

Agenda – Climate Change, Environment, and Infrastructure Committee

Meeting Venue:	For further information contact:
Video Conference via Zoom	Marc Wyn Jones
Meeting date: 25 November 2021	Committee Clerk
Meeting time: 09.30	0300 200 6565
	SeneddClimate@senedd.wales

Private pre-meeting (09.15–09.30)

In accordance with Standing Order 34.19, the Chair has determined that the public are excluded from the Committee's meeting in order to protect public health. This meeting will be broadcast live on www.senedd.tv.

Public meeting (09.30–10.45)

1 Introductions, apologies, substitutions, and declarations of interest

(09.30)

2 Scrutiny of the Welsh Government's Net Zero Wales Plan

(09.30)

(Pages 1 – 28)

Julie James MS – Minister for Climate Change

Robert Kent-Smith – Deputy Director Transport Strategy and Policy

Jonathan Oates – Head of Clean Growth

James Owen – Deputy Director for Land Management Reform

Christine Wheeler – Deputy Director, Climate Change and Energy Efficiency

[Welsh Government's Net Zero Wales Carbon Budget 2 \(2021 to 2025\)](#)



[Written evidence from stakeholders outlining their initial views on the Net Zero Wales Plan](#)

Attached Documents:

Research brief – Net Zero Wales

Paper – Welsh Government: Net Zero Wales Plan

3 Papers to Note

(10.45)

3.1 Common Frameworks

(Pages 29 – 30)

Attached Documents:

Letter from the Chair, Legislation, Justice and Constitution Committee to the Counsel General and Minister for the Constitution in relation to Common Frameworks

3.2 Environment Bill

(Pages 31 – 32)

Attached Documents:

Letter from the Chair, Legislation, Justice and Constitution Committee to the Minister for Climate Change, and the Counsel General, in relation to the Legislative Consent Motion debate relating to provisions in the UK Government's Environment Bill

3.3 Sea bottom trawling and Marine Protected Areas

(Pages 33 – 34)

Attached Documents:

Letter from the Chair to the Chair, Petitions Committee in response to his letter of 8 October, in relation to sea bottom trawling and Marine Protected Areas

3.4 Sewage discharges from storm overflows

(Pages 35 – 36)

Attached Documents:

Letter from the Chair to the Minister for Climate Change in relation to sewage discharges from storm overflows

3.5 National Infrastructure Commission for Wales (NICW)

(Pages 37 – 38)

Attached Documents:

Letter to the Chair from the Deputy Minister for Climate Change in relation to the Chair of the National Infrastructure Commission for Wales (NICW)

3.6 Complaint against Flintshire County Council

(Pages 39 – 49)

Attached Documents:

Letter to the Chair from the Chair, Public Accounts and Public Administration Committee in relation to a complaint over planning procedures at Flintshire County Council

4 Motion under Standing Order 17.42 (vi) and (ix) to resolve to exclude the public from the remainder of the meeting

(10.45)

Private meeting (10.45–11.00)

5 Scrutiny of the Welsh Government's Net Zero Wales Plan: consideration of evidence received under item 2

Following the public meeting, the Committee will hold an informal strategic planning session on its priorities for the Sixth Senedd

Document is Restricted

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref MA/JJ/3536/21

Llyr Gruffydd MS
Chair of Climate Change, Environment & Infrastructure
Committee Senedd Cymru
Cardiff Bay
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CF99 1NA

11 November 2021

Dear Llyr,

I am writing in advance of my attendance at the Climate Change, Environment and Infrastructure Committee in relation to the Net Zero Wales Plan, published on 28 October 2021.

The Net Zero Wales Plan is our second statutory decarbonisation plan. Building on Prosperity for All: A Low Carbon Wales (2019), it is our first plan to be published since accepting advice from the Climate Change Committee (CCC) in December 2020, which for the first time, articulated an achievable and affordable route to net zero emissions in Wales. The Net Zero Wales Plan focuses on our second carbon budget (2021-2025), but looks beyond to start building the foundations for Carbon Budget 3 and our 2030 target, as well as net zero by 2050.

In March 2021, the Senedd passed a suite of regulations to increase Wales' decadal emissions targets from those set in 2018 and to set Carbon Budgets 2 and 3 in line with them. The targets and budgets set in law followed the CCC's recommendations:

- Carbon Budget 2 (2021-25): 37% average reduction with a 0% offset limit¹.
- Carbon Budget 3 (2026-30): 58% average reduction².
- 2030: 63% reduction.
- 2040: 89% reduction.
- 2050: at least 100% reduction (net zero).

¹ The CCC's recommendation for CB2 was a 37% average reduction in law with a commitment to outperform it. This is the minimum required to meet the CCC's Balanced Pathway. The Senedd has legislated for a 0% offset limit for Carbon Budget 2. This means that all emissions reductions between 2021-25 must take place in Wales.

² There is no statutory deadline for setting each offset limit. We will set the CB3 offset limit no later than 2025.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The CCC concluded this pathway is consistent with global pathways to meet the Paris Agreement 1.5°C goal.³ However, despite being more ambitious, there is still a very significant degree of risk. We will continue to see the impact of rising temperatures, intense weather events and extreme pressures on the natural environment for decades to come.

The Plan focuses on the need to “outperform” the second carbon budget of 37% average reduction in emissions, in line with the CCC’s recommendation. This is because the third carbon budget (2026-2030) requires an average reduction of 58%, reflecting the huge step change we need to make here and now if our actions are to have time to take effect.

Therefore, whilst this plan focuses upon the Carbon Budget 2, it also seeks to lay the groundwork for emission reduction we will see in future years. For example, we want to see rapid reductions in emissions from housing, but we must build upon existing efforts and appropriately test our approach – local area energy planning, technology trialling, supply chain development and so on in the near term.

