



Llywodraeth Cymru
Welsh Government

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A New Approach to Managing Development in Wales

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Executive Summary

Introduction

Arup, the Cardiff School of City and Regional Planning and Liz Mills Associates were appointed by the Welsh Government to undertake a review of the management and control of the use of land in Wales. **The aim of the study was to look at radical and innovative approaches to the way development is managed within the plan-led system, to inform the creation of a Welsh Planning Act.**

This study forms part of the Welsh Government's ongoing review and reform of the planning system; it needs to be set against the findings of previous studies relevant to improving development management in Wales and considered in the context of policy and legislation at UK and European levels.

The study approach included an inception meeting, the creation of a steering group to inform the study, a literature review of the policy context, extensive interviews covering a wide range of interests within Wales and also reflecting international perspectives and practices, the development of ideas and initial assessment of a list of 'ideas' or 'tools' for the planning system, and a discussion seminar bringing together stakeholders from across a range of interests to discuss the 'ideas'.

Development management

No formal definition of development management is currently provided by the Welsh Government, and speaking to stakeholders as part of this research reveals that the use and understanding of the term 'development management' can be unclear or inconsistent. The shift to the development management model is perceived as a culture change and shift in mindset as well as concerned with new plan types or collaborative processes.

The research commissioned by the Welsh Assembly Government on the planning application process in Wales made a specific recommendation on a new policy statement on development management building on the earlier draft TAN. This research continues to highlight the value of that recommendation.

Recommendation 3.1: Welsh Government to issue a clear statement defining 'development management' and outlining the various tools that are available to local planning authorities to facilitate the management of development.

There is scope for local planning authorities to adopt a more proactive role in place-shaping, including through using more general (i.e. not planning-specific) powers available to local authorities, to complement their planning functions.

Powers of general competence entitle an authority to have the freedom to act as any individual would in terms of bringing forward programmes or projects or seeking funding, carrying out business or transactions and so on. In this way, they do not need to be mandated or given specific duties or responsibilities but can be more flexible and proactive in their custodianship. This would enable and give

confidence to local authorities to pursue their development management goals by proactively buying sites, entering into partnerships, and undertaking development.

Recommendation 3.2: The Welsh Government should enact powers of general competence for local authorities and promote their use.

Planning: who does what

In considering models from outside Wales, research such as that by the City Regions Group draw in particular on the need for strategic planning arrangements and for plans at a ‘higher’ level than LDPs. There is a need to have some form of overarching strategy or vision above the local authority level which can provide an overview as to the direction and location of development. It is an important means of providing certainty and addressing the reluctance in some instances and locations to make ‘big decisions’ around growth and development.

Recommendation 4.1: Welsh Government to produce a national spatial framework setting out expected areas of change and ranges of development need across strategic areas.

This framework should provide ranges of development need (i.e. employment land or housing numbers) across strategic areas (groups of local authorities) based upon a national evidence base. The expectation is that groups of local authorities will then come together to create a shared evidence base to refine and allocate within that range. This overarching framework will set the context for the government agenda for change. It will also positively impact ‘downstream’ on the ability and propensity for timely, consistent and robust decision-making.

Recommendation 4.2: Welsh Government to require local authorities to co-operate to produce integrated plans that include a shared evidence-base and agreed development needs.

Possible reorganisation of roles and responsibilities

Local planning authorities need to distinguish clearly between determining what is an acceptable use or development through both policy-making (allocations) and decisions on applications (approvals).

From one perspective, it can be argued that national politicians are responsible for setting national planning policy, whilst local politicians are responsible for setting local policy and, along with community council representations on applications, again responsible for granting planning approvals. On the one hand, this seems to reopen and duplicate democratic involvement. On the other hand, this is the longstanding way in which politicians have been able to oversee and control change in the very areas which they have been elected to represent. The recommended approach would be to involve members at the point of policy making, which is where the principle of zones or change and acceptable uses should be established as part of an overall cohesive vision for an area. Subsequent decision making should not require a political debate about the acceptability of use.

Recommendation 4.3: Welsh Government to review and define the role of member involvement in planning and, in particular, development management. To cover national, local authority and community levels.

Local planning authorities need to be more active (and proactive) in ensuring that their LDPs are implemented and in communicating their progress on this on a regular basis to local communities. A legal duty to secure this would focus attention, speed up a process which is accepted to be currently operating slowly, and it could be backed by requirements for Annual Monitoring Reports (AMRs) which are more evidently pro-active and engaged. AMRs could build upon the existing reporting requirements and mechanisms to specifically relate the review of progress, and future prospects, to the kind of place(s) that the development plan is seeking to create.

Recommendation 4.4: The Welsh Government to place a statutory duty on local planning authorities to implement their local development plans, once adopted, and to report annually on progress in a way that reflects development management principles.

Strengthening the development plan

The importance of an up-to-date plan framework

The plan-led system in Wales is partly undermined by the difficulties that have been experienced in ensuring complete and up-to-date development plan coverage. Stakeholders engaged in this research have argued forcefully that a plan-led system of development management requires adopted and up-to-date plans to be in place. Previous research commissioned by the Welsh Government has also criticised development plans for not being based on a sufficiently robust evidence base, with these deficiencies in evidence having consequences for development management. Concerns were also expressed by interviewees in this research that plans, even if they were in place, often failed to keep up with the requirements of practice and a fast-moving context. Some of the difficulties experienced in managing development are therefore attributed to and could be resolved through the development plans framework being designed and operated more effectively.

Recommendation 5.1: The Welsh Government should implement a system of incentives and penalties to facilitate timely plan preparation.

Distributing plan-making powers

Local planning authorities in Wales are responsible for the preparation of LDPs. Default powers provided in legislation enable the Assembly to prepare, or revise, and approve a LDP if the Assembly thinks that a LPA is failing or omitting to do anything necessary in connection with the preparation, revision or adoption of a LDP. Some stakeholders have called for these powers to be used in cases where LDP preparation has been problematic. The difficulty with these default powers is that they are to be exercised following the failure or omission by a LPA.

An alternative to the present arrangements is to revise legislation so that general powers of development plan preparation can be conferred on organisations other than local planning authorities, including the Welsh Government. This distinction between default and general powers is an important one as it means that plan-making would not be something removed from a LPA. It would enable the Welsh Government to initiate or prepare a development plan, either as an area-wide plan or more likely for parts of one or more LPA areas. This would enable it to establish a plan and decision-making framework for strategic, cross-border or nationally-significant projects.

Recommendation 5.2: The Welsh Government should provide itself with general as well as default powers as a plan-making body.

Binding local plans

One route to providing certainty for developers and communities on what will be developed and where is through the introduction of binding plans. Different types of binding plans are used in other European countries. Proposals that are in conformity with a plan will be permitted; proposals that do not conform to the prescriptions in the plan will not be permitted. The equivalent in the planning system in Wales would be removing the legislative requirement to have regard to material considerations in planning decision making.

The introduction of a system of binding plans would challenge the discretionary character of the planning system. Some stakeholders expressed caution about changing the current legislative basis of making decisions in accordance with the development plan unless material considerations indicate otherwise.

However, stakeholders in Wales have clearly expressed the desire for the planning system to provide greater certainty than it does at present. The value that is placed on flexibility means that a system that enhances certainty but provides continuing opportunity for flexibility in decision-making would have considerable support in Wales. The introduction in Milan of parallel binding and discretionary systems provides a useful example of managing the desire for certainty but creating opportunities for flexibility.

Recommendation 5.3: Welsh Government to make local development plan allocations binding.

This should be introduced as part of a hybrid system that combines a selective binding plan framework alongside a discretionary system of decision-making which distinguishes between proposals which are in compliance with the plan and those which are not.

A more selective approach to plan coverage

Development plans in Wales have since 1991 been prepared on a district- or area-wide basis. Consequently, the LDP is a single plan covering the entirety of a LPA's area. An alternative approach would be to focus plan-making resources only on those parts of the area that required a detailed, up-to-date development plan and where this could usefully promote, guide and regulate change. This reflects a similar framework to that which existed previously in England and Wales in the form of a two-tier development plans system. It is also aligned with

many other continental European planning systems where detailed, binding plans are prepared for areas that are to be developed and other areas are addressed through an integrated, multi-tier planning framework.

The recommended approach is for a binding local plan. The allocations within this plan would relate to planned development in areas of change. Outside of this, areas could be satisfactorily addressed through coverage of national planning policies in PPW, other strategic documents of the Welsh Government or through specific arrangements for areas such as defined city-regions.

Recommendation 5.4: Welsh Government to remove the requirement for complete plan coverage, in favour of planning for areas of change.

Out of date plans

In Wales, for the purpose of a development plan being the reference point for planning application decision-making, a development plan remains in place until superseded by a replacement plan. Plans state the time period they are intended to cover as the lifespan of the plan's policies. However, irrespective of the time taken to produce and adopt a replacement plan, the prevailing plan does not have any automatic 'expiry date' or any change in status following the conclusion of the intended lifespan of the plan. In reality, and given the timescale of adoption of LDPs, many decision-makers are making decisions based on dated plans.

The continuing existence of dated development plans undermines some of the principles of a plan-led system. This raises the possibility of plans that should have a specified 'life', after which they expire (assuming that they have not been reviewed, updated and rolled forward). The period that a plan would be in place for could vary, but could be for up to five years or longer and might only be extended or reset by completing a review of the plan. Plans that expire would no longer benefit from formal development plan status.

Recommendation 5.5: The Welsh Government to define the lifespan of a local development plan.

The aim of this is not that a plan should expire, but that a LPA should ensure that it completes the review and adoption (or renewal) of its plan promptly.

Decision making and culture change

Fast track process for proposals in line with the LDP

Stakeholders repeatedly referred to the 'one size fits all' approach taken by the development management system, namely that irrespective of what was being applied for, where, or in what policy context, the same standardised process plays out to ensure impartiality, consistency and robustness of each decision. This is by no means a bad thing but it does mean, as highlighted by users of the system, that a 'simple' or 'compliant' application in a comparatively straightforward context receives perhaps excessive treatment. In short, there ought to be a better, more content- and context-aware way of handling simple applications simply. Correspondingly, it is recognised that more complex arrangements will inevitably apply to complex or controversial applications.

The ‘current’ system might suit those applications where a significant degree of consideration, discretion and / or negotiation could be required. Alongside this, a new system (or perhaps a refined or abbreviated version of the current system) could be introduced in parallel. It would apply to those schemes that are in accordance with the development plan in terms of location and type and scale of use, and could therefore consult / decide upon the physical appearance and other operational parameters of use.

Recommendation 6.1: Welsh Government to introduce a parallel fast-track development management process for planning applications relating to development in accordance with an adopted up to date development plan.

In particular, this fast-track process should limit information required alongside an application, and should also be determined under delegated powers.

Capacity development

Whenever changes are introduced to the planning system, be they a new development plan system or changes to decision-making processes, there is a need to inform and train people in preparation for the transition and new element(s). However, even when the planning system ‘stands still’ in structural terms there continues to be a churn of officers and members, and practices and legal precedents continue to evolve. Thus there is a continual need for support, training and development to ensure that the planning system remains fit for purpose, with sufficient capacity to operate effectively.

There are a number of models that can be used to deliver collective or central capacity and learning support such as the Planning Advisory Service, Improvement Service or Austrian Planning Conference.

A hybrid form of support could provide not only training and capacity building, but also a central shared resource. This could cover a specific or specialist topic, such as design, conservation, ecology or arboriculture. It could provide assistance with smoothing the workflow, such as dealing with peaking in planning applications as exemplified by the Advisory Team for Large Applications. It could provide support with the more intense stages of LDP preparation, based on the Ministry of Planning’s (DATAR) planning service (the DDE) in France which provides a semi-autonomous central lead for local plan preparation.

Recommendation 6.2: Welsh Government to establish a centrally-supported and planning-specific support body.

The need to implement and monitor; incentives and penalties

Some stakeholders were concerned that the Welsh Government could do more to ensure that the present system is made to work effectively by using existing powers, by establishing new powers or by developing a more active and interventionist role for the Welsh Government in managing development.

In terms of existing powers, PPW for example sets out the importance of LDPs being prepared quickly. It also clearly states that performance targets for planning applications are established in law and that the Welsh Government expects each LPA to determine 80 per cent of its planning applications within 8 weeks.

It is important that performance management does not focus only on the principal stages of processing and determining planning applications, but also considers the up-front factors and engagement and the downstream outcomes delivered.

Interviewees raised concerns that many of the requirements placed on local planning authorities and others (such as statutory consultees and the Welsh Government) did not entail any sanctions if those requirements were not met. Similarly, few incentives to effective development management performance were identified. Consequently, this study suggests a framework of incentives and penalties as a means of shaping behaviour in order to deliver more effective development management. Stakeholders in both the interviews and discussion seminar suggested that a framework of penalties and incentives should apply to all actors involved in the process and to all stages, including applicants, local planning authorities, statutory consultees and the Welsh Government.

Recommendation 6.3: Welsh Government to establish a framework of enforceable targets for key actors in the planning system.

Facilitating implementation

Delegation

The routes for decision-making on a planning application allow for a decision made by elected members at the planning committee, or through delegated means. The criteria setting out the rules governing when a delegated decision may be made are provided within the ‘scheme of delegation’. Interviewees identified examples of some decisions made by elected members as being a significant source of uncertainty. They stated that even where the planning system generally worked well that decisions could sometimes be made on ‘political’ grounds.

Any proposal to restrict the involvement of democratically-elected representatives in the making of planning decisions is likely to be contentious. However, it is commonplace for local planning authorities to operate systems of delegated decision-making that result in the majority of planning decisions being made by planning officers acting under delegated powers. Each LPA in Wales is able to define its own scheme of delegation for planning decisions. For reasons of consistency and efficiency, this report recommends a national scheme of delegation. This would also enable the suggested fast-tracking of applications in accordance with an adopted LDP.

Recommendation 7.1: Welsh Government to implement a national scheme of delegation, which should require that applications in conformity with an adopted and current LDP be determined by delegated decision.

Expanding Permitted Development rights or removing applications from the system

One ‘easy win’ for the planning system is to simply remove a number of applications from the development management system. This has historically focused on smaller-scale developments. There are a number of options associated with such an approach: outright removal of the legal requirement for planning

permission, adopting a permit-led approach or extending permitted development rights.

Extending permitted development rights would enable retaining a single definition of ‘development’ but would allow or enable specified elements to not require the same degree of planning control.

Stakeholders expressed mixed views on the appropriateness of removing smaller – scale applications from the development management system through enhanced permitted development rights. Stakeholder views both for and against notwithstanding, if the timely delivery of development is a priority then extension of permitted development rights and / or the removal of smaller and / or less contentious applications from the system is likely to have a positive result.

Recommendation 7.2: Welsh Government to extend Permitted Development rights to cover more substantive or defined alterations or improvements to a single dwelling (i.e. extensions, conversions and so on), and to consider the proposed construction of a single dwelling (or equivalent scale development of other uses) in accordance with a current LDP.

Land readjustment

Land readjustment is currently used in various forms in Germany to develop land on the boundary between urban and rural areas; to regenerate former industrial areas in Emilia Romagna (Italy); to develop Central Business Districts in the USA and Hong Kong and to foster inner city development and densification in a number of Italian regions. This device enables a local authority to define an area in need of (re)development and to gently push landowners to develop it, without the restrictions related to plot sizes, ownership or fragmentation, and within a very strict timeline at a much lower cost than compulsory purchase. The designation is initiated by the LPA and landowners or the LPA alone and is undertaken publicly including representations. Once an area is defined the LPA, in discussion with landowners, combines all building rights into a single pot. It then removes the proportion of the area it believes is required for infrastructure and services, and then reallocates the building rights in the pot to the remaining area. These are then reallocated to landowners in proportion to the amount of land they own, with each landowner getting more building rights than previously owned. At this point, landowners must act swiftly. If they can supply investment in the joint development of the whole area they do so. If they cannot they should sell to other landowners, the LPA or – most likely in big developments - a developer.

For Wales, the land readjustment approach offers a mechanism for satisfying development needs consensually and fairly (in contrast to protracted and lengthy CPO processes), whilst overcoming land banking challenges and whilst maintaining sustainable and cohesive settlement structures and boundaries. In implementation, it is likely that land readjustment would be an ‘upstream’ alternative to a CPO, which would be retained for more site specific or smaller scale purposes.

Recommendation 7.3: Welsh Government to include land readjustment processes as an alternative to Compulsory Purchase Orders.

Floating development / allocations

This report has considered the applicability of ‘zoning’ approaches and area- and use-based tools such as Local Development Orders as a means to better link the development plan and development management decisions, to increase certainty and to reduce delay. In addition to this, one important derivative that can affect the delivery of development, and also introduce an element of competition to encourage swift delivery, is the ability to make ‘area specific’ allocations which are not ‘site specific’. This is the principle of what is commonly referred to as floating development or floating allocations.

Floating development would still involve a traditional LDP allocation process, but rather than allocating development to a specific site, the LDP would allocate the ‘level’ of development over a broader area.

The aims of this approach are to reduce the ‘pressure’ to get a specific site allocated within a development plan (leading to numerous representations and protracted opposition to approval of an otherwise acceptable plan by competing developers) and to also introduce competition to plan allocations to encourage developments to come forward as soon as they are practicable and viable.

This approach might not always lend itself to every type of allocation or every location. It could also be implemented in a way which incorporates site specific allocations, but retains a floating quota over take-up.

Recommendation 7.4: Welsh Government to enable local planning authorities to make floating allocations within local development plans.

Conclusions: the recommended reformed system

System feature	Description	Recommendation(s)
National plan	Wales-level spatial strategy setting out agreed vision for Wales including key growth areas and amounts. Linked to provision of strategic infrastructure.	4.1, 5.4
National planning policy	PPW and TANs. Includes definition and implementation of development management principles. Focus wherever practicable on the location of change or growth. National policy to take precedence in the absence of an up to date LDP, or in the absence of a site being covered by a plan allocation. Includes national scheme of delegation.	3.1, 7.1

System feature	Description	Recommendation(s)
Planning-focused support	Centrally-supported and planning-specific support body. Provision of support, capacity building and training. Additional resources or expertise to help in complex cases or to smooth workflow. Helps not only local authorities but also consultees, applicants and communities.	6.2
National performance framework	System for recording, analysing and publishing performance across the planning system relating to the quality of plan-making, decision-making and implementation, covering the Welsh Government, local authorities (officers and members), applicants / agents and statutory consultees. Linked to a national system of incentives, penalties and potential interventions.	4.4, 5.1, 5.2, 6.3
Sub-national co-operation	Local authorities coming together to create a shared planning policy evidence base and to translate the national plan into authority-level allocations to be taken forward in LDPs. Mediated by the Welsh Government if consensus cannot be achieved.	3.2, 4.2, 5.1
Local Development Plan	Spatial strategy prepared by the LPA. May or may not have complete geographic coverage. Focus on areas of change. Creates a set of binding allocations to illustrate what uses will be acceptable where and at what intensity of use as site-specific or floating allocations (area-specific allocations which are not necessarily site-specific). Driven by political and community engagement and is the main vehicle for establishing the principle of acceptable uses. Plan has a fixed expiry period and must be regularly reviewed. Welsh Government able to initiate or prepare a plan.	4.2, 4.3, 5.1, 5.2, 5.4, 5.5, 7.4

System feature	Description		Recommendation(s)
Plan Implementation	Local planning authorities required to proactively implement LDPs, using both their statutory duties and a power of general competence. Options and powers include Local Development Orders, land readjustment, CPOs and acquiring and developing sites directly. Knowledge and awareness of funding and delivery mechanisms and brokering / partnership / URC-type approaches with the private sector and service providers.		3.2, 4.4, 7.3
Permitted development	Extension of current rights to cover most householder development and construction of a single dwelling where in accordance with the LDP. Complemented by a design code where required to guide appearance. Welsh Government able to revise periodically, e.g. microgeneration. Prior approval process for sensitive locations.		7.2
Pre-application discussions and consultation	Good practice incentivisation of pre-application discussions including payment of a fee which can subsequently be offset by a reduced fee from a submitted planning application fee.		3.1, 3.2, 4.3
Fast-track process	Priority for delivery of major development through defined target performance timescales. Nationally Strategic Infrastructure Project (NSIP) process remains.		5.3, 6.1
	Application for development in accordance with the plan	Application for development departing from the plan	
Registration and validation	Check for conformity with plan, design code etc.	As per current system.	
Information requirements	Reduced requirements, based on plans and design and not principle of use of supporting statements.	As per current system, but need to explicitly demonstrate the acceptability of the site for intended use.	6.1

System feature	Description		Recommendation(s)
Consultation	Statutory consultees and neighbour notification. Does not consider the acceptability of the use, focused only on issues of siting, layout, design, impact, mitigation and anything else relevant to operation.	As per current system, involving members and communities.	3.1, 6.1
Determination	Delegated decision.	Committee decision. If minded to approve, notified to the Welsh Government. If no further action is taken, the LDP is updated to take account of decision.	3.1, 6.1, 7.1
Monitoring compliance	Proactive monitoring of sites to completion in addition to responses to complaints and reported breaches. Feedback into plan preparation and revision.		3.1, 4.4
Local performance framework	Annual reporting on the quality of the planning service at a local level. Covers plan-making, plan implementation and decision-making as and end-to-end process. Linked to ongoing review of LDPs.		4.4, 5.5, 6.3

1 Introduction

1.1 Purpose

Arup, the Cardiff School of City and Regional Planning and Liz Mills Associates were appointed by the Welsh Government to undertake a review of the management and control of the use of land in Wales.

The aim of the study was to look at radical and innovative approaches to the way development is managed within the plan-led system, to inform the creation of a Welsh Planning Act.

In exploring how development should be managed and controlled in a future Welsh planning system, the objectives were:

- to explore innovative ways to deliver timely planning decisions to achieve sustainable development within a new legislative and regulatory framework;
- to analyse the relationship between the development plan and development management to better understand the balance of certainty and risk in the implementation of development;
- to explore the most efficient way to deliver the vision and strategy a local planning authority (LPA) has set out in their adopted development plan so that plans once adopted can be implemented without unnecessary duplication, delay and cost whilst ensuring sustainable development principles and regulatory requirements are observed;
- to explore the role of stakeholders (including statutory and non- statutory consultees) in delivering development allocated in an adopted development plan within a new system;
- to consider a new framework for permitting / enabling development following the adoption of a development plan; and
- to identify existing mechanisms which cause unnecessary duplication, delay and cost to the realisation of development following the adoption of a development plan.

The recommendations of this research are listed in Appendix A. This study forms part of the Welsh Government's ongoing review and reform of the planning system; it needs to be set against the findings of previous studies relevant to improving development management in Wales and considered in the context of policy and legislation at UK and European levels.

1.2 The existing system

Since the Welsh Government paper *Changes to the development management system in Wales* was published in 2006¹, the Welsh Government has been committed to ongoing review and reform of the planning system, which could culminate in a new Planning Bill.

There are a number of different contextual themes associated with review and reform of the Welsh planning system and development management process,

¹ <http://wales.gov.uk/topics/planning/policy/dearcpoletters/devmanchanges/?lang=en>

including: promoting sustainability and sustainable development, commitment to carbon reduction and protecting / enhancing the environment; supporting economic development and improving the responsiveness of the planning system to meet business needs, facilitating the provision of affordable housing, evaluating the role and functions of local authorities and the need to work collaboratively, the role of engagement and consultation, and evaluating the planning system and planning application process. As current priorities most relevant to the context for this study, two of these themes are described below.

1.2.1 Promoting sustainability through the planning system

The role of sustainable development has been synonymous with Welsh planning guidance since devolution in 1999 and the first publication of *Planning Policy Wales* (PPW) in 2002.

In November 2011, the Welsh Government consulted on implementing a Strategic Monitoring Framework for the Planning System. This drew upon a research study considering the way in which, and extent to which, the planning system contributed to sustainable development. It includes a suggested indicator set for recording this impact.

The Welsh Government has also consulted on the paper ‘Planning for Sustainability - The presumption in favour of sustainable development’ (March to May 2012). By introducing a “presumption in favour of sustainable development” through PPW, the Welsh Government hopes to ensure that where Development Plans’ policies are outdated or superseded, local planning authorities should give them decreasing weight in favour of other material considerations such as national planning policy. Thus this study seeks to explore not only the development management process but also the way that decisions are made with reference to a definition of development and a potential presumption in favour of sustainable development.

1.2.2 Supporting economic development

The Welsh Government’s economic strategy, *Economic renewal: a new direction*² emphasised the role of the planning system in supporting the growth of businesses in Wales. Research on *Planning for Sustainable Economic Renewal*³ subsequently commissioned by Planning Division assessed the effectiveness of existing planning policy for economic development so as to inform future planning policy and guidance requirements. It considered the relationship between the planning system and economic development and in particular focused on the ways in which the planning system can encourage, support and deliver economic prosperity in accordance with sustainable principles. The report found little evidence in Wales of local authorities adopting a development management approach. Resulting revisions to Chapter 7 of PPW (supporting the economy) were subject to a consultation (November 2011 to March 2012).

The outcomes of this study and thus the actions taken forward by the Welsh Government will need to reflect a political commitment to encourage local authorities to adopt a development management approach and ensure that the

² <http://wales.gov.uk/topics/businessandconomy/publications/economicrenewal/>

³ <http://wales.gov.uk/topics/planning/planningresearch/publishedresearch/suseconrenewal/>

planning system can support the growth of businesses and sustainable economic renewal in Wales.

1.3 Study approach

The study approach comprised the following stages:

Inception: An inception meeting and the creation of a steering group (see Appendix B) helped to define the study approach and methodology. The study objectives were confirmed and the scope of research was agreed.

Policy context: The study constitutes one of several steps in Welsh planning and wider government reform. A literature review was undertaken to help position this study within its wider context, recognising that the planning system in Wales operates within a broader framework of policy and legislation established at UK and European levels.

Interviews: Extensive interviews covered a wide range of interests within Wales and also gathered international perspectives from the rest of the United Kingdom, elsewhere in Europe and internationally. Particular emphasis has been placed on interviewing experts in a range of roles associated with guiding, advising or undertaking development across the world. To provide an update on the policy context and to inform thinking during this early phase of the project, the study included interviews with civil servants involved in intergovernmental work on spatial planning and territorial cohesion and a range of practitioners and academics operating at European level. The aim was to identify practices which might be appropriate for use within the Welsh context, i.e. not only international case studies, but the ‘lessons learned’ from practice elsewhere which might be transposed into the planning system in Wales. The research has also elicited comments from some Welsh consultees on these issues. A full list of interviewees is provided in Appendix B.

