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e-mail response sent to: planning_wales@lawcommission.gov.uk

Dear Sir/Madam,

Response to: Planning Law in Wales

The Royal Town Planning Institute (RTPI) is the largest professional institute for planners in Europe, representing some 25,000 spatial planners. RTPI Cymru represents the RTPI in Wales, with 1,100 members. The Institute seeks to advance the science and art of spatial planning for the benefit of the public. As well as promoting spatial planning, the RTPI develops and shapes policy affecting the built environment, works to raise professional standards and supports members through continuous education, training and development.

The response has been formed drawing on the expertise of the RTPI Cymru Policy and Research Forum which includes a cross section of planning practitioners from the private and public sectors and academia from across Wales.

Thank you for the opportunity to contribute our views to the above consultation. We recognise the complexity and sometimes confusing structure of the existing legislative framework and in particular the lack of clarity about which Westminster legislation applies in Wales and the consequent difficulties this causes for practitioners and users. We therefore welcome the work of the Law Commission, along with the principles of simplification, consolidation and codification of planning law in Wales.

The issue of resources to carry out a codification programme and maintain and publish this effectively thereafter is a matter that is touched on in the consultation and, more so in the Planning Law in Wales Report (June 2016). Even effectively resourced, this could be a long process. Further stretched/complicated by the possibility of it being postponed or slowed down if there is an over-riding need to introduce replacement European legislation. Paragraph 2.33 makes a valid point in relation to how Welsh Government will ensure delivery of the project. Timescale, resources, commitments to delivery etc are all important elements in the success of this project.

RTPI Cymru believes this consultation demonstrates the significance and far reaching/broad subjects covered by the statutory planning function. Given the importance of planning in

delivering goals in the Welsh Government's Well-being of Future Generations (Wales) Act 2015, and the recognition of planning as one of the four key levers to deliver "Prosperity for All – the National Strategy", each Local Planning Authority (LPA) should have an appropriately qualified (i.e. Chartered) statutory Chief Planning Officer. The role of a Chief Planning Officer for each LPA should be established in legislation to ensure expertise about place and spatial planning is available at senior management level. This should set out where they would need to be involved in decision-making within and beyond the planning service. It would also establish how and when the Chief Planning Officer would be required to be involved in strategic decision-making. This measure would provide a better planned approach to service delivery and development which will benefit places and people in the longer term.

We note at paragraph 3.7 that the legislation on the historic environment is also subject to a codification exercise which is being undertaken in parallel with the planning code, and we look forward to receiving details of the programme, and opportunities to engage in the process.

Our response to the consultation questions are attached below.

If you require further assistance, please contact RTPI Cymru on 029 2047 3923 or e-mail Roisin Willmott at walespolicy@rtpi.org.uk

Yours sincerely,

Dr Roisin Willmott OBE FRTPI
Director
RTPI Cymru

Chapters 1 – 4 General Principles

RTPI Cymru would like to comment on a number of issues contained in chapters 1 to 4, for which there are no specific consultation questions.

We seek further clarification of the meaning of consolidation and codification of planning law. The use of the term 'code' and its wider interpretation requires some consideration. We also question how widely the term is understood in this context. Footnote 2, at page 3 of the consultation document, indicates a difference of opinion between the Law Commission and the Welsh Government on what constitutes a Code. The Law Commission "recommended that each new piece of primary legislation be called a Code" but "the Welsh Government has decided to use the term to describe a compendium of primary and secondary legislation together with associated policy and guidance". There are important legal and procedural matters to consider and the Welsh Government will need to determine the scope and programme of codification. We would recommend an introductory paragraph to explain this, particularly for non-lawyers.

At the RTPI Cymru event in November 2017, the term "codification plus" was set out as a possibility for the future. This term also requires further explanation and clarification.

Paragraph 1.7 of the consultation document states that in England and Wales as a whole, there are now over 50 Acts of Parliament and around 150 pieces of secondary legislation. In light of this, it would be helpful to have greater clarity over the scope and structure of the Code, particularly given the differences in views expressed by the Law Commission and Welsh Government at footnote 2. Thought also needs to be given to how a Code is published to ensure that it is easy to access and identify a topic of interest. Even a large code should be able to be made intelligible and easily accessible.

One key issue arising from the early sections of the consultation document is the extent to which a codification exercise only makes sense if it is done as a whole, as a full consolidation exercise, rather than leaving out some parts or suggesting further parts as additional resources become available. The vertical relationships should also be better articulated. The timing of this work is therefore key.

Another important point is the relative uniqueness of Planning Law. Paragraph 1.51states "Planning is the epitome of public consultation. Whatever problems may arise in practice ... there is a determination to include the public in the process in a way which is unmatched in other regulatory systems." We would suggest that this be considered when identifying the considerations set out in Paragraph 5.120, along with the support for community engagement that goes beyond consultation. .

Paragraph 2.4(4) confirms the proposal to write into statute propositions derived from case law. RTPI Cymru supports the embedding of well-established case law propositions in statute, with the aim of simplifying discussions. However, if all elements of legislation, policy, guidance etc are to be brought together in a single Code then there would need to be a clear distinction between these categories and a clear understanding of the question of precedence. There is obvious scope for misunderstanding without this clarity. We also note that Welsh Government advice and guidance is published in many forms and there could be practical difficulties in incorporating all these different types of documents into a single Code alongside legislation. A well maintained Code, which includes future case law where appropriate, that is effectively indexed would help stakeholders and users. We support the list of criteria at paragraph 4.54 of the consultation document for selecting case law for codification.

We raise strong concerns at the proposal at paragraph 3.7 relating to the separation out of 'the rural environment'. Further information is required in this case. It is important to ensure that separation of rural environment does not undermine the application of core planning law across urban and rural contexts. This appears to see the rural environment legislation divorced from planning (as the principle of having a Planning Code is that it incorporates all the legislation relating to planning, so to have a separate Rural Environment Code implies that it is separate from planning). It may be appropriate to have additional elements of the Code which are only relevant to rural areas, but this needs explanation.

This feeds into the wider issue of what should go into primary and secondary legislation in relation to the balance between durability, longevity and stability of the legislation on the one hand, and flexibility on the other. We question which is better for preserving the advantages of consolidation? Paragraph 1.4 should address how we can frame the law in this exercise to promote stability over time, which may mean focusing on a more skeletal Act that is more able to endure political change over time? While it is difficult to stop the process of political change, the consolidation into the Code should make it easy to identify and navigate the area of law or guidance of interest and give confidence that the content is complete and current. However, there also needs to be the ability to track changes to be clear about what has been changed, when and why. Paragraph 1.76 recognises that continual change around legislation cannot be prevented, however that law could be drafted in such a way as there is greater durability of the primary legislation. Primary legislation would be more enabling and concerned with matters of principle and that much of the detail would therefore be devolved down to secondary legislation.

In relation to the reference at 1.6(1) “which categories of development require specific authorisation of some kind, which should in general be permitted automatically, and which require authorisation only in particular cases;” we raise concerns that these boundaries or thresholds (e.g. permitted development) have in England been increasingly subject to politically-driven change and have therefore lacked stability over time.

RTPI Cymru supports a fully bilingual statute applicable to the planning system in Wales as discussed from paragraph 1.69 of the consultation document. There is a need to ensure that practitioners can easily access and identify the laws applying in each country. A glossary of agreed terms in English and Welsh could prove useful, particularly given the discussion about the English terms 'dwelling' and 'dwelling-house' in comparison to the Welsh term 'tŷ annedd' in paragraph 18.120 of the consultation document, which illustrates a case in point.

Chapter 5 Introductory Provisions

Consultation question 5-1.
We provisionally propose that a provision should be included in the Bill, to the effect that a public body exercising any function under the Code:

(1) must have regard to the development plan, so far as relevant to the exercise of that function; and

(2) must exercise that function in accordance with the plan unless relevant considerations indicate otherwise.

Response: On the basis of the reasoning in the report, and to reflect what happens in practice, we would support the retention of the need to have regard to the development plan in, and to extend this to, the exercise of all functions under the proposed Planning Code. It is unclear why the consultation paper appears to have dropped the words ‘any other’ in the above question and paragraph 5.40 of the consultation document. We feel this addition

would be an improvement to point (2) above, reading: "must exercise that function in accordance with the plan unless *any other* relevant *planning* considerations indicate otherwise.

Consultation question 5-2.
We provisionally consider that;

(1) to attempt to define relevant or material considerations in the Planning Code would cause as many problems as it would solve; and

(2) the term "relevant considerations" would be more appropriate than "material considerations."

Response: We recognise that it is not obvious to all stakeholders what 'material' means, even to members of planning committees, sometimes little is understood about what 'material' is intended to cover. So to move to a more everyday word could make the concept more understandable. However, the purpose of including 'material considerations' into the legislation in the first place was simply to enable other factors in addition to the development plan to be considered. Changing the terminology does not change this or the parameters of what other factors can be legitimately considered.

The Oxford English Dictionary defines 'relevant as: "earing on or having reference to the matter in hand", whereas it defined 'material' as "important, essential, relevant", providing added depth to the requirement.

Moving to 'relevant' may cause problems as it could be considered to be broader than the interpretation in *Stringer* intends it to be. This could cause greater ambiguity and therefore confusion/debate over what can legitimately be considered as relevant.

Planning professionals often take on the role of providing the necessary parameters of what 'material' is and there is a reasonable understanding of what is deemed to be 'material' and 'non material' within the profession itself. Whatever term is used, learning and understanding this would still need to happen in relation to defining what is 'relevant' and 'irrelevant'. As this will vary depending on the circumstances of an individual planning decisions, changing the terminology will make little difference in practice and could potentially add a massive administrative burden. We question the difference this change would make in practice?

Consequently, if 'relevant' is to be prepared over 'material' then the definition of 'consideration' set out in *Stringer'* should be incorporated to ensure that the term 'relevant consideration' is understood properly.

Also see our comments in relation to question 5.1. The words 'any other' appear to have been omitted from the 5.1 and 5.2 proposals but included in 5.3. We would support the use of these words to retain the continuity of the provision.

Consultation question 5-3.
We provisionally propose that a provision should be included in the Bill, to the effect that a public body exercising any function under the Code must have regard to any other relevant considerations.

Response: This proposal could be addressed as part of proposal 5.1. See our comments in response to 5.1.

Consultation question 5-4.
We provisionally propose that a provision or provisions should be included to the effect that:

(1) a body exercising any statutory function must have regard to the desirability of preserving or enhancing historic assets, their setting, and any features of special interest that they possess; and

(2) a body exercising functions under the Planning Code and the Historic Environment Code must have special regard to those matters;

(3) and that "historic assets" be defined so as to include world heritage sites, scheduled monuments, listed buildings, conservation areas, registered parks and gardens, and such other categories of land as the Welsh Ministers may prescribe.

Response: It would make sense to switch the order of (1) and (2) to place the planning and historic environment functions foremost with the importance of 'special regard' and then have any other functions following.

Consultation question 5-5.
We provisionally propose that a provision should be included in the Bill to the effect that:

(1) **the relevant considerations, to which a public body must have regard (in accordance with Consultation question 5-3) when exercising any function under the Code, include the likely effect, if any, of the exercise of that function on the use of the Welsh language, so far as that is relevant to the exercise of that function; and**

(2) **the duty to consider the effect on the use of the Welsh language is not to affect:**

- **whether regard is to be had to any other consideration when exercising that function or**

- **the weight to be given to any such consideration in the exercise of that function.**

Response: There is a distinction between the general Well-Being of Future Generations Act 2015 duty on public bodies to act to achieve "a Wales of vibrant culture and thriving Welsh language" and the more specific duty in the Planning (Wales) Act 2015 to consider as a relevant consideration the effects on the use of the Welsh language.

The planning system has its role to play in securing a thriving Welsh language, however the approach will vary with different areas and contexts. The Welsh Government consulted on changes to Technical Advice Note 20 (TAN20) in April 2016. RTPI Cymru's response can be downloaded here.

On balance, we agree with the continued inclusion of a provision as proposed, including the essential caveats.

Consultation question 5-6.
We provisionally propose that a provision should be included in the Bill, to the effect that:

(1) **the relevant considerations, to which a public body must have regard (in accordance with Consultation question 5-3) when exercising any function under the Code, include the polices of the Welsh Government relating to the use and development of land, so far as they are relevant to the exercise of that function; and**

(2) **the consideration of Welsh Government policies is not to affect:**

- **whether regard is to be had to any other consideration when exercising that function, or**

- **the weight to be given to any such consideration in the exercise of that function.**

Response: This is effectively bringing into legislation what is established practice in relation to plan making and planning decision making and the principle established by the Courts. An important point is that this does not undermine the primacy of the development plan. However, we appreciate that the development plan is not relevant in certain circumstances, such as Certificates of Lawfulness. Providing the proposal does not undermine this, we support the proposal with the caveats proposed.

