

Agenda – Public Accounts Committee

Meeting Venue:

For further information contact:

Video Conferencing via Zoom

Fay Bowen

Meeting date: 28 September 2020

Committee Clerk

Meeting time: 08.30

0300 200 6565

SeneddPAC@senedd.wales

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

(Private–Pre–meeting)

(09.00–09.30)

1 Introductions, apologies, substitutions and declarations of interest

(09.30)

2 Paper(s) to note

(09.30–09.40)

2a Inquiry into COVID–19 and its impact on matters relating to the Public Accounts Committee's remit: Letter from the Welsh Government (9 September 2020)

(Pages 1 – 9)

3 Effectiveness of Local Planning Authorities in Wales: Consideration of the Welsh Government's Response to the Committee's Report

(09:40 – 09:50)

(Pages 10 – 14)

PAC(5)–19–20 Paper 1 – Welsh Government Response



4 A465 Section 2 Road Improvement: Evidence Session with the Welsh Government

(09.50–11.20)

(Pages 15 – 45)

Research Briefing

PAC(5)–19–20 Paper 2 – Correspondence from the Welsh Government

PAC(5)–19–20 Paper 3 – Paper from the Welsh Government

Andrew Slade – Director General, Economy, Skills & Natural Resources Group, Welsh Government

Simon Jones – Director Economic Infrastructure, Welsh Government

Andy Falleyrn – Deputy Director, Infrastructure, Welsh Government

5 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

(11.20)

Item 6

6 A465 Section 2 Road Improvement: Consideration of evidence received

(11.20 – 12:15)



Tracey Burke

Cyfarwyddwr Cyffredinol / Director General

Y Grŵp Addysg a Gwasanaethau Cyhoeddus
Education and Public Services Group

Llywodraeth Cymru
Welsh Government

Nick Ramsay MS
Chair
Public Accounts Committee
Senedd Cymru
Cardiff Bay
CF99 1NA

08 September 2020

Dear Mr Ramsay,

Following my attendance at Public Accounts Committee on 3 August, and your subsequent follow up letter of 11 August, please find enclosed my response to the points raised.

Please let me know if the Committee would like further information or clarification.

Yours sincerely

Tracey Burke



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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.

**Public Accounts Committee meeting
3 August 2020
Follow-up Actions**

- 1) The most recent figures on the take up, by local authority, of the extra funding available as part of the ‘Stay Safe. Stay Learning’ programme, (to support digitally excluded learners during the current pandemic) to ensure traveller sites are equipped with broadband.**

As part of our ‘Stay safe. Stay learning’ programme, support for digitally excluded learners in maintained schools was mobilised through the wider Hwb EdTech programme.

The Minister for Education committed up to £3 million to support digitally excluded learners in maintained schools where there was no existing provision in place from their school or local authority. Working with their schools, local authorities utilised the funding to provide digitally excluded learners with repurposed school devices and 4G MiFi connectivity where required. Based on the demand identified by schools and local authorities, there have been 10,848 MiFi devices and 9,717 software licences funded by the Welsh Government and deployed across Wales. A high level breakdown of that take up by local authority is available as follows:

LA	MiFi Provision	Software Licences
Blaenau Gwent	100	1000
Bridgend	310	559
Caerphilly	842	800
Cardiff	2500	-
Carmarthen	300	750
Ceredigion	115	-
Conwy	226	123
Denbigh	125	-
Flintshire	165	-
Gwynedd	170	-
Isle of Anglesey	125	240
Merthyr	250	-
Monmouth	200	300
Newport	1300	800
Neath Port Talbot	200	1094
Pembrokeshire	300	-
Powys	600	700
Rhondda Cynon Taf	1400	1400

Swansea	500	65
Torfaen	560	1356
Vale of Glamorgan	350	230
Wrexham	210	300
Totals	10848	9717

The process has been managed by the local authorities and schools themselves and local authorities have engaged with their schools to identify digitally excluded learners. Therefore, we do not hold centrally recorded information for this specific intervention in terms of the onward distribution to families, children and young people and in the case of your specific question, traveller sites. However, I set out below the specific actions we have been taking in regard to traveller sites and connectivity including during the COVID-19 pandemic, working with a Gypsy, Roma and Traveller stakeholder group drawn from Local Authority and third sector service providers.

2) Details of which local authorities had permanent traveller sites with no [Broadband] connections and what action the Welsh Government is undertaking to ensure local authorities prioritise broadband connections for these sites.

Not every local authority has a permanent traveller site and the number of sites and pitches can fluctuate over time. In 2018, we asked every local authority with Authorised Socially-rented Gypsy and Traveller sites about the provision of a wide range of services, including access to basic services such as water, electricity and gas. This survey included fixed telephone and internet services. This was not meant as a monitoring exercise, more as an opportunity to identify effective practice or potential gaps in provision. Local authorities responded within that context.

Responses were received from six local authorities covering eight sites and 164 pitches. No response was received from eight local authorities with sites, covering 14 sites and 239 pitches. Five of the respondent local authorities to this survey had taken action to provide phone/internet lines for residents.

The funding of fixed lines within sites is an eligible cost under the Welsh Government Gypsy and Traveller Capital Sites Grant. Over the past four years we have encouraged local authorities to develop and submit projects for the funding to support a range of initiatives, including the provision of broadband. As part of the funding we expect local authorities to evidence engagement with residents. Unfortunately the take up has not been as high as we would have hoped.

Since the *Designing Gypsy and Traveller Sites* guidance was last revised in 2015, many more services have become digital-first or digital-only and access to the internet is becoming part of essential services for citizens. We are aware that not all sites have good mobile data signals, available Wi-Fi, or broadband at the level of individual pitches.

During the COVID-19 pandemic, we convened a Gypsy, Roma and Traveller stakeholder group drawn from Local Authority and third sector service providers. Stakeholders reported a range of issues around access to basic utilities, deliveries and access to services. A number of stakeholders reported significant issues with registering for and accessing services online. The inability to do so had an impact on education, obtaining benefits, seeking employment and accessing essential health messages.

In response to these concerns, officials commenced additional detailed mapping work on local authority sites to understand the provision of essential services to residents on sites and officials have written again to all local authorities in Wales to invite them to submit funding applications for projects that focus on overcoming infrastructure barriers to internet access, at up to 100% of eligible costs.

