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## Consultation Document – Annex 1.1

# Draft Planning Policy Wales – Chapter 2 Local Development Plans

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## **(DRAFT) REVISED PPW CH 2: LOCAL DEVELOPMENT PLANS**

***(N.B. This is PPW Ch2 & LDPW merged and revised; other guidance is now in the Draft LDP Manual)***

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## Chapter 2 (PPW)

### Local Development Plans

#### 2.1 PLAN-LED SYSTEM<sup>1</sup>

2.1.1 The aim of the planning system is to make planned provision for an adequate and continuous supply of land to meet society's needs in a way that is consistent with sustainability principles.

2.1.2 Up-to-date Local Development Plans (LDPs) are a fundamental part of a plan-led planning system and set the context for rational and consistent decision making in line with national policies. Planning applications must be determined in accordance with the adopted plan unless material considerations indicate otherwise (Section 38(6) of the Planning and Compulsory Purchase Act 2004). The LDP should show how places are expected to change in land-use terms to accommodate development needs over the plan period in order to provide certainty for developers and the public about the type of development that will be permitted at a particular location.

#### - Statutory provisions

2.1.3 LDP preparation is a statutory duty of the local planning authority (Section 62 of the 2004 Act) which is required to exercise the function with the objective of contributing to the achievement of sustainable development (section 39 of the 2004 Act). Authorities should give high priority to LDP preparation, monitoring and revision to ensure up to date plans are in place.

2.1.4 In addition to the 2004 Act, the procedures for LDP preparation are set out in The Town and Country Planning (Local Development Plan) (Wales) Regulations 2005. The Welsh Government's Local Development Plan Manual provides useful guidance on LDPs.

2.1.5 The statutory requirements for Strategic Environmental Assessment (SEA)<sup>2</sup>, Sustainability Appraisal (SA)<sup>3</sup> and Habitats Regulations Assessment (HRA)<sup>4</sup> must be met.

2.1.6 The Single Integrated Plan (SIP) (meeting the requirement for Community strategies under Part 2: Sections 37-46 of the Local Government (Wales) Measure 2009) should provide the overarching strategic framework for all the other plans and strategies for the

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<sup>1</sup> The LDP system established in Part 6 of the *Planning and Compulsory Purchase Act 2004* ('**The 2004 Act**') (<http://www.legislation.gov.uk/ukpga/2004/5/part/6>) was commenced fully in 2005.

Additional to the 2004 Act, procedures for plan preparation are set out in *The Town and Country Planning (Local Development Plan) (Wales) Regulations 2005* ('**the LDP Regulations**')

(<http://www.legislation.gov.uk/wsi/2005/2839/contents/made>).

'*The Local Development Plan Manual*', Welsh Government, 2015, ('**the LDP Manual**')

(<http://wales.gov.uk/topics/planning/policy/policy-and-guidance-on-development-plans/ldpmanual/?lang=en>)

(<http://wales.gov.uk/topics/planning/policy/policy-and-guidance-on-development-plans/ldpmanual/?skip=1&lang=cy>) provides further guidance.

<sup>2</sup> Environmental Assessment of Plans and Programmes (Wales) Regulations 2004 ("the SEA Regulations") - Regulations 5(2) and 5(4). (<http://www.legislation.gov.uk/wsi/2004/1656/contents/made>)

*Rheoliadau Aseidiadau Amgylcheddol o Gynlluniau a Rhaglenni (Cymru) 2004* ("") (<http://www.legislation.gov.uk/wsi/2004/1656/contents/made/welsh>)

<sup>3</sup> Section 62(6) of the 2004 Act

<sup>4</sup> Part 6 Chapter 8 of The Conservation of Habitats and Species Regulations 2010 ("the Habitats Regulations") (<http://www.legislation.gov.uk/uksi/2010/490/contents/made>)

local authority, including the LDP<sup>5</sup>. SIPs and LDPs need to be complementary with the LDP expressing, in appropriate land use planning terms, those elements of the SIP that relate to the development and use of land, provided that the elements of the SIP are in conformity with national and international policy and obligations.

2.1.7 Local planning authorities must consider the relationship of their LDP to **other adopted national, regional or local strategies** and are encouraged to work together in order to plan effectively for cross boundary and strategic issues; the soundness tests require that the plan must be compatible with adjoining plans and strategies, i.e. it must 'fit' (2.5 below). The sharing of skills, knowledge and best practice can reduce unnecessary duplication and ensure resources are used more effectively and efficiently.

2.1.8 Plan preparation should be inclusive and recognise the requirements of all sectors of society, including in compliance with the general duty in the **Race Relations (Amendment) Act 2000** to promote race equality and with the **Disability Discrimination Act 1995**, which places a duty on all those responsible for providing a service to the public not to discriminate against disabled people by providing a lower standard of service.

