

TAN1 – Temporary Dis-application of Paragraph 6.2

Consultation Response

June 2018

Introduction

1. This note has been prepared by Turley in response to the current consultation relating to the temporary dis-application of Paragraph 6.2 of TAN1.
2. The proposal by Welsh Government must set in the context of:
 - a) the importance of delivering housing in Wales; and
 - b) how, in practice, this is achieved through the planning system.
3. Our response examines the relevant context in which the proposal is set. This highlights the disappointingly simple nature of the consultation document/questions and that they portray a fundamental misunderstanding of housing delivery in Wales. The note then responds to the two questions posed in the consultation document directly.

Context

Well-being of Future Generations (Wales) Act 2015 (WFGA)

4. The WFGA requires public bodies in Wales to think about the long-term impact of their decisions, to work better with people, communities and each other, and to prevent persistent problems such as poverty, health inequalities and climate change. Its aim is to make sure public bodies in Wales are working towards the same purpose: achieving all seven well-being goals, not just one or two.
5. The WFGA sets out five ways of working for public bodies to achieve the seven well-being goals:
 - Long-term – the importance of balancing short-term needs with the need to safeguard the ability to also meet long-term needs.
 - Integration – consider how the public body's well-being objectives may impact upon each of the well-being goals, on their objectives, or on the objectives of other public bodies.
 - Involvement – the importance of involving people with an interest in achieving the well-being goals, and ensuring that those people reflect the diversity of the area which the body serves.
 - Collaboration – acting in collaboration with any other person (or different parts of the body itself) that could help the body to meet its well-being objectives.
 - Prevention – how acting to prevent problems occurring or getting worse may help public bodies meeting their objectives.

6. Planning Policy Wales 9 (PPW9), and the emerging draft PPW10, entrench the five ways of working to achieve the seven well-being goals in planning policy.

The Importance of Housing Delivery

7. The National Housing Strategy (2010) established a series of actions to bring about investment in housing. The actions aimed to: meet people's need for a home; bring about positive economic impacts through jobs and training opportunities; improve people's health and well-being; and benefit the environment. Housing delivery tackles poverty and inequality, opening new opportunity for people.
8. The importance of housing delivery is consolidated in the second priority area in Welsh Government's National Strategy Prosperity for All (September 2017). The document places a good quality, affordable home as the bedrock of living well. Moreover, it notes that delivering housing that secures this opportunity brings a wide range of benefits to health, learning and prosperity.
9. On this basis, the delivery of a choice and quality of housing to meet identified need is inextricably linked to the collective ability of public bodies in Wales to work effectively in delivering the seven well-being goals of the WFGA.

The Role of the Planning System

10. PPW9 and the emerging PPW10 are clear that the role of the planning system is to manage development and use of land in the public interest, contributing to improving the economic, social, environmental and cultural well-being of Wales, as required by the WFGA. The planning system should reconcile the needs of development and conservation, securing economy, efficiency and amenity in the use of land, and protecting natural resources and the historic environment. A functional planning system is fundamental for sustainable development.
11. PPW requires the planning system to provide for an adequate and continuous supply of land, available and suitable for development to meet society's needs. A choice of high quality housing required to achieve cohesive communities is a key priority at the heart of delivering sustainable development. It requires local planning authorities to ensure, through their adopted local development plans, a five year supply of land for housing.

The Role of Paragraph 6.2 of TAN1 in a Plan-led System

12. Where there is no demonstrable five year housing land supply, Paragraph 6.2 of TAN1 provides the technical guidance on the application of the PPW policy framework. The 'considerable weight' given to the absence of a five year housing land supply is a long-established and legitimate mechanism, which supports the delivery of housing through sustainable development. Crucially, it is only applied when the local development plan is failing and is an important means of increasing housing land supply.
13. This 'considerable weight' is qualified by the need for any development proposal to otherwise comply with the development plan and national planning policies. The decision maker retains the ability to make a balanced judgement in the context of the requirement to deliver sustainable development. It does not place a presumption in favour of granting planning permission in any instance, nor does it promote unsustainable development.

