

# Protecting theatres for **everyone**



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## **Planning Law in Wales Consultation Paper (November 2017)**

The Theatres Trust welcomes the opportunity to provide comments on the above document.

### **About the Theatres Trust:**

The Theatres Trust is the National Advisory Body for Theatres and was established by The Theatres Trust Act 1976 'to promote the better protection of theatres'. Our 15 trustees are appointed by the Secretary of State for Culture, Media and Sport. The Trust is a statutory consultee in the planning system and local planning authorities in Wales are required to consult the Trust on planning applications for '*development involving any land on which there is a theatre*'. The Act defines a theatre as 'any building or part of a building constructed wholly or mainly for the public performance of plays', and therefore applies to theatres, playhouses, arts centres, ciné-varieties or buildings converted for theatre use, old and new, in other uses or disused.

The Trust contributes to the development of national planning policy and engages with local planning authorities to encourage the inclusion of local policies to support cultural infrastructure and cultural well-being in their Local Development Plans. We identify Theatre Buildings at Risk and support and empower owners and community groups to purchase, restore and reuse theatre buildings to create opportunities for cultural participation, find sustainable new uses, and to use culture as a catalyst for wider regeneration in their communities.

The Trust is often the only source of expert advice on theatre use, design, conservation and planning matters available to theatre operators, local authorities and official bodies. Whilst our main objective is to safeguard and promote theatre use, or the potential for such use in the planning system, we also seek to provide impartial expert advice to establish the most viable and effective solutions for proposed, existing and former theatre buildings at the earliest possible stages of development.

The Trust is also a member of the Wales Heritage Group and this submission reflects similar concerns on heritage matters as that group.

### **Overarching recommendation for the Planning Law in Wales Consultation Paper:**

The Trust's overall objective from this consultation is to ensure the final Bill provides the framework to ensure any subsequent amendments to legislation and planning policy promotes

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and protects culture and the arts within Wales as a priority.

The Trust believes culture should be more fully reflected in planning policy, decision making and planning outcomes throughout Wales than is presently the case. Culture gives communities a sense of identity, promotes inclusion, and is essential to our health and well-being. The Trust strongly recommends that Ministers ensure culture and the arts form a key component of planning policy in Wales. This will ensure the promotion and protection of arts and culture as a priority in local planning and decision making to benefit communities throughout Wales.

This Bill appears to propose significant amendments to the planning system in Wales. In principle, the Trust is supportive of the stated intention to simplify and consolidate planning law in Wales which would result in a single Planning Code also containing relevant secondary legislation and Government guidance. However, in our response to the previous Planning Law in Wales Scoping Paper consultation we raised concern on particular aspects of what was being proposed. In particular, we highlighted our objection to the merger of planning permission, listed building consent, conservation area consent, advertisement consent and potentially scheduled monument consent into a single consent which we felt would undermine heritage assets and the ability of planning authorities to protect heritage assets. As this proposal has been carried forward to this consultation, the Trust wishes to highlight its ongoing strong objection.

Please find our responses to consultation questions relevant to our remit set out below.

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## **Chapter 5**

### **Question 5-1:**

We provisionally propose that a provision should be included in the Bill, to the effect that a public body exercising any function under the Code:

(1) must have regard to the development plan, so far as relevant to the exercise of that function; and

(2) must exercise that function in accordance with the plan unless relevant considerations indicate otherwise.

Do consultees agree?

The Trust supports this proposed amendment, which should add certainty, clarity and prominence to the need to have regard to the relevant development plan and legislation regardless of the nature of the function presented to the planning authority or other decision making body.

### **Question 5-2:**

We provisionally consider that;

(1) to attempt to define relevant or material considerations in the Planning Code would cause as many problems as it would solve; and

(2) the term “relevant considerations” would be more appropriate than “material considerations.”

Do consultees agree?

The Trust agrees with both parts of this question. We consider it problematic to attempt to define relevant/material considerations because this could introduce unnecessary inflexibility which could inhibit the ability of decision makers to deal with emerging or unique circumstances,

and to do so would add considerable length to the final legislation.

Consultation question 5-3:

We provisionally propose that a provision should be included in the Bill, to the effect that a public body exercising any function under the Code must have regard to any other relevant considerations. Do consultees agree?

The Trust agrees with this proposal.

Consultation question 5-4:

We provisionally propose that a provision or provisions should be included to the effect that:

- (1) a body exercising any statutory function must have regard to the desirability of preserving or enhancing historic assets, their setting, and any features of special interest that they possess; and
- (2) a body exercising functions under the Planning Code and the Historic Environment Code must have special regard to those matters;

and that “historic assets” be defined so as to include world heritage sites, scheduled monuments, listed buildings, conservation areas, registered parks and gardens, and such other categories of land as the Welsh Ministers may prescribe.

Do consultees agree?

The Trust agrees with these proposals and considers it vital that the preservation and enhancement of historic assets, their settings and any special features of interest is made a central pillar of the planning system through revised legislation, policy and guidance. We also consider that non-designated heritage assets ought to be included within the prescribed categories of land, as such assets may carry local significance and positively contribute to their surrounding townscapes without meeting the necessary threshold for statutory protection.

Consultation question 5-5:

(1) We provisionally propose that a provision should be included in the Bill, to the effect that: the relevant considerations, to which a public body must have regard (in accordance with Consultation question 5-3) when exercising any function under the Code, include the likely effect, if any, of the exercise of that function on the use of the Welsh language, so far as that is relevant to the exercise of that function; and

(2) the duty to consider the effect on the use of the Welsh language is not to affect:

- whether regard is to be had to any other consideration when exercising that function or
- the weight to be given to any such consideration in the exercise of that function.

Do consultees agree?

The Trust strongly supports the sustainable development principle outlined in paragraph 5.57 that public bodies must act to achieve “a Wales of vibrant culture and thriving Welsh language” as therefore agrees with the proposed provision to be included within the Bill.

Consultation question 5-6:

We provisionally propose that a provision should be included in the Bill, to the effect that:

- (1) the relevant considerations, to which a public body must have regard (in accordance with Consultation question 5-4) when exercising any function under the Code, include the policies of the Welsh Government relating to the use and development of land, so far as they are relevant to the exercise of that function; and
- (2) the duty to consider Welsh Government policies is not to affect:

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- whether regard is to be had to any other consideration when exercising that function, or
  - the weight to be given to any such consideration in the exercise of that function.
- Do consultees agree?

The Trust agrees with this proposal.

Consultation question 5-7:

We provisionally consider that it is not necessary for the Bill to contain a provision, equivalent to section 2 of the P(W)A 2015, to the effect that any public body exercising some of the functions under the Code must do so as part of its duty under the Well-being of Future Generations (Wales) Act 2015 to carry out sustainable development.

Do consultees agree?

