

Explanatory Memorandum to the Town and Country Planning (Pre-Application Services) (Wales) Regulations 2016

This Explanatory Memorandum has been prepared by the Department for Natural Resources and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Town and Country Planning (Pre-Application Services) (Wales) Regulations 2016. I am satisfied that the benefits outweigh any costs.

Carl Sargeant
Minister for Natural Resources
1 February 2016

- 1.1 The Town and Country Planning (Pre-Application Services) (Wales) Regulations 2016 (“the 2016 Regulations”) make provision for the provision of services by local planning authorities (“LPAs”) before a qualifying application is made (“statutory pre-application services”).
- 1.2 The 2016 Regulations specify that qualifying applications are applications for planning permission made to an LPA for the development of land in Wales (except applications under section 73A of the Town and Country Planning 1990 (“the 1990 Act”). They introduce basic statutory pre-application services to be provided by LPAs when requested by potential applicants. LPAs can currently offer a discretionary pre-application service and, should they choose to, request a fee based on the size and scale of the proposed development on a cost-recovery basis. Both the fee levels and thresholds for development currently used by LPAs vary significantly across Wales.
- 1.3 The 2016 Regulations make provision about the form and content of requests for statutory pre-application services and the information that is to accompany such requests. They also make provision about the pre-application services which must be provided by LPAs if a valid request is received, and when such services are to be provided. The statutory pre-application services provided by LPAs will be standard and contain the same level of detail across Wales.
- 1.4 The 2016 Regulations also make provision about records to be kept and publication of information by LPAs.

2 Matters of special interest to the Constitutional and Legislative Affairs Committee

- 2.1 The 2016 Regulations are connected to amendments to be made to the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015 by the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) (Amendment) Regulations 2016 (“the 2016 Fees Amendment Regulations”). The 2016 Fees Amendment Regulations will introduce standard fees across Wales for the statutory pre-application service to be provided by LPAs, if requested.
- 2.2 The 2016 Fees Amendment Regulations are subject to the affirmative procedure and the plenary debate will take place on 26 January 2016. The 2016 Fees Amendment Regulations will come into force on the same date as the 2016 Regulations.

3 Legislative background

- 3.1 The powers enabling the 2016 Regulations to be made are contained in sections 61Z1, 61Z2 and 333(2A) of the 1990 Act.

3.2 Section 18 of the Planning (Wales) Act 2015 inserts section 61Z1 (Wales: pre-application services) and section 61Z2 (Pre-application services: records and statements of services) into the 1990 Act.

3.3 The 2016 Regulations are subject to the negative procedure.

4 Purpose & intended effect of the legislation

4.1 The consultation paper 'Positive Planning' set out how the Welsh Government intends to achieve its vision for the planning system in Wales: 'a planning system which helps us to deliver national, local and community objectives by supporting appropriate development'. To achieve this we need a planning system which is positive in outlook and facilitates rather than frustrates appropriate development.

4.2 LPAs can currently offer a discretionary pre-application service and should they choose to, charge a fee based on the size and scale of the proposed development on a cost-recovery basis. Both the fee levels and the thresholds currently set by LPAs vary significantly across Wales.

4.3 The intention is to provide a standard statutory pre-application service across Wales to be provided by LPAs when requested by potential applicants. This will improve consistency and provide potential applicants with certainty and clarity on what information they can expect to receive.

4.4 LPAs will be able to offer an additional discretionary service that goes beyond the statutory pre-application services and will be able to charge a fee for these additional discretionary services on a cost recovery basis.

4.5 If the 2016 Regulations are not made, there will be significant risks to the consistency of pre-application services across Wales with continued uncertainty for developers.

5 Consultation

5.1 The requirement for a statutory pre-application service was first discussed in the 'Positive Planning' consultation paper. More detailed consultation was subsequently undertaken between 06 October 2014 and 16 January 2015, seeking comments on aspects of a proposed statutory pre-application service, including:

- What information potential applicants should submit to LPAs
- The content of a LPAs response
- Response times
- Pre-application service fees

5.2 Responses to the consultation were generally positive, although respondents did suggest additional information to be included within both the information potential applicants should submit to LPAs and LPA responses. Furthermore, it was suggested that the timescale for LPAs to respond should be extended.

Part 2 - Regulatory Impact Assessment

Statutory pre-application service

1. As outlined in section 2 of the Explanatory Memorandum in Part 1 above, the proposed standardised fees to accompany requests for statutory pre-application services under the 2016 Regulations, as outlined in Option 2, will be introduced through amendments to be made to the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015 by the 2016 Fees Amendment Regulations which will come into force on the same date as the 2016 Regulations. A separate RIA has been completed on those Regulations.

Options

2. Two options have been considered:
 - Option 1 – Do nothing i.e. continue with the current provision of pre-application service by LPAs on a discretionary basis.
 - Option 2 – The introduction of a statutory pre-application service, to be accompanied by a standardised fee.

