

**EXPLANATORY MEMORANDUM AND REGULATORY IMPACT ASSESSMENT
TO
THE TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT
PROCEDURE) (AMENDMENT) (WALES) ORDER 2009**

1. Description

1.1 This Order amends the Town and Country Planning (General Development Procedure) Order 1995 [S.I.1995/419]. It makes provision for design and access statements which are required to accompany certain types of planning applications.

2. Matters of special interest to the Subordinate Legislation Committee

2.1 None

3. Legislative background

3.1 The power to make the Amending Order and the Amending Regulations in relation to Design Statements will be provided by sections 59, 61(1) 62 (as substituted by the Planning and Compulsory Purchase Act 2004) and 69 of the Town and Country Planning Act 1990. The functions of the Secretary of State under these sections are now exercisable by the Welsh Ministers in relation to Wales.

3.2 Section 59 of the Town and Country Planning Act 1990 (“the 1990 Act”) requires the Welsh Ministers to make a development order. A development order can either grant planning permission for the development specified in the Order or set out the procedures to be followed in dealing with applications for planning permission. The Town and Country Planning (General Development Procedure) Order 1995 (“the 1995 Order”)¹ sets out the procedures to be followed in connection with planning applications, appeals to the Welsh Ministers and the Secretary of State and related matters so far as these are not laid down in the Town and Country Planning Act 1990 and the Town and Country Planning (Applications) Regulations 1988 [S.I. 1988/1812]. It also deals with the maintenance of registers of planning applications, applications for certificates of lawful use or development, and other related matters. This Order amends the 1995 Order.

3.3 Section 62 of the 1990 Act (substituted by section 42 of the Planning and Compulsory Purchase Act 2004) provides that a development order may make provision for applications for planning permission made to a local planning authority. Section 62(5) provides that a development order must require that an application for planning permission of such description as is specified must be accompanied by a statement setting out the design principles and concepts that have been applied to the development. Article 2 of this Order inserts a new article 4D into the 1995 Order setting out the type of planning applications to which the requirement for a

¹ S.I. 1995/419. Relevant previous amendments have been made by S.I.1997/2971, 2004/3156 (W.273) and 2006/3390 (W.310).

design and access statement applies 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 of the 2004 Act (which are Section 42 (1) and (5)) on 30th June 2007.

3.5 **Negative Resolution:** The negative resolution procedure is pursued as Section 333 of the TCPA 1990 provides that the standard parliamentary procedure for statutory instruments under the Act is the negative resolution procedure. There are some exceptions but they do not apply in this instance. By virtue of paragraph 33 of Schedule 11 to the Government of Wales Act 2006, references in section 333 to either House of Parliament are deemed to be references to the Assembly in relation to the present Order.

4. Purpose and intended effect of measure

4.1 Provision was made by the Assembly Government in 2006² for requiring specified applications for planning permission 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, Section 2.9 of Planning Policy Wales (as updated by the Ministerial Interim Planning Policy Statement) and Technical Advice Note 12: Design, 2002 (TAN 12) indicate that LPAs should include design policies in their development plans and augment these with supplementary planning guidance. TAN 12 also identifies 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 Assembly Government (SF CJ/0815/06) in November 2006. This decision was made following the responses to the Development Control consultation paper (July 2006) and the responses to the Planning for Climate Change consultation (December 2006).

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

² The Town and Country Planning (General Development Procedure) (Amendment) (Wales) Order 2006 (S.I. 2006/3390 (W.310)), which came into force on 30 June 2007

4.5 The consultation responses on statutory design statements were analysed and showed that a majority of consultees supported their introduction.

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

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 The Welsh Assembly Government therefore 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 were made. Questions were included in the TAN 12 consultation over the summer of 2008 on the contents of legislation.

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 statements will assist in achieving these aims.

4.12 The main objective is to ensure that local planning authorities have sufficient information to properly consider sustainable design issues. The developer would need to illustrate clearly and consistently how the proposed project would contribute to these aspirations. This includes contributing to decreasing the effects of climate change, which is an Assembly Government wide objective.

4.13 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 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 would provide clarity as to what should be included in a design statement.

4.14 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.

4.15 PPW has been revised and TAN 12 will be updated to include policy and guidance on design and access statements.

5. Implementation

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

5.2 There are no legal or other implications for the Assembly Government should the dates not be met.

5.3 England introduced requirements for design and access statements in 2006. The requirements for Wales will be different as they need to reflect the broader approach taken to design in policy since 2002 and the English requirements would not be sufficient (see section 7). As mentioned above, Access Statements have been introduced in Wales (June 2007) and therefore local planning authorities can properly assess access issues; the 2006 Order 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 Order 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 required by development order (section 62(6) TPCA 1990). 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. This is reinforced by the revision to planning policy by the introduction of the Ministerial Interim Planning Policy on Good Design, which includes a definition of design. It was considered therefore that since a broad and multi-faceted policy definition of design in planning terms, which went further than purely traditional design elements, has been in place since 2002, it would not be necessary or appropriate to do other than carry this forward into the scope of statutory design statements. These will therefore be required to consider the following aspects: environmental sustainability, character (traditional elements of design), movement and community safety. The statement must also consider the physical, social, economic and policy context of the development., but no statement is required for engineering or mining operations, development relating to existing dwelling-houses or material changes in use, These requirements are considered to encapsulate the principal concerns and objectives of good design already established by planning 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 planning applications "of such description as is specified in the order" must be accompanied by a statement (section 62(5) TPCA 1990). TAN12 states (paragraph 4.8) that design statements should be submitted with "all planning applications which have design implications" but does not further define what those applications would be. This is not appropriate for legislation and three options were therefore considered: the third option 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 (access statements are mandatory). Guidance is included in TAN 12: Design at present and the Assembly Government would continue to encourage the use of design statement when appropriate.

