

## Environment and Sustainability Committee

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Meeting Venue:

**Committee Room 3 – Senedd**

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Meeting date:

**Thursday, 11 December 2014**

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Meeting time:

**09.15**

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



For further information please contact:

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### Agenda

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**Informal pre-meeting (09:15 – 09:30)**

#### **1 Introductions, apologies and substitutions**

#### **2 Planning (Wales) Bill: Stage 1 – Evidence session 9 (09:30 – 10:30)**

(Pages 1 – 68)

Josh Miles, Policy Advisor, Federation of Small Businesses Wales

Ben Francis, Member, Federation of Small Businesses Wales

Mark Harris, Planning and Policy Advisor Wales, Home Builders Federation

David Morgan, Policy Manager, RICS Wales

John Pockett, Director, Confederation of Passenger Transport Wales

Matthew Williams, Policy and Research Officer, RenewableUK

E&S(4)–31–14 Paper 1

E&S(4)–31–14 Paper 2

E&S(4)–31–14 Paper 3

E&S(4)-31-14 Paper 4

### **3 Planning (Wales) Bill: Stage 1 – Evidence session 10 (10:30 – 11:00)**

(Pages 69 – 81)

Dyfan Sion, Director of Policy and Research, Welsh Language Commissioner

Huw Gapper, Senior Policy and Research Officer, Welsh Language Commissioner

E&S(4)-31-14 Paper 5

### **4 Planning (Wales) Bill: Stage 1 – Evidence Session 11 (11:00 – 11:30)**

(Pages 82 – 105)

Colin Nosworthy, Communications and Assembly Liaison Officer, Cymdeithas yr Iaith Gymraeg

Tamsin Davies, Chair, Sustainable Communities Group, Cymdeithas yr Iaith Gymraeg

Emyr Lewis, Dyfodol i'r Iaith

Meirion Davies, Mentrau Iaith Cymru, representing Dyfodol i'r Iaith

E&S(4)-31-14 Paper 6

E&S(4)-31-14 Paper 7

### **5 Planning (Wales) Bill: Stage 1 – Evidence session 12 (11:30 – 12:00)**

(Pages 106 – 112)

Naomi Luhde-Thompson, Planning Advisor, Friends of the Earth

E&S(4)-31-14 Paper 8

**Break (12:00 – 13:00)**

### **6 Planning (Wales) Bill: Stage 1 – Evidence session 13 (13:00 – 13:45)**

(Pages 113 – 127)

Nicola Hodgson, Case Officer, Open Spaces Society

Beverley Penney, Open Spaces Society

Elwyn Thomas, Chief Executive, Planning Aid Wales

Matt Hemsley, Policy and Media Adviser, Sustrans

Lindsey Curtis, Area Manager South West Wales, Sustrans

E&S(4)-31-14 Paper 9

E&S(4)-31-14 Paper 10

E&S(4)-31-14 Paper 11

## **7 Papers to note**

**Planning (Wales) Bill: Correspondence from the Minister for Natural Resources to the Chair of the Constitutional and Legislative Affairs Committee (Pages 128 – 141)**

E&S(4)-31-14 Paper 12

**Inquiry into energy efficiency and fuel poverty in Wales: Further information from SSE following session on 13 November (Pages 142 – 143)**

E&S(4)-31-14 Paper 13

**The Well-being of Future Generations (Wales) Bill: Correspondence from BMA Wales (Pages 144 – 145)**

E&S(4)-31-14 Paper 14

**8 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting**

**9 Planning (Wales) Bill: Discussion of evidence (13:45 – 14:00)**

**10 Discussion on the Committee's Forward Work Programme for 2015 (14:00 – 14:15) (Pages 146 – 152)**

E&S(4)-31-14 Paper 15

**11 Inquiry into recycling in Wales: Consideration of draft report (14:15 – 14:30) (Pages 153 – 173)**

E&S(4)-31-14 Paper 16

**12 Inquiry into energy efficiency and fuel poverty in Wales: Consideration of key issues (14:30 – 14:45) (Pages 174 – 179)**

E&S(4)-31-14 Paper 17

**13 Inquiry into the organic production and labelling of organic products: Consideration of draft letter to European Commission (14:45 – 14:55)**

(Pages 180 – 188)

E&S(4)-31-14 Paper 18

# Agenda Item 2

Document is Restricted

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FSB Wales

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Planning  
(Wales) Bill

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7<sup>th</sup> November 2014

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## **Planning (Wales) Bill**

### **FSB Wales**

FSB Wales welcomes the opportunity to present its views to the Environment and Sustainability Committee on the general principles of the Welsh Government's Planning (Wales) Bill. FSB Wales is the authoritative voice of businesses in Wales. With 10,000 members, a Welsh Policy Unit, two regional committees and twelve branch committees; FSB Wales is in constant contact with business at a grassroots level. It undertakes regular online surveys of its members as well as a biennial membership survey on a wide range of issues and concerns facing small business.

### **Executive Summary**

In response to the consultation FSB Wales makes the following headline observations:

We would call on the committee to examine why the following have been omitted from the Bill:

- A proper assessment of the impact of the Bill on micro, small and medium-sized businesses
- Any mention in the explanatory memorandum of the Planning Advisory and Improvement Service (PAIS)
- Further consideration of Permitted Development Orders for change of use - the biggest reason for SMEs engaging with the planning system
- A requirement for planning authorities to submit an Annual Performance Report outside of Strategic Development Plans
- Any reference to the role of National Parks in the planning process. FSB Wales is of the opinion that planning powers should be removed from Wales' National Parks and returned to local planning authorities

In reference to provisions found in the Bill as currently drafted we suggest:

- The Welsh Government should articulate a vision for developments in Wales and clearly set out what will be considered a Development of National Significance
- The committee should examine the governance arrangements for the proposed Strategic Development Panels to prevent a lack of accountability and to ensure the views of SMEs are represented
- The proposals to front-load the development plan process and for Ministers to be able to direct local authorities to produce a joint LDPs, where appropriate, are to be welcomed
- Proposals around community engagement in the LDP process should include an emphasis on engaging with the local business community
- Pre-application advice remains a key area of concern to FSB members and we call for the call for the implementation of recommendations of our 2008 report Small Businesses and the Planning System in Wales. We believe charges for pre-application advice should only be levied where an application proceeds
- The proposal to remove the requirement for mandatory design and access statements is welcome
- A move to ensure the role of statutory consultees is defined more appropriately in legislation is appropriate
- Proposed reform of planning committees and the delegation process is to be welcomed.



- Additional enforcement powers for planning authorities need to be accompanied by oversight from PAIS to ensure their use is fit, proper and proportionate
- Changes to the planning appeals process are welcome, and we would like to see the creation of a Commercial Appeal Service.

## **Introduction**

FSB Wales warmly welcomes the introduction of the Welsh Government Planning (Wales) Bill to the National Assembly for Wales. FSB Wales has taken part in numerous work streams in anticipation of the Bill that helped form a part of the evidence base. Our response to the Committee's inquiry is split into two sections. Firstly, our response considers issues that are not considered in the Bill. Secondly, we discuss the proposals included in the Bill and their likely impact on Wales' micro, small and medium sized businesses.

This is the first opportunity for a Wales specific Bill in relation to the planning system, following legislative devolution confirmed in the 2011 referendum. This provides a fantastic opportunity to streamline the planning system to make it easier for development opportunities to be managed positively to fruition. As such, FSB Wales largely agrees with the need and general principles of the Bill as introduced to the National Assembly for Wales.

## **Omissions from the Bill**

There are a number of issues that are mentioned in the previous Positive Planning consultation document that have not been included in the Bill as laid in the National Assembly for Wales<sup>1</sup>. While FSB Wales recognises that the reason for this is that some policies do not require primary legislation to be implemented, we have focused here on issue that we believe pertain to the legislation. We would call upon the committee to explore why these issues have been omitted from the Bill, despite their inclusion in the Positive Planning consultation.

## **Impact Assessment and SMEs**

FSB Wales welcomes the detailed impact assessment that accompanies the Bill. However, we are concerned that there is little attention paid to the impact on micro, small and medium sized businesses. Rather, businesses are categorised as 'developers'. This makes the assumption that the nature and type of planning applications are homogenous and the impact is therefore the same. FSB Wales believes this isn't the case. For instance, the vast majority of planning applications submitted by FSB members relate to relatively small issues such as change of use, extensions, minor physical improvements and signage issues (see Figure 1). Therefore, assessing the impact of pre-application advice fees, for example, could potentially mask the nature and resultant workload of a wide range of application sizes. This could lead to SMEs potentially shouldering a higher burden of the impact, with fees being a substantially larger proportion of expected returns from any development proposals.

FSB Wales therefore urges the Committee to examine this issue further to clarify the impact on SMEs. In particular, the Committee should ascertain whether the assumptions made in the impact

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<sup>1</sup> Welsh Government 2013. *Positive Planning: Proposals to reform the planning system in Wales*. WG20088



assessment are reasonable and proportionate to firms of varying sizes. The need for an improved impact assessment process was highlighted as a priority in our recent report, *Better Regulation for Wales*<sup>2</sup>.

### **Planning Advisory and Improvement Service**

FSB Wales welcomes the Welsh Government's proposals for a Planning Advisory and Improvement Service (PAIS). The Independent Advisory Group on Planning (IAG) identified the need for development to be better managed by planning officers and FSB Wales agrees with this assessment. The PAIS should also work to ensure that planning officers have knowledge and understanding of the day-to-day constraints of small firms and how this could potentially impact on the planning application process.

There is no mention of the proposed Planning Advisory and Improvement Service in the explanatory memorandum. This suggests that the body will not be underpinned on a statutory basis. As such, FSB Wales believes it is important that the Welsh Government's current task and finish group on the formation of a PAIS engages widely with SMEs. This should reflect and consider the Committee's previous recommendation that PAIS should be independent of Welsh Government.

### **Review of PDO for Change of Use**

The publication of the Planning (Wales) Bill was accompanied by a large number of consultations on specific secondary legislation that could have a bearing on the planning reform agenda. In this respect, FSB Wales is disappointed not to see further consideration of Permitted Development Orders for change of use via a review of the use class order, as was suggested in the Positive Planning consultation<sup>3</sup>. FSB Wales data (see figure 1) shows that this is a primary area of use for SMEs using the planning system. As such, FSB Wales believes this issue should be examined in conjunction with wider planning reforms.

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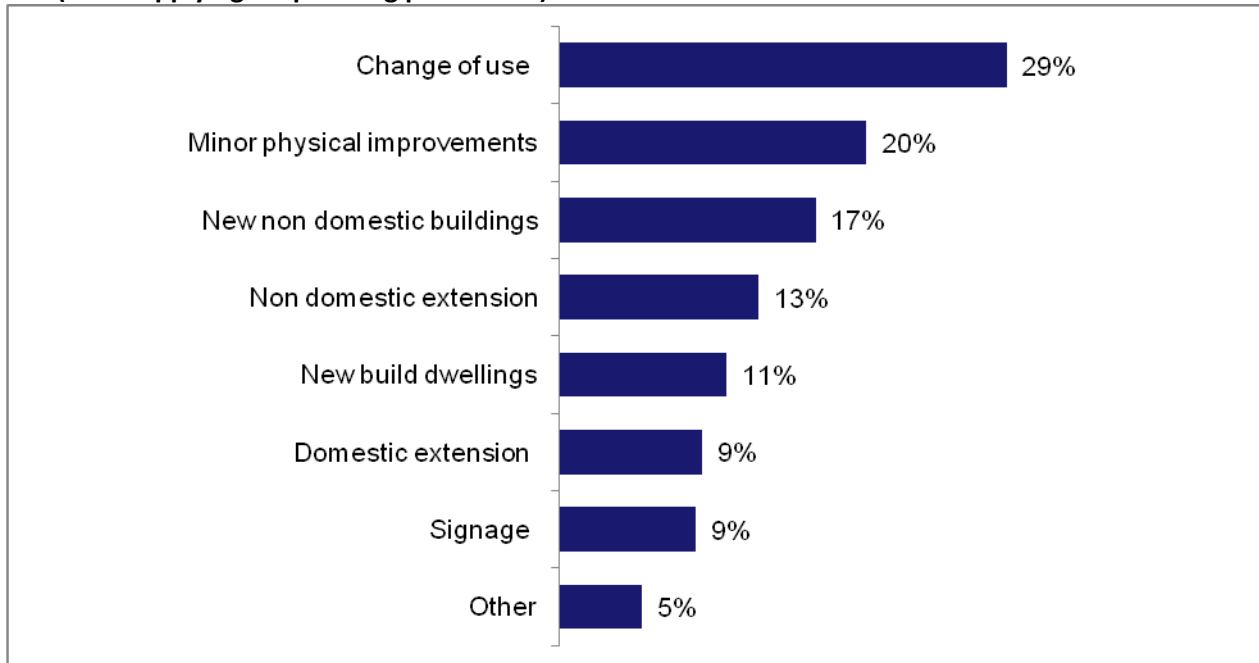
<sup>2</sup> FSB Wales. 2014. *Better Regulation for Wales* [Online]. Available at: <http://www.fsb.org.uk/wales/publications>

<sup>3</sup> Welsh Government 2013. *Positive Planning: Proposals to reform the planning system in Wales*. WG20088 P.30



**Figure 1**

**Q27. Specifically, what type of alteration or development does your application relate to? Base: 241 (those applying for planning permission)**



### **Annual Performance Report**

The Positive Planning consultation suggested that all planning authorities would need to submit an Annual Performance Report as part of the reform programme. FSB Wales is concerned that this is only referenced in relation to Strategic Development Plans and believes the Committee should consider the form and nature of reporting mechanisms of planning authorities. The publication of an Annual Performance Report would strengthen the level of scrutiny of local planning authorities

### **National Park Planning Powers**

The current Bill makes no reference to the role of National Parks in the planning process, despite the issue being considered by the previous Positive Planning consultation. While FSB Wales recognises the Welsh Government is currently reviewing the role of statutory landscapes via an Independent Panel led by Professor Terry Marsden, there is a danger that these issues will now run in parallel and as a result the opportunity to reform National Park Planning Authorities in the present Bill will be missed.

FSB Wales recently published a qualitative study of planning in national parks that revealed a number of concerns around the ability to pursue development in the national parks<sup>4</sup>. Key concerns raised as part of this report were the quality of communication between officials and the businesses concerned, frequent requests for additional information and a perceived lack of accountability for

<sup>4</sup> FSB Wales. 2014. *Planning in National Parks* [Online]. Available at: <http://www.fsb.org.uk/policy/rpu/wales/images/fsb%20planning%20issues%20in%20welsh%20national%20parks%20report%20english%20website.pdf> (accessed 11<sup>th</sup> February 2014).



decision making. This has ultimately led a large number of applicants to use external planning advisors to deal with the burden of information required.

While the report did not draw firm conclusions on the role of national parks in relation to planning powers, FSB Wales is of the view that planning powers should be removed from national parks and returned to constituent local authorities. FSB Wales also feels there is merit in discussing the potential for one national park authority to cover all three national parks and for that authority to be a statutory consultee in the planning process. FSB Wales believes this should be considered further as part of the response to the Williams Commission review into public services. Moving toward such a model could provide greater expertise and resilience within the national parks authorities.

### **Bill Specific Provisions**

The following issues relate specifically to the proposals found in the Planning (Wales) Bill as currently drafted.

#### **National Development Framework**

One of the weaknesses of the current planning framework in Wales is the absence of a hierarchy of development plans, with the Wales Spatial Plan failing to deliver a Wales wide approach to spatial planning. The Planning (Scotland) Act 2006<sup>5</sup> addressed similar issues in Scotland and a similar process has also been undertaken in London to provide an overarching spatial plan for the region. FSB Wales therefore welcomes this approach.

The vast majority of firms in Wales will be engaged in applications relating to far smaller developments than those proposed for consideration on a regional or national basis. That said, FSB Wales hopes that by bringing together spatial planning with influential documents such as the Wales Infrastructure Investment Plan, the Welsh Government will be able to articulate a vision for developments in Wales that will provide certainty for all concerned. Furthermore, the Welsh Government should define quite clearly what sorts of applications will be defined as a Development of National Significance and as regionally important for the purpose of Strategic Development Plans.

#### **Strategic Development Plans**

As is the case with the National Development Framework, FSB Wales is supportive of Strategic Development Plans to cover economic regions. It is crucial that the emerging city regions are linked in with the SDP process. While FSB Wales members will largely be concerned with planning applications at a more localised level, FSB Wales believes the creation of a well articulated planning hierarchy would benefit decision making.

One area of concern is the governance arrangements of the proposed Strategic Development Plan Panels. One of the issues identified by small businesses who deal with National Park Planning Authorities is the lack of accountability in their governance arrangements. FSB Wales is concerned that similar issues will arise from the SDP Panels if one third of the membership is drawn on the prerogative of the Welsh Ministers. Appointments made to City Regions and Sector Panel Advisory

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<sup>5</sup> Planning (Scotland) Act 2006. [Online]. Available at: <http://www.legislation.gov.uk/asp/2006/17/part/1> (accessed 22nd February 2014).



Boards suggest that there is a focus on large businesses with SMEs playing a limited role in informing policy. FSB Wales is concerned that these issues could be replicated in the future, to the detriment of the SDP process, and would therefore call for a deeper examination of this issue by the Committee. By contrast, the Education Workforce Council regulations provided FSB Wales the right, on a statutory basis, to nominate a representative on behalf of the SME community.

### **Local Development Plans**

Local planning authorities have in the past been slow to deliver on local development plans. FSB Wales is therefore supportive of the Welsh Government's proposals to front-load the development plan process and reduce the number of stages involved. FSB Wales also agrees with the Welsh Government's proposals to allow Welsh Ministers to direct local authorities to produce a joint LDP where appropriate. This should be seen in the context of the Williams Commission's proposals to merge local authorities, and the potential impact of mergers on costs to customers of the planning system should be examined further by the Committee.

While FSB Wales is sympathetic towards placing an end date for all local development plans in force, FSB Wales believes it is vital that local planning authorities frequently reassess and review the content of their LDPs to ensure they are up to date. Furthermore, FSB Wales would encourage the Welsh Government to ensure that the proposals around community engagement include an emphasis on engaging with the local business community. It is essential that the business voice does not get lost in this process.

### **Pre-Application Advice**

FSB Wales commissioned an extensive research project from Cardiff University's School of City and Regional Planning in 2008 to examine the experiences of small firms and the planning system<sup>6</sup>. Unsurprisingly, pre-application advice was a key area of concern highlighted by many members in the report and the subsequent recommendations included the need to improve and formalise the pre-application advice process.

FSB Wales is of the view that many of the themes highlighted in the report around pre-application still hold true and should be implemented by the Planning (Wales) Bill. The recommendations included:

- 1) Local planning authorities to be encouraged to **review procedures for recording pre-application advice** given by officers and to explore more effective ways of communicating that advice to potential applicants. This may require a degree of formalisation of the processes of providing and recording pre-application advice.
- 2) Local planning authorities consider introducing mechanisms for being proactive in **identifying whether persons seeking pre-application advice are small businesses**, so that suitable guidance can be issued and advice given at an early stage.
- 3) Local planning authorities to aim to ensure **continuity between the officer providing pre-application advice to a small business and the allocation of the case officer** once a planning application is submitted. This may be extended to the establishment of a **dedicated small**

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<sup>6</sup> FSB Wales. 2008. *Small Businesses and the Planning System in Wales*. Cardiff. P.22.



**businesses team** comprising a small number of planning officers that are trained and briefed in the service needs of small businesses.

As currently constituted, the Planning (Wales) Bill will allow for the formalisation of pre-application advice as recommended in our research, via secondary legislation. The Bill is as follows:

*“The Welsh Ministers may by regulations make provision for and in connection with the provision of pre-application services by a local planning authority in Wales or the Welsh Ministers.”<sup>7</sup>*

While FSB Wales warmly welcomes the intention of this provision, we would request that the Committee consider whether this is the best method of securing pre-application services across Wales. In particular, it may be appropriate to specify in the primary legislation that pre-application services will be provided but that the nature and level of the services will be set out by secondary legislation. This would strengthen the provisions and ensure all LPAs and Welsh Government are providing this service.

Likewise, the following provisions relating to the keeping of records are also to be welcomed. That said, the provisions are phrased in the same way by allowing secondary legislation on the matter. FSB Wales sees this as vital to the formalisation of the pre-application process and would like to see this area strengthened to ensure records are kept, the nature of which should be specified in secondary legislation.

In terms of costs for pre-application advice, FSB Wales has previously advised against charging for advice, unless an application proceeds. That said, FSB Wales welcomes a national charging framework that would ensure consistency across local planning authority areas for pre-application advice.

### **Design and Access Statement**

In recognising the Welsh Government’s own research that suggest the current mandatory design and access statements process does not achieve stated policy objectives, FSB Wales welcomes the proposal to remove the requirement in section 62 (5) of the Town and Country Planning Act 1990 and to examine an alternative measure to promote good design and access policy.

### **Statutory Consultees**

FSB Wales has encountered several examples from members where statutory consultees have delayed the planning process by providing information outside the designated period. This can often be frustrating, particularly for planning applications that require significant amounts of resources. Therefore, FSB Wales welcomes the Welsh Government proposals to ensure the role of statutory consultees is defined more appropriately in legislation and ensuring that they are able to respond in the necessary timeframe. We would also like to know what provisions will be put in place if statutory consultees still consistently fail to respond within the prescribed period.

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<sup>7</sup> Planning (Wales) Bill, as introduced. [http://www.assembly.wales/laid%20documents/pri-ld9940%20-%20planning%20\(wales\)%20bill/pri-ld9940-e.pdf](http://www.assembly.wales/laid%20documents/pri-ld9940%20-%20planning%20(wales)%20bill/pri-ld9940-e.pdf) P.18



### **Delegation at planning committees**

FSB Wales welcomes the Welsh Government's proposed reform of planning committees and the delegation process to planning officers. Assuming that the remaining 10 per cent of applications would be determined by the Planning Committee of each LPA, FSB Wales would like to see greater transparency for applications dealt with in this way. For instance, committee members should have to declare an interest where relevant and the voting record for any decision should be published for wider public scrutiny.

### **Enforcement**

As with many other regulatory functions, FSB Wales members frequently report poor practice in terms of enforcement. This often leads to a level of inconsistency between how regulations are applied and subjectivity from officers has damaged perceptions of the enforcement process in the past. FSB Wales believes that any additional enforcement powers gained by planning authorities need to be accompanied by work from the PAIS to ensure that their use is fit, proper, and proportionate.

Local planning authorities should be open and transparent about the enforcement process and justify why enforcement measures have been taken. There should be a direct line of accountability to those that ultimately make the decision to apply enforcement measures and this should be included as an issue for consideration in an annual performance report.

### **Planning appeals process**

FSB Wales broadly welcomes the changes suggested to the planning appeals process. In particular, the ability of appellants to recover costs from the written appeal process is to be welcomed. The Positive Planning consultation suggested an expedited process would be created via a Commercial Appeal Service, on a similar basis to the already established Householder Appeals Service. FSB Wales welcomes this development.

### **Conclusion**

FSB Wales hopes that the National Assembly for Wales will take the specific needs of small businesses into consideration throughout the Planning (Wales) Bill as it progresses and ensure that relevant links are made to other major pieces of planned legislation.



### **Federation of Small Businesses Wales**

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### **The Federation of Small Businesses Wales**

The FSB Wales is non-profit making and non-party political. The Federation of Small Businesses is the UK's largest campaigning pressure group promoting and protecting the interests of the self-employed and owners of small firms. Formed in 1974, it now has 200,000 members across 33 regions and 194 branches. FSB Wales currently has around 10,000 members, a Welsh Policy Unit, two regional committees and twelve branch committees meaning FSB Wales is in constant contact with small businesses at a grassroots level in Wales.

### **Lobbying**

From the Press and Parliamentary Affairs Office in Cardiff, FSB Wales campaigns with AMs, MPs and MEPs in Cardiff Bay, Westminster and Brussels in order to promote our members' interests. FSB Wales also works closely with local, regional and national media outlets to highlight our members' concerns. Development Managers work alongside members in our regions to further FSB Wales influence at a regional level. More widely, the FSB has Press and Parliamentary Offices in Westminster, Glasgow, Belfast and Brussels to lobby the respective Governments.

### **Member Benefits**

In addition, Member Services is committed to delivering a wide range of high quality, good value business services to members of the FSB. These services will be subject to continuing review and will represent a positive enhancement to the benefit of membership of the Leading Business organisation in the UK.

### **Vision**

A community that recognises, values and adequately rewards the endeavours of those who are self employed and small business owners within the UK.

The Federation of Small Businesses is the trading name of the National Federation of Self Employed and Small Businesses Limited. Our registered office is Sir Frank Whittle Way, Blackpool Business Park, Blackpool, Lancashire, FY4 2FE. Our company number is 1263540 and our Data Protection Act registration number is Z7356876. We are a non-profit making organisation and we have registered with the Information Commissioner on a voluntary basis.

### **Associate Companies**

We have three active subsidiary companies, FSB (Member Services) Limited (company number 02875304 and Data Protection Act registration number Z7356601), FSB Publications Limited (company number 01222258 and Data Protection Act registration number Z7315310) and FSB Recruitment Limited. (company number 07836252 and Data Protection Act registration number Z3131666).

National Assembly for Wales  
Environment and Sustainability Committee  
PB 34  
Planning (Wales) Bill  
Response from Home Builders Federation



THE HOME BUILDERS FEDERATION  
WALES

National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

MH

05/12/14

Dear Sir/Madam,

**Response to: The Environment and Sustainability Committee inquiry  
into the general principles of the Planning (Wales) Bill**

The Home Builders Federation Wales (HBF Wales) represents its members who are all involved in the delivery of homes across the whole of Wales.

We welcome the opportunity to provide written evidence to the Environment and Sustainability Committee on the general principles of the Planning (Wales) Bill. I would also confirm that I have already separately accepted an invitation to give oral evidence to the Assembly.

We supported the evidence based approach taken by the Minister and the general thrust and spirit of the proposals set out in the Positive Planning consultation exercise and the earlier draft Bill. We were pleased that many of those provisions were carried through into the Bill. We strongly believe there is a need to embed a new proactive and confident culture within planning in Wales, to boost economic prosperity and to create better places for our communities to live in through the delivery of more homes. Planners, politicians, consultees, developers, and the general public, all have a role to play in achieving this.

If you require further assistance, have any queries or require clarification of any points made, please contact HBF Wales on 07770752884 or e-mail [mark.harris@hbf.co.uk](mailto:mark.harris@hbf.co.uk).

Yours sincerely,



In summary HBF support the overall thrust of the changes proposed in the new Planning (Wales) Bill and see them as a positive step forward to achieving a fair, enabling and resilient planning system, which will allow our members to deliver the much needed housing that Wales requires.