Consultation question 5-7.
We provisionally consider that it is not necessary for the Bill to contain a provision, equivalent to section 2 of the P(W)A 2015, to the effect that any public body exercising some of the functions under the Code must do so as part of its duty under the Well-being of Future Generations (Wales) Act 2015 to carry out sustainable development.

Response: The consultation document presents a cogent rationale for not carrying forward the Well-being of Future Generations (Wales) Act 2015 cross-reference. It is demonstrated that cross-referencing and repeating duties already provided for in other legislation is neither necessary nor desirable (further elaborated in 5.110 – 5.113 of the consultation paper). However, these duties must be adequately highlighted and underlined in national policy and guidance.

Consultation question 5-8.
We provisionally propose that a series of signpost provisions to duties in non-planning legislation that may be relevant to the exercise of functions under the Code should be included at appropriate points within Ministerial guidance.

Response: For reasons already outlined in previous questions, we support this proposal. Guidance is the relevant place for signposting and providing additional interpretation as to what they mean in practice in relation to planning decisions.

Consultation question 5-9.
We provisionally propose that section 53(2) of the Coal Industry Act 1994 (environmental duties in connection with planning) should be amended so that they no longer apply to Wales.

Response: These requirements should be already a requirement inherent in a planning application and therefore covered by planning legislation and we would therefore not have an issue with this proposed amendment.

Consultation question 5-10.
In light of the previous proposals in this Chapter, we provisionally consider that there is no need for the Bill to contain a provision explaining the purpose of the planning system in Wales.

Response: The Law Commission sets out strong reasoning that the inclusion of a statutory purpose for planning is not necessary and could introduce duplication, conflict and confusion.

We recognise that a definition of the purpose of planning could be the subject of much debate and differences of opinion on the detail of the wording as well as principles, leading to agreement on something which would be so general as to be of little use for practitioners or the public. Also, Governments of different political persuasions may have different views too on the purpose of planning so there could be scope for regular changes to any wording.

Consultation question 5-11.
We provisionally consider that persons appointed by the Welsh Ministers for the purpose of determining appeals, conducting inquiries and other similar functions should be referred to in the Planning Code as "inspectors" or "examiners", but in either case in such a way as to make it clear that this does not prevent the Welsh Ministers appointing for a particular purpose a person other than an employee of the Planning Inspectorate.

Response: We assume that the term 'inspectors' would be more universally understood in the context of the role.

Consultation question 5-12.
We provisionally propose that the Bill should not include the provisions currently in the TCPA 1990 enabling enterprise zone authorities, urban development corporations and housing action trusts to be designated as local planning authorities.

Response: We would support this proposal.

Consultation question 5-13.
We consider that the term "planning authority" should be used in the Planning Code in place of the term "local planning authority" and "minerals planning authority" in existing legislation.

Response: We support the use of the term planning authority.

Chapter 6: Formulation of the Development Plan.

Consultation question 6-1
We provisionally consider that Part 6 of the PCPA 2004 (development plans), as amended by the P(W)A 2015, should be restated in the Planning Code, subject to any necessary transitional arrangements relating to the Wales Spatial Plan and to the proposals in the remainder of the Chapter.

Response: We agree.

Consultation question 6-2
We provisionally propose that:

(1) **the provisions currently in the Planning and Energy Act 2008 are not restated in the Bill;**

(2) **consideration is given in due course to:**

- **including equivalent provisions in guidance; and**

- **making appropriate amendments to the Building Regulations.**

Response: We agree

Consultation question 6-3
In light of the existence of duties to carry out sustainability appraisals of the NDF and strategic and local development plans, currently under Part 6 of the PCPA 2004:

(1) **is there a continuing requirement for a separate appraisal to be carried out of their environmental impact, as currently required by the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004?**

(2) **are the 2004 Regulations still required in relation to plans and programmes other than the NDF and development plans? or**

(3) **do the 2004 Regulations need amendment or simplification in any way?**

Response: We do not believe that now is the time to consider abolishing or significantly amending the regulations associated with the Strategic Environmental Assessment (SEA) Directive. With the SEA requirement applying with justification to a wide range of plans and programmes, it would not be appropriate for the requirement in relation to development plans to be disassociated from the requirement that applies to other plans and programmes.

The RTPI is currently commissioning research to consider the most appropriate process(es) that could be introduced to work alongside the planning systems of the UK after departure of the EU, which would still allow compliance with international requirements and not lower standards.

Consultation question 6-4
We provisionally propose that section 114 of the PCPA 2004 (responsibility for procedure at local plan inquiries) should not be restated in the Planning Bill.

Response: We agree

Consultation question 6-5
We consider that Chapter 2 of Part 6 of the TCPA 1990 (blight notices) and Schedule 13 to the Act should be restated in the Planning Bill in broadly their present form. Do consultees agree?

Response: We agree

Chapter 7 The need for a planning application

Consultation question 7.1
We provisionally propose that the power of the Welsh Ministers to remove certain categories of demolition from the scope of development, currently in TCPA 1990, s 55(4)(g), should not be restated in the new Bill, but that the same result should be achieved by the use of the GPDO.

Response: We suspect that there may be a typing error in this question in that it proposes that s55(4)(g) in TCPA1990 should not be restated in the new bill whereas it should refer to s55(2)(g)? Apart from this detail, using the General Permitted Development Order (GPDO) as the means of determining when demolition should be the subject of a planning application is a logical approach to simplifying the procedure with the added security that if a situation warrants it locally an Article 4 Direction can be used to withdraw the permitted development rights to bring specific types of demolition back under control.

Consultation question 7.2
We provisionally propose that the extent of minor building operations that are not excluded from the definition of development by TCPA 1990, s 55(2)(a), currently in the proviso to s 55(2)(a) and in s 55(2A) and (2B), should be clarified with a single provision to the effect that the carrying out of any works to increase the internal floorspace of a building, whether underground or otherwise, is development

Response: We support this amendment to the wording of TCPA 1990 s55(2)(a) as a logical approach to simplifying the matter of when internal alterations to a building constitute development, with the relaxation of when a planning application is required for these works being controlled through the GPDO.

Consultation question 7.3
It would be possible to incorporate in the Bill a definition of "engineering operations", to the effect that they are operations normally supervised by a person carrying on business as an engineer, and include:

(1) **the formation or laying out of means of access to a highway; and**

(2) **the placing or assembly of any tank in any part of any inland waters for the purpose of fish farming there.**

Response: We agree with the concerns set out by National Grid that there are types of engineering works such as landscaping bunds etc that would not be covered by the suggested definition for engineering works. We would recommend an extension to the definitions of 'engineering operations'.

Consultation question 7.4
We provisionally propose that there should be an explicit provision as to the approval of use classes regulations by the negative resolution procedure.

Response: We agree this will resolve a current omission.

Consultation question 7.5
We provisionally propose that section 55(3)(a) TCPA 1990 (intensification of dwellings as material change of use) should be clarified by providing that the use as one or more dwellings of any building previously used as a different number of dwellings shall be taken to involve a material change in the use of the building and of each part of it which is so used.

Response: We agree, this amended wording to s 55(3)(a) of the TCPA 1990 relating to changes in the number of dwelling units within a building (both up and down) provides greater clarity.

Consultation question 7.6
We provisionally propose that section 55(2)(d) to (f) of the TCPA 1990 (activities not falling under development) should be clarified by providing that the following changes of use should be taken for the purposes of this Act not to involve development of the land:

(1) **the change of use of land within the curtilage of a dwelling to use for any purpose incidental to the enjoyment of the dwelling as such;**

(2) **the change of use of any land to use for the purposes of agriculture or forestry (including afforestation) and the change of use for any of those purposes of any building occupied together with land so used;**

in the case of buildings or other land which are used for a use within any class specified in an order made by the Welsh Ministers under this section, the change of use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, from that use to any other use within the same class.

Response: We agree that this rewording of s55(2)(d) to (f) of the TCPA 1990 will help to emphasise the concept that it is the "change of use of land" that results in development and not the resulting use itself, thereby improving clarity.

In relation to proposal (1) it appears that the words "any buildings or other" in front of "land" has been dropped? Since this is the form of words currently used in s55(1) its retention would seem sensible.

Consultation question 7.7
We provisionally propose that section 58 of the TCPA 1990 (ways in which planning permission may be granted) should not be restated in the new Planning Bill in its present form.

Response: We agree to the deletion of s58 of the TCPA 1990 (ways in which planning permission may be granted) due to its incomplete and misleading nature

Consultation question 7.8
We provisionally propose that section 61 of the TCPA 1990 (largely relating to the applicability of pre-1947 legislation) should not be restated in the new Planning Bill.

Response: We agree to the deletion of s61 of the TCPA 1990 (mainly in relation to pre 1947 legislation) as it no longer appears relevant.

Consultation question 7.9
We provisionally propose that sections 88 and 89 of the TCPA (planning permission granted by enterprise zone scheme) should not be restated in the new Planning Bill

Response: We agree to the deletion of s88 and s89 of the TCPA 1990 (planning permission granted by enterprise zone schemes). See our response to questions 5.12 and 16.8.

Consultation question 7.10
We provisionally propose that sections 82 to 87 of and Schedule 7 to the TCPA (simplified planning zones) should not be restated in the new Planning Bill.

Response: We agree to the deletion of s82 to s87 and schedule 7 of the TCPA 1990 (simplified planning zones) as again these provisions have had limited use in Wales and more suitable alternatives exist, including Local Development Orders.

Consultation question 7.11
We provisionally propose that the provisions relating to time limits and certificates of lawfulness, currently included in TCPA 1990, ss 171B and 191 to 196, should be included in the new Planning Bill alongside the other provisions relating to the need for planning permission. They should be drafted along the lines of TCPA 1990, s 64(1) (including a reference to the need for a planning application to be submitted, in light of general and local development orders, but not to enterprise zone or simplified planning zone schemes).

Response: We agree that these suggested provisions relating to development time limits and Certificate of Lawfulness of Existing Use or Development (CLEUDs) and Certificate of Lawfulness of Proposed Use or Development (CLOPUDs) should be repositioned alongside the other provisions relating to the need for planning permission.

Consultation question 7.12
We provisionally propose that a provision should be included to the effect that:

(1) **an application for planning permission for an operation or change of use be assumed to include an application for a certificate of lawfulness of proposed use or development (CLOPUD) in relation to the operation or change of use; and**

(2) **an application for planning permission to retain an operation or change of use already carried out without permission is assumed to include an application for a certificate of lawfulness of existing use or development (CLEUD) in relation to the operation or change of use.**

Response: While we understand the principle behind this provision, we have concerns regarding its practicalities and note that the consultation document acknowledges that the detail needs to be thought through so that it would not add further complication or bureaucracy.

At present, those formulating proposals are able to draw on many sources of advice to help them consider whether or not a planning application is required, including Welsh Government guidance, LPA guidance, Planning Portal, informal discussions with planning officers at pre-application stage, formal pre-application consultation as well as advice from their own professional advisors. We would hope that the question of whether or not a particular proposal requires a planning application to be submitted would, in the vast majority

of cases, be sorted out at an early stage. Where there is any doubt or disagreement, an application for a Certificate of Lawfulness could be submitted.

However, we recognise that it is possible that the question may not be addressed or recognised at the pre-application stage and a planning application is submitted for something that does not require the specific grant of planning permission from the LPA. We would then expect those cases to be identified either at validation stage or by the case officer early in the process.

Bearing in mind the extract from Wells v Ministry of Housing and Local Government at paragraph 7.94 of the consultation document we would be interested to hear the evidence and justification for this proposal, particularly given the Law Commission's uncertainty of how it might work in practice.

There are a number of practical factors to consider, including: How should such applications be processed, assessed and determined? Would the planning application provide sufficient information to determine the matter, given the onus is on the applicant to provide the information and to prove the lawfulness of the operation(s) or change(s) of use involved.

We question whether concerns could be better addressed through guidance in the Welsh Government's Development Management Manual?

It is clear that the earlier in the process the decision on lawfulness is taken the better the intention is to avoid wasted time and effort, however we raise concerns that, in practice the proposal set out in the consultation document would lead to greater bureaucracy and that the objective could be achieved by other means, as mentioned above.

Chapter 8 Applications to the Planning Authority

Consultation question 8.1.
We provisionally consider that the law as to planning applications could be simplified, by:

(1) **abolishing outline planning permission;**

(2) **requiring that every application for planning permission for development – whether that development is proposed, or is under way, or has been completed – being accompanied by plans, drawings and information sufficient to describe the proposed development;**

(3) **enabling the items to accompany applications to be prescribed in regulations, so as to include (so far as relevant) details of:**

- **the approximate location of all proposed buildings, routes and open spaces,**
- **the upper and lower limit for the height, width and length of each building proposed, and**
- **the area or areas where access points will be situated;**

(4) **enabling an applicant to invite the planning authority to grant permission subject to conditions reserving for subsequent**

approval one or more matters not sufficiently particularised in the application;

(5) **enabling an authority**

to grant permission subject to such conditions (whether or not invited to do so); and

to notify the applicant that it is unable to determine an application without further specified details being supplied.