14. In practice, an efficient planning system must be able to function when the development plan is either failing or absent. Not doing so would fundamentally undermine its purpose as established in PPW. It would remove the ability of the planning system to fulfil its role in guiding development to improve the economic, social, environmental and cultural well-being of Wales, as required by the WFGA.
15. Paragraph 6.2 of TAN1 is not a trump card to allow any development anywhere. This was recognised by the Cabinet Secretary for Environment and Rural Affairs in a letter dated 11 October 2017 (to David John Rowlands AM). The letter states that all *“applications should be determined in accordance with the relevant policies in the approved or adopted development plan for the area, including the principle of sustainable development”*. It continued by concluding that *“the lack of a five-year housing land supply may be one of the considerations in determining a planning application, however applications which do not meet the relevant policy requirements may be refused by the Authority”*.
16. On this basis, the subject paragraph is a legitimate mechanism that enables the efficient function of the planning system when the housing policies of the development plan are either failing or absent. It is an appropriate check point with a specific purpose in an efficient plan led system. The mechanism ensures balanced decision making to deliver housing when appropriate, and is essential to the ability of the planning system to deliver the outcomes of the WFGA.

Speculative Applications

17. Speculative application(s) is not defined anywhere in the consultation document. It does, however, imply a negative connotation. It suggests an application unsubstantiated by rigorous technical evidence, thrown together and incapable of delivering the social, economic and environmental benefits to local communities and future generations. Using it to describe any application submitted on the basis of the absence of a demonstrable five year housing land supply is inaccurate.
18. The term illustrates a misunderstanding of the function of a plan led system and its ability to deliver housing when development plans are absent or failing. That is, the applications are very carefully considered, evidenced and aim to deliver a level of housing to address unmet demand identified in the development plan. Typically, they involve significant consultation with officers at local planning authorities, stakeholders and members of the public. They are submitted on the basis of a legitimate and specific element of the planning system in Wales and are vital in the delivery of new housing when the development plan is either failing or absent.
19. The Longitudinal Viability Study of the Planning Process published by Welsh Government in 2017 identified problems with local development plan strategies that are not robust. This is further evidenced by the contradiction between good plan coverage in Wales and absence of a five year housing land supply in much of the country. In this context, the so called ‘speculative’ applications have contributed significantly, and positively, to the delivery of housing and the resulting social, economic and environmental benefits required to realise the WFGA. Their role and that of the mechanism (Paragraph 6.2) in the planning system which guides them in the delivery of sustainable communities cannot be underestimated.

Question 1

Do you agree with the proposed temporary dis-application of paragraph 6.2 of TAN 1 to remove the reference to attaching “considerable” weight to the lack of a five-year housing land supply as a material consideration in determining planning applications for housing?

20. Turley strongly disagrees with the proposed dis-application of Paragraph 6.2 of TAN1.
21. We have significant concerns relating to both the nature of the proposed amendment to TAN1, and also the consultation undertaken. Given the potential far reaching effects of dis-applying Paragraph 6.2 on a range of issues (housing land supply, economic growth, affordability, social cohesion and sustainable communities), the brevity of the consultation document, clarity of messaging/reasoning and the lack of any substantive evidence is deeply concerning.
22. The consultation document makes a number of unsubstantiated statements, many of which are contradictory or nonsensical.

Clarity of Consultation

23. Firstly, the document refers to the removal of the word “considerable” as the purpose of the proposed changes. However, Question 2 refers to the dis-application of the paragraph as a whole. This lack of clarity is regrettable. Notwithstanding this, we have based our response on the removal of the paragraph as a whole.
24. The document is also unclear as to what is meant in terms of the duration of the dis-application. The document clearly states that the:
 - Dis-application is intended to be “temporary”; and
 - Is intended to be for the duration of a wide-ranging review of the delivery of housing through the planning system, which is intended to take place during summer 2018.
25. Notwithstanding this, it is understood that the Welsh Government has indicated that the dis-application is likely to be for three-and-a half years. This is not reflected anywhere in the consultation document or supporting material. It is also clear that such a period could not be described as temporary.

