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# Towards a Welsh Planning Act: Ensuring the Planning System Delivers

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Report to the Welsh  
Government by the  
Independent Advisory Group

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June 2012

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## **ABBREVIATIONS USED IN THIS REPORT**

APR	Annual Performance Report
CCW	Countryside Council for Wales
CfE	Call for Evidence
CIL	Community Infrastructure Levy
CLA	Country Land & Business Association
CPA	Compulsory Purchase Association
CPRW	Campaign for the Protection of Rural Wales
DCfW	Design Commission for Wales
DM	Development Management
DP	Development Plans
GPDO	General Permitted Development Order
IAG	Independent Advisory Group
IPC	Infrastructure Planning Commission
LPA	Local Planning Authority
LDP	Local Development Plan
NDF	National Development Framework
NDP	Neighbourhood Development Plan
NEF	Natural Environment Framework
NPA	National Park Authority
NRMP	National Resource Management Plan
NSIP	National Strategic Infrastructure Projects
MPPW	Minerals Planning Policy Wales
PAIB	Planning Advisory and Improvement Service
PAS	Planning Advisory Service
PAW	Planning Aid Wales
PEBA	Planning and Environment Bar Association
PINS	Planning Inspectorate
POSW	Planning Officers Society Wales
PPW	Planning Policy Wales
RTPI	Royal Town Planning Institute
SA	Sustainability Appraisal
SB	Single (Environment) Body
SD	Sustainable Development
SDP	Strategic Development Plan
SEA	Strategic Environmental Assessment
SEWEF	South East Wales Economic Forum

SEWSPG	South East Wales Strategic Planning Group
SLA	Service Level Agreement
SPG	Supplementary Planning Guidance
TAN	Technical Advice Note
TCPA	Town and Country Planning Association
ToR	Terms of Reference
WIIP	Wales Infrastructure Investment Plan
WLGA	Welsh Local Government Association

## FOREWORD

When the Minister asked us in October 2011 to undertake a study to consider options on how to deliver the planning system in the future we knew it would be a demanding task. Little did we know quite how demanding.

Man has been engaged in development ever since he emerged from his cave. But not until 1947 was comprehensive control of that development introduced in Britain.

In the subsequent years the body of planning legislation has increased in response to changes in society and public expectations of the planning system. Our planning system is now, as a result, complex.

However the central principle established in 1947 has stood the test of time. The Minister for Town and Country Planning, Lewis Silkin, said in the Second Reading of the Bill:

*“The objects of town and country planning are becoming increasingly understood and accepted. Primarily, they are to secure a proper balance between the competing demands for land, so that all the land of the country is used in the best interests of the whole people.”*

What has changed is “the best interests of the whole people”. The priorities then were to enable and control the redevelopment of towns and cities after economic depression and war, and to protect agricultural land from development so the nation could better feed itself. Today we are concerned with the complex challenges of climate change and the pursuit of sustainable development, neither of which were on the agenda in 1947. But the need for the planning system to ensure land is available to meet society’s needs appropriately, both allocating it for development and protecting it, is as pressing today as it was then.

Our task therefore has been to investigate whether, and if so how, the planning system needs to be changed to ensure that it delivers the multiple objectives society now expects. The opportunity is there to create a more competitive environment for the economy and for the people of Wales, whilst maintaining the important checks and balances already in place.

We have been aided in this task by many people, those who responded to the Call for Evidence, took part in our round table discussions, and met us individually. We would not have been able to prepare our report or reach our recommendations without your help and contributions, and we thank you. Equally, we wish to record our thanks to the secretariat provided by the Welsh Government, without whom our life would have been doubly difficult.

Whilst we approached our task with an open mind, it is fair to say that we felt instinctively that the principles of a democratically managed, plan-led system of development control established in 1947 had stood the test of time. This was supported in the evidence given to us; nobody suggested the system needed replacing. Our recommendations therefore seek to improve and adapt the system so that, to paraphrase the task given by the Minister, it delivers better.

Our report contains a large number of detailed recommendations seeking in the main to address roles and responsibilities, but also dealing with the problems and issues raised with us where we could see legislative opportunities offered by the Planning Bill. In particular, we have highlighted a number of legal improvements that can only be addressed through primary legislation. Some of the issues have been raised in previous studies and we have commented on the overlap where appropriate.

We were also at all times conscious of the large amount of other work that the Welsh Government is currently involved in, to improve all aspects of the planning process in preparation for the Planning Bill. We hope that those involved in such projects will find evidence within our report to assist them. Where we have not dealt with issues raised with us, it has been to keep to our terms of reference, and make best use of the time available. We have concentrated on the important issues as we see them and avoided duplicating other on-going Welsh Government work.

We consider our recommendations amount to a significant reform of the planning system within the conceptual framework of the 1947 legislation. It is now for the Minister to consider our recommendations and for the Welsh Government to take them forward as it sees fit.

Independent Advisory Group

June 2012

#### **Personal Footnote from the IAG Chair**

*This has been very much a collaborative effort and the Foreword reflects that approach.*

*But I wish to personally thank all the members of the IAG for their hard work and their assistance in dealing with this wide-ranging review; together we have covered an amazing amount of ground and variety of issues. They have attended our numerous meetings with unfailing good humour and have given up considerable amounts of their personal time. If not for their willingness to go 'above and beyond' we would never have completed the task. My thanks to you all.*

*John Davies*

John Davies MBE

Chair, Independent Advisory Group

## EXECUTIVE SUMMARY

1. In October 2011 the Minister for Environment and Sustainable Development established an Independent Advisory Group (IAG) to review the delivery of the planning system in Wales as part of the evidence base for a White Paper, leading ultimately to a Welsh Planning Bill. This report sets out the Group's findings.
2. In **Chapter 1** we outline the work of the Group, aspects of planning that are common across England and Wales, and those unique to Wales. We refer to the Localism Act 2011 and note the introduction in England of a local tier of planning, with its implications for the evolution of a distinct Welsh planning system. In November 2011 we published a Call for Evidence. We received 110 responses from a wide cross-section of individuals, businesses, local authorities and public bodies, voluntary groups, academics and professional bodies. We arranged round table discussions with selected respondents and individuals chosen for their knowledge and expertise. We met a number of organisations and individual respondents to explore their evidence in more depth. The IAG Chair met with officials of the Scottish and English Governments, and talked to officials from Northern Ireland.
3. At an early stage we set out a number of criteria that describe for the Group what 'effective delivery' means. These are drawn from our terms of reference, from our early discussions as a Group and from the first round table discussion. They are: Timely, Transparent, Democratic, Consistent, Certain, Inclusive, Accessible, Simple, Flexible, Responsive, Deliverable, Better Outcomes, and Value for Money. We have used these criteria to evaluate our recommendations in Table A. Our perspective is that the planning system has great potential to create opportunities and protect valuable natural resources, intrinsically and for the future well-being of the nation; it should be a devolution dividend, not deficit.
4. As **Chapter 2** explains, we began by exploring if there was common ground in the planning profession and with stakeholders about the role and purpose of planning. In our Call for Evidence we asked whether this is "*the delivery of land for sustainable development*". The responses to the Call for Evidence were almost equally divided and there was a similar divergence of views at the round table session where this was discussed. In summary the majority view was that the purpose of planning is to:
  - safeguard and enhance important land and buildings
  - deliver suitable land in sustainable locations for new development
  - control the development and use of land in the public interest
5. We support the agreement reached in the roundtable discussion that planning is and should be more than simply a regulatory activity; a system that is seen as purely regulatory will deliver negative rather than positive outcomes.
6. In our discussions with respondents on sustainable development, the definition in Planning Policy Wales was generally supported. We consider that any

change to the definition of sustainable development should come from the separate work on the Sustainability Bill, but that there should be no legal definition in the Planning Bill. In our view sustainable development should be defined in planning guidance or related policy.

7. The three elements of sustainable development (the environment, the economy and society) cannot be considered in isolation. The challenge to all planners is to seek out imaginative solutions for overcoming barriers to sustainable development, rather than setting the environment and economic development against each other in a 'winner takes all' scenario.
8. We recommend that a statutory purpose for planning along these lines is included in the Planning Bill:  
*"The purpose of the town and country planning system is the regulation and management of the development and use of land in a way that contributes to the achievement of sustainable development."*
9. In **Chapter 3** we set out some of the issues that emerged from the Call for Evidence, our meetings and the round table discussions. Many respondents felt that a revised Wales Spatial Plan or a new national spatial planning framework is needed to set the strategic context for *development* planning at the regional and local level. There was a call for more intervention by the Welsh Government in Local Development Plan (LDP) preparation, particularly to overcome delay. We express our concern that, currently, substantively flawed LDPs can reach the independent examination; the only intervention option open to the Welsh Government is to take over preparation.
10. There was a call for more Welsh Government monitoring and incentives for LDP delivery and *development* management performance. There was a strong desire from many quarters for a mechanism to address cross-boundary issues as part of the development planning process. We consider that current approaches to cross-boundary issues can best be described as fragmented, with no overall strategy, cohesion or obligation to resolve them. We point out that the regional dimension provided for LDPs in the policy areas of transport, waste and minerals appears to be missing for housing and economic development.
11. As well as criticism of LPAs for failure to adhere to Delivery Agreement timetables, there is criticism of the examination process, but this has more to do with the statutory framework for the LDP examination than the role of the Inspector. There is also complaint that the process is so complex that stakeholders and the public feel unable to engage with LDP preparation.
12. In terms of the application process, there was demand for the Welsh Government to make greater use of the call-in procedure to protect communities from the potential effects of decisions by local planning authorities (LPA) that are perceived to be perverse. There was concern that there are no regional arrangements across Wales for dealing with applications that have cross-boundary or regional implications. A core theme is a lack of consistency

in the manner in which the development management function is delivered across LPAs.

13. All sectors stressed the importance of the comprehensive training of Members. A number of energy companies raised the delay and complexity in obtaining consent for large renewable energy schemes due to the division of responsibility for decisions on national infrastructure projects. With regard to Town and Community Councils, there was support for them to have a wider role, but recognition of the issues around their coverage, capacity and willingness to take on an enhanced role.
14. It was suggested that the National Park Authorities (NP) should lose their planning powers. We note the separate Welsh Government study of the delivery of planning services in statutory landscapes and express the view that we have insufficient evidence to come to a conclusion. For that reason we make no recommendation on whether NPAs should retain planning powers.
15. There was support for the introduction of mediation in the planning process, both in development management and the LDP process.
16. At the end of **Chapter 3** we consider the question of third party rights of appeal, which was debated with a number of organisations in May. In our view the issues raised can be overcome by other measures (set out in chapter 4) to encourage and protect the right of the public to be involved in planning decisions and plan preparation. We therefore recommend that third party rights of appeal are not introduced in Wales.
17. We close **Chapter 3** by reflecting on the evidence and its implications. We believe that the system is conceptually sound and not in need of root and branch reform; too much change would create further uncertainty and deter investment. We identify the two opposing views of planning: as a barrier to economic growth, as opposed to the view that current difficulties should not prioritise economic issues over all others. We find, similar to previous studies, a system under strain. We conclude that reform is needed and set out a set of **principles** that our reforms are intended to meet.
18. **Chapter 4** sets out the main recommendations of the report dealing with roles and responsibilities. Our recommendations are divided into two sections – **development plans** followed by **development management**; within these two sections we follow the sequence of **national, regional and local roles**.
19. The main role of the Welsh Government in **development planning** is to set the national framework within which local planning authorities deliver development plans. It should have a variety of reserve powers to intervene in the preparation of development plans to prevent unreasonable delay or progression of seriously flawed plans. The Welsh Government must be ready to use these powers if circumstances require it. We recommend that the Welsh Government prepares a national development framework (NDF), building on the *Living Wales Programme* to provide a spatial framework for land-use planning in Wales. We recognise the resource implications and so recommend

as an interim measure that the status of national documents in relation to land use planning is clarified.

20. We conclude that while two main tiers of planning are sufficient for a country of our size, not all planning matters can be effectively considered at either a national or a local level. We therefore recommend that the Planning Bill includes a statutory framework to enable the introduction of strategic planning at a regional level. We recognise that this will not be necessary or appropriate for the whole of Wales and so recommend consultation on the areas and the details of the statutory framework. The areas may be influenced by the work being done in parallel with ours on the economic arguments for City Regions. A support structure will be needed to implement regional strategic planning. In the interim, the Welsh Government should encourage voluntary strategic planning to ensure it is conducted in a manner that is democratic, consistent, accountable, transparent and inclusive.
21. We stress that the planning system is a delivery mechanism with application across several Ministerial portfolios and coordinated action at all levels is vital if the Welsh Government is to realise its ambition to create the conditions for growth. A joined-up approach across all levels of Welsh Government is essential to delivery of the planning system.
22. We consider that the LDP process needs to be improved, not replaced. We recommend:
  - replacement of the soundness tests
  - publicity for the Welsh Government's comments on emerging LDPs
  - revised regulations to ensure better feedback at the pre-deposit stage
  - increased levels of meaningful engagement with all stakeholders at every stage.
23. The Planning Bill should include powers for Ministers to direct an independent review at any stage of plan preparation; for the appointed Inspector to find a plan sound in part, with recommendations for further work; and for an LPA to apply to the Welsh Ministers to carry out a partial review of an LDP.
24. We consider that Supplementary Planning Guidance (SPG) has an important part to play in the planning process. As well as an important vehicle for adding the detail to LDP policies, it has potential for involving communities and other stakeholders in the detail of how allocated sites should be developed. We heard much criticism of the manner and timeliness of SPG preparation and so we recommend the Welsh Government issues revised policy guidance emphasising its importance. There should be scrutiny through the LDP process of SPG and its timetable; regulations for its preparation; the power for Welsh Ministers to direct the preparation of nationally important SPG; and a call-in process. We also envisage an expanded role for Town and Community Councils in the preparation of some SPG.
25. Turning to development management, we consider that the role of the Welsh Government is to create the conditions that enable LPAs to deliver planning

services locally. However, it also needs appropriate powers to intervene in an effective and timely manner.

26. The Welsh Ministers should take decisions of national significance. We recommend that the Planning Bill provides a statutory framework for decisions by Welsh Ministers on nationally significant infrastructure schemes that are devolved, and for the definition of such schemes also to be determined by Ministers. Ancillary development related to non-devolved schemes such as energy generation of +50Mw should be handled by the same process, administered through the Welsh Directorate of the Planning Inspectorate. National policies for such infrastructure should be approved by the National Assembly to provide a framework for decisions; there are options for doing this, including integration with the National Development Framework that we recommend at the start of Chapter 4.
27. Applications should be decided by the Welsh Ministers where it is in the public interest to do so; we recommend changes to the call-in process to improve transparency. We also recommend a review procedure by a Planning Inspector where an authority is minded to approve an application contrary to officer recommendation. Local planning authorities should notify all decisions contrary to recommendations to the Welsh Government, enabling targeted directions where appropriate.
28. The Welsh Government should review the current multiplicity of ancillary approvals resting with them which, on examination, raise only local considerations with a view to transferring such decisions to LPAs, subject to a right of appeal.
29. We see a compelling argument for creating a national body to collect and disseminate best practice from Wales and elsewhere; collect relevant national information; promote consistent and targeted training; advise, mentor and assist LPAs and regional groups; and develop the use of mediation. This body, the Planning Advisory and Improvement Body (PAIB), would be responsible for taking forward several recommendations of both this and other studies of the planning system. It would drive delivery improvements and the required positive culture.
30. We found no convincing argument to support the creation of a separate Planning Inspectorate in Wales; the current arrangements have worked well for many years and have considerable merit. We do not consider a separate Welsh Inspectorate is a priority for reform of the planning system. However, we consider that a protocol should be agreed with the Inspectorate for the provision of a dedicated service for all its functions in Wales and that it should undertake a communications project to explain its role in the system, particularly the fact that it serves Wales equally with England. We also recommend a review of the appeal system to consider adopting several features of the Scottish system; provide Inspectors with greater case powers of case management; and the introduction of a fast track process for appeals against non-determination.

31. To improve and enhance the way that statutory consultees interact with the planning system we recommend that those with the greatest influence should be considered part of its institutional framework and that the Welsh Government should enter into a compact with them. The Planning Bill should give effect to this by placing a duty on them to contribute positively to the efficient and effective functioning of the system, including water and sewerage undertakers.
32. We see a need to improve public and stakeholder roles in the planning system. We envisage an enhanced role for Town and Community Councils generally, particularly in the LDP process; for them to disseminate information about applications affecting their area; and, along with other broad based community groups, to prepare community plans that can be adopted as SPG. This latter role stems in part from our wish to introduce a process that would be simpler and more flexible than the Neighbourhood Development Plan process in England.
33. We consider that local planning authorities need assistance with the processing of certain complex and/or strategic cross boundary applications, where they can share expertise and resources, as recommended in the Simpson Report. These could be processed and assessed by specialist regional teams, or as part of the PAIB.
34. A consistent theme in the responses we received was the need for improvements in the transparency and consistency of Planning Committees. We consider Planning Committees and their members have a crucial role and see this as an opportunity to create a group of trained councillors equipped to make decisions on sometimes controversial applications. We conclude that training for Planning Committee members should be compulsory. We make recommendations for a study to establish the optimum size of Planning Committees; regulations covering delegation schemes and Committee procedures to secure consistency across the country; and a specific Planning Code of Conduct. We also recommend that joint responsibility for LDP preparation rests with the Executive and the Planning Committee, to ensure that the Planning Committee members have an appreciation of the plan making process and, ultimately, ownership of the adopted LDP.
35. Any potential applicant should have ready access to advice from the local planning authority, because that is the role of the LPA and it benefits the quality of applications. We are aware of the recent Welsh Government guidance on pre-application discussions but we consider that more is needed. We recommend that the Minister has the power to make regulations governing pre-application discussions, including a Code of Practice drawn up between the Welsh Government, the WLGA and LPAs. In addition, following the debate on third party appeal rights we conclude that communities must be more involved in planning developments and decisions that affect them. The Welsh Ministers should have the power to make regulations requiring pre-application consultations for certain defined types of applications, and to specify the form

that consultation should take. We support the involvement of councillors in pre-application discussions and recommend a pilot study.

36. Mediation was mentioned by a number of respondents. Use of alternative dispute resolution techniques in planning has been the subject of studies in the past, but the opportunity has yet to be created in the planning process. We recommend that authorities should be able to issue 'minded to' resolutions to allow for mediation to address the issues in dispute. The service could be administered and promoted by the PAIB using established dispute resolution services.
37. We make a number of recommendations to reduce the load on the system, which we call removing 'The 10%'. These include: a study to produce a unified application process; moving detailed matters such as BREEAM and the Code for Sustainable Homes to Building Regulation control; further investigation of the scope for revising the General Permitted Development Order; and establishment of an advice team by the Welsh Government to assist LPAs to make the maximum use of CPOs, SPZ and LDOs.
38. At the end of **Chapter 4** we turn to how we measure success, both in terms of the delivery of the planning system and the impact of our recommendations. We consider that a formal, annual reporting process is required so that a statutory **Annual Performance Report** is produced to a consistent standard, established by the Welsh Government and operated through the PAIB. We recommend consultation on the format and refer to the work of the Planning Officers Society Wales and the recent consultation by the Scottish Government. The object of the report should be to create a culture of self-improvement, so that LPAs identify what action they can take to enhance the services they provide. We also recommend incentives for good delivery but recognise the need for penalties for cases of last resort. Both could be implemented by one or more Welsh Ministers, having regard to the cross departmental nature of the planning system.
39. **Chapter 5** makes a further series of recommendations to streamline and improve delivery. The frustration at the different processes in each authority reflects the findings of the earlier GVA Grimley study. A drive for greater consistency is identified in a number of areas including: validation of applications; minor amendments to planning permissions; notification and publicity; standardising planning conditions and Section 106 clauses.
40. We welcome the Welsh Government's recent actions to introduce the 1APP system and accompanying advice on validation. However, to provide for flexibility we recommend enhanced regulation making powers for the Welsh Ministers governing validation. We also consider that the operation of the 1APP system should be carefully monitored and that the period for challenging the validity of an application is 6 weeks, with a requirement to show prejudice.
41. There are a number of issues around the operation of Section 106 of the Town and Country Planning Act 1990 where improvements could be made to remove

uncertainty and introduce flexibility. We favour a return to the more flexible provisions that existed prior to 1993 and we note the more flexible terms in Scottish legislation. We recommend a review of the powers under S.106; detailed changes to create flexibility; and more flexible arrangements for discharge or modification of obligations. Related to this we make recommendations regarding model conditions; the need for a power to attach a condition making commencement conditional on the execution of an obligation; and the imposition of conditions relating to the imposition of bonds or guarantees for restoration.

42. To simplify the process of amending a planning permission we recommend the early application of Section 96A of the Town and Country Planning Act, which enables LPAs to approve non-material amendments to permissions. We also recommend that the Planning Bill makes provision for minor material amendments to permissions, specifying the characteristics of such a procedure. To simplify and aid clarity, there should be a new statutory form of planning permission that identifies approved plans and documents, which can be updated as conditions are discharged.
43. We consider that notification and publicity requirements should be reviewed to encourage public engagement. Some of the procedures used in the Scottish Planning system would aid transparency and enforcement, specifically notification of the date of commencement and completion of development, and display of a site notice during development.
44. Finally, we deal with the interaction between the application process for planning permission and other consent regimes. First, we recommend that the Planning Bill makes provision for parallel applications to be made for planning permission and any other consents or permits required. Second, we recommend measures to make the handling of highways issues, such as closures or diversion, more efficient through a greater measure of parallel consenting.
45. **Chapter 6** includes recommendations on outstanding matters where the opportunity presented by a Welsh Planning Bill should not be missed. We recommend consultation on a number of issues related to enforcement including:
  - the power to attach conditions to a planning permission granted in response to an appeal against an enforcement notice
  - fixed penalty notices
  - a 'letter of assurance' procedure
  - provision for statements of compliance to be entered on the public register and 'spent' notices to be cancelled
  - provision for the LPA to confirm to a prospective purchaser the outstanding steps needed to comply with an enforcement notice.
46. We do not recommend the introduction of retrospective powers in respect of concealed development.

47. The Welsh Government should consult on the definition of commencement under the Planning Acts, and simplifying the Completion Notice procedure.
48. We considered the difference between the duration of planning permission in England and Wales but did not reach an agreed position; the majority view was that there should be no change in the duration of permission in Wales. It will be for the Welsh Government to decide whether to consult on this matter.
49. To retain maximum flexibility we consider that the Planning Bill should contain a separate procedure enabling an application to be made to extend the life of a planning permission, taking into account the reasons for not implementing the permission, which could include market conditions.
50. Following representations from the Compulsory Purchase Association, we recommend that the Welsh Government revises its circular on compulsory purchase to take account of the amendments to S.226 of the Town and Country Planning Act 1990. In addition, S.237 of the Planning Act 1990 should be brought into line with England as soon as practicable. The Welsh Government may wish to consider bringing together all regeneration compulsory purchase powers into a single set of powers in a separate Act.
51. **Chapter 7** deals with the financial implications of our recommendations. We recognise the current financial climate and pressure on public spending and have been conscious of the need to avoid unnecessary additional costs. However, the land use planning system has a central role as a delivery mechanism cutting across many policy areas. If the Welsh Government wishes to see a step change in the efficiency of the planning system and its ability to deliver, this will require modest investment. Nonetheless, we believe it is possible to be inventive to achieve change, particularly through sharing resources.
52. We believe that some of the Planning Improvement Fund (PIF) would be better used to directly create structures to support LPAs, particularly the PAIB, rather than allocated in response to individual applications from authorities. Setting up the PAIB is the most significant of our proposals in terms of cost. Nonetheless, there are options to reduce the costs by using Welsh Government surplus accommodation; sharing costs with other bodies such as the Design Commission for Wales and the WLGA; by secondments; and by charging for some services. We consider the benefits from this body justify the cost.
53. Collaboration between authorities, including secondments, shared accommodation and support services would considerably reduce the cost of introducing strategic planning at regional level. The additional work for the Planning Inspectorate in dealing with infrastructure would be partly funded by the application fees; the review of approvals contrary to officer recommendation would be offset by efficiencies from appeal process improvements.

54. Member training will require investment by LPAs, but a considerable amount already takes place; the PAIB would raise the quality and consistency of training. This training, like many of our recommendations, we regard as part of the role and responsibility of the organisations involved and part of their normal business. We regard the production of the Annual Performance Report in the same way and see this as a means to help LPAs identify opportunities for improvement, in performance and efficiency.
55. Chapter 8 sets out a series of 'Quick Wins' that can be implemented without waiting for a Planning Bill. The speed of delivery of our recommendations relies on the political will, resources and leadership to drive through change at all levels.
56. The status of the Wales Spatial Plan and other national plans could be clarified by a Ministerial statement. The PAIB could be established now to drive improvements, in advance of legislation to underpin its operation. Voluntary working at strategic level by LPAs could be encouraged and led by the Welsh Government. Refinement of LDPs could be taken forward, as could our non-statutory recommendations on SPG; the review of Planning Committee size; and pilots of member involvement in pre-application discussions. The format of the APR could be consulted on and agreed, and information on decisions contrary to officer recommendations collected. The recommendations of this report and other studies could be brought together into a comprehensive set of changes to the development management process.
57. In **Chapter 9** we give our overall conclusions, setting out what we envisage the planning system in Wales should look like in the future to guide any further consideration of the system during the preparation of the Planning Bill. The principles that we have followed address the issue of subsidiarity: planning functions are carried out at the level closest to their impacts, to create the most effective conditions for delivery. We emphasise the role of the planning system in delivery and the need for coordinated action across the Welsh Government to secure the changes we envisage.
58. We consider it right that local planning authorities continue to have the main responsibility for delivering planning services. We have tried to avoid adding to bureaucracy whilst making local delivery more effective and more rigorously measured. We propose significant reform, but through an evolution of the planning system put in place in 1947, adapted to meet the needs of Wales. We believe the changes we propose are deliverable and will lead to the necessary improvement of the planning system.

# CHAPTER 1: INTRODUCTION

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- 1.1 This chapter outlines the nature of the work of the Independent Advisory Group and the initial assessment processes that fed into our deliberations. To understand the current state of planning delivery in Wales, there are also sections covering various aspects of planning that are common with England and those unique to Wales.

## TERMS OF REFERENCE, SCOPE AND OUTPUTS

- 1.2 In October 2011, the Minister for Environment and Sustainable Development made a statement outlining the establishment of an Independent Advisory Group (IAG) to prepare a review of planning delivery which would provide part of the evidence base for a Planning White Paper. Details of the IAG Members can be found in Appendix 1. He appointed John Davies MBE to chair the Group and set out the terms of reference, scope and outputs as follows:

*“The review will identify future options for the institutional structures to deliver the planning system in Wales taking into account Welsh Government policy priorities. The review should:*

- a. Identify the key policy objectives that the planning system is required to deliver now and in the future;*
- b. Assess existing institutional delivery arrangements, noting areas of good practice and areas in need of improvement; and*
- c. Propose options for the future delivery of the planning system, including plan making and development management services. This should include consideration of what should be delivered where in the institutional hierarchy and may include suggesting new institutional arrangements.*

*This review will gather evidence on how best to allocate roles and responsibilities to ensure that Welsh Government policies are delivered by the planning system in a timely, transparent and democratically accountable way taking into account the increasingly complex demands being placed on it.*

*The review will consider the future role and responsibilities of the Welsh Government (including the Planning Inspectorate), local planning authorities, statutory consultees and town and community councils.*

*It should deliver a report that makes recommendations about:*

- a. Options for future delivery of the planning system including a preferred approach;*
- b. The primary and secondary legislation and policy and guidance necessary to introduce the identified options and preferred approach;*
- c. An assessment, on an all Wales basis, of the resources necessary, in terms of staff numbers and costs, to deliver the identified options and preferred approach; and*
- d. Any identified quick wins.”*

## **PLANNING IN WALES**

- 1.4 The Town and Country Planning system in Wales is already distinctive as a result of the following constitutional, legislative and policy developments:
- Local Government Reorganisation in 1996 created the present 25 local planning authorities (22 unitary authorities and 3 national parks).
  - The Government of Wales Act 1998 passed the powers of the Secretary of State for Wales to the National Assembly for Wales.
  - The first Welsh Governments advanced a made-in-Wales planning policy through the collaborative revision of Planning Policy Wales and Minerals Policy Wales. They also took forward the revision of the Welsh Development Plan system (Local Development Plans) through the Welsh provisions in the Planning and Compulsory Purchase Act 2004 (Part 6).
  - Welsh Ministers also set up a process to develop and agree a national spatial plan – Wales Spatial Plan (which is not a development plan), which was given statutory status as a material consideration in the 2004 Act.
  - The Planning Act 2008 gave the National Assembly legislative competence over the development plan system.
  - A Welsh Directorate of the Planning Inspectorate, the Countryside Council for Wales, the Environment Agency Wales and the Design Commission for Wales were all established or took on their present form during this period.
  - The 2011 referendum on legislative powers extended the legislative competence of the National Assembly over the planning system as a whole.