Option 1 – Do nothing

Description

3. Currently, there is no statutory requirement for LPAs to provide a pre-application service to potential applications. However, if they choose to, it is provided on a discretionary basis, resulting in a lack of consistency in service provision. For example, some LPAs may not require a fee for a householder pre-application enquiry, where others will. Similarly, the charging schedules and the thresholds used to determine fee charges can vary significantly across Wales. For example, for major developments, one LPA requires a fee of £300, while another LPA requires a fee of £1,500. This highlights the significant variations in fee levels.
4. Under this option, LPAs would continue to offer pre-application services on a discretionary basis, with little consistency across Wales. LPAs would retain the ability to charge different fees for pre-application services, with some offering free advice and others recovering costs by charging.

Costs

Welsh Government

5. There would be no additional costs to the Welsh Government as guidance on the pre-application process is currently available to LPAs.

Local Planning Authorities

6. The costs associated with LPAs are based on the time taken to administer and resource the pre-application enquiry, coupled with staff costs of undertaking these tasks. This can be highly variable depending on the complexity and scale of the application. It is not possible to calculate the aggregate cost of pre-application services to LPAs as the number of pre-application enquires submitted across Wales is currently unknown. Furthermore, as this is a discretionary service, there would be no costs associated with LPAs that choose not to provide a pre-application service. The following sections provide an assessment of the cost associated with pre-application services for a single application.
7. Where a discretionary pre-application service is provided, the costs to LPAs will vary and Welsh Government data¹ can be used to estimate the cost of different types of pre-application service. For example, the cost to LPAs of providing a written response, based on one hour of a Planning Officer's time, would be approximately £25.00. Therefore, a written response for a complex application that takes 10 hours would be calculated at a cost of £250.00.
8. The cost to the LPA of a Planning Officer attending an hour long meeting would be approximately £25.00 and a series of five meetings, each lasting an hour, involving a Principal Planner and a Senior Planning Officer would cost approximately £300.00.
9. LPAs have the ability to charge for discretionary services under Section 93 of the Local Government Act 2003, meaning that LPAs have the ability to recoup the costs of providing a discretionary pre-application service.

Developers

Costs to the developer through delayed decision making

10. If a developer wishes to engage with a LPA at the pre-application stage but the LPA does not offer a discretionary pre-application service, the benefits of providing such a service will not be secured. Pre-application engagement between the developer and the LPA should "lead to high quality and appropriate development schemes being granted planning permission more quickly"² and can "improve the quality of applications and help reduce the time taken to deal

¹ Paragraph 10.2 - Planning (Wales) Bill Regulatory Impact Assessment Methodology Paper – October 2014

² [10 commitments for effective pre-application engagement – January 2014](#)

with a formal application”.³ However, a lack of pre-application engagement can result in delayed decision making, which places a financial cost on the developer.

11. It is not possible to quantify this cost due to the number of potential variables; however, the current planning system imposes costs on the development sector through inefficient processes. Although the costs incurred are very difficult to measure, estimates have been made for the UK as a whole. The estimates range between £700 million⁴ to £3 billion⁵ per year.

Costs to the developer of engaging with the LPA

12. LPAs that provide a discretionary pre-application service in Wales generally require applicants to submit information on a standard form in order to initiate their pre-application service. Some developers may undertake their own pre-application enquiries with LPAs, but the majority will appoint a professional planning consultant.
13. Based on data obtained from a number of UK planning consultancies, the average professional / graduate planning consultant’s fee is approximately £40 per hour (including on-costs). It is estimated that the task of completing a pre-application enquiry form would take no longer than 15-30 minutes. Therefore, the estimated cost of submitting the initial enquiry would be between £10 and £20, in addition to the LPAs fee required to be accompanied by the enquiry, which varies depending on the LPA and the size / scale of the development.
14. As well as providing written responses to pre-application enquiries, LPAs may also offer applicants meetings. The time allocated for pre-application meetings with LPAs is highly variable and will depend on the nature and scale of the application. The developer may also need to be supported by professional representation (e.g. planning consultants and architects). Some proposals may only require a written response from the LPA following the meeting. However, developers may request a number of follow-up meetings with the LPA when they are proposing more complex schemes that involve a number of technical issues.
15. Using data obtained from a number of UK planning consultancies, the cost of a planning consultant attending an hour long meeting with a LPA would be approximately £40.00. A series of five meetings each lasting an hour, which, for example, could require representation from a planning consultant and an architect is estimated to be £200.00.⁶
16. An additional cost to developers is the fee payable with each pre-application enquiry and the uncertainty associated with these fees. Section 93 of the Local Government Act 2003 allows LPAs to charge for the provision of a discretionary service, which includes pre-application services.

