

Environment, Planning and Countryside Committee

EPC(2) 14-06 (p5) Regulatory Appraisal

Town And Country Planning Wales

The Planning (Listed Buildings And Conservation Areas) (Amendment) (Wales) Regulations 2006

(Access Statements – applications for listed buildings consent)

Background

1. The Assembly Government is committed to the Disability Discrimination Act 2005 and its requirements. The Disability and Equality Duty to be placed on public authorities from December 2006 under the Disability Discrimination Act 2005 is a key driver to the proposed introduction of the requirement for access statements to accompany certain outline and full planning applications and applications for listed buildings consent.

2. The requirement for access statements is also driven by the principles underlying the new planning system under the Planning and Compulsory Purchase Act 2004, namely:

- Greater certainty: for developers, local planning authorities (LPAs) and communities about the planning system and the nature of development.
- Upfront information: Improving the efficiency of the planning system is a key objective for the 2004 Act and greater activity upstream in the decision making process is a key means of achieving this.
- Community involvement: the requirement for statements to explain how access issues have been thought through support the principle of better community engagement.

3. The Assembly Government is also committed to improving the quality of development. Any changes would aim to better embed considerations of access into the development process.

4. In England, secondary legislation came into force in August 2006 in relation to combined design and access statements (SIs 2006/1062 and 2006/1063)

Purpose and intended effect of the measure

5. The measure would amend the Planning (Listed Buildings And Conservation Areas) Regulations 1990 [S.I.1990/419] in terms of access statements accompanying applications for listed buildings consent.

6. There is a separate regulatory appraisal for the proposed statutory instrument amending Town and Country Planning (General Development Procedure) Order 1995, in terms of access statements accompanying certain planning applications.

7. The purpose of the access statement would be to explain and justify the access principles and concepts on which a development proposal is based, and how these will be reflected in individual aspects of the scheme. It should be proportionate to the development proposed and would support other more detailed material submitted as part of certain applications for planning permission or listed building consent. It would ensure that LPAs have sufficient information to properly consider access issues against relevant policies in their development plans.

8. Places with good access for the disabled also provide better access to others with mobility problems and parents with young children. Promotion of access statements through this amendment is a critical planning tool in the delivery of the Assembly Government policy on quality design and social inclusion across the country. The inclusiveness of design can make a difference in creating places that will stand the test of time, and be valued by their community. Well designed, inclusive and accessible places last longer and are easier to maintain, so the costs of good design is an investment repaid over time.

9. There are often specific issues regarding listed buildings and access. Access statements for listed buildings consent applications and certain planning applications will also ensure consistency across the development control system.

10. Section 10 of the Planning (Listed Buildings and Conservation Areas) Act 1990 gives the National Assembly for Wales power to make provision for the way in which applications for listed building consent are to be made. Section 10(4) the Planning and Compulsory Purchase Act 2004 provides that the Regulations must require that an application for listed building consent of such description, as is specified, must be accompanied by a statement about how issues relating to access to the buildings have been dealt with. These Regulations allow for these requirements by inserting a new regulation 3B into the Planning (Listed Buildings and Conservation Areas) Regulations 1990 setting out the type of application to which the requirement for an access statement applies (i.e. applications for listed buildings consent except in relation to works affecting only the interior of a building) and setting out the form and content of that statement.

Risk Assessment

11. Without this legislation being made there are risks that:

- Proposals lack full information about accessibility, relying on the policy put in place in a particular area rather than a mandatory nation-wide requirement which would provide clarity for everyone and a level playing field for developers.
- Continued potential for costly solutions being required later in the planning and development process where they had not been considered at the earliest application stages.
- Social exclusion in the built environment would continue to be inadequately addressed.
- Failure by the Assembly Government to implement legislation which is supportive of the

Disability and Equality Duty to be placed on public authorities from December 2006, under the Disability Discrimination Act 2005.

Options

Option 1 – Do Nothing

12. There is already strong and robust planning policy and advice in Planning Policy Wales (2002) and TAN12: Design (2002) on design, including in relation to inclusive design. TAN12 already advises, at paragraph 4.8ff, that certain planning applications should be accompanied by design statements, and accessibility is one aspect of good design.

13. This option would leave it to a policy decision by LPAs as to when and under what circumstances an access statement might be appropriate and to incorporate this requirement into development plan policy and/or supplementary planning guidance. Development plans would provide some certainty for the private sector and communities about what will be required in the area. The Assembly Government would continue to encourage policy in plans covering design statements (addressing accessibility issues) and would explicitly encourage them.