This Plan has five parts:

- **Part 1 – Setting the context** – the overall vision for Wales in 2025 and beyond to 2050, an overview of the reduction trajectory, the latest emissions data, and a broader view of our consumption emissions and global responsibilities.
- **Part 2 – Setting the conditions** – capturing those actions and policies which do not reduce emissions on their own, but which enable the transition we wish to see.
- **Part 3 – The emissions sector chapters** – setting out the pathways for each emissions sector, describing what is in scope, where the emissions come from, progress to date, our ambition for the future and then details of the policies and proposals together with the all-Wales approach to drive the changes we need.
- **Part 4 – Monitoring and reporting** – setting out our governance structures, performance indicators, financial costings and finally a section on how the Plan was developed in line with the Well-being FG Act and how it will maximise our contribution to the wellbeing goals.
- **Part 5 – Next Steps** – highlighting key engagement and emissions reducing deliverables over this carbon budget, and the timeframe for developing our third delivery Plan to meet Carbon Budget 3.

Alongside the Plan, we also published a Sustainability Appraisal, an All Wales Plan, capturing the actions being taken by business, communities, individuals, the public and third sectors in Wales and also a Net Zero Wales Summary document.

The Plan contains 123 policies and proposals for action. However, there are number of themes outlined below, which I wish to draw your attention to. I believe these themes run through the plan and create a unique approach in Wales to the essential task of achieving the net zero targets.

The Pathway

The advice of the CCC has been invaluable. The advice considered the two broad levers of innovation and behaviour change to develop four net zero pathways which were then combined to form a ‘balanced pathway’. It is from this balanced pathway the targets agreed by the Senedd are derived. However, despite the CCC doing an excellent job in taking the

³ Advice Report: The path to a Net Zero Wales (CCC, 2020), 49

Welsh context and available evidence in to account in developing their advice to us, in developing the Plan, we have looked at alternative pathways. This may be in areas where we think either we may be able to decarbonise faster, areas where we think there are constraints on meeting the ambition set out by the CCC, or indeed where the evidence may have already changed.

Therefore, in constructing our pathway to 2050 we have further developed our Wales 2050 calculator, building on the work undertaken in preparation for our first statutory decarbonisation plan. The calculator has allowed analysis of different pathways based on different shares of effort across society. This approach is an ongoing process. We will need to develop and refine further evidence to continually inform the strategic pathway to net zero and the policies required to meet our targets. We will continue to develop our calculator to ensure it remains current to policy developments, the emerging evidence and of course the global context (for example taking into account the pandemic, spiking gas prices).

The calculator shows that by meeting the ambition set out in the Plan will see emissions fall by an average 44% against the baseline over the period of Carbon Budget 2. As previously described, we seek to outperform this level of decarbonisation.

Engagement

The Net Zero Wales Plan was required, by the Environment (Wales) Act 2016, to be published before the end of 2021. We very deliberately published the Plan to coincide with COP26, COP Cymru events in every region in Wales and the forthcoming Wales Climate Week series of events. Engagement with the public, businesses and organisations of Wales will be crucial to achieving our ambitions.

Reaching net zero emissions requires everyone to play their part. The emission reduction seen to date has in the main, been achieved in areas where little public engagement was necessary. For example, the changes in the electricity grid have not required the people of Wales to use energy differently. Achieving our net zero targets will require us all to consider and change, the way we live our everyday lives.

Nearly 60% of the abatement in the CCC's scenarios to 2035 involved large numbers of people acting or choosing differently, whether that is adopting new low-carbon technologies (for instance driving an electric car, or installing a heat pump) or choosing to eat lower carbon foods, fly less and choosing products that last longer⁴. Many of these changes can of course bring economic, social and health benefits to Wales.

The scale of the changes required means we need to move to facilitating a society-wide dialogue and education. On the basis engagement with the public in decision-making will provide a stronger basis for behaviour change, we will consult on a Public Behaviour Change Engagement Strategy in 2022, which will set out how we can involve society in the changes individuals and communities can make to help Wales meet net zero.

Prior to this engagement strategy, we are using the opportunity offered by COP26, to engage widely. COP Cymru is a series of events being held in Wales in November, largely coinciding with COP26, which will provide an opportunity for stakeholders and the public to engage in important conversations about climate change.

Commencing on 22 November, Wales Climate Week will be a five-day nationwide conversation on the Net Zero Wales Plan and the collective action needed to ensure Wales meets its targets. Open to all, the programme of virtual events will help people understand

⁴ <https://www.theccc.org.uk/wp-content/uploads/2020/12/Advice-Report-The-path-to-a-Net-Zero-Wales.pdf> Page 145

what Wales has already achieved, the changes we can expect in the next five year and how together, we can shape the future. The week will reflect on important outcomes from COP26 and the contents of the Net Zero Wales plan – and will aim to build a shared sense of direction and unity in achieving our national mission of achieving net zero.

Wales Climate Week 2020 featured 80 speakers over five days, with over 2,000 participants and I hope this year's event will be even more successful.

Registration to events is through the following links:

<https://freshwater.eventscase.com/CY/COPCymru21>

<https://freshwater.eventscase.com/EN/COPCymru21>

I recognise this approach is not in complete harmony with the recently published UK Net Zero Strategy, which places much greater emphasis on technology rather than behavioural changes. I will return to the UK Government role later in this paper.

