

November 2014



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

Introduction

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

Sustainable Development

5. We are concerned at the failure to link the Well-being of Future Generations Bill aims and goals with the Planning (Wales) Bill. While Section 39¹ (Sustainable Development) of the Planning and Compulsory Purchase Act applies to the proposed National Development Framework and Local Development Plans, there should be a link on the face of the Bill.
6. We also believe it is essential to set out the purpose of planning in this Bill, and recommend that the Bill states that delivering on sustainable development is that purpose, in line with Planning Policy Wales (PPW). We refer you to paragraphs 1-10 of our response to the draft Planning (Wales) Bill which further outlines the case for this.²

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

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

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

Public participation

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

Plan-led system and spatial planning

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

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

Undemocratic planning

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

Centralisation of decision-making

19. Nor do we believe that there is a case for introducing new legislation for ‘developments of national significance’. The Government could merely improve call-in powers, and focus on getting the over 50MW energy powers devolved.
20. Note also that the model for this legislation which is in the English Growth and Infrastructure Act (Section 26 - Bringing business and commercial projects within Planning Act 2008 regime) and the UK Planning Act 2008 (Part 3) sets out types of development and thresholds on the face of the legislation. Section 17 of the Planning (Wales) Bill merely inserts 62D (2) to the TCPA 1990 *A nationally significant development application is an application for planning permission for the development of land in Wales, where the development to which the application relates is of national significance.* The Explanatory Memorandum does state an intention for energy projects between 25MW and 50MW to be classified as Developments of National Significance (3.71) but no thresholds are mentioned for other types of developments.
21. Many significant developments will have huge local impacts – and the costs and impacts of the development will be felt locally (e.g. on services, transport, social and cultural heritage).
22. We would prefer to see an ATLAS style level of support to boost capacity around local government in Wales, to enable there to be a harmonious partnership between the skills and resources required to tackle the decision-making on major projects and the local government role³.

³ http://www.atlasplanning.com/page/about_atlas.cfm

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

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

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

25. We are disappointed that so many crucial issues raised by the committee’s pre-legislative scrutiny, and by many respondents to the public consultation to the Draft Planning (Wales) Bill, have not been addressed. We refer the committee to our response and recommendations to the draft bill⁴ which support the committee’s recommendations, as well as to specific comments below.
26. We support the Committee’s recommendation⁵ to include a Statutory Purpose for planning on the face of the Bill as recommended by the Independent Advisory Panel, and are disappointed to find that it has not be included in the Bill or even discussed in the Explanatory Memorandum (EM).
27. There is a total failure to address the Committee’s request to provide an explanation as to how the revised structures for land use planning are expected to function alongside other regimes such as for natural resources, transport and marine⁶. The Well-Being of Future Generations, Environment, or Heritage Bills are not mentioned in the Bill or EM.
28. No additional clarity has been provided for the definition of a Development of National Significance⁷ besides the proposal mentioned in the EM for energy developments between 25 and 50 MW to be categorised as Developments of National Significance.⁸
29. It is highly disappointing and of great concern that neither the Bill nor the EM contain a clear statement, as recommended by the Committee and by Planning Aid, setting out how the public can engage at each level of the proposed development plans⁹.
30. The Committee’s concerns over Strategic Development Panels, including that a third will be non-elected members, has not been addressed and the Government has not included in the Bill any way that ensures local communities will be heard in the planning process.

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

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

⁶ Ibid at para 2.6

⁷ Ibid at para 4.3

⁸ Explanatory Memorandum at para.3.71

⁹ Supra 3 at para.2.3

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

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

Whether there are any unintended consequences arising from the Bill

32. In our view there are four major unintended consequences.
33. The first is that the local plan-led system is undermined because of the need to align three tiers of statutory plans. Transition, timings and co-ordination could mean that Wales simply has no effective development plan system for a number of years. In our view the local plan should remain the pre-eminent plan, and the Welsh Government should aim to maintain stability and ensure that plans in Wales are not immediately rendered out of date either by new legislative arrangements or unnecessary changes to PPW. While developers may welcome a free for all, the costs of speculative and short term decisions on development will fall on the taxpayer and local communities. We recognise that there are problems with the current local plan making system which need to be resolved, such as the flawed population projections to determine the demand for housing, but local plans remain the cornerstone of local land-use planning and public involvement.
34. The second unintended consequence is the impact on public participation and democratic accountability.
35. With regard to public participation, this happens in two ways;
 - a. By undermining the local plan, the right to be heard and contribute through local plan inquiries becomes devalued as the plan's value and influence on development decisions falls or disappears.
 - b. Centralised decisions that bypass local government mean that opportunities such as speaking rights at planning committee, and the opportunity to speak to ward councillors or local planning committee councillors in people's local area are no longer relevant. It is clear that there is more value to the public in speaking at planning committee than there is in submitting a consultation response which can easily be set aside by national decision-makers.
36. In terms of democratic accountability, the democratic deficit is widened when the decisions are made nationally by Ministers on an increased number of decisions, or regionally by Boards that are not fully democratically representative.
37. Thirdly, there could be a perverse incentive for developers to scale up their proposals, e.g. for housing developments, in order to fall under the definition of Developments of National Significance and be subject to what might be seen as less rigorous process of decision by Welsh Ministers. This could result in housing developments that are not appropriate for the needs of the community.
38. And fourthly, the ability for developers to "bypass" local authorities is considered in the Impact Assessment as having the effect of reducing the number of applications made to an 'average' local planning authority by 50% (para 7.432 of the Regulatory Impact Assessment) – that has been designated as 'poorly performing'.

¹⁰ Ibid at para. 3.5

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

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

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

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

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

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

Conclusion and summary

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

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

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

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