



Cynulliad Cenedlaethol Cymru **The National Assembly for Wales**

Y Pwyllgor Amgylchedd a Chynaliadwyedd **The Environment and Sustainability Committee**

Dydd Iau, 23 Tachwedd 2011
Thursday, 23 November 2011

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Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynndi yn y pwyllgor. Yn ogystal,
cynhwysir cyfieithiad Saesneg o gyfraniadau yn y Gymraeg.

These proceedings are reported in the language in which they were spoken in the committee.
In addition, an English translation of Welsh speeches is included.

Aelodau'r pwyllgor yn bresennol**Committee members in attendance**

Mick Antoni	Llafur Labour
Yr Arglwydd/Lord Elis-Thomas	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)
Rebecca Evans	Llafur Labour
Vaughan Gething	Llafur Labour
Russell George	Ceidwadwyr Cymreig Welsh Conservatives
Llyr Huws Gruffydd	Plaid Cymru The Party of Wales
Julie James	Llafur Labour
David Rees	Llafur Labour
Antoinette Sandbach	Ceidwadwyr Cymreig Welsh Conservatives

Eraill yn bresennol**Others in attendance**

Peter Burley	Cyfarwyddwr, Arolygiaeth Gynllunio Cymru Director, Planning Inspectorate Wales
Ceri Davies	Pennaeth Uned Strategol Cymru, Asiantaeth yr Amgylchedd Cymru Head of Strategic Unit Wales, Environment Agency Wales
Morgan Parry	Cadeirydd, Cyngor Cefn Gwlad Cymru Chair, Countryside Council for Wales
Roger Thomas	Prif Weithredwr, Cyngor Cefn Gwlad Cymru Chief Executive, Countryside Council for Wales
Anthony Wilkes	Cynghorydd Uned Strategol Cymru ar Gynllunio, Asiantaeth yr Amgylchedd Cymru Strategic Unit Wales Adviser on Planning, Environment Agency Wales
Dr Sarah Wood	Arweinydd y Tîm Cynllunio Gofodol, Ynni a Seilwaith Daeorol, Cyngor Cefn Gwlad Cymru Team Leader, Terrestrial Spatial Planning, Energy and Infrastructure, Countryside Council for Wales

Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol**National Assembly for Wales officials in attendance**

Dr Virginia Hawkins	Clerc Clerk
Catherine Hunt	Dirprwy Glerc Deputy Clerk
Graham Winter	Gwasanaeth Ymchwil Research Service

*Dechreuodd y cyfarfod am 9.30 a.m.
The meeting began at 9.30 a.m.*

Cyflwyniad, Ymddiheuriadau a Dirprwyon Introduction, Apologies and Substitutions

- [1] **Yr Arglwydd Elis-Thomas:** Bore da, a chroeso i aelodau'r pwyllgor a'r cyhoedd. Gwnaf y rhybuddion arferol ynglŷn ag ymadael â'r adeilad, ffonau symudol a'r offer cyfieithu, gyda chyfieithu ar y pryd ar sianel 1 a chwyddleisio'r sain ar sianel 0. Nid oes angen i chi gyffwrdd â'r microffonau yn ystod y sesiwn gan fod y technegwyr yn gwneud hynny. Nid oes gennyf unrhyw ymddiheuriadau na buddiannau i'w datgan.
- Lord Elis-Thomas:** Good morning, and welcome to committee members and the public. I issue the usual notices regarding evacuating the building, mobile phones and the interpretation equipment, with interpretation on channel 1 and sound amplification on channel 0. There is no need to touch the microphones during the session as the technicians will operate those. I have no apologies or declarations of interest.

9.31 a.m.

Ymchwiliad i Bolisi Ynni a Chynllunio yng Nghymru—Tystiolaeth gan yr Arolygiaeth Gynllunio Inquiry into Energy Policy and Planning in Wales—Evidence from the Planning Inspectorate

- [2] **Yr Arglwydd Elis-Thomas:** Croeso mawr i Peter Burley. Dyma'r chweched sesiwn dystiolaeth.
- Lord Elis-Thomas:** A warm welcome to Peter Burley. This is the sixth evidence session.
- [3] Dechreuaf drwy ofyn cwestiwn cyffredinol i Peter Burley. Mae'n ymddangos imi eich bod mewn sefyllfa ble mae'r ddrama yn symud o'ch cwmpas a newidiadau mawr eto ar y gorwel. Efallai y bydd o ddefnydd i ni pe byddech yn rhoi disgrifiad o sut mae'r newidiadau'n edrych o'ch safbwynt chi.
- I will begin by asking a general question to Peter Burley. It appears to me that you are in a position where the drama is moving around you and major changes are on the horizon. It could be useful to us if you give us a description of how those changes look from your perspective.
- [4] **Mr Burley:** Bore da. Yes, it is a time of very significant change, especially for us in the planning inspectorate with the forthcoming integration with the Infrastructure Planning Commission, particularly now that the Localism Bill has received Royal Assent. We are now moving forward swiftly to have, hopefully, a smooth transition into a new body from April 2012, when we will cover the work that the planning inspectorate currently does with the appeal system and the national infrastructure.
- [5] Obviously, this is at a time when there is major change across England, and we also expect change in Wales in the planning system that we are working with, so, for me, it is an interesting time, dealing with a system that is diverging, in some respects, from that in England. That provides certain challenges and an interesting working environment. Certainly, we have the advantage in Planning Inspectorate Wales in working very closely with Welsh Government officials. That is a helpful situation as we are co-located in the same building, whereas, in England, the Department for Communities and Local Government is based in London and we are based in Bristol, so the working environment is not quite so conducive to close working as that we have in Wales, which I find very helpful.
- [6] **Lord Elis-Thomas:** You have described your relationship of physical proximity to Welsh Government. What about strategic and policy proximity? How does that work for you? It is Chinese walls plus, I suppose.

[7] **Mr Burley:** Absolutely, Chair. The planning inspectorate is, effectively, a delivery arm. It is a quasi-judicial process and, therefore, we have to weigh up evidence. Therefore, where we are looking at issues relating to comments on policy and determining things in line with policy, it would not be appropriate for us to have a hand-in-glove relationship with Welsh officials. That is not say that, in terms of procedural matters and matters that may need to be considered by the Minister, we do not maintain a close working relationship.

[8] **Lord Elis-Thomas:** I have one final point before I hand over to Russell: do you think that the public, especially appellants and those interested in the planning process, understands how the proximity and yet not hand-in-glove operates?

[9] **Mr Burley:** Those who are familiar with the planning system understand, but I appreciate that many people do not. We do our best to try to explain through guidance notes and advice that we give to customers when they ring in. My colleagues in England and I go around talking to councillors and other people wherever we can, when we are asked to explain the planning system. Inspectors, when they are out there in the field holding inquiries do their best to explain the system to those people who are using it for the first time, and, generally speaking, there is a level of understanding. Certainly, by the end of the inquiry, I always find that people have a fairly good understanding of how that process works.

[10] **Russell George:** The National Infrastructure Directorate and Planning Inspectorate Wales will be integrated to become part of the same organisation from April 2012, as we know, but they will be responsible to different Governments. With the Infrastructure Planning Commission functions being integrated with the planning inspectorate, what mechanisms will be put in place to ensure the separation of duties and prevent any conflict of interest?

[11] **Mr Burley:** The Chair has already referred to Chinese walls, and we are quite clear about the need to separate the work that we do for Welsh Ministers and the work that we do for the UK Government. What we have envisaged within PINS 2012, as we call it, is that the director for Wales and his staff will remain responsible for determining and dealing with matters that fall to Welsh Ministers, whereas the national infrastructure casework will be dealt with in Bristol by our national infrastructure unit. There will be a clear division, and inspectors who are based in Wales and work to me will be determining Welsh casework. We will be using separate inspectors for dealing with the national infrastructure work. That is not to say, however, that we will not take the opportunity for some overlapping, in the sense that we will provide, within Wales, customer services from people who are trained to answer general queries about national infrastructure casework. As director for Wales, I or my successor will also be available to go out and talk about national infrastructure work. We are quite clear that there will be a distinction between the two branches of the inspectorate in terms of the day-to-day handling of casework.

[12] **Russell George:** Just following on from that, my last question is this: in future, could a planning inspector in Wales be required to work on a national infrastructure project for which they would report to the Secretary of State, and also on an appeal or call-in related to an associated development for which they would report to the Welsh Minister?

[13] **Mr Burley:** We have not ruled out the possibility that we might use inspectors across the pitch, as it were, but, at the moment, none of the inspectors whom we employ for Welsh work will be trained to do national infrastructure casework. Going forward, we will have to look at whether we can work a system whereby we could use those inspectors, but it would still be quite clear that, when they are working on national infrastructure, they are working to England, and would be seconded to England for that work, whereas when they are working here, they would be working to Welsh Ministers, obviously.

[14] **David Rees:** Just to take that a little bit further, which policies will they be working

to? If they report to Welsh Ministers, presumably, they will be working to policies set by the Welsh Government, such as TAN 8, and, if they are looking at infrastructure projects, they would be using the national planning system. Could there be clashes as a consequence?

[15] **Mr Burley:** I do not think that there is a clash because, effectively, as an inspector, you are working to the policies that are relevant to that particular case. So, effectively, yes, when they are working to Welsh Ministers, they will normally be dealing with planning appeals, which will obviously be subject to Welsh policies, both national and local. If they are dealing with a national infrastructure case, as Sir Michael Pitt said to you when he appeared before the committee, the NPS under the 2008 Act is the starting point for determination. Welsh planning policies are an important and relevant consideration, but such a case has to be determined in accordance with the NPS unless there are significant adverse effects that outweigh the benefits.

[16] **David Rees:** Therefore, it is possible, hypothetically speaking, that you could have an application under 50 MW being treated under one side of the system, and an application above 50 MW being treated separately and, therefore, inequalities could occur. Could that cause a problem?

[17] **Mr Burley:** I do not see it causing a problem for the inspector, because, as I said, the inspector has to determine the application within the policies that apply to that particular case. Whether there is a problem in terms of the policies is for Ministers to decide in the UK Government and in Wales—not for the inspector.

[18] **David Rees:** So, the answer is ‘possibly, yes’.

[19] **Rebecca Evans:** On a similar subject, when considering appeals and call-ins, what weight would planning inspectors give to the national policy statements, particularly if there are different policies at a UK level and in Wales?

[20] **Mr Burley:** If we are talking about planning appeals, which fall to the Welsh Minister to determine, the NPS is potentially a material consideration under planning law. However, clearly, the first port of call for any planning appeal determination, under section 38(6) of the 2004 Act, is the local plan, because it has to be determined in accordance with policies relevant to the local plan unless material considerations indicate otherwise. That is the inspector’s starting point. Once he or she has looked at the local plan, if it is in conflict with that, he or she has to look at what the other material considerations are, and those may include the NPS. However, in Wales, Welsh national planning policies would obviously play a significant role as well. As in any case, it is a question of the inspector balancing and weighing all the evidence put before him or her before reaching a conclusion.

[21] **Lord Elis-Thomas:** I had a bit of assistance once from Wyn Roberts when he was Minister when I asked what the word ‘national’ meant when applied to the curriculum—whether it meant England or Wales. He said that when you use the term in England it means ‘England’ and when you use the term in Wales it means ‘Wales’. I detected that you used the word ‘national’ in relation to Welsh national planning policy just then. So that is a brownie point from this Chair anyway. [*Laughter.*]

[22] **David Rees:** I would like to take that a step further. There is concern in mid Wales about the associated development side of things. Therefore, what weight would the decision to approve a large-scale project that comes under the control of the planning inspectorate in England have with regard to a decision on an associated development? What pressure, or what weighting, would the approval of the major project be given when considering an associated development?

[23] **Mr Burley:** First, I disassociate myself from the word ‘pressure’. [*Laughter.*] I do not think that there would be any pressure with regard to determining it. Clearly, if there is already a consent for something, that is a material consideration and something that must be weighed in the balance when considering the application before the inspector. However, that is not to say that the inspector is forced to make a decision in favour of the associated development just because there is another consent. It is clearly an important factor that may carry significant weight, but, at the end of the day, the inspector has to determine the application before them at appeal, if they are determining an appeal, or make a recommendation to the Minister if it is a call-in application or a recovered appeal.

[24] **Antoinette Sandbach:** Following on from that, where do you see the balance in terms of strategic UK needs? Taking the nuclear industry for example, how does it fit into that? For example, there may be a decision relating to a nuclear power station in England under the IPC, where associated development is not part of that, and it would be part of that process if that application was in England.

[25] **Mr Burley:** If I recall correctly, the Minister said at the outset of your inquiry and scrutiny of this that the situation in Wales regarding associated development is pretty complex. That is something I would not demur from agreeing with. It will be a case-by-case situation, with inspectors looking at each case on its merits. It would be a question of weighing that up. It is not for me in the delivery arm to argue which should take precedence. I would go back to the fact that, obviously, on an infrastructure case, the NPS takes precedence. Otherwise, at the moment, given the way it is set up, an associated development has to be determined in accordance with Welsh policies and Welsh local planning policies.

[26] **Antoinette Sandbach:** Does that mean that there is potential for inherent conflict in the Welsh system, even for projects under 50 MW, because there may be different considerations in different local authorities?

[27] **Mr Burley:** Put it this way: the potential is possibly greater where you have different things being determined under different systems. However, that is not to say that, even under the single consent regime in England, there are not going to be conflicts between different elements of the regime.

[28] **Rebecca Evans:** The committee has heard evidence that the Welsh Government should use its powers to call in all associated developments. Do you have a view on that, and to what extent do you anticipate those associated elements being called in?

[29] **Mr Burley:** First, I do not think it is for me to have a view on that. It is for Ministers to decide how they are going to exercise their call-in policy.

9.45 a.m.

[30] However, I have had a discussion with colleagues in the Welsh Government about that issue. My understanding is that they do not intend to change the policy and it will remain as set out in chapter 3 of ‘Planning Policy Wales’, which clearly sets out that it is intended to be a very selective process and that Ministers do not intend to take away local authorities’ responsibility for determining applications except in exceptional circumstances.

[31] **Julie James:** May I turn the question around? As a result of the complexity regarding who decides on associated development and the need for the grid to travel through many local authority areas, and so on, are you seeing more appeals?

[32] **Mr Burley:** No, not at the moment. In fact, I was looking at the number of appeals that we have had over the last three years relating to renewable energy and, at the moment, we

have fewer appeals.