**The general principles of the Planning (Wales) Bill including the need for legislation in the following areas:**

***The requirement to produce a national land use plan, to be known as the National Development Framework;***

We are heartened to see the consultation document recognise the significant shortcomings of the Wales Spatial Plan. We are also encouraged by the fact that the NDF will be a completely different document in nature and focus, and will have the benefit of development plan status.

We believe the NDF will be a positive addition to the planning process in Wales. It will deal with issues that are 'nationally important' and as such, we expect housing issues to play a significant role in its make-up, particularly the inclusion of clear guidance and direction on the need to ensure we increase the supply of homes built in Wales each year. As such, it is considered appropriate that the Plan should include a National Housing Target which would help focus the minds on the need for more housing now and in the future.

We recommend that the NDF has genuine engagement and public scrutiny in its preparation and then it is reviewed every three years rather than the five suggested.

We would also recommend that the NDF deal specifically with local authorities that fail to achieve a 5 year land supply by setting out clear guidelines on the implications of not maintaining a 5 year land supply, particularly when there is an adopted LDP or SDP in place. We believe failure to demonstrate a 5 year land supply should be conferred additional weight in the decision making process and that the NDF should include specific provisions to address this.

***The creation of Strategic Development Plans to tackle larger-than-local cross-boundary issues;***

We wholeheartedly agree with the creation of Strategic Development Plans. We believe such a system in Wales is long overdue and, if done correctly, would bridge a significant gap that currently exists between national and local policy in areas that would benefit from a cross-boundary approach to planning matters such as housing provision. We also agree with the proposal to set up a Strategic Development Plan Panel, however, we believe it will be necessary to ensure that the lead authority cannot sway decisions on the panel, by holding a majority vote.

We also agree that it is appropriate to identify an area to be designated a Strategic Planning Area, given that we believe it would not be appropriate to simply follow administrative boundaries to identify Strategic Planning Areas, particularly in South East Wales. However, to ensure the most appropriate area is selected, we believe the process of identifying a Strategic Planning Area should be subject to thorough and robust public consultation.

In terms of the Strategic Development Plan Panel, given that house building issues will be a major consideration for Strategic Development Plans, we believe the Panel should include a representative from the house building industry. The HBF would be willing to help identify suitable persons as appropriate.

In terms of the SDP and its relationship to national guidance, we again believe it should be in strict conformity, rather than in 'general conformity' with the NDF. Further in terms of hierarchy the SDP sits above the LDP so it should not be led by the LDP. It is suggested that there should be a requirement to review LDPs which fall under a SDP within a certain time period to bring them in line with the SDP and also to remove the policies covered by the SDP, to create what is described as a 'light touch' LDP.

We agree that LDPs should be 'light touch' where there are SDPs addressing issues of strategic importance, however, clarification is required for situations where only part of a local authority is covered by an SDP. In this context, such a local authority would need major issues such as housing (for example) to be dealt with through both an SDP and also through an LDP for the area that is not subject to the SDP. Also in terms of the status of an SDP in relation to an existing LDP. If SDP have to follow existing LDP's, as is currently suggested, there may be conflict as the SDP will cover more than one LDP area and these plans may be at different stages and have different policies. We believe these issue requires further clarification.

Due to the small number of SDP's likely to be created and to help with resource issues and in order to create consistency across wales, a key theme of the new Planning Bill, the HBF would suggest the formation of a single board with a number of key members responsible for the creation of SDP's across Wales. This would then be supplemented with an agreed number of local people co-opted on in each area where a SDP is created.

Due to the small number of local authorities in North Wales some concern is raised about the effectiveness of such an approach in the area, particular if LPA's merge as currently planned.

### ***Changes to Local Development Plan procedures;***

We note that the details of this are being looked at in a separate consultation which the HBF will comment on separately.

### ***Notification of LDP withdrawal***

This is seen as a positive step in helping to speed up the preparation of LDP's, as from experience, the decision to withdraw a plan is often a political one rather than one based on planning reasons.

### ***Period for which Development Plan has effect***

Support this in principle, however would suggest that clarification is required over the suggestion that although a time expired plan will no longer be a planning consideration, that the evidence base used could still be considered when determining planning application. It is suggested that this should only be the case where the evidence base has been updated within the last 5 years of the plan otherwise evidence which is out of date could be used to determine planning applications.

### ***Welsh Ministers' power to direct preparation of Joint Local Development Plans (LDPs).***

Support.

### ***Joint Planning Boards***

Support this in principle, although we do have some concerns over the efficiency of such a process if the two Authorities who are producing a joint LDP have no political will to do so. The current planning system is often delayed by political issues and this is likely to be compounded in a situation where two LPA's who have no desire to work together are forced to.

### ***Front-loading the development management process by making provision for pre-application services;***

### ***Requirement to carry out pre-application consultation***

Support in principle, but consider that a higher threshold than that currently provided by the definition of a major application. This currently defines schemes over 10 units or 1ha as major development. There is likely to be a large amount of work associated with the pre application consultation process and associated report and this will be a resource drain on smaller to medium

size developers. Further, it is likely that public interest in schemes at the lower end of the currently proposed threshold are less likely to create sufficient local interest to warrant detailed public consultation. The current threshold essentially means there does not seem to be a distinction between (for example) a development of 11 units and one of 1000 units. Clearly the level of detail, community engagement, pre application discussion etc., required to submit an application of 1000 units would be far greater than that of 11 units. As such, we believe there needs to be a re-think of the definition of major development with the threshold increased to over 30 units or 2 ha.

It is also suggested that this should not be a requirement for sites which are allocated for housing in the adopted LDP to undergo pre-application consultation, as these will have already been publicly consulted on as part of their allocation.

We would suggest that a set of timescales need to be agreed across Wales for the delivery of such a service, to ensure that it does have the desired effect of speeding up the planning system.

### ***Requirement to provide pre-application services***

Support in principle, however the regulations should go further and set out a fee schedule for such a service so that consistency is created across Wales. Currently LPA's can set fees at any level and there is no way that a developer can challenge these, other than to not use the service. Although it is accepted that this process cannot guarantee a decision and is only an officer's opinion, much greater certainty and willingness to use the service would be achieved if some level of commitment was given to stand by the advice given. All too often in the current system the opinions given in the formal response are changed once the application is submitted. When this happens there is no way of challenging it.

There is concern that there would be a requirement to publicise pre-application advice as it is often undertaken on a confidential basis. Some enquiries with LPAs do not result in proposals being taken further forward. As such, local residents could be made aware of speculative proposals that do not materialise and then become irate for no reason which is not effective in managing the expectations of local residents, particularly those who are not familiar with the planning process. There needs to be flexibility in the system to still allow 'informal' conversations to occur between officers and developers at the very early stages of a sites consideration.

### ***Introducing a new category of development to be known as Developments of National Significance that are to be determined by Welsh Ministers;***

Support.

### ***Option to make applications direct to Welsh Ministers***

Support this proposal as we agree that it would be useful to have an 'escape route' to submit planning applications where local authorities are failing to

deliver an appropriate and timely planning service. However, it is imperative that certain conditions are met to ensure the proposed system operates effectively and achieves the desired outcomes.

In this respect, if the Welsh Government is to act as a pseudo planning authority to determine planning applications in place of poorly performing local authorities, it is essential that agreed standards of service are set out from the outset. Currently, when planning applications are called-in or recovered, our members state that the experience is far from acceptable. For instance, our members report that there are no fixed timescales for dealing with call-in or recovered applications and significant delays have been reported before a decision is provided. This situation is clearly unacceptable and we believe it is important to ensure that this level of uncertainty is not prevalent in a system which aims to speed up the decision-making process of planning applications. As such, if the Welsh Government is to potentially become responsible for dealing with a significant number of planning applications, the relevant WG department should be subject to the same performance and monitoring targets as the local authority planning department it aims to replace.

Allied to the issue above, we are also concerned with the potential resources that might be available within the Welsh Government to deal with planning applications in an efficient and timely manner.

In light of the above, in order for this process to operate efficiently and effectively, we believe it is imperative that robust key performance targets and indicators are put in place from the outset. If applicants are to submit applications to the Welsh Government, they need to be clear about the level of service they can expect, they need to have clear understanding of the timescales for determination and they also need to fully understand the options available to them should any of the timescales or performance targets be breached.

### ***Streamlining the development management system;***

Section 26: Power of local planning authority to require information with application.

We support the introduction of limits on local planning authorities' power to require information to accompany planning applications and that information requests must be reasonable, and relevant. We also suggest that any request should be 'proportionate', particularly in the context of the theme of reducing the documentation required to be submitted with planning applications and the "enabling" culture change that is being promoted.

Section 36: Stopping up or diversion of public paths where application for planning permission made.

We support the proposed change which will allow the process leading to the stopping up or diversion of public paths to start before planning permission has been granted.

## ***Planning Committees and Delegation***

We support this and believe the principles of delegating decisions to planning officers should be consistent across Wales.

We believe that where a proposed development is development-plan compliant, the need for it to be deferred to committee should be negated. Provided the development plan is robust and with flexible policies, planning applications on allocated sites should not need the extra scrutiny of a planning committee. In our view, given that the principle of housing development as a land use has already been 'approved' by the council and its elected members, a discussion over the technical detail of the application should be all that is required.

We support the recommendations of the recent RTPI report and note that the details of this are being looked at in the Planning Committee and Delegation consultation paper which the HBF will comment on separately.

## ***Decision Notices***

We support the standardisation of decision notices across Wales and the requirement for a condition tying the permission to the listed plans, documents and drawings.

In principle the idea of a single decision notice which gives you the current position on a site with regard to the discharge of planning conditions and any amendments to the scheme is seen as positive. However we do not consider the concept of a 'live consent' is necessarily the best way to achieve this. The requirement to keep a decision notice up to date will cause a lot of additional work at a time when resources are becoming more stretched in LPA's. Most LPA's register discharge of conditions as planning applications anyway so a separate decision notice is produced, it may be simpler to attached/link these decision notices to the original decision notice.

## ***Notification of Development***

We support this, however it is suggested that a single sided abbreviated version of the decision notice is produced for display on site consisting of an overview of information such as the developers name the application description, the application reference and information on where the plans/documents can be viewed (i.e. the web or at Council offices). This would avoid the need to display what might be a very lengthy document.

## ***Statutory Consultees***

We welcome a requirement for statutory consultees to respond within a specified timescale and welcome that this is also proposed for pre-application enquiries. However, we believe the list of statutory consultees should be expanded to include major organisations that can have a significant impact on housing delivery. In this respect, our members often report that utilities companies such as Welsh Water can cause major delays to the delivery of new homes, as well as major delay to the timely consideration of planning

applications. Local authorities will rarely take action on a planning application in advance of any comments from organisations like Welsh Water and therefore, we believe organisations like this should be made Statutory Consultees, in order to ensure not only that they make appropriate comments in a timely manner, but also to ensure they are fully included in the consultation procedures by local authorities.

There is no mention of what happens if the consultees do not respond in time. For example, can the statutory consultee respond by saying that they require a further two weeks to comment or is it that once the timescale for response is reached and no response is made then it is taken that the statutory consultee has no objection? Also with regard to reporting performance to WG if there is no clear penalty for underperformance there is no incentive to perform. The reporting also needs to be on a regular basis (quarterly) rather than yearly, otherwise any consultees who are failing to perform will have potentially done so for over a year.

### ***Design and Access Statements***

We support this and completely agree with the research which shows that Design and Access Statements have not been effective in achieving the desired policy outcomes.

We note that the details of this are being looked at in consultation on Design in the Planning Process which the HBF will comment on separately.

### ***Changes to enforcement and appeal procedures;***

#### ***Planning appeals***

We support the proposal for a right of appeal against the decision of an LPA not to register a planning application, using a streamlined appeal procedure administered by the Planning Inspectorate (Section 28).

We disagree with the proposal to not allow any alterations to an appeal once it is submitted. The ability to submit amendments after an appeal has been submitted is a crucial part of the process. More often than not, such amendments can be the result of deliberation and agreement between all parties involved in the appeal process and can therefore remove the need for protracted debate through the process thereby potentially saving a significant amount of inquiry time, or even negating the need for a hearing or public inquiry completely.

The same concerns apply to the proposal that an appeal must be determined on the basis of the matters before the LPA when it made its decision, except where new information could not have been raised earlier or was not raised because of exceptional circumstances.

It is considered that the existing situation in which an Inspector has the discretion to accept changes to the application and the submission of new information, subject to the rules of natural justice and the requirement that

those who are entitled to comment have the opportunity to do so, is appropriate and should be retained.

We support the proposal to allow the recovery of costs incurred by the Welsh Ministers or appointed persons in cases where appeals proceed by written representations and giving the Welsh Ministers the ability to recover their own costs in cases where a party or parties behave unreasonably.

***Changes in relation to applications to register town and village greens.***

We support this, as it is seen as a positive step which will stop the process of TVG applications being used to delay development.

**Any potential barriers to the implementation of these provisions and whether the Bill takes account of them.**

It is understood that the changes proposed by the Bill are likely to come into effect in late 2015 early 2016, just at a time when the ongoing resource issues and other changes such as LPA Planning Department merger could be starting to take real effect. We would request that consideration is given to some form of interim support for LPA's to ensure that the proposed changes are implemented quickly and efficiently in order that the development industry can benefit from them rather than suffer delays while new systems are put in place.

**The Committee's pre-legislative scrutiny of the Draft Planning (Wales) Bill and the extent to which the revised Bill takes account of the Committee's recommendations.**

We consider that this process has worked well and allowed a range of stakeholders to engage in the process.

**Whether there are any unintended consequences arising from the Bill.**

As stated above the HBF are concerned at resource issues in Local Planning Authorities which are only likely to get worst over the next few years for various reasons. Although once the changes are in place there may be an overall resource saving, in the shorter term the various changes necessary to implement the Bill and associated legislation, will be a considerable strain on what are already stretched resources. The potential short term impact on developers will be the slowing down of the time it takes to determine planning applications which in turn will affect the number of houses delivered.

**The financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum, the Regulatory Impact Assessment, which estimates the costs and benefits of implementation of the Bill).**

Pre-application community consultation (Part 3, Section 15)

The HBF consider that the costs associated with the preferred option have been significantly underestimated. The cost appears to have been calculated only taking account of the preparation of the report, which is only a small part

of the process. It is suggested that the cost would be considerably more when the time taken to prepare for the consultation, and the actual time spent on the consultation event are taken into account. It is also not always true to say that smaller application will result in less work, often the smaller applications are the most sensitive and result in the most local interest.

The HBF are not suggesting that these higher cost be a reason not to carry our pre-application consultation, but instead, that the threshold which triggers the requirement for such pre- application public consultation be raised to 30 units or 2ha as this will reduce the financial impact on the smaller to medium size developer.

**The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum, which contains a table summarising the powers for Welsh Ministers to make subordinate legislation).**

No comment.

**The measurability of outcomes from the Bill, i.e. what arrangements are in place to measure and demonstrate the fulfilment of the Welsh Government's intended outcomes from making this law.**

We consider that appropriate targets and associated non-performance penalties, have long been missing in the planning system in Wales. Although we are supportive of most of the measures which the new Bill proposes we are concerned that some do not go far enough. Clearly the threat of a Council being determined to be 'failing' is a big one but we question how badly they will have to fail before this happens. It is suggested that a national standard of targets against which LPA's have to report should be established and these should be backed up by guidance on how this data should be recorded/reported. A league table should then be produced quarterly and instead of looking to punish poorly performing Councils consideration given to rewarding the LPA's who perform well.



November 2014  
The Committee Clerk  
Environment and Sustainability Committee  
National Assembly for Wales  
Cardiff Bay, CF99 1NA.

Dear Sir,

### **Call for evidence**

Thank you for the opportunity to respond to the call for evidence:

RICS Wales is the principal body representing professionals employed in the land, property and construction sector and represents some 4000 members divided into 17 professional groups. As part of our Royal Charter we have a commitment to provide advice to the Government of the day and in doing so we have an obligation to bear in mind the public interest as well as the interest of our members

In response we would like to make the following observations:

There needs to be a time limit of 5 years for Local Development Plans. If they are longer then they will be rigid and inflexible to changing economic and social circumstances. Applications should be allowed to make greater use of off-site contributions to encourage the viability of schemes

There needs to be an appreciation that for every extra requirement asked of developers consideration needs to be given to incentives to balance them,

RICS Wales strongly advocates close co-ordination of LDPs and planning policy by Local Authorities in Wales. This not only pools resources for the Authorities themselves in the current budgetary system, it also would provide greater clarity for developers encouraging projects and crucially it would recognize the reality of economic units on the ground.

If you have any queries in respect of this response please do not hesitate to contact me. Attached for further consideration is the full RICS Wales Planning Policy paper.

Yours sincerely,

**David Morgan**  
**Policy Manager**

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## **RICS Wales Planning Document**

### **Summary**

RICS Wales believes the following principles are vital to a successful system and need to be embedded in planning in Wales namely, flexibility according to each individual case, viability, and the provision of appropriate training for elected officials and planning officers.

### **Current Position**

With the passage of the Referendum on increased powers for the National Assembly in March 2011 the Welsh Government was given the opportunity to promote sustainable Development in Wales by the introduction of a Planning Act specific to Wales. This short document is intended to support the development of this legislation and any secondary regulations, and to assist in their effective implementation moving forward.

### **RICS Recommendations**

#### **Flexibility**

- Change of use Flexibility – RICS believes this principle needs to be embedded at the core of the Planning Act in Wales in order to provide the necessary responsiveness in the planning system to changes in the Welsh economy and society
- Development Corporations – RICS Wales feels that Wales would benefit from organisations that can operate across Council boundaries to piece together to make more schemes viable. This would support and enhance the City Regions concept

There exists a great opportunity to embed flexibility into the Planning System as a core concept for Planners in Wales. This applies to both having the system respond automatically to prevailing economic conditions so for instance adjusting s106 conditions in response to economic performance and also in making change of use for Buildings easier wherever possible. To highlight one particular example we continue to feel strongly that planners should where there is clear evidence of excess retail capacity promote their conversion to residential. This brings both the possibility of hitting three social goals at once, namely increasing land availability for

housing supply, removing excess retail capacity and regeneration. Areas like Swansea High Street would be precisely the sort of environment that we would view this as a potential remedy for.

### **Viability and Sustainable Development in Planning**

- There needs to be a time limit of 5 years for Local Development Plans. If they are longer then they will be rigid and inflexible to changing economic and social circumstances
- Applications should be allowed to make greater use of off-site contributions to encourage the viability of schemes
- There needs to be an appreciation that for every extra requirement asked of developers consideration needs to be given to incentives to balance them,
- We believe reform of the SLAB element of SDLT would send a powerful statement of intent to smooth out blockages and rigidity in the Welsh Housing Market
- The creation of an Infrastructure category of development is to be strongly welcomed.

Flexibility is inextricably linked to what we view as the next key principle namely viability. What is viable for developers will clearly fluctuate according to economic circumstances and accordingly we would like to highlight the RICS work on Financial Viability in Planning to policymakers at all levels. Although developed in response to planning and development conditions in England the key principles to achieve viable and sustainable development are equally applicable to conditions in Wales. RICS Wales feels it is extremely important that the objective of sustainable development is followed in its entirety. This means not just in relation to environmental goals, but economic and social ones also.

To this end it is important that incentives to encourage higher environmental standards are offered in addition to regulations requiring them. One option may present itself with Stamp Duty Land Tax devolution. So if for instance a developer went further than regulations require in environmental standards required by the Planning system this could then be reflected in terms of how much and at what point stamp duty land tax might be levied on buildings. Above all though there is the opportunity by tying the tax system to standards required by the Planning system we would hope that positive incentivisation rather than compulsion can be embedded into the development process.

## **Training**

- Joint Planning Boards should be required to undertake regular refresher training in consultation with independent professional practitioners
- Training must emphasise the principle of a continually evolving planning system
- It is vital that the act and all subsequent training ensures a starting point culture of positivity towards development.

It is of great importance we feel that officials and Councillors are supported in the most comprehensive way through regular refresher training. Such training should be developed and refined in consultation and where possible co-operation with professional organisations.

Training is important not only to refresh technical knowledge but also thinking by stimulating internal debate. As economic circumstances change it is important that planners are continually weighing the proportionality of planning demands and requirements to the condition of the wider economy.

The culture of planning has been changing from one of control to one of enabling. The changed context requires a variety of different skills which are capable of responding to the changing economic, social and environmental conditions. These changes require a general capability to adapt to new conditions, whether encountered as flooding, abandoned High Streets or social housing.

## **Regional Planning**

- City regions. To make this a reality Local Authorities must be required to form joint planning teams. To co-ordinate with each other
- Planning officials must be required to take secondments with other planning authorities not just in Wales but throughout the UK to avoid siloing of planning approaches and encourage the spread of best practices.
- Welsh Government must be the lead partner in fostering co-operation and spread of best planning practice throughout Wales
- The National Land use plan should be developed first by consultation with the private sector and secondly, thereafter in full public consultation ensure the participation of all relevant social partners

RICS Wales supports the policy of City Regions and strongly advocates close co-ordination of LDPs and planning policy by Local Authorities in Wales. This not only pools resources for the Authorities themselves in the current budgetary system, it also would provide greater clarity for developers encouraging projects and crucially it would recognize the reality of economic units on the ground. As an example the fortunes and economy of the Vale of Glamorgan and Cardiff are inextricably bound together. It is therefore vital that regular dialogue and co-ordination take place. In our view Welsh Government is best placed to facilitate this throughout Wales. To support this RICS Wales proposes regular secondments of planning officials to neighboring authorities to strengthen ties and mutual understanding. Finally just as the NPPF in England requires Local Authorities to co-ordinate with each other. RICS Wales believes a similar binding requirement should be enacted in Wales.

RICS Wales welcomes the Wales specific Planning Act and stands ready to engage with all stakeholders to ensure that it delivers essential sustainable development for Wales.

## **RenewableUK Cymru Response to the Environment and Sustainability Committee Inquiry on the general principles of the Planning (Wales) Bill**

1. RenewableUK is the representative body for the wind, wave and tidal energy industries operating in the UK. RenewableUK Cymru also represents members with interests in solar, biomass, and other forms of renewable energy technologies in Wales. We represent around 600 corporate members in the UK and our active membership in Wales covers the vast majority of Wales' commercial renewable generation interests.
2. Our members have interests in renewable energy at all stages of the planning and development process. Our membership portfolio includes those companies with an interest in carrying out Environmental Impact Assessments and related development work, through to companies who are primarily involved in the operation, construction and maintenance of projects.
3. RenewableUK Cymru's vision is of a Wales that makes full use of its renewable energy resource by 2050 and we aim to ensure that the maximum benefits of this accrue to Wales.
4. Wales has faced a number of obstacles to the achievement of its targets for renewable energy generation and development in Wales has lagged behind the rest of the UK, especially in onshore wind, an area in which Wales has a high resource. This committee has previously examined many of these issues (our evidence to the committee previously is available [here](#)) and we, in conjunction with our partners in industry and Government have sought to overcome many of these barriers. We have since worked with Government to produce a register of community benefit for onshore wind, and continue to work with partners in order to alleviate concern over transport issues in mid Wales.
5. However, there remain significant barriers within the planning system itself and it is on this basis that we submit this evidence paper.
6. RenewableUK Cymru will be happy to provide oral evidence to the committee on any matters that may be of interest arising from this paper.

### Wider context

7. The Industry in Wales will work within the strictures of the planning system, and many of our members are used to working across widely varying planning systems across country borders. However, in consultation with our members we have been unable to reach a consensus on whether devolution of consenting powers for projects >50MW would be favourable. Whilst it would appear to be the intention of Welsh Government that the proposed system for projects >25MW in the Planning Bill would also apply to larger projects in the event of devolution of consenting, we are only able to reflect on the proposal as it stands in the context of the current planning system.
8. It was an unintended and perhaps unforeseen consequence of Technical Advice Note 8 that wind energy projects in Wales were focussed in a small number of Local Planning Authorities. This in our view highlighted and strengthened the case for reducing the number of LPAs in Wales or taking steps to plan for infrastructure on a larger than local basis. Wales has 25 Local Planning Authorities covering areas of various size and varying levels of development and this seems obviously too many, especially when compared to the rest of the UK and evidence provided to Welsh Government in the preparation of the Planning Bill by the Independent Advisory Group, Hyder and this committee has confirmed this.
9. The proposals for the Planning Bill sit within a wider context of reforms that may significantly change the context for Planning in Wales. The potential reduction in the number of Local Authorities, following the Williams Commission recommendations, as well as the potential move to further devolution and a reserved powers model of devolution will have wide-reaching ramifications for the planning and development management system that are not addressed by the Bill. In this context, we hope to see the progression of a Bill that is robust enough to weather any further changes to the planning system in Wales and not require significant reworking in the short to medium term future.

### Developments of National Significance and the National Development Framework

10. We welcome the proposals by the Welsh Government to introduce a new category in the development management hierarchy for “Developments of National Significance” and believe that having a National Development Framework, approved by the National Assembly for Wales is the most appropriate method for ensuring democratic accountability in this proposal.
11. As the NDF will be a “policy document” we are not at this stage able to comment on whether the NDF will improve delivery. However, we believe in general a robust national

document would likely aid the delivery of large infrastructure projects, as the National Planning Frameworks have done in Scotland. A single approach across Wales for larger projects would ease the burden on LPAs and developers when considering projects and allow for more timely assessment of a project.

12. Following the example of the Planning Act 2008, we would expect the system for examining a DNS application to follow a fairly strict timetable. Our members often express the view that predictable and reliable timescales for determination are more important than the outcome of the process itself. That is, we believe the introduction of a new system for DNS can introduce *predictability and reliability* into the planning system which is essential for developers to maintain business confidence in Wales. We cannot predict whether a new system would result in more approvals for renewable energy projects as that is a policy matter, but this bill takes steps in the right direction to restore business confidence in the Welsh Planning System.
13. We note that as with the Planning Act 2008, there is no route of appeal against applications made to Welsh Ministers.
14. From a Policy perspective, we see no reason why wind developments should be singled out as “Nationally Significant”. Energy infrastructure of any technology greater than 25MW of installed capacity is likely to have impacts greater than those of the immediate locality or region.
15. Finally, as a matter of principle we believe the Welsh Government should have a duty to meet targets that could be laid out in the National Development Framework for the performance of the planning system.

### Strategic Development Plans

13. Strategic Development Plans are to be welcomed in the identified areas though we do not see any reason why energy infrastructure should not be identified in Strategic Development Plans, especially infrastructure relating to the Grid or for projects that are of too great a scale to be left to LDPs. Projects of 5-25MW are arguably still significant beyond that planned for in an LDP.
14. In principle we argue that energy should be identified and planned for at each level of the planning system (national, regional/strategic and local) in order to drive the investment required to meet climate change and energy targets, and to offer a sense of ownership at each level of the planning system. We believe that this would reinforce the sense that energy should be something owned by all to meet all of our needs.