Climate Justice

A just transition will ensure we leave no-one behind as we move to a cleaner, stronger, fairer Wales. The changes driven by the need to decarbonise our economy will have impacts on industries, sectors of the workforce and socio-economic groups in different ways, depending on the pathways, policies and actions we choose. It could help to resolve existing inequalities, but there is a risk it could also exacerbate them. Over the period covered by this plan we will work closely with our key partners such as employers, the Well-being of Future Generations Office and Wales TUC to develop our evidence base and further improve our understanding of how to achieve a just transition.

Our approach will also be supplemented by further strengthening our internal integrated impact assessment processes, when we develop policy.

In particular we must understand how impacts layer upon each other. For example, rural agricultural communities will see changes to agricultural practices and land use. These communities may have a high proportion of homes which are challenging to decarbonise. People living in these areas, where more dispersed patterns of settlement mean public transport and digital infrastructure are less concentrated, tend to have to travel greater distances for essential purposes than those living in urban areas. The changes we make in agriculture, transport, buildings, the public sector and land use will all affect these communities and need to be integrated and coherent.

Collaboration across sectoral and geographical boundaries and interdependence with the UK Government

As indicated in the approach to climate justice and engagement above, we will not be successful unless we collaborate. This is at the heart of our approach to climate justice and engagement. Internationally we will continue to play an active and leading role in international networks such as Regions 4SD and the Under 2 Coalition. Closer to home, we must significantly improve our collaboration with the UK Government.

The CCC assessed, by 2050, around 60% of the changes needed in Wales are influenced by powers mostly reserved to Westminster. We therefore make a number of calls on the UK Government to take the action needed to unlock a green future in Wales, for example in supporting our industries to transition to clean and sustainable futures. While the UK cannot

reach its targets without Welsh action, we cannot reach our ambition without the UK Government playing its fair part.

Despite this imperative, the UK Government remains distant, opaque and unhelpful in many areas. Despite the Minister of State for Business, Energy and Clean Growth offering to share a draft of their Net Zero Strategy, in July, that commitment was never fulfilled. Instead in the early hours of the publication date, we were sent an embargoed copy. On the same day, a slew of other policy was published, such as the long delayed Heat and Buildings Strategy, little of which has had engagement with Welsh Government or other stakeholders in Wales.

As a consequence, our own Net Zero Wales Plan has not been able to properly consider policies announced by the UK Government in their strategy. I repeat the calls contained in our plan for the UK Government to work with Welsh Government for the benefit of Wales.

The cost of the transition

In their advice, the CCC indicate capital investment associated with delivering net zero in Wales may need to increase by around 0.5% (or £360 million) of GDP in 2022, reaching 1.7% of GDP (£1.4 billion) in 2025, peaking at 3.8% of GDP (£3.6 billion) in 2034, before falling to a more-or-less steady state figure of just under 2% of GDP (£2.3 billion) in 2050⁵. Due to the uncertainty of estimating future costs, these figures should be seen as illustrative rather than an accurate forecast. In the long-term, the CCC also project significant savings in fuel costs in a variety of areas, which may offset a large proportion of the additional investment costs.

In the short term over Carbon Budget 2 (2021-2025), the CCC indicate that additional capital investment associated with the low-carbon transition in Wales will need to increase steadily over this period. According to the CCC's balanced pathway, over this 5 year period, the total additional investment cost is estimated to be approximately £4.2 billion, compared to a baseline of no further climate action.

Almost 40% of the total additional capital investment over this period is expected to be in the surface transport sector. The majority of these costs will likely be private sector investment in zero-emission vehicles. Just under 30% of total additional investment is expected to be in buildings, with the majority of this investment going into improving energy efficiency via retrofitting and installing low carbon heat in existing residential homes and non-residential buildings. Finally, approximately 20% of the total additional investment is expected to be in electricity supply, installing low-carbon generation, mostly in variable renewables such as wind and solar photovoltaics.

Whilst the majority of the costs will not fall directly to Government, we need to consider how we will focus our financial resources to stimulate investment from others.

With a UK Government Spending Review on 27 October, our Net Zero Wales Plan was based upon a situation where we had not received our financial settlement beyond 2021-22. Despite this, the Welsh Government intend to demonstrate our commitment to delivering that aims of the Net Zero Wales Plan as part of the forthcoming 2022-23 Draft Budget.

We need the UK Government to recognise the gravity of the climate emergency, and make funding available, which reflects the seriousness of the climate emergency.

⁵ These figures are based on the CCC's recommended pathway, the Balanced Pathway. Total investment varies in the other scenarios

Integration of Policy for Multiple Benefits

Delivering policies to ensure a fair and prosperous transition to net zero will be largely dependent on our ability to identify and maximise connections between policies, to maximise the contribution towards the seven well-being goals of the Wellbeing of Future Generations Act. Our net zero pathway requires us to decarbonise across all sectors, and therefore it is important we make the most of every policy and action. We need to think about a joined-up system and integrate our work, continuing to seek multiple benefits from every action we take, embedding our response to the climate and nature emergency in everything we do.

Whilst the Net Zero Wales Plan is predominately concerned with climate change mitigation, significant and irreversible changes to our climate and weather patterns are predicted to continue to develop over the next few decades. Crucially, the changing climate could put at risk some of the measures needed to achieve net zero emissions. Integration of our adaptation and mitigation policies is therefore essential.

The Sustainable Development principle in the Well-being of Future Generations Act will steer our policy responses so we continue look to the long term; involve people in the decisions that affect them; collaborate with partners to deliver; integrate our thinking to drive multiple benefits; and seek out opportunities to address the underlying causes of change.

Resource efficiency and a circular economy

To effectively tackle the climate emergency and nature crisis we must address the unsustainable consumption of resources as a root cause. Given 45% of global emissions come from the goods and products made and used every day, we need an approach, which keeps resources in use and avoids all waste: a circular economy. This means accelerating actions to increase resource efficiency, re-use, repair and re-manufacture across all sectors of the economy, seeking to retain and increase good quality jobs across Wales, and where appropriate, substitute high carbon, energy intensive materials with sustainable ones, including natural materials.