As with the exercise undertaken in 2018, our current information gathering on services available on sites faces considerable challenges on obtaining complete, consistent and clear information that would support targeted interventions. Of the current 402 local authority pitches across Wales, 19% are known to have “poor access”, 25% may have some access (which may include good mobile data signal) and 19% may have “good” access, which may include infrastructure needed for broadband. For 37% of pitches, we have insufficient information to understand if or how residents might access the internet.

Taking account the challenges and lessons learned from the 2018 information gathering exercise we are working more closely with local authorities to identify what forms of internet access, including high-speed mobile data, site-wide Wi-Fi, fixed telephone/broadband lines are present at each site and what gaps in essential infrastructure and/or barriers to uptake exist.

In addition, beginning in September, the Gypsy Traveller Forum – the Welsh Local Authority Gypsy and Traveller service provider network is planning a task and finish group to share good practice and develop strategies to re-engage Gypsy and Traveller learners and their families in education post lockdown.

3) How is the Welsh Government supporting schools in taking forward the requirements set out in the additional guidance bearing in mind the speed with which this guidance will need to be implemented?

Throughout the summer, Officials have engaged with all key stakeholders, including trade unions, Directors of Education, head teachers and transport operators on [the operational guidance](#) for the autumn.

Recognising schools would need time to plan for learners returning, the Minister for Education provided schools with additional time at the start of the term to plan and prepare for all pupils to return on 14th September, this decision was made reflecting on the views of key stakeholders. We have continued to work closely with trade unions the profession and local authorities and the feedback received has been that schools have been working hard to develop their plans to enable the return of all

learners in the autumn. Schools have started to welcome learners back and all schools have arrangements in place for the return of all learners by 14 September.

We have shared live examples of the work some of our schools have done to prepare through social media. We have also worked closely with Estyn to provide further examples of how schools are preparing for the start of term. These are all accessible via Estyn's website.

Over the summer we have taken forward a reassurance campaign which has provided various material to parents, schools and local authorities. Responses received from local authority Directors of Education and comments from parents assure us that these have been positively received.

4) Will the Welsh Government be providing any further guidance on the operation of schools in the autumn schools?

- Clarification on exactly what social distancing means in the context of primary schools – Does the guidance issued in July apply to primary schools?**

As part of the 21 day review of lockdown restrictions, the First Minister recently took the decision to relax the position on children under 11 having to maintain a 2 metres distance from each other or from adults. However, this does not mean that they are no longer subject to other restrictions on minimising contacts. It is simply a realistic balance of risk for those who live with and care for these children, who routinely are likely to need physical contact as part of everyday care. This age group must still observe the social restrictions on meeting other family groups or wider gatherings, and it is still up to parents to assess and evaluate the risks of their children's family and social contacts. It is still important to continue with staggered start times for example to minimise the mixing of parents for example at the school gate.

Consistent groups help reduce the risk of transmission by limiting the number of learners and staff in contact with each other to only those within the group. It is accepted that learners and especially the youngest learners, may not be able to socially distance from staff or from each other and consistent groups provide an additional protective measure. Maintaining distinct contact groups that do not mix makes it quicker and easier, in the event of a positive case, to identify those who may need to self-isolate and to keep that number as low as possible.

The use of small contact groups brings a number of educational and operational challenges which restricts the normal operation of schools. This is the case in both primary and secondary schools, but is particularly difficult in secondary schools. However, given the decrease in the prevalence of COVID-19 and the plan for the autumn term for the resumption of the full range of curriculum subjects, schools may need to change the emphasis on contact groups, increasing the size of the groups, but staying within their system of controls and building into their risk-assessments.

The latest updated guidance published on 2 September remains current and we currently have no plans to change our operational guidance in relation to the advice

for this specific age group. However, if the evidence changes, we will revisit our guidance and update as appropriate. The guidance already makes clear that minimising contacts and mixing between people reduces transmission of COVID-19. It also recognises that for younger learners the emphasis will be on separating groups as it is accepted that learners and especially the youngest learners cannot socially distance from staff or from each other and consistent groups provide an additional protective measure. Maintaining distinct contact groups that do not mix makes it quicker and easier, in the event of a positive case, to identify those who may need to self-isolate and to keep that number as low as possible.

- Clarification on Free School Meal / school breakfast club / afterschool club provision from September.

Continuing social distancing requirements and limited space for food preparation, serving and eating will result in varied school catering provision during the autumn term. Discussions with local authority catering leads indicate that some local authorities intend to provide more or less a full service with hot meals (although with simplified menus, adaptations to take account of the need for social distancing, staggered meal-times and sometimes delivery of meals to classrooms), whilst other local authorities have indicated that they will not be resuming their catering operations, at least during the first few weeks of term. Where local authorities are not able to provide pupils with a meal in school, the alternative provision for pupils who are in receipt of free school meals will vary. We understand that at least one local authority plans to deliver food parcels to pupils' home addresses, whilst others are considering cash and voucher payments in lieu or packed lunches.

The Welsh Government made an additional £40million available to local authorities to ensure provision of free school meals right through the school summer holidays until 31 August 2020. A further £1.28million has also been made available for the same purpose during the first two weeks of the autumn term whilst some schools are operating a staggered return to school. After that, local authorities will be expected to fund all free school meal provision from existing budgets.

Our operational guidance for schools states that local authorities, working with their schools, must consider resuming free breakfast schemes in primary schools and should consider resuming any other breakfast and after school provision, whether this is provision offered by the school or run out of the school by a private provider.

Where a primary school ran a free school breakfast scheme prior to the COVID 19 outbreak, they are still under a legal duty to provide the free school breakfast scheme at the start of the new school term. Local authorities, as well as school governing bodies and head teachers must have regard to the statutory guidance when considering whether to re-open free breakfast schemes in primary schools. We would expect that as schools should be open to all pupils full-time from the beginning of September breakfast clubs should operate as normal, unless it would be unreasonable for them to do so. It is not possible to say what will or will not be unreasonable in any particular situation and local authorities will consider a range of factors, including:

- demand for the provision of free breakfast in the maintained school;
- availability/suitability of a venue to undertake the provision of free breakfast;
- availability/suitability of facilities within the maintained school to provide the provision;
- availability / suitability of staff to supervise the breakfast provision.