2.1.9 The **Welsh Language (Wales) Measure 2011** introduced a duty on organisations including LPAs to comply with standards to do with the Welsh language. The Standards provide clarity about the services that should be provided in Welsh and require organisations to use the Welsh language in a reasonable and proportionate manner. Many of the Standards are likely to be relevant to all stages of the process of preparing and revising LDPs but particularly to the way in which LPAs publicise proposals, consult with the public, communicate with those making representation and make arrangements for the conduct of examination proceedings.

## 2.2 PLAN FORM AND CONTENT<sup>6</sup>

2.2.1 It is for the local planning authority to determine how its LDP should be tailored to the needs of the area based upon robust evidence. It should be a succinct plan expressed in plain language avoiding jargon; it should not be long, complex, vague or over-detailed nor a compendium of policies to cover every eventuality.

2.2.2 An LDP should have a clear base date and operational plan period of 10-15 years on adoption and should focus on the key **issues** to be addressed in the plan area. It should incorporate a concise, long-term **vision** and **strategy** indicating clearly the plan's main **objectives** along with the broad direction of change and the key spatial locations for development and infrastructure required to achieve them. The strategy, which should be broadly illustrated in diagrammatic format on a **key diagram**, should be aspirational but realistic and should provide a transparent guide to what is intended to be achieved by the implementation of the plan. **Deliverability and financial viability** are key considerations and costs such as infrastructure and affordable housing must be considered during preparation of the plan (see PPW section 3.7 regarding planning obligations and the Community Infrastructure Levy). The strategy should be framed so it is capable of being rolled forward to accommodate subsequent revision.

2.2.3 The plan should include **policies**<sup>7</sup> to achieve outcomes, support and identify site allocations/development areas, define where constraints apply and set out the general

<sup>5</sup> In national parks the National Park Management Plan will reflect the relevant Single Integrated Plan(s) for the National Park area, and should inform the LDP.

<sup>6</sup> Section 62 of the 2004 Act and LDP Regulations 11 & 12.

<sup>7</sup> A site specific proposal is a type of policy.

criteria against which planning applications for the development and use of land and buildings will be considered, preferably by the use of generic policies rather than repetition. Policies should be distinct from, but should be supported by, concise reasoned justification.

2.2.4 National planning policy set out in Planning Policy Wales and Minerals Planning Policy Wales should not be repeated as policy in LDPs but plans should explain how it will apply to the local area, critically the link between how national and local policy will work together.

2.2.5 Plans should not duplicate provisions in other legislative regimes, for example, in environmental health, building regulation and health and safety legislation. The policies should not include statements of intent or descriptions of administrative arrangements. Plans should not seek to designate areas where special facilities or grants will be available, or where special consultation arrangements will apply, although it may be appropriate to refer to them in the text.

2.2.6 A '**proposals map**' on a geographical Ordnance Survey base must delineate those policies and proposals with a spatial component including all allocations; although where spatial delineations are determined by other mechanisms they do not need to be shown (e.g. by TAN15 Development Advice Maps). In the event of a contradiction between the main body of the LDP and the proposals map, the provisions of the former prevail.

2.2.7 Further detailed guidance to supplement plan policy, but not new policy, may be included in **supplementary planning guidance** in the form, for example, of development/design briefs or master plans (see PPW section 2.4).

2.2.7 In the light of local circumstances it is for individual authorities to consider the need for **phasing** of development over the period of the LDP. Phasing may be justified by considerations relating to physical or social infrastructure, or to the adequacy of other services, which may indicate that a particular site cannot be released for development until a particular stage in the plan period. Where phasing is included in an LDP it should take the form of a broad indication of the timescale envisaged for the release of the main development areas or identified sites, rather than an arbitrary numerical limit on permissions or a precise order of release of sites in particular periods.

2.2.8 Proposals should allow for a reasonable degree of choice and **flexibility**, for example to secure an efficient and effective housing market. Flexibility will be needed in respect of the emergence of unidentified sites, i.e. sites not allocated in the LDP for the particular type of development and generally referred to as windfall sites. Phasing policies should recognise the need for possible adjustment to the timing of land release to the extent that the emergence of unidentified sites exceeds or falls short of the assumptions in the LDP. Where assumptions are made in the LDP about the future availability of windfall sites the assumptions will need to be checked by regular monitoring of planning permissions granted.

## **2.3 STRATEGIC ENVIRONMENTAL ASSESSMENT (SEA), SUSTAINABILITY APPRAISAL (SA) AND HABITATS REGULATIONS ASSESSMENT (HRA)**

2.3.1 **Sustainable development** is our shared responsibility. Local planning authorities are responsible for setting the framework for the development of sustainable communities in their areas, integrating services and infrastructure requirements at a local level, and, seeking to achieve a sustainable form of development. Section 39 of the 2004 Act requires

authorities to prepare LDPs with the objective of contributing to the achievement of sustainable development (see PPW Chapter 4; & figure 4.2 regarding plan making).