### Front-loading the development management process

15. Renewable energy developers have long engaged in pre-application consultation with stakeholders and this is recognised as best practice by RenewableUK members. We believe formalising these practices, as well as enabling statutory consultees to render pre-application services, should ease the burden on the planning system by ensuring fewer issues arise without notice during examination.
16. We do however have some concerns regarding the details of the proposals (which are currently under consultation by Welsh Government). Whilst it may be beneficial for statutory consultees to be able to charge for pre-application advice, we do not wish to see situations arise whereby a consultee may contradict itself later in the examination process. This may add risk into the system by introducing new avenues for appeal and judicial review.
17. There are also potential issues that will arise as to where statutory duties lie, and the ‘chargeable’ advice provision begin and end. This must be clearly laid out so as not to prejudice the planning system and produce unwelcome and unnecessary avenues for appeal and judicial review.
18. As indicated above, much of the detail of these proposals is currently under consultation by Welsh Government and we are unable to provide a detailed analysis at this time. We believe it would have been useful for Welsh Government to consult on the details of regulation and policy proposals prior to the Bill reaching the scrutiny stage, or at least timed in such a way that scrutiny of the Bill and regulations/policy arising from it could have occurred in tandem.

### Single Consents

19. We welcome moves towards single consenting and we support provisions that will allow developers to seek permission for associated consents from the Welsh Ministers alongside the main application, rather than having to pursue a separate consent through the LPA.
20. We welcome the principle that developers should have the “option” to submit connected consents – developers should be able to choose the route which they feel will provide the timeliest response to their applications. It is also the case that in some instances it may be more appropriate for an LPA to determine “associated consents” that might be constructed earlier in the development process or be temporary structures/arrangements.
21. However the proposals for connected consents outlined in the White Paper were not sufficiently clear for us to provide detailed feedback and follow up documentation has not yet been published. We will keep the committee informed of our views on the final proposals.

### Performance and Reporting

22. We welcome the proposals for annual reporting and feel this would be very valuable for oversight and scrutiny purposes. We have also argued that Welsh Ministers should be able to investigate the performance of a planning authority with respect to certain sectors in order to intervene early where problems may be occurring. Such measures may have helped to prevent the large back log of projects in Mid Wales.
23. The proposal to allow developers to submit an application to Welsh Ministers should an LPA be designated poorly performing is welcome. However we do not feel the provisions relating to this proposal in the Bill are sufficiently strong and do not outline the process by which this might be done strongly enough. The principle of allowing developers and Welsh Ministers to bypass LPAs when they are failing to perform their statutory function is strong in principle, however it will not be useful if Welsh Ministers are not then required to exercise their functions in a timely manner.
24. Joint Local Development Plans may be useful in some circumstances; however the power outlined in the Bill does not sufficiently constrain Welsh Ministers ability to issue such a direction and offers no avenue for public scrutiny. It is our view that a reduction in the number of LPAs should obviate the need for Welsh Ministers to exercise such a function in the foreseeable future.
25. Local Development Plans should cease to be the development plan beyond a certain date after their completion, after this date the relevant advice should be the Strategic Development Plan or National Policy.

### Conclusions

26. RenewableUK Cymru and its members welcome the general provisions of the planning bill. The Welsh Government have sought to address many of the concerns raised by industry in recent years and we are hopeful that this is a move towards a more stable and predictable planning regime.
27. Whilst the wind industry has been the primary renewable energy development sector in Wales, the Bill should be technology neutral in order that is robust and able to deal with any future changes in the energy market.
28. We are concerned that a great deal of detail is left to policy and regulation, in particular the shape of the National Development Framework and whilst we expect this to be subject to full and robust consultation it is difficult to assess the impact of the proposed Bill in absence

of fully formed policy proposals that necessarily arise if the Bill is approved.

29. The timing of Welsh Government consultation on the detail of regulation and policy arising from the Bill is of some concern, six consultation deadlines fall on the same day in January (the 15<sup>th</sup>) and the consultation period runs parallel to this committee's consultation on the general principles of bill. This makes considering the full impact of the Bill's proposals more difficult than it otherwise might be.

For more information or clarification please contact Matthew Williams:  
[matthew.williams@renewableuk.com](mailto:matthew.williams@renewableuk.com)

Clerk to the Committee  
The Environment and Sustainability Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1 NA

7 November 2014

Dear Clerk

### **General Principles of the Planning (Wales) Bill: written evidence**

The Welsh Language Commissioner welcomes the opportunity to submit written evidence to the Environment and Sustainability Committee as part of its investigation into the general principles of the draft Planning Bill.

#### **Context**

The principal aim of the Commissioner is to promote and facilitate the use of the Welsh language. This entails raising awareness of the official status of the Welsh language in Wales and imposing standards on organizations. This, in turn, will lead to the establishment of rights for Welsh speakers.

Two principles underpin the Commissioner's work:

- In Wales, the Welsh language should be treated no less favourably than the English language;
- People in Wales should be able to live their lives through the medium of Welsh if they choose to do so.

In due course, secondary legislation will introduce new powers allowing the setting and imposing of standards on organizations. Until then, the Commissioner will continue to

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Correspondence welcomed in Welsh and English

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inspect statutory language schemes through the powers inherited under the Welsh Language Act 1993.

The post of Commissioner was created by the Welsh Language Measure (Wales) 2011. The Commissioner may investigate failure to implement a language scheme, allegations of interference with individuals' freedom to use Welsh in Wales and, in future, complaints regarding the failure of organizations to meet standards.

One of the Commissioner's priorities is to scrutinize policy developments in terms of the Welsh language. Therefore the Commissioner's main role is to provide comments in accordance with this remit and to act as an independent advocate on behalf of Welsh speakers. This approach is used to avoid any possible compromise of the Commissioner's functions in the area of regulation.

## 1. Planning - context

- 1.1 The planning system in Wales is based on laws enacted in Westminster, such as the Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004. These laws are supplemented by regulations and secondary legislation enacted by the Assembly and Westminster. The draft Planning (Wales) Bill is an attempt to simplify this complex legislative system.
- 1.2 In Wales, all planning authorities must prepare a local development plan for their area. This is a statutory requirement resulting from the Planning and Compulsory Purchase Act 2004. It is these plans that offer a basis for making decisions on individual planning applications and appeals. Planning authorities are required to make decisions in accordance with the development plans unless relevant considerations suggest otherwise.
- 1.3 The Welsh Government's land use policies are outlined in *Planning Policy Wales 2012*, and the policy is supplemented by a series of technical advice notes providing guidance on specific matters. In preparing their development plans local authorities should consider the national planning policy and the technical advice notes, but that does not mean there is a statutory requirement upon local authorities to implement them.

## 2. Planning and the Welsh Language

- 2.1 The Welsh Government's strategy for the Welsh language, *Iaith Fyw: Iaith Byw (A Living Language: A Language for Living) 2012-2017*, states that the planning system is an important means of managing change in communities and the Government's planning policy states that the Welsh language is part of the social fabric of Wales.



2.2 Economic policy matters, such as employment and housing affect the sustainability of communities and linguistic sustainability is a matter that needs to be addressed in this context. The Welsh Government recognises the influence of the land use planning system on Welsh communities in *Planning Policy Wales*. For example, section 4.13 of the Policy states:

*“All local planning authorities should consider whether they have communities where the use of the Welsh language is part of the social fabric, and where this is so it is appropriate that this be taken into account in the formulation of land use policies.”*

2.3 The Policy also states:

*“It should be the aim of local planning authorities to provide for the broad distribution and phasing of housing development taking into account the ability of different areas and communities to accommodate the development without eroding the position of the Welsh language”.*

2.4 There are other references to the Welsh language in the Policy too, for example regarding the ability of areas to cope with more housing and the effect on the Welsh language in deciding which sites to designate for housing.

2.5 The document that provides advice and guidance to local authorities on how to do this is Technical Advice Note 20 (TAN20). A new version of the document was published in October 2013 and it outlines the framework for when to consider the Welsh language. Further practical guidance supplementing TAN20 was published in June this year. According to TAN20 the land use planning system should *“where feasible and relevant contribute to the future well-being of the Welsh language by establishing the conditions to allow sustainable communities to thrive”.*

### 3. Shortcomings in terms of the Welsh language's place in the planning system

3.1 Although there are references to the Welsh language in the national planning policy, unlike other aspects of the planning system, it is not a statutory requirement on authorities to give consideration to the Welsh language. For example, section 62 of the Planning and Compulsory Purchase Act 2004 requires authorities to undertake a **sustainability appraisal** of the development plan and prepare a report on the findings. The Environmental Assessment of Plans and Programmes (Wales) Regulations 2004 incorporate a directive from the European Union and require authorities to conduct a **formal environmental assessment** when developing specific plans and programmes. There is no comparative statutory requirement for conducting an assessment of the effect on the Welsh language.



- 3.2 The process of considering the Welsh language in the planning system therefore depends on policies and guidelines. Before the new Technical Advice Note 20 was published in October 2013, the Welsh Language Commissioner carried out a study of the consideration given to the Welsh language by planning authorities as they formulated their development plans.
- 3.3 As part of the study, planning authorities were asked three questions:
- had they carried out an assessment of the impact of their local development plan or unitary plan on the Welsh language
  - did they have supplementary planning guidance on the Welsh language
  - had they carried out an assessment of the impact of individual applications on the Welsh language.
- 3.4 Twenty three (23) of the twenty five (25) authorities responded to the study and the findings suggested that the Welsh language was not being considered consistently under the planning system and that all authorities had not considered the Welsh language in formulating their development plans. Substantial variation was also seen in the content and detail of the authorities' policies on the Welsh language and variations in the process of how and when to conduct a linguistic impact assessment.
- 3.5 A new version of TAN20 has been published since the study and further practical guidance is available to authorities. However, it appears that a large number of authorities have already adopted their development plans and others have gone too far in the process to be able to give full consideration to the new guidance. The development plans of 14 of the 25 planning authorities had been adopted before the practical guidance on the Welsh language was published by the Government in June 2014.
- 3.6 The new TAN20 also places emphasis on assessing the linguistic impact through the development plan only. Although it is reasonable for the main plan to be the subject of a thorough impact assessment, planning authorities should also have the flexibility to hold impact assessments of individual applications on the Welsh language under some circumstances. This is not supported by the new guidance.
- 3.7 Evidence therefore suggests that planners have been reluctant to follow planning guidelines on the Welsh language thus far, and that there is nervousness about making decisions on the basis of linguistic impact assessments. It is likely that part of the reason for this is that the Welsh language is the subject of non-statutory guidance, rather than robust directions via legislation.
- 3.8 An example of this can be found in the report "*The Welsh Language in Carmarthenshire*" published a working group of the County Council in March 2014. According to section 3.2 of the report:



*“The present methodology and guidelines (in respect of the Welsh language) for local planning authorities on assessing the impact of development and establishing mitigation measures are not adequate and there is a need to draw up a standard national methodology to support local authorities.”*

Also, recommendation 22 in the report calls on the Welsh Government to include the Welsh language as a “material” consideration in part of the Planning Bill.

#### **4. Draft Planning (Wales) Bill**

4.1 The Planning Bill offers an unique opportunity to address the lack of consideration currently given to the Welsh language in the planning system. A legal basis is required for the process of assessing linguistic impact. The current system of policy and guidance has not worked so far and it is unlikely that the new TAN20 will change the situation.

4.2 There is no mention of the Welsh language in the Bill at present (save for one technical reference in the schedules). This is a missed opportunity to give the Welsh language the same status as already exists for sustainability and the environment.

4.3 The Government has argued against including the Welsh language in the Planning Bill on the grounds that it is a structural and framework piece of legislation, and the Welsh language is a policy matter. But in our opinion, structural reasons account for the need to include the Welsh language in the Bill. The Welsh language needs an impact assessment framework in law rather than it being dependent on guidance. Evidence suggests that there is a high risk that a system reliant on guidance alone will not be implemented.

4.4 Although there are no references to the Welsh language in the Bill, there are several references in the associated Explanatory Memorandum. For example, section 1 of the memorandum begins with a statement that the provisions of the Bill will create sustainable places that will promote use of the Welsh language. Reference is made to the Welsh language also in section 3 on the aim of the Bill:

*“to deliver a planning system which is positive in outlook and enables development, helping to deliver sustainable places that include homes, jobs and infrastructure, whilst providing opportunities to protect and enhance our most important built and natural environments and support the use of the Welsh language”*

It is unclear how the Bill will succeed to achieve these objectives unless it includes specific provisions for consideration of the Welsh language in the planning system.

4.5 The new system proposed in the Bill offers a structure that includes a National Development Framework; Strategic Development Plans and Local Development



Plans. This means that for the first time there will be development plans on land use at national, regional and local level. We have already referred to the need to put a statutory framework in place for considering the Welsh language in local development plans, this should happen for regional and national plans too.

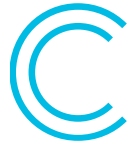
4.6 The Bill also makes provision for “developments of national significance” and the need for “local impact reports”. This is an example of the Bill making new provision for assessing the local impact of major developments, by amending the Town and Country Planning Act 1990. It is disappointing that the Bill as it stands makes no new provision for assessing linguistic impact in a similar manner.

4.7 The Commissioner responded to the Welsh Government's consultation “Positive Planning” on the Planning Bill white paper in February this year. The response included a number of the arguments included in this document. As part of the response, some possible improvements to the draft Bill were suggested. They were examples and initial ideas, but the intention was to provide amendments that would:

- Require Welsh Ministers to assess the effect of the National Development Framework on the Welsh language.
- Require local planning authorities / strategic planning panels to assess the impact of Strategic Development Plans on the Welsh language
- Require local planning authorities to assess the impact of Local Development Plans on the Welsh language
- Require planning authorities to include an assessment of the impact on the Welsh language as part of the local impact assessment of nationally significant developments.

As part of these improvements, it should also be ensured that local authorities have the flexibility to conduct a linguistic impact assessment on individual developments when necessary. Although we support the principle of assessing impact through development plans, circumstances will arise with some individual applications where a specific assessment of the impact on the Welsh language will be necessary.

4.8 Finally, it should be noted that our comments have been restricted to the main matters that need strengthening through the Planning Bill legislation. There are other aspects of Welsh language and planning that are important and need further consideration, such as the Welsh language on signs and the names of developments and population projections that lead to housing development targets.



Comisiynydd y  
Gymraeg  
Welsh Language  
Commissioner

Thank you for the opportunity to submit comments on the Committee's investigation into the general principles of the Bill. Please note that I am willing to give oral evidence to the Committee if it so wishes.

Yours sincerely

**Meri Huws**

Welsh Language Commissioner



Comisiynydd y  
Gymraeg  
Welsh Language  
Commissioner

# **Study of local planning policies and the Welsh language**

September 2013

## Background

In response to the recent discussions on revising Technical Advice Note 20, the Welsh Language Commissioner decided to conduct a study on local planning policies and the Welsh language. The aim of the study was to assess to what degree the Welsh language is considered under the current planning system.

The study was conducted in two stages. Firstly, the Commissioner wrote to the 25 local planning authorities in Wales during June 2013 asking three questions:

- did they have supplementary planning guidance on the Welsh language;
- had they assessed the impact of their local or unitary development plan, on the Welsh language; and
- had they assessed the impact of individual applications on the Welsh language.

By the end of September, 23 of the 25 authorities had responded.<sup>1</sup>

Further to this and as a second step, during August and September 2013, consideration was given to the policies on the Welsh language included in the development plans of the 25 authorities.

A summary of the findings is given below.

## Policies on the Welsh Language in local or unitary development plans

A study of planning authorities' current and proposed development plans showed that 14 of the 25 planning authorities had included policies on the Welsh language in their plans. This included 11 county councils and three National Parks.

There was a geographic pattern to the authorities that had included policies on the Welsh language. Every authority in north Wales and mid Wales had developed a policy as had the authorities in south-west Wales<sup>2</sup>, except for Swansea.

Some of the authorities that had not included policies on the Welsh language in their development plans, such as Bridgend and Torfaen, said that they had considered the Welsh language but had concluded that the use of Welsh in their communities was low and that planning and development policies weren't likely to have any further impact on the usage.

<sup>1</sup> The only authorities to fail to provide information were Flintshire county council and Blaenau Gwent council.

<sup>2</sup> i.e. Pembrokeshire county council; Pembrokeshire Coast national park authority; and North Port Talbot council.

The policies that did exist on the Welsh language varied significantly. That variation can be explained to some degree by the fact that some authorities continue to implement a unitary development plan whilst others have moved on to adopt a local development plan. Despite this, there were also significant variations in the policies on the Welsh language in local development plans.

For example, **Development Policy 18 of Snowdonia national park authority's Local Development Plan** gave detailed instructions. It clearly stated the following: 'Refusing development which, due to its size, scale or its location, would cause significant harm to the character and language balance of a community'. It provided further instruction on the type of assessment that applicants would be required to submit under different circumstances, including a 'Community and Linguistic Statement' to be submitted with the planning application for a smaller development, and 'A more detailed assessment in the form of a "Community and Linguistic Impact Assessment"' to be submitted with a planning application where developments are of a larger scale. The policy also defined the different levels of development.

**Policy GDP1 of Wrexham Council's Unitary Development Plan** was less detailed and stated that every new development should 'have regard to the need to safeguard those areas that possess a strong Welsh cultural and/or linguistic identity from development that could harm this identity'. But it also defined those areas where the Welsh language was considered part of the social fabric.<sup>3</sup>

The policies of some authorities such as Wrexham (above) and Powys, name the areas where the Welsh language was considered part of the social fabric, but others such as Pembrokeshire county council, Pembrokeshire Coast national park authority and Brecon Beacons national park authority set a threshold for defining where the Welsh language was part of the social fabric. Pembrokeshire county council considered communities with 25% or more Welsh speakers as part of the definition, whereas for Pembrokeshire coast national park authority and Brecon Beacons national park authority, the threshold was 30%.<sup>4</sup>

Some authorities such as Neath Port Talbot gave guidance on the headings of linguistic impact assessments in the policy itself referring also to the supplementary planning guidance on the Welsh language that would give further advice to developers.

<sup>3</sup> The term 'social fabric' derives from Technical Advice Note 20 (2000). Beneath the headline 'Unitary Development Plans', planning authorities were required to consider whether they had areas where the use of the Welsh language was part of the social fabric.

<sup>4</sup> The document Planning and the Welsh Language: The way ahead published by a consortia of organisations in 2005 proposes 20% as a threshold. Some planning authorities have used and developed the methodology proposed in the document in preparing their planning policies on the Welsh language.

Other authorities included policies in their development plans on wider issues regarding the Welsh language. For example, some authorities included a policy on encouraging bilingual signs in line with the guidance in Technical Advice Note 20 and others included statements on development and street names in Welsh.

In general, the assessment of policies outlined significant variation and inconsistency in the way that the Welsh language is treated in different areas. Although some local variation is expected, it is possible that the inconsistency reflects a lack of clarity in the national policy regarding the Welsh language.

## **Supplementary planning guidance on the Welsh language**

Some policies on the Welsh language included in development plans refer to supplementary guidance. This guidance contains further information on how and when to conduct a linguistic impact assessment. Of the 23 responses received to the Commissioner's letter, five authorities responded to say that they had supplementary guidance in place on the Welsh language<sup>5</sup> and four others responded to say that they were in the process of drafting guidance.

Of the 14 Authorities that had developed a policy on the Welsh language in their development plan (see the previous section), four had stated that they didn't have supplementary planning guidance on the Welsh language and one other hadn't contributed towards the study.

## **Impact assessments of development plans on the Welsh Language**

The authorities were asked whether they had assessed the impact of their development plans on the Welsh language since publishing Technical Advice Note 20 in 2000. During that time, two main systems have been adopted, the first being the unitary development plans and more recently, the local development plans, that are gradually replacing the unitary plans.

It became clear that not much consideration was given to the Welsh language overall, during the process of preparing unitary development plans. Only 2 authorities reported with certainty that an assessment of the Welsh language was conducted. The situation with

<sup>5</sup> Anglesey; Gwynedd; Wrexham and Neath Port Talbot councils and Snowdonia national park authority.

local development plans was more positive with six authorities reporting that they had assessed the impact on the Welsh language and three others reporting that an assessment was planned as part of the process of preparing a Development Plan. Despite this, the evidence suggests that there is variation in the way the assessments are carried out.

Another six authorities reported that they had conducted a basic assessment of the Welsh language as part of another arrangement, such as a sustainability assessment or environmental impact assessment. Finally, six authorities reported that they hadn't assessed the impact of their development plan on the Welsh language. This conclusion raises doubts about the degree to which Planning Policy Wales and Technical Advice Note 20 (2000) were considered by these authorities as they prepared their development plans. The findings also raise questions about the role of the Planning Inspectorate responsible for inspecting development plans and ensuring that they are consistent with national policy before they are adopted.

## **Impact assessments of individual planning applications on the Welsh language**

The authorities were asked whether they had assessed the impact of individual planning applications on the Welsh language since publishing Technical Advice Note 20. They were also asked to give an indication of how many assessments were conducted.

The information received varied from concise answers explaining whether or not any assessments were conducted, to detailed answers that included copies of assessments. Eight authorities reported that they had conducted assessments. Of those only three reported that they had conducted more than one or two assessments, with one other authority admitting that it didn't keep information on the number of assessments. Although the evidence was incomplete, it seemed as though there had been a small increase in the number of assessments conducted in recent years.

The number of authorities requesting a linguistic impact assessment from applicants was lower than the number that had included policies on the Welsh language in their development plans. This can be explained to a degree, due to the fact that some of the policies are relatively new, but it raises the question as to what degree policies on the Welsh language in development plans are implemented by some authorities.

## The study's main findings

1. The Welsh language isn't considered consistently under the current planning system.
2. Not every planning authority has considered the Welsh language in preparing its development plan. This suggests that not every authority has complied with Planning Policy Wales<sup>6</sup> and Technical Advice Note 20 (2000).
3. There is variation and inconsistency in the content and detail of policies on the Welsh language in development plans and because of this, the procedure in terms of how and when to conduct a linguistic impact assessment differs. That suggests a lack of clarity in the national policy.
4. There is variation and inconsistency in the supplementary issues on the Welsh language considered in development plans. Some plans include policies on bilingual signs and others include policies on the name of developments. Once again, that suggests a lack of clarity in the national policy.
5. Although over half of the planning authorities had included a policy on the Welsh language in their development plans and even though good practice does exist, the policies are limited and superficial in some cases. Furthermore, not every authority has published supplementary planning guidance to give further guidance on the policy.
6. The number of linguistic impact assessments conducted on individual planning applications is small in the majority of authorities. This suggests that the policies are not being implemented fully in some areas.

<sup>6</sup> Section 4.13 of Planning Policy Wales explains the expectations for considering the Welsh language.

# Agenda Item 4

Document is Restricted



## Y Bil Cynllunio - Ymgynghoriad y Pwyllgor Amgylchedd a Chynaliadwyedd Ymateb Cymdeithas yr Iaith Gymraeg

### 1. Cyflwyniad

Mae Cymdeithas yr Iaith Gymraeg wedi bod yn ymgyrchu am ymhell dros chwarter ganrif am drefn gynllunio a fyddai'n rhoi buddiannau'r Gymraeg, yr amgylchedd a chymunedau Cymru yn gyntaf.

Testun syndod mawr yw'r ffaith bod Bil Cynllunio Llywodraeth Cymru'n anwybyddu un o brif gasgliadau ymgynghoriad Llywodraeth Cymru – y Gynhadledd Fawr – sef:

*"Roedd consensws mai symudoledd poblogaeth yw'r her gyfredol fwyaf i hyfywedd y Gymraeg a gwelwyd bod yr atebion i'r her honno ynghlwm â... [ph]olisïau tai a chynllunio..."*

Nid yn unig hynny, ond mae'r Bil hefyd yn groes i addewid y Prif Weinidog yn y ddogfen a gyhoeddwyd ganddo fe ym mis Awst eleni, sef ei ddogfen polisi "Bwrw 'Mlaen" lle addawodd ystyried:

*"pob cam ymarferol ar gyfer atgyfnerthu'r Gymraeg o fewn y system gynllunio".*

Nid oes ymdrech yn y Bil i fynd i'r afael â'r materion sy'n niweidiol i'r Gymraeg, er bod digon o sôn am yr iaith yn y memorandwm esboniadol, nad oes iddo effaith statudol. Yn wir, pryderwn y byddai'r hyn sy'n cael ei gynnig yn y Bil yn gwaethygu a dwysáu'r patrymau presennol, yn hytrach na'u datrys a'u lliniaru.

Bellach, mae arweinwyr traean y cynghorau sir – sef arweinwyr Pen-y-bont ar Ogwr, Wrecsam, Conwy, Ynys Môn, Ceredigion, Sir Benfro a Sir Gâr – wedi ysgrifennu at Carl Sargeant gan alw ar i'r Llywodraeth newid cynnwys y Bil. Rydyn ni'n cytuno gyda'u casgliadau hwythau:

*"...ar hyn o bryd, nid oes modd i gynghorwyr, o dan y fframwaith cynllunio statudol presennol, ganiatáu neu wrthod datblygiadau ar sail eu heffaith iaith yn unig. Mae angen newid y sefyllfa honno drwy'r Bil, gan ei fod yn fater nad oes modd ei ddatrys heb ddeddfwriaeth. Pe collir y cyfle hanesyddol hwn i sicrhau bod y drefn gynllunio yn adlewyrchu anghenion Cymru, byddai'n peryglu ein gallu i gryfhau'r Gymraeg yn ein cymunedau am nifer o flynyddoedd i ddod.*

*"Pryderwn yn ogystal am y nifer o ffyrdd mae'r Bil yn cynnig canoli grym yng Nghaerdydd, credwn yn gryf y dylai fod gan gynghorau'r rhyddid i allu pennu targedau tai yn seiliedig ar anghenion lleol yn annibynnol o'r Llywodraeth yn ganolog. Eto, mae rhaid i fframwaith y Bil ddatganoli'r grym hwnnw yn ogystal*

*â chreu proses newydd sy'n ein harwain a'n cynorthwyo i asesu'r angen lleol hynny mewn ffordd drwyadl.*

*"Rydyn ni hefyd yn cytuno gyda chynghor eich pwyllgor arbenigol bod angen pwrpas statudol i'r system gynllunio, sy'n rhoi cyfeiriad i'r system, ac sy'n egluro mai diogelu ein hamgylchedd, mynd i'r afael â thlodi, a chryfhau'r Gymraeg yw rhai o sylfeini'r drefn gynllunio drwyddi draw."*

Anfonodd Comisiynydd y Gymraeg gyngor ysgrifenedig at y Llywodraeth ynghylch y Bil gan nodi mai dim ond hanner cynghorau sir Cymru sydd wedi cynnwys polisïau iaith Gymraeg yn eu cynlluniau datblygu lleol.