Evidenced Approach

26. At the outset we would also stress that the proposed dis-application of Paragraph 6.2 is premature. The consultation document is not supported by any form of evidence or analysis. Instead, it refers to undertaking a wide-ranging review over the coming months.
27. Turley fully support: a) the need for a review of housing delivery; b) gaining an evidenced understanding of the underlying reasons why there is significant shortfall in housing land supply; and c) a co-ordinated focus on the appropriate means to remedy the problem.
28. Given this review is yet to take place, there is no justification to make such far reaching changes to what is a well-established and longstanding part of the planning policy. Carrying out such an action ahead of any review is both premature and irrational. The wide-ranging review of the

delivery of housing through the planning system should be completed prior to a decision being made on this proposal.

29. At this stage, the consultation document provides no evidence whatsoever to support the dis-application of Paragraph 6.2. In the interests of proper planning, it is imperative that this review is undertaken, and the findings considered, before any amendments to the planning system (in relation to housing delivery) are implemented.

Main Issues

30. In the “What are the main issues?” section, the consultation document notes:
- That new home building in the right location is essential – both to meet the growing need for housing and as an important driver of economic development and job creation.
 - The importance of having an up-to-date adopted LDP in place to ensuring the homes needed are delivered.
 - That the planning system, through the LDP process, must provide the land needed to allow for building new homes.
 - An important element of delivering these homes is the Welsh Government requirement for local planning authorities to provide a 5 year housing land supply and to ensure the appropriate monitoring of this supply.
 - The means of calculating housing land supply is set out in TAN1 and enables a rational and consistent methodology to be applied across Wales.
 - This monitoring has highlighted a shortfall in deliverable land – with 19 out of 25 LPAs unable to demonstrate a 5 year housing land supply in April 2017, including those with recently adopted LDPs.
31. Turley do not disagree with any of the above statements. They reiterate the importance of housing delivery set out above. However, no evidence is presented to demonstrate that the above support or require a dis-application of Paragraph 6.2 of TAN1.
32. Rather, they support the continued role of TAN1, and particularly Paragraph 6.2 in ensuring an efficient planning system that delivers housing as a means of realising the intended outcomes of the WFGA. Where there is not demonstrable five year housing land supply, the paragraph actively promotes positive action to increase supply and realise the above statements. This action is only permissible where the development would otherwise comply with development plan and national planning policies.
33. It is accepted that a majority of LPAs in Wales are currently unable to demonstrate an adequate housing land supply, despite the increase in the coverage of adopted LDPs. As a result, there is a significant shortfall in housing delivery across large parts of Wales. This position is clearly contrary to PPW and the required outcomes of the WFGA in meeting society’s needs.
34. Whilst the proposed dis-application would not result in the supply figure being removed as a material consideration, it would result in a more restrictive policy position at a time when there is

a need to significantly increase housing delivery to meet local need. Removing Paragraph 6.2 of TAN1 will:

- Result in less housing applications coming forward, reducing the already significantly constrained housing land supply in Wales.
- Reduce the delivery of affordable and market housing in Wales, including the associated positive social, economic and environmental benefits delivered as a result.
- Take away a significant potential source of positive impacts on the creation of sustainable communities in Wales that meet the needs of the current and future generations.
- Remove the only sanction holding local planning authorities to account in terms of the requirement to maintain robust and up to date housing strategies in their local development plans.

35. It is clearly counterintuitive to introduce the proposed change, which would worsen the already failing housing land supply position across Wales. It will remove a key mechanism that promotes the delivery of housing when the development plan is failing or absent in this regard. Doing so unsystematically and without evidence ahead of any review into housing delivery cannot be in the interests of proper planning. Moreover, the proposal directly contradicts the goals of the WFGA.