Over the last 20 years, Wales has become a world leader in recycling and waste management, transforming into a high recycling society. In 1999, less than 5% of municipal waste was recycled and in 2020, this has reached over 65% supported by a billion pound investment in collections infrastructure and wide-ranging action by the Welsh Government. Every household in Wales has played their part in this success meaning that the foundations are in place to develop a circular economy.

The Programme for Government has committed to progress our transition to a zero waste, net zero carbon circular economy through using resources more efficiently, so that by 2050, we use only our fair share of the planet's resources and have 100% recycling (zero waste). The global biodiversity and climate systems will be the key beneficiaries, but the environment of Wales itself will also benefit, for example, from reductions in direct plastic pollution.

Moving towards a circular economy will also have significant, long-term positive impacts on the economy, and the people, communities and culture of Wales. Moving to a circular economy can benefit our economy by retaining value in more resilient and shorter supply chains and enabling people and communities to come together through taking collective action on resources like running repair cafes or redistributing surplus food.

The Leadership Role of the Public Sector

The Welsh Government has consistently highlighted the public sector has a significant leadership role. The public sector in Wales should not only reduce direct emissions. The public sector should use its unique position to influence wider emissions reduction, whether that be in its workforce, supply chain, or through its statutory responsibilities. This is why in 2017 we set the ambition for the Welsh public sector to be collectively net zero by 2030. Accurately measuring direct and indirect emissions is vital, as is setting a routemap for making the change. We have therefore worked with partners across the public sector to co-create a toolkit of support, which includes a route map for decarbonisation across the Welsh public sector:

<https://gov.wales/sites/default/files/%20publications/2021-07/a-route-map-for%20decarbonisation-across-the-welsh-public%20sector.pdf>

and Welsh public sector net zero carbon reporting guide:

https://gov.wales/sites/default/files/publications/2021-05/welsh-public-sector-net-zero-reporting-guide_1.pdf

This guidance encourages the public sector to take the widest view of its impact and put in place plans to act.

I believe the Net Zero Wales Plan is a step forward in ambition and action. However, I must reinforce the point, it is a point in time. I will work resolutely with my Cabinet colleagues, partners and stakeholders within and outside Wales. Together we will develop further policies which achieve our net zero targets and create a more prosperous, equal and healthy nation. I look forward to attending the committee on the 25 November, to discuss the points above and the contents of the Net Zero Wales Plan more broadly.



Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change

Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

Legislation, Justice and Constitution Committee

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Mick Antoniw MS
Counsel General and Minister for the Constitution

15 November 2021

Dear Mick

Common Frameworks

At our meeting today we formally noted your letter of 8 November informing us that a quadrilateral ministerial meeting on common frameworks would be held on 10 November.

We are grateful to you for providing us with information on who was due to attend, what the focus of the meeting would be, and a list of the draft agenda items.

While we acknowledge that you have committed to update us on the outcome of the quadrilateral meeting within two weeks of it having taken place, there are a number of questions which we would like to put to you now so that they can be addressed as soon as possible.

You will recall that I wrote to you in July to seek an update on the common frameworks programme and your letter in response of 7 September was extremely helpful to us in assessing and planning for the anticipated workload. I would again be grateful if you would provide:

1. the latest update on the common frameworks programme, including progress towards agreement on how frameworks will manage international obligations and interactions with the *UK Internal Market Act 2020* and the Northern Ireland Protocol;
2. a confirmed (or likely) date by which each provisional framework now in operation will be published, in the interests of transparency for stakeholders affected by the decisions being made on laws and policies in these areas;
3. a date by which the governments of the UK are expecting all common frameworks to have been scrutinised by their respective parliaments and subsequently finalised.

I am copying this letter to the Climate Change, Environment and Infrastructure Committee; the Economy, Trade and Rural Affairs Committee; and the Health and Social Care Committee.

I would welcome a response by 25 November 2021.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies

Chair



Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

Legislation, Justice and Constitution Committee

Welsh Parliament

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Julie James MS
Minister for Climate Change

Mick Antoniw MS
Counsel General

8 November 2021

Dear both

Legislative Consent Motion debate relating to provisions in the UK Government's Environment Bill

On Tuesday last week in plenary, during closing remarks in the debate on the above consent motion, the Minister for Climate Change said the following:

"Just to reiterate the point that I fully intend to bring a single-use plastics Bill to the Senedd. We are, of course, however, embroiled in specific problems relating to the United Kingdom Internal Market Act 2020 and the legal arrangements surrounding it."

However, the Counsel General when questioned about the impact of the 2020 Act in an evidence session on 22 September told us:

"So, essentially, we do not have regard to the internal market Act in terms of our legislation. We work on the basis of the devolved powers that we actually have, as determined by the various Government of Wales legislation. We do not think that the internal market Act lawfully limits those devolved responsibilities."

On 22 October, in response to a question on the 2020 Act in our letter of 8 October, the Counsel General said:

8. Is the Welsh Government proceeding with its legislative programme on the basis that the practical effect of Welsh laws within the scope of the Internal Market are not impacted and undermined, as argued in its grounds for judicial review?

The Welsh Government's position is that the Act has not altered the devolution settlement. Indeed, that is what we have submitted as part of the Judicial Review challenging the United Kingdom Internal Market Act 2020, which is now at appeal stage in the Court of Appeal. We confirm that the Welsh Government is proceeding with its legislative programme on that basis..."

