



27 June 2012

Committee Clerk
Communities, Equality and Local Government Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

Dear Sir/Madam

Inquiry into the Welsh Government's historic environment policy

I have been asked by the **Wales Planning Consultants Forum** (WPCF) to respond to the invitation issued on 31 May 2012 to assist the inquiry into the Welsh Government's historic environment policy. The WPCF is an informal affiliation of planning consultants working in Wales, which was formed earlier this year specifically to comment on the various inquiries, studies and reports currently being undertaken into the operation of the planning system in Wales. Given the evident relationship between historic environment policy and the planning system, I therefore welcome the opportunity to respond to your recent enquiry.

1. I note that the Committee intends to focus specifically on the overall policy direction and strategic priorities of the Welsh Government in regard to historic environment policy and that the invitation letter specifically seeks responses to five questions. The third of these is the relationship between policies for the historic environment and wider Welsh Government policy objectives (such as the regeneration of communities). With respect, there is a further specific issue that I think the Committee should address under this heading and that is the effect of current historic environment policies, procedures and practices on the timely delivery of development in Wales. This is a matter of considerable concern to members of the WPCF, whose clients include many public sector as well as private sector organisations, whose proposals are directly affected by the operation of policies designed to protect and manage the historic environment in Wales.

The comments set out below relate principally to listed buildings and are based on many years experience of working on listed buildings and of applying listed building law and procedures in practice.

2. When listing a building, the listing notice should be accompanied by a plan identifying the extent of the statutory designation. At present, this is undefined and the extent of the building to which the listing applies is not always readily apparent from reading the listing description. In contrast, when a monument is scheduled there is an accompanying plan that defines the area of the monument (even though there is no requirement for this under section 1 of the *Ancient Monuments and Archaeological Areas Act 1979* as amended). This is important – for example, when considering whether scheduled monument consent is required



– and a plan would be equally beneficial when considering requirements in respect of the necessity to obtain listed building consent.

3. Subsection 1(5) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* defines a listed building so that the following are to be treated as part of the building:

- (a) any object or structure fixed to the building;
- (b) any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1 July 1948.

This statutory definition causes specific problems for practitioners. In the case of (a), this would apply to an adjoining building (for example, in a terrace of buildings) even when that building is not separately listed. I am aware of a particular case where the listing report helpfully records that the attached range of buildings is not included in the listing, but where the buildings would be regarded as falling within (a) and, hence, would be subject to listed building law and policy.

4. In the case of (b), the concept of “curtilage listed buildings” should be abandoned. It seems perverse that the full weight of listed building law and policy should be made to apply to buildings that have been assessed for listing building status and have been determined to be of insufficient architectural or historic interest to justify listing, even for their group value. This is particularly the case in respect of the requirement to obtain listed building consent to demolish a curtilage listed building. Paragraph 92 of extant Welsh Office Circular 61/96 sets out very stringent tests to be applied to applications for listed building consent for demolition:

- the condition of the building, the cost of repairing and maintaining it in relation to its importance and to the value derived from its continued use;
- the adequacy of efforts made to retain the building in use, including ‘...*the offer of the unrestricted freehold of the building on the open market at a price reflecting the building’s condition...*’; and
- the merits of alternative proposals for the site.

Attempting to satisfy these tests requires considerable effort and expense by an applicant and in the case of criterion (ii) – marketing the freehold of the building – a lengthy timescale. To apply these tests to curtilage listed buildings (which may be of no or limited interest) is disproportionate and unduly onerous.

5. In the event of the concept of curtilage listed buildings being retained, a formal and transparent procedure should be introduced to define the curtilage. At present, there is no formal procedure and it is left to the sole discretion of the local planning authority. The planning authority may take advice on this from Cadw, but that consultation is not necessarily transparent. Moreover, there is no right of appeal against that decision to the Welsh Ministers by an aggrieved applicant; a legal challenge through the Courts would have to be on the lawfulness of the decision rather than its substantive merits. One solution would be for the curtilage of the listed building, as well as the listed building itself, to be defined when the building is listed. This may be practicable for buildings as and when they are first listed or reviewed, but it would be an enormous task for buildings that are already listed. It would be



preferable for the concept of curtilage listed buildings to be abandoned: if a particular building is of special architectural or historic interest, it should be listed in its own right.

6. The Welsh Ministers are a statutory consultee for certain applications for planning permission (schedule 4 to *The Town and Country Planning (Development Management Procedure) (Wales) Order 2012*) and, in respect of development likely to affect the site of a scheduled monument, this duty is exercised on their behalf by Cadw. Consultation responses are not always timely and in certain cases are unduly excessive: I am aware of one case in which it took Cadw over a year in which to respond, which must surely be regarded as unacceptable.

I trust that you will find these comments helpful.

Yours faithfully

A handwritten signature in black ink that reads 'Paul Vining'.

Paul Vining

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