The Trust agrees with this proposal which would appear to remove from the future Bill any unnecessary duplication with the Well-being of Future Generations (Wales) Act 2015. However, it is important that the provisions within the Well-being of Future Generations (Wales) Act 2015 (or any future amendments) are retained and fully reflected within future Welsh planning legislation and policy.

Consultation question 5-8:

We provisionally propose that a series of signpost provisions to duties in non-planning legislation that may be relevant to the exercise of functions under the Code should be included at appropriate points within Ministerial guidance.

Do consultees agree?

The Trust agrees with this proposal.

Consultation question 5-9:

We provisionally propose that section 53 of the Coal Industry Act 1994 (environmental duties in connection with planning) should be amended so that it no longer applies in Wales.

Do consultees agree?

No comment

Consultation question 5-10:

In light of the previous proposals in this Chapter, we provisionally consider that there is no need for the Bill to contain a provision explaining the purpose of the planning system in Wales.

Do consultees agree?

The Trust agrees with this proposal.

Consultation question 5-11:

We provisionally consider that persons appointed by the Welsh Ministers for the purpose of determining appeals, conducting inquiries and other similar functions should be referred to in the Planning Code as “inspectors” or “examiners”, but in either case in such a way as to make it clear that this does not prevent the Welsh Ministers appointing for a particular purpose a person other than an employee of the Planning Inspectorate.

Do consultees agree, and if so which term do consultees think is most appropriate?

The Trust agrees with this proposal, but has no preference as to the most appropriate term.

Consultation question 5-12:

We provisionally consider that the Bill should not include the provisions currently in the TCPA 1990 enabling enterprise zone authorities, urban development corporations and housing action trusts to be designated as local planning authorities.

Do consultees agree?

No comment.

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## **Chapter 6**

Consultation question 6-1:

We provisionally consider that Part 6 of the PCPA 2004 (development plans), as amended by the PWA 2015, should be restated in the Planning Code, subject to any necessary transitional arrangements relating to the Wales Spatial Plan and to the proposals in the remainder of the Chapter.

Do consultees agree?

The Trust agrees with this proposal in line with our comments in response to Question 5-7. We would recommend that support and protection of culture and the arts should be a priority of the future National Development Framework cited in paragraph 6.14.

Consultation question 6-2:

We provisionally propose that

(1) the provisions currently in the Planning and Energy Act 2008 are not restated in the Bill; (2) consideration is given in due course to:

- including equivalent provisions in guidance; and
- making appropriate amendments to the Building Regulations.

Do consultees agree?

No comment.

Consultation question 6-3:

In light of the existence of duties to carry out sustainability appraisals of the NDF and strategic and local development plans, currently under Part 6 of the PCPA 2004,

(1) is there a continuing requirement for a separate appraisal to be carried out of their environmental impact, as currently required by the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004?

(2) are the 2004 Regulations still required in relation to plans and programmes other than the NDF and development plans? or

(3) do the 2004 Regulations need amendment or simplification in any way?

No comment

Consultation question 6-4:

We provisionally propose that section 114 of the PCPA 2004 (responsibility for procedure at local plan inquiries) should not be restated in the Planning Bill.

Do consultees agree?

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The Trust agrees with this proposal.

Consultation question 6-5:

We consider that Chapter 2 of Part 6 of the TCPA 1990 (blight notices) and Schedule 13 to the Act should be restated in the Planning Bill in broadly their present form.

Do consultees agree?

No comment

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## **Chapter 7**

Consultation question 7-1:

We provisionally propose that the power of the Welsh Ministers to remove certain categories of demolition from the scope of development, currently in TCPA 1990, s 55(4)(g), should not be restated in the new Bill, but that the same result should be achieved by the use of the GPDO.

Do consultees agree?

The Trust agrees, as this proposal would appear to remove the potential for duplication. However, we would strongly object to any removal or weakening of regulation in relation to the demolition of listed buildings and buildings within conservation areas. We would in fact suggest that any building in use as a community or cultural facilities is also included within the definition of development for the purposes of demolition.

Consultation question 7-2.

We provisionally propose that the extent of minor building operations that are not excluded from the definition of development by TCPA 1990, s 55(2)(a), currently in the proviso to s 55(2)(a) and in s 55(2A) and (2B), should be clarified with a single provision to the effect that the carrying out of any works to increase the internal floorspace of a building, whether underground or otherwise, is development.

Do consultees agree?

The Trust agrees with this proposal.

Consultation question 7-3:

It would be possible to incorporate in the Bill a definition of “engineering operations”, to the effect that they are operations normally supervised by a person carrying on business as an engineer, and include:

- (1) the formation or laying out of means of access to a highway; and
- (2) the placing or assembly of any tank in any part of any inland waters for the purpose of fish farming there.

We invite the views of consultees.

No comment.

Consultation question 7-4:

We provisionally propose that there should be an explicit provision as to the approval of use classes regulations by the negative resolution procedure.

Do consultees agree?



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No comment.

Consultation question 7-5:

We provisionally propose that section 55(3)(a) should be clarified by providing that the use as one or more dwellings of any building previously used as a different number of dwellings shall be taken to involve a material change in the use of the building and of each part of it which is so used.

Do consultees agree?

No comment.

Consultation question 7-6:

We provisionally propose that section 55(2)(d) to (f) of the TCPA 1990 should be clarified by providing that the following changes of use should be taken for the purposes of the Act not to involve development of the land:

(1) the change of use of land within the curtilage of a dwelling to use for any purpose incidental to the enjoyment of the dwelling as such;

(2) the change of use of any land to use for the purposes of agriculture or forestry (including afforestation) and the change of use for any of those purposes of any building occupied together with land so used;

(3) in the case of buildings or other land which are used for a use within any class specified in an order made by the Welsh Ministers under this section, the change of use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, from that use to any other use within the same class.

Do consultees agree?

No comment

Consultation question 7-7:

We provisionally propose that section 58 of the TCPA 1990 (ways in which planning permission may be granted) should not be restated in the new Planning Bill in its present form. Do consultees agree?

No comment

Consultation question 7-8:

We provisionally propose that section 61 of the TCPA 1990 (largely relating to the applicability of pre-1947 legislation) should not be restated in the new Planning Bill.

Do consultees agree?

The Trust agrees with this proposal and would support the incorporation of secondary legislation into one consolidated order.

Consultation question 7-9:

We provisionally propose that sections 88 and 89 of the TCPA (planning permission granted by enterprise zone scheme) should not be restated in the new Planning Bill.

Do consultees agree?

No comment

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Consultation question 7-10:

We provisionally propose that sections 82 to 87 of and Schedule 7 to the TCPA (simplified planning zones) should not be restated in the new Planning Bill.

Do consultees agree?