[33] **Julie James:** That is because they are all currently waiting to hear about the transport infrastructure.

[34] **Mr Burley:** Possibly. I know that there are some legacy cases that fall to the Department of Energy and Climate Change to determine, but which have yet to be determined and which might have to come to the inspectorate to be dealt with.

[35] **Julie James:** To follow that point through, in order to try to understand the bulk of the work and where it is, we have heard evidence from various frustrated project developers regarding the length of time that it is taking. Have you seen an increase in appeals for non-determination at all in this area?

[36] **Mr Burley:** I have not seen any increase in appeals in non-determination in this area. To go back to the call-in issue, I looked again at our figures for the last three years and only one application for a renewable energy scheme has been called in by the Minister and one was recovered. There was one for 16 turbines in 2009 in Ammanford, which was called in, and we had one last year in Swansea for 19 turbines, which was recovered. However, there have been only two in three years.

[37] **Julie James:** One of the issues that has been put in front of us by a number of other people—and it is also true of my experience—is that some of the appeals processes are taking quite a long time. Is that because of their complexity, is it a resource issue, or is it a combination of those two things?

[38] **Mr Burley:** It depends. If I might ask a question back: are we talking about the time from their appeal or the whole process?

[39] **Julie James:** The time from their appeal.

[40] **Mr Burley:** There is a tendency, certainly for some of the bigger schemes, because they are complex and there is a lot of public involvement in setting up inquiries, and so on, and because they involve others in the process, for it to take a degree of time. It is possible to speed up the process, but there is a balance between allowing democratic input into the system and speeding up the process. I know that, in some cases in England, where we have pushed inquiries quite fast on large schemes, there has been quite a difficult inquiry because people have not felt that they have had sufficient time to prepare their evidence to argue against the scheme.

[41] **Julie James:** If the Chair will indulge me, I would like to ask one more question. I understand the public point of that, but the other issue that we are looking at is the ability of the statutory consultees to respond. Are you finding that there is a similar situation with regard to the speed of their response?

[42] **Mr Burley:** I am not aware that we have had particular problems with statutory consultees at the appeal stage, usually because their response has been put to the councils at the application stage, so that is not a particular issue at the appeal stage. I would like to take the opportunity to add that we are looking all the time at how we can improve the inquiry process and I know that, in England, we are working with the Department for Communities and Local Government to look at the whole inquiry process and the way in which it might be speeded up. If that takes place, we will look at what we can learn from that experience in Wales and consider what we can do here.

[43] **Llyr Huws Gruffydd:** Yr ydych **Llyr Huws Gruffydd:** You have touched on

wedi cyffwrdd ar rai o'r cwestiynau yr oeddwn yn bwriadu gofyn, ond efallai y gallwn fynd ar ôl un neu ddau ohonynt ymhellach. Un o'r themâu cyson sydd wedi codi yn y dystiolaeth yr ydym wedi ei derbyn yw'r gwrthdaro rhwng yr angen i symud yn sydyn ar nifer o benderfyniadau er mwyn cyflawni polisi'r Llywodraeth a'r angen i sicrhau perchnogaeth leol ac ymgynghori mwy trylwyr, efallai, pan fydd penderfyniadau yn cael eu gwneud. Yr ydych wedi sôn am gael cydbwysedd; a ydych yn meddwl ei bod yn bosibl taro'r cydbwysedd iawn sydd yn ticio'r ddau focs?

some of the questions that I intended to ask, but perhaps we could pursue one or two of them a little further. One of the themes that has arisen frequently in the evidence that we have received is the clash between the need to move quickly on a number of decisions in order to put the Government's policy into action and the need to ensure local ownership and more thorough consultation, perhaps, when decisions are being made. You have talked about achieving a balance; do you think that it is possible to achieve the correct balance that ticks both boxes?

[44] **Mr Burley:** Let me separate national infrastructure casework and appeals casework. As you know, with national infrastructure, there is a process that is, to use a horrible technical term, front loaded. Basically, consultation and engagement with the local community is supposed to happen even before the application is submitted. That does not happen to the same degree in normal planning systems. The belief is that it happens in this case because the local authority is determining it, and it should be going through its own processes. However, having spent 20-odd years as a planning inspector, I have to say that it does not always work as well as it should. Sometimes, you get to a stage in an inquiry where people still feel disengaged from the process and feel that the local authority has not really engaged with them. It is a difficult balancing judgment. We need to do a lot more to engage people much earlier in the process. The Chair asked a question earlier on how much people understand about the system. The difficulty is that their own engagement in the process comes right at the end of it, when they are facing an inquiry and they have not really understood the issues, meaning that they are on a very steep learning curve. We need to do more across the whole planning system and across planning organisations to try to make people understand how the process works.

[45] **Llyr Huws Gruffydd:** Yn eich barn chi, sut fyddai modd sicrhau bod hynny'n digwydd? Dywedasoeh fod yn rhaid i hyn ddigwydd ar draws y sbectrwm. Fodd bynnag, bydd yn rhaid i'r gyriant ar gyfer y gwaith hwn ddod o rywle. A ddylai ddod oddi wrth Lywodraeth Cymru?

Llyr Huws Gruffydd: In your view, how would it be possible to ensure that that happens? You said that this needs to happen across the spectrum. However, the driver for this work needs to come from somewhere. Should it come from the Welsh Government?

[46] **Mr Burley:** Yes, I think that it should come from the Welsh Government. As a planning inspectorate, we also have a duty. Tomorrow, for instance, I am holding a workshop on the local development plan system for amenity organisations and the private sector. I have also been in discussions with Planning Aid about doing this for community groups. This is about not just the Welsh Government, it is also about us. We have a responsibility to try to explain the process to people.

[47] **Mick Antoni:** I wish to turn to the pre-planning appeals situation. You will obviously be looking at the whole process from start to finish, so you are probably in a very privileged position in terms of seeing what has gone with many applications. A lot of the evidence that we have had, as I have interpreted it, shows a fairly complex and often dysfunctional system in which there is a considerable variety of problems, such as those relating to skills, resources and so on. What are the key problems and lessons that we should be paying attention to in respect of the pre-planning appeals process?

[48] **Mr Burley:** It is quite difficult for me to answer that. From my perspective, one problem is that people are not properly prepared and that they do not start off thinking about where they want to be. So, they do not start off by thinking, 'I might end up at an inquiry and go through the whole process to get consent.' Before I became director of Planning Inspectorate Wales, I was responsible for renewable development in the Planning Inspectorate in England. I often had meetings with RenewableUK, which complained about the length of the process. When we looked at the situation, we found that most of the delays were because of things that it could not do or was not doing. I had a meeting with the organisation, where I made a presentation about how it should prepare itself for inquiries, and things improved significantly. The same is sometimes true of planning authorities, in cases where they have not thought through what would happen if they refused something and were to appear at an inquiry. So, this is a question of people being prepared for the system and understanding how the whole system works, so that they can be ready, if a council refuses something, to deal with an appeal.

[49] Last year or the year before that, we made changes to the appeals system under the Planning Act 2008. We went out to parties and said, 'Look, we are looking for a fast appeal system in which, upon your appeal, you are ready to go through the process.' In the past, we had people appealing without really thinking about it, and then suddenly wanting to go and speak to the council and asking if their appeal could be held in abeyance. We are saying that those conversations should be held upfront before a person appeals, so that when they come to the appeal system, it works smoothly and efficiently.

[50] **Mick Antoniwi:** I would like to follow up on one point. Are skills and resources at local authority level an issue, and do they impact on the length of time or the smoothness of the planning process?

[51] **Mr Burley:** There is no doubting the fact that, certainly on the national infrastructure side, a small authority faced with a huge national development is going to be under a significant degree of pressure to have an input in that process. I am aware that, over the last year, the Welsh Government has been providing some financial assistance to local authorities to enable them to get expert advice on renewable energy schemes and also to deal with DECC legacy cases and Infrastructure Planning Commission cases. The process is built so that local authorities can be involved through stakeholder and community consultation, but I accept that there may be some difficulties for small authorities. I am aware that the Welsh Government has been keen to persuade authorities to work jointly to deal with situations that arise. I know that there has been a lot of joint working in north Wales. The week before last, I met councillors from Anglesey and Gwynedd who are now working together on a joint local plan. We discussed how they are dealing with the issue of Wylfa in relation to their local plan. There is a lot of joint working to that end, which is one way of addressing the matter. On the inspectorate side, resourcing is not an issue at the moment. We will have to look at how the casework comes through, particularly on the side of our inspectors, to see whether we need to increase our inspector resources in the medium-to-longer term.

[52] **Lord Elis-Thomas:** We have great hopes for collaboration across the Menai straits.

[53] **Antoinette Sandbach:** The difficulty in north Wales is that there is no route for the associated infrastructure development; there has not even been a consultation on that. How are local authorities and local communities expected to be in a position to respond or judge? The information is not in the public domain.

[54] **Mr Burley:** Are you expecting me to answer that? It is a little outside my remit.

[55] **Antoinette Sandbach:** You were talking about close co-operation. How can a local authority deal with Wylfa, which you mentioned, when the proposed route for the associated

infrastructure has not been disclosed?

[56] **Lord Elis-Thomas:** You may answer the question in your own way.

[57] **Mr Burley:** We talked to Anglesey and Gwynedd councillors and said that they may need to look at alternative options when producing a local plan, so that the plan is flexible for the coming period depending on what is decided on Wylfa. I cannot tell them how they should deal with that; I can just advise councillors to look at what the options are and at what they might need to do in the 10-year period, depending on the outcomes.

[58] **Antoinette Sandbach:** How clear do you think that local authorities are on the strategic search areas, particularly the maximum capacity of those areas and grid infrastructure, given the evidence that has been presented to this committee?

[59] **Mr Burley:** As we know, the situation on technical advice note 8 has been changing rapidly. Some authorities are more up-to-speed than others; there is no doubt about that, and we always find that that is the case. I cannot say that I am aware of any authority being particularly problematic in dealing with those issues, so I am not conscious that any one council is failing to act responsibly in dealing with schemes.

[60] **Antoinette Sandbach:** Is the planning inspectorate clear on what the maximum capacities are in those strategic search areas, and on the policy regarding grid infrastructure?

[61] **Mr Burley:** We work according to the Welsh Minister's statements on policy.

[62] **Lord Elis-Thomas:** You have made a number of references to local development plans. Of the ones that you have examined so far, to what extent are they in line with Welsh national policy on energy matters?

[63] **Mr Burley:** I cannot comment on that, because I did not undertake the examinations and I have not looked through the plans in detail to note what they say on energy policy. I can come back to the committee if you would like some comment on that.

[64] **Lord Elis-Thomas:** That would be useful, because the extent to which the strategic relationships of Government, the way that those relationships influence the attitude of developers and the way that the practical experience of decisions undertaken, either by the local authorities or on appeal by yourselves, relate to each other is of interest to this committee. How they score on the effectiveness of delivery of public policy would be a grand way of putting it.

10.00 a.m.

[65] **Mr Burley:** I am happy to write to you about that.

[66] **Lord Elis-Thomas:** That would be very helpful.

[67] **Julie James:** Before I became an Assembly Member, I did a lot of renewable energy work. My experience of the way that local development plans—or unitary development plans, as they were then—and the permitting regime worked together was that it was problematic. Do you have a view about lining up the timescales for permitting applications and planning appeals?

[68] **Mr Burley:** I do. Before I became director of Planning Inspectorate Wales, I was involved in the Penfold review in England, which looked specifically at the issue of associated consents. More work needs to be done to try to line up associated consents.

Interestingly, I looked at the issue of environmental permitting, and whether we have many appeals against environmental permits at the same time as appeals against planning, and we do not. There are very few cases where we have had to run environmental permits and planning applications together. It is more likely that we will have cases like the Ammanford call-in case, which involved listed building consent and works on common land—that is one of the reasons why it was called in by the Minister. We have some cases where we have associated consents that we run alongside each other. It is much better the more that you can run things together, either in parallel or consecutively, so that you speed up the overall decision-making process.

[69] **Julie James:** In my experience, some of the permitting is dealt with either as conditions precedent or whatever—a condition of some sort on planning consent. There has just been a case in Pembroke, which we all know about, of a power station being held up because of the permit and not the planning application. As regards the proposed planning Bill, some of us are thinking about slightly changing the material consideration issues around permitting—the public really do not understand the difference between permitting and planning—forcing them to come together so that there is a sensible decision about the entire project at once, rather than have a ridiculous situation where you can build it but not operate it, or vice versa, which is even worse. What do you think about a proposal of that sort? I know that that is very general.

[70] **Mr Burley:** It is very general and I will give my personal view, because it is outside my remit. My view is that, the more you can do to align the consenting process, or even include it in one, the easier it will be for people to understand and to process. I am well aware that environmental permitting is one area. With the Countryside Council for Wales and species licences and so on, that is another issue whereby you have to get planning consent and wait to get a separate licence. It is becoming more difficult because the courts have now said that the inspector still has to consider the same issues that the licence authority has to consider as part of the planning appeal. Effectively, there is a double consideration going on. There is also an issue, even for professionals on environmental permitting, as to where the borderline on planning pollution control goes with regard to what is dealt with at the planning stage and what is dealt with at the environmental permitting stage. In my view, the more you can do to simplify that, the better.

[71] **Julie James:** If you were to, for example, take the environmental impact assessment regime, or something similar, and prepare a single source document of that sort for both systems—if you had to encompass the whole thing in one document, by way of example—would that be a more comprehensible way of doing it?

[72] **Mr Burley:** On the face of it, it sounds like a potential option. I would not want to close down potential options, but that sounds like one that is worth considering.

[73] **Lord Elis-Thomas:** In areas that appropriate for hydro development, many of us come across situations where a potential applicant—an individual farmer, perhaps—ends up having to request three permissions and/or three environmental statements. You would surely agree—I say, with a leading question—that that does not make any sense. [*Laughter.*]

[74] **Mr Burley:** As an inspector, I am well used to spotting leading questions, Chair.

[75] **Lord Elis-Thomas:** I thought that you might be.

[76] **Mr Burley:** Given the answer that I have just given, I could not demur from that. When we had discussions at some of the Penfold review meetings, it was interesting that what seemed to happen was that the review was trying to improve the way in which agencies such as the Environment Agency and Natural England processed things so that they worked more

consecutively. However, the committee said that that was not going far enough and that they needed to look more at aligning some of the consents, so that there were fewer consents to go through. I would not demur from that position.

