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Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref LF/CS/1240/14

Alun Ffred Jones AM
Chair
Environment and Sustainability Committee
National Assembly for Wales
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Cardiff Bay
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10th December 2014

Dear Alun Ffred Jones AM

Planning (Wales) Bill

Thank you for inviting me to the Environment and Sustainability Committee on 27 November 2014 to give evidence on the Planning (Wales) Bill.

I agreed to provide the Committee with further information on a number of issues raised in your letter. I have provided detailed responses to those questions below:

- 1. The implications of the National Development Framework having 'development plan' status and, specifically, what processes will be necessary to enable the identification of sites as Developments of National Significance through the plan.**

As the National Development Framework (NDF) is proposed to have development plan status, any decisions made under the planning Acts must be made in accordance with the NDF, unless material considerations indicate otherwise. Section 38(6) of the Planning and Compulsory Purchase Act 2004, provides "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan, unless material considerations indicate otherwise."

Sites for Developments of National Significance could be identified through preparation of the NDF. Such proposals would then be subject to the formal preparation process, as proposed in the Bill, be evidence-based and able to stand scrutiny by the National Assembly for Wales. They would also have to comply with any relevant European legislation, such as Strategic Environmental Assessment (SEA)/ Sustainability Appraisal (SA) and Habitat Regulations Assessment (HRA). This mirrors the process for the inclusion of allocations in an LDP. Robust evidence to support the inclusion of such developments will be critical.

2. Whether the NDF will include proposals for infrastructure development where responsibility for consenting of these is not currently devolved – for example the electricity transmission network or over 50 Megawatt energy schemes.

The NDF would need to clearly articulate the appropriate consenting regimes which would apply, what they were and who would make decisions, depending on the scale of application, particularly energy consents over 50 Mw.

Those matters which could have a bearing on Wales will be identified. For example, Wylfa, where the scale of the proposal would have significant implications for housing, local communities and connectivity. Even though the Wylfa project is to be determined by the UK Government under the NSIP consenting regime the consequence of this development and therefore any further actions that may be required in other development plans should be identified. The key is for the NDF to set the scene for other development plans in terms of policy requirements and to be clear as to its role in decision making, whilst also showing connectivity to other parts of the planning process, both in Wales and England (currently).

3. Clarification on the intentions regarding the hierarchy of development plans, in particular:

- **at what stage adopted LDPs will need to be reviewed and amended to take account of the National Development Framework.**

Section 7 of the Planning (Wales) Bill (as introduced) provides that:
“Following the publication of the National Development Framework for Wales or a revised Framework, a local planning authority must consider whether to carry out a review of their Local Development Plan.”

Section 61(1) of the 2004 Act states that:
“The local planning authority must keep under review the matters which may be expected to affect the development of their area or the planning of its development.”

Section 62(5) of the 2004 Act (as proposed to be amended by paragraph 26 of Schedule 2 to the Bill) will provide that:
“In preparing a local development plan the authority must have regard to the (NDF)”.

Section 76 of the 2004 Act, supplemented by regulation 37 of The Town and Country Planning (Local Development Plan) (Wales) Regulations 2005 require a local planning authority to publish an Annual Monitoring Report (AMR) stating how policies are being implemented, steps to secure implementation of the policy and whether the local planning authority intends to prepare a revision of the LDP. The AMR should also take into account matters arising from sections 61(1) and 62(5) of the 2004 Act. Consequently, the local planning authority will have to consider the potential implications arising from the NDF if published after adoption of their LDP and whether, or not, their LDP requires amending.

AMRs are submitted to the Welsh Ministers by 31 October each year, for each full financial year following adopting (paragraph 4.42, Local Development Plan Wales 2005). It will be for each local planning authority, through their AMR, to consider how their plan needs to be amended, or not, following publication of the NDF.

- **at what stage adopted LDPs will need to be reviewed and amended if the Local Planning Authority area is subsequently included in a Strategic Planning Area.**

The LDP would remain the adopted development plan until the SDP is adopted. Following adoption of the SDP this would be the most recently adopted development plan and take precedence over the LDP. The local planning authority responsible for preparing the LDP should review its LDP as soon as possible following adoption of the SDP to ensure that the LDP is in conformity with the SDP (see section 7 of the Bill). As long as the LDP policies are not considered to be contrary to the SDP, i.e. so long as they are in general conformity, planning applications should still be determined in accordance with those policies unless material considerations indicate otherwise, thus avoiding a policy vacuum. When an SDP is adopted a light touch LDP will be appropriate, resulting in a quicker preparation time. As the local planning authority will be engaged in preparation of the SDP, there is no reason why preparation of the light touch LDP could not commence in parallel with the SDP, thereby enabling adoption of the light touch LDP as soon as possible after the SDP.

- **the implications for a Local Planning Authority with an adopted LDP when only part of its area is subsequently included in a Strategic Planning Area.**

The Bill enables parts of local planning authority areas to be included in an SDP as it will be for those local authorities to determine the precise boundary of the plan area. It is not for the Welsh Ministers to pre-determine the boundary or prejudice its definition. Enabling part local authority coverage facilitates, but does not prejudice, this potential outcome.