No comment

Consultation question 7-11:

We provisionally propose that the provisions relating to time limits and certificates of lawfulness, currently included in TCPA 1990, ss 171B and 191 to 196, should be included in the new Planning Bill alongside the other provisions relating to the need for planning permission. They should be drafted along the lines of TCPA 1990, s 64(1) (including a reference to the need for a planning application to be submitted, in the light of general and local development orders, but not to enterprise zone or simplified planning zone schemes). Do consultees agree?

The Trust agrees with this proposal.

Consultation question 7-12:

We provisionally propose that a provision should be included to the effect that:

(1) an application for planning permission for an operation or change of use is assumed to include an application for a certificate of lawfulness of proposed use or development (CLOPUD) in relation to the operation or change of use; and

(2) an application for planning permission to retain an operation or change of use already carried out without permission is assumed to include an application for a certificate of lawfulness of existing use or development (CLEUD) in relation to the operation or change of use.

Do consultees agree?

The Trust agrees with this proposal.

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## **Chapter 8**

Consultation question 8-1:

We provisionally consider that the law as to planning applications could be simplified, by:

(1) abolishing outline planning permission;

(2) requiring that every application for planning permission for development – whether that development is proposed, or is under way, or has been completed – being accompanied by plans, drawings and information sufficient to describe the proposed development;

(3) enabling the items to accompany applications to be prescribed in regulations, so as to include (so far as relevant) details of - the approximate location of all proposed buildings, routes and open spaces, - the upper and lower limit for the height, width and length of each building proposed, and - the area or areas where access points will be situated;

(4) enabling an applicant to invite the planning authority to grant permission subject to conditions reserving for subsequent approval one or more matters not sufficiently particularised in the application;

(5) enabling an authority - to grant permission subject to such conditions (whether or not invited to do so); and - to notify the applicant that it is unable to determine an application without further specified details being supplied.

Do consultees agree?



The Trust cautions against abolishing outline planning permission, because this may disincentivise new development by increasing the cost to applicants at the application stage due to the requirement for submission of more detailed proposals and designs early in the process than is currently the case. As a result, applicants may be less inclined to test the principle of new development before committing to investment. It may also create greater cost at a later stage should proposals require amendment to reflect changing circumstances.

Consultation question 8-2:

We provisionally propose that section 327A of the TCPA 1990 – providing that planning authorities must not entertain applications that do not comply with procedural requirements – should not be restated in the new Bill.

Do consultees agree?

The Trust agrees with this proposal.

Consultation question 8-3:

We provisionally propose that section 65(5) of the TCPA 1990 – providing that planning authorities must not be entertain applications that are not accompanied by ownership certificates – should not be restated in the new Bill.

Do consultees agree?

The Trust agrees with this proposal.

Consultation question 8-4:

We provisionally propose that the requirements of section 65(2) of the TCPA 1990 and secondary legislation made under that provision as to (1) the notification of planning applications to agricultural tenants and (2) the notification of minerals applications should be clarified, to ensure that they are only drawn to the attention of applicants in relevant cases.

Do consultees agree?

No comment

Consultation question 8-5:

We provisionally propose that section 70A of the TCPA 1990 (power to decline similar applications) should be restated in the Planning Bill as it stands following amendment by PCPA 2004, the Planning Act 2008 and the P(W)A 2015. Do consultees agree?

The Trust agrees with this proposal.

Consultation question 8-6:

We provisionally propose that section 70B of the TCPA (designed to discourage or prevent twin-tracking) should not be restated in the Planning Bill.

Do consultees agree?

The Trust agrees with this proposal.

Consultation question 8-7:

We provisionally consider that it would be helpful to include in the Bill a provision requiring each planning authority to prepare a statement specifying those within the community whom it will seek to involve in the determination of planning applications.

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### Do consultees agree?

The Trust supports this proposal. It has been the case on numerous occasions across England, Scotland and Wales that despite the Trust's status as a statutory consultee, we have not always been consulted on applications related to theatres as per our remit. A requirement for planning authorities to prepare such a statement will hopefully result in greater regard being given to those with whom the authority should consult, and in turn ensure the engagement of the appropriate consultees which will enrich the decision-making process.

### Consultation question 8-8:

We provisionally propose that the DMP(W)O 2012 should be amended to make it clear that representations as to a planning application received after the end of the 21-day consultation but before the date of the decision should be taken into account if possible, but that there should be no requirement to delay the consideration of the application.

### Do consultees agree?

The Trust supports this proposal. In light of the potential for the details of applications to be amended and/or additional information to be submitted prior to determination, it is right and fair that additional or amended consultee comments may also be submitted beyond the end of the 21-day consultation period.

### Consultation question 8-9:

We provisionally consider that the distinction between conditions and limitations attached to planning permissions should be minimised, either: (1) by defining the term "condition" so as to include "limitation", or (2) by making it clear that planning permission granted in response to an application or an appeal (as opposed to merely permission granted by a development order, as at present) may be granted subject to limitations or conditions. Do consultees agree?

The Trust agrees that the distinction between conditions and limitations attached to planning permission should be minimised, but we suggest that the distinction could also be made clearer by moving some conditions/limitations into formal application types. For example, the scenario outlined in paragraph 8.87 could be managed by introducing time-limited (temporary) permissions as a formal application type, thereby making the consent an outcome rather than a limitation or condition that needs to be outlined.

### Consultation question 8-10:

We provisionally propose that the provisions in the TCPA 1990 as to the imposition of conditions should be replaced in the Bill with a general power for planning authorities to impose such conditions or limitations as they see fit, provide that they are:

- (1) necessary to make the development acceptable in planning terms,
- (2) relevant to the development and to planning considerations generally,
- (3) sufficiently precise to make it capable of being complied with and enforced, and
- (4) reasonable in all other respects.

### Do consultees agree?

The Trust agrees with this proposal, which would give the flexibility to decision makers to implement conditions that respond to particular or local conditions. In the case of theatres and other such cultural facilities, conditions have for example been implemented to ensure that development of replacement facilities has been completed before operations at the existing facility have ceased.

## Consultation question 8-11:

In addition to the general power to impose conditions and limitations, it would be possible to make explicit in the Code powers to impose specific types of conditions and limitations, considered in consultation questions 8-11, 8-14 and 8-16.

Do consultees consider that the powers to impose all or any of these types of conditions (or others) should be given a statutory basis – either in the Bill or in regulations – or should they be incorporated in Government guidance on the use of conditions?

The Trust considers that such conditions should be set out within guidance on the use of conditions rather than within the Bill or other regulations in order to afford flexibility to planning authorities to react to particular circumstances or local requirements.

## Consultation question 8-12:

We provisionally propose that the Code should include a provision enabling the imposition of conditions to the effect:

- (1) that the approved works are not to start until some specified event has occurred (a *Grampian* condition); or
- (2) that the approved works are not to be carried out until:
  - a contract for some other development has been made; and
  - planning permission has been granted for the development for which the contract provides.

Do consultees agree?

The Trust supports this proposal, which reflects the example set out in our response to Question 8-9 and thus would formalise the ability of such conditions to be implemented.

