



Llywodraeth Cymru
Welsh Government

Fire and Rescue Authorities – Guidance on being a statutory consultee in the planning system

Guidance

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1. Introduction

- 1.1 The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (“DMPWO”) and the Developments of National Significance (Procedure) (Wales) Order 2016 (‘DNSPWO’) (referred to collectively as “the Procedure Orders”) place a statutory requirement on key bodies to be consulted at the pre-application and post-submission consultation stages of the consenting processes for planning applications and applications for Developments of National Significance (DNS).
- 1.2 On 27 October, The Development Procedure (Consultees) (Wales) (Miscellaneous Amendments) Order 2021 (“the Order”) was laid before the Senedd. The Order amends the Procedure Orders so as to make Fire and Rescue Authorities (FRAs) in Wales ‘statutory consultees’ for certain types of development at both pre-application and post-submission stages. This will apply to planning applications to be determined by local planning authorities (LPAs) and DNS applications determined by the Welsh Ministers.
- 1.3 The requirements set out in this guidance will come into force gradually, starting on 24 January 2022, to enable FRAs to become familiar with the new process and procedures placed upon them. Further information on the phased approach is set out in section 8 below.
- 1.4 In order to inform FRAs of the requirements placed upon them, this letter provides guidance regarding the effect of the legislation.

2. Pre-application Consultation (by developers)

Background

- 2.1 The requirement to undertake pre-application consultation, as set out in Part 1A of the DMPWO and Part 2 of the DNSPWO, applies to all planning applications for ‘major’ development, whether for full or outline permission, and all applications for DNS. The requirement does not apply to applications:
 - under section 73 or 73A of the Town and Country Planning Act 1990 (i.e. applications to vary an existing planning condition or retrospective development);
 - for reserved matters;
 - for non-material amendments; or
 - for minor material amendments.
- 2.2 Prior to submitting an application for ‘major’ development or DNS, the developer must:
 - publicise a draft of the application;
 - consult community and specialist consultees; and
 - write a report (known as the ‘pre application consultation report’ or “PAC”) about the pre-application consultation undertaken.
- 2.3 For planning applications, the developer is required to consult specialist consultees listed in the table in Schedule 4 to the DMPWO when the proposed development

meets the corresponding 'description of development' listed in column 2 of that table. In the case of FRAs, this will be the following types of development:

- waste development (as defined in article 2 of DMPWO);
- the provision of dwellinghouses where either the number of dwellinghouses to be provided is 10 or more or the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the number of dwellinghouses to be provided is 10 or more;
- the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or
- development carried out on a on a site having an area of 1 hectare or more.

2.4 For DNS applications, the developer is required to consult specialist consultees listed in the table in Schedule 5 to the DNSPWO when the proposed development meets the corresponding 'description of development' listed in column 2 of that table. In the case of FRAs, this will be the following types of development:

- waste development;
- the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or
- development carried out on a site having an area of 1 hectare or more.

What to expect from the developer

2.5 The developer must provide information to the FRA as the consultee (either in hard copy, electronically or via a website) which includes the following:

- Requisite notice under the Procedure Orders for planning applications and DNS applications.
- All information that would be required to be submitted as part of a formal planning application or DNS application. This includes all the information on the relevant application form.
- Scaled plans, with north arrow, to identify the land to which the application relates.
- All other scaled plans, drawings and information that would be required to describe the proposed development. This includes any technical documents that would be needed in order to validate any subsequent application.
- Design and Access Statement.
- Any information that would be needed in order to accord with any local validation requirements of the relevant determining authority.

2.6 In addition to the above, applications for DNS may also include the following:

- A copy of the notice from the Welsh Ministers accepting notice of the proposed development.
- Any particulars or evidence required by the Welsh Ministers.
- Where applicable, a statement referred to as the environmental statement for the proposed development.
- A written statement about any secondary consent connected with the proposed application, together with the draft application form and documents associated with such consents.
- In the case of development consisting of the construction, extension or alteration of an onshore wind generating station that generates electricity, a written statement about the length of the proposed line and its nominal voltage.

Timescales to respond

- 2.7 On receipt of the requisite notice, the FRA is required to provide a 'substantive response' to the developer within 28 days (42 days in the case of applications for DNS).
- 2.8 In some cases, particularly when considering more complex and technical schemes, FRAs may request an extension of time to fully consider the proposed development. Developers have discretion on whether to accept an extension of time.

What is a substantive response?

