Evaluation of the planning permission process for housing
This research was prepared for the Planning Division of the Welsh Government by Arup and Fortismere Associates in October 2013.

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1 Introduction

1.1 Outline

The Welsh Government commissioned Arup, with Fortismere Associates, to undertake research into the planning permission process for housing. The purpose of the research was to examine the barriers to the delivery of timely decisions for housing developments, and to consider opportunities to improve the performance of the key players to facilitate the delivery of both market and affordable housing. The research aimed to provide a robust evidence base and recommendations about ways to improve the decision-making process.

1.2 Background to the Study

The Welsh Government announced its intention to bring forward a Planning Reform Bill and this was preceded by a White Paper. As part of the evidence base for the Planning Reform Bill, an Independent Advisory Group (IAG) was set up in October 2011 to consider the role of the planning system in Wales. The IAG report was published in June 2012 and made 97 recommendations to improve the delivery of planning in Wales.1 A study on the planning application process in Wales also reported in June 2010.2

These studies identified that an area where improvement is necessary is the efficient and timely delivery of planning permissions and the way in which applications for housing are dealt with in the planning process. This research aims to examine the planning permission process and to encompass both market and affordable housing. The results will complement other work by the Welsh Government to improve the planning application process and will inform the Planning Consultation Paper and the Planning Reform Bill.

1.3 Study Scope and Approach

The scope of the study was to assemble and analyse evidence based on a sample of applications for housing development which had recently been determined and included engagement with the stakeholders that were involved in those applications.

The approach to the study drew upon a wide range of application contexts through case study assessments. Each case study included a forensic review of the local authority application case file as well as detailed follow up interviews with selected stakeholders for each case. Evidence was sought from all sides of the planning process, representing the experience of applicants, agents, local planning authorities (LPAs) and other key players including statutory consultees. An effort was made to undertake consultation with a range of stakeholders in order to gain a wide perspective on current strengths, good practice, potential areas for concern and opportunities for improvement.

2 Study to Examine the Planning Application Process in Wales, Welsh Government, June 2010.
Literature Review

The first phase of the research included a literature review of documents relevant to changes to planning and housing policy in Wales. This helped to inform some of the issues to be addressed in the research. These were reflected in the case studies materials used including the interview pro formas.

Case Study Selection

The second phase of the research consisted of a detailed assessment of case study files and interviews with stakeholders. A total of 20 case study applications were completed from five LPAs. The LPAs were selected to obtain a representative cross-section of housing development contexts across Wales.

The five LPAs that participated in the research were:

- Cardiff Council;
- Conwy County Borough Council;
- Flintshire County Council;
- Rhondda Cynon Taf County Borough Council; and
- City and County of Swansea.

Each LPA was asked to provide data on all planning applications of 10 or more dwellings ("major applications") for the last two and a half years. The data list from the LPAs included details of a number of different criteria that were selected to try and provide a representative sample of planning application types. The selection matrix for case studies is summarised in Table 1.

<table>
<thead>
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<th>Application Type</th>
<th>Selection Criteria</th>
<th>Example Context</th>
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<td>Applications ‘stuck in the system’</td>
<td>Affordable/social housing grant</td>
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<td>Large/small applications</td>
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<td>Allocated/non-allocated</td>
<td>Housing only/mixed use</td>
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The LPA application data was critically reviewed against the selection matrix in order to derive 4 case study applications for each LPA. A number of reserve applications for each authority were also selected in the event that data or information proved to be missing or not available. The sample selection was not weighted, since this was not always possible within the sample population. For example, only a very small number of cases involved Environmental Impact Assessment (EIA) or were determined within the target timescale (8 weeks for most applications, 16 weeks for those with an EIA).

Visits to the five selected LPAs were made during July and August 2013 in order to complete an on-site review of application files (including pre-application and post decision files). For each case study application, the overall time taken to
determine the application and key milestones were identified and examined. The process was ‘time mapped’ to visually represent where the application spent its time across the application and end-to-end timeframes. Planning service managers were interviewed whilst on-site as part of this process.

Selected follow up interviews with key stakeholders (including case officers, elected members, internal local authority consultees, applicants, agents, statutory consultees, community or other local interests) were also undertaken. In the few instances where the study team were unable to (after repeated attempts) make contact, or where the party declined to take part in the research, the assessment has been made based on the available materials.

1.4 Structure of the Report

The structure of the rest of this report is set out below:

- Chapter 2 sets out the main findings from the research;
- Chapter 3 draws together the findings in order to outline the proposals for the recommended system for timely decision-making on planning applications for housing;
- Chapter 4 refers to plan-making and site allocations – whilst not directly part of the application process the study identified a clear relationship between policy and the timeliness of decision-making;
- Chapters 6, 7 and 8 provide further information on the proposed system, detailing the initial phase, the determination phase and the post-decision phase;
- Chapter 9 provides a collated summary of the research recommendations.

1.5 Acknowledgements

The core study team comprised:

- Kieron Hyams, Arup (Project Director);
- Jessica Jones, Arup (Project Manager);
- Alison Blom-Cooper, Fortismere Associates; and
- Dan Evans, Arup.

We are grateful to the input and advice of the Steering Group, which comprised:

- Jonathan Fudge, Welsh Government (Chair);
- Gareth Davies, Community Housing Cymru;
- Jennifer Ellis, Rhondda Cynon Taf County Borough Council;
- Rhidian Jones, Welsh Government;
- Richard Price, Home Builders’ Federation;
- Paul Robinson, Welsh Government; and
- Phil Williams, Cardiff Council.
We are grateful to the five LPAs from which we selected the case studies that are used in this report. In addition, we also appreciate the time taken by applicants, agents and other stakeholders who engaged with us as part of this study.
2 Findings

2.1 Introduction

The case study assessments and follow-up interviews revealed a number of barriers to the timely decisions for housing developments in Wales. Some of these were caused by the current operation of the existing planning system. Others were as a result of poor practice on the part of case officers, applicants, agents, consultees and members.

This section highlights the key findings from the case studies, which are divided into four main phases of the application process:

- plan-making and site allocation;
- pre-application;
- decision making; and
- post-decision.

2.2 Plan-Making and Site Allocation

Allocated sites are not always deliverable.

Sites that have been allocated as part of the plan making process are not always suitable for development, remain technically unproven in evidence terms, or require extensive physical work in order for development to proceed. This is due to the fact that, whilst evidence is collected at the plan preparation stage, it is often not considered at an appropriate level of detail in order to assess whether a site is realistically deliverable within the plan period. LPAs are expected to consider deliverability and the provision of infrastructure as part of the plan-making process, but particularly for the older plans this has often been in the form of a high level review. The research found that major issues relating to allocated sites – most commonly biodiversity, flood risk, drainage and ground conditions – were only fully established once a concept for the development of the site is investigated.

Several instances of this problem were identified in the case studies. In one example, an external consultee believed the site to be ‘undeliverable’ and objected to the scheme, despite its allocation in the development plan. LPAs are required to ensure that sufficient land is available to provide a 5 year supply of land for housing in their areas. They must prepare an annual Joint Housing Land Availability Study (JHLAS) to issue an agreed statement in conjunction with their Study Group (including housebuilders’ representatives and other bodies) of the availability of residential land for development planning and control purposes. These figures are reported to the Welsh Government.
Statutory consultees do not always engage with LPAs in the selection and allocation of housing sites in a joined up way.

External consultees are consulted as part of the plan making process. However, responses are sometimes produced by a separate team from the team that is involved in the day-to-day planning liaison role with LPAs. This can lead to conflicting views on the constraints and deliverability of sites (see above).

Issues raised during policy-making are sometimes dealt with during the planning application process.

Where issues surrounding a particular site are raised, there is sometimes a delay in addressing these and a decision to deal with them within the application for any forthcoming development.

The effect of this is to ‘back load’ work from policy to application stages. One example involved a site allocated for housing with potential drainage issues known to planning officers. There did not appear to be any engagement in this respect between the LPA and Welsh Water in creating the plan and so the risk eventually transferred on to the developer to resolve.

2.3 Pre-Application Stage

Pre-application engagement between the applicant or agent, LPA and consultees is not compulsory, and the take-up, scope and quality of engagement varies significantly.

Prior to the submission of a planning application, it is considered good practice and encouraged by Welsh Government advice for parties to engage early in the process to help define the parameters for a potential development. This can cover aspects such as site history, prevailing policy, potential development levels/mix, design, community views on proposals and issues to be addressed in supporting materials and assessments. This is usually achieved through either/both pre-application discussions and pre-application consultation.

Interviews with applicants and agents suggested that they welcome opportunities to engage with officers and consultees, but that this is not always sufficiently encouraged or available. For example, an agent from one case study had tried to receive feedback on a proposed scheme, but said that the officer replied that they had to give priority to planning applications, meaning that pre-application enquiries were dealt with when time permitted.