Local authorities will also need to consider the health and safety of pupils and staff and social distancing requirements.

5) We are concerned that in the current climate, schools that are not performing well will need to have been assessed and improvements made in a more-timely manner to minimise detriment to pupils. Even though you stated a wealth of good practice has been prepared and shared through other means, there remains the challenge of encouraging schools to take that practice up. Are you able to reassure us that underperforming schools will be addressed?

I acknowledged the challenge the pandemic brought to facilitating and enabling continuity of learning. As we go into September, we plan to state clearly our expectation that schools do all they can to ensure continuity of learning under future conditions of disruption. As part of wider operational and risk-management guidance that is being issued, schools will be expected to set out in their plans pupils' entitlement to contact and support, the frequency and duration of teaching and learning sessions, and the amount of time pupils are expected to spend in independent study. Schools' plans will be scrutinised by their regional consortia and Local Authorities, and monitored as part of the work Estyn do in the coming year.

Schools will also be expected to set out the curriculum that will be available to learners involved in the [*Recruit, Recover, Raise Standards*](#) programme and the general curriculum available to all learners in the case of disruption to normal operation.

Where schools do not provide appropriate plans or do not deliver the requirements of the *Recruit, Recover, Raise Standards* programme they will be supported by their regional consortia and Local Authorities to address any issues. We will work with local authorities on the protocols to identify and address underperformance and with regional consortia on their provision of monitoring, support and Professional Learning as appropriate to the needs of the school.

Local authorities have now received the grants and the school-level allocations, as part of the additional £29 million provided for the recruitment of extra teachers and teaching assistants. We are working with the Education Workforce Council, regional consortia and local authorities to get the recruitment programme up and running. Whilst we expect schools to be focused on the day-to-day business of operating under changed conditions for a couple of weeks, we then want to see recruitment as a priority for head teachers and local authorities.

6) Childcare settings - What is the Welsh Government doing to assess the requirement for these to be operational again by September as parents need assurances that childcare will be available.

Since my attendance at Committee there have been a number of developments in relation to the provision of and funding for childcare services in Wales.

On 4 August, the Deputy Minister for Health and Social Services announced that provision under the Childcare Offer for Wales would be restarting from September. Local authorities began processing applications from 10 August. We know access to the funded childcare under the Offer is key to supporting both working families and to providing childcare settings with certainty on demand and funding. Alongside this, we published updated guidance for childcare settings on 5 August enabling them to further increase their operations.

The updated guidance takes account of the latest scientific evidence regarding the transmission of the virus amongst children, and the announcements regarding social distancing for children under 11. We have removed the restriction on contact group sizes in light of this, and there is an explicit reference in there to the operation of wrap around and out of school childcare.

On 12 August we also announced the Childcare Provider Grant which will provide funding to those childcare settings which have been unable to access the wider coronavirus support schemes. This opened for applications on 24 August, with a condition that grant recipients are open and providing childcare in September. We are also undertaking a health-check survey of the childcare sector to get a better understanding of their current operations, their plans for the autumn and any issues or concerns they have about the coming months. This survey is now closed and headline results are expected in the next week.

We will be working with the education and childcare sectors to ensure as many of these settings open as possible and to support them into the future. The latest figures show that of the 3,615 childcare settings registered in March 2020 (before the pandemic), 73% are currently open.

Agenda Item 3

Response to the Senedd Cymru Public Accounts Committee Report on Local Planning Authorities

Provided by: Minister of Housing and Local Government

Date: 17 September 2020

The Welsh Government welcomes the findings of the report and offer the following response to the 8 recommendations contained within it.

Recommendation 1 – The Committee recommends that the Welsh Government addresses the cuts made to Planning budgets by using the Welsh Ministers' powers under the Planning (Wales) Act 2015 to ensure Local Planning Authorities collaborate and merge to improve resilience and build capacity. This should include measures to ensure there is adequate knowledge sharing and information exchanges between the separate planning bodies in the UK to support learning and enhance expertise.

Accept – The Welsh Government acknowledges that local planning authority budgets have experienced very significant reductions due to public sector austerity. To move closer to cost recovery for development management services a 20% increase in planning application fees came into effect on 24th August. The Minister for Housing Local Government recently wrote to local authority leaders and chief executives on a number of planning matters. One of the matters related to the retention of planning application fees by the planning service. Research has also been commissioned to identify a new model for planning fees to better reflect the cost of providing the service. The research will report during autumn 2020.

<https://www.legislation.gov.uk/wsi/2020/745/contents/made>

https://gov.wales/sites/default/files/publications/2020-07/planning-and-the-post-covid-19-recovery-letter-to-local-authorities_0.pdf

The Local Government and Elections Bill currently before the Senedd includes an enabling power which would allow the creation, by regulations, of Corporate Joint Committees (CJCs). CJCs provide a consistent approach under which principal councils can work together to deliver specified functions. CJCs would be a body corporate comprising of elected members of its constituent principal councils and be capable of employing staff and holding assets and funding. Principal councils would be able to request the Welsh Ministers establish, through regulations, a CJC where they wish to work together because of shared interests and mutual benefit. The Welsh Ministers will also be able to require principal council functions to be delivered by a corporate joint committee. Such functions include Strategic land-use planning and transport.

Through requiring strategic planning to be delivered by CJCs the implementation of Strategic Development Plans on a consistent basis across Wales will be facilitated.

A governance framework will also be created which will allow for greater collaboration between local planning authorities to improve resilience and capacity. This is particularly applicable to areas of specialist planning expertise such as minerals and waste, development viability and historic environment where it is not feasible for each LPA to replicate services. The Welsh Government continues to participate in and support professional networks across the UK and Ireland including the Five Administrations Chief Planner network, POSW and the RTPI to support learning and enhance expertise.

Recommendation 2 – The Committee recommends that the Welsh Government works with the Planning Officer's Society for Wales to review the current National Performance Indicators to ensure the measures used to judge the performance and impact of Planning reflects the contribution of all agencies in the Planning system and develops new measures to better judge the impact of Planning on improving wellbeing in communities and people.