[77] **Lord Elis-Thomas:** What interests this committee, in our very good system here, is that we are now a select committee asking you questions, but we will also be the equivalent of a standing committee when the Bill comes. So, everything that you say now is being taken down and will be used in evidence. [*Laughter.*]

[78] **Russell George:** Going back to the question that Antoinette asked about the capacity of SSAs, you mentioned that you have followed recent statements. Just to clarify, are you talking about the statements by the First Minister and John Griffiths that were issued in the summer? I ask because other witnesses have suggested that there is no legal weight to those statements, but I may be wrong—I may have heard that elsewhere. Either way, I would be interested to hear your views on that.

[79] **Mr Burley:** A statement of ministerial policy, in whatever form it is made, is a material consideration, which inspectors would have to take into account. Regarding the weight attached to it, lawyers sometimes try to dance on the head of a pin in terms of legal weight. [*Laughter.*] I am quite used to having robust conversations with my legal colleagues over such issues. Something that is said in a circular probably has different weight to something that is said in an on-the-hoof ministerial statement, but it is still a material consideration. Our inspectors determine cases on behalf of Welsh Ministers, so I would expect them to take the Minister's policy into account, because they are standing in the shoes of the Minister.

[80] **Lord Elis-Thomas:** I am tempted to pursue this. To take a totally hypothetical situation, if a Minister who had specific responsibility for an area made a statement and, a fortnight later, another Minister made another statement, would they have equal value?

[81] **Mr Burley:** I am digging myself into a hole here, so I will stop digging at that point.

[82] **Lord Elis-Thomas:** Would you like to defend the honour of lawyers, Vaughan?

[83] **Vaughan Gething:** No, I am very relaxed. It is interesting to learn how the process works, the policy considerations underneath it and how the pre-appeal stage works. The reality of what you say is particularly interesting in terms of the lack of appeal action and that most of the problems occur at the pre-appeal stage. We heard about significant delays from energy companies, but you are saying that that has nothing to do with the appeal process, but with the planning process.

[84] **Mr Burley:** Yes. My discussions with RenewableUK did not lead to me believe that it has particular problems with the appeal process. It would like swifter decisions to be made sometimes, but it accepts that a balance has to be struck between the involvement of the public in the system and getting its consents. I am not aware of it saying that it is totally unhappy with the appeal system.

[85] **Vaughan Gething:** The other interesting thing is that you talked about your previous life, about RenewableUK and its role in England. I would be interested in the types of things that it was able to do to make the process more consistent and easier to manage, and whether that process is already taking place or has taken place in Wales as well. I certainly detected a difference in attitude in how RenewableUK Cymru was set up. For example, it is talking about setting up a community benefits protocol, as England already had one. So, I would be interested in what you managed to do to improve things in England and whether those things could be done here.

[86] **Mr Burley:** The conversation that we had with RenewableUK was more to do with getting it ready by being prepared for the fact that the process was supposed to be balancing the inputs from the community against the desire to develop the scheme. Sometimes, it was going at it from the point of view that, 'Our scheme's a great one and you should accept it, full stop', and was not really preparing itself to present the evidence or rebut the challenges from the local community. So, we said that the inspector has to look at both sides of the coin and listen to what people say about noise and so on and that, therefore, it needed to be in the position to help the inspector by providing evidence to rebut that. It is not good enough just to say that it is a great scheme and that we should not be listening to these people. It was more about its engaging with and understanding the process and helping the inspector to reach a balanced conclusion.

[87] **Julie James:** I just want to follow that up. Is that your experience where something has been called in as well, because then, obviously, you are doing the whole thing all the way through?

[88] **Mr Burley:** Yes, we are.

[89] **Julie James:** Do you find the level of preparedness to be of a similar state?

[90] **Mr Burley:** Call-ins are more problematic. In fact, certainly in England, where we were writing the guidance, we had to accept that, often, people are less prepared for call-ins, unfortunately. We are saying to people that they should have a fair idea whether there is a likelihood that it is going to be called in and that they should be preparing for that. However, people still sometimes seem completely surprised that the Minister has decided to call something in and have not really prepared for that eventuality. Also, quite often in call-in cases, particularly if it is a case where the local authority is supporting the developer, there is not an awful lot of organised rebuttal, and the inspector has to do a great deal more work to examine the background to establish whether it is justified.

[91] **Julie James:** Going back to my question about the statutory consultees, are you finding that that is a problem in call-in cases?

[92] **Mr Burley:** It is difficult to say. As I said, certainly on renewables, we have had only one call-in case in the past three years, so I am not conscious of it as a problem.

[93] **Lord Elis-Thomas:** We are very grateful to you for your openness in discussion. I have a final question, with no sting in the tail at all. However, because we have asked others about the adequacy of resources for local planning authorities we ought to ask you the same question. Do you, as a planning inspectorate, have the skills and resources to deal with renewable energy appeals? You have already mentioned that you have had only one call-in, so it does not seem to be a call on your resources at the moment.

[94] **Mr Burley:** At the moment, Chair, I feel that we have the resources that we need. We are constantly monitoring, we do forecasting and we keep on identifying what we have coming forward. I mentioned earlier that there is the potential that we will have some DECC legacy cases in Powys. They have started to have conversations with us, and that may put us under some pressure, given that we have a large number of local development plan examinations going forward over 2012. However, we work closely with our English colleagues to ensure that we have the required resources to staff everything that we need to.

[95] **Lord Elis-Thomas:** We look forward to a continuing and positive relationship with your office.

[96] **Mr Burley:** Thank you.

10.15 a.m.

**Ymchwiliad i Bolisi Ynni a Chynllunio yng Nghymru—Tystiolaeth gan
Asiantaeth yr Amgylchedd Cymru
Inquiry into Energy Policy and Planning in Wales—Evidence from the
Environment Agency Wales**

[97] **Yr Arglwydd Elis-Thomas:** Bore da, a chroeso i Ceri Davies ac Anthony Wilkes ar ran Asiantaeth yr Amgylchedd Cymru. Ni wn a glywsoch y dystiolaeth flaenorol, ond gofynnwyd cwestiwn cyffredinol i gychwyn ynglŷn â swyddogaeth yr Arolygiaeth Gynllunio o fewn y gyfundrefn cynllunio a chaniatadau ynni yng Nghymru. Gofynnaf yr un cwestiwn i chi, sef: ble mae'r asiantaeth yn eistedd, fel corff sydd yn ymgynghori ac yn rheoleiddio mewn perthynas ag ynni? A oes anawsterau penodol ynglŷn â'r swyddogaethau hynny?

Lord Elis-Thomas: Good morning, and welcome to Ceri Davies and Anthony Wilkes from the Environment Agency Wales. I do not know if you heard the previous evidence, but we opened with a general question on the function of the Planning Inspectorate within the energy planning and permissions system in Wales. I will ask you the same question, that is: where does the agency stand, as a consultative and regulatory body in relation to energy? Are there any specific difficulties that arise as a result of those functions?

[98] **Ms Davies:** Thank you for the opportunity to come to give evidence today. I thought that it would be worthwhile to set out what our role is with regard to energy policy and planning. Essentially, our role can be divided into two aspects. First, we provide impartial advice and evidence to the Welsh Government—the policy maker in this case. Where it is within our remit, we will ensure that policies are implemented through the roles that we undertake. We also provide advice for the planning process, through the Infrastructure Planning Commission and through the local planning authorities. We use our evidence of the environmental impact and make that information available. Secondly, we are the regulator for some major energy infrastructure, for example, larger power stations. We issue permits and monitor compliance with those permits, to ensure that the environment is protected. We have an advisory and a regulatory role.

[99] On fulfilling those roles, with regard to permitting, we are principally involved with ensuring that the developments for which they are seeking a permit are safeguarding the environment and promoting sustainable development. There needs to be a balance between the environment, development and the impact on people in communities.

[100] In our evidence, we have drawn from our experience of regulating large industry, within the energy sector and in other sectors. In terms of developing our evidence, we have drawn from that experience and there are two key areas that we think it would be helpful to explore. The first is the development of a national infrastructure plan: strategic planning for major infrastructure developments would help to ensure that we could aim to achieve a win, win, win situation for the environment, communities and the economy. Another area that we think would be worthy of exploration, for very complex situations, is the potential to bring together and run together the planning and the permitting processes, so that we could input into both of those with the maximum amount of information available. Often, if planning comes first—and that is usually the case—if we have not had an application for an environmental permit, and have not had that information, it is often difficult to input into the planning process, because we have not seen all of the information about how the proposal is to pan out if planning is given. These are the two main areas that we feel would help us in trying to protect the environment, as well as promote sustainable development.

[101] **Lord Elis-Thomas:** Thank you very much for that general description of the situation. Since you mentioned large power stations, perhaps we can move straight to Pembroke. Could you explain what happened from your point of view in that case, bearing in mind that we will be seeing your colleagues from the Countryside Council for Wales a little later this morning?

[102] **Ms Davies:** We recently issued the permit. At the moment, we are in the six-month period for appeal and judicial review, so I will try to keep my comments factual on the process that we have gone through. The Environment Agency is the decision maker in situations where major applications come forward. However, we do not do that on our own. We take advice from a range of different statutory bodies and CCW is one of the bodies that we would take advice from. We worked well with CCW throughout that process; there was dialogue, discussions, meetings and a sharing of information, so that we could understand its concerns and request of the company further information to address the concerns that were being raised by CCW and others in the permitting process. However, at the end of the day, we could not reach agreement, although we worked with CCW a great deal and took it through our determination at the end of that process as to how we had tried to address its concerns and built into the appropriate assessment the specific queries to which we had been able to respond, and then the permitting decision was made.

[103] **Lord Elis-Thomas:** Are there any ways, on reflection, in which—without straying beyond what you think it is appropriate for you to say—the process of consultation and co-operation might be improved?

[104] **Ms Davies:** In terms of the co-operation, as I said, we worked very much with CCW throughout the determination process. So, it was not as if we just shared the information at the consultation stage and made a decision thereafter. However, again, to draw it back to the point that we made in our evidence about the national infrastructure plan, we feel that if we had those discussions much earlier in the process, before the applications came forward, we could look at the environment and its capacity, and then have those discussions with other bodies such as CCW and set out some of the environmental issues so that, when we receive applications, we would be in a much better position, because we would have proactively looked at the sensitivities and what the art of the possible is for mitigation.

[105] **Lord Elis-Thomas:** So, you are saying that the process would be more consistent in terms of the principles of sustainable development if these issues had been balanced at an earlier stage.

[106] **Ms Davies:** That is right. If we were involved much more prior to specific locations being applied for through permits, and if we had had a lot of those discussions about what the environment could cope with in some of these sensitive locations, that would help us all in terms of the permitting process.

[107] **Julie James:** Following on with that, we have just been talking to the Planning Inspectorate about the possibility of lining up the planning process and the associated consents process in a more comprehensible way. One of the issues that arose with the Pembroke station was that it had planning consent, but not a permit, which most people outside of the planning bubble just cannot comprehend. What would your view be on trying to make those systems line up or work better together, or do you think that they do so already? I was not trying to put the words into your mouth.

[108] **Ms Davies:** Our experience is often that—this is usually with large, complex or sensitive locations that are being considered for development—if the planning process is taking place and we have not had any detailed information from the company about what its

plans are, exactly what processes it is proposing to operate and how it proposes to operate them at that location, we are less able to input some detailed information into the planning process. So, aligning those two processes so that we have that information would be helpful, not only to us in terms of informing the planning consideration, but also for the communities, for whom it would be beneficial. They get quite confused as to which elements are considered in the planning process and which are considered in the permitting process, and, often, if we are the ones doing the permitting later on, they will come to us and start asking us questions about things that are to do with land use planning, not permitting. It is then difficult to explain that that is not being covered. So, it would be better for communities, because they could see more transparently the process that is being gone through and make a better contribution to it. In addition, the companies are often being asked to provide similar information for both those processes, and by lining them up better, we could perhaps ask for all the information that we both need once, so they will only have to provide that once to both of us. They will then benefit from not having to provide very similar, but slightly different, information later on in the process.

[109] **Julie James:** I hope that you do not mind if I follow that up. For example, if you took the environmental impact assessment process and expanded it so that it covered associated consents in one document—we have heard about habitat consents and various other associated consents, which require similar information to an EIA or even a health impact assessment and so on—it would make it cheaper for the developer and more comprehensible for the public, how would you feel about that?

[110] **Ms Davies:** Our view is that the processes are quite distinct because they are dealing with different issues, but by running them in parallel, the applicant can apply one set of information to both. We could then look at that and make those considerations by looking at the same evidence.

[111] **Mr Wilkes:** From a systems point of view, there is nothing to stop the applicant from doing that at the moment. It is well within their gift to do that.

[112] **Julie James:** I understand that; they can twin-track it, as it is called. Perhaps you could tell us why you think that they do not do that in many cases. My experience prior to becoming an AM was that applicants often do not twin-track it even though they could.

[113] **Mr Wilkes:** I am not sure that we can answer that, to be honest.

[114] **Ms Davies:** When we have conversations with organisations regarding why they do not do that, we find that it can sometimes be linked to financing and, often, they will go for planning consent first and then secure more finance to move it forward. For us, it is about exploring the benefits to them of running these processes in parallel, so that they can see that it could speed up the decision making and it could mean that they have to provide only one set of information that satisfies both elements of the determination.

[115] **Julie James:** My experience is that it is often a financial consideration on the developer's part. Chair, if you do not mind, that is why I was suggesting that perhaps we could devise a system where one document or one suite of information were put forward. In a sense, the expenditure would be inevitable at that point and it might therefore speed the process up.

[116] **Lord Elis-Thomas:** Do you have anything further to add to that point? Antoinette?

[117] **Antoinette Sandbach:** I want to move on to the national infrastructure plan, which I am tempted to call a NIP. We have had evidence that the spatial for Wales has not been updated for some time—I think that it goes back to 2008, or maybe even earlier. In your

evidence, you indicate that key environmental implications of development are currently being recognised and addressed too late in the site-selection process. Are you thinking along the lines of a spatial plan? I know that there have been concerns in some of the strategic search areas that the main criteria related to wind developments and did not look at other benefits or the environmental costs in terms of agricultural tourism and balance that with wind development. Effectively, the sole criterion was wind. Do you echo those concerns, and what is your feeling on spatial planning?