## Consultation question 8-13:

We consider that it might be helpful:

- (1) for a planning authority to be given a power (but not necessarily a duty) to identify from the outset the pre-commencement conditions attached to a particular planning permission that are “true conditions precedent”, which go to the heart of the permission, so that they must have been complied with before the permission can be said to have been lawfully implemented (the second category identified by Sullivan J in *Hart Aggregates v Hartlepool BC*), as distinct from other conditions precedent;
- (2) for an applicant to have a right to request an authority to identify which of the conditions attached to a particular permission that has been granted are true conditions precedent; and
- (3) for an applicant to have, in either case, a right to appeal against such identification, without putting in jeopardy the substance of the condition itself.

Do consultees agree? Is there any other way in which the consequences of non-compliance, or belated compliance with commencement conditions could usefully be clarified?

The Trust is supportive of the formalisation of pre-commencement conditions.

## Consultation question 8-14:

We provisionally propose that the Bill makes plain:

- (1) that development must be commenced by the date specified in any relevant condition; (2) that any phases must be commenced by the date specified in any condition relevant to that phase; and
- (3) that in the absence of any such condition the development must be commenced within five years of the grant of permission.

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Do consultees agree?

The Trust agrees with this proposal.

Consultation question 8-15:

We provisionally propose that the Bill, or regulations under the Bill, should enable the imposition of conditions to the effect that the development or use of land under the control of the applicant (whether or not it is land in respect of which the application has been made) should be regulated to ensure that the approved development is and remains acceptable in planning terms.

Do consultees agree?

The Trust agrees with this proposal.

Consultation question 8-16:

We provisionally propose that the Bill, or regulations under the Bill, should enable the imposition of conditions where permission has been granted for a limited period, to the effect that the buildings or works authorised by the permission be removed, or the authorised use be discontinued at the end of the period, and that works be carried out at that time for the reinstatement of land.

Do consultees agree?

The Trust agrees with this proposal.

Consultation question 8-17:

We provisionally consider that a provision equivalent to section 72(3) of the TCPA 1990 (as to time-limited conditions) should be retained in the Code, but drafted so as to make clear that it applies only in the case of (1) time-limited permissions issued under what is now section 72(1)(a), and (2) certain time-limited permissions issued between 29 August 1960 and 31 December 1968.

Do consultees agree?

The Trust agrees with this proposal.

Consultation question 8-18:

We provisionally propose that the Bill, or regulations under the Bill, should enable the imposition of conditions to the effect:

(1) that particular features of the building or land to which the permission relates be preserved, either as part of it or after severance from it;

(2) that any damage caused to the building or land by the authorised works be made good after those works are completed; or

(3) that all or part of the building or land be restored following the execution of the authorised works, with the use of original materials so far as practicable and with such alterations as may be specified.

Do consultees agree?

The Trust agrees with this proposal.

Consultation question 8-19:

We provisionally consider that the Bill should clarify the existing law and procedures as to the approval of details required by a condition of a planning permission, whether imposed at the

request of an applicant (in relation to matters not sufficiently particularised in the application) or instigated by the authority itself. Do consultees agree?

The Trust agrees with this proposal.

Consultation question 8-20:

We provisionally propose that a planning authority should be able in an appropriate case to decline to determine an application for the approval of one detailed matter without at the same time having details of another specified matter.

Do consultees agree?

The Trust agrees with this proposal.

Consultation question 8-21:

We provisionally propose that the Bill should clarify the existing law and procedures as to the approval of details required by:

- (1) a condition of a permission granted by a development order;
- (2) a requirement imposed by a planning authority following a notification of proposed works in a relevant category of development permitted by a development order.

Do consultees agree?

The Trust agrees with this proposal, which would appear to give greater clarity for applicants.

Consultation question 8-22:

We consider that it might be helpful for there to be a time-limit within which the planning authority can respond to a notification of a proposal to carry out development in a relevant category (for example, buildings for agriculture and forestry), such that an applicant can proceed if no response has been received to the notification.

Do consultees agree?

The Trust cautiously agrees with this proposal in principle, but it relies on planning authorities being appropriately resourced to manage demand on their service. An inability to handle demand in a timely fashion could result in inappropriate or detrimental works taking place.

Consultation question 8-23:

We provisionally consider that it might be helpful to bring together the procedures for seeking amendments to planning permissions, currently under section 73 and 96A of the TCPA 1990, into a single procedure for making an application for any variation of a permission – whether major or minor – which can be dealt with by the planning authority appropriately, in light of its assessment of the materiality of the proposed amendment. We envisage that the authority would be able to choose to permit either:

- (1) both the original proposal and a revised version, with the applicant able to implement either; or
- (2) only the revised version, which would thus supersede the original.

Do consultees agree?

The Trust agrees with this proposal, which would appear to simplify for applicants the procedure for seeking amendments.

Consultation question 8-24:

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We provisionally propose that the Planning Code should extend the scope of section 96A (approval of minor amendments) to include approvals of details.  
Do consultees agree?

The Trust agrees with these proposals

Consultation question 8-25:

We provisionally propose that an expedited procedure should be available for the determination of an application to vary a permission where the implementation of the permitted development is under way.

Do consultees agree?

The Trust agrees with these proposals

Consultation question 8-26:

We provisionally propose that the Welsh Ministers should have powers

(1) to make regulations requiring applications in a particular category to be notified to them, and  
(2) to make a direction requiring a particular application to be so notified, so that they may decide whether to call it in for their decision.

Do consultees agree?

The Trust agrees with these proposals.

Consultation question 8-27:

We provisionally propose that, where the Welsh Ministers decide to call in an application for planning permission, they (rather than, as at present, the planning authority) should be under a duty to notify the applicant.

Do consultees agree?

The Trust agrees with this proposal, although we request that it is also stipulated that the Minister must notify statutory consultees, persons that have made representations on the application and persons with an interest in the land.

Consultation question 8-28:

We provisionally consider that the following provisions currently in the TCPA 1990 should not be restated in the Planning Bill, but that equivalent provisions should be included in the DMP(W)O 2012 if considered necessary:

(1) section 71(3) (consultation as to caravan sites); and

(2) section 71ZB (notification of development before starting, and display of permission whilst it is proceeding).

Do consultees agree?

No comment.

Consultation question 8-29:

We provisionally propose that the following provisions currently in the TCPA 1990, which appear to be redundant (at least in relation to Wales), should not be restated in the Bill:

(1) section 56(1) (referring to the initiation of development);

(2) in section 70(3), the reference to the Health Services Act 1976 (applications for private hospitals);



(3) section 74(1)(b) of the TCPA 1990 (to make provision for the grant of permission for proposals not in accordance with the development plan);  
(4) section 74(1A) (planning applications being handled by different types of planning authority);  
(5) section 76 (duty to draw attention to certain provisions for the benefit of disabled people);  
and  
(6) section 332 (power of Welsh Ministers to direct that planning applications should also be treated as applications under other legislation).  
Do consultees agree?