On the other hand, some applicants and agents said that they would not currently take up the offer of pre-application advice. This was because the type and quality of pre-application advice was not always useful in progressing the development concept. One applicant, who had been involved in a number of pre-application discussions, stated that the planning officer was ‘fixed’ in his view and was not open to discussion or debate. Applicants particularly referred to the subjective nature of design issues. On the other hand some case officers advised that it can be difficult to get some applicants to engage at an early stage.
Where pre-application discussions do take place, it appears to have generally had a positive effect on the decision-making process. For instance, pre-application advice for one case involved not just the case officer, but also representatives of the authority’s highways department, which allowed the applicant and agent to deal with parking concerns before they arose as part of the formal consultation process. Furthermore, as the case officer remained the same for both the pre-application and application stages, the issues that had been resolved as part of pre-application were not re-visited once the application had been submitted. However, there were also examples where pre-application discussions had taken place and the resulting application was still initially invalid based on missing or unacceptable information being provided.

LPAs do not, or cannot, always make pre-application engagement a priority. None of the five case study LPAs charged for pre-application meetings, and views were split over whether charging would make a positive difference. Some felt that charging would increase the resources available for pre-application discussions, highlight their importance as part of the planning process, and help to formalise the level of service and what was expected from both sides. Others felt that charging would be perceived as an additional fee for something which should be provided as part of the overall application process. The need to be open and attractive to development was also mentioned as a reason for not imposing additional charges on applicants.

Records of pre-application discussions and meetings are poor or in some cases non-existent, with the result that officers have nothing to rely on other than their own recollection of the discussion. This creates difficulties and conflicting views when officers change roles or when a different case officer takes over the application file.

Statutory consultees are not regularly involved in pre-application discussions, even where they have the potential to highlight ‘show-stopping’ issues that may affect an application. For instance, several of the case studies cover development proposals on sites with clear flood risk issues and biodiversity or other environmental risks. Despite this, however, statutory consultees frequently do not appear to become engaged in the application (by either the applicant, agent, or the LPA) until the formal consultation process on the application. This conflicts with the views of one statutory consultee that they actively welcome pre-application involvement. There is, perhaps, a perception by applicants that it is not necessary (or beneficial) to involve statutory consultees at an early stage in the development process and / or that it is ‘too difficult’ to obtain a meaningful response before an application is submitted.

Where the statutory consultees are engaged at this stage, it is not always done in a way that joins up with the LPAs advice or even the advice of the consultee itself.
In one case study the applicant had engaged with Network Rail at the pre-application stage in order to agree a mitigation strategy for development near a retaining wall next to the railway. When Network Rail was consulted as part of the formal consultation on a subsequent application, they issued a holding objection as the development was next to the retaining wall, with no (apparent) prior knowledge of the pre-application discussion.

**Pre-application advice does not always explicitly cover the information required as part of a subsequent application.**

Interviews with applicants and agents indicated that, even where pre-application engagement does take place, it does not necessarily result in a clear understanding of the information requirements to be submitted for the application to be made valid. One case study application for 224 dwellings included several pre-application meetings. However, the application was initially invalid, took nearly two months to become valid and involved the submission of seven sets of revised plans throughout the determination of the application.

**Advice is not always followed by applicants and agents.**

Some of the case studies, and subsequent discussions with case officers, have indicated that the advice given by the LPA is not always followed by applicants. For example, pre-application advice sought for one scheme recommended that the layout be changed in order to provide a more coherent open space. The applicant chose not to follow this advice, instead reverting to the original layout in the submitted scheme. This led to a protracted period of negotiation during the application, before an amended scheme for the preferred layout was submitted. In another case, clear pre-application advice from the LPA that the scale of development was unacceptable was ignored by the applicant. The application was subsequently refused and was also dismissed at appeal.

It is unclear why advice is not always followed. It may be that applicants and agents are choosing to ‘chance it’, knowing that they will still be able to negotiate at a later point in the application process, or that they may have better luck with the Inspector. It may also be the case that LPAs are not effectively communicating the changes they deem necessary for the application to be acceptable.

**Issues discounted at the pre-application stage sometimes become important once the application is submitted.**

Conversely some interviewees felt that issues, seemingly discounted at the pre-application stage, were subsequently raised as concerns (either by the LPA or consultees) after the application had been submitted. For example, one agent agreed a lower number of parking spaces with a highways officer, only for this to be raised as an objection by another officer during the consultation stage. This indicates inconsistency and a lack of a development management or integrated Council approach, which results in misleading messages and frustration for applicants.
Affordable housing budgets are often set at, or prior to this stage, which can create a challenge in terms of achieving planning permission within the same budgetary period.

In one of the case study applications, the applicant was under funding time constraints to secure planning permission. As a result, the applicant did not engage in a pre-application discussion due to the need to submit the application before a certain date in order to meet the funding timetable. The lack of a pre-application discussion then resulted in long running negotiations about detailed aspects of the design, which could have been eliminated prior to the application being submitted.

Whilst not an element of the planning system *per se*, the way in which affordable housing funding is tied to reaching application milestones is an issue particularly when the process takes the length of time evidenced by some of the case studies. Stakeholders interviewed attributed this to both an inability for funding to be carried across budgeting periods and competition from other schemes (within their portfolios) which might reach their planning milestones first.

There is little evidence of Section 106 heads of terms being discussed at the pre-application stage.

Little evidence was presented to suggest that Section 106 requirements are considered before the planning application is submitted. Discussion with an affordable housing officer did indicate that, although pre-application discussions on Section 106 issues were undertaken, the requirements were made in a general sense (or set out as a ‘shopping list’) and were not always adhered to by the Council. This reflects a trend that Section 106 obligations are not given sufficient weight at the pre-application stage. Some LPAs provide clear guidelines on specific Section 106 items, such as affordable housing, so that applicants can calculate the requirement themselves. However, this is not universally adopted by LPAs and doesn’t always take in account the characteristics of each scheme or its viability. None of the case study authorities had introduced the community infrastructure levy. However the introduction of CIL and the adoption of a Section 123 list for infrastructure requirements will improve the clarity as Section 106 will only be available for on-site requirements or affordable housing.

Where Section 106 items are discussed at the pre-application stage, there was also a tendency for the obligations to be varied once the application had been submitted. This is not just the experience with pre-application discussions. On one case file, the financial contribution for the provision of off-site open space was amended three times, with the planning officer having to request a detailed breakdown and justification for the costs twice.

Planning Performance Agreements (PPAs) are not used.

None of the five LPAs covered in this study had used PPAs as part of considering proposals for housing developments. There were limited examples where they had been considered or used as part of other types of development, particularly for energy projects.
2.4 Decision Making

A number of applications are initially invalid in some way.

Many of the case study applications were found to be initially invalid when submitted. This was usually due to missing or incomplete information, evidence or studies. In some examples, case officers considered that the agents should have known the information requirements; for instance, the need for permeability assessments in flood-prone areas or the need for a Flood Consequences Assessments. Officers considered that some applicants and agents decide to ‘chance it’, in order to get the application validated as quickly as possible. Some agents said that they feel they are often under pressure by the clients to get applications ‘in the system’ as quickly as possible in order to demonstrate progress / keeping to programme.

Not all applications with missing information were considered to be invalid by LPAs. In some cases, applications were validated despite the fact that information was missing. This is because some LPAs aim to have a positive (or negotiation-based) approach to development and aim to move the application through the system, with the proviso that the additional information can be submitted at a later date.

In other cases, incomplete or incorrect information, which should have been identified at the validation stage, was not picked up until later. For instance, one application which had used an incorrect address was not identified until the consultation had started. This led to the re-issuing of public notices and neighbour notifications, and an extension to the consultation period. In another case, the lack of an arboricultural impact assessment led to delay further down the process, despite the fact that it was a validation requirement.

Even when applications are valid, not all of the initial application documents are always submitted at the same time.

Several case study applications included information provided shortly after the initial electronic 1APP application had been submitted. In most cases, this seemed to be because the applicant or agent chose to send some documents in a paper copy format because of the need to split large documents into 5-megabyte sections on the Planning Portal. In other cases, however, the reason for this delay was less clear. The delay in submitting documents has the potential to hold up the start of the application process.

Occasionally, consultees are not provided with sufficient information by the LPA to respond.

The case study applications have identified that on occasion, consultees were not always provided with the correct or sufficient information by the LPA with which to respond. In one application, one locally significant consultee was consulted by the LPA, but was not provided with either of the documents that fell within their remit, or any other details of the application itself. In another, the applicant had submitted an ecological assessment but this was not passed on to the consultee looking at ecology.
Consultation often highlights deficiencies in the design or supporting materials or studies.

Responses from consultees often highlight deficiencies in the application, or gaps in the information and supporting material that had been provided. Amended proposals or additional materials were often requested in order for the consultee to support the application. In some cases, this significantly affected the timescale of the application. As part of the determination of one case study application, a consultee highlighted that a dormouse mitigation strategy was missing from the application, and requested that one be produced before support for the application could be given. However, because dormouse surveys can only be undertaken during certain times of the year, it took almost 30 weeks for the applicant to provide the additional supporting material, and another four weeks for re-consultation to occur. This delay may have been avoided if the material had been included as part of the information submitted with the application.