Rhai o brif gasgliadau'r adroddiad oedd:

*"Nid yw'r Gymraeg yn cael ei hystyried yn gyson o dan y gyfundrefn gynllunio gyfredol."*

*"Nid yw pob awdurdod cynllunio wedi ystyried y Gymraeg wrth lunio ei gynllun datblygu. Mae hynny'n awgrymu nad yw pob awdurdod wedi gweithredu yn unol â Pholisi Cynllunio Cymru a Nodyn Cyngor Technegol 20 (2000)."*

*"Mae amrywiaeth ac anghysondeb yng nghynnwys a manylder y polisïau ar y Gymraeg mewn cynlluniau datblygu... Mae amrywiaeth ac anghysondeb yn y pynciau atodol mewn perthynas â'r Gymraeg a ystyrir mewn cynlluniau datblygu."*

*"Mae'r nifer o asesiadau effaith ieithyddol a gynhaliwyd ar geisiadau cynllunio unigol yn isel yn y mwyafrif o awdurdodau. Mae hynny'n awgrymu nad yw'r polisïau yn cael eu gweithredu'n llawn mewn rhai ardaloedd."*

Fe ddaw Comisiynydd y Gymraeg i'r casgliad:

*"Heb ddyletswydd gyfreithiol ar awdurdodau wedi ei gefnogi gan gyngor ac arweiniad priodol, bydd yr ansicrwydd a'r anghysondeb yn parhau. Gallai hynny yn ei dro gael effaith andwyol ar les y Gymraeg a chymunedau Cymraeg."*

Ymhellach, mae dros saith cant o bobl wedi cyflwyno cardiau i'r Pwyllgor Amgylchedd gan alw ar i'r pwyllgor argymhell Bil Cynllunio sy'n:

1. Datgan mai pwrpas y system gynllunio yw rheoli tir mewn ffordd sy'n gynaliadwy'n amgylcheddol, yn taclo tlodi ac yn hybu'r Gymraeg
2. Asesu anghenion lleol fel man cychwyn a sylfaen pendant i gynlluniau datblygu, yn hytrach na thargedau tai sy'n seiliedig ar amcanestyniadau poblogaeth cenedlaethol
3. Sicrhau bod effaith datblygiadau ar y Gymraeg yn cael ei asesu.
4. Rhoi grym cyfreithiol i gynghorwyr ystyried y Gymraeg wrth dderbyn neu wrthod cynlluniau, drwy wneud y Gymraeg yn ystyriaeth berthnasol statudol
5. Sefydlu Tribiwnlys Cynllunio i Gymru, y mae cymunedau yn gallu apelio iddo.

## 2. Safbwynt Ideolegol Cymdeithas yr Iaith

Cred y Gymdeithas mai un o fethiannau'r farchnad yw'r problemau sy'n wynebu'r Gymraeg oherwydd y drefn gynllunio, yn yr un ffordd ac mae nifer o broblemau ynghylch anghyfartaledd incwm a'r amgylchedd yn deillio o ddibyniaeth ar y farchnad rydd.

Mae'r Bil Cynllunio yn gyfle i daclo'r problemau hyn, gan ddi-ddymu neu ailgydbwysu'r farchnad gynllunio fel y saif. Credwn hefyd fod angen gweld y Bil Cynllunio fel pecyn o newidiadau, a chredwn y dylid bod Deddf Eiddo er mwyn ymdrin â'r stoc tai bresennol a'i heffaith ar y Gymraeg.

Wrth graidd ein pwyntiau mae'r argyhoeddiad sylfaenol bod yn rhaid i'r Bil Cynllunio adlewyrchu anghenion arbennig ein gwlad yn hytrach na dim ond efelychu yr hyn sy'n digwydd yng ngwledydd eraill Prydain.

Credwn ymhellach fod yr iaith yn perthyn i bawb – o ba gefndir bynnag – sydd wedi dewis gwneud Cymru yn gartref iddyn nhw. Mae angen deddfu mewn ffordd sy'n cynorthwyo twf y Gymraeg a'i diogelu ym mhob rhan o Gymru.

### 3.Cyd-destun y Gymraeg ar lefel gymunedol

Nid oes amheuaeth bod canlyniadau Cyfrifiad 2011 yn amlygu'r argyfwng sy'n wynebu'r Gymraeg. Bu gostyngiad yn nifer y siaradwyr Cymraeg ym mron pob rhan o Gymru. Bu'r gostyngiad mwyaf yn yr ardaloedd lle mae'r Gymraeg ar ei chryfaf.

Cafwyd gostyngiad yn nifer yr adrannau etholiadol lle roedd dros 70 y cant o'r boblogaeth yn gallu siarad Cymraeg, o 92 yn 1991 i 54 yn 2001 i 39 yn 2011. Erbyn 2011, roedd pob un o'r adrannau etholiadol hyn (ac eithrio un yng Nghonwy) yng Ngwynedd neu ar Ynys Môn.

Dylid nodi mai targed strategaeth iaith Llywodraeth Cymru 2003, Iaith Pawb, oedd codi nifer y siaradwyr Cymraeg pum pwynt canran ledled Cymru (o 20.7% yn 2001 i 25.7% yn 2011) ac atal y dirywiad yn nifer y cymunedau Cymraeg:

*“Erbyn 2011 - bod y ganran o bobl Cymru sy'n gallu siarad Cymraeg wedi cynyddu 5 pwynt canran o'r ffigwr a ddaw i'r amlwg o gyfrifiad 2001;*

*“bod y lleihad yn nifer y cymunedau lle mae'r Gymraeg yn cael ei siarad gan dros 70% o'r boblogaeth yn cael ei atal;”* [tud.11, Iaith Pawb]

Ymatebodd [Comisiynydd y Gymraeg](#) i ganlyniadau Cyfrifiad 2011 gan ddweud:

*“...mae'n wir dweud bod ystadegau a gyhoeddwyd heddiw yn ysgytwad. Efallai bod yna berygl wedi bod i bawb fynd i ryw gyfforddusrwydd artifisial 10 mlynedd yn ôl, gan gredu bod tro ar fyd, a bod twf mewn rhai ardaloedd yn gwneud yn iawn am y gostyngiad mewn ardaloedd eraill. Os mai felly oedd hi am y 10 mlynedd diwethaf, yna mae'r cloc larwm wedi canu'n uchel iawn .... ac mae yna heriau pendant i'w hateb yn y fan hyn, a hynny ar fyrder.”*

Yn sicr, nid oes amheuaeth bod y system gynllunio yn dylanwadu, fel y cydnabyddir gan gasgliadau ymgynghoriad Llywodraeth Cymru i'r Gynhadledd Fawr.

Ymhellach, credwn fod y gwaith ymchwil a wnaed gan Fwrdd yr Iaith a Menter Iaith Conwy yn 2011/12 yn amlygu effeithiau iaith y gyfundrefn bresennol:

#### **Gwaith Ymchwil Menter Iaith Conwy / Bwrdd yr Iaith (2012)**

*Comisiynwyd gwaith ymchwil gan Fwrdd yr Iaith Gymraeg yn 2011 a gynhaliwyd gan Fenter Iaith Conwy i fesur beth oedd tarddiad pobl oedd yn berchen ar anheddau newydd o fewn Sir Conwy rhwng 2006 a 2011. Yn ôl y gwaith ymchwil hwnnw, llenwyd 87% o'r tai a adeiladwyd gan bobl nad oedd yn gallu siarad Cymraeg. Amcangyfrifwyd y byddai Cynllun Datblygu Lleol drafft y cyngor yn golygu gostyngiad yng nghanran siaradwyr y Gymraeg o 2.24% oherwydd y 6,350 o dai yr argymhellwyd eu hadeiladu. Argymhelliad y*

*Fenter laith yn sgil y gwaith ymchwil oedd gostwng nifer y tai yn y cynllun drafft a newid y drefn fel bod nifer y tai yn adlewyrchu anghenion lleol.*

*Er gwaethaf yr argymhellion hyn, cafodd Cynllun Datblygu Lleol Conwy ei fabwysiadu ym mis Hydref 2013 gan osod targed nifer y tai ar gyfer y cyfnod hyd at 2022 fel a ganlyn: "6,520 o unedau tai newydd gyda lefel 10% wrth gefn o hyd at 7,170 o unedau tai newydd ..."*

#### 4. Gwendidau'r Drefn Bresennol

Mae Cymdeithas yr Iaith wedi bod yn galw am newidiadau i'r drefn gynllunio ers y 1980au gan arwain at gonsesiynau. Yn fwy diweddar, cyhoeddassom Fil Eiddo a Chynllunio amgen ym mis Mawrth 2014, ac yn dilyn hynny cynhaliwyd nifer o gyfarfodydd cyhoeddus o Ben Llŷn i Hwlfordd i Gaerdydd i drafod ein cynigion deddfwriaethol. Mae nifer o bwyntiau isod ac yn adran 8 yn rhestru penawdau gwelliannau i'r Bil sy'n adlewyrchu sylwadau gan aelodau'r cyhoedd yn y cyfarfodydd hynny.

##### 4.1 Diffyg Cysondeb a Chyfeiriad i'r Drefn

Mae Comisiynydd y Gymraeg wedi nodi'r diffyg cysondeb yn y gyfundrefn, gan ddweud:

*"Yn gyffredinol, roedd yr asesiad o bolisiau yn amlygu amrywiaeth eang ac anghysondeb yn yr ymdriniaeth a roddir i'r Gymraeg mewn gwahanol ardaloedd. Er bod rhywfaint o wahaniaethau lleol yn ddisgwyliedig, mae'n bosibl bod yr anghysondeb yn adlewyrchu diffyg eglurder yn y polisi cenedlaethol tuag at y Gymraeg." (Tud. 3, Astudiaeth o bolisiau cynllunio lleol a'r Gymraeg - Medi 2013)*

Credwn y gellid lliniaru'r problemau hyn drwy sefydlu diben statudol i'r drefn gynllunio yn y Bil, a fyddai'n rhoi cyfeiriad i'r Fframwaith Cenedlaethol ynghyd â chynlluniau datblygu eraill wrth eu llunio a'u hadolygu. Cytunwn felly â'r pwyllgor arbenigol a roddodd gyngor i Weinidogion cyn iddynt lunio'r ddeddfwriaeth y dylid sefydlu diben statudol i'r drefn gynllunio.

##### 4.2. Trefn nad yw'n seiliedig ar anghenion lleol

Wrth wraidd y broblem gyda'r drefn mae'r ffaith nad yw hi'n seiliedig ar anghenion lleol. Yn hytrach na system sy'n cael ei gyrru gan anghenion y farchnad, mae angen newid pwyslais y system fel ei bod yn gwbl glir mai awdurdodau lleol sy'n gyfrifol am osod targedau tai, a hynny ar sail anghenion lleol yn unig. Byddai hynny'n dileu effaith y targedau tai a osodir gan y Llywodraeth ganolog sy'n seiliedig ar yr amcanestyniadau poblogaeth cenedlaethol, a fyddai'n parhau â'r patrymau sydd wedi bod yn niweidiol i'r Gymraeg ers blynnyddoedd.

##### 4.3. Diffyg Ystyriaeth i'r Gymraeg

###### Ceisiadau Unigol

Dim ond 0.03% o geisiadau cynllunio oedd wedi cael eu hasesu am eu heffaith ar yr iaith Gymraeg yn ôl cais rhyddid gwybodaeth a wnaed gennym. Tri awdurdod cynllunio lleol yn unig, o'r 25 yng Nghymru, a gynhaliodd asesiad effaith datblygiadau ar y Gymraeg rhwng 2010 a 2012 – cyfanswm o 16 asesiad allan o bron i 50,000 o geisiadau cynllunio a wnaed. Mae cwestiynau yn codi am wrthrychedd yr asesiadau effaith iaith a wnaed, gan iddynt, mewn nifer o achosion, gael eu comisiynu a'u hariannu gan y datblygwyr.

Mae nifer o enghreifftiau o benderfyniadau ar geisiadau unigol lle nad oedd eglurder neu rym gan gynghorwyr i wrthod neu ganiatáu ceisiadau ar sail eu heffaith iaith yn unig, megis datblygiad tai Penybanc yn Sir Gaerfyrddin a'r pentref gwyliau Land & Lakes yn Ynys Môn.

### Cynlluniau Datblygu Lleol

Fel nodwyd uchod, yn ôl astudiaeth Comisiynydd y Gymraeg, dim ond hanner cynghorau sir Cymru sydd wedi cynnwys polisiâu am y Gymraeg yn eu cynlluniau datblygu lleol. Credwn y dylai effaith y drefn gynllunio fod yn ystyriaeth ym mhob rhan o Gymru, gan ei bod yn effeithio ar statws yr iaith, mynediad at addysg Gymraeg ynghyd â phatrymau mudo.

Yn ôl astudiaeth Comisiynydd y Gymraeg: *"adroddodd 6 awdurdod nad oeddynt wedi cynnal unrhyw asesiad o effaith eu cynllun datblygu ar y Gymraeg. Mae'r canfyddiad yma yn codi amheuan ynghylch y graddau yr ystyriwyd Polisi Cynllunio Cymru a Nodyn Cyngor Technegol 20 (2000) wrth i'r awdurdodau yma lunio eu cynlluniau datblygu. Mae'r canfyddiadau hefyd yn codi cwestiynau ynghylch rôl yr Arolygiaeth Gynllunio sy'n gyfrifol am arolygu cynlluniau datblygu a sicrhau eu bod yn cyd-fynd gyda pholisi cenedlaethol cyn iddynt gael eu mabwysiadu."*

#### 4.4. Parchu Statws ac Etifeddiaeth y Gymraeg

##### Diogelu Enwau Llefydd, Strydoedd, Datblygiadau Newydd

Yn y cyfarfodydd cyhoeddus rydyn ni wedi eu cynnal ar hyd a lled Cymru, codwyd yn gyson y pryder am effaith datblygiadau ar statws y Gymraeg mewn materion megis enwau lleoedd, enwau strydoedd, enwau adeiladau newydd ac enwau tai. Mae Cymdeithas yr Iaith yn dadlau y dylid cael amddiffyniad statudol Cymru-gyfan i sicrhau bod statws swyddogol y Gymraeg yn cael ei hybu a'i ddiogelu yn yr holl enghreifftiau hyn.

##### Datblygiadau Tai a Mynediad at Addysg Gymraeg

Ceir cwynion mewn nifer o gyd-destunau nad yw mynediad at addysg Gymraeg yn cael ei ystyried wrth ganiatáu datblygiad stad o dai newydd – ceir sawl enghraifft o'r broblem yn y De Ddwyrain megis yn ardal Llantrisant, Caerdydd a Bro Morgannwg.

#### 4.5 Gwneud Penderfyniadau'n Lleol

Eto, yn ein cyfarfodydd, codwyd yn gyson yr angen i sicrhau bod penderfyniadau cynllunio yn cael eu gwneud yn lleol mor aml â phosibl.

Codwyd nifer o bryderon am dargedau tai yn cael eu gosod ar lefel genedlaethol yn hytrach na gadael i gymunedau lleol wneud penderfyniadau ar sail eu hanghenion lleol.

Hefyd, codwyd y pwynt mai dim ond y tu allan i Gymru y mae nifer o dai ac adeiladau yn cael eu hysbysebu ac y dylai fod amod bod anheddau yn gorfod cael eu hysbysebu i'w rhentu neu eu prynu yn yr ardal leol.

#### 4.6. Rôl yr Arolygiaeth Gynllunio

Mae nifer yn pryderu am yr Arolygiaeth Gynllunio a'r ffaith ei fod yn gorff Lloegr-Cymru. Codwyd pryder am y ffaith bod yr holl swyddogion yn derbyn eu hyfforddiant ym Mryste, yn hytrach na Chymru. Wrth i drefn gynllunio Cymru a Lloegr wahanu, teimlwn nad yw'r sefyllfa bresennol yn gynaliadwy. Hefyd, codwyd pryder am dryloywder a chostau'r broses apelio ac ymwybyddiaeth yr Arolygiaeth o'r Gymraeg.

## 5. Dadleuon y Llywodraeth

Ers i'r dadleuon dros y Bil Cynllunio gychwyn, rydym wedi gweld datblygiad yn esboniadau'r Llywodraeth am ei hagwedd tuag at gynnwys cymalau a fyddai'n llesol i'r Gymraeg yn y Bil. Cawsom gyfarfodydd diddorol gyda'r Gweinidog Cynllunio a'i swyddogion, sy'n mynd i barhau dros yr wythnosau nesaf.

Ysgrifenasom at y Llywodraeth ar nifer o achlysuron gan geisio cael eglurhad ynghylch eu dadleuon am le'r Gymraeg yn y Bil.

Ceir manylion y llythyrau hynny yma:

<http://cymdeithas.org/dogfen/bil-cynllunio-llythyr-y-gweinidog-carl-sargeant>

<http://cymdeithas.org/dogfen/bil-cynllunio-llythyr-swyddogion-cynllunio-llywodraeth-cymru>

Yn dilyn ein cyfarfod ar 27ain Chwefror 2014 gyda swyddogion adran gynllunio'r Llywodraeth, ysgrifenasom atynt gan ddweud:

*"Yn ystod y sgwrsiau yn ystod ein cyfarfod roedd yn ddiddorol nodi bod:*

*(i) Cyfaddefiad gan Neil Hemington bod cynghorau bron a bod fel bod ganddynt obsesiwn ("too fixated" yn ei eiriau ef) ar seilio eu rhagamcaniadau weithredu ar amcanestyniadau poblogaeth;*

*(ii) Nodir ymhellach eich bod wedi datgan nad yw Bil Cenedlaethau'r Dyfodol yn berthnasol i'r adran gynllunio, gan eich bod fel Adran yn cyflawni popeth yn barod.*

*(iii) Roeddwn yn falch clywed eich parodrwydd i archwilio gyda'r gweinidog ynglŷn â gwneud y Gymraeg yn ystyriaeth berthnasol."*

## 7. Sylwadau Manwl ar y cynigion yn y Bil

### Adran 2 - Fframwaith Datblygu Cenedlaethol Cymru

Nid oes egwyddorion sy'n gyrru cyfeiriad y fframwaith. Nid oes dyletswydd ar y Llywodraeth i gynnwys polisi am y Gymraeg yn y fframwaith, nac wrth ei adolygu. Credwn fod yr absenoldeb hwn yn cryfhau'r achos dros sefydlu diben statudol i'r drefn yn ei chyfanrwydd.

### Adran 3 - Ardaloedd Cynllunio Strategol a Phaneli Cynllunio Strategol

Rydym yn gwrthwynebu canoli grym a thynnu pwerau allan o ddwylo cynghorwyr etholedig. Dylid gwneud penderfyniadau ar y lefel fwyaf lleol bosibl.

Yn lle, gellid cynnwys pwerau i gynghorau cymunedau lleol, neu nifer ohonynt ar y cyd, sefydlu awdurdod cynllunio lleol er mwyn gwneud rhagor o benderfyniadau cynllunio yn agosach at y bobl.

Mae'r broses o greu ardaloedd cynllunio strategol yn broses o'r brig i lawr. Ni ddylai grym i gyfarwyddo awdurdodau lleol i'w sefydlu fod yn nwylo Gweinidogion. Er nad ydyn ni wedi cael ein hargyhoeddi am fanteision cynllunio ar lefel ardal strategol, mater arall fyddai cynghorau yn wirfoddol yn ffurfio ardal strategol.

Yn atodlen 1, sy'n amlinellu darpariaethau pellach am y paneli, gwrthwynebwn fodolaeth aelodau'r paneli cynllunio strategol nad ydynt yn etholedig, gan ein bod yn credu mewn dulliau cwbl ddemocrataidd o wneud penderfyniadau.

Adran 5 - Lluio ac adolygu cynlluniau datblygu strategol

Yn adran 60I(7), mae dyletswydd ar y panel i asesu cynaliadwyedd y cynllun datblygu strategol. Dylid diffinio cynaliadwyedd wrth gyfeirio at effaith y cynllun ar y Gymraeg. Fel arall, drwy sefydlu diben statudol i'r drefn gynllunio sy'n cyfeirio at y Gymraeg, gellid sicrhau bod y cynllun yn cael ei lunio yn unol â'r diben hwnnw.

Adran 12 - Pŵer Gweinidogion Cymru i gyfarwyddo bod cynllun datblygu lleol yn cael ei lunio ar y cyd

Nid ydym yn cytuno y dylid rhoi grymoedd i Weinidogion gyfarwyddo awdurdodau i lunio cynllun datblygu lleol ar y cyd. Credwn y dylai pwerau gael eu gweithredu mor agos â phosibl at gymunedau.

Adran 19 - adroddiadau effaith lleol

Dylai unrhyw adroddiad effaith lleol gynnwys asesiad effaith ar y Gymraeg o'r datblygiad dan sylw.

Adran 33 - Cyfnod para caniatâd cynllunio: cyffredinol

Credwn y dylid cynnwys darpariaethau yma fel yr amlinellir yn rhan 8 er mwyn diddymu yn syth unrhyw ganiatâd cynllunio a roddwyd sawl blynedd yn ôl nas gweithredwyd neu a weithredwyd yn rhannol yn unig wedi i'r Ddeddf hon ddod i rym.

Adran 35 - Ymgynghori etc mewn cysylltiad â cheisiadau penodol sy'n ymwneud â chaniatâd cynllunio

Credwn y dylid gwneud Comisiynydd y Gymraeg yn un o ymgynghoreion Statudol y drefn gynllunio.

Adran 37 - Arfer swyddogaethau awdurdod cynllunio lleol sy'n ymwneud â cheisiadau

Ni fyddwn yn cefnogi gwneud rhagor o benderfyniadau cynllunio gan swyddogion yn hytrach na chynghorwyr etholedig. Dylai'r broses fod yn un gwbl ddemocrataidd gydag atebolrwydd ar lefel leol.

Adran 44 a 45 - Gweithdrefnau a chostau ar gyfer ceisiadau, apeliadau a chyfeiriadau

Credwn y dylid sefydlu Tribiwnlys Cynllunio i Gymru, yn lle'r Arolygiaeth Gynllunio, a fyddai'n ymdrin ag apeliadau gan reoli costau fel bod modd i bobl o ba gefndir bynnag allu ymdrin â'r drefn ar yr un lefel ag eraill.

## 8. Ein Cynigion Amgen

Dylid darllen y sylwadau isod ochr yn ochr â'n Bil Eiddo a Chynllunio a gyhoeddwyd ym mis Mawrth eleni - [www.cymdeithas.org/cynllunio](http://www.cymdeithas.org/cynllunio)

Ers cyhoeddi ein Bil Eiddo a Chynllunio, rydym wedi cynnal nifer o ddiwyddiadau a chyfarfodydd er mwyn derbyn adborth ar y ddogfen. Byddwn yn cyhoeddi fersiwn diwygiedig o'n cynlluniau deddfwriaethol cyn diwedd y flwyddyn.

Credwn fod angen newid y Bil Cynllunio trwy gynnwys nifer o elfennau gan gynnwys y saith pwynt canlynol:

### **1. Sefydlu diben statudol i'r system gynllunio sy'n cyfeirio at nodau datblygu cynaliadwy Cymru**

(Gweler Bil Eiddo a Chynllunio er budd ein Cymunedau Cymdeithas yr Iaith Gymraeg, adran 1. Diben Statudol y Drefn Gynllunio)

Datganwyd yn glir iawn gan y Llywodraeth bod y Bil yn seiliedig ar adroddiad y grŵp cynghorol annibynnol a gyhoeddodd ei adroddiad ym mis Mehefin 2012. Nodwn nad yw'r Bil na'r ddogfen ymgynghori yn cyfeirio at yr argymhelliad canlynol yn yr adroddiad:

*“We recommend that a statutory purpose for planning along these lines is included in the Planning Bill:*

*“The purpose of the town and country planning system is the regulation and management of the development and use of land in a way that contributes to the achievement of sustainable development.”* [Saesneg yn unig, gan nad oes copi Cymraeg o'r adroddiad ar gael]

Rydym yn cytuno â'r grŵp y dylai fod pwrpas statudol i'r system gynllunio yn y Bil, er nad ydym yn cytuno â nifer fawr o argymhellion yr adroddiad. Ymddengys fod gwrthod yr argymhelliad hefyd yn groes i ysbryd yr ymrwymiad ym Maniffesto Llafur Cymru yn etholiad 2011, sef:

*“Deddfwriaethu i greu cymunedau mwy cynaliadwy trwy'r system gynllunio”*

*“Sicrhau bod cynlluniau datblygu yn adlewyrchu'r cyfrifoldeb i gyflwyno cymunedau cynaliadwy ar draws Cymru.”*

Yn y cyhoeddiad “Cymru'n Un: Cenedl Un Blaned” a gyhoeddwyd yn 2009 gan Lywodraeth Cymru pwysleisiwyd pwysigrwydd y Gymraeg fel rhan o'r diffiniad o ddatblygu cynaliadwy a lles yng Nghymru.

Ymhellach, credwn y gellid seilio'r pwrpas ar y nodau llesiant ym Mil Llesiant Cenedlaethau'r Dyfodol. Mae ein Mesur Eiddo a Chynllunio er budd ein Cymunedau yn addasu'r nodau llesiant hynny, er mwyn adeiladu arnynt, yn ogystal â'u cryfhau a'u gwella.

Credwn fod sefydlu pwrpas statudol i'r system gynllunio yn y Bil yn cynnig cyfle i osod cyfeiriad clir i'r system gynllunio ac un a fyddai er lles y Gymraeg, yn hytrach na'r un presennol sy'n ei thanseilio.

## **2. Sicrhau ar wyneb y Bil bod y Gymraeg yn cael ei gwneud yn ystyriaeth gynllunio berthnasol statudol ym mhob rhan o Gymru**

(Gweler Bil Eiddo a Chynllunio er budd ein Cymunedau Cymdeithas yr Iaith Gymraeg, adran 2. Ystyriaethau Perthnasol ym mhob rhan o Gymru)

Rydym yn falch ein bod wedi cael cadarnhad gan Rosemary Thomas, pennaeth adran gynllunio Llywodraeth Cymru, yn ein cyfarfod ar ddechrau mis Rhagfyr 2013, nad yw'r system bresennol yn caniatáu i bwyllgorau cynllunio neu awdurdodau cynllunio wrthod, neu ganiatáu, cais cynllunio ar sail eu heffaith iaith, gan fod cymaint o ystyriaethau i'w cydbwysu.