Benefits

- **Economic:** it would mean that the process remains as it is and that applicants should be aware of national policy and guidance on design statements and do not need to be aware or accommodate any new statutory requirement.
- **Social:** It would mean that the process remains as it is and that the community would not need to be aware of a new statutory process.
- **Environmental:** TAN 12 states that environmental aspects should be included in the non statutory design statement. EIA Regulations already cover applications of certain types or which exceed specified thresholds and thereby require environmental impact assessments.

Costs

- The use of such a tool is sporadic and an inconsistent approach has developed throughout Wales and this would continue.
- TAN 8 also includes 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 (and to what degree) information on design will be required by the Local Planning Authority when considering a planning 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:** The quality of the current design statements are variable and the contents can be vague and unclear. Unless an EIA is required, environmental issues may not be addressed as fully as they should be.

(ii) Applying design statement to applications for major developments

This option would introduce a statutory requirement to ensure that applications in relation to major developments (as defined in the General Development Procedure Order) are accompanied by a design and access statement. A statement would ensure that applicants would consider the design implications of the proposed development and this would be noted in the design and access statement which would accompany the planning application when submitted to the authority. This would mean that the access element of the design and access statement would be required to accompany different planning applications.

Benefits

- **Economic:** It would give applicants the opportunity to take account of the costs of preparing studies and material when land is purchased. The

- requirements exist already in guidance and therefore applicants should be carrying out such statements already and new costs not incurred. However, 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. Where applicable, if the required information (as stated by the legislation) is not presented the applicant will not be able to appeal against a non-determination as the authority could not register the application. In some instances, as justification and explanations are presented upfront decisions will be taken quicker and less time would be spent on chasing for information.
- **Social:** The community would benefit from having a statutory process for major developments as there would be statutory requirements to ensure consistency on the information provided with certain types of 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 (in relation to major developments) consider the environmental aspects even if EIA is not required. 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:** This would only relate to the minority of applications in Wales. LPAs should have the skills to assess design currently for major applications so should not incur additional costs. By making DS statutory, there would be new costs for those applicants who are not currently required by LPAs to submit a design statement. LPAs could demand more information if the requirements of the order had not been satisfied.
- **Social:** The community would only gain further information and insight into major applications and therefore many applications which may be relevant to the community would not provide design detail and justification.
- **Environmental:** Design and access statements would only accompany major applications and therefore the environmental aspects of design would otherwise only be covered if an EIA were required.

(ii) Design Statement for specified applications– This option would introduce a statutory requirement to ensure that certain types of applications are accompanied by a design and access statement to match the statutory requirements for access statements. Engineering and mining operations, householders and changes of use would not be covered by this requirement. A statement would ensure that applicants would consider the design implications of the proposed development and this would be noted in the design and access statement which would accompany the planning

applications (when applicable) when submitted to the authority. The information included in the statement would be proportional to the development.

Benefits

- **Economic:** This would create certainty for the applicant and would enable the applicant to cost the process from the beginning – it should bring all the present requirements of policy and guidance into one statement for both access and design and provide clarity. Requirements would be proportional to type and scale of application thus should not disproportionately burden smaller proposals. It would give applicants the opportunity to explain how they have considered the design aspects of the proposal and therefore would allow planners to make better and quicker decisions based on clear up front information. It would mean that developers have to consider design issues in full at the outset for most applications. Where applicable if the required information (as stated by the legislation) is not presented the applicant will not be able to appeal against a non-determination as the authority could not register the application. In some instances, as justification and explanations are presented upfront decisions will be taken quicker and less time would be sent on chasing for information. It would probably mean less cost for the applicants, the requirements exist already in guidance and therefore applicants should be considering the issues and providing information already; this would add certainty to the process.
- **Social:** The community would benefit from having a statutory process as there would be statutory requirements to ensure consistency on the information provided with certain types of applications and provide more and better quality information than is required by statute at present. Due to the justifications included in the statement the community will benefit from seeing the reasons for the proposal and that development would improve the quality of the built environment.
- **Environmental:** This option would ensure that applicants consider the environmental aspects of the project and include such considerations in the statement. The applicant will have to consider environmental aspects and therefore more applications will consider environmental aspects than the current regime where it is a statutory requirement under EIA requirements. By taking these considerations up front it would allow developers to create schemes which would have less impact on the environment. By including the above types of applications a high percentage of applications will have to justify their proposal and explain how they have considered relevant topic areas and this would lead to higher quality developments which would benefit the environment and the community.

Costs

- **Economic:** There should not be additional costs for LPAs as they should have the skills in house as the requirements are included in guidance at the moment. This would only bring about costs to those applicants who do not follow the guidance that exists at the moment, by ensuring that what should

- happen happens by making it a statutory process and therefore allowing LPAs to require the relevant information as stated by this order.
- Social: None
 - Environmental: None

Recommendation: Option 3 is recommended. It is considered that option 3 would offer the widest benefits for Wales. By requiring that Design Statements accompany a wide range of applications, there is consistency and integration with access statement requirements and design considerations will be part of the early consideration of a project, leading to more sustainable development.

Competition Assessment

The competition filter test has been completed and it shows that there is unlikely to be any market competition impact from this Order. There is little likelihood of the Order 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 options outweigh the costs. The Order should not act as a barrier to entry, nor lead to a greater concentration of market share. It is considered that this Order will improve the current process as it will provide a level playing field for all across Wales. Although guidance states that design statements should accompany planning applications, as things stand practice varies 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 included 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 organisation 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

A 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 applications;
- the policy that is appropriate in development plans and supplementary planning guidance.

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 includes 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.