## **LEGAL BACKGROUND TO DELIVERY**

- 1.5 The current “planning code” is based around the 1990 Planning Acts, the Planning and Compulsory Purchase Act 2004 and the Planning Act 2008. The 1990 Planning Acts consisted of:
- The Town and Country Planning Act 1990
  - Planning (Listed Buildings and Conservation Areas) Act 1990
  - Planning (Hazardous Substances) Act 1990
  - Planning (Consequential Provisions) Act 1990
- 1.6 The Planning (Hazardous Substances) Act 1990 relates to the storage of large quantities of specified substances. The Planning (Transitional Provisions) Act as its name suggests deals with the transition to the new consolidated legislation.
- 1.7 The Planning Act 2008 set up the Infrastructure Planning Commission (IPC) to determine planning applications for certain types of nationally significant infrastructure. The remit of the IPC in Wales was restricted to nationally significant infrastructure projects related to functions which had not been devolved, principally energy generation schemes over 50 MW capacity, ports and railways.
- 1.8 The Localism Act 2011 introduced a local tier of planning in England based around the concept of neighbourhood planning. This was accompanied by a new National Planning Policy Framework, which superseded all existing

English national planning policy (although the extent of other guidance to be preserved is still emerging). As the passage of the Localism Act coincided with the National Assembly taking legislative competence over town and country planning, the only provision applying to Wales of relevance to the planning system is the modification of the pre-determination rule. This provides that a Member is not to be taken to be biased in their decision making if they have expressed a prior indication of their views on a matter relevant to a decision. The Localism Act represents a significant stage in the evolution of a distinct Welsh planning system. The introduction of a local tier of plan making represents a radical departure for the system in England and is a good illustration of how, under devolution, difference is created as much by change in England as by Wales' own reforms.

- 1.9 The present structure of the Town and Country Planning Act 1990 Act and the statutory planning provisions of the Planning and Compulsory Purchase Act 2004 contain a legislative scheme that follows a logical progression through the planning process.
- Part 1 of the 1990 Act identifies who does what in the system. The position in Wales is relatively straightforward: Local Planning Authorities (LPAs) are unitary authorities and national park authorities.
  - Parts 2 and 3 set out the roles and responsibilities of LPAs and Ministers in delivering the two main outputs of the planning system: development plans and development decisions.

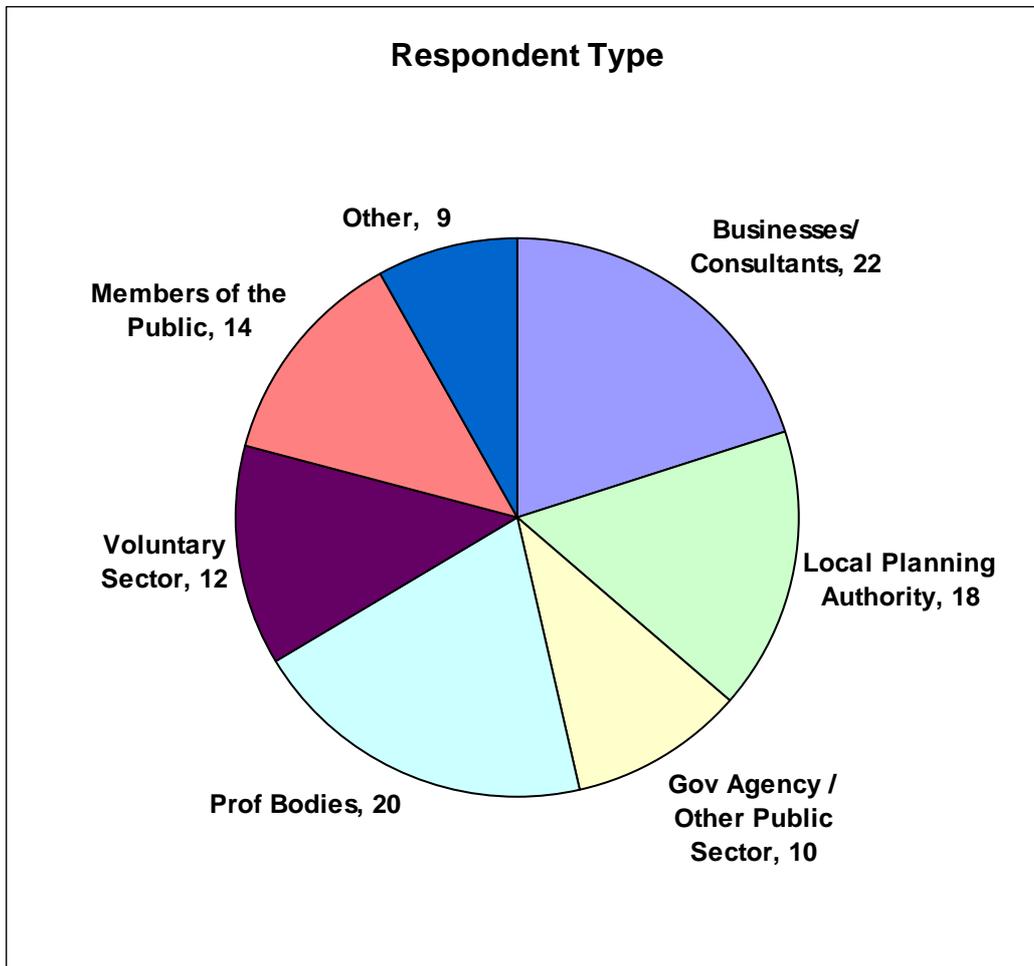
## **GATHERING EVIDENCE**

- 1.10 In November 2011, we published a Call for Evidence (CfE) and notified interested parties (Appendix 2). Responses were required by 3 February 2012. An IAG web site was created to provide information to the public and a contact point<sup>1</sup>.
- 1.11 During these 3 months, we met with any individuals or organisations who requested our presence to explain our task. This included the City Regions Task and Finish Group. We also undertook to find "experts" in the field of planning delivery and governance. The Chair travelled to Scotland to investigate the nature of Scottish planning delivery mechanisms and to England to meet with DCLG officials. A telephone conference was held with Northern Ireland officials.

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<sup>1</sup> <http://wales.gov.uk/topics/planning/planningresearch/planningreview/advisorygroup/?lang=en>

1.12 There were a total of 110 responses to the CfE, from a wide cross-section of individuals and groups, as shown in the following chart.



1.13 Graphs of the responses to the questions in the Call for Evidence are found in Chapters 2 and 3. Two elements stand out overall. First, there were a large number of respondents who omitted to complete many questions. This could be because they did not feel qualified to answer or because they had no particular view. Second, there are significant disagreements between sectors on some of the questions with close to 50% on either side of yes/no responses.

1.14 After the Call for Evidence deadline, we arranged a number of group discussion days on topics of interest or conflict, including inviting some of the identified experts to open discussion. We sought meetings with selected individual respondents to clarify their responses and/or to elicit more information. The Chair attended meetings with 2 of the economic business panels (Energy and Construction) and met twice with the WLGA.

1.15 A full list of all of these activities, contributing experts and various papers and presentations can be found on the IAG web site.

1.16 We realise that some of the issues raised overlap with concerns expressed in earlier reports including the GVA Grimley Study<sup>2</sup>, the Simpson Review on what should be Local, Regional and National<sup>3</sup> and the Report of the Welsh Assembly's Sustainability Committee on Planning in 2010<sup>4</sup>. These were drafted when Wales had less control over legislative processes and we consider they are valid topics for this review. However, many of their recommendations do not require statutory provisions and we have re-emphasised the need for progress where they are important to delivery.

## HOW TO EVALUATE EFFECTIVE DELIVERY

1.17 One of our first tasks was to assess the term “effective delivery” as it applied to our investigation.

1.18 The Welsh Government consultation “A Strategic Monitoring Framework for the Planning System” included a diagram illustrating what the planning system is designed to deliver<sup>5</sup>. It divides these into Processes, Outputs, Outcomes, and Impacts. We adopted a similar terminology in considering the effectiveness of the delivery of planning. We define the **Outputs** as the actual products on the ground (not the plan or planning decision), such as a number of housing units. **Outcomes** are the impacts of these products, such as a potential increase in the number of affordable units or the loss of habitats.

1.19 The Terms of Reference included some required measures i.e. that the planning system should deliver in a manner that is **timely, transparent and democratically accountable**. The Call for Evidence sought views on these, including **accessibility** and requested suggestions for any other criteria that should be judged as measures of effectiveness.

1.20 The Minister's criteria noted above are directly related to the **Processes** of producing Development Plans and making Development Decisions. We consider that there are other indicators that measure the effectiveness of both processes, including **simplicity, flexibility and responsiveness**.

1.21 Question 6 of the Call for Evidence asked respondents to score the delivery of planning separately for development plans and development management, using the criteria of **transparency, accessibility, timeliness and economic accountability**. The scores were on a scale of 1 (low) to 10 (high).

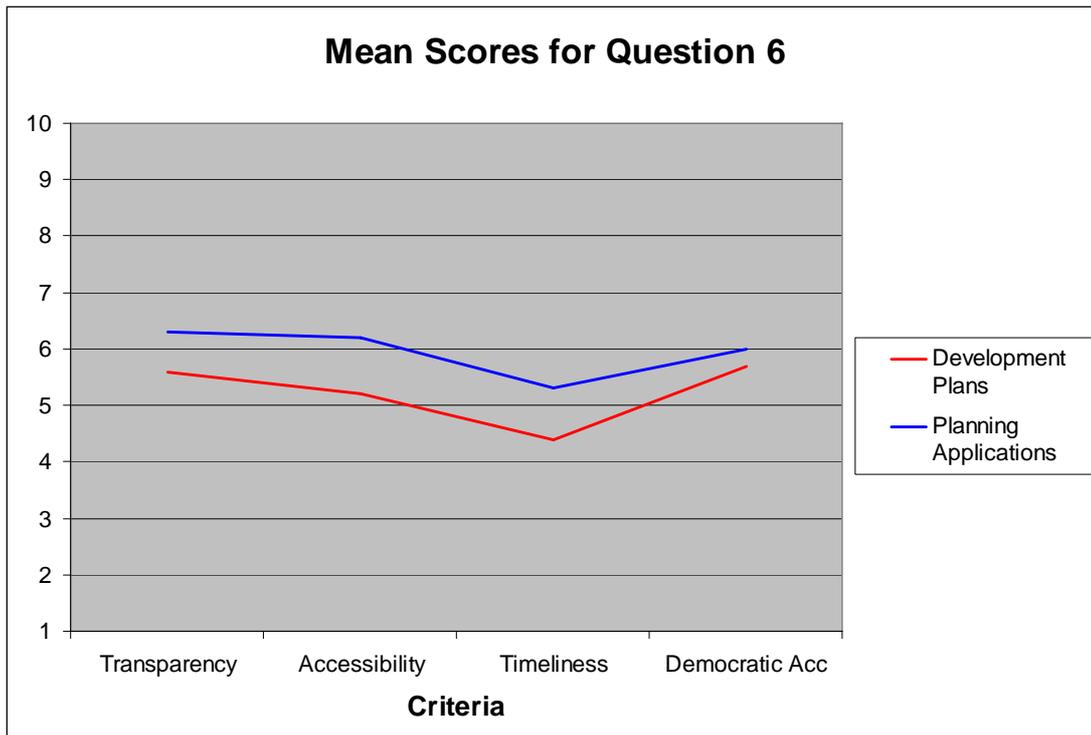
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<sup>2</sup> GVA Grimley *Study to Examine the Planning Application Process in Wales*, June 2010

<sup>3</sup> The Simpson Review: *Local, Regional, National: What services are best delivered where?* A Report to Carl Sargeant AM, Minister for Social Justice and Local Government, March 2011

<sup>4</sup> National Assembly for Wales Sustainability Committee *Inquiry into Planning in Wales*, January 2011

<sup>5</sup> *A Strategic Monitoring Framework for the Planning System*, Welsh Government Consultation Nov 2011, Fig 4



- 1.22 The table above shows the breakdown of responses (Mean Scores for Question 6) indicating higher scores for development management than for development plans. The lowest mean for both is timeliness.
- 1.23 A Roundtable with invited participants on 22 February added more indicators to consider. During the discussion of timeliness, debate centred on potential trade offs with **quality and certainty**. There were also discussions about **consistency** applied mainly to decision making.
- 1.24 Many respondents noted the need for additional indicators covering the **Outputs and Outcomes** of delivery. This discussion also led to the concept of **deliverability** i.e. would a particular change in mechanism actually be able to be delivered and, if so, how much change, if any, would there be to the number or quality of potential outputs?
- 1.25 Finally we include a measure of **value for money/resource** to assess any changes and to follow the terms of reference.
- 1.26 We can classify the list of criteria as either **quantitative or qualitative**. In other words, some assessments are based on hard statistics and others rely on judgements.
- 1.27 A full list of criteria is found in Table A, at the end of this report, where they are used to assess our Recommendations.

## **IAG PERSPECTIVE**

- 1.28 In order to consider the mass of information and weigh up differing views and conflicting criteria, the IAG members discussed their overview of the importance of the future of the planning system.
- 1.29 We recognise that a wide variety of factors, which currently constrain new development, are outside the remit of the planning system and that there is a tendency to focus on a system within Welsh Government control to stimulate growth. It is our view that the planning system has been a vehicle for the delivery of multiple service objectives since devolution and, to some extent, assertions of non-delivery relate to unrealistic expectations of a land use system. Reform of the planning system is not, in itself, a cure for all ills.
- 1.30 We believe that the planning system has great potential to create opportunities and protect valuable natural resources, intrinsically and for the future well being of the nation. In other words, it should be a devolution dividend, not deficit.
- 1.31 These views informed the Group's deliberations when considering the evidence as outlined in the following chapters.

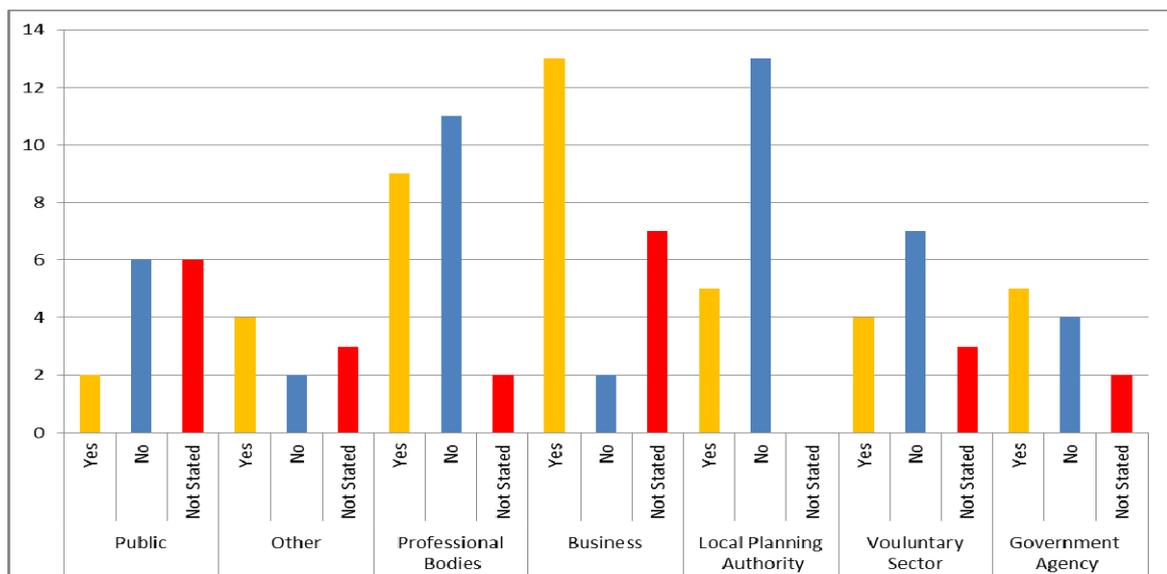
## CHAPTER 2: THE PURPOSE OF PLANNING

### Background

- 2.1 We began by looking at some fundamental matters before considering the delivery of the planning system. Did the Group have a similar view on the purpose of planning? Did the planning profession possess any common understanding of the purpose? And how did other stakeholders view the purpose(s) of planning and its role? Unless there was broad agreement, the examination of planning delivery and, more importantly, the recommendations of the Group would have little support.
- 2.2 The 1947 Town and Country Planning Act for the first time sought to control the development and use of land – it effectively nationalised the right to develop land. The Act introduced the necessity to apply for permission to develop or change the use of an individual’s land and buildings. Wales now has the opportunity to review whether or not the purpose of planning as it was in 1947 is still relevant today or whether it should be changed by the new Planning Bill.

### Evidence

- 2.3 Question 1 of the Call for Evidence (CfE) asked *“Do you agree that the primary purpose of the planning system in Wales is the delivery of land for sustainable development?”*
- 2.4 Responses indicate that there is unanimous support for maintaining a land use planning system in Wales. However, the responses also reveal considerable difference of opinion about the primary purpose of planning as shown by this table.



- 2.5 The graph shows an almost exact split between ‘yes’ and ‘no’. There were also 22 “not stated” responses, partly due to the content of the question. It was criticised for introducing a narrower definition which focussed on development and delivery of land, and excluded wider issues.

- 2.6 To try to establish some common ground, the IAG held roundtable discussions on 21 February on the objectives of planning and the definition of sustainable development as it applies to the Welsh planning system. Despite the varying opinions there was general consensus that, for planning purposes, Sustainable Development (SD) has to be expressed in terms of land use.
- 2.7 The variety of views did have some pattern. In summary the majority view was that the purpose of planning is to -
- safeguard and enhance important land and buildings
  - deliver suitable land in sustainable locations for new development
  - control the development and use of land in the public interest
- 2.8 However, there was also a debate about the word “delivery” as the planning authority does not control land or when it is brought forward (save in the exceptional situations of compulsory purchase). Alternatives discussed for the word delivery included adjectives such as ‘enable’, ‘regulate’ and ‘manage’.
- 2.9 A general consensus was reached in the round table discussion that the planning system does not deliver in itself but is more of an enabler or influencer. Nonetheless, some held strongly to the view that the system should be ensuring land is available for development through the planning process.
- 2.10 A wider view expressed by many was that the purpose of planning includes the pursuit of SD ‘in the round’ rather than individual elements in isolation. It should facilitate development in sustainable locations, resist development in unsustainable locations and contribute to the achievement of sustainable development as a whole.

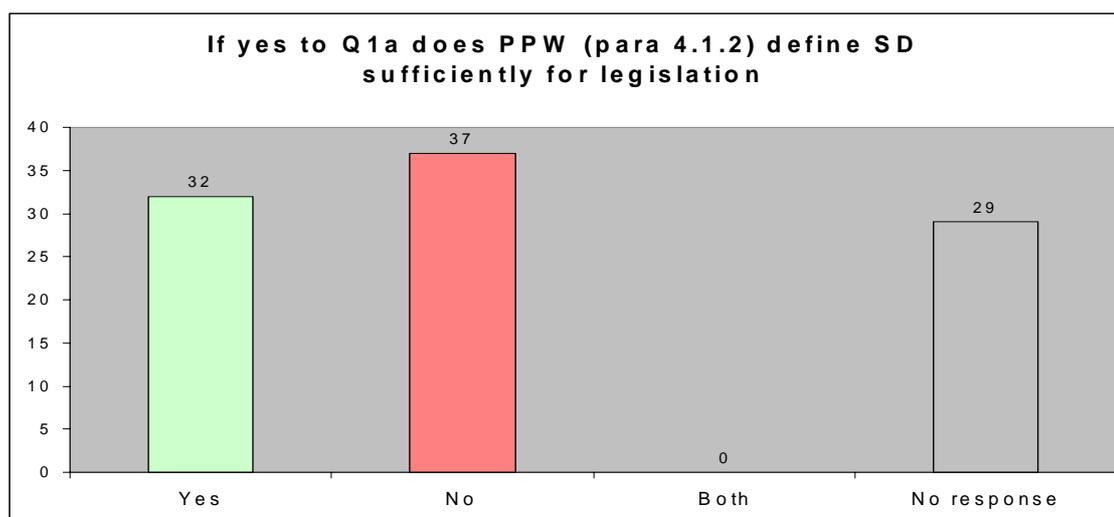
## **IAG RESPONSE**

- 2.11 The IAG fully agrees that one of the successes of the planning system is its ability to protect and enhance the best of our existing environment. This includes important landscape and ecological areas, listed buildings and conservation areas.
- 2.12 Therefore the IAG considers that the conservation purpose of planning should remain as an end in itself, and to provide the environmental framework that channels growth to sustainable locations. This aspect should have greater recognition in Planning Policy Wales (PPW) Chapter 4 (Purpose and Key Policy Objectives).
- 2.13 Though the debate did not arise, the word “sustainable” can also be used in a variety of ways. Sustainable economic development can be considered as economic development that maintains its own specific economic viability. But in planning terms, the word has a broader meaning than self-perpetuating a particular activity.
- 2.14 The responses and the round table discussions stressed that PPW states the planning system regulates the development and use of land “***in the public interest***”. The acceptability or otherwise of any development has historically been judged against the public interest, as expressed in three ways:
- i. National planning policy, which is non-statutory;

- ii. Through a statutory development plan and policies, reflecting national policies, which allocate locations where development will be acceptable;
  - iii. The democratic control of the system by elected local planning authorities who are responsible for both plan making and the determination of the acceptability of specific applications for permission to develop and subject (through the appeal and call-in systems) to Ministerial oversight.
- 2.15 Whilst we entirely support the long-standing principle that the planning system must operate in the public interest, we differ from the bald statement in Planning Policy Wales, paragraph 1.2.1, that the planning system simply 'regulates' the development and use of land; it can and should be much more.
- 2.16 We support the view that the wider SD-related outcomes mentioned in the CfE and the debates are legitimate considerations as products of the planning system. However, these should be applied proportionately and appropriately whether plan making or determining a planning application. In other words, where an application is made for the development of land or the change of use of a building, the decision should take into account only those wider issues of relevance and in proportion to the character of the development being proposed. For example:
  - An attic dormer conversion would not involve health considerations but will have to meet design criteria.
  - A wind farm would not deliver affordable housing but will need to consider its impact on landscape quality and biodiversity.
- 2.17 We therefore fully support the agreement reached in the roundtable discussion that planning is and should be more than simply a regulatory activity. In our view a system that is seen as purely regulatory will deliver negative rather than positive outcomes.
- 2.18 The centrality of sustainable development in the Welsh planning system presents a challenge to planners in all sectors to seek out imaginative solutions overcoming barriers to sustainable development, rather than setting the environment and economic development against each other in a 'winner takes all' scenario. The move from 'development control' to 'development management' will assist in this, and our comments on the culture of planning should be viewed in this light.
- 2.19 Related to this is our view that the three elements of sustainable development (the environment, the economy and society) cannot be considered in isolation from each other. In practical terms, planners and decision makers should be aiming to ensure that, at a minimum, development in support of one of the three elements does not have significant adverse impacts on the remaining two, seeking 'win-win' solutions.

## RELATIONSHIP BETWEEN SUSTAINABLE DEVELOPMENT AND PLANNING

- 2.20 At present the contribution that the planning system should make to sustainable development is set out in national planning policy issued by the Welsh Ministers and set out in PPW and Minerals Planning Policy Wales, as supplemented by Technical Advice Notes.
- 2.21 The policies in PPW reflect the Welsh Ministers' Sustainable Development Scheme. The Ministers are under a statutory duty to publish and maintain such a scheme showing how they intend to promote sustainable development in carrying out their functions and to report annually on how the proposals in the scheme were implemented.<sup>6</sup> The current scheme "*One Wales, One Planet: A New Sustainable Development Scheme for Wales*" was published in May 2009.
- 2.22 The Sustainable Development Scheme identifies the overall aim of the planning system as providing land for homes, infrastructure, investment and jobs in a way that helps reduce our ecological footprint. The Welsh Government is currently consulting on the introduction of a presumption in favour of sustainable development into national planning policy through the amendment of PPW<sup>7</sup> and is consulting on a Sustainable Development Bill.
- 2.23 Most respondents were satisfied with the definition of sustainable development, in PPW<sup>8</sup>. We consider that any change to the definition of sustainable development should come from the separate work and consultation on the content of the Sustainability Bill.
- 2.24 Question 2A of the CfE asked "*Does PPW in paragraph 4.1.2 define sustainable development sufficiently for the purposes of legislation?*" The majority felt that the definition was insufficient for the purposes of legislation, as this table shows.



<sup>6</sup> Section 79 Government of Wales Act 2006

<sup>7</sup> See: Welsh government Consultation document – *Planning for sustainability: The presumption in favour of sustainable development*. March 2012

<sup>8</sup> See for example submission by the Town and Country Planning Association (No. 28)

2.25 The CfE responses also indicated a difference of opinion about whether there should be an explicit requirement in legislation to achieve or promote sustainable development, which would be a departure for the planning system.

### **IAG RESPONSE**

2.26 The IAG has considered the arguments for the Planning Bill to set out the relationship between the planning system and the promotion of sustainable development or to leave it as matter of policy.

2.27 Since the Town and Country Planning Act 1947 the central concept of the planning system has been “development”. It is the carrying out of “development” that engages the system, requiring either a planning application or bringing the proposal within a general consent covered by a development order.

2.28 The definition of development for planning purposes, now found in section 55 of the Town and Country Planning Act 1990, is “...*the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land*”.

2.29 We are clear that the planning system is only one instrument for the achievement of sustainable development, albeit it a major one. The arguments in favour of a statutory expression of the overall objective of the planning system are:

- A statement such as that on the role of planning in the Sustainable Development Scheme is focussed on the purpose of the system in locating development.
- By setting out such a statutory objective it then becomes a guiding principle so that whenever plan policies become out of date or uncertainties or conflicts arise between policies and impact upon decision making on planning applications, then the starting point is to apply the statutory purpose of the system. This is already embedded in the process of statutory plan-making<sup>9</sup>; this proposal would make it the overarching principle for development control decisions as well.

2.30 The arguments against are:

- The concept of “development” has stood the test of time, while policy and the public interest inevitably change over time.<sup>10</sup>
- A statutory objective must be both “timeless” and sufficiently precise to be certain of consistent interpretation by those to whom it is addressed.
- The Welsh Government’s definition of sustainable development in the Sustainable Development Scheme commanded broad support, both in the responses to the call for evidence and at the “roundtable” when the meaning of sustainable development was discussed. However, concepts such as “well-being”, “social justice and equality” and “fair share of the earth’s resources” are generalisations which are legally problematic as they defy precise or commonly agreed definition.

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<sup>9</sup> See Planning and Compulsory Purchase Act 2004 s.39 as applying in Wales.

<sup>10</sup> National Assembly for Wales Sustainability Committee *Inquiry into Planning in Wales* Jan ‘11: para 27

- 2.31 While the IAG is attracted by the idea of an overall statutory purpose<sup>11</sup>, we conclude that the definitions of sustainable development alone lack the precision necessary to found a principle of sufficient certainty to be useful in a legislative context.
- 2.32 However, there is an option that in our view overcomes this barrier. A Planning Bill could include a general purpose for planning along the lines:  
*“The purpose of the town and country planning system is the regulation and management of the development and use of land in a way that contributes to the achievement of sustainable development.”*
- 2.33 This encompasses the core purpose for planning as we see it, makes it clear that planning is more than simply regulation, and enshrines ‘management’ as part of a statutory purpose for planning. This general statement could be linked to a provision such as:  
*“The Welsh Ministers may issue guidance to planning authorities on the application of the purpose in exercising or performing their powers or duties and a planning authority shall have regard to any such guidance so issued.”*
- 2.34 The model for this approach can be found in two places. First, the statutory purpose of national parks in s.5 of the National Parks and Access to the Countryside Act 1949 and, second, the procedure for promulgating the statutory guidance on the operation of the “polluter pays” regime for contaminated land under Part IIA of the Environmental Protection Act 1990.
- 2.35 This approach would also be effective in binding the planning system into the overall vision of the SD Act. The guidance could be given enhanced status by requiring it to be approved by the National Assembly as a statutory instrument.

### **Recommendations 1 - 3**

- 1. A statutory purpose for planning along the following lines is included in a future Planning Bill:**  
*“The purpose of the town and country planning system is the regulation and management of the development and use of land in a way that contributes to the achievement of sustainable development.”*
- 2. The Welsh Government includes the statement above of the core purpose of planning in a future revision of PPW.**
- 3. The general statement as described above is linked to another provision about the Ministerial role:**  
*“The Welsh Ministers may issue guidance to planning authorities on the application of the purpose in exercising or performing their powers or duties and a planning authority shall have regard to any such guidance so issued.”*

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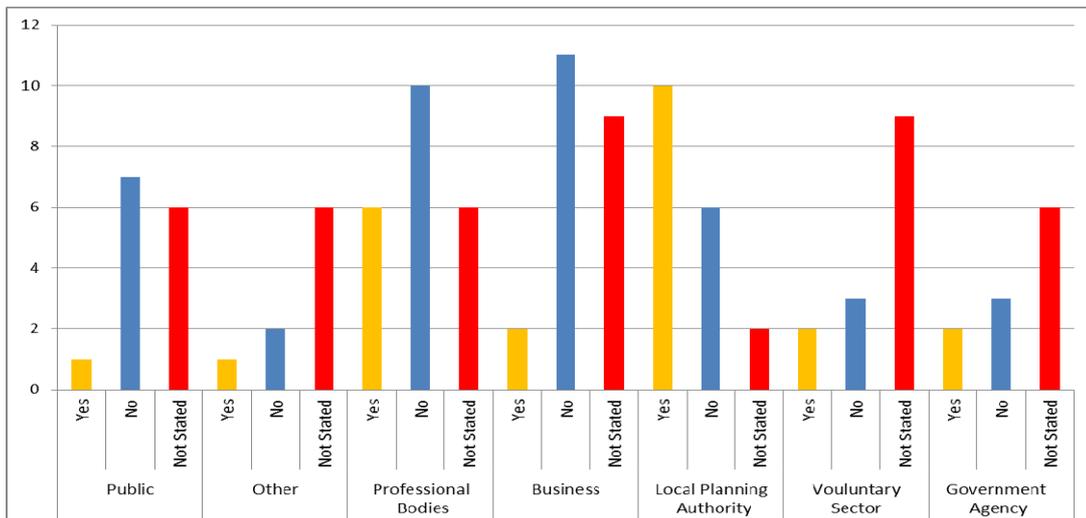
<sup>11</sup> See also submission by the Town and Country Planning Association (No. 28)

## CHAPTER 3: The Call for Evidence – Issues

- 3.1 The land-use planning system is divided into development plans (DP) and development management (DM), which includes the planning application process. In this chapter we look at what the evidence reveals about the roles and responsibilities of those involved in delivering planning services in these two distinct areas at national, regional and local level. In the next chapter we look at how these issues could be addressed.