- 2.9 In line with the requirements in the Procedure Orders, a 'substantive response' to be required by the FRA would be one which:
- a) confirms the FRA has no comment to make; or
 - b) confirms the FRA has no objection to the proposed development and refers the applicant to [any] current standing advice by the FRA on the subject of the consultation; or
 - c) advises the developer of any concerns identified in relation to the proposed development and how those concerns can be addressed; or
 - d) advises the developer that the FRA has concerns and that it would object to an application for planning permission made in the same or substantially the same terms and sets out the reasons for those objections.
- 2.10 It is important to ensure that any matters raised in response to the consultation must be material planning considerations, i.e. must be planning matters. These are matters that are relevant to the regulation of the development and use of land in the public interest, towards the goal of sustainability. Material considerations must also be fairly and reasonably related to the development concerned. The Courts are the final arbiters of what may be regarded as material considerations in relation to any particular application.
- 2.11 From previous discussions with FRAs and representations submitted through the public consultation exercise, the key planning matters of consideration and the focus of a FRA's response will be:
- Access – ensuring adequate access to a site for appropriate numbers and types of fire appliances; and
 - Water – ensuring adequate supply of water for fire-fighting purposes.
- 2.12 These are relevant, material planning considerations that can be taken into account by LPAs or Welsh Ministers when determining a planning application. Any non-planning matters, such as matters regulated by the Building Regulations, should not form part of a response since these matters cannot be taken into consideration by the LPA or Welsh Ministers. This may include matters such as means of escape, alarm strategies, or need for sprinklers or other fire suppression and control systems.

3. Post-submission consultation by Local Planning Authorities

Background

- 3.1 Article 14 of the DMPWO requires LPAs to consult FRAs (and other relevant specialist consultees) prior to determining an application for planning permission for the types of development listed in paragraph 2.3.
- 3.2 LPAs will also be required to consult FRAs to inform their determination of applications for developments representing higher fire risk, specially applications:
- which provide ten or more flats (whether by increasing the number of flats within an existing building or otherwise); or
 - which provide residential accommodation of ten or more rooms, not contained in dwellinghouses or flats, which are not solely used for cooking purposes and are not toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms; or
 - involving the provision of residential accommodation of ten or more rooms contained in a dwellinghouse or flat used as a house in multiple occupation (HMO), which are not solely used for cooking purposes and are not toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms.
- 3.3 For clarity, the above criteria will capture applications for other forms of residential accommodation such as care homes, hotels, HMOs and student accommodation.
- 3.4 FRAs will be provided with a copy of the application (this can be in a digital format via a website) and with notice that a consultation response is requested.

What is a substantive response?

- 3.5 The duty to provide a 'substantive response' is slightly different depending on whether the development proposal was subject to mandatory pre-application consultation with the FRA.
- 3.6 Where no statutory pre-application consultation has taken place, or where consultation was undertaken but the FRA failed to provide a response, a 'substantive response' is one which:
- a) confirms the FRA has no comment to make;
 - b) confirms the FRA has no objection to the proposed development and refers the LPA to any current standing advice by the FRA on the subject of the consultation;
 - c) advises the LPA of any concerns identified in relation to the proposed development and how those concerns can be addressed by the applicant; or
 - d) advises the LPA that the FRA objects to the proposed development and sets out the reasons for the objection.
- 3.7 Where pre-application consultation has taken place and the FRA has given a response at that consultation stage (in accordance with the requirements set out in paragraph 2.9), a 'substantive response' to be provided is one which:
- a) confirms the FRA has no further comment to make in respect of the proposed development and confirms that any comments provided at the pre-application consultation stage remain relevant;
 - b) advises the LPA of any new concerns identified in relation to the proposed development, why the concerns were not identified in the response provided at the pre-application stage and :-

- (i) how the concerns can be addressed by the applicant; or
- (ii) that the FRA objects to the proposed development and sets out the reasons for the objection.

3.8 The advice set out in paragraphs 2.10 - 2.12 also applies.

3.9 In determining the application, the LPA must take into account any representations received from a consultee. The weight the LPA attach to the material considerations raised in a FRA response will be a matter of judgement, however the LPA must demonstrate that, in reaching its decision, they have considered all relevant planning related matters. Generally greater weight is attached to issues supported by evidence rather than solely by assertion.

Timescales to respond

3.10 Upon receiving a consultation from the LPA, FRAs must provide a substantive response to the consultation within a period of 21 days (30 days in the case of an Environmental Impact Assessment [EIA] application) unless an alternative time period is agreed in writing. This period commences on the day on which notice is given or, if earlier, the date a copy of the application is received.

4. Local Planning Authorities discretion to consult on applications for approval, consent or agreement relating to a planning application

Background

4.1 Where a LPA receive an application for approval, consent or agreement relating to a planning application on which FRAs were originally consulted, they will have the discretion to decide whether to consult FRAs for their views.