Accept - The Welsh Government has an established annual procedure to review and update National Performance Indicators in collaboration with POSW. It has been a long term goal of the Welsh Government to complement performance indicators with a suite of outcome indicators. A step in this direction has been made through the collection of sustainable development indicators for planning covering areas such as development in areas of flood risk and the use of brownfield land.

Planning Policy Wales includes a suite of National Placemaking Outcomes, linked to the Well-being of Future Generations Act goals, which identify the areas where planning contributes to community and individual wellbeing. The Welsh Government has supported work by the RTPI on Measuring Planning Outcomes. The research is being conducted on a UK and Ireland basis and is due to be published during autumn 2020. The research and will inform the next review of planning indicators.

Recommendation 3 – The Committee recommends that the Welsh Government works with the Planning Officer's Society for Wales to review current standards for engagement and develop new approaches that better reflect 21st century communication to ensure people are involved in the planning process.

Accept - The Welsh Government accepts that significant change is required to the way in which engagement takes place in the planning system to reflect community aspirations and new communication methods. The Well-being of Future Generations Act Involvement and Collaboration Ways of Working will form the basis of the new approaches. This is a significant piece of work which will require changes to policy legislation and guidance. Ensuring that all communities are involved in the plan making process is the priority as the plan establishes the principle of whether development is acceptable or not with subsequent planning applications dealing with matters such as detailed design.

The need for new approaches to involvement has been highlighted by the Covid 19 pandemic. The closure of public buildings and need for social distancing has prevented the use of traditional consultation methods such as the deposit of

documents and public meetings. Where possible involvement has moved on-line with printed material being made available on request to help to combat digital exclusion.

Initial project scoping and discussion with POSW has taken place with a view to identifying a programme of activity.

Recommendation 4 – The Committee recommends that the Welsh Government works with the Planning Officer's Society for Wales to strengthen how developers consult with local communities before applying for larger or 'major' developments.

Accept - The Welsh Government maintains that community involvement should be a cornerstone of the Welsh planning system. Better planning outcomes can only be achieved with comprehensive and respectful engagement between community and developer.

The Planning (Wales) Act 2015 introduced a minimum standard of Pre Application Community Consultation for major developments. Best practice guidance has also been produced which encourages developers to go beyond the statutory minimum.

<https://gov.wales/sites/default/files/publications/2018-09/pre-application-community-consultation.pdf>

Some concerns have been raised that community consultation comes too late in the design of a new development with the consequence that developers are often unwilling to make changes to their planning applications. Research undertaken by Savills has shown that many developers are submitting planning applications shortly after the PAC process has ended, suggesting either very efficient management of the process (which is to be applauded) or a lack of changes being made to proposals between PAC and planning application submission (for any number of reasons), which would mean the potential opportunities of the process are being lost.

<https://www.savills.co.uk/insight-and-opinion/savills-news/275877/pac-research-is-wales-new-planning-process-delivering->

A project to evaluate and recommend changes to the Pre Application Community Consultation process will commence later this year. It will involve representatives from POSW, the development sector and community groups.

Recommendation 5 – The Committee recommends that the Welsh Government works with the Future Generations Commissioner and the Planning Officer's Society for Wales to make Placemaking and Place Plans a statutory plan and introduce guidance on how Local Planning Authorities must work with local communities to ensure Place Planning is made central to delivery of the Wellbeing of Future Generations (Wales) Act 2015.

Accept – The Welsh Government has worked extensively with the Future Generations Commissioner, Planning Officer's Society for Wales and stakeholders to

re-focus planning policy to support well-being and placemaking. To support implementation of the policy a stakeholder group, Placemaking Wales, has been established to develop the first Placemaking Charter and a Placemaking Guide. The charter and guide will be launched in September.

Making Place Plans part of the statutory development plan was considered during the passage of the Planning (Wales) Bill. A change in primary legislation would be necessary to implement the recommendation.

The current flexibility of when and how to prepare place plans is a positive attribute allowing different approaches to be adopted to reflect local circumstances. The role of Place Plans as community engagement tools will be considered as part of the programme of activity to develop new methods of community involvement referred to in response to Recommendation 3. This may include considering whether Place Plans could be used as the building blocks from which LDPs are developed in the future. Guidance on the preparation of Place Plans is provided by the Development Plans Manual and Planning Aid Wales.

<https://gov.wales/sites/default/files/publications/2020-03/development-plans-manual-edition-3-march-2020.pdf>

<http://www.placeplans.org.uk/en/>

Recommendation 6 – The Committee recommends that the Welsh Government strengthens Section 106 agreements by:

- updating guidance to require development option appraisals to be based on a single source of information using the building cost information service construction data to improve estimates, cost advice, plan costs and benchmarks; and
- introducing a tranche payment system for Section 106 contributions with developers being required to pay a third of the agreed sum at the point planning permission is given; a third when on site development begins; and a third when the site is fully developed.

Accept – The inherited interrelated systems of S106 and community infrastructure levy are complex and require review following devolution of responsibility for the policy to Wales. A programme of work will be brought forward subject to the availability of resources in the light of other priorities including recovery from the Covid 19 pandemic and Brexit. This will include reviewing available sources of information and considering whether a staged approach to infrastructure payments is appropriate.

Prior to commencing a major review in this area, the Welsh Government has supported research to construct regional development viability models built on locally available information including land values, construction costs and sales prices. The model for South West Wales has been completed. LPAs in South East Wales are also proposing to adopt the model.

Recommendation 7 – The Committee recommends that the Welsh Government commissions research on the use of Section 106 agreements to determine whether the identified contributions from developers when agreeing a planning application are realised. The Committee also recommends that the Welsh Government works with the Planning Officer's Society for Wales to evaluate how Section 106 agreements work and identify where approaches need to be strengthened including resourcing legal expertise and management of Section 106 agreements.

Accept - Research has previously been undertaken on the use of Section 106 agreements in Wales.

<https://gov.wales/use-and-value-planning-obligations>

The research was undertaken in 2007. It is accepted that more up to date evidence is required. It is proposed to commission new research to inform the review referred to in response to Recommendation 6. The research project and wider review will include representatives from POSW and the development industry.

