

Explanatory Memorandum to The Town and Country Planning (General Development Procedure) (Amendment) (Wales) Order 2008

This Explanatory Memorandum has been prepared by the Department for Environment, Sustainability and Housing and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

(i) Description

This Order amends the Town and Country Planning (General Development Procedure) Order 1995 [S.I.1995/419]. It amends the definition of “reserved matters” and specifies information that must be submitted with an application for outline planning permission.

(ii) Matter of social interest to the Subordinate Legislation Committee

None

(iii) Legislative background

The power to make the Order is provided by sections 59, 61(1), 62(1) and 333(7) of the Town and Country Planning Act 1990 (“the 1990 Act”) as amended by the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”).

Section 59 of the 1990 Act requires the Secretary of State to make a development order. In relation to Wales that obligation now lies with the Welsh Ministers. 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”) sets out the procedures to be followed in connection with planning applications, appeals, and related matters so far as these are not laid down in the 1990 Act 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.

Article 3(1) of the 1995 Order provides that where an application is made to the local planning authority for outline planning permission for the erection of a building, the authority may grant permission subject to a condition specifying reserved matters which require the authority’s subsequent approval. “Reserved matters” is defined in article 1(2) of the 1995 Order. Article 3 of this Order amends that definition.

Section 61 of the 1990 Act provides that a development order may make different provision with respect to different descriptions of land, and Section 62 of the 1990 Act (substituted by section 42 of the 2004 Act) provides that a development order may make provision as to applications for planning permission made to a local planning authority.

The Planning and Compulsory Purchase Act 2004 (Commencement No.1) Order 2004 (SI 2004/2097) and the Planning and Compulsory Purchase Act 2004 (Commencement

No. 10 and Saving) Order 2007 [S.I. 2007/1369 (C.58)] commenced the relevant provision of the 2004 Act, which is Section 42 (1).

Negative Resolution: The negative resolution procedure is pursued as Section 333(5) of the 1990 Act provides that the standard procedure for statutory instruments under the 1990 Act is a negative resolution procedure. There are some exceptions but they do not apply in this instance.

(iv) Purpose and intended effect of measure

In July 2006, the Assembly Government consulted on a package of documents based on the development control aspects of the 2004 Act. This package included consideration of the definition of reserved matters in Wales.

The Welsh Assembly Government considers 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,

The move towards a more detailed outline planning permission regime will assist in achieving these aims.

The revised definition of reserved matters is intended to provide:

- 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.
- Up-front 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 to aid public understanding of the proposals and therefore support the principle of better community engagement.

These changes will support provision of the amount of detail required to satisfy the requirements of the Town and Country Planning (Environmental Impact Assessment) Regulations 1999 which require a development's likely significant effects on the environment to be considered before outline planning permission is granted. They will also clarify the limits of reserved matters, which will further assist the process of assessment. The cases of *R v Rochdale MBC ex parte Tew* [1999 3PLR74] and *R v Rochdale MBC ex parte Milne* [2001 81PCR27] set out the approach that planning authorities need to take when considering Environmental Impact Assessment (EIA) in the context of an application for outline planning permission. A critical lesson learned from these judgements was that an application for a "bare" outline permission with all matters reserved for later approval is extremely unlikely to comply with the requirement of the EIA Regulations.

"Reserved matters" currently consist of siting, design, external appearance, means of access and the landscaping of the site. This Order amends the definition to access, appearance, landscaping, layout and scale. These matters are then accompanied by an explanation of their scope, detail not previously provided. The Order then inserts new clauses into Article 3 of the 1995 Order that require a basic level of information on access, layout and scale, even if these matters are reserved for later consideration. The overall effect is to require more information to be submitted as part of an outline planning permission and provide greater clarity about the scope of reserved matters.

(v) Implementation

If these regulations are annulled, then the benefits of greater certainty, level of up-front information and community involvement would not be realised for outline planning applications. Also, a more robust legal framework will not as a consequence be provided for ensuring outline planning applications have a sufficient level of information to comply with the EIA Regulations and European law.

The definition of reserved matters has already been changed in England. Of the wide range of changes to the planning system introduced by the 2004 Act, priority was given in Wales to developing the new system of Local Development Plans. Development procedure clauses are now being addressed.

(vi) Consultation

Consultation was undertaken on the proposed revisions as part of the Changes to Development Control in Wales Consultation, which issued in July 2006 for 10 weeks. Details can be found in the following Regulatory Impact Assessment.

(vii) Regulatory Impact Assessment

A Regulatory Impact Assessment has been prepared in relation to the above aspects of the Order.

a) Options

Two options were considered:

- (i) Do nothing
- (ii) Amend definition of reserved matters to require information earlier in the determination process.

Option (i) Do nothing –

This would mean that the present regime would continue which means that local planning authorities would have to exercise care when determining outline planning applications to ensure sufficient information is provided with an application so that it is clear what is being applied for.

