

REPORT OF DIRECTOR OF PARK DIRECTION AND PLANNING

SUBJECT: CONSULTATION ON LAW COMMISSION'S PLANNING LAW IN WALES'S DOCUMENT

Purpose of Report: To bring to the attention of members this consultation and request delegated authority for officers to finalise the consultation submission from PCNPA and also a submission on behalf of the 3 National Parks in Wales.

Background

The Law Commission had been invited by Welsh Government to review the possibility of simplifying and consolidating planning law in Wales, and in particular to make proposals for technical reforms.

The closing date for responses is 1 March 2018.

The consultation document is over 500 pages long, and there are over 180 questions which the Law Commission is seeking responses to. A summary document has also been provided. Both the full and summary documents can be accessed at:

<https://www.lawcom.gov.uk/project/planning-law-in-wales/>.

The Law Commission introduces its recommendations as:

“A new Planning Code for Wales: comprehensive, but simpler

Planning law in Wales is unnecessarily complicated and, in places, difficult to understand.

The legislation has not been consolidated since the [Town and Country Planning Act 1990](#), and that has been supplemented by a succession of piecemeal changes ever since.

Furthermore, the increasing divergence between the law in England and Wales has made it difficult to identify what the planning law of Wales actually is.

New legislation made in the Assembly and in Parliament may apply to Wales only, to England only, or to both England and Wales. This creates an ever more complex system.

As part of our [12th programme of law reform](#) the Law Commission was asked by the Welsh Government to examine the operation of the development management system.

We didn't think there was a need for further major policy changes in this area, but there is clearly a need for planning law in Wales to be simplified and modernised.

The Welsh Government is now preparing a new Planning Code, incorporating almost all of the 1990 Act and many of the other Acts that added to it. And the Commission is working on technical reforms, to improve how the system works in practice.”

The Law Commission goes on to explain:

“Part One of the Paper deals with General Principles. It opens with a brief outline of how planning law in Wales has arrived at its present unsatisfactory state, and some of the problems that have arisen. It also sets out the progress of the project to date and explores the way forward. We issued a Scoping Paper in June 2016, setting out our initial views; we are grateful to all those who responded. In the light of the views expressed, and our further work, Part One of the Consultation Paper sets out our conclusions as to the scope of the exercise, and our general approach to technical reforms to the law.

Following on from those general conclusions, Part Two then deals in turn with each of the major topic areas in this field. It sets out a number of provisional proposals for technical changes to the substance of the law, and as to the way in which the law can best be presented for the benefit of those who use it. It also makes a number of suggestions as to obsolete provisions that are no longer required. We ask a number of questions in relation to issues where there are more likely to be differing views as to what is most appropriate.

We particularly welcome comments as to the financial or other resource implications – favourable or adverse – of any of our proposals. Would they save you time or money, or in some way make your life easier; or would they have the reverse effect? This will enable us to prepare an impact assessment to accompany our final report.

We also invite respondents to raise any particular points in the existing statutory code – similar in kind to those that have been included in the Consultation Paper – that they feel should also have been included.

In the light of the responses we receive to this Consultation Paper, we will be issuing a Final Report in the summer of 2018. This will inform the production of a new Planning Bill, which will form the principal element in a new Planning Code for Wales.

Alongside such a Bill, we are aware that it is the intention of the Welsh Government to introduce in due course a Historic Environment Bill, incorporating all of the primary legislation relating to listed buildings, conservation areas, scheduled monuments and other heritage assets.

We consider that it would not be appropriate, at this stage, to include within the Planning Code the legislation relating to the countryside and rights of way, hazardous substances, compulsory purchase and compensation, Building Regulations, and a variety of other self-contained legislative codes.”

Policy considerations

Many of the proposed changes are technical and detailed. Some which will clearly make the system simpler. However your officers have three main concerns to highlight that they would wish the Law Commission to reconsider.

1. National Parks

This would be the opportunity to engrain the duty that there is on all statutory authorities to consider the implications of their actions on the National Parks and in particular the purposes for which they were designated. The consultation document at para 5.14 notes:

*We noted in our meetings with stakeholders that many were largely unaware of some of the duties in question – particularly those referred to in **paragraph 5.12** above. All knew about the duty to have regard to the development plan, and the duties relating to listed buildings; however, few knew about, for example, the requirements to consider the countryside, and national parks; and almost none were aware of the provisions of the Crime and Disorder Act 1998 relating to crime prevention.*

This needs to be made clear in law and restated clearly in any codification.

2. Planning applications/Listed Building applications

The amalgamation of both listed building consent and planning applications into a combined single application, in our view would create confusion and not clarity. It could also mean that although the principle aim is not to undermine the built heritage of Wales, this action could in fact do just that. Officers have concerns that there would be a dumbing down of historic context with 'general' planners dealing with lbc without knowledge or training. Whilst the ultimate judge on such matters would be an input from Cadw – officers are cautious that such a change would mean that Cadw had to prioritize it's response to such applications and would not have the capacity to deal with all applications as submitted. The descriptions of lbc applications are often loosely worded and many agents/applicants appear to think that the description of development and the same as that for a planning application. For example a recent description for an lbc application read: *Conversion of four List Buildings: redundant barns into either permanent or holiday letting use.* This is the description of the proposed development and not the description of what alterations are necessary to the listed buildings to facilitate this change of use. We are not aware of any instances where applicants have complained or avoided submitting both applications and seem to understand the difference. There are other applications which need to be submitted – building regulations for example.

3. National Parks noted as statutory undertakers

National Parks do take on some works of statutory undertakers - primarily highway and coastal agency works within their areas. However, as they are not defined as statutory undertakers do not have the relevant exemptions to do such works. In some cases PCNPA has commissioned the PCC (as highway authority) to undertake works on its behalf to overcome this seeming oversight.

Financial considerations

The Law commission has requested that planning authorities advise on whether the proposals will result in a better use of resources and a better understanding and accessibility of the planning system in Wales.

Officers cannot identify any direct or significant resource implications. Although other planning authorities have already stated that they see the implication of the new planning system leading to a better use of time and money. – one noted that it would spend less time researching and checking the ever changing legal position. However, the Law Commission has accepted that once the codification and amalgamation of the Acts has been completed 'clearly we cannot prevent this process of continual change'. This in itself will require any new legislation to be included within the Code which comes with a substantial resource implication for Welsh Government.

Risk considerations

None.

Equality considerations

None.

Conclusion

There is much to commend and justify the stance of endeavouring to make the Planning system in Wales as simple as possible. In conclusion there is the opportunity to simplify the current complex system. The Law Commission's proposals are generally to be commended and supported.

However, there are matters which could have even greater clarity – ie. The duty to consider National Parks and the proposal to unify both listed building and planning applications. Concerns on these two points (amongst others) will be raised in the response to the consultation.

Recommendation

That PCNPA thanks the Law Commission for the opportunity to comment on the consultation recommendations and that delegated authority is granted to the Director of Park Direction and Planning to respond on its behalf but also including any comments raised by members at this committee meeting.

Background Documents

(For further information, please contact)

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Consultees: Other Heads of Planning Authorities throughout Wales, Tegryn Jones, plus officers associated with specific subjects considered in the consultation documentation