The majority of consultation responses from internal and statutory (or locally significant) consultees are received on time. However, the application will tend to progress at the speed of the slowest response.

Analysis of the case study data shows that a significant proportion of consultation responses – both internal and external – are received within the initial 21 day period. However, when responses are outstanding, LPAs tend not to progress without the response. This is particularly the case if consultation responses are delayed from statutory consultees or the highway authority. As a result, the application often progresses only at the speed of the slowest response.

In some cases the staggering of responses results in a similar staggering of progress, such that when an issue is identified by (say) consultee x, this is passed to the agent who arranges for a revised plan. A week later consultee y identifies an issue, this is passed to the agent, and they commission a study to gather the required data. Several ‘trains’ are set in motion but without regard to the overall ‘whole’ of the application. Ultimately the case officer cannot conclude their report to committee (or similar) until each element is resolved. If consultation timescales could be adhered to or meetings established between the relevant stakeholders to consider the overall scheme and resolve issues, the application could progress in a more uniform way. A ‘typical’ case illustrating this is shown below (Figure 1):

Figure 1: Internal and External Consultee Response Times for a ‘Typical’ Case Study Application
In the case shown in Figure 1, the majority (60%) of responses were received within the 21 day window. However, the minority of the responses that were received after this led to a delay in the determination process.

One minor point is the way in which the timescales are monitored so that they do not necessarily align. The LPAs issue letters of consultation and request a response within 21 days of issue. Consultees then record incoming consultation requests and aim to respond within 21 days of receipt. Where requests are sent in the post, this can result in a discrepancy of several days. If second class postage is used, this could equate to two days in receiving a request and two days issuing a response. This is not significant in absolute terms, but four days equates to nearly 20% of the 21-day window.

### The majority of consultation responses appear considered.

The majority of responses to consultation are considered ones, with any concerns, objections or proposed conditions made clear in the correspondence. In the most part, the responses are made formally via letter or memo (often by email), with language appropriate for sharing with the applicant or public.

However, applicants, agents and case officers have highlighted some problems with specific consultees that are either not fully engaged in their role as a consultee, or make disproportionate requests or responses. These consultees were reported to take longer to respond and provide less constructive material than other consultees. Feedback from applicants also suggested that certain consultees are less willing to consider any benefits of the scheme, which do not fall under their immediate remit or subject area.

There are also specific examples of consultees using informal, unclear or inconclusive language in their responses, which led to the need for further clarification being sought by the case officers. For example, one internal consultee was asked for an amended response twice, as they had not made their position sufficiently clear. This led to their final response being received after the 21 day period had ended. Another example is a response that began along the lines of: “…whilst I do not object in principle... the issue of... raises some concern as to whether...”. This also raises a secondary issue of the extent to which LPAs rely on the views expressed by statutory consultees within their responses particularly those offering very specialist advice. Based on the evidence considered, there appears to be little critical challenge or ‘push back’ against consultee views when weighed up in combination.

### Responses are not always shared with the applicant or agent in a co-ordinated or effective manner.

Feedback from applicants and agents has indicated that responses are not always shared in the most effective manner. Some felt that potential ‘show stopper’ issues raised during consultation were not being shared in a timely matter, meaning that they could not be dealt with efficiently, and that this had an impact on making timely decisions. Others felt that less significant issues were being ‘drip-fed’ to the applicant or agent, rather than being compiled and presented as a whole at the
end of the statutory consultation period. Conversely, some consultees take a proactive approach and send a copy of their comments on the application direct to the applicant or agent.

It was also noted that agents feel that some case officers see their role as providing a ‘post box’ service only, where responses are passed on without professional judgement on their relevance to determination.

**Applicants often view the application as a negotiation process rather than a determination process.**

Rather than the determination of a single, refined development proposal, most of the key actors (across applicants, agents, LPA and consultees groups) saw the application process as an iterative set of negotiations whereby the LPA or a consultee identify an issue, which is then debated and then the design or other features are altered as the proposal ‘meanders’ through the system.

It was very common for revisions to the applications to be made during the life of the application, often (though not always) as the result of concerns raised during the consultation process. For instance, one case study showed that additional information was received three times, and amended plans twice, which resulted in two additional re-consultation periods (see Figure 2).

![Application timeline](image)

**Figure 2: Revised Plans as Part of the Determination Process**

In many cases, this ‘meandering’ nature of cases results in re-consultation, either to confirm the acceptability of additional material or information requested by an initial consultation response, or when revised plans or design changes result in across the board re-consultation. Re-consultation has a number of consequences for the application. Firstly, it can have a significant impact on the time taken to determine. Secondly, it has an impact on workload/cost, not only for local planning authorities, but also for consultees. Even where the consultees have no additional comments to make on an across the board re-consultation, they often respond to make this clear. Finally, re-consultation also seems to cause confusion for neighbours and residents who are notified again on an application that has not been determined, but on which they have already had the chance to comment.
Applications for affordable housing are usually dealt with in a proactive manner by the LPA, although there is inconsistency over how Section 106 requirements are applied.

Case officers were generally found to be pro-active when dealing with applications for the provision of schemes for 100% affordable housing, working hard to resolve any issues. One housing association applicant also commented that a good working relationship with the authority’s housing officer was extremely beneficial in the planning process. Similarly, the housing association had good access to other officers, such as the highways team, who were helpful and were prepared to provide good quality advice and comments both at the pre-application and post submission stages.

There was some inconsistency identified in affordable housing schemes in terms of how Section 106 requirements were applied. In one case the housing association responsible for the scheme recognised that the development would result in increased service requirements and so on, but felt that there was no differentiation between their scheme and if they had submitted a similar scheme for entirely market housing.

Ultimately, affordable housing schemes appear to suffer the same problems and delays as other (market) housing applications.

Applicants and agents may choose to withdraw an application rather than receive a refusal

When it becomes clear that an application will not be successful, applicants often choose for it to be withdrawn. This effectively doubles the amount of work and cost for the LPA (as the subsequent re-submission will not attract a fee), therefore having an obvious effect on departmental resources.

Other applicants may decide to let the application run so that they can ‘try it’ at appeal. One case study application was ‘twin tracked’, whereby two identical applications were submitted, allowing the applicant to run one to refusal, in order that they could appeal the decision. Another applicant chose not to follow pre-application advice, knowing that it would be likely to lead to a refusal by the authority and therefore ‘getting’ a chance to have the application determined by the Planning Inspectorate.

The period of time between the officer recommendation and the formal committee decision can be delayed, for a variety of reasons.

Decisions are not always made when applications are first taken to committee. This is for a variety of reasons, including:

- deferral for site visits;
- deferral in order that officers can prepare suitable reasons for refusal in overturn cases;
- further information may be sought; and
call-in to a different committee or a full Council meeting. This can cause considerable delay to the process, particularly when applications are reported to committee several times. In one case, even though the application was recommended for refusal by officers, members deferred making a decision in order that officers could prepare additional reasons for refusal. This added a further month to the application timescale. Delays in committee proceedings are particularly exacerbated in those authorities where Planning committees are held just once a month. Often this is because the first time members are aware of the details of a scheme is when it comes before the Committee. Additional engagement with members at an earlier stage (either at pre-application or during the application process) would help to minimise deferrals.

2.5 Post-Decision Stage

Debate on conditions following a committee resolution to grant planning permission can cause delays in issuing the decision notice.

Conditions are discussed throughout the determination period, and committee reports tend to include the set of conditions required to make a decision acceptable. However, negotiation on conditions between the applicant and the LPA sometimes take place after the resolution to grant permission. Occasionally, this can cause a significant delay to issuing the decision notice. For example, negotiation between the applicant and the LPA in one case, with regard to just one condition, led to a delay of almost eleven weeks in issuing a decision notice.

Conditions are occasionally ‘tweaked’ and re-worded by negotiation after resolution to grant permission, in order to enable staged development or Section 106 trigger points. In these instances, the application is normally reported back to committee.

Feedback from applicants and agents has demonstrated an appetite for discussing draft conditions at an earlier stage, particularly those suggested by consultees. Although case officers tend to be happy to discuss likely conditions, no formal sharing mechanism is in place for this to happen on a regular basis.

Some applications have a large number of pre-commencement conditions, with variable record keeping.

The number of pre-commencement conditions was found to vary widely between applications. In part, this is to be expected, with the number dependant on the scale and complexity of the proposal, and the type of application. However, there are instances where LPAs are choosing to take a ‘belt and braces’ approach. It was the view of several applicants and agents that conditions often ignore information that has already been submitted as part of the application.

The quality of recording submissions and outcomes are variable between LPAs, and it was rare for LPAs to register the discharge of conditions as separate applications - none of the case study authorities did this. Due to poor record keeping, it is very hard, if not impossible in some cases, to track correspondence on conditions and to work out which conditions have been discharged. This not only has implications on the commencement of development, but also for
monitoring conditions and establishing if any breaches of planning control have taken place. This could also cause problems in land searches.