### Development Plans

- 3.2 Question 12a of the Call for Evidence (CfE) asks whether the current allocation of roles and responsibilities provides the most effective delivery of development plans. All sectors apart from local planning authorities considered they do not, the response from the business sector being particularly clear. The table below shows the answers by sector.



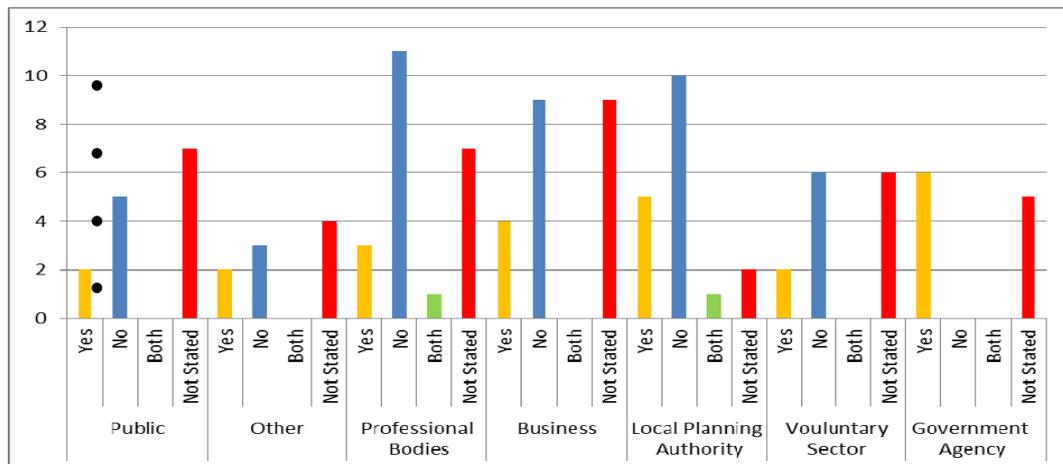
Against this general indication of a need to consider changes to roles and responsibilities, we look next at the current national, regional and local roles.

### Development Plans – National

#### *Welsh Government*

- 3.3 One of the issues relating to the role of the Welsh Government is the Wales Spatial Plan. The general view from the CfE and the round table discussions can be summarised as disappointment at the lack of guidance it has provided for plan-making and decisions on strategic applications, and confusion over its current status. **Many respondents felt that a national spatial planning framework is needed to set the strategic context for development planning at the regional and local level.**
- 3.4 The clearest indication of a perceived need for change in the role of the Welsh Government comes in the answers to Question 16a of the CfE, which asked “Do you consider the level of policy development and intervention by the Welsh

*Government is appropriate for effective delivery?’* The majority across all sectors apart from Government Agencies answered ‘No’ as the following table shows:



- 3.5 The detailed answers to this question indicate concerns around policy formulation, which is outside the IAG’s terms of reference. **But many respondents emphasised the need for greater intervention by the Welsh Government in Local Development Plan (LDP) preparation, particularly to overcome delay.** The Welsh Government is currently undertaking a ‘refinement exercise’ with the aim of learning from experience to date of the LDP process. Our terms of reference require us to look at roles and responsibilities and we have not therefore considered the detailed stages of LDP preparation. Nonetheless, there are issues that deserve consideration.
- 3.6 The Welsh Government currently has reserve powers to intervene in the LDP process, either to take over plan preparation or to prevent adoption. These powers were used to prevent the adoption of some Unitary Development Plans that failed to reflect national policy, but have yet to be used in respect of LDPs. **We are concerned that, in practice, the system appears to have allowed apparently flawed LDPs to progress to the independent examination.**
- 3.7 Turning to delay, respondents are critical of the willingness to date of the Welsh Government to agree to extensions of the agreed LDP timetables in Delivery Agreements. Some consider the Welsh Government should take over the preparation of the LDP from those authorities that delay plan preparation excessively<sup>12</sup>. Others suggest that it needs to provide more direct support to ‘failing’ LPAs to guide them through plan preparation, although we are aware that officials already provide considerable advice and support. Many of the submissions refer to ‘carrots and sticks’, suggesting that there should be financial or other incentives and/or penalties where there is lack of progress<sup>13</sup>. The Welsh Government already provides incentives through the Planning Improvement Fund (PIF). We are aware that applications for PIF funding by some LPAs have been refused, although this does not appear to be widely

<sup>12</sup> See submission by the Home Builders’ Federation, No. 89

<sup>13</sup> See submission by the Wales Planning Consultants Forum, No. 37

known or publicised. **Nonetheless, the responses to the call for evidence question the effectiveness of current incentives for LDP delivery.**

- 3.8 The other issue raised is the assessment of LDP soundness. Several respondents to the CfE criticise the tests<sup>14</sup> used by Inspectors when examining LDPs for complexity and lack of transparency, and argue that the process overall is cumbersome and lacks transparency<sup>15</sup>.

#### ***Design Commission for Wales***

- 3.9 The Design Commission for Wales (DCfW) was established in 2002 by the Welsh Government. Its mission is

*“To champion high standards of architecture, landscape and urban design in Wales, promoting wider understanding of the importance of good quality in the built environment, supporting skill building, encouraging social inclusion and sustainable development.”*

- 3.10 Many of the submissions are complementary of the work of the Commission and there are suggestions of a wider role, utilising its existing voluntary professional network.

#### **Development Plans – Regional**

- 3.11 We have met with the City Regions Task and Finish Group, which is advising the Business Minister on the potential role of city regions in the future economic development of Wales. The role of the IAG is to consider whether a framework for ‘larger than local’ strategic or cross-boundary land-use planning is needed.
- 3.12 The Welsh Government has set up clearly defined arrangements for regional research and planning, for transport, waste and minerals. The South East Wales Economic Forum (SEWEF) is a less formal voluntary partnership of local authorities, the Welsh Government and stakeholders dealing with regional economic issues.
- 3.13 The South East Wales Strategic Planning Group (SEWSPG) and the North Wales Planning Officer Group are voluntary groups set up mainly by LPAs. Both Groups have carried out ‘housing apportionment’ exercises to allocate regional housing growth figures provided by the Office of National Statistics to individual LPAs. The SEWSPG exercise was heavily criticised by the house building sector for lack of transparency, failure to involve stakeholders, and absence of an independent examination.
- 3.14 Other voluntary initiatives include: preparation of a joint LDP by Gwynedd and Anglesey County Councils; the working group set up by the Chief Executives of the SE Wales councils to examine regional planning issues; and the working group comprised of the participating bodies in SEWSPG assisting Cardiff City Council to consider the cross-boundary issues arising in the preparation of its LDP. **We consider that current approaches to cross-boundary issues can best be described as fragmented, with no overall strategy or cohesion.**

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<sup>14</sup> Local Development Plans Wales 2005

<sup>15</sup> See for example submissions by the RTPI (No. 60) and POSW (No. 32)

3.15 The responses to the CfE and the round table discussions reveal a strong desire from many quarters for a mechanism to consider cross-boundary issues as part of the development planning process. The arguments put to us in support of this view include :

- the need to address issues such as housing growth, gypsy and traveller provision, economic development and infrastructure at a strategic level
- protected sites (such as Special Protection Areas, Ramsar) extend across administrative boundaries
- inability of individual LPAs to influence beyond their boundary
- no encouragement/opportunity for Members to consider the bigger picture
- inconsistency between LPAs on similar policy issues
- strategic planning allows advantage to be taken of the growth potential of larger cities, increasing competitiveness and economic development
- the failure of some LPAs to progress their LDP is a direct result of the absence of regional working

3.16 Questions debated in relation to 'larger than local' arrangement include:

- could there be different solutions for different parts of Wales
- how would the geography work
- should it be voluntary or statutory
- who should be involved
- should there be independent examination of any 'larger than local' plans

3.17 National policy requiring authorities to work jointly together on transport, waste and minerals appears to have been successful and the fact that the regional groupings are different does not seem to have caused any difficulty. Indeed it would support the view that any arrangement must be pragmatic and fit for purpose as opposed to a standard imposed arrangement. Although the regional strategy documents produced for each of these topics are not independently examined, the collaborative and inclusive manner of their preparation appears to have avoided the criticisms of the SEWSPG housing apportionment. Welsh Government funding for the work of these groups, including technical studies and research, has clearly assisted.

3.18 However, work on economic and housing issues appears fragmented, less organised, less inclusive, and less successful. We are not aware of any funding from the Welsh Government to support regional work on these issues. **We consider that the regional dimension provided for LDPs in the policy areas of transport, waste and minerals is missing for housing and economic development, probably the most important parts of every development plan.** We also consider that protection and enhancement of the environment, particularly in the context of climate change adaptation and the need to harmonise development and the environment, lends itself very well to a regional approach. Respondents gave us evidence of good practice in this respect.<sup>16</sup>

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<sup>16</sup> The Thames Basin Heathlands regional work, where 11 abutting local planning authorities cooperated across SE England to deliver housing in the vicinity of large heathland Special Protection Areas.

## Development Plans – Local

- 3.19 Delivery of LDPs lies in the hands of local planning authorities. **The chief criticism is delay and failure to adhere to the timetables in their Delivery Agreements.** The most serious delays have occurred when LPAs have withdrawn their LDPs after submitting them for examination, having been warned by the Inspector that the plan is flawed, as occurred with the Cardiff and Wrexham LDPs. However, other examinations have been delayed for further work in respect of housing figures and the CfE responses refer to general delays to LDP timetables.
- 3.20 The responses in the CfE, particularly from the business and house building sectors<sup>17</sup>, highlight the consequences of delays to LDP preparation, including lack of certainty and an unwillingness to invest<sup>18</sup>. LDP delivery is seen by the CBI as the key driver to improve delivery for the business and development community. **We consider that LDPs are essential to identify the land needed to meet society’s need for, amongst other things, houses and jobs and they are key to delivering sustainable development objectives.**

### *The Planning Inspectorate*

- 3.21 The Inspectorate’s guidance states "*The Inspector’s role is not to improve the LDP but to make recommendations to ensure it is sound.*" Many of the criticisms of the LDP system relate to the examination<sup>19</sup> and one criticism is that the examination does not choose the ‘best’ plan. **However, this is a criticism of the statutory framework for the LDP examination rather than the role of the Inspector.**
- 3.22 The Inspectorate’s main role presently is to examine the plan submitted to the Welsh Government, which is the last stage in the LDP process. Several of the submissions to us argue for earlier intervention by the Inspector<sup>20</sup>. We have highlighted above our concern that the current system appears to allow flawed LDPs to progress to the examination.

### *Statutory Consultees*

- 3.23 The main issues put to us regarding the role of statutory consultees are:

- delays in providing essential information
- delays in responding to consultation
- investment programmes out of step with LDP preparation
- failure to engage early enough in the LDP process<sup>21</sup>

Issues such as investment programmes are not a matter for the IAG. Whilst views on the time taken to provide information and respond to consultations and a lack of LDP engagement have been challenged by the statutory bodies themselves, and by some environmental organisations, these issues are part of the roles and responsibilities in the LDP system and are within our remit.

<sup>17</sup> For example see that by the Home Builders’ Federation, No 89

<sup>18</sup> See submission by SEWEF, No. 56

<sup>19</sup> See submission by the Home Builders’ Federation, No 89

<sup>20</sup> See submission by Flintshire County Council, No. 91

<sup>21</sup> See submission by SEWSPG, No. 78

**Business Sector**

3.24 The business community needs development plans to allocate land for development and provide a policy framework that creates certainty, fosters business confidence and encourages investment. The issues put to us include:

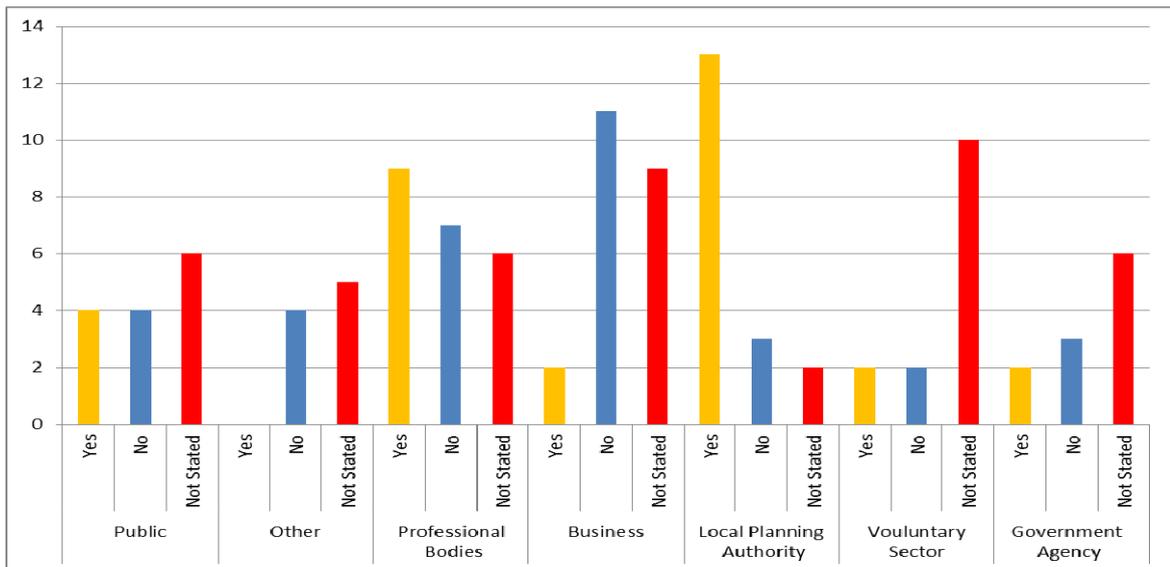
- the complexity of the LDP process and the soundness tests
- lack of transparency
- difficulty in engaging with individual LPAs in LDP preparation
- inconsistency between LPAs in terms of LDP preparation methods and practices

**Community Councils & the Public**

3.25 Responses from Town & Community Councils, other voluntary groups<sup>22</sup> and members of the public indicate that they find it difficult to engage in the LDP process or influence policy decisions due to a combination of complexity, length of the process and lack of transparency. There is regular evidence in the press of such situations arising during the plan preparation stages. **We consider such a situation raises the risk of disengagement by the public and a greater likelihood that communities will oppose development, since they see it as simply being imposed on them.**

**Development Management**

3.26 Question 12b of the CfE asks whether the current allocation of roles and responsibilities provides the most effective delivery of planning application decisions. The public and professional bodies were evenly split, with the latter marginally answering in the positive. Local planning authorities heavily support the current arrangements whilst the clear majority of the business community do not think the current arrangements are effective.



<sup>22</sup> See for example submissions by One Voice Wales (No. 85) & Ystradgynlais Town Council (No. 47)

## Development Management – National

### *Welsh Government*

- 3.27 Many of the responses to the CfE, particularly from the business sector, argue strongly that the **Welsh Government provides insufficient incentive as a reward to encourage good performance by LPAs**, a point also made in relation to LDPs<sup>23</sup>. Linked to this was the question of the need for consistent information to enable the Government to properly judge performance. Questions were also raised about the status of national policy; the balance between the various aspects of national policy, some of which were seen as competing; and the relationship between LDPs and national policy.
- 3.28 The Government has the power to ‘call-in’ applications for decision by Ministers. Some responses to the CfE criticised the manner in which the Welsh Government handles the call-in process on grounds:
- some applications do not merit call-in: a public inquiry is unnecessary
  - the procedure is not transparent and the reasons for the decision whether to call-in an application are sometimes unclear
  - unnecessary delay when the Minister approves an application that the LPA would have approved
  - no timescale and delay for the decision to be issued after the Inspector’s report has been submitted.

Several of the participants in the round table discussion on third party appeal rights argued that **greater use should be made of the call-in procedure to protect communities from the potential effects of decisions by LPAs that are perceived to be perverse**. This would apply in the main to decisions by Members to approve applications when officers recommend refusal

- 3.29 For what appear to be historic reasons, the Welsh Government deals with various applications, made under a wide variety of Acts dealing with matters such as rights of way, common land, allotments and caravan sites. In addition, various Directions and Orders are referred to Ministers for confirmation, even though they may be unopposed. **The reasons why such work remains with the Welsh Government rather than being undertaken by LPAs, subject to a right of appeal to the Welsh Ministers, is unclear.**

### *The Planning Inspectorate*

- 3.30 Question 15a asks whether the Planning Inspectorate (PINS) delivers appeal decisions and plan examinations effectively. The majority of respondents (43%) consider that the Inspectorate provides an effective service, with 11% answering it does not; 46% gave no view. Question 15b asks whether the Inspectorate could play some wider role in delivery. Two respondents suggested there should be a separate Inspectorate in Wales; most considered that PINS should continue with its existing role.

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<sup>23</sup> See submissions by Wales Planning Consultants Forum (No. 37) and Redrow Homes Ltd (No. 42)

3.31 Other points raised in the CfE relating to the role of PINS include:

- the time to determine appeals
- appeal procedures in Scotland are more efficient, particularly the greater intervention by Reporters
- better use could be made of PINS' expertise
- it needs to communicate more clearly and consistently
- it could provide a mediation service
- it could play a regional examining role
- costs of the appeal system
- its role in Joint Housing Land Availability Studies

### **Development Management – Regional**

3.32 There are groups working at regional level in terms of plan making, as discussed above. **However, as a number of the responses point out, there are no equivalent arrangements for dealing with applications that have cross-boundary or regional implications.**<sup>24</sup> Such applications can be called-in for decision by the Welsh Government<sup>25</sup> as this procedure is designed to handle applications that raise planning issues of more than local importance, but it would not be feasible to call-in all such applications.

3.33 Another consistent theme is that LPAs currently lack the resources to deal with certain developments which, by virtue of their complexity, are difficult for local planning authorities to handle. There is a specialist team in Flintshire County Council providing advice to the North Wales authorities on minerals and waste applications and a similar service is provided by Carmarthenshire County Council. The Simpson Review<sup>26</sup> calls for this initiative to be developed further and there is obvious potential for LPAs to develop a joint approach to provide a specialist service to deal with applications with cross-boundary or national implications.

### **Development Management – Local**

3.34 Local planning authorities are responsible for local delivery of DM services. Reflecting the variety of responders to the CfE, there are mixed views of whether the current structure of local government in Wales allows planning decisions to be taken at the most appropriate level. **A core theme is a lack of consistency in the manner in which the DM function is delivered across LPAs.** Frustration exists regarding the different processes found in each authority, reflecting the findings of the GVA Grimley study. A drive for greater consistency is identified in a number of operational, practical areas, which would assist in the delivery of planning services for customers. These include:

- validation of applications;

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<sup>24</sup> See for example submissions by South Wales Regional Aggregates Working Party (No.10), South Wales Biodiversity Officers (No. 41), SEWSPG (No.78, West Coast Energy (No. 80)

<sup>25</sup> See PPW para 3.12.1 for examples of applications that it would be appropriate to call-in

<sup>26</sup> The Simpson Review: '*Local, Regional, National: What services are best delivered where?*' Report to Carl Sargeant AM, Minister for Social Justice and Local Government, March 2011

- standardising planning conditions and Section 106 clauses;
- pre-application discussions;
- schemes of delegation for decision making;
- the size, nature and operation of Planning Committees;
- toolkits for LPAs to interpret TANs (employment land, site viability etc).

**3.35 The importance of the comprehensive training of Members and officers is a consistent theme across all sector submissions**, both for DM and DP.

Anecdotal evidence was received at all stages of our work of some planning decisions being taken that were felt to be unduly influenced by local objections, rather than sound material planning considerations. Members were considered to have acted inconsistently and failed to have regard to officer advice. Whilst it is accepted that these decisions may be seen to reflect the local will, many such decisions result in appeals or challenges, with subsequent delays and costs to both applicants and local authorities.

**3.36 Other issues, some of which are consequent upon the operational issues identified above are -**

- complexity and lack of transparency;
- excessive information requirements at different application stages;
- negative, regulatory attitude by some officers and LPAs;
- lack of certainty – both at the eventual outcome and the time required;
- delay, leading to loss of confidence and loss of investment;
- multiple application types;
- ineffective enforcement;
- viability and the cumulative impact of LPA requirements.

***National Park Authorities***

3.37 Some respondents argued that there are too many local planning authorities and called for a reduction in their number<sup>27</sup>. However, reorganisation of the structure of local government is not within our Terms of Reference. Nonetheless, the principle of sharing resources is advocated in the Simpson Review and we explore this further in Chapter 4 (Recommendation 54).

3.38 It was also proposed that the National Park Authorities (NPA) should lose their planning powers<sup>28</sup>. Whilst this would reduce the number of local planning authorities there are arguments on both sides. The NPAs argue that they need planning powers to give the necessary degree of protection to these nationally designated areas and to ensure a consistent approach to plan making and development management. In our view this issue should be considered in the wider context of the delivery of planning powers in nationally designated areas and we note that the Welsh Government has commissioned a separate study on this topic.<sup>29</sup> We do not consider that at the present time we have sufficient evidence to come to a conclusion and for that reason we make no recommendation on whether NPAs should retain planning powers.

<sup>27</sup> See submissions by Wales Planning Consultants Forum (No. 37), Powys County Council (No. 106)

<sup>28</sup> See Submission by the Country Land & Business Association No. 68

<sup>29</sup> *The Delivery of Planning Services in Statutory Landscape Designations* Welsh Government Research

### ***Nationally Significant Infrastructure Projects***

- 3.39 A system for granting a single integrated permission for nationally significant infrastructure projects in England and Wales was established by the Planning Act 2008. However, in Wales the system only applies to a limited extent, regulating energy generation schemes over 50 Mw, electricity lines over 132 Kv and harbour projects. Other types of infrastructure projects in Wales remain subject to the normal planning application process, except for transport (mainly rail) and marine works schemes, which are already subject in Wales to approval by the Welsh Ministers through an order under the Transport and Works Act 1992.
- 3.40 There are further complications in Wales and the evidence presented to us made a number of criticisms of the current position. They can be summarised as the **delay and complexity in obtaining consent for large renewable energy schemes caused by the division of responsibility between the NSIP process**, which deals with the consents for the energy generation plant and high voltage lines, while transformers and other ancillary developments remain the responsibility of the local planning authority. This causes confusion, frustration and prevents effective delivery.

### ***Town and Community Councils***

- 3.41 Some respondents seek an increase in the powers currently available to Town and Community Councils<sup>30</sup> and a widening of their role. The issue is whether there is a **capacity and willingness on behalf of some Town or Community Councils to undertake a wider role** and the impact on delivery.

### ***Mediation***

- 3.42 There was support from a number of respondents for the introduction of mediation in planning.<sup>31</sup> In most cases the suggestion was in connection with development management, particularly to either reduce the number of appeals or reduce their scope.<sup>32</sup> However, the RTPI and the Town and Country Planning Association also suggested there was scope for much wider use of mediation, including prior to LDP examinations.

## **Third Party Rights in Wales**

- 3.43 Before moving on to our recommendations for change, we deal with a fundamental issue that arose through the responses to the Call for Evidence, namely whether there should be a third party right of appeal in Wales. Were we to be in favour, this would have considerable implications for our other recommendations for change. The case for and against third party rights was debated at a round table session on 10 May 2012. It was attended by most of

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<sup>30</sup> See submissions from Nia Griffiths AM (No. 66), Ystradgynlais Town Council (No. 47), One Voice Wales (No. 85), Tim Ball (No. 1), Friends of the Earth Cymru (No. 54)

<sup>31</sup> See submissions by the Town & Country Planning Association (No. 28), RTPI (No. 60)

<sup>32</sup> See submission by Flintshire County Council, No. 91

the organisations that had raised this issue in their responses to the call for evidence<sup>33</sup>.

3.44 Some of the issues in support of appeal rights for third parties were:

- The role of planning is to safeguard public interest and the environment for this and future generations.
- The appeal system is currently unbalanced
- Third party rights would encourage good proposals and discourage bad
- The current system encourages LPAs to approve to avoid costs at appeal
- Third party rights would encourage acceptance of unpopular decisions
- Lack of third party rights reduces public and community engagement.

3.45 Against third party rights it was argued that:

- The right of appeal stems from property rights; third parties do not have property rights but have 'political' rights.
- There are 4 methods of relief open to third parties in the event of potentially spurious decisions affecting them:
  - The Welsh Government can call in applications
  - The local planning authority can revoke or modify a planning decision
  - Judicial review
  - The local ombudsman in the event of maladministration

3.44 We considered the evidence presented to us at length but came to the unanimous view that most of the examples put forward in support of the need for third party rights were in reality instances where the existing planning system had not worked as it should.

3.45 In our view such a significant change risks overburdening the system and shifting resources away from decision and plan making. We believe that the arguments in favour do not justify the burden that would be placed on the Planning Inspectorate and LPA planning officers. We are satisfied that the problem applications cited to us during the debate are not the norm and do not justify the shift of resources implied by the introduction of third party appeals. We do not consider that a third party appeal right would benefit those sections of the community who are traditionally seldom heard. Resourcing confidence in the planning system is a better solution. Most importantly, none of those arguing in favour were able to produce a set of clear criteria that did not run the risk of abuse of the right of appeal by people acting in a vexatious manner.

3.46 Our conclusion is that measures are needed to ensure those who may be affected by a development are made aware of it from the earliest stage and those who consider they might be affected are given every opportunity to be heard. Front loading the planning process and involving third parties in planning decisions from the earliest stages would address the types of problems that have been described to us and go some way towards improving public perception and confidence in the planning system. We are strongly of

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<sup>33</sup> CPRW, Environment Link, Friends of the Earth, Home Builders Federation, The Law Society, One Voice Wales, PEBA, Planning Aid Wales, RTPI Cymru, The National Trust, TCPA, WLGA

the view that Town and Community Councils could play a more explicit role in this area. (Recommendations 52, 53)

- 3.47 We also support the view expressed by Planning Aid Wales (PAW) forcefully during the debate that the crucial time for community engagement is during the preparation of the Local Development Plan. We consider that their work with Community Councils in the Brecon Beacons National Park demonstrates the benefits to be gained from proper, meaningful engagement with communities to build understanding and capacity. Examples of good practice of this kind need to be collected and disseminated so that all may benefit. We make recommendations in Chapter 4 to create a body to make best practice the norm. (Recommendations 37-40)
- 3.48 Democratic accountability is at the heart of planning decisions. In our view Planning Committee Members need to be publicly accountable and demonstrably making lawful decisions based on sound judgment in the public interest. (Recommendations 55, 57)
- 3.49 We heard some criticism of the role of the Planning Inspectorate during the debate. The public do not have as much confidence in the appeal system as would be anticipated given the Inspectorate's general reputation for independent and impartial appeal decisions and its core values of openness, fairness and impartiality. Other responses argued the need for the Inspectorate to communicate better. We therefore recommend in Chapter 4 that the Inspectorate undertakes a proactive public communications exercise in consultation with the Welsh Government and stakeholders to help improve confidence in appeal decisions. (Recommendation 46)
- 3.50 There was support in the responses to the CfE across many sectors for the introduction of mediation and arbitration in the application process, which could avoid some appeals; this is addressed in Chapter 4. (Recommendations 62-64)
- 3.51 Somewhat to our surprise there was considerable support at the debate from supporters of third party appeal rights for greater use of its 'call-in' powers by the Welsh Government. This was considered to be one way of giving protection against unreasonable decisions by committees. This is also addressed in Chapter 4. (Recommendations 30-34)
- 3.52 In summary, we do not consider there is a case for introducing third party rights of appeal in Wales. The issues that were raised with us can be overcome by other measures to ensure that the rights of the public to be involved in decisions affecting them are properly protected. We make a number of recommendations (as specified above) in Chapter 4 designed to widen public involvement in the planning process.

#### **Recommendation 4**

**We recommend that third party rights of appeal are not introduced in Wales, but that a number of initiatives are taken forward, as outlined in Chapter 4, to ensure full participation by the public in planning decisions and plan making.**

## GUIDING PRINCIPLES

- 3.53 We conclude this chapter by reflecting in broad terms on the evidence we have gathered and the implications. While the call for evidence revealed diverging views about the performance of the planning system as it currently stands, there was no evidence or views presented to us which sought to start afresh.
- 3.54 We believe that the system is conceptually sound and not in need of root and branch reform. In fact, too much deviation from the current system would create just the conditions of uncertainty that deters investment.
- 3.55 The fundamental concepts of the planning system, even after sixty five years remain remarkably relevant and enduring testimony to the vision and foresight of the draftsmen of the 1947 Act.
- 3.56 The Group heard many anecdotes and case studies about planning barriers to economic growth, one of the potential outcomes of the system. Though there was not conclusive quantitative evidence to this effect, the Group agree that such a perception could be potentially detrimental to the health of the Welsh economy. Furthermore, if Wales could create a comparative advantage with a simplified planning regime, it would aid economic competitiveness. On the other hand, environmental groups also considered that there was potential for changes in the difficult economic circumstances of this review that would seek to prioritise economic issues over others. The Group sought to keep both points of view in mind when considering their recommendations.
- 3.57 The Welsh Planning Minister meets the Councillors responsible for planning and their chief officers in one room on a regular basis. Equally the Minister regularly meets key stakeholders. We believe that this level of communication and dialogue has been central to the successful evolution of the Welsh planning system since devolution. Maximum use needs to be made of such opportunities to create the necessary culture of positive planning.
- 3.58 We have found – as did both GVA Grimley, in their study of the planning application process, and the Sustainability Committee in 2010 – a system under stress and struggling to cope with the demands of complexity, information overload and changing priorities.
- 3.59 We conclude that the forthcoming Planning Bill should reform the present planning system and we have formulated the planning principles (set out on the next page), which the reforms we recommend are intended to meet.