Response: Part (1) While we agree to the proposed abolishing of outline planning permission in principle, having one form of application to cover all proposals for development and developments that have already commenced or have been completed seems logical and would help simplify the current system. However, this is subject to the following comments – we have particular concern regarding the above proposals (3) and (4) for the reasons given below. We believe that further consultation, discussion and consideration of the options is required in relation to this proposal at 8.1

Part (2) We would suggest the following amendment to the wording of the proposed requirement, "requiring that every application for planning permission for development- whether that development is proposed, or is under way, or has been completed be accompanied by plans, drawings and information sufficient to describe '*the development being applied for'* in place of "….*'information sufficient to describe the proposed development'* as this implies a differentiation between proposed developments and those already underway or completed contrary to the stated aims of this section.

The word 'proposed' needs to be removed from the last phrase so that the requirement is clearly applicable to all the types of applications proposed.

We also note that if the proposal set out at question 7.12 is commenced, then the information requirements for applications need to also take account of the deemed application for a Certificate of Lawfulness. For example, an application for an extension to a dwelling, to determine the lawfulness of this proposal would require details not only of the extension but also accurate positioning and dimensions of the original dwelling, other buildings and boundaries. For existing development, evidence of commencement of use or completion of operations would be required.

Part (3) This appears to replicate the documentation currently required as a minimum to accompany applications for outline planning permission and is no more onerous. Is this somewhat contradictory as it suggests that an application equivalent to an outline application may be submitted? We also raise concern at the use of the word "approximate", which is not acceptable when considering an application or taking enforcement action.

Part (4) While this may help to clarify where the applicant is expecting to submit further details or information at a future date and will help LPAs establish if an applicant has overlooked any matters that they consider should be dealt with, either during the processing of the application itself or under subsequent conditions. We are concerned that members of the public would not have the opportunity to comment on the detail submitted as part of a condition.

Part (5) We agree that LPAs should be able to apply conditions to any permission it grants both on matters suggested by applicants as well as other matters and that the current situation for outline applications whereby they are able to notify applicants that they are unable to determine an application without further specified details being supplied is

effectively extended to applications for developments whether it is proposed, underway or completed.

Consultation question 8.2
We provisionally propose that section 327A of the TCPA 1990 – providing that planning authorities must not entertain applications that do not comply with procedural requirements – should not be restated in the new Bill.

Response: While we understand the logic of removing s327A of the TCPA 1990 we would like to draw attention to the recent judgment in Bishop, R v Westminster City Council [2017] EWHC 3102 (Admin) which, in paragraph 23 refers to Main, O'Brien et al which indicates that "finally all counsel agreed that despite the starkly mandatory and identical wording of section 65(5)and section 327A of the 1990 Act ("must not entertain"), nevertheless the court retained a discretion whether or not to quash the second application."

Consultation question 8.3
We provisionally propose that section 65(5) of the TCPA 1990 – providing that planning authorities must not entertain applications that are not accompanied by ownership certificates – should not be restated in the new Bill.

Response: We agree to the removal of s 65(5) of the TCPA 1990 relating to Certificates of Ownership.

Consultation question 8.4
We provisionally propose that the requirements of section 65(2) of the TCPA 1990 and secondary legislation made under that provision as to

(1) the notification of planning applications to agricultural tenants and

(2) the notification of minerals applications

Should be clarified, to ensure that they are only drawn to the attention of applicants in relevant cases.

Response: We agree that the wording covering the notification of agricultural tenants on existing planning application forms could be clearer and is irrelevant to the majority of applications. Consequently the proposed provision that notification of agricultural tenants should only be considered in future where the land is subject to an agricultural tenancy under either the Agricultural Holdings Act 1986 or the Agricultural Tenancies Act 1995 is a logical and sensible step.

No comment in relation to minerals applications.

Consultation question 8.5
We provisionally propose that section 70A of the TCPA 1990 (power to decline similar applications) should be restated in the Planning Bill as its stands following amendment by PCPA 2004, the Planning Act 2008 and the P(W)A 2015.

Response: We agree to amendments that will update the power LPAs have under s70A of TCPA1990 to decline similar planning applications to include the amendments within PCPA 2004, the Planning Act 2008 and the Planning (Wales) Act 2015 as this will deal appropriately with a current omission.

Consultation question 8.6
We provisionally propose that section 70B of the TCPA (designed to discourage or prevent twin-tracking) should not be restated in the Planning Bill.

Response: We agree as it secures another avenue for mediation and keeps dialogue open, particularly where there are alternative, but similar options, in terms of delivering a development proposal.

Consultation question 8.7
We provisionally consider that it would be helpful to include in the Bill a provision requiring each planning authority to prepare a statement specifying those within the community whom it will seek to involve in the determination of planning applications.

Response: We agree, a statement of community involvement in the determination of planning applications would help to provide certainty over the extent and consistency of neighbour consultation etc.

Consultation question 8.8
We provisionally propose that the DMP(W)O 2012 should be amended to make it clear that representations as to a planning application received after the end of the 21-day consultation but before the date of the decision should be taken into account if possible, but that there should be no requirement to delay the consideration of the application.

Response: Practice evidence from Northern Ireland where this is already detailed in legislation, causes us concern and we do not support such a proposal. In many occasions comments are received after the 21 days and frequently just the day before Committee. They are required to be taken into account but officers have not been able to give them the due attention to be able to effectively inform the recommendation or decision.

Consultation question 8.9
We provisionally consider that the distinction between conditions and limitations attached to planning permissions should be minimised, either:

1) **by defining the term "condition" so as to include "limitation", or**

2) **by making it clear that planning permission granted in response to an application or an appeal (as opposed to merely permission granted by a development order, as at present) may be granted subject to limitations or conditions.**

Response: The explanatory text and proposal are confusing. Further clarification is required before we are able to respond.

Consultation question 8.10
We provisionally propose that the provisions in the TCPA 1990 as to the imposition of conditions should be replaced in the Bill with a general power for planning authorities to impose such conditions or limitations as they see fit, provide that they are:

(1) **necessary to make the development acceptable in planning terms;**

(2) **relevant to the development and to planning considerations generally;**

(3) **sufficiently precise to make it capable of being complied with and enforced; and**

(4) **reasonable in all other respects.**

Response: We agree that the Bill should, when giving the planning authorities the general power to impose conditions or limitations, also detail the 4 specified criteria that such conditions/limitations must adhere to.

We raise some concern regarding the use of the wording "as they see fit" as this is unclear and could be mis-understood.

Consultation question 8.11
In addition to the general power to impose conditions and limitations, it would be possible to make explicit in the Code powers to impose specific types of conditions and limitations, considered in Consultation questions 8-12, 8-16 and 8-18.
Do consultees consider that the powers to impose all or any of these types of conditions (or others) should be given a statutory basis – either in the Bill or in regulations – or should they be incorporated in Government guidance on the use of conditions?

Response: We assume this question means to refer to consultation questions 8.12 (not 8.11) and 8.14 to 8.16, i.e. including 8.15?

We support the approach that the power to impose the following types of conditions is given a statutory basis, applying of Grampian conditions (8.12), commencement date conditions (8.14), conditions relating to other land within the applicant's control (8.15) and conditions relating to the removal of buildings and works and reinstatement of land following the expiry of a time limited planning consent (8.16).

Consultation question 8.12
We provisionally propose that the Code should include a provision enabling the imposition of conditions to the effect:

(1) **that the approved works are not to start until some specified event has occurred (a *Grampian* condition); or**

(2) **that the approved works shall not be carried before:**

- **a contract for the carrying out of some further specified development has been made; and**

- **planning permission has been granted for the development that is the subject of the contract.**

Response: As detailed above we agree that the power to apply Grampian style conditions should have a statutory basis.

Consultation question 8.13
We provisionally consider that it would be helpful:

(1) **for a planning authority to be given a power (but not a duty) to identify from the outset the conditions attached to a particular planning permission that are "true conditions precedent", which go the heart of the permission, so that they must have been complied with before the permission can be said to have been lawfully implemented (the second category identified by Sullivan J in *Hart Aggregates v Hartlepool BC*), as distinct from other conditions precedent;**

(2) **for an applicant to have a right to request an authority to identify which of the conditions attached to a particular permission that has been granted are true conditions precedent; and**

(3) **for an applicant to have, in either case, a right to appeal against such identification, without putting in jeopardy the substance of the condition itself.**

Do consultees agree? Is there any other way in which the status of pre-commencement conditions could be clarified?

Response: We agree that it would be helpful if there was a system for identifying which pre-commencement conditions were "true condition precedents" i.e. those that go to the heart of the planning permission.

A provision for the applicant to request the identification of these by the LPA (or Planning Inspectorate or Welsh Government if the decision is granted on appeal or via the call in procedures) is essential.

In relation to (3), we assume this suggests an appeal purely about the definition of a condition as a true condition precedent without any consideration of the principle of the decision being considered? Further consideration could be needed here as it may lead to an upsurge in appeals about conditions, which may not be the intention of the proposal.

Consultation question 8.14
We provisionally propose that the Bill makes plain:

(1) **that development must be commenced by the date specified in any relevant condition;**

(2) **that any phases must be commenced by the date specified in any condition relevant to that phase; and**

(3) **that in the absence of any such condition the development must be commenced within five years of the grant of permission.**

Response: This proposal can only apply to proposed developments and not to any permissions being granted for existing completed development or un-phased developments currently underway. Subject to this, we agree that the details of conditions relating to a commenced by date are included in the Bill and that this is done by providing a specific date by which initial commencement must occur.

With regard to any phasing requirements would a more appropriate wording be “that identified phases cannot be commenced before a specified date or time lapse period, which might relate back to the commencement dates for earlier phases of the development.”?

We agree that in the case of permissions for proposed developments there is a catch all time limit of 5 years where no commencement date is given.

Consultation question 8.15
We provisionally propose that the Bill, or regulations under the Bill, should enable the imposition of conditions to the effect that the development or use of land under the control of the applicant (whether or not it is land in respect of which the application has been made) should be regulated to ensure that the approved development is and remains acceptable.

Response: We agree that provisions for conditions relating to other land within the control of the applicant should be included in the Bill.

Consultation question 8.16
We provisionally propose that the Bill, or regulations under the Bill, should enable the imposition of conditions where permission has been granted for a limited period, to the effect that the buildings or works authorised by the permission be removed, or the authorised use be discontinued at the end of the period, and that works be carried out at that time for the reinstatement of land.

Response: We agree that the Bill should include provisions enabling the imposition of conditions where permission has been granted for a limited period, at the end of that period the removal of buildings or works authorised under that permission and the reinstatement of any affected land.

Consultation question 8.17
We provisionally consider that a provision equivalent to section 72(3) of the TCPA 1990 (as to time-limited conditions) should be retained in the Code, but drafted so as to make clear that it applies only in the case of:

(1) **time-limited permissions issued under what is now section 72(1)(a); and**

(2) **some time-limited permissions issued between 1960 and 1968.**

Response: We assume this provision is to fill a current gap in the legislation?

Consultation question 8.18
We provisionally propose that the Bill, or regulations under the Bill, should enable the imposition of conditions to the effect:

(1) **that particular features of the building or land to which the permission relates be preserved, either as part of it or after severance from it;**

(2) **that any damage caused to the building or land by the authorised works be made good after those works are completed; or**

(3) **that all or part of the building or land be restored following the execution of the authorised works, with the use of original materials so far as practicable and with such alterations as may be specified.**

Response: Further clarification is required here. The proposal appears to be introducing potential control over matters and areas that would otherwise benefit from permitted development rights to make certain changes or alterations without requiring planning permission, thereby preventing the implementation of these permitted development rights?

Consultation question 8.19
We provisionally consider that the Bill should clarify the existing law and procedures as to the approval of details required by a condition of a planning permission, whether imposed at the request of an applicant (in relation to matters not sufficiently particularised in the application) or instigated by the authority itself.

Response: We agree that the Bill could clarify the existing law and procedures relating to the approval of all details required by condition.

Consultation question 8.20
We provisionally propose that a planning authority should be able in an appropriate case to decline to determine an application for the approval of one detailed matter without at the same time having details of another specified matter.

Response: We agree that providing a justification is provided, that LPAs are able to decline to consider one detailed matter without the details for another detailed matter so that their overall impact can be assessed. However there should also be a right of appeal against this if the applicant disagrees with the justification provided.

Consultation question 8.21
We provisionally propose that the Bill should clarify the existing law and procedures as to the approval of details required by:

(1) **a condition of a permission granted by a development order;**

(2) **a requirement imposed by a planning authority following a notification of proposed works in a relevant category of development permitted by a development order.**

Response: We agree that the Bill should clarify the existing law and procedures relating to the approval of details required by a condition of a permission granted by a development order, and a requirement imposed by a planning authority following a notification of proposed works in a relevant category of development permitted by a development order.

It's not clear what the proposals are by way of 'clarification'. If change is proposed, we would of course wish to be consulted on the details.