Conditions are often ‘partially discharged’, and it is not always clear which part of the submission this part approval refers to and what the applicant must do in order to fully discharge the condition.

**Applicants can take a long time to submit applications to discharge pre-commencement conditions.**

Applicants do not necessarily aim to discharge conditions immediately after a decision notice is issued. The juxtaposition between the effort to get a permission followed by the long periods taken to submit discharge of conditions applications can result in a feeling that the ‘foot has been taken of the pedal’. Submissions are usually made in a phased approach, rather than all in one go.

**The time taken for LPAs to discharge conditions is variable.**

Once submissions for discharging conditions have been made to the LPA, it can often take a considerable amount of time for these to be formally discharged. For example, one application took 16 weeks for determination, but an additional 77 weeks before the final pre-commencement condition was discharged. Often, discharge will require consultation or agreement with statutory consultees. As submissions are not always registered as separate applications, there is no statutory timescale for either the consultees to respond or the LPA to determine and no application tracking mechanism in place. Some applicants commented that planning officers gave low priority to the discharge of conditions and that they (and their agents) had to chase regularly for conditions to be discharged. This leads to frustration for applicants. In one case, the applicant had started on site prior to all the pre-commencement conditions being discharged.

**It is 'the norm' for Section 106 Heads of Terms to be finalised following committee resolution to grant planning permission, which can involve lengthy negotiation.**

Negotiation between the LPA and the applicant on Section 106 requirements usually happens during the determination stage, and LPAs are generally successful at making clear what is likely to be required (although the feeling amongst applicants is that the rationale or method of calculation is not always sufficiently transparent). Despite this, it is ‘the norm’ for Heads of Terms to be finalised after there is a resolution to grant permission. This can often involve a lot of negotiation and therefore remains a protracted process.

**Section 106 agreements often take many months to be agreed and signed.**

Reaching agreement on Section 106 can be a difficult process, particularly where there are several landowners. Section 106 agreements often take many months, and can include several drafts and protracted periods of negotiation between legal officers, the applicant(s), land owners and solicitors. This can result in often substantial time lags between a resolution to grant planning permission and the
issue of a decision notice. One extreme case took over three years after resolution for the Section 106 agreement to be signed and the decision notice to be issued. However, even in more straightforward cases time lags of several months or more are not uncommon.

This is critical as this is a precondition to the decision notice being issued, and the performance ‘clock’ stopping, even though the actual planning decision at committee was made much earlier. However from the applicant side it is often the case that a resolution to grant permission is sufficient for their purposes and they are in no hurry to complete the Section 106 as this will trigger the purchase of the land.

Some submissions to discharge conditions include revised plans altering the approved design.

Some submissions to discharge conditions include revised plans, which alter the approved design. In part, this may be due to the fact that applications for minor amendments cannot currently be made in Wales. This is often confusing for the public who are following applications. One case study was approved and then, as part of discharging a pre-commencement condition, revised plans were submitted which involved a revised layout. There was disagreement over whether these changes were consulted on (following approval of the scheme in principle by the planning committee). However, a member of the public who lived near the site boundary where the scheme had changed wrote to the LPA, aggrieved as they had commented on one scheme and felt that the developer would now be building another. The revised layout brought some of the dwellings closer to the shared boundary with the neighbour.

Appeal decisions are generally made in accordance with the agreed timetable. However, the appeal process can take much longer.

Where unsuccessful or non-determined applications are taken to appeal, the Planning Inspectorate is generally successful in issuing decisions within the target timescale. However, in exceptional cases the decision can take much longer. For example, the time taken between submitting an appeal against one LPA decision and receiving a decision notice took around 75 weeks, far longer than the time taken to determine the original application. In that case, the appeal was called in by the Welsh Government, which added considerably to the appeal timescale. In another appeal against non-determination, the appeal decision also took longer than the LPA had taken before the appeal was submitted.
3 The Recommended System

3.1 Overview

The findings identified in research highlight a system which incorporates a number of ‘breaks’ or delays in the overall end-to-end timeline such as between:

- pre-application discussions and the submission of an application;
- validation of an application and the submission of additional information; and
- a decision in principle to grant planning permission and the agreement of planning conditions and a Section 106 agreement in order to issue the decision notice.

One result of these ‘breaks’ in the system is that it makes little sense to refer to or set a single overarching determination timescale. The 8 week performance target set for LPAs is considered to be a guide for them in terms of the overall timescale for their efforts in determining the application. In reality, the application of the current system means that there are numerous instances where the ‘ball’ is not in the LPA’s ‘court’.

In measuring the timeliness of determination performance by a LPA, it is appropriate that there are not opportunities to ‘stop the clock’. This might incentivise perverse behaviour in order to meet performance targets or result in other such unintended consequences. At the same time, in many cases interviews with applicants and their agents identified some satisfaction with the current ‘breaks’ in the system. There was a desire towards a more ‘sequential’ approach whereby applicants could tackle each ‘hurdle’ in turn. This enabled them to navigate and achieve consent incrementally.

Overall, based on the case study evidence gathered for this research, the desired characteristics of a reformed system can be identified as:

**Sequential**

Enabling applicants to proceed in a way that does not require all information / consents up front, but allows them to develop proposals and manage risk.

**Accountable**

It should be clear in whose court the ‘ball’ is at any point in time and that this should be the basis of any performance measurement of timeliness.

**Shared**

There should be clear commitments and responsibilities on all actors in the system, including applicants / agents and statutory consultees as well as the LPA. This is not only about performance, but also about engagement throughout the process.

**Realistic**

Overall, there is a clear class of development, of a certain upper scale and / or complexity, where it is not possible to make a planning decision in an 8-week period. Applications accompanied by an Environmental Statement have a 16-week target, but the initial application trawl identified very
few such applications. There is still a thick ‘band’ of applications which have an 8-week target timescale, but which relate to large and/or complex proposals for many hundreds of houses. The only way in which such timescales are achievable in these cases is with a concerted effort to both front-load scheme formation and to back-load implementation considerations or similar details. In such a scenario, if an applicant does not engage in any way at pre-application stage the challenge is further compounded.

**Firm**

As set out above, the current target timescale requires a robust and strict approach with good early communication and a determination process which has no delays or feedback loops (such as re-consultation).

LPAs are keen to attract sustainable development and to deliver the vision set out in their prevailing policy. In doing so, they are often willing to accept an application which is not, at its outset, acceptable and opt to negotiate an acceptable scheme. This has time implications for decision-making and to some extent LPAs might be a ‘victim’ of their own flexibility. It is also possible, though hard to evidence, that such an approach discourages pre-application discussions of the vigour required in order to make applications relate to schemes which are acceptable at their submission.

**End-to-End**

A reformed system should be grounded in development management principles, with a focus on implementation that runs all the way from policy-making and site-allocations through to brokering development proposals and supporting implementation and delivery.

### 3.2 Towards a Recommended System

The evidence gathered and presented in Section 2 has been considered in the light of the desired characteristics set out above. In combination, these lend themselves to a ‘staggered’ system comprising three main stages of development management. These are presented in the flow diagram below (Figure 3).

The recommended system is formed by these stages each having a fee and target timescale associated with them. Each constitutes a self-contained structure whereby an applicant/agent would prepare a submission for the LPA, pay a fee and receive a service regulated by a target timescale. This enables the applicant to proceed at their own pace (between phases), but ensures a responsive service once a formal submission is received.

A key consideration of the approach is to ensure that Wales remains a competitive place to invest in, and that applicants are not discouraged from developing in Wales. The recommended system broadly contains the same building blocks as the current system. Further, the recommended system embeds flexibility and certainty whereby applicants can move from phase to phase at their own pace,
whilst certain that the outputs from each phase (from the LPA) will be delivered in a robust and timely fashion.

![Diagram](image)

**Figure 3: Summary of the Recommended Process**

Whilst this system is designed primarily around the needs of full applications, which make up the majority of cases, the same approach can and should be adopted for outline and reserved matters applications. This will need to be applied sensitively. For example, where an outline consent provides significant detail it might not be necessary or desirable to engage in the Initial Phase on a subsequent reserved matters application.

The remainder of this section sets out an introduction to each of these phases. The sections of the report which follow this one develop these ideas further and provide some detail as to both the requirements for implementation and the mechanics of operation.

### 3.3 Plan-Making and Site Allocations

This research does not propose any reform to the current Local Development Plan (LDP) system. However, the evidence gathered has highlighted that a number of sites progress through planning policy and to adoption in the development plan without a clear demonstration or understanding of their technical deliverability.

It is crucial that allocated sites are technically deliverable and that the housing pipeline identified within Joint Housing Land Availability Studies (JHLAS) can be relied upon. This is distinct from commercial viability, which might reasonably be expected to vary over time.