2.3.2 Sustainability appraisal and Strategic Environmental Assessment will play an important part in demonstrating that the LDP is sound by ensuring that it reflects sustainable development objectives.

2.3.3 Local planning authorities must comply with the European Union Directive 2001/42/EC requiring formal environmental assessment during production of certain plans and programmes which are likely to have significant effects on the environment, (commonly known as the **Strategic Environmental Assessment (SEA) Directive**). The Directive has been incorporated into Welsh law by virtue of the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004 (the SEA Regulations). It applies to all LDPs and may also apply to certain types of Supplementary Planning Guidance (SPG). **Local planning authorities must comply with the SEA Regulations as well as the LDP Regulations when preparing LDPs.**

2.3.4 A local planning authority must also carry out a **sustainability appraisal (SA)** of the LDP and prepare a report of the findings (the SA Report) as an integral part of the process of plan preparation (Section 62(6) of the 2004 Act). SA and SEA work can be undertaken separately but Welsh Government is of the view that it should be combined and fully integrated into the plan making process as long as the SA meets the requirements of the SEA Regulations. **Any references to SA in Welsh Government LDP policy and guidance should be taken as also referring to SEA.** The LDP SA does not remove the requirement for a formal **Environmental Impact Assessment** for individual development proposals where such an appraisal is required by legislation<sup>8</sup>.

2.3.5 The purpose of sustainability appraisal is to ensure that a systematic and iterative process is undertaken during the preparation (and revision) of a plan which identifies and reports on the extent to which implementation of the plan will achieve the environmental, social and economic objectives by which sustainable development can be defined, and identifies related opportunities for improving plan performance.

2.3.6 To be most effective in ensuring that decisions at each stage accord with sustainable development principles (see PPW section 4.2) sustainability appraisal should be fully integrated into the plan making and monitoring process. The authority should identify a clear set of integrated objectives with which to evaluate alternative policies (where appropriate), proposals and locations for development so that it is clear from the process how and why particular options have been chosen.

2.3.7 An integrated appraisal should expose the full range of significant economic, social and environmental considerations.

- Plans will be effective if they have regard to **economic** considerations and are realistic and practical. LDPs should include an indication, in broad terms, of the assumptions made about the resources likely to be available for effecting the policies (including proposals) formulated. They should provide developers and others with scope to make choices to secure the efficient and effective use of resources. LDPs (and development management decisions later based upon them) should take account of European, national and local economic and development policies.

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<sup>8</sup> Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (SI1999/293) as amended

- LDPs (and later development management decisions) should take account of **social** considerations relevant to land use issues, such as the relationship of planning policies and proposals to social needs and problems, including the likely impact of policies and proposals on the whole community. Social considerations will be particularly relevant in assessing the need for affordable housing and for special needs housing, in preparing measures for crime prevention, and for sport and recreation provision. The several impacts of plans upon health and its determinants should be considered. LDPs should make provision for land for schools, further and higher education, places of worship, recreation and other community facilities.
- Most LDP policies and proposals will have **environmental** implications which may be local, regional, national or international. The environmental effects of a plan, including realistic alternatives, need to be considered as early in the plan preparation process as possible.

2.3.8 When integrating SA into their plan making process Authorities should document and be able to demonstrate in an SA Report how at each stage they are meeting the requirements of SA and in particular SEA.

2.3.9 Initially Authorities must issue a **screening** opinion regarding the need for SEA. As part of the preparatory work in developing the LDP information and evidence base they should produce a **scoping report** in association with the environmental consultation bodies (under the SEA Regulations) and stakeholders (i.e. other local partners) identifying the main issues to be reflected in the integrated plan objectives and level of detail required.

2.3.10 During the pre-deposit participation stage (LDP Regulation 14), authorities must ensure sustainability appraisal requirements are incorporated into the objectives used to assess the strategic options leading to the identification and development of the preferred strategy. They should work with the environmental consultation bodies and stakeholders and prepare an initial SA report to show how SA requirements have been met and SA issues have informed the plan.

2.3.11 At pre-deposit public consultation stage (LDP Regulation 15), authorities must consult on the initial SA report alongside the preferred strategy document.

2.3.12 Responses to the pre-deposit public consultation should be used to inform the development of the deposit plan and revisions to the SA report. Late focussed changes or changes required at examination should also be subject to the same integrated assessment process.

2.3.12 **Habitats Regulations Assessment (HRA)**<sup>9</sup> must be undertaken when preparing LDPs to ensure compliance with the Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations). Part 6 Chapter 8 of the Habitats Regulations requires local planning authorities to consider the impact of their draft LDPs on European Sites to ensure that the requirements of Article 6 of the Habitats Directive (92/43/EEC) are met. All LDPs must be screened as part of HRA to determine whether the draft plan, alone or in combination with other plans or projects, is likely to have a significant effect on any 'European sites'. If such effects are likely, the plan must be subject to an HRA (also known as "appropriate assessment"). All Ramsar sites and potential Special Protection Areas (pSPAs) must be considered as European sites for the purposes of the Habitats Regulations.

