

Explanatory Memorandum to The Planning Permission (Withdrawal of Development Order or Local Development Order) (Compensation) (Wales) Order 2012

This Explanatory Memorandum has been prepared by the Department for Environment and Sustainable Development and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Planning Permission (Withdrawal of Development Order or Local Development Order) (Compensation) (Wales) Order 2012. I am satisfied that the benefits outweigh any costs.

John Griffiths AM

Minister for Environment and Sustainable Development

9 November 2011

1. Description

1.1 The Welsh Government is seeking to commence sections 61A to 61D of the Town and Country Planning Act 1990 (inserted by sections 40 and 41 of the Planning & Compulsory Purchase Act 2004) to enable local planning authorities to introduce, after consultation, local development orders which would remove the requirement for planning permission for developments as specified in a local development order.

1.2 Section 107 of the Town and Country Planning Act 1990 provides for compensation to be payable where planning permission granted by a local planning authority is subsequently revoked or modified. Section 108 of that Act extends the entitlement to compensation to circumstances where planning permission granted by a development order is withdrawn.

1.3 This Order amends section 108 as it applies in Wales, extending the entitlement to compensation to certain circumstances where planning permission granted by a local development order is withdrawn and restricting in other circumstances the entitlement to compensation on withdrawal of planning permission granted by a development order or local development order. A further amendment confers power on the Welsh Ministers to prescribe certain matters in relation to the entitlement to compensation.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 There are no matters of special interest

3. Legislative Background

3.1 Section 108 of the Town and Country Planning Act 1990 (“the 1990 Act”) extends the entitlement to compensation under section 107 of that Act to circumstances where planning permission granted by a local development order is withdrawn. Section 189 of the Planning Act 2008 amends section 108 of the 1990 Act. Section 189 applies to England only but section 203(1) of the Planning Act 2008 gives the Welsh Ministers power to make provision which has an effect in relation to Wales that corresponds to the effect section 189 has in relation to England. This instrument makes such provision and is made under enabling powers conferred by section 203.

3.2 The instrument is subject to the affirmative resolution procedure.

3.3 Further instruments subject to negative procedure will be made in due course and laid before the National Assembly for Wales giving full effect to provisions relating to local development orders and in exercise of powers conferred by section 108 of the 1990 Act, as amended by this instrument.

4. Purpose and intended effect of the legislation

4.1 An earlier consultation on the ‘Changes to the Development Control System in Wales’ (July 2006), introduced a number of proposals for change to the development management system, one of which was the proposed introduction of Local Development Orders.

4.2 A Local Development Order (LDO) is an order made by a local planning authority (LPA), through which permitted development rights (i.e. reducing the need to seek planning permission), additional to those granted nationally by the Welsh Government, are granted to certain types of development (specified in the order) within a certain area (also specified in the order).

4.3 There was little interest for this particular proposal in the responses received in 2006 but the issue was reviewed by the previous UK Government and legislation introduced in the Planning Act 2008 which removed the requirement that local development orders should be linked to adopted local development plans.

4.4 Subsequently the then Welsh Assembly Government issued a further detailed consultation (in July 2010) setting out proposed detailed provisions to enable local planning authorities to establish local development orders.

4.5 The Welsh Government commitment to improve the planning application process includes changes bringing about both process improvements and removal of the need for planning permission, where appropriate, and proportionate. The use of local development orders would also be a vehicle to assist local economic and community development that reflect local circumstances, and could additionally potentially support the use of Enterprise Zones to assist economic development.

4.6 This particular instrument amends the 1990 Act so as to make provision in relation to Wales similar to provisions in England, relating to compensation provisions relating to revocation, modification, or withdrawal of a development order or local development order.

5. Implementation

5.1 It is intended that the proposed Instrument will be made on 10 January 2012 and come into force on 31 January 2012.

6. Consultation

6.1 A public consultation took place from 26 July 2011 to 29 October 2010, and the consultation document was available on the Welsh Government website at

<http://wales.gov.uk/consultations/planning/localdevorders/?lang=en&status=closed>

Local Development Orders - Regulatory Impact Assessment

1. Purpose and intended effect

1.1 To support improvements in the planning application process through the use of local development orders (LDOs), with a local planning authority (LPA) being able to encourage particular developments to meet local needs (and reduce costs for applicants), supporting sustainable development and facilitating economic recovery. A local development order would mean that certain developments, as specified in the order, would not require planning permission.

1.2 This Order is part of a suite of regulation changes that are needed to enable the introduction of powers for local planning authorities to introduce local development orders. This particular order amends existing provisions so that they are applicable to Wales, providing for the situation where planning permission of a prescribed description granted by a development order or local development order is withdrawn. The result of the amendment is that compensation would be payable only if an application for planning permission for development formerly permitted by that order is made within 12 months of the withdrawal taking effect. While this is theoretically possible, it is unlikely to happen in reality. However, it is necessary to cater for this possibility.