Option (ii) Amend definition of reserved matters to require information earlier in the determination process

This option would leave three of the five existing reserved matters largely unchanged: landscaping of the site, means of access and external appearance (more detailed description provided in the consultation document and draft guidance). It would replace siting and design with two reserved matters which more closely tie in both with Ministerial wishes for more information and design statements. Applicants for outline permission would provide parameters on the scale and layout of their schemes. The final, fixed layout and scale of a development (within these parameters) would be decided at reserved matters stage.

b) Benefits

Option (i) Do nothing –

Economic benefits

This option would mean that the process remains as it is and that applicants do not need to be aware of or accommodate any new requirements.

Environmental benefits

None.

Social benefits

This option would mean that the process remains as it is and that the public would not need to be aware of any new process.

Option (ii) Amend definition of reserved matters to require information earlier in the determination process

Economic benefits

This option should facilitate better quality development by giving certain elements of design greater consideration at an earlier stage in the development process. It should also help to minimise any costly negotiations or changes at a later stage in development.

Environmental benefits

This option should ensure that there is sufficient information available to carry out an effective EIA and generally assist the effectiveness of the EIA process. EIAs should help to minimise the impact of development on the environment.

Social benefits

This option would provide a baseline of information about the nature of development that would give the community greater certainty about what to expect and a more informed basis on which to participate in planning decision. This should ensure that opposition to development at the later stages of a planning application is reduced and issues are worked through at an early stage. Better and earlier information about the nature of development will also contribute to improving trust between parties involved in planning applications.

c) Costs

Option (i) Do nothing –

Economic costs

No direct costs although delays in determining planning applications may occur due to uncertainty about the extent of information required by local planning authorities and therefore discussions may be prolonged.

Environmental costs

This option would not ensure enough information is provided about the proposed development to enable environmental impacts to be properly considered and would therefore be counter to EIA requirements.

Social costs

It would mean that 'bare' outline applications would continue to be submitted making it difficult for the public to understand the proposals and engage in the determination process.

Option (ii) Amend definition of reserved matters to require information earlier in the determination process

Economic costs

There will be no overall direct financial cost to applicants for planning permission or local planning authorities. However, this option will involve applicants providing more detail at outline stage about the scale and layout of proposed schemes which will entail greater cost on the part of the applicant at an earlier stage of the development process - although this should be offset by a reduced burden later on in the process as more detailed proposals are finalised. Representatives of the development industry have indicated that they are content with this approach for the retention of outline planning permission. Similarly, there will be additional costs for local authorities in considering outline planning applications which are more detailed, however, there will be less work to be done during the consideration of reserved matters and this should also reduce the need to go back to the applicant for more information as has been the tendency in the past, therefore saving time and costs.

Environmental costs

None.

Social costs

None.

d) Competition Assessment

The competition filter test indicates there will be little risk of the regulations having a negative impact on the development market.

e) Consultation

The Changes to Development Control in Wales consultation set out a number of proposed changes to development management procedures made possible by the 2004 Act. This included a proposal to amend the definition of reserved matters to the same extent that it had been amended in England.

The consultation was issued on the Assembly Government's website for a 10 week period between 20 July 2006 and the 28 September 2006. Invitations to comment on the consultation paper were sent to approximately 450 individuals and organisations including those representing, the voluntary, business and environmental sectors as well as local and central government.

Of the 48 responses to the consultation only 18 specifically addressed the issue of amending the reserved matters definition, these latter respondents are listed in Annex 1. Eleven respondents gave the proposals unqualified support and a further 5 gave their support with certain reservations about the continued worth of outline permissions, a perceived lack of guidance and questioning whether the changes go far enough.

Due to the level of support for the proposal, no changes have been made. It is the intention to issue guidance to accompany regulations, which will address one point made.

f) Post-implementation Review

No formal monitoring of the effect of the Order is proposed. However the number of decisions on EIA applications that are challenged through a lack of information at outline stage will be monitored.

g) Summary

The 1990 Act (as amended) provides the scope to amend the definition of reserved matters to clarify the information required at outline application stage. The order is intended to improve certainty, gain more up-front information and community involvement. It is particularly intended to ensure sufficient information is provided to comply with EIA legislation. The development sector will have to provide some information earlier in the determination process thereby affecting development costs, but will benefit from greater certainty about the extent of information required. The order is considered the most appropriate option because to do nothing would not have resolved the issues associated with 'bare' planning applications.

ANNEX 1 - List of responses received

Bridgend County Borough Council
British Holiday and Home Parks Association
Caerphilly County Borough Council
Campaign for the Protection of Rural Wales, Newport and Valleys Branch
Ceredigion County Council
Country Landowner Association
Design Commission for Wales
Environment Agency Wales
Gwynedd County Council
The Law Society
Monmouthshire County Council
Newport City and County Council
Planning Aid Wales
Rhondda Cynon Taf County Borough Council
Royal Town Planning Institute
Snowdonia National Park Authority
Swansea City and County Council
Vale of Glamorgan Council