*[See following page for Planning Principles]*

## PLANNING PRINCIPLES

1. The overarching purpose of the system is to provide the land use dimension within the “central organising principle” of sustainable development.
2. Citizens, interest groups and businesses must feel that the system will treat them fairly, and that they have been included in a timely manner, have an opportunity to state their case and have received a reasoned response.
3. Plans should be adopted in a timely manner under a procedure that balances sufficient time for democratic consultation and deliberation with the national interest in a planning system that determines applications in accordance with complete and up to date statutory plans.
4. There is a national and regional dimension to the distribution of sustainable development which must be reflected in each planning authority’s local development plan.
5. The legitimacy of:
  - (a) nationally significant developments being approved by Ministers who are democratically accountable to the National Assembly;
  - (b) the oversight role of the Welsh Government in ensuring effective and efficient planning.
6. The increasing complexity of individual planning applications and the expectations placed on the planning system require the system to be more consistent across local planning authorities and sufficiently flexible to control and manage development through a range of appropriate conditions and agreements.
7. Where disagreements arise there should be flexibility in the way in which disputes can be resolved and which gives recognition to the role that alternative dispute resolution methods can play in reaching agreement while still respecting the wider public interest in planning decisions.
8. Decision takers should be trained in evidence based decision making in accordance with legally based principles.
9. There should be an institutional structure for promoting good practice, identifying and remedying weaknesses and developing a nationally consistent service.

## CHAPTER 4: ROLES & RESPONSIBILITIES

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- 4.1 In this Chapter we set out the more significant recommendations to address the issues that have emerged in the CfE and other evidence we have gathered. We consider these at the national, regional and local level, dealing first with development plans and then development management.

### DEVELOPMENT PLANS: OVERVIEW

- 4.2 We confirm that the main role of the Welsh Government in development planning is to set the national framework within which LPAs can deliver development plans. The call for greater intervention implies that it should have, and be ready to use, deliverable reserve powers to intervene in the preparation of development plans when there are unreasonable and unnecessary delays.
- 4.3 We accept that not all planning matters can be effectively considered at either a national or a local level and that a process is needed to enable cross boundary and strategic planning to be carried out at a regional level.
- 4.4 We consider that the LDP process needs to be improved, not replaced. Improvements are needed to the consultation processes to secure better feedback to early representations and to increase levels of engagement with all stakeholders. Town and Community Councils should play a larger role both in the LDP process and in the preparation of Supplementary Planning Guidance (SPG), which we consider has a significant role but requires a consistent and better regulated process to enhance its status.

### A National Development Framework

- 4.5 We consider there is a case for a national development framework in Wales for both plan making and national development decisions. The need for such a framework was a common theme in many of the representations made to us, in particular to determine priorities and to set the strategic context for development planning at the regional and local level. There was a wish amongst those we talked to for the Wales Spatial Plan (WSP) to be revised and updated while still respecting the principles of the European Spatial Planning Perspective (1999). However, the current version of the WSP has in our view been overtaken by a number of recent Welsh Government initiatives, particularly the Wales Infrastructure Investment Plan (WIIP) and the Living Wales Programme.
- 4.6 The WIIP sets out the Welsh Government's strategic investment priorities, providing a detailed account of sectoral investment plans through to 2014-15. However, in our view it does not provide a spatial framework either for decisions on new infrastructure proposals, for other projects with national or regional spatial implications, or for plan making.

- 4.7 The WIIP refers to the Programme for Government and its commitment to developing a national plan for the use of Wales' vital natural resources and states
- “This will be developed in the light of the consultation on the proposals in Sustaining a Living Wales in order to provide a clear basis for future investment decisions.”*
- 4.8 Under its Living Wales Programme, the Welsh Government is proposing to introduce an Environment Bill (due 2015) and has recently consulted on a Green Paper, *Sustaining a Living Wales*, on a new approach to natural resource management in Wales. The aim, as set out in the Green Paper, is:
- “To ensure that Wales has increasingly resilient and diverse ecosystems that deliver environmental, economic and social benefits now and in the future.”*
- 4.9 The national plan referred to in the Programme for Government is an initiative stemming from this Green Paper, the proposal to create an overarching national Natural Resource Management Plan (NRMP) to identify environmental constraints and opportunities at a national scale. In our view this Plan could assist in identifying opportunities for development at a national scale as well as improved outcomes for the natural environment.
- 4.10 The WIIP recognises the importance of spatial planning, stating
- “We will ensure that this ethos of spatial planning is integrated into the Plan from the outset when developing the knowledge required to inform nationally strategic infrastructure investment decisions.”*
- 4.11 Both the WIIP and the Living Wales Programme explicitly recognise their importance as a basis for future investment decisions, particularly for nationally strategic infrastructure investment. We are of the view that the work on the NRMP naturally leads into the preparation of a national development framework, identifying opportunities for and constraints on strategic development, spatially and at a national scale.
- 4.12 The land-use planning system in Wales is a key delivery mechanism. We consider that a national development framework is the essential spatial tool for delivering the objectives of the Living Wales Programme and the WIIP. We strongly recommend that the Welsh Government ensures there is close alignment and integration between the Living Wales Programme and the preparation of the NRMP, the WIIP, and the land-use planning system. The opportunity presented by the NRMP and the publication of the WIIP, which commits itself to spatial planning principles, must not be missed. Unless this work and the land use planning system in Wales are closely aligned from the outset, delivering the Welsh Government objectives for integrated decision making and the achievement of sustainable development will be difficult.
- 4.13 We envisage that a National Development Framework (NDF) would be essentially spatial in content, setting national land-use development priorities and avoiding the needless and damaging competition for strategic investment that can and has occurred between regions and Councils. It has considerable potential to benefit the economy. A national approach, subject to regular review, would allow for a wider perspective to be adopted and therefore a

cohesive package of sites identified to provide a more comprehensive portfolio than it is possible for a single local authority to supply. The long term investment required to promote and service certain sites can be threatened in the short term by the cyclical nature of the economy. However, a national strategy should allow for long term decisions to be made and local planning authorities to deflect potential criticism arising from allocated sites not being developed. In addition, a strategy which considers the demand perspective and identifies key location and property criteria for existing and emerging industries will allow for limited public sector investment in infrastructure and services to be targeted on a limited number of strategic sites, potentially also allowing for surplus sites to be released from employment allocations. Finally, a wider property strategy for employment in Wales would help inform policy in other areas, from transport and infrastructure to housing.

- 4.14 A NDF would also be essential to set the framework for future Welsh Government decisions on national strategic infrastructure projects, which we deal with later in this chapter. We consider that such a national framework should gain democratic legitimacy through the roles we envisage for the Welsh Ministers and the National Assembly in the formulation and approval of the NDF. This work will have cross-boundary implications in respect of the national infrastructure policy framework for England and Wales.
- 4.15 We questioned whether the NDF should be independently examined and we took account of the processes used in other devolved UK administrations, which essentially require debate by the nationally elected body. As part of that debate we took into account the arrangements we recommend later in this chapter that should apply at regional level, which is where more detailed scrutiny should take place. We have concluded that a lighter level of scrutiny is appropriate at national level. We consider that the NDF should be adopted by the Welsh Government following debate and scrutiny by the National Assembly. We see considerable advantage in the appointment of an independent professional, possibly a Planning Inspector, to report to the Assembly and assist in the Assembly's scrutiny process.
- 4.16 We envisage that the NDF would be a single document. It would differ from the WSP in that it would contain specific spatial allocations based on the WIIP, the constraints in the NRMP (although this may be at a "coarse grained" level leaving more details to the LDP) and other national spatial planning policies such as Technical Advice Note 8 (TAN8): Renewable Energy. It could also include economic development sites selected as the national priorities. But it would also differ from the WSP by having a 'lighter touch', avoiding the detail on other matters such as the area strategies. We envisage that development plans at strategic and local levels would be required to have regard to or take account of the NDF.
- 4.17 We recognise that the preparation of this document will require considerable investment of resources, for which there are other competing priorities at present. In the meanwhile, therefore, an up to date statement is needed by the Welsh Government setting out those national priorities that have a spatial dimension. This is necessary for the continuing preparation of LDPs and the

emerging voluntary cross boundary work by a number of authorities in which, we recommend below, the Welsh Government should take an active role. We envisage a statement by the Minister that would set out what national documents are relevant and material and must be taken into account in development planning and development management. This series of documents with a spatial dimension could include, for example, TAN8, the NRMP, the National Transport Plan, the WIIP and the relevant spatial policies in the WSP.

### **Recommendations 5 - 7**

- 5. The Welsh Government aligns the work on the Living Wales Programme with the Wales Infrastructure Investment Plan and the land-use planning system, to inform the preparation of a national development framework to provide a spatial framework for land-use planning.**
- 6. The Planning Bill contains powers to enable the Welsh Ministers to prepare a national development framework, which should be adopted by a procedure that includes independent scrutiny of the framework in draft prior to scrutiny and debate by the National Assembly.**
- 7. The Welsh Government should, as an interim measure, identify the status of national documents such as the Wales Infrastructure Investment Plan and the Natural Resource Management Plan with respect to the land use planning system, setting out those national priorities that have a spatial dimension so as to clarify their place in the formation of informal regional land use strategies and LDPs.**

### **Development Plans: A Regional Approach**

4.18 A failure of the existing local government arrangements are their inability to develop planning policy on topics that are of a 'greater than local' significance. This is seen as one barrier to the progression of adopted development plans across Wales. Despite policy advice from the Welsh Government and the tests of soundness encouraging them to work together, LPAs generally work separately to produce their development plan documents. There is little scope or formal machinery to develop collaborative approaches to cross-boundary issues on a regional, or sub-regional, scale. The National Assembly's

Sustainability Committee<sup>34</sup> and the Simpson Review both recognise the need to strengthen collaborative working arrangements.

4.19 Aware of the decision by the UK Government to remove regional planning in England, we sought advice from those with direct experience of that regional system. We were advised of the structural weaknesses within that system including: insufficient accountability of the Regional Assembly in the absence of directly elected members; insufficient inter-regional coordination; and the separation of economic planning from spatial planning. Consequently, the structure of regional planning became too complex and local communities were excluded from the process.

4.20 We have also noted the conclusions of the Communities and Local Government Select Committee in their report<sup>35</sup> on the abolition of Regional Spatial Strategies in England:

*"We do not agree that strategic planning is merely "comforting to planners"; it performs an essential role in effective place-shaping and in ensuring economic growth and prosperity." (para 42)*

Furthermore, we have taken account of the conclusions and recommendations of the 2011 research report for the Welsh Government by Roger Tym & Partners<sup>36</sup> that there should be new arrangements for strategic planning across local authority boundaries.

4.21 The evidence indicates a number of areas where value would be added by LPAs working collaboratively to address common policy topics on a regional basis<sup>37</sup>. These topics and the advantages of a regional approach could include:

- housing provision where labour market and travel to work areas extend over local authority boundaries
- the ability to discuss housing numbers and strategic sites
- adopting a common approach to site viability
- infrastructure requirements, such as waste management facilities, for catchment areas wider than an individual local authority
- minerals
- gypsy and traveller sites
- green infrastructure networks that need connecting across boundaries
- flood risk, where allocations could impact on adjoining authority areas
- demand management to free road space for sustainable transport modes and integration with Regional Transport Strategies
- strategic employment sites, avoiding greenfield allocations reducing the likelihood of brownfield regeneration in an adjoining area

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<sup>34</sup> National Assembly for Wales Sustainability Committee *Inquiry into Planning in Wales* January 2011: Recommendation 14

<sup>35</sup> Communities and Local Government Committee (2010-11) Second Report, *Abolition of Regional Spatial Strategies: a planning vacuum?* London: TSO, HC 517

<sup>36</sup> Roger Tym & Partners *Planning for Sustainable Economic Renewal*, June 2011

<sup>37</sup> See for example submission by C Swain, Arup, No 23

- stronger evidence base for decisions on planning applications with impact extending beyond boundaries (out of town retail development)
- 4.22 A 'larger than local' approach to economic spatial planning could allow for a balanced portfolio of more significant employment sites and buildings to be identified and promoted. Wales should maximise its economic impact by making the most effective use of public and private sector resources to deliver economic policy objectives and therefore to fulfil market demand. A property strategy for employment in Wales could focus on higher level and more specialist employment sites. It could ensure that sufficient sites and locations are adopted to cater for the retention of our existing industries and businesses, as well as true inward investment.
- 4.23 Taking the evidence before us as a whole, we have concluded that there is a persuasive case for creating a structure to enable strategic land-use planning to take place at a level above the individual LPA.
- 4.24 Furthermore, the evidence clearly demonstrates a need to improve the delivery of LDPs. The responses to the CfE indicate strongly that a process enabling agreement on cross-boundary issues at a regional level could potentially smooth the process of preparation and adoption of LDPs. If regional consensus could be reached on these matters, time could be taken out of the Local Development Plan process, both in preparation and examination. This must be good for the delivery of the development plan system.
- 4.25 We recognise that LDP coverage should be nearing completion across Wales before a Planning Bill is enacted<sup>38</sup>, in view of the timescales for any primary legislative changes. Nevertheless, we are dealing with the long-term with regard to the possible content of a Planning Bill. Even when there is complete LDP coverage, every plan will need monitoring and review. The need for strategic regional planning is hence continuous and long term.
- 4.26 Critically, what needs to be addressed is the method by which regional consensus is sought and how any "agreement" is given weight and status, particularly in the LDP process. Whilst there are examples of informal collaboration in Wales resulting in consensus on such matters as housing apportionment, these exercises have generally failed to gain credibility and have not, for the most part, translated into LDPs reaching adoption sooner. Our next conclusion, therefore, is that any regional arrangements require public scrutiny to provide transparency and weight to the outcomes.
- 4.27 The options we have considered are:
- i. voluntary collaboration at a regional level
  - ii. voluntary collaboration with a 'duty to cooperate'
  - iii. nationally mandated figures for set topics, with a duty to apportion these figures at a regional level
  - iv. a statutory framework for the preparation of strategic regional plans
- 4.28 We set out our views on these options below:

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<sup>38</sup> *Progress Adopting Development Plans In Wales*, Welsh Government, 30 April 2012

- i. We can dismiss the first since a purely voluntary arrangement would not provide the necessary certainty and consistency required to improve delivery. Arrangements would be fragmented and there would be no incentive for authorities to reach agreement on the difficult issues, with parochial attitudes too easily blocking agreement within regions. It would be impossible to ensure cooperation if some authorities chose not to participate or did so reluctantly. Consensus could not be reached in such circumstances. Independent examination would be pointless as any outcome could only have any status if all constituent authorities participated and transposed what was agreed into their LDPs.
- ii. The second option would overcome some of the objections to the purely voluntary arrangement by including a 'duty to cooperate'. However, arrangements would again be fragmented. There would be no commonality of topics to be considered, no timescales for agreement, and again no certainty or consistency. Lack of consistency is one of the main current criticisms of the planning system. In addition, the 'duty' to cooperate would be difficult to enforce where agreement could not be reached, for example where one authority is asked to accommodate essential but unpopular infrastructure for the sake of the wider area. The implications of such a 'duty' are open to interpretation, as evidenced by the different views now emerging in England.
- iii. The third option introduces an obligation to meet certain minimum requirements at a strategic level, whilst leaving the manner in which each constituent authority in the region meets the requirement, to be decided at the local level by consensus. However, this does not allow procedures or timescales to be set and the topics that lend themselves easily to this approach are limited in the main to housing numbers and strategic economic sites. For the regional approach to be meaningful it should be able to deal with the variety of topics set out in paragraph 4.21 above. This option would need a statutory framework enabling independent examination.
- iv. The fourth option is a statutory framework for the preparation of strategic plans covering defined regions. We looked at the Scottish Strategic Development Plan process as a model for this approach. This has the benefits of being able to be applied consistently, providing certainty and transparency, including a process of public scrutiny and independent examination, and enabling Welsh Ministers to have reserve powers of intervention. However, whilst there is a statutory framework, the work to deliver the strategic plan is done locally by authorities forming joint working arrangements. The advantage over the other options is that a properly designed statutory framework, with timetables and powers of intervention for Ministers, would encourage authorities to take a wider view and tackle the difficult issues to achieve a regional consensus.

- 4.29 A practitioner review due to be published this summer<sup>39</sup> concludes that strategic planning on a statutory basis provides the best chance of translating a common solution to an area's problems into action on the ground. It found that, regardless of institutional arrangement, the ability to make difficult decisions about the location of major new housing and other controversial developments was much better if strategic planning operates under a statutory rather than voluntary system. It follows that there are then stronger mechanisms to require such strategic proposals to be incorporated into LDPs.
- 4.30 We recognise that the need for and benefits of a regional approach are far greater in some parts of Wales; a regional approach may neither be necessary or appropriate for the whole of the country. For large parts of the country a single level of development plan, the LDP, suits the nature and geography of the issues to be tackled. However, it is important that any regional process is introduced consistently to provide certainty and transparency. We conclude that a statutory framework (option iv above) provides the best route to create the regional arrangements that are required to facilitate delivery of the planning system in Wales. This will require a new primary legislative framework to be created by the Planning Bill.
- 4.31 It is important that in setting up this framework lessons are learnt from experience in England and Scotland. Transparency, accountability, co-operation and strong leadership, both at national and local level, are essential. Leadership does not imply diktats by the Welsh Government but a system based on collaboration and trust with a commitment by both sides to deliver<sup>40</sup>. Nevertheless, there should be a statutory underpinning that ensures the national interest in having timely and up to date development plans in place.
- 4.32 We therefore envisage a statutory framework, along the lines of that in Scotland, that does not create a new tier of government but enables a dialogue between the Welsh Government and LPAs on the definition of areas to which a requirement to produce a strategic plan would apply, and the working arrangements for the production of that plan. The topics to be included in that strategy would also be open to discussion, subject to a core set of requirements. The Scottish system does not seek to prescribe the matters to be included in their strategic development plans and we also consider these details should be left for agreement between the constituent authorities, to address the particular strategic issues of the area. There will, however, be a need for the Government to have reserve powers to specify boundaries, arrangements and timetables in the absence of agreement and to have further powers of intervention. The aim should be to leave the preparation of the regional strategy under the local control of the constituent LPAs, but with the clear understanding that the Government would not hesitate to use its reserve powers to prevent unnecessary delays.

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<sup>39</sup> Swain C, Marshall T, Baden T eds, English Regional Planning 2000-2010: Lessons for the Future, Routledge/RTPI series, forthcoming.

<sup>40</sup> See Simpson Review: *Local, Regional, National: What services are best delivered where?* Report to Carl Sargeant AM, Minister for Social Justice and Local Government, March 2011: principles of good governance, paras 4.3-4.4

- 4.33 Whether the SDP process needs a body recognised by statute to take ownership for certain legal purposes, such as the carrying out of an SEA, should be consulted upon by the Welsh Government. We were advised to consider this issue when we talked to the TAYplan team. There are options to manage the process, including a regional planning board or a joint committee representing the constituent authorities with rotating chairs. The discussion of the principles of good governance in the Simpson Review, particularly paragraph 4.3, are in our view a sound basis for determining the appropriate structure and governance arrangements.
- 4.34 The strategic development plan (SDP) would become part of the development plan and individual LDPs would be required either to conform to it or be consistent with it, as in Scotland. For that to occur, it would need to be independently examined. The examination process would need to be sufficiently rigorous and it remains to be decided whether that should be on the basis of testing the whole plan to decide if it is sound, or considering only the outstanding issues along the lines used in Scotland. We comment however that if the test of soundness is retained for LDPs it would seem illogical to have a different test for the strategic plan.
- 4.35 The plan we envisage would be short and concentrated on the key issues needing to be addressed regionally. LDPs were also envisaged as being short and concentrated; that vision has not been realised. However, there are models emerging from the Scottish system, such as the Strategic Development Plan produced by TAYplan<sup>41</sup>, which was awarded the RTPi Silver Jubilee Cup for 2011. This is the type of concentrated, strategic document we envisage.
- 4.36 If the Welsh Government accepts our recommendation it will be necessary to relate our proposals to the outcome of the work of the City Regions Task and Finish Group, which has yet to report at the time of writing. Nonetheless, we believe there are strong arguments justifying the introduction of strategic land-use planning arrangements in certain parts of Wales whatever the recommendations of the City Regions Group. If they conclude there are economic grounds for a city region approach to economic planning, the strategic framework we envisage would be capable of delivering the necessary land-use planning arrangements.
- 4.37 Any system is only as strong as the people within it. We are aware that since the creation of the unitary system of local government based on 22 local authorities, Welsh LPAs have had little opportunity for strategic planning. The Welsh Government will therefore need to ensure that support is in place for those involved in the new strategic planning process, to provide them with the skills and knowledge they will need. We take comfort from the fact that there is experience available in Scotland that can be harnessed to assist Wales develop its own approach. In addition, we recommend later in this chapter (Recommendations 37-40) the formation of a body, the Planning Advisory and Improvement Body (PAIB), to help deliver the changes to the planning system that are needed, including training, provision of specialist advice and support,

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<sup>41</sup> Proposed Strategic Development Plan 2012 – 2032 for Dundee City, Perth and Kinross, Angus and Fife Councils, June 2011

and the identification of best practice. Supporting the delivery of strategic plans would be part of the PAIB's role.

- 4.38 We consider that with or without a Welsh Government commitment to strategic plans, work on LDPs must progress and accelerate to answer the criticisms we have heard. Continued delay in achieving up to date development plan coverage across Wales is not an option. There is evidence of an increasing desire to work regionally, particularly in SE Wales, and there is a history of it in North Wales. The Welsh Government should become actively involved in all such initiatives so that full advantage is taken of the opportunities created by this enthusiasm for regional collaboration and coordination.
- 4.39 We purposely refer to the Welsh Government here since the planning system is a delivery mechanism with application across several Ministerial portfolios. If the Welsh Government is to realise its ambition to create the conditions for growth in the current difficult economic times, it is vital that coordination of initiatives and investment takes place at the highest levels of Government. The Simpson Review confirmed that increased collaboration across the public sector in Wales is essential to gain maximum value from limited resources. We therefore urge the Government to become involved in and encourage voluntary regional planning arrangements in advance of any legislative changes and to use all the tools available across departments to ensure such work is democratic, accountable, transparent and inclusive, involving stakeholders whenever appropriate. This joined-up approach across all levels of Welsh Government is essential to delivery of the planning system.

#### **Recommendations 8 - 11**

- 8. The Planning Bill provides a statutory framework to enable the introduction of strategic planning.**
- 9. The Welsh Government consults on the areas where strategic planning is required and the details of a statutory framework for plan making to ensure it is fit for purpose for use in Wales**
- 10. The Welsh Government puts in place a national support structure to ensure delivery of the proposed regional strategic planning arrangements.**
- 11. The Welsh Government encourages voluntary strategic planning arrangements in advance of any legislative changes, using the tools available across all Government departments to ensure such work is democratic, consistent, accountable, transparent and inclusive.**

## Improving Local Development Plans

4.40 In Chapter 3 we expressed our concern at the volume of criticism of the LDP system and the fact that it has come from several different sectors, including business, the house building industry, consultants and LPAs. We comment on the issues raised below, but we make recommendations only where we consider the issue falls within our terms of reference as we are aware that these issues have also been raised as part of the Welsh Government's 'refinement' review. We should point out that there was no suggestion in the responses that the LDP system should be abandoned. The LDP system is seen by many organisations as a key to delivery. To replace the system, which has only been introduced relatively recently, can only disrupt delivery. Our recommendations are therefore intended to answer some of the criticisms of the way the LDP system currently operates to reduce delay, simplify the process, increase transparency and add certainty.

### *The 'Best' Plan or a 'Sound' Plan?*

4.41 It has been argued that the LDP process is flawed as it does not achieve the 'best' plan. However, this is a consequence of the legislation, which requires a plan to be 'sound'. The Inspectorate's advice makes it clear that Inspectors are not looking for the 'best' plan. The Scottish system does not include the test of 'soundness' but their advice also makes it clear that Reporters are not looking for the 'best' plan.

4.42 The system of Strategic Environmental Assessment (SEA) and Sustainability Appraisal (SA) should assist in choosing the appropriate development strategy or show what trade-offs have been made when considering alternative strategies. There will always be choices and alternatives; what is considered to be the 'best' alternative will vary between the community, committee members, owners and developers. Therefore we consider that the approach of looking for the 'best' plan is flawed.

### *The Soundness Tests*

4.43 Criticism of the tests has been voiced from several quarters, including the Royal Town Planning Institute<sup>42</sup> (RTPI), on the grounds that they have become an obstacle, preventing people understanding or becoming involved in LDP preparation. The tests were originally designed by the Inspectorate to provide some consistency between examinations by giving Inspectors a series of questions, and to help everyone understand how Inspectors were assessing the concept of 'soundness', which was not otherwise defined.

4.44 We consider that the evidence presented to us provides a compelling case for reviewing the tests of soundness. It is clear to us that the tests have outlived their usefulness. Indeed they would appear to now be an obstacle to the transparency and accessibility of the LDP system. The term 'soundness' does not convey a clear meaning and it could be seen as a barrier to the transparency of the LDP process. The development plan system in England

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<sup>42</sup> See submissions by the RTPI (No. 60), the Wales Planning Consultants Forum (No. 37), the Home Builders Federation (No. 89)

now uses a simpler set of tests.<sup>43</sup> We conclude that the Welsh Government should replace the tests with something more transparent and accessible.

#### *Earlier Intervention*

- 4.45 The current system appears to allow flawed LDPs to progress as far as the independent examination, which takes place at the end of the preparation process after many years' effort by the LPA and others. The Welsh Government offers considerable advice and support to individual LPAs during the preparation process, making it abundantly clear in their comments when they consider an LDP is flawed. However, the advice and comments it gives are not generally published and the public appears largely unaware of its involvement. An immediate improvement would be for the Welsh Government to require LPAs to publish its comments about LDPs to make its involvement more transparent.
- 4.46 The Government has powers to intervene but can only halt progress by taking over preparation of the LDP. The Scottish Government has recently suggested a 'Gateway Review' procedure for local development plans<sup>44</sup>. We consider this idea has merit. We see this as a power for the Welsh Government to intervene at any stage of LDP preparation to call for a review of progress where it has concerns. This would prevent the LDP proceeding to the next preparation stage until an independent review had been carried out. This review could be by a panel of stakeholders appointed by the Welsh Government, for example an Inspector, a representative from another authority, and a business or RTPI representative. The review could take place in a short timescale and would not take evidence but would consider the reasons stated by the Government for calling for the review, together with the emerging LDP and its evidence base, and would publish its findings.
- 4.47 We also consider that the system as it currently operates at the pre-deposit stage is neither transparent nor encourages public confidence. At present LPAs are able to move from the consultation on their preferred strategy directly to publishing the deposit LDP. The Welsh Government advises that authorities should discuss with stakeholders any issues that arise which question the preferred strategy or particular key locations for development<sup>45</sup>. In practice this does not seem to happen and instead the deposit plan effectively 'appears' without any feedback by the LPA in response to comments on its preferred strategy. This lacks transparency and does not encourage communities or stakeholders to have confidence in, or engage with, the LDP system.
- 4.48 We therefore consider that an additional step should be introduced requiring the LPA to publish its responses to the representations received on the preferred strategy within a certain timescale, including whether and how those representations will affect the deposit plan. The requirement to publish responses to representations regarding the preferred strategy, coupled with the

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<sup>43</sup> *National Planning Policy Framework*, Department for Communities and Local Government, March 2012: para 182 – positively prepared; justified; effective; consistent with national policy

<sup>44</sup> *Planning Reform – Next Steps* The Scottish Government, March 2012

<sup>45</sup> *Local Development Plans Wales*, Welsh Assembly Government, 2005: para 4.22

proposed power for the Welsh Government to call for a review where there are concerns regarding that strategy and the LPAs response to representations, should answer these criticisms and prevent the progression of flawed plans. Whilst we propose a general power for the Welsh Government to call for a review at any time, in practice we envisage this power being used at this specific stage, after publication of the LPA's response to representations on the preferred strategy. This process offers the prospect that some weight could be attached to the deposit LDP as it will have either been allowed to continue or will have passed through the proposed review process.

