Open Spaces Society

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28 February 2018

Via email

Dear Sir

Planning Law in Wales, Law Commission Consultation Paper: Law Commission number 233

The Open Spaces Society (OSS) welcomes this opportunity to comment on the Law Commission's review of Planning Law in Wales, Consultation number 233.

The OSS was founded in 1865 and is Britain's oldest national conservation body. It campaigns to protect common land, village greens, open spaces and public paths, and people's right to enjoy them. It is a member of many organisations including the Welsh Wildlife and Countryside Link.

The recent Planning Wales Act 2015 (PWA) involved a thorough revision of planning legislation and supporting guidance and followed extensive consultation with relevant stakeholders. The OSS gave evidence to the Environment and Sustainability Committee when the original planning bill was being considered by the Welsh Government.

It seems premature to propose the wholesale repeal of this Act after the lengthy process only recently undertaken. The full implications of the Act need to be assessed in due course and once fully implemented further analysis carried out.

It is very odd that the consultation does not make any reference to Part 8 of PWA, which alters the existing town and village green (TVG) legislation by amending the Commons Act 2006. We would question whether this was intentional or an oversight. If PWA was repealed would the position in respect of TVGs revert to the current position, whereby there are no restrictive 'trigger events', preventing TVG applications, and no provision for the deposit of landowner statements to prevent rights being established. Would the amendments made to the TVG legislation be embedded in the replacement legislation? Or are there plans to introduce something else?

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There is a missed opportunity not to include in the proposed new planning act the statutory protection of open space and its use by local people. The seven principles in the Wellbeing and Future Generations (Wales) Act 2015 make clear that open space protection is crucial to the economy health and wellbeing of Wales. Protection of open space should not be left to policy guidance, such as the current out of date TAN 16 (2009). Such guidance can be changed leaving open space vulnerable to disposal.

There should be a specific power, under any amendments or replacements of section 106/CIL, to require a developer to dedicate land for public benefit, for instance as TVG under section 15(8) of the Commons Act 2006, for public access under section 16 of the Countryside and Rights Of Way Act 2000, or as a public right of way.

Unless there is specific supplementary planning guidance, the fact that land is registered either as common land or TVG is not regarded as relevant in respect of 'material consideration'. It is essential that this is rectified as the status of the land is clearly relevant to the determination of any planning application.

There are various references to public rights of way (PROW), highways legislation and procedure. In particular, at section 3.101 there is the statement that PROW are not going to be considered at this time. However the new planning code and statutes may include re-enactment of section 257 of the Town and Country Planning Act 1990 which is proposed to be repealed. If so it should contain clarification that the decision maker is entitled to go behind the necessity of the order, and refuse to confirm the order if satisfied that the development could have been arranged so as to avoid interference with the PROW.

If Grampian conditions are to be codified, it is arguable that the delivery of a condition need not necessarily be wholly in the gift of the developer, and this should not make a condition unlawful. It should be expressly stated that it is permissible to make such a condition.

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There is no need for highway to be defined, as its meaning is clear, and it is not appropriate to define curtilage as this is subject to fact and degree, and any statutory definition would merely replace a corpus of court precedent with a form of words which is unlikely to generate any new clarity.

The society would be happy to discuss any of these issues.

Yours faithfully

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Case Officer