[118] **Ms Davies:** Our view is that the spatial plan certainly did not set out to do what we were suggesting in terms of a national infrastructure plan. We are looking for a starting point that considers what the environment can sustain in that location. We all know that, while it seems to rain a lot in Wales, there are plenty of areas where there is not a great deal of water available for business, industry, and household users. There are areas along the coast and near rivers that are at risk of flooding. There are also very sensitive environments where we are already, perhaps, at the limit of what the environment can sustain at those locations. That could be anything from biodiversity impacts right through to things like air quality issues in Neath Port Talbot, for example. So, for us, it is about trying to set out that case.

[119] This does not mean to say that you are looking to sterilise those areas from any development; it is about recognising that there will be certain developments that can take place in those locations, and trying to drive that. At the moment, it is market-driven. If someone applies to operate a power station, our role as the regulator is to determine whether they can do that, what the environmental constraints will be and what the permit will look like, not whether it is the right thing to do in that location. So, it is really about starting at that level and building up so that we can start to direct things more proactively to the areas where they would be best served.

10.30 a.m.

[120] **Antoinette Sandbach:** We have also heard quite a lot of evidence about a lack of community engagement at an early stage, so that, sometimes, planning policy is effectively being dictated and then left. How would you see community engagement happening with that kind of national infrastructure plan?

[121] **Ms Davies:** I suppose that if we were to be part of developing a national infrastructure plan, there would need to be consultation around that so that communities have the opportunity to understand the risks and opportunities in their area. Then, when developments come forward, we have been involved in much wider community engagement, particularly around things that communities tend to worry about, like big infrastructure developments or waste facilities—they tend to be unpopular. It is a case of proactively going out to the community before you receive an application, to explain what it is that is likely to be coming forward, what the technology is, and the roles of the various bodies that are dealing with the permitting process, whether it is planning or permitting pollution.

[122] **Lord Elis-Thomas:** Julie has a short question on this point.

[123] **Julie James:** I just wondered if you thought that any of that was covered by strategic impact assessments and the local development plan process—or are you talking about something else?

[124] **Ms Davies:** We are talking about something at the level above that. At the moment, we have an input to the LDP process, and in Neath Port Talbot, for example, we recently returned comments to remind them that they are at the legal limit in terms of the air quality zone, and therefore they need to consider that as regards the development that they are promoting. However, if we could get to a position whereby developers look at a number of

strategic sites and then pick the one that will be least harmful to the environment, and make it easier for them to gain a permit in those circumstances, that would be helpful. They could go through a shorter process, as long as the environment was not under pressure at that location.

[125] **Rebecca Evans:** Moving on, we have heard that there are concerns that relevant parties do not have adequate resources or expertise to deal with the increasingly complex and technical issues brought forward by energy planning. What is the experience of the Environment Agency?

[126] **Ms Davies:** We have read CCW's evidence. For us, as the regulator in these cases, we are paid to undertake permitting, so the resources that we need are covered by the application fee, and the ongoing regulation is covered by the annual fee for the permit. The period that we look at is the planning input period, which we will do partly through grant-in-aid from the Welsh Government. Clearly, we do not have infinite resources to manage that, so we rely very much on a risk-based process. We will put far more of our resources into those things that are more complex or more potentially harmful to the environment, and make more standard responses to those things that will be less impactful. We use a risk matrix to determine that, and then there is some financial aid available for more lengthy discussions with the IPC, for example. Perhaps Anthony has something to add to that.

[127] **Mr Wilkes:** The IPC element is where the applicant withdraws, effectively, from the process, and there is an opportunity to try to recover some of the cost if that withdrawal is deemed to be unfair or unreasonable. However, we do not have an awful lot of experience with the IPC process, because the main application in Wales, in Merthyr, has been withdrawn now. We will have to wait for the next one.

[128] **Rebecca Evans:** Do you have access to technical expertise and knowledge?

[129] **Ms Davies:** Again, we benefit from being part of a larger organisation. We can draw on expertise throughout Wales, but also from the part of our organisation in England, and so we utilise that resource to help us if there are particularly complex technical determinations that we need to undertake. Clearly, depending on how things pan out in the future, it may be that we would be separate from that. Again, we would need to look at whatever new organisation may be put in place to ensure that we have that technical resilience. It is about making sure that we are brigading our resources, and focusing them on the most impactful environment applications, and not trying to provide a blanket approach across every planning application that we receive for comment. So, we focus on the ones that are going to have the biggest impact.

[130] **Llyr Huws Gruffydd:** Hoffwn ddod yn ôl at yr awgrym o gael proses gynllunio a chydsynio yn rhedeg gyda'i gilydd. Yn amlwg, mae hyn yn rhywbeth a gododd yn gynharach y bore yma a bydd yn codi ar ôl y sesiwn benodol hon hefyd. Beth yw eich ymateb i'r farn a allai ddod o gyfeiriad y datblygwyr y byddai hynny'n creu anawsterau ymarferol, oherwydd heb gael caniatâd cynllunio yn y lle cyntaf, ni fyddant yn mynd allan i gontractwyr? Felly, bydd yn anodd iddynt fod yn ymwybodol o ddull gwaith y rheini a'u nodweddion perfformiad, ond mae angen y wybodaeth honno er mwyn ateb gofynion cydsynio. Felly, rhaid i chi gydnabod y bydd anawsterau a thrafferthion

Llyr Huws Gruffydd: I would like to return to the suggestion of having a planning process and a consent process running along each other. This arose earlier today and it will arise after this session as well. What is your response to the opinion that could well come forward from developers that that would create some practical difficulties, because without planning permission in the first place, they would not be able to go out to contractors? Therefore, that would make it difficult for them to become aware of their working processes and performance and so on, whereas they need that information in order to satisfy consent requirements. So, changing the process like that, although there

ymarferol wrth newid y broses, o safbwynt y cwmnïau fydd yn dod gerbron, er bod manteision. are some advantages, will create some practical problems from the point of view of companies that will come forward.

[131] **Ms Davies:** Yes, that was the point that RWE Npower made in its evidence. However, it also recognises that there are some benefits. It is a trade-off around how much information it has and how much we need in terms of that permitting process so that we can have a better input into the planning discussions. So, I suggest that that would be something that we could work through as a sort of pilot project with some of these larger, more complex, applications to look at what information they have available to them prior to the setting of those contracts, whether that is sufficient information for us to start to understand what the impacts on the environment will be, and to then be able to make those decisions at the right time.

[132] **Llyr Huws Gruffydd:** Diolch am hynny. Yr oeddwn eisiau codi'r pwynt hwnnw'n benodol. Fodd bynnag, mae fy mhrif gwestiwn yn ymwneud â'r ffaith fod gan y Llywodraeth, yn amlwg, dargedau o safbwynt ynni adnewyddadwy, a byddai rhai yn dweud eu bod yn dargedau reit benodol. Sut fyddech yn ymateb i'r farn fod ymgynghoreion statudol yn achosi rhwystredigaeth i ddatblygwyr, er gwaethaf y ffaith fod targedau clir sydd angen eu cyflawni?

Llyr Huws Gruffydd: Thank you for that. I wanted to raise that specific point. My main question relates to the fact that the Government, obviously, has targets on renewable energy, which, some would say, are quite specific. How would you respond to the opinion that statutory consultees cause frustration for developers, even though there are clear targets that need to be achieved?

[133] **Ms Davies:** A good example I would use is the work that we have done more recently on the hydropower permitting regime, where we received lots of comments and concerns from developers about the slowness of the process and the burdens that that was placing on them, and the fact that that was perhaps not allowing those sorts of opportunities to be exploited to meet the targets that the Government has set. So, we went through a rigorous process of looking very hard at our processes, paring them down so that they were streamlined back, providing much better guidance to the developer and to the communities, because a lot of these are community schemes that are being proposed, so that they knew exactly what criteria we would be assessing the application against. Then, in the early stages, we mapped some areas where it may be that there were opportunities for renewables in the form of hydropower. However, you cannot get away from the fact that even within those opportunity areas, you still need to do a site-specific assessment so that you can determine whether you can meet the legal obligations that have to be met, such as the habitats directive. However, by streamlining the process, if we are in a position where we can say, quite clearly, that the environment is sensitive and it does not look as if this proposal is going to be able to go ahead, the feedback that we have had from developers who are helping us to produce this guidance is that they want an early 'no', rather than a long-drawn-out 'maybe'. So, that has been the focus for us.

[134] We have tried to deal with that by bringing them around the table to help us do the streamlining work. So, rather than us doing this from our perspective, launching it on communities and developers and then asking them whether it meets their needs, we have had them around the table—along with the anglers, the rivers trusts and the various interests represented—to help us go through our good practice guidance and come up with what now looks like a very straightforward system. Within this system, a developer, regardless of whether we are talking about a multinational or an individual farmer, can do a red and green tick-box exercise and see clearly how hard the process is going to be for them, depending on the way in which they have answered the questions, due to the impact on the environment.

That is the sort of thing that we have tried to develop to help speed up the permitting process for hydropower.

[135] **Llyr Huws Gruffydd:** A gawsoch **Llyr Huws Gruffydd:** Did you have any chi unrhyw adborth ar hynny? feedback on that?

[136] **Ms Davies:** Yes, the feedback has been very positive regarding the approach of involving developers, communities and interest groups. Part of the problem is that they often do not fully understand each other's perspectives. So, by getting them around the table and having a sensible discussion about the rivers trusts' concerns and the developers' concerns, we have been able to focus in on the real issues rather than on people's perceptions of them.

[137] **Lord Elis-Thomas:** We will now have a short, sharp question from Julie, and then we will have questions from David and Vaughan.

[138] **Julie James:** I am familiar with some of the smaller energy schemes—anaerobic digestors and so on—where you have a permitting system that comprises off-the-shelf permits or bespoke permits, depending on which boxes you tick. Are you talking about the same sort of thing?

[139] **Ms Davies:** It can be. We have been involved in regulating business, large and small, for a considerable time. As well as specific actions, such as the ones that we have taken on hydropower, we have been looking at our regulation and how we use it. We have looked at the Hampton principles, which are about proportionate regulation and focusing on what we need and not asking for any more. A couple of years ago, we went through quite a rigorous process with the Better Regulation Executive, which assessed our ability to meet those criteria. On the basis of that, it judged us to be Hampton-compliant and therefore eligible to have further powers available to us under civil sanctions. That was a really good test for us, in terms of how much effort we put into looking at our regulatory regimes and limiting the process so that we meet our outcomes. It has been quite successful. It is good to see that some of the feedback that we are getting from the Confederation of British Industry is that it recognises that the agency has done more in terms of better regulation than any other regulator. We are continuing on that theme by looking at ways in which we can again focus our efforts on those operators that are just about compliant or slipping into non-compliance, rather than putting the same amount of effort into those that are continually 'A' and 'B' performers. If the best performers have their systems sorted, we really need to focus our resources on those that need to be brought up to that standard. So, a lot of work has been done on that by the agency.

[140] **David Rees:** I would like to return to the infrastructure plan. You are clearly helping local authorities—and I represent Port Talbot—to build up their LDPs. So, you are basically building infrastructure plans from the ground up, as I understand it. Do you believe that this gives confidence to developers because they know what is permissible in an area? Also, with regard to your own interpretation of permitting, do you also consider the accumulation effect, such as on the air quality in my area, in respect of any approaches that you take to decide on applications?

[141] **Ms Davies:** Regarding the first question, the feedback has been that this does help, even if it is the case that a particular site is the only one that a developer can develop. It may be that a farmer only has land around a particular river, and so a developer does not have the option of going around different locations to put a scheme in place. By setting out what the constraints are with regard to the environment itself, or what the legal limits are in the case of air quality, developers at least know that they will need to jump through many hoops and undertake a more rigorous assessment. Therefore, they know that they may need to invest more money in the sort of abatement equipment that they use in their processes because they

are looking to develop in a sensitive location. So, it is about being clear upfront that it may mean that they have to do more work in that location.

10.45 a.m.

[142] In terms of the cumulative impact, we very much look at what the proposal coming in is, what is already there in terms of background levels and what impact it will have on that and how acceptable that is in terms of the overall air quality in Port Talbot. That is why, when we responded to the LDP, we made the comments that, with the current arrangement of business, industry and development in that location, it is close to the European air quality limits and, therefore, the local authority needs to bear that in mind in terms of the sorts of development that it promotes in that area.

[143] **David Rees:** To follow up that a little further, you know that it is encouraged by LDPs, but how do you tackle new technology such as fracking and shale gas issues in that sense?

[144] **Ms Davies:** In terms of these new technologies that are coming forward, our role is mainly around the potential releases to surface water and ground water. So, our focus would be on looking at those proposals to see what pollutants they might be inadvertently releasing into the ground water or, through the discharges, releasing into surface water. We have worked with the information that has been available to date to try to make our assessment on that, working with local authorities to gather that information so that we can make that assessment. We recently attended the Vale of Glamorgan scrutiny session so that we could help the local authority with our expertise around the table so that it could make a decision on whether to allow planning or not.

[145] **David Rees:** I have one final point, Chair. You mentioned earlier the involvement of the community. Is it your view, therefore, that a joined-up process will help the community not to decide which way to go, but to have a greater understanding of the whole development and the implications of any development that comes forward?

[146] **Ms Davies:** That would certainly be our preference. When you have a development that is contentious because of the type of development that it is, we would prefer all of us who have a role in permitting, whether it be planning or permitting, for a pollution discharge consent, to go along there and deal with it so that we can understand the issues in the round. Again, it is about understanding which issues need to be dealt with by which regime. If we can deal with that early on in the process, it gives people more confidence that they are talking to the right people about the right issues and that their voices will be heard and taken into account.

[147] **Vaughan Gething:** I wanted to pick up the point about shale gas. I know that we could probably spend the whole day talking about shale gas—

[148] **Lord Elis-Thomas:** We do not have all day, but you have 10 minutes. [*Laughter.*] Is that all right?

[149] **Vaughan Gething:** For now. I am interested in the view that the Environment Agency has or has not taken about the environmental risks associated with shale gas extraction. I appreciate that it is not a mature technology in the sense that everything about it is understood, but I am interested in how you assess the risks that are there. Given the potential extraction method, is there something that you view as being inherently risky or do you still have to deal with it more on a case-by-case basis? My understanding is that, because of the way that you have to extract it, you will always have an element of chemicals that will go in and come out. Have you formed a view on that yet, not just in Wales, but with

colleagues across the rest of the country?