Option 2 – Make the Legislation

14. Option 2 would introduce a statutory requirement to ensure that certain applications for listed buildings consent (and for planning permission) are accompanied by access statements. This would secure submission of information on access for consideration in determining all applications for listed building consent where it is known that access is, or is likely to be, a key issue relating to that application. This requirement would contribute to enabling LPAs to better meet the Disability and Equality Duty imposed from December 2006 under the Disability Discrimination Act 2005, and ensure that there is a clear and immediate mandatory focus on accessibility matters.

15. Section 42 of the 2004 Act (upon commencement for Wales – target December 2006) would make it clear that LPAs cannot accept an application without an access statement, where one is required. A poor access statement may be dealt with through attaching conditions to the granting of listed buildings consent applications.

Option 3 – Make Different Legislation

16. Option 3 would introduce a statutory requirement to ensure that certain applications for listed buildings consent (and for planning permission) are accompanied by separate or combined design and access statements. This would secure submission of information on design and access for consideration in determining all planning applications where it is known that design or access are, or are likely to be, key issues relating to that application.

17. Equity and fairness: Option 2 appears to be fairest on all parties for the following reasons:

- it levels the playing field for developers (they should expect the same requirements

everywhere)

- it provides a clear focus on accessibility and contributes to social inclusion and independent living by improving the built environment in terms of ‘accessibility for all’, (it does not prevent the introduction of a statutory requirement for design statements should the Assembly decide to do so at a later date, including guidance that would combine the two)
- the decision maker and the community can expect a minimum level of information about accessibility giving them a more informed basis on which to make decisions or to engage in consultation on proposed development.

Benefits

18. Introduction of this requirement would contribute to social inclusion and independent living (a priority of the Assembly’s Sustainable Development Scheme). A mandatory requirement for access statements will give all applicants the opportunity to explain how they considered the access aspects of the scheme. The requirement only applies to applications where access is likely to be a key issue, so this option would add value without creating undue burdens. The information provided should enable better decision-making.

19. In some cases such statements may also speed up the decision making process. More easily accessible information available earlier on in the process may allow decisions to be made more quickly.

20. Identifying specific accessibility issues early in the planning process should reduce the need for more expensive solutions later in the development process. A national requirement is likely to lead to less uncertainty as to what is required where. There may be benefits of commercial advantage to developer and user.

21. There will be resultant greater certainty for communities over the nature of development. As a result of more upfront thought about the accessibility of development these statements are also likely to improve the quality of the built environment. If access has not been considered properly, there may be an unnecessary restriction on those who can visit or access the building in question enforcing existing exclusion of aspects of the built environment.

Costs

22. It is anticipated that there will be no additional financial implications for the Assembly Government arising from implementing this Order.

23. There may be a small administrative cost to LPAs in checking for and putting statements on the public register, commenting on their appropriateness and monitoring their effectiveness. This may require a greater level of knowledge and training among staff in LPAs. There will entail some costs in terms of staff resources, but these would be the outcome of imposing requirements through the development plan anyway. LPAs should already be considering accessibility issues under the Disability and Equality Duty, so the training costs etc would be required anyway. These costs cannot be quantified but will be met from existing budgets.

24. Applicants will incur a cost in having to prepare a statement (where a statement is required) and may have to seek professional advice. However, even if the requirement was not made statutory, if applied through development plan policy, these costs would still need to be incurred. Most developers would already provide this information for public sector clients (under the Disability Discrimination Act 1995), and already need to provide information on internal accessibility issues as part of the requirements under Part M of the Building Regulations. This requirement would not entail significant extra detail or cost – the statements would make the requirement more transparent to the LPA and community. It is not possible to quantify the cost of preparing a statement, as its length and content would be proportionate to the type of development proposed; however, it is anticipated that it would not comprise a significant proportion of the cost of preparing documents required in relation to the application.

Competition Assessment

25. The competition filter test has been completed and it shows that there is unlikely to be any market competition impact from these Regulations. There is little risk of the Regulations having a negative impact on competition in the development market. Although developers may face slightly higher costs these will be equal across incumbents and new entrants. The Regulations should not act as a barrier to entry, nor lead to a greater concentration of market share. In fact, these requirements will level the playing field for developers – they can expect the same requirements from all LPAs whereas the practice varies between LPAs at present.