4.2 Where a LPA choose to consult they will be required to provide the following information to a FRA in order for it to be a valid consultation, and trigger the 21 day timescale for response:

- a copy of the application form;
- the reference number allocated by the LPA to the original application;
- any drawings in connection with the relevant application; and
- any report issued to the LPA in connection with the relevant application.

Timescales to respond

4.3 Upon receiving a consultation from the LPA, a FRA must provide a substantive response to the consultation within a period of 21 days unless an alternative time period is agreed in writing with the LPA.

4.4 The statutory consultation period will commence either on the day on which the views of the FRA are sought or, where there is more than one document, the day upon which the last of those documents is received by the FRA if sent at different times.

4.5 LPAs have flexibility on how they issue the consultation (e.g. hard copy or electronic). Where a LPA writes or emails FRAs to inform them that these details can be found on the LPA website (rather than email the information as attachments or provide

hardcopies) the 21 day period will only be taken to have commenced when the last of these documents is available to view on that website.

What is a substantive response?

- 4.6 Where an FRA is consulted by the LPA on these types of applications a substantive response is one which:
- confirms the FRA has no comment to make;
 - the FRA has no objection to the matters which are subject to the consultation and refers the LPA to [any] standing advice;
 - advises of any concerns identified in relation to the matters which are the subject of the consultation, and how those concerns can be addressed; or
 - advises the FRA objects to the matters which are the subject of the consultation and sets out the reasons for the objection.
- 4.7 The advice set out in paragraphs 2.10 - 2.12 also applies.

5. Post-submission consultation by the Welsh Ministers (DNS)

Background

- 5.1 Article 22 of the DNSPWO requires the Welsh Ministers to consult FRAs (and other relevant specialist consultees) before determining a DNS application. The types of development upon which FRAs will be consulted is set out in paragraph 2.4.
- 5.2 FRAs will be provided with a copy of the application (this can be in a digital format via a website) and with notice that a consultation response is requested.

Timescales to respond

- 5.3 Upon receiving a consultation from the Welsh Ministers, a FRA must provide a substantive response to the consultation within a period of 21 days (30 days in the case of an EIA application) unless an alternative time period is agreed in writing with the Welsh Ministers. This period commences on the day on which notice is given.

What is a substantive response?

- 5.4 The duty to provide a 'substantive response' for DNS applications mirrors the approach in responding to a consultation from an LPA on planning applications, where the response to be provided slightly differs depending on whether the FRA responded to the request for consultation as part of mandatory pre-application consultation.
- 5.5 Where consultation was undertaken but the FRA failed to provide a response, a 'substantive response' is one which:
- a) confirms the FRA has no comment to make;
 - b) confirms the FRA has no objection to the proposed development and refers the Welsh Ministers to any current standing advice by the FRA on the subject of the consultation;
 - c) advises the Welsh Ministers of any concerns identified in relation to the proposed development and how those concerns can be addressed by the applicant; or
 - d) advises the Welsh Minister that the FRA objects to the proposed development and sets out the reasons for the objection.

- 5.6 Where pre-application consultation has taken place and the FRA has given a response at that consultation stage (in accordance with the requirements set out in paragraph 2.9) a 'substantive response' to be provided is one which:
- a) confirms the FRA has no further comment to make in respect of the proposed development and confirms that any comments made at the pre-application consultation stage remain relevant; or
 - b) advises the Welsh Ministers of any new concerns identified in relation to the proposed development, why the concerns were not identified in the response provided at the pre-application consultation stage and -
 - (i) how the concerns can be addressed by the applicant; or
 - (ii) that the FRA objects to the proposed development and sets out the reasons for the objection.
- 5.7 The advice set out in paragraphs 2.10 - 2.12 also applies.
- 5.8 In determining the application, the Welsh Ministers must take into account any representations received from a consultee. The weight the Welsh Ministers attach to the material considerations raised in a FRA response will be a matter of judgement, however the Welsh Ministers must demonstrate that, in reaching their decision, they have considered all relevant planning related matters. Generally greater weight is attached to issues supported by evidence rather than solely by assertion.

6. Reporting

- 6.1 As a statutory consultee, no later than 1 July each calendar year, FRAs are required to provide the Welsh Government the following data:
- the number of occasions on which the FRA were consulted;
 - the number of occasions on which the FRA provided a substantive response (i.e. either a response to the applicant on statutory pre-application consultation, or a response to the LPA or Welsh Ministers on a planning applications and DNS applications); and,
 - the number of occasions on which each FRA gave a substantive response outside the period prescribed and a summary of the reasons why.
- 6.2 FRAs are free to determine how the above information is presented. However, to provide a report that meets the statutory requirements and provides context to the statistics provided, FRAs may find it beneficial to replicate the following structure:
- 1) **Introduction:** a short section outlining the role as a statutory consultee.
 - 2) **Key issues in the reporting year:** this section is an opportunity to comment on any specific challenges you have faced, or to highlight positive work that has been undertaken.
 - 3) **Performance against the indicators:** provide statistical figures for the data set. This data should be separated into data for pre-application consultation and consultation from the LPA or Welsh Ministers. A summary of the reasons for late responses should also be included.
 - 4) **Reflection:** this section provides an opportunity to identify areas that are performing well and areas where performance could be better.
- 6.3 The length of the report should be proportional to the number of responses.