The Trust agrees with these proposals, which appear to provide greater clarity and robustness by removing redundant or duplicate provisions.

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## **Chapter 9**

Consultation question 9-1:

We provisionally consider that sections 62M to 62O of the TCPA 1990, enabling a planning application to be made directly to the Welsh Ministers in the area of an underperforming planning authority, should be restated in the new Planning Code, subject to appropriate adjustments to reflect our proposals in Chapters 7 and 8.

Do consultees agree?

The Trust agrees with this retention in principle, but we would advocate Welsh Ministers working with 'underperforming' planning authorities to resolve any perceived shortcomings as quickly as possible so as to ensure decision-making is subject to proper local accountability and knowledge.

Consultation question 9-2:

We provisionally consider that the law relating to pre-application consultation and pre-application services in connection with developments of national significance should be reviewed and, where appropriate, clarified.

Do consultees agree?

No comment.

Consultation question 9-3:

We provisionally propose that the power to appoint assessors to assist inspectors to determine DNS applications that are the subject of inquiries or hearings should be extended to allow their appointment in connection with applications determined on the basis of written representations.

Do consultees agree?

No comment.

Consultation question 9-4:

We provisionally propose that sections 62D to 62L of the TCPA 1990 should be restated in the new Planning Code, subject to appropriate adjustments to reflect our proposals in Chapters 7 and 8.

Do consultees agree?

No comment.

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Consultation question 9-5:

We provisionally propose that section 101 of and Schedule 8 to the TCPA 1990 (planning inquiry commissions) should not be restated in the new Planning Code.

Do consultees agree?

No comment.

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## **Chapter 10**

Consultation question 10-1:

We provisionally consider that the statutory provisions relating to CIL, currently in Part 11 of the Planning Act 2008 as amended by the Localism Act 2011, should be incorporated broadly as they stand into the Planning Code, pending any more thoroughgoing review that may take place in due course.

Do consultees agree?

The Trust agrees with this proposal so as not to pre-empt the Welsh Government review of CIL in Wales, to which the Trust would also be keen to provide comment.

Proposal 10-2:

We provisionally propose that provisions relating to planning obligations, currently in sections 106 to 106B of the TCPA 1990, should be incorporated broadly as they stand into the Planning Code, pending any more thoroughgoing review that may take place in due course.

As above, the Trust would agree with this proposal so as not to pre-empt further review.

Consultation question 10-3:

We provisionally consider that the rules as to the use of planning obligations, currently in regulation 122 of the CIL Regulations, should be included within the new Planning Bill.

Do consultees agree?

The Trust supports the retention of these rules, and considers it vital that a framework to maintain obligations on a site-specific basis alongside CIL remains in place.

Consultation question 10-4:

We provisionally consider that it might be helpful for a provision to be included in the Bill whereby a planning agreement under what is now section 106 of the TCPA 1990 – but not a unilateral undertaking – could include any provision that could be included in an agreement under section 278 of the Highways Act 1980 (execution of highway works), provided that the highway authority is a party to that agreement.

Do consultees agree?

No comment.

Consultation question 10-5:

We provisionally consider that it would be helpful to make the enforcement of a planning obligation under section 106 of the TCPA 1990 more straightforward by including the breach of such an obligation within the definition of a breach of planning control. We invite the views of

consultees, including as to the practicalities of such a proposal.

The Trust agrees with this proposal. In the case of theatres, typically a Section 106 agreement might require re-provision of a theatre or improvements as a condition of development and a failure to undertake such works can have a detrimental impact on the social and cultural wellbeing of local people. Therefore the strengthening of the ability of planning authorities to enforce such obligations is welcomed.

Consultation question 10-6:

Section 106(12) empowers the Welsh Ministers to provide regulations for the breach of an obligation to pay a sum of money to result in the imposition of a charge on the land, facilitating recovery from subsequent owners. No such regulations have been made; does their absence cause a problem in practice?

No comment.

Consultation question 10-7:

We provisionally propose that the use of standard clauses should be promoted in Welsh Government guidance.  
Do consultees agree?

For the purposes of simplification and clarity, the Trust supports this proposal. However, to facilitate unique site-specific circumstances we would encourage guidance to present some flexibility to deviate from standard clauses where it can be justified.

Consultation question 10-8:

We provisionally consider that the introduction of a procedure to resolve disputes as to the terms of a section 106 agreement in Wales (along the lines of Schedule 9A to the TCPA 1990, to be introduced in England by the section 158 of the Housing and Planning Act 2016) might be useful.

Do consultees agree in principle, and what should be the features of such a procedure?

No comment.

Consultation question 10-9:

We provisionally consider that the introduction of a procedure for the Welsh Ministers to impose restrictions or conditions on the enforceability of planning obligations as they relate to particular categories of benefits to be provided (along the lines of section 106ZB of the TCPA 1990, introduced by section 159 of the 2016 Act with regard to obligations as they relate to the provision of affordable housing) might be useful.

Do consultees agree in principle, and what categories of benefits might most appropriately be subject to such a procedure?

No comment.

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Consultation question 10-10:

We provisionally propose that planning authorities should be able to enter into planning obligations to bind their own land in appropriate cases.

Do consultees agree?

No comment.

Consultation question 10-11:

We provisionally propose that a person proposing to enter into a contract for the purchase of land should be able to enter into a planning obligation so as to bind that land, which would take effect if and when the relevant interest is actually acquired by that person.

Do consultees agree?

No comment.

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## **Chapter 11**

Consultation question 11-1:

We provisionally propose that the provision, currently in section 79(1) of the TCPA 1990, as to the powers of the Welsh Ministers on an appeal should be amended so as to make it plain that they are required to consider the application afresh – as opposed to having a power to do so, as at present.

Do consultees agree?

The Trust agrees with this proposal.

Consultation question 11-2:

We provisionally propose that the Bill should make it clear that all appeals (including those relating to development proposals by statutory undertakers) are to be determined by inspectors or examiners, save for

(1) those in categories that have been prescribed for determination by Welsh Ministers; and  
(2) those that have been specifically recovered by them (in case-specific directions) for their determination.

Do consultees agree?

The Trust agrees with this proposal.

Consultation question 11-3:

We provisionally propose that the power to appoint assessors to assist inspectors to determine appeals that are the subject of inquiries or hearings: (1) should be widened so as to be exercisable by inspectors as well as by the Welsh Ministers; and (2) should be extended to allow the use of assessors in connection with applications determined on the basis of written representations.

Do consultees agree?

The Trust agrees with this proposal.

