions (which are Section 42 (6) to (9) on 30th June 2007.

3.5 **Negative Resolution:** The negative resolution is pursued as Section 93 of the 1990 Act provides that the parliamentary procedure for statutory instruments

¹ S.I. 1990/1519. Relevant previous amendments have been made by S.I. 2004/3156 and S.I. 2006/3316.

containing regulations made under the Act is the negative resolution procedure. By virtue of paragraph 33 of Schedule 11 to the Government of Wales Act 2006, references in section 93 to either House of Parliament are deemed to be references to the Assembly in relation to the present Regulations.

4. Purpose and intended effect of measure

4.1 Provision was made by the Assembly Government in 2006² for requiring specified applications for listed building consent to be accompanied by an Access Statement. The present measure consolidates this provision with new provision for Design Statements, thus enabling applicants to submit combined “Design and Access Statements”. Given this background, the succeeding paragraphs deal only with the new provision (i.e. that relating to the design element of the statements).

4.2 Currently Planning Policy Wales 2002 (PPW) (Section 2.9) and Technical Advice Note 12: Design, 2002 (TAN 12) currently indicate that LPAs should include design policies in their development plans and augment these with supplementary planning guidance. They also identify design statements as a design tool to accompany planning applications with design implications.

4.3 The intention to make Design Statements statutory was made by the Minister (SF CJ/0815/06) in November 2006, following the responses to the Development Control consultation paper and further considerations with regards to the possible relationship to influencing the effects of Climate Change.

4.4 In July 2006, the Assembly Government consulted on a package of documents based on the development control aspects of the Planning and Compulsory Purchase Act 2004 (PCPA). This package included consideration of statutory design statements in Wales.

4.5 The consultation responses on statutory design statements were analysed and showed that a majority of consultees supported their introduction. The Minister was recommended to set the necessary statutory processes in train to implement them as a requirement to accompany certain types of planning applications and applications for listed building consent. None of the responses made specific reference to listed buildings and conservation areas.

4.6 PPW and TAN 12 provide a broad definition of design and list sustainable design principles, which include energy and resource efficiency but not specifically targeted at climate change issues and includes specific guidance on the historic environment. TAN 8: Renewable Energy indicates that LPAS require energy statements to accompany certain non-residential proposals.

² The Planning (Listed Building and Conservation Areas) (Amendment) (Wales) Regulations 2006 (S.I. 2006 3316 (W.301)) which came into force on 30 June 2007

4.7 Design statements are considered a useful tool for addressing climate change and other aspects of sustainable development through the planning system.

4.8 Therefore, the Welsh Assembly Government consulted on the detail of statutory design statements and relevant changes to PPW as part of an overall package of measures to address climate change through the planning system in “Planning for Climate Change” (December 2006).

4.9 Following the analysis of this consultation, the relevant changes to PPW and TAN 12 are being made in conjunction with the making of the present Regulations. These will provide practical guidance to applicants as to how the requirements of the Regulations should be met.

4.10 The move towards the requirement for design statements is driven by the principles underlying the new planning system under the Planning and Compulsory Purchase Act 2004, namely:

- greater certainty: for developers, local authorities and communities about the planning system and the nature of development. Both to reduce timescales associated with the planning process and to increase trust amongst parties and in turn, improve support for good development.
- Upfront information and involvement: improving the efficiency of the planning system is a key objective and involvement early-on in planning applications, enabled by greater activity upstream in the decision making process, is a key means of achieving this.
- Community involvement: more information at outline stage about the nature of development, and the requirement for statements to explain how design issues have been thought through and support the principle of better community engagement

4.11 As the Welsh Assembly Government is responsible for setting the framework for planning in Wales, it is considered that the planning system should:

- be open, fair and transparent
- inspire public and business confidence
- deliver improved quality and speed
- integrate with other plans, processes and actions,

and it is considered that introducing these regimes will assist in achieving these aims.

4.12 The main objective is to ensure that local planning authorities (and the Welsh Ministers when they are the decision-maker) have sufficient information to properly consider sustainable design issues and therefore make and informed decisions about whether to grant listed building consent. Design is particularly relevant to listed building controls and a design statement will ensure that the wider aspects of design will be considered early on in the process.

4.13 The applicant would need to illustrate clearly and consistently how the proposed works would not be inappropriate for the listed building, as these are part of our national heritage, whilst also considering other specified aspects of design; thus maximising opportunities for making the proposed works more efficient and appropriate for the building.

4.14 The promotion of the design statements through this order is a critical tool to ensure that all the required information from the requirements included in national policy and guidance and local planning policy can be presented on the one statement, and that therefore good design practice will prevail across Wales and ensure conformity with national and local planning policy. Good design seeks benefits over time and the investment will be repaid. Guidance will provide clarity as to what should be included in a design statement.