³ [Planning Policy Wales – Edition 7 \(July 2014\) Paragraph 1.3.8](#)

⁴ [Planning applications: A faster and more responsive system \(November 2008\)](#)

⁵ [Planning reforms boost local power and growth \(4 September 2011\)](#)

⁶ Hourly rates for architects derived from [Annual Survey of Hours and Earnings – 2013 Provisional Results \(December 2013\)](#)

17. Developers that wish to engage with the LPA at pre-application stage face uncertain costs as LPAs currently operate under different charging schedules for the same development type, resulting in varying fee levels⁷. As the current system is discretionary, the developer does not necessarily get the same level of service across each LPA for the fee paid.
18. LPAs have the power to amend their charging schedule, providing they comply with Section 93 of the Local Government Act 2003. Those LPAs that do not currently charge for their pre-application service could do so in the future. This results in further uncertainty for developers and the potential for inconsistency.

Benefits

Welsh Government

19. There are no identifiable benefits to the Welsh Government as the current pre-application service is administered solely by LPAs. Furthermore, the current discretionary service does not facilitate universal availability of pre-application engagement when requested by developers.

Local Planning Authorities

20. LPAs retain flexibility and control on the type of pre-application service they provide, the thresholds of development and the fees associated with these thresholds, so long as they are in accordance with Section 93 of the Local Government Act 2003.

Development Industry

21. There are no identifiable benefits to the development industry as the existing level of service provided to developers by LPAs may also be inconsistent.

Option 2 – The introduction of a statutory pre-application service, to be accompanied by a standardised fee.

Costs

Welsh Government

22. The Welsh Government will be required to produce procedural guidance on the delivery of proposals for LPAs. Based on the average salary of a HEO planning

⁷ Planning (Wales) Act – Regulatory Impact Assessment Methodology Paper – October 2014

officer and the estimated time taken to produce the guidance, we calculate the total cost to be £307.50 (see Annex 1).

23. There will also be additional costs to the Welsh Government to produce the standardised pre-application form that will be used by all LPAs across Wales. Based on the average salary of a HEO planning officer and the estimated time taken to produce the form, we calculate the total cost to be £82.00 (see Annex 1).

Local Planning Authorities

24. LPAs will be required to set up and administer the new statutory pre-application service. However, as the majority of LPAs already provide some form of discretionary pre-application service, this will involve updating their online forms and guidance notes. LPAs that currently do not offer pre-application services will have to introduce all the necessary pre-application service information and guidance to their websites. As the Welsh Government will provide the standardised pre-application enquiry form for LPAs to use, along with the necessary guidance, the cost of this activity to LPAs is minimal.

Development Industry

25. This option does not place any statutory duties on developers as if a developer does not request a pre-application service from their LPA, there is no resulting cost.
26. LPAs may also wish to provide an enhanced pre-application service that goes beyond the statutory pre-application service and charge for these enhanced services using Section 93 of the Local Government Act 2003. However, developers can choose whether they wish to seek these enhanced services and pay the additional costs.

Benefits

Welsh Government

27. This option would contribute towards facilitating and encouraging pre-application engagement between LPAs and developers and provide clarity and consistency of approach for all.

Local Planning Authorities

28. LPAs would still be able to influence development proposals from an early stage in the process, which would facilitate faster decision making when a formal planning application is submitted, thus saving time and meeting their required targets for determination of applications within a given time. The LPA would also

recover the cost of providing the new statutory pre-application service. Whilst LPAs would lose some flexibility in terms of the type of pre-application service provided, they will retain the ability to offer additional, discretionary pre-application services with the ability to charge for these discretionary services on a cost recovery basis.

Development Industry

29. A standardised statutory pre-application service will allow developers across Wales to pay the same fee for the service and know exactly what information they can expect to receive from LPAs. If additional information is required, LPAs will continue to offer a discretionary service, should they choose to, and have the ability to charge a fee for any additional information on a cost-recovery basis. But it should be noted that developers are under no obligation to use these discretionary services.
30. Furthermore, the costs of delay and uncertainty in the decision making process will be removed as LPAs will be required to provide a written response to an applicant / developer within 21 days of a valid request for statutory pre-application services being received.

Summary and preferred option

31. The current discretionary pre-application service offered by LPAs in Wales varies significantly, both in terms of fees and the level of service provided by authorities. This leads to an inconsistent approach and a lack of clarity for developers.
32. The proposal to introduce a statutory pre-application service in Wales (as outlined in Option 2) means that LPAs will be required to provide a standard pre-application service to prospective applicants. This allows for a more consistent approach to pre-application services, both for LPAs and developers. Option 2 is the preferred option.

ANNEX 1 - Calculations

OPTION 2 – COSTS

Welsh Government

Guidance:

Average annual salary of a HEO planning officer (including on costs) = £39,450

£39,450 / 52 weeks = £758.65 per week

£758.65 / 37 hours = £20.50 per hour

*£20.50 x 15 hours (time taken to produce guidance) = **£307.50***

Creation of the pre-application form:

Average annual salary of a HEO planning officer (including on costs) = £39,450

£39,450 / 52 weeks = £758.65 per week

£758.65 / 37 hours = £20.50 per hour

*£20.50 x 4 hours (time taken to produce guidance) = **£82.00***