The negotiation, drafting and monitoring of Section 106 agreements are areas which local planning authorities may wish to provide on a collaborative basis through Corporate Joint Committees referred to in the Welsh Government response to Recommendation 1

Recommendation 8 – While we welcome the Welsh Government's approach to establish a Welsh Planning Code, given the divergence in the Planning systems between Wales and England, the Committee recommends that this goes beyond a Code and is enshrined in legislation to help drive consistency in decisions.

Accept – Work on a separate planning code for Wales is ongoing. The code will consolidate and simplify planning legislation in Wales and will help to drive consistency in decisions.

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A465 Heads of the Valleys Dualling Abergavenny to Hirwaun
Section 2 – Gilwern to Brynmawr
Public Accounts Committee session 28 September 2020
Welsh Government Written Evidence Paper

Context

1. The scheme to upgrade the A465 between Gilwern and Brynmawr (Section 2) is part of a wider project to dual the A465 between Abergavenny to Hirwaun. The project was split into six sections to enable a phased delivery which has been ongoing since 2000. To date three sections have been built, while delivery of this scheme will complete a continuous dual carriageway to Dowlais Top.
2. The Section 2 scheme has been on site since the start of 2015 and has been the subject of significant programme delays and cost increases. Wales Audit Office prepared a report in February 2020 with the interim findings into the problems faced by the scheme.

Procurement Philosophy – Early Contractor Involvement

3. Industry-standard best-practice for large highway infrastructure projects over the last 15+ years has included the use of the Early Contractor Involvement (ECI), Target Cost, design and build form of procurement. This form of contract is used extensively in the UK and has been Welsh Government Transport Division's preferred procurement route for large, complex infrastructure projects. It has been implemented successfully on a number of major trunk road projects delivered in Wales in recent years.
4. In the Public Accounts Committee's June 2015 inquiry report on the *Value for Money of Motorway and Trunk Road Investment* the benefits of the ECI contract were acknowledged and a recommendation made that expansion of the ECI model should also be considered for lower value schemes.
5. A complicated scheme such as Section 2 is, in theory, well suited to an ECI contract provided the contractor makes best use of the design development stage to undertake the necessary investigations to understand the site constraints, the methods required to build the project and the level and nature of the risks to delivery.
6. The ECI approach for this scheme required the appointment of a contractor to undertake:
 - Part 1: Key Stage 3 (Outline Design & Environmental Impact Assessment) and Key Stage 4 (Statutory Process), and on satisfactory completion of this work
 - Part 2: Key Stage 6 (Construction & aftercare).
7. The procurement process for this scheme encompassed both parts 1 and 2 (design and construction) of the ECI process simultaneously.
8. The Section 2 contract with Costain is a Target Cost contract. The Target Cost represents what Costain expect it to cost to provide the agreed goods or services as

defined by the project scope. Under the contract Costain are paid their actual costs (out-turn) with a contractual adjustment, known as pain/gain mechanism, apportioning over-spends/ cost savings with both Welsh Government and Costain taking a portion of the difference between the contractor's actual out-turn costs and the Target Cost. The allocation of cost is set out in the contract.

9. The intent behind the pain/gain mechanism is to incentivise both parties to work together to mitigate delays or overspends where possible. As a result of a revision to our contracts, Section 2 allows Welsh Government to apply these financial penalties as construction progresses rather than seek to cover them at the end.

Increase in costs from the approved budget

Section 2 Tender Evaluation and Contract Award

10. As part of their tender, Costain proposed some significant changes in their tender design which included features which have since formed a significant part of the disputes between Welsh Government and Costain. These included:
 - re-configuration of Brynmawr junction to encroach into the site of the old Anacomp factory. When the design was developed in the 1990s, the Anacomp Factory at Brynmawr was operational. By 2011 the factory had closed and the building demolished. Costain design proposed a change in the configuration of the Brynmawr junction such that it almost fully occupied the Anacomp site.
 - replacing the Coed Ffyddlwyn Viaduct with a retaining wall. The specimen design included a viaduct carrying the A465 along the valley. Costain proposed a retaining wall 200m long and 19m in height, known as RW14.
11. Costain's tender price was based on their tender design which included these changes.
12. The Welsh Government appointed Costain as the ECI contractor in June 2011 following a competitive procurement in accordance with the Public Procurement Regulations. The contract took into account a range of value considerations and was not awarded to the lowest price tenderer. Costain are supported in the delivery of this scheme by Atkins and Jacobs (was Halcrow at the time of award) to provide engineering design services and RPS to provide Environmental support. The appointment of Costain in 2011 covered the Part 1 contract with a clear intention that appointment for the Part 2 contract would follow.
13. The tendered sum (Initial Target Cost) formed the basis of the KS6 (construction) Adjusted Target Cost which was developed and refined as the scheme progressed through the design and Statutory Process taking into account design development changes constituted as evaluation events (see below).
14. There was a hold point in the contract between Parts 1 & 2 which enabled either the Welsh Government or the contractor to terminate the contract without penalty.
15. This hold point allowed Welsh Government for instance not to proceed with the project in the event that the construction Adjusted Target Cost did not demonstrate Value for Money, or that the scheme no longer met Ministerial priorities.

16. It also enabled Costain not to enter into the construction contract, without penalty, should they have felt that, based on all the information they had gathered, their projected out-turn cost would not be realistic.
17. Costain and Welsh Government were content to proceed on the basis of the agreed Construction Adjusted Target Cost and the construction contract to deliver this project was awarded to Costain in December 2014.

