



Y Pwyllgor Amgylchedd a Chynaliadwyedd

Environment and Sustainability Committee

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Regeneration
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Annwyl Carl

Positive Planning and draft Planning (Wales) Bill

1. Introduction

1.1 The Committee decided to carry out pre-legislative scrutiny of the draft Planning (Wales) Bill and the broader package of proposals for the reform of the planning system that are set out in the *Positive Planning* Consultation paper. As a starting point we decided to review the evidence base that the Welsh Government has used to inform its proposals, as well as comparing the proposals with the planning systems in other parts of the UK and particularly with England given the changes introduced there by the Localism Act 2011.

1.2 We took evidence from those who had contributed to preparing the evidence base including the Chair of the Independent Advisory Group (IAG) and a number of consultants who had produced research reports on aspects of the planning system. The Committee also heard from planning lawyers, representatives from local government officers and the National Parks and from One Voice Wales, the Welsh Language Society, Planning Aid Wales and Planning Aid England.

1.3 This letter sets out our views on the package of planning reforms at this pre-legislative stage of the process. We are sending this to you

now to be in time to influence the emerging shape of the full package of planning reform proposals, including the revised contents of the Bill to be introduced into the Assembly later this year.

2. General comments

2.1 We support the **evidence-based approach** taken by the Welsh Government in preparing its package of reforms. We also found broad support for many of its proposals. However in areas where *Positive Planning* is silent it would be helpful if the Welsh Government could clarify whether this is because it does not agree with recommendations emerging from the evidence, or because it hasn't yet had either the time or the resources to work these up.

2.2 There are some proposals in *Positive Planning* where **not enough detail has been provided to judge their impact**. We are concerned about putting new statutory requirements in place without more information about what they will mean in practice. One example of this would be the proposal for a national scheme of delegation for officers to determine planning applications. The Fortismere/Arup research made some specific recommendations about the contents of such a scheme, including for example a delegation target of 95% of all applications to be determined by officers. We would like to know if the Welsh Government intends to implement these recommendations. We also urge the Welsh Government to **provide as much information as possible to explain all of its proposals in the Explanatory Memorandum** that will accompany the Bill, even where these proposals will require further Secondary Legislation at a later stage.

2.3 One of the Welsh Government's stated objectives in *Positive Planning* is to make it easier for citizens to influence the future of communities. Whilst the proposals add two additional levels of Development Plans and also a new process for Developments of National Significance, in our view these changes may help to clarify different roles and responsibilities in the planning system. We do

however have some doubts about the conclusion from the Public Attitudes research that “the majority of people are satisfied with planning system”. Certainly there is a limited awareness of the system and how people can engage and influence it. We support Planning Aid Wales’s **call for a clear statement setting out how the public can engage at each level.**

2.4 It is important that the planning system is not just seen as a “top-down” system – local communities have a valuable contribution to make. For example these communities need to have a voice in deciding on the number of new houses in their area, as well as their location. They also have an important role in helping local planning authorities to assess the impact of development proposals on the Welsh language through the LDP process. The revised TAN 20 expects Local Planning Authorities to assess the impact of the LDP spatial strategy, its policies and land allocations on the Welsh Language and the sustainability of Welsh language communities, through the Sustainability Appraisal. The impact of this new approach will need to be closely monitored. Given the potential impact of the planning system on the Welsh Language we ask the Welsh Government to consider making it a statutory requirement for LDP Sustainability Appraisals to include consideration of the impact of the plan on the Welsh Language. Such a requirement should also apply to the National Development Framework and Strategic Development Plans.

2.5 We note the statement in *Positive Planning* that the reforms will not give rise to additional costs, but will involve some limited redistribution. We also note the suggestion that there will be increased income from fees. In our view the package of proposals will have **considerable resource implications for all stakeholders**, including the Welsh Government, Local Planning Authorities, Town & Community Councils, Statutory Consultees and developers. We expect the Welsh Government to produce a **thorough Regulatory Impact Assessment to accompany the revised Bill that will explain the resource impact of the**

additional requirements on all stakeholders and to enable the value for money of the proposed changes (eg: Developments of National Significance) to be fully assessed.

2.6 We want to see a **clearer explanation of the relationship between the planning reform proposals and other existing and proposed legislation**, including the Future Generations, Environment and Heritage Bills. In particular we want to see more information about how the revised processes and structures for land use planning are expected to **function alongside other “planning” regimes** such as those for **natural resources, transport and marine**. Finally some more information about how the **proposals for SDPs relate to other defined areas such as the City Regions** would be helpful.

