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The Right Honourable Lord Justice Green
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9 May 2019

Dear Nicholas

INTERIM RESPONSE TO THE REPORT ON PLANNING LAW IN WALES

On behalf of the Welsh Government, I am grateful to you, Nicholas Paines QC and the Public Law Team for the work undertaken to produce your detailed report on planning law in Wales. It is clear significant work and robust analysis has been undertaken to establish a comprehensive evidence base to inform the report and to engage with a wide range of stakeholders.

This letter is the Welsh Government's Interim Response to the Report, issued in accordance with the Protocol between the Law Commission and the Welsh Ministers (July 2015).

It is not my intention to respond to the 192 recommendations set out in Part 2 of your report, as our detailed analysis and consideration of them continue. This will be the subject of our formal response later this year.

This response focuses instead on the core conclusions set out in Part 1 of the Consultation Paper (November 2017) and of the Final Report (November 2018), in particular the Law Commission's views on:

- the need to simplify and consolidate planning law;
- the case for a planning code; and,
- the scope of the initial consolidation exercise.

These points are addressed in turn below.

The need to simplify and consolidate planning law

The report clearly demonstrates planning legislation is an area of law that needs urgent attention in terms of simplification and consolidation. It reinforces the Welsh Government's

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

long held view about the complexity of the legislative framework underpinning the planning system.

Our work on the Planning (Wales) Act 2015 and the supporting evidence base provided by an Independent Advisory Group highlighted this issue, which led to our collaboration with the Law Commission to undertake this detailed review. I also note that issues of complexity and accessibility of the law more widely were considered by the Law Commission in the report, *Form and Accessibility of the Law Applicable to Wales* (June 2016), which also touched upon aspects of planning law.

The recent review of the planning system in England undertaken by the Town and Country Planning Association¹ also reinforces the conclusions of your report by recommending the simplification and consolidation of planning legislation in England. This demonstrates the problem is not unique to Wales. However, the Law Commission's comprehensive and detailed review for the Welsh Government puts us ahead of the general thinking on this important issue.

Having practised in planning law, I recognise and agree with the difficulties of the current legislative framework identified in your review. Current planning legislation is voluminous and fragmented, with the report highlighting around 30 pieces of interlocking primary legislation (in whole or part) relating to this area of law. This clearly affects accessibility to the law, in addition to its quality in term of complexity and clarity.

The problems caused by this are significant. Difficulties or errors in the operation and interpretation of the legislation leading to the potential of legal challenge can result in delays to the delivery of sustainable development and the achievement of sustainable places for our communities. The increasing need for legal advice in order to operate, use or engage in the planning system and the associated costs are also of concern. How effectively the planning system functions or communities engage with the system should not depend on whether legal advice can be accessed or afforded.

The evidence clearly highlights that the difficulties identified with the current legislative framework can frustrate the planning system. We believe the simplification and consolidation of the law is essential in order to address these issues. It is important that all stakeholders operating, using or engaging in the system can clearly access and understand the law directly affecting them. It is also essential to the achievement of an efficient, effective and simple planning system that works for the specific needs of Wales.

Simplified and consolidated planning legislation will produce real practical benefits to all stakeholders in the planning system – from those who operate and use it to those who wish to access the law to engage in the system. Importantly, as planning law becomes more accessible and clearer, it will assist in increasing public participation in the system.

This is an important project that the Counsel General and Brexit Minister and I are committed to take forward. As you will be aware, the Legislation (Wales) Bill is currently being scrutinised by the National Assembly for Wales. This Bill places a duty on the Counsel General and the Welsh Ministers to bring forward a programme aimed at improving the accessibility of Welsh law. The first programme will begin in the next Assembly subject to the Bill receiving Royal Assent, but I am pleased to say that ahead of any formal programme being set, work has already begun on a Planning Consolidation Bill.

¹ Planning 2020: Raynsford Review of Planning in England, Final Report, November 2018

The case for a planning code

As you are aware, the codification of Welsh law is currently under consideration by the Counsel General and Brexit Minister. He has already set out our vision of what a Legislative Code will contain and is currently considering how Welsh law should be organised in those Codes.

I support the Law Commission's view that there is a particular need for a Code bringing together the legislation relating to land use planning. Having the legislation in a single place will assist in addressing the dispersed nature of the current legislative framework. This in itself will make the law more accessible to stakeholders.

This view is also shared by the Counsel General and Brexit Minister. The *Draft Taxonomy for Codes of Welsh Law* published to accompany the introduction of the Legislation (Wales) Bill to the National Assembly currently identifies a "Planning, Land and Building Code". This reflects the need for land use planning legislation to be brought together in a single place for the benefit of those who operate, use and engage in the planning system. Importantly, it also reflects that land use planning is a key and significant area of devolved law.

I note the Law Commission's views and those of stakeholders on the other areas of law associated with land use planning that could benefit from being included in a planning related Code, or benefit from future codification and consolidation exercises to form separate Codes. I also note the views and queries expressed by stakeholders about the principles and general operation of Legislative Codes.

These important views will inform the Counsel General and Brexit Minister's ongoing discussions and refinement of the future structure and taxonomy. Subject to the National Assembly passing the Legislation (Wales) Bill, the Counsel General intends to publish further information on consolidation and codification of Welsh law in the summer.