Consultation

i) With Stakeholders –

26. A consultation on ‘Changes to the Development Control System in Wales’ took place from 20 July to 28 September 2006 and contained the principles of access statements and the draft policy framework for the necessary Instruments, together with draft regulatory appraisals. These principles will be introduced in the Order and Regulations. That policy framework will be finalised to issue in 2007 to complement the Order and Regulations.

27. A list of consultees is at Annex A. The consultation was also placed on the Assembly web-site and a press notice was issued on 19 July (‘New Measures to Improve Access for Disabled People’).

28. 37 responses were received on the issue of access statements. 51% of these responses specified their support or favour of statutory access statements. 6% of respondents (i.e. two respondents) specified they did not want statutory access statements introduced (reasons given were that it would be a regulatory burden on developers, amenity groups and LPAs; that sufficient powers exist under the 1995 Order for LPAs to require a developer to supply reasonably necessary information; and that a statutory requirement would appear onerous and instead the requirement should be site specific and should be dealt with through the development plan and supplementary planning guidance). 43% of respondents just made comments, many of which apply to guidance rather than the statutory instruments. The summary report of the analysis of the consultation responses on access statements is

enclosed. The Order has not been redrafted as a result of consultation responses received.

iii) With Subject Committee –

29. These Amending Regulations were notified to the Environment, Planning and Countryside Committee, via the list of forthcoming legislation on 28 September 2006 (EPC(2)-12-06(p.3), Annex 2, item no.69). The Regulations were identified for detailed scrutiny and will be scrutinised on 26 October 2006.

Review

30. If access statements are introduced, as with all policies and measures, it will be subject to monitoring review as deemed appropriate and in discussion with key stakeholders. As with most development control processes, LPAs will be expected to monitor the effectiveness of access statements.

Summary

31. There may be increased financial cost in requiring preparation of access statements to accompany certain planning and/or listed buildings consent applications. However, as there will be greater certainty about access elements up front there is potential for cost savings downstream (in the later stages of development control) and the wider social benefit of delivering better accessibility to developments.

Annex A: List of Consultees (2006)

Assembly Members of National Assembly for Wales, Chief Executives of Local Planning Authorities, Chief Executives of National Park Authorities, Chief Planning Officers of Local Planning Authorities, Chief Planning Officers of National Park Authorities, Age Concern Cymru, All Wales Ethnic Minority Association (AWEMA), Association of Heads of Outdoor Education Centres, British Association of Leisure Parks, Piers and Attractions, British Holiday and Home Parks Association Ltd, British Waterways, Cadw, Campaign for Architecture & the Built Environment, Campaign for the Protection of Rural Wales, Camping & Caravaning Club, Caravan & Camping Forum for Wales, Caravan Club, Chartered Institute of Housing, Children's Commissioner for Wales, Commission for Racial Equality, Confederation of British Industry Wales, Country Land and Business Association, Council for National Parks, Countryside Council for Wales, Department for Communities & Local Government, Department of City & Regional Planning, Design Commission for Wales, Disability Wales, Disability Rights Commission, Environment Agency Wales, Farmers Union of Wales, Federation of Small Businesses, Forestry Commission Wales, Friends of the Earth (Cymru), Groundworks Wales, National Co-ordinator Funky Dragon, Home Builders Federation, Housing Associations in Wales, Law Society, National Farmers Union Cymru, National Playing Field Association, One Voice Wales, PEBA, Planning Aid Wales, Planning Inspectorate, Planning Officers' Society Wales, Play Wales, Rambler's Association Wales, Road Safety Manager Wales, Royal Institution of Chartered Surveyors in Wales, Royal Society for the Prevention of Accidents, Royal Society of Architects in Wales, Royal Town Planners' Institute Wales, Scottish Executive

Development Department, Shelter Cymru, Atkins, Arup, Baker Associates, Barton Wilmore Planning, Bowman Planton Associates, CB Hillier Parker, David Wilson Homes, Forward Planning, GVA Grimley, How Planning, Huw Griffiths Architects, Jones LanglaSalle, Jubb Consulting Engineers Ltd, Malcolm Judd & Partners, Nathaniel Lichfield, StrataMatrix & Citigate Public Affairs, The Planning Exchange, Town Planning Consultancy.