We would be grateful if you could clarify the comments regarding the single-use plastics Bill in the context of the 2020 Act and also the Welsh Government's position regarding the impact of the 2020 Act on its approach to legislating.

I am copying this letter to the Chair of the Climate Change, Infrastructure and Environment Committee.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies

Chair, Legislation, Justice and Constitution Committee



Jack Sargeant MS
Chair
Petitions Committee

11 November 2021

Dear Jack,

P-05-1181 Sea bottom trawling is killing our marine wildlife...Stop bulldozing our seas!
Correspondence – Petitioner to Committee

Thank you for your letter, dated 8 October 2021, and for drawing to our attention the above petition.

The Committee is in the process of agreeing its priorities for the Sixth Senedd and has already highlighted the marine environment, including Marine Protected Areas, as an area of interest.

We have agreed to undertake a short piece of work on marine environment management to follow up on a range of issues raised by stakeholders in response to our consultation on Sixth Senedd priorities. To inform this work, we will be holding oral evidence sessions with stakeholders at our meeting on Thursday 9 December 2021. The session will give the Committee an opportunity to explore the matter raised by the petitioner with stakeholders.

Depending on the outcome of the session, we may wish to write to the Minister to follow up on matters arising.

I would be happy to share any output from the session with you.

Regards,



Llyr Gruffydd MS,
Chair, Climate Change, Environment and Infrastructure Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Julie James MS

Minister for Climate Change

18 November 2021

Dear Julie,

Sewage discharges from storm overflows

At the Committee's 11 November 2021 meeting, we discussed the amendments to the UK Environment Bill, now the Environment Act 2021 ('the 2021 Act'), in relation to the discharge of untreated sewage, which were considered during ping pong.

We understand that the 2021 Act includes provisions which aim to reduce the adverse impact of discharges from storm overflows of sewage undertakers in England, including:

- a requirement on sewage undertakers to secure a progressive reduction in the adverse impact of discharges from their storm overflows;
- a requirement on the Secretary of State to prepare a storm overflow discharge reduction plan and to report annually on progress towards implementation;
- a requirement on sewage undertakers to publish annual reports in relation to their storm overflows; and
- a requirement on the Environment Agency to publish reports in relation to the operation of storm overflows of sewerage undertakers.

There are no equivalent provisions in relation to Wales.

The Committee agreed I should write to you to request a response to the following questions.

- What are the current regulatory arrangements governing discharges from storm overflows of sewage undertakers in Wales?

- To what extent do the requirements in the 2021 Act mean that rivers and coastal areas in England are better protected from the adverse impacts of sewage discharges from storm overflows than those in Wales?
- What work are you undertaking, or do you plan to undertake, to reduce sewage discharges from storm overflows in Wales?
- What consideration have you given, or will be giving, to legislating with the aim of reducing the adverse impact of sewage discharges from storm overflows in Wales?
- What discussions have you had, or do you plan to have, with UK counterparts about reducing any adverse impact of sewerage discharges from storm overflows in cross border catchments?

I should be grateful if you would provide a response as soon as possible, and by Thursday 2 December 2021 at the latest.

Yours sincerely,



Llyr Gruffydd MS,
Chair, Climate Change, Environment and Infrastructure Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Lee Waters AS/MS
Y Dirprwy Weinidog Newid Hinsawdd
Deputy Minister for Climate Change

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref MA/LW/3533/21

Llyr Gruffydd MS
Chair
Climate Change, Environment, and Infrastructure Committee

SeneddClimate@senedd.wales

19 November 2021

Dear Llŷr,

Thank you for the report of the Climate Change Environment & Infrastructure Committee's pre-appointment hearing with my preferred candidate for Chair of the National Infrastructure Commission for Wales (NICW). I am pleased you find Dr Clubb to be suitable for the role.

I have noted the issues raised in the report and would like to re-assure you, on a number of points. I took the decision to make a direct appointment, to ensure that NICW is able to make a timely contribution to the action Wales needs to take on climate change. However, I requested your input before confirming Dr Clubb's appointment because any reservations you may have had about Dr Clubb's ability to undertake the role could have implications for the reputation of the NICW. Dr Clubb, as chair designate, had engaged with members of NICW and its secretariat, with my agreement to ensure he understood the role and would be able to deliver on the identified priorities.

With regard to appointable candidates from the 2019 campaign, I was not party to the recruitment campaign, but have been informed, no candidates were appointed due to a shift in focus, at the end of 2019, to prioritise responding to the climate change emergency. As this had not formed part of the original campaign the decision was to rerun the campaign early in 2020, this was delayed due to the onset of the Covid 19 pandemic.

Finally, I welcome your commitment to both inviting the chair annually to explore progress and note your comments about the status of NICW. There are significant constraints towards delivering an independent public body in the current economic environment. These constraints particularly relate to governance arrangements and costs. However, in principle,

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

the Welsh Government could be open to considering the need for a more delivery focused body in the future and to reviewing the status and remit of the infrastructure commission.

I will be writing to Dr Clubb to formally offer him the role and hope to make a statement on this shortly

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lee', is centered on a light-colored rectangular background.

Lee Waters AS/MS

Y Dirprwy Weinidog Newid Hinsawdd
Deputy Minister for Climate Change

Y Pwyllgor Cyfrifon Cyhoeddus a Gweinyddiaeth Gyhoeddus

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Llyr Gruffydd MS

Chair - Climate Change, Environment and
Infrastructure Committee

19 November 2021

Dear Llyr

Complaint against Flintshire County Council

I have been assisting a constituent, Mrs Marilyn Forster, with a complaint against Flintshire County Council. Specifically, Mrs Forster felt that the revised procedures for planning applications, during the pandemic, were not adhered to. The Public Services Ombudsman for Wales considered her case and concluded that the correct procedure was followed. I have advised my constituent that a Judicial Review would be the only option left for her to pursue this matter, although I am aware this is not an affordable option in this case.