Consultation question 11-4:

We provisionally propose that the changes proposed in consultation questions 11-1 to 11-3

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should apply equally to:

- (1) appeals against enforcement notices;
- (2) appeals relating to decisions relating to applications for listed building consent or conservation area consent, express consent for the display of advertisements, and consent for the carrying out of works to protected trees; and
- (3) appeals against listed building and conservation area enforcement notices, advertisements discontinuance notices, tree replacement notices, and notices relating to unsightly land.

Do consultees agree?

The Trust agrees with this proposal. Applications for listed building consent, conservation area consent and other such works must be treated with equal significance to any other application.

Consultation question 11-5:

We provisionally propose that the legislation should state that, in a case where there has been an appeal to the Welsh Ministers, the start of the period within which a purchase notice can be served is the date of the decision of the Welsh Ministers on the appeal.

Do consultees agree?

The Trust agrees with this proposal.

Consultation question 11-6:

We provisionally propose that the Planning Bill should clarify that a purchase notice may not be amended, but that a second or subsequent notice served in relation to a single decision should be deemed to supersede any earlier such notice.

Do consultees agree?

No comment.

Consultation question 11-7:

We provisionally consider that it would not be appropriate to bring together the powers currently in section 247, 248, 253 to 257 of the TCPA 1990 (relating to highways affected by development) and those in section 116, 118 and 119 of the Highways Act 1980.

Do consultees agree?

No comment.

Consultation question 11-8:

We provisionally propose that sections 249 and 250 of the TCPA 1990 (relating to orders extinguishing the right to use vehicles on a highway, in conjunction with a proposal for the improvement of the amenity of an area) should not be restated in the Bill, in view of the parallel provisions in section 1 of the Road Traffic Regulation Act 1984.

Do consultees agree?

No comment.

Consultation question 11-9:

We provisionally propose that decisions relating to orders under section 252 of the TCPA 1990 should generally be made by inspectors rather than by the Welsh Ministers, subject to a power for them to make a direction to recover a particular case for their decision.

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Do consultees agree?

The Trust agrees with this proposal.

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## **Chapter 12**

Consultation question 12-1:

We provisionally consider that the provisions currently in sections 171C and 330 of the TCPA 1990 could be conflated into a single power for the Welsh Ministers or a planning authority to serve a “planning information notice” on the owner and occupier of land or any person who is carrying out operations or other activities on the land or is using it for any purpose, requiring the recipient to supply information as to:

(1) the interest in the land held by the recipient of the notice and by any other person of whom the recipient is aware;  
(2) the use or uses of the land and when they began; and  
(3) the operations and other activities now taking place of the land and when they began. Where it appears that there has been a breach of planning control, such a notice may also: (4) require the recipient to supply information as to:

- whether any uses or operations specified in the notice are being or have been carried out on the land;
- any person known to be using or have used the land or carried out any operations on it;
- any planning permission that may have been granted, and any conditions or limitations attached to such a permission; or
- any reasons why permission is not required for any particular use or operation; and

(5) request a meeting at which the recipient can discuss the matters referred to in the notice.

Do consultees agree?

The Trust agrees that a single procedure would bring simplification and clarity to the Welsh planning system.

Consultation question 12-2 – 12-26:

We provisionally propose that the restriction on entering property for enforcement purposes only after giving 24 hours’ notice, currently in section 196A(4) of the TCPA 1990, should be clarified to ensure that it applies in relation to all property in use as a dwelling.

Do consultees agree?

The Trust has no comment to make on these proposals.

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## **Chapter 13**

Consultation question 13-1:

We provisionally consider that the control of works to historic assets could be simplified by: (1) amending the definition of “development”, for which planning permission is required, to include “heritage development”, that is: (a) the demolition of a listed building; or (b) the alteration or extension of a listed building in any manner that is likely to affect its character as a building of special architectural or historic interest; or (c) the demolition of a building in a conservation area.



(2) removing the requirement for listed building consent and conservation area consent to be obtained for such works; and  
(3) implementing the additional measures outlined in consultation questions 13-2 to 13-8, to ensure that the existing level of protection for historic assets would be maintained.  
Do consultees agree?

The Trust strongly objects to these proposals, and would reiterate comments made during the previous scoping consultation. We feel that to merge planning permission with listed building consent and conservation area consent would undermine the status of Wales' heritage assets and historic environments, and would undermine the ability and duty of planning authorities to protect such assets.

The Trust is concerned that consideration for preserving the historic environment would become a secondary issue to general planning considerations, particularly to the overarching presumption in favour of sustainable development outlined in Planning Policy Wales. This presumption is often at odds with the requirement in the Planning (Listed Buildings and Conservation Areas) Act 1990 for decision makers to have 'special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses'. The objective of planning permission is to 'encourage sustainable development' whilst Listed Building Consent's objective is 'about managing change to retain significance'.

To ensure that heritage continues to have the special protection in legislation, policy and guidance that is necessary under a merged application framework, the Act would require detailed content to guide the processing and determination of planning applications. Such content currently underpins listed building consent and conservation area consent; this would result in planning application guidance becoming more complex, and we would argue unnecessarily so. The supporting documentation (paragraph 13.3 of the Summary) asserts that where two types of permission are required it results in two committee reports, appeals and enforcement notices amongst other things. In reality, multiple application types are handled by the same officer within a single report and managed under the same Inspector or enforcement officer if relevant. Expert advice is often provided by a Conservation Officer and heritage bodies who may also be statutory consultees. On that basis, it would seem sensible to maintain the three distinct types of application and this would provide greater clarity for applicants and also for interested parties. Without distinct reference to a listed building consent, it may not be clear that an application relates to works to a listed building and therefore the level and quality of response, scrutiny and advice from consultees may be diminished.

Furthermore, it is assumed that the merger of listed building consent into a single planning permission would result in a fee becoming payable whereas presently there is no fee. This could result in an increase in unauthorised works taking place to listed buildings.

If Ministers are minded to agree to the proposals and merge these types of development into a single application, at the very least we request the special regard for heritage assets is not diluted and their protection continues to be given considerable weight in all decision making.

## Consultation question 13-2:

We provisionally propose that the power to make general and local development orders should be extended to enable the grant of planning permission by order for heritage development.  
Do consultees agree?

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The Trust has concerns about this proposed power. As per our response to Question 13.1, we object to the merger of planning permission and listed building consent. By extension, we also object to this proposal which could serve to dilute the proper consideration of heritage issues in decision making.

Consultation question 13-3:

We provisionally propose that heritage partnership agreements should be capable of granting planning permission by order for heritage development in such categories as may be prescribed.

Do consultees agree?

Should Ministers be minded to abolish listed building consent, we would support the ability of heritage partnerships to grant planning permission for heritage development. However, this proposal does not override the concerns we have set out previously and we would reiterate our objection to the merging of planning permission and listed building consent.

Consultation question 13-4:

We provisionally consider that the provisions (currently in sections 191 and 192 of the TCPA 1990) relating to certificates of lawfulness should be extended to include works that currently require only listed building consent or conservation area consent.