Mae hynny'n cadarnhau'r hyn mae'n haelodau ni, yn ogystal â chynghorwyr, yn ei ddweud wrthym, sef nad oes amddiffyniad statudol i awdurdodau cynllunio nac awdurdodau pwyllgorau cynllunio os ydyn nhw am wrthod cais, neu ei ganiatáu, ar sail ei effaith iaith. Credwn fod hynny'n cryfhau'r achos a amlinellir yn ein papur i wneud y Gymraeg yn ystyriaeth berthnasol (material consideration) statudol a fyddai'n rheswm digonol ynddo ei hun er mwyn gwrthod, neu gymeradwyo, cais cynllunio ar sail ei effaith iaith. Dylai'r Llywodraeth ystyried polisi o'r fath.

Bellach, mae llawer iawn o gynghorwyr sir wedi ysgrifennu atoch chi gan nodi'r un pryder. Rydym yn gobeithio'n fawr y byddwch yn sicrhau bod y Bil Cynllunio yn ymateb i'r pryderon hyn.

### **3. Gwneud asesiadau effaith datblygiadau ar y Gymraeg yn hanfodol ar gyfer pob datblygiad sydd yn 10 uned o dai neu'n fwy**

(Gweler Bil Eiddo a Chynllunio er budd ein Cymunedau Cymdeithas yr Iaith Gymraeg, adran 6. Asesiadau effaith datblygiadau sylweddol ar ffyniant y Gymraeg)

Ceir nifer o enghreifftiau yn y Bil o asesiadau sy'n ofyniad statudol megis arfarniad cynaliadwyedd o'r Cynlluniau Datblygu Lleol ac asesiadau amgylcheddol.

Mae'r Arolygiaeth Gynllunio ac eraill yn dweud bod yn rhaid iddyn nhw dderbyn tystiolaeth gadarn wrth iddyn nhw edrych ar effaith unrhyw gynlluniau unigol neu gynlluniau datblygu lleol.

Credwn fod y Bil yn creu cyfle amlwg, gan ei fod yn gwahaniaethu rhwng gwahanol feintiau o ddatblygiad, i wneud Asesiad Effaith Iaith (AEI) yn ofynnol ar 'ddatblygiadau sylweddol' fel y'u diffinnir yn y Bil, sef 10 uned o dai neu fwy.

Ffordd arall o gyflawni'r un nod fyddai dilyn cynsail asesiadau effaith amgylcheddol sy'n gosod dyletswydd ar awdurdodau cynllunio i ystyried cynnal asesiad gan ddibynnu ar eu barn o ran yr hyn fyddai'n debygol o gael effaith ar yr iaith o dan yr amgylchiadau.

Credwn fod angen y sail dystiolaeth a gynigir gan AEI annibynnol, er mwyn galluogi cynghorwyr i wrthod, neu i ganiatáu cais cynllunio ar sail ei effaith iaith. Mae hynny'n golygu y byddai gwneud AEI yn ofyniad statudol ar ddatblygiadau 'sylweddol' yn mynd law yn llaw â sefydlu'r Gymraeg fel ystyriaeth berthnasol (material consideration) statudol.

Credwn y gellid ystyried cynnwys AEI o fewn asesiad ehangach ar gynaliadwyedd, yr amgylchedd neu asesiad effaith gymdeithasol. Mae cynsail Ewropeaidd dros wneud asesiadau effaith amgylcheddol/gymdeithasol a fyddai'n cynnwys effeithiau datblygiadau ar yr iaith Gymraeg. Dylai hynny gael ei atgyfnerthu mewn deddfwriaeth fel y gellir sicrhau bod prosesau a strwythurau ar gyfer cynnal asesiadau iaith yn cael eu gosod ar sail statudol. Oni bai bod hyn yn digwydd, bydd Awdurdodau Lleol ac eraill yn anwybyddu'r Nodiadau Cyngor Technegol perthnasol.

### **4. Datganoli grymoedd ystyrion dros geisiadau cynllunio i gymunedau, yn hytrach na chanoli grym yn nwylo gweinidogion**

Rydym yn gwrthod y duedd beryglus yn y Bil i ganoli grym yn nwylo Gweinidogion yng Nghaerdydd, yn ogystal â bygwth diddymu neu uno awdurdodau cynllunio lleol. Yn lle, dylai'r Bil ddatganoli grymoedd i gynghorau cymuned er mwyn grymuso pobl ar lawr gwlad.

Credwn fod nifer o elfennau o'r Bil yn codi pryderon mawrion am ddiffyg democratiaeth yn y system gynllunio. Credwn fod y cynlluniau ar gyfer cynlluniau Datblygu Strategol yn annemocrataidd, a'u bod yn rhoi grym dros gynlluniau datblygu yn nwylo unigolion anetholedig.

Ymhellach, pryderwn yn fawr am y syniad y byddai modd cosbi neu dynnu pwerau oddi ar awdurdodau cynllunio nad ydynt yn dilyn cyfarwyddiadau gweinidogol. Mae'n codi'r cwestiwn: beth yw diben democratiaeth os nad oes hawl gan y rhai etholedig i wneud penderfyniadau sy'n groes i farn swyddogion anetholedig?

Ymhellach, credwn fod yr argymhellion ynghylch grymoedd cynghorau cymuned yn wan. Dylai cynghorau cymuned fod yn gwbl ganolog i'r broses o greu, caniatáu neu wrthod cynlluniau datblygu lleol a cheisiadau ar gyfer datblygiadau unigol.

Rydym wedi cynnwys nifer o ffyrdd y gellid gwneud hynny yn ein Bil Eiddo a Chynllunio drafft. Un ohonyn nhw yw cysyniad "Datblygiadau o fudd sylweddol i'r gymuned ac i ffyniant y Gymraeg", sef creu llwybr tarw i gynghorau cymuned roi caniatâd ar gyfer dosbarth o geisiadau sy'n bodloni meini prawf sy'n eu gwneud yn llesol i'r Gymraeg a'r gymuned yn ehangach.

### **5. Gosod ar wyneb y Bil gymal a fyddai'n sicrhau mai anghenion lleol fydd sail y drefn gynllunio, fel mai dyna yw'r dechreubwynt wrth i awdurdodau lleol bennu eu targedau tai yn hytrach nag amcanestyniadau poblogaeth**

(Gweler Bil Eiddo a Chynllunio er budd ein Cymunedau, adran 10. Asesiadau Angen Lleol)

Cafwyd eglurhad mai 'anghenion lleol' ddylai fod yn brif ystyriaeth wrth i awdurdodau lleol lunio Cynlluniau Datblygu Lleol yn ein cyfarfod gyda'r Gweinidog ar ddechrau mis Rhagfyr 2013. Credwn fod y Bil felly yn gyfle i gadarnhau bwriad y Llywodraeth mewn statud.

Yn y cyfarfod hwnnw, cyfeiriodd prif swyddog adran cynllunio'r Llywodraeth at yr angen i awdurdodau cynllunio gynnal "asesiad o'r farchnad dai leol" a'r "cynlluniau tai fforddiadwy", ac mai hynny yw dechreubwynt awdurdodau cynllunio wrth iddynt lunio Cynlluniau Datblygu Lleol. Fodd bynnag, mae'r hyn a ddywedodd yn groes i'r hyn a ddywedwyd gan Richard Poppleton, Cyfarwyddwr yr Arolygiaeth Gynllunio yng Nghymru ar y pryd, gerbron y Cynulliad:

*"The Welsh Government informs the local authorities of the [population] projections, which is the starting point. If there is no starting point, everybody would be thrashing around asking where to start. The Welsh Government's housing projections are the starting point, with a certain variance. Local authorities take that as a starting point and the way in which Planning Policy Wales's manual is phrased means that the projections are regarded as being robust and should not be deviated from unless there are justifiable reasons."*

Ymhellach, nodwn gasgliad canlynol Pwyllgor Amgylchedd a Chynaliadwyedd y Cynulliad mewn llythyr at y Gweinidog:

*"Os bydd Awdurdodau Cynllunio Lleol eisiau defnyddio amcanestyniadau sy'n gwyro oddi wrth amcanestyniadau Llywodraeth Cymru, rhaid iddynt profi bod y gwyriad yn cael ei wneud ar sail 'tystiolaeth gadarn a chredadwy', fel y nodir ym Mholisi Cynllunio Cymru. Pan gafodd ei holi ar y pwynt hwn, cydnabu'r Gweinidog ar y pryd gymhlethdod y mater hwn a bod awdurdodau lleol a Llywodraeth Cymru yn anghytuno ambell waith. Fodd bynnag, dywedodd y gallai'r rhain gael eu datrys drwy drafodaeth."*

Carem bwysleisio bod y Gymraeg yn dioddef ar hyn o bryd oherwydd y patrymau mudo presennol. Mae'r system gynllunio nid yn unig yn adlewyrchu'r patrymau hyn, ond hefyd yn dylanwadu arnynt, oherwydd fel mae pob economegydd da yn ei ddeall, mae cyflenwad yn arwain y galw yn ogystal ag i'r gwrthwyneb. Mae'n rhaid bod modd i awdurdodau cynllunio ddewis sut maen nhw am ddylanwadu ar y ffactorau hynny.

Yr hyn sy'n glir i ni am y broses yw'r canlynol:

- ✦ nid oes eglurder statudol ynghylch o ba ddechreubwynt y dylid llunio cynllun datblygu lleol, gan i swyddogion y Llywodraeth gynnig dadleuon gwahanol i'r Arolygiaeth Gynllunio ac i eraill;
- ✦ mae'r aneglurder yn arwain at wrthdaro rhwng barn awdurdodau lleol a Llywodraeth Cymru yn ogystal â gorddibyniaeth ar farn Arolygwyr Cynllunio nad ydynt yn cael eu hyfforddi yng Nghymru;
- ✦ bod baich ar gynghorau sir i brofi rheswm dros wyro oddi ar amcanestyniadau poblogaeth Llywodraeth Cymru;
- ✦ nid oes mewnbwn na thystiolaeth sy'n ofynnol, megis asesiad effaith iaith neu farn Comisiynydd y Gymraeg, fel rhan o'r broses statudol wrth lunio cynlluniau datblygu lleol ac ystyried ceisiadau unigol.

Credwn felly, y dylid ystyried y cynigion canlynol:

- ✦ gosod ar wyneb y Bil yr hawl i gynghorau sir osod targedau tai yn annibynnol o Lywodraeth Cymru, gan seilio eu hamcanestyniadau ar anghenion lleol a thwf naturiol y boblogaeth;
- ✦ gwneud Comisiynydd y Gymraeg yn ymgynghorai statudol ynglŷn â chynlluniau datblygu lleol a datblygiadau sylweddol, sef 10 uned o dai neu fwy;

Ymhellach, credwn fod nifer o wendidau eraill yn y system bresennol sef bod:

- ✦ rhagdybiaeth y bydd y rhan fwyaf o'r stoc tai yn anfforddiadwy i bobl ar gyflogau lleol;
- ✦ tai fforddiadwy yn ychwanegiad at system sydd yn ei hanfod yn un anfforddiadwy i bobl leol;
- ✦ diffyg cydnabyddiaeth o effaith bodolaeth tai anfforddiadwy ar y Gymraeg a chynaliadwyedd cymunedau;
- ✦ diffyg gofyniad statudol i ddefnyddio'r stoc bresennol, cyn adeiladu datblygiadau 'sylweddol' fel y'u diffinnir yn y Mesur drafft;
- ✦ amcanestyniadau poblogaeth sy'n cynnal a dwysáu problemau'r patrymau mudo presennol;
- ✦ diffyg grym statudol y tu ôl i ganllawiau Nodyn Cyngor Technegol 20

Mae'n Bil Eiddo a Chynllunio drafft yn ymdrechu i ddatrys nifer o'r problemau hyn, yn bennaf, drwy osod dyletswydd statudol ar awdurdodau lleol i gynnal asesiad o'r angen lleol am dai. Yr asesiad hwnnw fyddai'r dechreubwynt ar gyfer pennu'r targedau tai, yn hytrach na'r amcanestyniadau poblogaeth. Felly, byddai'n ffordd o ddileu'r ansicrwydd o ran (i) pwy sy'n gyfrifol am bennu'r targedau tai, sef yr awdurdodau lleol a (ii) beth yw'r ystyriaethau wrth ffurfio'r targedau hynny.

## **6. Sefydlu Tribiwnlys Cynllunio Cymru, gyda hawl i bobl a chymunedau apelio iddo, yn lle'r Arolygiaeth Gynllunio bresennol**

(Gweler Bil Eiddo a Chynllunio er budd ein Cymunedau, adran 21. Sefydlu Tribiwnlys Cynllunio Cymru & adran 22. Yr Hawl i Apelio i'r Tribiwnlys)

Credwn y dylid sefydlu Tribiwnlys ar wahân i Gymru yn lle'r Arolygiaeth Gynllunio yng Nghymru. Byddai hwn yn gorff a fyddai'n hyfforddi pobl yng Nghymru, gyda chanran uchel ohonynt wedi eu hyfforddi trwy gyfrwng y Gymraeg, gan sicrhau bod

gan y rhai sy'n gweithio i'r corff yng Nghymru ddealltwriaeth ddofn a thrwyadl o bolisiau cynllunio Cymru ac anghenion ieithyddol ac amgylcheddol Cymru.

Wrth i'r drefn gynllunio Gymreig wahanu o'r sefyllfa yng ngwledydd eraill Prydain, credwn fod creu sefydliad annibynnol yng Nghymru'n anochel.

Wrth sefydlu Tribiwnlys ar wahân, dylid edrych ar geisio datrys nifer o broblemau gyda'r sefyllfa bresennol, gan gynnwys y canlynol:

(i) Diffyg hawliau gan bobl ar lawr gwlad a'n cymunedau i apelio yn erbyn penderfyniadau – rydym yn ymwybodol o grwpiau gwyrdd a chymunedau sydd eisiau hawl i apelio ar lefel gyfartal â datblygwyr mawrion. Ymhellach, mae datblygwyr bychain yn mynegi pryder nad oes modd iddyn nhw ymwneud â'r broses apêl.

(ii) Anghyfartaledd mynediad at y broses gynllunio – mae nifer o gynghorwyr a chynghorau yn dweud eu bod nhw'n gwneud penderfyniadau oherwydd eu bod yn pryderu y byddai penderfyniad yr hoffon nhw ei wneud yn cael ei wrthdroi ar apêl. Datgenir hefyd nad oes modd i gynghorau, ac i raddau helaethach, cymunedau a phobl eraill, fforddio mynd i apêl yn wyneb grym datblygwyr mawrion. Yn wir, dyna oedd y profiad mewn achosion megis Penybanc yn Sir Gaerfyrddin a Land & Lakes yn Ynys Môn, lle gwelwyd cynghorwyr yn newid eu meddyliau o'u penderfyniadau cyntaf oherwydd pwysau gan swyddogion a datblygwyr.

## **7. Sicrhau nad yw awdurdodau cynllunio yn cael caniatáu datblygiadau pan fo modd diwallu'r anghenion o'r stoc tai presennol**

(Gweler Bil Eiddo a Chynllunio er budd ein Cymunedau, adran 12. Diwallu'r angen lleol cyn datblygu)

Hanfod y pwynt polisi hwn yw y dylai fod yn anghyfreithlon rhoi caniatâd cynllunio ar gyfer tai newydd oni bai eu bod yn diwallu angen lleol na ellir ei ddiwallu o'r stoc bresennol. Golyga hyn na chaniateir datblygiadau hapfasnachol na thai unigol yn groes i gynlluniau lleol lle mae tai ar gael o'r stoc bresennol.

Byddai nifer o fanteision economaidd ac amgylcheddol i bolisi o'r fath gan y byddai'n rhoi hwb enfawr i'r gwaith o uwchraddio'r stoc dai bresennol a lleihau allyriadau a gwastraff o'r stoc bresennol yn ogystal â rheoli nifer y datblygiadau tai newydd yn well.

## **8. Rhestr Gwelliannau Arfaethedig - Cynigion Eraill**

Amlinellir nifer o gynigion eraill yn ein Bil Eiddo a Chynllunio, ond yn dilyn ymgynghoriad ar y Bil, byddwn yn diwygio'n Bil gan adlewyrchu'r strwythur diwygiedig a'r elfennau ychwanegol canlynol:

1) Diben Statudol y Drefn Gynllunio:

- ◆ Diben Statudol y Drefn Gynllunio yw rheoli tir mewn ffordd sy'n gynaliadwy'n amgylcheddol, yn taclo tlodi ac yn hybu'r Gymraeg.

2) Ystyriaethau Perthnasol:

- ◆ Mae'r iaith Gymraeg yn ystyriaeth berthnasol ar gyfer ceisiadau cynllunio ym mhob rhan o Gymru;
- ◆ Gellir gwrthod neu ganiatáu cais cynllunio ar sail ei effaith ar y Gymraeg yn unig.

3) Continwmm Datblygu'r Gymraeg:

- ◆ Rhaid i awdurdod cynllunio gyhoeddi cynllun gweithredu Cymraeg fel rhan o'r Cynllun Datblygu Lleol ynghylch sut y bwriada gyrraedd sefyllfa lle'r Gymraeg fydd y brif iaith gymunedol ym mhob rhan o Gymru gan fabwysiadu un neu ragor o'r blaenoriaethau canlynol:
  - diogelu'r Gymraeg
  - cryfhau'r Gymraeg
  - hyrwyddo'r Gymraeg.

#### 4) Asesu'r Effaith ar y Gymraeg:

- ◆ Rhaid i awdurdod cynllunio asesu effaith datblygiadau unigol ar y Gymraeg;
- ◆ Mae'r Comisiynydd Iaith yn ymgynghorai statudol;
- ◆ Rhaid i awdurdod cynllunio asesu effaith ei gynllun datblygu lleol ar y Gymraeg.

#### 5) Parchu etifeddiaeth y Gymraeg ac enwau lleoedd:

- ◆ Ni chaniateir datblygiad oni bai bod unrhyw enwau llefydd neu enwau tai a ddefnyddir fel rhan o'r datblygiad yn Gymraeg ac y darperir arwyddion yn Gymraeg;
- ◆ Ni chaniateir newid neu ddileu enw Cymraeg ar roddir ar ddatblygiad, rhan o ddatblygiad, annedd neu nodwedd ddaearyddol heb gydsyniad Comisiynydd y Gymraeg;
- ◆ Lle bo datblygiad yn un ar gyfer tai, rhaid iddo wella darpariaeth a mynediad at addysg cyfrwng Cymraeg.

#### 6) Anghenion Lleol fel Sail i'r Drefn Gynllunio:

- ◆ Rhaid i awdurdod cynllunio lleol gynnal asesiad angen lleol am dai cyn llunio neu adolygu Cynllun Datblygu Lleol a dylid pennu targedau tai yn seiliedig ar yr asesiad hwn.

#### 7) Cynllunio i'r Gymuned:

- ◆ Ni chaniateir i awdurdod cynllunio roi caniatâd ar gyfer tai newydd oni bai eu bod yn diwallu angen lleol na ellir ei ddiwallu o'r stoc tai presennol;
- ◆ Gellir gwneud cais am ganiatâd cynllunio ar gyfer datblygiadau o fudd sylweddol i'r Gymraeg i'r cyngor cymuned perthnasol, neu os nad oes cyngor cymuned, i'r awdurdod cynllunio lleol.

#### 8) Blaenoriaeth i Bobl Leol:

- ◆ Mewn ardaloedd lle mae diogelu'r Gymraeg yn flaenoriaeth, rhaid i'r awdurdod cynllunio lleol osod amodau ar ddatblygiadau newydd sy'n sicrhau'r cyfle prynu cyntaf i bobl leol a dod â phrisiau tai o fewn cyrraedd y boblogaeth leol.
- ◆ Sicrhau y caiff tai ar werth neu ar rent eu hysbysebu yn lleol

#### 9) Sicrhau Tai Fforddiadwy

- ◆ Ni chaiff awdurdod cynllunio lleol ganiatáu cais cynllunio i dai sy'n anfforddiadwy i bobl leol.

#### 10) Ailasesu Caniatâd Cynllunio Blaenorol:

- ✦ Rhaid diddymu yn syth unrhyw ganiatâd cynllunio a roddwyd bum mlynedd neu fwy yn ôl nas gweithredwyd neu a weithredwyd yn rhannol yn unig wedi i'r Ddeddf ddod i rym.

#### 11) Ail Gartrefi

- ✦ Rhaid i berchnogion ail gartrefi yn gofrestredig gan yr awdurdod tai lleol;
- ✦ Rhaid i berchnogion hysbysu'r awdurdod lleol os yw'r eiddo heb ei feddiannau am gyfnod hwy na thri mis yn olynol neu gyfanswm o dri mis mewn unrhyw gyfnod o 12 mis;
- ✦ Ni chaiff perchennog eiddo nad yw'n brif eiddo iddi/o osod yr eiddo hwnnw ar rent am ran o'r flwyddyn yn unig.

#### 12) Datganoli a Democrateiddio Trefn Gynllunio Cymru:

- ✦ Tribiwnlys Cynllunio Cymru - rhaid i weinidogion Cymru benodi Tribiwnlys Cynllunio Cymru fel y corff sy'n ymdrin ag apeliadau cynllunio;
- ✦ Caiff cyngor cymuned, Comisiynydd y Gymraeg, Comisiynydd Cenedlaethau'r Dyfodol neu unrhyw un a wrthwynebodd y cais gwreiddiol apelio i'r Tribiwnlys yn erbyn penderfyniad i ganiatáu cais cynllunio
- ✦ Mae achosion gerbron y Tribiwnlys i'w cynnal yn gyhoeddus

#### 13) Dileu'r Hawl i Brynu:

- ✦ Dileu'r hawl i brynu tai cymdeithasol

#### 14) Awdurdodau Cynllunio Lleol:

- ✦ Mae gan gymunedau'r hawl i greu Awdurdodau Cynllunio Lleol sy'n gyfrifol am geisiadau cynllunio o fewn eu ffiniau.

### 9. Casgliadau

Mae Bil Cynllunio Llywodraeth Cymru yn bell iawn o weledigaeth Cymdeithas yr Iaith Gymraeg ar gyfer trefn gynllunio a fyddai'n llesol i'r Gymraeg a holl gymunedau Cymru. Fodd bynnag, mae'n galonogol bod cymaint o gefnogaeth ar lawr gwlad i'n gweledigaeth ar gyfer trefn newydd a fyddai'n cryfhau'r iaith, yn taclio tlodi ac yn diogelu ein hamgylchedd.

Rydym yn erfyn ar i'r pwyllgor argymhell newid y Bil fel ei fod yn datganoli grym i'n cymunedau, yn rhoi lle canolog i'r Gymraeg yn y system ac yn seilio'r drefn ar anghenion lleol.

**Grŵp Cymunedau Cynaliadwy, Cymdeithas yr Iaith Gymraeg**

**Tachwedd, 2014**

**Atodlen 1 - Bil Eiddo a Chynllunio Cymdeithas yr Iaith Gymraeg (2014)**

<http://cymdeithas.org/cynllunio>

Nodyn Esboniadol: <http://cymdeithas.org/sites/default/files/NodynBriffio-YBilCynllunio.pdf>

Bil Amgen: <http://cymdeithas.org/sites/default/files/bil%20cynllunio%202014%20Cymraeg%20-%20CMYK%281%29.pdf>

**Atodlen 2 - Gohebiaeth gyda Llywodraeth Cymru**

<http://cymdeithas.org/dogfen/bil-cynllunio-llythyr-y-gweinidog-carl-sargeant>

<http://cymdeithas.org/dogfen/bil-cynllunio-llythyr-swyddogion-cynllunio-llywodraeth-cymru>

**Atodlen 3 - Cyngor Comisiynydd y Gymraeg**

<http://www.comisiynyddygyymraeg.org/Cymraeg/Rhestr>

<http://www.comisiynyddygyymraeg.org/Cymraeg/Rhestr%20Cyhoeddiadau/20140225%20LI%20C%20Ymateb%20i'r%20Bil%20Cynllunio.pdf>

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Ymchwiliad Pwyllgor Amgylchedd a  
Chynaliadwyedd Cynulliad Cenedlaethol  
PB 06  
Bil Cynllunio (Cymru)  
Ymateb gan Dyfodol I'r Iaith

**TO DDO  
DYFODOL**

Llais i'r Iaith

**TYSTIOLAETH YSGRIFENEDIG  
DYFODOL I'R IAITH**

**Ymgynghoriad ar egwyddorion cyffredinol y Bil Cynllunio (Cymru)**

**I sylw**

**Rheolwr Craffu**

**Y Pwyllgor Amgylchedd a Chynaliadwyedd**

**Cynulliad Cenedlaethol Cymru**

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**5 Tachwedd 2015**

**Cyswllt:  
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## **Y CEFNDIR POLISI**

**Mae'n argyfwng ar y Gymraeg fel iaith hyfyw, yn yr ychydig gymunedau a threfi lle y mae hi'n dal i fod yn iaith y mwyafrif. Mae cefnogaeth eang yng Nghymru i'r syniad o gynnal yr iaith Gymraeg fel iaith gymunedol. Mae nifer fawr o Gymry nad ydynt yn ei siarad yn rhyfedd o falch o'r ffaith fod yna lefydd yn ein gwlad lle "na chlywch chi ddim byd ond y Gymraeg". Hynny yw mae bodolaeth y cymunedau ieithyddol hyn yn fater dirfodol i bobl Cymru, y tu hwnt i'r rhai sy'n siarad yr iaith.**

## **PWRPAS CYFRAITH CYNLLUNIO**

**Heb gyfraith cynllunio, byddai rhyddid llwyr gan berchnogion a datblygwyr eiddo i wneud beth bynnag a fynnent ar eu tir, o godi adeiladau i brosesu cemegolion gwenwynig. Diben cyfraith cynllunio yw gosod rhyddid trefeddianwyr a datblygwyr yn y glorian a'i bwysu yn erbyn ystyriaethau eraill. Mae'r rhain yn cynnwys buddiannau cymdogion, yr amgylchedd neu'r gymuned, yn ogystal â materion sy'n cael eu hystyried i fod yn rhai y dylid eu diogelu o ran egwyddor e.e. henebion neu ystlumod. Felly er enghraifft, yn achos tyrbeini gwynt, rhoddir yn y glorian ar y naill law hawl y trefeddiannwr a'r angen am ynni glân, ac ar y llall ymyrraeth â byd natur a harddwch naturiol.**

## **EFFAITH RHYDDID Y FARCHNAD AR YR IAITH GYMRAEG**

**Yn achos yr iaith Gymraeg, mae "rhyddid y farchnad" wedi gwneud lles ac wedi gwneud drwg. Er enghraifft, gellir dadlau bod y datblygu dwys a fu yng nghymoedd glofaol y de, cyn bod deddfau datblygu, wedi arwain at ddosbarth gweithiol a dosbarth canol diwydiannol Cymraeg eu hiaith sydd wedi galluogi'r Gymraeg i ddatblygu yn iaith fodern mewn modd na wnaeth yr un iaith Geltaidd arall. Mae hefyd wedi gwneud drwg, er enghraifft, ym maes ail gartrefi a thai haf.**