I attach copies of recent correspondence together with an email she subsequently sent with notes on Third Party Appeals. I would be appreciative if your Committee, with responsibility for planning matters, could give consideration to the broader issue here. Mrs Forster has consented to her correspondence being forwarded to you and to be published, if relevant. I attach copies of the recent correspondence with her email redacted, as she requested.

Thank you.

Kind regards



Mark Isherwood MS
Committee Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.

Mrs Marilyn Forster

By email: [REDACTED]

9 November 2021

Dear Marilyn

Complaint against Flintshire County Council

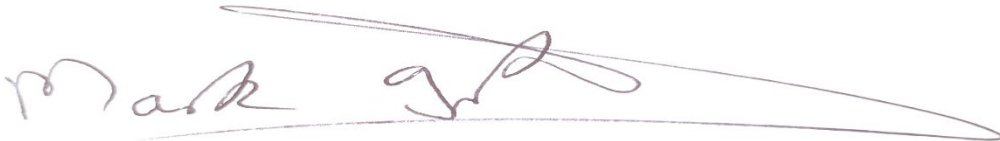
Thank you for your recent email, enclosing the Public Services Ombudsman for Wales findings regarding your complaint against Flintshire County Council, which I am responding to you as Chair of the Public Accounts & Public Administration Committee.

I understand your concerns, and as you requested, I have consulted on whether this is a matter that would be appropriate for consideration by the Public Accounts and Public Administration Committee. Unfortunately, the advice I have received is that this is not a matter that is appropriate for the Committee to consider as it is not within our remit to examine individual planning decisions or planning policy. Our remit does enable us to consider wider arrangements if there is clear evidence of misuse of public money through widespread and significant failure to follow proper procedures. However, if the local authority acted correctly within its powers and duties in making its planning decision then we are not able to pursue the matter. As you know, the Public Services Ombudsman for Wales has concluded that the correct procedure was followed.

As you have raised your concerns with the Public Services Ombudsman for Wales, I regret that a Judicial Review would be the only option left for you to pursue this matter, although I fully appreciate that this is not an affordable option for you.

I have forwarded your email of 8 November to Llyr Gruffydd MS, Chair of the Climate Change, Environment, and Infrastructure Committee, as the Committee with responsibility for planning matters, for their consideration.

Kind regards

A handwritten signature in dark ink, appearing to read 'Mark Isherwood', with a long horizontal flourish extending to the right.

Mark Isherwood MS
Committee Chair

Public Services Ombudsman for Wales (PSOW) Conclusion

Dear Mrs Forster

Complaint against Flintshire County Council

I have now considered your complaint against Flintshire County Council (“the Council”). I am sorry for the delay in providing you with a written decision on your complaint.

In reaching my decision on your complaint, I have considered all the evidence you provided, as well as material I obtained from the Council. I have also watched the webcast of the Council’s Planning Committee meeting. Having done so, I am sorry to tell you that I have decided your complaint should not be investigated. I appreciate that this outcome will be a disappointment to you, but I will set out my reasons in full.

Your complaint

You complain about the way the Planning Committee handled, and subsequently granted, planning permission for planning application 061081 at its meeting on 2 September 2020. You consider the Planning Committee failed to follow its own policies, guidance and due process, and that the decision reached was unlawful and has had a significant impact on you and the community.

The Ombudsman’s role

The Ombudsman has a dual role; the roles are separate and are governed by two different pieces of legislation. He can consider complaints of maladministration or service failure on the part of bodies within his jurisdiction which causes hardship or injustice to members of the public. We normally take maladministration/service failure to mean that the body concerned has not acted in accordance with its policies or procedures. The Ombudsman is prohibited from considering complaints against individual employees, but he can look into the actions an individual took as a representative of or on behalf of the Council. This would apply to any employee who acted with maladministration when carrying out their duties.

The Ombudsman’s other role is to consider complaints that elected members (i.e. councillors) have breached the code of conduct for members. You have commented that the Council failed to follow its Planning Code of Conduct and Welsh Government planning guidelines. It appears there was some confusion in this regard as the information provided to you by the Welsh Government referred to the members’ Code of Conduct and their obligations in planning matters. I note that my colleague has already considered and given you decisions on your Code of Conduct complaints.

In considering a complaint of maladministration or service failure, we take account of the Ombudsman’s legal powers and jurisdiction. He must act in accordance with the law which governs his work, namely, the Public Services Ombudsman (Wales) Act 2019. He cannot investigate complaints about a properly made decision that a body is entitled to make in the absence of any evidence of maladministration in the decision-making process. This means that where a body reached a decision in accordance with its policies, procedures, guidance or legislation, it is generally taken without maladministration. The Ombudsman must also consider whether his intervention is proportionate taking account of our limited resources, or if anything further can be usefully achieved.

My consideration

My role is to consider, on the Ombudsman’s behalf, the complaint you put to us and to assess whether, or to what extent, we can help you. I am conscious that you have gone to significant lengths to set out your challenges to various issues contained within the planning application and to the process. I will not, however,

refer to every single point raised by you in your submission to this office. But in reaching my decision on your complaint, I have carefully considered all the evidence you provided and all you have said.

In order for the Ombudsman to be able to investigate a complaint, he must be satisfied that there is both evidence of maladministration (or service failure) and (my emphasis) direct hardship or injustice to a member of the public. Accordingly, a key consideration is whether a complainant has been directly or personally affected by the decision reached or the action taken by the body.