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<sup>9</sup> See Annex 6 of TAN 5 - Nature Conservation and Planning, WG.

2.3.13 Where the appropriate assessment identifies potentially significant adverse impacts on a European site, the planning authority must identify whether there are mitigation measures, or alternative solutions to the plan, which will counteract those adverse impacts. If there are no alternative solutions and if, in exceptional circumstances, it is proposed that a plan be adopted despite the fact that it may adversely affect the integrity of a European site, the HRA will need to address and explain the imperative reasons of overriding public interest (IROPI) which the local planning authority considers to be sufficient to outweigh the potentially adverse effects on the European site(s). The Welsh Government expects that development plans will only proceed to adoption on the basis of IROPI in the most exceptional circumstances. An LDP will not be permitted to proceed to adoption on the basis of IROPI where the HRA identifies that the development plan (either alone or in combination with other plans or projects) may incur the risk of seriously compromising the ecological characteristics of a candidate Special Area of Conservation (cSAC).

2.3.14 The HRA should be programmed to fit in with existing plan-making procedures, including the SEA, wherever possible, but the appraisal should be clearly identified and kept distinct from that of the SA/SEA. LDPs cannot proceed to adoption until the HRA process has been completed.

## **2.4 SUPPLEMENTARY PLANNING GUIDANCE**

2.4.1 LDPs should contain sufficient policies and proposals to provide the basis for deciding planning applications while avoiding excessive detail. Selective use of supplementary planning guidance (SPG) is a means of setting out more detailed thematic or site specific guidance on the way in which the policies of an LDP are to be interpreted and applied in particular circumstances or areas.

2.4.2 The LDP should not delegate the criteria for decisions on planning applications to SPG which should only contain guidance and advice. Nor should SPG be used to avoid subjecting policies and proposals to public scrutiny and independent examination in accordance with statutory procedures.

2.4.3 SPG does not form part of the development plan but it must be consistent with the plan and with national policy. It must derive from and be clearly cross referenced to a generic LDP policy or – in the case of a masterplan or site brief – a plan allocation. SPG cannot be linked to national policy alone; there must be an LDP policy or policy criterion that provides the development plan ‘hook’ whilst the reasoned justification provides clarification of the related national policy. The LDP should note which policies are supplemented by SPG.

2.4.4 Only the policies in the development plan have special status under section 38(6) of the 2004 Act in deciding planning applications but SPG may be taken into account as a material consideration. In making decisions on matters that come before it, the Welsh Government and the Planning Inspectorate will give substantial weight to approved SPG which derives from and is consistent with the development plan, and has been the subject of consultation.

2.4.5 Local planning authorities will need to consider the potential role of SPG in relation to the LDP strategy and policies. Key SPG being produced in tandem with the LDP should be listed in the Delivery Agreement along with the implications for resources, the timetable, and monitoring.

2.4.6 Local planning authorities should review the effectiveness and relevance of their existing SPG early in the preparation of the LDP. Existing SPG should be revised to state which LDP policies it supplements. SPG should be prepared in accordance with an



authority's community involvement scheme; consultation should involve the general public, businesses, and other interested parties and there should be a record of how their views were taken into account before the SPG was finalised.

2.4.7 Once the LDP Inspector's report is received confirming the LDP policy approach SPG should be formally approved by a Council resolution so that it can be given due weight.

2.4.8 While SPG should be tailored to local circumstances local planning authorities should explore the opportunities for joint working or sharing and ensure cross boundary consistency wherever possible.

2.4.9 SPG, along with the policy it supplements, should be reviewed on a regular basis in the LDP annual monitoring report. Any proposed revision of the policies on which SPG is based should include a review of that SPG. Annual monitoring may also identify the requirement for new SPG.

2.4.10 Non-statutory SPG doesn't require an SA but the SEA Regulations may apply to some types of SPG – for example some site briefs / masterplans. Where screening indicates that SEA applies and there are likely to be significant environmental effects, the local planning authority will need to ensure it has met the requirements of the SEA Regulations.

