



Planning (Wales) Bill

November 2014

1. Key Messages

1.1. Wales Environment Link (WEL) is broadly supportive of the Planning (Wales) Bill as it stands, but we have a few key concerns about the Bill as it is currently drafted, which we summarise here:

- We are disappointed note the **absence of any provision in the Bill for the introduction of a statutory sustainable development purpose** for the Welsh planning system.
- We see the National Development Framework as **an opportunity to plan**, not just for built infrastructure, but **for green infrastructure, wildlife, designated landscapes and natural resource management**.
- We would like the National Development Framework and other plans to be **integrated with the Welsh National Marine Planning process, and the principles of Integrated Coastal Zone Management (ICZM), to be fully embedded** into the planning process.
- We are **very concerned that Local Planning Authorities will not have the resources to undertake post-determination work for DNS applications** which have been approved by Welsh Ministers.
- We are disappointed at the **missed opportunity to introduce Third Party Rights of Appeal** to be used under specific circumstances.
- We strongly **oppose the changes to the registration of Town and Village Greens**, as we believe this will result in local people losing access to open spaces which are important for their health and well-being and which constitute vital green infrastructure in our towns and villages.

1.2. We set out our comments under those aspects of Committee's terms of reference where we have particular points to raise, but we do not have comments on all the aspects of the terms of reference.

2. Introduction

2.1. In general, the Planning (Wales) Bill is very technical and process driven, and WEL believes that the improvements to the planning process outlined in this Bill are broadly sensible. However, we do feel that this Bill represents certain missed opportunities and

it is not well integrated with the provisions of the Well-being of Future Generations (Wales) Bill and proposed Environment Bill. We also have a particular concern with the changes to registration of Town and Village Greens.

- 2.2. WEL is surprised and disappointed to note the absence of any provision in the introduced Bill for the introduction of a statutory sustainable development purpose for the Welsh planning system. We thus consider the introduced Bill's treatment of sustainable development to be deficient, and not in conformity with the way in which the IAG Report addresses this matter. The IAG Report recommended a statutory purpose for planning as follows:

“the purpose of the town and country planning system is the regulation and management of the development and use of land in a way that contributes to the achievement of sustainable development” (Recommendation 1) and that *“The Welsh Ministers may issue guidance to planning authorities of the application of the purpose in exercising or performing those powers or duties and the planning authority shall have regard to any such guidance so issued”* (Recommendation 3).

We support these recommendations, and see no reason to exclude them from the introduced Bill.

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

- 3.1. Wales Environment Link (WEL) welcomes the decision to retain the plan-led system in Wales, and supports the provision for a National Development Framework (NDF). We see the setting of national priorities as an opportunity to ensure that the planning system enables sustainable development in a manner which ensures that economic, environmental and social aspects of the planning system are given equal weight.
- 3.2. WEL notes that paragraph 3.23 of the Explanatory Memorandum states that the NDF will ‘set out area or location specific policies currently in ‘Planning Policy Wales’ (PPW) and Technical Advice Notes (TANs).’ We support the need for a spatially expressed NDF, and feel strongly that this must influence regional and local planning more effectively than the previous Wales Spatial Plan. We support the intention for Strategic and Local Development Plans to conform to the policies set out in the NDF.
- 3.3. WEL is pleased to see that in Section 60B (1) (b), Welsh Ministers must carry out a sustainability appraisal of the policies set out in the draft NDF before it is published. We would hope that if any policies were identified by this appraisal to be unsustainable, or to negatively affect the long-term economic, social or environmental well-being of Wales, then this would lead to the NDF being amended.
- 3.4. We believe that there is a missed opportunity in this Bill for a direct link to the Well-being of Future Generations (Wales) Bill, in that the statutory purpose of the planning system, and indeed the NDF, could be explicitly drafted in this Bill to foster the economic, social and environmental well-being of Wales, within defined environmental limits, thereby achieving **sustainable** development. Integration with the proposed Natural Resource Management Plans in the Environment Bill is also crucial.