This will also need to be considered in the light of the introduction of the Community Infrastructure Levy (CIL) for off-site contributions and the new role of Section 106 for on-site or small-scale (only) pooled contributions. In particular, this will create a decision for LPAs in terms of the way in which affordable housing is delivered.
3.4 The Initial Phase

The purpose of this phase is to discuss and refine the development proposals (design, location, characteristics, and so on). The aim is to arrive at the requirements of a scheme which can be assessed.

This phase is not confined to pre-application discussions, but would include consultation with statutory consultees. Involvement with local communities and the Design Commission for Wales (DCfW) would be encouraged, as would engagement with members. Engagement would ideally be joined up as part of a development team approach, although the response should be appropriate and proportionate to the proposal.

The initial phase would result in a formal output identifying the key areas of concern for a submission to address and the documents / information requirements that should be provided (as well as their focus) in order to address those key concerns. The output would include CIL / Section 106 considerations (including Heads of Terms).

This phase would be optional. However the determination phase will be managed more strictly than in current practice. An applicant / agent would be able to enter this phase more than once per scheme if the design or development changes significantly.

This phase would not replace a less formal ‘duty planner’ type discussion around general acceptability in principle of a use on a site.

The target timescale for the initial phase would be 6 weeks from receipt of a formal submission by an applicant to the issue of a formal written output by the LPA.

3.5 The Determination Phase

The submission and determination of a single, defined development proposal.

Validation would be undertaken against the information requirements and issues identified in the initial phase, with flexibility applied where schemes have altered slightly. The submission would include a draft Section 106 / Unilateral Undertaking Heads of Terms where required and provide information around phasing to enable conditions to be drafted.

This phase would include a single round of statutory and local consultation. Only minor modifications or non-material amendments would be allowed in the light of consultation responses.

The overall approach is one of ‘tough love’ where applicants need to provide robust, quality submissions that can be promptly assessed. Where applicants made use of the initial phase, applicants would still have a ‘free go’ in the event of refusal.

The target timescale for the determination phase would be 8 weeks from receipt of a valid submission by an applicant to a committee decision. This could include a committee resolution in principle to grant planning permission subject to the conclusion of a Section 106 agreement or Unilateral Undertaking. In such cases, a Section 106 agreement would need to be concluded within 3 months of the...
committee resolution (or as otherwise agreed between the LPA and applicant) and
the resolution would lapse if this is not completed. The legal section of the local
authority would be expected to respond swiftly to enable completion within this
timescale. In these circumstances, a decision notice can only be issued following
the conclusion of a Section 106 agreement. Conditions (notably pre-
commencement conditions) should not cover wide-ranging issues that should have
been addressed during this phase. Discussions should be held with the applicant
on proposed draft conditions.

3.6 The Post-Decision Phase

This phase runs from the issue of the decision notice through to implementation in
cases where planning permission is granted, covering conditions and compliance /
monitoring. It also includes any appeals against a refusal to grant planning
permission or non-determination by the LPA.

Applicants would be encouraged to engage in early discussion with the LPA and
consultees (during preceding phases) about the appropriate inclusion of conditions
and subsequent materials or information that would be required in order to
commence and complete development.

This phase includes a robust system of discharging pre-commencement conditions
based on a single fee per submission made.
4 Plan-Making and Site Allocations

4.1 Introduction

The Local Development Plan (LDP) system in Wales requires all LPAs to prepare a plan for its area to give developers and the public certainty about the type of development that will be permitted at a given location. The examination into the LDP considers the soundness of the plan. A main principle for LDPs and one of the tests of soundness is deliverability of the plan, so that all authorities must be able to show that they can deliver the development planned. LDPs should be supported by evidence of good infrastructure planning. Implementation of the plan is dependent on the actions of others and one of the purposes of working with stakeholders is to secure widespread commitment to the strategy. The Welsh Government published the Wales Infrastructure Investment Plan in May 2012, which includes priorities for new investment including the Welsh Housing Partnership and with the Registered Social Landlords (RSLs) is launching a Welsh Housing Bond to finance the delivery of affordable homes.

Local authorities are required to prepare an annual Joint Housing Land Availability Study (JHLAS) and early engagement with developers and landowners in plan making is required in order to obtain information on potential sites and to ensure that the LDP strategy is deliverable. The Welsh Government’s LDP manual states that potential sites should be discussed with statutory consultees at an early stage to identify any fundamental issues. However, this study has found that, in some instances, allocated sites in development plans had not resolved infrastructure issues so that planning applications were delayed whilst these were addressed.

4.2 Housing Land Supply and Development Plan Status

The case study evidence did not suggest any substantive differences in handling applications based on development plan status and / or whether a development site had been allocated in the development plan. Further, anecdotal discussions around the case studies suggested sites which are allocated within development plans are not always easy to bring forward. In some cases it is too early to assess the success of a recently adopted LDP as there had not yet been significant amounts of development permitted and implemented under the plan. It is clear that whilst being allocated in the plan carries material weight in determining planning applications, allocation within a plan does not mean permission is assured particularly where infrastructure provision has not yet been made or new issues such as flooding have arisen since the site was allocated. In several case studies there were sites which, whilst allocated in the ‘old style’ development plan, were challenging to deliver based on a range of factors such as (but not restricted to) site conditions, viability, expected level of development, infrastructure requirements and environmental concerns. It is to be hoped that for those development plans adopted more recently and with more emphasis on deliverability that this will not be such an issue in future.
Authorities will need to identify local priorities including priority sites for development and the range of needs in the area in their development plans. It will also be necessary to consider emerging and existing policies, in terms of how affordable housing is defined, and the nature of the evidence base underpinning affordable housing policies. Technical Advice Note (TAN) 1 identifies that LPAs must ensure that sufficient land is genuinely available to provide a five year supply of land for housing. This land supply must inform the strategy contained in the development plan. LPAs should also have regard to the requirement to prepare and provide timely housing land supply figures to satisfy the requirements of the Wales Programme for Improvement Core Planning Indicators and Local Development Plans Annual Monitoring Reports (AMR).

The annual Joint Housing Land Availability Studies:

- provide an agreed statement of residential land availability for development planning and management purposes; and
- set out the need for action in situations where an insufficient supply is identified.

Each LPA is responsible for preparing a Study Report in a standard format.

Further, in allocating sites, the greater the evidence to support the allocation of a site for housing, the lower the risk associated with that site and the greater likelihood the allocation will be built-out. There is a danger that front-loading too much could delay plan creation and adoption. Typically, those with an interest in a site are keen to promote it and so some of the onus can and should rest with those promoting sites to justify their adoption with greater evidence. At the same time, there is a growing appreciation of strategic evidence gathering in place of some localised evidence gathering. For example, Natural Resources Wales (NRW) are currently undertaking some macro-scale modelling of habitats and ecological quality in order to provide an evidence base that is robust and might avoid the needs for site-specific counts or surveys in low-risk areas. At an authority level, this will also better enable LPAs to consider sites in terms of overall biodiversity offsetting or banking.

4.3 Section 106 and Community Infrastructure Levy

Following the introduction by the Planning Act 2008 of the Community Infrastructure Levy (CIL), the county and county borough councils and the national park authorities in Wales will have the power to charge the levy on new developments which add 100sq metres of floorspace or one dwelling or more. At the present time, no Welsh Authority has introduced the levy although some have consulted on a draft charging schedule. From April 2015, whether or not an authority has introduced CIL, there will, however, be certain restrictions placed on the use of Section 106 agreements. After this date, Section 106 agreements designed to collect pooled contributions from 5 or more developments may not be used to provide infrastructure which could be funded from CIL.

To provide the evidence to support the introduction of CIL to fund infrastructure in their areas, authorities will need to have identified the infrastructure required to support development, its costs, sources of funding, timescales for delivery and

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3 Technical Advice Note (TAN) 1: Joint Housing Land Availability Studies (2006)
gaps in funding. The introduction of CIL for off-site contributions will bring consistency and certainty for applicants as to the quantum to be paid towards off-site contribution. This is currently debated on a case-by-case basis and in some cases is not considered in an ‘overall’ light – each department’s request is added together with no overall perception of viability / cumulative impact.

Those authorities who introduce a CIL may impact on their ability to deliver affordable housing. Evidence in England suggests that the introduction of the CIL is already reducing the number of new affordable homes as the viability of sites is affected. Since CIL is designed to be non-negotiable, it has priority over other payments so that schemes are halted or the amount of affordable housing reduced.

There are no proposals from this research to change the plan making process. It will, however, be important for there to be engagement with (and from) key stakeholders in the plan-making process to ensure that sites are deliverable and that infrastructure requirements are clearly identified.
5 The Initial Phase

5.1 Introduction

Although the Welsh Government has strongly advocated the use of pre-application discussions and the Practice Guide published in 2012 ‘Realising the Potential of Pre-Application Discussions’ provided advice as to their implementation, the study has revealed that the extent / take up and quality varies significantly. The guidance advises that early discussions offer the opportunity for informed amendments and improvements to schemes prior to the submission of a formal application. They can also help to identify community groups, consultees and other stakeholders that are likely to be involved in the application process. These discussions can identify the relevant planning policy framework against which a proposal would be assessed and specify the information that would be required to support a planning application. They can result in a better planning application and deliver a higher quality development.