## 2.5 PLAN PREPARATION PROCESS

2.5.1 The process to be followed in preparing a new or full replacement plan can be divided into 7 cyclical stages with community involvement and integrated SA work key to informing the content of the Plan:

- **Evidence base.** (Section 61 of the 2004 Act) Review, develop and maintain a proportionate evidence base including monitoring the current development plan; preparation and publication of a review report related to plan revision. SA scoping report.  
- *(Cyclical – see last bullet).*
- **Delivery Agreement** (Section 63 of the 2004 Act; LDP Regulations 5 to 10) Preparation and publication of the Delivery Agreement incorporating the plan preparation timetable and the community involvement scheme (CIS).
- **Pre Deposit Plan Preparation \*** (LDP Regulations 14 to 16) Early stakeholder engagement and formal consultation on evidence (including a review report related to a proposed revision), issues, objectives, alternatives, preferred strategy, allocations, policies, integrated SA / initial SA report, and, candidate sites; consideration of responses.
- **Deposit** (LDP Regulations 17 to 19) Formal consultation on the deposit LDP; SA report; consideration of responses.
- **Submission and Examination** (Section 64 of the 2004 Act; LDP Regulations 22 to 23) Independent Inspector considers the submitted LDP documentation (including representations), often with hearings held in public, to determine the soundness of the submitted LDP.
- **Inspector's Report** (Section 64 of the 2004 Act; LDP Regulation 24; section 64(7) of the 2004 Act) Identifies any required changes to the deposit LDP.

- **Adoption** (Section 67 of the 2004 Act; LDP Regulation 25) The adopted LDP, the adoption statement and SA Report are publicised and made available.

- **Monitoring, Review and Revision** (Sections 69, 70 & 76 of the 2004 Act; LDP Regulations 3, 41 & ??) Annual monitoring reports (AMRs) and plan reviews with at least 4 yearly full reviews; a **Review Report** with conclusions about any need for plan **revision** or **replacement**.

- *(And back to the first step above - cyclical – see first bullet).*

\* Regulation ? (*proposed*) also provides for a **short-form revision procedure** for circumstances where the issues involved are not of sufficient significance to warrant the full revision procedure.

## - Management of the Process: the Delivery Agreement

2.5.2 The Delivery Agreement, comprising the timetable and community involvement scheme (CIS), is a commitment to a project plan and policy for proactively involving the community in plan preparation; it must be approved by formal resolution of the local planning authority and agreed with Welsh Government, publicised and made available for public inspection. The Delivery Agreement should be kept under regular review. Only exceptionally (where factors beyond an authority's control prevent the initial targets being attained) should a revised timetable be considered during plan preparation. It may be necessary to revise the CIS when significant contextual changes have occurred. For the preparation of an LDP Revision, a review of the Delivery Agreement will be necessary; a separate Timetable for the revision will be required and parts of the CIS may need to be revised.

2.5.3 A standard prescribed timetable for LDPs is not appropriate because there will be substantial variations in the context in which they are prepared and the nature of planning issues being addressed. Local planning authorities replacing LDPs will be familiar with the process and be maintaining an up to date evidence base; they should aim to complete a full replacement plan within 4 years. The timetable for the revision of an LDP will depend upon the extent of the changes required but should be dealt with expeditiously. Where the spatial strategy is still appropriate and the changes are limited, such as involving allocating new sites, revising growth predictions or specific policy changes, then the short-form revision process would be appropriate with completion within 12 months.

## - Evidence Base

2.5.4 Section 61 of the 2004 Act, requires a local planning authority to keep under review all matters that are expected to affect the development of its area. An authority's policies and proposals and decisions should be founded on a thorough understanding of the area's needs, opportunities and constraints. This requires authorities to maintain and continually develop an up-to-date relevant and proportionate information base concerning the economic, environmental and social characteristics of their area that will inform the preparation, monitoring and review of the LDP, including:-

- i. the principal physical, economic, social and environmental characteristics;
- ii. the principal purposes for which land is used;
- iii. the size, composition and distribution of the population;
- iv. the communications, transport system and traffic; and
- v. any other considerations which may be expected to affect those matters.

2.5.5 Local planning authorities also should take account of the effects of similar issues in neighbouring areas in consultation with the authorities concerned. They should be selective

and concentrate on material needed for plan preparation, monitoring and decision making. The results of surveys and research should be made available for public inspection on request.

### - Collaborative working, engagement and consultation.

2.5.6 Issues of a nature which affect more than one local planning authority will require consultation and collaboration between all authorities likely to be affected. The resulting cross boundary strategies or agreements, especially where evidenced and formally endorsed, will be important inputs to the LDP and examination process. Statements of common ground and joint evidence bases can assist in demonstrating positive collaboration. Local planning authorities are encouraged to consider the advantages of carrying out certain aspects of plan preparation in tandem or through joint working arrangements.

2.5.7 The local planning authority should seek to secure a degree of consensus over the future development and use of land in its area by involving the general public, community councils, voluntary bodies, the business community and all other relevant stakeholders in the preparation of LDPs as indicated in the CIS. There are statutory requirements for engagement and consultation during LDP preparation; further guidance is in the LDP Manual.

### - Joint Plans and Joint Working

2.5.8 Two or more local planning authorities may agree to prepare or revise a joint LDP for their areas (section 72 of the 2004 Act and LDP Regulation 36). This is encouraged where it would be more efficient and effective in tackling cross boundary issues and would improve the robustness of the plan.