Development of ideas and initial assessment: A list of ‘ideas’ or ‘tools’ for the planning system was built up during the evidence gathering (preceding) stages of the study. This served as a baseline of ideas for further assessment, including at a discussion seminar (see below) bringing stakeholders together to discuss ideas and issues. A final assessment of the range of ideas (as options) was undertaken by the project team. The general principles for selection of ideas included:

- capability to reduce delay and risk in the existing Welsh planning system;
- level of impact on the existing planning system and tools and likelihood of improving development management processes in Wales;
- political, public and stakeholder acceptability;
- capacity, culture change and resources required for implementation, including actors accountable / responsible for delivery;
- requirement for additional mechanisms or tools to support implementation and delivery; and
- transferability of ideas and / or tools from outside Wales into a different cultural and legal context.

As part of this process, the study has also considered the strengths and weaknesses of the present system to try and ensure a ‘fit’ with the recommendations.

Discussion seminar: A seminar was held to bring together stakeholders from across a range of interests to discuss the ‘ideas’. The discussion seminar focused on ‘road testing’ important lessons and concepts, in addition to the identification of case studies and examples (set out in boxes throughout this report) to help strengthen the evidence base. Participants are listed in Appendix B.

Final Report including recommendations: This Final Report brings together the range of ideas generated and assessed throughout the various stages of the study. It includes case studies and international examples alongside assessment based on the issues and themes of planning reform and development management in Wales. The evidence presented here is used to support a series of recommendations to the Welsh Government.

1.4 Outline of this report

The remainder of this report is structured as follows:

- Chapter 2 provides a **contextual overview, covering planning reform** and other legislation in Wales and the rest of the UK, and setting out the overall European-level context;
- **development management** is considered and defined in Chapter 3, setting out the objectives for a reformed system, what a development management approach should comprise and identifying where the current system falls short in its implementation;
- Chapter 4 discusses the **roles of various actors** in the planning system and the vertical levels at which it operates. It considers hierarchical policy-making, the role of elected members and shared services;
- ways in which to strengthen the development plan, including the scope for binding plan allocations and other mechanisms to enhance certainty, are set out in Chapter 5;
- **decision-making and culture change** are brought together in Chapter 6 which considers the way in which the decision-making process is designed and how it is delivered and monitored;
- **implementation** is the focus of Chapter 7, considering what planning can do to encourage delivery of development; and
- Chapter 8 sets out the **conclusions** – covering the overarching themes, a summary of the recommended reformed system and suggestions for legislative and other routes for delivery of the recommendations.

2 Development management in Wales in its broader context

2.1 Introduction

The consideration of a new approach to managing development in Wales needs to be set within a wider context of current policy and recent research. First, the study itself constitutes one of several streams of work designed to support planning reform in Wales. A brief review of other planning-specific research exercises is appropriate. Second, this study is specifically intended to inform the development of a Planning Bill, itself one of several interrelated pieces of legislation currently in preparation by the Welsh Government. Third, this research takes a multi-level governance perspective, recognising that the planning system in Wales operates within a broader framework of policy and legislation at UK and European levels.

In identifying innovative approaches to development management it is important to consider both changes and additions to Welsh legislation as well as other levers available to the Welsh Government to deliver its policy objectives for the planning system. Some of the ‘available levers’ are not ‘made in Wales’; several are UK-wide or European instruments or arrangements. This chapter, therefore, also outlines selected planning reforms in other parts of the UK and refers to some items of UK legislation which impact upon Wales.

In the final section, this chapter selectively explores the relevance of the European context for the design of a new approach to development management in Wales.

2.2 Evaluating the planning system and planning application process

Several studies and reviews aimed at exploring planning reform in Wales have been undertaken in recent years, all with implications for development management. They include, in particular:

Welsh Government Planning Review

This includes the *Study to Examine the Planning Application Process in Wales*. Published in 2010, the study was a ‘nuts and bolts’ review of the planning application process⁴. It recognised the need for greater certainty for developers and criticised inconsistent processing times for decision-making. The preparation of an Implementation Plan following the study led to debate around the clarity, amount and process of preparing new guidance, in addition to calls for greater consideration of consultation arrangements and those involved in both statutory and non-statutory consultation. The Welsh Government went on to publish new draft guidance on pre-application discussions which were consulted upon in 2011⁵.

More recently, the Welsh Government convened the *Independent Advisory Group* as part of the first step towards a Planning Bill for Wales. Focused on the delivery arrangements of the current planning system, the review included a call for

⁴ <http://wales.gov.uk/topics/planning/planningresearch/planningappprocess/?lang=en>

⁵ ‘Realising the potential of pre-application discussions’ (June to September 2011)
<http://wales.gov.uk/consultations/planning/preappdiscussions/?lang=en>

evidence from a significant number of users of and actors within the planning system and represented a wide range of interests. The report and recommendations of the Independent Advisory Group are published alongside this research report.

The Welsh Government Planning Review collectively forms the evidence base for the Planning White Paper, and includes a number of other studies and / or reports as set out in the diagram within Section 3.3 below. These other studies and reports associated with exploring planning reform in Wales indicate that there is a need to improve the efficiency of planning application processes (manifested mainly through quicker decision-making) and that there is a demand for greater certainty for applicants.

National Assembly for Wales Sustainability Committee – Inquiry into the Planning System in Wales

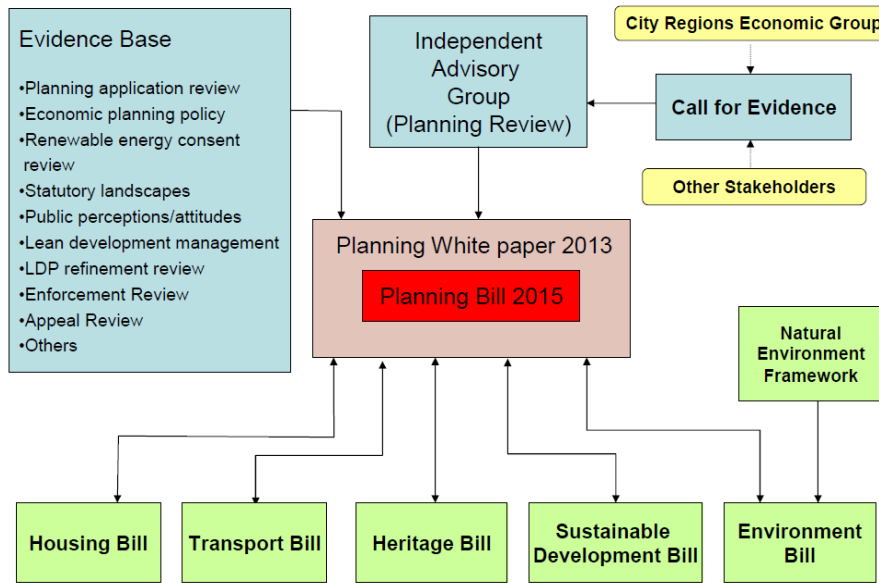
The Sustainability Committee of the National Assembly for Wales published its report and recommendations for its Inquiry into the Planning System in Wales in January 2011⁶. The inquiry focused on issues of national planning policy and did not directly consider the planning application process. It recommended that clear guidance on a development management approach be issued by government, including the identification of those functions and activities that complement the planning applications system. The inquiry recommended consideration of the introduction in planning policy of a presumption in favour of sustainable development, noting that evidence from stakeholders highlighted concerns that elected members were not taking decisions in accordance with the development plan, undermining the principle of a plan-led system.

2.3 Other legislation in preparation

The Planning Bill is part of a wider programme of legislative change by the Welsh Government, as illustrated below. This section briefly considers progress on some other bills.

⁶ http://www.assemblywales.org/bus-home/bus-committees/bus-committees-scrutiny-committees/bus-committees-third-sc-home/inquiries_sd/sc3_inq_planning.htm

Planning Bill: How it fits together



Source: <http://wales.gov.uk/topics/planning/planningresearch/planningreview/billtimeline/>

2.3.1 Sustainable Development as a central organising principle

The Welsh Government has a duty to promote sustainable development under Section 79 of the Government of Wales Act 2006 and recently consulted on proposals for a Sustainable Development Bill White Paper (May to June 2012)⁷. Through the document *One Wales: One Planet*⁸, the Welsh Government has already put sustainable development at the centre of everything it does. The Sustainable Development Bill aims to strengthen this approach and make sustainable development the central organising principle of the Welsh Government and of the public sector in Wales. Whilst the Planning and Compulsory Purchase Act 2004 contains a statutory requirement for those responsible for preparing strategies and plans to undertake these functions with a view to contributing to the achievement of sustainable development, the Welsh Government’s Legislative Programme (2011-16) provides new powers, duties and institutional capacity to advance the goal of building a sustainable Wales.

2.3.2 Regulation for environmental protection: steps towards an Environment Bill

The Welsh Government has recently consulted on the Green Paper ‘*Sustaining a Living Wales*’ (January to May 2012), which outlines a new approach to natural resource management⁹ in Wales. The central proposal is to move to an ‘ecosystem approach’ to environmental regulation and management. This would see Wales move to a system of managing and regulating the environment as a whole rather than dealing separately with individual aspects of the environment. The

⁷ <http://wales.gov.uk/consultations/sustainabledevelopment/sdbill/?lang=en>

⁸ <http://wales.gov.uk/topics/sustainabledevelopment/publications/onewalesoneplanet/?lang=en>

⁹ <http://wales.gov.uk/consultations/environmentandcountryside/sustainingwales/?lang=en>

consultation will form the basis for the future Environment Bill and shape the work on a new Single Environmental Body (SEB) for Wales, bringing together the three existing bodies (Environment Agency Wales, Countryside Council for Wales and the Forestry Commission Wales).

The Green Paper considers the interface between environmental regulation and land use planning with a view to establishing better integration between these two regimes. For example, there is a desire to consider the boundaries for environmental regulation and planning decision-making to ensure a more coherent approach, as well as identifying whether one of the systems might be better placed for making decisions on specific aspects of regulation. The Green Paper also calls for greater clarity on the legal status of the plans produced under one regime in relation to the other, (for example on the legal standing of a natural resource management plan in developing a Local Development Plan (LDP) and *vice versa*).

2.3.3 Other Bills

A Welsh Government consultation on the Housing White Paper¹⁰ recently concluded. The Housing White Paper sets out an ambitious programme of legislative and non-legislative action to tackle homelessness, to improve conditions in the private rented sector and to deliver more homes, as well as proposals for tenancy reform. Proposals relevant to development management include strengthening the strategic role of local authorities to identify and address local housing needs, and effective regional collaboration on housing functions and services.

2.4 Other key issues in Wales

2.4.1 An emphasis on collaborative working

The Welsh Government's vision of joint working between public bodies was first set out in 2004 through the Welsh Assembly Government report *Making the Connections*¹¹, and endorsed in 2006 by the Beecham Report.¹² Joint working between public bodies is now seen as a key to efficiency and local authorities, in particular, face increasing pressures to collaborate. The Local Government (Wales) Measure (2011) has given Welsh Ministers powers to amalgamate councils and to issue statutory guidance on collaboration. So far there have been no proposals for amalgamation. The 2011 Simpson Review¹³ made several recommendations proposing that further joint working arrangements between local authorities be introduced. In particular, this review considered a range of non-planning consent regimes and concluded that change should be through collaboration rather than reorganisation, due to the continuing need for services to be organised locally.

Although Welsh local authorities continue to exercise planning powers, constraints on their capacity and capability to deliver planning services are well

¹⁰ 'A White Paper for Better Lives And Communities'

<http://wales.gov.uk/consultations/housingcommunity/housewhitepaper/?lang=en>

¹¹ <http://wales.gov.uk/about/programmeforgovernment/strategy/makingtheconnections/?lang=en>

¹² <http://wales.gov.uk/about/cabinet/cabinetstatements/2006/1008909/?lang=en>

¹³ <http://wales.gov.uk/topics/localgovernment/publications/lndelivery/?lang=en>

recognised. Local authorities already have legal powers to co-operate on planning, for example to produce joint LDPs and to deliver strategic services in some areas of responsibility. The North Wales Minerals and Waste Shared service provides a good example, see Section 4.3.

Consideration of the way development is managed in Wales needs to be set in the context of the current and future roles and responsibilities of local authorities, as well as the advantages of collaborative working across boundaries.

2.4.2 The need for a broader spatial framework

A Cabinet Statement in March 2012 stated that “the 2008 Wales Spatial Plan continues to be the Welsh Governments vision for people, places and futures”¹⁴. However, many practitioners felt unclear on the current status and weight of the Wales Spatial Plan. At the same time, the new *Wales Infrastructure Investment Plan*¹⁵ provides a framework for major infrastructure projects. Speaking at the Royal Town Planning Institute (RTPI) Wales’s annual conference in May 2012, the Welsh planning minister reaffirmed political commitment to reforming planning, setting out plans to reduce the time it takes to deal with planning applications, taking forward the Wales Spatial Plan in the context of the Wales Infrastructure Investment Plan, and committing to natural resource management planning.

The *City Regions Final Report* published in July 2012¹⁶ is relevant for the current study in that it identifies improvement of the planning system as one of the main drivers behind the city region approach. However, the emphasis is on re-discovery of strategic spatial planning - with an emphasis on ‘what goes where’, so as to overcome what is perceived as excessive ‘self containment’ of LDPs. The report states that the Welsh government should ‘adapt or replace the Wales Spatial Plan to ensure the economic development framework is fit for purpose and does not hinder the success of city-regions’; it calls for establishment of ‘an over-arching city-region strategic planning tier to ensure city-region hinterlands benefit from the growth of their cities and have a voice in cross-boundary development’, and recommends that ‘housing, like spatial planning, must be organised at city-region rather than local authority level and linked to transport planning to facilitate commuting and leisure travel and prevent the isolation of more remote communities’. There is strong support for collaborative working by local authorities on strategic issues.

In considering models from outside Wales the report draws in particular on the strategic planning arrangements established in Scotland which are acknowledged to provide ‘a clear hierarchy of decision-making’.

With specific reference to development management approaches there are passing references in the *City Regions Final Report* to the use of Enterprise Zones and a subsequent comment from the Minister that spatial approaches to economic development other than city regions are currently being explored, with the Local Growth Zone in Powys cited as an example. Also of interest are coverage of various financing mechanisms for investment (such as a modified Community Infrastructure Levy), the importance of accessing EU funds (principally Structural

¹⁴ <http://wales.gov.uk/about/cabinet/cabinetstatements/2012/wsp/?lang=en>

¹⁵ <http://wales.gov.uk/funding/wiip2012/?lang=en>

¹⁶ <http://wales.gov.uk/topics/businessandconomy/publications/120711cityregions/?lang=en>

Funds) and the suggestion that ‘consideration should be given to the idea of public sector landowners leasing or endowing land for housing to make development more economically attractive’.

2.5 Rest of the UK

2.5.1 England

In comparison to Wales, England is seen as being encumbered with a more protracted plan-making regime, but there have been significant efforts to address performance management in decision-making.

The Barker Review in 2004 considered housing supply and in 2006 it looked more broadly at land use planning.¹⁷ Both Barker Reviews provided a strategic look at planning driven mainly by a desire to speed-up decision-making and encourage economic growth. In the 2006 Review, the main themes were around creation of a more responsive planning system, with local authorities delivering ‘a framework for positive planning’ (an early form of development management) and policy objectives in terms of:

- ensuring that the planning system is more responsive to the market while delivering sustainable development;
- managing growing demand for development land, both by ensuring more efficient use of urban land and ensuring that the environment is protected and enhanced;
- enabling the effective delivery of necessary infrastructure;
- streamlining the planning system to increase certainty, reduce delays and cut costs; and
- improving the appeals system to reduce lengthy delays.

In 2008, UK Government passed two amendments to the General Permitted Development Order, notably reviewing the extent of permitted development rights for householders.

The Killian-Pretty Review reported in November 2008 and identified five main areas of concern relevant to planning reform in England, including proportionality, process, engagement, culture and complexity. In summary, the Review concluded that that the application requirements and process in relation to many smaller scale developments were not considered proportionate or reasonable, whilst the pre-application stage and discharging of conditions could provide challenges for applicants and local planning authorities. The Review suggested that the involvement of elected members and some statutory and non statutory consultees in decision making was not effective, whilst the current target regime is having some harmful, unintended, effects on behaviours and outcomes. The complexity of the national policy framework and the legislation governing the consideration of applications were also criticised.

¹⁷ <http://www.barkerreview.org.uk/>

In a draft PPS on development management¹⁸ in 2009 DCLG tackled the need for culture change in local authorities. It emphasised proactivity and place-making, encouraging local authorities to take an active role in securing developments. Referring to good practice, it promoted front loading in planning; effective engagement; and taking a proportionate approach to management. The role of Planning Performance Agreements in supporting collaborative working was strongly emphasised. The draft PPS also discussed the potential for refusals on grounds of pre-maturity¹⁹.

The General Election, and resulting change in Government, has led to substantial changes to the planning system in England. The over-arching current theme is ‘localism’ which is broadly analogous to the European Union principle of subsidiarity in that it promotes decision-making or planning powers at the lowest practicable level. The main post-election changes to promote localism to date are:

- the abolition of regional planning, including disbanding Regional Planning Bodies, Government Offices and Development Agencies.
- encouraging multi-authority and private-sector co-operation;
- the abolition of the Infrastructure Planning Commission and creation of the Infrastructure Planning Unit within The Planning Inspectorate;
- a move away from central data collection and performance auditing, including withdrawal of the National Indicator Suite, abandoning Comprehensive Area Assessment and closing the Audit Commission with a view to outsourcing its scrutiny functions to the private sector;
- local financial and resource incentives - whilst the previous government had centrally-determined initiatives such as Housing and Planning Delivery Grant, the current government is focused on introducing fiscal incentives such as Tax Increment Financing;
- Community Infrastructure Levy tariffs based on locally identified infrastructure needs (through Infrastructure Delivery Plans) and local assessments of viability;
- powers associated with Neighbourhood Planning – enabling local residents, businesses and communities to steer their own local planning policy frameworks; and
- provision for powers of general competence for principal local authorities.

Following the UK government’s publication of the Localism Bill²⁰, a Written Statement was published by the Welsh Government, detailing aspects of the Bill as they related to Wales²¹.

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<http://www.communities.gov.uk/publications/planningandbuilding/developmentmanagementconsult>

¹⁹ The more recent National Planning Policy Framework updates this position on prematurity and clarifies that planning decisions must be taken in accordance with the development plan unless material considerations indicate otherwise

²⁰ The Localism Bill was introduced to Parliament on 13 December 2010, and was given Royal Assent on 15 November 2011, becoming an Act.

<http://www.communities.gov.uk/localgovernment/decentralisation/localismbill/>

Through what is now the Localism Act, the Welsh Government Statement highlighted that the Bill would confer Measure powers on the National Assembly for Wales. These powers enable the Welsh Government to consult and, if appropriate, bring forward proposals for legislation in relation to development management. Most of the provisions in the Act apply in England only. Some provisions also apply in Wales, or apply in Wales only – in summary:

- Chapter 2 limits the binding nature of the CIL Examiners' recommendations on Community Infrastructure Levy charging schedules and provides for requiring charging authorities to pass Community Infrastructure Levy funds to other bodies;
- Chapter 6 makes provision in relation to nationally significant infrastructure, particularly the abolition of the Infrastructure Planning Commission; and
- Chapter 7 confers legislative competence on the National Assembly for Wales in relation to aspects of town and country planning, including the processes for deciding planning applications and enforcement.

In November 2011, the UK government published the National Infrastructure Plan, billed as an 'updated' plan. This pulls together and collates commitments to improve infrastructure.

The recent introduction of the National Planning Policy Framework (NPPF, March 2012) has sought to simplify and consolidate the previous sets of Planning Policy Guidance and Planning Policy Statement notes into a shorter, more accessible single publication. The NPPF emphasises the three (social, economic and environmental) pillars of sustainability – social, economic and environmental – and creates an overarching policy position in favour of sustainable development.

DCLG has launched a series of consultations around speeding up the Planning Application process, namely:

- Relaxation of planning rules for change of use from commercial to residential;
- New opportunities for sustainable development and growth through the reuse of existing buildings;
- Statutory consultee performance and award of costs; and
- Streamlining information requirements for planning applications.

Finally, relevant to development management in England, the UK government's Water White Paper²² and draft Water Bill²³ proposes a new planning approval system for sustainable drainage, whilst the draft Water Bill also proposes to extend environmental permitting to flood defence consents.

Reform in England might influence planning and development management in Wales through providing lessons learned regarding the departure of regional planning, promotion of collaborative working and the localism agenda and an emphasis on delivering community benefits, strategic infrastructure and streamlined policy documents.

²¹ <http://wales.gov.uk/about/cabinet/cabinetstatements/2010/101214bill/?lang=en>

²² <http://www.defra.gov.uk/environment/quality/water/legislation/whitepaper/>

²³ <http://www.defra.gov.uk/environment/quality/water/legislation/water/>

2.5.2 Scotland

Scotland's first National Planning Framework was published by the Scottish Executive in 2004. It set out the strategic direction and vision for Scotland as a whole to 2025²⁴. The overarching ethos was for sustainable economic growth. The 2005 Planning White Paper *Modernising the Planning System*²⁵ included 66 suggested reforms to the planning system ranging from strategic duties and addressing plan-making issues through to detailed determination issues. Notably, it included suggestions for consultation duties for applicants, local review panels, third party rights of appeal and increased delegation levels. Not all proposed reforms were adopted in The Planning etc. (Scotland) Act 2006, the majority of which came in to force in 2009. The National Planning Framework was formally consolidated as the *Spatial Plan for Scotland*. Structure Plans and Local Plans were replaced by Strategic Development Plans and LDPs. Planning authorities were empowered to issue fixed penalty enforcement notices as an alternative to prosecution, and update the temporary stop notice system as well as a wider requirement to create an enforcement charter. Development management reforms designed to improve the handling of applications were introduced, notably including widening the definition of 'development', making provisions for the variation of a planning permission, creating a duty for applicants for certain classes of development to undertake pre-application consultation, and expanding the circumstances in which an authority can decline to determine an application.

*Delivering Planning Reform*²⁶ (2008) set out the Government's 'shared determination' to implement the 2006 Act and to improve the planning system. It said that the Scottish Government would scale back the amount of planning advice, would consolidate Scottish Planning Policy around three themes, would launch an electronic planning system in 2009 and establish an internal unit to support the Strategic Environmental Assessment of development plans. Part 7 of the 2006 Act also gave Scottish Ministers powers to conduct (and report on) an assessment of a planning authority's performance including, but not restricted to, decision-making. Furthermore, the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 aimed to promote efficiency and simplicity, and to ensure that procedures were fit for purpose and responsive to different types of development proposals. Building on the 2006 Act it provided updates to advertising requirements, applications for certificates of lawful use, and statutory requirements for consultation.

In 2009, the Scottish Government published the second National Planning Framework, extending the national vision through to 2030. It adopted a similar structure to the 2004 version, setting out both drivers of change and spatial perspectives. It also included 'statements of need' for a range of nationally-significant developments.

In 2011, Audit Scotland undertook a review of the new development management system. It recognised the positive roles played by Scottish Government and Government agencies, and the gradual shift towards development management by local authorities, but highlighted that few authorities were performing well on the timescales for determining planning applications. There was an acceptance that the planning system should not be judged on speed alone. In March 2012,

²⁴ <http://www.scotland.gov.uk/Topics/Built-Environment/planning/National-Planning-Policy/npf/>

²⁵ <http://www.scotland.gov.uk/Publications/2005/06/27113519/35231>

²⁶ A <http://www.scotland.gov.uk/Publications/2008/11/05100742/0>

‘Planning Reform – Next Steps’ provided a progress update on the modernising planning agenda. A key theme beyond the 2006 Act provisions already set out above was an emphasis on driving improved performance. Two publications were delivered alongside the update:

- A consultation paper on a new planning application fees regime, moving towards a single fee for processing applications including previously separate fees for advertising and pre-application advice and creating a link between performance and fees;
- A Planning Performance Framework, prepared by Heads of Planning Scotland (the equivalent of the Planning Officers Society Wales) and designed to consistently and comparably measure LPA performance.

Finally, the Scottish Government has undertaken a ‘Development Delivery’ Consultation (March 2012).²⁷ The consultation aims to gather views as to whether the planning system supports or hinders the delivery of development, as well as how various aspects of the system work in this regard. Specifically, it includes a question in relation to a potential development charge, such as a ‘roof tax’, ‘tariff’ or ‘infrastructure levy’.

It is noticeable that Scotland is often cited by Welsh consultees as a source of good practice which Wales might seek to emulate. Considering planning systems across the UK, Scotland is arguably the one most influenced by European policy and practice. In Scotland, strategic regional plans have long been both informed by good practice from elsewhere and designed so as to provide a foundation for leveraging EU funds. The concept of ‘flagship projects’, for example, was imported from practice in France and Sweden. Reform in Scotland might influence reform in Wales through demonstrating the value of: engaging at a European level and leveraging EU funds, providing a clear steer in national policy and visioning, promoting the concept that a planning system should not be judged on speed alone, and leading an agenda based on driving improved performance. In particular, the Planning Performance Framework and Strategic Development Plans could offer practical examples for Wales.

2.5.3 Northern Ireland

As a result of historical political tensions, whilst local authority boundaries have been set and local authorities manage some service functions, the planning functions are managed centrally by the Department of the Environment using teams which are based on groupings of local authorities. This includes both policy-making and decision-making. Like other parts of the UK, Northern Ireland is in the midst of substantive planning reforms, in this case as part of a wider Review of Public Administration (RPA). The ‘Reform of the Planning System in Northern Ireland: Your chance to influence change’ consultation concluded in 2009. In preparing the Planning Reform Bill, and as a result of the consultation, in January 2010 the Northern Ireland Assembly published four working papers on the planning system, covering:

- Department functions and LDPs – making provision for spatial planning and development management, linking the LDP (split into plan strategy and local policies plan), the Community Plan, and the Regional Development Strategy.

²⁷ <http://www.scotland.gov.uk/Publications/2012/03/3965>

- Development management, planning control and enforcement – to improve the quality of the built environment and the efficiency and certainty of the planning [application] process, defining development as either major or local, requiring pre-application consultation, power of call-in by the Department, requiring a delegation scheme for each district council, notification of initiation and completion of development, and the unaltered provision of appeal to the Planning Appeals Commission.
- Community involvement – planning authorities to prepare Statements of Community Involvement, transfer of many planning powers to district councils where locally elected politicians who understand the concerns of local communities will be making planning decisions, requirement for pre-application consultation for major developments, providing for pre-determination hearings for the ‘applicants and any person so prescribed’, and a duty to respond to consultation on a person or body which exercises functions under the planning legislation.
- Implementation, performance and decision making: issues of capacity, delivery and quality – explores themes of integration, leadership (role of a chief planning officer), governance, stakeholder involvement, capacity, transparency and the resulting quality of the built environment.