[150] **Ms Davies:** At the moment, we are looking at the proposals on a case-by-case basis, because they are different and there appear to be different risks depending on the operation or the way that they are choosing to do it. So, we have worked very much with colleagues who are dealing with the developments that have been considered in England as well as what we have done in Wales. However, the important thing in this is that many regulatory bodies are potentially involved. While we are principally concerned about potential discharges into the ground water, which could have an impact on drinking water in future, and into surface waters, which could have an impact on ecological status in future, the Health and Safety Executive is involved in looking at public safety from the point of view of the process of the drilling and any potential seismic activity, which has been one of the issues raised in one of the studies or pilot schemes that were undertaken in England. So, it is very much a case of working together as a group of regulators on what the various issues are, because a number of regulators are involved. If they needed to discharge pollutants to water, for example, we would do that through the EPR regime that we talked about earlier, but it is DEC that would give them the consent if it was a petroleum-based activity, or the Coal Authority, if it was a coal activity.

[151] Underground coal gasification is another example of something that developers might look to do in Wales in future, because of the coal seams that we have here, and a consideration for us in that would be that there would be a requirement on them to capture the carbon. There are no facilities in Wales for carbon capture and storage at the moment, so where that carbon dioxide would need to go would be a big consideration, because of the public health risks involved. Again, it will be on a site-by-site basis, depending on the operation that they propose to undertake and the sensitivity of the environment in that location.

[152] **Vaughan Gething:** I am sure that we will come back to this; it is part of the reference, so I will not go on about it today. There was another thing that I was interested in. On a different topic, you said that you had read the evidence from CCW, and it suggested that there be a new renewable energy delivery board. I would be interested in your view on that, given that you said you had read the CCW's evidence.

[153] **Ms Davies:** There were some discussions at the very early stages of that. My view is that that is almost there because we do not have a national infrastructure plan system at the moment. So, where we have had common interests, we have got together with CCW, the Forestry Commission and others to look at how we can speak with one voice as far as possible on these issues. My understanding is that the renewable energy board has come out of that working arrangement, but it is very new. With regard to our proposal, if a national infrastructure plan could look at energy and other infrastructure-type developments, that would be the vehicle that this could perhaps nest under, to look at the issues that need to be considered.

[154] **Vaughan Gething:** It is set out very clearly as facilitating development for renewables. The other question to ask is: how effective do you think it could be under current arrangements with different consenting regimes? I know that it talks about a team Wales approach, but what if decisions are primarily made somewhere else on major projects, as opposed to there being further devolution? How do you see this working under current circumstances, if such a renewable energy board was created?

[155] **Ms Davies:** It provides the opportunity, similar to a national infrastructure plan, to bring together the policy objectives of the Government into one place to ask, 'If this is what we want to do in Wales, then what are the sensitivities in terms of the environment from our perspective around that, and how could we therefore help to facilitate a "yes, if" approach to

the future development of renewables?’ We did some of that when we started our review of the hydropower permitting. It affected us, CCW and the Forestry Commission, so we got together very early on in the process, about 18 months ago, to look at the role of each of us in that and how we can all work together. The Forestry Commission, for example, looked at its land to see what the opportunities were for it. For us, the issue was to really understand, with CCW, the sensitivities with regard to the environment and to ensure that we were considering them properly. I guess that it has been tested a little bit in the work that we did together in furthering the streamlining of the hydropower work.

[156] **Antoinette Sandbach:** None of the Assembly Members has seen the case in relation to a single environment body—it has been discussed, but the business case has not been released. I would like your comments on this. When the creation of a single environment body is being looked at, what sense is there in setting up another quango—which the new renewable energy delivery board would be—when you are trying to bring the processes together? Would you not then just be separating out further?

[157] **Ms Davies:** In terms of the single environment body, as the proposal currently stands, we would look at bringing together CCW, the Forestry Commission and the Environment Agency Wales. However, they are not all of the players that need to be around the table with regard to discussions on renewables. My proposition is that a national infrastructure plan would be our preferred way forward, so that we did not just limit it to renewables and that we looked at all of these big and complex developments and did it on a much wider basis than just focusing on renewables.

[158] **Antoinette Sandbach:** By implication, or, in fact, expressly in your earlier answer, you indicated that the TAN 8 policy on renewables is not clear at the moment.

[159] **Ms Davies:** As well as setting out what the environment can take with regard to future developments, the other element of the national infrastructure plan that we envisage would be that clear setting out of what it is that we want to do in Wales. We could then match our aspiration for development in Wales with the best place in the environment for that to take place without having too much of an impact, and move forward on that basis and give greater certainty to developers and communities in that way.

[160] **David Rees:** If the joint consenting and planning process happens in Wales but not in England, have you had any discussions with developers that that might give them more confidence in coming to Wales, given that it will be an extra cost that has already been identified in Wales, in contrast to England, or would it put off developers from coming to Wales? The cost might be more suitable in England, if the process is not a joint one.

[161] **Ms Davies:** It has been considered a little in England under one of the reviews, has it not?

[162] **Mr Wilkes:** Parallel tracking, from an Environment Agency perspective, is from an England-and-Wales point of view. You do not parallel track everything; you choose the complex ones and it is always going to be with the developer’s consent. For example, the Covanta one was run in parallel because it chose to run it in parallel, because it suited its purposes. As to whether it is more beneficial in terms of cost, that is down to the specifics of the case and what risks the developer chooses to take. Our point is that, if you have the national infrastructure plan, which has already set out these big arguments on a big scale, then that gives developers the confidence to come to Wales. The national infrastructure plan will be pretty much like an LDP, but on a higher scale, given that it is frontloaded, evidence-based and tested for soundness. That should really give you strong confidence about what is going to happen and where.

[163] **David Rees:** You mention a ‘national infrastructure plan’. We have been referring to a Welsh national infrastructure plan. Are you talking about a UK national infrastructure plan, because there would be differences between that and one for Wales?

[164] **Ms Davies:** No, we are talking about a Welsh national infrastructure plan.

[165] **David Rees:** So, there could be differences, in that Wales might have a national infrastructure plan, but England might not?

[166] **Ms Davies:** Yes, absolutely. There is a benefit to setting out Wales’s ambition for development and having those discussions upfront. We see that as a really big bonus in giving developers certainty and an incentive to come to put forward their plans.

[167] **David Rees:** It would give them confidence.

[168] **Ms Davies:** Yes, absolutely.

[169] **Lord Elis-Thomas:** It is always good to have confirmation that when this committee talks about ‘national’ it is talking about Wales. We know that the United Kingdom exists, but that is somewhere else. [*Interruption.*] I was looking for a way of closing things on a light-hearted note. [*Laughter.*] Thank you very much. No doubt we will follow this up.

*Gohiriwyd y cyfarfod rhwng 10.58 a.m. a 11.07 a.m.
The meeting adjourned between 10.58 a.m. and 11.07 a.m.*

**Ymchwiliad i Bolisi Ynni a Chynllunio yng Nghymru—Tystiolaeth gan Gyngor
Cefn Gwlad Cymru
Inquiry into Energy Policy and Planning in Wales—Evidence from the
Countryside Council for Wales**

[170] **Yr Arglwydd Elis-Thomas:** Yr wyf am ddechrau'r holi gyda chwestiwn cyffredinol ynglŷn â swyddogaeth cyrff yn y broses gynllunio. Fodd bynnag, cyn hynny, yr wyf am ddechrau gyda fy hoff ddyfyniad o'ch tystiolaeth, sef:

Lord Elis-Thomas: I will start the questioning with a general question regarding the role of organisations in the planning process. However, before that, I will start with my favourite quotation from your evidence, which is:

[171] ‘mae'r Cyngor Cefn Gwlad yn cydnabod y bydd yn aml yn angenrheidiol ymglyfarwyddo â'r angen i dderbyn rhai effeithiau lleol ar ein treftadaeth naturiol yn y tymor byr er mwyn sicrhau bod allyriadau o waith cynhyrchu ynni'n lleihau’.

‘CCW recognises that it will often be necessary to reconcile the need to accept some local impacts on our natural heritage in the short term in order to secure a lowering of emissions from energy generation’.

[172] A wnewch chi ymhelaethu ar hynny tra'n esbonio eich swyddogaeth fel corff yn y broses gynllunio?

Will you elaborate on that while explaining your role as an organisation in the planning process?

[173] **Mr Parry:** Diolch Gadeirydd, a diolch i aelodau'r pwyllgor am y gwahoddiad i ddod yma. Mae'r gwaith yr ydych yn ei wneud yn hollbwysig, ac yr ydym yn hapus i gyfrannu at y dystiolaeth.

Mr Parry: Thank you Chair, and I thank the committee members for the invitation to come here. The work that you are doing is vital, and we are happy to contribute to the evidence.

[174] Mae hyn yn mynd i wraidd y *dilemma* sydd gennym i gyd, sef sut i hwyluso symud tuag at dechnoleg sy'n cynhyrchu ynni ond nad yw'n cael cymaint o effaith ar yr amgylchedd â defnyddio tanwydd ffosil. Mae'r cyngor cefn gwlad o'r farn bod angen symud i'r cyfeiriad hwn o dderbyn ynni adnewyddadwy. Mae angen inni newid y ffordd yr ydym yn meddwl am yr amgylchedd wrth wneud hyn. Yr ydym yn derbyn yr angen i symud tuag at ynni o'r math hwn, nid yn unig am ei fod yn bolisi'r Llywodraeth ond oherwydd bod y ffordd yr ydym yn defnyddio ynni ar hyn o bryd yn niweidiol iawn i'r amgylchedd ac yn cael effaith ar y tirlun ac ar fioamrywiaeth. Felly, mae rhesymau gwyddonol yn ogystal â rhesymau polisi.

[175] Mae hyn wedi newid y ffordd yr ydym yn gweithio fel corff. Yr wyf am dynnu sylw at un peth arall a nodir yn ein tystiolaeth, sef y cynnydd yn nifer y ceisiadau yr ydym wedi ymwneud â hwy. Rhyw 20 mlynedd yn ôl, yr oedd holl drydan Cymru yn dod o lond llaw o bwerdai ac un lle yn Ninorwig a oedd yn ychwanegu rhywfaint o gydbwysedd at y ffordd yr oedd y trydan yn cael ei gynhyrchu.

[176] **Yr Arglwydd Elis-Thomas:** Yn ogystal â lle ychydig yn llai yn Nhanygrisiau.

[177] **Mr Parry:** Ie. Yn y bôn, dim ond llond llaw o lefydd oedd. Yr oedd cais am bwerdy neu dechnoleg i gynhyrchu trydan yn rhywbeth anarferol iawn. Fodd bynnag, bellach yr ydym yn cael dros 500 o geisiadau'r flwyddyn, sydd wedi golygu newid mawr yn yr adnoddau yr ydym yn gorfod eu rhoi i'r gwaith hwn. Mae hyn yn cael effaith fewnol, a bydd Roger, y prif weithredwr, yn gallu dweud mwy am hynny os bydd angen. Mae hefyd yn bwysig ein bod yn ystyried hwn fel ffactor yn y ffordd yr ydym yn creu corff newydd o'r tri chorff presennol. Bydd y gallu a'r adnoddau i roi tystiolaeth sy'n seiliedig ar wyddoniaeth yn hollbwysig wrth inni fynd ymlaen.

[178] **Yr Arglwydd Elis-Thomas:** Gan eich bod wedi dod â'ch tîm cyntaf allan, byddai'n braf clywed gan Roger a Dr Sarah Wood.

This goes to the root of the dilemma that we all have, which is how to facilitate the move towards technology that generates energy but does not have as much impact on the environment as using fossil fuel. The countryside council believes that we need to move in this direction of accepting renewable energy. We need to change the way that we think about the environment in doing this. We accept the need to move towards this kind of energy, not only because it is the Government's policy but because the way that we currently use energy is very detrimental to the environment and impacts upon the landscape and biodiversity. So, there are scientific reasons as well as policy reasons.

This has changed the way that we work as an organisation. I want to draw attention to one other thing noted in our evidence, which is the increase in the number of applications that we have to deal with. Some 20 years ago, all of Wales's electricity came from a handful of power stations and one place in Dinorwig that added some balance to the way that the electricity was generated.

Lord Elis-Thomas: As well as a slightly smaller place in Tanygrisiau.

Mr Parry: Yes. Fundamentally, it was only a handful of places. An application for a power station or technology to generate electricity was very unusual. However, we now get over 500 applications every year, which has meant a major change in the resources that we must allocate to this work. This has an impact internally, and Roger, the chief executive, can expand on that if you wish. It is also important that we consider this as a factor in the way that we create a new body from the three current bodies. The ability and the resources to provide evidence based on science will be crucial going forward.

Lord Elis-Thomas: Seeing that you have brought out your first team, it would be good to hear from Roger and Dr Sarah Wood.

[179] **Mr Thomas:** Diolch, Gadeirydd; **Mr Thomas:** Thank you, Chair; I have to mae'n rhaid imi siarad Saesneg. speak English.

[180] We are very grateful for this opportunity to appear before the committee to answer your questions. As the Chair said, the important point for us is that we determine our energy structure in an overall way. First of all, we understand the scope within which we are working, so we understand the responsibilities that we have in Wales for the delivery of energy. We then determine the policies that we need. We follow that with the right plan. The national infrastructure plan has been talked about, of which we are very much in favour. Through that, we should get the developments that we expect. That is the general process. So, first of all we think strategically, and then, tactically, you get the types of developments that you would expect to see.

[181] **Lord Elis-Thomas:** Could you concentrate more specifically on how that has turned your attitude towards your spatial planning approach?

[182] **Dr Wood:** The evidence from the inquiries that we get and the objection rates—which are incredibly low for CCW on energy projects—reflects the fact that we have invested a lot of time and effort in that strategic approach, trying to get the right development in the right place. Once it gets to a project level, we see less conflict, so we are getting a better outcome for the environment and for developers in the consenting process.