The scope of the initial consolidation exercise

As the Report identifies, the consolidation of planning law and related legislation to create a Code of Welsh law will need to be undertaken in a phased approach. This is a sensible approach given the extent of the task and limited resources available to undertake this exercise.

I welcome the Law Commission's consideration of this matter and its view that the scope of the initial consolidation exercise and resulting Bill should include, as far as possible, all planning related primary legislation relating to:

- the planning and management of development;
- the provision of infrastructure and other improvements;
- outdoor advertising and work to trees;
- public sector led improvements and regeneration (insofar as currently within the Town and Country Planning Act 1990 (TCPA 1990)); and
- supplementary and miscellaneous provisions.

The suggested content to be included under these five topic areas, as set out in Table 3.1 of the consultation paper, indicates that the scope of this initial exercise should result in the replacement of the main pieces of primary legislation underpinning the system in Wales. In particular, the TCPA 1990 and the Planning and Compulsory Purchase Act 2004 (PCPA

2004) as they apply to Wales; in addition to those that amend these principal Acts, such as the Planning and Compensation Act 1991, Planning Act 2008 and Planning (Wales) Act 2015.

We agree that this is a sensible approach and this will form the basis of our initial consolidation exercise and resulting Bill. It supports our view that the initial exercise needs to cover the core functions of the planning system, especially those used frequently by operators and users of the system. However, our ability to fully remove Wales from the scope of the TCPA 1990 and relevant parts of the PCPA 2004 will depend on a number of factors, in particular the extent of the National Assembly's legislative competence. This will only become fully apparent during the preparation and drafting of the planning consolidation Bill.

The possible scope and structure of an initial planning consolidation Bill suggested by the Law Commission also reflect your recommendations to unify listed building and conservation area consents with planning permission. Whether the scope of the initial exercise will accommodate such proposals is yet to be determined as we continue to carefully consider your recommendations on this particular matter.

In addition to the above, I note the report also makes recommendations for other areas of planning law to be included within the scope of this initial exercise. I support the view set out in Recommendation 10.1 that the provisions relating to Community Infrastructure Levy (CIL) should be included in the initial consolidation exercise and resulting Bill. As highlighted in the report, legislative competence relating to CIL has only recently been devolved through the Wales Act 2017. Our future policy approach to CIL and planning obligations will need to be considered as part of the Welsh Government's wider and long-term discussions on the taxation of development land, such as our investigations into the introduction of a vacant land tax.

It is sensible to carry forward these provisions unaltered into the initial piece of consolidated planning legislation whilst this policy area is being reviewed. Given the close relationship between CIL and planning obligations, there is benefit to users and operators of the system in bringing these provisions together under a single piece of legislation rather than having them in separate Acts, as is currently the case.

The report also considers whether the statutory provisions relating to compulsory purchase should be included as part of this initial exercise. It suggests the general statutory provisions on compulsory purchase and compensation should not be included in the initial exercise and resulting Bill, but recommends that the power to acquire land for planning purposes in Part 9 of TCPA 1990 should be (Recommendation 16.14). I believe that it would be sensible to include those provisions of the TCPA 1990 with a view to replacing the TCPA 1990 in its entirety for Wales. However, the wider consolidation of compulsory purchase legislation would need to be the subject of a future exercise given the size of the task and the complexity of this area of law.

The Law Commission report has provided a clear direction and scope for the initial planning consolidation exercise. To deliver a planning consolidation Bill that is focused in the manner set out above will deliver significant benefits to our stakeholders.

In taking forward a planning consolidation Bill, I also note and welcome the Law Commission's conclusions that the balance between primary and secondary legislation in the current planning legislative framework is broadly correct. We will respond in due course to the small number of recommendations where the Law Commission has questioned this balance.

Detailed recommendations

While I am not in a position to provide a detailed response to the recommendations set out in Part 2 of the report, it is clear from our initial consideration they generally fall under three categories:

- the majority constitute minor technical reforms with little or no changes in policy, to aid consolidation;
- some propose policy reforms with the aim of achieving greater simplification of the law and operation of the planning system, which range from minor to substantial changes in policy effect; and,
- some propose changes to subordinate legislation and guidance.

You will be aware the Business Committee of the National Assembly has agreed to develop a Standing Order for the scrutiny of consolidation Bills. Clearly the final form of that procedure will influence what can be taken forward through consolidation. I anticipate the planning consolidation Bill will be the main delivery mechanism for those recommendations we accept to take forward and comprise minor technical reforms.

However, where we may agree with those recommendations that constitute more substantial policy reforms, they are unlikely to be taken forward within the scope of a consolidation Bill. These changes may need to be accommodated in a law reform Bill for greater scrutiny by the National Assembly.

The delivery mechanisms for the recommendations will become clearer following our detailed consideration of them, and the agreement of any Standing Order by the National Assembly.

Delivering any consolidation project is a substantial and technical exercise that can take considerable time and effort to do well. We are committed to developing accessible and well thought through legislation. As we begin to prepare the planning consolidation Bill for Wales, I am grateful to the Law Commission for its continued support and assistance in its delivery.

Yours sincerely



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Minister for Housing and Local Government

cc. Counsel General and Brexit Minister