One of the key benefits is to establish the information required to support applications in order to avoid incomplete applications. Despite the advice from the Welsh Government that there should be a written response to enquiries and the advice should be formally recorded, the resources and priority afforded such discussions is limited. This is perhaps a result of the fact that the case study authorities do not currently charge (and did not have any plans to do so) for this aspect of the service. This is partly due to a desire to facilitate development and not to provide a disincentive for applicants. However, whilst this might be true for householder applications and some minor development proposals, where authorities (such as in England) have started to charge for providing advice on major proposals, it has not had this impact and has allowed the service to be properly resourced. If it were properly resourced, it would be possible to facilitate the timely and constructive involvement of other stakeholders. It should also include community consultation, and involvement of local authority members.

The proposal for an initial phase seeks to formalise this process and ensure that there is engagement from statutory consultees as part of the formal written response provided by the LPA.

5.2 The Process

The intention would be for the initial phase to bring together the LPA, the developer and key stakeholders to work together in partnership and by doing so, to provide greater certainty and transparency to the development of scheme proposals, and the subsequent assessment and determination of any forthcoming application. This would be a more formal pre-application process, but would not in any way commit to the granting of planning permission, but to ensuring that development proposals (design, location, characteristics) can be discussed and refined prior to submission. It draws on the experience of using planning performance agreements in England but would be more formalised and integral to the new regime. There would be nothing to prohibit the use of such an agreement to provide an agreed timetable for this and the subsequent determination phase.

This phase could be either mandatory for major applications or could be optional. If optional and not made use of, the determination phase would be managed more strictly. An applicant would be able to enter the initial phase more than once on a scheme if the design or development changed significantly.

This phase would not replace a less formal ‘duty planner’ type discussion around general acceptability in principle of a use on a site.

The initial phase would include the following elements:

- the applicant to provide information of the proposal including site plans, existing and proposed drawings and plans; and a statement explaining the design principles of the proposal;
- the LPA to consider the key objectives of the scheme including any policy constraints;
- engagement with relevant statutory consultees, local communities and members as appropriate to the nature and scale of scheme to obtain a coordinated view of the proposal; and
- provision of a formal written response to the applicant on the proposal within a target of 6 weeks (or otherwise as agreed between the LPA and applicant).

It would be important to assess the ability of a proposal to meet all planning policy requirements during this stage. If the ability of any given development site to provide sufficient affordable housing, deal with any on site Section 106 requirements and CIL liabilities is challenged by a developer such that negotiations stall, then robust and open viability evidence will have to be provided and assessed in order to resolve the impasse. At the same time, the authority would need to be confident that it can substantiate its position, both in terms of the affordable housing ‘ask’ and in terms of the overall range of planning obligations being sought for the scheme.

In order to deal with proposals at an initial phase within the suggested timescale local planning authorities will need to put in place standing arrangements or mechanisms to engage with the relevant parties in a timely fashion (as set out below). The written response would provide details of the information required when submitting an application including the Heads of Terms for any S106 agreement, the project management arrangements and a suitable timescale for processing the application during the determination phase, and any outstanding issues which need to be addressed with details of the evidence required. Whilst cognisance would need to be taken of any confidential matters which are exempt from freedom of information requests these could if necessary be part of a separate note. The response might result in advice that the proposal is not likely to be acceptable and accordingly avoid unproductive work.

The benefit to the applicant would be greater certainty and a smoother ride through the determination phase.

5.3 **Co-ordinated Advice**

Larger scale developments for housing would require input from outside the planning function and putting in place a development team approach to considering proposals (with internal and external stakeholders including statutory consultees) would be one way of ensuring that the advice is given in a co-
ordinated way. This study has revealed that the involvement of internal and external stakeholders at early stage of discussion and to feed in their approach in early discussions was limited. In order to ensure that these occur, one way of doing this would be to have a standing meeting within each local authority area with identified representatives from all the key stakeholders to attend as required according to the schemes to be considered. Schemes would be identified in advance for discussion and the relevant attendees invited.

The approach taken to the scope, scale, targets and delivery of affordable housing becomes paramount. This can fundamentally effect the overall viability of any given development proposal, often more so than any other single factor. The importance of both rigorous evidencing of affordable housing requirements and for all parties being able and willing to evaluate information on site viability is key. Ensuring that all the key stakeholders were engaged and feeding in comments / advice on requirements / constraints would ensure that applicants are aware of all the issues prior to submitting a scheme which can be assessed.

The aim of the output from this phase is to provide clarity to the applicant in a written report prior to the submission of an application of the following:

- the information / evidence needed to support the application;
- whether an EIA would be required\(^5\);
- any S106 requirements, affordable housing requirements and CIL liability;
- provision of advice on any further consultation that might be required;
- views of all statutory consultees; and
- identification of unresolved issues and the process by which they can be agreed.

5.4 Working with Members and the Community

As well as working at officer level and obtaining a clear steer prior to the submission of an application, it is important that the views of members are also fed into this process. In the past, members and officers identifying different issues when an application is being considered by a planning committee has caused concern. Increasingly private sector stakeholders are looking to reduce uncertainty and ensure any additional members’ issues are identified. Members have in the recent past been cautious about engaging in the process in order to avoid fettering their discretion. Any involvement at this stage therefore needs to be open and transparent and in accordance with clear published guidelines.

Some authorities have started to provide informal briefings to the committee on major schemes so that members know what schemes are in the pipeline. It is recommended that there is national best practice guidance produced and each authority should be required to include within its planning protocol mechanisms for the involvement of members in line with such guidance. This would facilitate members’ involvement in relevant public meetings and this initial phase of the process without taking risks which would question the integrity of the decision-making process. This guidance should draw on the practice elsewhere, for

\(^5\) This would not replace the formal screening and scoping procedures for EIA under the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999, as amended (SI 1999. No. 293).
example the Planning Advisory Service (PAS) guidance and practice in many English authorities and could include interim committee reports; developer presentations to committee and development management forums or enquiry by design workshops.

Local people have a vital role in conveying local issues, influencing proposals that will affect them and potentially having a long term involvement in management and decision making. These objectives are reflected in current planning guidance, which advocates front loading of engagement early on in the planning process, ideally helping to set the overall agenda, and sets out a formal requirement for a ‘Delivery Agreement,’ which includes a Community Involvement Scheme as part of the plan-making process. Likewise, other key stakeholders such as statutory agencies must be involved throughout the evolution of a project to ensure that the outcome is acceptable and deliverable. Stakeholders for a major development proposal are likely to include national bodies such National Resources Wales, the highway authority, local interest groups, utility companies, service providers, community councils and local people. Engagement requires commitment from all partners in terms of time, money invested upfront and skills, and there are a variety of ways that the wider public can be engaged. To get the most from the involvement, each project will need an approach based on local and project specific circumstances.

Engaging early on in the planning process can be highly effective in relation to generating community buy-in, identifying and addressing key issues. This can save abortive work and issues being raised late in the process causing delay and uncertainty. The local community can be experts in understanding the neighbourhood and may be able to identify opportunities and constraints that are not apparent to professionals.

As part of the initial phase, involvement with local communities and the DCfW, which provides a free design review service allowing early consultation with its independent expert panel, should be essential.

5.5 A Single Fee, Set Nationally

In formalising the process and in order to properly resource this phase of the process, a fee should be charged for undertaking the co-ordinated response to the proposal and a written report. The service should result in a smooth ride through the determination phase avoiding delays as a result of changes, amendments or unforeseen issues and help to ensure any relevant agreements are completed quickly. The fee set should relate to the scale of the proposal. An initial suggestion would be to set this as a proportion of the current planning application fee.
5.6 Summary

The initial phase is established as a formal stage in considering planning proposals for which a fee is charged to provide a co-ordinated report, setting out:

- the information / evidence needed to support the application;
- whether an EIA would be required;
- any S106 requirements, affordable housing requirements and CIL liability;
- provision of advice on any further consultation that might be required;
- the co-ordinated views of all statutory consultees; and
- identification of unresolved issues and the process by which they can be agreed.

This phase should include engagement with local members and the community, commensurate with the scale of the development.
6 The Determination Phase

6.1 Introduction

It is inevitable in the planning process, which involves the assessment of often complex technical problems and subjective design issues, that there will be an element of negotiation and debate. This is desirable and appropriate and can result in a better form of development. However, the current approach to determining applications is very iterative and can be ad hoc in some cases, leading to protracted negotiations, re-consultations and bottlenecks in the system.

The determination phase should be a quicker and more streamlined approach to determining whether a proposed development is acceptable. The determination phase should build upon the initial phase, which should have contributed to the discussion and refinement of the development proposal and established the requirements of the scheme that can be formally assessed.