The Planning Bill (2011), although the commencement order(s) are not yet in place, will provide for the transfer of the majority of planning functions from central government to district councils. The Act includes powers associated with performance monitoring and reporting (Part 10) and also brings forward a number of other reforms to the planning system. As with the equivalent Scottish legislation, references are made to ‘development management’ and these encompass the following areas of reform:

- For policy-making, the government has a statutory power to make a development plan for any area. In reality, these are local plans of varying focus which can cover either the entire administrative area (a ‘local plan’) or a particular sub-set or functional urban area (an ‘area plan’); and
- Strategic planning is the responsibility of the Department for Regional Development (DRD), as outlined through the Regional Development Strategy (RDS) 2035. The RDS provides strategic guidance for operational planning as well as influencing a range of stakeholders across the region. The RDS adopts a ‘nested’ approach to sustainable development and contains a spatial framework for implementation, along with hierarchy of settlements and functions.

The Department for Regional Development has also been working collaboratively with counterparts in the Republic of Ireland on finalising a Framework for Collaboration based on both the RDS and the National Spatial Strategy for the Republic of Ireland. Northern Ireland is an outward-looking region, exemplified by its planning officials in the Department for Regional Development often seeking to explore links between the European territorial cohesion agenda and current Structural Funds programming.

Reform in Northern Ireland could influence development management processes in Wales through offering lessons learned in making provision for spatial planning and linking the LDP with both the Community Plan and the Regional Development Strategy. This multi-level governance approach supports

integration, stakeholder involvement, capacity and transparency in planning. Furthermore, reform in Northern Ireland places an emphasis on the importance of implementation, performance monitoring and reporting.

2.6 The European context

2.6.1 EU Directives and ‘other regulatory frameworks’

Planning continues to be the formal responsibility of national governments and there are no directives explicitly for land use. However, the regulatory framework provided by EU directives and related instruments is central to any proposed review or reform of the planning system in Wales. Further, the Strategic Environmental Assessment (SEA) and Environmental Impact Assessment (EIA) requirements directly impact upon plan-preparation and assessment of the impacts of development proposals, whilst EU environmental legislation influences both policy content and procedures. Several directives require the preparation of integrated management plans for particular types of territory, and for some directives the Commission has produced explicit guidance for land use planning²⁸. Directives in other policy areas, such as energy, are also important drivers for change.²⁹ Welsh consultees often comment that, when it comes to achieving high quality sustainable development outcomes, the EU directives with their associated legally-binding targets and penalties have more force than UK planning system requirements. In addition, compliance with EU obligations is also recognised as a significant driver for investment, as demonstrated by the recently published *Wales Infrastructure Investment Plan for Growth and Jobs*³⁰.

At the EU level there are ambitious plans to streamline permit procedures and market rules for strategic infrastructure developments, particularly in the field of energy. It is worth noting that some EU countries – currently Austria, Germany and the Netherlands - are simplifying their permitting regimes through integrated permitting, which enables compliance with both national and EU requirements. Outside the EU system, some other European instruments could be given greater consideration than is currently the case. For example, provisions of the European Landscape Convention are relevant to articulating the character of the local built environment or landscape either during plan preparation or in relation to a particular development proposal³¹. Chapter 6 considers integrated permitting from a process perspective.

²⁸ See for example European Commission Joint Research Centre (2006) Land Use Planning Guidelines in the context of Article 12 of the Seveso II Directive 97/82/EC as amended by Directive 105/2003/EC relating to the control of major accident hazards.

http://ec.europa.eu/environment/seveso/pdf/landuseplanning_guidance_en.pdf

²⁹ For example the Renewable Energy Directive (2009/28/EC) sets binding national targets for renewables and requires the production of National Renewable Energy Action Plans (NREAPs). The most recent UK NREAP identifies the planning system is one of the main instruments for achieving the targets. All relevant measures applying to or taken in Wales are itemised.

http://www.decc.gov.uk/en/content/cms/meeting_energy/renewable_ener/uk_action_plan/uk_action_plan.aspx

³⁰ <http://wales.gov.uk/funding/wiip2012/?lang=en>

³¹ Chapter 5 end note - <http://wales.gov.uk/docs/desh/publications/110228ppwchapter5en.pdf>

2.6.2 Territorial Cohesion

The European Spatial Development Perspective (ESDP), adopted in 1999, underpinned the establishment of spatial planning across much of Europe, including Wales. The most recent common statement is the *Territorial Agenda of the European Union 2020* (TA2020)³², designed to secure the spatial dimension of the overarching EU2020 strategy for ‘smart, sustainable and inclusive growth’. In the context of EU2020, which sets the framework for all new legislative proposals and funding programmes, references to land use planning and management are becoming more frequent, especially in relation to the ‘flagship’ initiative ‘Resource-efficient Europe’³³, which treats land as a scarce resource requiring long-term management according to sustainability principles.

The inclusion of ‘territorial cohesion’³⁴ as an objective in the EU Treaty has provided a firmer legal basis for these efforts. Under the Treaty of Lisbon, ‘social, economic and territorial cohesion’ is a shared competence between the EU and the Member States. Civil servants from national ministries responsible for spatial planning meet regularly as the ‘Network of Territorial Cohesion Contact Points’ (NTCCP)³⁵ to consider the evolving European agenda for ‘the territory’ and compare national approaches. They agree that all EU policies having a territorial impact need to have an explicit spatial dimension and speak of ‘the problem of convincing sectoral policy makers that a territorial dimension adds value’³⁶.

Matters discussed at territorial cohesion meetings include issues that may impact on development management. The most recent meeting considered, for example, the Commission’s *Road Map to a Resource Efficient Europe* which proposes that by 2020 EU policies should ‘take into account their direct and indirect impact on land use in the EU and globally’ and sets an ambition for no net land take by 2050. Other ongoing initiatives at EU level followed in territorial meetings include the Green Infrastructure initiative, which has implications for integrated planning across urban and rural areas and across administrative boundaries³⁷, and work on health inequalities³⁸. Recently, national representatives for territorial cohesion have pursued the development of practical planning tools, notably Territorial Impact Assessment (TIA). This is potentially useful for assessing development proposals against spatial policy objectives³⁹.

The UK is represented at European level on issues of territorial cohesion by DCLG. Officials from the Devolved Administrations can put forward issues for discussion, be briefed on proceedings and attend associated events such as those

³² <http://www.eu-territorial-agenda.eu/Reference%20Documents/Final%20TA2020.pdf>

³³ <http://ec.europa.eu/resource-efficient-europe/>

³⁴ Precise definitions of ‘territorial cohesion’ vary, but in general it refers to ‘the process of ensuring overall harmonious development between and within all regions of the European Union and enabling their inhabitants to take full advantage of their specific characteristics.’

<http://extranet.cor.europa.eu/subsidiarity/policyareas/Pages/EconomicandSocialCohesion.aspx>

³⁵ <http://ntccp-udg.eu/ntccp>

³⁶ http://www.eu-territorial-agenda.eu/Related%20Documents/PL_PRES_DG_meeting_report.pdf

³⁷ http://ec.europa.eu/environment/nature/ecosystems/index_en.htm

³⁸ http://ec.europa.eu/health/social_determinants/policy/index_en.htm

³⁹ Although those involved with TIA seem generally to view it as useful for assessing the impact of EU policies and directives, they are less convinced of its application at local and regional levels (most practitioners wish to avoid the establishment of a procedurally demanding TIA system comparable with EIA).

organised through the European Spatial Planning Observatory (ESPON) programme⁴⁰.

2.6.3 The European agenda for sustainable urban development

The European institutions and national urban policy ministers have long promoted integrated and sustainable approaches to the management of development in cities and towns on the part of all levels of governance, from the neighbourhood to the EU level. Intergovernmental arrangements for dialogue take place principally through the Urban Development Group (UDG)⁴¹, which includes mainly senior officials and representatives of bodies such as Eurocities. This group is highly influential in determining how Structural Funds are spent in urban areas. There is a close association between this intergovernmental dialogue and the role of local authorities in place-making. European resources have been made available to support local authorities in this task. For example, the URBACT programme has supported projects on land use planning⁴² and promoted community-led local development approaches⁴³. This programme has been little used in Wales, although Bridgend CBC provides an exception⁴⁴.

Recently, national urban policy ministers have sponsored the development of the European Reference Framework for Sustainable Cities, a web-based tool which takes account of all relevant EU legislation and current best practice around sustainable development.⁴⁵ Due to be launched in autumn 2012, this will be freely available to all local authorities as a means of benchmarking their strategies against others in Europe and identifying good practice approaches (both with possible application to the preparation of LDPs and finding partners for cooperation projects, as well as possibly also assessing the impact of investment strategies and specific development proposals). The UK government has been actively involved in its development and is the route by which Wales can become more involved, especially given its relevance to aspects of involvement and implementation in development management.

2.6.4 EU Structural Funds and other financing mechanisms

It is widely recognised that Structural Funds represent a major driver for the delivery of development in Wales and that the planning system has a key role in targeting and facilitating the use of these funds. Public bodies establishing Operational Programmes (and preparing and agreeing proposals for EU funding) are required to demonstrate that projects fit within an agreed strategic spatial framework reflecting effective partnership working and stakeholder engagement. For individual projects a facilitative LDP will be important, but a patchwork of individual plans is unlikely to provide sufficient spatial focus.

⁴⁰ <http://www.espon.eu/main/>

⁴¹ <http://ntccp-udg.eu/udg>

⁴² The LUMASEC project (Land Use Management for Sustainable European Cities) provides an example. <http://urbact.eu/en/projects/metropolitan-governance/lumasec/homepage/>

⁴³ Soto P., M.Houk & P.Ramsden (2012) Implementing 'community-led' local development in cities. Lessons from URBACT

http://urbact.eu/fileadmin/general_library/URBACT_CLLD_290212.pdf

⁴⁴ <http://urbact.eu/en/projects/low-carbon-urban-environments/cash/homepage/>

⁴⁵ <http://www.rfssustainablecities.eu/presentation-of-the-prototype-rfsc-a324.html>

In previous programming periods, Operational Programmes for Wales have been underpinned by the Wales Spatial Plan, used to determine strategic priorities for different sub-regions. Within particular localities, the integrated approaches established in European policy and demanded by EU funding programmes are valuable for improving practice, especially in plan making. In the case of the financial instrument for urban investment, JESSICA, there has been an explicit requirement to have in place an ‘integrated plan for sustainable urban development’. Lack of such plans in eligible areas of Wales reportedly delayed the establishment of the Regeneration Investment Fund for Wales⁴⁶. Delays and uncertainties in obtaining planning permission also affect opportunities for local authorities and their partners to secure co-financing for innovative pilot schemes outside Structural Funds.

In any discussion of Structural Funds in relation to planning it is important to be aware of the Territorial Cooperation programmes, financed by the European Regional Development Fund, which offer opportunities for direct contact with planning and governance systems elsewhere. In addition to the ESPON and URBACT programmes mentioned above, all three strands of INTERREG are relevant (and take up of opportunities in these programmes is also recommended in PPW⁴⁷).

Planners in Wales do participate in the Territorial Cooperation programmes and have useful observations to report. For example Torfaen council’s participation in the INTERREG IIIB project REVIT (on brownfield site redevelopment) enabled detailed mapping of sites using a GIS tool developed jointly with European partners, part of the evidence base for the LDP, and also sustainability appraisal of the council’s regeneration strategy. With specific reference to development management, Welsh participants in REVIT noted the professionalism in stakeholder engagement displayed by partners from Stuttgart and Tilburg. In the case of the REGAIN project funded by INTERREG IVB, long delays in securing planning permission for the demonstration building (a 500m² business incubator unit) eventually completed on The Works site in Ebbw Vale meant complex applications to the managers of the funding programme to secure extensions to the project. Participants from Blaenau Gwent have been able to compare their development process with experience of building projects in Belgium, France and Scotland.⁴⁸

Looking to the future, the draft Regulations for the 2014-2020 programming period contain several specific proposals with a strong ‘territorial dimension’ which could be significant drivers for development management. Those for Community-led local development⁴⁹, Integrated Sustainable Urban Development⁵⁰ and Integrated Territorial Investments⁵¹ are especially relevant. However, the new Partnership Agreements and Operational Programmes have a strong thematic focus and there are uncertainties about how the territorial dimension will be taken into account. Although work on a UK Partnership Agreement is well advanced, the various territorial development instruments are not yet in place. In particular, the UK has not yet finalised a strategy for

⁴⁶ <http://www.rifw.co.uk/eng/index.html>

⁴⁷ *Planning Policy Wales* (Edition 4, 2011) Para. 1.4.9

⁴⁸ <http://sbchallenge.iisbe.org/projects/BP108RC/main.html#!prettyPhoto>

⁴⁹ http://ec.europa.eu/regional_policy/sources/docgener/informat/2014/community_en.pdf

⁵⁰ http://ec.europa.eu/regional_policy/sources/docgener/informat/2014/urban_en.pdf

⁵¹ http://ec.europa.eu/regional_policy/sources/docgener/informat/2014/iti_en.pdf

Integrated Territorial Investments (ITI). In Wales, the Wales European Funding Office (WEFO) is leading the preparatory work for the new programmes. The Welsh Government has already announced its choice of thematic investment priorities for the future,⁵² but without an operational spatial plan, the on-going work on city-regions and the *Wales Infrastructure Investment Plan for Growth and Jobs* could play a crucial role in shaping the future programmes.

Although the European context is highlighted in PPW, there is a role for greater awareness amongst practitioners in Wales on the extent to which EU membership both conditions and supports much of what can be achieved in practice at local level and, for development management, its role in shaping the strategic spatial vision for plan-making, decision-making and implementation. Beyond a brief reference in the Welsh Government's EU Strategy there is no explicit Wales-wide strategy for territorial cohesion or territorial cooperation.

2.7 Conclusions

In considering the wider context for development management reform within Wales, it is important to recognise that the planning system in Wales operates within a broader framework of policy and legislation established at UK and European levels. It is important that this framework and the learning opportunities derived from it are embraced.

In identifying innovative approaches to development management, the Welsh Government should consider both changes and additions to Welsh legislation and other levers available at UK, European and international levels, so as to deliver policy objectives for the planning system. Review of the broader context suggests that the following key issues all need to be considered:

- the perceived need for strategic planning arrangements and greater powers of direction 'from above';
- a better understanding of the interconnections between all the Bills currently in preparation and proposed new powers through consultations, reviews and studies relevant to the planning system;
- the importance of collaborative working, pre-application discussions and respecting appropriate stakeholder engagement in order to deliver better quality plans and decisions;
- understanding the value of engaging at a European level in order to help shape policy direction and identify available levers, instruments or arrangements for funding, sharing best practice and improving development management;
- the importance of improving development management to benefit implementation, performance monitoring and reporting; and
- engagement with European processes around territorial cohesion, whether at an intergovernmental level, in territorial cooperation projects, or in Structural Funds programming and implementation in order to find more effective solutions to common challenges around funding and delivering development, and especially regeneration.

⁵² <http://wefo.wales.gov.uk/news/latest/120509futureeuropeanprogrammes/?lang=en>

3 Development management: current and reformed approaches

3.1 Introduction

The purpose of this chapter of the report is to define development management and to provide a summary of key issues within the current system as identified by the study team through the interviews and discussions as part of this research. However, this is preceded by a first principles assessment of the objectives for a reformed system which sets out the overarching aims and desired characteristics.

The definition of development management is important in establishing a context for the international examples used later in the report. Stakeholders' concerns also set the context for the discussion and recommendations made in later chapters of the report. However, the purpose of the research was not to focus in detail on stakeholders' concerns with the present planning system, especially given that this work is being addressed by the Independent Advisory Group, and views were not the sole or determining factor in establishing the project's recommendations or delivery preferences.

3.2 Objectives for a reformed system

The recommendations made by this report are grounded within an independent 'first principles' view of the objectives and desired characteristics of a reformed system. This draws upon the experiences of the research team in Wales and beyond, and also the views and general agreement from stakeholders involved in the research as to the objectives of a reformed system. These include:

- **An agreed vision or development scenario as a starting point:** this is currently translated as planning policy (PPW, TANs and LDPs) within the plan-led system but in essence is related to the need for a discussion, agreement and allocation of what and / or how much of a use should go where, where it is less appropriate for development and similarly, where is there a need for active conservation or other types of custodianship.
- **Sustainability:** the agreed vision or development scenario outlined above should be grounded in evidence and interpreted in a way which ensures that sustainability is the golden thread running throughout the various stages and processes.
- **Certainty:** It is the agreed overarching vision or policy which is the founding of certainty within the system. Certainty is an understanding by actors as to what is likely to be acceptable in planning terms and what might not. This is currently delivered through LDP allocations, supplementary guidance, site masterplans and pre-application discussions.
- **Flexibility:** Although certainty is often cited as a key requirement by developers, flexibility is also important to ensuring that the agreed vision can react and evolve to changing circumstances. Planning applications can be amended and revised plans submitted, and there is an increasing focus on renegotiation of planning agreements and ensuring development viability to promote prompt implementation.

- **Efficiency:** the management of development should be an efficient process which is measured and proportionate in terms of the requirements and resource burden on those involved. This currently includes local lists for information requirements for applications which some stakeholders felt included unnecessary documents, and a balance between delegated and committee decision routes to ensure appropriate levels of rigour and expediency.
- **Expediency:** if the system is operating efficiently then, all other things being equal, the management of development should be discharged in a timely fashion. PPW currently sets out the targets for timely determination of planning applications and LDPs are intended to be reviewed regularly.
- **An end to end approach:** the management of development should not begin and end with the processing of a planning application but should start early on with the identification of sites, stakeholders, partners, developers, issues, funding and through policy and discussions nurture and progress sites and proposals through to an approval. Following this, the process should continue to support and broker the necessary leads and action to ensure appropriate implementation and delivery. This is what is meant by an ‘end to end approach’ and is characterised by a **proactive approach** and a **focus on outcomes**.
- **Equity:** the process should be fair. This is currently managed through democratic involvement, consultation and transparency / accessibility to plan- and decision-making processes. This includes ensuring that the system is **easy to understand**.
- **Inclusivity:** a system for all, involving (and placing duties upon) all, including officers, members, statutory and non-statutory consultees and the public. Inclusion importantly includes a **duty to participate** as well as a **need to be consulted**. Further, inclusion operates as all vertical levels, including the promotion of **local involvement or empowerment** where relevant.

3.3 Development management

No formal definition of development management is currently provided by the Welsh Government, and speaking to stakeholders as part of this research reveals that the use and understanding of the term ‘development management’ can be unclear or inconsistent.

In England, the Department of Communities and Local Government (DCLG) issued a consultation document which included a chapter titled ‘What is development management?’. This stated:

*“Development management is a positive and proactive approach to shaping, considering, determining and delivering development proposals. It is led by the local planning authority (LPA), working closely with those proposing developments and other stakeholders. It is undertaken in the spirit of partnership and inclusiveness, and supports the delivery of key priorities and outcomes”.*⁵³

⁵³ DCLG (2009) Development management: proactive planning from pre-application to delivery. London: Department for Communities and Local Government.

The aim of the consultation document was to embed the end-to-end principles within adopted policy and to better integrate (a) policy and decision-making, and (b) the front and tail end of decision-making with the statutory process (an ‘end-to-end approach’). Elements covered included objectives, pre-application principles and determination policies.

DCLG has also defined development management by reference to its role in delivering sustainable development:

Development Management is end-to-end management of the delivery chain for sustainable development (DCLG, 2007)⁵⁴

The Planning Advisory Service has characterised a development management ‘way of thinking’ as including:

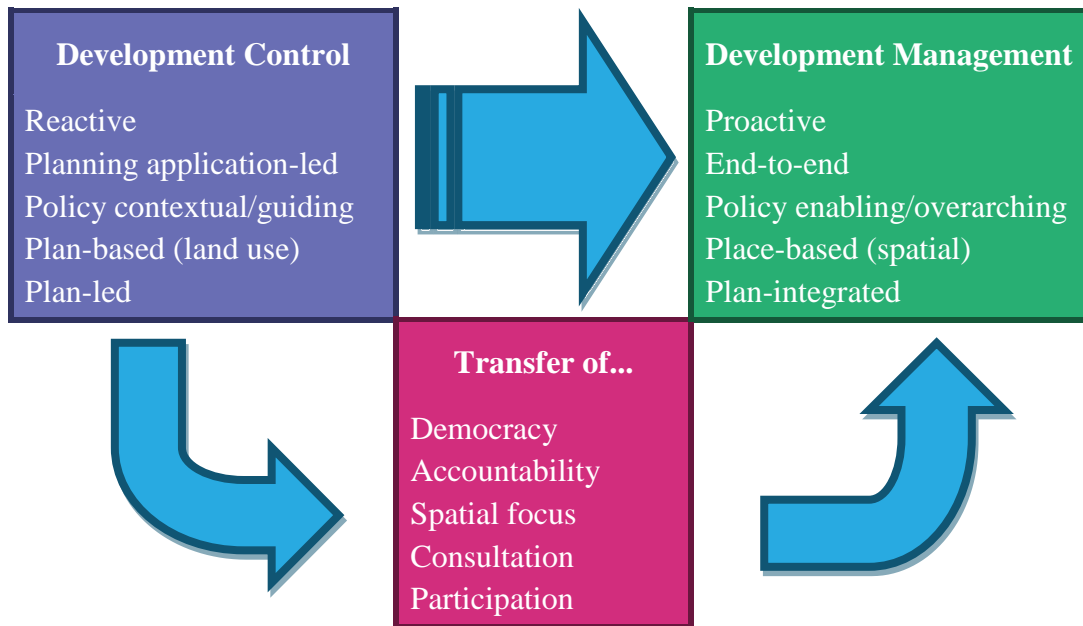
- positive planning - with planners demonstrably involved in place-shaping;
- partnership working – with appropriate engagement;
- problem solving – resolving, for example, schemes that contribute to the vision but which might adversely impact matters of local importance;
- going beyond the statutory process – with better up-front engagement; and
- customer-focused – ensuring processes are only as complex as they need to be.

It is clear from the above that development management is intended to signal a new approach to the design and delivery of a range of existing and new planning mechanisms. This is an important point and highlights the significance of replacing traditional approaches to core planning functions. These traditional approaches – referred to as the activity of development control - have been described as regulatory, negative and passive. The core of the development control function has been regarded as the processing and determining of planning applications within the context of a plan-led system, alongside other related activities such as planning enforcement.

The shift to the development management model is perceived as a culture change and shift in mindset as well as concerned with new plan types or collaborative processes. The definitions of development management could also be widened to include planning policy as the spatial strand of an overarching place-based and people-focused vision for an area which should be integrated with other regimes, processes and decisions. This forms the basis for proactively meeting and delivering identified development needs by engaging with potential applicants, stakeholders and communities at an advanced stage, almost to the point that a planning application becomes the product of discussions and negotiation rather than the instigator of them. Monitoring (and enforcement) is a critical feedback loop that informs ongoing policy review as well as performing more basic regulatory control functions.

⁵⁴ The DCLG speakers at the series of Planning Advisory Service (PAS) regional seminars on Development Management in November & December 2007.

Illustrative diagram to show the transition from the development control model to a development management process



The above definitions have largely been taken from planning guidance and information issued in England as part of reforms initiated by central government. Reforms to the planning system have been progressed separately in England and Wales, although there have been interesting parallel studies and learning across the two systems. For example, the Welsh Assembly Government published a consultation draft Technical Advice Note (TAN) 17: Planning and Managing Development in August 2007. The aim was to establish planning as a “positive, proactive process to stimulate and guide the development and use of land in urban and rural areas in the public interest”. However, the draft TAN used the terms ‘development control’ and ‘development management’ interchangeably⁵⁵ and did not therefore signal a move to a different approach in the form of development management. In addition, the focus of the TAN was on decision-making practices and did not address many of the positive and proactive elements of a development management approach.

The research commissioned by the Welsh Assembly Government on the planning application process in Wales made a specific recommendation on a new policy statement on development management building on the earlier draft TAN⁵⁶. This research continues to highlight the value of that recommendation and the importance of the Welsh Government acting on it by issuing a clear statement on a development management approach. The view was expressed by one interviewee that, despite the frequent use of the term development management in practice, there are very few examples across Wales of local planning authorities adopting a genuine development management approach to their planning functions. Further, it is important that the Welsh Government interpret research elsewhere to arrive at a definition suited to the Welsh context.

⁵⁵ Paragraph 2.1.3

⁵⁶ Welsh Assembly Government. (2010). Study to examine the planning application process in Wales. Recommendation 6.

Recommendation 3.1: Welsh Government to issue a clear statement defining ‘development management’ and outlining the various tools that are available to local planning authorities to facilitate the management of development.

The interviews have not revealed a clear consensus among different stakeholders on the key difficulties with the current system of development management. However, these discussions with stakeholders have raised a number of common issues causing duplication, delay and cost in the existing system. These are discussed below.

3.4 Issues with the current system of development management

This section identifies the principal concerns expressed by stakeholders with the operation of the current system of development management in Wales. The issues raised have been used in parallel with the identification of practices and innovations used in other planning systems internationally. The mechanisms that may be introduced to address these concerns are outlined in subsequent chapters of this report.

The Wales Planning Bill provides an opportunity to introduce significant changes to the planning system in Wales. Changes to primary legislation provide a chance to reconsider the role and purpose of the planning system, as well as introduce radical and innovative mechanisms for the effective management of development. However, many stakeholders in Wales expressed reservations about the prospect of significant reforms of the existing mechanisms for the control of development. They felt in many cases that more efforts should be made to ensure that the current system is adhered to and that the principles and practices set out in existing legislation, policy and good practice should be complied with. The current planning system was considered to possess significant strengths. This is not to state that those interviewed did not see significant room for improvement to the planning system, including improvements in primary and secondary legislation.

Overarching spatial framework to guide development decisions

The absence of a strategic context for managing development was noted by stakeholders representing a range of interests. A strategic context for decision-making was considered to be valuable for deciding on major projects and aligning development with infrastructure planning and provision, as well as in protecting environmental assets and resources.

In other planning systems (in countries including Scotland, South Africa and the USA) frameworks include strategic guidance over the future location of nationally-significant infrastructure, population or household projections and requirements for economic or sectoral aims and objectives. However, there is no strategic framework in Wales that is this specific, and existing instruments such as the Wales Spatial Plan were felt to be weak in providing a strategic spatial context for managing development. The lack of a strategic spatial framework results in LDPs having to address the full range of issues from meeting national growth needs to catering for development-specific policies. This leaves an individual planning authority grappling with issues such as where the best place for a new

power station or waste facility is, or with other pan-authority issues such as whether they or a location in a neighbouring authority are best-suited for an urban extension or new town etc. Anecdotally, the result has been political ‘paralysis’ around plan- and decision-making.