2.7 A general theme from the evidence we heard is concern about a **potential democratic deficit** across different geographic scales of the proposals. A particular concern is the proposal for Strategic Development Plan (SDP) Panels to include **one third of non-elected members** and how the planning competence framework would be applied to these members. We consider that the Welsh Government should find other ways of ensuring that there is a **local community voice in the SDP process**, especially given the reduced role of Local Development Plans in those areas where an SDP is to be prepared. The report of the Williams Commission suggests that the Welsh Government considers a Single National Park Authority for the three parks in Wales. We also have concerns about how **local communities would retain a voice in planning matters if there is to be a single planning authority for the three parks**.

2.8 We have particular concerns about the **role of Town & Community Councils** in the revised planning system including the proposals for Place Plans as Supplementary Planning Guidance. These plans can only be prepared at the end of the development plan process after the LDP has been prepared, whilst communities need to be involved

throughout. We believe that the Welsh Government needs to review its proposals to ensure the involvement of local communities in all stages of the development plan process. The varied size and make-up of Town & Community Councils across Wales is a concern as is the fact that there is incomplete geographical coverage. We can see the potential for a democratic deficit at this level too, given that some of these councils rely on co-opted members, with no elections having been held for a number of years.

2.9 We see no need for the more formal processes for producing Neighbourhood Plans that have been put in place in England. We are also unclear about the relationship of Place Plans with a simplified LDP where there is also a SDP in place. If Place Plans are to be introduced then we support the idea of a **pilot approach**, but the Welsh Government will need to choose the pilot areas carefully. There are also potential **resource implications** both for Town & Community Councils and for Local Planning Authorities and pilots would help in understanding these more. We would also support the concept of **'clustering'**, with a number of Town & Community Councils coming together to produce a Place Plan, or otherwise engage with the planning system.

2.10 The **complexity of existing planning legislation for Wales**, which will be exacerbated by this Bill by making further amendments to a number of existing England and Wales Acts, remains a concern. We were told by planning lawyers that this complexity and the confusion it creates could be acting as an impediment to inward investment. We urge the Welsh Government to progress with an exercise to **consolidate primary and secondary planning legislation** for Wales as soon as possible.

2.11 The report of the **Williams Commission** and its recommendations to reduce the number of Local Planning Authorities **clearly has implications for the package of planning reforms**. We understand that

the Welsh Government considers that it will reduce the need for SDPs in some parts of Wales. However we note that the view of the Williams Commission is that as a result of fewer Local Planning Authorities “there may be less of a need to aggregate some planning functions at the national level”. The Committee would like to see **evidence that the Welsh Government has considered the impact of a reduced number of local planning authorities on all its planning reform proposals**, not just on the need for Strategic Development Plans.

2.12 The recommendation of **Part 2 of the Silk Commission’s report** that consenting of energy projects of between 50–350 megawatts should be devolved to Welsh Ministers does seem to be compatible with Bill’s proposals for the Welsh Government taking responsibility for Developments of National Significance. However this would have resource implications for the Welsh Government and others given the added complexity of larger developments.

3. Issues from the evidence base not included in WG proposals

3.1 We would like to see a **Statutory Purpose for planning** on the face of the Bill. This was a recommendation from the IAG and we believe that it will help to achieve the required culture change. We support the **clear definition in the IAG report** that “the purpose of the 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”. We agree that it would not be appropriate to define sustainable development itself on the face of the Bill.

3.2 The IAG report made a number of recommendations about **the call-in process** but these are conspicuously absent from the proposals. Given that the Welsh Government sees the need for a culture change across all stakeholders we believe it would reinforce this message if it were also seen to be putting its own house in order. Whilst the introduction of Developments of National Significance may reduce the number of call-ins, the process will continue. We ask that the Welsh

Government considers adopting the IAG's proposals on reforms of the call-in process, especially setting a time limit for the Welsh Government to make a decision.

3.3 We also ask the Welsh Government to look again at the IAG recommendations about Compulsory Purchase. From the evidence we heard the greatest concern is about retaining coherence with the rules that apply in England, given the common system of land law that applies throughout England and Wales. However bringing together compulsory purchase powers from different legislation into a single set of powers for Welsh Ministers and local planning authorities also seems a sensible proposal that should be taken forward.

3.4 Positive Planning has taken up some of the recommendations of the research work on Enforcement. However the use of fixed penalty notices and removing time limits for taking enforcement action do not appear in the proposals. The use of fixed penalty notices was also recommended by the IAG. We ask the Welsh Government to consider these two proposals again or at least explain its reasons for not proceeding with them.

