



Communities, Equality and Local Government Committee
CELG(4)-31-14 Paper 11

01/09

Clerk to the Committee
The Environment and Sustainability Committee
National Assembly for Wales
Cardiff Bay
CF99 1 NA

7 November 2014

Dear Clerk

General Principles of the Planning (Wales) Bill: written evidence

The Welsh Language Commissioner welcomes the opportunity to submit written evidence to the Environment and Sustainability Committee as part of its investigation into the general principles of the draft Planning Bill.

Context

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The principal aim of the Commissioner is to promote and facilitate the use of the Welsh language. This entails raising awareness of the official status of the Welsh language in Wales and imposing standards on organizations. This, in turn, will lead to the establishment of rights for Welsh speakers.

Two principles underpin the Commissioner's work:

- In Wales, the Welsh language should be treated no less favourably than the English language;
- People in Wales should be able to live their lives through the medium of Welsh if they choose to do so.

In due course, secondary legislation will introduce new powers allowing the setting and imposing of standards on organizations. Until then, the Commissioner will continue to inspect statutory language schemes through the powers inherited under the Welsh Language Act 1993.

The post of Commissioner was created by the Welsh Language Measure (Wales) 2011. The Commissioner may investigate failure to implement a language scheme, allegations of interference with individuals' freedom to use Welsh in Wales and, in future, complaints regarding the failure of organizations to meet standards.

One of the Commissioner's priorities is to scrutinize policy developments in terms of the Welsh language. Therefore the Commissioner's main role is to provide comments in accordance with this remit and to act as an independent advocate on behalf of Welsh speakers. This approach is used to avoid any possible compromise of the Commissioner's functions in the area of regulation.

1. Planning - context

- 1.1 The planning system in Wales is based on laws enacted in Westminster, such as the Town and Country Planning Act 1990 and the Planning and Compulsory



Purchase Act 2004. These laws are supplemented by regulations and secondary legislation enacted by the Assembly and Westminster. The draft Planning (Wales) Bill is an attempt to simplify this complex legislative system.

- 1.2 In Wales, all planning authorities must prepare a local development plan for their area. This is a statutory requirement resulting from the Planning and Compulsory Purchase Act 2004. It is these plans that offer a basis for making decisions on individual planning applications and appeals. Planning authorities are required to make decisions in accordance with the development plans unless relevant considerations suggest otherwise.
- 1.3 The Welsh Government's land use policies are outlined in *Planning Policy Wales 2012*, and the policy is supplemented by a series of technical advice notes providing guidance on specific matters. In preparing their development plans local authorities should consider the national planning policy and the technical advice notes, but that does not mean there is a statutory requirement upon local authorities to implement them.

2. Planning and the Welsh Language

- 2.1 The Welsh Government's strategy for the Welsh language, *laith Fyw: laith Byw (A Living Language: A Language for Living) 2012-2017*, states that the planning system is an important means of managing change in communities and the Government's planning policy states that the Welsh language is part of the social fabric of Wales.
- 2.2 Economic policy matters, such as employment and housing affect the sustainability of communities and linguistic sustainability is a matter that needs to be addressed in this context. The Welsh Government recognises the influence of the land use planning system on Welsh communities in *Planning Policy Wales*. For example, section 4.13 of the Policy states:



“All local planning authorities should consider whether they have communities where the use of the Welsh language is part of the social fabric, and where this is so it is appropriate that this be taken into account in the formulation of land use policies.”

2.3 The Policy also states:

“It should be the aim of local planning authorities to provide for the broad distribution and phasing of housing development taking into account the ability of different areas and communities to accommodate the development without eroding the position of the Welsh language”.

2.4 There are other references to the Welsh language in the Policy too, for example regarding the ability of areas to cope with more housing and the effect on the Welsh language in deciding which sites to designate for housing.

2.5 The document that provides advice and guidance to local authorities on how to do this is Technical Advice Note 20 (TAN20). A new version of the document was published in October 2013 and it outlines the framework for when to consider the Welsh language. Further practical guidance supplementing TAN20 was published in June this year. According to TAN20 the land use planning system should *“where feasible and relevant contribute to the future well-being of the Welsh language by establishing the conditions to allow sustainable communities to thrive”.*

3. Shortcomings in terms of the Welsh language's place in the planning system

3.1 Although there are references to the Welsh language in the national planning policy, unlike other aspects of the planning system, it is not a statutory requirement on authorities to give consideration to the Welsh language. For example, section 62 of the Planning and Compulsory Purchase Act 2004 requires authorities to undertake a **sustainability appraisal** of the development plan and prepare a report on the findings. The Environmental Assessment of Plans and Programmes



(Wales) Regulations 2004 incorporate a directive from the European Union and require authorities to conduct a **formal environmental assessment** when developing specific plans and programmes. There is no comparative statutory requirement for conducting an assessment of the effect on the Welsh language.

3.2 The process of considering the Welsh language in the planning system therefore depends on policies and guidelines. Before the new Technical Advice Note 20 was published in October 2013, the Welsh Language Commissioner carried out a study of the consideration given to the Welsh language by planning authorities as they formulated their development plans.

3.3 As part of the study, planning authorities were asked three questions:

- had they carried out an assessment of the impact of their local development plan or unitary plan on the Welsh language
- did they have supplementary planning guidance on the Welsh language
- had they carried out an assessment of the impact of individual applications on the Welsh language.