Relationship of Development Plans to Decision Making

There is widespread support from stakeholders for the principle of a plan-led system of development management. There is specific support for the evidence-based nature of LDPs which provide more robust tools for setting out future growth patterns than earlier generations of development plans. Yet the principle of a plan-led system is felt to be undermined by a number of issues. The most relevant of these is the absence of up-to-date development plans across many areas of Wales as well as dated development plan frameworks. Another undermining issue identified through interviews was the length and detail currently characterising LDPs. Some stakeholders felt that the adoption of a development management approach should have important implications for the form and character of development plans, that might need to become more focused on strategic issues in order to operate as ‘frameworks’ for the active management of development and to establish the principle of an acceptable use in an acceptable location.

Other stakeholders - in particular those representing developers and generally the private sector – raised the issue of the equality of treatment between sites allocated in a LDP and emerging sites subsequent to the adoption of an LDP. Stakeholders from both the private and public sector agreed that requiring both sites in the plan and those not in the plan to go through the ‘same hoops’ when applying for planning permission generated unnecessary duplication and costs to the system. Stakeholders went on to suggest that a closer link between development plans and the way in which planning permission is granted is needed and that sites might be treated differently and decisions streamlined when an application is in accordance with the development plan. Equally, consideration should be given to measures aimed at avoiding land banking and inappropriate ‘rolling on’ of allocations into new LDPs.

Some stakeholders - particularly environmental and infrastructure providers – pointed out that key land-use decisions can often be made in advance of any formal engagement with the planning system. This is an important issue for effective development management; if many key decisions could be addressed properly at ‘pre-planning’ stage then the extent of significant problems being encountered when proposals ‘enter’ the planning system could be prevented or reduced. Particular reference was made to being able to identify ‘show stoppers’ at an early stage. Issues raised in regard to pre-application discussions relate to the lack of early involvement by elected members at this stage. This is a lost opportunity since their involvement could increase certainty. Another issue is constituted by LPAs providing unclear letters following pre-application discussions, somehow ‘sitting on the fence’ instead of taking a firm stance at an early stage. Since the current system is considered difficult for non-professionals to understand, stakeholders representing communities suggested that a simplified system with more and better guided front-loaded consultation could ease the problems currently faced by lay people and local communities in dealing with the development management system. Although extensive front loading is not likely to speed things up in the short term - and in fact might create delays in plan making – most stakeholders were supportive as it was widely felt that a change of

attitudes at this stage could positively impact on certainty as well as trust in the system.

The status of different elements of the planning framework has also been raised as a significant issue for some stakeholders who – in order to increase certainty - argued for a stronger planning system setting imperatives for certain policies to be adhered to. This included the potential for affording statutory status to selected planning documents. This issue seems to be relevant also in consideration of the wider UK context, where Wales might be competing for development with England, Scotland and Northern Ireland, as well as other countries further afield. Whilst some stakeholders argued for increased consistency across borders to ease their locational policies, others suggested that increased certainty, simplification and speed in development management could provide Wales with a competitive advantage over other parts of the United Kingdom in particular. This underlines the significance of designing an effective planning system in Wales and the potential of a Wales Planning Bill in supporting this.

A problem consistently reported is planning applications being incomplete or of poor quality. Amongst the reasons for this, some signalled that in too many areas there are onerous requirements that slow down the system without consistently producing visible results or valuable outcomes. One such requirement is Design and Access Statements (DAS). These statements are at times poor and are not always relevant to the development applied for. These statements were seen as symptomatic of a system that was exceeding its remit and needing to focus on the principal land-use considerations of development. Other stakeholders suggested that the poor quality of many applications was the result of a significant ‘jump’ in the system between the provisions of a LDP and the requirements in submitting a planning application. Stakeholders suggested that mechanisms to help ‘bridge’ this gap between the plan and detailed proposals would be very useful, especially to reduce the risk to developers in bringing forward specific proposals.

Certainty, flexibility and timely decision making

Representatives of the private sector felt that achieving certainty is challenging where a significant number of individuals and public bodies – such as planning officers, elected members, statutory consultees, the Welsh Government calling in applications, the Planning Inspectorate in the case of appeals - are involved in an application across the various stages. It is believed that communities find the current system and range of actors difficult to penetrate, understand and engage with. In particular, people tend to be less able or willing to engage in LDP preparation, or in the determination of a planning application that does not directly involve them. Public actors in the system feel a lack of certainty too, with national government uncertain about the outcomes of planning applications of national or regional relevance or of strategic importance, and LPAs uncertain about actual implementation of site allocations included in the plan due to developers actively land banking.

Whilst the interviews and focus groups found that both certainty and flexibility are valued by the majority of different stakeholders, issues around the speed of decision making was less pronounced in stakeholder views. It was lack of certainty that caused most delays and costs. However, it was not clear if this was the ‘ideal view’ of stakeholders as to how the system should operate, or rather an acceptance of and working around current decision-making timescales. Some stakeholders addressed the need for speed as well as certainty for decision making

whilst suggesting that this might not be possible without giving up some of the flexibility currently embedded in the system. Flexibility is seen by many stakeholders as a powerful feature of the current system and an important resource to face times of sudden change.

Although delays in granting permission were acknowledged to have negative effects on the local economy, stakeholders tended to be comparatively disinterested in forcing quicker decisions through imposing timescales, which were seen as unworkable or unhelpful within the current system. Ideas around the use of fast-tracking applications, arbitration, the integration of planning with other consenting regimes or the simplification of validation requirements received somewhat greater enthusiasm in terms of the effect on increasing the speed of decision-making.

Stakeholders generally felt that local planning authorities were the best placed in developing LDPs and making decisions on development, however the significant burden on the LPA during plan making was acknowledged. Suggestions to mitigate this involved ‘extracting’ some themes such as waste or minerals from LDPs, and ‘delegating’ these to dedicated national or regional bodies that would have critical mass and expertise to discharge the policy- and decision-making functions (shared services are considered more in Section 4.3 and through the recommendation to establish a centrally-supported and planning-specific support body, Recommendation 6.2). Some stakeholders felt that LPAs could engage more in land markets to stimulate development and make land that developers are likely to want to deliver available or provide incentives to develop unattractive sites in site allocation. There is scope for local planning authorities to adopt a more proactive role in place-shaping, including through using more general (i.e. not planning-specific) powers available to local authorities, to complement their planning functions.

Although a general support emerged for decision making to be as close as possible to communities with deep knowledge of the area – including community and town councils - the lack of planning expertise in place suggested that careful thought should be given to whether there is genuine scope for local planning authorities to delegate certain aspects of development management.

Powers of general competence entitle an authority to have the freedom to act as any individual would in terms of bringing forward programmes or projects or seeking funding, carrying out business or transactions and so on. In this way, they do not need to be mandated or given specific duties or responsibilities but can be more flexible and proactive in their custodianship. This would enable and give confidence to local authorities to pursue their development management goals by proactively buying sites, entering into partnerships, and undertaking development.

Recommendation 3.2: The Welsh Government should enact powers of general competence for local authorities and promote their use.

3.5 Conclusions

This chapter has highlighted the significance of a shift from a development control approach to a development management approach and sets out some of the main issues that are considered further in the following chapters.

The emphasis of development management is on a positive and proactive approach to managing development rather than a traditional approach of controlling or regulating development. A development management approach places an onus on local planning authorities in particular to manage development, from inception of development proposals through to implementation. This chapter has in particular highlighted the importance of sustained and coordinated programmes for achieving the shift in practice to a development management approach. Keys to success include the issuing of central government guidance on what constitutes a development management approach and ensuring that appropriate tools are available to deliver it, including here both planning-specific measures and the possibility of a power of general competence.

The Planning White Paper and the Wales Planning Act will provide valuable opportunities for designing and delivering a genuine development management approach.

The shift to a development management approach requires both a change in culture and the development of new and revised planning instruments. The view of stakeholders in Wales is that there is much to commend the present planning system and that it could work effectively if it was made to work well, if all stakeholders adhered to the principles of the system and it were properly resourced and enforced. There is only a limited appetite for significant reform of the planning system in Wales. Some stakeholders have argued that radical reforms to the system would be counter-productive to the objective of an efficient and effective planning system. Despite this, some of the tools and mechanisms outlined in later chapters of this report have received strong interest and support from stakeholders.

4 Planning: who does what

4.1 Introduction

In discussing the way development management itself is organised within a planned system, it is important to consider the roles of different actors at different stages of decision-making, with a particular focus on responsibility for strategy, policy, consultation and then the actual decision itself. Questions include:

- Who has responsibility for this?
- Who else should be involved?
- What information is required?
- What else does / should this influence within the planning system?

Stakeholders repeatedly noted that a culture of development management does not exist within Welsh planning, and that there is no current visible champion of such a culture. Commissioning of this report may begin to change this perception. It is to the Welsh Government that other stakeholders look for cues as to the purpose, style and tone of Welsh planning.

This chapter seeks to identify innovations in actor roles and responsibilities which could facilitate a culture change to development management. The term ‘actors’ is used to encompass the full range of people and organisations engaged across the various parts of the decision making process, and is not restricted to a given body or stage.

4.2 The current position and its limitations

Strategic vision and policy allocations

In considering models from outside Wales, research such as that by the City Regions Group draw in particular on the need for strategic planning arrangements and for plans at a ‘higher’ level than LDPs. Suggestions include a re-launched Wales Spatial Plan or conceivably the Wales Infrastructure Investment Plan – to have greater powers of direction from above.

There is a need to have some form of overarching strategy or vision above the local authority level which can provide an overview as to the direction and location of development. It is an important means of providing certainty, in a sequential or hierarchical way which enables bigger picture thinking to be gradually translated and implemented through development proposals. It is also a means of addressing the reluctance in some instances and locations to make ‘big decisions’ around growth and development.

A strategic framework could take several different forms and operate at different levels. At a national level, there could be either a single plan or a set of themed policies (such as housing, employment or conservation) which set out the parameters for development and their broad locations. In terms of parameters, this could set minimum or maximum levels, or could set out a range of levels which enable sub-national interpretation. In terms of location this could be defined as sub-national (or regional) areas such as groups of local authorities (i.e. as with the

Spatial Plan areas or Regeneration Areas), could apply directly to local authorities or could even relate to a settlement- or site-specific mandate.

Debates on the future of national spatial policy, the Wales Infrastructure Investment Plan and City Regions are able to inform the chosen option for providing a strategic framework. The recommended approach is that there should be a national spatial framework which sets out expected areas or zones of change, growth or preservation which should be linked to and reflect the national infrastructure delivery programme. It should, however be a standalone exercise and document as it is the starting point for the spatial management of Wales.

Recommendation 4.1: Welsh Government to produce a national spatial framework setting out expected areas of change and ranges of development need across strategic areas.

This framework should provide ranges of development need (i.e. employment land or housing numbers) across strategic areas (groups of local authorities) based upon a national evidence base. The expectation is that groups of local authorities will then come together to create a shared evidence base to refine and allocate within that range. This overarching framework will set the context for the government agenda for change. It will also positively impact ‘downstream’ on the ability and propensity for timely, consistent and robust decision-making.

Recommendation 4.2: Welsh Government to require local authorities to co-operate to produce integrated plans that include a shared evidence-base and agreed development needs.

There is more agreement about the significance of land ownership as a factor in shaping the timing and quality of development. The challenges of overcoming fragmented land ownership are well understood; strategies and aspirations of land owners are important influences over when land comes forward, and the quality of development. Chapters 5 and 7 outline ideas around the challenges of land banking and site assembly.

Consideration of planning applications

Stakeholders generally accept that quality of decision-making must not be sacrificed in the search for speed, although speed is an essential part of quality and the ‘quality’ argument used to discourage incentivising of timely decisions must be resisted. Yet most consultees concede that there is a need for re-engineering the system. Frustrations relating specifically to roles and responsibilities of stakeholders focus on:

- the overall quality and consistency of advice from **planning officers**;
- **local authority councillors**, many of whom are seen as (in planning terms) inconsistent in their judgements and involvements, often driven by local political tensions around controversial planning applications and challenges of agreeing ‘big picture’ policy questions;
- the respective planning responsibilities of principal local authorities and **community councils**. Community councils appear very keen but poorly equipped to participate in the planning system in expertise and resource terms;

- the poorly defined relationship between information required and decision-making, with particular concern about demands on applicants to provide redundant information (with Design and Access Statements (DASs) often mentioned in this regard), information about issues resolved at the plan-making stage and requests made for complex information after submission, typically by **statutory consultees**;
- a concern that some kinds of planning application – such as for minerals - appear to be technically challenging for **smaller planning authorities** who cannot afford to sustain dedicated experts; and
- a concern that too many minor developments require the submission of a planning application, although some express the view that **public engagement** with planning is at its most vibrant in relation to smaller-scale applications.

Later sections of this report make recommendations about incentivising and measuring performance and these should, as far as is practicable, be tailored to the range of actors outlined above.

On the more general question of public engagement with planning, optimistic consultees believe that with appropriate support and techniques the public can engage seriously with development management early in the process (perhaps at development plan stage); pessimists, on the other hand consider that, if given an opportunity, the public will always wish to revisit policy via commenting on and pursuing objections to planning applications.

4.3 The scope for change: Possible reorganisation of roles and responsibilities

Inception of development proposals

The starting point for a development proposal in the current plan-led system is the acceptance or allocation of a use on a particular site within a development plan. Development proposals – and, indeed, reactions to them - can be shaped by whatever pertinent information is available, notably, information about market conditions, planning policies, present and future infrastructure, and environmental context and capacity. A shared or collaborative approach to pooling and interpreting market and other information would assist the formation of (early) consensus.

Currently, in any given part of Wales only some of this information is likely to be available when decisions about specific proposals begin to form. It should be possible to move towards a situation where ideas for development arise within a context rich in appropriate information which can help shape proposals so that they satisfy the needs and aspirations of applicants and also further the implementation of the development plan. This would be a way to foster better quality development proactively.

Comparative analysis suggests a range of initiatives which could be adopted in Wales to promote a move towards more proactive engagement of all stakeholders.

First, local planning authorities need to distinguish clearly between determining what is an acceptable use or development through both policy-making (allocations) and decisions on applications (approvals).

The city of Vancouver has an alternative approach:

Complete delegation for zoning density alterations

With Vancouver's zoning approach to development planning, local authority officers are given discretion to make decisions on improving design quality by varying densities without requiring political sign-off. The consequences of this 'hands off' approach from elected representatives have been a marked improvement in design quality, and success in curbing urban sprawl. In effect, officers have been able to take evidence-based decisions within a political vacuum.

Application of this principle to Wales would not necessarily require abandoning the discretionary planning system if, for example, all applications in conformity with the LDP were to be determined through delegated powers. Later sections discuss handling applications in conformity with the plan in more detail but the issues raised are a fundamental expression of the challenges and consequences of the democratisation of the planning application process in a way that doesn't occur for building control, environmental health or permits required through Integrated Pollution Prevention and Control. From one perspective, it can be argued that national politicians are responsible for setting national planning policy, whilst local politicians are responsible for setting local policy and, along with community council representations on applications, again responsible for granting planning approvals. On the one hand, this seems to reopen and duplicate democratic involvement. On the other hand, this is the longstanding way in which politicians have been able to oversee and control change in the very areas which they have been elected to represent. The recommended approach would be to involve members at the point of policy making, which is where the principle of zones or change and acceptable uses should be established as part of an overall cohesive vision for an area. Subsequent decision making should not require a political debate about the acceptability of use.

Whether or not such an approach is pursued the current engagement of members needs to be supported by extensive educational / training opportunities for councillors of all kinds (LPA, community and town councillors) and also community representatives and ordinary members of the public. Similarly, planning officers and statutory consultees could also benefit from training to better enable them to liaise with elected representatives and members of the public.

Further, in the light of the increasingly prominent role of community and town councils special attention needs to be given to enabling these councils to play a more effective role. This is not just a 'training' issue but one which requires a considered definition of the interaction of national, local authority and community political representation with the planning system, and in particular decision making. For example, there might be scope under new legal arrangements to consider a composite committee structure drawing on political inputs from different spatial scales and including both local authority and community council members.

Recommendation 4.3: Welsh Government to review and define the role of member involvement in planning and, in particular, development management. To cover national, local authority and community levels.

Local planning authorities need to be more active (and proactive) in ensuring that their LDPs are implemented and in communicating their progress on this on a regular basis to local communities. A legal duty to secure this would focus attention, speed up a process which is accepted to be currently operating slowly, and it could be backed by requirements for Annual Monitoring Reports (AMRs) which are more evidently pro-active and engaged. The *Local Development Plan Manual*⁵⁷ sets out the requirement to establish a monitoring and evaluation framework so that the AMR can assess the extent to which LDP strategies and policies are being achieved. The first AMR should also establish data and indicators that will be used in subsequent AMRs to monitor policies.

AMRs could build upon the existing reporting requirements and mechanisms to specifically relate the review of progress, and future prospects, to the kind of place(s) that the development plan is seeking to create. They might also include updates of key local social, economic and environment information so that this is available to all stakeholders. Such reviews would emphasise the significance of the role of the LPA in development management, and they would of necessity be based on continuing discussions and sharing of information with key stakeholders – major landowners, utilities, and other agencies. This would help to create an information-rich environment for new development proposals.

This kind of ‘proactive’ AMR could draw upon practice from outside Wales on effective communication between local planning authorities and the public. Specific examples include Shropshire’s ‘Place Plans’ (see Chapter 5) and, from further afield, Helsinki City Council’s distribution of an annual planning report to every household.

Recommendation 4.4: The Welsh Government to place a statutory duty on local planning authorities to implement their local development plans, once adopted, and to report annually on progress in a way that reflects development management principles.

In conjunction with collaborative (multi-level, multi-authority and multi-sector) approaches recommended in this study, there is considerable scope for securing a more systematic approach to development planning across Wales, much greater sharing of information and far better coordination of investment plans. An increased emphasis on delivery and a requirement for progress reporting would encourage and facilitate this consistency and coordination.

Shared services and consideration of planning applications

The same collaborative ethos and processes apply to the consideration of planning applications. This relates to the sharing of knowledge and expertise (see the North Wales Shared Minerals and Waste Service example, below) and more technical issues such as, in relation to roles and responsibilities, how to minimise requests for information after the application has been submitted; and what roles elected

⁵⁷ <http://wales.gov.uk/topics/planning/policy/developplans/ldpmanual/?lang=en>

members, statutory consultees and the public should play in the consideration of planning applications.

This research has identified a range of approaches worth further consideration. Following through the Vancouver model mentioned earlier, for example, it would be possible to have a system which has no direct political input over planning decisions.

It has also been suggested during consultations with practitioners in Wales that applications requiring high levels of technical expertise – such as those for minerals, waste, energy and coastal or marine issues – should be taken out of the hands of individual local planning authorities. There is a choice of model to use to achieve this. For example, (statutory or non-statutory) partnerships of local planning authorities could be established on a regional basis, as a development of what is currently done in North Wales – described in the case study example below. As an alternative, a specialised all-Wales agency, based in the Welsh Government of an organisation similar to ATLAS in England, could advise and mentor on such cases, following relevant LDP policy, but able to deploy specialised expertise and experience (see also Recommendation 6.2 on the establishment of a centrally-supported and planning-specific support body). Under this option, in effect, all applications of specified kinds would be automatically ‘called in’ (or ‘pushed in’ depending on the slant or perspective taken). Uses of this approach might include setting appropriate development thresholds.

North Wales Minerals and Waste Planning Service

Following local government reorganisation in 1996, the previous arrangement of district and county authorities was replaced by a single unitary authority structure (with national park authorities created separately). Former county minerals and waste teams were allocated amongst the new unitary authorities, and those authorities took over the statutory responsibility for minerals and waste planning policy, decision-making and monitoring. This resulted in a fragmentation of specialist knowledge. Further, over time these specialists tended to not be replaced when they retired or left authorities. As part of a ‘Making the Connections’ regional collaboration project, the North Wales Planning Officers Group decided to pursue a shared service.

The North Wales Minerals and Waste Planning Service is a collaboration of seven founding authorities led by Flintshire County Council and comprising the County Councils of Anglesey, Conwy, Denbighshire, Gwynedd and Wrexham and the Snowdonia National Park Authority. Each authority joins the service through commitment to a service level agreement and payment of an annually reviewed charge, with the exception of Snowdonia which joined on a ‘day rate’ (pay as you go) basis. The Chief Planning Officers of each authority together form the Governance Board to manage the service, approve the business plan and review performance. The service started operating in April 2011. Applications and fees are still received and retained by the local authority and decisions continue to be made by the relevant local authority through committee or delegation routes. The shared service provides the necessary policy or decision-making inputs to carry out the statutory functions. The shared service carries out monitoring and retains the fee for this.

From the local authorities' perspective, the benefits have included:

- the development of more **resilient** services;
- the creation of a single **expert service**;
- the facilitation of a more **strategic and proactive** approach to service delivery;
- a greater **consistency** of approach;
- enhanced job satisfaction and career opportunities for staff; and
- the adoption of **best practice** processes.

The success of the service has meant a proactive and strategic (multi-authority) approach to policy with appropriate expertise and resources, along with a critical mass to efficiently and effectively undertake decision-making and monitoring functions. The service has been well-received by those using it; it has ensured adequate resources to handle issues effectively and has provided greater consistency and certainty within the operation of the system.

Powys County Council joined the North Wales Minerals and Waste Planning Service in 2011 on a 'day rate' basis for procuring the necessary skills and expertise.

North Wales is not the only example of collaborative working. Carmarthenshire County Council has a similar arrangement to deal with minerals applications and associated issues for the Brecon Beacons National Park Authority, Pembrokeshire Coast National Park Authority and Pembrokeshire County Council.

4.4 Conclusions

This section brings together the implications of the range of changes discussed by this report for the main actors / participants in the planning system, distinguishing, where appropriate, between existing and new measures.

The Welsh Government remains the single body best able to provide leadership for the Welsh planning system. The recommendations of this report will require a stronger and more proactive role for the Welsh Government. It is important that the Welsh Government ensures that an appropriate over-arching framework for development is in place, and this applies as equally to actor involvement as to any other technical planning issue. Similarly, the scope for shared or collaborative planning is an important source of potential improvement to the system. Creating pressure to deliver, implement and report on progress with development plans is likely to create an incentive for collaborative working.

In particular, the role of elected members and representatives at all geographic scales (national, local authority and community and town councils) needs to be considered and defined in the context of a development management approach. The current situation is a continuation (or hangover) from previous development control approaches. Implementing this shift is likely to have training requirements, not only for those directly affected but also for officers and consultees, and it might also create additional information needs for the public.

5 Strengthening the development plan

5.1 Introduction

This chapter explores the relationship between the development plan and development management. An effective system of development management is dependent on a well-designed framework of plans and policies being in place and kept up-to-date. The chapter focuses on statutory development plans and explores a range of options, based on experience in other planning systems, for ensuring an appropriate balance between certainty and flexibility within the context of a plan-led system.

The section also emphasises the importance of up-to-date LDPs as a basis for managing development, and recommends a framework that would enable a plan to have binding allocations within it.

5.2 The current plan-led system in Wales

The planning system in Wales reflects changes made to the planning system in 1991 that enhanced the significance of the development plan in the making of planning decisions⁵⁸. It also reflects the current requirement on all local planning authorities to prepare a LDP for their area. Local planning authorities are provided with the scope to determine the detailed form and content of their LDP, subject to any specific requirements set out in primary or secondary legislation. Plans typically include a vision and strategy, a series of general policies and site specific proposals (including allocations), as well as a proposals map on a geographical base. These various components of a plan are often found in more than one plan or document in other international countries' planning systems. Plans in Wales are also less detailed than is the case in many other planning systems in other countries.

The multiple functions of development plans

Development plans perform a wide range of functions. These functions are referred to in a range of documents issued by the Welsh Government and its predecessors⁵⁹. They include establishing a place-based vision and strategy for an area, providing a framework for guiding investment and growth, and co-ordinating the delivery of infrastructure. Development plans are also an important vehicle for supporting the delivery of national planning policies. Development plans therefore play an important dual function in both providing a positive framework for guiding change and setting a framework for regulatory decisions.

The importance of an up-to-date plan framework

The plan-led system in Wales is partly undermined by the difficulties that have been experienced in ensuring complete and up-to-date development plan coverage. Five local planning authorities had adopted LDPs in place at April

⁵⁸ s.54A of the Planning and Compensation Act 1991

⁵⁹ Including Welsh Assembly Government (2005) Local Development Plans Wales; Welsh Government (2011) Planning Policy Wales – Edition 4.

2012⁶⁰, some seven years after the introduction of the new system. The changes introduced by the Planning and Compulsory Purchase Act 2004 also resulted in a significant number of local planning authorities abandoning work on their former unitary development plans. More local planning authorities are expected to adopt their LDPs during 2013, but complete coverage is not expected until late 2015 or early 2016. At that point, full LDP coverage will have taken almost a decade to achieve. This poor performance in producing adopted LDPs is widely recognised and acknowledged, and it has implications for the effective management of development.

Stakeholders engaged in this research have argued forcefully that a plan-led system of development management requires adopted and up-to-date plans to be in place. Previous research commissioned by the Welsh Government has also criticised development plans for not being based on a sufficiently robust evidence base, with these deficiencies in evidence having consequences for development management. Concerns were also expressed by interviewees in this research that plans, even if they were in place, often failed to keep up with the requirements of practice and a fast-moving context. Some of the difficulties experienced in managing development are therefore attributed to and could be resolved through the development plans framework being designed and operated more effectively. A system of incentives and penalties to facilitate timely plan preparation could be implemented as part of performance management recommendations within Chapter 6.

Recommendation 5.1: The Welsh Government should implement a system of incentives and penalties to facilitate timely plan preparation.

Various options are available for penalties; at one extreme an authority without an adopted and up to date LDP might not be allowed to determine planning applications. Applications would presumably pass to the Welsh Government to determine. However, the Welsh Government is itself capacity-constrained and might not be able to fulfil this role. The Welsh Government could outsource the applications (and the fees they attract) to either other local planning authorities or the private sector. A simpler approach (which is recommended) would be a financial penalty (such as reduced or withheld central grant allocation) for failure to discharge the statutory plan-making duty. Conversely, incentives could include a top-up in central allocation funding as a reward for previous investment in plan preparation, and / or access to other planning-related designations such as specific grants or enterprise zones.