6.4 The data is used to identify both good and poor performance so the Welsh Ministers can review how the statutory consultee involvement in the planning application process is operating. Those who fail to provide data will be recorded as poorly performing and identified in the Welsh Government's All Wales Annual Performance Report.

7. Contact Details

7.1 FRAs are advised to publish a means of contact, such as a dedicated email address, which can be used by developers and LPAs to submit consultation requests. This information should be published on each FRA website to aid accessibility.

8. Transitional arrangements

8.1 Whilst the Order has been laid, FRAs will not immediately begin to receive requests for consultation. Transitional arrangements have been put in place to phase implementation to enable FRAs to adapt and become familiar with the requirements in order to be ready to receive and respond to consultation requests when the statutory requirements for developers and determining authorities to consult FRAs come into force.

8.2 Table 1 provide a summary of the phased implementation period.

Table 1: Transitional arrangements for consultation with FRAs

Consultation with FRAs required for applications submitted (including notifications made to Welsh Ministers in the case of DNS):

27 October 2021 –
23 January 2022

24 January 2022 - 24
April 2022

25 April (onwards)

Planning Applications determined by LPAs

Developers to undertake pre-application consultation with FRAs under Article 2D of the DMPWO	X	Developers to start pre application consultation with FRAs*	✓ Pre-application Consultation Report (PAC) must include consultation with FRA for validation of application by the LPA
Consultation by LPAs at application stage under Article 14 of the DMPWO	X	X	✓
Statutory requirement for FRAs to provide a substantive response to any consultation received under articles 2E and 15E of DMPWO (and articles 10 and 23 of the DNSPWO)	X	✓	✓
DNS Applications			
Consultation by developers (Article 9 of the DNSPWO) and the Welsh Ministers (Article 22 of the DNSPWO) for applications for DNS	X	✓ (excluding applications submitted where notification to the Welsh Ministers was undertaken by the developer before 24 January 2022)	✓ (excluding applications submitted where notification to the Welsh Ministers was undertaken by the developer before 24 January 2022)

* Whilst there is no statutory requirement for applications submitted prior to 25 April 2022 to include confirmation in the PAC of consultation with FRAs, developers nonetheless should begin undertaking consultations during this period as part of the statutory pre-application consultation process in preparation for the submission of planning application on or after 25 April.

Between the laying of the legislation and 23 January 2022:

- 8.3 During this period, neither developers nor LPAs will be under a duty to consult FRAs. Whilst FRAs may respond should any requests for consultation be received, the statutory requirement to provide a substantive response does not apply.
- 8.4 This time should be used by FRAs to make preparations to receive the first phase of consultations, which will begin to arrive from 24 January 2022.

From 24 January 2022:

- 8.5 FRAs will begin receiving requests for consultation responses from developers undertaking consulting pre-application consultation (for both future planning applications and DNS). Requests for a consultation response may also be received from the Welsh Ministers for DNS applications.
- 8.6 FRAs will be required to provide a substantive response to any pre-application consultation request received (see paragraph 2.9).
- 8.7 Whilst there is no requirement for LPAs to begin consulting FRAs on planning applications until 25 April, should a FRA receive a formal consultation request, a statutory response must be provided (see paragraph 3.5). Any request received should also be recorded and incorporated into the annual report (see section 6).

From 25 April 2022:

- 8.8 FRAs should expect the number of consultation requests to increase as the statutory requirement for both developers and LPAs to undertake consultations commences.
- 8.9 FRAs will be required to provide a substantive response to any pre-application consultation request received.

9. Local Development Plan (LDP)

- 9.1 FRAs becoming a specialist consultee in the process for planning and DNS applications is only one part of necessary further engagement needed in the planning system to ensure fire safety is taken into account when new building projects are being proposed.
- 9.2 It is important that fire safety and the views of fire safety experts are considered as early as possible in the planning and design of a new development. Planning applications must be determined in accordance with the adopted plan. Involvement at plan-making stage therefore provides an opportunity to influence placemaking and wider strategic development. FRAs are therefore encouraged to engage with LPAs about the fire safety issues in your area during the preparation and review of the relevant LDPs. Involvement in the LDP process assists in considering safety for the wider area, including the threat of wildfires, and further facilitates access for firefighting and potential changes to frontline FRA resources.