[183] **Llyr Huws Gruffydd:** Diolch ichi am ddod atom y bore yma. Nid wyf yn gwybod a gawsoch gyfle i glywed ein trafodaethau gyda'r tystion blaenorol, ond yr ydym wedi sôn ychydig am y bwrdd cyflawni ynni adnewyddadwy yr ydych yn ei argymhell. Byddai gennyf ddiddordeb clywed mwy am beth y byddech yn ei ragweld fel rôl bwrdd o'r fath, fel yr ydych yn ei awgrymu yn eich papur. **Llyr Huws Gruffydd:** Thank you for coming in this morning. I do not know if you had the opportunity to hear our discussions with earlier witnesses, but we have talked briefly about the renewable energy delivery board that you recommend. I would be interested in hearing more about what you would see as the role of such a board, as you suggested in your paper.

[184] **Dr Wood:** We suggested in the paper that there is an opportunity for a team Wales approach. We have the targets and we know that there are a number of challenges in meeting those, so the board would bring together those intrinsically involved, such as the developers, the Welsh Government and others who give consent and provide advice, namely statutory bodies such as CCW. It could look at issues that might be common in north and south Wales, but rather than deal with those things separately, it could look at the extent to which it could facilitate solving the problem across Wales. We think that there would be a better outcome if we brought everyone together to address that. That works particularly well in terms of research in to some of the newer technologies, where the expectation on an individual developer to address some of the uncertainties is something from which we can learn best practice, and apply it to other cases. So, we are saying that there is an opportunity here to address that in a more strategic way—we just need that facilitation to happen. We think that there is a role for that type of forum to come together to develop that work.

[185] **Llyr Huws Gruffydd:** Sut mae hynny'n wahanol i banel y sector ynni a'r amgylchedd a sefydlwyd gan Edwina Hart? **Llyr Huws Gruffydd:** How is that different to the energy and environment sector panel set up by Edwina Hart?

[186] **Dr Wood:** Are you talking about the panel developed already in the UK?

[187] **Llyr Huws Gruffydd:** No, the sector panel established by the Assembly Minister.

[188] **Dr Wood:** We are saying that it is an evolution of that panel, and it is about getting the right bodies involved.

[189] **Llyr Huws Gruffydd:** Pe bai **Llyr Huws Gruffydd:** If there was a national cynllun seilwaith cenedlaethol i Gymru, a infrastructure plan for Wales, would much of fyddai llawer o'r gwaith hwnnw yn cael ei that work be resolved within that plan? wneud o fewn cynllun o'r fath?

[190] **Dr Wood:** That would help towards that. As you have seen in our evidence, we encourage a national infrastructure plan as something that would bring together some of that strategic discussion. The specific example that I used earlier relates more to new technology—an issue that is, perhaps, delaying something through the consenting process because of uncertainty. There is an opportunity there to say ‘Let us come together to try to address that in Wales so that we can all learn from it. That will help those providing advice, like CCW, and those making the decisions. It will also help the developers, because we are facilitating an opportunity to get together to address that collectively.

11.15 a.m.

[191] **Mr Thomas:** Chair, I just want to add that the distinction between the sector panel and the deployment board that we are suggesting is that the latter would be much more inclusive; we would get all the interests together. As Sarah said, we have seen that, when there are specific issues to address, such as the impact of wind turbines, at the moment, the industry does not come together to address these. So, within the industry, with RenewableUK, through the memorandum of understanding that we have with it, and more recently with the fledgling RenewableUK Cymru body, working together as an industry and statutory consultees, we can identify problems and fund the common research that needs to be done to resolve them.

[192] **Llyr Huws Gruffydd:** A ydych yn **Llyr Huws Gruffydd:** Do you feel that it teimlo mai rôl Llywodraeth Cymru fyddai would be the role of the Welsh Government creu ac ariannu bwrdd o'r fath? to create and fund such a board?

[193] **Mr Thomas:** Yes. That is what happens in England, and it seems to be quite successful. We are learning from what is going on in another country, but it seems to be successful there.

[194] **Dr Wood:** There have been several fora over a number of years. It may have been a role that the Department of Energy and Climate Change has taken on across England and Wales, or perhaps the Crown estate has taken on the role. Essentially, we are saying that, sometimes, everyone needs to be brought together to say, ‘We’re not meeting these targets; these are some of the biggest issues; let us come together to see whether we can address them collectively’. That facilitation role—creating team Wales—is something that we feel the Welsh Government could do that would be of benefit.

[195] **Lord Elis-Thomas:** It is something that we will certainly consider among our possible recommendations. There may be—this sounds invidious now; I was about to turn to Russell, but I am not suggesting that he might demur from this—

[196] **Russell George:** To follow up on that question, who would you suggest should be on the board?

[197] **Mr Thomas:** Representatives from industry, all of the statutory consultees and local planning authorities—and the Welsh Government, of course. Basically, it would bring everyone together so that we could understand the challenges and what we were trying to

achieve—a common outcome—and then address all the issues collectively. Pooled research has to be the way forward in addressing some of the big issues that individual projects are attempting to address.

[198] **Rebecca Evans:** Still on that issue, how would you envisage community voices being heard on the board?

[199] **Mr Thomas:** Sarah, do you know whether the English version has community representation?

[200] **Dr Wood:** No. Obviously, it depends on the scope of what the board is set up to do. The experience that we have had on those set up by the Crown estate or DECC or the IPC is that it is about the developers, those providing the advice to Government and those making the decisions or providing further advice. It sits within the consenting issue. There is then community discussion in relation to individual projects and the wider research that comes from those.

[201] **Antoinette Sandbach:** On that issue, your evidence addresses the issue of a single environment body. However, the Assembly Members around this table have not seen the business case for a single environment body. Therefore, we are perhaps not sufficiently informed to be able to question you on that at this stage. However, we have just heard evidence from the Environment Agency that it has been setting up the process of sitting down with various interested parties, including local community groups, to streamline processes and to look at where it can make the procedure easier and more understandable. Why is that not going on already?

[202] **Mr Thomas:** In relation to hydropower, in particular, we were part of that. The three chief executives of the Environment Agency, the Forestry Commission and CCW met with the relevant Ministers here to kick off that work. That has been a joint project.

[203] **Antoinette Sandbach:** Why has that process not been extended? It seems to me that, within your remits, you are able to get together anyway to undertake that sort of work.

[204] **Mr Thomas:** Yes, we do a lot together. We have worked very closely with the Environment Agency and the Forestry Commission. I think that our collective view is that we could do even more if we were one body.

[205] **Antoinette Sandbach:** I am not talking particularly about that. I am talking about working together to look at problems in the renewable sector. Why has that not been done more broadly? You described it in relation to hydropower, but why has that not been done more broadly under your existing arrangements?

[206] **Dr Wood:** We come together quite a lot; Roger has used the example of hydroelectric power, but we also work well on specific developments, or across the sector—it works at different levels. For example, we had a team working on Severn tidal power, together with CCW and the Environment Agency. What we are talking about here is the ownership and facilitation of that discussion, which brings in both the developer and others who are providing advice and making decisions. I am not sure, if it was a CCW-run thing, for example, whether it would cover that broad remit. It is about ownership of the process and facilitating the delivery of those targets.

[207] **Antoinette Sandbach:** The concern then is that local communities are left out, and feel that it is a top-down approach with which they are not engaged.

[208] **Dr Wood:** I would say that community engagement in individual developments does

happen. It happens through the IPC process, it happens in stakeholder consultation, and when they go out to consultation on their individual projects. What we are talking about here is an opportunity to get together to address some issues that relate to future consents that are more generic than that. For example, we have a number of offshore windfarms, with some in north Wales and some in south Wales; they might be having similar issues about uncertainty in relation to impacts on birds, so rather than a project being done on one windfarm, and then on another, the developers are coming together with those who provide advice to come up with a solution that helps the consenting process and our advice on those developments.

[209] **Mr Thomas:** We would strongly advocate engagement with communities at the earliest possible opportunity in any development. Elsewhere in our remit—for example in access and recreation—we engage closely with local communities. We get disadvantaged communities and young people who are not in employment, education or training out into their local environment. We have projects such as Come Outside, Walking Your Way to Health, and so on, that engage with local communities. In all aspects of our work, we would advocate community engagement at an early stage. As Sarah says, when you are talking about generic problems across a whole industry, that is a different issue. You would not expect to have community engagement there—you would expect to address different issues, and then, at the level of the specific development, make sure that the local community is involved from the outset.

[210] **Mick Antoniw:** Just following on from that, I understand the logic, and I sympathise to a high degree with what you say, because it follows on from a lot of the evidence that we have had. However, you are effectively proposing the streamlining of the process and the driving through of applications. Perhaps it is more efficient than the planning process, but it does create an enormous imbalance, and gives the impression of a Government/industry stitch-up. It is all very well talking about going down the community engagement road and so on, but do you think that something needs to be done to restore the balance, assisting communities with their own representation? One of the problems with community representation is that it often goes in diverse, misinformed directions. It may depend on personalities and individuals. If you are creating a streamlined process on the one side, there is a need to restore the balance in some way. Do you have any ideas about how you might make that process more efficient, and how you might restore the balance of the community interest?

[211] **Mr Parry:** May I speculate a little? I acknowledge what Antoinette says—we have not had a decision from the Minister about a single environment body—but there are some important principles that could be factored in to how any new body operated, and how it was perceived. One is that it is seen as a service to the public, and not just as a regulator—it is not a technocratic organisation in its entirety, but is able to engage at a much more community level, in the way that CCW does, funding projects and working with partners to deliver on the ground. It could well get a more community-oriented view as to how big issues impact on their environment, and there is no bigger issue than energy development. I would be interested in thinking through how facilitation is enabled in a new body if the Minister gives the go-ahead, because that would address some of the fears about stitch-ups between the Government and industry. It would really give the sense that this is a public service that is enabling people to take part in decision making. That is a personal view at the moment because we have not yet had a decision and the Countryside Council for Wales cannot have a view on something that has not yet been decided. However, it seems to be a fair principle.

[212] **Mr Thomas:** We recognise that the greatest challenge that we face is in engaging people with the sustainability agenda. It is almost like the Pareto principle, where 20 per cent of people get it and 80 per cent do not; that is the big gap that we need to address.

[213] **Julie James:** To go back a little bit, I was interested in what you were saying about

the development of new technologies, and about trying to get some of those technologies off the ground. One of my concerns regarding the renewables sector has been the slowness with which viable economic projects involving new technologies are able to come to the table, partly because each individual development is expected to drive the finance for research. I was very interested in what you were saying about that. Sorry to make this point so complex, but if you were to have something like a national infrastructure plan, would you envisage having a sector panel to try to place pilot plants, reference plants or small pilot projects as part of it? Pyrolysis, for example, is talked about all the time, and there are strenuous arguments over whether it works or whether it is just an incinerator enclosed in a building. My understanding is that there is an ongoing argument about whether a pyrolysis scheme would ever come to fruition here because there are no reference plants in the European area. Was that what you were moving toward in your comments, or have I taken you down an entirely different path?

[214] **Dr Wood:** I confess that I am not sure that I can answer that. The opportunities for a national infrastructure plan are about drawing together the big developments with the associated ancillary infrastructure, and doing so in a strategic way, particularly at a time when we are talking about the natural environment framework, Bills on planning, the environment and sustainable development and implementing some of the plans from the Marine and Coastal Access Act 2009. It is about taking the opportunity in the context of spatial planning, rather than adopting a piecemeal approach. We have seen the benefits of a spatial approach, so we want to see that being extended, not just within a sector, but across the bigger picture, and consider how all of these issues connect. I think that that is perhaps where I was taking that.

[215] **Lord Elis-Thomas:** What are your thoughts on national spatial planning, Roger?

[216] **Mr Thomas:** I was thinking it is a fairly logical direction: if you have deployment boards and a national infrastructure plan, it is logical that you would also provide funding to take pilot projects forward. They would become part of the overall process and is the logical next step, if you have everything focused in that way. We need to plan at that level. As I said at the start, we need to understand the scope of our responsibilities, get the right policies and then put the plans in place.

[217] **Julie James:** One of the new technologies that have irritated me for years is anaerobic digestion. I did not spend my teenage years in Britain; I spent them elsewhere, where anaerobic digestion was considered to be a standard way of dealing with food refuse. Here, it seems that it is regarded as a kind of weird science-fiction technology that no-one should embrace. I am frustrated by the lack of a reference situation here. Do you take information from around the globe on some of these technologies when approaching these projects?

[218] **Dr Wood:** Yes; one of the benefits of our work with a number of bodies in the UK and further afield is that we ensure that we learn from developments here and there. That communication is incredibly important when applied to the evidence and advice that we have in Wales on projects coming forward.

[219] **Mr Parry:** On the national spatial plan, there is a danger of there being too much of a focus on the infrastructure plan, which is clearly gaining momentum as an idea. The infrastructure plan is important, but it needs to sit in the broader context of spatial planning. The technologies and infrastructure sit in the natural environment; they impact on it and derive resources from it, and impact on people living in the natural environment.

11.30 a.m.

[220] First, we need to think what the spatial plan can do for Wales, and have an infrastructure plan as a layer in it. However, let us have the natural environment, which was there before we arrived on the planet, as the basis of it. We should think about the inter-relationships between humans and the natural environment, and then have transport, infrastructure, housing and everything else as a layer on it. There was an attempt to have a Wales spatial plan, but it needs to be refreshed, we need some new thinking behind it and it needs to be given a new purpose. With the natural environment framework that is coming through, that is the purpose and on that sits the infrastructure plan.

[221] **Yr Arglwydd Elis-Thomas:** Yr hyn yr wyt yn ei ddweud yw—os yr wyf yn deall yn iawn—wrth ystyried y berthynas rhwng cynllunio ac ynni, nid dyna dylai fod y pwynt cychwyn ac y dylwn ystyried y cwestiwn o amcanion cynllunio, sef datblygu cynaliadwy, gyda'r pwyslais ar effaith amgylcheddol y datblygiad posibl o fewn unrhyw ardal yng Nghymru.

Lord Elis-Thomas: If I understand you correctly, what you are saying is that, in considering the relationship between planning and energy, that should not be our starting point, and that we should be considering the issue of planning objectives, namely sustainable development, with an emphasis on the environmental impact of the proposed development on any area in Wales.