2.5.9 Each local planning authority involved must comply with the preparation procedures for the joint LDP as if preparing a separate LDP. Where two or more local planning authorities agree to prepare or revise a joint LDP, each local planning authority must comply with the procedures for the preparation of the joint LDP or revision as required if preparing an LDP or revision separately. All the local planning authorities must prepare / revise the plan; it cannot be done on a unilateral basis by an individual authority.

### - Submission, Independent Examination and Adoption

2.5.10 The local planning authority must submit the Deposit LDP and any focussed changes it considers appropriate, together with supporting documents, to the Planning Inspectorate (PINS) for independent examination on behalf of Welsh Ministers (PINS examination guidance is available on the Planning Portal web-site<sup>10</sup>). The examination will assess whether **preparation requirements** have been followed and will determine whether the plan is 'sound', namely that it meets all **3 soundness tests**<sup>11</sup> specified here in national planning policy as:

1. **Does the plan fit?** (Is it clear that the LDP is consistent with other plans);
2. **Is the plan appropriate?** (Is the plan appropriate for the area in the light of the evidence);
3. **Will the plan deliver?** (Is it likely to be effective).

<sup>10</sup> [www.planningportal.gov.uk/planning/planningsystem/localplans](http://www.planningportal.gov.uk/planning/planningsystem/localplans) (Welsh site)

<sup>11</sup> Key questions relating to these tests are in chapter 8 of the LDP Manual.

2.5.11 A local planning authority should only place on deposit and subsequently submit an LDP for examination which it considers to be 'sound'. Occasionally, if new information, such as new national policy, becomes available in the later stages of plan preparation and some limited changes are deemed necessary to make the plan sound then the authority can exceptionally publish, as an addendum to the deposit plan, a schedule of **focussed changes**. Provided the addendum has been the subject of consultation (in the same way as the deposit plan) and revised SA (if necessary) it will be accepted by the Planning Inspector as part of the submitted LDP. It will be the submitted LDP as amended by the proposed focussed changes that will be the starting point for considerations of soundness.

2.5.12 The Inspector's recommendations are binding. The plan must be adopted by the local planning authority within 8 weeks of receipt of the Inspector's report, incorporating the Inspector's recommendations in full.

2.5.13 An LDP becomes operative on the date it is adopted or, if the plan has been called in, the date it is approved by the Welsh Government.

### - Plan Withdrawal

2.5.14 A local planning authority may withdraw an LDP at any time before it is submitted for examination (section 66 of the 2004 Act). Once the plan is submitted, it can only be withdrawn if either the Inspector carrying out the examination recommends that it is withdrawn (and the Welsh Government does not overrule that recommendation) or, the Welsh Government directs that the plan must be withdrawn. As soon as reasonably practicable after an LDP is withdrawn the authority must advertise the fact and remove all documents from the public domain (LDP Regulation 26). The authority should consider which elements of the evidence may be valid when preparing a further plan, thereby avoiding repetition of evidence gathering and minimising further cost.

### - Plan Monitoring

2.5.15 A local planning authority is required to submit an **annual monitoring report (AMR)** to the Welsh Government by 31 October each year based on the implementation and performance of the adopted LDP for the preceding period 1st April to 31st March, and to publish the AMR. The AMR should provide information as to the extent to which the objectives set out in the LDP are being achieved, identify any policy that is not being implemented and give the reasons, together with any steps the authority intends to take to secure the implementation of the policy and any intention to revise or replace the LDP (section 76 of the 2004 Act; LDP Regulation 37). It should identify any changes to key parts of the plan which would need to be considered in a review and possible plan revision.

### - Plan Review and Review Report

2.5.16 The timing and frequency of **plan review**, and the consequential need for a **Review Report**, will depend upon the findings of the AMR and on local circumstances. To ensure that the LDP is kept up to date and the plan period remains strategic, an authority should commence a more thorough full review of its LDP at least once every 4 years, potentially sooner if suggested by the findings of the AMRs (LDP Regulation 41).

2.5.17 The Review Report must be formally approved by the local planning authority and precede any revision of the LDP (Regulation **proposed**). The Report will set out clearly what has been considered and what needs to change and why; and, when appropriate, must make a conclusion on the revision procedure to be followed. Early engagement opportunities at the pre-deposit stage will enable any dissenting views on the scope of a proposed revision to be expressed and considered by the LPA.

2.5.18 To establish whether revision or replacement of an LDP is required a plan review should assess the degree to which there has been a significant or fundamental change in:-

- external conditions / economic and financial conditions / neighbouring plans
- national policy or legislation
- the local context e.g. major employment site closure
- development proposals and investment strategies of major public and private investors
- implementation and delivery of policies
- the viability and deliverability of a policy or proposal
- forecasts or assumptions
- the cumulative effect of a range of issues

An important further consideration will be the end date of the original plan to maintain an operational life of at least 10 years post adoption, the need to maintain a 5-year supply of deliverable housing land and the time required to prepare and adopt a revision or replacement.