- 3.5. We welcome the statement in the Explanatory Memorandum that the sustainability appraisal stated in the Bill will include a Strategic Environmental Assessment and Habitats Regulations Assessment, but would feel more comfortable if these specific assessments were name-checked in the Bill itself.
- 3.6. We note with concern that the Explanatory Memorandum puts emphasis on the intention to provide business interests with opportunities to identify areas for development so that they can bring forward ideas for projects that they will finance. It does not recognise the opportunity for the NDF to also identify areas for environmental protection and enhancement, which we believe must also be a major component of the planning system. If we are to stop losing our precious habitats and special landscapes then this must be actively planned for and managed with the same fervour with which we plan for infrastructure development and economic growth.
- 3.7. WEL would like to know if Welsh Government plans to include green infrastructure, continued protection and enhancement of designated landscapes and areas of importance for wildlife and natural resource management in its NDF. The [Scottish National Planning Framework](#) is perhaps a useful frame of reference in this respect, as it overtly includes planning for biodiversity, designated landscapes and green infrastructure as part of the Framework, along with hard infrastructure.
- 3.8. Welsh Government has stated its intention to develop a Welsh National Marine Planning Process by 2015. We seek further detail on how marine planning will be taken into consideration as part of the NDF and, where appropriate, SDPs and LDPs and vice versa. Further clarification is needed on how projects will be addressed that span the intertidal area in estuaries and on the coast, and require multiple consents, including both a marine license and planning permission from the local planning authority. The principles of Integrated Coastal Zone Management (ICZM), one of which is to facilitate the integration between planning regimes, should be fully embedded into the planning process to ensure coherence between the marine and terrestrial planning regimes. The principles enshrined in the English coastal concordat, which sets out recommendations for coordinating the consenting process for coastal development, may be a useful starting point for joint working arrangements at the Welsh coast.

4. The creation of Strategic Development Plans to tackle larger-than-local cross-boundary issues

- 4.1. WEL agrees with the principle of producing Strategic Development Plans (SDPs) for larger than local cross-boundary issues, however, we have concerns about how SDPs will integrate and overlap with LDP areas, and also with the local well-being plans which the new Public Services Boards will be required to produce under the Well-being of Future Generations (Wales) Bill. It is essential that issues are not overlooked between the different levels of plan, particularly in LDP areas that are partially covered by an SDP. We support RTPI's suggestion in their evidence on the WFG Bill that Local Planning Authority interests must be represented on the Public Services Boards so that links are made between the different plans. Where there is a Strategic Planning Panel in place, it must also have links with the local Public Services Board.

4.2. The Explanatory Memorandum notes on page 16, paragraph 3.30 that Cardiff, Swansea and the A55 corridor have been identified as benefiting from an SDP approach. We are pleased that SDP areas are not set in the Bill itself as we feel that there may be other areas that benefit equally from a more strategic approach. The natural resources which provide ecological connectivity and ecosystem services such as clean water, flood mitigation and carbon sequestration do not respect local authority boundaries and there may be significant benefits to using a strategic planning approach which would integrate with the natural resource management plans proposed in the Environment Bill.

5. Front-loading the development management process by making provision for pre-application services

5.1. WEL fully supports the increased use of pre-application discussions and the provisions within the Bill to make this mandatory for Developments of National Significance (DNS) and major developments. We are pleased that provisions also require a "pre-application consultation report" to be submitted along with planning applications where pre-application consultation has taken place, as we believe this will increase transparency.

6. Introducing a new category of development to be known as Developments of National Significance that are to be determined by Welsh Ministers

6.1. WEL supports the introduction of the new category of Developments of National Significance (DNS) and is pleased that they will be subject to mandatory pre-application notification and consultation. As we stated in our consultation response to Welsh Government, we believe that the term 'Projects of National Significance' might be more inclusive of planning for environmental projects of national significance alongside hard infrastructure of national importance.

6.2. WEL is extremely concerned that if LPAs are left to deal with the post-determination work (such as discharge of planning conditions) following an application for a DNS, which they would not be responsible for approving, that this could cause resource issues for the LPA, especially as they would not be in receipt of the planning fee for that application. LPAs are already lacking in resources and this may have significant implications for the practical implementation of post-determination work.

7. Streamlining the development management system

7.1. WEL is concerned about the new provisions for Ministers to be able to designate an LPA as 'poorly performing' and for planning applications to bypass these LPAs and be submitted directly to Ministers. The Explanatory Memorandum seems to suggest that this is intended to address the issue of LPAs whose track record is slow in determining applications. Whilst decisions must be made in an efficient and timely manner, speed of decision making should not outweigh the quality of the outcome of any planning-related decision making process. Welsh Government must ensure that the criteria used to designate poorly performing LPAs does not focus purely on speed of decision-making, but must take quality of output into account as well.

7.2. WEL is also concerned that large developers may use these new provisions to bypass the local democratic process and evade local objections to developments by submitting their application directly to Ministers. We would be interested to know how the Minister intends to ensure the new provisions are not abused in this way.