**Yng nghyd-destun y Gymraeg, gor-ddatblygu stadau tai a throi carafannau gwyliau yn anheddau parhaol ar sail eang yw'r enghreifftiau amlycaf o sefyllfa lle mae yna annhegwch sylfaenol**

**o ffafrio rhyddid y farchnad dros ddymuniadau pobl leol a'u cynrychiolwyr etholedig i warchod natur ieithyddol yr ardal.**

## **PAM FOD RHEOLI DATBLYGU TAI AC ANHEDDAU MOR BWYSIG?**

**Nododd ffigurau'r Cyfrifiad diweddar fod cwmp wedi bod yn nifer y siaradwyr Cymraeg mewn ardaloedd a ystyrid i fod yn gadarnleodd. Mae'r rhesymau dros y cwmp ac ystyr y ffigurau eu hunain yn gymhleth. Yn sicr mae ffactorau cymdeithasol a seicolegol ar waith, yn arbennig o ran trosglwyddo'r iaith o fewn teuluoedd. Ystyriwn fod tebygolrwydd parhad yr iaith a'i throsglwyddiad yn uwch lle mae hi'n fyw fel iaith gymunedol bob dydd, ac mae rhywbeth y gellir ei wneud am hynny.**

**Mae'r iaith Gymraeg a chymunedau Cymraeg wedi croesawu pobl o'r tu allan erioed, ac mae amrywiaeth cyfenwau pobl sy'n siarad Cymraeg (yn Wyddelig, Seisnig, Eidalaid, Llychlynaidd, Ffrengig ac yn y blaen) yn dyst i hyn. Yr hyn sy'n wahanol nawr yw gallu'r cymunedau i gymhathu newydd-ddyfodiaid yn effeithiol, ymdrech a wneir yn anoddach fyth os cynyddir nifer y tai y tu hwnt i anghenion lleol.**

**Dengys gwaith ystadegol Hywel Jones (gynt o Fwrdd yr Iaith) yn eithaf clir fod iaith y "cyfarchiad cyntaf" yn troi o fod yn Gymraeg i fod yn Saesneg pan fo canran y siaradwyr Cymraeg mewn cymuned yn disgyn o dan 70%. Mewn geiriau eraill, does dim rhaid i'r Gymraeg fynd yn iaith leiafrifol cyn colli ei lle fel prif iaith y stryd.**

**Mae caniatáu adeiladu stadau tai mawrion sy'n mynd y tu hwnt i'r galw lleol am dai yn golygu bod y trothwy yma mewn peryg o gael ei gyrraedd yn gynt, gan (1) nad siaradwyr Cymraeg sy'n dod i fyw yno gan fwyaf a (2) fod y niferoedd gyfryw fel na ellir eu cymhathu i'r gymuned leol.**

**Gymaint yn fwy felly yw'r anawsterau i'r Gymraeg mewn llefydd lle mae hi'n iaith fwyafrifol o drwch blewyn, neu'n iaith lleiafrif swmpus. Yma mae'n parhau i gael ei defnyddio fel iaith gymunedol, ond nid iaith y cyfarchiad cyntaf. Mae datblygiadau tai mawrion yn prysuro ei thranc fel iaith gymunedol, ac mae'r ymdrechion i gymhathu hyd yn oed yn anos.**

**Gall cyfraith cynllunio helpu drwy sicrhau bod ystyriaethau fel hyn yn cael eu rhoi yn y glorian wrth ystyried ceisiadau, ac yn dwyn pwysau priodol, fel y mae ystyriaethau sy'n ymwneud â chadwraeth naturiol neu gadwraeth y "dreftadaeth adeiledig".**

**Er enghraifft, yn achos pentref Penybanc yn Sir Gaerfyrddin, lle mae'r Gymraeg yn iaith fwyafrifol o drwch blewyn, fe bleidleisiodd y cynghorwyr yn erbyn adeiladu nifer fawr o dai yn yr ardal ar y sail y byddai hynny'n peryglu sefyllfa'r Gymraeg.**

**Er gwaethaf hyn fodd bynnag, gwyrdröwyd penderfyniad y cynghorwyr yn dilyn cyngor gan y swyddogion cynllunio. Sut all hyn fod?**

**Mae'r ateb i'w ganfod yn natur y gyfundrefn gynllunio ei hun.**

**Sail y gyfundrefn yw deddfau cynllunio a wnaed yn San Steffan ac is-ddeddfau a wnaed gan weinidogion llywodraethau Whitehall a Chaerdydd.**

**At hyn, ceir dogfennau polisi sy'n datgan polisi canolog, a dogfennau "cyngor technegol", sy'n rhoi canllawiau i awdurdodau cynllunio sut i fynd ati i weithredu'r deddfau mewn amgylchiadau penodol.**

**O ran lle'r iaith Gymraeg yn y drefn cynllunio, ac eithrio pedwar paragraff go annelwig ym mhrif Bolisi Cynllunio Cymru, un o'r dogfennau "cyngor technegol" yma, sef TAN 20 fel y'i gelwir, yw'r cwbl sydd gennym.**

## **ANNIGONOLRWYDD TAN 20**

**Yn y lle cyntaf, canllaw yw TAN 20, nid deddf. I'r graddau y bo'n gyfraith o gwbl, cyfraith feddal iawn yw. Dim ond talu sylw iddo y mae'n rhaid i awdurdod cynllunio ei wneud. Os na chedwir ato, beth wedyn? Mae hawl gan y datblygwr eiddo i apelio yn y fath amgylchiadau, ond dim hawl gan y cyhoedd fel y cyfryw.**

**Yn ail, mae TAN 20 yn weithredol ar lefel y cynllun datblygu lleol. Nid yw'n weithredol ar lefel cais cynllunio unigol.**

**Yn drydydd, mae pob TAN 20, gan gynnwys yr un diweddaraf, wedi pwysleisio mai "ystyriaethau cynllunio" sydd yn gorfod bod**

yn drech wrth benderfynu ar geisiadau. Nid ymhelaethir ryw lawer ar hyn, ond mae'n ddigon eglur nad yw gwarchod y Gymraeg yn ystyriaeth o'r fath.

Yn bwysicach na hyn oll, oherwydd nad yw'n ddeddf, gellir *herio dilysrwydd TAN 20 ei hun* yn y llysoedd gan ddatblygwr y gwrthodir ei gais.

Mae mwy na sŵn ym mrig y morwydd fod rhai cyfreithwyr yn cynghori ei bod hi'n gyfreithiol annilys i gymryd sylw o effaith ar y Gymraeg *o gwbl* mewn penderfyniadau cynllunio, a felly bod TAN 20 ei hun yn anghyfreithlon.

Hyd yn oed os yw'r cyfreithwyr hyn yn anghywir, mae'r sefyllfa yn anghytbwys yn ei gwraidd, gan fod nerfusrwydd neu gyndynrwydd ar ran swyddogion a chynghorwyr polisi yn mynd i barhau. Ni ellir eu beio am hyn. Yn y pen draw, asesu risg yw gwaith swyddogion o'r fath. Mae'n haws rhoi cyngor diogel a gwneud penderfyniad na ellir mo'i herio yn y llysoedd, na chreu risg o gyfreitha yn erbyn yr awdurdod cynllunio.

Mewn geiriau eraill, nid yw'n eglur fod yr iaith Gymraeg yn gallu bod yn y glorian o gwbl dan y drefn bresennol, ac os yw yn y glorian, ychydig iawn iawn o bwysau y mae hi'n ei ddwyn. Yn gyfreithiol ac yn ymarferol, mae rhyddid y farchnad a'r datblygwyr yn drech na hi.

## **YR ANGEN AM SYLFAEN MEWN DEDDF**

**Beth sydd i'w wneud felly? Mae angen sicrhau dau beth:**

- yn gyntaf, fod yr iaith Gymraeg yn y glorian,
- yn ail bod ganddi'r pwysau priodol mewn achosion priodol

a hynny heb unrhyw amheuaeth cyfreithiol.

Ni fydd dogfen bolisi newydd na chyngor technegol newydd yn ddigon i gyflawni hyn. Mae angen sylfaen mewn deddf.

Mae'n briodol cymharu sut y mae gan adeiladau hanesyddol, creaduriaid gwyllt ac ardaloedd pwysig o ran cadwraeth naturiol gyfundrefnau statudol sydd yn sicrhau eu bod yn cael eu diogelu

**a'u rhoi yn y glorian mewn achosion cynllunio. Mae deddfau sy'n rhoi dyletswyddau, hawliau a grymoedd penodol i Cadw a Chyfoeth Naturiol Cymru yn rhan o'r cyd-destun hwn. Digwyddodd hyn gan nad oedd cyfraith feddal yn ddigonol i sicrhau'r warchodaeth angenrheidiol.**

## **BETH YW'R ANGHENION?**

**Rhestr siopa fras yw hon, ond dyma y mae Dyfodol i'r Iaith yn credu sydd ei angen:**

- 1. Datganiad statudol diamwys ei bod hi'n gyfreithlon i gymryd ystyriaeth o faterion yn ymwneud â hyfywedd y Gymraeg fel iaith gymunedol wrth ystyried ceisiadau cynllunio. Dyma'r lleiafswm y gellir ei ddisgwyl, ac ni fydd yn costio dim i'r pwrs cyhoeddus.**
- 2. Sefydlu cyfundrefn statudol (ar batrwm Cadw neu Gyfoeth Naturiol Cymru) dan oruchwyliaeth awdurdod lled braich oddi wrth y Llywodraeth sydd yn gyfrifol am ofalu nad yw datblygiadau yn effeithio yn andwyol ar hyfywedd y Gymraeg fel iaith gymunedol. Fel rhan o'r gyfundrefn gellid ystyried dynodi ardaloedd fel rhai o sensitifrwydd ieithyddol, lle byddai rhai mesurau penodol ar waith ee rhagdybiaeth yn erbyn caniatáu datblygiadau sy'n cynyddu nifer yr anheddau y tu hwnt i ryw ganran benodol**
- 3. Camau penodol eraill er mwyn diogelu'r Gymraeg gan gynnwys mewn perthynas ag enwau lleoedd.**

# Agenda Item 5

National Assembly for Wales  
Environment and Sustainability Committee  
PB 44  
Planning (Wales) Bill  
Response from Friends of the Earth Cymru

November 2014



## General principles of the Planning (Wales) Bill A Response by Friends of the Earth Cymru

### Introduction

1. Friends of the Earth Cymru is part of Friends of the Earth England, Wales and Northern Ireland, and supports a unique network of local campaigning groups working in communities throughout Wales. Friends of the Earth Cymru inspires the local and national action needed to protect the environment for current and future generations, and believes that the well-being of people and planet go hand in hand.
2. We welcome the opportunity to respond to the Environment and Sustainability Committee's inquiry into the general principles of the Planning (Wales) Bill and would welcome the opportunity to give oral evidence and discuss this issue further as the committee undertakes its scrutiny.
3. We understand that the terms of reference for the inquiry are to consider the general principles of the Planning (Wales) Bill including the need for legislation.
4. Friends of the Earth Cymru's view is that some of the proposed legislation is unnecessary and counter-productive.

### Sustainable Development

5. We are concerned at the failure to link the Well-being of Future Generations Bill aims and goals with the Planning (Wales) Bill. While Section 39<sup>1</sup> (Sustainable Development) of the Planning and Compulsory Purchase Act applies to the proposed National Development Framework and Local Development Plans, there should be a link on the face of the Bill.
6. We also believe it is essential to set out the purpose of planning in this Bill, and recommend that the Bill states that delivering on sustainable development is that purpose, in line with Planning Policy Wales (PPW). We refer you to paragraphs 1-10 of our response to the draft Planning (Wales) Bill which further outlines the case for this.<sup>2</sup>

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<sup>1</sup> 39(2) The person or body must exercise the function with the objective of contributing to the achievement of sustainable development.

<sup>2</sup> <https://www.foe.co.uk/sites/default/files/downloads/proposals-reform-planning-system-wales-74131.pdf>

7. We would also draw your attention to the Aarhus Convention of which the UK is a signatory and which states in Article 1 Objective *In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.*

### **Public participation**

8. There is duplication between the National Development Framework (NDF) and Strategic Development Plans (SDPs) and we are of the view that SDPs are unnecessary and should be dropped.
9. The most important element of public participation in planning decision-making is the right to be heard in person at local plan inquiries. This has not been afforded to persons affected by the NDF. We also note Article 7 of the Aarhus Convention which states: *Each party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public.* It also refers parties to the need for (Art 6(3)) *“The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public”* and *“for the public to prepare and participate effectively during the environmental decision-making”*. In addition Art 6(4) is extremely important *“Each party shall provide for early public participation, when all options are open and effective public participation can take place”*.
10. We recommend the Committee look carefully at the option of introducing a limited community (third) party right of appeal to rebalance the system, Given that private interests are able to appeal the decisions of planning authorities, it is broadly unfair that communities do not enjoy a set of similar but limited rights for matters of public interest.

### **Plan-led system and spatial planning**

11. Section 8 (making 3 plans in effect the ‘development plan’ for any planning decision by a local planning authority) and the fact that the local plan has to be in conformity with the regional and national tiers, result in a much weakened local plan, with much of its responsibilities stripped away. Section 12 of the Planning Bill gives the Welsh Ministers a power to prepare a joint local development plans.
12. We note that the WLGA in their February 2014 consultation response to the draft Planning Bill expressed concerns: *“Whilst land use planning needs to operate at different spatial levels the relationships between plans need to be clear, their production must be properly synchronised and additional tiers of planning should not be introduced unless it can be clearly demonstrated how they will deliver improvement. The consultation document does not set out clearly what the benefits of proposed changes are expected to be.”*
13. In effect the Welsh Government is taking powers from local government (the opposite of devolution and subsidiarity) when it should be focusing on taking powers from Westminster. We are concerned that this pre-empts the full implementation of the Silk Commission recommendations and the impact of the Williams report in changing structure of local government in Wales.
14. We agree that there is an urgent need to tackle cross-boundary issues which is why we agreed with the principle of the Wales Spatial Plan, and there are clear issues which demand larger than local thinking e.g. mitigation of climate change emissions, adaptation

to climate change, transport, river basin management, major energy projects, and biodiversity.

### **Undemocratic planning**

15. There is no case or evidence that introducing an undemocratic tier of planning and decision-making through strategic planning boards will enable communities across Wales to benefit from a streamlined system. In response to the draft planning bill we obtained legal advice as to the proposals for NDFs, SDPs and Welsh Ministerial decision making, which noted that this “introduces a degree of ministerial control which is unprecedented in England and Wales”.
16. We note that the WLGA have also raised concerns around dilution of democratic members’ roles and the creation of quangos in their response, and we share these concerns.
17. We are extremely concerned that corporate lobby groups who exist to promote private rather than public interest, such as volume house builders, have put themselves forward for the strategic boards (recorded in the Welsh Government’s response to the consultation). This in our view threatens public legitimacy and trust in the decisions that affect communities. Given the care taken to ensure that local planning committee members declare interests etc (see code of conduct for members), we do not see how the proposal to have a set of vested interests with no electoral accountability represented in decision-making can be reconciled with the principles of planning.
18. There must be fully democratic structures for deciding how society deals with issues such as “the strategy, population, strategic housing and employment sites, transport, retail, minerals and waste”.

### **Centralisation of decision-making**

19. Nor do we believe that there is a case for introducing new legislation for ‘developments of national significance’. The Government could merely improve call-in powers, and focus on getting the over 50MW energy powers devolved.
20. Note also that the model for this legislation which is in the English Growth and Infrastructure Act (Section 26 - Bringing business and commercial projects within Planning Act 2008 regime) and the UK Planning Act 2008 (Part 3) sets out types of development and thresholds on the face of the legislation. Section 17 of the Planning (Wales) Bill merely inserts 62D (2) to the TCPA 1990 *A nationally significant development application is an application for planning permission for the development of land in Wales, where the development to which the application relates is of national significance.* The Explanatory Memorandum does state an intention for energy projects between 25MW and 50MW to be classified as Developments of National Significance (3.71) but no thresholds are mentioned for other types of developments.
21. Many significant developments will have huge local impacts – and the costs and impacts of the development will be felt locally (e.g. on services, transport, social and cultural heritage).
22. We would prefer to see an ATLAS style level of support to boost capacity around local government in Wales, to enable there to be a harmonious partnership between the skills and resources required to tackle the decision-making on major projects and the local government role<sup>3</sup>.

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<sup>3</sup> [http://www.atlasplanning.com/page/about\\_atlas.cfm](http://www.atlasplanning.com/page/about_atlas.cfm)

23. Front-loading the development management process by making provision for pre-application services is welcomed but should be better integrated with the process for planning application consultation. The applicant for development has a vested interest in the outcome and therefore is not independent. Concerns are often raised by the public that they are not being listened to. Accountability is an important part of ensuring trust in a system.
24. We are also very concerned about the changes in relation to applications to register town and village greens. Sustainability requires us to think of the long term future of our communities. Land that is used for recreation is a valuable social and public asset, and protecting that land from development increases the value assigned to the area as a whole – both socially and economically. Developers do not necessarily have a long term interest in the area. This Section should be removed.

**The Committee asks whether there are potential barriers to the implementation of these provisions and whether the Bill takes account of them.**

**The Committee’s pre-legislative scrutiny of the Draft Planning (Wales) Bill and the extent to which the revised Bill takes account of the Committee’s recommendations**

25. We are disappointed that so many crucial issues raised by the committee’s pre-legislative scrutiny, and by many respondents to the public consultation to the Draft Planning (Wales) Bill, have not been addressed. We refer the committee to our response and recommendations to the draft bill<sup>4</sup> which support the committee’s recommendations, as well as to specific comments below.
26. We support the Committee’s recommendation<sup>5</sup> to include a Statutory Purpose for planning on the face of the Bill as recommended by the Independent Advisory Panel, and are disappointed to find that it has not be included in the Bill or even discussed in the Explanatory Memorandum (EM).
27. There is a total failure to address the Committee’s request to provide an explanation as to how the revised structures for land use planning are expected to function alongside other regimes such as for natural resources, transport and marine<sup>6</sup>. The Well-Being of Future Generations, Environment, or Heritage Bills are not mentioned in the Bill or EM.
28. No additional clarity has been provided for the definition of a Development of National Significance<sup>7</sup> besides the proposal mentioned in the EM for energy developments between 25 and 50 MW to be categorised as Developments of National Significance.<sup>8</sup>
29. It is highly disappointing and of great concern that neither the Bill nor the EM contain a clear statement, as recommended by the Committee and by Planning Aid, setting out how the public can engage at each level of the proposed development plans<sup>9</sup>.
30. The Committee’s concerns over Strategic Development Panels, including that a third will be non-elected members, has not been addressed and the Government has not included in the Bill any way that ensures local communities will be heard in the planning process.

<sup>4</sup> <https://www.foe.co.uk/sites/default/files/downloads/proposals-reform-planning-system-wales-74131.pdf>

<sup>5</sup> Environment and Sustainability Committee letter to Carl Sargeant, Minister for Housing and Regeneration, on its findings and recommendations following scrutiny of *Positive Planning* and the Draft Planning Bill, 10 April 2014,

<sup>6</sup> Ibid at para 2.6

<sup>7</sup> Ibid at para 4.3

<sup>8</sup> Explanatory Memorandum at para.3.71

<sup>9</sup> Supra 3 at para.2.3

The EM merely asserts that the unelected members will comprise of representation from social, economic and environmental organisations, however this has no statutory footing.

31. The Bill fails to deal with the current delivery arrangements for planning in Areas of Outstanding Natural Beauty or give them equal protection from inappropriate development as is given to National Parks.<sup>10</sup>

### **Whether there are any unintended consequences arising from the Bill**

32. In our view there are four major unintended consequences.

33. The first is that the local plan-led system is undermined because of the need to align three tiers of statutory plans. Transition, timings and co-ordination could mean that Wales simply has no effective development plan system for a number of years. In our view the local plan should remain the pre-eminent plan, and the Welsh Government should aim to maintain stability and ensure that plans in Wales are not immediately rendered out of date either by new legislative arrangements or unnecessary changes to PPW. While developers may welcome a free for all, the costs of speculative and short term decisions on development will fall on the taxpayer and local communities. We recognise that there are problems with the current local plan making system which need to be resolved, such as the flawed population projections to determine the demand for housing, but local plans remain the cornerstone of local land-use planning and public involvement.

34. The second unintended consequence is the impact on public participation and democratic accountability.

35. With regard to public participation, this happens in two ways;
- a. By undermining the local plan, the right to be heard and contribute through local plan inquiries becomes devalued as the plan's value and influence on development decisions falls or disappears.
  - b. Centralised decisions that bypass local government mean that opportunities such as speaking rights at planning committee, and the opportunity to speak to ward councillors or local planning committee councillors in people's local area are no longer relevant. It is clear that there is more value to the public in speaking at planning committee than there is in submitting a consultation response which can easily be set aside by national decision-makers.

36. In terms of democratic accountability, the democratic deficit is widened when the decisions are made nationally by Ministers on an increased number of decisions, or regionally by Boards that are not fully democratically representative.

37. Thirdly, there could be a perverse incentive for developers to scale up their proposals, e.g. for housing developments, in order to fall under the definition of Developments of National Significance and be subject to what might be seen as less rigorous process of decision by Welsh Ministers. This could result in housing developments that are not appropriate for the needs of the community.

38. And fourthly, the ability for developers to "bypass" local authorities is considered in the Impact Assessment as having the effect of reducing the number of applications made to an 'average' local planning authority by 50% (para 7.432 of the Regulatory Impact Assessment) – that has been designated as 'poorly performing'.

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<sup>10</sup> Ibid at para. 3.5

**The financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum, the Regulatory Impact Assessment, which estimates the costs and benefits of implementation of the Bill)**

39. We are concerned that the Welsh Government has not looked at the external costs and benefits for communities, having engaged with authorities and the development industry as explained in the Regulatory Impact Assessment: “The costs and benefits associated with each option have been produced using the best available information at the time. This information has been prepared through discussion with key stakeholders, including the Welsh Local Government Association (WLGA) and development industry.”
40. Indeed we cannot understand why the Welsh Government uses figures presented by the UK Secretary of State, Eric Pickles, in a speech in September 2011 as evidence, and the Killian Pretty Review, which was criticised at the time for failing to quantify the benefits of planning regulation.
41. The costs for the introduction of SDPs is put at £3.5 million, and interestingly relies on a ‘light touch’ LDP. It says that it will reduce “duplication” but essentially the same planning job will have to be done and planning departments are currently under-resourced. This figure is in our view is probably an under-estimate. And there is no indication of how the costs will pan out after local government reorganisation. We are concerned that there does not seem to be a reference to Audit Office figures here and would welcome clarification. Nor does the Welsh Government consider the “cost” to communities, it merely says that it will result in lower costs for the development industry as they will have to take part in fewer inquiries (paragraph 7.71 of the Regulatory Impact Assessment).
42. There is no estimate of the “external” costs – only the “cost of delay” to the development industry is quantified. This is a very internalised view of costs which says nothing about the costs to services, the public purse and the wider economy about decisions made poorly and in haste because of a particular private interest driver.

**The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum, which contains a table summarising the powers for Welsh Ministers to make subordinate legislation)**

43. Given the increase in Welsh Ministerial powers over planning decisions and structures that this Bill confers, we would recommend caution in the provision of significant further powers for Welsh Ministers to make subordinate legislation.
44. In particular we are concerned about the powers conferred in Section 17 relating to the criteria and type of developments to be dealt with as Developments of National Significance, and Section 22 - the procedure for considering applications made to Welsh Ministers.
45. If such decision-making powers are to be put in the hands of Welsh Ministers there should at the very least be assurance that the procedures for considering and determining those applications are to be fully scrutinised and open to amendments by the Assembly. Otherwise the power lies completely in the Minister’s hands not only as to what type of application they should decide upon, but how, to what timescale and who to consult. This is an unacceptable level of control to rest in a Minister’s hands.
46. A series of checks and balances is essential, and we would recommend that these provisions are set out in primary legislation to ensure full scrutiny and Assembly involvement, with changes made by Affirmative procedure in future.

**The measurability of outcomes from the Bill, i.e. what arrangements are in place to measure and demonstrate the fulfilment of the Welsh Government's intended outcomes from making this law.**

47. We would welcome clarification on the monitoring and reporting mechanisms that measure the positive benefit of the planning system i.e. in delivering affordable homes, ensuring adaptation and securing amenity and high quality places to live and work with connected services and so on.

**Conclusion and summary**

48. We are disappointed that this Bill as drafted would be a step backwards for public participation and local democracy in Wales, does not embed sustainable development in the planning process, and does not answer the concerns expressed by many organisations, and the Committee, during consultation on the draft Bill.

49. We would recommend the following key changes to this Bill;

- That the Bill states that delivering on sustainable development is the purpose of planning, and refers to the Well-being of Future Generation Bill.
- That the Welsh Government drop the proposals for Strategic Development Plans and Boards. These will duplicate the NDF on the one hand and the LDP on the other. However for cross border issues such as adaptation or river basin management, transport and biodiversity, it could be useful to prepare regional spatial evidence bases (that can be held as part of the NDF) and regional specific policies that could be adopted into the local development plans.
- That the Welsh Government drop the proposals for enabling developers to bypass local authority planning processes either due to those local authority in question being designated or the proposal being Developments of National Significance. Call-in powers should be improved instead.
- That the Bill introduce a community right of appeal to help redress the balance between developers and local communities, to create greater accountability, and enhance public participation in decision-making.

We would welcome the opportunity to give oral evidence to the committee during the scrutiny process.

## Open Spaces Society response to call for evidence: Inquiry into the general principles of Planning (Wales) Bill

### Summary

- The Open Spaces Society objects to part 7 of the Planning (Wales) Bill which will prevent local people from applying to register land as a town or village green when it is threatened with development.
- There is no evidence that the TVG process is undermining the planning process.
- The changes will severely prejudice local people, their health and well-being.
- We propose alternative measures which bring the village green process closely in line with the planning process, remove vexatious applications and speed up determination, without amending the law.

The Open Spaces Society (formerly the Commons, Open Spaces and Footpaths Preservation Society) 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, throughout England and Wales.

The society took a lead role when the Commons Bill (now Commons Act 2006) went through Westminster. It is this 2006 Act which the Planning (Wales) Bill proposes to amend. We are a statutory consultee under the Commons Act 2006. The society is represented on Wales Environmental Link and the Welsh Commons Advisory Group. We work with community councils, local authorities and the public. We are named as statutory consultees in regulations, under Playing Fields (Community Involvement in Disposal Decisions) (Welsh) Measure 2010.