### - Plan Revision and Replacement

2.5.19 The LDP can be revised in whole or in part to respond flexibly to changing; revisions should be proportionate to the issues in hand and should include reconsideration of the SA and the soundness of the plan.

2.5.20 Where a review report indicates that the existing plan is substantially out-of-date and/or the scale of alterations necessary are fundamental, the **replacement** of a plan (i.e. a completely new plan) will be justified. The process to be followed is the same as for preparing a new plan.

2.5.21 Alternatively, a review report could indicate that the plan does not need to be completely replaced but requires some **revision**. This could be where a partial rolling forward of the plan is necessary, forecasts and assumptions have changed, policy needs to be refined/supplemented or new sites, in line with the original strategy, are needed. In circumstances where the issues involved are not of sufficient significance to warrant the full revision procedure, local planning authorities can use the short-form revision procedure.

2.5.22 When deciding to make revisions to a plan, an authority should consider the degree of inter-relationship between different policy areas in the plan as selective changes may have significant consequences for the coherence and effectiveness of the plan as a whole and could affect the soundness of the original strategy and overall plan. The local planning authority needs to give careful consideration, based on evidence, to which revision procedure is followed, as the decision could have significant ramifications procedurally at the public examination and hence 'soundness'.

2.5.23 For the preparation of an LDP Revision, a review of the Delivery Agreement will be necessary; the existing CIS should set out the intentions for community involvement when revising an LDP, but parts of it may need to be refreshed; a new Timetable for the revision will be required. The revised Delivery Agreement must be agreed with Welsh Government and published.

2.5.24 The consultation documents for plan revision should indicate clearly the changes from the existing policies and proposals and linkages to the parts of the plan to be retained. Any representations should focus on the changes, including any implications for other parts of the plan that are not being altered. Local planning authorities are not required to consider

representations that do not relate to the changes unless they can be reasonably regarded as of relevance to the soundness of the plan revision.

2.5.25 Examination of the proposed revisions will be within the context of the adopted plan; the Inspector will consider the local planning authority's conclusions regarding the continued soundness of the plan (as set out in the review report) as well as the appropriateness of the changes in the light of the evidence base. The Inspector will have discretion to determine whether a representation about a retained or a linked policy should be regarded as relevant and considered as an objection requiring to be heard at examination.

### - Availability of Documents

2.5.26 An authority is required to publish (including on its web-site) and make available for public inspection the Delivery Agreement (i.e. the timetable and CIS) and the adopted LDP (LDP Regulations 10 & 39). It must also advertise the availability of the plan and the various other documents, reports and statements produced during the procedure leading to its adoption. Copies of these other documents must remain available for public inspection until six weeks after the date of publication of the notice of adoption or approval of the plan (the period for legal challenge) (LDP Regulation 38). Any direction or notification from the Welsh Government about the plan must also be available for inspection.

2.5.27 Plan documents, including the proposals maps, should be available at each stage in electronic form, but paper copies are also required for inspection and purchase at a reasonable charge at identified, publicly accessible locations.

## 2.6 WELSH GOVERNMENT ROLE IN THE PLAN PROCESS

2.6.1 Welsh Government's role in the preparation of LDPs is one of active stewardship of the system as a whole. It will encourage, and if necessary seek to ensure, the adoption of sound, up-to-date LDPs. In order to prevent the need for more formal interventions to be made later in the plan process local planning authorities should engage the Welsh Government in ongoing dialogue from an early stage.

2.6.2 If an emerging LDP appears to conflict with national policy and appears not to be justified by robust evidence of local circumstances, the Welsh Government will draw this to the attention of the local planning authority at the statutory consultation stages. These views will be considered by the Inspector at examination.

2.6.3 The Welsh Government has wide-ranging **powers of direction** in relation to LDPs including being able to:

- i. direct the terms of the Delivery Agreement documents where agreement cannot be reached - section 63(5)
- ii. direct an authority to modify its plan in a specified manner before adoption – section 65(1)
- iii. call-in a plan for determination by Welsh Government - section 65(4)
- iv. direct in relation to withdrawal of the LDP prior to adoption – section 66(2)(b)
- v. direct an authority not to adopt the plan where the recommendations of the examination inspector are considered to be in conflict with national policy – section 67(4)
- vi. direct that a plan shall be revised (i.e. altered or replaced) - section 70(2)
- vii. direct, where an authority withdraws from an agreement to prepare a joint LDP, the resumption of the independent examination and that steps taken for the purpose of

the joint plan examination are to have an effect in relation to the corresponding individual plan of that authority – section 72(7)

2.6.4 However the Welsh Government will generally only consider using these powers of direction as a last resort when dialogue has failed and where an LDP:

- raises issues of national importance, or
- could have wide effects beyond the area of the plan-making authority.