The status of development plans in decision-making

One of the core functions of a development plan is to provide a framework for making rational and consistent planning decisions. Section 38(6) of the Planning and Compulsory Purchase Act requires that ‘if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise’. This is the legal basis for the plan-led system of decision-making. Despite the requirement to assess whether proposals are ‘in accordance with the development plan’, previous research has been critical

⁶⁰ Welsh Government. (2012) Progress Adopting Development Plans in Wales. Position at 30 April 2012. Available at <http://wales.gov.uk/topics/planning/policy/developplans/dppos/?lang=en>

of local planning policies and claimed that these were not ‘sharp enough’ to provide a solid basis on which to determine planning applications⁶¹. The reference to ‘unless material considerations indicate otherwise’ ensures that a significant degree of decision-maker discretion remains a key part of the planning system in Wales. The way in which this is interpreted, particularly among elected members, is considered by some to result in planning decisions that are neither rational nor consistent. Compared to European plans, the planning system in Wales (and, by legal association England, Northern Ireland and Scotland) is a relatively weak form of plan-led system.

The flexibility and discretion available in the planning system in Wales has several advantages. These include enabling decision-makers to take account of revised national policies and changed circumstances that did not prevail at the point at which a plan was adopted. Decisions can be made with a degree of flexibility and in advance of a plan review. However, this discretion and flexibility can also be a basis for apparently inconsistent decisions and a source of uncertainty for both developers and the public. PPW highlights that development plans “should give developers and the public certainty about the type of development that will be permitted at a given location”⁶². The research has identified that the current planning system in Wales does not provide this certainty for stakeholders, including developers and their agents.

5.3 The strategic context for effective development management

A hierarchy of plans

The system in Wales is characterised by a single tier of statutory development plans prepared within the context of national planning policies and the requirements set out in primary and secondary legislation. Requirements are placed on local planning authorities to consider a range of other documents as part of preparing their LDPs, including those for adjacent authorities. There is also a requirement for local planning authorities to have regard to the Wales Spatial Plan in preparing a LDP. This requirement to ‘have regard to’ was considered by some interviewees to be a weak arrangement. Current arrangements for collaborative working on cross-boundary or strategic issues are informal and it is only the formal, statutory development plan that has a particular legal status in making planning decisions. The various other components of the system are taken into account as other material considerations.

The planning system in Wales, when compared with many other planning systems across Europe, lacks an integrated vertical framework of formal plans at differing or multiple scales. There is reliance on the LDP for translating national planning policies into detailed policies and allocations. These national planning policies are also largely devoid of any spatial content, with some notable exceptions, such as the Strategic Search Areas in TAN8 (Renewable Energy)⁶³. The absence of a strategic context for plan-making and decision-making was identified by stakeholders as an important ‘missing element’ of the planning system in Wales.

⁶¹ Roger Tym and Partners and Asbri Planning. (2011). Planning for Sustainable Economic Renewal. Research Report to the Welsh Government.

⁶² Welsh Government (2011) Planning Policy Wales – Edition 4, paragraph 2.1.7

⁶³ Welsh Assembly Government. (2005). Technical Advice Note (TAN) 8: Renewable Energy.

Strategically important projects were claimed to be delayed or frustrated as a consequence. In addition, lack of a formal mechanism for strategic housing allocations or housing apportionment is cited as a key reason for delays in development plan preparation. This then has implications for managing housing development as well as wider implications for development management in more general terms.

Stakeholders varied in their assessment of what were suitable mechanisms for dealing with strategic planning issues in Wales. Some argued for a strong strategic planning framework that addressed the weaknesses of local planning authorities in tackling cross-border or strategic issues. They argued that such a framework 'required teeth'. The existing Wales Spatial Plan was seen as having failed in providing the necessary strategic framework for a range of reasons. The City Regions Task and Finish Group has recently recommended, firstly, the establishment of two city regions and, secondly, that the Wales Spatial Plan be adapted or replaced. The approach to managing strategic planning issues that has been adopted in Scotland has been commended by stakeholders. A key part of its success appears to derive from a very clear articulation of issues needing to be addressed at national, regional and local levels.

The form of any strategic planning framework in Wales is clearly an issue that has various dimensions and various demands are made of this framework. In this research on development management, the key issue cited has been the difficulty of ensuring an up-to-date set of LDPs due to the absence of a framework for dealing with strategic issues, most notably those related to housing. These issues are not limited only to those areas where the City Regions Task and Finish Group has proposed a formal city-region strategic planning tier. Nevertheless, there is scope for the key issues related to effective development management to be addressed in a revised and adapted Wales Spatial Plan. The Wales Spatial Plan and its relationship to the planning system is currently set out in The Planning and Compulsory Purchase Act 2004. A new Wales Planning Act should clarify the status of the Wales Spatial Plan (which should be revised to include greater spatial specificity) and provide greater clarity in its relationship to the statutory planning system, including its role in development management.

The earlier recommendation (recommendation 4.1: Welsh Government to produce a national spatial framework setting out expected areas of change and ranges of development need across strategic areas) is clearly relevant here, to ensure that important cross-boundary issues are addressed across Wales. The Wales Spatial Plan will set the vision for Wales and identify the approximate quantum and location of development. Local planning authorities should then come together and develop a shared evidence base to agree the allocation of this development between their various areas - creating a sub-national shared vision. This may or may not be articulated in a publication, plan or similar shared publication. Each LPA can then prepare their plan in compliance with the national and sub-national visions. This differs from the 'duty to co-operate' implemented in England in that the suggested route is a sequential process; once authorities have agreed their development allocations then each is free to prepare its own development plan having completed the required 'co-operation' at the previous stage. In cases where consensus is problematic, the Welsh Government should mediate or intervene as appropriate.

Distributing plan-making powers

Local planning authorities in Wales are responsible for the preparation of LDPs as set out in Part 6 of the Planning and Compulsory Purchase Act 2004. Default powers provided in legislation enable the Assembly⁶⁴ to prepare, or revise, and approve a LDP if the Assembly thinks that a LPA is failing or omitting to do anything necessary in connection with the preparation, revision or adoption of a LDP. This power is one to be used in default by a LPA. Some stakeholders have called for these powers to be used in cases where LDP preparation has been problematic. The difficulty with these default powers is that they are to be exercised following the failure or omission by a LPA.

An alternative to the present arrangements is to revise legislation so that general powers of development plan preparation can be conferred on organisations other than local planning authorities, including the Welsh Government. This distinction between default and general powers is an important one as it means that plan-making would not be something removed from a LPA. It would enable the Welsh Government to initiate or prepare a development plan, either as an area-wide plan or more likely for parts of one or more LPA areas. This would enable it to establish a plan and decision-making framework for strategic, cross-border or nationally-significant projects, thus providing, a degree of certainty for strategic projects that cannot be accommodated within the preparation schedule of a LPA's own LDP.

The mechanism could also be extended to a role for the Welsh Government in preparing subject plans for topics of a strategic character, including minerals, waste and energy. This mechanism would need to accept that development plans did not always cover the entirety of a LPA's area (see Recommendation 5.4, below). It would therefore revert to a system similar in principle to the pre-1991 system of local plans. The exercise of plan-making powers by the Welsh Government – either in default as at present or as a plan-making body under the above proposal – would require plan-making capacity to be established centrally. Useful examples from elsewhere in Europe of centralised plan-making powers and capacity are provided by Belgium and France.

Recommendation 5.2: The Welsh Government should provide itself with general as well as default powers as a plan-making body.

Central government engagement in plan-making

Experience across Europe provides several different means of central government engagement in plan-making. In France, central government has established a specialist team skilled in plan-making that is used to supplement the resources and address the skills deficit in preparing plans in local planning authorities. The service can be called upon by local planning authorities in preparing or renewing a local land-use plan. The active engagement of central government in local plan-making provides the added advantage of coordination and ensures that plans are produced in a form that facilitates centralised monitoring of the performance of the planning system as a whole. Similarly, the centralised team builds up

⁶⁴ The Planning and Compulsory Purchase Act 2004 refers in its original form to these powers being those of the Assembly.

experience and expertise in applying the plan-making legislation that then facilitates swift plan preparation. This arrangement is one where central government supports local planning authorities in the preparation of plans.

An alternative arrangement is provided by the planning system operating in Belgium. Here, plan-making functions have been allocated across the different ‘tiers’ of the planning system. This enables any tier of the planning system to bring forward or prepare a plan. A strongly integrated planning framework ensures that there is an overall context for plan preparation. The advantage is that plans can be initiated by any of the tiers, ensuring that strategic projects can be brought forward without delay experienced in systems that depend on a hierarchy of local delivery of central government planning policies.

5.4 Binding local plans

One route to providing certainty for developers and communities on what will be developed and where is through the introduction of binding plans. Different types of binding plans are used in other European countries. For example planning systems in Belgium, France, the Netherlands, Germany and Poland all utilise some form of binding local plans. The relationship between a binding plan and a planning decision is a very clear one. The plan will specify, often in some detail, which forms of development or which uses are permitted on a site. This will often be specified in some detail in the plan.

Proposals that are in conformity with a plan will be permitted; proposals that do not conform to the prescriptions in the plan will not be permitted. The equivalent in the planning system in Wales would be removing the legislative requirement to have regard to material considerations in planning decision making. The issuing of permits is a largely administrative task of checking proposals for compliance with a detailed plan. The issuing of a permit can be done very quickly if a proposal is compliant with an approved plan.

The difficulty with such systems is that they are inflexible and find it difficult to deal with changing circumstances. This is a general difficulty with prescriptive or binding systems. Creative mechanisms are needed when a proposal is not in conformity with a plan and local authorities wish to support the proposal. One option for delivery is to have plans which can ‘optionally’ be binding.

Flexibility in the designation of plans as binding

In Helsinki, the city council can determine whether a city masterplan is to be designated as legally binding or not legally binding. This provides flexibility and allows a conscious decision on whether to introduce a binding status for a masterplan based on the circumstances of each area or site.

The introduction of a system of binding plans would challenge the discretionary character of the planning system. Decision-making was highlighted by stakeholders as an activity requiring professional judgment and craft, not easily reduced to an administrative function. Some stakeholders therefore expressed caution about changing the current legislative basis of making decisions in accordance with the development plan unless material considerations indicate otherwise.

There are several reasons why binding local plans may not be applicable to or suitable in Wales, despite providing high degrees of certainty. Stakeholders still require flexibility – therefore any binding plan approach needs to provide a process to either vary the plan or apply for something not allocated within the plan. Stakeholders also questioned whether it was feasible to restrict consideration of proposals to a largely administrative series of checks for compliance – therefore any binding plan should be used to establish the principle of use but might still leave design, layout, mitigation etc to the application stage. The track-record of local planning authorities in Wales in preparing development plans was also cited as a source of concern in placing additional emphasis on the preparation of detailed plans within a binding system. If other recommendations around the ability of the Welsh Government to prepare plans and set the strategic context for local plans, and a series of incentives and penalties are introduced, then this would be expected to improve.

Hybrid systems – certainty and discretion

Stakeholders in Wales have clearly expressed the desire for the planning system to provide greater certainty than it does at present. There is therefore support for implementing measures that constrain the discretion currently available to decision-makers by providing clearer parameters for decisions. The value that is placed on flexibility means that a system that enhances certainty but provides continuing opportunity for flexibility in decision-making would have considerable support in Wales. Hybrid systems that combine the certainty of a binding plan and the flexibility of a negotiated or discretionary decision-making pathway are therefore of particular interest in addressing the challenge of moving to a system that provides greater degrees of certainty. The planning system in Rome provides a useful example of combining a binding plan with areas of the city that are left open for consideration of a range of proposals. Similarly, the introduction in Milan of parallel binding and discretionary systems provides a useful example of managing the desire for certainty but creating opportunities for flexibility. These examples together highlight how flexibility can be maintained even within an otherwise prescriptive plan framework.

Flexible zones’ within a binding plan framework

The planning system in the City of Rome operates on the basis of a binding plan framework that specifies future land use and development for a five year period. This provides certainty but restricts the scope to adapt to changing economic circumstances and development trends. The innovation in the system is the designation of areas that are ‘left blank’ in the zoning typology. These areas are carefully selected and are limited in number and extent, and are usually designated in the more dynamic parts of the city. The local authority engages in an annual ‘call for proposals’ in which developers submit proposals on a competitive basis through the preparation of a scheme similar to a development brief. The local authority then selects the best schemes and invites the developers to submit a masterplan document demonstrating details of scale of development, land uses, volumes, design character, phasing of development and financial viability and development feasibility. A final scheme is approved based on capability of implementation and the potential benefits delivered for local communities.

Recommendation 5.3: Welsh Government to make local development plan allocations binding.

This should be introduced as part of a hybrid system that combines a selective binding plan framework alongside a discretionary system of decision-making which distinguishes between proposals which are in compliance with the plan and those which are not. Section 6 sets out recommendations for this split.

5.5 Other mechanisms for allocations and certainty

This section explores some of the other principal mechanisms that could be developed by the Welsh Government as part of a system of binding plans. It explores variations on a zoning concept and identifies how existing mechanisms could be used to work towards or pilot binding plans.

Zoning

Zoning mechanisms provide an opportunity to provide greater certainty for developers and communities by specifying in various levels of detail what will be permitted on specific sites. The concept of zoning was identified and supported by a series of stakeholders interviewed during the research. Systems of zoning of land uses are common in many other parts of the world. Zoning ordinances include or are accompanied by detailed documents specifying forms of development that can be undertaken subject to the issue of a permit. Zoning is often a technical practice and provides developers with high degrees of certainty. A system of zoning would be a significant departure from current practices in Wales.

Zoning could also be a mechanism for more effective frontloading of community engagement in plan-making. The present system of development plans in Wales is based on the principle of frontloading of engagement by the community and others. Nevertheless, this is often difficult to achieve. The fact that there is also opportunity for consultation and engagement at the stage of determining a planning application means that frontloaded opportunities for engagement are not a final opportunity to be involved and comment. The knowledge that engagement in the preparation of a plan or a zoning ordinance is the primary or exclusive opportunity to engage with the planning process may support earlier and more effective engagement in plan-making.

As part of a binding plan, it should be possible for local planning authorities to ‘mass designate’ an area (or zone) and to be quite prescriptive about the level, extent and use of anticipated development. This doesn’t however require the entire basis or plan-making to be converted to a zoning approach.

Site allocations as outline planning permissions.

Development plans in Wales do not confer any development rights, even for sites that are allocated in an adopted development plan. The research has explored whether there is potential for sites that are allocated in an adopted development plan to form the equivalent of an outline planning permission. This would mean that the allocation in the development plan established the principle and scale of development on a site. This would require only reserved matters applications to be submitted and approved for development to proceed subject to any conditions.

For this mechanism to be effective, and to ensure that sites allocated in a development plans could be satisfactorily developed, it would require additional information to be produced and assessed at the stage of allocating the site. This is especially the case in terms of environmental impact assessment (EIA) and reflects the practice of some local planning authorities in England that require ‘mini-EIA’ on allocations in a development plan. This has resource and information implications and the potential for charging for candidate site submissions could be explored further as a means of funding any additional, detailed work that is required to evaluate whether the allocation is a robust one and capable of delivery. Nevertheless, interviewees have identified that the information requirements for allocating a site in a development plan do not fall far short of the existing requirements for an outline planning application.

However, within the preferred approach of a binding plan there is no need for outline consent as the plan itself already affords confidence in the location, level and use of development.

Design codes

Design codes can already be used within the current framework of the planning system in Wales and may be likened to a detailed and relatively prescriptive masterplan document. These are usually prepared in Wales as supplementary planning guidance. Local planning authorities in Wales that have used design codes have usually done so in order to raise design quality on larger housing schemes. Stakeholders interviewed for this study provided varying assessments of the value and effectiveness of design codes. Consultants and developers relayed some positive experiences of using design codes. Their quality is however reported as being variable, with the success of the code depending on how well-conceived and well-written the code is. They are also reported as working well where both the LPA and developer are supportive. Codes imposed by a LPA were claimed to be unhelpful. Additional concerns expressed in relation to design codes are: that they can be overly prescriptive and do not provide for flexibility and creativity in design; and that they can result in local planning authorities losing the ability to control design detail in a discretionary manner.

Design coding for small-scale residential extensions and housing sub-division

The planning system in New Zealand is based on the Resource Management Act 1991. This focuses on assessing the effects of activities and developments and relies in part on the use of standards or rules in conjunction with zones set out in a district plan. Residential extensions within a residential zone can be constructed as a permitted activity so long as the development accords with standards prescribed in a plan. Criteria include area, percentage plot coverage, height, and side and rear plot restrictions. Subdivision of land for low-density housing development can also be undertaken as a controlled activity subject to criteria such as density, shape, minimum frontages and access. Conditions can be used to maintain control over details where this is necessary or desirable.

Form-based zoning

This mechanism is used in various parts of the United States where a traditional zoning approach is supported by detailed design codes in order to emphasise the

resultant built form of a place. It responds to concerns that traditional zoning practices do not give sufficient consideration to good design. Form-based zoning approximates to a design code focused on generating specific types of 'place'. Greater control is exercised over detailed form. A detailed, regulating plan is prepared within the context of an overall illustrative plan. A form-based zoning plan is very detailed and time-consuming to prepare in comparison with a traditional zoning approach. Some concerns remain that, despite a greater emphasis on form and design, the approach can stifle creativity in design.

Design codes are helpful and, if a binding plan approach is not adopted, the next logical conclusion for providing certainty and enabling expedited decision making. Design codes could still remain in use within the recommended approach of a binding plan, but this should recognise that it could limit the degree of flexibility open to applicants.

Supplementary planning guidance

As well as their use in creating design codes, more widely supplementary planning guidance provides an existing vehicle that could be formalised to ensure that it played a more significant and formal role in decision-making. Supplementary planning guidance could be taken forward in a revised form, using the opportunity of a Wales Planning Act, so that it approximated a detailed, binding plan similar to those practiced elsewhere albeit not having the same (independently examined) status.

There is significant and widespread support among stakeholders in Wales for supplementary planning guidance, including for the preparation of masterplans and site development briefs. These are considered to play a useful role in the planning system. Despite it being identified that the statutory status of other documents is helpful in ensuring that they carry weight, and some support for applying this to supplementary planning guidance, there is a consensus among stakeholders that formalising supplementary planning guidance is not appropriate. The existing mechanisms for preparing supplementary planning guidance ensure 'buy-in' from the LPA, including from elected members. The status of supplementary planning guidance is not therefore a significant issue for stakeholders. Formalising supplementary planning guidance would also require a formalisation of procedures which would lead to delay in preparation or reluctance by local planning authorities to develop supplementary planning guidance. Stakeholders also sometimes expressed concern at the inconsistencies in approaches between authorities in preparing supplementary planning guidance.

Overall, if the plan itself can be made binding, alongside dropping the need for complete geographic plan coverage, then this use of supplementary planning guidance would not be necessary.

Local Development Orders

Local development orders are an existing mechanism available in the planning systems in England and Wales having been introduced by the Planning and Compulsory Purchase Act 2004. These provide local planning authorities with the opportunity to extend permitted development beyond nationally-prescribed limits. The research has identified very limited exploration by stakeholders of the potential of local development orders in Wales. Certain stakeholders have expressed an interest in exploring their potential further and others – most notably

planning consultants – have reported positively on their experience of local development orders in England where their use has been promoted much more actively. Local development orders can be used in their more radical form to deliver a planning instrument that approximates to a binding plan or zoning ordinance similar to other planning systems outlined above. They can also be used as a complement to design codes. They could therefore be used experimentally to inform the detailed preparation of a Wales Planning Act, and might provide a mechanism to pilot some of the recommendations contained within this report.

The research has identified a number of potential barriers to the use of local development orders in Wales. These include a perception that local development orders are a deregulatory instrument and represent a ‘laissez faire’ approach to planning and development. There is therefore the potential for the Welsh Government to communicate the wider purposes of local development orders, including the provision of certainty for developers.

An additional concern is that there is no incentive for local planning authorities to prepare a local development order. Further, putting in place local development orders is perceived to add complexity (and resource input or cost) to the task of explaining what is permitted development in different areas, with consequent increases in enquiries and workloads.

Barking District Heating Local Development Order

The London Development Agency (LDA), in partnership with the London Thames Gateway Development Corporation (LTGDC) and the London Boroughs of Havering, Newham and Barking & Dagenham developed a borough-wide Local Development Order (LDO) for the development of district heating and cooling networks. Heat networks look and feel like other utilities but they are not statutory undertakings and so do not benefit from the permitted development rights given to other energy infrastructure. The LDO grants a class-based permission for specified aspects of district heating networks. It is adopted at a local level under the Planning and Compulsory Purchase Act 2004.

An LDO Working Group comprising representatives from all the local planning authorities and the LDA was set up to inform the development of the LDO. A comprehensive process of analysis to assess the likely impacts of installing a district heating network in various streetscapes was then undertaken, and through this a series of control mechanisms were identified. These included conditions attached to the LDO which could be put in place to ensure that any potential impacts are identified and mitigated to the satisfaction of the local authority. This includes consideration of impacts under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011.

The London Borough of Newham is currently in the process of adopting the LDO which is part of new streamlined planning processes for the Royal Docks Enterprise Zone. The LDO once granted could be used by any energy company who may wish to implement the permission. The LDO will be in place for 5 years with the option of extending the period if successful.

If the Welsh Government wish to introduce the ability to create a binding allocation with the auspices of current legislation then the LDO offers a good mechanism. In order to encourage its use, the Welsh Government could prepare

some templates to assist local use. There is value in piloting local development orders if there are to be retained. They could be used to supplement a binding plan where the original plan allocation needs to be enhanced or where the authority wished to provide greater certainty to an area (or a use within an area) without revising the entire plan.

5.6 Revisiting the plan-making framework in the context of development management

A more selective approach to plan coverage

Development plans in Wales have since 1991 been prepared on a district- or area-wide basis. Consequently, the LDP is a single plan covering the entirety of a LPA's area. Policies in the plan will apply across this area unless otherwise stated. An alternative approach would be to focus plan-making resources only on those parts of the area that required a detailed, up-to-date development plan and where this could usefully promote, guide and regulate change. As indicated above, this reflects a similar framework to that which existed previously in England and Wales in the form of a two-tier development plans system. It is also aligned with many other continental European planning systems where detailed, binding plans are prepared for areas that are to be developed and other areas are addressed through an integrated, multi-tier planning framework. This approach could be a useful response to concerns that 'only 20% of the LDP is controversial, but 100% of the plan gets delayed'. It would allow detailed plans to be put in place more quickly for areas where there are few controversial issues to be addressed and generally promote a more incremental approach whereby an authority does not need to be entire 'with' or 'without' a plan.

The recommended approach is for a binding local plan. The allocations within this plan would relate to planned development in areas of change. Outside of this, areas could be satisfactorily addressed through coverage of national planning policies in PPW, other strategic documents of the Welsh Government or through specific arrangements for areas such as defined city-regions. The principle of national planning policies being sufficient to cover areas without a detailed development plan could be usefully applied across Wales, but could apply especially to extensive rural areas across Wales through an enhanced statement on national planning policies for rural areas. This would require a strengthening and reconsideration of the role of PPW, as well as a review of the way in which it is prepared and assessed.

Recommendation 5.4: Welsh Government to remove the requirement for complete plan coverage, in favour of planning for areas of change.

This would enable a more focused and timely approach to development plan preparation. However, in compiling an evidence base, preparing development scenarios and considering alternatives as part of producing the plan it will continue to be important that authorities consider their entire areas. The plan will continue to be a spatial expression of the preferred development scenario.

Development plans as frameworks for managing development

Left unchecked, and without a route to development outside the plan allocations, a binding plan might prove inflexible in the face of changes in context. Plans need

to be flexible to support an effective approach to the management of development. The emphasis here is on management of development, rather than the regulation of development. Interviewees that have made progress towards a development management approach argue that this requires a significant shift in the character and nature of plan documents. Plans need to be based on a core vision or strategy, with an emphasis on regularly updates to provide information on development trends, development permitted in the preceding period, the fine-tuning of policies and how policies in a plan will be applied in the prevailing circumstances. The experience of Shropshire County Council demonstrates some of the challenges for development plan making of adopting a development management approach.

Plans for managing development

Shropshire County Council's approach to the preparation of its development plan is an innovative one. It has placed less emphasis on specific site allocations for development and instead emphasised the plan as a tool for managing development. This has changed the shape and content of the plans prepared. The plan is understood as being 'the basis for a conversation between developers and the community'. A limited suite of development plan policies is supplemented by 18 area-based 'site allocations and management of development' documents (SAMDev). There is also an emphasis on preparing non-statutory 'Place Plans' which are revised annually. The council has placed a strong emphasis on community engagement. This enables the council to be confident that communities support a defined level of growth and development. This provides a different form or type of certainty than allocating specific sites for development. The council has worked on ensuring that there are mechanisms for bringing forward sites for development even if these are not allocated on a site-by-site basis in the development plan. This also prevents allocated sites that cannot be readily developed from being continually rolled forward.

The recommended approach enables applications outside the binding plan, and does not prescribe the detail or geographic coverage required of plans. This leaves significant flexibility to local planning authorities to set the detail and enables regular plan reviews.

Out of date plans

In Wales, for the purpose of a development plan being the reference point for planning application decision-making, a development plan remains in place until superseded by a replacement plan. Plans state the time period they are intended to cover as the lifespan of the plan's policies. However, irrespective of the time taken to produce and adopt a replacement plan, the prevailing plan does not have any automatic 'expiry date' or any change in status following the conclusion of the intended lifespan of the plan. In reality, and given the timescale of adoption of LDPs, many decision-makers are making decisions based on dated plans.

There are already powers for the Welsh Government to prescribe at which times a review of a LDP must be carried out⁶⁵. Plan reviews may be required either if directed by the Welsh Government⁶⁶, or if a LPA thinks that a plan should be

⁶⁵ s.69(1) of the Planning and Compulsory Purchase Act 2004.

⁶⁶ S.70(2)(a) of the Planning and Compulsory Purchase Act 2004.

revised following a review⁶⁷. Again, the prevailing plan does not have any automatic ‘expiry date’. On one hand, this means that areas have continued plan coverage. However, where a plan is out of date this means that decisions are not necessarily made on an appropriate and up-to-date basis. It also does not by itself incentivise replacement plan production.

The ability to take into account other material considerations provides a degree of flexibility in uncertain or volatile circumstances. Nevertheless, the continuing existence of dated development plans undermines some of the principles of a plan-led system. This raises the possibility of plans that should have a specified ‘life’, after which they expire (assuming that they have not been reviewed, updated and rolled forward). The period that a plan would be in place for could vary, but could be for up to five years or longer and might only be extended or reset by completing a review of the plan. Plans that expire would no longer benefit from formal development plan status.