This response deals solely with Part 7, 'changes in relation to town and village green legislation'. The society believes there is no need to introduce these provisions.



The Society strongly disagrees with the suggestion that the proposals strike a balance between the need to preserve land used as a town or village green (TVG) and providing greater certainty for developers. There is no evidence that the TVG process is undermining the planning process. The Independent Advisory Group (IAG) report concluded that the planning system is conceptually sound and not in need of root-and-branch reform. At point 5.58 the report stated that parallel procedures should be permitted unless there is a good reason for putting a planning permission in place first.

The report confirms that responses from town and community councils, other voluntary groups and the public showed it was difficult to engage in the LDP process or to influence policy decisions due to the combination of complexity, length of process and lack of transparency.

The IAG report notes the conclusion of the Penfold report; however the proposals go way beyond Penfold's conclusions. Penfold's recommendation H was that there be a review of the operation of the registration of TVGs in order to reduce the impact of the current arrangements on developments that have received planning permission. The report concluded that where the possibility of a TVG application has been considered as part of planning, the subsequent granting of planning permission should then provide protection from TVG application for the duration of the permission.

There is little evidence to justify such a proposed restriction on TVG applications. We are dismayed that the Welsh Government should advocate change when it has no up-to-date evidence to prove that change is necessary. We are also dismayed that it proposes to copy the Westminster Government in making these changes.

The Society proposes amendments to regulations and guidance, rather than new legislation, to improve the current system (see our appendix 1).

### **Potential barriers to the implementation of these provisions**

One of the main difficulties is to align the greens system more closely to the planning process and to enable local people to apply to register rights to use land as they have for many years, while ensuring there are no delays.

To clarify, the Penfold review 2010 was concerned with consents required for a development other than for planning permission. It identified changes to ensure greater certainty, speedier decisions and reduced duplication. Non-planning consents (of which the village green process is but one) play an important role in delivering a wide range of government objectives. We trust that all of these are being looked at, rather than singling out the village green process, which has little or no impact on the planning system.

Across Wales over 90 per cent of planning applications are granted consent, 80 per cent of which are determined by some authorities within eight weeks (Independent Advisory Group report). We urge you to consider carefully the Penfold recommendations, which were that there be a review of the operation of registration of town and village greens in order to reduce the impact of the current arrangement on developments that have received planning permission. The report concluded that, where the possibility of a town or village green application has been considered as part of planning, the subsequent granting of planning permission should then provide protection from town or village green applications for the duration of the permission.

## Unintended consequences

Our fear is that people will not know that the land they have used and loved is under threat from planning until it is too late to save it. Most people do not engage with the planning system, nor do they know that in order to protect their customary use of the land they must register it as a green. It is only when land is under threat that they realise that their use and enjoyment of it is at risk. It is grossly unfair to local people to introduce a system whereby they lose their rights with no opportunity to record them.

Green spaces in urban and suburban areas are vital for the health and well-being of the population, it is essential to have places where people can walk and children can play, which are close to home. These spaces may not be anything special, just a bit of scruffy land perhaps, but they give people a sense of place, and are of crucial importance. The proposals undermine the ability of local people to protect the places they love.

We feel that speculative planning applications will be made deliberately to engage one of the proposed new 'trigger events' and this will prevent genuine applications to record the historic rights of local people who have used the land for recreation for many years. The introduction of the landowner statements further restricts the rights of local people to apply to register land as a village green.

## Financial implications of the Bill

The Department for Environment, Food and Rural Affairs (Defra) carried out a recent survey of village green applications (published June 2014). The figures show there are still few applications and that the new system, (following amendments to the Commons Act 2006 in England) with the cost of introducing it, has not reduced the total number of applications. Officer hours have more than doubled from 67 in 2011 to 148 in 2013. The number of applications is still low and in 2013 was only one fewer than in 2011 (2011: 123 applications; 2012: 132; 2013:122). However no such surveys have been carried out in Wales.

In addition new guidance and training will need to be provided.

The changes proposed in the Bill will require additional work for all planning authorities who will have to carry out research and respond to questions from the officers processing town and village green applications as to whether any 'trigger events' from Schedule 6 have taken place.

## Conclusion

The Society proposes a more balanced approach.

1. Before allocating land for development, the local authority must be satisfied that the land is not capable of being registered as a town or village green, ie that local people have not enjoyed 20 years use of the land for informal recreation without being stopped or given permission.
2. If the authority is not satisfied with this, it must give early notification to local people so that they may gather evidence and submit an application for registration as a green if they wish to do so. The authority may allow sufficient time for local people to do this and must not process a planning application until the green status is resolved.

3. In addition, the process for registering town and village greens could be improved and should empower registration authorities to reject vexatious applications, as proposed in our appendix 1.

The Welsh Government has, in implementing other parts of the Commons Act, taken a different and better route than England. For instance, there has been no implementation of Part 1 of the Act, concerned with amendments to the common-land register, before the register has been digitised. We welcome the provision of funding by the Welsh Government for research in this area.

There are no exemption orders for works on common land in Wales, all works require ministerial consent. The severance provisions, allowing leasing of grazing rights, have been introduced in line with *Glastir* for the protection of common land.

In England, however, the government has attempted to mitigate against the draconian measures which restricted the rights of local people to apply to register land as a town or village green, (as contained in this Welsh Bill). This is the Local Green Space (LGS) designation, introduced under the National Planning Policy Framework (2012). This provision allows local people to apply to register the land as an LGS if it satisfies the criteria. The land then receives enhanced protection. While we are sceptical of the effectiveness of LGS and have yet to see how it will work, we are concerned that there appear to be no mitigation measures accompanying the Planning Bill.

We urge that the society's alternative proposals are considered and adopted. Representatives from the society have met the Minister, Carl Sargeant, and we should welcome the opportunity to continue discussions to find a workable solution.

Nicola Hodgson  
Case Officer  
6 November 2014



## Appendix 1

### Village greens in Wales The Open Spaces Society's proposals to improve practice and guidance without changing the law

The Open Spaces Society is calling for the following changes in law and procedure to safeguard land which in Wales which is registrable as a town or village green.

#### New provisions in planning law

Before allocating land for development, the local authority must be satisfied that the land is not capable of being registered as a town or village green, ie that local people have not enjoyed 20 years use of the land for informal recreation without being stopped or given permission.

If the authority is not satisfied of this, it must give early notification to local people so that they may gather evidence and submit an application for registration as a green if they wish to do so. The authority must allow sufficient time for local people to do this and must not process a planning application until the green status is resolved.

#### New guidance for greens registration authorities (no change in law needed)

##### Reduce the time and cost of determining greens applications

1. Tighten up the process whereby registration authorities determine that an application is 'duly made', by requiring applications to pass a basic evidential test. For instance, this could be a minimum number of evidence forms (perhaps related to the population of the locality or neighbourhood). If an application does not pass the test, it can be resubmitted with better evidence, but within a limited period.

##### Introduce time limits through the process

2. At present, the only statutory time-limit in the process is that the registration authority must allow a period of not less than six weeks, after an application has been published, during which objections can be lodged. We suggest the introduction of time limits as follows.
  - (a) The authority to determine when an application is duly made within x weeks of receipt.
  - (b) The authority to inform the applicant whether the application is duly made within x days of determination.

- (c) The authority to publicise the application within x weeks of determining that it is duly made.
  - (d) The authority to determine the application within x weeks of the closing date of notice period.
3. The authority to have the power to dismiss irrelevant objections.
  4. Applications normally to be determined by written representations or occasionally a hearing, not an inquiry. Use the Planning Inspectorate not barristers as inspectors.
  5. Decisions to be delegated to a subcommittee of the registration authority, which meets as often as is necessary to determine them.
  6. Introduce a simple appeal process (eg some form of tribunal) for both side, to avoid judicial review.

### **Deterring vexatious applications**

7. Introduce an application fee, which is recoverable if the application is deemed to be valid.
8. Introduce a power to award costs against applicant where application is clearly fraudulent.

### **Attempting to reach agreement**

9. Once an application is judged to be duly made, the registration authority consults the landowner to see if an agreement can be reached, between those with an interest in the land and the applicant, perhaps leading to a voluntary registration of the area, or part of the area, applied for, or for another area in exchange.

### **Ensure greater awareness between local authority departments**

10. Duly-made greens applications to be logged with planning departments, and planning departments to inform registration departments of any planning applications affecting a potential green (CCRI research report 2009\*, para 7.7.1 and 2). Successful greens applications logged with planning department (7.7.3).
11. Local planning authority to consult commons registration officer in preparing Local Development Plans and LDPs to be sent to commons registration officer on adoption (7.7.5).

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\*'Study of determined town and village green applications', by the Countryside and Community Research Institute (CCRI) and Asken Ltd, commissioned by Defra and published October 2009.



## Environment and Sustainability Committee

### Planning (Wales) Bill: Consultation on general principles

#### Submission by Planning Aid Wales

#### 1. About Planning Aid Wales

1.1 Planning Aid Wales is the independent charity providing planning aid services in Wales. With funding support from Welsh Government we work to help individuals and communities engage more effectively with the planning system. We provide impartial information and guidance via a website, guidance publications, an advice Helpline and training programmes. We also work with planning authorities and Welsh Government to encourage meaningful community involvement in the planning process.

1.2 Our services are delivered by a small staff team supported by a Wales-wide network of around 70 planning and community volunteers. An independent Management Board of Trustees oversees the running of Planning Aid Wales and sets the direction and strategy for the organisation. For more information, please visit:

<http://www.planningaidwales.org.uk/about-us>

1.3 When seeking to influence national policy development, Planning Aid Wales aims to make the planning system more accessible and equitable by removing barriers to community involvement.

#### 2. Key issues

2.1 Our observations on the general principles of the Planning (Wales) Bill fall under four main headings: Integrated explanation of planning hierarchies; Development plan hierarchy; Development management hierarchy, and; Pre-application consultations.

##### Integrated explanation of planning hierarchies

2.2 The Planning (Wales) Bill as introduced will significantly change the 'shape' of the Welsh planning system. The changes will have significant impacts on the opportunities available for local communities to understand and engage meaningfully with the main components of planning process - development plan preparation and development management.

2.3 Our experience of helping local communities to engage with the planning system demonstrates that understanding the general ‘shape’ of planning is an essential prerequisite before effective engagement can happen. Without some understanding of broader context, communities seeking to influence outcomes in the planning process are placed at a disadvantage. This applies to community involvement in both plan-making and deciding planning applications.

2.4 **An integrated and carefully structured explanation of the new planning hierarchy is needed to help address this.** The explanation, or ‘route map’, should express clearly all the opportunities for public participation in planning, from the national strategic level down to implementation on the ground. The route map will help local planning authorities, developers and others to engage more fruitfully with communities when they seek useful comments on planning applications or set out to involve the public in plan-making.

2.5 To generate maximum benefit, the route map will need to make explicit the links between principal elements of the proposed development plan and development management hierarchies. Examples of the need to explain such links are between the National Development Framework and Developments of National Significance, or between the Local Development Plan and Major Developments, or between the Local Development Plan and Place Plans.

2.6 While these links may be evident to the seasoned planning professional, our experience suggests that lay people will struggle to understand and engage with the reformed planning process without a carefully crafted route map to illustrate the connections.

### **Development plan hierarchy**

2.7 The new hierarchy will introduce two completely new elements - the National Development Framework and Strategic Development Plans (SDPs). Local Development Plans will continue to be prepared for each planning authority area, but in conformity with the National Development Framework (and SDP if applicable).

#### *National Development Framework*

2.8 There is no clear strand of public engagement proposed for preparation of the National Development Framework (NDF), which will be the most important part of the Development Plan for all parts of Wales. **There needs to be systematic and early engagement of the general public, local communities in areas of likely development pressure, and other stakeholders in devising a shared vision for Wales.**

2.9 The proposals for preparing the NDF will be less rigorous than for a Local Development Plan, and there will be less opportunity to ensure it is robust. The

Framework will be produced in-house by Welsh Government with public engagement limited to a statutory twelve week period.

2.10 Since the NDF will provide a framework for decisions taken on Developments of National Significance, and all Strategic Development Plans and Local Development Plans will need to be in conformity with it, it is vital that there are clear opportunities for the general public to be involved in its preparation.

#### Strategic Development Plans

2.11 In those areas where a Strategic Development Plan is proposed, there need to be meaningful opportunities for local communities to participate directly in its preparation process.

**2.12 Planning Aid Wales recommends introduction of a statutory mechanism to allow proportionate and effective community engagement during the early stages of Strategic Development Plan preparation.** Such a mechanism will help to manage expectations whilst maintaining public confidence in the planning system.

2.13 Local community interests should also be represented on the SDP Panels. This is important given that one third of the members will not be democratically elected, eroding the necessary links between communities and decisions on strategic plans.

#### Local Development Plans

2.14 Planning Aid Wales identifies the early, strategy-setting stages of Local Development Plan preparation as a particularly effective and meaningful route for community engagement in planning. It is vitally important that early-stage community engagement is conducted by local planning authorities as a concrete demonstration of their, and the Welsh Government's, commitment to maintaining a transparent and accountable planning system.

#### Clarification of the role of Community and Town Councils and Place Plans

2.15 Planning Aid Wales strongly supports the principle of Place Plans and we are committed to helping Welsh Government achieve its objectives for community engagement through Place Plan preparation.

2.16 However, local communities in those areas without a community or town council (comprising around 30% of the Welsh population) will not have an opportunity to work with local planning authorities to develop Place Plans. Urban areas in particular, where development pressures tend to be concentrated, have relatively poor local council coverage.

**2.17 We urge consideration of a mechanism allowing preparation of Place Plans (or equivalent) in areas not covered by community or town councils.**

**We also suggest that planning authorities should be encouraged to work with groupings of community or town councils to develop Place Plans.**

**2.18 We also consider that secondary legislation is needed to usefully define the role of Community and Town Councils in planning, preparation of Place Plans and requirements on local planning authorities to support their preparation.**

### **Development management hierarchy**

2.19 The development management hierarchy will introduce new elements including Developments of National Significance, Direct Applications to Ministers, and pre-application consultation on Major Applications. There will be new ways of processing some planning applications and changes to the opportunities offered to third parties to be involved in decision-making, which have the potential to create confusion.

**2.20 As above (paras. 2.2 to 2.5), we see the need for a clear route map showing the opportunities that will be available for the public to participate in decision-making on the different types of planning application at different levels in the new development management hierarchy.**

### **Pre-application consultations**

2.21 Planning Aid Wales supports the principle of pre-application consultation on major developments. However, it will only be of value if it is done well. A current Welsh Government consultation (*Frontloading the Development Management System* – see: <http://wales.gov.uk/docs/desh/consultation/141006frontloading-consultation-document-en.pdf>) outlining proposed procedures to be followed by scheme promoters suggests that the full potential is unlikely to be realised. In essence, the consultation envisages promoters of major schemes as consulting local people before the application is submitted in much the same way as the planning authority will consult local people once the application is submitted. Care will be needed to ensure that this new process adds value and does not contribute to consultation fatigue.

**2.22 Our work with local communities demonstrates that robust consultation processes serve to improve people's trust in the planning system, while poor consultation experiences often serve to undermine confidence.**

# Environment and Sustainability Committee Planning Bill

## Sustrans submission to Environment and Sustainability Committee's inquiry into the Planning (Wales) Bill

November 2014

### Summary

1. Sustrans Cymru welcomes the opportunity to contribute to the committee's enquiry into the Planning (Wales) Bill as introduced by the Welsh Government. We previously responded to the consultation on the "Positive Planning" White Paper issued by the Welsh Government.<sup>1</sup>
2. Sustrans is a leading UK charity enabling people to travel by foot, bike or public transport for more of the journeys we make every day. We work with families, communities, policy-makers and partner organisations so that people are able to choose healthier, cleaner and cheaper journeys, with better places and spaces to move through and live in.
3. While having clear national guidance on planning strategy is important, we have concerns that the Planning (Wales) Bill could negatively impact on local community involvement in the planning process. In particular, the creation of Strategic Development Plans (SDPs) adds an extra tier higher up in the process.
4. We welcome the fact that transport is now considered a key element of SDPs. In the White Paper transport was not listed as a key area for cross local authority planning. Travel to work areas cross local authority boundaries, and with the effective dissolution of the Regional Transport Consortia, it is important there is a mechanism for combining transport and planning at a regional or travel to work area level.
5. Town and Village Green applications are often used in a way that was not intended, and as a delaying tactic. As a smaller organisation, the time and cost of dealing with these applications can be costly. We support the Welsh Government's planned reforms of Town and Village Green applications, but it is of vital importance that community involvement in the planning process is increased in other areas.
6. There is a clear link between planning and public health – for example by designing our communities so that cycling and walking is the most direct way to get around. The legislation could aid this by introducing mandatory Health Impact Assessments in certain circumstances, and by making Public Health Wales a consultee at a national and strategic planning level.

### National Planning Framework and Spatial Development Plans

7. Sustrans Cymru believes that planning system has greater potential to engage with local communities, ensuring active community participation to utilise land for the public good. As part of our work, we engage local people at the earliest possible stage in shaping their communities; for example as part of the 'Greener Grangetown' project with Welsh Water, and our recent National Cycle Network (NCN) programme funded by the Big Lottery Fund, where each project had a local steering group involving members of the local community.
8. However, there is a role in planning for national and regional strategy. New national strategy that comes out of the National Development Framework could be useful in helping to 'tidy up' existing planning policies. Lessons should be learnt from the development of the National Planning Policy Framework in England, however, where in places there have been discrepancies between policy and guidance. It is important that all participants in the planning system can have a clear understanding of policy and guidance.
9. There is also need for planning at a sub-national level, which crosses local authority boundaries. In particular, travel to work areas cross council boundaries and so planning policy needs to be developed across authority boundaries.
10. In section 5.29 of the Positive Planning White Paper, transport was not listed as a key issue that the SDPs would need to cover. We welcome the alteration in the draft Bill, which makes it clear that transport is crucial in cross authority planning. This is especially important considering the effective dissolution of Regional Transport Consortia, bodies which had previously assumed a role in regional transport planning and delivery.
11. While these national and regional plans are important, Sustrans is concerned that the legislation moves planning policy further away from local communities and will become overly centralised. There is a risk that while the national framework approach will provide greater certainty for developers, that local issues and communities could be disengaged from the process. We believe the legislation could be improved to ensure greater community involvement as part of the planning process.
12. In principle, Sustrans Cymru has no objections to pre-application notification and consultation. However, the Bill does not make it clear how non-statutory bodies and members of the public can engage with these processes on matters of national significance. We would welcome additional guidance in this area.
13. Moreover, as written the Bill may place local authorities and local communities on the defensive when it comes to new development in Wales and may mean only well-resourced national groups could get involved in the process. Sustainable Development is built around the involvement of local communities in their own future
14. Community involvement is an essential element in delivering sustainable development, and reform of the planning system must ensure that people are able to shape their surroundings more effectively.<sup>2</sup>
15. With local government reform on the horizon following the reporting of the Williams Commission, Sustrans would welcome further information as to how the legislation and guidance will be future-proofed. In particular, a reduction in the number of councils would impact on SDPs. As the City Regions develop, we would welcome further clarity about how this level of governance would be included as part of the planning process.

## Town and Village Green applications

16. Sustrans – in Wales and across the United Kingdom – has experience of dealing with Town and Village Green applications. Our main work is building (or supporting the building of)

paths for active travel. It is unclear, both to developers and communities, about what level of development is permitted on a Town and Village Green.

17. We have also begun to see this legislation used retrospectively as a delaying tool by local communities to prevent agreed development. This can add significant delays and costs, which can put projects at risk. In Wales, the majority of funding for walking and cycling projects from the Welsh Government comes in an annual cycle, meaning unexpected delays in the planning system can cause the cancellation of a project.
18. As we have expressed earlier in our response, it is important to engage local communities in the development of their community. This is why, for example, we gave evidence calling for extensive consultation as part of the Active Travel (Wales) Act.<sup>3 4</sup>
19. Sustrans, therefore, supports the Welsh Government's plans to reform the application of registering Town and Village Greens, but we stress that the planning system must support increased community engagement at earlier stages.

## Other issues

20. Sustrans Cymru supports the provisions to allow an appeal against a Local Planning Authority (LPA) failing to lodge a planning application. Sustrans Cymru is involved in a number of planning applications where the LPA is unfamiliar with the detail and therefore can request an inappropriate amount of material to validate the appeal.
21. On occasion, information provided by LPAs can be conflicting and lead to extended delay. For example, incorrect information on how to provide payment to register a planning application can cause delay. Therefore, Sustrans Cymru supports the ability to appeal against the non-registration of a planning application by an LPA.
22. We are concerned that introducing fees to cover the costs of Welsh Ministers may make it impossible for smaller organisations, local communities and individuals to appeal planning decisions, and we would welcome further information and guidance as to how this would work in practice.
23. There are clear links between planning and improving public health; for example by designing our communities so that cycling and walking become the normal and obvious way to make everyday shorter journeys. Sustrans believes there is merit in making Public Health Wales a statutory consultee as part of the planning process, and bringing forward Health Impact Assessments (HIAs) to ensure that public health considerations are taken into account.<sup>5</sup>
24. Sustrans Cymru believes that local communities can benefit from the planning system through the application of section 106 funds and the Community Infrastructure Levy. Therefore, it is important that the Planning Bill aids local communities in making the most of these funding streams.
25. Sustrans Cymru recognises the need to review the role of Design and Access Statements, however we are concerned that without guidance on their future use this change will send the wrong message to developers. In preparing schemes it is important that developers demonstrate how the design and layout of a proposed development will provide safe and attractive routes and how these will link with existing communities and facilities.
26. The Design and Access Statement should be a tool for communicating how these decisions are made and how all users will be accommodated in the development. It is also an

opportunity for developers to explain how the local community have been involved in identifying and prioritising routes and links and contributing to the design process overall.

## Conclusion

27. Sustrans Cymru has no practical objection to a National Development Framework or Strategic Development Plans. However, we believe the planning system should support local community involvement, and we remain concerned that this legislation provides clarity for developers, but risks making it more difficult for local communities to engage.
28. We welcome the inclusion of transport as a key element of Strategic Development Plans.
29. We support the Welsh Government's proposed changes to the registering of Town and Village Green applications, but urge caution that this change must come while ensuring local communities have real say in the planning of their local area.
30. The legislation could develop a greater link between planning and public health.

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<sup>1</sup> Sustrans Cymru submission to Welsh Government's Positive Planning White Paper Consultation, February 2014 <http://www.sustrans.org.uk/sites/default/files/images/files/2014-02%20Positive%20Planning%20Welsh%20Government.pdf>

<sup>2</sup> Civic Voice response to the Department of Communities and Local Government's review into the National Planning Policy Framework, February 2011, [http://www.civicvoice.org.uk/uploads/files/National\\_Planning\\_Policy\\_Framework\\_Civic\\_Voice\\_submission.pdf](http://www.civicvoice.org.uk/uploads/files/National_Planning_Policy_Framework_Civic_Voice_submission.pdf)

<sup>3</sup> Sustrans Cymru response to Enterprise and Business Committee enquiry into the general principles of the Active Travel (Wales) Bill, March 2013

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<http://www.sustrans.org.uk/sites/default/files/images/files/policy/submissions/2013-03-08%20Enterprise%20and%20Business%20Committee%20Written%20Evidence%20AT%20Bill.pdf>

<sup>4</sup> Sustrans Cymru response to the Welsh Government consultation on the Delivery Guidance accompanying the Active Travel (Wales) Act, July 2014, <http://www.sustrans.org.uk/sites/default/files/images/files/2014-07%20Active%20Travel%20Act%20Delivery%20Guidance.pdf>

<sup>5</sup> Sustrans Cymru submission to Welsh Government's Public Health White Paper Consultation, May 2014, <http://www.sustrans.org.uk/sites/default/files/images/files/2014-05%20Public%20Health%20White%20Paper.pdf>

# Agenda Item 7.1


Carl Sargeant AC / AM  
Y Gweinidog Cyfoeth Naturiol  
Minister for Natural Resources



Llywodraeth Cymru  
Welsh Government

Eich cyf/Your ref  
Ein cyf/Our ref LF/CS/1240/14

David Melding AM  
Chair  
Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
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 December 2014

Dear David

## **Planning (Wales) Bill**

Thank you for inviting me to the Constitutional and Legislative Affairs Committee on 10 November 2014 to give evidence on the Planning (Wales) Bill.

As noted in your letter of 21 November, I committed to provide the Committee with further information on a number of issues. The information is provided below with some further details to clarify certain points raised by Members of the Committee. Dealing with each of the points in turn:

### **1. The overlap between the Planning, Well-being of Future Generations and the Environment Bills**

Please find attached at Annex 1 the document which I referred to during the Committee session outlining the links between the Planning Bill, Well-being Bill of Future Generations Bill and the Environment Bill.

### **2. Whether pre-application advice would be subject to the provisions of the Freedom of Information Act 2000?**

The subordinate legislation in connection with the pre-application services will make provision for and in connection with when the pre-application services are required to be provided, the nature of the service and the requirements for the documents and information to be published. This will require local planning authorities and the Welsh Ministers to retain records of pre-application services and to publish information on

the type of pre-applications services provided. This will ensure that the process is open and transparent.

Any Freedom of Information request received by the Welsh Government or a local planning authority in relation to information held on pre-application services would be subject to disclosure. However, deciding whether information is to be released would depend on whether the public body are bound to protect that information. In disclosing information a public body has to follow the law relating to handling information. There are three main pieces of legislation governing handling of requests for information:

- Data Protection Act (DPA) 1998.
- Freedom of Information Act (FOIA) 2000.
- Environmental Information Regulations (EIR) 2004.

I mentioned in scrutiny that I would need to seek advice on whether there is competence in relation to FOI requests. This was in relation to seeking advice in relation to human rights implications of disclosing information. I am reassured that there are no issues of competence in relation to the disclosure of information.

### **3. The meaning of Developments of National Significance; (DNS).**

In Positive Planning, I consulted on the proposal that the Welsh Ministers would in future determine applications defined as Developments of National Significance. Positive Planning described DNS as:

“few in number but of greatest significance to Wales because of their potential benefits and impacts. They may raise complex technical issues... Ultimately, many of these applications already fall to the Welsh Ministers to decide, either as a result of being called in, or, on appeal.”

The proposed categories and thresholds for DNS were published in Annex B which, I have reproduced as Annex 2 to this paper. Almost 70% of respondents agreed with the categories in Annex B, some respondents commented that the LPAs do not have the required expertise in relation to some of the issues. Respondents also noted that the criteria for DNS should be flexible enough to allow for amendment and extension.