- 4.49 We consider the Welsh Government should issue policy advice regarding the form of the LPA's response to representations on the preferred strategy. In particular, the comments by the Welsh Government and the authority's response must be given prominence. The authority should also be required to respond to each of the candidate sites proposed by stakeholders, including whether these are in accordance with the preferred strategy. We also envisage that, in line with the existing advice in LDP Wales, the LPA should be required to reduce objections prior to the publication of the deposit plan by entering into meaningful discussions with those who made representations and that regulations should be issued accordingly.
- 4.50 A related issue that has arisen in our discussions concerns the impact of Sustainability Appraisal and Strategic Environmental Assessment on the deposit plan. The SA/SEA process is intended to be iterative<sup>46</sup>. The initial SA report is consulted upon alongside the preferred strategy and responses should be used to inform the development of the deposit plan and revisions to the sustainability appraisal report. It should be clear what elements of the appraisal have informed the policies and proposals in the deposit plan<sup>47</sup>. It is also reasonable to assume that the SA/SEA work on candidate sites will indicate that some should not be allocated for development. Although we do not have evidence to show this is a consistent failing, the SA/SEA process appears at least in some cases to have had little impact upon the eventual content of the plan. We therefore recommend that the Welsh Government requires the LPA to publish, at the same time as its response to the preferred strategy representations, a statement of what changes to the plan are indicated by the SA/SEA process and, where necessary, the reasons why these changes are not being implemented. Failure to follow SA/SEA indications that sites should not be allocated could warrant a review. We note also that the Scottish Government has a central team specialising in SEA, which undertakes work on a rechargeable basis. There would be the opportunity for such a team to be created either within the Welsh Government or the PAIB (Recommendations 37-40) to provide a similar service in Wales.
- 4.51 We consider this approach preferable to the suggested alternatives, that the LDP strategy should be submitted separately and examined before the site allocations and detailed policy sections, or a formal deposit draft stage prior to

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<sup>46</sup> *Local Development Plans Wales, Welsh Assembly Government, 2005: paras 3.2, 3.5*

<sup>47</sup> *Ibid para 3.11*

submission. In our view splitting the plan in this manner or adding another stage would lead to delay and confusion for the public. The ethos of the LDP system is a single plan with two clear steps and we see no need for change.

#### *The Examination*

- 4.52 The length of examinations has been criticised and there are three factors that may contribute from our investigation of the other UK development plan systems. These are, first, the requirement to examine the whole plan, which stems from the statutory purpose of the examination, to determine whether the plan is sound. Second, the requirement to consider all representations, rather than just outstanding unresolved issues, as is the case in Scotland. We make no recommendations on these aspects as the concept of soundness is fundamental to the current LDP process and we assume these matters will be considered by the Welsh Government's review.
- 4.53 The third factor is the delay caused when Inspectors require LPAs to carry out further work, for example to enable them to include in the plan alternative or additional development sites. This is again a consequence of the statutory framework, which requires the Inspector to either find the whole plan to be sound or to reject it; there is no provision for the Inspector to find the plan sound in part. This results in considerable delay whilst evidence is gathered on new sites, frequently requiring SA/SEA and advertising; depending on the extent of the necessary work, delays can be up to 6 months. This prevents adoption of the rest of the LDP.
- 4.54 We consider that the legislation should be amended to enable the Inspector to find the LDP partly sound, referring it back with a direction to adopt it in part and requiring the LPA to carry out specified additional work, as identified in the Inspector's binding report, within a set timescale. We envisage the timescale would be set following negotiation with the LPA. Failure to complete the necessary work within that timescale should result in intervention by the Welsh Government, which would be considerably more feasible than taking over preparation of the whole plan. The revised plan would be subject to SA/SEA, advertisement and examination, as normal, and be subject to the proviso that representations and examination would be confined to the matters specified in the original Inspector's report.
- 4.55 This process would allow the plan and the policies and allocations that were considered sound to be adopted and to attain development plan status, thus enabling and encouraging development of those allocated sites to proceed. It would leave the identification of alternative sites in the hands of the LPA, working with the community and stakeholders.
- 4.56 We are aware of the risk that when the additional work is carried out it will be discovered that there is a wider impact on the plan. However, we take the view that this will be for the Inspector to judge when conducting the initial examination. Inspectors presently have to judge the implications before asking LPAs to carry out further work during examinations and we are confident they will be able to make the necessary judgement. In any event, we do not believe it is possible to anticipate every eventuality and the potential benefits justify the changes we recommend.

## *Review*

- 4.57 LDPs need to be responsive and kept up to date. Currently annual monitoring reports are required with a full review every 4 years; reviews may be carried out at any time if the annual report identifies the need. However, the legislation would appear to require a review of the whole plan; this could prove lengthy and time-consuming, discouraging LPAs from keeping their plans up to date. A system is needed that permits flexibility and responsiveness with simple reviews that can occur not just after 4 years but at any time. We consider that a process should be introduced enabling an LPA to request from the Welsh Government consent for a partial review based on monitoring evidence.
- 4.58 Another issue is what action can and should be taken where a review is not carried out and an LDP becomes out of date. The legislation requires a review every 4 years but is silent on what action can be taken by the Welsh Ministers if one is not. We recommend that the Welsh Ministers consider what powers are appropriate in such circumstances. An alternative or complementary approach would be for PPW to set out the policy approach to the weight to be attached to an LDP if not reviewed in accordance with the Regulations.

### **Recommendations 12 - 17**

- 12. The Welsh Government reviews and replaces the soundness tests.**
- 13. The Welsh Government takes steps to ensure its advice and comments on LDPs in preparation are publicised by each local planning authority.**
- 14. The Local Development Plan Regulations are amended to require the LPA to publish its responses to representations received at pre-deposit stage on the preferred strategy, including whether and how those representations affect the deposit plan. The amended regulations should require the LPA to enter into negotiation to minimise objections and specify the issues to be covered in the LPA's response including: the Welsh Government's representations; candidate sites; changes recommended by the SA/SEA process and, as appropriate, reasons why those changes are not to be implemented.**
- 15. The Welsh Government investigates the feasibility of amending the Local Development Plan Regulations to introduce a power enabling the Welsh Ministers to require an independent review at any stage of plan preparation.**
- 16. The Planning Bill includes the power for the appointed Inspectors to find a plan sound in part and to include in their report a specification of the work required to make the plan sound and a timetable for that work with reserve powers of intervention by the Welsh Ministers where that timetable is not met.**
- 17. The Planning Bill includes provision for an LPA to apply to the Welsh Ministers for consent to carry out a partial review of their adopted LDP and the Welsh Ministers consider what powers are appropriate where a review is not carried out in accordance with the Regulations.**

## Increasing Use of Supplementary Planning Guidance (SPG)

4.59 There is an important place for SPG in adding the detail to approved LDP policy, including master plans and design briefs for allocated sites; the provision of affordable housing; and S.106 planning obligations. We have heard many criticisms of the manner in which LPAs prepare and use SPG:

- failing to involve stakeholders in the preparation of SPG
- failing to make any changes to SPG in response to comments from stakeholders or to give any explanation
- lack of transparency in the process of preparation, scrutiny and adoption
- including policy content that should have been included in the LDP
- writing SPG for internal use rather than applicants and the public
- applying SPG inflexibly

4.60 The nature of SPG is that it is guidance, which means the LPA must always be ready to hear and give reasonable consideration to arguments as to why the guidance should be departed from in specific cases. While its preparation is referred to in LDPs, the SPG is not a development plan document and it can only gain any status through having been subject to a process of consultation prior to being formally adopted. The extent of the consultation is a matter for the LPA. PPW states:

*Planning and development briefs should be used to outline sustainable design requirements where appropriate. Supplementary planning guidance and briefs can usefully be prepared in partnership with stakeholders and should be subject to appropriate consultation<sup>48</sup>.*

4.61 In England there are regulations governing the preparation of SPG but there is no scrutiny and they are not part of the development plan. Scotland also has a regulated process where all SPG is submitted to the Scottish Government and there is a 28 day period allowing it to direct changes before adoption by the LPA. The SPG then becomes part of the development plan.

4.62 In Wales the LDP Manual states “*The need to review or add key SPG should be part of the consideration of the formation of the LDP... The aim of producing succinct LDPs means that new SPG may be necessary to support the plan<sup>49</sup> ...*”

4.63 Section 7.3.5 of the Manual goes into more detail and suggests that the SPG needed to support the plan should be identified in the Timetable for the LDP, including the form of community involvement to be used to develop it in the Community Involvement Scheme. The Section gives SPG three roles:

- expanding topic based policy with guidance
- covering numeric guidance such as parking standards so that they can be changed more easily than if they were in the LDP
- a form of master plan or development brief for an allocated site

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<sup>48</sup> PPW para 4.10.16

<sup>49</sup> Welsh Assembly Government *Local Development Plan Manual* June 2006

- 4.64 We consider that SPG has an important role to play as a vehicle for involving communities and other stakeholders in formulating master plans and briefs setting out the detail of how allocated sites are to be developed<sup>50</sup>. Similar value would be gained by the LPA engaging with stakeholders on many other LDP policies that are identified as requiring SPG. In our view the whole process of SPG preparation needs to be reviewed to ensure consistency and transparency; proper stakeholder engagement; and to create a document that has status and value. Every adopted SPG should contain a statement setting out how it was prepared and confirming that it complies with the regulations.
- 4.65 As in the Manual<sup>51</sup>, the LDP should be the start of the SPG preparation process and the Welsh Government should closely monitor this aspect of emerging plans. The list of SPG should be thoroughly examined by the Inspector to ensure it is appropriate and adequate to support the LDP.
- 4.66 We do not consider that SPG should become part of the development plan; this would require examination, which defeats the object of expanding on approved LDP policy. Nor do we consider that all SPG should be submitted to the Welsh Government because of the level of work this would involve and since preparation of such advice is essentially a local matter. However, we consider that the regulations should ensure there is a proper, transparent local scrutiny process, which is applied consistently across the country.
- 4.67 Nonetheless, there are circumstances where it is important that all LPAs have particular SPG and that this is drawn up in a broadly consistent manner<sup>52</sup>. We therefore propose that the Welsh Government has the power to direct the preparation of certain 'nationally important' SPG, which should be submitted to the Minister with the power to direct modification prior to adoption. We envisage this power being used sparingly. Examples might be affordable housing or planning obligations, where it is important to ensure consistent local compliance with national policy.
- 4.68 Our final recommendation in this section is for a reserve power to require any SPG to be referred to the Welsh Ministers prior to adoption in response to a request that it be 'called-in'. Whilst SPG is essentially a local matter, in line with our general approach there is a need for the Government to exercise control where authorities, for whatever reason, go beyond the boundaries of the process. The grounds on which an SPG might be called in could include, although not necessarily be confined to:
- It has not been prepared in accordance with the regulations
  - It affects issues of national significance
  - It is considered to include policy matters that should be part of the LDP
  - It is in conflict with the LDP.

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<sup>50</sup> Indeed we consider there is a potential role for Town and Community Councils to prepare SPG, which we expand on in the section dealing with the role of these bodies.

<sup>51</sup> *Local Development Plan Manual* Welsh Assembly Government, June 2006

<sup>52</sup> See submission by the Home Builders Federation No. 89

4.69 It would be necessary for the Welsh Ministers to exercise strict control and issue advice making it clear that this power would be exercised only if there are clear grounds for intervention in what we regard as an essentially local process.

### **Recommendations 18 - 23**

- 18. To improve and deepen community and third party engagement before the application stage is reached, the Welsh Government should issue revised policy guidance placing more emphasis on the potential value of SPG to the planning process and the importance of its relationship with LDP policy.**
- 19. Scrutiny of emerging LDPs by the Welsh Government should include full consideration and comment on SPG proposals both at an early stage (Delivery Agreement) and in the LDP deposit document.**
- 20. At Examination, Inspectors should consider the scope and timetable of SPG production and their reports should incorporate recommendations on the merits of the proposed SPG, identifying any further SPG deemed necessary to implement the LDP proposals and approving the timetable for its production.**
- 21. The Welsh Government should consult on regulations covering the procedures for the production of all SPG including: developer and third party engagement; SEA and HRA processes if deemed necessary; local scrutiny processes prior to adoption; and the publication of a statement of compliance.**
- 22. The Welsh Government should have the power to direct the preparation of nationally important SPG by all LPAs; such nationally important SPG should be sent to the Welsh Government for consideration within 28 days; no response in that time would be deemed approval.**
- 23. The Welsh Government should identify and issue advice on a minimal call in process for SPG where certain defined conditions are met; these could include that the SPG is: proceeding contrary to regulations; affects issues of national significance; is considered to include policy matters that should be part of the LDP; is considered to be in conflict with the LDP.**

## DEVELOPMENT MANAGEMENT - OVERVIEW

4.70 The Simpson Review recommended that

*“.....mainstream planning should continue to be delivered on a local basis because of the need for accountability, public engagement, policies and priorities”.*<sup>53</sup>

4.71 We entirely support this principle. We believe that the role of the Welsh Government is to create the conditions that allow LPAs to deliver planning services locally. However, as with development planning, we have considered where the Government needs powers of intervention to ensure that LPAs deliver development management services in an effective and timely manner.

4.72 We consider that Welsh Ministers should take decisions appropriate for a national Government. This should include decisions on nationally significant infrastructure applications that fall within the Welsh planning system. Applications should be decided by Ministers where it is in the public interest to do so and we recommend changes to the call-in process to improve transparency. However, Ministers should review with LPAs the current multiplicity of applications resting with them that raise only local considerations. The normal model should be one of local decision with a right of appeal, or recourse for the determination of unresolved objections, to the Ministers.

4.73 We consider that a national body is needed to collect and disseminate best practice from Wales and elsewhere; to promote consistent and targeted training; and advise and assist LPAs. This body could take forward a number of our recommendations and those of other studies of the planning system.

4.74 The Welsh Government should have powers to require LPA's to provide information on the delivery of planning services and to be under a duty to cooperate with enquiries that the Welsh government may make for this purpose – in other words some “light touch” inspection powers.

4.75 We do not recommend a separate Planning Inspectorate for Wales, but see an enhanced role for the current combined Inspectorate to provide a service to Welsh Ministers. There are a number of improvements that could be made to the Appeals process. We also see a need for a clearer role and duty for statutory consultees. Specialist regional teams are needed to assist with the processing of certain types of more complex applications.

4.76 We see a need to improve public and stakeholder roles in the planning system and we envisage an enhanced role for Town and Community Councils, particularly in preparing community plans that can be adopted as SPG and disseminating information about applications affecting their area.

4.77 Pre-application consultations should be required on certain types of applications and the benefits of discussions with LPAs prior to submission of applications must be recognised.

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<sup>53</sup> The Simpson Review: ‘Local, Regional, National: What services are best delivered where?’ Report to Carl Sargeant AM, Minister for Social Justice and Local Government, March 2011 – para 3.31

- 4.78 Planning Committees and their members have a crucial role in taking decisions on sensitive and difficult applications. We must take the opportunity to create a trained group of members equipped to make such decisions; training must be compulsory. Coupled with this is a need for consistency on the size of committees, their procedures and delegation schemes.
- 4.79 We see a role for mediation and recommend how space can be made within the planning system. And we see a need to reduce the load on the planning system by removing some things from planning control, what we have called removing 'The 10%'.

### **Decisions on National Infrastructure Projects**

- 4.80 The evidence presented to us made a number of criticisms of the current position in Wales, which can be summarised as:
- The effect in terms of delay and complexity in obtaining consent for large renewable energy schemes caused by the division of responsibility between the national strategic infrastructure projects (NSIP) process, which is responsible for consenting large energy plant and the high voltage lines, while transformers and other ancillary developments remain the responsibility of the local planning authority.
  - Developments which by virtue of their complexity, rarity or their greater than local significance are difficult for local planning authorities to handle.
  - LPAs require resources to respond to these applications but receive no fee.
- 4.81 The system for granting a single integrated permission for NSIP under the Planning Act 2008 applies to only a limited extent in Wales, regulating energy generation schemes over 50 Mw, electricity lines over 132 Kv and harbour projects. Other infrastructure projects in Wales are dealt with under the normal planning application process, except for transport (mainly rail) and marine works schemes. In Wales these are approved under the Transport and Works Act 1992 or other special consenting regimes, either by the Welsh Ministers or (for non-devolved functions) the Secretary of State.
- 4.82 The NSIP process in England gains its policy legitimacy through a series of National Infrastructure Policy Statements, which must be debated in Parliament before being issued. The policies in the Statements are, in many instances, site specific.
- 4.83 The Localism Act 2011 made an important amendment to the NSIP process. Originally, decision making lay with a body of appointed Commissioners and the Infrastructure Planning Commission ("IPC") was an autonomous public body. However, the Localism Act merged the Commission with the Planning Inspectorate where since 1 April 2012 it forms the National Infrastructure Directorate. Decision making has been transferred to the Secretary of State and thus brought under directly accountable democratic control.
- 4.84 We recognise that the NSIP process is still in its infancy with few schemes having yet completed the process, which lays considerable emphasis on pre-

submission consultation by the applicant. The handling of the application runs to a tightly controlled timetable with an examination process based on written representations and responses, with restricted and focussed use of hearings.

4.85 A Welsh NSIP process would require:

- The Welsh Ministers to become the planning authority responsible for giving consent for a range of infrastructure projects
- The precise range of projects to be tailored to Welsh circumstances <sup>54</sup>
- A review of the NSIP process to:
  - a. ensure that it is suitable to Welsh circumstances, particularly the tightly controlled examination procedure and the ancillary consents that will be included in the development consent.
  - b. learn the lessons of the integration of the NSIP process within the Planning Inspectorate in England, for example in relation to the balance between the use of primary and secondary legislation
- Consideration of whether the Planning Inspectorate could provide a service for a Welsh national infrastructure process.

4.86 On the last point, there is every reason to believe this should be the case given the Inspectorate's current cross border role. Furthermore, Wales alone may not generate sufficient 'critical mass' of major infrastructure schemes to provide experience in the administration of such a process and the types of projects involved, while PINS already has a body of experience and skills to draw on.

4.87 A national policy framework for decisions on NSIP would be needed; options include:

- A Welsh national policy statement on infrastructure (similar to that in England)
- An infrastructure planning section in an enhanced Wales Spatial Plan, which would have the advantage of retaining a single national planning document.
- Conferring "nationally significant project" status on spatial aspects of TANs.
- A role for the National Assembly in debating and approving national infrastructure policies.
- Integration with the National Development Framework (Recommendations 5-7)

4.88 Other issues that would require consideration to meet Welsh circumstances include:

- An examination of the case for part of the fee for handling the application to be paid to the local planning authority in view of the extent of engagement expected of the local planning authority in connection with such applications.

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<sup>54</sup>Although in general terms the list of projects subject to the NSIP process in England also appears appropriate to Wales – see Planning Act 2008, Part 3

- The case for a fee to be payable to the local planning authority for the discharge of conditions.
  - The establishment of specialist advice teams at either regional or national level to assist local planning authorities to respond to NSIP schemes; deal with the discharge of conditions; and enforce development consents.
- 4.89 While the Welsh Government's policy is to continue to press for the devolution of responsibility for large scale energy projects, we recognise that the initiative for such a transfer rests with the UK Government. However, a Welsh NSIP process would offer the prospect of the Welsh Ministers reaching a co-ordinated decision with the Secretary of State following a joint examination of projects such as the grid connections for large scale wind farm schemes, where responsibilities are currently split with the devolved matters resting with LPAs. We believe that a Welsh NSIP scheme would significantly improve the coherence of the approval process for large scale renewable energy projects in Wales and answer many of the criticisms of the current arrangements.

#### **Recommendations 24 - 28**

- 24. The Planning Bill makes provision for nationally significant infrastructure schemes in Wales (other than those which are not devolved) to be determined by the Welsh Ministers and that a model based upon national planning policies approved by the National Assembly and the development consent process under the Planning Act 2008 should be considered.**
- 25. The approval of ancillary development related to nationally significant infrastructure projects not devolved to the Welsh Ministers (i.e. energy generation over 50 Mw and port development) is brought within a Welsh infrastructure planning process.**
- 26. National infrastructure planning policies, approved by the National Assembly as part of the national development framework, are prepared to provide the basis for national infrastructure planning decisions.**
- 27. The national infrastructure process is administered through the Welsh Directorate of the Planning Inspectorate on behalf of the Welsh Ministers.**
- 28. Provision is made in relation to nationally significant infrastructure projects determined by the Welsh Ministers for the fee structure to recognise the resource implications for local planning authorities in their role as principal consultees in relation to such applications and in relation to the discharge of conditions and in the enforcement of development consents once granted.**

## Improving the Call-in Procedure

- 4.90 During the debate on third party rights of appeal there was considerable support for the calling-in of planning applications which proponents of third party rights of appeal otherwise suggested were suitable for such a right. These included departures from the development plan; applications where the local planning authority is an interested party; and decisions made by members to approve development contrary to officer recommendation.
- 4.91 The level of support for call-in, however, was matched by criticism that the criteria for calling-in applications and the reasons for decisions whether to call-in lacked transparency.
- 4.92 The concept of call-in fulfils two functions:
- (a) It enables applications which raise issues of national interest to be notified to the Welsh Government and a decision taken at the national level. The system of notifying specified categories of development fulfils this function.
  - (b) It provides a means of intervention by the Welsh Government in cases which raise new or unusual issues, particular controversy or where there is concern to ensure that the integrity of national and local plans and policies is maintained. Discretionary call-in in accordance with the criteria in PPW fulfils this function.
- 4.93 Concern was expressed by some members of the IAG that the increased use of call-in would:
- (a) Lead to the erosion of the democratic legitimacy of the system, especially if these applications were decided by Inspectors under delegated powers (as opposed to the called-in decisions where the Minister withdraws the delegation and takes the final decision personally). The consequence may be a system that is technocratic rather than democratic.
  - (b) Impose resource demands on the Welsh Government which would have to be found by savings elsewhere in the system.
- 4.94 However, others felt that the call-in procedure is an important 'safety-valve' in the planning system, which should be retained. We recommend a number of changes to make the call-in process more flexible and responsive to the concerns expressed about its current operation and the applications that should be considered for call-in.
- 4.95 The current procedure for calling-in an application is set out in S.77 of the Town and Country Planning Act 1990, which states:
- (5) Before determining an application referred to him under this section, the Secretary of State shall, if either the applicant or the local planning authority wish, give each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.*
- 4.96 Consequently, at present a 'call-in' often means in practice the holding of a full public inquiry at considerable expense to the LPA and the applicant. There is a

small number conducted by the written process where neither the local planning authority nor the applicant exercises their right to ask to be heard.

- 4.97 It is not clear to us what the case is for an absolute right to a hearing in all called-in cases. There is now considerable experience with more focussed methods of examination and we received evidence in that regard in relation to the Scottish system, where the procedure for determining called-in applications is in the discretion of the Minister. We consider that the Planning Bill should give the Minister the discretion to determine the procedure to be used for called-in applications, in a manner that is proportionate to the issues, while maintaining procedural fairness and the opportunity for all interested parties to make representations and raise questions.
- 4.98 Views were also expressed to us supporting notification to the Welsh Government of all decisions where local planning authorities are minded to determine applications contrary to officer recommendations. In considering this suggestion we were mindful of the burden reviewing possibly several hundred additional notifications would impose on the Government.
- 4.99 We note that the Welsh Government's 2011 consultation on notification directions states that it is minded to introduce a new requirement to identify those applications approved or refused contrary to officer advice in development control returns. We strongly support this initiative. We heard of many examples where such decisions had been taken but, as the RTPI<sup>55</sup> pointed out to us, there are no statistics available. Information is needed to ascertain whether and to what extent this is an issue needing to be addressed.
- 4.100 Nonetheless, action is needed to respond to the concerns expressed during the debate on third party rights of appeal. We recommend that where an authority is minded to **approve** an application contrary to the officer's recommendation, the Welsh Minister is notified. The LPA should then have to wait for a specified period, say 21 days, before proceeding to grant the permission. In that time the Committee report together with a report and minute of the Committee proceedings would be reviewed by an Inspector on behalf of the Ministers. The Inspector's report would be sent to the authority for the results of their review to be taken into account before the authority issues its decision. The role of the Inspector would be to express a view on whether the officer's recommendation to refuse is well founded or whether there is scope for a reasonable exercise of planning judgement by the Committee to make a contrary decision to approve. A further option, which should be available to cater for exceptional circumstances, is that the Inspector should be able recommend that the Minister proceeds with a full call-in.
- 4.101 We consider this procedure enables an independent view to be sought, through the involvement of the Inspectorate, before professional advice is overturned but in a manner which still leaves the final decision with elected members. We consider the amount of additional work would be manageable, as only decisions to approve contrary to recommendations would be reviewed, and that the extra work is justified by the benefits and safeguards it would provide.

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<sup>55</sup> See submission No 60

Furthermore, the procedure we propose would hopefully reduce the number of appeals and therefore make a saving of resources in that direction.

- 4.102 In line with this we also recommend that the Planning Bill makes clear provision enabling the Minister to issue targeted directions to LPAs to notify decisions contrary to officers' recommendations. The power should be flexible to enable the Minister to respond to trends emerging from the monitoring process by issuing directions to individual LPAs either generally, or in respect of specific types of application, requiring notification prior to determination. An example might be contrary decisions on applications for isolated dwellings outside settlement boundaries.
- 4.103 We have not recommended review by an Inspector of decisions to **refuse** contrary to officer recommendation due to the amount of extra work and the fact that the applicant has the option of an appeal. However, we recommend elsewhere that a place for mediation is made in the planning process, prior to appeal, by enabling the LPA to issue a 'minded to' resolution. This could be where the committee is minded to **refuse or approve** contrary to the officer's report. If the resolution is to reach a contrary decision to approve, the Welsh Government would not be notified and review by the Inspector would not be initiated until after mediation had taken place and the committee had the opportunity to reconsider or affirm its original resolution.
- 4.104 The need for greater transparency in call-in decisions also merits attention as there appears to be a lack of confidence in some quarters that such decisions are taken for purely planning reasons. We consider that if the Minister is minded to call-in an application there should be a short period for comment. We envisage that the Minister would send a 'minded to call-in' letter setting out the reasons to the applicant, the local planning authority and the party making the call-in request and any other party (a national consultee, for example) for whom the reasons for call-in are especially relevant. There would then be a seven day period for comment before the decision was taken. Equally, the Minister should provide full reasons for deciding not to call an application in.
- 4.105 Finally, the length of time taken to determine called-in applications, especially those where jurisdiction is recovered by the Ministers was a concern to both local authorities and developers who responded to the call for evidence. We note that the infrastructure planning system in England allows six months for the examination process and three months for the Secretary of State to take the decision. These appear to us to be reasonable maximum periods for dealing with called-in applications in Wales.

[See next page for Recommendations 29-35]

### **Recommendations 29 - 35**

- 29. The Planning Bill contains a power allowing the Minister to determine the procedure to be used to determine applications that are called-in, including use of the written procedure and targeted hearings.**
- 30. A short period, such as 7 days, is allowed for comment if the Minister is minded to call-in an application. The Minister should send a “minded to call-in” letter setting out the reasons why call-in is considered appropriate, to the applicant, the local planning authority and, if appropriate, the party making the call-in request and any other party (a national consultee, for example) for whom the reasons for call-in are especially relevant.**
- 31. The Planning Bill contains a requirement that the Minister sets out the reasons for accepting and rejecting call-in requests.**
- 32. The Welsh Government requires all LPAs to supply details on a regular quarterly basis of all decisions made contrary to officer recommendation, including both refusals and approvals.**
- 33. The Welsh Government amends its notification direction to require LPAs to notify it of all applications it is minded to approve contrary to officer recommendation. The Welsh Government should then arrange for a review of the authority’s decision by an Inspector and the authority should be precluded from issuing a permission until it has received and has considered the Inspector’s report.**
- 34. The Ministers’ powers to direct notification of applications include powers to respond to trends emerging from the monitoring of applications approved or refused against officers’ recommendations. This should include powers to direct individual authorities to refer specific types of application to the Ministers.**
- 35. There is a statutory maximum time limit of 9 months for the consideration and determination of called-in applications.**

## **Applications and Orders Dealt with by Ministers**

4.106 The Welsh Ministers decide a multiplicity of special applications, made under a wide variety of Acts dealing with matters such as rights of way, common land, allotments and caravan sites. In addition, various Orders and Directions, such as Article 4 Directions in conservation areas, are referred to Ministers for confirmation, even though they may be unopposed. Many of these applications, particularly those referred to above, deal with essentially local matters and should therefore be the responsibility of LPAs.

4.107 We consider there is scope for many of these applications to be dealt with at local authority level with recourse to the Ministers by way of appeal or determination of unresolved objections. This would free up time within the Welsh Government to deal with the matters that we consider should be their priorities, as outlined at the start of this section. However, this matter would need to be explored with authorities and the WLGA to fully understand the scope and implications.

### **Recommendation 36**

**The Welsh Government carries out a review in conjunction with the WLGA and LPAs of all types of applications, Orders and Directions decided or confirmed by Ministers with a view to establishing the feasibility of transferring to LPAs responsibility for dealing with those with local implications.**

## **A Planning Advisory and Improvement Body for Wales**

4.108 There was support in numerous submissions for a means of ensuring greater consistency of practice between local planning authorities, and identifying and disseminating good practice and eradicating bad practice. We consider that an overarching body should be established to drive up performance, improve the quality and consistency of planning services across Wales, and identify and build on best practice to develop and share standard approaches to the common issues identified. This facilitation role could draw on that undertaken by the Planning Advisory Service (PAS) in England and build on the good work of the Design Commission for Wales.