This is similar in principle to the concept of saved policies applied in England in delivering a transition to a new development plan framework. The requirement on a LPA to maintain an up-to-date development plan could then also be linked to various incentives and penalties (See Chapter 6). This mechanism should be considered alongside that for a more selective approach to plan coverage, in which detailed development plans are prepared only for areas of significant change. In areas where plans expire or where there is no replacement then PPW provides a general series of policies and principles to guide decision-making.

Recommendation 5.5: The Welsh Government to define the lifespan of a local development plan.

The Welsh Government should introduce into the Wales Planning Act a period following adoption of a LDP for which the plan is valid for the purposes of decision-making. The Act could include a requirement that plans expire following this period. The specific period for which the plan is valid, in terms of number of years, should then be outlined in secondary legislation. The clear aim of this is not that a plan should ever expire, but that an LPA should ensure that it completes the review and adoption (or renewal) of its plan promptly and to ensure that the current position of decision-making primacy for out-of-date plans cannot happen again.

Aligning plan preparation cycles to support development management

The mechanism of plans that expire is also linked closely to the practice in many European countries that require all local planning authorities to review their plans within a specified time period (LDPs, once established, also have a 4-year review process). In other European countries, plans are generally prepared on a prescribed ‘cycle’. The advantages of applying such a system in Wales include being able to better align changes in national planning policies with plan-making cycles. It would also enable improved alignment with shorter-term infrastructure investment plans of government and utilities providers. The effective apportionment or allocation of housing requirements for individual LPA areas would also be facilitated by alignment of plan-making cycles.

⁶⁷ .70(2)(b) of the Planning and Compulsory Purchase Act 2004

Aligning plan preparation would demand significant investment is made by local planning authorities. Even with capacity building, central government support and the use of consultants, this would be a significant task. Further, the simultaneous need for LDP inquiries / examinations and the production of inspectors' reports would create a 'lumpy' workload that would challenge sustaining an experienced plan-assessing capability.

5.7 Conclusions

This chapter has explored the relationship between development plans and development management. It has highlighted the importance of this relationship and provided a series of both radical and evolutionary ideas for strengthening this relationship in a reformed planning system in Wales.

There is a demand among stakeholders for a planning system in Wales that provides a greater degree of certainty in decision-making than is provided by the current system. This report recommends the introduction of binding plans, which have a prescribed lifespan, but which are free to focus on areas of change. Within this framework, plans will have considerable flexibility to focus on an overarching vision for places, whilst prescriptively setting parameters for planned development. As set out in Chapter 4, it will be important to define who does what and to drive engagement in plan making by members, consultees and communities.

It is important that binding plans retain or ensure the flexibility for an application process for proposals not contained within the plan, and this issue is assessed and addressed in the following Chapter.

6 Decision making and culture change

6.1 Introduction

This chapter is concerned with the process of decision making and the factors that influence it. Earlier chapters have set out the relationship of the development plan to decision making and have touched upon a range of tools available as part of development management such as pre-application discussions and permitted development rights. This chapter is grounded in the shortcomings of the current development management system identified in Chapter 3 and targets specific reforms to parts of the decision making process, considering:

- the relationship of the decision making process to other related processes (the scope for integrated permitting);
- possible routes towards simplification and fast tracking (parallel processes, amongst others);
- the importance of culture change, capacity and training / support in actually delivering the system to its full and as designed;
- exploring a range of incentives and corrective actions which could keep that system delivery on track; and
- the importance of performance being measured and monitored.

6.2 The Development Management process

Sequential certainty

An area of clear consensus amongst interviewees and seminar attendees was that the planning system should help actors to navigate it by progressively refining proposals as the system progresses. For example, the LDP evidence base considers a range of sites and uses, the final adopted LDP identifies a site and its intended use, an application comes forward for a specific scheme and design, and pending consent and the eventual discharge of any pre-commencement conditions construction and eventually occupation or operation of that development can begin. The aim is to provide increasing certainty. A number of recommendations already set out in this report deal with ways to increase certainty, but the overall framework is for the ‘progressive’ or ‘sequential’ narrowing of risk or uncertainty, in a way which enables an appropriate means to also deliver flexibility.

There remains a significant gulf in the level of risk between an adopted plan and the detailed design and use of a development. An important element of the planning system is the ability to ‘test’ or obtain an ‘in principle’ view of a proposed development. The planning system provides for this through outline planning consent, however because of increasing risk aversion (from all parties), information requirements and timescales for decision-making the value of the ability to pursue outline planning consent has been eroded to the point where only for the larger schemes (where design often evolves at a commensurate pace) is there sometimes value in pursuing the outline / reserved matters route. In the absence of potential reform by a Planning Act, there would be a need to re-assert the role and implementation of outline planning consent. However, the recommended approach is to make use of the opportunity for new legislation to

move towards a system of binding plans and plan allocations, as previously set out in Chapter 5.

Integrated permitting

A number of other consenting regimes exist which occasionally interact with the development management process. These are mainly environmental type permits applicable to resources, energy waste, commissioning and decommissioning, but areas such as heritage and transport are also covered.

Whilst ‘integrated permitting’ already has a defined meaning (under the 1996 Integrated Pollution Prevention and Control Directive) in this context it is used to refer to the possible grouping or rationalisation of planning and non-planning permissions into a unified consenting regime. The range of different permits and permissions required has significant resource implications for applicants, determining bodies, and statutory consultees and agencies alike.

Proactive information and advice to support effective development management – Environment Agency Wales

The Environment Agency Wales is a statutory consultee whose advice in plan preparation and at the stage of determining planning applications can have significant implications for the development potential of a site. The Agency recognises that environmental capacities and constraints mean that certain sites are rendered unsuitable or incapable of being used for particular purposes. The Agency also recognises that the active promotion of some sites by landowners and developers can make it difficult for local planning authorities in allocating sites in LDPs. The risk is that sites are allocated in LDPs that are not capable of being delivered, or alternatively cannot be developed without significant cost and technical solutions to environmental constraints.

The preferred approach of the Environment Agency and one that it is working towards is the provision of information and advice to landowners and developers at ‘pre-planning’ stages. This reflects a concern that certain schemes are promoted by developers, who invest resources in doing so, only to find that environmental capacities and constraints ‘block’ developments at a later stage. This information needs imparting to landowners and developers in advance of any engagement in the preparation of a LDP and needs to inform the inception of development proposals at the very earliest stages. The approach is one of managing development and guiding developments towards appropriate sites that can accommodate identified forms of development.

Similar concerns have led the Environment Agency towards developing guidelines for developments requiring both planning permission and environmental permits⁶⁸. The guidelines are designed for developers, local planning authorities and Environment Agency staff and have been prepared with the specific objective of reducing costs and burdens on developers and other by providing increased certainty over planning and permitting decisions. The guidelines include an appendix that lists various forms of development, and for each of these specifies ‘showstoppers’, serious concerns and informatives.

⁶⁸ Environment Agency. (2012) Guidelines for developments requiring planning permission and environmental permits - working draft. May 2012. Bristol: The Environment Agency.

A unified consenting regime would undoubtedly require new legislation bringing together a number of previous legal regimes and would be a complex exercise. It would also need to dovetail with the other emerging Welsh Government legislation. However, the scope for integration was considered as part of the Penfold Review⁶⁹, which concluded that:

Overlaps and duplication between planning and non-planning consents are a source of inefficiency and blur the boundary between the decision of principle about whether development should go ahead (the ‘if’ decision) and detailed decisions about how a development should be built and operated (‘how’ decisions).

Critically, the review also urged (local) authorities to adopt development management processes and to take a holistic, rounded and outcome-focused view of the requirements of the various consenting regimes. The Review included a number of recommendations aimed at changes that increase certainty, speed up processes, reduce duplication and minimise costs.

It is likely that any move to deliver integrated permitting would require not only planning legislation but also legislation across other affected areas. Whilst the current legislative opportunities would seem like an ideal time to consider integrated permitting, this does run counter to the ‘sequential certainty’ ideal. Rather than being able to progressively work through consent and permitting requirements, a major scheme in an ‘integrated’ system would risk significant investment in an application for ‘all or nothing’.

Fast track process for proposals in line with the LDP

Stakeholders repeatedly referred to the ‘one size fits all’ approach taken by the development management system, namely that irrespective of what was being applied for, where, or in what policy context, the same standardised process plays out to ensure impartiality, consistency and robustness of each decision. This is by no means a bad thing but it does mean, as highlighted by users of the system, that a ‘simple’ or ‘compliant’ application in a comparatively straightforward context receives perhaps excessive treatment. In short, there ought to be a better, more content- and context-aware way of handling simple applications simply. Correspondingly, it is recognised that more complex arrangements will inevitably apply to complex or controversial applications.

Parallel planning systems providing developer choice

Milan City Council in Italy has adopted an innovative approach to planning and managing development. In 2000, radical changes were made to the established Napoleonic tradition of a binding plan. These were based on the need to quickly enable and capture development in the few underused or disused former industrial areas which constituted the only land available for development within the city’s tightly defined administrative boundaries. The old binding plan was replaced with a synthetic scheme, which briefly set out the basic structure of the city and the priority areas for development. Any proposal submitted in fitting with the general strategy could be assessed quickly.

However, the constitutional framework and the ongoing process of devolution of

⁶⁹ BIS (2010) Penfold Review of non-planning consents. Final Report.

planning powers to regions meant that the old system could not be abandoned completely. For a decade, Milan was one of the few cities in the world with two very different planning systems in place - one binding and based on plan conformity, the other flexible and based on negotiation. Thus, developers could choose which route to take: one leading to a more certain outcome, the other to a less certain but more flexible one.

The example (above) from Milan provides a potential solution to the ‘one size fits all’ issue. Whilst the example illustrates how flexibility can be achieved within a binding zoning plan, it also illustrates that it might be possible to provide and operate two systems in parallel. The ‘current’ system might suit those applications where a significant degree of consideration, discretion and / or negotiation could be required. Alongside this, a new system (or perhaps a refined or abbreviated version of the current system) could be introduced in parallel. It would apply to those schemes that are in accordance with the development plan in terms of location and type and scale of use, and could therefore consult / decide upon the physical appearance and other operational parameters of use.

Recommendation 6.1: Welsh Government to introduce a parallel fast-track development management process for planning applications relating to development in accordance with an adopted up to date development plan.

In particular, this fast-track process should limit information required alongside an application, and should also be determined under delegated powers.

Engagement with approved agents

As well as differentiation in terms of the extent to which development proposals are in accordance with an up to date development plan, it is also possible to differentiate by applicant (or agent). Local authority stakeholders spoken to as part of this study referred to a wide variation in the quality of submissions. Ways to incentivise consistently high quality submissions might include, for example, the introduction of either reduced information requirements and / or quicker turnaround (reduced timescale for decisions) for higher quality submissions.

Accredited agent scheme

The Killian Pretty Review identified Agents Accreditation Schemes (AASs) as good practice in incentivising high quality submissions. To be accredited, agents have to sign up to a locally prepared code of practice and achieve consistently high standards in the planning applications they submit on behalf of their clients.

Schemes normally relate only to minor and other forms of development. For example, the North Lincolnshire AAS covers applications for:

- Less than 10 new dwellings
- Minor development uses such as offices or industry where the floor space to be built is less than 1,000 sq m or where the site area is less than 1 ha
- Changes of use
- Householder development

- Advertisements
- Listed Building Consent (if associated with the above)
- Conservation area consent

Accredited planning agents agree to submit their applications electronically, include a checklist and guarantee that their applications meet a certain standard that removes the need for formal validation by the LPA. This reduces the workload for the LPA, and helps deliver more efficient and faster decisions. In return, the LPA commits to endeavour to determine such applications, so long as they remain a delegated decision, in a shorter timescale (six weeks in North Lincolnshire).

Whilst the effect of this would be reduced information requirements and a more timely process, the main thrust of this approach is based upon the partnership working and engagement aspects of development management principles.

An accreditation scheme could be defined centrally by government or individually by local planning authorities. The former would promote consistency and enable agents submitting applications in numerous locations (i.e. to several different local planning authorities) to have to become accredited only once. Ongoing checks would be necessary to ensure standards were maintained. These could again be carried out by either central or local government. Given that the local planning authorities are the ones receiving and reviewing (validating and registering) the applications, it is probably sensible for local planning authorities to own and run the scheme and to report back to government when an agent is not meeting the criteria for membership. Such arrangements are possible within the current planning system.

6.3 Culture, capacity and support

Culture change

Interviews and discussions undertaken as part of this study identified the significance of ‘culture’ to the effective operation of the development management system. Some of the stakeholders have also identified the importance of ensuring that any changes to the development management system are suited to the culture of the planning system that exists in Wales. Culture change is acknowledged as being difficult to achieve and requires considerable time to implement. However, it is regarded as equally important to any legislative change in delivering an effective system of development management.

Capacity development

Whenever changes are introduced to the planning system, be they a new development plan system or changes to decision-making processes, there is a need to inform and train people in preparation for the transition and new element(s). However, even when the planning system ‘stands still’ in structural terms there continues to be a churn of officers and members, and practices and legal precedents continue to evolve. Thus there is a continual need for support, training and development to ensure that the planning system remains fit for purpose, with sufficient capacity to operate effectively.

Support could be provided in a number of ways. Most simply, each organisation (or local authority) can make its own provisions by either designing or purchasing the necessary training. However, many of the gains from training and support come from sharing knowledge, practice and experience; operating a training regime in isolation can be a comparatively expensive and inefficient option. The private sector delivers a range of conferences and learning resources at a cost, and professional bodies such as the Royal Town Planning Institute, Planning Officers Society for Wales, the Design Commission for Wales and the Welsh Local Government Association also provide a range of training and published materials. The Welsh Government has provided training when new policy has been introduced and also offers more ad hoc advice and support through its research and other planning activities, such as supporting local planning authorities in producing timely and sound LDPs. All of these approaches are valuable and should continue as there is benefit in having a diverse approach in this area.

In addition to those sources above, there are experiences of planning support entities elsewhere in the UK focused almost solely on training, support and capacity building, as well as providing a means of embedding reforms.

Capacity building in England (the Planning Advisory Service) and Scotland (the Improvement Service)

The Planning Advisory Service (PAS) is sponsored and funded by the Department for Communities and Local Government, and ‘housed’ by the Local Government Association. PAS provides face-to-face and online learning and peer support to deliver the full range of planning functions.

The Improvement Service (IS) is a partnership between the Convention of Scottish Local Authorities and the Society of Local Authority Chief Executives. The IS covers not only planning but the full range of local authority duties. Like PAS there is a focus on giving support and capacity building, although in the past this has included grants and subscriptions. The main programme covering planning functions is the Planning Development Programme which is funded by the Scottish Government.

Both services are ‘arms length’ from central government and act as intermediaries, providing support for implementing national policy and reforms, whilst also relaying the ‘voice’ of local authorities back to government. This is particularly important for PAS, where the number of local authorities makes a direct relationship between all authorities and government challenging.

PAS currently costs around £2.5m a year to run. The IS Planning Delivery Programme has historically run to around £500,000 per annum, but is currently funded at around £75,000 per annum. The IS supports Scotland’s 34 local authorities, whilst PAS works with around 365 local authorities.

Both PAS and IS started as ‘pure’ capacity building and performance improvement measures. Latterly, PAS has become increasingly involved in delivering the current government’s planning agenda, although it could be equally said that this is the emerging needs of its target audience.

Because of limited budgets, both organisations place a premium on maximising returns on investments. As such, support needs to be relatively uniform so that it can be used across the maximum possible audience. That said, the additionality of

the work is unclear in terms of training and capacity building at a global level – the support is taken up and over-subscribed but at a time when overall resource levels and local authority training budgets are declining.

These are clearly transferrable models of central support. They enable central government to retain control of the ‘agenda’ for support and development, whilst providing a dedicated resource to ‘get things moving’. The focus on capacity building is designed to ensure long-term benefits from short-term expenditure. In both cases, the primary recipients are local authority officers and members.

There are a number of models that can be used to deliver collective or central capacity and learning support. The PAS and IS examples set out above illustrate a quite centralised government funded approach, whilst the Austrian example below sets out a more decentralised (but still in part government funded) approach.

Dissemination and exchange of best practice

The Austrian Planning Conference (APC) was set up by the government in conjunction with the regions and the municipalities. It is an independent unit with the objective of supporting plan implementation, disseminating best practice and fostering exchange of experiences. In context, the Austrian planning system is almost entirely devolved to the regions (Länder).

The APC has two main duties: to effectively co-ordinate the dissemination and sharing of best practices in the country and to develop and implement the spatial plan. In Austria the spatial plan is not binding, and hence needs to be taken on board by local binding plans in order to be implemented.

The APC is governed by a political executive chaired by the federal chancellor (with a similar role to the First Minister in Wales) and has a number of committees and working groups comprised of elected members and civil servants. For a number of years the APC also used to serve as a formal link with the EU as secretariat for Structural Funds monitoring activities, and as the national contact point for EU programmes. This put the APC at the core of Austrian planning.

The APC has been in place for four decades and is a well-established entity. It is a relatively dynamic body with representatives from all political levels of representation and territories. The actual office co-ordinating activities is relatively small, with between eight and a dozen officers running the various mainstream activities. The office running costs are shared equally between the national government and by the regions.

This is an interesting device as it allows effective cross pollination of best practice within a country that has very differentiated approaches to planning. As in Germany (and in contrast to the United States of America), federalism in Austria is seen as a collaborative, not competitive, endeavour. Because of this, developing best practice and ‘excellence’ generally is seen as necessary and healthy for the country’s common good. Within this frame, the conference looks for ‘harmonisation’ rather than standardisation of practices in a continuous quest for innovation and effectiveness.

A centrally-led model for support in Wales might not be the preferred route and would certainly create an additional funding requirement. Again, different

delivery options exist, such as net additional central funding, top-slicing the local authority grant allocation or making some form of optional subscription payment.

A hybrid form of support could provide not only training and capacity building, but also a central shared resource. This could cover a specific or specialist topic, such as design, conservation, ecology or arboriculture (as exemplified by the North Wales Shared Minerals and Waste service, see Chapter 4). It could provide assistance with smoothing the workflow, such as dealing with peaking in planning applications as exemplified by the Advisory Team for Large Applications (ATLAS), funded by DCLG and LGA and part of the Homes and Communities Agency in England who assist in major applications with a housing component. It could provide support with the more intense stages of LDP preparation, based on the Ministry of Planning's (DATAR) planning service (the DDE) in France which provides a semi-autonomous central lead for local plan preparation.

This report recommends that a collaborative and planning-specific organisation be established and co-funded by the Welsh Government and Welsh Local Government Association to (a) raise capacity and disseminate good practice, and (b) support LPA functions and provide shared staff resources to deal with peaks and more specialist work.

Recommendation 6.2: Welsh Government to establish a centrally-supported and planning-specific support body.

The above recommendation notwithstanding, and taking into account the role of those participating in the planning system as discussed within Chapter 4, stakeholders identified that even where the professional and technical aspects of development management work well, planning decisions are often political in nature. This is specifically the case in strategic schemes, but it also applies to smaller schemes which trigger representations from the public to elected members. Such political tensions, as distinct from pure 'planning' issues, result in significant uncertainty and risk due to the difficulty related to taking controversial (or perhaps unpopular) positions. Members wish to respond to the needs and wants of the people they represent, and understandably they sometimes struggle to reconcile this with the statutory duties within the planning system where there are conflicts or tensions. Whilst the political tensions arising from lack of certainty (or the sequential certainty sought and discussed within Section 7.2 above) can be addressed through the reforms recommended, there remains a need to provide support and ongoing training for members to allow them to respond effectively to such pressures remedy some of the identified skills deficits in delivering a proactive and positive approach to development management.

6.4 Performance management

The need to implement and monitor

Some stakeholders were concerned that the Welsh Government could do more to ensure that the present system is made to work effectively by using existing powers, by establishing new powers or by developing a more active and interventionist role for the Welsh Government in managing development.

In terms of existing powers, PPW⁷⁰ for example sets out the importance of LDPs being prepared quickly where the adopted plan is not up to date or where major development is proposed (para 1.3.6). Similarly, PPW clearly states that performance targets for planning applications are established in law (the 8 and 16 week targets, para 1.3.7) and that the Welsh Government expects each LPA to determine 80 per cent of its planning applications within 8 weeks (para 1.3.8).

A more interventionist role by the Welsh Government might not be restricted to taking responsibility for the effective operation of the planning system in Wales as a whole. This would mean that the Welsh Government or another body designated by the Welsh Government could step in where another party (such as a local authority or statutory consultee) does not fulfil its obligations effectively or in a timely fashion. This would include ensuring up-to-date plan coverage, as well as a more active role in relation to taking decisions of strategic importance. This would in turn require the Welsh Government to review its performance monitoring and management of the planning system to ensure that it is embedded within a development management approach, and that it has sufficient robust information on which to make performance judgments and decisions.

It is important that performance management does not focus only on the principal stages of processing and determining planning applications, but also considers the up-front factors and engagement and the downstream outcomes delivered. The Strategic Monitoring Framework for Planning⁷¹ sought to identify an appropriate balance between measuring planning as a process and the outputs and outcomes from that process, although that framework was designed to measure the contribution the planning system makes to the Welsh Government's vision of a sustainable Wales.

Whilst previous reviews of the planning system across Wales and the UK (see Chapter 2) have focused on measuring 'satisfaction' with the planning system, the study team believe that the 'quality and effectiveness' of the system should be the primary objective measures. These studies and current and emerging frameworks such as the Development Control Quarterly Return (reviewed in 2008 by Arup and containing numerous recommendations to expand recording to cover development management⁷²), the POSW Annual Survey and the Heads of Planning Scotland (HOPS) Planning Performance Framework will provide an appropriate starting point. The aim is to ensure that data collected reflects (and encourages) the development management approach.

It is important that performance measures also seek to measure performance across the range of actors involved to enable a review of the quality and effectiveness of the planning system as a whole, i.e. recording the proportion of rejected (invalid) applications as a proxy for quality of applications submitted, average speed of consultation response by statutory consultees, speed of decision-making for applications called in by the Welsh Government and so on.

Finally, it is important that clear and regular use of this information is made. In the past, it is not clear how statistics about the planning system have been used,

⁷⁰ Welsh Government (2011) Planning Policy Wales: Edition 4.

⁷¹ Welsh Government (2011) Research: A Strategic Monitoring Framework for the Planning System.

⁷² Welsh Government (2008) Research: Review and Evaluation of the Development Control Monitoring Process.

how performance has been measured and what the outcome, consequences or changes as a result of the measurement of performance have been.

Incentives and Penalties

Interviewees raised concerns that many of the requirements placed on local planning authorities and others (such as statutory consultees and the Welsh Government) did not entail any sanctions if those requirements were not met. Similarly, few incentives to effective development management performance were identified. Consequently, this study suggests a framework of incentives and penalties as a means of shaping behaviour in order to deliver more effective development management. Stakeholders in both the interviews and discussion seminar suggested that a framework of penalties and incentives should apply to all actors involved in the process and to all stages, including applicants, local planning authorities, statutory consultees and the Welsh Government.

Stakeholders in the public sector raised several issues around the quality and completeness of applications and that this impacts on the performance of local planning authorities themselves. Those representing the private sector suggested that significant financial penalties should be attached to poor decision making performance and / or failure to deliver a LDP within agreed timescales. Another issue raised by both public and private stakeholders related to the delay experienced in getting replies from statutory consultees as well as the poor quality or lack of detail of some of the responses made by statutory consultees (for example, an on-time holding response which does not progress the determination of the application it relates to). The Welsh Government should also consider provision and enforcement of penalties and incentives for timely deliberation in regard to applications called in so that it too is similarly performance-bound in the same way as others.

A wide range of possible ‘carrots’ and ‘sticks’ could be used and indeed some incentives (e.g. additional central funding for good performance) are simply the inverse of a penalties (i.e. reduced central funding for poor performance) and vice versa. The list below sets out some of the higher profile possible (and current, historic or in operation elsewhere) incentives or penalty measures:

- central core funding allocation / withdrawal (at least in part) linked to performance;
- targeted top-up funding / fines based on performance (e.g. Planning; delivering for Wales monies, Planning Delivery Grant, New Homes Bonus);
- designation or categorisation such as a ‘beacon’, ‘exemplar’, ‘failing’ or ‘special measures’ authority or body;
- the ability / power to produce a plan (in order to avoid direct intervention);
- the ability / power to define the development management process (such as delegation, delegation rates);
- the ability / power to determine a planning application; and
- the ability / power to levy (or set) a fee for planning applications.

Numerous performance ‘hooks’ were suggested by stakeholders, but almost all of these can be broadly categorised into ‘having an up to date plan’ or ‘determining planning applications in accordance with development management principles’.

In presentational terms, a number of suggestions revolved around the production of a performance report by each planning authority or consultee in the form of a similar approach to the HOPS Planning Performance Framework, centrally published league tables or an ‘AMR’ for development management. The format, interval and other reporting requirements would need to be based on the design of the performance framework itself.

The Welsh Government should use the opportunity provided by a Wales Planning Act to establish a framework of enforceable targets for key actors in the planning system, with these being linked to a framework of incentives and penalties designed to promote an effective system of development management. These targets should be applicable to applicants, local planning authorities, statutory consultees and the Welsh Government. Performance information should be consistent, robust and published.

Recommendation 6.3: Welsh Government to establish a framework of enforceable targets for key actors in the planning system.

Planning Performance Agreements

As well as the ‘centralised’ approach to performance monitoring, the use of Planning Performance Agreements (PPAs) enables more local and direct (authority-applicant) performance monitoring. Being application-specific, PPAs not only cover performance issues but also more widely address certainty issues.

The use of PPAs for certain large-scale applications is considered good practice and is in keeping with customer-focused and outcome-focused elements of development management. However, anecdotally there is evidence both for and against the effectiveness of PPAs.

Ideally, a PPA should be binding on both parties although this recommendation has been resisted as it is often impossible (and unproductive in performance and outcome terms) to try and isolate the reason for a PPA failing. For example, if an applicant has to submit information but the LPA believes that the information is insufficient or of poor quality, can the authority or applicant ‘stop the clock’? Does the applicant have to appeal / enter arbitration to get it started again?

The recommendation for a system of enforceable targets should improve the overall performance of the development management process. Accepting that a small proportion of applications are significant in their scale and / or complexity, it is possible to define or classify applications and such as set performance measures accordingly. The use of a PPA should still be open to applicants and authorities that see mutual benefit in their use.

6.5 Conclusions

This chapter has focused on some specific areas relating to the decision making process portion of development management, and then broadened that out into a

wider framework for decision making which takes account of capacity and support, and then also incentivising, measuring and monitoring performance.