I cannot see that, even if the Council was in some way at fault, you have suffered significant hardship or injustice directly as a result. You have complained in your role as a member of the public and consider that an investigation is merited in the wider public interest. However, you have also set out the personal impact on you, in terms of the stress you have experienced, and the time and energy you have expended in challenging the planning application. While I appreciate that the application and planning decision has caused you a great deal of worry, this would not, in my view, amount to sufficiently significant hardship to merit the Ombudsman's intervention.

That said, if you did establish such an injustice/hardship, I am of the view that we could not investigate your concerns. The Ombudsman cannot investigate complaints about a properly made decision by a public body, and I explain more about my considerations in that regard below.

Your complaint to the Ombudsman concerned the actions of the Planning Committee's members and Council officers at its meeting on 2 September 2020. The Committee was determining a planning application for a change of use of the Pwll Gwyn, a grade 2 listed building. Your view is that the Planning Committee failed to follow due process in determining the application, such as only reading out the late observations received for the planning application and by referring to previous planning history, which you consider 'set the tone' for the meeting. You said the Council failed to follow its Planning Code of Practice, its planning policies and also ignored Welsh Government Planning Guidelines in its decision-making process. I would note, incidentally, that it is for each Council to determine its process and there are some variations between them in this.

This application was to be considered by the Planning Committee. The planning officer reported to the Committee on the application, with a recommendation to grant planning permission. While the Council sets out relevant policies for balancing competing interests in reaching planning decisions, the weight given to the information provided is at the discretion of the decision-maker, namely the Council as the Local Planning Authority (LPA). In this regard the LPA is required to take account of relevant views expressed by neighbouring occupiers, local residents and other third parties. While it is appropriate for individuals to have the opportunity to comment on a planning application, it remains for the LPA to ultimately determine whether the application should be allowed following consideration of any comments or objections received.

The Council's usual process for considering planning applications was suspended as a result of the lockdown in March 2020. The usual process had included the opportunity for individuals - one representative each from the applicant and objectors - to speak to the Planning Committee prior to the debate on the planning application.

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The Council's usual process for considering planning applications was suspended as a result of the lockdown in March 2020. The usual process had included the opportunity for individuals - one representative each from the applicant and objectors - to speak to the Planning Committee prior to the debate on the planning application.

The pandemic meant changes to this process, and the Welsh Government issued advice to LPAs in respect of planning to enable them to hold meetings virtually. The advice also included the position in respect of site visits for planning applications. I note that the Council explained to the members of the Planning Committee on 2 September 2020 that the process for public speaking would not be available but that a statement could be submitted by an applicant and an objector to accompany the planning documentation provided prior to the meeting. Also, that it would only read out relevant late observations received after the Planning Committee documentation and agenda had been completed. Late observations were submitted on behalf of the planning applicant; these were read out by a Council officer in accordance with the change in process

The Committee approved the application by a majority. You subsequently complained to the Council that the Planning Committee process was unlawful, demonstrated bias towards the planning applicant and that during the debate on the application several factual inaccuracies were referred to by both the Committee members and the council officers. The Council formally responded to your complaint on 9 October 2020 and 21 April 2021.

Your specific complaint relates to the unfairness of the process followed by the Planning Committee on 2 September 2020. You are concerned that the process adopted by the Planning Committee, due to the pandemic, did not allow for third party oral representations to be made prior to the planning application. Also, that the Council read out only a statement from the applicant. I note, however, that information from third parties and statutory consultees was included in the planning officer's report on the application and was in the bundle of documents for the Planning Committee's consideration. The Council's process allows for late observations to be read out.

The process put in place by the Council at this time does not seem unreasonable. The process put in place by the Council at this time does not seem unreasonable to me, especially taking account of the constraints placed on it by the pandemic. I note that there was a substantial debate by members of the Planning Committee,

both for and against the planning application, and the issues you raise in this complaint were referred to in that debate. References were made by several members to the planning officer's report and to the accompanying documentation on the application. The planning officer also responded to the concerns raised during the debate. Overall I consider the application was robustly considered by the Planning Committee prior to reaching its majority decision that the planning permission be granted.

It is for the LPA to decide whether, upon the facts of a particular case, the objections of individuals are such that refusal of planning permission on those grounds would be reasonable. In my view, proper consideration was given to the objections by the Planning Committee. I can find no evidence that the Council has acted contrary to written policy, procedure or the law and I have concluded that, on the face of it, its actions have been reasonable. Consequently, there is no evidence of maladministration, service failure or injustice.

Whilst I have decided that we will not investigate your complaint, I would like to stress that this does not mean I am not sympathetic to the problems you have described. My decision is based upon the information I have seen. If you would like to discuss the matter with me, then you can contact me on the number at the top of this letter.

Procedural matters

An anonymised copy of this letter, which constitutes a formal statement of reasons for the decision not to investigate your complaint, has been sent to the Flintshire County Council's Chief Executive.

If you have not already done so, I would be grateful if you would complete customer satisfaction and equality questionnaires. These can be accessed at www.ombudsman.wales/customersatisfaction If you would prefer paper copies please contact us.

Yours sincerely

Email chain between Mrs Marilyn Forster and Mark Isherwood MS

Planning matters at Flintshire County Council

From: Marilyn Forster <[REDACTED]>
Sent: 05 November 2021 14:59
To: Isherwood, Mark (Aelod o'r Senedd | Member of the Senedd) <[REDACTED]>
Subject: Re: FW: Ombudsman conclusion

Hi Mark

Just for your information - no need to reply as I know you are an extremely busy man. I have just found some old notes re third party appeals which may or may not be of some use to you. I have copied them below. Many thanks and Kind regards Marilyn

Third Party Appeals plus cc Hannah Blythn

Hi Mark

Please see thread below re "Third Party Appeals" correspondence between Hannah Blythyn and Julia James.