4.109 This body would cover a range of functions including:

- gathering data on the performance of the planning system
- identifying and disseminating good practice and standards
- promoting and developing the use of mediation in the planning system
- keeping the planning system under review, making recommendations for reform and giving advice on implementing system changes
- identifying training requirements for Members and officers and working with stakeholders to ensure quality and consistency of training
- providing targeted specialist advice and mentoring

- 4.110 It could be argued that this new national body would only be required for a temporary period, operating on a ‘task and finish’ basis. However, we take the view that the planning system is a dynamic process and the functions identified above will always be needed to help the system adapt to new challenges and policies. This is demonstrated by the numerous references in evidence to the great increase in the tasks and expectations placed on the planning system.
- 4.111 We therefore favour the establishment of a body with a remit to collaborate with local planning authorities and the WLGA to improve standards and quality. It would combine tasks such as the identification and dissemination of good practice with obtaining information from planning authorities on the operation of the planning system. This role would be supported by a duty on authorities to co-operate. It would promote the use of mediation (Recommendations 62-64) and have a crucial role in improving training for members, which should be compulsory (Recommendation 56).
- 4.112 We envisage a relatively small organisation of less than ten staff, with a chief executive and a governing board representing local planning authorities and other stakeholders. We propose that the body be called the ‘Planning Advisory and Improvement Body’ (PAIB).
- 4.113 The PAIB would work in close partnership with stakeholders on the governing board. These could include the Welsh Local Government Association, which already provides valuable support to planning committee members and planning officers; the Planning Officers’ Society Wales; the Royal Town Planning Institute Wales; the Design Commission for Wales; and Planning Aid Wales. The PAIB would call on the expertise of the governing board members to assist in developing good practice, training and mediation services.
- 4.114 In terms of scrutinising and monitoring local planning authority performance we envisage this as being a role for the Welsh Government and we propose that there should be some “light touch” inspection powers to underpin this. Tasks such as collecting annual performance data and ensuring it is uniformly presented would rest with the PAIB acting on behalf of Welsh Ministers. The body would publicise the data and present it to the Welsh Ministers, who would decide on the necessary and appropriate response.
- 4.115 As our discussions progressed more ideas emerged that would be taken forward by this body and it is in our view one of the main initiatives needed to improve delivery of planning in Wales. In Chapter 5 (Recommendation 73) we emphasise the importance of validation. Monitoring the 1APP system and the use of the standard validation lists in practice, to ensure validation does not continue to be a blockage in the system, could be part of its role. Other matters have come up in our discussions and could be taken forward include:
- The quality and consistency of Committee Reports
  - Rationalising the multiplicity of assessments and reports that are required to register an application
  - The issue of viability, to secure a common approach that has acceptance across LPAs and the business sector.

This body could in our view play a crucial role in driving forward delivery improvements and fostering the positive culture that is needed.

4.116 Finally, we attach great importance to the need for a continuous process of improvement to equip the planning system to cope with change, and to explore better methods of working and allocating the available resource of professional planners within the public sector. Therefore, in addition to including such a role in the remit of the body, Welsh Ministers should conduct pilot studies and trials of new procedures and practices within specified planning authorities, in order to test whether changes should be introduced on a national basis.

#### **Recommendations 37 - 40**

**37. A Planning Advisory and Improvement Body (PAIB) is established by the Welsh Government, led by a Chief Executive and supported by a governing board.**

**38. The PAIB should be responsible for:**

- a. identifying and disseminating good local planning authority practice**
- b. gathering and publicising data on the performance of the planning system**
- c. promoting and developing the use of mediation in the planning system**
- d. identifying training requirements for Members and officers and working with stakeholders ensuring quality and consistency in the provision of training**
  - i. keeping the effectiveness of the planning system under review and making recommendations for reform and adaptation to changing circumstances and demands**

**39. Local planning authorities should be under a statutory duty to cooperate with the PAIB in both in its advisory and data collection role.**

**40. The PAIB should work closely with stakeholders such as the Welsh Local Government Association, the Planning Officers' Society Wales, the Royal Town Planning Institute Wales, the DCfW and Planning Aid Wales particularly in developing good practice, training and mediation.**

## A Planning Inspectorate for Wales?

4.117 Only two respondents argued for a separate Planning Inspectorate for Wales, essentially on the grounds that a separate body is needed because of the different policies and statutory framework and to ensure these are properly taken into account in decisions. Some cautioned that its ability to examine LDPs and provide a timely service on appeals should not be compromised by requiring it to carry out additional functions.

4.118 The Inspectorate's arguments for retaining a joint Agency are:

- it provides a cost-effective service, able to take advantage of shared back-office services; providing these separately would cost the Welsh Government more
- the dedicated team in Cardiff, with a separate group of Inspectors, ensures that the planning policies and statutory framework in Wales are properly applied
- Wales can call on the services of Inspectors from England at times of high demand, such as for LDP examinations
- at times of lower workload flexible working enables Wales Inspectors to undertake work in England, reducing the overall cost to the Welsh Government
- the advantages of sharing ideas, specialist knowledge and expertise with the larger body of Inspectors in England (+200) and the benefits for shared training and improved working practices

4.119 The argument that a separate body is needed because Wales has separate planning law and policy is not borne out by experience. The Welsh Government has issued separate planning policy since devolution and there has also been increasing divergence in the planning law applying in Wales. The Inspectorate has taken steps to ensure it is capable of dealing with these differences by creating a separate Wales Directorate, based in Cathays Park, with its own group of Inspectors working almost solely in Wales. Training is given to Inspectors working for the first time in Wales and their work is checked by colleagues in the Wales Directorate. The performance targets set by the Welsh Government were all exceeded in 2011-12 apart from delivery of reports<sup>56</sup>. The evidence available to us confirms that there is general satisfaction to date with the service provided in Wales by the Inspectorate.

4.120 The evidence also shows that the Inspectorate is generally held in high regard by its customers, partly based on its actual and perceived impartiality. There were concerns in some submissions that appeal decisions can overturn the decisions of the elected Members, but that is a criticism of the appeal system rather than of the Inspectorate.

4.121 Turning to the feasibility of a separate Inspectorate, the Welsh Government has its own finance, IT and HR departments. We are not aware of their capacity to take on work for the Inspectorate, but note that the Welsh Government pays

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<sup>56</sup> Planning Inspectorate for England and Wales: *Wales Business Plan 2012/13*

the Inspectorate some £645k<sup>57</sup> for the provision of back office services. We have no evidence to support the Inspectorate's argument that it would cost the Welsh Government more to provide these services, but we accept that some of these, such as IT, are specialised. In any event, it would be possible for the Welsh Government to contract with the Inspectorate to provide such services. A Service Level Agreement could include the provision of training and other services by the Inspectorate in Bristol were a separate Inspectorate established in Wales. This could include arrangements, including financial, for Inspectors to cross temporarily from England to Wales (and the reverse) to meet workload demands. However, the considerable benefits to Wales of sharing ideas, specialist knowledge and expertise with a larger body would be seriously diluted were the current joint Inspectorate replaced.

4.122 The policy of Welsh Governments has been to seek a reduction in the number of public bodies. A separate Inspectorate for Wales would have new organisational and consequent cost implications since we assume it would need to be separate from the Welsh Government in order to retain its independence and impartiality. The creation of such a separate body would involve disruption, time and effort for which there is no necessity and no logical or persuasive case. The benefits to Wales of being part of a larger organisation add weight to the view that the Inspectorate should continue to provide a service to the Welsh Government. We deal later in this chapter with the additional services that we consider the Inspectorate should provide for the Welsh Government. Setting up these services would rely heavily on the experience gained by the joint Inspectorate, which in our view is a persuasive argument for retaining a single, joint Agency serving England and Wales.

4.123 There is hence no convincing argument leading us to the view that there is a pressing need to create a separate Inspectorate for Wales. The present arrangements have worked well for many years and command confidence among users of the planning system, which was reflected in the call for evidence. It seems to us that the present arrangements have considerable merit. We do not consider that the establishment of a separate Welsh Inspectorate is a priority for the reform of the planning system.

4.124 The establishment of a separate Inspectorate should in our view only be considered as part of the wider debate about the institutions of a separate Welsh legal jurisdiction, rather than as a necessity for the future delivery of the planning system in Wales.

4.125 Nonetheless, there is one area where we think improvements should be made. The decisions which Inspectors take and the reports they submit are all done in the name of, and on behalf of, the Welsh Ministers. In that respect the Inspectorate is as much an institution of the Welsh Government as it is of the UK Government. We consider that a protocol is needed to reinforce the relationship between the Welsh Government and the Inspectorate in terms of, amongst other things, respective responsibilities, communications and levels of service. We envisage this protocol would be in the form of a Service Level

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<sup>57</sup> Planning Inspectorate for England and Wales: *Wales Business Plan 2011/12*

Agreement (SLA) or Memorandum of Understanding between the Inspectorate and the Welsh Government. We understand that an SLA was drawn up when the Inspectorate became an Agency. We consider that this needs to be refreshed to bring it up to date and to reflect the relationship with and expectations of the Welsh Government, as reflected in the recommendations in this report. The protocol we envisage would ensure that the Inspectorate offers a dedicated service for all its work for the Welsh Government similar to that currently provided for appeals and LDP work.

4.126 Our final recommendation arises from comments during the debate on third party appeal rights. There was agreement that a proactive communications exercise to the public by the Planning Inspectorate, relating to their core values of openness, fairness and impartiality, could improve trust in decisions made at appeal. We consider this to be a sensible idea.

#### **Recommendations 41 - 43**

**41. The Inspectorate continues to provide a combined service in England and Wales.**

**42. A protocol is agreed between the Welsh Government and the Inspectorate for the provision of a dedicated service for all its functions in Wales reflecting the recommendations in this report.**

**43. The Inspectorate undertakes a communications project with the public in consultation with the Welsh Government and other stakeholders such as PAW, DCfW, One Voice Wales and the WLGA.**

### **Improving the Appeal System**

4.127 Amongst the CfE responses were comments in relation to the appeal system in Scotland<sup>58</sup>. The Scottish system is considered to be more flexible, less confrontational, quicker and more efficient.

4.128 The particular difference highlighted by the respondents is the pro-active involvement of the Scottish Reporter in determining the issues and the procedures to be used. After considering the appeal documents the Reporter may proceed to determine the appeal without further information. Where information is required, the Reporter issues a 'procedure notice' specifying in detail the matters on which further information is needed and the procedure for obtaining that information, which can be by written submissions, hearing, or public inquiry, or any mix of all three. Hence, if the Reporter decides that a public inquiry is to be held, this would deal with specific topics and would not hear evidence on all of the issues involved. Other topics could be handled by written submissions or hearings. Reporters also have the right to decide whether to hold a site visit and, if so, whether it should be accompanied or not.

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<sup>58</sup> See for example submission by Renewable UK, No 94

4.129 In our view the benefits of this procedure are –

- transparency in that all involved are informed of the issues relevant to the Inspector's decision
- flexibility and time saving, particularly the time spent at inquiries, as the procedure is tailored to the nature of the issue and information needed
- accessibility as the public would not have to be involved in an inquiry format but could attend a hearing
- earlier involvement by the Inspector

We therefore are strongly of the view that the Welsh Government should evaluate the Scottish appeal system with a view to introducing improved appeal procedures in Wales.

4.130 The target for an appeal proceeding by written representations is now 12 weeks in Scotland whereas in Wales it is 16 weeks. The reason appears to be that after the LPA has commented (within 21 days) on the full grounds of appeal and the appellant has responded (within 14 days), there is no further opportunity to submit statements or comments unless requested by the Reporter. We consider that a system that enables a reduction of 25% in the target time to determine an appeal merits close consideration.

4.131 Another significant difference is that no alterations can be made to an application once an appeal has been submitted. This answers the difficulties that can arise where applications are amended after the authority's decision but prior to the appeal. The Scottish system ensures that the appeal deals with the application in the form it was considered by the LPA and by the local community.

4.132 When an appeal is made, neither the appellant nor any other party can raise anything new that was not before the LPA when it decided the application, unless it could not have been raised earlier or that it was not raised because of "exceptional circumstances". In the interests of natural justice the Scottish legislation also requires that regard is to be had to all material considerations. We consider these other differences should also be considered by the Welsh Government.

4.133 While the appeal process and the role of PINS commanded wide respect, we consider that a greater degree of flexibility and control, to an extent mirroring development of case management in the field of civil litigation, should be given to Inspectors. The measures that appear to us to be appropriate are:

- Allowing Inspectors to give a preliminary view on the merits of the appeal and (as in Scotland) determining the most appropriate method of dealing with the issues, based on the papers. The exchange of Statements of Case would appear to be the most appropriate stage for this to take place and it should be open to the parties to request such a step or for the Inspector to take the initiative and inform the parties that it is proposed to give a preliminary view.
- Allowing the Inspector to play a mediation role in respect of specific issues with agreement of the parties during a hearing or public inquiry.

- 4.134 Although not a matter raised in the responses, there also appears to be merit in considering the procedure used when an appeal is lodged against the LPA's failure to issue a decision in the prescribed period. Presently such cases go through the full appeal procedure of submission of grounds of appeal; questionnaire; LPA statement; comments by third parties; and comments by the appellant and LPA. There are instances where the LPA would have granted permission but they are unable to do so since jurisdiction passes to the Inspectorate once the appeal is lodged. The Planning Bill could overcome this by including a power for the Inspectorate to return the application to the LPA with the applicant's agreement.
- 4.135 In all other cases it would seem sensible for the appeal to be determined on the basis of the LPA's case file, which will have the application and supporting documents and third party comments, together with the questionnaire completed by the Council. It would be for the Inspector to decide what additional information would be required. We recommend this procedure is investigated by Welsh Ministers and the Inspectorate and we suggest this approach would benefit from a pilot exercise.

#### **Recommendations 44 - 46**

- 44. The Welsh Government should initiate a review of the appeal system to consider the benefits that would result from adopting the principles of the procedures used in Scotland including:**
- a. a more active role for Inspectors to define issues and the procedures to be used to consider each issue**
  - b. the procedure and targets for appeals using the written procedure**
  - c. preclusion of changes to applications after the decision by the LPA and the raising of new issues at appeal not previously raised**
- 45. The Appeal Regulations are amended as necessary to give Planning Inspectors greater powers of case management of appeals and the ability to:**
- a. Give preliminary views on the issues and merits after the exchange of Statements of Case.**
  - b. Adopt a mediation role with the consent of the parties in relation to specific issues during a hearing or a public inquiry**
- 46. The Welsh Government investigates with the Inspectorate:**
- a. the feasibility of a fast track process for dealing with appeals against the LPA's failure to issue a decision in the prescribed period, based on a review of the authority's case file; and**
  - b. including in the Planning Bill a power for the Inspectorate to return an appeal for determination by the LPA with the applicant's agreement.**

## Clarifying the Role of Statutory Consultees

- 4.136 The role of statutory consultees figured significantly in the responses to the Call for Evidence. Whether fully justified or not there was a common thread of criticism about delays due to late responses to consultation, disproportionate responses and recommendations. There was also concern at the power statutory consultees wield over the planning system in that, while LPAs are responsible for determining planning applications, they are hesitant to challenge the response of an expert body.
- 4.137 The need for an effective statutory consultation system has been a theme of many of the reports in to the planning system in recent years – GVA Grimley<sup>59</sup> on the planning application process in Wales; Killian Pretty<sup>60</sup> in England; and the National Assembly Sustainability Committee's Inquiry into Planning in Wales 2011<sup>61</sup>. We also note that the Welsh Government proposes a consultation in 2012 on the role of statutory and non-statutory consultees.
- 4.138 Also of relevance is the inclusion in the Town and Country Planning (Development Management Procedure) (England) Order 2012 of the duty on statutory consultees to respond to consultation and to report annually on their performance. The power to impose this requirement derives from section 54 of the Planning and Compulsory Purchase Act 2004 and is also exercisable by the Welsh Ministers. However, to date the Welsh Ministers have not specified any consultations to which the obligation should apply and the recent Town and Country Planning (Development Management Procedure)(Wales) Order 2012 does not apply the duty.
- 4.139 The position of statutory consultees in Wales also differs significantly in terms of the nature of some of the main national consultees:
- The Welsh Ministers have now announced their intention to proceed to create a single body (the "SB") by merging the functions of the Countryside Council for Wales with the Welsh functions of the Environment Agency and the Forestry Commission. We think it is not unreasonable to conclude that the new body will be the most powerful national consultee in Wales by some margin, with huge influence over the planning system and the decisions of local planning authorities.
  - Cadw, unlike English Heritage is not a separate sponsored body, but a department of the Welsh Government and may be subject to reforms under the proposed Heritage Bill.
- 4.140 Implementing a statutory duty to co-operate and report on their performance would be preferable to the current position, where there is no duty of any sort that would enable the performance of consultees to be measured. We consider that the Planning Bill should go further.

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<sup>59</sup> GVA Grimley *Study to Examine the Planning Application Process in Wales* June 2010

<sup>60</sup> The Killian Pretty Review *Planning applications: A faster and more responsive system* Nov 2008

<sup>61</sup> National Assembly for Wales Sustainability Committee *Inquiry into Planning in Wales* January 2011:

- 4.141 A consultee of the stature and influence of the SB should now be regarded as an integral part of the institutional framework of the planning system. We therefore propose that the SB specifically, but also other national consultees, should be under a statutory duty to contribute positively to the efficient and effective functioning of the planning system. Other bodies whose influence should also make them subject to this duty are the Health and Safety Executive, the Coal Authority and CADW. The Welsh Ministers should have powers to apply the duty to other consultees of similar stature.
- 4.142 Placing an enhanced duty on statutory consultees may have resource implications, but we consider the duty we propose reflects nothing more than their proper role in the planning system in discharge of their respective statutory remits. We debated whether there should be some acknowledgement of the resource implications by giving the statutory consultees subject to this duty an entitlement to a proportion of the planning fee for applications on which they are consulted. But since we consider this to be part of their role we make no recommendation regarding additional funding. Furthermore, there would be considerable practical difficulties with transfer of part of the planning fee.
- 4.143 We received submissions from water and sewerage companies<sup>62</sup> that they should be statutory consultees for the following reasons:
- Water and sewerage undertakers need to be closely involved in the planning of new development to prevent later problems
  - PPW states in para 12.4.1 that the adequacy of water supply and sewerage infrastructure are material in the consideration of planning applications and appeals
  - They are best placed to provide advice on the impact of proposed development on the existing water and sewer networks and on the adequacy of those networks
  - Their advice is essential to protect the environment and communities from sewage flooding and pollution from overloaded sewers
  - Whilst the companies are generally consulted by LPAs on planning applications at present, authorities are not consistent and their advice is sometimes ignored
  - The companies are special consultation bodies in the LDP process but are only advisory bodies in the planning application process
- 4.144 It seems to us to be anomalous that the water and sewerage companies, such as Dwr Cymru Welsh Water, have a different status for LDP purposes compared with the planning application process. Furthermore, the significance attached by PPW to water and sewerage considerations rightly reflects the importance of this information to decisions whether to grant planning permission and what conditions are needed. The reasons put forward by the companies provide a strong case for giving them the status of statutory consultees. We are concerned at the level of criticism levelled at the consultation process because of the delay this appears to frequently cause.

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<sup>62</sup> See responses from Severn Trent Water (No 50) and Dwr Cymru Welsh Water (No 84)

However, this in our view is an argument for improving the consultation process rather than for refusing statutory consultee status where this is merited. We conclude that the water and sewerage companies should be given statutory consultee status and should be subject to the duty to contribute positively to the planning system as proposed above.

4.145 We also consider that the creation of the SB and the change to the status of the water and sewerage companies is an opportunity to launch a new compact or memorandum of understanding between all consultees, the Welsh Government and LPAs. There is an overarching theme to much of the response we have received relating to the need for a culture change in planning. We see the compact as a statement of the overall purpose of the consultees in relation to the planning system as being to adopt a positive role helping to find solutions to enable sustainable developments to proceed, rather than simply giving reasons why they should not.

#### **Recommendations 47 - 51**

- 47. The statutory consultees exercising the greatest influence over the planning system are considered to be part of the institutional framework of the planning system.**
- 48. Initially, the statutory consultees who should be considered in this way are the new Single Body, the Health and Safety Executive, the Coal Authority and Cadw. The Welsh Ministers should have powers to add further bodies.**
- 49. The Planning Bill places a duty on such statutory consultees to contribute positively to the efficient and effective functioning of the planning system.**
- 50. The water and sewerage undertakers are made statutory consultees and placed under the duty referred to above.**
- 51. The Welsh Government enters into a compact with all statutory undertakers setting out the overall purpose of statutory consultees in relation to the planning system as being to adopt a positive, enabling role.**

## Enhancing the Role of Town and Community Councils

4.146A Welsh Government study in 2010<sup>63</sup> stated:

*Community and town councils are the grassroots tier of government in Wales. They are responsible for providing a variety of services tailored to meet the needs of their local population and together, receive an overall annual budget of more than £25 million. In Wales, there are a total of 735 community and town councils which serve populations that range from fewer than 200 to more than 45,000 people. ....currently, around 70 per cent of the population in Wales are represented by a community or town council.*

4.147 Some responders seek an increase in the powers currently available to Town and Community Councils, though it is accepted that this should not occur without providing significant additional resources to those bodies and a further acceptance that some of those bodies may not desire such powers. At this stage, the Group considers that such a move would not bring significant benefits to the delivery of planning in Wales, as resources would inevitably have to be diverted from LPAs to support those Town and Community Councils willing to take on this function.

4.148 Nonetheless, there is an important role for Town and Community Councils in the planning system. The 2010 study quoted above found that 75% of the councils who responded gave 'planning' as one of the top three reasons for interacting with the community. One of the criticisms from communities and members of the public is the difficulty they have in engaging with the current planning system<sup>64</sup>. We consider that Town and Community Councils have a potentially important role in acting as the local link with communities to improve their understanding of, and participation in, the planning process.

4.149 The potential has been demonstrated for example by the work done in Brecon Beacons National Park in conjunction with PAW as part of the preparation of that LDP<sup>65</sup>. We therefore consider that resources would be better utilised in ensuring that Town and Community Councils fully understand and are equipped to engage in the LDP process from the outset. This would build greater understanding of the level of development their area could accommodate; the implications in terms of infrastructure; and the policy context against which any proposed development would be assessed.

4.150 There is also a role for Town and Community Councils in keeping communities informed about proposed developments and planning applications in their area. We think that this role sits well with the proposals in the Welsh Government's recent White Paper *Promoting Local Democracy* proposing they maintain a website to improve communication with their communities.

4.151 Town and Community Councils have a role in representing their communities in pre-application consultations with developers before applications are submitted. We make recommendations (Nos 58-61) later in this chapter about

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<sup>63</sup> Community and Town Councils Survey 2010: Social Research Division Welsh Assembly Government, para 1.1

<sup>64</sup> See for example submissions by Planning Aid Wales (No 64), One Voice Wales (No 85) and No 57

<sup>65</sup> *Community engagement in the Brecon Beacons National Park* Planning Aid Wales

pre-application consultations. There are examples of Community Forums providing a vehicle for developers to engage with communities during the planning stages, prior to the submission of a planning application, where the Community Councils are heavily involved<sup>66</sup>.

4.152 During our work we have looked at the changes introduced in England by the Localism Act, in particular the introduction of Neighbourhood Development Plans (NDP). Such tools should involve communities in areas of change, enabling them to influence the shape of development that affects them. However, there is nothing to prevent LPAs and local councillors from working now with Community Councils and other broad-based community groups to produce community plans. We were given a presentation by Shropshire Council on their 'Place Plans', which set out local priorities and infrastructure requirements for individual communities and were prepared before the Localism Act. These Plans also can play a role in wider community strategies. They can also be linked with the Community Infrastructure Levy process, as has been done in Shropshire.

4.153 The system of NDPs is still very much in its infancy; it remains to be seen how successful these will be in practice. We consider there is a risk that the legislative framework created by the Localism Act will introduce a level of bureaucracy into community planning that will prove counterproductive and discourage many communities from engaging with the system. We prefer a simpler approach that retains maximum flexibility and can be varied to suit the aspirations and the capabilities of different communities. We believe the involvement of representative Community Councils offers an appropriate and democratically accountable basis for this approach. We propose that these Councils should be encouraged and empowered to work with their local planning authority to identify and take forward Supplementary Planning Guidance for their communities, translating and developing policies and allocations in LDPs for local implementation, an idea supported by the Friends of the Earth Cymru<sup>67</sup>. We have dealt earlier in this chapter with the principles and preparation of SPG and we propose that any such documents prepared by Community Councils would be subject to the same regulatory process leading to eventual adoption by the LPA, giving them status in the planning process.

*[See next page for Recommendations 52-53]*

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<sup>66</sup> For example see Terms of Reference of the Nant Llesg Community Forum at [http://www.nantllesg.co.uk/creo\\_files/upload/default/terms\\_of\\_reference\\_final.pdf](http://www.nantllesg.co.uk/creo_files/upload/default/terms_of_reference_final.pdf)

<sup>67</sup> Submission No. 54

### **Recommendations 52 - 53**

**52. The Welsh Government works with Planning Aid Wales and One Voice Wales to develop training programmes to enable Town and Community Councils to understand and become involved in the planning system generally and in the LDP process in particular, and to give them the skills and techniques to involve their communities in the planning process.**

**53. The Welsh Government consults on the scope for Town and Community Councils and other broad-based community organisations to prepare Supplementary Planning Guidance in accordance with the LDP for their areas or parts of their areas for submission to and adoption by the local planning authority following the statutory preparation process we recommend.**

### **Enhancing Regional and Specialist Capabilities**

4.154A consistent theme which is accepted by the Group is that LPA's currently lack the resources to deal with certain complex planning applications and that, through a joint approach, these applications would be better assessed on a regional basis with Local Planning Authorities sharing resources.

4.155 One current example of which we are aware is in North Wales, where Flintshire County Council leads a shared service for minerals and waste planning on behalf of the other North Wales authorities. Applications are processed by a specialist team based largely in Flintshire CC offices in Mold, with reports and recommendations being presented to the individual authority for decision. The shared service team also monitors activities at minerals and waste sites and advises on policy matters. We understand that Carmarthenshire County Council provides a similar service for a number of neighbouring authorities.

4.156 The benefits of such a joint approach were highlighted in the Simpson Review<sup>68</sup>. However, that Review recommended that mineral planning and other specialist planning services should be organised on a national level. It also recommended that a national resource of planning expertise should be established to enable the public sector make best use of its own expertise and so avoid the need for private sector input. Nonetheless, that report also acknowledged the importance of local knowledge, advising that it should be taken advantage of where appropriate.

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<sup>68</sup> The Simpson Review: 'Local, Regional, National: What services are best delivered where?' Report to Carl Sargeant AM, Minister for Social Justice and Local Government, March 2011

- 4.157 Many responses highlight the increasing complexity of the planning process and we do not dispute the point. However, this is in our view an inevitable consequence of the impact of several factors including, but not exclusively – European legislation; the Welsh Government’s drive for sustainable development; the impact of climate change and the need to make decisions on the location of development against the best available evidence; the aim to improve the quality and design of development; the complexity of new technology; and the demands of the public for information and involvement in decisions affecting them. The planning system is not going to become simpler. What is needed is for authorities to work together to make the best use of resources available to them. This in our view is the thrust of the Simpson Review.
- 4.158 We consider that the best way to ensure LPAs have access to the specialist expertise they require is through the creation of teams working on a regional basis. It is only in the area of minerals and waste that such teams appear to have been set up for development management. There have been examples of authorities coming together to commission specific research where there is a common interest. However, what is needed is a network of specialist resources that can be called upon where an individual LPA does not possess the necessary in-house knowledge. In the current economic climate it is essential that authorities are able to share resources rather than have to buy in external advice. By sharing expertise in this way LPAs can build resilience and develop their own skills.
- 4.159 This approach could be valuable in a number of areas including major retail applications; gypsy and traveller sites; renewable energy and other major infrastructure; and major projects generally. It may well be that single regional teams could be created that would include specialists in different areas, possibly with periods of secondment, with the advantages of both sharing and developing skills and knowledge amongst team members, and giving individuals the opportunity for career progression. As an alternative such a team could be part of the PAIB, operating at a national level. This could be particularly important in the area of site viability, where a nationally agreed best practice approach could answer some of the issues raised in the representations.<sup>69</sup>

**Recommendation 54**

**The Welsh Government consults on the scope for planning applications on matters such as minerals and waste; gypsy and traveller sites; and significant infrastructure projects to be processed and assessed by specialist planning teams operating on a regional basis or as part of the PAIB. The matters to be dealt with by these teams should be agreed between the Welsh Government and local planning authorities.**

<sup>69</sup> See for example submission by the Home Builders’ Federation No. 89

## Planning Committees, Role of Members, Delegation

- 4.160 All Welsh LPAs have delegation schemes so that decisions on straightforward applications are taken by officers. By definition, therefore, Planning Committees make decisions on the most controversial, sensitive and often technically complex applications. This is a difficult and challenging task. Members have to make decisions on applications that are unpopular with some sections of the community and they will be under pressure from constituents to support their point of view. Nonetheless, the responsibility of the committee members acting within the legal framework of planning is to take the decision that is best for the community as a whole and in the public interest.
- 4.161 The Planning Committee is a crucial part of the Council's decision making processes and membership of that Committee should be regarded as a key role with recognition for the accompanying responsibility. Planning Committees commonly deal with applications involving major investment with significant implications including - job creation; the provision of housing or retail floorspace; and other essential facilities. Planning Committee Members must be given the necessary support in order to discharge their responsibilities under this role positively, properly and successfully.
- 4.162 A consistent theme in the responses to the CfE and during our discussions was the need for Planning Committee members to be better trained to equip them to make the difficult decisions that are needed. The current regime of training for members is inconsistent and in some instances, inadequate. Bearing in mind the importance we attach to this role we have concluded that a compulsory, consistent programme of training is required for members appointed to Planning Committees, which should be provided by each authority. This should be a statutory requirement, as recently proposed by the Welsh Government in relation to school governors<sup>70</sup>. If a Councillor wishes to be a member of the Planning Committee they will be required to undertake training. The importance of training for members generally is highlighted in the recent Local Government White Paper.<sup>71</sup> There is an opportunity now to be dynamic and robust in the approach to delivery of this service.
- 4.163 We see this as an opportunity to create a body of trained councillors who have the knowledge equipping them to take on the responsibility for decision making, on sometimes controversial planning applications, with confidence. There should be an initial level of induction training undertaken before a councillor can determine a planning application, followed by a regular and consistent programme of training. We deal separately with the creation of the Planning Advisory and Improvement Body; this body would have oversight of training to ensure it is delivered consistently across all LPAs (Recommendations 37-40). The PAIB would work with stakeholders such as the WLGA, DCfW, POSW, the Planning Inspectorate and the RTPI, to establish standards and content for

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<sup>70</sup> *Proposals to introduce regulations for mandatory training for governors and clerks to the governing body and for local authorities to provide a clerking service for governing bodies*, Welsh Government: 15 May 2012

<sup>71</sup> *Promoting Local Democracy*, Welsh Government: 17 May 2012

training, potentially delivered on a sub-regional basis to improve efficiency and consistency.