Consultation question 8.22
We consider that it might be helpful for there to be a time-limit within which the planning authority can respond to a notification of a proposal to carry out development in a relevant category (for example, buildings for agriculture and forestry), such that an applicant can proceed if no response has been received to the notification.

Response: It is unclear what new provision is being proposed and further clarification is required here. Our understanding is that under Part 6 of Schedule 1 of the General Permitted Development Order (GDPO), which covers agricultural buildings and operations, the developer must give the authority notification of the proposal before work commences to ascertain if prior approval is required. If no determination is made over whether prior approval is required within 28 days of that notification then the development can commence. The proposal appears to ask for a reiteration of what already exists?

Consultation question 8.23
We provisionally consider that it might be helpful to bring together the procedures for seeking amendments to planning permissions, currently under section 73 and 96A of the TCPA 1990, into a single procedure for making an application for any variation of a permission – whether major or minor – which can be dealt with by the planning authority appropriately, in light of its assessment of the materiality of the proposed amendment.

We envisage that the authority would be able to choose to permit either:

(1) **both the original proposal and a revised version, with the applicant able to implement either; or**

(2) **only the revised version, which would thus supersede the original.**

Response: This bringing together of procedures for amendments to existing planning permissions would help to simplify what is quite a complex mix of procedures at the present time. However, the provisions of the primary legislation need to provide sufficient clarity on the categories to reduce the potential for misallocations and challenges.

Concerning paragraph 8.157, we would question if the consequence of s71ZA, which then allows an application to apply to substitute different plans under s73, was an unintended consequence which should be reconsidered?

Consultation question 8.24
We provisionally propose that the Planning Code should extend the scope of section 96A (approval of minor amendments) to include approvals of details.

Response: We agree that the approval of minor amendments needs to be extended to cover the approval of details i.e. you can amend details already approved under condition, or have more than one set of details approved under the conditions if appropriate.

Consultation question 8.25
We provisionally propose that an expedited procedure should be available for the determination of an application to vary a permission where the implementation of the permitted development is under way.

Response: We agree that an expedited procedure for amendments to approved developments already underway would be a helpful addition and would help encourage the ongoing improvement of developments when the opportunity arises, subject to the payment of an enhanced fee. We question whether a form of this is already in place in LPAs?

Consultation question 8.26
We provisionally propose that the Welsh Ministers should have powers:

(1) **to make regulations requiring applications in a particular category to be notified to them, and**

(2) **to make a direction requiring a particular application to be so notified, so that they may decide whether to call it in for their decision.**

Response: We agree that the introduction of such regulations would help with the transparency of the call in process. However the example of developments above a certain size in green belts is a poor example, as there are no green belts in Wales.

Consultation question 8.27
We provisionally propose that, where the Welsh Ministers decide to call in an application for planning permission, they (rather than, as at present, the planning authority) should be under a duty to notify the applicant.

Response: We agree with the proposal. This would provide clarity of the process and who is responsible.

Consultation question 8.28
We provisionally consider that the following provisions currently in the TCPA 1990 should be not restated in the Planning Bill, but that equivalent provisions be included in the DMP(W)O 2012 if considered necessary:

(1) **section 71(3) (consultation as to caravan sites); and**

(2) **section 71ZB (notification of development before starting, and display of permission whist it is proceeding).**

Response: We agree that both these matters could be appropriately relocated from their current position within primary legislation into the DMP(WO) 2012 as secondary legislation.

Consultation question 8.29
We provisionally propose that the following provisions currently in the TCPA 1990, which appear to be redundant (at least in relation to Wales), should not be restated in the Bill:

(1) **section 56(1) (referring to the initiation of development);**

(2) **in section 70(3), the reference to the Health Services Act 1976 (applications for private hospitals);**

(3) **section 74(1)(b) of the TCPA 1990 (to make provision for the grant of permission for proposals not in accordance with the development plan);**

(4) **section 74(1A) (planning applications being handled by different types of planning authority);**

(5) **section 76 (duty to draw attention to certain provisions for the benefit of disabled people); and**

(6) **section 332 (power of Welsh Ministers to direct that planning applications should also be treated as applications under other legislation).**

Response: We agree that the identified provisions within the current TCPA 1990 that appear redundant should not be restated in the Bill.

Chapter 9 Apps to Welsh Ministers

Consultation question 9-1.
We provisionally propose that sections 62M to 62O TCPA 1990, enabling a planning application to be made directly to the Welsh Ministers in the area of an underperforming planning authority, should be restated in the new Planning Code, subject to appropriate adjustments to reflect our proposals in Chapters 7 and 8.

Response: Given that this is recent Planning (Wales) Act 2015 legislation not yet brought fully into effect and that there is therefore no experience of this legislation in practice, it seems reasonable to propose that it be restated in the proposed Code as proposed. However further consideration needs to be given to the detail of such a proposal. RTPI Cymru believes that where an authority is deemed to be poorly performing, the areas of poor performance and the root causes of the poor performance need to be established and then an appropriate response should be developed and implemented. The option to make applications direct to Welsh Ministers should be an option of last resort.

Consultation question 9-2.
We provisionally consider that the law relating to pre-application consultation and pre-application services in connection with developments of national significance should be reviewed and, where appropriate, clarified.

Response: The consultation paper seems to have reasonably identified this area as one where there may be a case for clarification and the proposal for review and, where appropriate, clarification of the law.

Consultation question 9-3.
We provisionally propose that the power to appoint assessors to assist inspectors to determine DNS applications that are the subject of inquiries or hearings should be extended to allow their appointment in connection with applications determined on the basis of written representations.

Response: This appears a reasonable proposal and we raise no objections

Consultation question 9-4.
We provisionally propose that sections 62D to 62L of the TCPA 1990 (DNS procedure) should be restated in the new Planning Code, subject to appropriate adjustments to reflect our proposals in Chapters 7 and 8.

Response: Given that this is very recent legislation and that there has been no widespread experience as yet of its operation, It is reasonable to propose that it be restated in the new Planning Code subject to any consequential changes arising from other proposed changes as may be finally agreed.

Consultation question 9-5.
We provisionally propose that section 101 of and Schedule 8 to the TCPA 1990 (planning inquiry commissions) should not be restated in the new Planning Code.

Response: The consultation paper sets out a convincing case that this legislative provision should not be restated.

Chapter 10 The Provision of Infrastructure and Other Improvements

Consultation question 10-1.
We provisionally consider that the statutory provisions relating to CIL, currently in Part 11 of the Planning Act 2008 as amended by the Localism Act 2011, should be incorporated broadly as they stand into the Planning Code, pending any more thoroughgoing review that may take place in due course.

Response: While this provision appears sensible, there is a need for a review to be undertaken by Welsh Government, using its new powers as a matter of priority to ensure appropriate funding is available to support good place making.

Consultation question 10-2.
We provisionally propose that provisions relating to planning obligations, currently in sections 106 to 106B of the TCPA 1990, should be incorporated broadly as they stand into the Planning Code, pending any review that may take place in due course.

Response: We support this, with the above caveat set out in our response to 10.1.

Consultation question 10-3.
We provisionally consider that the rules as to the use of planning obligations, currently in regulation 122 of the CIL Regulations, should be included within the new Planning Bill.

Response: Agree.

Consultation question 10-4.
We provisionally consider that it might be helpful for a provision to be included in the Bill whereby a planning agreement under what is now section 106 of the TCPA 1990 – but not a unilateral undertaking – could include any provision that could be included in an agreement under section 278 of the Highways Act 1980 (execution of highway works), provided that the highway authority is a party to that agreement.

Response: It appears sensible to give the option to integrate S278 and S106 agreements if this helps to streamline the process.

Consultation question 10-5.
We provisionally consider that it would be helpful to make the enforcement of a planning obligation under s106 of the TCPA 1990 more straightforward by including the breach of such an obligation within the definition of a breach of planning control. We invite the views of consultees, including as to the practicalities of such a proposal.

Response: We support this proposal in principle.

Consultation question 10-6.
Section 106(12) TCPA 1990 empowers the Welsh ministers to provide regulations for the breach of an obligation to pay a sum of money, to result in the imposition of a charge on the land, facilitating recovery from subsequent owners. No such regulations have been made: does their absence cause a problem in practice?

Response: In principle this appears a potentially valuable mechanism.

Consultation question 10-7.
We provisionally propose that the use of standard clauses in planning obligations should be promoted in Welsh Government guidance.

Response: We support this in principle, subject to consultation on the draft standard clauses and the ability for developers/LPAs to revise these where required in specific cases.

Consultation question 10-8.

We provisionally consider that the introduction of a procedure to resolve disputes as to the terms of a section 106 agreement in Wales (along the lines of Schedule 9A to the TCPA 1990, to be introduced in England by the section 158 of the Housing and Planning Act 2016) might be useful. Do consultees agree in principle, and what should be the features of such a procedure?

Response: We question whether it is a little premature to make a convincing case for bringing forward provisions similar to s158 of the Housing & Planning Act 2016 recently introduced in England. Those provisions remain untested in practice and the provisions necessary to bring this section into effect have not yet been produced.

What evidence exists to suggest that such arrangements are needed? A remedy does exist for applicants unwilling to agree the terms of a s106 which is to appeal against non-determination – the reasonableness and terms of a s106 can then be considered as part of the appeal. Another alternative would be the use of mediation. We would suggest that given CIL is now devolved to Welsh Ministers, a comprehensive review is undertaken of the S106 and CIL regime and an approach tailored to Wales is developed.

Consultation question 10-9.
We provisionally consider that the introduction of a procedure for the Welsh Ministers to impose restrictions or conditions on the enforceability of planning obligations as they relate to particular categories of benefits to be provided (along the lines of section 106ZB of the TCPA 1990, introduced by section 159 of the 2016 Act with regard to obligations as they relate to the provision of affordable housing) might be useful. Do consultees agree in principle, and what categories of benefits might most appropriately be subject to such a procedure?

Response: We again question whether it is premature to make a convincing case for bringing forward provisions similar to the Housing and Planning Act in England, that are not yet in force and therefore untested.

Further discussion is required on this matter and see our previous comment on the need for a review of the CIL and S106 system in Wales.

Consultation question 10-10.
We provisionally propose that planning authorities should be able to enter into planning obligations to bind their own land in appropriate cases.

Response: We support this proposal

Consultation question 10-11.
We provisionally propose that a person proposing to enter into a contract for the purchase of land should be able to enter into a planning obligation so as to bind that land, which would take effect if and when the relevant interest is actually acquired by that person.

Response: Further clarification is required. As the planning obligation usually only takes effect at commencement of development and is, in any case, bound to the land, will this make any difference in practice? Does it negate the need for the current landowner (and, potentially, funders) to enter into the s106 agreement? What would the position be if the prospective owner did not proceed to acquire the land and another party were to acquire the land and proceed with the development? The planning authority would need to have an absolute guarantee that whoever eventually proceeded with the development was bound by a s106 subject to which a planning permission was granted. Would the proposal provide this safeguard?

General points – Relationship between CIL and Planning Obligations
We support the statement in paragraph 10.75. We agree that an integrated approach is preferable, and that any new system should combine the best of both current regimes in an integrated way, but any new system will need to be developed in light of the development needs of Wales.

Chapter 11 – Appeals

Consultation question 11-1
We provisionally propose that the provision, currently in section 79(1) of the TCPA 1990, as to the powers of the Welsh Ministers on an appeal, should be amended so as to make it plain that they are required to consider the application afresh – as opposed to having a power to do so, as at present.

Response: This would assist with clarity.

Consultation question 11-2
We provisionally propose that the Bill should make it clear that all appeals (including those relating to development proposals by statutory undertakers) are to be determined by inspectors or examiners, save for:

(1) **those in categories that have been prescribed for determination by Welsh Ministers; and**

(2) **those that have been specifically recovered by them (in case-specific directions) for their determination.**

Response: We agree, this provides clarity. See our response to 5.11 - We assume that the term ‘inspectors’ would be more universally understood in the context of the role.

Consultation question 11-3
We provisionally propose that the power to appoint assessors to assist inspectors to determine appeals that are the subject of inquiries or hearings:

(1) **should be widened so as to be exercisable by inspectors as well as by the Welsh Ministers; and**

(2) **should be extended to allow the use of assessors in connection with applications determined on the basis of written representations.**

Response: This should be welcomed and ensure that a more robust decision is made. It would seem logical, given the scope, to use an assessor at inquiries /hearings to speed up the appeal process.

In terms of extending their use to written representations there is a concern that there is a risk that this could weaken the position of the Inspector with more work being given to such assessors resulting in the Inspector merely having oversight of the process. It is important that the appeal process remains rigorous and transparent and this stepping up of the use of assessors does not dissipate the work of the Inspector.

Consultation question 11-4
We provisionally propose that the changes proposed in Consultation questions 11-1 to 11-3 should apply equally to:

(1) **appeals against enforcement notices;**

(2) **appeals relating to decisions relating to applications for listed building consent or conservation area consent, express consent for the display of advertisements, and consent for the carrying out of works to protected trees; and**

(3) **appeals against listed building and conservation area enforcement notices, advertisements discontinuance notices, tree replacement notices, and notices relating to unsightly land.**

Response: This would bring clarity and consistency, subject to the comments made at 11.3.