36. In summary, we strongly disagree with the dis-application of Paragraph 6.2 of TAN1 for the following reasons:

- The changes are not supported by any substantive evidence base.
- It is premature to implement any changes ahead of undertaking the 'wide-ranging review of the delivery of housing through the planning system.
- The dis-application of Paragraph 6.2 will result in reduced house building, both market and affordable, at a time when a majority of local planning authorities are unable to demonstrate an adequate 5 year housing land supply.
- The reduction in house building will have a negative effect on the economy in Wales, including economic growth and indirect and direct employment.
- The dis-application will remove a longstanding and important facet of the plan-led planning system that serves a positive purpose where local planning authorities are unable to demonstrate a 5 year housing land supply, whilst maintaining adequate safeguards against unsustainable development.
- The proposal directly contradicts the goals of the WFGA.

Question 2

Do you consider the proposed temporary dis-application of paragraph 6.2 of TAN 1 will be effective in relieving pressure on local planning authorities when dealing with speculative planning applications for housing?

37. We are concerned that the consultation document contends that the current situation in relation to housing supply results *"in an increase in the number of speculative planning applications for housing"*. No effort is made to define what a speculative application is. There is no evidence that such applications have increased in number. There is also no justification for the clear implication in the document that such applications are a negative, rather than an important method of increasing housing supply where local planning authorities are unable to demonstrate a five year housing land supply.
38. Notwithstanding the above, the consultation document takes matters further in implying that reducing the number of 'speculative' applications for housing will ensure local planning authorities will have additional capacity to focus on local development plan preparation and review. We strongly disagree with this statement.
39. The consultation document provides no evidence to indicate any link between determining 'speculative' applications and securing additional capacity to focus on LDP preparation/review. We would anticipate that no evidence is provided as none exists.
40. Our understanding is that a majority of LPAs are structured in a way that separates plan making and development management responsibilities. It therefore seems highly unlikely that a reduction in planning applications would have any significant benefit for progressing local development plan preparation/review.
41. The dis-application of Paragraph 6.2 would apply across Wales. Against this context, it is noted that a number of local planning authorities do not need to undertake, or do not intend to undertake, a review of their local development plans. The removal of Paragraph 6.2 in such instances will clearly have no beneficial role.
42. As mentioned above, the time period for which Paragraph 6.2 is to be dis-applied is not made clear in the consultation document. The only indication given is that it will be temporary and for the duration of a wide ranging review which is proposed to take place during the summer of 2018. If that is the case, it is again clear that the dis-application would serve no practical purpose.
43. Rather than rush through the dis-application of Paragraph 6.2 without any evidence, it would be more effective to complete the wide-ranging review referred to and for this to include consideration of resourcing and practical implications for progressing LDPs. Such issues are likely to result from other pressures on resourcing, whether budgetary or otherwise, rather than the perceived 'speculative' applications.

An Alternative Approach

44. On the basis of the above reasons, Turley do not agree with the proposed temporary dis-application of Paragraph 6.2 of TAN1. As a proposal, it is both unsubstantiated and premature. It

will not be effective in relieving pressure on local planning authorities when dealing with applications for housing.

45. Without prejudice to this position, and if Welsh Government proceeds with an amendment to TAN1, it is considered that:

- Any amendment should be delayed and only be made on the basis of a full and comprehensive review of the delivery in Wales, including the reasoning for housing strategies in local development plans that are proven not to be robust (as demonstrated by the Longitudinal Viability Study).
- Any amendment must maintain the ability of the decision maker to make a balanced planning determination of housing applications, taking into account the weight given to the absence of a five year housing land supply. To this end, alternative wording for an amended Paragraph 6.2 is proposed to ensure a graduated weighting to the absence of a five year housing land supply. That is, the decision maker is capable of affording greater weight to the absence of a five year housing land supply, taking into account:
 - A significant shortfall is evidenced through the joint housing land availability study.
 - The extent to which development plan housing policies are up to date.
 - The delivery of housing in the plan period.
 - The realistic prospect of the shortfall being remedied through the local development plan process.
 - The development would otherwise comply with the development plan and national planning policies.

46. Such an approach would ensure flexibility for the decision maker to make a balanced determination of applications, taking into account the specific circumstances of each case. It would maintain the only mechanism holding local planning authorities to account in maintaining the required five year housing land supply. Doing so is vital to the continued delivery of housing as a priority in Wales, its associated social, economic and environmental benefits and realising the outcomes of the WFGA.