4.164 In line with our view that the Planning Committee Member's role is crucial, failure to undertake the required training should be a member conduct issue for the local authority standards system and members' Codes of Conduct should reflect this. We are also aware that at least one Welsh authority, the Pembrokeshire Coast National Park Authority, has a separate code of conduct for planning committee members. Whilst we are aware that there is a general member code of conduct, we consider that the important role of the planning committee member justifies a separate code. A national Code of Conduct for Planning Committee members, overseen through the authority's standards procedures, would cover:

- Training obligations.
- The conduct of pre- application discussions involving members.
- The conduct of hearing-style meetings and site visits.
- The use of alternative dispute resolution/mediation
- The role members will be expected to play if a refusal against officer advice goes to appeal.

4.165 There should also be a similar programme of training to maintain and improve the competence and technical knowledge of officers and to assist officers to better understand the role of councillors in planning – see Killian Pretty Recommendation 10<sup>72</sup>. In relation to a code of conduct, RTPI members are already covered by the Institute's Code. Bearing in mind that not all planning officers are Institute members, we recommend that a code should be developed jointly by the Welsh Government and the RTPI based on the latter's current code of practice.

4.166 We believe there is an issue regarding the current split between responsibility for statutory plan making, which falls to the Council Executive, and the determination of applications which fall to the Planning Committee. The Killian Pretty Review in Recommendation 10 encourages the councillor with strategic responsibility to be a member of the planning committee, to improve consistency between planning policy and planning decisions. We do not think it will be generally practicable for the Executive Member to be an active member of the Planning Committee given the member's likely other responsibilities. However, we consider that statutory plan making should be a joint responsibility between the Executive (through the Executive Member for planning) and the Planning Committee. This will ensure that Planning Committee members have a proper appreciation of the integration of development management with plan-making and will have 'ownership' of the adopted LDP, against which they will reach their decisions on applications. Under this arrangement the executive member with responsibility for planning will become subject to the training requirements for planning members. There

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<sup>72</sup> The Killian Pretty Review *Planning applications: A faster and more responsive system* Nov 2008

may be a role for regional/national training for executive members on statutory plan making to ensure consistency and save resources.

- 4.167 Specific training may be required on pre-application discussions, which we deal with in a separate section. In addition, the conduct of new formats of Planning Committee 'hearing' meetings, which we recommend in the section on mediation, implies the need for specific training for chairs and vice-chairs of planning committees which, given the numbers involved, would also need to be on a regional or national basis.
- 4.168 We have noted that two of the largest authorities in Wales (Cardiff and Newport) have the smallest Planning Committees as a percentage of the members of the Council. We consider that the model of democratic decision making we envisage is best suited to smaller committees, which are better able to develop the culture of informed evidence-based decision making that the administration of planning law requires. Where there are larger committees, particularly where all members are also on the Planning Committee, the make-up of the committee will vary considerably between meetings. Consistency clearly suffers under such conditions. Furthermore, we do not consider it would be feasible to provide the intensive training we envisage for a large group of members. However, we recommend that an independent body carries out a study of the effectiveness and efficiency of the various planning committee models operating in Wales.
- 4.169 If the study supports our view then we would recommend that the Ministers have the power to direct a maximum size for Planning Committees. This should be around 20% of the Council membership, allowing for rounding to meet the political balance rules and subject to some flexibility for councils who, for geographical reasons, may be able to make a case out for operating through area committees or panels.
- 4.170 In line with our preference for smaller specialised committees, we do not favour allowing substitute members, who would have to be subject to the same training requirements as full members but who would not gain the experience of decision-making through regular participation in meetings.
- 4.171 A number of submissions to us highlighted the differences between procedures adopted by different planning committees<sup>73</sup>, for example in whether they allow applicants or the public to speak and for how long. This causes confusion, reduces transparency, and undermines confidence in the planning process. We therefore recommend that the Welsh Ministers should have the power to make regulations governing the procedures at planning committee meetings to ensure consistency, transparency and accessibility, particularly for the public who might be affected by applications.
- 4.172 We are also aware from the evidence we have received of considerable inconsistency in the level of, and conditions under which, decisions are delegated to officers between authorities. Whilst there were some submissions

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<sup>73</sup> See for example submission by the Royal Society of Architects in Wales, No 71

suggesting that the level of delegation to officers is too high<sup>74</sup>, we see no reason why all authorities should not be able to delegate well over 90% of decisions, as is the case with some authorities. The reasons why decisions that would otherwise be taken by officers are referred to the planning committee should be carefully examined to ensure that committees are really dealing with the difficult and controversial cases, which is their proper role. The inconsistency of practice between authorities hinders transparency, certainty, and the speed and quality of decision making. We therefore strongly recommend that the Welsh Ministers have the power to specify by regulation a national model scheme of delegation, so that applicants will have the same type of application considered at the same level throughout Wales.

4.173 The national model delegation scheme should require proper justification for applications to be considered by the Planning Committee that would otherwise be determined by officers, rather than simply a request from a local councillor. We are aware that some Councils require such requests to go through a scrutiny process involving the Committee Chair, which in our view is good practice that all LPAs should follow. Both the scheme of delegation and the Planning Committee Code of Conduct should be required to be incorporated into each authority's council constitution.

#### **Recommendations 55 - 57**

**55. An independent body is commissioned to conduct a study of the operation of Planning Committees in Wales to determine whether there is a link between efficiency and effectiveness and committee size.**

**56. The Planning Bill contains a power for the Welsh Ministers to make regulations regarding:**

- a. a national scheme of delegation of decision making powers by local planning authorities, including minimum requirements;**
- b. the size and make-up of Planning Committees;**
- c. the procedures to be used at Planning Committee meetings including speaking rights for all parties;**
- d. compulsory training for members of Planning Committees, including procedures where training requirements have not been met by individuals;**
- e. a code of conduct for members of Planning Committees and officers.**

**57. The Planning Bill contains a power for the Welsh Ministers to make regulations about the responsibility for statutory plan making within local planning authorities and that this power be used to ensure that LDP preparation and adoption is the joint responsibility of the executive (through the Executive Member for planning) and the Planning Committee.**

<sup>74</sup> See for example submission by Ystradgynlais Town Council, No 47

## Pre-Application: Improving Engagement

- 4.174 Several submissions highlighted the need for and benefits of pre-application discussions with the LPA and pre-application consultation with communities. Dealing first with pre-application consultation, this clearly has potential benefits for a number of the parties involved. The applicant engages in discussions to smooth the passage of the application and improve the chances of obtaining permission. The LPA by giving meaningful advice should make its task of dealing with the application easier, provided that advice is acted upon by the applicant. Although the public are not involved in such discussions, if the applicant acts on the advice provided by the LPA officers this should result in a better scheme. In the face of the potential benefits it would seem that both the applicant and LPA should be eager to engage in pre-applications discussions. The benefits of pre-application discussions were highlighted in the GVA Grimley report.<sup>75</sup>
- 4.175 But this does not appear to be the case. Some authorities appear to engage only reluctantly in pre-application discussions. We heard from the Country Land and Business Association (CLA) that their members find it difficult to obtain advice and that one authority does not permit anyone to speak to a planning officer without first going through an administrative 'clearance' process. Others engage willingly without charge, whilst many are happy to engage but make a charge. We heard from the Royal Society of Architects in Wales (RSAW) and others that some developers will not engage in pre-application discussions if there is a charge; they do not believe the benefits to be sufficient. The inconsistency between LPAs in this respect is in our view unacceptable and from the responses we received this is clearly a major area of concern.
- 4.176 We start from the position that any potential applicant should have ready access to advice from the local planning authority; first, because it should be the role of the LPA to provide that service and, second, because of the potential benefits to the quality of applications. We accept that LPAs are under increasing pressure to deliver more for less, particularly in the current economic climate. However, in our view any LPA that places their planning officers out of reach of applicants and discourages pre-application discussions has lost sight of their role and purpose. We are aware that the Welsh Government has now issued guidance on pre-application discussions<sup>76</sup>. Whilst this should assist to improve the service provided by LPAs we consider more is needed. We therefore consider that the Ministers should have the power to make regulations governing pre-application discussions and that this should include a Code of Practice drawn up between the Welsh Government, the WLGA and LPAs, which would be incorporated into the code referred to in the previous section (Recommendation 56).

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<sup>75</sup> GVA Grimley *Study to Examine the Planning Application Process in Wales* June 2010: Recc 12

<sup>76</sup> *Realising the Potential of Pre-application Discussions*, Welsh Government, May 2012

4.177 With regard to charging, there is a strong argument that there should be no charge, bearing in mind the potential benefits to the LPA in terms of time saved by having a better quality of application. We are also concerned at the evidence indicating charging discourages some applicants. We speculate that it may be the smaller developer or business who would benefit the most from discussion with the LPA prior to submitting an application. However, we recognise that some pre-application discussions do not result in improved applications and in some cases may not result in any application. We note that the recent consultation in Scotland<sup>77</sup> stated that the application fee will cover pre-application discussions. We do not consider this matter should be left to individual authorities as this can only reinforce the current criticisms of inconsistency. This is a matter for the Welsh Government to control under the fee regulations. We therefore recommend that as a first stage the Welsh Government consults on the following options for the pre-application service:

- a service free of charge
- a service charged on a set scale, with provisions for an initial free meeting or set amount of contact time
- a charged service with the fee deducted from any subsequent application fee

4.178 Turning then to pre-application consultations, this is a way to involve the community in the formative stages of a development, whilst there is the opportunity for changes to be made prior to the submission of an application. Provision for such consultations in England was introduced by the Localism Act. In Scotland the requirement to consult on defined categories of development was introduced by the 2006 Act and in Northern Ireland the 2011 Planning Act requires developers proposing regionally significant or major development to carry out pre-application community consultation. The Planning Act 2008 that set up the process for dealing with national infrastructure proposals contains extensive pre-application consultation requirements.

4.179 Following the debate on third party appeal rights we concluded that more effort needs to be made to involve communities in planning developments and decisions that affect them. It is important that such involvement occurs at a stage when it is meaningful, rather than after all the important decisions have been made. In practice this means involving communities at the project planning stage and we refer elsewhere to such initiatives in some parts of Wales, although examples are limited. We therefore recommend that the Welsh Ministers should have the power to make regulations requiring pre-application consultations to be carried out for certain defined types of applications, and to specify the form that consultation should take. Some of the responses to the CfE expressed concern at the impact on businesses of requiring such consultation and specific reference was made to the national infrastructure requirements. We recommend that the detail of the procedures is drawn up by the Welsh Government following consultation and that a

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<sup>77</sup> *Consultation on Fees for Planning Applications* March 2012

balance is struck between the impact on business and the need to secure meaningful engagement with communities.

- 4.180 We also support the proposal in the Killian Pretty Review<sup>78</sup> regarding the participation of councillors in pre-application discussions, which should now pose less potential difficulties than previously following the relaxation of the 'predetermination bias' rules by S.25 of the Localism Act. We have some concern about the transparency of this process, while recognising that it is to everyone's advantage for issues to be identified and solutions proposed as early as possible in the process. There should be a clear structure for such meetings and transparent recording of the proceedings. This should be the case even before an application is submitted as the public may be aware of a proposal before it becomes the subject of an application. We recommend that the Welsh Government instigate trials of such member involvement with pilot authorities.

#### **Recommendations 58 - 61**

- 58. The Planning Bill contains powers for the Welsh Ministers to make regulations governing pre-application discussions with local planning authorities, including a Code of Practice drawn up with LPAs.**
- 59. The Planning Bill contains powers enabling the Welsh Government to make regulations governing the charges for pre-application discussions and consults on whether there should be such charges and the charging structure**
- 60. The Planning Bill contains powers for the Welsh Ministers to make regulations governing procedures for pre-application community consultations, including the definition of the types of applications to which these procedures will apply.**
- 61. The Welsh Government initiates a pilot trialling the participation of councillors in pre-application discussion with selected authorities to develop protocols, with particular attention given to maintaining openness and transparency.**

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<sup>78</sup> The Killian Pretty Review *Planning applications: A faster and more responsive system* Nov 2008 - Recommendation 4

## Alternative Dispute Resolution: Making Space for Mediation

- 4.181 Evidence was received throughout the process of some planning decisions that had been taken that were unduly influenced by local objections, rather than sound material planning considerations. Whilst it is accepted that these may be seen to reflect the local will, inevitably many such decisions result in appeals with subsequent delays and costs to both applicants and local authorities. No mechanism currently exists consistently across Wales to review such decisions, prior to submission of an appeal.
- 4.182A number of the round table sessions, one to one meetings and responses to the call for evidence referred to the potential of alternative dispute resolution techniques and alternative methods of determining applications. These were seen as means of achieving a number of aims:
- greater engagement by affected parties prior to the local planning authority making its decision
  - avoiding or minimising appeals and legal challenges
  - introducing greater flexibility at the appeal stage
- 4.183The adoption of mediation and the use of other alternative dispute resolution techniques has become a feature of civil litigation. The Civil Procedure Rules expressly enjoin the parties to litigation to explore alternative dispute resolution; costs sanctions can be imposed upon parties who refuse to do so.
- 4.184During our deliberations we were referred to Sir Henry Brooke's seminal Peter Boydell Memorial Lecture 2008 on Mediation in Planning<sup>79</sup> and the 2010 PINS and National Planning Forum report by Leonora Rozee and Kay Powell: "Mediation in Planning"<sup>80</sup>. It is evident from these sources that while interest in the application of alternative dispute resolution techniques to planning has been a subject of interest for many years, the planning system has yet to adjust its processes to give space to allow the use of such techniques to develop.
- 4.185In this regard, we noted the application to Wales of s.25 of the Localism Act 2011 which modifies the "pre-determination" rule, giving councillors greater scope to express opinions on a planning application without disqualifying themselves from taking part in its eventual determination. We refer earlier to our support for Recommendation 4 of the Killian Pretty Review of the Planning Application System in England for councillors to take part in pre-application discussions, providing they are conducted according to a clear and well-structured format<sup>81</sup>.

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<sup>79</sup> Journal of Planning & Environment Law *The Role of Mediation in Planning and Environmental Disputes* Henry Brooke, J.P.L. 2008, 10, 1390-1406

<sup>80</sup> *Mediation in Planning* Report commissioned by the National Planning Forum and the Planning Inspectorate, Leonora Rozee OBE & Kay Powell, June 2010

<sup>81</sup> The Killian Pretty Review *Planning applications: A faster and more responsive system* Nov 2008

- 4.186 We believe therefore that the Planning Bill should take the opportunity to facilitate alternative dispute resolution in the planning process and that there would be significant advantage in the development of a formal mediation opportunity prior to the submission of any appeal. This process could be organised and facilitated by the PAIB using the resources of established bodies to deliver the service.<sup>82</sup>
- 4.187 There are a number of well-established dispute resolution techniques. The best known of these is probably mediation. Mediation in the litigation context is a private process between a limited number of parties. However, mediation in planning must always take account of the interests of third parties and consultees, which potentially limits its scope in planning. Another technique that of “independent neutral evaluation” may therefore be better suited. This involves calling in a neutral independent party to evaluate opposing positions and to give a non-binding view on the issues and the merits, leaving the parties to reflect on the outcome.
- 4.188 We propose that there should be provision for a planning committee to pass a “minded to” resolution indicating its provisional view of the application and the principal issues to allow a dispute resolution process to take place prior to the final reporting and determination of the application. Whilst this would be used in the main where the inclination is to refuse, it could also be used where the resolution is to approve but there are other issues such as the views of third parties; the details of conditions; or the content of a planning obligation.
- 4.189 We also consider that greater public confidence could be generated in the planning system by the wider use of special Planning Committees, which would hold hearing style meetings in advance of receiving the report and recommendations of officers. Such hearings would allow more time for the applicants and other interested parties to explain their proposals, give their views and to respond to questions raised.
- 4.190 We envisage this approach being adopted in only the most significant and contentious applications. It will therefore only apply to a small percentage of applications. We also consider that it will be most effective where Planning Committee size is limited; we recommend in the section above on member’s role a study of the link between committee size and effectiveness and efficiency. In addition we consider that committees, when they consider applications by means of a hearing would benefit from the presence of one or two co-opted members with relevant experience of planning to contribute to the conduct of the meeting and the deliberations of the members.
- 4.191 We noted that the Town and Country Planning (Scotland) Act makes provision for such hearing style meetings and for procedural rules to be made by regulation or development order.
- 4.192 We believe that creating a statutory basis for the use of alternative dispute resolution will encourage its use, with consequent savings in resources otherwise devoted to the appeal process. However, we also consider that the lack of practical experience of such techniques makes it desirable that these

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<sup>82</sup> For example CEDR: Centre for Effective Dispute Resolution or ADR Group

are introduced generally on a pilot basis for the purpose of assessing the methods most useful and appropriate to planning.

#### **Recommendations 62 - 64**

- 62. The Welsh Government provides a statutory basis for recourse to alternative dispute resolution prior to the submission of an appeal. The organisation of such a service should rest with the PAIB.**
- 63. In particular, local planning authorities should be able to use “minded to” resolutions to allow the opportunity for the use of alternative dispute resolution to address the issues in dispute.**
- 64. Local planning authorities are given powers to conduct Committee hearing style meetings to examine applications and receive representations and the Welsh Ministers issue guidance on the conduct of such meetings, including the role of third parties and the need for a report of proceedings.**

#### **Reducing Pressure on the System: Saving ‘The 10%’**

4.193 In our first meeting we discussed what we hoped to achieve in this review. We agreed that removing some of the burdens on the planning system, to make it easier to understand and operate, would give Wales a competitive edge, making it more able to attract investment across the long, porous border with our neighbour, England. This became known as saving ‘The 10%’.

4.194 The responses to the CfE and at the round table sessions supported the view that the planning system is expected to deliver too much and is being asked to implement policy objectives for which it was not designed. The Planning Bill provides the opportunity to consider whether the planning system is the appropriate body to deliver multiple policy objectives and we recommend in Chapter 2 that the system refocuses on its land use purpose. There is merit in the view that no more should be imposed without removing something. In this section we deal with some of the ideas given to us for removing things from the planning system.

4.195 A number of submissions proposed a **unified consent procedure** for obtaining planning permission and other consents such as conservation area and listed building consent. We are aware that there are moves in other UK jurisdictions<sup>83</sup> to investigate this possibility, which we recognise is not without its difficulties. However, this would create a simpler process and answer some of the criticisms that the planning system is too complex. We recommend this is investigated by the Welsh Government in conjunction with the similar studies elsewhere. We are aware that the Welsh Government proposes a Heritage Bill

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<sup>83</sup>The Scottish Government, *Planning Reform - Next Steps* March 2012

in its legislative programme. In the time available we are unable to examine proposals for the content of this Bill. Nonetheless, we consider this Bill is a further opportunity to consider ways in which pressure on the planning system can be reduced, rather than increased. In particular it is an opportunity to introduce greater integration of listed building control and planning along the lines of the recommendations of the Penfold Review in England<sup>84</sup>.

4.196 It was suggested that the implementation of the policy on sustainable buildings in TAN22 regarding BREEAM and the Code for Sustainable Homes should be examined carefully and revised<sup>85</sup> and that this should rest with **Building Regulations**. It was also pointed out to us that the example post construction conditions in TAN22 requiring Final Certificates prior to completion cause serious difficulties since these cannot be provided until many months after completion of the building. We draw attention to this because of the apparent difficulties it is causing, but it is in our view a matter for the Welsh Government to investigate. However, we consider there is considerable logic in the suggestion that at least some responsibility can be transferred to Building Regulations. Whilst the detail of the location and design of buildings is for the planning system, the detail of their construction in our view is not and we recommend this idea is pursued.

4.197 The extension of the scope of **permitted development** under the General Permitted Development Order (GPDO) was also suggested in several responses. We understand that revisions to the regulations governing householder permitted development rights are soon to be issued and those covering business are being considered. There is unquestionably considerable scope for the GPDO to be relaxed to remove many minor developments, or those having little impact, from the need for planning permission, thus freeing the time of planning officers to deal with development proposals that need proper consideration. We urge the Welsh Government to treat this work as a priority. Whilst we appreciate that a review has recently been undertaken we consider there is scope for further revision and this work needs to continue.

4.198 In particular, we consider that further study is needed into the requirement for planning permission under other sections of the GPDO such as that for statutory undertakers. Severn Trent Water state in their submission<sup>86</sup> the surprising fact that they have submitted 1200 planning applications in England and Wales from 2005-10, many of which were for minor development. The scope for removing minor developments such as plastic equipment cabinets on existing sites from the requirement to obtain permission needs further investigation. In conjunction with such investigation we consider there to be merit in considering the scope for widening the use of the 'prior notification' procedure currently in use for telecommunications and agricultural

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<sup>84</sup> *Review of non-planning consents*, Adrian Penfold: Final Report July 2010

<sup>85</sup> See for example submission by the RSAW, No. 71

<sup>86</sup> Submission No. 50

development. This would enable the LPA to decide whether to request an application and introduce greater flexibility.

- 4.199 There are **other existing legislative tools** with the potential to reduce the burden on the planning system, namely Local Development Orders (LDO) and Simplified Planning Zones (SPZ). Advice on SPZs is contained in PPW and TAN3; they have been available as a tool to LPAs for many years. The Killian Pretty Review (2008)<sup>87</sup> in England reinforced the need to promote the potential role of LDOs as a tool for achieving a reduction in planning applications. An LDO may grant permission for specified development, or for any class of development. It can relate to the whole of a local planning authority area, or to a specific site. The former requirement that they had to be linked to a policy in an LDP has been relaxed, making them easier to introduce and the Welsh Government issued new advice on the use of LDOs in April 2012<sup>88</sup>.
- 4.200 Both SPZ and LDOs could be used in the seven Enterprise Zones that now exist in Wales, to take the maximum benefit from their declaration. More than this, we consider these statutory tools are of much wider application and have the potential to make a significant impact in reducing pressure on the planning system. Many LPAs in England are seeing and taking advantage of the opportunity presented by LDOs to promote development and simplify application procedures. Bearing in mind our starting point in this report, that the purpose of planning is not simply regulatory but to facilitate sustainable development, we are in no doubt that an authority's responsibility is to create the conditions for investment, not seek to maximise income. We are aware that the Welsh Government is proposing to fund pilots in the next financial year to assist LPAs implement LDOs.
- 4.201 However, barriers to their use may be more related to skills and experience. We believe a support team to assist LPAs to take the maximum advantage of LDOs and SPZs is critical to their implementation. This support may not necessarily be wholly within the Welsh Government but could comprise a network including consultants with knowledge of this work, and LPAs in England that have LDOs in place.

[See next page for Recommendations 65-68]

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<sup>87</sup> The Killian Pretty Review *Planning applications: A faster and more responsive system* Nov 2008

<sup>88</sup> Welsh Government Circular 3/2012: *Guidance on using a Local Development Order*, 30 April 2012

### **Recommendations 65 - 68**

- 65. The Welsh Government undertakes a study with the aim of producing a single unified application and consent procedure including as many as possible of: planning permission; conservation area consent; listed building consent; rights of way and public open space; and common land consent.**
- 66. The Welsh Government investigates the feasibility of moving control of matters regarding the detailed construction of buildings, including most elements of BREEAM and the Code for Sustainable Homes, to the Building Regulations system.**
- 67. The Welsh Government investigates further opportunities to reduce the number of planning applications by revisions to the General Permitted Development Order, including the practicality of widening the use of the notification procedure currently applying to agricultural and telecommunications development.**
- 68. The Welsh Government sets up an advice team as soon as possible to assist LPAs to make maximum use of tools to simplify the planning process such as SPZ and LDOs. This function should pass to the PAIB if and when it is constituted.**

### **Measuring Success**

4.202 We end this chapter by considering how the delivery of planning can be rigorously monitored, which at the same time should measure the effectiveness of any reforms introduced, including those we recommend.

#### ***Overview***

4.203 Ultimately, the effectiveness of the planning system will be judged by the delivery of economic growth alongside the provision of a robust framework for sustainable land use that protects and enhances our environment, one of Wales' most impressive assets. However, the simple attainment of economic growth is not sufficient. Rather the Welsh Government should require the planning system to deliver robust and sustainable economic growth within a framework which is capable of adapting to the changing environment including the dynamics of the market.

4.204 A number of respondents to the Call for Evidence highlighted the lack of flexibility in the planning system, but also made reference to a number of factors being outside planning control, from site specific issues such as the non-delivery of allocated land to changes in the wider economic environment.

Indeed, it should be recognised that a wide variety of factors which currently constrain new development are outside the remit of the planning system, including a lack of development finance, lack of economic confidence, external policy issues and temporary weakness in occupier markets.

- 4.205 Any reform of the planning system is therefore not, in itself, a cure for all ills. However, CBI Wales and other business groups have stated that planning reform is a key priority. The CBI said to us that in order for the private sector to drive economic recovery “*Wales must be an attractive place to build a business and create jobs*”.
- 4.206 The Welsh Government may therefore decide to change the emphasis of the planning system to provide greater flexibility and responsiveness to changing circumstances, whether affecting the wider economy or, indeed, local considerations.
- 4.207 This re-balancing could, in part, take the form of greater de-regulation with more freedom and flexibility subject to important checks and balances. This could include a wider interpretation of permitted uses, greater use of simplified planning procedures (LDOs) and greater flexibility and empowerment of planning officers, as set out earlier in this Chapter.
- 4.208 To monitor the on-going effectiveness of the Welsh planning system, however it is configured, the Group considers it essential that a monitoring system be established to ensure effective delivery and assist future adaptation.

#### ***Criteria for Effective Delivery***

- 4.209 In considering relevant criteria for assessing effective delivery, we have had regard to the Minister’s description of how the planning system should be delivered – with transparency, accessibility, timeliness and democratic accountability.
- **Transparency** – the creation of a stable and consistent policy background, for the benefit of all, requires a culture of transparency to provide confidence in processes and outputs.
  - **Accessibility** – there is an overlap between transparency and accessibility. The planning system should be available to all but such accessibility should be clearly structured to ensure it does not lead to vexatious obstruction.
  - **Timeliness** – the issue of timeliness was the most commonly quoted concern within the Call for Evidence although, surprisingly, did not rank as highly as other factors. Timeliness has to be balanced against predictability and certainty of decision, which were considered by some respondents to be arguably more important than the adherence to strict deadlines. It was also remarked that, if other parts of the planning system were improved and streamlined, timeliness would naturally follow.
  - **Democratic Accountability** – the Group considers that the need for democratic accountability is a two way process. Local democracy

needs to be balanced against the requirement for members to take ownership of the planning system. Currently, democratic decision making is associated with the development management process. Reform should promote a more sophisticated role in terms of the plan system. This includes the need to understand the primacy of the LDP; the impact of non-delivery upon economic development; and the ensuing problems if members 'opt out' of the process.

### ***How Do We Measure?***

- 4.210 In considering which criteria to measure to assess effective delivery, the Group was aware of the current focus upon quantitative rather than qualitative measures; the latter generally being considered harder to measure and requiring more judgement. We consider that there should be a formal reporting procedure<sup>89</sup>, to be produced annually to nationally agreed standards, established by the Welsh Government and overseen by the PAIB (Recommendations 37-40). A central body with a degree of independence may provide greater confidence to users of the planning system and have sharper powers to set standards and collect an agreed annual return and interpret its results. Statutory bodies should also provide Annual Performance Reports (APR). In addition, we consider that the Welsh Government should set the example and produce its own annual report.
- 4.211 Such reports should utilise existing statistics and systems whenever possible to reduce the administrative burden. The APR should cross refer to the LDP Annual Monitoring Report and have reference to the Planning Advisory Service (PAS) report on effective monitoring and consultation on strategic indicators for planning and sustainable development.<sup>90</sup>
- 4.212 The APR should address both quantitative and qualitative measures and should form the basis of a report which allows the individual planning authority to consider issues and aim for self-improvement. Suggested criteria for qualitative measures, which would require innovative survey methods, include:
- Public awareness and engagement with process
  - Successful application of policy in practice (i.e. upheld through decision making process)
  - Quality of development implemented
  - Levels of community and customer satisfaction
  - Economic measures such as inward investment, economic activity, job creation, employment stats by type of jobs, etc.
  - Social measures such as deprivation indices, education provision, and environmental measures in terms of biodiversity banking, built environment conservation (listed buildings at risk, etc.)

