



**NATIONAL ASSEMBLY FOR WALES
ENVIRONMENT AND SUSTAINABILITY COMMITTEE
INQUIRY INTO THE GENERAL PRINCIPLES OF THE PLANNING (WALES)
BILL
SUBMISSION BY BOYER PLANNING LIMITED**

INTRODUCTION

1. Boyer Planning Ltd is an established multi-skilled planning consultancy who work on behalf of private developers, landowners and public sector clients throughout Wales and England.
2. Our work encompasses both the Development Plan and Development Management aspects of the planning system. We have long and extensive experience of the plan-making system and its operation, the preparation and determination of planning applications and, where it has been necessary, planning appeals and enforcement action.
3. This response draws upon our experiences of the way in which the planning system in Wales is presently operating, firstly, in terms of the central tenet of managing the development and use of land in the public interest; and, secondly, the application of procedures presently prescribed in various legal instruments.
4. It has been prepared without reference to any development proposal that is either presently before, or may in the future be submitted to, a Local Planning Authority or the Welsh Ministers.
5. We previously submitted representations to the consultation exercise earlier in 2014. On this occasion, our submissions are structured around the provision of the Bill.

PART 2: DEVELOPMENT PLANNING

Section 2 - National Development Framework for Wales

6. In replacing Section 60 of the Planning and Compulsory Purchase Act 2004 (PCPA) the Welsh Government (WG) propose to prepare a new National Development Framework (NDF) for Wales as an alternative to the Wales Spatial Plan (WSP).

7. The WSP was, at the time of its preparation and subsequent updating, an important and invaluable exercise in defining certain national and regional priorities and outcomes which the land use planning system intended to secure. Despite the statutory purpose of the WSP being clear, its purpose has been diluted and its impact limited.
8. The National Development Framework is intended to achieve the following:
 - i. set out land use priorities by defining key locations to accommodate change and infrastructure investment;
 - ii. specify nationally significant land use issues;
 - iii. identify nationally significant areas of growth and change; and
 - iv. provide a national land use framework for lower tiers of the Development Plan system (Strategic Development Plans and Local Development Plans) to conform with; and
 - v. provide the starting point for the determination of applications for Development of National Significance.
9. Section 8 of the Draft Bill expressly identifies the NDF as part of the Development Plan.
10. Given its defined purpose and status, the NDF will, in these terms, be central to the subsequent plan making and development management regimes that operate across Wales through the provisions of the other Planning Acts (for example Section 38 of the 2004 Act which defines the development plan, and section 70 of the 1990 Act which prescribes the decision making framework).
11. Accordingly, its preparation must be afforded proportionate examination.
12. As did a great many others in their initial representations, we set out the importance of the NDF's policies and proposals being subject to appropriate and independent scrutiny. The WG summary of consultation responses notes this, but has not explained why it does not agree this is necessary.
13. It must be recognised that the process of preparing the NDF will draw upon evidence around a great many issues, some of which will undoubtedly conflict or compete. As with all aspects of planning policy, the NDF will need to balance social, economic and environmental considerations consistent with the longstanding principles of the way in which the planning system operates and the tenets of sustainable development.
14. Judgements will need to be reached by the Welsh Ministers in preparing the Draft NDF based on the evidence prepared and the statutory plan making assessment regimes¹. Moreover, the representations that are invited will need to be grounded in an articulation

¹ Sustainability Appraisal, Strategic Environmental Assessment and Habitat Regulations Assessment

of this or other evidence – in some instances the policies and proposals of the Welsh Ministers will be challenged for good and sound reasons.