Target Cost, Scheme Budget and Contract Management Framework

18. Corderoy were commissioned by Welsh Government in 2010 to develop a budget construction cost estimate for the scheme at £139m (excl VAT) at 2010 prices based on specimen design. £139m at 2010 prices would be £207m at 2020 prices.
19. Also in 2009, Arcadis (then EC Harris) were appointed as Welsh Government's Employer's Agent for the scheme. Arcadis used the construction cost estimate prepared by Corderoy to form the basis of the Original Budget of £193m (KSA3) at 2011 prices, which inflates to circa £220 at Q4 2014 prices, and £287m at 2020 prices.
20. While Costain's tender sum in 2011, based on their tender design, was lower than the construction cost estimate, the overall scheme budget was retained with the difference between the two costs kept as risk contingency and used to absorb the majority of the changes in the scope of the scheme without an increase in the overall budget.
21. Additional scope or changes included within Part 1 contract were largely absorbed in the final scheme budget at construction contract award, which saw the budget increase in real terms from the original budget of £220.6m (£193m inflated to 2014 prices) to £223.2m when the contract was awarded.
22. Changes in scope during the Part 1 contract (design development, environmental impact assessment and Statutory Process) included the following:
- an increase in the cost of Statutory Undertaker diversions required for the scheme. This was primarily as a result of Costain's proposed tender design change at Brynmawr where a number of key SU apparatus was present.
 - the provision of slip road at Gilwern. This was added to the scope of the scheme following feedback from stakeholders and traffic modelling work.
 - amendments to the design at Brynmawr and Saleyard as a result of elevated status to a European designation of the Tilio Acerion habitat at Brynmawr and to avoid a new bat roost respectively. Both these were unforeseen at tender stage.
 - an additional footbridge at Gilwern following a recommendation from the report from the independent inspector as a result of the Public Local Inquiry.
 - the construction programme extension as a result of these increases in scope.
 - a VAT increase from 17.5% to 20% introduced in 2011.

23. In accordance with the contract the impact of these changes were deemed by Arcadis to be evaluation events and where appropriate added to Costain's Target Cost and programme. Not all change during this period amounts to an evaluation event. Only areas where the Welsh Government gives an instruction to change the scope (known as the Works Information or Specification), changes one of the mandatory assumptions Costain were asked to make at tender stage or Costain taking on a risk that was deemed to sit with Welsh Government at tender stage.
24. Arcadis's role as Employer's Agent has been to provide commercial and technical advice to Welsh Government in the delivery of both Part 1 and Part 2 of the contract.
25. Arcadis held regular meetings with Costain during the pre-construction period to review and challenge the development of the Target Cost and the construction programme and recommended to Welsh Government that it was realistic.
26. The Project Manager (PM) is managing the construction contract on Welsh Government's behalf. This included accepting Costain's original construction programme which was based on the outline design. The PM manages the commercial aspects of the contract administration including:
- review of work done to date, Costain's costs and certification of payments.
 - Risk Management in accordance with the Value for Money Manual
 - managing and administering change under the contract including recommending to Welsh Government on Compensation Events
 - reviewing, challenging and accepting Costain's programme.
27. Under the terms of the contract Costain are responsible for the design. Arcadis's technical role in this process is limited to design assurance recommending to Welsh Government that the design proposals prepared by Costain met the Welsh Government's requirements, and are designed in accordance with the correct Standards. Their role was not to check Costain's self-certified designs.

The disputes between WG and the contractor

28. In line with best practice of actively managing risks and attempting to establish clarity on the actual project position, Welsh Government took the unusual step for a client and began formal dispute proceedings in early 2018 to ensure Costain are only paid what they are entitled to under the contract.
29. The Welsh Government's contract with Costain is based on the industry-standard NEC3 suite of contracts which adopts a two-staged approach to dispute resolution which is set out in the contract. The first of these is adjudication, and if the dispute is not finally resolved at this stage, the dispute can be elevated to either arbitration or litigation as the second step.
30. To date there have been nine disputed matters referred through adjudication with two of those then being progressed to arbitration. These have generally been around the interpretation of the contract. Welsh Government has been successful in four of these adjudications, with Costain successful in two and with two others to some extent split.

Both arbitrations have primarily gone the way of Welsh Government, the most recent one likely to have a significant impact on moving the contract interpretation towards the position that Welsh Government has adopted throughout.

31. The table below provides details of the issues that have been in dispute and the decisions received to date. It is an update on the table in the WAO Report including decisions since the report in February 2020.

Dispute	Summary and outcome
Anacomp (one adjudication)	The project required excavation within the site of the former Anacomp factory in Brynmawr, which was demolished in 2008. When Costain started working on the site in early 2015, it discovered asbestos. Costain claimed a compensation event ¹ under the contract to increase the target price and extend the date for completion in relation to this issue. The Welsh Government commenced the adjudication regarding Anacomp and the adjudicator decided in favour of Costain .
Ben Ward's Fields (one adjudication)	Costain acquired by private agreement an old open cast site to the south of the A465 known as Ben Ward's Fields. This important site is the location where large quantities of earth and rock taken from the construction site are brought for disposal or, where possible, processed before being reused in the project. Costain had submitted a precautionary notice of a compensation event under the contract in relation to this matter. The Welsh Government commenced the adjudication regarding Ben Ward's Fields, which Costain did not defend. In the circumstances, the adjudicator decided in favour of Welsh Government .
Retaining walls (four adjudications and two arbitrations)	The project involves the construction of 89 retaining walls. For a large number of these walls, Costain has encountered various issues that either inform the design and/or impact during construction (including more difficult ground conditions and topography than expected). Consequently, elements of the design developed by Costain in the Part 1 (KS3/4 professional services) contract and contained in the Works Information within the Part 2 (KS6 design and build) contract are considered by Costain to be impossible and/or illegal to construct in compliance with relevant standards/regulations or have been changed for other reasons. The changed designs are costing significantly more to construct. The issues are complex and the Welsh Government and Costain have taken different positions about what has caused the increase in cost. However, key to both parties' position is the allocation of risk under the Part 2 (KS6 design and build) contract. To date, the Welsh Government has commenced adjudications regarding two retaining walls (firstly RW08 and then RW02).

¹ Compensation events are events defined in the Part 2 detailed design and construction contract, which if they occur and do not arise from the contractor being at fault, entitle the contractor to be compensated for any effect the event has on the prices and project timeline.