In view our communities problems with what we consider to be an unlawful planning decisions, and others that you mentioned to me, could you possibly offer your support in a push to instigate a review of planning meetings and Third Party Appeals (TPAs)? It seems incredible that there has not been a review since 2015 despite new LDPs. In my opinion, the points that could raised are:

- How is it democratic that a proposer of a planning submission can appeal and yet TPAs cannot.
- A truly independent body should be set up by Welsh Government – not within Councils – to review TPAs within time constraints.
- TPAs could be restricted to people living within a 5 mile radius whose lives are directly affected and who can provide evidence to substantiate their appeal.
- In these days of technology, all planning meetings, post covid, should be recorded in council chambers and "live recorded Webcasts" should be available for public viewing as soon as possible after the meeting. This would obviously be in addition to the Minutes.
- Planning decisions made on that day could be temporary subject to TPAs being submitted to the independent body within 5 working days of the release of the Webcast. If none are received than the decision is ratified by the independent body. If evidence based appeals are submitted relating to the Webcast etc then a further one or two months should be allowed for investigation and this independent body should have the power to overturn a planning decision if it is proved to be unlawful.

- A fee of perhaps £100 could be charged for each person lodging a TPA and this would then make the process accessible to everyone instead of the offer of a Judicial Review costing in excess of over £10,000.
- Communities whose lives are blighted long term by unlawful planning decisions will then have some closure knowing that their objections have been thoroughly investigated by a truly independent body.
- I take the point about the UDP/LDP but if the Planning Departments and Planning Committees choose to ignore it, it is of no value whatsoever.
- Again, referring to the UDP and LDP much is made of community well-being but how can this be achieved if planners know that the community have no recourse to prove unlawful decisions unless they have a huge amount of money and therefore have to live with the consequences.
- A review of planning procedures could be an appendix to the LDP based perhaps on some of the above.
- I am aware of the Welsh Ombudsman but they may not take on a case and, if they do, it could be up to 12 months before they reach a conclusion and they do not have the power to overturn a planning decision.

As a community we were not aware of Monitoring Officers within the council departments. Are the Monitoring Officers present when the Planning Officers meet to discuss Approval or Rejection of the proposal, the decision then being presented to the Councillors? Is there a record of that discussion and information about how they made that decision? In the case of our experience with FCC the Planning Committee/department also seemed to ignore their own Planning Code of Practice. Surely the Monitoring Officer should have stopped the meeting and pointed out that it was not being run in the prescribed manner. Again, in my opinion, there is a great need for more transparency.

Planning Officers and Councillors are paid substantial amounts of money to undertake their duties. If it is obvious, by statements made by councillors, that they have not read the complete proposal and evidence based objections, then surely that should be pointed out immediately by the Planning Officer and thereby not allowing these inaccurate statements colour the final vote.

Below is a reply I received from the Chief Executive of FCC following my email re serious planning allegations:

“I will arrange to review and reply, including a view as to whether the Council has followed its own procedures for the treatment of planning applications at the Planning Committee level. Please do note that councillors who are members of the Committee are entitled to express their views and opinions in debate even if they appear to an outside party to be uninformed or incorrect.

I would not expect the Public Services Ombudsman to interfere in the case of the democratic determination of an application at Committee level, however, you can reserve the right to follow that course at a later date once I have followed up your complaint.”

Also below an email sent by Clare Morter and received by another Afonwen resident:

“From: Claire E Morter <[REDACTED]>
Sent: 15 September 2020 09:21
To:
Subject: Pwll Gwyn Public House - Enforcement reference 208408

Dear Mrs

I write further to your enquiry received concerning the works being undertaken to the Pwll Gwyn Public House, Afonwen. This e-mail is to update you on the progress of the investigation.

The Local Planning Authority were contacted before any works commenced on site, and comprehensive details were given regarding the necessity of works. The Council’s Conservation Officer assessed the proposals and deemed that they were considered essential to the protection of the Listed Building.

In addition, as you may be aware Planning Permission and Listed Building Consent have now been granted for the conversion of the building.

Accordingly, as there is not considered to be any breach of planning control the enforcement enquiry is now closed. Should you have any queries please do not hesitate to contact me.”

I placed a formal complaint with FCC on 28th September and sent an email last week to the Chief Monitoring Officer who replied on 5th October telling me “I have asked my planning solicitor for a response on your comments I will come back to you when I have heard form him”

On Mon, 1 Nov 2021 at 12:44, Isherwood, Mark (Aelod o’r Senedd | Member of the Senedd) <[REDACTED]> wrote:

Dear Marilyn,

Thank you for your e-mail and for sharing the attached conclusion.

I am sorry to read its contents, but thank you for your kind words.

My Office is already pursuing the clarification from the Ombudsman requested in your 27th October e-mail and we will share his response with you.

In my capacity as Chair of the Public Accounts and Public Administration Committee, I will also seek advice regarding giving 3rd parties a chance to challenge planning decisions within 3 weeks and at a minimum cost.

Kind regards

Mark

From: Marilyn Forster <[REDACTED]>
Sent: 31 October 2021 18:45
To: Isherwood, Mark (Aelod o'r Senedd | Member of the Senedd) <[REDACTED]>
Subject: Ombudsman conclusion

Hi Mark

I have received the attached conclusion from an Investigating officer.

I do believe that now is the time to roll over and give up!

Without a judicial review which we could not afford there appears to be no way we can challenge a council.

Maybe, as part of your remit you could look at giving 3rd parties a chance to challenge planning decisions within 3 weeks and at a minimum cost.

Thank you once again for your massive support it has been much appreciated.

Kind regards

Marilyn