2. Background

2.1 LPAs in Wales in 2010 received over 23,300 planning applications. These ranged from relatively small works on an individual householder's property to major housing and commercial development. A key objective of the Planning & Compulsory Purchase Act 2004 and the Planning Act 2008 has been to enable improvements in the planning application process. The discretionary power for an LPA to make an LDO is intended to assist in the delivery of the planning application process. LDOs will, in effect, grant permission for the type of development specified in that Order and by so doing negate the need for a planning application to be made by the developer.

2.2 Town and country planning legislation grants a general permission for various types of relatively small-scale and normally uncontentious development without the need to make a planning application. These provisions, known as permitted development rights, are designed to ensure that people have a reasonable degree of freedom to improve their properties. They also relieve local planning authorities of the need to determine numerous, routine planning applications. Local development orders can therefore be seen as an extension of permitted development, but decided upon locally in response to local circumstances within an overall framework provided by the LPA.

2.3 The LDO can relate to the whole of the LPA area, parts of the area or apply to a specific site, or type of development. The scope of the LDO would reflect local circumstances and can be used to achieve a wide variety of objectives, and promote a wide range of behaviours by developers to serve communities, planning, environmental or regeneration objectives.

3. Options

- (i) Do nothing – continue with the existing system with no full commencement of the relevant provisions of the Planning & Compulsory Purchase Act 2004 and the Planning Act 2008 or amendments to related planning regulations.
- (ii) Enable local planning authorities to have the powers to establish local development orders.

Option (ii) is the Welsh Government's preferred option.

4. Costs and Benefits

4.1 As the use of Local Development Orders is a discretionary power for local planning authorities, it is not possible at this stage to estimate benefits or costs as it is not known to what extent the power might be used, as the form of the local development order is likely to vary from one authority to another, and would be prepared to suit specific local needs and requirements type.

4.2 There would be no additional economic benefit from option (i). Developers would benefit from option (ii) by not having to apply for a specific planning permission and pay the associated fee. Fees vary by type and size of development. The certainty provided and the ability to deliver development more quickly should benefit developers as well as the removal of the administrative burden of making applications. For 2010, 68% of all applications were processed within 8 weeks, with the best performing local planning authorities determining over 80% of applications within 8 weeks. This shows that there is scope for LDOs to reduce the time it takes to progress a development especially in the weaker performing authorities. Delays of more than 8 weeks can be costly particularly for small businesses adding to uncertainties.

4.3 There could also be benefits for communities generally if LPAs decide to use LDOs to assist in the regeneration of particular areas. Householders could also benefit from not having to apply for planning permission.

4.4 Although LPAs will entail costs in producing an LDO, it could be possible that in the longer term it may be more resource efficient to do so by reducing the number of applications for planning permission having to be decided and reducing the number of appeals to be processed.

4.5 Neither option would necessarily impact on one particular group. There are no specific race, health or spatial impacts.

5. Costs

5.1 LPAs wishing to prepare LDOs to assist in encouraging specific local developments will incur costs. Much of this cost is likely to be related to the upfront costs associated with preparation of an LDO prior to it being made although this may be minimised by running the LDO process concurrently with other consultations, such as supplementary planning guidance. It is possible that a LPA may choose to make a LDO even where the resource costs exceed any savings in the longer term. However as this is a discretionary power and in such circumstances LPAs would only be doing so where they believe that the cost is worthwhile in that it is proportionate to the benefit delivered through the implementation of local planning policy.

5.2 LPAs will lose the fee income where development can be carried out without the need to apply for planning permission. Total fee income for Wales in 2009/2010 is estimated at approximately £9.5m. If for example it is assumed that 5% of the fee income is lost because of LDOs the lost revenue would be about £475,000. However it is not possible to assess how much fee income could be lost, although the reduction in costs incurred by LPAs in processing applications could possibly cancel out any lost fee income. In addition it is highly unlikely that all 25 LPAs will introduce LDOs.

5.3 On the issue of claims for compensation, should a LPA introduce an LDO and then subsequently decide to remove or revoke the development rights so granted, the 12 months time limit will ensure that such claims will be minimal, safeguarding public finances.

6. Consultation with Small Businesses

6.1 Notification of the consultation document was sent to the Confederation of British Industry Wales and the Federation of Small Businesses in Wales, as well as being posted onto the Welsh Government website.

7. Competition Assessment

7.1 It is not considered that the proposed changes would have a disproportionate impact on any particular sector. Therefore it is considered unlikely that there would be appreciable competition impact arising from the introduction of LDOs.

8. Consultation

8.1 The draft Regulatory Impact Assessment formed part of the formal consultation with stakeholders of the planning system when the consultation was published in July 2010.

Welsh Government
November 2011