	<p>Costain has commenced two adjudications regarding another retaining wall (RW14). The adjudication decisions provided some clarification on how the contract should be interpreted. However, dispute still remained on both the contractual principle and the cost and programme impacts of design changes.</p> <p>In 2019 The Welsh Government commenced an arbitration as the final dispute resolution process set out in the contract, which was associated with a RW08 retaining wall adjudication point previously found in Costain's favour.</p> <p>The arbitration award split responsibility for the Works Information between the Welsh Government and Costain and was a partial (but in WG view substantive) reversal of the earlier adjudication decision.</p> <p>The award resulted in Costain issuing a regulatory notice / trading update to the markets revising their anticipated 2019 full year trading performance https://otp.investis.com/clients/uk/costain_group/rns/regulatory-story.aspx?cid=1001&newsid=1352233)</p> <p>However in subsequent discussion, WG could not reach agreement with the Contractor on the wider application of the RW08 award for the remaining retaining walls on the scheme. As a consequence, in April 2020 WG referred the earlier RW14 adjudication decision (decided in favour of Costain around contract principle) to arbitration.</p> <p>The award was received on 2nd September 2020 confirming that Welsh Government's interpretation of the contract prevailed on all substantive matters.</p> <p>This decision resulted in Costain again issuing a regulatory notice https://otp.investis.com/clients/uk/costain_group/rns/regulatory-story.aspx?cid=1001&newsid=1411416) confirming the arbitrator's decision;</p> <ul style="list-style-type: none"> (i) <i>"...found that responsibility for the design information rests with Costain and, consequently, the additional costs associated with the building of the retaining wall is not a compensation event under the Contract."</i> (ii) <i>"...has implications for the responsibility for design information under the whole contract and therefore Costain's ability to recover these costs."</i> and (iii) <i>"...the Group's half year results for the period to 30 June 2020 will include a charge to the income statement of c.£45 million to adjust the revenue recognised based on</i>
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	<p><i>the level of cash received to date under the Contract.”</i> and (iv) <i>“Costain will continue to fulfil the Company's obligations under the Contract, with completion scheduled in 2021.”</i></p> <p>Concurrently with the RW14 arbitration, Costain began their own adjudication in June 2020 on the Project Manager’s assessment of the quantum (cost and programme) implications of the original RW14 adjudication. Costain claimed that the Project Manager’s assessment was significantly lower than their assessment. Welsh Government instructed independent programme and cost experts to support us in the process. As a consequence Costain were awarded only a marginal increase to the Project Manager’s implemented sum meaning Welsh Government’s defence of the referral was largely successful. The subsequent RW14 arbitration award (September 2020 see above) has however reversed the earlier adjudication decision and this revised quantum is now nil.</p>
Statutory undertaker (utility supply) works (one adjudication)	Costain claimed that the scope and duration of statutory undertaker diversions changed and that this led to other associated delays and additional costs. Costain commenced an adjudication against the Welsh Government. The adjudicator decided in favour of the Welsh Government.

32. The discovery of Asbestos at the former Anacomp Factory, Costain’s inability to secure Ben Ward’s Fields or a suitable alternative for earthworks processing, and the changes to the scope of the Statutory Undertaker works have all been critical factors affecting the programme and costs. However, the main area of dispute on this scheme has been around the principle of who owns the design, scope and specification for the works (known as the Works Information) and as a result who should be liable for the cost increase and programme delays associated with any changes to it.
33. It has always been Welsh Government’s position that as design and build contractor Costain prepared and provided the design during the Part 1 contract they were then responsible for developing their design during Part 2 and building it. The arbitrator in his decision on 2nd September 2020 agreed with that position.

Cost Increases

34. It was Arcadis who identified in early 2017 that costs appeared to be rising and that the scheme was behind programme and raised it with Welsh Government. As a result Welsh Government requested that Costain undertake a detailed bottom-up re-evaluation of the projected costs and timescale to complete the project. Welsh Government also demanded a change in on site personnel
35. The completion of that review identified that there was an issue with the scheme budget which has continued to rise as the scheme has progressed. While there are changes to other elements within the project budget, in particular Statutory Undertaker diversion costs and also Employer’s Agents costs which are a direct result of the commercial performance of this scheme, it is the cost increases to the construction

contract with Costain where the vast majority of the increase arises. Welsh Government have implemented small elements of de-scoping and granted Costain a significant number of road closures in an effort to reduce costs and programme delay. However in a design and build contract Welsh Government is heavily reliant on the performance of the contractor to control and manage costs and programme. Welsh Government also considered terminating Costain's contract and appointing a new contractor to finish the scheme but concluded that such action would result in further significant delays and a further increase in costs.

36. The table below sets out the development of each of the elements of the scheme budget since the construction contract was awarded. The table is based on that included in the WAO report with an additional column to reflect the current position. The full implications of the arbitration into RW14 is currently being evaluated although the figures in the right hand column of the table give an early view on the impact of the decision on the scheme costs and in particular Welsh Government's liability under the contract.

		£ millions			
	June 2011 (appointment of ECI contractor via Part 1 contract) ²	Dec-14	Jan-18	Nov-19	Sep-20
		(award of Part 2 detailed design and construction contract)			
Historic expenditure – including outline design and development	4.4	19.7	19.7	19.7	19.7
Detailed design and construction contract target cost	110.2 (initial target cost)	159.5	159.5	159.5	159.5
Instructed change			14.8	16.7	21.7
Estimate of Welsh Government portion of pain and expected liabilities for			40.6	80.5	63.5

adjudications in favour of Costain					
Statutory undertaker costs	3.9	15.2	23.2	18.2	18.4
Risk (including legal fees)	16.5	14	5.3	4.7	2.7
Optimism bias ³	45.1				
Employer's agent costs ⁴	3	2	4.8	8.5	9.1
Lands	7.3	11	11	11	11
Other costs	3.3	1.8	2.4	2.4	2.8
Sub-total (costs to the public purse)	193.7	223.2	281.3	321.1	308.4
Estimate of Costain's portion of the pain	0	0	[redacted] ⁵	[redacted] ⁵	[redacted]
Total project cost	193.7	223.2	[redacted] ⁵	[redacted] ⁵	[redacted]

37. These figures are calculated by the independent Project Manager appointed by Welsh Government to administer the contract and represents his assessment of Welsh Government's liabilities. Costain do not agree with these figures and feel they are understated. It will be for them to challenge through whatever dispute avenues remain available to them to change these costs.

38. Full clarity on Welsh Government's final liabilities under the contract will not be achieved until after scheme construction has finished, the final out-turn cost is known and any further disputes have been finished. However the scope for any significant change for the current position is narrowing.