3.5 One of the key messages from the research on the *Delivery of Planning Services in Statutory Designated Landscapes* was that Areas of Outstanding Natural Beauty (AONBs) and National Parks have equal status in terms of landscape quality and scenic beauty and should therefore should have the same protection from inappropriate development. The Welsh Government states that it has not yet reached a final view on whether National Park Authorities should retain a planning function. However *Positive Planning* makes no reference at all to the arrangements for the delivery of planning services in AONBs. We consider that in coming to a final view on the future of planning functions for National Parks the Welsh Government should also consider whether the current delivery arrangements for planning in AONBs are satisfactory.

3.6 The IAG made a number of detailed technical recommendations about **Section 106 agreements**. However none of these have been included in the *Positive Planning* proposals. There is no doubt that Section 106 agreements can be a cause of delay and frustration. There is a particular issue relating to requirements for affordable dwellings to be retained “in perpetuity” that the IAG sought to address. Given their continuing use we think it is **important that the Welsh Government should review the powers under Section 106** with the aim of introducing greater flexibility and to allow for the transfer of land.

3.7 A further complication is the changing role of Section 106 agreements and their relationship with the **Community Infrastructure Levy**, which is a non-devolved matter. The Committee has previously **supported the Welsh Government’s call for responsibility for CIL to be devolved**. It is unclear from the Silk Commission’s two reports whether or not it agrees with this proposal. UK Government regulations already require 15% of CIL contributions, when it is collected, to go to Community Councils in Wales. It was suggested to us that in future CIL contributions could also be top-sliced for the delivery of SDPs.

3.8 Whilst it is sensible that *Positive Planning* deals with aspects of the planning system that are devolved, the development hierarchy presented does not reflect the existence of the Nationally Significant Infrastructure Project (NSIP) regime that sits at the top of the hierarchy. This adds additional complexity to the process in Wales. We would welcome clarification from the Welsh Government as to whether or not it accepts the IAG recommendation that, should further devolution of energy consenting not take place, **associated development for NSIP projects should be decided by Welsh Ministers** rather than by local planning authorities.

3.9 A big concern of the Committee in its previous work on energy was about the delays sometimes caused by other consenting regimes. In

our report on energy we recommended that the Welsh Government should introduce a system **that better integrates planning and environmental permitting systems**. The Welsh Government accepted this recommendation stating it is “committed to simplifying planning and environmental legislation at the earliest opportunity”. The IAG also made a recommendation about allowing **parallel permitting** to take place alongside a planning application where possible. However this issue is not dealt with at all in Positive Planning. We note that the **Energy Wales Delivery Plan** published in March 2014 announces a new **Welsh Energy Consents Forum**. We ask the Welsh Government to consider further how other permitting regimes can be simplified and made to run alongside planning applications as far as possible, as well as explaining the role of the Welsh Energy Consents Forum and how it relates to the *Positive Planning* proposals.

4. Comments on some of the Positive Planning/Draft Bill proposals

4.1 We support the establishment of a **Planning Advisory & Improvement Service**. This will have an important role to play in sharing expertise and in promoting culture change in the planning system. However we think it is important that the service is **seen as independent** and not simply as an arm of the Welsh Government.

4.2 We fully endorse the importance of complete up-to-date **Local Development Plan** coverage and welcome the proposals to refine the LDP process through further evolution rather than making wholesale changes. We do however have some concerns that the **proposals don't go far enough** to ensure that Local Planning Authorities both **produce and then implement their plans**. We do not consider it appropriate for the Welsh Government to be taking over the production of LDPs apart from in exceptional circumstances, given the importance of local community support for a plan's proposals. It also lacks the resources to take on this work. We ask the Welsh Government to reconsider its proposals for LDPs, including how it could strengthen its existing

statutory powers that require Local Planning Authorities to prepare such plans and to look again at **some of the recommendations of the Cardiff University/Arup research** – for example introducing a system of incentives and penalties to facilitate timely plan preparation and imposing a statutory duty on a local planning authority to implement an LDP once it has been adopted.

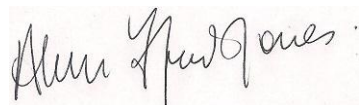
4.3 Further clarity is needed about the **definition of a Development of National Significance**. Although Annex B of *Positive Planning* sets out thresholds and criteria, the paper also says that such projects can be identified through the National Development Framework, the Wales Infrastructure Investment Plan, transport plans or natural resources policy.

4.4 The new emphasis on pre-application advice is welcomed.

However it is important that in any new legislative requirements the status of such advice is made absolutely clear and that appropriate safeguards are built in.

4.5 We agree with the need for a consistent approach across Wales to **planning committee size and constitution** but we are unclear about the implications of a suggested size of between 11 and 21 members for National Park Authorities, if they are to retain their planning functions.

Yn gywir,

A handwritten signature in black ink, appearing to read 'Alun Ffred Jones', is written over a light-colored rectangular background.

Alun Ffred Jones AM

Chair of the Environment and Sustainability Committee