6.2 A Single, Defined Development Proposal

The planning system needs to work better, more efficiently and to a stricter timetable. The aim should be for the submission of a single, defined development proposal that can proceed through the determination phase in a more linear fashion rather than the meandering and / or stop-start situation that occurs at present. This should apply equally to schemes that are subject to EIA and in situations where EIA is not required.

6.3 Validation

For applications that have been considered in the initial phase, applications should be validated against the information requirements and issues that are defined in the initial phase. Applications should be deemed to be valid provided that the requirements agreed at the initial phase have been submitted. It is entirely possible that the development proposed at the application stage may have evolved from that which was discussed at the initial phase. Indeed, this is a necessary and desirable outcome of the initial phase. As a result, LPAs should take a proportionate approach to validation if elements of a scheme have been amended.

Applicants should be encouraged to participate in the initial phase with LPAs. However, this is not compulsory. For applications that have not been through the initial phase and have gone straight to submission, validation should continue to be against the national and local list requirements for LPAs. In these situations, LPAs would be entitled to take a robust approach to validating applications and identifying information requirements from potentially deficient planning applications. Where applications are deemed to be valid, they should be registered promptly by the LPA (best practice would be within 3 working days) with the determination period commencing on the date of receipt as at present.

Section 106 requirements should have been discussed in the initial phase and LPAs should expect the submission to include draft Heads of Terms, plus information on the proposed phasing of the proposed development, where appropriate.
6.4 Consultation

In most of the case studies, good practice was observed with consultation letters being sent out promptly. This should be continued. In addition, to statutory consultees, LPAs should be encouraged to issue ‘focussed’ consultations to a core list of key consultees, both internal and external to the Council and to avoid sending out blanket consultations to a standard list.

There should be a consistency of approach from consultees to provide certainty for applicants and to provide a coherent development management approach, which should not deviate from the initial stage unless there has been a material change to the proposed development. There should be a single round of statutory and local consultation. In this way, the applicant should only expect to make minor modifications or non-material amendments in response to comments received from consultees.

Similarly, consultees should not attempt to make substantive changes to Section 106 requirements that should have been discussed and agreed in principle at the initial phase. All consultee responses should be provided with clear reasoning and should not be ambiguous. All correspondence relating to Section 106 requirements should be accompanied by a detailed justification for the obligation that is required. Service level agreements should be put in place internally within Councils in this respect in order to achieve better performance in consultation response times. Similar arrangements should exist between LPAs and statutory consultees and key stakeholders including those now operating within the private sector.

Consultations should be made more readily available to applicants by officers to avoid ‘surprises’ when the committee report is published. For example, NRW now send a copy of their response direct to the applicant. This is a helpful and pro-active approach and enables the applicant to respond promptly and directly to both NRW and the LPA if required. A similar approach is taken by South Wales Police, with the crime prevention officer sending a copy of their comments directly to the applicant/agent. Other key consultees should be encouraged to adopt this approach, rather than the applicant having to repeatedly chase the officer for comments that may have been received.

The ‘ultimate’ aspiration for consultation might include a more automated IT-driven portal approach whereby live application information (including consultation responses) is available online.

6.5 Determination

The overall approach in the determination phase is one of ‘tough love. Applicants should provide robust, quality submissions that can be promptly assessed. The initial phase should have assisted in ironing out fundamental issues and applicants should not expect to be confronted with ‘show stopping’ factors or constraints at this stage if they have been through the initial phase. The focus of the determination stage should be processing the application, with less ‘to-ing’ and ‘fro-ing’, revisions and re-submission of plans which should have been addressed prior to submission.

In the event of a refusal of planning permission, applicants would still retain the right of appeal. However, it is proposed that applicants should only be entitled to a
resubmission (‘free go’) if they have engaged in the initial phase and planning permission is subsequently refused. The reasons for refusal should contain clear reasoning in order to provide a clear view on what could be undertaken to make a proposal acceptable. LPAs should be clear that (and applicants / agents should interpret outcomes such that) refusal relates to the acceptability of the proposed scheme assessed and does not relate to the general principle of use. The common current practice of an applicant or agent withdrawing an application facing refusal serves only to frustrate the system and result in additional administrative burden associated with a resubmission for which there might not be an application fee payable.

6.5.1 The Use of Conditions

LPAs should discuss proposed draft conditions with applicants prior to the finalisation of committee / delegated reports. Pre-commencement conditions should be retained, but should be used only when they are necessary and relevant. Consideration should be given to the use of more appropriate conditions, such as prior to beneficial occupation or linked to a particular phase of the proposed development. LPAs should also avoid the excessive use of conditions.

Conditions should not be used to cover wide-ranging issues that should have already been covered in the application submission. The application, as submitted should be capable of being implemented and should not require a further raft of conditions. Details such as the proposed access, siting, drainage and run-off information should be submitted as part of the application to reduce the need for conditions. The use of conditions for the approval of materials, finishes, landscaping and construction / environmental method statements would still be appropriate.

In order to aid transparency and monitoring, both decision notices and LPA back-end IT systems should clearly identify the number of pre-commencement conditions imposed as part of a decision.

6.5.2 Time Period for Determination

The 8 week period for the determination of applications would be retained and would refer to the period from the receipt of a valid submission to a committee decision, with the ability to extend the period with the agreement of the applicant. However, in order to incentivise LPAs to process applications quickly in any event, it is proposed that the applicant should be entitled to claim the planning application fee back if the application is not determined within 6 months (26 weeks). A similar provision, known as the ‘Planning Guarantee’, has been introduced by Regulation 5 of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2013. This arrangement would not preclude the applicant’s right of appeal against non-determination.

6 The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2013
6.5.3 Planning Committees

The Royal Town Planning Institute (RTPI) Cymru recently commissioned Fortismere Associates with Arup to undertake research into the operation of planning committees in Wales. The report made a number of key recommendations on:

- a national scheme of delegation;
- a national planning committee protocol;
- member training;
- decision-making and procedures;
- committee size;
- site visits, deferrals and overturns;
- arrangements for public speaking; and
- customer care.

The efficient operation of planning committees is integral to the smooth running of the planning system and the implementation of the findings of the RTPI Cymru research will be critical to a more effective planning system for housing and reducing the deferral of applications by committee.

6.5.4 Section 106 Agreements (Planning Obligations)

In the absence of the introduction of CIL by LPAs in Wales, Section 106 obligations will continue to be a major factor for the provision of on-site infrastructure and in the timeliness of decision making on housing planning applications for some time to come. Agreement on the Heads of Terms for Section 106 obligations earlier in the process, plus the requirement for LPAs to be consistent about the provisions that are required, should help to reduce the time taken to negotiate Section 106 agreements. Details of the Heads of Terms should be provided in the planning officer’s report to committee. Committee resolutions should only be made where clear Heads of Terms have been provided. As currently occurs, the planning permission would not exist until the Section 106 agreement has been completed and signed.

Once a resolution has been made to grant planning permission, subject to a Section 106 agreement, the ‘clock should stop’ at this stage. In order to progress the Section 106 agreement, applicants should be required to pay a fee (to cover the administrative cost of the legal services team responsible for the authority inputs, and as distinct from a planning application fee) for this part of the planning process and the ‘clock starts again.’

In effect, the applicant pays a fee for the processing of the Section 106 agreement and can, therefore, expect a level of service from the local authority in return, that is the Section 106 should progress within a fixed timescale. The fee should be payable on the first submission of a draft Section 106 to the LPA. The LPA should be required to acknowledge and provide a substantive response to each draft of a Section 106 agreement within 3 weeks of receipt. It is also proposed that

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7 RTPI Cymru, Study into the Operation of Planning Committees in Wales Final Report, Fortismere Associates with Arup, July 2013
the final Section 106 agreement should be signed by all parties within 3 months, or other such period as may be agreed, or the committee resolution would lapse.

Applicants should be entitled to use their own solicitors or the Council’s in-house solicitors for the drafting of the Section 106 document. LPAs should also make available model templates for Section 106 agreements for applicants to use. This could be made available via LPA websites. The use of unilateral undertakings should also be encouraged for straightforward obligations as a quicker route to issuing the decision notice.

### 6.6 Summary

The proposals for the determination phase aim to encourage timely decisions on planning applications. Key recommendations for the determination phase are:

- the submission of a single, defined development proposal;
- applications should be validated against the information requirements agreed in the initial phase;
- there should be a single round of consultation. Consultation responses should be clear and unambiguous. Consultation responses should not vary substantively from those that are provided at the initial stage;
- in cases of refusal, applicants should only be entitled to a ‘free go’ if they have participated in the initial pre-application phase;
- LPAs should discuss draft conditions with applicants. Large numbers of conditions should be avoided and conditions precedent should only be used where they are necessary;
- applications that are not determined within 26 weeks of the date of registration may be subject to a refund of the fee to applicants;
- improvements to the operation of planning committees in accordance with the recommendations set out in the RTPI Cymru research;
- Heads of Terms for Section 106 agreements should be provided with the application and committee resolutions should only be made where clear Heads of Terms have been provided; and
- applicants should pay a fee to process the Section 106 agreement, with a strict timetable proposed for the signing of the agreement within 3 months of payment of the fee, or other such period as may be agreed, or the Committee resolution would lapse.
7 The Post-Decision Phase

7.1 Introduction

The post-decision phase essentially refers to the period within which conditions imposed on a planning permission are discharged and before development commences on site, that is from decision to implementation. At present, the post-decision phase is unregulated with LPAs operating their own systems for discharging conditions. This arrangement leads to an inconsistent approach and uncertainty for applicants, with consequent delays as the discharge of conditions is routinely given lower priority than active case work by officers. The aim of the new post-decision phase will be to create a more formalised and pro-active approach to this crucial pre-commencement phase of development and will address the discharge of conditions, compliance and monitoring of conditions.