Do consultees agree?

The Trust agrees that in principle provisions relating to certificates of lawfulness could be extended to listed building consent and conservation area consent, but we consider this could also be achieved through amending existing legislation rather than purely as a result of merging the three application types.

Consultation question 13-5:

We provisionally consider that the Bill should include provisions to the effect that:

- (1) any appeal relating to works to a listed building may contain as a ground of appeal that the building in question is not of special architectural or historic interest, and ought to be removed from the list of such buildings maintained by the Welsh Ministers;
- (2) where a building is subject to a building preservation notice (provisional listing), the notice of appeal may contain a claim that the building should not be included in the list;
- (3) the Welsh Ministers, in determining an appeal relating to a listed building, may exercise their powers to remove the building from the list; and
- (4) in determining an appeal relating to a building subject to a building preservation order, they may exercise their powers not to include it in the list.

Do consultees agree?

In principle the Trust agrees with this proposal, but we request that such a provision is in place only where works to a listed building are proposed and not where they have already been carried out. If features of historic importance have already been removed without consent and that has undermined the value of the listed building as a heritage asset, that must not be reason to remove from listing and the appropriate punishment should be enforced irrespective of whether the appeal is allowed or dismissed.

Consultation question 13-6:

We provisionally propose that the Bill should include provisions to the effect that:

(1) the carrying out without planning permission (or in breach of a condition or limitation attached to permission) of heritage development – defined along the lines indicated in Proposal 13-1 – be a criminal offence, punishable - on summary conviction by imprisonment for a term not exceeding six months or a fine or both; or - on summary conviction by imprisonment for a term not exceeding two years or a fine or both; and  
(2) the defence to a charge of such an offence is the same as currently applies in relation to a charge of carrying out works without listed building consent.  
Do consultees agree?

The Trust agrees with this proposal, as appropriate punishments must be in place to deter unauthorised heritage development.

#### Consultation question 13-7:

We provisionally propose that the Bill should include provisions to the effect that heritage development be excluded from the categories of development that are subject to time limits as to the period within which enforcement action may be taken.  
Do consultees agree?

The Trust agrees with this proposal. If Ministers are minded to merge planning permission and listed building consent, this proposal is essential to deter persons from undertaking unauthorised works. However, the fact that such provision would be needed is further argument in support of our objection to maintaining listed building consent as a separate application type.

#### Consultation question 13-8:

We provisionally propose that the Bill should include provisions to the effect that:

- (1) Where an enforcement notice is issued in relation to the carrying out of heritage development in breach of planning control, the grounds on which an appeal may be made against such a notice include grounds equivalent to grounds (a), (d), (i), (j) and (k) as set out in Section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990;
- (2) the Welsh Ministers, in determining an enforcement appeal relating to a listed building, may exercise their powers to remove the building from the list.
- (3) in determining an enforcement appeal relating to a building subject to a building preservation order, they may exercise their powers not to include it in the list.

Do consultees agree?

Further to our responses to questions 13.5 and 13.6, in principle we agree with this proposal but we would seek reassurance that any decision to remove a building from the list is to be based on its qualities prior to works having taken place and must not be influenced by unauthorised modifications.

#### Proposal 13-9:

We provisionally consider that planning permission should not be unified with scheduled monument consent.  
Do consultees agree?

The Trust agrees that these two application types should not be unified, and as the rationale for maintaining their separation is also applicable to planning permission and listed building consent/conservation area consent we would reiterate our objection to them being merged.

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## **Chapter 14**

### Consultation question 14-1:

We provisionally propose that the definition of “advertisement” in the TCPA 1990 should be clarified, and included in the Bill alongside other provisions relating to advertising.

Do consultees agree?

Advertisements, banners and signage are a common and integral feature of theatre buildings. The Trust is supportive of measures within the Bill which would improve clarity and certainty for applicants.

### Consultation question 14-2:

We provisionally consider that the reference to “the display of advertisements”, currently included in the statutory definition of “advertisement” in the TCPA 1990, could be omitted.

Do consultees agree?

The Trust agrees with this proposal.

### Consultation question 14-3:

We provisionally propose that the word “land” should be used in place of “site” and “sites”:

- (1) in the provisions of the Bill relating to the control of advertisements; and
- (2) in the Regulations when they are next updated.

Do consultees agree?

The Trust agrees with this proposal, which would appear to add clarity.

### Consultation question 14-4:

We provisionally propose that a definition of “person displaying an advertisement” in the TCPA 1990 should be included in the Bill alongside other provisions relating to advertising, to include:

- (1) the owner and occupier of the land on which the advertisement is displayed; (2) any person to whose goods, trade, business or other concerns publicity is given by the advertisement; and
- (3) the person who undertakes or maintains the display of the advertisement. Do consultees agree?

The Trust agrees with this proposal, which would appear to add clarity.

### Consultation question 14-5:

We provisionally propose that a discontinuance notice under the advertisements regulations:

- (1) should contain a notice as to the rights of any recipient to appeal against it;
- (2) should come into force on a particular date specified in it (rather than at the end of a specified period from the date of service); and
- (3) should be “issued” (rather than “served” as at present), with a copy served on all those deemed to be displaying the advertisement in question.

Do consultees agree?

The Trust agrees with this proposal.

### Consultation question 14-6:

We provisionally propose that section 220(2), (2A) and (3) should be replaced with a provision enabling regulations to be made providing for:

(1) the dimensions, appearance and position of advertisements that may be displayed, and the manner in which they are to be affixed to the land;  
(2) the prohibition of advertisements being displayed on land being used for the display of advertisements without either deemed or express consent;  
(3) the discontinuance of deemed consent;  
(4) the making and determination of applications for express consent, and the revocation or modification of consent;  
(5) appeals against discontinuance orders and decisions on applications for express consent;  
(6) areas of special control over advertising; and  
(7) consequential and supplementary provisions.  
Do consultees agree?

The Trust agrees with this proposal.

Consultation question 14-7:

We provisionally propose that deemed consent under the Advertisements Regulations should be granted for a display of advertisements that has the benefit of planning permission.  
Do consultees agree?

The Trust agrees with this proposal, which would simplify the planning process and reduce costs for applicants by removing unnecessary duplication.

Consultation question 14-8:

We provisionally propose that the display of advertisements on stationary vehicles and trailers should be brought within control by the Regulations being amended so as to provide that:  
(1) no consent (express or deemed) be required for the display of an advertisement inside a vehicle, or on the outside of a vehicle on a public highway;  
(2) deemed consent be granted for the display of an advertisement on a vehicle not on a highway, provided that the vehicle is normally employed as a moving vehicle and is not used principally for the display of advertisements.  
Do consultees agree?

The Trust agrees with this proposal.

Consultation question 14-9:

We provisionally propose that :

(1) a provision should be introduced in the Advertisements Regulations to enable a certificate of lawfulness to be issued in relation to a display of advertisements; and (2) an appropriate enabling provision should be included in the Bill, in line with the approach indicated in consultation question 14-6.