The SDP area should be based on role and function of this area. This could result in only part of a local planning authority area being designated for inclusion. However, issues relating to data collection or broader consistency, are likely to mean that whole LPA areas are included. This could be a more pragmatic solution, rather than increase fragmentation and complexity. The proposed legislation enables this outcome, albeit it would be for those authorities involved in preparation of the SDP to determine.

If the designation of an SDP area results in part of the local planning authority being excluded from an SDP, this 'remaining area would be subject to an LDP. The part area within the SDP would be subject to a light touch LDP, both prepared by the same local planning authority.

- **if at any point in time the different tiers of development plan are not in conformity, which plan has precedence when making planning application decisions.**

The most recently adopted development plan would take precedence. Other development plans could form material considerations when determining planning applications, depending on the circumstances.

4. The circumstances in which the Minister could direct two or more Local Planning Authorities to produce a joint LDP.

The prime reason where the Minister could direct two or more local planning authorities to work together is where there would be benefits from collaborative working, albeit on a formalised basis. There may be cases where common issues transcend boundaries which would be better addressed once, rather than repeated. This would benefit a more consistent policy approach, as well as reducing the financial costs associated with duplicating evidence gathering, process costs when undergoing statutory plan stages and examinations. This mirrors the principle being followed by Anglesey and Gwynedd where they have voluntarily agreed to prepare a joint LDP.

5. The circumstances in which the Minister could decide to create a Joint Planning Board and how this would impact on adopted LDPs.

The Welsh Ministers are likely to use the powers in the circumstances where evidence exists that the establishment of a joint planning board would increase the efficiency and sustainability of local planning services. The provision does not amend the existing power to establish a joint planning board or the process by which it is established; it simply extends the range of planning functions that a joint planning board can exercise. The provision will allow a joint planning board to carry out local planning authority functions in relation to Local Development Plans and the community infrastructure levy.

Adopted Local Development Plans will remain extant for each of the constituent LPA area until replaced by the Local Development Plan produced by the Joint Planning Board.

6. The reasoning behind the decision to propose a planning permission and separate connected secondary consenting regime for Developments of National Significance, rather than a single Development Consent Order regime as currently used for Nationally Significant Infrastructure Projects in England.

A consent by the Secretary of State for a Nationally Significant Infrastructure Project (“NSIP”) takes the form of a Development Consent Order, which is a statutory instrument. This order may grant permission for the development, and any ancillary consents which would normally be required, such as listed building consent and an ability to compulsorily purchase land.

Applications for DNS are those which will normally require planning permission. The provisions require that a decision on that application is made by the Welsh Ministers, rather than by a local planning authority. A planning permission can only be granted for certain development and engineering operations. Other applications, such as listed building consent or compulsory purchase proceedings are decided under different legislation.

It is not considered expedient to create a new consent type for applications for DNS as a further tier of complexity would be added to the existing system. The creation of a new consent type would not be a proportionate solution to infrastructure developments, which are likely to be relatively few in number.

The intention of the proposals at s.18 of the Planning (Wales) Bill (as introduced) is to enable, where appropriate, all of those prescribed secondary consents which have been submitted alongside an application for DNS to be considered at the same time and under the same examination process. It is also the intention for consent or refusal of consent for those secondary consents to be contained on the same decision letter. It is not proposed to change the considerations upon which a decision to a secondary consent is based. To the customer, these proposals will give the appearance of one consent decision being given in place of many, without making fundamental changes to the legislation on which these consents are based.

7. Whether the Minister intends ancillary consents for non-devolved NSIP applications for Development Consent to also be decided by Welsh Ministers, as recommended by the IAG.

This issue was not consulted upon as part of the Positive Planning consultation exercise, which focussed on streamlining the planning processes in Wales. As such, I have not come to a firm view on the recommendation and I would welcome the Committee’s view as to whether it would be appropriate to take it forward. Any potential proposals would of course require further consultation and separate legislation to the Planning (Wales) Bill.

8. Why Section 53 of the Bill has been drafted in such a way to give powers to the Welsh Ministers to change primary planning legislation ‘as Welsh Ministers consider appropriate in connection with the Act’ rather than the more usual provision which would restrict this to ‘amendments consequential to the Bill.

Section 53 does not have the effect that is being suggested. It will not enable the Welsh Ministers to amend primary legislation unless the amendments are consequential, incidental, transitional or savings. While the wording of this provision is slightly simpler than that in some other Bills, it is not conferring any greater powers, and is in fact narrower than some other powers that have been included in Acts recently passed by the Assembly.

The words at the end of subsection (1) also qualify “incidental, transitional or saving provision”. If the words at the end are changed, such provision could only be made so far as it was both incidental etc. and consequential. This would inhibit the natural meaning of those words and the intended legal purpose of such a power, which would severely restrict the practical implementation of the legislation on the ground. As currently drafted, section 53 cannot be used to fundamentally change the principle of the provision but only assist with its practical implementation to enable the ‘nuts and bolts’ of the provision to fit and work together. An incidental provision for example may fill in details, the desirability of which only becomes apparent when preparing the detail of the subordinate legislation or when detailed drafting is undertaken. Transitional and saving provision may be required in connection with the Act in order to be able to provide for a smooth movement from one state of law to another.

I trust that my response to the Committee’s request and the additional information I have supplied will assist Members in their scrutiny of the Planning (Wales) Bill. Should you or any Member have any further queries or require more information on any aspect, please do not hesitate to contact me.

Yours sincerely



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