[222] **Mr Parry:** Yn union. Cynhaliwyd trafodaethau ac mae pryderon ynglŷn â thechnolegau newydd. Yr ydym yn gwybod bod pobl yn bryderus am ynni niwclear ac am dreulio anaerobig. Y prif gonsyrn sydd gan bobl yw lle fydd y dechnoleg yn mynd. A fydd yn agos i le maent yn byw? A fydd yn bell i ffwrdd? Maent yn debygol o boeni llai os bydd yn bell i ffwrdd. Os ydym yn derbyn, fel cymdeithas, bod yn rhaid inni gael ynni a derbyn technoleg newydd, y prif beth yw lle yr ydym yn rhoi'r dechnoleg honno. Rhaid inni gael y dechnoleg yn y lle iawn. Yr wyf yn siŵr y byddwn yn trafod rhai o'r problemau a gafwyd yn y gorffennol o ganlyniad i roi technoleg yn y lle anghywir. Mae hwn yn rhywbeth y gallwn ei ddatrys drwy gael cynllun gofodol cenedlaethol.

Mr Parry: Exactly. Discussions have been held and concerns have been expressed about new technologies. We know that people are concerned about nuclear energy and anaerobic digestion. The main concern that people have is where the technology will be located. Will it be near to where they live? Will it be far away? They are likely to be less worried if it is far away. If we accept, as a society, that we have to have energy and to accept new technology, the main issue is where we place that technology. We have to place that technology in the right place. I am sure that we will discuss some of the problems that have arisen in the past as a result of placing technology in the wrong place. We can solve that issue by having a national spatial plan in place.

[223] **Yr Arglwydd Elis-Thomas:** Fel mae'n digwydd, mae gen i lythyr oddi wrth gadeirydd Cyngor Cefn Gwlad Cymru, a diolch amdano, dyddiedig 18 Hydref, ynglŷn â gorsaf bŵer Penfro. Byddwn yn cyhoeddi hwn gyda'r dystiolaeth. A hoffet ddweud unrhyw beth pellach am yr hyn a ddigwyddodd ym Mhenfro? Yr ydym wedi cael trafodaeth am hyn yn barod y bore yma gydag Asiantaeth yr Amgylchedd, ond mae gennym ddiddordeb byw yn y prosesau caniatâd a'r cysylltiadau rhwng hynny a'r broses cynllunio.

Lord Elis-Thomas: As it happens, I have a letter here from the chair of the Countryside Council for Wales, and thank you for that, dated 18 October, regarding Pembroke power station. We will publish this with the evidence. Would you like to say anything further about what happened in Pembroke? We have already had a discussion about that with the Environment Agency this morning, but we have a great interest in the consent process and the connection between that and the planning process.

[224] **Mr Parry:** Hoffwn sôn yn gyffredinol, yn hytrach nag am y manylion. Cefais gyfle ddoe, gydag aelod o fwrdd

Mr Parry: I would like to speak generally, rather than focusing on the details. I had an opportunity yesterday, with a board member

Asiantaeth yr Amgylchedd, i gyfarfod â'r Gweinidog i drafod y camau nesaf. Yr ydym wedi anghytuno yn gyhoeddus am y wyddoniaeth a'r dehongliad cyfreithiol. Beth nesaf? Sut y gallwn sicrhau na fydd y math hwn o beth yn digwydd eto? Yn y pen draw, yr hyn sy'n hanfodol yw—fel y cyfeiriwyd ato yn nhystiolaeth Asiantaeth yr Amgylchedd—sicrhau bod y dechnoleg yn y lle iawn, bod yr holl ffactorau yn cael eu hasesu o'r dechrau, a bod y caniatâd yn cael ei roi ar yr un amser, neu mewn proses o ganiatâd cynllunio'n cyd-fynd â'r caniatâd amgylcheddol. Felly, yr ydym yn ceisio dysgu o'r problemau hyn ond mae'n bwysig cofio bod y rhain yn ddau gorff sydd â phersbectif gwahanol i'w gilydd. Yr ydym wedi cael llawer o drafodaethau ac mae llawer o dystiolaeth a gwybodaeth wedi mynd yn ôl ac ymlaen, ond, yn y bôn, yr ydym wedi anghytuno ar y dehongliad o'r gwyddoniaeth—yn arbennig beth fydd yr effaith ar y safle rhyngwladol.

[225] Mae hefyd yn bwysig nad ydym wedi gweld y cyngor cyfreithiol gwreiddiol y mae Asiantaeth yr Amgylchedd wedi ei ddefnyddio fel sail i'w phenderfyniad. Mae hynny'n od iawn i mi, ac nid wyf yn credu y dylai hynny barhau—o fewn cyrff cyhoeddus sy'n atebol i'r un Llywodraeth, dylem gael un farn gyfreithiol. Ni wnaeth hynny ddigwydd ac, o ganlyniad, cafwyd dehongliad gwahanol o'r ffeithiau. Mae digon o wersi i'w dysgu at y dyfodol ac yr wyf yn siŵr y gwnawn gydweithio â staff ac aelodau Asiantaeth yr Amgylchedd i sicrhau y bydd yn digwydd yn well y tro nesaf.

[226] **Yr Arglwydd Elis-Thomas:** Yr wyf yn cael y pleser, fel y gwelwch, gadeirydd, o gadeirio pwyllgor lle mae o leiaf pedwar o gyfreithwyr. Mae anawsterau o'r fath yn codi yn aml gan fod cyngor cyfreithiol i Weinidogion—fel yr oedd pan oeddwn yn Llywydd y Cynulliad—neu i rywun yn y safle hwnnw, yn draddodiadol yn gyfrinachol. Fodd bynnag, yr ydych yn gwneud y pwynt bod y mater o roi cyngor cyfreithiol i gorff cyhoeddus sy'n cynghori'r Llywodraeth ynghylch datblygiad yn gwestiwn arall. Efallai y dylem ofyn am sylwadau pellach ynglŷn â'r sefyllfa honno. Efallai y bydd rhai o'r cyfreithwyr sydd o gwmpas y bwrdd hwn yn gallu cynnig

of the Environment Agency, to meet the Minister, to discuss what the next steps will be. We have disagreed publically about the science and the legal interpretation. What next? How can we ensure that that type of thing will not happen again? Ultimately, it is essential—as referred to in the Environment Agency's evidence—that we ensure that the technology is located the right place, that all factors are assessed from the outset, and that consent is given at the same time, or in a process of planning consent that runs alongside the environmental consent. Therefore, we are trying to learn from these problems, but it is important to bear in mind that these are two bodies that have a different perspective to each other. We have had many discussions and a lot of evidence and information has gone back and forth, but, essentially, we have disagreed on the interpretation of the science—particularly what the effect will be on the international site.

It is also important to note that we have not seen the original legal advice that the Environment Agency used as a basis for its decision. I find that strange and I do not think that that should continue—within public bodies that are accountable to the same Government, we should have one legal opinion. That did not happen and, as a result, there was a different interpretation of the facts. There are many lessons to be learnt for the future and I am sure that we will work with the staff and members of the Environment Agency to ensure that things are done in a better way next time.

Lord Elis-Thomas: As you can see, chair, I have the pleasure of chairing a committee where there are at least four lawyers. Such difficulties often arise since legal advice to Ministers—as was the case when I was the Assembly's Presiding Officer—or to someone in that position, is traditionally confidential. However, you make the point that the matter of giving legal advice to a public body that advises the Government on development is another matter. Perhaps we should ask for further comments on that situation. Perhaps some of the lawyers who are around this table could offer us some help.

cymorth inni.

[227] I will now bring in Antoinette Sandbach, followed by Mick.

[228] **Antoinette Sandbach:** Again, we have not had the business case at all. Forget about whether the Minister is going to make a decision on the single environmental body; we have not had the business case and there has been no consultation on it yet. One concern is that that discussion will be hidden from public view, which will decrease the transparency of the process, because that level of accountability will be behind closed doors. The process that is being looked at, where the planning and consenting regimes run together, would bring that type of discussion out much earlier and enable communities to access that advice at an earlier stage. Effectively, a dispute has broken out post-consent, and the local communities that are potentially affected by that process have not had an opportunity to use those considerations in the planning process.

[229] **Mr Parry:** I guess that my contribution to this discussion is on the level of philosophy or principle, rather than on the detail.

[230] **Lord Elis-Thomas:** There is nothing wrong with philosophy.

[231] **Mr Parry:** The principle of a good democracy, surely, is that a Government takes decisions on behalf of the people, based on evidence and advice that is freely available to all, with some restrictions around the edges. A number of things need to happen to ensure that that is the case. If we can build this principle into the thinking for the new body and the work that it does, it should be sufficiently independent from the Government. It is a Government agency, but it should be sufficiently independent to be able to put its advice in the public domain and allow the Minister to take decisions, based on that advice and other advice that he gets from elsewhere. That is the decision that the politician makes. For that system to work, it needs to have other politicians, such as committee members like yourselves, to respect the principle that there will be dilemmas and contradictions, and that that is no reason to undermine the Minister. The Minister needs to have confidence in the decisions that are taken and be able to stand behind them, given that the advice is in the public domain.

[232] The media have a role to play in this as well. If they are just looking for conflict and stories based on conflict, rather than presenting information to the public, we have a problem. However, we cannot control the media. There are important principles of democracy here, and I would love to see a situation in which we can put all advice in the public domain, difficult as that might be for the Government, and where the Minister takes his decisions based on that advice. It would be plain and clear for everyone.

[233] **Mr Thomas:** On this specific issue, there was an important judgment recently in the European Court of Justice relating to a case in Northern Ireland. The judgment concluded that you could have the two functions in one body, but that they had to be separate. That is clear advice for us. As Morgan says, the new body should make all of its evidence transparent. People can submit freedom of information requests for it anyway, but I long for the day when we can put everything on the website and everybody can look at everything that we have done at any time, in order to see what is going on.

[234] **Mick Antoniw:** This is only a comment: seeing legal advice rarely contributes to democracy or a greater understanding of the issues. If that was not the case, there probably would be no need for lawyers. The business case is the key bit, is it not? The reasoning, the motivation and how the new body will function are the important things, rather than the particular pros and cons of different aspects of legal advice. Is the point that you are making the fact that we need to understand the logic, how we arrive at certain conclusions, how the system will be better and how we will achieve objectives that we would not achieve by

continuing with the existing system?

[235] **Mr Parry:** It is true that legal opinion has driven the different views in the two agencies. Regarding the legal advice that the Environment Agency was using as its basis from the outset, we never saw that and we still have not seen it. The logic of the agency's arguments took it to a place where we could not agree, because we had different legal advice. We perhaps interpreted the science in the same way, but we ended up in a different place, and I think that that is unfortunate. There are major lessons to be learnt from that.

[236] **Vaughan Gething:** I just want to come back to one thing and then move on to something different. I think that a lot of it is about the judgment that you make on the advice that you are given, and the advice you are given often depends on the question you ask in the first place. If you asked the wrong question, you will get the wrong answer, frankly. It also depends on what you want to do. I can understand where you are coming from, however, in saying that you want to give as much information as possible to the public to understand the basis on which you are making decisions. I think that that is a welcome principle. There will always be caveats to do with what information you provide. I can understand why you regret your agency and the Environment Agency not reaching the same point of view and the fact that you had different advice. I hope that that sort of thing would be resolved, and that you would have clearer lines of communication, even with different functions within a single body, if that happens. My issue, however, is more with people's judgment when they have to make decisions, because the legal advice will often not tell you which decision to take; it may offer you a range of decisions that you can take, depending how cautious the advice is, but it is still down to someone's judgment to make a decision and be accountable for it, whether that is an agency such as yours or a Minister.

[237] Moving on, whether you become a single body or remain separate bodies, I am interested in your views on working together and how that has been explored, along with the cross-border work, too, because the environment does not stop at the border. The environment tends not to recognise boundaries. I am also interested to know what impact the approval of, or the failure to approve, products here will have. How do you see that joint working taking place now, and would you want to see that develop in the future, whether there is further devolution of planning consents—or the ability to consent to energy projects—or not?

[238] **Mr Parry:** Sorry; were you talking about the ability to work at the UK level?

[239] **Vaughan Gething:** Yes.

[240] **Mr Parry:** The Joint Nature Conservation Committee was set up at the same time as the Countryside Council for Wales, in 1990. That was in recognition of the fact that, despite devolution being a good thing—I was always a supporter of the creation of the Countryside Council for Wales—it was seen by some, it is interesting to note, as being a weakening of the UK structure that was there previously. I did not see it in that way at all, but the joint committee was the place where those decisions that were still reserved at the UK level were made, because of legal powers, because of the need to share scientific data or because of the need to have a common view on the European issue, for example. The JNCC is the place where that happens, and I think that that model is a good one, because Wales has a quarter share in it, effectively. Even though we do not necessarily contribute a quarter share of the resources, we have a quarter share in the decisions taken there. That would be a very beneficial model for Wales to follow if we were to look at those functions that are not going to be devolved to the new body—there will be forest research and there will be advice on technical issues that the Environment Agency currently has that we will not be able to have immediately in Wales, and we will still be reliant on being in some office in England. It would be much better, I think, to have joint ownership of those resources than to have a commercial arrangement under which we would buy them in, because I do not think that that

would be in our interest. That model of understanding, that there is a—I cannot use the ‘federal’, because my colleagues in Scotland refuse to countenance such a thing.

[241] **Lord Elis-Thomas:** You can use it here without fear or favour.

[242] **Mr Parry:** On what is reserved at the UK level, scientists are constantly talking across the UK and sharing information and resources, so there needs to be some structure there that we are the owners of and which we can benefit from. That needs to be factored into the thinking over the coming year, as we design the new body.

[243] **Mr Thomas:** It would also allow us to pool common research needs and to derive common standards, so that the approach to monitoring, the approach to habitats and this sort of stuff is common across all four countries, because we do it at JNCC.

[244] **Vaughan Gething:** Do you have a view on shale gas extraction in terms of the potential impact? We asked the Environment Agency briefly, and I know that we will probably come back to shale gas in more detail, but you are here today and you are talking about the potential environmental impact of any new technology.

11.45 a.m.

[245] **Dr Wood:** I do not think it appropriate for the CCW to have a view in principle on a specific technology, because it is for each Government to drive targets and deal with the balance of energy. We deal with what comes through the door in trying to address those issues at a spatial level and then at a project level. Specifically, in relation to shale gas, it is an example of a new technology where there is a great deal of uncertainty. We need to learn as much as we can from developments happening elsewhere, in Wales, England or further afield. Certainly, our internal experts are doing that. They are putting feelers out, making those links and learning from that process. At a very general level, we are aware of what has been happening in Blackpool and the conclusion that it was the extraction of that gas that caused a very small-scale earthquake. That has been recognised by the British Geological Survey and the contractors doing that work. We are aware of the exploratory wells in south Wales that are looking not at fracking, but sampling that gas.