Do consultees agree? And what might be the resources implications of this proposal?

The Trust agrees with this proposal.

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Consultation question 14-10:

We provisionally propose that what is now Class 13 in Schedule 3 to the 1992 Regulations should be amended to provide that deemed consent is granted for the display of advertisements on a site that has been used for that purpose for ten years, rather than by reference to a fixed date (currently 1 April 1974).

Do consultees agree?

The Trust agrees with this proposal, although we suggest the insertion of a stipulation that the time limit does not apply to listed buildings.

Consultation question 14-11:

We provisionally propose that the power (currently in section 224(1), (2)) for the Welsh Ministers to include in Regulations provisions similar to those governing enforcement notices should not be restated in the Bill.

Do consultees agree?

The Trust agrees with this proposal.

Consultation question 14-12:

We provisionally propose that the powers currently in section 225 of the TCPA 1990 (removal of unauthorised posters and placards) and in section 43 of the Dyfed Act 1987 (removal of other unauthorised advertisements) should be replaced with a new single procedure allowing the removal of any unauthorised advertisements, subject to

(1) no advertisement being removed without 21 days' notice having first been given to those responsible;

(2) a right of appeal being available to recipients of such a notice and to owners and occupiers of the site of the offending advertisement, as under section 225B of the TCPA 1990 – on grounds relating to the lawfulness of the advertisement, the service of the notice, and the time for its removal;

(3) compensation being payable by the planning authority for damage caused to land or chattels by the removal of the advertisement (other than damage to the advertisement itself); and

(4) protection for statutory undertakers to be afforded as under section 225K.

Do consultees agree? What are the likely resource implications of this proposal?

The Trust agrees with this proposal.

Consultation question 14-13:

We provisionally propose that the maximum sentence on conviction for unauthorised advertising should be increased to an unlimited fine, in line with other offences under the TCPA 1990 and the Listed Buildings Act 1990.

Do consultees agree?

The Trust has some concerns regarding this proposal. In principle the Trust is supportive, but some flexibility and discretion must be allowed as it is quite plausible that many instances of unauthorised advertising are undertaken unknowingly, particularly where they relate to community and voluntary groups.

Consultation question 14-14:

We provisionally propose that it be made clear on the face of the Bill, rather than (as at present) in the Regulations, that all functions under the Code relating to advertising should be exercised



# Protecting theatres for **everyone**



in the interests of amenity and public safety.  
Do consultees agree?

The Trust agrees with this proposal.

Consultation question 14-15:

We provisionally propose that the provisions in section 220 of the TCPA 1990 relating to advisory committees and tribunals should not be included in the Bill.  
Do consultees agree?

No comment.

Consultation question 14-16:

We provisionally propose that the provisions in section 221(1)(b), (2) of the TCPA 1990 relating to experimental areas should not be included in the Bill.  
Do consultees agree?

No comment.

Consultation question 14-17:

It appears that section 223 of the TCPA 1990, providing for the payment of compensation in respect of the costs of removing advertisements on sites that were in use for advertising in 1948 is no longer of any practical utility, and should not be included in the Bill.  
Do consultees agree?

No comment.

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## **Chapter 15**

Proposals 15-1 – 15-17 (Works to protected trees)

The Trust has no comment to make on these proposals

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## **Chapter 16**

Consultation question 16-1:

We provisionally propose that the Bill should be drafted so as to make clear that a notice under what is now section 215 of the TCPA 1990, requiring land to be properly maintained, can be issued where the condition of the land:

(1) is adversely affecting the amenity of part of the authority's area or the area of an adjoining authority; and

(2) does not result in the ordinary course of events from, the lawful carrying on of operations on that land or a use of that land that is lawful.

Do consultees agree?

The Trust is supportive of this proposal. We foresee this being of relevance to theatre buildings where theatre use has discontinued. Additional powers to enforce the appropriate upkeep and maintenance of these and other buildings to better enable their re-use particularly for their

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intended purpose is welcomed.

Consultation question 16-2:

We provisionally propose that it should be possible to issue a notice (under what is now section 215 of the TCPA 1990) where the condition of the land in question results from the carrying on of operations or a use of the land that were once lawful, but are no longer lawful.

Do consultees agree?

No comment.

Consultation question 16-3:

We provisionally propose that a notice under the provision in the new Code replacing section 215:

(1) should come into force on a particular date specified in it (rather than at the end of a specified period from the date of service);

(2) should be “issued” (rather than “served” as at present), with a copy served on all those responsible for the maintenance of the land in question; and

(3) should contain a notice as to the rights of any recipient to appeal against it.

Do consultees agree?

The Trust agrees with this proposal.

Consultation question 16-4:

We provisionally propose that the Bill should make it clear that all appeals against section 217 notices are normally to be determined by inspectors, in line with Consultation question 11-3.

Do consultees agree?

The Trust agrees with this proposal.

Consultation question 16-5:

We provisionally propose that the new Planning Code could include powers, replacing those currently available under section 89(2) of the National Parks and Access to the Countryside Act 1949, to enable a planning authority, in relation to any land whose condition is affecting the amenity of its area or of any adjacent area (or is likely to affect it due to the collapse of the surface as the result of underground mining operations):

(1) to issue a notice, and serve a copy of it on the owner and occupier of the land and to display an appropriate notice on the land, stating the authority’s intention to carry out remedial works;

(2) to carry out itself the works specified in the notice, either - on terms agreed between it and the owner and occupier of the land (both as to the carrying out of the works themselves and as to the subsequent maintenance of the land); or - where no response is received to the notice;

(3) to recover the cost of such works from the owner, or to make them a charge on the land; and  
(4) to acquire the land for the purpose of carrying out such works, using compulsory powers or by agreement.

Do consultees agree?

The Trust agrees with this proposal.

Consultation questions 16-5 – 16-12

The Trust has no comment to make on these proposals.

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## **Chapter 17**

### Consultation questions 17-1 and 17-2

The Trust has no comment to make on these proposals.

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## **Chapter 18**

### Consultation questions 18-1 – 18-17

The Trust has no comment to make on these proposals.

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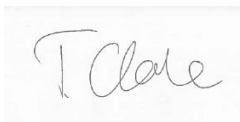
### **Concluding comments:**

While we support many of the proposed amendments which appear to simplify the planning system in Wales and remove legislation that has become obsolete, we have a number of concerns about the effectiveness of merging planning permission and listed building consent. This concern will be reflected by the Wales Heritage Group, of which the Trust is a member.

Our primary focus is on promoting, supporting and protecting culture and the arts within the Welsh planning system and we would be keen to work with and support Ministers as legislation and policy is developed.

Please do not hesitate to contact us, should you require further information.

Yours faithfully,



Tom Clarke  
National Planning Adviser

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