4.15 Design statements mean that design is considered at the outset of any project and will form an integral part of the thinking and not something considered at the last minute. The regulations will require the statement to explain the policy or approach adopted to specified aspects of design, and how this takes account of the special architectural or historic importance of the building, the particular features that justify its listing and the building's setting. Guidance will recommend that the length of the statement should be proportionate to the works proposed.

4.16 The purpose of the design statement will be to explain and justify the design principles and concepts on which proposed works are based, in terms of the aspects of design specified in the Regulations..

5. Implementation

5.1. Date instrument laid: 21st April 2009
Coming into force date: 1st June 2009

5.2 No legal or other implications for the Assembly Government should the dates not be met.

5.3 England has introduced requirements for Design and Access but the requirements for Wales will be different, as they need to reflect the long-established broader approach taken to design in policy in Wales and the English requirements would not be sufficient (see section 7). As mentioned above (4.1), Access Statements have already been introduced in Wales and therefore local planning authorities and the Welsh Ministers can properly assess access issues; this has also supported the Disability Equality Duty placed on public authorities from December 2006.

6. Consultation

6.1 This RIA has been prepared to accompany the legislation on design and access statements. The principles of the legislation were consulted upon as part of the limited update on TAN12 on Design (closed Summer 2008).

6.2 The summary of the consultation responses is available on the Assembly Government's website.

7. Regulatory Impact Assessment

7.1 The Regulatory Impact Assessment has been prepared in relation to all of the above aspects of the Regulations and this follows.

Design and Access Statements

Scope of statements

The enabling powers provide that the form and content of a design statement are to be such as are prescribed by regulations (section 10(5) of the 1990 Act). However, the objectives listed in the current Assembly Government policy on Design, TAN 12, include matters which go much further than the traditional aesthetic elements of design. The policy emphasises (para 5.44) that its advice on the objectives of good design is equally applicable to design in the historic environment. This approach has been reinforced by the Ministerial Interim Planning Policy on Good Design, which includes a definition of design. Long-established policy on the historic environment also provides for a comprehensive and broad approach to the justification of proposed works. It was considered therefore that since a broad and multi-faceted policy definition of design (which went further than purely traditional design elements) has been in place for many years, it would not be necessary or appropriate to do other than carry this forward into the scope of statutory design statements. However, regard would need to be had to the scope of listed buildings works and the policy objectives of listed building control, which are more narrowly focussed than the scope of planning applications and the objectives of planning control.

Statements will therefore be required to consider the following aspects: environmental sustainability, appearance, layout and scale. The statement must also take account of the special architectural historic importance of the building, the features which justify its listing and the building's setting. These requirements are considered to encapsulate the principal concerns and objectives of good design already established by policy, whilst being sufficiently general to allow applicants the scope to reflect the circumstances and concepts of their proposals in a proportionate way.

Application of requirement for statements - options

The enabling powers provide that a development order must require that applications for listed building consent “of such description as is prescribed” must be accompanied by a statement (section 10(4) 1990 Act). TAN12 does not make specific provision for advisory design statements in reaction to applications for listed building consent, but Circular WO 61/96 (Planning and the Historic Environment) emphasises the need for applicants to justify their proposals and states that the local planning authority must be provided with full information. However, such a generalised approach is not necessarily appropriate to carry forward into a statutory requirement to submit design statements. Two options were therefore considered: the second is the preferred option:

(i) Do nothing – This would mean that the present regime would continue which means that local planning authorities decide as to when and under what circumstances a design statement is required. Guidance is included in TAN 12: Design at present and the Assembly Government would continue to encourage the use of design statement when appropriate. Access statements are mandatory.

Benefits

- Economic: it would mean that the process remains as it is and that applicants do not need to be aware or accommodate any new requirements.
- Social: It would mean that the process remains as it is and that the community would not need to be aware of any new process.
- Environmental: TAN 12 states that environmental aspects should be included in a design statement.

Costs

- The use of such a tool is sporadic and an inconsistent approach has developed throughout Wales and this would continue.
- TAN 8 also give guidance on Energy Reports and these are also inconsistently applied throughout Wales and this would remain.
- Economic: Incur costs on developers by the lack of clarity as to when a Design Statement is required and therefore discussions may be prolonged. Uncertainty would still exist.
- Social: Lack of certainty for the community as to when a DS is required and what information needs to be included.
- Environmental: As this information is not currently required, the environmental aspects of the listed buildings would not be considered by the applicant.

(ii) Applying design statement requirement to listed building consent applications

This option would introduce a statutory requirement to ensure that applications for listed building consent are accompanied by a design and access statement (with the design element being required in relation to both internal and external proposed

works). A statement would ensure that applicants would consider the design implications of the proposed development.