2.6.5 The Welsh Government also has **default powers** (section 71 of the 2004 Act) where it considers an authority is failing or omitting to do anything necessary in connection with the preparation, alteration or adoption of the LDP or replacement plan and can direct the preparation, alteration or replacement of an LDP within specified timescales.

2.6.6 The Welsh Government may **revoke** an LDP at the request of the authority at any time (section 68 of the 2004 Act).

- **High Court Challenge** (section 113 of the 2004 Act)

2.6.7 Any person can challenge the validity of an LDP or any revision to it on the grounds that it is not within the powers conferred by Part 6 of the 2004 Act, or that there has been a failure to comply with requirements in that Part of the 2004 Act or Regulations made under it (i.e. the LDP Regulations). In such circumstances an application may be made to the High Court to have the plan or part of the plan quashed. Applications must be made within six weeks of the date of the published notice that the plan has been adopted.

## 2.7 EMERGING OR OUTDATED PLANS

2.7.1 The weight to be attached to an **emerging draft LDP** when determining planning applications will in general depend on the stage it has reached, but does not simply increase as the plan progresses towards adoption. When conducting the examination, the appointed Inspector is required to consider the soundness of the whole plan in the context of national policy and all other matters which are material to it. Consequently, policies could ultimately be amended or deleted from the plan even though they may not have been the subject of a representation at deposit stage (or be retained despite generating substantial objection). Certainty regarding the content of the plan will only be achieved when the Inspector publishes the binding report. Thus in considering what weight to give to the specific policies in an emerging LDP that apply to a particular proposal, local planning authorities will need to consider carefully the underlying evidence and background to the policies. National planning policy can also be a material consideration in these circumstances (see PPW section 3.1..2).

2.7.2 Additionally where an LDP is still in preparation questions of **prematurity** may arise. Refusing planning permission on grounds of prematurity will not usually be justified except in cases where a development proposal goes to the heart of a plan and is individually or cumulatively so significant, that to grant permission would predetermine decisions about the scale, location or phasing of new development which ought properly to be taken in the LDP context. Where there is a phasing policy in the plan that is critical to the plan structure there may be circumstances in which it is necessary to refuse planning permission on grounds of prematurity if the policy is to have effect. The stage which a plan has reached will also be an important factor and a refusal on prematurity grounds will seldom be justified where a plan is at the pre-deposit plan preparation stage, with no early prospect of reaching deposit, because of the lengthy delay which this would impose in determining the future use of the land in question.

2.7.3 Whether planning permission should be refused on grounds of prematurity requires careful judgement and the local planning authority will need to indicate clearly how the grant of permission for the development concerned would prejudice the outcome of the LDP process.

2.7.4 It is for the decision-maker, in the first instance, to determine through monitoring and review of the development plan whether policies in an adopted LDP are outdated for the purposes of determining a planning application. Where this is the case local planning authorities should give the plan decreasing weight in favour of other material considerations, such as national planning policy including the presumption in favour of sustainable development (see PPW section 4.2).

## **-Transition**

### **- Blight and Avoiding Blight**

2.7.5 Once a local planning authority publishes a deposit LDP which it proposes to adopt, in accordance with Regulation 17, it will trigger the planning blight provisions, as will the deposit of proposals to revise or replace an adopted LDP.

2.7.6 While an authority should ensure that adequate provision is made for development and infrastructure provision when preparing its LDP it is important that proposals are realistic and likely to be implemented during the plan period to assist in keeping blight to a minimum.

2.7.7 Where circumstances change so that there are proposals in an adopted LDP which are no longer likely to be implemented, the authority should take the necessary action to ensure that this is clear to those using or referring to the plan. This is particularly important in cases such as proposals for major development or infrastructure projects (e.g. road proposals) where uncertainty of the likelihood of projects proceeding can lead to perceived blight to property owners in the vicinity. The only way of removing such proposals from the plan is through a formal revision, and the annual monitoring report (AMR) is a useful tool to highlight necessary changes. However, it is recognised that decisions not to proceed with proposals may be taken on a timescale that does not match annual monitoring or plan revision. Therefore, where a firm decision has been made not to proceed with a proposal (e.g. through a formal council resolution), the authority should ensure that copies of the resolution (or other appropriate document) are made available for public inspection. The authority may also wish to inform directly those whose land or property may have been affected, and others as they think fit. Authorities should be aware that taking this approach does not equate to a formal alteration to the plan. In terms of section 38(6) of the 2004 Act, the proposals in the plan will remain unaffected. The record of the decision by the authority that the proposals will not be taken forward will, however, be a material consideration in respect of any subsequent planning application or appeal. The authority should ensure that the decision not to proceed with the proposal is incorporated in the next set of alterations to the plan or its subsequent replacement.

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