8. Changes to enforcement and appeal procedures

8.1. WEL believes the Bill is a missed opportunity for the introduction of Third Party Rights of Appeal. WEL has previously advocated that a limited Third Party Right of Appeal should be introduced under the following circumstances:

- When a development is approved contrary to the provisions of an adopted Development Plan
- When the application is one in which the local authority has an interest.
- If an application is a Major Development or one requiring an Environmental Impact Assessment
- When the original officer recommendation was to refuse the application

8.2. We do not accept that the current provisions will provide the necessary safeguards to ensure these circumstances will not arise. As long as the circumstances by which and when a Third Party Right of Appeal can be utilised are clear, then this would provide the certainty to ensure that it is used effectively.¹

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

9.1. WEL is concerned that the provisions relating to Town and Village Greens will result in local people losing access to land that they rely on for exercise, leisure activities and general health and wellbeing. There is strong evidence that green spaces within towns and villages (green infrastructure) are important for local people for a wealth of physical and mental health reasons.² They can also be important for local wildlife, yet these areas are under incremental threat from development.

9.2. Whilst we appreciate the emphasis on greater engagement and pre-application discussions within this consultation, it is a fact that the majority of ordinary members of the public are not sufficiently engaged with the planning system to be involved with producing a Local Development Plan. Therefore, they may not realise that land they have used as a green for 20 years or more could be taken from them until it is actually threatened with development.

9.3. If a green is subject to a planning application, the statutory timescale for deciding on an application is far shorter than the timescale required to put in a robust case for the land to be designated as a green. If planning decisions are not delayed until the case for a green has been considered, or if the public loses the right to register land as a green after planning permission has been given, then local people will lose access to the land in question.

9.4. We are very concerned that the period of time for registering a green has been reduced from two years to one (where use has ceased or is being challenged). The

¹ WEL's full argument for the introduction of Third Party Rights can be accessed at http://www.waleslink.org/sites/default/files/111117_WEL_response_to_Planning_Appeals_consultation.pdf

² Health and Natural Environments, Natural England, March 2012
http://www.naturalengland.org.uk/Images/health-information-pack_tcm6-31487.pdf

introduction of the ability for a landlord to make a declaration regarding land, so as to make it incompatible with the “as of right” use by local people, also raises particular concerns. If a landlord makes a declaration, members of the public have one year to register the land as a green, after which they lose this right. This same provision has made it far more difficult to register a green in England, because providing a robust enough case for registration often takes at least a year. We are concerned that landowners could potentially make declarations on large areas of green space in towns and villages across the country, with a view to keeping their options open if a suitable development proposal comes along.

- 9.5. This incremental loss of green space would be detrimental to local people’s health and wellbeing, and possibly detrimental to wildlife in some areas. Furthermore, in England, when these same provisions were brought in, it simply resulted in the need to introduce a new designation of “local green space” under the National Planning Policy Framework (2012) for open space that is special, of value to the local community and meets certain criteria.
- 9.6. Instead of tipping the advantage firmly in favour of developers, WEL supports the following recommendations, which would provide a fairer, more balanced approach to the issue of Town and Village Greens:
- Before allocating land for development, the local authority must be satisfied that the land is not capable of being registered as a town or village green, i.e. that local people have not enjoyed 20 years use of the land for informal recreation without being stopped or given permission.
 - If the authority is not satisfied of this, it must give early notification to local people so that they may gather evidence and submit an application for registration as a green if they wish to do so. The authority must allow sufficient time for local people to do this and must not process a planning application until the green status is resolved.
 - In addition, the process for registering town and village greens could be improved and accelerated by amending the guidance to introduce timescales and greater dialogue and to empower registration authorities to reject vexatious applications, as proposed by the Open Spaces Society.³

³ <http://www.oss.org.uk/saving-welsh-village-greens-from-changes-in-planning-law/>

Wales Environment Link (WEL) is a network of environmental, countryside and heritage Non-Governmental Organisations in Wales, most of whom have an all-Wales remit. WEL is officially designated the intermediary body between the government and the environmental NGO sector in Wales. Its vision is to increase the effectiveness of the environmental sector in its ability to protect and improve the environment through facilitating and articulating the voice of the sector.

The following WEL members support this document:

Bat Conservation Trust

Butterfly Conservation Wales

Campaign for National Parks

Marine Conservation Society

Open Spaces Society

RSPB Cymru

Ymddiriedolaeth Genedlaethol / National Trust