15. Ultimately, the evidence and the representations made will need to be examined – or put simply ‘tested’ - before a final NDF can be adopted. How else can the NDF be afforded the weight that will be prescribed to it, without adequate consideration of its policies and proposals?
16. Presently, the Bill simply requires the Welsh Ministers to have regard to any resolution passed by the NAW or a recommendation made by a committee of the NAW (Section 60B (3)).
17. In the interests of natural justice, fairness and transparency, such examination should be conducted by an independent person appointed by the Welsh Ministers. We strongly believe that this should be an examination-in-public. This would necessitate amendments to Section 60B from that presently drafted.
18. The Committee may wish to consider the expression of statutory provisions associated with examinations-in-public that existed in the 2004 Act (for the purpose of Regional Spatial Strategies) (Sections 7 and 8 refer).

Section 3 - Strategic Planning

19. We welcome the intention for there to be a statutory basis for the preparation of Strategic Development Plans (SDPs).
20. There is undeniably a need for co-ordinated and collaborative planning that responds to, and addresses, the land use issues that arise from the functional relationships between places that extend beyond local authority boundaries.
21. Neither the Draft Bill, nor the Explanatory Memorandum, at present explain what the WG expect the individual ‘Panels’ to address when it refers to “*objectives in relation to development and the use of land*”. (Section 01(2))
22. The closest the Explanatory Memorandum gets to this is paragraph 3.35 which refers in the context of LDP preparation that “*issues such as the overall level of housing, employment and retail provision will have already been addressed and do not need to be repeated*”.
23. It is not clear whether Section 60E (2) is intended to encompass by way of reasons the matters which the WG intend are included within the proposals for the preparation of Strategic Planning Areas. We suggest it ought to and that, for the avoidance of doubt, this Section of the Bill be amended accordingly.

24. In our opinion the scope of Strategic Development Plans should extend to providing a broad development strategy for the region for a twenty year period, including, but not limited to:
- the identification of the scale and distribution of provision for new housing;
 - priorities for the environment, such as countryside and biodiversity protection; and
 - transport, infrastructure, economic development, agriculture, minerals extraction and waste treatment and disposal.
25. In this context, Strategic Development Plans should:
- articulate a spatial vision of what the region will look like at the end of the period of the strategy and show how this will contribute to achieving sustainable development objectives;
 - provide a concise spatial strategy for achieving that vision, defining its main aims and objectives, illustrated by a key diagram, with the policies clearly highlighted;
 - address regional issues that will often cross unitary authority boundaries, and take advantage of the range of development options that exist at that level.
 - be consistent with, and supportive of, the National Development Framework and adjoining Strategic Development Areas and other relevant strategies;
 - be specific to the Plan area: whilst they should have regard to national policies, a SDP should not simply repeat them. It should provide spatially specific policies by applying national policies to the circumstances of the region; adding value to the overall planning process;
 - be locationally, but not site, specific, while not going into the level of detail more appropriate to a LDP.

Section 7 - Duty to consider whether to review Local Development Plans

26. We agree that with publication of the NDF (or a revision to it), LPAs will need to consider whether to review their Local Development Plan. In practice such a review is unlikely to proceed until such time as an SDP has also been prepared or revised. The reality of the current situation is that, for a considerable period of time, Local Development Plans will not be in conformity with the higher tiers of the Development Plan.
27. In such instances Section 38(5) of the PCPA 2004 is wholly relevant; stating that “If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is

contained in the last document to be adopted, approved or published (as the case may be).”

Section 10 - Period for which the development plan has effect

28. We welcome the proposed amendment to Section 62 of the PCPA 2004 for it to specify that the LDP ceases to be the development plan on the expiry of a particular date.
29. There have been numerous instances where local planning authorities have based decisions on development plans prepared a great many years ago and when the end dates have elapsed by quite some time.
30. Clarity in this regard will firstly assist decision making and the judgement about weight to be afforded to planning policies relative to other material planning considerations and, secondly, underscore the importance of development plans as a whole – the NDF, SDP and LDP - being kept up to date.