Decision making needs to be grounded in policy. Each stage in the development management process should provide greater certainty than the last and refine development outcomes. In order to bridge the gap between plans and detail there needs to be some middle ground – outline planning permission should provide a decision in principle that gives some certainty (although less than that associated with full detailed planning permissions) in exchange for less information. The present arrangement is not weighted appropriately.

For applications relating to development in line with what is proposed in the LDP (and desired as part of a positive and proactive approach to development management and place making) there ought to be a way of distinguishing these applications as ‘simpler’ to determine and the same applies to those applicants that consistently provide high quality information within their submissions. This might involve a parallel process for simpler and abbreviated information and determination timescale requirements.

All of these process changes require accompanying culture changes in order to fully embrace and adopt the development management approach. A catalyst and enabler for this would be a central service providing advice, good practice, training to increase capacity and support in ‘specialist’ or ‘peak’ areas. This should target LPA officers and members and should build upon (and not replace or consume) other sources of learning and support.

These process and capacity changes should lead to a better planning service in terms of the quality (including speed) of decisions and development outcomes. However, these changes need to be incentivised, pushed, measured and monitored.

7 Facilitating implementation

7.1 Introduction

This chapter considers not only the planning decisions that permit development but also the delivery of development itself. Accordingly, it looks at both process and outcome elements of managing development in so far as they influence the overall ‘end to end’ timeliness of implementation. Chapter 2 highlights this in the various reviews of the planning application process from around the UK, and Chapter 3 explains that a timely decision and development outcome arise from the proper application of development management principles.

The themes and ideas covered in this chapter include:

- considering the balance between front-loading (pre-application) and decision-making (of planning applications) and the influence of this balance on the overall timescale for delivery of development;
- determining the appropriate role of delegation for applications;
- defining the balance between applications that are considered within the mainstream development management process, those which might require expediting based on a priority to delivering the development proposed (i.e. such as a system to speed up major applications) and those might be consciously excluded from a requirement for planning permission (i.e. such as the current operation of permitted development rights);
- considering an approach grounded in ‘permit-ing’ (granting a permit or license based on procedural rules such as the current operation of the building regulations regime) as opposed to ‘permitting’ (approving a planning application within a discretionary framework);
- identifying fiscal tools to incentivise the delivery of development and discourage land banking or non-delivery; and
- organisations or structures which can identify and address sites with viability issues, such as Urban Development Companies or the role previously carried out by the Land Authority for Wales.

In considering the ways in which decisions and development can be delivered in a more timely way, there is inevitably some overlap with other parts of this report such as Chapter 5 (site- or area-specific designations or tools such as design codes which alter the relationship of plans to decisions) and Chapter 6 (covering issues around streamlining, simplification and fast tracking of the development management process and which in turn overlaps with this Chapter’s consideration of time issues).

7.2 Current tools

Pre-application discussion and consultation

An important facet of the development management approach is proactivity. In practice this translates to a desire to increase up-front engagement and should apply equally to local planning authorities, applicants and their agents, and

consultees that are well acquainted with the planning process. It is good practice for local authorities offer pre-application discussions; it enables authorities to engage with developers at an early stage so as to input into use, siting, design and similar issues. Developers benefit from repeated interaction with those who will be determining their application, rather than ‘coming cold’ to the policies and processes of the authority. However, the development management culture is not fully engrained in local authority practices. From a statutory perspective, there is no mandatory requirement on any party to offer and undertake pre-application discussions. Contrast, for example, applications requiring Environmental Impact Assessment where the screening and / or scoping requirements ensure early up-front interaction.

If pre-application discussions are to be required or incentivised, then a range of perspectives need to be considered:

- From an authority perspective, this includes making pre-application discussions a statutory duty for authorities to provide, making a fee payable for pre-application discussions to provide resources and helping authorities to deliver a proportionate service or mandating the level of interaction required (telephone conversation, meeting in person, duty planner available or pre-booked appointments etc). A binding plan should limit the complexity of advice to instead cover only the built form and operation of development, as opposed to the in principle acceptability of a proposed use.
- From the applicant perspective, a binding plan is designed to offer greater certainty at the pre-planning stage. If there is a charge for pre-application advice, then it might be possible to offer a subsequent discount in the application fee where pre-application discussions have taken place.
- From the consultee perspective, there might need to be a statutory duty or other (service level-type) agreement in place to ensure engagement in pre-application discussions. It is not clear how this input might be resourced; charging the applicant might create a significant ‘jump’ from the current system and discourage involvement, whilst central funding would not necessarily create any new resources and either diminish the availability of the pre-application advice or divert resources from other work currently undertaken.

Pre-application discussions could be introduced as a requirement in law, mandated through guidance such as PPW or a TAN for pre-application discussions, or left as good practice as per current arrangements. Defining a range of use types or scales where pre-application discussions would be expected or required would be helpful. This should include within its scope any schemes not in accordance with the LDP, and any major applications. Considering the options for delivery set out above, pre-application discussions should remain as a discretionary but encouraged activity – incentivised through both the payment of a pre-application discussion fee and subsequent discount to a planning application fee. Introducing a legal requirement would require definition of the service, what information needs to be submitted, the timescales and form or advice etc. The danger is that, in requiring good practice, the effect is to introduce an additional stage to the process, thus having the unintended effect of lengthening the ‘end to end’ timescale for delivering development.

In May 2012, the Welsh Government released the *Practice Guide: realising the potential of pre-application discussions*⁷³ which set out how pre-application discussions should operate and what the duties and expectations of each party could reasonably be. Moving forward, consideration can be given to the extent to which advice can be considered binding, and the role and involvement of elected members and statutory and non-statutory consultees.

Similarly, a good development management protocol should include robust and meaningful pre-application consultation. The aim of pre-application consultation is to guide and inform options and designs for development proposals. Such consultation is normally, but not exclusively, undertaken by the applicant. The Planning Act 2008 (amended by the Localism Act 2011) covers both England and Wales and sets out requirements for pre-application consultation for Nationally Significant Infrastructure Projects (NSIPs) and so there is an existing avenue / definition of the process and who it should cover in these instances, and these arrangements are overseen by PINS Wales. Beyond this NSIP regime, pre-application consultation remains an exercise in good practice and judgement as to when it might be appropriate. In keeping with encouraging the take-up of the development management approach for major applications (not covered by the NSIP regime), it may be necessary to expand and / or clarify the role of pre-application consultation. Whilst the current legal framework sets out the style, contact and content of pre-application consultation this might not remain the same moving forwards under a new Planning Act. The aim should be to assist in the front-loading and formulation of development proposals so that decision-making can provide greater certainty and result in an expedited process.

Delegation

The routes for decision-making on a planning application allow for a decision made by elected members at the planning committee, or through delegated means whereby members agree that an appointed person (normally the Head of Service / Directorate, Chief Planning Officer and often worded to include officers authorised by those persons above, thus also including the Head of Development Control / Development Management) may make a planning decision on their behalf. The criteria setting out the rules governing when a delegated decision may be made are provided within the ‘scheme of delegation’.

Interviewees identified examples of some decisions made by elected members as being a significant source of uncertainty. They stated that even where the planning system generally worked well that decisions could sometimes be made on ‘political’ grounds. Any proposal to restrict the involvement of democratically-elected representatives in the making of planning decisions is likely to be contentious. However, it is commonplace for local planning authorities to operate systems of delegated decision-making that result in the majority of planning decisions being made by planning officers acting under delegated powers. Each LPA in Wales is able to define its own scheme of delegation for planning decisions. There is potential in a reformed development management system for the Welsh Government to prescribe a standard scheme of delegation for all local planning authorities across Wales (See Chapter 5). In terms of the relationship between development plans and development management, then a mechanism could be introduced that ensured that where proposals are in accordance with an adopted up-to-date development plan then the decision is to be made as an officer-

⁷³ <http://wales.gov.uk/topics/planning/policy/guidanceandleaflets/preappguide/?lang=en>

delegated decision rather than by a planning committee. This would also necessitate the delegation of the validation/screening of applications to determine accordance with the plan, and again guidance and practice will need to be established to assist here. This would reflect the system of decision-making in the Republic of Ireland where the emphasis of member engagement is in the preparation of development plans rather than in individual planning decisions. This requires a robust, evidence-based development plans system to be in place to prevent inappropriate scales or locations for development from being included in development plans.

A lack of delegation is anecdotally cited as a source of delay, although unpicking the reasons behind such delays is more problematic. Typically, more complex or controversial applications are determined by the committee route. Similarly, all things being equal there is a greater resource requirement for an application which is heard by the committee.

This study does not recommend the removal of member decision-making (see Chapter 6 covering the role of stakeholders and member involvement) but does recognise that there is a time and cost saving associated with a delegated decision. This in turn relates to an end-to-end time and cost saving in delivering development outcomes. As part of the overall desire to streamline determination and / or fast track proposals where possible (see Chapter 7) there is felt to be scope to review and reform the operation of delegated decision-making arrangements.

The aim of reviewing delegation arrangements is to try and ensure that it is being used appropriately by local authorities in terms of the scope and scale of its application. A number of options exist, with varying degrees of central control. The Welsh Government could create or mandate a national scheme of delegation which would then result in the same undertaking across each LPA. The Welsh Government could mandate a set range or limit to the minimum and / or maximum level of delegation. The Welsh Government could monitor delegation rates, with the power to intervene if felt necessary. The Welsh Government could require its approval of an authority's own scheme of delegation prior to its adoption. For reasons of consistency and efficiency, this report recommends a national scheme of delegation. This would also enable the suggested fast-tracking of applications in accordance with an adopted LDP. This would need to be monitored to prevent 'unofficial' processes springing up.

Recommendation 7.1: Welsh Government to implement a national scheme of delegation, which should require that applications in conformity with an adopted and current LDP be determined by delegated decision.

The Scottish Government maintains a list of schemes of delegation⁷⁴ and also undertakes analysis to compare differences in schemes. The aim is not to reach a position of uniformity but to ensure monitoring and contextual understanding of those schemes. If a national scheme of delegation were adopted in Wales this would be unnecessary. However, monitoring would be an important component of the Welsh Government approving an individual authority's delegation scheme if this recommendation is not implemented.

⁷⁴ <http://www.scotland.gov.uk/Topics/Built-Environment/planning/National-Planning-Policy/themes/dev-man/SchemeofDelegation>

Fiscal incentives and tools

There are a myriad of funds, loans and credits available to local authorities and developers / partners to boost capacity, prepare sites and deliver development. Potentially useful sources include:

- European Union funds (such as ERDF and its associated LEADER, JESSICA, JEREMIE, INTERREG instruments) and financing mechanisms such as those overseen by the European Investment Bank;
- Borrowing and financing arrangements (such as Tax Increment Financing, Green Investment Banks, National Loan Guarantee Scheme, Prudential Borrowing, Get Britain Building etc);
- Simplification / designation / area specific arrangements (such as Enterprise Zones, Business Improvement Districts, Rural Economy Grant, Coastal Communities Fund etc);
- Tax incentives or credits (such as Land Remediation Relief, R&D tax credits, Flat Conversion Allowance etc); and
- Current and previous planning tools (such as Section 106 agreements, Community Infrastructure Levy and Planning: delivering for Wales monies).

Current awareness of these sources varies widely, and thus there is a need to raise the profile and awareness of sources and their suitability and application. The aim is to identify, package and promote available funding sources to enable and speed up development. Rather than leave the public, private and voluntary sectors to their own devices to each discover and understand it is logical and appropriate for the Welsh Government to take a lead in promoting these financial tools and highlighting how they might be used to meet government and local development objectives. The Welsh Government should also identify potential funding sources elsewhere which might be applicable to or useful for Wales, i.e. New Homes Bonus, Planning Delivery Grant, KickStart etc.

Again, a number of delivery options exist to achieve this. A document could be prepared and published based on discrete research. The Welsh Government could appoint or designate a dedicated resource to prepare, maintain and offer advice. Alternatively, there could be a partnership arrangement (with the Welsh European Funding Office, the Welsh Local Government Association, or the recommended route of using any newly formed Planning Advisory Service for Wales (see Chapter 6) whereby partners collaborate to build and share this expertise. Involvement and joint funding from the private sector could form part of the delivery if an appropriate mechanism can be found, such as liaison and part-funding through industry bodies such as the British Property Federation, the Federation of Small Businesses or the Home Builders Federation.

Organisations or structures to assist with delivery

Some stakeholders highlighted the lack of a regeneration body in Wales as providing a barrier to the delivery or enabling of development. In particular, it was felt that this was a missing ingredient holding back some of the more challenging sites based on location, site assembly, readiness for redevelopment and infrastructure provision. In short, there was a gap for a public body charged with procuring and enabling stalled sites.

Historically, this role has been fulfilled by both national bodies such as the Land Authority for Wales (LAW) and the Welsh Development Agency (WDA), and purpose-built Urban Development Corporations (UDCs) such as the Cardiff UDC (1987-2000) and the Newport Unlimited Urban Regeneration Company (URC). UDC / URC or Enterprise Zone approaches are deemed appropriate mechanisms for concentrating on the intensive regeneration of a single location, depending on the funding model and public:private mix to be adopted, whilst the LAW / WDA model lends itself to a national, ad hoc approach but one which can more swiftly react to market conditions without need for a separate entity to be established or zone to be legislated for. More recently, a smaller-scale hybrid has emerged in the form of a Local Asset-Backed Vehicle, itself a hybrid of PFI initiatives involving public land and private investment.

In England, the Homes and Communities Agency (previously English Partnerships) operates in a similar way to that of the LAW / WDA previously. It is able to procure, transform and sell on sites (and developments, particularly those with a housing component) with any uplift used to fund further successive investment in regeneration. Some stakeholders feel that the impetus for regeneration has diminished since the absorption of the WDA into the Welsh Government. This position could be reversed through either re-energising the Welsh Government responsibility in this area, or through reconvening a semi-autonomous body tasked with regeneration and delivery of enabled land and development. Ideally, the strength of both the location-specific and national model should be distilled and brought to bear as appropriate through any retasking or new organisation. The recommended approach is to, based on the previous merger of the WDA into the Welsh Government and the provision of powers of general competence (see Chapter 3), retask the Welsh Government with this regenerative function. This is in line with the general backdrop to this report of a call for more active and interventionist Welsh Government.

The example below (Newport Unlimited, the only Urban Regeneration Company in Wales) highlights an example of strong focus on timely delivery. This included strong pre-application (and indeed post-submission) engagement as well as an organisational approach which enabled land assembly, critical mass and development delivery.

Public Participation and Land Assembly

Newport Unlimited is the Urban Regeneration Company for Newport and was created in 2003 to help counter the impacts of the continued decline in heavy industry and manufacturing in Newport. Its vision is to work with public and private sectors to deliver major physical change and strengthen the economy of Newport.

Significant progress towards its urban regeneration objectives has been made since 2003. To help stimulate development, Newport Unlimited assembled key sites to provide a focus on delivery of its regeneration objectives. Innovative land assembly approaches included use of receipts from land sales to help deliver projects within the strategy that the private sector was unlikely to support. This created a direct link between planning and delivery of projects. Since 2003, Newport Unlimited has delivered:

- over £100 million of private sector investment secured;

- over 61,000 sq.m. of office and business floor-space;
- more than 1,100 new jobs (not including construction jobs);
- more than 244 new residential units completed;
- more than 4,000 existing homes now with reduced flood risk; and
- almost 9 hectares of derelict land reclaimed.

As part of its efforts, Newport Unlimited has demonstrated the value of public participation in helping progress its regeneration projects. Newport Unlimited consider that it is possible that the general public become more engaged in the planning process when consultation revolves around regeneration strategies and major projects. Newport Unlimited engaged the public on regeneration proposals for central Newport at an early stage and gained broad support for their strategy. As a consequence there was very little opposition to individual applications as they came forward as there was a good understanding of how they fitted within the wider strategy.

The quinquennial review of Newport Unlimited highlighted the need to establish clearer connections between regeneration investment in the city and wider social and community benefits. A particular focus of the Masterplan refresh sought to understand and assess public and business perceptions of the regeneration of Newport and of future key drivers. Stakeholder consultation workshops; thematic discussions around key issues and priorities; social media and web-based platforms; and public exhibitions are often used as engagement tools.

7.3 New tools

The Delivery of Major Development

The delivery of major development schemes was for some interviewees the crux of the current failings of the planning system. Prioritisation aside, in volume and profile terms it is these larger schemes which take longer to get through the system and account for the anecdotal ‘jobs in filing cabinets’ or shortfall in housing delivery sometimes cited by critics of the system.

The ‘design’ of the system to try and deliver such schemes has been addressed in Chapter 3 (current sources of delay, duplication and cost) and in Chapter 5 (considering how the plan can provide greater certainty and be the starting point for an shorter overall determination timescale). These issues are not repeated here. However, from a delivery perspective there remains concern about the suitability of the system provide timely delivery of major applications. Thus the challenge is to provide a focused and dedicated service to determine large-scale applications, but in a way which does not create additional tiers or stages of delay or complication. Possible solutions include the NSIP model, arrangements (current or otherwise) for some form of ‘call in’ (or possibly even ‘send in’ in cases where local planning authorities lack capacity or particular expertise) as well as the previously recommended hybrid zoning or parallel processes as well as other recommendations around proposals which are in accordance with LDP allocations.

Fast-tracking strategic developments

In Ireland, the Planning and Development (Strategic Infrastructure) Act 2006 provides a streamlined planning consent procedure for strategic infrastructure developments, with applications made directly to an independent statutory administrative tribunal within the Irish planning board (An Bord Pleanála). The Act provides:

- the ability to bypass the need for LPA consent;
- direct access to consultation with An Bord Pleanála;
- a new streamlined consent procedure that usually involves a six-week public consultation followed by an 18-week assessment period (although this can be extended); and
- consideration of the 'national interest' when assessing the project.

The application procedure to the board is broadly similar to a standard planning application for local authority development but it is the duty of the board to ensure that a decision is made as expeditiously as possible. Where the board cannot achieve an 18-week assessment period, it must notify the applicant as to the reason why it is not possible and specify a new date for its decision. The public have online access to all applications to the board.

Interviews carried out with Irish planners as part of this research suggest that the streamlined planning consent procedure for strategic infrastructure developments is one of the most effective elements of recent reform in the Irish planning system. It has created a process based on pre-application consultation advice and removing local political influence from strategic decision making. The system requires the creation of an experienced, skilled and respected independent panel, who are required to engage closely with the developer and local authority.

Clearly, there is a logical problem with recommending that too many types of applications are fast-tracked – not everything can be fast-tracked. The fast-tracking recommended for applications in conformity with the plan aims to achieve a simplification based on removing the need to determine the acceptability of the use (which has been made through the LDP). This application can be fast-tracked because there is less information to consider and less ‘decision’ to make.

In the case of major applications, the need is to make the ‘decision’ but more quickly. The mechanism for this lies within the recommendations of this report in terms of setting performance targets and incentivising and penalising meeting or not meeting these respectively.

Expanding Permitted Development rights or removing applications from the system

One ‘easy win’ for the planning system is to simply remove a number of applications from the development management system. This has historically focused on smaller-scale developments. There are a number of options associated with such an approach: outright removal of the legal requirement for planning permission, adopting a permit-led approach or extending permitted development rights.

Outright removal or ‘scoping out’ of the legal requirement for planning permission would require a fundamental redefining of ‘development’ to exclude those types of categories to be excluded, whilst still leaving everything else in. This is generally problematic as the definition needs to be overly-specific and is thus inflexible after the fact and for any future alteration or amendment.

An alternative is to adopt an approach more grounded in a system of ‘permit-ing’ (granting a permit) as opposed to ‘permitting’ (approving a planning application). This lends itself to a regime of detailed classification or codification (a defined and not discretionary system), with self-certification and only administrative checking that the ‘paperwork’ (development proposals and plans in this instance) accord with the classification or code. This can involve stepping down from a ‘permission’ to a ‘notification’ or granting of a permit, as per the ‘ten-day planning approval’ in Australia.

Ten-day planning approval

The New South Wales (NSW) Government in Australia launched its Housing Code in 2008. It is a NSW initiative for people who want to build a new one or two storey home, or to renovate or improve their current home. A key feature of the system is the so-called ‘10 day housing approval’. It is an alternative to the traditional development application (DA) process. The NSW Housing Code aims to save time and money by making home approvals easier and faster.

Applicants are eligible for a “10 day or less” planning approval for a new one or two storey house or to renovate an existing house that in both cases in on a land parcel of at least 200 square metres or larger with a width of 6 metres. Additional guidance clarifies eligibility for the express approval – the design code sets out acceptable parameters for new and renovated (or extended) homes and the planning approval process is a check that that the plan(s) submitted accord with the design code.

The Design Code was brought in when national housing statistics showed that New South Wales was delivering fewer new homes than other states. It was a political push to drive up completion rates and to be seen to reduce red tape imposed by government. It was part of a wide raft of reforms which introduced 57 categories of permitted development and also included the repeal of ‘call in’ powers for major development proposals which had been previously over-utilised as a means of major developers bypassing local government and which was a source of local and community dissatisfaction with the planning system.

At face value this appears to be ‘just a design code’, however the key learning point is the integration of codification of design with permitted development to drive planning performance improvements. It is a fast-track system for proposals that conform with acceptable parameters for development. It would require planners in Wales to ‘let go’ of site-specific control in favour of more generic (but locally defined) parameters.

A permit-led approach might also involve a similar approach to that currently taken for building regulations within the UK. This would require a system based on an overarching codification of development. Proposers suggest that the system offers greater clarity and certainty, requires more standardised (and less) information, and enables market forces to drive competition, performance and

efficiency through the ability to access the services of more than one provider since there is no subjectivity (or requirement for impartiality) involved. The counter argument for such a regime being put in place relates to the more ‘black and white’ nature of building control compared to the ‘discretionary’ nature of planning, and also refer to the more standardised scale of size of the workload for a given ‘unit’ or application. Lastly, there are some concerns in relation to the probity or potential conflict arising from a competitive regime and the possibility of this influencing the likelihood of achieving planning consent. Certainly, the definition of One Planet Developments in Wales highlights the potential for codification of planning development.

Extending permitted development rights would enable retaining a single definition of ‘development’ but would allow or enable specified elements to not require the same degree of planning control. Traditional approaches have focused on householder development and change of use within and between use classes. This has the advantage of being a operating framework which local authorities and agents are familiar with.

Stakeholders expressed mixed views on the appropriateness of removing smaller – scale applications from the development management system through enhanced permitted development rights. On the one hand, removing them undoubtedly frees up officer time and authority resources to focus on the remaining workload. Similarly, the removed (or reduced in the case of a permitting or building regulations-type regime) statutory requirements mean that the end-to-end process can be made simpler, shorter and cheaper for those that would have previously had to submit an application. However, in many cases local residents care most and engage most with the planning system when responding to these small-scale and local issues (compared to plan-making consultations or major schemes) as these are the types of development which directly affect them.

Stakeholder views both for and against notwithstanding, if the timely delivery of development is a priority then extension of permitted development rights and / or the removal of smaller and / or less contentious applications from the system is likely to have a positive result. The scale of permitted development suggested below is based upon the views of stakeholders gathered as part of the research and the study team.

Recommendation 7.2: Welsh Government to extend Permitted Development rights to cover more substantive or defined alterations or improvements to a single dwelling (i.e. extensions, conversions and so on), and to consider the proposed construction of a single dwelling (or equivalent scale development of other uses) in accordance with a current LDP.

The exact scale or extent of additional permitted householder development will require further investigation in terms of reviewing the average size and location of submitted schemes, but the intention is to allow extensions which already form the most common type of applications (i.e. householder extensions) and which are overwhelmingly approved. This commonly includes single- and double-storey side and rear extensions where sufficient overall land permits development including spacing and the location of roads, streets, access and so on – in accordance with national guidance. In the case of sensitive locations (such as National Parks or Areas of Outstanding Natural Beauty) this should operate through a ‘prior approval’ notification scheme which deemed permission follows

a short (4-week) notification period. In order to be meaningful, this needs to have the effect of removing a large number of applications from the system, freeing up resources to concentrate on more complex or demanding planning issues. Local authorities will still be able to adopt design codes and advice which householders will be required to adhere to.

Land readjustment

Promoting development through land readjustment

Land readjustment is currently used in various forms in Germany to develop land on the boundary between urban and rural areas; to regenerate former industrial areas in Emilia Romagna (Italy); to develop Central Business Districts in the USA and Hong Kong and to foster inner city development and densification in a number of Italian regions.

This device enables a local authority to define an area in need of (re)development and to gently push landowners to develop it, without the restrictions related to plot sizes, ownership or fragmentation, and within a very strict timeline at a much lower cost than compulsory purchase. The designation is initiated by the LPA and landowners or the LPA alone and is undertaken publicly including representations.

Once an area is defined the LPA, in discussion with landowners, combines all building rights into a single pot. It then removes the proportion of the area it believes is required for infrastructure and services, and then reallocates the building rights in the pot to the remaining area. These are then reallocated to landowners in proportion to the amount of land they own, with each landowner getting more building rights than previously owned.

Up to this stage no planning tool is used and the added value comes from harnessing value from the legal / administrative approach taken. Generally a redesign of the area needs to happen at this stage, and the cadastre lines / plots delimitations change accordingly. According to land value and development / density needs of the area, the LPA could also change the land use plan. At this point, landowners must act swiftly. If they can supply investment in the joint development of the whole area they do so. If they cannot they should sell to other landowners, the LPA or – most likely in big developments - a developer. Most countries exempt sale related to land readjustment from land purchase taxes. If they fail to develop or sell, a compulsory purchase order (CPO) (for the value of the land before the land readjustment started) will be issued.

Planners involved in this type of development should be knowledgeable of the land market in the region, financial and planning legislation and the working of the cadastre. Landowners are made to move ‘gently’ as the LPA does provide a reward for those who comply with the requirements both in form of finance and tax exemption.

This is a device which has typically found its way into planning through the ‘back door’. In Germany, for example, it was introduced in order to reorder the cadastre on the fringes between urban and rural development. There it has however managed to avoid sprawl and linear developments along main roads and achieve better form and coherence for new developments. It is a rather clever tool, able to capture (economic) value from legal and technical manoeuvres, and – despite an

element of compulsion - to achieve effective collaboration between landowners and local planning authorities, without the costs and disputes traditionally associated with CPOs. It constitutes an interesting tool to facilitate development of sites in an integrated form.