3.4 Twenty three (23) of the twenty five (25) authorities responded to the study and the findings suggested that the Welsh language was not being considered consistently under the planning system and that all authorities had not considered the Welsh language in formulating their development plans. Substantial variation was also seen in the content and detail of the authorities' policies on the Welsh language and variations in the process of how and when to conduct a linguistic impact assessment.

3.5 A new version of TAN20 has been published since the study and further practical guidance is available to authorities. However, it appears that a large number of authorities have already adopted their development plans and others have gone too far in the process to be able to give full consideration to the new guidance. The development plans of 14 of the 25 planning authorities had been adopted before the practical guidance on the Welsh language was published by the Government in June 2014.



- 3.6 The new TAN20 also places emphasis on assessing the linguistic impact through the development plan only. Although it is reasonable for the main plan to be the subject of a thorough impact assessment, planning authorities should also have the flexibility to hold impact assessments of individual applications on the Welsh language under some circumstances. This is not supported by the new guidance.
- 3.7 Evidence therefore suggests that planners have been reluctant to follow planning guidelines on the Welsh language thus far, and that there is nervousness about making decisions on the basis of linguistic impact assessments. It is likely that part of the reason for this is that the Welsh language is the subject of non-statutory guidance, rather than robust directions via legislation.
- 3.8 An example of this can be found in the report "*The Welsh Language in Carmarthenshire*" published by a working group of the County Council in March 2014. According to section 3.2 of the report:

"The present methodology and guidelines (in respect of the Welsh language) for local planning authorities on assessing the impact of development and establishing mitigation measures are not adequate and there is a need to draw up a standard national methodology to support local authorities."

Also, recommendation 22 in the report calls on the Welsh Government to include the Welsh language as a "material" consideration in part of the Planning Bill.

4. Draft Planning (Wales) Bill

- 4.1 The Planning Bill offers an unique opportunity to address the lack of consideration currently given to the Welsh language in the planning system. A legal basis is required for the process of assessing linguistic impact. The current system of policy and guidance has not worked so far and it is unlikely that the new TAN20 will change the situation.



- 4.2 There is no mention of the Welsh language in the Bill at present (save for one technical reference in the schedules). This is a missed opportunity to give the Welsh language the same status as already exists for sustainability and the environment.
- 4.3 The Government has argued against including the Welsh language in the Planning Bill on the grounds that it is a structural and framework piece of legislation, and the Welsh language is a policy matter. But in our opinion, structural reasons account for the need to include the Welsh language in the Bill. The Welsh language needs an impact assessment framework in law rather than it being dependent on guidance. Evidence suggests that there is a high risk that a system reliant on guidance alone will not be implemented.
- 4.4 Although there are no references to the Welsh language in the Bill, there are several references in the associated Explanatory Memorandum. For example, section 1 of the memorandum begins with a statement that the provisions of the Bill will create sustainable places that will promote use of the Welsh language. Reference is made to the Welsh language also in section 3 on the aim of the Bill:
- “to deliver a planning system which is positive in outlook and enables development, helping to deliver sustainable places that include homes, jobs and infrastructure, whilst providing opportunities to protect and enhance our most important built and natural environments and support the use of the Welsh language”*
- It is unclear how the Bill will succeed to achieve these objectives unless it includes specific provisions for consideration of the Welsh language in the planning system.
- 4.5 The new system proposed in the Bill offers a structure that includes a National Development Framework; Strategic Development Plans and Local Development Plans. This means that for the first time there will be development plans on land use at national, regional and local level. We have already referred to the need to put a statutory framework in place for considering the Welsh language in local development plans, this should happen for regional and national plans too.



4.6 The Bill also makes provision for “developments of national significance” and the need for “local impact reports”. This is an example of the Bill making new provision for assessing the local impact of major developments, by amending the Town and Country Planning Act 1990. It is disappointing that the Bill as it stands makes no new provision for assessing linguistic impact in a similar manner.

4.7 The Commissioner responded to the Welsh Government's consultation “Positive Planning” on the Planning Bill white paper in February this year. The response included a number of the arguments included in this document. As part of the response, some possible improvements to the draft Bill were suggested. They were examples and initial ideas, but the intention was to provide amendments that would:

- Require Welsh Ministers to assess the effect of the National Development Framework on the Welsh language.
- Require local planning authorities / strategic planning panels to assess the impact of Strategic Development Plans on the Welsh language
- Require local planning authorities to assess the impact of Local Development Plans on the Welsh language
- Require planning authorities to include an assessment of the impact on the Welsh language as part of the local impact assessment of nationally significant developments.

As part of these improvements, it should also be ensured that local authorities have the flexibility to conduct a linguistic impact assessment on individual developments when necessary. Although we support the principle of assessing impact through development plans, circumstances will arise with some individual applications where a specific assessment of the impact on the Welsh language will be necessary.

4.8 Finally, it should be noted that our comments have been restricted to the main matters that need strengthening through the Planning Bill legislation. There are other aspects of Welsh language and planning that are important and need further



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consideration, such as the Welsh language on signs and the names of developments and population projections that lead to housing development targets.

Thank you for the opportunity to submit comments on the Committee's investigation into the general principles of the Bill. Please note that I am willing to give oral evidence to the Committee if it so wishes.

Yours sincerely

Meri Huws

Welsh Language Commissioner