Consultation question 11-5

We provisionally propose that the legislation should state that, in a case where there has been an appeal to the Welsh Ministers, the start of the period within which a purchase notice can be served is the date of the decision of the Welsh Ministers on the appeal.

Response: This appears a reasonable proposal.

Consultation question 11-6
We provisionally propose that the Planning Bill should clarify that a purchase notice may not be amended, but that a second or subsequent notice served in relation to a single decision should be deemed to supersede any earlier such notice.

Response: Agree

Consultation question 11-7
We provisionally consider that it would not be appropriate to bring together the powers currently in section 247, 248, 253 to 257 of the TCPA 1990 (relating to highways affected by development) and those in section 116, 118 and 119 of the Highways Act 1980.

Response: We agree, each covers separate requirements.

Consultation question 11-8
We provisionally propose that sections 249 and 250 of the TCPA 1990 (relating to orders extinguishing the right to use vehicles on a highway, in conjunction with a proposal for the improvement of the amenity of an area) be not restated in the Bill, in view of the parallel provisions in section 1 of the Road Traffic Regulation Act 1984.

Response: Agree, these provisions are appropriately covered in the 1984 Act

Consultation question 11-9
We provisionally propose that decisions relating to orders under section 252 of the TCPA 1990 (extinguishing rights of way) be generally made by inspectors rather than by the Welsh Ministers, subject to a power for the Welsh Ministers to make a direction to recover a particular case for their decision.

Response: We agree, this appears consistent with previous proposals.

Chapter 12 Unauthorised Development

Consultation question 12-1.
We provisionally consider that the provisions currently in sections 171C and 330 of the TCPA 1990 could be conflated into a single power for the Welsh Ministers or a planning authority to serve a "planning information notice" on the owner and occupier of land or any person who is carrying out operations or other activities on the land or is using it for any purpose, requiring the recipient to supply information as to:

(1) **the interest in the land held by the recipient of the notice and by any other person of whom the recipient is aware;**

(2) **the use or uses of the land and when they began; and**

(3) **the operations and other activities now taking place of the land and when they began.**

Where it appears that there has been a breach of planning control, such a notice may also:

(4) **require the recipient to supply information as to:**

- **whether any uses or operations specified in the notice are being or have been carried out on the land;**
- **any person known to be using or have used the land or carried out any operations on it;**
- **any planning permission that may have been granted, and any conditions or limitations attached to such a permission; or**

- **any reasons why permission is not required for any particular use or operation; and**

(5) **request a meeting at which the recipient can discuss the matters referred to in the notice.**

Response - In principle, we consider there is scope to amalgamate these two provisions together. However, it would be useful to have further details as to how this will be achieved. Currently the Planning Contravention Notice is an effective tool to gather useful information about how land is being used, in order to assess whether there is a breach of planning control. We would not like to see this procedure restricted by the use of standard prescribed questions. Would this provision extend to listed building issues

Consultation question 12-2.
We provisionally propose that the restriction on entering property for enforcement purposes only after giving 24 hours' notice, currently in section 196A(4) of the TCPA 1990, should be clarified to ensure that it applies in relation to all property in use as a dwelling.

Response - This clarification would be useful.

Consultation question 12-3.
We provisionally consider that the law as to concealed breaches of planning control should remain as it is, subject to the common law principles developed *Welwyn Hatfield Council v Secretary of State* [2010] UKSC 15, [2011] 2 AC 304, and in particular that the "planning enforcement order" procedure, introduced by the Localism Act 2011, should not be included in the Bill.

Response – We agree with the principles of the report relating to the law and concealed breaches of planning control. If such a case is identified than reliance can be placed on the Welwyn principle. Therefore, we see little point in introducing the 'planning enforcement order' procedure into the Bill.

Consultation question 12-4.
We provisionally propose either:

(1) **that an enforcement warning notice can be served during the period of 4 or 10 years after which enforcement action cannot be taken, but that the service of such a notice does not extend that period; or**

(2) **that where an enforcement warning notice has been served, the period for taking other enforcement action starts on the date on which the notice was served.**

Do consultees agree and, if so, which option seems most appropriate?

Response – We do not believe Enforcement Warning Notices (EWN) to be widely served. We are not aware of the current procedure being problematic in terms of an LPA being able to extend the time for other forms of enforcement action simply by serving an EWN. Is this proposal attempting to deal with a potential loophole that has been identified? Option 2 would appear more sensible as it would give a specific date, from which to gauge relevant time periods.

Consultation question 12-5.
We provisionally propose that the restriction on issuing a temporary stop notice, currently in section 171F(1)(a) of the TCPA 1990, should be clarified to ensure that it applies in relation to any dwelling (defined so as to include a house and a flat).

Response – This appears logical and would mirror the suggested proposal being considered under question 12-2.

Consultation question 12-6.

We provisionally propose that:

(1) **a temporary stop notice (TSN) should come into effect at the time and date stated in it, which will normally be when a notice is displayed on the land in question;**

(2) **it should then remain in effect for 28 days (starting at the beginning of the day after the day on which it is displayed);**

(3) **the notice displayed on the land, as near as possible to the place at which the activity to which it relates is occurring, should:**

- state that a TSN has been issued;

- summarise the effect of the TSN; and

- state the address (and, if applicable, the website) at which a full copy of the TSN can be inspected;

(4) **the authority should have a power (but not a duty) to serve copies of the TSN on the owner and occupier of the land and on others as may seem appropriate.**

Response – The proposed provisions appear to address only minor variations and we consider them to be acceptable.

Consultation question 12-7.

We provisionally propose that:

(1) **it should be an offence to contravene a temporary stop notice that has come into effect (rather than one that has been served on the accused or displayed on the site);**

(2) **it should be a defence to a charge of such an offence to prove that the accused**

- **had not been served with a copy of the notice; and**
- **did not know, and could not reasonably have been expected to know, of the existence of the notice.**

Response – Again the proposal appears relatively minor. We consider it to be acceptable.

Consultation question 12-8.
We provisionally propose that the provisions relating to breach of condition notices, currently in section 187A of the TCPA 1990, should be amended so that a notice is to be "issued", to come into force on the date stated in it, with copies being served on those apparently responsible for the breach (rather than, as present, a separate notice being served on each such person, coming into force on a date specified by reference to the date of service).

Response – This proposal appears to be a logical approach.

Consultation question 12-9.
We provisionally propose that an enforcement notice should be required to specify:

(1) **the steps that the authority requires to be taken, or the activities that are to cease, in order to achieve, wholly or partly, all or any of the purposes set out in section 173(4) of the TCPA 1990; and**
(2) **which one or more of those purposes it considers will be achieved by taking those steps.**

Response – This appears to be an acceptable proposal and will provide clarification to this particular section of an enforcement notice.

Consultation question 12-10.
We provisionally propose that there should be an explicit provision in the Bill, incorporating the principle in *Murfitt v Secretary of State* and subsequent cases, to the effect that, where an enforcement notice is served alleging the making of a material change of use of land, the notice may require that certain works be removed in addition to the cessation of the unauthorised use, provided that those works were integral to the making of the material change of use.

Response – We agree with this proposal.

Consultation question 12-11.

We provisionally propose that the relevant regulations should require that the explanatory note accompanying an enforcement notice should include a statement (in line with the principle in *Mansi v Elstree RDC*) to the effect that the notice does not restrict the rights of any person to carry out without a planning application any development that could have been so carried out immediately prior to the issue of the notice.

Response – We agree with this proposal, as this situation often arises during enforcement notice appeals. However, the drafting of the note is an important factor, to ensure it is fully understood by the recipient.

Consultation question 12-12.
We provisionally propose that the Bill:

(1) **should omit section 177(5) and (6) of the TCPA 1990, relating to the application for planning permission deemed to have been made by an appellant relying on ground (a) in section 174(2) (permission ought to be granted for any matter stated in the enforcement notice as constituting a breach of control); and**

(2) **should provide instead that the Welsh Ministers on determining an appeal including ground (a) may do all or any of the following:**

- **grant planning permission for any or all of the matters that are alleged to have constitutes a breach of control;**

- **discharge the condition that is alleged to have been breached; or**

- **issue a certificate of lawfulness, insofar as they determine that the matters alleged by the notice to constitute a breach of control were in fact lawful.**

Response – This proposal, on the face of it, appears acceptable. There appears to be no requirement for section 177(5) and section 177(6), especially if section 177(1) (a) can be amended accordingly.

Consultation question 12-13.
We provisionally consider that ground (e) on which an appeal can be made against an enforcement notice (under section 174 of the TCPA 1990) should refer to copies of the notice not having been served as required by section 172(2) (which refers to service on owners and occupiers etc) rather than as required by section 172 (which also refers to time limits for service).

Response – This change appears to be acceptable.

Consultation question 12-14.
We provisionally consider that section 174(4) of the TCPA 1990 (requirements as to the statement to be submitted with appeal against an enforcement notice) should be amended so as not to duplicate the requirements of the relevant secondary legislation.

Response – This appears to be a relatively minor change and will potentially omit the current duplication taking place.

Consultation question 12-15.
We provisionally propose that there be included in the part of the Code dealing with enforcement a provision equivalent to section 285(1) and (2), to the effect that an enforcement notice is not to be challenged, other than by way of an appeal to the Welsh Ministers, on any of the grounds on which such an appeal could have been brought.

Response – This appears to be an acceptable proposal.

Consultation question 12-16.
We provisionally propose that the restriction on issuing a stop notice, currently in section 183(4) of the TCPA 1990, should be clarified to ensure that it applies in relation to any building in use as a dwelling.

Response – We agree. This appears to be in line with previous other proposals flagging up the same change and will provide continuity.

Consultation question 12-17.
We provisionally propose that the provisions relating to stop notices, currently in section 184 of the TCPA 1990, should be amended so that a notice is to be "issued", to come into force on the date stated in it, with copies being served on those apparently responsible for the breach of control (rather than, as present, a separate notice being

served on each such person, coming into force on a date specified by reference to the date of service).

Response – In principal we agree with the proposed amendments. Although question whether there is any requirement to change the procedure/wording when there appears to be very little wrong with the existing one. Unless it is for the changes to mirror the proposed changes to the breach of condition notice?

Consultation question 12-18.
We provisionally propose:

(1) **that it be an offence to contravene a stop notice that has come into effect; and**

(2) **that it be a defence to a charge of such an offence to prove that the accused**

- **had not been served with a copy of the stop notice, and**
- **did not know, and could not reasonably have been expected to know, of the existence of the notice.**

Response – This appears to be acceptable but refer to comments made in 12–17 above.

Consultation question 12-19.
We provisionally propose that:

(1) **a stop notice should cease to have effect when the planning authority makes a decision to that effect; and**

(2) **that such a decision should be publicised as soon as possible after it has been made, by the display of a suitable site notice and the notification of all those who were notified of the original notice.**

Response – This appears to be a common sense approach.

Consultation question 12-20.
We provisionally consider that where a stop notice is served by the Welsh Ministers under section 185, and subsequently quashed, any liability to compensation arising under section 186 should be payable by them and not by the planning authority. Do consultees agree?

Response – We agree.

Consultation question 12-21.
We provisionally propose that the offences under section 179(2) (breach of an enforcement notice) and section 179(5) (subsequent resumption of prohibited activity)to be framed so as to provide that a person commits an offence if:

(1) **the person is in breach of an enforcement notice;**

(2) **the notice was at the time of the breach contained in the relevant register; and**

(3) **the person had been served with a copy of the notice.**

Response – This appears to be a logical approach.

Consultation question 12-22.
We provisionally propose that section 172A of the TCPA (assurances as to non-prosecution for breach of an enforcement notice) should be amended so as:

(1) **to enable an authority to give such an assurance simply by "giving notice" to the relevant person, rather than necessarily doing so by a letter; and**

(2) **to enable the authority to give in response to a request from to a person (B), who acquires an interest in land following the issue of an enforcement notice relating to the land, an assurance explaining that, once the enforcement notice had been issued, the authority was required to serve a copy of it on a person (A) from whom person B had acquired the interest in the land.**

Response – In principal, the proposed changes appear acceptable. Again, we are not aware of this particular section of the Act creating any issues. By simply being able to 'give notice' by way of an email rather than letter appears a logical approach. However, does giving notice extend to simply advising the person over the telephone and a note placing on the file?

Consultation question 12-23.
We provisionally propose that section 180(1) of the TCPA 1990 (relating to the effect on an enforcement notice of a subsequent grant of planning permission) should be amended so as to refer

(1) **to the grant of planning permission generally, rather than just to permission for development already carried out; and**

(2) **planning permission following the issue of an enforcement notice, rather than following the service of a copy of the notice.**

Response – We agree.

Consultation question 12-24.
We provisionally propose that offences of supplying false information in response to a request from a planning authority, currently under sections 65(6), 171D(5), 194(1) and 330(5) of the TCPA 1990, should all be triable either summarily (in the magistrates court) or on indictment (in the Crown Court), and the maximum penalty in each case should be in either case a fine of any amount. Do consultees agree?

