



# Buckinghamshire & Milton Keynes Fire Authority

<b>MEETING</b>	Fire Authority
<b>DATE OF MEETING</b>	14 October 2020
<b>OFFICER</b>	Graham Britten, Director of Legal and Governance
<b>LEAD MEMBER</b>	Councillor Lesley Clarke OBE
<b>SUBJECT OF THE REPORT</b>	<b>Fire and rescue authorities becoming statutory consultees in the development management process - Consultation by the Welsh Government</b>
<b>EXECUTIVE SUMMARY</b>	<p>The purpose of this report is to apprise the Authority of:</p> <ul style="list-style-type: none"><li>a) a consultation launched by the Welsh Government on 28 July 2020 about its proposals to make the three Welsh fire and rescue authorities statutory consultees on planning applications relating to specified developments;</li><li>b) the current position in England in respect of consultation and fire and rescue authorities; and</li><li>c) proposals contained within the draft Building Safety Bill.</li></ul> <p>The relevant legislation in respect of the consultation obligations on planning authorities, after an application has been submitted and before planning permission can be granted, is essentially the same currently in Wales as it is in England.</p> <p>The proposals, if implemented through changes to legislation<sup>1</sup> in Wales, would mean that for certain types of development:</p> <ul style="list-style-type: none"><li>1. developers would be required to consult fire and rescue authorities prior to submitting their application;</li><li>2. local planning authorities and the Welsh Ministers would be required to consult fire and rescue authorities to inform their consideration and determination of the application; and</li><li>3. the fire and rescue authority would need to respond where the local planning authority chooses to consult further on applications for</li></ul>

<sup>1</sup> Changes would be made to the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (SI 2012/801) and the Developments of National Significance (Procedure) (Wales) Order 2016 (SI 2016/55).

approval, consent or agreement relating to a planning application on which they were initially consulted.

The Welsh Government's rationale for the proposals are summarised in its consultation document at §§ 3.2 -3.4:

"3.2 Firstly, it will allow FRAs [fire and rescue authorities] to comment on proposed developments which give rise to concern from a fire safety perspective. Such concerns could, for instance, relate to the siting of the development relative to other premises at known risk of fire; proximity to land which is known to be at risk of wildfire; or access for fire appliances and availability of water supplies once the development is complete.

3.3 Secondly, and even if there are no such concerns, effective firefighting depends on FRAs having detailed knowledge of the premises in the areas they serve, and of their estimated risk of fire. That will help in establishing and maintaining the local capacity and capability to address those risks. Engagement at this stage will allow FRAs to update that knowledge, and to begin planning for any changes in operational capability which might be necessary in light of the development.

3.4 The direct stimulus for change was the Grenfell Tower fire; and high-rise residential blocks will always present particular risks and challenges to the Fire and Rescue Services. However, similar considerations apply to other large-scale developments. A major new low-rise housing estate might, for instance, be some distance from the nearest current fire station, or may be built adjacent to land which is at known risk of wildfire. Our proposals are therefore not confined to proposals for development of high-rise buildings."

And at §§ 4.12 to 4.14:

"4.12 [...]We consider that FRAs should be consulted on all residential proposals where significant numbers of people are involved to ensure the design is appropriate and the resources available by the FRA are adequate to the fire risk presented by the new development.

4.13 In respect of non-residential proposals we consider the FRAs should be given the opportunity to comment on all larger scale proposals to ensure the design and availability of fire-fighting capability is appropriate.

4.14 All waste development proposals should be included for consultation with the FRAs. Waste site development can create a significant fire risk, often due to the large quantity of flammable materials (such as wood, plastic, cardboard and tyres) stored at these