7.2 Discharge of Conditions

In the determination phase, applicants should be encouraged to engage with LPAs on the content of draft conditions prior to committee or an officer delegated decision. This approach should be beneficial in reducing the number of pre-commencement conditions, potentially allowing the use of prior to beneficial occupation conditions or other phased approaches to conditions where appropriate. In this way, the applicant would know the conditions that were likely to be proposed prior to the decision notice being issued. This would be beneficial in reducing the need for applicants, post decision, to submit Section 73 applications to vary or delete conditions or in some cases appeal against a condition.

7.2.1 Positive Engagement with the LPA and Consultees

Applicants would also be encouraged to actively engage, at an early stage, with the LPA and relevant consultees on the most appropriate way of discharging a condition. This process should include a discussion on the information that would be required in order to discharge the condition, providing greater certainty for applicants. This should help to reduce abortive work for applicants and would save time in the long run.

7.2.2 Registering Applications to Discharge Conditions

LPAs would be required to register the discharge of conditions as a formal planning submission in their own right, albeit as a sub-set of an original planning application. Some LPAs in Wales are already doing this. These best practice examples should be replicated and the requirement to register them as application should be incorporated into new Planning Bill.

Registering applications for the discharge of conditions would provide an accurate reflection of the planning history of the site, provide a co-ordinated development management approach with benefits for the monitoring of conditions, assisting in identifying the need for and expediency for enforcement action, as well as providing more accurate land searches for prospective property purchasers. On
approval, the fact that a condition has been discharged should also be recorded on
the planning register and a formal notice of the decision should be issued to the
applicant.

7.2.3 Fees for Discharging Conditions

Applicants would be required to pay a fee for each request to discharge a
condition or a group of conditions. In England, the fee payable for a request for
confirmation that one or more planning condition has been complied with is
currently set at £97.00 per request.

This approach would incentivise applicants to group conditions and should
contribute to a more efficient approach. The scale of fee for discharging
conditions should be set at a level to reflect the level of work required by officers
to discharge a condition and which encourages applicants to submit groups of
conditions to speed up the process. The requirement for a fee for the discharge of
conditions may not be popular with applicants at first. However, the fact that a fee
is payable, together with a set timetable for the discharge of conditions, should
provide applicants with confidence and a level of service that they could
reasonably expect from LPAs in this phase.

7.2.4 Timescale for the Discharge of Conditions

Currently, the approach to discharging conditions is *ad hoc* and unregulated. In
the new system, LPAs would be required to determine each request to discharge
conditions within 6 weeks of receipt of a valid request, or such other period that
may be agreed in writing between the LPA and the applicant. This approach
should help to overcome the lack of priority that is given to conditions and
eliminate the ‘black hole’ into which conditions can currently disappear.

Applicants would retain their right of appeal if an application to discharge
conditions is refused or is not determined. Applicants would retain the ability to
submit Section 73 applications to vary or delete conditions. The proposed
arrangements would not preclude the ability of LPAs to issue breach of condition
notices or to take further enforcement action should the need arise.

7.3 Minor Amendments

Anecdotal evidence suggests that information submitted to LPAs to discharge
conditions includes details that amend or vary the originally permitted scheme.
This causes difficulties for applicants and LPAs alike and potentially brings into
question the validity of the permission. This has consequent implications in terms
of cost and time delays for applicants. As a result, there is significant need to
afford LPAs with the power to make non-material minor amendments once a
planning permission has been granted. This power exists in England under Section
96A of the Town and Country Planning Act 1990 (as amended).

7.4 Appeals

In the case study evidence, a number of planning applications went to appeal. The
research revealed that, despite the Planning Inspectorate’s published timescales,
appeals remain a time consuming process, which adds to the overall delivery
timescale for housing. As part of the overall approach to improving the delivery of planning permission for housing the Planning Inspectorate should also undertake a similar review of the timeliness of appeal decisions and identify ways in which the appeal system can be made more efficient.

### 7.5 Summary

The proposed arrangements for the post-decision phase aim to facilitate the timely approval and discharge of planning conditions in order to enable development to commence. The key recommendations for the post-determination phase are:

- **positive engagement with LPAs and consultees should be encouraged in order to clarify the information that is required to discharge a condition, prior to submission;**
- **LPAs should be required to register the discharge of conditions as part of an accurate and up to date planning register. Conditions, which have been successfully discharged, should also be recorded on the register;**
- **applicants should be required to pay a fee for each request to discharge a condition or a group of conditions;**
- **LPAs should be required to determine each request to discharge conditions within 6 weeks of receipt of a valid request, or such other period that may be agreed in writing with the applicant;**
- **LPAs should be given the power to make non-material minor amendments once a planning permission has been granted; and**
- **the Planning Inspectorate should also undertake a similar review of the timeliness of appeal decisions and identify ways in which the appeal system can be made more efficient.**
8 Summary

The case study research has indicated that there are a number of common problems and barriers within the existing planning system that result in delays in the delivery of planning decisions for housing. These problems were replicated both across the case study LPAs throughout Wales and in the sample applications that were examined. The problems within the system seem to apply to both market and affordable housing projects, with both sectors suffering delays in achieving planning permission.

The findings of the research have identified a number of ‘breaks’ in the end-to-end timeline of an application. Based on the case study evidence, recommendations have been formulated around the creation of a ‘staggered’ system.

In summary, the recommended system is formed by three distinct stages, each having a fee and target timescale associated with them, and supported by a realistic assessment of deliverability in the plan-making process. Each stage constitutes a self-contained structure whereby an applicant / agent would prepare a submission for the LPA, pay a fee and receive a service regulated by a target timescale.

The main recommendations for streamlining the system and for encouraging more timely decisions for proposed housing development are:

Plan-Making and Site Allocations

There are no proposals from this research to change the plan making process. It will, however, be important for there to be engagement with (and from) key stakeholders in the plan-making process to ensure that sites are deliverable and that infrastructure requirements are clearly identified.

The Initial Phase

The initial phase is established as a formal stage in considering planning proposals for which a fee is charged to provide a co-ordinated report, setting out:

- the information / evidence needed to support the application;
- whether an EIA would be required;
- any S106 requirements, affordable housing requirements and CIL liability;
- provision of advice on any further consultation that might be required;
- the co-ordinated views of all statutory consultees; and
- identification of unresolved issues and the process by which they can be agreed.

This phase should include engagement with local members and the community, commensurate with the scale of the development.
The Determination Phase

The proposals for the determination phase aim to encourage timely decisions on planning applications. Key recommendations for the determination phase are:

- the submission of a single, defined development proposal;
- applications should be validated against the information requirements agreed in the initial phase;
- there should be a single round of consultation. Consultation responses should be clear and unambiguous. Consultation responses should not vary substantively from those that are provided at the initial stage;
- in cases of refusal, applicants should only be entitled to a ‘free go’ if they have participated in the initial pre-application phase;
- LPAs should discuss draft conditions with applicants. Large numbers of conditions should be avoided and conditions precedent should only be used where they are necessary;
- applications that are not determined within 26 weeks of the date of registration may be subject to a refund of the fee to applicants;
- improvements to the operation of planning committees in accordance with the recommendations set out in the RTPI Cymru research;
- Heads of Terms for Section 106 agreements should be provided with the application and committee resolutions should only be made where clear Heads of Terms have been provided; and
- applicants should pay a fee to process the Section 106 agreement, with a strict timetable proposed for the signing of the agreement within 6 months of payment of the fee, or other such period as may be agreed, or the Committee resolution would lapse.

The Post-Decision Phase

The proposed arrangements for the post-decision phase aim to facilitate the timely approval and discharge of planning conditions in order to enable development to commence. The key recommendations for the post-determination phase are:

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- LPAs should be required to register the discharge of conditions as part of an accurate and up to date planning register. Conditions, which have been successfully discharged, should also be recorded on the register;
- applicants should be required to pay a fee for each request to discharge a condition or a group of conditions;
- LPAs should be required to determine each request to discharge conditions within 6 weeks of receipt of a valid request, or such other period that may be agreed in writing with the applicant;
- LPAs should be given the power to make non-material minor amendments
once a planning permission has been granted; and

- the Planning Inspectorate should also undertake a similar review of the timeliness of appeal decisions and identify ways in which the appeal system can be made more efficient.