Response – We note this provision only refers to supplying false information. For the benefit of s171 and s330 could this not also be extended to failing to comply with a Notice? Potentially a fine of any amount can only be a deterrent to those who may consider supplying false information. However we would be concerned magistrates courts would not give this offence serious recognition and without any guidance stipulate a low fine.

Consultation question 12-25.
We provisionally propose that the offences of:

(1) **reinstating or restoring buildings or works following compliance with an enforcement notice (under section 181(5) of the TCPA 1990); and**

(2) **failing to comply with a breach of condition notice (under section 187A(9) of the TCPA 1990);**

should all be triable either summarily or on indictment, and punishable in either case by a fine of any amount, to bring them into line with the penalties for other breaches of planning enforcement notices under the TCPA 1990.

Response – We agree.

Consultation question 12-26.
We provisionally propose that sections 57(7), 302 of and Schedules 4 and 15 to the TCPA 1990, relating to pre-1948 breaches of planning control, should not be restated in the Code.

Response – We agree.

Chapter 13 – Work Affecting a Listed Building

The crux of the issues in relation to this chapter relates to the unification of consents and removing the requirement for listed building consent and conservation area consent. Many of the other key elements and questions flow from this central question. We have therefore not directly addressed the consultation questions set, but instead consider below the unifying of these consents and the options set out in the consultation paper.

RTPI Cymru has previously expressed concerns that the importance given to historic assets may become diluted under a unified consenting regime, along with the risks of losing specialist skills.

There does appear to be a mixed response on this issue from the scoping opinion feedback set out in the consultation document. While the Law Commission seeks to address these concerns there remain mixed views amongst our membership on whether the outlined proposals override the concerns we have previously raised.

We recognise that a potential benefit of unifying consents may succeed in getting Conservation Officers and Planning Officers to routinely work together in considering all aspects of all applications and thus heritage issues may become more engrained in the wider planning psyche. It could result in a simpler process for submission and processing for all stakeholders. We also note from the consultation document that the “the majority of respondents to the scoping paper supported the proposals to unify consent regimes”, although much of the support was heavily qualified.

However, many of these potential positives are based around planning culture and the way we work and do not appear to consider the potential impact on listed buildings themselves, their important status and the special and distinct consideration of settings, features etc

While the Law Commission asserts that they are not seeking to dilute the level of protection for historic assets, we have concerns that it will be an inevitable consequence of a unified regime. A key concern expressed would be the matters considered to be material to an application under a unified consenting regime. There would be significant risks that historic environment considerations would be diluted by, or become subordinate to, the wider considerations that would be material to the determination of a unified application.

We have in Wales recently gone through an extended process of consultation about the historic environment, which has led to the Historic Environment Wales Act 2016. This could have provided an opportunity to introduce a unified consenting regime if it was felt that this would contribute to the aim of improving the management of the historic environment. We believe that a unified consenting regime would negate the progress achieved on historic buildings under the 2016 Act.

Unification of listed building and planning consents would result in an application fee for works to a listed building where there is currently no fee. There is a risk that some owners will avoid applying for consent due to a fee. Detecting internal works would be difficult and once these historic elements are destroyed/altered, it is very difficult if not impossible to replace them.

We also have concerns regarding the impact of unifying consents on specialist resources, given the present pressures on local authority budgets. The consultation paper recognises the risks in terms of the further loss of specialist staff and their expertise. It says "This would have to be resisted, possibly by appropriate guidance from the Welsh Government or through pressure from relevant professional bodies." This does not prove a convincing argument for unification, given that the guidance and pressures which are already in place have not prevented the loss of some existing skills and expertise. The loss of skills in planning is a very real issue. The 2017 RTPI survey revealed that out of 4225 respondents, only 15% had been involved with heritage and conservation during the previous three years. http://www.rtpi.org.uk/membership/membership-survey/

The value of a separate listed building process is summed up by the comments from the Ancient Monuments Society: "listed building consent is important precisely because its whole premise is the protection of the historic environment." The comments by Allen Firth at paragraph 13.123 of the consultation document are also very relevant. While he notes that new processes could mirror existing requirements, "these are mechanistic and cannot, in themselves, guard against the subtle psychological shifts in the profile that stand-alone LBC applications currently enjoy." As the consultation document recognises: "much would depend on management attitudes and priorities within each authority." This is not re-assuring.

In relation to paragraph 13.42 of the consultation document, the following case study illustrates how the unification would not be beneficial: “In the Pembrokeshire Coast National Park there was a major proposal for a leisure development which included use of a listed building (Blackpool Mill) and which included restoration works to the listed building. Consequently there was an application for planning permission for the development and an application for listed building consent for the restoration works to the listed building. The outcome was that planning permission was refused for the development application but approval was granted for the listed building consent application.

While we are given some assurance that the existing levels of protection will be ensured, we consider that while there might be some assurance on paper, there is no guarantee of this in practice. Therefore based on the information provided in the consultation document, our existing position and the information and views provided by our members, RTPI Cymru does

not support the unification of listed building consent and planning permission and believes that further discussion is required regarding the unification of conservation area consent

Chapter 14 – Outdoor Advertising

Consultation question 14-1.
We provisionally propose that the definition of "advertisement" in the TCPA 1990 should be clarified, and included in the Bill alongside other provisions relating to advertising.

Response - The current definition of 'advertisement' has always been open to various interpretations. Therefore, we welcome this proposal. However, this is providing it will sit alongside/mirror other provisions relating to advertising.

Thought needs to be given to the wording to ensure it covers all methods of advertising, e.g. possible new high tech advertising mechanisms (projection of images on a 'surface') and the content.

Consultation question 14-2.
We provisionally propose that the reference to the display of advertisements currently included in the statutory definition of "advertisement" in the TCPA 1990 could be omitted.

Response – We agree. The reference to the display of advertisements is not required.

Consultation question 14-3.
We provisionally propose that the word "land" is used in place of "site" and "sites", to be included:

(1) **in the provision of the Bill relating to the control of advertisements; and**
(2) **in the Regulations when they are next updated.**

Response –We agree. Section 336 of the Act succinctly defines the word 'land' and it potentially will avoid confusion if there is simply one word used, with one definition. However, it must follow any proposed change will be made within the Regulations when they are next updated.

This chapter is not only looking at proposals to change primary legislation but is also suggesting changes to secondary legislation i.e. the regulations. We do not believe any exact dates or timetable has been provided for a review of the regulations, therefore there needs to be some certainty to ensure that any agreed proposals from this consultation are followed through when the review of the Advertisement Regulations takes place. The Welsh Government have suggested there will be a review of the regulations but we are not aware of dates or timetables.

Consultation question 14-4.
We provisionally propose that a definition of "person displaying an advertisement" in the TCPA 1990 be included in the Bill alongside other provisions relating to advertising, to include:

(1) **the owner and occupier of the land on which the advertisement is displayed;**

(2) **any person to whose goods, trade, business or other concerns publicity is given by the advertisement; and**

(3) **the person who undertakes or maintains the display of the advertisement.**

Response – Based on the reasoning given in the consultation paper, we agree there should be one definition of 'person displaying an advertisement' and that this should take the form defined in the current Regulations. The definition provided in the Regulations is more robust and encapsulates all relevant interested parties.

Consultation question 14-5.
We provisionally propose that a discontinuance notice under the advertisements regulations:

(1) **should contain a notice as to the rights of any recipient to appeal against it;**

(2) **should come into force on a particular date specified in it (rather than at the end of a specified period from the date of service); and**

(3) **should be "issued" (rather than "served" as at present), with a copy served on all those deemed to be displaying the advertisement in question.**

Response – It seems logical to bring this procedure in line with the process relating to enforcement notices.

Consultation question 14-6.
We provisionally propose that section 220(2), (2A) and (3) should be replaced with a provision enabling regulations to be made providing for:

(1) **the dimensions, appearance and position of advertisements that may be displayed, and the manner in which they are to be affixed to the law;**

(2) **the prohibition of advertisements being displayed or land being used for the display of advertisements without either deemed or express consent;**

(3) **the discontinuance of deemed consent;**

(4) **the making and determination of applications for express consent, and the revocation or modification of consent;**

(5) **appeals against discontinuance orders and decisions on applications for express consent;**

(6) **areas of special control over advertising; and**

(7) **consequential and supplementary provisions.**

Response – Based on the reasoning given in the consultation paper, the proposed approach appears more straightforward and much clearer to interpret.

Consultation question 14-7.
We provisionally propose that deemed consent under the Advertisements Regulations should be granted for a display of advertisements that has the benefit of planning permission.

Response – This proposed provision appears to be a logical way forward and will avoid the need to submit two different types of consent.

Consultation question 14-8.
We provisionally propose that the display of advertisements on stationary vehicles and trailers be brought within control by the Regulations being amended so as to provide that:

(1) **no consent (express or deemed) be required for the display of an advertisement inside a vehicle, or on the outside of a vehicle on a public highway;**
(2) **deemed consent be granted for the display of an advertisement on a vehicle not on a highway, provided that the vehicle is normally employed as a moving vehicle and is not used principally for the display of advertisements.**

Response – The display of advertisements on vehicles has always posed a particular problem for LPAs and it is encouraging to see this consultation paper attempting to address the issue. However, further consideration needs to be made in respect to any specific wording of any new provisions attempting to control this type of advertising. In terms of the proposed drafting, we would currently question the definition of a 'vehicle' and a 'highway'.

Further thought should be given to the definition of (2) to exclude those cases where advertisements are mounted on a vehicle normally employed as a moving vehicle ,e.g. a trailer, but which are stationed off-highway, e.g. in afield next to a highway or on a highway verge or in a layby, intentionally for advertisement purposes.

Consultation question 14-9.

We provisionally propose that:

(1) **a provision should be introduced in the Advertisements Regulations to enable a certificate of lawfulness to be issued in relation to a display of advertisements; and**

(2) **an appropriate enabling provision should be included in the Bill, in line with the approach indicated in Consultation question 14-6.**

Do consultees agree? And what might be the resources implications of this proposal?

Response – We question whether such a proposal is actually required in light of recent formal pre-application enquiry processes? It would appear to create an additional workload for an LPA and we therefore question the benefit in the long term?.

Consultation question 14-10.
We provisionally propose that what is now Class 13 in Schedule 3 to the 1992 Regulations should be amended to provide that deemed consent is granted for the display of advertisements on a site that has been used for that purpose for ten years, rather than by reference to a fixed date (currently 1 April 1974).

Response – This is a logical approach to take and we welcome the proposed change. The current fixed date of 1 April 1974 has lost all relevance, simply due to the passage of time. The ten-year approach fits well with other current timescales within the legislation.

Consultation question 14-11.
We provisionally propose that the power (currently in section 224(1), (2) TCPA 1990) for the Welsh Ministers to include in Regulations provisions similar to those governing enforcement notices should not be restated in the Bill.

Response – We are aware of the general enforcement provisions of the Act being used to control advertisements. It provides an added mechanism to deal with unauthorised advertisements, where other alternatives have not appeared possible. Further research is required before proposing not to restate this enabling power in the Bill.

Consultation question 14-12.
We provisionally propose that the powers currently in section 225 of the TCPA 1990 (removal of unauthorised posters and placards) and in section 43 of the Dyfed Act 1987 (removal of other unauthorised advertisements) should be replaced with a new single procedure allowing the removal of any unauthorised advertisements, subject to

(1) no advertisement being removed without 21 days' notice having first been given to those responsible;

(2) a right of appeal being available to recipients of such a notice and to owners and occupiers of the site of the offending advertisement, as under section 225B of the TCPA 1990 – on grounds relating to the lawfulness of the advertisement, the service of the notice, and the time for its removal;

(3) compensation being payable by the planning authority for damage caused to land or chattels by the removal of the advertisement (other than damage to the advertisement itself); and

(4) protection for statutory undertakers to be afforded as under section 225K.

Do consultees agree? What are the likely resource implications of this proposal?

Response –The power s225 conveys is relatively quick and normally achieves a positive result with little paperwork involved. This proposal suggests a more drawn out process including a right of appeal with specific grounds. We question the necessity of this procedure when the existing one appears effective?

However, we note the proposal is to extend the power to remove any advertisement displayed without consent or in breach of conditions attached to consent. While we welcome this wider spectrum, further consideration of the detail are needed, including the appeal process. Potentially this new power will create greater resource implications to an Authority. Furthermore, the current timescales involved with the current procedure are much shorter

than proposed. Is there recent case law that supports the need to replace the current s225 provisions?

Consultation question 14-13.
We provisionally propose that the maximum sentence on conviction for unauthorised advertising should be increased to an unlimited fine, in line with other offences under the TCPA 1990 and the Listed Buildings Act 1990. Do consultees agree?

Response – We support this proposal. Usually excessive time and resources are used to take prosecution proceedings, with the result being a small fine. This proposal will potentially deter larger companies from undertaking unauthorised advertising. For some companies the displaying of unauthorised advertisements is lucrative. The additional income raised normally far exceeds any current maximum fine given.