	<p>sites. It is therefore important that the FRA is made aware of such developments at the earliest stage.”</p> <p>The consultation closes on 23 October 2020.</p>
<b>ACTION</b>	Decision
<b>RECOMMENDATIONS</b>	<p>It is recommended that:</p> <ol style="list-style-type: none"> <li>1. the content of Welsh Government Consultation Document (<b>Annex A</b>) be noted; and</li> <li>2. the Chief Fire Officer be authorised, after consultation with the Group Leaders and Vice Chairman, to submit the views of the Group Leaders about fire and rescue authorities becoming consultees in the development management process to: <ol style="list-style-type: none"> <li>a) the Minister of State for Building Safety, Fire and Communities; and</li> <li>b) the LGA Fire Services Management Committee.</li> </ol> </li> </ol>
<b>RISK MANAGEMENT</b>	No risks arise to the delivery of the Authority’s functions from the recommendations.
<b>FINANCIAL IMPLICATIONS</b>	There is no direct financial impact from responding to the consultation. However, changes to legislation in England of the type contemplated in Wales would require the necessary levels of staffing and competency within the FRA to enable it to comply with a duty to provide a “substantive response” to the relevant planning authority.
<b>LEGAL IMPLICATIONS</b>	<p>In England and Wales most building work, and certain changes of use involving buildings, are subject to the Building Regulations 2010. If a building’s intended purpose is that it is to be used other than a single dwelling it will also be subject to the Regulatory Reform (Fire Safety) Order 2005 once the work is completed and the building is occupied.</p> <p>Building control bodies (local councils’ building control departments and Approved Inspectors) are responsible for checking for compliance with the requirements of the Building Regulations. The Regulations are concerned with building work and with material changes of use (which may give rise to requirements for building work) and the requirements for fire safety will apply to most buildings. Fire safety requirements are set out in Part B of Schedule 1 to the Building Regulations. These cover means of escape, means of early warning, fire spread, and access and facilities for the fire and rescue service. Ways of meeting the requirements are given in statutory guidance issued in England and separately in Wales as ‘Approved Document B (Fire safety)’.</p> <p>At present, FRAs are consulted on applications for</p>

Building Regulations approval when required under Approved Document B.

In a building to which of the Regulatory Reform (Fire Safety) Order 2005 applies, Article 45 of that Order provides for consultation between a local authority and the FRA if plans have been deposited with the local authority in accordance with the Building Regulations 2010. In these circumstances the local authority must consult with the FRA. Regulation 13 of the Building (Approved Inspectors etc) Regulations 2000 (SI 2000/2532) makes similar provision for consultation by Approved Inspectors.

However, FRAs are not prescribed bodies to be consulted about applications for planning permission.

### **Consultation by planning authorities prior to planning permission**

Articles 18 to 20, and Schedule 4, of the Town and Country Planning (Development Management Procedure (England) Order 2015 impose detailed requirements to consult specified authorities and bodies in respect of particular descriptions of development<sup>2</sup>. (The table from Schedule 4 listing the current consultees in England is reproduced in **Annex B**) The Secretary of State may also give directions requiring consultation with a named person or body.

A period of 21 days must be allowed for a response from a statutory consultee although the authority may proceed earlier if it receives representations or notice that the consultee does not intend to make representations. The authority must take any representations received into account.

Local planning authorities have a discretion to consult 'non statutory consultees', 'where there are planning policy reasons to engage other consultees who – whilst not designated in law – are likely to have an interest in a proposed development.'

( [National Planning Policy and Guidance, Published 6 March 2014 Last updated 13 May 2020](#) ) This Guidance to English planning authorities also states as follows:

"To help applicants develop their proposals, local planning authorities are encouraged to produce and publish a locally specific list of non-statutory consultees. [...]"

Local planning authorities need to identify the particular types of development or areas in which non-

<sup>2</sup> In addition, in areas of two-tier authorities consultation by a district planning authority with the county planning authority for its area is required under circumstances set out under Paragraph 7 of Schedule 1 to the Town and Country Planning Act 1990, Article 21 Development Management Procedure Order and Schedule 4(b)(c) Development Management Procedure Order