This approach is likely to become increasingly appealing in situations where land becomes more and more fragmented. For example, the Scottish Government is about to undertake a review of its Community Right to Buy in smaller communities and in England, DCLG intends to introduce a similar Community Right to Buy for local building deemed to be ‘community assets’. DCLG previously considered an alternative approach to capture land uplift and to provide infrastructure through Strategic Land & Infrastructure Contracts (SLICs), but this did not address land banking issues and referred back to CPO powers.

For Wales, the land readjustment approach offers a mechanism for satisfying development needs consensually and fairly (in contrast to protracted and lengthy CPO processes), whilst overcoming land banking challenges and whilst maintaining sustainable and cohesive settlement structures and boundaries. In implementation, it is likely that land readjustment would be an ‘upstream’ alternative to a CPO, which would be retained for more site specific or smaller scale purposes. It would begin a more consensual and shared dialogue over the ownership and use of land, but in a way that has ‘teeth’ and can directly facilitate implementation of the LDP. Introduction of this approach would also require detailed training and publication of processes.

Recommendation 7.3: Welsh Government to include land readjustment processes as an alternative to Compulsory Purchase Orders.

Floating development / allocations

Chapter 5 of this report has already considered the applicability of ‘zoning’ approaches and area- and use-based tools such as Local Development Orders as a means to better link the development plan and development management decisions, to increase certainty and to reduce delay. In addition to this, one important derivative that can affect the delivery of development, and also introduce an element of competition to encourage swift delivery, is the ability to make ‘area specific’ allocations which are not ‘site specific’. This is the principle of what is commonly referred to as floating development or floating allocations.

Floating development would still involve a traditional LDP allocation process, but rather than allocating development to a specific site, the LDP would allocate the ‘level’ of development over a broader area. For example, a settlement might identify a need for and thus allocate an additional number of residential units within the defined (or planned future) boundary of that settlement. The allocation would be specific to that settlement and the ‘quota’ would be delivered by the first available site(s) that can demonstrate compliance with the criteria set by the LPA (e.g. number of dwellings, proportion of affordable housing, possibly also specifying the mix, size and / or tenure of units).

The aims of this approach are to reduce the ‘pressure’ to get a specific site allocated within a development plan (leading to numerous representations and protracted opposition to approval of an otherwise acceptable plan by competing developers) and to also introduce competition to plan allocations to encourage

developments to come forward as soon as they are practicable and viable, and also to enhance the flexibility so that as the LDP evidence base evolves or is updated, so too can the floating allocation without having to undertake more detailed site work. The timing of allocations can also potentially be planned to stagger or phase development in appropriate scenarios.

A fortunate side effect of this approach is that a continual development pipeline is established. For example, to provide the choice and competition elements, the above housing example would require the settlement boundary of the floating allocation to be able to accommodate more than the number of units suggested. A floating allocation would not negate national or local policy around issues such as (but not limited to) EIA, conservation, flood risk, housing needs and so on.

For example, a settlement could be allocated for ‘up to 50 units’ of residential growth. The settlement boundary could be drawn with an additional capacity for up to 70 units, with the proviso that the settlement should remain a continuous built area and so should not ‘leap frog’ any empty plots and / or should prioritise infill sites over edge of settlement sites. The remaining 20 ‘spaces’ could (if part of the longer terms vision for growth) form part of the longer term housing trajectory for the area.

This approach might not always lend itself to every type of allocation or every location. It could also be implemented in a way which incorporates site specific allocations, but retains a floating quota over take-up. In the above example, a LDP might include site-specific allocations for 70 residential units within a settlement, but only allow 50 to come forward within the life of the plan. It is therefore better implemented as a tool available to local planning authorities for use where appropriate. This approach is compatible with a binding local plan concept so long as the floating allocation is explicit.

Authorities should be offered support in its implementation and the Welsh Government should consider some pilot schemes to establish practice and showcase the potential of floating allocations.

Recommendation 7.4: Welsh Government to enable local planning authorities to make floating allocations within local development plans.

7.4 Conclusions

This section has considered a range of ways in which both development management decisions and development can be expedited.

Recommended current tools available, or those based on current processes, involve either the better implementation of development management principles (pre-application discussions, schemes of delegation and delegation of decisions for development proposals in conformity with the development plan) or the promotion of special delivery bodies and funds (promoting financial tools and funds and national regeneration powers).

Recommended new approaches involve unblocking either the development management system (approaches to the delivery of major development, permitted development rights and permitting or removal of applications) or the supply of

sites and competition to facilitate development (land readjustment and floating allocations).

The overall implication of the study and the actions it has explored are that, in keeping with the themes of other sections of this report, there is an important link between: (a) the development plan and the identification and allocation of sites, (b) the development management process for certain decisions and (c) the ability to deliver timely development.

8 Conclusions: a reformed approach to managing development

8.1 Introduction

The aim of this study was to consider radical and innovative approaches to managing development. The focus has therefore been on decision-making and development management. However, in imagining alternative ways of managing development it has also required a more fundamental consideration of the relationship between the development plan and the decisions it informs.

The study team have conducted interviews with a wide range and number of stakeholders from Wales, the rest of the United Kingdom and from mainland Europe and beyond to draw in and reflect upon international practice and in particular to assess the suitability of that practice to the Welsh context. These views have driven the generation of issues, challenges and ideas or tools to improve the management of development in the Welsh context.

Each chapter of this report has considered a facet or element of development management and decision making. The wide range of issues addressed in the report provides many ideas for promoting a development management approach in Wales. Some of these ideas are presented as a range options for different approaches to development management, and other ideas will need further development as part of the process of working towards a Planning Bill.

8.2 Overarching themes

These themes summarise the main issues that have arisen during the study. They were stimulated by the interviews, international practice examples and discussion seminar and were used to define the report structure and its more general conclusions. These themes are the precursor to setting out the recommended reformed system which is set out more factually in Section 8.3 below.

Multi-level governance: There is a strong overarching need to reflect upon, embrace and engage with the strategic EU and UK contexts. Wales operates within a system of multi-level governance. It is bound by UK laws and EU Directives, and underneath the Welsh Government are local authorities, community councils and businesses, and finally individual citizens. The opportunity to create planning legislation offers considerable autonomy but this should be exercised mindful of and engaged with these other levels.

Implementation challenges: The Welsh Planning System is strong in design and compares favourably to its neighbours. It is fair to say that a number of development delivery issues are not driven solely by the design of the system but also or rather by its implementation. As identified by other Welsh Government research, there is significant scope to improve the implementation of the current planning system.

Nationally strong approach: Within the recommended hierarchy of actors, the Welsh Government needs to set and lead the vision for development. This includes strong leadership and enforcement of development management principles and a national steer, via a hierarchy of plans including a national spatial

position on levels and patterns of growth. This must also put PPW in context as the fall-back position for areas without a current and up to date LDP.

Intermediate tier: Whether through collaborative multi-authority working or nationally determined allocations, plan production and decision consistency would be greatly expedited by an intermediate tier of policy making. This could make strategic and difficult decisions as well as achieve critical mass for a shared and functional evidence base. The aim is to devise an agreed area wide development scenario that can then simplify, expedite and underpin LDP production.

Plans giving greater certainty: There is a need to achieve plan coverage, to install the framework of the plan with regard to decision-making. A current plan needs to also convey greater certainty and could either adopt a new approach such as zoning or could use existing mechanisms such as LDOs and design codes to deliver that certainty. The plan is the starting point for the enhanced status of applications for development proposals that accord with plan. Certainty and flexibility need to be considered together. Plans do not need to achieve complete local coverage if national policies can be relied on. Plan coverage can focus on areas of change (not just areas of growth), which might include:

- Central Business Districts or town centres;
- inner city areas or regeneration zones;
- brownfield sites or former industrial areas;
- areas of plan-led growth or change;
- environmentally sensitive areas;
- Conservation Areas; and / or
- areas covered by masterplans or similar showing a complex mix of uses.

Embed development management: A development management approach is not currently in full operation across Wales. This needs to be changed through both culture and process shifts. This needs a strong message on the need to be proactive and to support and nurture development and planned change.

Defined roles for the various actors: Development management relies on collaborative approaches. This includes various actors particularly planning officers, members, statutory and non-statutory consultees and community organisations and representatives.

Scope for simplification: With a plan that gives greater certainty, there is scope for reduced information requirements for applications for development in conformity with it. This includes the intermediate step of outline consent and the use of SPG or design codes to provide increasing (sequential) certainty.

A leaner fast-track system: There are a number of planning applications that do not need to be considered in full detail. A parallel fast-track system should exist for applications which are in conformity with an up to date development plan. Similarly, planning decisions that do not need to be made (as minor issues or things that can be more objectively regulated or codified) should be removed from the system, primarily through permitted development rights.

Incentivise, enable and monitor performance: The system should encourage its own efficient operation and penalise instances of poor decision-making in terms of quality, effectiveness and development outcomes. This requires an approach to capacity, training and support from a planning-focused central body. A clear system of performance requirements should be set out and monitored, and backed up with incentives, rewards and corrective action as required.

8.3 The recommended reformed system

The recommended reformed system is based on a first principles approach to understanding the requirements of the planning system and the way in which the current system operates. The overarching themes set out in the preceding section are developed here into a factual list of the component features of the recommended reformed system which incorporates the conclusions and recommendations from this research. At the end of this section, there is a ‘worked example’ of how development proposals that are in compliance with an adopted and up to date LDP might be fast-tracked through this reformed system.

System feature	Description	Recommendation(s)
National plan	Wales-level spatial strategy setting out agreed vision for Wales including key growth areas and amounts. Linked to provision of strategic infrastructure.	4.1, 5.4
National planning policy	PPW and TANs. Includes definition and implementation of development management principles. Focus wherever practicable on the location of change or growth. National policy to take precedence in the absence of an up to date LDP, or in the absence of a site being covered by a plan allocation. Includes national scheme of delegation.	3.1, 7.1
Planning-focused support	Centrally-supported and planning-specific support body. Provision of support, capacity building and training. Additional resources or expertise to help in complex cases or to smooth workflow. Helps not only local authorities but also consultees, applicants and communities.	6.2
National performance framework	System for recording, analysing and publishing performance across the planning system relating to the quality of plan-making, decision-making and implementation, covering the Welsh Government, local authorities (officers and members), applicants / agents and statutory consultees. Linked to a national system of incentives, penalties and potential interventions.	4.4, 5.1, 5.2, 6.3

System feature	Description	Recommendation(s)
Sub-national co-operation	Local authorities coming together to create a shared planning policy evidence base and to translate the national plan into authority-level allocations to be taken forward in LDPs. Mediated by the Welsh Government if consensus cannot be achieved.	3.2, 4.2, 5.1
Local Development Plan	Spatial strategy prepared by the LPA. May or may not have complete geographic coverage. Focus on areas of change. Creates a set of binding allocations to illustrate what uses will be acceptable where and at what intensity of use as site-specific or floating allocations (area-specific allocations which are not necessarily site-specific). Driven by political and community engagement and is the main vehicle for establishing the principle of acceptable uses. Plan has a fixed expiry period and must be regularly reviewed. Welsh Government able to initiate or prepare a plan.	4.2, 4.3, 5.1, 5.2, 5.4, 5.5, 7.4
Plan Implementation	Local planning authorities required to proactively implement LDPs, using both their statutory duties and a power of general competence. Options and powers include Local Development Orders, land readjustment, CPOs and acquiring and developing sites directly. Knowledge and awareness of funding and delivery mechanisms and brokering / partnership / URC-type approaches with the private sector and service providers.	3.2, 4.4, 7.3
Permitted development	Extension of current rights to cover most householder development and construction of a single dwelling where in accordance with the LDP. Complemented by a design code where required to guide appearance. Welsh Government able to revise periodically, e.g. microgeneration. Prior approval process for sensitive locations.	7.2

System feature	Description		Recommendation(s)
Pre-application discussions and consultation	Good practice incentivisation of pre-application discussions including payment of a fee which can subsequently be offset by a reduced fee from a submitted planning application fee.		3.1, 3.2, 4.3
Fast-track process	Priority for delivery of major development through defined target performance timescales. Nationally Strategic Infrastructure Project (NSIP) process remains.		5.3, 6.1
	Application for development in accordance with the plan	Application for development departing from the plan	
Registration and validation	Check for conformity with plan, design code etc.	As per current system.	
Information requirements	Reduced requirements, based on plans and design and not principle of use of supporting statements.	As per current system, but need to explicitly demonstrate the acceptability of the site for intended use.	6.1
Consultation	Statutory consultees and neighbour notification. Does not consider the acceptability of the use, focused only on issues of siting, layout, design, impact, mitigation and anything else relevant to operation.	As per current system, involving members and communities.	3.1, 6.1

System feature	Description		Recommendation(s)
Determination	Delegated decision.	Committee decision. If minded to approve, notified to the Welsh Government. If no further action is taken, the LDP is updated to take account of decision.	3.1, 6.1, 7.1
Monitoring compliance	Proactive monitoring of sites to completion in addition to responses to complaints and reported breaches. Feedback into plan preparation and revision.		3.1, 4.4
Local performance framework	Annual reporting on the quality of the planning service at a local level. Covers plan-making, plan implementation and decision-making as and end-to-end process. Linked to ongoing review of LDPs.		4.4, 5.5, 6.3

Example: A small housing scheme in accordance with an up to date LDP

A local authority takes account of the national plan and the sub-national allocation of housing numbers in producing their LDP. The LDP includes a floating allocation for 100 homes within and around an existing settlement, defined to have a capacity for around 125 units. The local Community Council helped to determine which sites were allocated, and agreed that any timing or phasing of the delivery was not required.

As part of the plan-making process the local authority has established who the land owners are and is aware of those developers that have interests or options on the sites covered by the floating allocation. The authority has reached out to these developers and land owners to encourage them to come forward with schemes and has set out, both through the plan and pre-application discussions, what the mix of houses is likely to be. There have been negotiations on affordable housing provision, infrastructure requirements and developer contributions. There has been agreement that EIA would not be required as the site area is under the 0.5ha threshold.

A developer submits an application for 20 units which is in accordance with the LDP in terms of the number of units provided on that particular site. As part of the application there are detailed plans showing the site layout and design of each unit. The applicant has also submitted draft heads of terms for a Section 106 agreement. The fee paid is reduced by the amount that the applicant paid for pre-application discussions.

The authority validates the application, happy that it conforms with the LDP

allocation and that there is sufficient information to make a timely decision. It issues consultation letters to neighbouring properties, the relevant sections of the council, and relevant statutory consultees. All consultees are given a deadline to respond by and are reminded to comment on valid planning issues – i.e. that the principle and intensity of use have already been established by the LDP and that comments should focus on siting, layout, design and any impacts or mitigation requirements.

The officer produced their recommendation report based on the responses received before the cut-off deadline and using only those comments based on valid planning issues. There are no considerations to prevent granting of planning permission, although some issues around construction are raised by local residents. This, along with the need for subsequent approval of the landscaping detail, are handled by planning condition. Planning approval is granted through delegated decision and the timescale for the decision is automatically included within the authority's performance monitoring framework statistics.

The developer discharges all pre-commencement conditions through a single submission. These are approved by the authority. It then, notifies the local authority when work begins on site. As part of ongoing monitoring, a local authority officer visits the site to check that the development accords with the approved plans. Upon completion, the housing numbers are used to inform the AMR which comments on plan delivery and the status of each floating allocation, and which will also be used to inform future housing market studies in the next sub-national evidence base and LDP revision exercises.

8.4 Delivery

A key issue for the report is to set out what recommendations can be achieved within the current framework, and what would require new legislation or more fundamental alterations to the mechanics of the planning system. Thus, the recommendations are focused on either:

- 'system' recommendations that help set the requirements for a new Planning Act, i.e. reforms which require legislation; and
- 'process' recommendations which do not require legislation, i.e. reforms which reflect a need for capacity building and / or culture change.

The next two sections take each set of recommendations and summarise the suggested route to implementation. It should be noted that this report has also commented on (but not made recommendations about) what can be achieved within the current system i.e. through the use of Local Development Orders or incentivising pre-application discussions. These are included together within the recommended reformed system set out above.

8.4.1 Reforms requiring legislation

These are the recommendations which, although some have a range of delivery options which might not absolutely necessitate new legislation, it is recommended that they be handled together and collectively introduced through a new Planning Act. Each recommendation is assessed in turn below:

Recommendation	Route to implementation
Recommendation 3.2: The Welsh Government should enact powers of general competence for local authorities and promote their use.	The Localism Act does not provide powers of General Competence to local authorities in Wales. However, the Welsh Government does have power to legislate directly in this area.
Recommendation 4.1: Welsh Government to produce a national spatial framework setting out expected areas of change and ranges of development need across strategic areas.	The Wales Spatial Plan already exists and so existing provision is in place for such a concept. However, the opportunity for a new Planning Act should be taken to consolidate the system in one place, and in particular to reinforce the hierarchical nature of the Plan as having precedence over those plans beneath it.
Recommendation 4.2: Welsh Government to require local authorities to co-operate to produce integrated plans that include a shared evidence-base and agreed development needs.	Local authorities are already able to co-operate and produce shared LDPs. This recommendation does not require a shared LDP (or a sub-national plan) but rather informal co-operation to produce a shared evidence base.
Recommendation 4.4: The Welsh Government to place a statutory duty on local planning authorities to implement their local development plans, once adopted, and to report annually on progress in a way that reflects development management principles.	This will require explicit enactment within the Planning Act to convey a duty to implement their LDP. Local authorities are already required to report annually on their plan (through the AMR). Authorities currently provide statistics through the range of Government returns such as the Quarterly Development Control Return. Revisions to this return are expected to be sufficient.
Recommendation 5.2: The Welsh Government should provide itself with general as well as default powers as a plan-making body.	This will require specific enactment within the Planning Act to convey a general plan-making power.

Recommendation	Route to implementation
<p>Recommendation 5.3: Welsh Government to make local development plan allocations binding.</p>	<p>All plan allocations could be made binding through the updating of Section 38(6) of the Planning and Compulsory Purchase Act to remove the underlined part of the phrase ‘if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan <u>unless material considerations indicate otherwise</u>’.</p> <p>However this would not enable the twin-tracking recommended by this report. Thus, there will need to be specific enactment of determination for an application for development in accordance with the plan <i>allocation</i> resulting in one process, and another (similar to the current process) for applications for development not in accordance with the plan.</p>
<p>Recommendation 5.4: Welsh Government to remove the requirement for complete plan coverage, in favour of planning for areas of change.</p>	<p>This would require updating of Section 62 of the Planning and Compulsory Purchase Act 2004, which requires each authority in Wales to prepare a LDP “for its area” to enable it to plan for ‘part of its area’ and revert to national policy elsewhere.</p>
<p>Recommendation 5.5: The Welsh Government to define the lifespan of a local development plan.</p>	<p>This would require updating of Section 62 of the Planning and Compulsory Purchase Act 2004 to revoke the current status of ‘in place’ plans which are not current LDPs. Currently development plans in Wales remain in place until superseded.</p>
<p>Recommendation 6.1: Welsh Government to introduce a parallel fast-track development management process for planning applications relating to development in accordance with an adopted up to date development plan.</p>	<p>See recommendation 5.3 (above).</p>

Recommendation	Route to implementation
<p>Recommendation 7.1: Welsh Government to implement a national scheme of delegation, which should require that applications in conformity with an adopted and current LDP be determined by delegated decision.</p>	<p>Local authorities are required to determine planning applications under the Town and Country Planning Act 1990. However, the establishment of delegated decision-making is undertaken within the constitution of each individual local authority.</p> <p>A new Planning Act would thus need to define a ‘committee’ and ‘delegated’ decision and legislate nationally to prescribe which applications should be determined in which way. This would then be set (and could be reviewed or updated) through secondary legislation.</p>
<p>Recommendation 7.2: Welsh Government to extend Permitted Development rights to cover more substantive or defined alterations or improvements to a single dwelling (i.e. extensions, conversions and so on), and to consider the proposed construction of a single dwelling (or equivalent scale development of other uses) in accordance with a current LDP.</p>	<p>Current legislation enables Welsh Government to prescribe that some developments enjoy permitted development rights, under the Town and Country Planning (General Permitted Development) Order 1995 (GPDO), as amended for Wales.</p> <p>This would build upon the 2010 “Proposed Changes to Householder Permitted Development Rights” Consultation which has not yet been enacted – hence the need for legal reform.</p>
<p>Recommendation 7.3: Welsh Government to include land readjustment processes as an alternative to Compulsory Purchase Orders.</p>	<p>The powers of compulsory purchase arise through a range of legislation including a CPO, based on a specific Act of Parliament or an Order under the Transport and Works Act 1992. These are based on the purchase of land and will remain unchanged.</p> <p>The aim of readjustment is to reallocate land to enable and encourage development and not to transfer land to the local authority or other public body.</p> <p>Examples of this legislation exist where this is practiced elsewhere and the powers should be brought in to a new Planning Act, and the process subsequently defined through secondary legislation.</p>

Recommendation	Route to implementation
<p>Recommendation 7.4: Welsh Government to enable local planning authorities to make floating allocations within local development plans.</p>	<p>The ability to make a floating allocation is believed to already be in accordance with existing protocols. An authority can already allocate alternative sites for a given use based on an assumed quantum of development.</p> <p>However this is not tied or binding in the way in which a floating allocation is intended (either across a group of sites or across a settlement). At the same time as removing the requirement for a plan to have complete spatial coverage (See Recommendation 5.4) the power to make an ‘allocation’ will need to be widened to also enable floating allocations.</p>

8.4.2 Capacity Building and Culture Change

These are the ‘softer’ recommendations which are designed to underpin the efficient and effective operation of the development management process. Each is assessed in turn below and given a recommend route to implementation:

Recommendation	Route to implementation
<p>Recommendation 3.1: Welsh Government to issue a clear statement defining ‘development management’ and outlining the various tools that are available to local planning authorities to facilitate the management of development.</p>	<p>Chapter 3 of PPW deals with ‘making and enforcing planning decisions’ and development management is only explicitly referenced as part of enforcement. It should be updated to define and set out the development management approach in Wales.</p> <p>This can draw upon the consultation draft TAN17 and the principles set out in this research and the other references made within it.</p>
<p>Recommendation 4.3: Welsh Government to review and define the role of member involvement in planning and, in particular, development management. To cover national, local authority and community levels.</p>	<p>This could be addressed through both the national scheme of delegation (Recommendation 7.1) and a clear definition within PPW on the operation of decision-making as part of a wider definition of development management (Recommendation 3.1).</p> <p>This should be supported by softer measures around training and support offered by the planning-specific support body.</p>

Recommendation	Route to implementation
<p>Recommendation 5.1: The Welsh Government should implement a system of incentives and penalties to facilitate timely plan preparation</p>	<p>This will largely be guided by the availability of additional resources. It is important to make the case that development management is a more resource intensive process than development control. Further, the current level of resources have led to the current level of plan creation, decision-making etc. If incentives are to be ‘real’ (as opposed to top-sliced money given back if performance in met) then additional monies are required.</p> <p>Similarly, penalties need to be implemented and adhered to in order to ‘bite’ and have the desired effect. For example, the Welsh Government may have to step in and take over plan preparation for an authority that is failing in order to demonstrate that the system is real (Recommendation 5.2).</p> <p>There are no additional legal requirements associated with this recommendation, but fiscal measures will require budgetary approval.</p>
<p>Recommendation 6.2: Welsh Government to establish a centrally-supported and planning-specific support body.</p>	<p>This should be jointly established and funded by the Welsh Government and the Welsh Local Government Association.</p> <p>There should be a planning-specific remit and should balance direct support (plan-making or application resource or expertise) with capacity building (training and sharing best practice).</p> <p>There is considerable scope for alliance or service-level agreements with other organisation where appropriate, e.g. the Design Commission for Wales who could provide specialist design advice.</p>

Recommendation	Route to implementation
<p>Recommendation 6.3: Welsh Government to establish a framework of enforceable targets for key actors in the planning system.</p>	<p>The Welsh Government already sets some targets within its policy, such as those in PPW that relate to the timeliness of decision-making. Further, local authorities and statutory consultees already report on a range of performance measures.</p> <p>As per Recommendation 4.4, the AMR and Quarterly Development Control Returns provide the mechanism to collect most of this data.</p>

Appendix A– Study Recommendations

Chapter 3: Development management: current and reformed approaches

Recommendation 3.1: Welsh Government to issue a clear statement defining ‘development management’ and outlining the various tools that are available to local planning authorities to facilitate the management of development.

Recommendation 3.2: The Welsh Government should enact powers of general competence for local authorities and promote their use.

Chapter 4: Planning: who does what

Recommendation 4.1: Welsh Government to produce a national spatial framework setting out expected areas of change and ranges of development need across strategic areas.

Recommendation 4.2: Welsh Government to require local authorities to co-operate to produce integrated plans that include a shared evidence-base and agreed development needs.

Recommendation 4.3: Welsh Government to review and define the role of member involvement in planning and, in particular, development management. To cover national, local authority and community levels.

Recommendation 4.4: The Welsh Government to place a statutory duty on local planning authorities to implement their local development plans, once adopted, and to report annually on progress in a way that reflects development management principles.

Chapter 5: Strengthening the development plan

Recommendation 5.1: The Welsh Government should implement a system of incentives and penalties to facilitate timely plan preparation.

Recommendation 5.2: The Welsh Government should provide itself with general as well as default powers as a plan-making body.

Recommendation 5.3: Welsh Government to make local development plan allocations binding.

Recommendation 5.4: Welsh Government to remove the requirement for complete plan coverage, in favour of planning for areas of change.

Recommendation 5.5: The Welsh Government to define the lifespan of a local development plan.

Chapter 6: Decision making and culture change

Recommendation 6.1: Welsh Government to introduce a parallel fast-track development management process for planning applications relating to development in accordance with an adopted up to date development plan.

Recommendation 6.2: Welsh Government to establish a centrally-supported and planning-specific support body.

Recommendation 6.3: Welsh Government to establish a framework of enforceable targets for key actors in the planning system.

Chapter 7: Facilitating implementation

Recommendation 7.1: Welsh Government to implement a national scheme of delegation, which should require that applications in conformity with an adopted and current LDP be determined by delegated decision.

Recommendation 7.2: Welsh Government to extend Permitted Development rights to cover more substantive or defined alterations or improvements to a single dwelling (i.e. extensions, conversions and so on), and to consider the proposed construction of a single dwelling (or equivalent scale development of other uses) in accordance with a current LDP.

Recommendation 7.3: Welsh Government to include land readjustment processes as an alternative to Compulsory Purchase Orders.

Recommendation 7.4: Welsh Government to enable local planning authorities to make floating allocations within local development plans.

Appendix B – Acknowledgements

Arup, the Cardiff School of City and Regional Planning and Liz Mills Associates are grateful to the guidance, expertise and feedback offered by those people who offered time and support to inform this study.

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