Consultation question 14-14.
We provisionally propose that it be made clear on the face of the Bill, rather than (as at present) in the Regulations, that all functions under the Code relating to advertising should be exercised in the interests of amenity and public safety.

Response – We agree. This is a sensible approach.

Consultation question 14-15.
We provisionally propose that the provisions in section 220 of the TCPA 1990 relating to advisory committees and tribunals should not be included in the Bill.

Response – We agree.

Consultation question 14-16.
We provisionally propose that the provisions in section 221(1)(b), (2) of the TCPA 1990 relating to experimental areas be not included in the Bill.

Response – We agree.

Consultation question 14-17.
It appears that section 223 of the TCPA 1990, providing for the payment of compensation in respect of the costs of removing advertisements on sites that were in use for advertising in 1948 is no longer of any practical utility, and should be not included in the Bill.

Response – We agree.

Chapter 15 – Works to Protected Trees

Consultation question 15.1
We provisionally consider that it would not be helpful to define a "tree" or a "woodland", in the context of what can be protected by a tree preservation order. Do consultees agree? If they do not, what definitions would be appropriate?

Response – We agree. This is better to be dealt with on individual basis and not have statutory definition.

Consultation question 15.2
We provisionally propose that the Bill should provide;

(1) **that functions under the Code relating to the protection of trees should be exercised in the interests of amenity;**

(2) **that "amenity" for that purpose includes appearance, age, rarity, biodiversity, and historic, scientific and recreational value; and**

(3) **that tree preservation regulations may prescribe matters considered to be relevant to amenity.**

Response – This is a positive change to ensure that trees can be protected for other grounds than visual amenity.

Consultation question 15.3
We provisionally propose:

(1) that the Bill makes it clear that tree preservation orders can in future be made to protect trees – specified either individually or by reference to an area – or groups of trees or woodlands;

(2) that area and group orders only protect only those trees that were in existence at the time the order was made;

(3) that new area orders provide protection only until they are confirmed, at which time they must be converted into orders specifying the trees to be protected either individually or as groups;

(4) that existing area orders, already confirmed as such, cease to have effect after five years; and

(5) that woodland orders protect all trees, of whatever age and species, within the specified area, whether or not they were in existence at the date of the order.

Response – While it is good to reinforce the group protection, it may be difficult to enforce point (2) covering area / group orders regarding those in existence at the time of the order unless explicitly surveyed / recorded and tagged.

With respect to (4) – we have concerns about existing area orders ceasing to have effect after 5 years in the context mentioned in paragraph 15.44 (i.e. where served on a precautionary basis on sites where development seems likely). We would suggest that the five year time limit is not sufficient.

Consultation question 15.4
We provisionally propose that it should be clarified that the making of a tree preservation order is to be notified to the owners and occupiers of any parcel of land on, in or above which is located any part of any of the trees protected by the order.

Response – This would make it clearer in terms of who should be notified relating to ownership of land.

Consultation question 15.5
We provisionally consider that there would be no benefit in bringing works to trees within the scope of development requiring planning permission

Response – We agree that works to trees should not be brought within scope of development requiring permission.

Consultation question 15.6
We provisionally consider that the exemption from the need for consent under a tree preservation order relating to works to "trees that are dying or dead or have become dangerous" (currently in section 198(6)(a) of the TCPA 1990) should be tightened up when the trees regulations are next updated. We consider that the exemption should extend only to the cutting down, topping, lopping or uprooting of a tree, to the extent that such works are urgently necessary to remove an immediate risk of serious harm (or to such other extent as agreed in writing by the authority prior to the works being undertaken).

Response – We agree with the proposal to tighten up the exemption as set out. However, care needs to be taken to ensure that any amendments still include clarification of prior notification.

Consultation question 15.7
We provisionally consider that the exemption from the need for consent under a tree preservation order relating to works that are "necessary to prevent or abate a nuisance" (currently in section 198(6)(b) of the TCPA 1990) should not be restated either in the Bill or in the new trees regulations.

Response - The removal of the nuisance exemption for adjoining landowners would again, strengthen protection and remove ambiguity.

Consultation question 15.8
We provisionally propose that a new exemption from consent under tree preservation regulations be introduced, to allow the carrying out without consent of works to trees having a diameter not exceeding a specified size, save in the case of trees that were planted as a result of

(1) a requirement under section 206 of the TCPA 1990 or

(2) a condition of a planning permission or a consent to fell another tree.

Response – While this appears a sensible change, we would suggest that further consideration is given to the impact of the proposal, for example in the case of woodland TPOs.

Consultation question 15.9
We provisionally propose that a provision should be introduced in the trees regulations (along with an appropriate enabling provision in the Bill) to enable a certificate of lawfulness to be issued in relation to proposed works to a tree. Do consultees agree? And what might be the resource implications of this proposal?

Response – The issuing of a Certificate of Lawfulness would again clarify position in terms of whether permission is required.

Consultation question 15.10
We provisionally propose that planning authorities should be required to acknowledge applications for consent under the trees regulations.

Response – We agree that acknowledgement should be required.

Consultation question 15.11

We provisionally propose that the requirement to plant a replacement tree following the felling of a dangerous tree or following unauthorised works should be limited to the planting of a tree of appropriate species at or near the location of the previous tree (rather than, as at present, in precisely the same place).

Response – This seems to add subjective issues into the consideration of the location of the replacement tree. Should the location of the tree be subject of agreed location plan?

Consultation question 15.12
We provisionally propose that there should be an explicit power enabling a planning authority to waive or relax a replacement notice.

Response – We agree.

Consultation question 15.13
Section 209 of the TCPA 1990 provides for regulations be made enabling a planning authority to recover any expenses it has incurred in making and enforcing a tree replacement notice; but no such regulations have yet been made. Would such powers be helpful in ensuring that replacement trees are planted in appropriate cases?

Response – We would consider such power helpful.

Consultation question 15.14
We provisionally propose that the scope of the matters prohibited by a tree preservation order should be extended to include the causing of harm to tree:

(1) intentionally; or

(2) recklessly (for example, by the raising or lowering of soil levels around the base of a tree, or the grazing of animals in woodlands).

Response – We agree.

Consultation question 15.15
We provisionally propose that the two offences currently in section 210 of the TCPA 1990, relating to works liable to lead to the loss of the tree (subsection (1)) and other works (subsection (4)) should be replaced with a single offence, triable either summarily or on indictment, of contravening tree preservation regulations.

Response – This appears a sensible change, and would allow proportional fines.

Consultation question 15.16
We provisionally consider that the offence under section 210 (of contravening tree preservation regulations) and the regulations made under section 202A prohibiting works to a tree subject to a tree preservation order should be framed so as to require the prosecution to prove that

(1) a copy of the order had been served on the person carrying out the works before the start of those works; or

(2) a copy of the order was available for public inspection at the time of the works; and

that a defence should be available to a person charged with such an offence if able to show that he or she had not been served with a copy of the order, did not know, and could not reasonably have been expected to know, of its existence

Response – We support the tightening up of legislation.

Consultation question 15.17
We provisionally consider that it would be more straightforward if an authority, on being notified under section 211 of the TCPA 1990 of proposed works to a tree in a conservation area, were to have four possible responses open to it:

(1) to allow the works (either felling of the tree or other works to it) to proceed, with no conditions (other than as to the two-year time limit);

(2) to allow the tree to be felled, subject to a condition as to a replacement tree being planted;

(3) to impose a tree preservation order, and to allow works to the tree other than felling, possibly subject to conditions; or

(4) to impose a tree preservation order, and to refuse consent for the works.

Response – We support this consistent and better approach for LPAs to control outcomes.

Chapter 16 – Improvement, Regeneration and Renewal

Consultation question 16-1
We provisionally propose that the Bill should be drafted so as to make clear that a notice under what is now section 215 of the TCPA 1990, requiring land to be properly maintained, can be issued where the condition of the land:

(1) is adversely affecting the amenity of part of the authority's area or the area of an adjoining authority; and

(2) does not result in the ordinary course of events from, the lawful carrying on of continuing operations on that land or a continuing use of that land that is lawful.

Response: On the basis of the reasoning in the report, this would seem to be sensible. It is important that for lawful uses of land such as industrial sites, the use or operations should be allowed to continue. It is important that the 2 tests should both be satisfied before a s215 Notice is served.

Consultation question 16-2
We provisionally propose that it should be possible to issue a notice (under what is now section 215 of the TCPA 1990) where the condition of the land in question results from the carrying on of operations or a use of the land that were once lawful, but are no longer lawful.

Response : On the basis of the reasoning in the report, this would seem to be sensible

Consultation question 16-3
We provisionally propose that a notice under the provision in the new Code replacing section 215 TCPA 1990:

(1) should come into force on a particular date specified in it (rather than at the end of a specified period from the date of service);

(2) should be "issued" (rather than "served" as at present), with a copy served on all those deemed to be displaying the advertisement in question; and

(3) should contain a notice as to the rights of any recipient to appeal against it.

Response: This would seem sensible as serving such a notice is often difficult when trying to establish all ownership of vacant or abandoned properties/land. This response will expedite the process. The consultation makes it explicit about the rights of all recipients to appeal.

Consultation question 16-4
We provisionally propose that the Bill should make it clear that all appeals against section 217 notices (appeals) are normally to be determined by inspectors, in line with consultation question 11-3.

Response: This would seem sensible. We are aware of the closure of Magistrates Courts across Wales, seeking court time is an issue in many areas and recourse to inspectors would appear to be an appropriate response. Appointed inspectors are appropriately trained to assess impact on the amenity of land**.**

Consultation question 16-5
We provisionally propose that the new Planning Code could include powers, replacing those currently available under section 89(2) of the National Parks and Access to the Countryside Act 1949, to enable a planning authority, in relation to any land whose condition is affecting the amenity of its area or of any adjacent area (or is likely to affect it due to the collapse of the surface as the result of underground mining operations):

(1) to issue a notice, and serve a copy of it on the owner and occupier of the land, stating the authority's intention to carry out remedial works;

(2) to carry out itself the works specified in the notice, either

- on terms agreed between it and the owner and occupier of the land (both as to the carrying out of the works themselves and as to the subsequent maintenance of the land); or

- where no response is received to the notice; and

(3) to recover the cost of such works from the owner, or to make them a charge on the land; and

(4) to recover the cost of such works from the owner, or to make them a charge on the land; and

(5) to acquire the land for the purpose of carrying out such works, using compulsory powers or by agreement.

Response: This would harmonise the powers available under S89 and S215 and would seem sensible. Prior to any remedial works being undertaken the planning authority would have to issue a Notice. This is established procedure and this harmonisation of the two procedures is welcomed.

Consultation question 16-6
We provisionally propose that the new Planning Bill should include powers, equivalent to those currently available under section 89(1) of the National Parks and Access to the Countryside Act 1949, to enable a planning authority:

(1) to issue a notice, and serve a copy of it on the owner and occupier of the land, stating the authority's intention to carry out landscaping works for the purpose of improving the land;

(2) to carry out itself the works specified in the notice, either

- on terms agreed between it and the owner and occupier of the land (both as to the carrying out of the works themselves and as to the subsequent maintenance of the land); or

-where no response is received to the notice; and

(3) to acquire the land for the purpose of carrying out such works, using compulsory powers or by agreement.

Response: This proposal for powers to issue a Notice, undertake remedial works and the ability to acquire land using CPO or by agreement is welcomed. Such powers can be used positively to promote economic regeneration and serve the aims of wider sustainable development

Consultation question 16-7
We provisionally propose that the Bill should contain powers for the Welsh Ministers to make regulations to facilitate the removal of graffiti and fly-posting, by enabling planning authorities:

(1) **to deal with graffiti or fly-posting that is detrimental to amenity or offensive, by requiring the users or occupiers of the land affected to remove it;**

(2) **to deal with persistent unauthorised advertising, by serving a notice on those responsible for surfaces persistently covered with fly-posting, requiring them to take preventive measures to minimise recurrence; and**

(3) **in either case, to take direct action where necessary, and recharge those responsible where appropriate.**

Response: New powers to serve a notice, undertake works and recover the costs of removal are welcomed.

Consultation question 16-8
We provisionally propose the amendment of:

(1) **Part 18 of and Schedules 32 to the Local Government, Planning and Land Act 1980 (enterprise zones), and**

(2) **the provisions relating to enterprise zones in the TCPA 1990 and related legislation,**

so that they apply in future only in relation to England.

Response: On the basis of the reasoning in the report, this would seem to be sensible. Also see our response to question 5.12.

Consultation question 16-9
We provisionally propose the amendment of:

(1) **the New Towns Act 1981, and**

(2) **the provisions relating to new towns in the New Towns and Urban Corporations Act 1985, the TCPA 1990, the Housing and Regeneration Act 2008, and related legislation,**

so that they apply in future only in relation to England.