	<p>statutory consultees have an interest, so that any consultation can be directed appropriately, and unnecessary consultation avoided.</p> <p>To ensure consultations are received promptly it is helpful for applicants and local planning authorities to agree the most cost and time effective system of notification on individual applications.”</p> <p>A consultee may recommend that a planning application be refused but cannot in most cases direct that this happens<sup>3</sup>.</p> <p><b>Consultation by developers pre-application</b></p> <p>In England there is no general statutory requirement for developers to undertake consultation before submitting a planning application. Of the few exceptions, one is if the application is for development which is a <i>nationally significant infrastructure project</i> (NSIP). Applicants seeking NSIP consent are subject to pre-application publicity and consultation requirements. The statutory consultees are the prescribed persons listed in Schedule 1 to the <a href="#">Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009/2264</a> . FRAs are statutory consultees in England only where these regulations apply.</p>
<b>CONSISTENCY WITH THE PRINCIPLES OF THE DUTY TO COLLABORATE</b>	The <a href="#">Policing and Crime Act 2017</a> requires the Authority to keep opportunities for collaboration with the police and ambulance services under review. It is not engaged by the consultation under consideration.
<b>HEALTH AND SAFETY</b>	None arising from the recommendations.
<b>EQUALITY AND DIVERSITY</b>	No implications arising from the recommendations.
<b>USE OF RESOURCES</b>	The formulation of any response to the consultation can be accommodated within existing resources. However, changes to legislation in England of the type contemplated in Wales would require the necessary levels of staffing and competency within the FRA to enable it to comply with a duty to provide a “substantive response” to the relevant planning authority (as defined – i.e. a response which (a) states that the consultee has no comment to make;

<sup>3</sup> ‘Town and Country Planning (Development Affecting Trunk Roads) Direction 2018 is that if Highways England, having been consulted on a planning application under Schedule 4 of the Development Management Order 2015, makes a recommendation which the local planning authority does not intend to follow, the local planning authority must consult the Secretary of State and must determine the application in accordance with any Direction given within 21 days by the Secretary of State. In addition, article 6 of the Town and Country Planning (Mayor of London) Order 2008 sets out a power for the Mayor of London to direct refusal of a planning application in certain instances. Several combined authorities also have similar powers’.  
[Paragraph: 027 National Planning Policy and Guidance, Planning Practice Guidance :Consultation and pre-decision matters]

	<p>(b) states that, on the basis of the information available, the consultee is content with the development proposed;(c) refers the consultor to current standing advice by the consultee on the subject of the consultation; or (d) provides advice to the consultor.)</p> <p>The substantive response would need to include reasons for the consultee’s views so that where these views have informed a subsequent decision made by a local planning authority the decision is transparent. A holding reply would not be acceptable as a substantive response. Statutory consultees who are under a duty to provide a substantive response must provide an annual report on their performance in providing such responses within the 21-day period or longer agreed period, and a summary of the reasons why they failed to comply with the duty to respond within the relevant timescale.</p> <p>These annual reports would need to be sent to the Ministry of Housing, Communities and Local Government each year; and published on the FRA’s website.</p>
<p><b>PROVENANCE SECTION &amp; BACKGROUND PAPERS</b></p>	<p><a href="#">Welsh Government Consultation Document Fire and Rescue Authorities becoming statutory consultees in the development management process</a></p> <p>The Welsh consultation proposals are separate from those proposed for England under the Building Safety Bill.</p> <p>On 20 July 2020 the Government published the <a href="#">draft Building Safety Bill</a>.</p> <p>The stated intention of the Bill is to create a more stringent regulatory regime for ‘higher-risk’<sup>4</sup> residential buildings and is part of the <a href="#">Government’s response</a> to the Independent Review of Building Regulations and Fire Safety, led by Dame Judith Hackitt. Dame Judith’s final report, <a href="#">Building a Safer Future</a> , was published on 17 May 2018.</p> <p>The Bill introduces a ‘Building Safety Regulator’ as a new role to be undertaken by the Health and Safety Executive and its functions in relation to buildings in England; and, inter alia, would amend the Building Act 1984 to create a new ‘Gateway’ regime.</p>

<sup>4</sup> Left to be defined by secondary legislation. The Government has signalled its intention that it proposes to define a ‘higher-risk building’ as: A building 1) in which the floor surface of the building’s top storey is 18 metres or more above ground level (ignoring any storey which is a roof-top plant and machinery area or any storey consisting exclusively of plant and machinery rooms); or in which there are more than 6 storeys (ignoring any storey which is below ground level); and 2) contains: a) Two or more dwellings (i.e. house, flat or serviced apartment); b) Two or more rooms for residential purposes (e.g. supported accommodation), or c) Student accommodation.