[246] The issues for us are around the pathways for water that is coming back out of those systems into our aquifers that affect our protected sites and others. We are also interested in the cumulative impact of a number of wells. We are not talking about one here and one there. When you multiply these—particularly if they are small-scale developments that sit below the level of regulation that we see on the bigger developments—we need to consider how we tackle the cumulative issue. If we have one project here, are we asking that developer to do all the research to help us address that uncertainty or are we asking the local planning authority, or is it down to CCW? Is there a collective approach so that we can decide what the big issues are and what the concerns are with regard to consenting? Perhaps we can come together to try to address those and to help understand it in order to give the best evidence and advice to those making decisions on those projects.

[247] **Lord Elis-Thomas:** Mick is first, then Antoinette, and then Russell can have the last word, unless I think of something else. [*Laughter.*]

[248] **Mick Antoniw:** To take you back a bit, over the past two decades, there have been something like 500 planning applications. There has been a massive increase in applications. To put it bluntly, are resources and skills an issue for you in terms of having the confidence and ability to handle the responsibilities, bearing in mind that massive increase?

[249] **Mr Thomas:** As you recognise, we have had a huge increase in both the complexity

and number of applications. It is a resource challenge for us as an organisation. We do not have sufficient resources to deal with all of these, so we do them on a priority basis, working with the industry. Our approach is to try to resolve those applications that are most likely to proceed first. As I say, it is done in discussion. We had that discussion with various energy companies at the recent renewables conference in the Centre for Alternative Technology in Machynlleth. The position is well understood by the industry there. It is a resource issue. We cannot charge for the work we do. If a single environment body goes ahead, that will be something interesting that comes out of it, because it might extend the agency's charging powers to CCW. All the work we do, which, as I say, is increasingly complex, does not increase the resources we have. We have very good technical resources in the organisation, but they are limited in number.

[250] **Mick Antoniw:** Does this contribute to delay and the duration of the procedure?

[251] **Mr Thomas:** We try to manage it so that the issues that we do not deal with as promptly as others, are dealt with on a priority basis. I posed the question to the industry at the recent conference, and there was only one person who said that they had been waiting a long time for a response from CCW. However, when we went to discuss it with him, he acknowledged that there was absolutely no chance of his being able to connect to the grid anyway, which was the reason why we had not processed the application. That is why we put it at the bottom of the pile. Sarah, do you want to add anything more specific on this?

[252] **Dr Wood:** I can give you some facts on this. In 2010-11, we responded to 70 per cent of the consultations we received on energy on time and 85 per cent within seven days. Often, we agree a small extension and perhaps meet that, so that figure might be better than it sounds. We report on that performance to the Welsh Government every year. On resourcing, in recognising the challenges, we have sought external funding in a number of sectors and have been successful in achieving some time-limited support, particularly for the round 3 offshore windfarms and Forestry Commission onshore windfarms. They are time limited and get us out of a small hole, if you like, but there is a wider perspective. We work with developers to understand what applications are coming through, and try to plan our work in that way. Often, we find that there is a concentrated period of activity, and then perhaps it goes quiet for a while, and then there is another concentrated period of activity. Balancing that, particularly when we have statutory deadlines to meet, is very challenging.

[253] **Mr Thomas:** The general resources picture is that we have gone from about 720 full-time equivalent staff over the last few years to 450, so there has been a massive downsizing of the organisation over the years. You can see the challenge that we are facing there. We are currently talking with the Department of Energy and Climate Change about how we can get some resource from it for the round 3 offshore consultations, because there are two very big areas facing Wales there.

[254] **Antoinette Sandbach:** You have helpfully given us information on a number of energy consultations, and I wondered if you would be able to give us the number of projects that were above 50 MW and the number that were below, to break that information down. We had similar information from the Minister and there seemed to be a difference in the figures, which I suspect might be due to the number of applications that were consented. It would be helpful to know where the division is between larger and small-scale projects, and also, picking up on Julie's question on anaerobic digestion, breaking it down by types of development. I know of a very good anaerobic digestion project in Wrexham that has faced various difficulties in planning rather than consenting. It would be useful to know, in effect, where the split is, and where that volume of work is coming—whether it is the smaller, more community-based schemes, or schemes below 50 MW. In the budget line that we looked at with John Griffiths, the administration and staffing costs for CCW, which presumably cover your experts as well, were about £19 million, or just over. Are you saying that £19 million is

not enough resource to respond to these consultations?

[255] **Dr Wood:** We can certainly provide you with the additional detail on the projects. We do break those figures down by sector, so we can pull that out and provide that. What I would say as a general rule is that, in those 2010-11 figures, solar and small-scale hydroelectric projects, and some of the single and small wind turbines, are areas that take a big chunk of that time. It is not all about the big infrastructure projects, although obviously we have a raft of those on our books as well. There is not necessarily a direct relationship between the number of megawatts and the amount of effort that we have to put in, particularly when it is a new technology. That is the key—the amount of work that a new technology requires in research in order to provide evidence and the best advice, on the basis of the best evidence, that we can. So, that relationship is not there, but we can certainly look into the detail of the figures a bit more.

[256] **Antoinette Sandbach:** To pick up on that, would looking at areas like permitted development actually assist in relieving you of some of that workload? I know, for example, that there are solar schemes that were permitted development in England that were not permitted in Wales. Has that effectively increased your burden—not unnecessarily, but it is something that your colleagues over the border did not have to respond to?

[257] **Dr Wood:** Internally, we have an operational procedure notice—the OPN—which is an instruction to staff based on the Hampton principles of being proportionate and risk-based. That guidance for staff means that we do a measure and a risk assessment of which projects to get involved in, which I think Roger highlighted earlier. We are already a few steps along that way, but that does not take away the new technologies that require investment early on, particularly for demonstration projects, and the resourcing of that alongside projects at the other end of the scale, like Wylfa or Hinkley.

[258] **Mr Thomas:** Plus we have agreements with local planning authorities on which developments to send to us. We are clear that there are some things that fall below our radar, because their impact is on too small a scale to be of interest. That is another important part of the approach.

[259] **Antoinette Sandbach:** How widely known is that in the public domain? How well is that publicised to potential applicants, who may not be aware of it?

[260] **Mr Thomas:** I think that it is made fairly clear by the local authorities. You still have to apply for planning permission; it is just that the local authority does not need to send it to us. It can take it that we are okay about it.

[261] **Russell George:** I am not one of the lawyers around the table; we have heard from them. I have some questions on TAN 8. In your evidence paper, you mention that you

[262] ‘believe that the decisions to date under the current TAN 8 ... have led to consistent decisions, upholding the intention to concentrate development strategically in SSA’s and discouraging schemes outside SSA’s.’

[263] To what extent do you agree with the view that, since the background work for TAN 8 was carried out in 2003-04, it needs to be reviewed in light of changes in the environment, and particularly with regard to the changes in technology that you have already mentioned?

[264] **Mr Thomas:** As an organisation, we recognised a long time ago that there was a need to determine the most appropriate places to put terrestrial windfarms. We were being blamed—without any evidence, in fact—for delaying terrestrial windfarms, going back about seven or eight years. Therefore, we commissioned research and ran a project to identify the

areas in Wales that were free of any constraints—other than, of course, the discussion on the local planning consents—taking into account infrastructure, whether it met the wind-speed criterion of the industry, and any designations. The areas that we came up with are remarkably similar to what is now in TAN 8. We have been a strong supporter of TAN 8 throughout, as a means of putting development in the most appropriate locations.

[265] **Lord Elis-Thomas:** Is that exercise in the public domain? Is it published?

[266] **Mr Thomas:** Yes, we brought it here at the time.

[267] **Lord Elis-Thomas:** That is right; I thought that I had seen it.

[268] **Mr Parry:** I will say a little about this from the point of view of the council, and it may illuminate how the CCW works as well. Staff are involved in these decisions, and Roger has an oversight of the strategic role that CCW plays with regard to energy developments, and windfarms in particular. There was an increasing issue around how to address the CCW's core concerns with regard to landscape issues, national parks, the increasing numbers of developments coming forward, and our view that renewable energy should be supported. There is no getting away from the fact that that is creating pressures and tensions that need to be resolved. Roger brought it to the council as a paper. That was an opportunity for council members—who are stood aside from the day-to-day work of CCW and may be able to provide a wider perspective, given the make-up of the council—to discuss it and explore it from all different sides. The question was: should we be taking a different view and should we be advising the Minister that TAN 8 is no longer fit for purpose or needs reviewing? The council's view, after that discussion, was that we should hold the course, and that TAN 8 was still the best tool that we had. However, we acknowledged that there were issues, and that it did not go through an impact assessment—if it is reviewed in future, that could be the case. One of the worst things that could happen would be to introduce added uncertainty by opening that up for review at a time when we are trying to deal with these major issues. It provides a strategic framework, and is a reasonably good strategic way of weighing up the constraints and the opportunities. Our view was that we should stay with it.

[269] **Russell George:** Would a review of TAN 8 require that a full and strategic environmental assessment is carried out?

[270] **Mr Parry:** Yes. Our view is that, if it was reviewed, that would happen as a matter of course.

[271] **Russell George:** The committee has received a lot of evidence from companies that suggests that recent statements from the Welsh Government—I am thinking about those from the First Minister and John Griffiths during the summer in particular—have created some uncertainty and confusion. To what extent have these statements caused uncertainty for you as a statutory consultee?

12.00 p.m.

[272] **Dr Wood:** We deal with what comes through our door. We are continuing those discussions with the developers. The uncertainty that you report there and what I have seen in the evidence submitted by other developers is around their understanding. So, we are still providing that advice and will continue to do so.

[273] **David Rees:** You clearly support the SSAs within TAN 8. Do you have a view on the density that you expect within TAN 8?

[274] **Dr Wood:** Clarification has been given on the capacities envisaged within the policy.

We advise on the impacts; that is where our focus is.

[275] **David Rees:** ‘Capacity’ and ‘density’ are not necessarily the same things, which is why I used the word ‘density’, not ‘capacity’.

[276] **Dr Wood:** I do not know whether I can answer that.

[277] **Mr Thomas:** We can only do that on a specific site-by-site basis. Are you thinking of anywhere in particular?

[278] **David Rees:** With regard to any SSA, the capacity is indicated as outage, but the question is how you achieve that outage and the number of turbines within an area.

[279] **Mr Thomas:** It depends on the height of the turbines; there are a lot of factors.

[280] **David Rees:** And how, therefore, it incrementally increases as well. My area has a large part of an SSA within it.

[281] **Julie James:** My question is a non sequitur now, because it is about something that you said earlier. With regard to these resources, we have heard from a lot of people about co-ordination and national infrastructure plans and all the rest of it. For the Wales procurement for anaerobic digestion of residual waste—energy from waste from municipal waste, not commercial stuff—the Welsh Assembly Government, as it was then, set up a planning committee that included representatives of developers, your organisation, the EA and so on, in an attempt to co-ordinate some of that advice and provide a central point of expertise for certain things. Are you aware of that committee and was it of any use? Personally, I could not decide whether it was of use or whether it was just another thing that you had to go to in order to get some of those projects going.

[282] **Dr Wood:** I am not aware of that, but that does not mean that there are not others in CCW who are.

[283] **Julie James:** There was someone on the committee from your organisation.

[284] **Dr Wood:** If it would be helpful, I could find out the extent of our involvement. In principle, that kind of approach of bringing people together has huge benefits for us. We are prepared to invest time at that strategic level, because we have seen that investing time at that strategic level means that we have to deal with less conflict and fewer issues at a project stage. So, while it is a difficult balance within the organisation at a time when we perhaps do not have all of the resources that we feel we need, that strategic approach is given priority, because there are wins for everyone in that situation.

[285] **Julie James:** I would be interested if you could find that out and tell us about it, because that might be something that the committee might want to consider recommending.

[286] **Mr Thomas:** In deciding where to put our relatively scarce resources, I would always put more into these strategic ends, so that we then get the developments you expect, rather than firefight at the individual application level.

[287] **Yr Arglwydd Elis-Thomas:** Diolch yn fawr. Nid wyf am ddweud mai eich corff chi yw fy hoff gorff cyhoeddus yng Nghymru, neu fe fyddaf yn tramgwyddo cyrff eraill. Mae’n bleser gwrandao arnoch chi a’ch holi chi. Fe fyddwn yn sicr yn parhau

Lord Elis-Thomas: Thank you very much. I will not say that your body is my favourite public body in Wales, or I will offend others. It is a pleasure to listen to you and to question you. We will certainly continue with our discussions in the process of preparing our

â'n trafodaethau yn ystod y broses o baratoi ein hadroddiad. Diolch yn fawr. report. Thank you very much.

[288] Cyn cloi'r cyfarfod, nodaf ymddiheuriad oddi wrth William Powell, Aelod Cynulliad. Yr oedd wedi ymddiheuro imi ar lafar ddoe y byddai'n absennol heddiw a bu inni dderbyn cadarnhad ysgrifenedig yn gynharach y bore yma. Dylwn fod wedi nodi ei ymddiheuriad ar y dechrau. Before closing the meeting, I note an apology from William Powell, Assembly Member. He apologised verbally to me yesterday that he would be absent today and we received written confirmation earlier this morning. I should have noted his apology at the beginning.

[289] Bydd y grŵp gorchwyl a gorffen ar y polisi amaethyddol cyffredin yn cwrdd yn Ffair Aeaf y Sioe Frenhinol. Am unwaith, deallaf na fydd hi'n rhewi'n gorn yn y ffair aeaf yn y bore, felly siawns y bydd y rheini ohonoch sy'n aelodau o'r grŵp hwnnw yn y brecwast gyda Hybu Cig Cymru ac yna yn y cyfarfod. The common agricultural policy task and finish group will be meeting at the Royal Welsh Winter Fair. For once, I understand that it will not be freezing in the morning at the winter fair, so I hope that those of you who are members of the group will be at the breakfast with Hybu Cig Cymru and then at the meeting.

[290] Bydd cyfarfod nesaf y pwyllgor hwn ar ddydd Iau, 1 Rhagfyr. Diolch yn fawr iawn. The next meeting of this committee will be on Thursday, 1 December. Thank you very much.

*Daeth y cyfarfod i ben am 12.05 p.m.
The meeting ended at 12.05 p.m.*