Response: On the basis of the reasoning in the report, this would seem to be sensible

Consultation question 16-10
We provisionally propose the amendment of:

(1) **Part 16 of and Schedules 26 to 31 to the Local Government, Planning and Land Act 1980 (urban development areas and urban development corporations); and**

(2) **the provisions relating to urban development corporations in the New Towns and Urban Development Corporations Act 1985, the TCPA 1990, the Leasehold Reform, Housing and Urban Development Act 1993, and related legislation,**

so that they apply in future only in relation to England.

Response: On the basis of the reasoning in the report, this would seem to be sensible

Consultation question 16-11
We provisionally propose the amendment of:

(1) **Part 3 of the Housing Act 1988 (housing action trust areas), and**

(2) **the provisions relating to housing action trusts in the TCPA 1990 and related legislation,**

so that they apply in future only in relation to England.

Response: We agree. Housing is now a devolved power and The Housing (Wales) Act 2014 aims to improve the quality and standards of housing in Wales. No Housing Action Trust Areas have been designated in Wales and regeneration policy funded via the *Viable and Viable Plac*es programme and the recently launched *targeted regeneration investment* policy are the appropriate mechanisms for tackling areas with serious housing and other social problems. Stock transfer of local authority housing and the release of subsidy to bring homes up to the Welsh Housing Quality Standard have been largely successful across Wales.

Chapter 17 – High Court Challenges

Consultation question 17-1.
We provisionally propose that the provisions currently in Part 12 of the TCPA 1990 (challenges in the High Court to the validity of actions and decisions under the Act) should be replaced in the Planning Code by new provisions to the effect that a court may entertain proceedings for questioning any decision of a public body under the Code (other than one against which there is a right of appeal to the Welsh Ministers) – and any failure to make any such decision – but only if:

(1) **the proceedings are brought by a claim for judicial review; and**

(2) **the claim form is filed:**

- **before the end of the period of four weeks in the case of a challenge to the decision of the Welsh Ministers on an appeal against an enforcement notice (other than a decision granting planning permission), a tree replacement notice, an unsightly land notice or a decision refusing a certificate of lawfulness of existing use or development; or**

- **before the end of the period of six weeks in any other case,**

(3) **beginning with the day after the day on which the relevant decision was made.**

Response: The proposals appears to bring together all challenges under the judicial review procedures, which are well understood and should help to make the law easier to understand and reduce the risk of confusion and errors.

Consultation question 17-2.
We provisionally consider that the provisions of Part 5 of the PCPA 2004 (relating to the correction of minor errors in decisions) should be included within the Bill, but amended so as to allow a 14-day period within which the Welsh Ministers or an inspector can respond to a request to make a correction to their decision, and an applicant can respond to a notification by them that they propose to make such a correction.

Response: The proposal to include a limited period for minor errors to be corrected is sensible and could avoid lengthy challenge procedures when a correction would resolve an issue.

Chapter 18 – Miscellaneous and Supplementary Provisions

Consultation question 18-1.
We provisionally propose that the Bill should:

(1) **rationalise as far as possible the bodies or categories of bodies that are to be treated as statutory undertakers for the purpose of some or all of the Code (and for which provisions); and**

(2) **provide for each undertaker or category of undertaker what is to be regarded as "operational land" and who is "the appropriate Minister".**

Response: Further detail is required in relation to this proposal in order to provide an informed position.

Consultation question 18-2.
We provisionally propose that, when the GPDO is next updated, consideration should be given to separating those provisions relating to development by statutory undertakers, the Crown, mineral operators, and other similar bodies, from those relating to development generally.

Response: As the Order would form part of the Planning Code and we assume available digitally we do not raise any objection to the proposal.

Consultation question 18-3.
We provisionally propose that sections 283 and 316A of the TCPA 1990 (relating to the display of advertisements on the operational land of statutory undertakers and local authorities that are statutory undertakers) should not be restated in the Code.

Response: This appears a sensible, based on the reasoning in the consultation document.

Consultation question 18-4.
We provisionally propose that section 316A of the TCPA 1990 (which enables regulations to be made relating to planning permission for development by local authorities that are statutory undertakers) should not be restated in the Bill.

Response: We are not aware of any proposal to designate a local authority as a statutory undertaker and would not therefore object to this proposal.

Consultation question 18-5.
We provisionally propose that the new Bill should generally use – in place of the term "winning and working of minerals" – the term "mining operations" defined so as to include:

(1) the winning and working of minerals in, on or under land, whether by surface or underground working;

(2) the removal of material of any description from:

a mineral-working deposit;

a deposit of pulverised fuel ash or other furnace ash or clinker; or

a deposit of iron, steel or metallic slag; and

(3) the extraction of minerals from a disused railway embankment.

Response: We support the analysis and proposal set out in the consultation document. We also question whether clause (2) should also provide for the operation of removing material from former domestic and industrial waste tipping sites, if such activity is not covered elsewhere?

Consultation question 18-6.
We provisionally consider that Schedule 2 to the Planning and Compensation Act 1991 (minerals permissions granted prior to 1 July 1948) and Schedule 13 to the Environment Act 1995 (minerals permissions granted from 1 July 1948 to 22 February 1982) no longer serve any useful purpose, and should not be restated in the Planning Code.

Response: No comment.

Consultation question 18-7.
We provisionally propose that the Bill should include:

(1) the provisions currently in Schedule 14 to the Environment Act 1995 (periodic review of minerals permissions); and

(2) those currently in Schedule 9 to the TCPA 1990 (discontinuance of minerals permissions).

Response: This appears a necessary proposal.

Consultation question 18-8.
We provisionally propose that the provisions of the TCPA 1990 in the form in which they apply as modified by the TCP (Minerals) Regulations 1995 (so as to apply to minerals development) should be included in the Bill itself rather than in secondary legislation.

Response: Based on the explanation and reasoning in paragraphs 18.70 – 18.73, we agree that it would be more straightforward for the substance of the modifications in the 1995 Regulations to be incorporated into the proposed Planning Bill, subject to the question raised in paragraph 18.72 concerning the definition of development and the need for

planning permission being satisfactorily resolved and that the provisions can be made more understandable.

Consultation question 18-9.
We provisionally propose that the Bill should include a power for the Welsh Ministers to provide for a scale of fees for the performance by them or by planning authorities of any of their functions under the Code, by publication rather than prescription, provided that it also includes a restriction equivalent to section 303(10) of the TCPA 1990, ensuring that the income from the fees so charged does not exceed the cost of performing the relevant function.

Response: We would support a simpler and quicker process for revising fee levels. Welsh Ministers should be given the power to provide a scale of fees for actions by themselves and planning authorities, with the intended restriction that income does not exceed the cost of providing the service. The proposed means for setting fees is a straightforward one and the restriction is in accord with the current practice.

Consultation question 18-10.
We provisionally propose that there should be single provision in the Bill providing for the determination by the Upper Tribunal of disputes as to compensation under provisions in the Bill relating to revocation, modification and discontinuance of planning permission, temporary stop notices, stop notices, damage caused by entry for enforcement purposes, tree preservation, highways, and statutory undertakers, under the provisions in the Land Compensation Act 1961.

Response: We support the findings and the proposal set out in the consultation document.

Consultation question 18-11.
We provisionally propose that the Code should include a power to require that expert evidence at inquiries and other proceedings (including appeals decided on the basis of written representations) to be accompanied by a statement of truth in accordance with the requirements of the Civil Procedure Rules in force for the time being.

Response: This proposal should increase confidence in professional evidence and would be consistent with the RTPI's Code of Practice

Consultation question 18-12.
We provisionally propose that the power to make orders as to the costs of parties to proceedings, currently in section 322C(6) of the TCPA 1990, should be amplified to make explicit that such an order is only to be made where:

(1) one party to an appeal has behaved unreasonably; and

(2) that unreasonable behaviour has led other parties to incur unnecessary or wasted expense.

Response: This appears to reflect current practice, as long as the word 'and' is retained between (1) and (2).

Consultation question 18-13.
We provisionally propose that the Planning Code should incorporate provisions equivalent to those currently in:

(1) section 276 of the Public Health Act 1936 (the powers of a planning authority to sell materials removed in executing works);

(2) section 289 of that Act (power to require the occupier of any premises not to prevent works being carried out); and

(3) section 294 of that Act (limit on the liability of landlords and agents in respect of expenses recoverable),

to be applicable to the carrying out by the authority of works required by discontinuance notices, enforcement notices, tree replacement notices, and unsightly land notices.

Response: No comment

Consultation question 18-14.
Are there any terms used in the TCPA 1990 that need to be defined (or defined more clearly), other than those explicitly referred to in other consultation questions?

Response: No comment.

Consultation question 18-15.
We provisionally propose that:

(1) the provisions of the English language version of the Bill equivalent to sections 55, 171, 183, 196A and 214B and Schedule 3 of the TCPA 1990 should be framed by reference to a "dwelling", rather than a "dwellinghouse", and

(2) the interpretation section of the Bill should include a definition of the term "dwelling" to the effect that it includes a house and a flat, and a definition of the term "flat".

Response: The analysis in the consultation document puts forward a very persuasive case for the rationalisation of the differing definitions and on that basis we can see no reason to disagree with the proposals.

Consultation question 18-16.
We provisionally consider that it would be helpful for the Bill to include a provision to the effect that the curtilage of a building is the land closely associated with it, and that the question of whether one structure is within the "curtilage" of a building is to be determined with regard to:

(1) the physical 'layout' of the building and the structure;

(2) their ownership, past and present; and

(3) their use and function, past and present.

Response: While we support this proposal in principle, we have some concerns about the proposal.

Firstly, the definition of the curtilage of a building as simply the land closely associated with it is insufficient on its own to provide a satisfactory definition. We would support the addition of some basic principles to be applied in establishing the extent of the curtilage in any particular case.

Secondly, the proposal goes on to have regard to physical layout, ownership, use and function. As proposed, this appears rather narrow and directed to the particular question of whether a structure lies within the curtilage of a building, while the question which would be of wider applicability is 'what is the extent of the curtilage of a building?'.

The wording would need to be capable of being applied to the many different instances where the definition of the curtilage comes into play.

Consultation question 18-17.
We provisionally propose that the interpretation section of the Bill contain definitions of the following terms:

(1) "agriculture" and "agricultural", along the lines of the definition currently in section 336 of the TCPA 1990, with the addition of a reference to farming in line with those currently in section 147 and 171; and

(2) "agricultural land" and "agricultural unit", broadly in line with the definition in Part 6 of Schedule 2 to the GPDO;

and we provisionally propose that no further definitions of those terms be provided in relation to purchase notices and blight notices.

Response: We question the use of the terms - 'along the lines of', broadly in line with' and would suggest further consideration of what changes might arise from the use of the phrases.

Consultation question 18-18.
We provisionally propose that the following provisions, which appear to be obsolete or redundant, should not be included in the Planning Code:

(1) section 314 of the TCPA 1990 (apportionment of expenses by county councils);

(2) section 335 of the TCPA 1990 (relationship between planning legislation and other legislation in force in 1947); and

(3) Schedule 16 to the TCPA 1990 (provisions of the Act applied or modified by various other provisions in the Act).

Response: We agree, subject to the following query - that, based on the explanation and reasoning set out in paragraphs 18.158 – 18.160 and the information in footnote 109, these would, should earlier recommendations be accepted and proceeded with, appear to be obsolete or redundant provisions and should not be included in the new Code. However, we are not clear what is proposed in relation to section 318 arising from paragraphs 18.48 and 18.49 relating to ecclesiastical property and note that paragraph 18.49, suggests that section

318 needs to be retained to take account of Church of England parishes lying partly in Wales so our query is whether that requires Schedule 16 to be retained also for those cases?

General Comments:

The issue of resources to carry out a codification programme and maintain and publish this effectively thereafter is a matter that is touched on in the consultation and, more so in the Planning Law in Wales Report (June 2016). Even effectively resourced, this could be a long process. Further stretched/complicated by the possibility of it being postponed or slowed down if there is an over-riding need to introduce replacement European legislation. Paragraph 2.33 makes a valid point in relation to how Welsh Government will ensure delivery of the project. Timescale, resources, commitments to delivery etc are all important elements in the success of this project.

RTPI Cymru believes, given the significance and far reaching/broad subjects covered by the statutory planning function, as demonstrated in this consultation, and the importance of planning in delivering goals in the Welsh Government's Well-being of Future Generations (Wales) Act 2015, each Local Planning Authority (LPA) should have an appropriately qualified (i.e. Chartered) statutory Chief Planning Officer. The role of a Chief Planning Officer for each LPA should be established in legislation to ensure expertise about place and spatial planning at senior management level. This should set out where they would need to be involved in decision-making within and beyond the planning service. It would also establish how and when the Chief Planning Officer would be required to be involved in strategic decision-making. This measure would provide a better planned approach to service delivery and development which will benefit places and people in the longer term.

We believe that there is some future potential work to be done in looking at the Planning Inspectorate and its set up and operations in Wales. While we do not think this should impact or hold up this work, we wanted to take the opportunity to raise this for the future