### **Building Safety Regulator (England only)**

Clause 13 of the Bill enables the Building Safety Regulator to call on assistance from local authorities and FRAs when regulating higher-risk buildings. Its intention is that local authorities and FRAs have the legal power to provide assistance requested by the Building Safety Regulator.

Clause 13 also enables the Building Safety Regulator to direct a local authority or FRA to provide support requested under clause 13, subject to the following provisos:

- Before making a direction, the Building Safety Regulator must first make a formal, written request to the local authority or FRA setting out the reason why the assistance is being requested. The local authority or FRA must be given the opportunity to give reasons why it should not be required to provide the assistance.
- If the local authority or FRA does not undertake the requested activity, the Building Safety Regulator may direct the relevant authority to do so. However, the Building Safety Regulator must have considered any reasons provided by the authority for not undertaking the activity; still consider it expedient for the authority to undertake the activity; and have secured the consent of the Secretary of State for the direction.

Clause 14 makes further provisions in relation to the assistance to be provided by local authorities and FRAs. Including:

- funding to be provided for the activity requested from local authorities and FRAs, and any activity necessary to support this, both through grants from the Secretary of State and enabling regulations to be made setting out how the Building Safety Regulator would reimburse local authorities and FRAs; and
- a duty on FRAs and local authorities to only use staff with the 'appropriate skills, knowledge, experience and behaviours' when supporting the Building Safety Regulator.

### **The Gateway Process for 'higher risk buildings'<sup>5</sup> (England only)**

The Bill intends to introduce a Gateway process by inserting amendments into Schedule 1 of the Building Act 1984. The details of the Gateway regime will be left to secondary legislation however the first Gateway

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<sup>5</sup> See note 4 above

	<p>is the 'Planning Gateway'</p> <p>This Gateway's requirements would be fulfilled by those applying for planning permission for developments containing a 'higher-risk building'.</p> <p>Information will need to be submitted to the Local Planning Authority with the planning application information that demonstrates fire safety requirements which impact on planning considerations have been considered at an early stage and incorporated into the proposals.</p> <p>This information will take the form of a Fire Statement.</p> <p>A new statutory consultee, in the form of the Building Safety Regulator, will be introduced for all planning applications containing a higher-risk building, this will provide specialist fire safety input on the proposals to assist the Local Planning Authority in their decision-making process. (Note that the Regulator will be able to call upon an FRA for assistance - per clauses 13 and 14 of the Bill, above)</p> <p>However, where a planning application is not currently required (i.e. it has been permitted by the General Permitted Development Order 2015), the requirements of the Planning Gateway will not apply, and development proposals will proceed straight to Gateway two.</p> <p>The Bill proposes that Gateway two occurs prior to construction work beginning. It is intended to bolster the current building control 'deposit of full plans'.</p> <p>Gateway two is intended to provide a 'hard stop' where construction cannot begin until the Building Safety Regulator is satisfied that the building's design meets the functional requirements of the building regulations and does not contain any unrealistic safety management expectations.</p> <p>Key information will need to have been submitted to the Building Safety Regulator to demonstrate how the building, once built, will comply with the requirements of building regulations. Design decisions in relation to fire and structural safety will have to have been well considered and justified, to ensure they will work effectively during occupation.</p>
<p><b>APPENDICES</b></p>	<p>Annex A: Welsh Government Consultation Document Fire and Rescue Authorities becoming statutory consultees in the development management process Date of issue: 28 July 2020.</p> <p>Annex B: Schedule 4 of the Town and Country Planning (Development Management Procedure (England) Order 2015</p>



<b>TIME REQUIRED</b>	15 Minutes
<b>REPORT ORIGINATOR AND CONTACT</b>	Graham Britten <a href="mailto:gbritten@bucksfire.gov.uk">gbritten@bucksfire.gov.uk</a> 01296 744441