Benefits

- **Economic:** It would give applicants the opportunity to take account of the costs of preparing studies and material when works are required or intended. The requirements exist already in guidance and therefore applicants should be carrying out such statements already and new costs should not be incurred. This would add certainty to the process and would mean that developers have to incur costs and consider design issues in full at the outset. This should allow planners to make better and quicker decisions based on clear up front information and reduce costs to local authorities and applicants.
- **Social:** The community would benefit from having a statutory process for proposed works as there would be statutory requirements to ensure consistency on the information provided with applications and provide more and better quality information than is required by statute at present. Due to the evidence in the statement the community will benefit from understanding the proposal and how it should improve the quality of the local environment.
- **Environmental:** This option would ensure that applicants consider the environmental aspects. By considering these issues early, developers should create schemes, which would have less impact on the environment. Where developments have a detrimental impact on the environment, mitigation can be considered at an early stage.

Costs

- **Economic:** LPAs should have the skills to assess design currently where they are the decision-maker so should not incur additional costs. By making design statements statutory, there would potentially be new costs for applicants where the design statement requirement exceeds the current policy requirement to provide full information relating to the application. LPAs could however demand more information if the requirements of the order had not been satisfied.
- **Social:** None.
- **Environmental:** None

Recommendation: Option 2 is recommended. It is considered that option 2 would offer the widest benefits for Wales. By requiring that design and access statements applications for listed building consent, there would be consistency and integration with access statement requirements and design considerations would be part of the early consideration of any works, leading to a more sustainable operation. It is recognised that in some instances comparatively minor works will require a statement, but the Regulations do not require any particular level of detail or length and this will allow applicants to take a proportionate approach which responds to the circumstances of the works.

Competition Assessment

The competition filter test has been completed and it shows that there is unlikely to be any market competition impact from the Regulations. There is little likelihood of the Regulations having a negative impact on competition in the development market. The costs and benefits have been considered for applicants and it is considered that the benefit of the recommended option outweighs the costs. The Regulations should not act as a barrier to entry, nor lead to a greater concentration of market share. It is considered that the Regulations will improve the current process as it will provide a level playing field for all across Wales.

Consultation

Public Consultation

Overview of the responses to the consultation on the Development Control package

The main question was whether the requirement for design statements with planning and listed building applications should be statutory. The highest percentage of responses came from the local authorities. Two thirds of all the respondents were in support of making Design Statements statutory as TAN 12 which currently suggests that design statements should be required acts only as guidance. It was considered that 'design' needed to be seen as a higher priority in Wales.

Yes – 18 NO – 9

2007 Climate Change consultation document – Design Statements

Generally the 43 who responded on the Design Statements were in support of them being broader than purely design and that these should include details on sustainability and considered that they would be useful in tackling climate change issues.

12 Responses considered that Design Statements should accompany any application with the degree of detail varying in the type and size of application. Most of these 12 were from local planning authorities. The cumulative effect of development was also raised by three of the respondents and that even small development could have an impact.

9 of the responses believed that the design statements should only apply to major applications, these respondents were from various organisations but did also include responses from local planning authorities.

Local planning authorities raised concerns about the time this could add to the decision making process. One believed that this process should happen prior to

submission of the application to ensure that the design issues were considered at the outset. Many believed that it was crucial that design was considered as early as possible.

It was considered reasonable that the design statements should also include information on how the proposed development would reduce carbon emissions and that details on energy efficiency should be included.

It is also clear that some LPAs are preparing supplementary planning guidance on design which also include similar requirements as the above.

Others required further guidance and information on how the statements should be assessed and that clarification is needed on how DS could contribute to the implementation of climate change policies.

Sounding Board

Sounding Board was set up which included representatives from WLGA, DCfW, HBF, FSB, and WAG. Representatives of Disability Wales and other interest groups, experts or officials attended relevant meetings.

It assisted the Welsh Assembly Government in producing national legislation and guidance that related to:

- the requirement to submit design and access statements with planning and listed building consent applications;
- the policy that is appropriate in local planning authority policy

Review

This legislation will be subject to monitoring review as deemed appropriate and in discussion with key stakeholders. As with most development control processes, local planning authorities will monitor the effectiveness of design statements. Representations from key stakeholders on this issue will be considered as part of any review.

Summary

As current guidance include the requirement for design statements it is not considered that this legislation will increase the financial costs on applicants. However as practices vary across Wales this will ensure certainty for applicants and has the potential for cost saving for developers at later stages of development. Its implementation will also facilitate the Welsh Assembly Government's commitment to sustainability and reducing the effects of climate change.