39. The changes in how the costs in the main construction contract can be adjusted is made up of four components. Until the final account is settled the quantum within each of these elements will change. The four components are as follows:

- an increase in the Target Cost as a result of agreed instructed change. This includes any future impact of COVID-19 on construction.
- a change in the Target Cost as a result of increased or decreased liabilities to Welsh Government resulting from dispute decisions either in favour or against Welsh Government.
- a change, either increase or decrease in their projected out-turn (ie Costain's projections of their final costs to complete the scheme). This is Costain's cost to manage but can be scrutinised via the Project Manager on an open book basis.
- a change in the pain share distribution. The pain share is a direct function of the difference between the Target Cost and the projected out-turn. Welsh Government and Costain each pay a portion of the total gain share based on the pain-gain mechanism set out in the contract.

40. An increase in the target cost will reduce the level of 'pain-share' to Welsh Government but increase Welsh Government's overall liability under the contract (as Welsh Government pays for all of the increase to the Target Cost compared to a proportion of it as part of the pain-share). The reverse is true for any reduction in the Target Cost. The pain-share will continue to change as greater certainty of Costain's out-turn cost is established and the implications of further dispute decisions has on the Target Cost.
41. While a number of factors have contributed to the cost increases and programme delays it is the changes to the Works Information that has by far the biggest impact on the cost to build the scheme and the time taken to do it.
42. The Part 1 contract required Costain to prepare and provide an outline design for the scheme on which they based their pre-construction Target Cost (including risk). In the Part 2 contract Costain were required to develop their outline design and build it. It is the difference in the extent of the outline and detailed design which has resulted in the cost increase, and in particular differences arising during the detail design of the structures.

The issues, the site topography, traffic management requirements and complex ground conditions, which meant the contractors found the project far more difficult to deliver than they originally envisaged

43. Early programme delays can be directly linked to Costain's inability to secure Ben Ward's Fields or a suitable alternative for earthworks processing and the discovery of Asbestos at Anacomp both of which affected the ability to construct the Brynmawr junction and the early diversions of key Statutory Undertaker diversions.
44. However the most significant programme are based on Costain having to deal with the site conditions encountered. ECI contracts work well when the design and build contractor makes best use of the time available pre-construction to understand the site. The scope of the Part 1 contract required Costain to identify and undertake whatever surveys were required to gain an understanding of the site, including topographical and environmental surveys and in particular ground investigations.

Ground conditions

45. Following the award of Part 1 of the contract there was a 28 months period during which Costain developed their design to progress through the Statutory Process followed by a further 14 months to plan how the proposed to execute the work . During the design development phase Costain undertook a single Ground Investigation contract in late 2011 and early 2012 to inform their outline design. From early 2012 until the end of the outline design stage in October 2013 Costain did not request or undertake any further Ground Investigations to support their developing design. Costain's Ground Investigation supplemented the substantial data supplied to all tenderers, as part of the tender process, of the boreholes and trial pits collected via a series of historical investigations carried out by Welsh Government since the 1990s for the specimen design.
46. After construction commenced Costain found that the ground conditions in a large number of areas along the site were not what they expected. As a result Costain concluded that their outline designs would be impractical and uneconomical to build and/or required additional design elements i.e. they could not safely carry the loads there were expected to in order to meet engineering standards in their original envisaged form and/or the outline design needed to be changed. This meant that Costain had to revisit a large number of structures, during the construction phase, with the associated delay to the construction programme to meet the required design standards and stakeholder consultation requirements such that the new structures were bigger and, more expensive and took longer to build.

Traffic management requirements & site topography

47. The scheme is an online widening of the existing A465 which for over half of its length is cut into the steep-sided, Clydach Gorge. The gorge is particularly environmentally sensitive and the subject of a number of local, national and European designations. The nature of the scheme is such that the majority of construction activities are undertaken alongside live traffic. Due to the nature of the site there are very few suitable local alternative routes to the A465.
48. The most significant programme delay is primarily linked to a number of issues associated to the change in designs required for structures. Re-designs have resulted in design of some structures not being available on time further exacerbated by longer construction periods. This has been compounded by the environmental sensitivity of the site where seasonal constraints have resulted in a disproportionate impact where a delay has resulted in seasonal windows being missed.
49. In addition to design changes, revised and reconsidered methodologies have resulted in it being impracticable to build a number of the structures alongside live traffic without closures or substantial temporary arrangements to protect road users. At the evidence Costain presented at the Public Local Inquiry for the scheme in 2014 they proposed a small number of weekend road closures to install footbridges and undertake tie-in works. As it has become apparent that a large portion of the construction needs to be undertaken under road closure, Welsh Government has reluctantly agree to a significant programme of weekend and overnight road closures to facilitate safe construction and try to recover some programme delay. To date Welsh Government has reluctantly granted Costain 58 no weekend closures and over 100 overnight closures with a small number still required before construction finishes. While far from ideal,

Welsh Government has worked with Costain to ensure the construction activities undertaken under each closure is maximised.

50. The scheme is progressing towards completion and a major traffic management switch was achieved in mid-August 2020 to facilitate the completion of the final phase of the works.
51. The critical path for the project programme, and key to its completion, is a stretch of engineering running through a 400m length towards the middle of the Clydach Gorge, where retaining wall (RW14) is being built. Costain identified what they considered to be a geotechnical fault very early in 2015 which although not a risk to the travelling public, caused them to fundamentally change the design of the retaining wall and a small bridge. It should be noted that this area was one that Costain identified in their tender design for a Value Engineering change having been a viaduct in the specimen design.
52. While construction of the wall is well underway the complexity of the design and construction drives the critical path to programme completion.
53. There are financial penalties, where Costain are penalised for being late in their programme delivery but these are relatively small when compared to the financial constraints from the dispute process.

Timeline to complete

54. Welsh Government are in the process of considering the full implications of the arbitration award and preparing for further substantive discussion with Costain regarding the completion of the works and the final account.
55. Costain regulatory statement to the market at the end of 2019, and pre COVID identified a scheduled completion in the first half of 2021. COVID resulted in a 2 week lockdown of the site in March/ April while Costain modified their working practices and brought in additional welfare facilities and safety protocols. Other than that, to date COVID has had only a limited impact on progress on site.
56. Following the recent arbitration decision on RW14, Welsh Government will be seeking programme clarity from Costain. In their statement to the city on 2nd September 2020 Costain confirmed they *“...will continue to fulfil the Company's obligations under the Contract, with completion scheduled in 2021.”*
57. Any programme to finish will necessarily be COVID-19 dependent and could be affected by further lockdowns and isolations or quarantines of major suppliers.