Positive Planning also consulted on the process for considering these applications, including the need for mandatory pre-application consultation, with 97% of respondents agreeing with this proposal. Similarly, there was widespread support for charging of fees for pre-application advice on DNS applications.

In relation to connected consents, the majority of respondents, 81% agreed with the proposal for handling connected consents and believed it would bring benefits in terms of a more comprehensive consideration of an application and that a single decision making body would speed-up the process. Comments also noted that the process would benefit the public and consultees as they would be able to fully consider the impacts of a scheme as a whole at the start of the engagement process.

DNS will also be specified by the Welsh Ministers in the National Development Framework (NDF) document, which is subject to a 12 week public consultation

process followed by Ministerial consideration. The final draft NDF will then be laid before the Assembly for approval for a period of 60 days. It is only these developments and those that meet the criteria set out in the regulations that will be DNS. The NDF can be reviewed and revised at any time subject to further scrutiny. Guidance will be produced outlining this process.

- 4. The reasons for the use of the negative and affirmative procedures in respect of new sections inserted into the Town and Country Planning Act 1990 by sections 44 and 45 of the Bill. In particular, why when both section 44 and paragraph 18 of Schedule 4 to the Bill impose financial burdens on the public, you have chosen the affirmative procedure for paragraph 18 of Schedule 4 (inserting section 303(1B)) and the negative procedure for section 44 (inserting section 322C).**

Paragraph 18 of Schedule 4 applies to fees charged by the Welsh Ministers in relation to the performance of functions undertaken where an application is submitted to them. Those fees are charged in advance of the making of an application and may place some financial burden on the applicant. The amendment inserts provisions into section 303 of the Town and Country Planning Act 1990, regulations under which are already subject to affirmative procedure.

Section 322C, by contrast, applies to costs actually incurred by the Welsh Ministers or parties to an application, appeal or reference to the Welsh Ministers. The Welsh Ministers will be able to direct that all or part of their costs are paid by the applicant, appellant, person making the reference, local planning authority or other party. The Welsh Ministers may also make orders as to the costs of the applicant, appellant or other party. The intention of this section is to ensure that where a party has acted unreasonably, an award may be made to other parties to reimburse them of the additional cost incurred as a result of that unreasonable behaviour. The Welsh Ministers may prescribe a standard daily amount to reflect their costs. The prescribed standard daily amount is intended to reflect the amount spent by the Welsh Ministers, which may change regularly, based on economic and staffing factors. These costs are intended to reflect costs at the time of dealing with a case, and as such, flexibility is required.

The key difference between this section and section 303, is as follows. Under section 303 fees for planning applications and other matters have to be paid, irrespective of any other circumstances. Fees set under this section in effect set the level of income local planning authorities receive from the exercise of their development management functions, subject only to variability in the number of applications they receive. In contrast, under section 322C a costs order can only relate to costs which have actually been incurred (and will need to be reasonable in the case of the Welsh Ministers, applying public law principles). These costs are due to the behaviour of the applicant, appellant or other person against whom an order is made. In a sense the "burden" can be avoided by not behaving unreasonably.

Current provisions relating to costs are contained at section 42 of the Housing and Planning Act 1986 and section 250 of the Local Government Act 1972. The provision

at section 322C, amongst other things, consolidates the costs regime into one place in relation to planning decisions. There is already provision at section 42 of the Housing and Planning Act 1986, which enables the Welsh Ministers to prescribe a standard daily rate, which follow the negative procedure.

In addition to the information that I agreed to provide at Committee, in your letter you asked for more detail in relation to a number of questions. I have provided detailed responses to those questions below:

**1. Why under Schedule 4D, paragraph 1(2) of the Town and Country Planning Act 1990 (as inserted by Schedule 3, paragraph 1) is a “specified function” to be set out in regulations rather than including definition on the face of the Bill?**

It is anticipated that the Planning Inspectorate will be appointed to exercise certain functions in relation to optional direct applications, such as the receipt of applications, identification of consultees, consideration of responses and the determination of the application. For DNS applications, the Planning Inspectorate, are expected to undertake administrative functions and consideration of the DNS application, with the function of determination reserved to the Welsh Ministers. Where it is more efficient for the local planning authority to undertake certain actions (such as to erect the site notice), provision is included in the Bill that enables the Welsh Ministers to direct LPAs to undertake certain functions.

The Town and Country Planning Act 1990 contain powers, at Schedule 6, to appoint and/or revoke or alter the appointed persons at any time. Schedule 4D also allows this to occur in relation to optional direct applications and DNS. Secondary legislation is required to prescribe specific functions to be undertaken by appointed persons as routine, rather than appointments being made on a case-by-case basis. This also allows the flexibility for the Welsh Ministers to undertake certain tasks should they consider it necessary.

It may also be considered appropriate to review this legislation regularly, as the procedures for DNS and optional direct applications are monitored, and updated.

The negative procedure is considered appropriate as this is a matter of relatively minor detail in an overall legislative scheme, which prescribes the functions that are to be undertaken by an Inspector, rather than the Welsh Ministers. In addition, the provisions do not give enabling power that would change primary legislation; confer significant powers on the Welsh Ministers; increase or impose significant financial burdens on the public; or create or confer unusual powers. Similar powers exist in relation to appeals and call-ins at Schedule 6 to the Town and Country Planning Act 1990. These are subject to negative procedure.

**2. Would the regulation-making power under Schedule 4D, paragraph (1)(3) of the Town and Country Planning Act 1990 (as inserted by Schedule 3,**

**paragraph 1) include the power to amend primary legislation and if so, why is the negative procedure appropriate?**

The power in question is constrained in so far as it may be used to give effect to the provision in articles 1(1) and 1(2). It does not enable the Welsh Ministers to amend primary legislation. There is nothing on the face of the Bill which suggests that paragraph 1(3) includes a power to amend primary legislation, and if it were the case that the provision was intended to confer such a power, you would expect to see that explicitly referred to in the wording of the section.

**3. What is the rationale for using negative procedure in the making of an order under section 75A(1) of the Town and Country Planning Act 1990 (as inserted by Schedule 4 paragraph 7) given the scope for such an order to amend primary legislation?**

Schedule 4 (7) inserts Section 75A into the TCPA 1990. The purpose of section 75A is to allow a development order to apply (or disapply) other legislation which might otherwise hinder the Welsh Ministers from making determinations of applications for DNS, optional direct applications or connected applications.

It is likely that the procedures for both types of applications will mirror, as far as possible, the process and requirements that usually apply when an application is submitted to a local planning authority. This is in order to maintain a consistent and familiar approach for stakeholders, including the applicant, the local community and statutory consultees. In order to achieve as similar a process as possible, Section 75A(1) enables provisions within existing planning legislation to be applied, with or without modification to applications made directly to them, including 'connected' applications.

The power would be used to apply existing processes and requirements that relate to applications made to local planning authorities to those made directly to the Welsh Ministers. For example by applying:

- The existing requirements associated with the making of a valid application, such as the form and manner in which it is to be made, as well as the information to accompany the application.
- The publicity and consultation requirements.
- The form and content of the decision notice.

The negative procedure is considered appropriate as the provision prescribes operational matters relating to the process of making and determining these applications. Some of these matters will include establishing arrangements relating to the validation of applications, the publicity to be undertaken and the issuing of the decision notice.

Flexibility is also required to enable the application procedures to be amended from time to time in order to respond to changing circumstances. For example, with the procedures for both types of applications likely to mirror as far as

possible existing ones, any changes made to the existing procedures under current subordinate legislation, that are already subject to the negative procedure, may also need to be reflected for applications submitted directly to the Welsh Ministers. This is to maintain a consistent approach for stakeholders, including applicants, the local community and statutory consultees.

Section 75A does not in any circumstances enable the Welsh Ministers to amend primary legislation. The power contained in that section is one which enables the Welsh Ministers to provide, in a development order, for an applicable enactment or requirement (as defined in section 75A(2)) to apply, with or without modifications, or not to apply, in the narrow context of applications made to the Welsh Ministers, in order to ensure the effectiveness of the relevant provisions.

- 4. In light of the Supreme Court cases about the importance of Assembly proceedings and documents generated by the Assembly or Welsh Government when considering competence, would the Welsh Government be prepared to share with the Committee any human rights assessment that has been carried out in preparing this Bill?**

Human rights issues in respect of the Bill have been considered as part of the overall legal advice provided to Ministers. All legal advice to Ministers is protected by Legal Professional Privilege.

The Welsh Government considers the proposals contained in the Bill are compatible with the Convention Rights given that the planning system by its very nature balances the rights of the individual and the interests of the wider community.

- 5. Are the amendments made by the Bill to the existing town and country legislation which already binds the crown, also intended to bind the Crown? If so, would it be clearer to state this expressly?**

The Planning and Compulsory Purchase Act 2004 and the Town and Country Planning Act 1990 bind the Crown and as such the amendments to those Acts made by this Bill will also bind the Crown. It is therefore not necessary to state this.

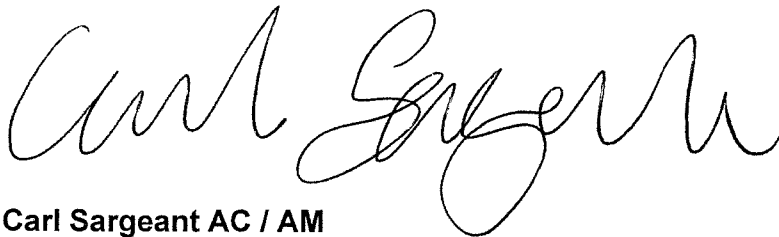
- 6. Do the Welsh Government consider that Queen and/or Prince's consent needs to be obtained in respect of the changes made to the town and country planning legislation by the Bill, and if not, for what reason?**

I consider, at this time, that Queen's or Prince's consent is not required in respect of the Bill. The earlier consent given in respect of the Planning and Compulsory Purchase Act 2004 is sufficient because the changes in the Bill affecting interests of the Crown are not substantive. This issue will be kept under review as the Bill progresses through the Assembly.

I trust that my response to the Committee's request and the additional information I have supplied will assist Members in their scrutiny of the Planning (Wales) Bill. Should you or any Member have any further queries or require more information on any aspect, please do not hesitate to contact me.

I am copying this letter to the Chair of the Environment and Sustainability Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carl Sargeant'.

**Carl Sargeant AC / AM**  
Y Gweinidog Cyfoeth Naturiol  
Minister for Natural Resources

Cc Chair of the Environment and Sustainability Committee

# Legislating for sustainable development to secure the long term well-being of Wales

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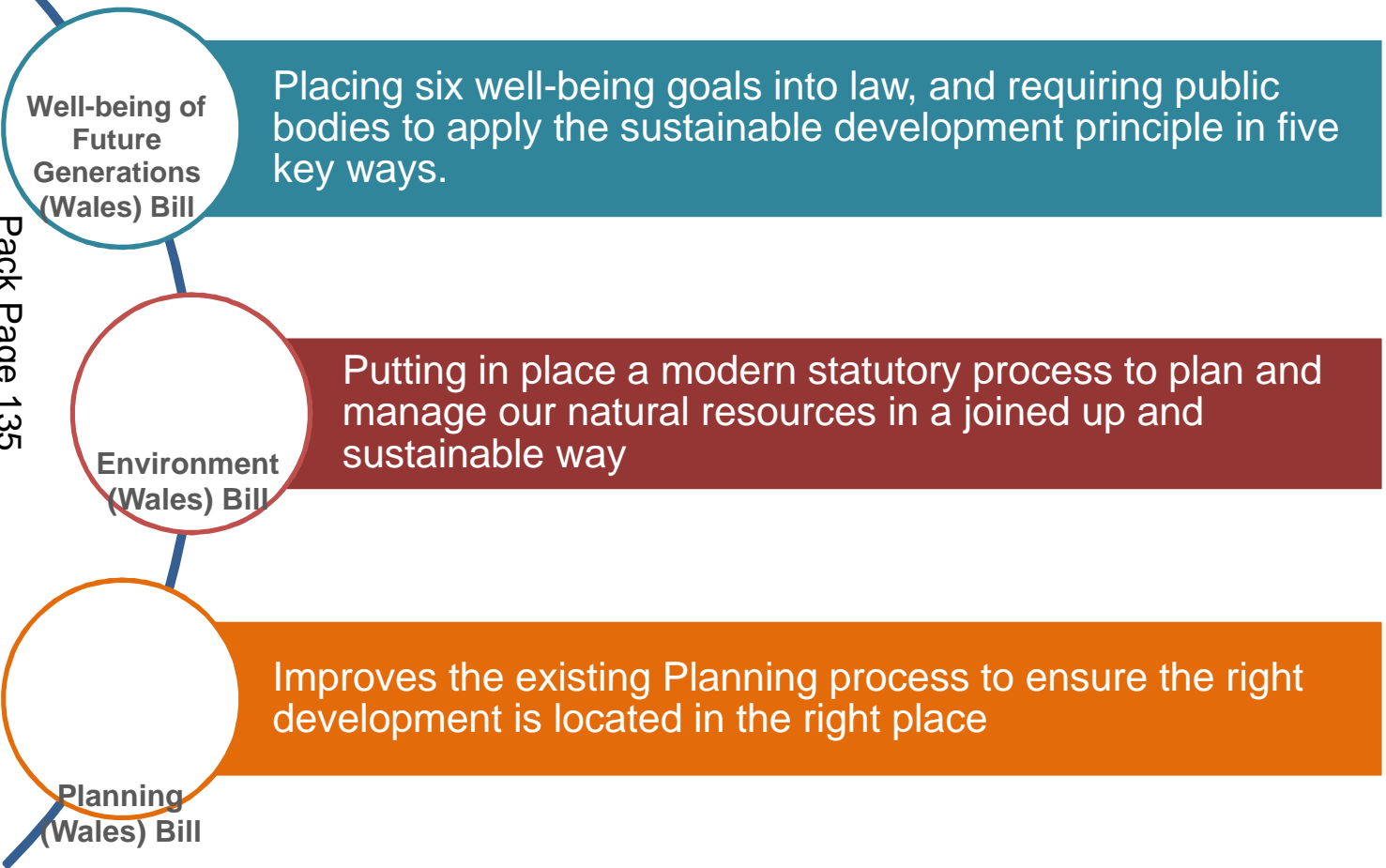
For Wales to develop sustainably, we need to change the law to put in place the key elements that will enable it to happen:

A clear idea of what we are aiming for and an understanding of the key principles that will guide us;

A clear picture of the natural resources we have, the risks they face and the opportunities they provide; and,

An efficient process that ensures the right development is located in the right place to make it happen.

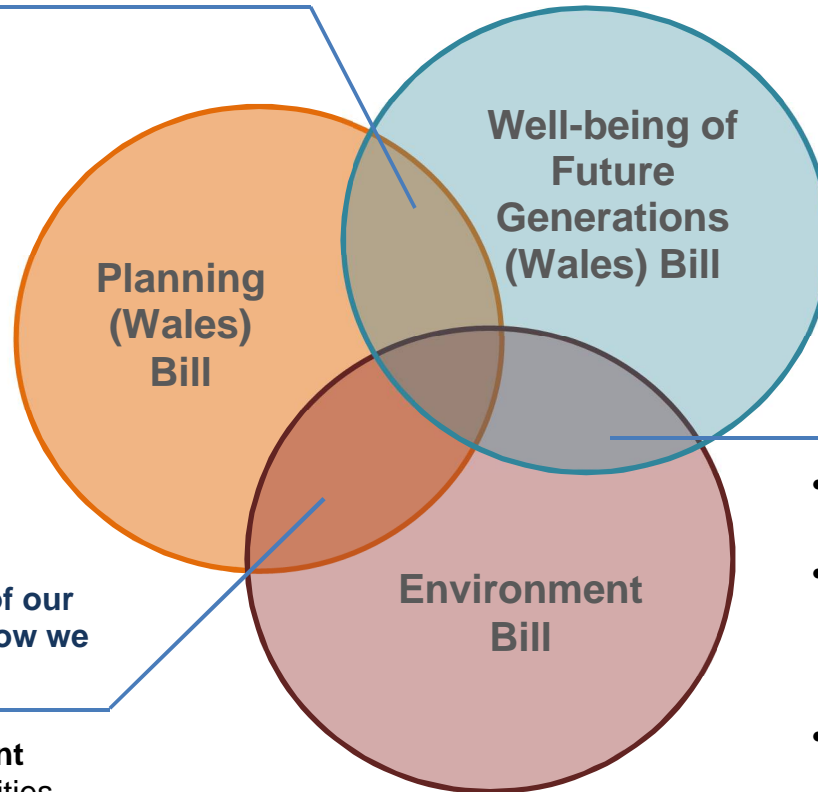
The three Bills do this by:



**To help achieve the goals we need to plan how we use our land, and how our cities, towns and communities change over time**

- A **plan-led system** means that Local Planning Authorities need to understand what their communities need. Local Planning Authorities will be under a duty to have regard to the ‘local well-being plan’ published by the Public Service Board (PSB)
- Greater development engagement at the **pre-application stage** will ensure local communities are able to engage early on in the planning process to influence development proposals.
- **Strategic Development Plans** will focus planning for areas with matters of greater than local significance. The key is to focus on areas where development is of a strategic nature.
- The **National Development Framework** will set out the Welsh Government’s land use priorities.

Pack Page 136



**Linking how we manage the use of our land must be done in alongside how we manage our natural resources**

- **Natural resource management** informs priorities and opportunities through area-based evidence.
- More consistent, proactive and prioritised **evidence base** for natural resource use aligned to national and local goals.
- Prioritised opportunities to inform and underpin investment decisions and ensure the **right development**, supporting positive planning.

**Our natural resources are essential for us to achieve the well-being of a sustainable Wales:**

- The use and resilience of natural resources is reflected in the 6 well-being **goals**
- Natural Resources Wales are one of the 44 identified **public bodies** subject to the sustainable development duty and a member of the Future Generations Commissioner for Wales’ **Advisory Panel**.
- **State of Natural Resources Report (SoNaRR)** will provide the evidence base for our natural resources which will inform Public Services Boards’ assessments of well-being.
- Natural Resources Wales will be a statutory member of all **Public Services Boards**, supporting partnership working across the public sector to maximise their contribution to the well-being goals.
- **Area statements** will identify local needs, opportunities and challenges within the context of both natural resource management and local well-being plans.

## Planning Application Classifications – Thresholds and Criteria

### Developments of National Significance (DNS)

Proposed categories and thresholds are listed below.

<b>Application Type</b>	<b>Threshold</b>
Underground Gas Storage Facilities not constructed by a gas transporter, for the storage of gas underground in cavities or non porous strata	Working capacity at least 43 million standard cubic metres or maximum flow rate at least 4.5 million standard cubic metres per day.
Alteration of any type of underground gas storage facility	Working capacity at least 43 million standard cubic metres or maximum flow rate at least 4.5 million standard cubic metres per day.
LNG Facilities	Storage capacity at least 43 million standard cubic metres, or maximum flow rate at least 4.5 million standard cubic metres per day.
Gas Reception Facilities	Where the maximum flow rate is expected to exceed 4.5 million standard cubic metres per day.
Pipe-lines constructed by a Gas Transporter	<p>Pipelines constructed by a Gas Transporter that:</p> <p>are more than 800 millimetres in diameter and more than 40 kilometres in length or would be likely to have a significant effect on the environment; and</p> <p>have a design operating pressure of more than 7 bar gauge; and</p> <p>convey gas for supply (directly or indirectly) to at least 50,000 customers, or potential customers, of one or more gas suppliers.</p>
Airport related development and construction	Increase capacity by 10 million passengers per annum, or over 10,000 air transport movement of freight per annum.
Harbour facilities	In the case of facilities for container ships: anything below 500,000 TEU;

	<p>In the case of ro-ro ships: anything below 250,000 units;</p> <p>In the case of facilities for cargo ships of any other description, anything below 5 million tonnes.</p> <p>In the case of mixed thresholds, the cumulative effects falling within the above but not greater (anything greater is determined under the NSIP regime in Wales).</p> <p>The above apply unless 'permitted development' under Classes B &amp; D of Part 17 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995.</p>
Railways	<p>Works to the national rail network not covered by permitted development rights (as contained within Article 3 of the Town and Country Planning (General Permitted Development) Order 1995); work that is a continuous length of more than 2 kilometres, is not on land that was either operational land of a railway undertaker immediately before the works began or is on land that was acquired at an earlier date for the purpose of the works. This does not include works that take place on the operational land of a railway undertaker unless that land was acquired for the purpose of those works.</p>
Rail freight interchanges	<p>Interchanges covering at least 60 hectares and handling at least 4 goods trains per day.</p>
Dams and reservoirs	<p>Capable of holding back or storing in excess of 10 million cubic metres of water.</p>

Transfer of water resources	Capable of transferring in excess of 100 million cubic metres of water per annum.
Waste water treatment plant	Has a capacity exceeding that which is capable of dealing with a population equivalent of 500,000.
Hazardous waste facilities	Land-fills or deep stores able to handle more than 100,000 tonnes per annum; In any other case, facilities able to handle more than 30,000 tonnes per annum.
Pipe-lines <u>not</u> constructed by a gas transporter	A pipe-line below 16.093 km in length wholly or partly in Wales.
Generating stations (onshore)	Anything 25 megawatts to 49 megawatts inclusive.

### Major Developments

Current thresholds and criteria for major development are listed under Article 2 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012/801 for Wales. These thresholds and criteria are listed below.

<b>Thresholds and Criteria for Major Development</b>
(a) the winning and working of minerals or the use of land for mineral-working deposits (for the definition of “ <i>mineral-working deposit</i> ” see section 336 of the Town and Country Planning Act (c.8))
(b) waste development
(c) the provision of dwellinghouses where—  (i) the number of dwellinghouses to be provided is 10 or more; or  (ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c) (i).
(d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more

(e) development carried out on a site having an area of 1 hectare or more

### **Local Developments**

A local development is any development proposal that falls below the categories for developments of national significance and major development, unless it is defined as permitted development. The types of development that comprise of permitted development are defined in the Town and Country Planning (General Permitted Development) Order 1995/418 for Wales (as amended) (link to legislation is as follows: <http://www.legislation.gov.uk/uksi/1995/418/contents/made>).

# Agenda Item 7.2

01 December 2014



Alun Ffred Jones AM  
Chair, Environment & Sustainability Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

Dear Chair

Thank you again for inviting me to provide oral evidence at the recent session on the inquiry into Fuel Poverty and Energy Efficiency in Wales. As requested, I am writing with additional Wales-specific disaggregated data and points of clarification.

### SSE pre-payment meters in Wales (as a proportion of UK total- 2014)

Wales	UK	Wales as % of total
216,592	1,128,650	19.1%

### Number of SSE customer home visits in Wales (as proportion of UK total- 2013/14)

Wales	UK	Wales as % of total
9,000	64,000	14.1%

There are also three further points of interest I would like to briefly address in the context of this investigation, at which we did not arrive organically during the evidence session:

**National Pricing** - Customers in Wales currently pay more for their electricity than other parts of Britain due to regional network charges. North Wales is the second most expensive region out of 14, and South Wales is third. SSE is calling for the Regulator and Government to flatten these charges across the UK so that everyone pays a fairer amount wherever they live, saving Welsh customers around £30-40 per year.

**Funding Schemes Fairly** - Funding policies such as ECO through energy bills is regressive and can mean that the most vulnerable customers pay proportionately more than others. SSE want to see these costs shifted into means-tested taxation so that those least able to afford to pay for such schemes are sheltered from the burden, including those living in rural off-gas grid areas, who effectively pay 'twice' for schemes from which they will not necessarily benefit.

**Fuel Poverty Agency** - SSE believe that the creation of a Fuel Poverty Agency would resolve many of the issues highlighted in the inquiry evidence relating to data-sharing. A single cross-departmental body would also be better able to find customers and make better assessments of

need than energy companies, and would have a range of tools for improving peoples' circumstances, far exceeding those offered by energy companies.

**Site Visit** - Finally, our frontline customer service provision has been highlighted in an earlier evidence session as an example of industry best practice, and I reiterate my invitation to the committee members to visit the site in order to meet our staff and see first-hand some of the assistance we provide.

If you require anything else please let me know, I look forward to seeing the committee's final report.

Yours sincerely

**Dr Gareth Wood**  
Head of Collections  
SSE

Alun Ffred Jones AM  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

3 December 2014

## Legislating for a 'health in all policies' approach through the Well-being of Future Generations (Wales) Bill

Dear Alun Ffred Jones AM,

We welcome the recent publication by the Environment and Sustainability Committee of the Stage 1 Report on the Well-being of Future Generations (Wales) Bill. We would, in particular, wish to express our support for recommendations 29 and 30 of the report which refer to the need for the Bill to be improved regarding its ability to deliver a 'health in all policies' approach.

As you may be aware, the idea of introducing a 'health in all policies' approach was consulted upon favourably by the Welsh Government in 2012 as part of the then Public Health Green Paper. The Minister for Health and Social Services, subsequently indicated in his Ministerial foreword to the Public Health White Paper earlier this year that the approach would now be delivered through the Well-being of Future Generations (Wales) Bill.

However, our view is that the concept has not been sufficiently taken forward by the Bill in the way it has been initially drafted and we therefore welcome the fact that the Environment and Sustainability Committee has now concluded it shares this concern.

In the Public Health Green Paper, the concept of a 'health in all policies' approach was described as testing *"any new policy to assess its impact on health, in order to minimise any damage and increase any benefit it might cause"*. We very much support such an approach to delivering 'health in all policies'.

We therefore hope that any amendments to the Bill that may now be considered to take forward recommendations 29 and 30 of the Stage 1 report will therefore deliver a 'health in all policies' approach

**Ysgrifennydd Cymreig/Welsh Secretary:**

Dr Richard JP Lewis, CStJ MB ChB MRCP MFFLM Dip IMC RCS(Ed) PGDip FLM

**Prif Weithredwr/Chief Executive:**

Keith Ward

Cofrestrwyd yn Gwmni Cyfyngedig trwy Warant. Rhif Cofrestredig: 8848 Lloegr  
Swyddfa gofrestredig: BMA House, Tavistock Square, Llundain, WC1H 9JP.  
Rhestrwyd yn Undeb Llafur o dan Ddeddf Undebau Llafur a Chysylltiadau Llafur 1974.  
Registered as a Company limited by Guarantee. Registered No. 8848 England.  
Registered office: BMA House, Tavistock Square, London, WC1H 9JP.  
Listed as a Trade Union under the Trade Union and Labour Relations Act 1974.



along the lines of this previously considered definition. We hope we can secure your support for such an approach to now be incorporated into the Bill.

Yours sincerely,

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

**Dr Stephen Monaghan**  
Chair, Welsh Council Legislation Subcommittee

# Agenda Item 10

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# Agenda Item 11

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# Agenda Item 12

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# Agenda Item 13

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