PART 3: PRE APPLICATION PROCEDURE

31. To take forward this approach requires a paradigm that hitherto has not existed in the planning arena. A pre-condition to successful pre-application engagement will be for all stakeholders to exercise realism as to the development needs not only of their own area but also the nation, region and sub-region.
32. Very often individuals who oppose a new development proposal will cite an absence of need, yet as is the case with housing almost always nowadays there is an assessment which indicates a requirement for housing in excess of what was being planned for in the first instance. Our experience of community consultation is consistent in revealing that the local benefits of development proposals – eg. physical and community infrastructure improvements – let alone the wider contribution to meeting housing need, rarely outweigh the perceived objections. Opinions formed at the pre-application stage then permeate through the development control process.
33. A means of conflict resolution must be created that places obligations upon local authorities, the local community, development and environmental interests to work together within a protocol that ensures that broader issues are adequately reflected. It cannot be that wholesale opposition to a proposal from a local or parochial consensus allows required development to be prevented.
34. We recognise that this is associated with the culture change sought by the Welsh Government but that this cannot be legislated for. Absent a strong government lead to this effect there is a very real risk that the planning system will be governed by vocal

minorities working to short term horizons. Difficult but necessary decisions will not be taken.

PART 5: DEVELOPMENT MANAGEMENT

Section 35 - Consultation etc in respect of certain applications relating to planning permission

35. Experience has shown that in far too many instances, statutory consultees have little regard to the efficient and effective operation of the development management system in Wales.
36. As such we welcome a requirement for statutory consultees to respond within a specified timescale (Subsection (3a)).
37. We recognise that there may be instances where a response cannot be provided in the prescribed period. However the Order that is to follow must make clear that this must be exceptionally the case.
38. The Order should prescribe that where such an alternative date is sought, the reasons for this must be specified. Similarly, the action which the statutory consultee is to take to provide the response within this new time period must be specified also. Subsection (4) should be amended accordingly.
39. Such measures are necessary for transparency and to engender the behavioural change necessary.

PART 6: ENFORCEMENT / APPEALS

Section 42 - No variation of application after service of notice of appeal against planning decisions etc.

40. By inserting Subsection (4BA), the appellant will be denied the right to vary the appeal scheme following the notice of the Appeal to the Welsh Ministers.
41. Restricting the Appellant's ability in this regard could prevent the opportunity for an acceptable form of development to be achieved. It is often the case that Reasons for Refusal are added at the Planning Committee stage that are not substantive matters and can be overcome through negotiation and modification. To deny the ability to achieve this during the Appeal process would seem nonsensical in the context of the priority afforded to sustainable development.

42. Similarly, were there to be a restriction placed on up to date and relevant information being provided after the Appeal is lodged this would appear to deprive the decision maker of the necessary evidence to reach a sound decision.
43. Whilst greater prescription is required as to the extent to which relevant material can be deployed in the Appeal process, (to avoid protracting the process and lengthy adjournments), so long as no prejudice arises, this ought not become an absolute restriction that frustrates the ability to achieve determinations that would deliver sustainable development.

Section 44 - Costs on applications, appeals and references

44. Section 44 proposes to insert a new provision into Section 322 of the TPCA 1990 to enable the costs incurred by Welsh Ministers to be paid in full by persons as are so directed.
45. If such a measure is to be introduced it could only be applied where an Appeal has been brought about by conduct, either on behalf of a Local Planning Authority or Appellant, that is truly frivolous and spurious and the Welsh Ministers must be able to demonstrate why they have incurred unreasonable costs beyond that which ordinarily arise in the process of administering the Appeals system.
46. It would be wrong and counter to natural justice if such costs were being sought to administer a legitimate appeal as this would impede and discourage Appeals by increasing the financial burden.
47. That said, where a Local Planning Authority's unreasonable behaviour has resulted in the need for an Appeal to be prosecuted, the Welsh Minister ought to be able to recover costs in the same way as the Appellant can. For example, in the instance of an Appeal against non-determination a proportion of the planning application fee submitted initially to the LPA could be required to be paid to cover the costs of the said appeal.

OJ/7th November 2014