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<sup>89</sup> For example submissions by National Parks Wales (No. 45), Ystradgynlais Town Council (No. 47), Merthyr Tydfil and Gwynedd Councils (Nos. 55 & 87), SEWSPG (No. 78)

<sup>90</sup> Planning Advisory Service: *Monitoring that matter: s towards a better AMR* April 2011

4.213A ‘no blame’ culture within the planning system should be encouraged to allow a more positive environment to develop. The purpose of measuring criteria is to try and understand what improvements are needed either to policies or procedures. Indeed, the APR could seek to lead the planning authority towards greater flexibility through incorporating questions on how each authority is seeking to simplify planning under its own powers.

4.214 The mandatory production of Annual Performance Reports to agreed standards would allow the production of a Wales-wide performance report, again with the objective of fostering a culture of self-improvement. The Wales Report would allow analysis by regional groups or national bodies such as Data Unit Wales and the Planning Officers’ Society Wales (POSW).

4.215 In terms of the model for such a reporting structure, we have examined two surveys which may form the basis for a distinct new ‘Wales Annual Monitoring System’:

- POSW Management Information Survey<sup>91</sup>
- Scottish Government Consultation Performance Scorecard<sup>92</sup>

We consider these models could be used as the basis for consultation.

### ***Monitoring and Ensuring Compliance***

4.216 The reporting and monitoring process should include measures to ensure that Local Planning Authorities are compliant.

4.217 In this regard, the Group has a preference toward the granting of incentives for co-operation and compliance rather than imposing penalties for poor performance. For example, additional funding or the allocation of special incentives leading to economic development benefits could be directed toward those Local Authorities that have delivered.

4.218 However, we consider that there must be penalties for cases of last resort and these may be implemented by one or more Ministers of Welsh Government, having regard to the cross departmental nature of the planning system. Indeed, mechanisms should be in place for Welsh Government to step in and take direct control of certain aspects of planning policy if required and we have attempted to create the structure to enable such intervention where necessary throughout our recommendations.

[See next page for Recommendations 69-72]

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<sup>91</sup> See submission by Bridgend Council No. 22

<sup>92</sup> Heads of Planning Scotland, *The Planning Performance Framework* March 2012

**Recommendations 69 - 72**

- 69. The Welsh Government establishes an Annual Performance Report (APR) for Local Planning Authorities in Wales.**
- 70. The format of the APR should be consulted upon but reflect both quantitative and qualitative issues and, as far as possible, use existing data and cross refer to the LDP Annual Monitoring Report.**
- 71. The purpose of this report should be to allow the Local Authority to consider areas for self-improvement, whilst its submission to the Welsh Government will allow for the production of Wales wide statistics and the formulation of corrective policy, where required.**
- 72. Through a formal monitoring and compliance process, incentives are provided for good delivery and the provision for penalties for the poorest performers.**

## CHAPTER 5: STREAMLINING & IMPROVING EFFICIENCY

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### Development Management: Local Delivery Issues

- 5.1 A core theme in terms of the current delivery of planning in Wales is a lack of consistency in the manner in which the development management function is delivered across local planning authorities. Frustration exists regarding the different processes found in each authority, which reflects the findings of the earlier GVA Grimley study<sup>93</sup>. A drive for greater consistency is identified in a number of operational, practical areas which would assist in the delivery of planning services for customers. These areas include:
- validation of applications
  - minor amendments to planning permissions
  - notification and publicity
  - standardising planning conditions
  - standardising Section 106 clauses.
- 5.2 We received evidence from a number of respondents regarding the need for the current policy guidance on planning conditions to be updated, particularly in relation to the provision of more model conditions reflecting the increasing complexity and number of conditions attached to applications.
- 5.3 The Law Society drew our attention to the issues surrounding the use of a “Grampian” style condition to enable permission to be granted but restricting the carrying out of development until a s.106 planning obligation has been executed. We were also referred to cases where such conditions had been used in the past on the basis that developments might be delayed or even frustrated, for example:
- a. Where an applicant, usually a developer has not secured control of the whole application site.
  - b. In cases of compulsory purchase where planning permission has to have been granted, or the Ministers satisfied that there are no planning impediments to a scheme, before a CPO can be confirmed.
  - c. Where there are numerous landowners the execution of the s.106 agreement can be time consuming, amounting to months in some cases.
- 5.4 The Law Society and Community Housing Cymru drew attention to a number of other problems that have been encountered with the operation of S.106 of the Town and Country Planning Act 1990 and where improvements could be made to remove uncertainty about the scope and application of the powers.

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<sup>93</sup> GVA Grimley – Study to examine the planning applications system in Wales.

- 5.5 Respondents to the CfE also raised the issue of whether planning applications and applications for consents under other permitting regimes should be considered in parallel. We deal with these issues next, together with a number of points relating to planning permission and highways. A Welsh Planning Bill provides the opportunity to address these matters and we make recommendations in this chapter aimed at streamlining the planning system and improving its efficiency.

## Validation

- 5.6 The validation of applications was raised as an issue by a number of respondents to the CfE. There was strong criticism from developers and consultants regarding the inconsistency between authorities and the intransigence of some who refuse to validate applications that would appear to contain all the information necessary. On the other hand, LPAs responded that many applications are of a poor standard, lacking sufficient information and detail for them to be safely determined. The evidence we heard appears not to have altered since the Grimley Report in June 2010.
- 5.7 In response to Recommendation 13 of the Grimley Report, dealing with validation, the Welsh Government has issued revised procedure regulations<sup>94</sup> to require all applications submitted after 30 April 2012 to use the Standard Application Form system (1APP). An accompanying Circular 2/2012<sup>95</sup> explains the system and its validation requirements, which are based on standard lists that vary to seek to ensure that the information requirements are proportionate. These changes are in response to the recommendations of the Grimley Report<sup>96</sup>.
- 5.8 Local planning authorities should not determine applications on any basis other than the provision of adequate plans and documents. Validation is a crucial step and getting this right creates good working relations between applicants and LPAs, leading to greater efficiency throughout the application process. We are aware that some LPAs use the time spent on validating applications as a local performance indicator and that these authorities are amongst the best in terms of performance. We therefore believe validation is a key to delivery of the development management process. The current inconsistency between the validation procedures of different LPAs is unacceptable and we therefore welcome the Welsh Government's actions.
- 5.9 However, there is a perception amongst developers that validation has become more of a hurdle since the introduction of s.327A of the Town and Country Planning Act 1990, added by the Planning and Compulsory Purchase Act 2004. S.327A requires greater formality in the validation of applications by introducing a mandatory prohibition on local planning authorities entertaining

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<sup>94</sup> Town and Country Planning (Development Management Procedure) (Wales) Order 2012

<sup>95</sup> Welsh Government Circular 002/12: *Guidance for Local Planning Authorities on the Use of the Standard Application Form ('1APP') and Validation of Applications*, April 2012

<sup>96</sup> GVA Grimley *Study to Examine the Planning Application Process in Wales* June 2010: Recommendation 13

an application that does not comply with statutory requirements as to its form, manner or content. The effect of the mandatory provision has created the risk of legal challenge to local planning authorities if they accept an application that is not strictly in accordance with the statutory provisions and regulations.

- 5.10 S.327A superseded the previous position which rested on case-law. This drew a distinction between serious and minor irregularities and recognised a discretionary test, which had regard to all the circumstances including the identity of the person challenging the irregularity, the lapse of time, and the effect on other parties and the public.
- 5.11 This change to the law appears to have had an unintended effect on local planning authorities due to the fear of legal challenge over even minor irregularities. This causes friction between applicants and planning authorities at the outset of the process and a hidden source of delay as it lies outside the statutory time limits for determination of applications. Accordingly, we consider that s.327A in its current form should not be incorporated in the Planning Bill.
- 5.12 The operation of the '1APP' system and its standard validation procedures will need to be monitored closely to identify situations where validation may still be causing a blockage. This could be done by changing the secondary legislation. If s.327A is replicated in a Welsh Planning Bill, further primary legislation would be necessary to deal with any issues that emerge from monitoring the experience of the 1APP system. We suggest that the PAIB should take over such monitoring and recommending necessary changes.
- 5.13 We propose that validation is covered by a regulation making power that enables the Welsh Ministers to specify requirements for validation and to make provision for the disposal or rejection of invalid applications. The regulation could be along the lines of s.327A but it would enable some flexibility if monitoring of national validation lists supports the need for further change. Bearing in mind the importance of validation and registration to the efficiency of the application process, if the 1APP system and the associated standard lists do not produce the necessary improvements the Welsh Government will need to amend the regulations to take greater powers of control and intervention.
- 5.14 Finally, we consider that the risk of legal challenge to the final validation of a planning application should be disposed of at the time and not raised as a ground of challenging the planning permission. Accordingly, we recommend that legal challenges to the validity of an application should be made by way of judicial review within six weeks of the final validation of the application and that the person making the challenge should be required to show that they have been prejudiced by the omission or irregularity.

### **Recommendation 73**

**With regard to the validation of planning applications:**

- a. Section 327A of the Town and Country Planning Act 1990 is not included in the Planning Bill, which instead contains a power for Welsh Ministers to make regulations specifying requirements for validation and for the disposal or rejection of invalid applications.**
- b. The operation of the 1APP Standard Application Form is monitored to identify situations where validation is still causing a blockage and action is taken to resolve such issues, including changes to the regulations made under Recommendation 73a.**
- c. Legal challenges to the decision of the local planning authority to finally validate an application are required to be made within six weeks by application for judicial review and the claimant should be required to show they suffered prejudice as a result of the error in validation.**

### **Material and Non Material Amendments to Planning Permission**

5.15 The form of the planning permission has remained remarkably unaltered over the years, although the number and complexity of conditions has expanded greatly. This has resulted in two areas of difficulty that are encountered in practice:

- Identifying the complete content of the planning permission, where the permission incorporates details from the application.
- The need to amend permissions to take account of changes as the design and development process unfolds.

5.16 We believe that a requirement to specify the plans and other documents that are to be read with the conditions attached to the permission should be clearly stated in the permission and that this requirement should be set out in a development order.

5.17 The amendment of planning permissions raises particular conceptual and practical issues, particularly in view of the principle that anyone can, after giving the required notice, apply for planning permission. At present the statutory basis for amendment can be found in:

- i. S.96A of the Town and Country Planning Act 1990, which provides a procedure (which is not an application for planning permission) by which persons with an interest in a development site can apply to make a non-material amendment to an existing permission. This provision does not apply in Wales, but the Welsh Ministers have power to apply the provision in Wales by virtue of s.203 of the Planning Act 2008. There is no statutory

definition of 'non-material' and materiality is dependent on the context of the overall scheme – what may be non-material in one context may be material in another. Thus the local planning authority must be satisfied that the amendment sought is non-material in order to grant an application under s.96A. However, the non-materiality test will mean that it should not raise issues which would necessitate consultation or neighbour notification.

- ii. S.73 of the Town and Country Planning Act 1990, which is the power to make an application to develop without complying with a condition attached to a planning application. While the procedure for such an application is less formal than a full or outline planning application (it does not require the use of the planning application form) it is nevertheless an application for planning permission and will trigger consultation requirements. While the procedure is the only method by which material changes can be made without a fresh application it is not a general procedure to amend a permission already granted, because:
  - The effect of a successful application is the grant of a completely new permission with the amended condition attached. This is a necessary requirement as otherwise a third party could amend a planning consent while it was in the process of being implemented by another person.
  - Details in the original application cannot be altered unless they are referred to in a planning condition.

5.18 We consider that the Welsh Ministers should proceed as rapidly as possible to apply in Wales the provisions of s.96A of the Town and Country Planning Act 1990. We note that this was also recommended by the GVA Grimley study of the planning application process in Wales (2010)<sup>97</sup>.

5.19 Furthermore, we consider that the Planning Bill should make provision for a general power to make a planning application to make minor material amendments to planning permissions already granted. We note that a recommendation to this effect was made in the Killian Pretty Review of the planning application process in England: "Government should take steps to allow a more proportionate approach to minor material changes in development proposals after permission has been granted".<sup>98</sup>

5.20 A subsequent study by WYG Planning and Design for the Department of Communities and Local Government in England defined a minor material amendment as "*A minor material amendment is one whose scale and nature results in a development which is not substantially different from the one which has been approved*".<sup>99</sup>

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<sup>97</sup> GVA Grimley *Study to Examine the Planning Application Process in Wales* June 2010: Rec 11

<sup>98</sup> The Killian Pretty Review *Planning applications: A faster & more responsive system* Nov 2008: Rec 8

<sup>99</sup> WYG Planning & Design *Minor material changes to planning permissions: Options study* July 2009, para 5.2

- 5.21 Primary legislation is required to make provision for minor material amendments. We recommend that the Planning Bill should provide in addition to the powers under s.73, a general power to make minor material amendments to a planning permission and that amendments be made to the Town and Country Planning (General Development Management)(Wales) Order 2012 to allow the local planning authority to conduct proportionate consultation and advertising.
- 5.22 The power to apply for a minor material amendment should be restricted to the persons most likely to undertake the development which has been given permission. We therefore recommend that the same restriction on the ability to apply for a minor non-material variation under s.96A should apply to an application for a minor material variation, that is to say owners or occupiers or persons with an interest in the site under a contract.
- 5.23 We see one of the advantages of these proposals taken together is that they would facilitate the redesign of the current planning permission form into a document that could be updated and reissued when amendments are made, which would record the details of the discharge of conditions and the approval of reserved matters. The latter point is frequently an issue for subsequent purchasers, particularly of commercial property and their funders in seeking to ascertain if a development has been built in conformity with the planning permission.
- 5.24 The proposal in the preceding paragraphs would be facilitated by an amendment to the s.73 powers to provide that where a third party applies under s.73 there should be a new permission but, where the application is made by a person within the category of those entitled to make a minor material amendment under s.96A, there should be an amendment made to the original permission.

*[See next page for recommendations 74-77]*

### **Recommendations 74 - 77**

- 74. Section 96A of the Town and Country Planning Act 1990 should be applied to Wales at the earliest opportunity to allow local planning authorities to approve applications for non-material amendments to planning permissions by owners or occupiers or persons with a contractual interest in the development site.**
- 75. The Planning Bill contains:**
- i. A power to make a planning application to an LPA for approval of a minor material amendment to a planning permission; and**
  - ii. A revised s.73 enabling parties likely to implement a planning application to obtain an amendment to an existing permission and not a new permission as at present.**
- 76. The minor material amendment procedure should have the following characteristics:**
- a. It should be one whose scale and nature results in a development which is not substantially different from the one which has been approved.**
  - b. The local planning authority's duty to consult should be a duty to consult those bodies or persons appropriate to the nature of the amendment being sought.**
  - c. Where an application is made by a person who is an owner or occupier of the site or a person with a contractual interest in the land, the application if successful will result in an amendment to the planning permission referred to in the application.**
  - d. Where an application is made by a third party without any interest in the site a fresh planning permission will be issued if the application is successful.**
- 77. The Welsh Government consults on a new statutory form of planning permission that:**
- a. Identifies the plans and documents that are to be read with the permission.**
  - b. Can be updated and reissued as reserved matters and conditions are discharged and records the plans and documents that are to be read with the discharge.**

## Notification and Publicity

- 5.25 We believe that the notification and publicity requirements for applications, particularly those with major impact on the amenity of the wider community, currently serve to give the impression that public engagement is discouraged.
- 5.26 The current methods of publicity – site notices, newspaper advertisements and limited individual notification - are no longer sufficient. For example a wind turbine application will be of concern to neighbours over a wide area and in adjoining communities.
- 5.27 We consider that there should be additional neighbour notification appropriate and proportionate to the area over which the effects of the development will be felt. This should be required either in accordance with national directions from the Welsh Ministers or determined locally in accordance with guidance from the Ministers. We also note that the Killian Pretty review in England recommended greater freedom for councils in publicising new applications.<sup>100</sup>
- 5.28 We recognise that requiring significant further notification will make an additional call on the resources of the local planning authority and we consider that, in general, such costs should be met either by a further fee payable to the local planning authority or through the applicants undertaking such notification themselves and providing appropriate certification to the local planning authority.
- 5.29 In line with our views on the role that Town and Community Councils could play in the planning process, we believe that they could play a useful role at a local level, especially in rural areas, in disseminating local information about planning applications. We think that this role sits well with the proposals in the Welsh Government's recent White Paper "Promoting Local Democracy"<sup>101</sup> to increase awareness of the role of local town and community councils and to require them to maintain a website and a means of electronic communication with at least the clerk.
- 5.30 While we have not examined the enforcement process in detail in view of our terms of reference, we consider that the transparency of the planning application process as well as the determination of time limits for enforcement purposes would be improved by adopting the following measures. These had some support in the evidence we received and have been introduced into the Scottish system:
- To give notification to the local planning authority of the date on which development began.
  - To post and maintain throughout the carrying out of the development at or near the development site and in a location accessible to the public a copy of the planning permission.
  - To give notice to the local planning authority of the completion of the development.

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<sup>100</sup> The Killian Pretty Review *Planning applications: A faster & more responsive system* Nov 08: Rec 11

<sup>101</sup> *Promoting Local Democracy: A Welsh Government White Paper*, 17 May 2012, Part 3

- 5.31 The enforcement of these obligations should be subject to further consultation as to whether they should be subject to the enforcement process or whether, given the nature of the requirements, they should incur penalties of either a civil or criminal nature.

#### **Recommendations 78 - 83**

- 78. The notification requirements for planning applications should be reviewed and additional notification proportionate to the effects of the application should be required in specified cases.**
- 79. The developments requiring additional notification are either specified nationally in a direction from the Welsh Ministers or determined locally in accordance with guidance from the Welsh Ministers. We recommend that there is a consultation on these options.**
- 80. The cost of significant additional notification should be met either by a further fee, payable if the local planning authority carries out the notification, or the developer should be able to undertake the notification at its own expense and provide appropriate certification to the local planning authority.**
- 81. Town and Community Councils are given a role in providing additional publicity for planning applications.**
- 82. Requirements should be introduced requiring persons implementing a planning permission to:**
- a. Give notification to the local planning authority of the date on which development began.**
  - b. Post and maintain throughout the carrying out of the development at or near the development site and in a location accessible to the public a copy of the planning permission.**
  - c. Give notice to the local planning authority of the completion of the development.**
- 83. The Welsh Government consults on the enforcement of the notification requirements in Recommendation 82.**

## Section 106 Obligations

- 5.32 Agreements under s.106 of the Town and Country Planning Act 1990 (otherwise known as planning obligations) are an essential feature of the planning system, particularly in relation to the approval and control of major developments. S.106 agreements are entered into between the local planning authority and all the persons with legal interests in an application site. The purpose of the agreement is to deal with points that, as matters of law, cannot be covered by planning conditions, but which would otherwise be impediments to the granting of permission.
- 5.33 S.106 agreements have also become an important mechanism for delivering affordable housing in accordance with both national planning policy and local planning authorities' statutory plans. Other important policy objectives that are secured through S. 106 agreements include:
- Securing the provision and management of on-site infrastructure ranging from open space and play areas to community buildings and new schools.
  - Provision for the construction and maintenance of sustainable urban drainage works
  - Securing the implementation of management schemes for environmentally sensitive areas within a development or the provision and management of mitigation works.
- 5.34 Where a developer is prepared to offer a S.106 agreement then the local planning authority's resolution to grant permission is made subject to such an agreement being completed. The planning permission is then issued when the agreement is executed. It is also possible for a landowner to offer a unilateral undertaking to the local planning authority giving binding undertakings in the event that permission is granted.
- 5.35 The tests governing the circumstances in which a local planning authority can ask for a S.106 agreement or accept a unilateral undertaking as a material consideration in a decision to grant planning permission are derived from case law, planning policy and legislation. The tests for the validity of a planning obligation are:
- As a matter of law it must be for planning purposes and must be reasonable. This test is derived from the well-known case of *Tesco Stores Ltd v Secretary of State for the Environment (1995)*.
  - As a matter of policy, it must be:
    - i. Necessary to make the development acceptable in planning terms;
    - ii. Directly related to the development; and
    - iii. Fairly and reasonably related in scale and kind to the development;
    - iv. Reasonable in all other respects.
  - If relied upon as a reason for granting planning permission the tests in the Community Infrastructure Levy Regulations 2010 apply, namely that it is:
    - i. Necessary to make the development acceptable in planning terms;

- ii. Directly related to the development; and
- iii. Fairly and reasonably related in scale and kind to the development.

5.36 In its present form, S.106 dates from the Planning and Compensation Act 1991 and specifies the matters which can be dealt with in a planning obligation as:

- restricting the development or use of the land in any specified way;
- requiring specified operations or activities to be carried out in, on, under or over the land;
- requiring the land to be used in any specified way; or
- requiring a sum or sums to be paid to the authority on a specified date or dates or periodically.

5.37 The obligations in a S.106 agreement bind the landowners who enter into the obligations and also those who acquire title from them subsequently.

5.38 The matters that are expected to be covered by planning obligations in order to give effect to planning policy have become more extensive. However, it is noteworthy that S.106 in its present form is actually more restrictive than the wording originally found in the Town and Country Planning Act 1990 (and which itself derived from earlier legislation), which was couched in the broader terms of

*“restricting or regulating the development or use of the land, either permanently or during such period as may be prescribed by the agreement; and any such agreement may contain such incidental and consequential provisions (including provisions of a financial character) as appear to the local planning authority to be necessary or expedient..”*

5.39 We received evidence, particularly from the Law Society<sup>102</sup> and from Community Housing Cymru when we met them, of a number of problems that have been encountered with the operation of S.106 and where improvements could be made to remove uncertainty about the scope and application of the powers.

5.40 The problems drawn to our attention by the Law Society were:

- The lack of powers to include an obligation that requires the transfer of land to the local planning authority or a third party. The need for a transfer is implicit in many obligations, such as those involving affordable housing; new community or education buildings; open space and playing fields; and environmental management and mitigation works. Currently a drafting device of restricting development, for example by reference to the number of housing units that can be occupied, has to be used to frame an obligation that is within the powers of S.106.
- The absence of powers to require developers to enforce or apply obligations to third parties. Examples were given to us of requirements for lorries to use a specified route along the public highway when entering or leaving a site and the ability to enforce green travel plans.

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<sup>102</sup> Submission by the Law Society (No. 109)

- The absence of powers allowing obligations to require the payment of sums of money to third parties such as community councils or housing associations.
- It is not unusual in the case of major regeneration schemes for the local planning authority to be a landowner within the proposed development. The authority is unable to contract with itself to create a planning obligation thus precluding the obligations binding the authority's successors in title. This can give rise to problems in a number of situations:
  - i. Where the local authority as landowner wishes to ensure that planning permission has been issued and makes this a condition precedent of the disposal of the authority's land.
  - ii. Where a local planning authority and a developer have entered into a development agreement that requires the local authority, subject to complying with its statutory duties, to make a compulsory purchase order (CPO) to assemble the development site and planning permission needs to be available to enable the CPO to be confirmed by the Welsh Ministers.

Various contractual devices are used to overcome this problem at present but none is completely satisfactory. A provision allowing an authority in its capacity as landowner to contract with itself in its capacity as local planning authority under S.106 would resolve this issue.

- It is relatively common to see s.106 agreements which state that the agreement is not enforceable against certain successors to the original parties, for example owner occupiers of housing units or the owners of parts of a site on which no obligations are to be carried out. However, there is legal opinion which holds that such restrictions are an unlawful fetter on the power of the local planning authority to enforce the agreement which by statute binds successors. It would be desirable for such doubts to be resolved and for there to be an express power for the local planning authority to agree that certain categories of successor will not be bound by some or all of the obligations.
- There are potential difficulties in a local planning authority being satisfied that a planning obligation has been duly executed by the other parties because the statutory presumptions, that avoid the need to obtain evidence of identity or of resolutions authorising corporations to execute documents, will not always apply to S.106 agreements. This is because of the difficulty of characterising a local planning authority entering into a S.106 agreement as a "purchaser" within the statutory definition of "a purchaser in good faith for valuable consideration", which is a requirement for the statutory presumption of due execution to apply. The arguments for an extended definition of "purchaser" are unattractive due to the principle that planning permissions can neither be bought nor sold. This difficulty could be resolved by extending the relevant provisions in the Law

of Property Act 1925 section 74(1) and the Companies Act 2006 section 44(5) to S.106 planning obligations.

- 5.41 In addition, the Law Society proposed that arrangements for discharging or modifying planning applications should be reviewed in the light of current economic conditions affecting viability and that consideration is given to:
- Enabling the parties to agree a term after which a modification application can be made, subject to the current maximum of five years.
  - That the effect of obligations on the financial viability of a scheme and thus the prospect of a commencement of development should also be a reason for applying to modify a planning obligation.
- 5.42 Issues drawn to our attention by other parties were:
- The need to introduce greater standardisation in S.106 agreements and the endorsement by the Department of Communities and Local Government in England of the Law Society's standard form.
  - Differences in the approach of local planning authorities to the policy that affordable dwellings should be retained "in perpetuity" and unwillingness of LPAs to consent to provisions that would allow commercial lenders to housing associations to realise their security over affordable dwellings, in the event of insolvency, free of the affordability restriction.
  - A further problem with the "in perpetuity" requirement arises when housing association tenants acquire their properties through a "shared equity" scheme.
- 5.43 We have concluded that statutory planning agreements must continue to have an important role in the planning system but the present arrangements embodied in S.106 could be improved to make the provisions more flexible and to address a number of technical legal issues. We favour a return to the more flexible provisions that existed prior to 1993 and we note the more flexible terms in which the equivalent provisions are drafted in Scottish legislation. To the extent that the present powers in S.106 are a reflection of concern that "planning gain" should be related to planning considerations, we consider that this has now been met by the policy and case-law based tests, and the tests now embodied in statutory provision in the CIL regulations.
- 5.44 Allied to this we believe that the Welsh Government should be able to take steps to ensure that local planning authorities adopt supplementary planning guidance on S.106 agreements, which reflects a consistent national approach to the drafting of obligations subject only to necessary and justified variation to reflect particular circumstances. We think that affordable housing SPG would fall into this category given its importance nationally.
- 5.45 We consider that given the size and population of Wales a consistent approach would increase the confidence of developers in this aspect of the planning system as well as increasing the transparency for other interested parties of what can otherwise be an opaque aspect of the system. (See Chapter 4: Recommendation 22.)

### **Recommendations 84 - 86**

**84. The Welsh Government reviews the powers under s.106 with the aim of introducing greater flexibility to make provision for matters that are connected with the development of the land which is the subject of the development, its use, or the development or use of other land that reasonably and properly relates to the development for which permission is being granted and, in particular, to allow provision to be made requiring the transfer of land.**

**85. Section 106 makes provision as to:**

- a. The due execution of s.106 agreements in a similar manner to documents executed under property legislation and the Companies Act.**
- b. Making clear the powers to specify in a S.106 agreement that the obligations do not bind specified successors in title.**
- c. The ability of the local authority as landowner to bind itself under a S.106 obligation for the purpose of ensuring that the local authority's successors are bound by the obligations.**

**86. The arrangements for the discharge or modification of planning obligations should enable a planning obligation to be modified if the extent of that obligation makes the development no longer viable.**

## **Planning Conditions**

### *Conditions requiring completion of a Planning Obligation*

5.46 We received evidence from a number of respondents regarding the need for the current policy guidance on planning conditions to be updated, particularly in relation to the provision of more model conditions, reflecting the increasing complexity and number of conditions attached to applications.

5.47 The Law Society drew our attention to the issues surrounding the use of a "Grampian" style condition to enable permission to be granted but to restrict the carrying out of development until a s.106 planning obligation has been executed. The Law Society drew attention to cases where such conditions had been used in the past and to a change in the attitude of PINS to the use of such conditions in 2008.

- 5.48 The Law Society was concerned that developments might be delayed or even frustrated, for example:
- (a) Where an applicant, usually a developer has not secured control of the whole application site.
  - (b) In cases of compulsory purchase where planning permission has to have been granted, or the Ministers satisfied that there are no planning impediments to a scheme, before a CPO can be confirmed.
  - (c) Where there are numerous landowners the execution of the s.106 agreement can be time consuming, amounting to months in some cases involving trustees or foreign owners.
- 5.49 It is also relevant to note that unilateral obligations will not always be available because obligations may require the local planning authority to agree to certain provisions to make the obligation effective.
- 5.50 In order to avoid these issues the Law Society proposes that “Grampian” style conditions be expressly permitted enabling a requirement for the execution of a s.106 obligation to be imposed where either a draft agreement can be annexed or referred to in the condition, or the terms of the obligation otherwise stated in sufficiently precise and enforceable terms.
- 5.51 We note that the approach proposed would address some of the problems of delays with the issuing of planning permission where s.106 agreements are involved. In particular it would:
- (a) Remove any discussion of whether an application should be reconsidered by the local planning authority where there has been a long delay between resolution and completion of a s.106 obligation.
  - (b) Address the inconvenience and delay of requiring existing owners to execute the agreement so that the developer can then exercise options to buy the land.
  - (c) Prevent delays in closing appeal proceedings due to the need to secure the execution of a planning obligation and the production to the Inspector of the executed obligation.

*Imposition of bonds or guarantees*

- 5.52 We would also draw attention to the existence of local Act powers which enable bonds or guarantees to be imposed by condition in relation to coal development. Minerals Technical Advice Note 2: Coal described the arrangements as follows:

*In South Wales, local Acts contain powers to impose bonds or other financial guarantees for the restoration of coal sites in the event of default by the developer. The Dyfed Act (1987), the West Glamorgan Act (1987) Mid Glamorgan County Council Act 1987 require financial guarantees for coal mines. This private legislation was introduced in response to the problems arising from the restoration of small coal mines in the 1970s/80s.*

*The private-sector successors to British Coal Corporation acquired certain long-term leases over coal reserves, along with the mining assets which they purchased. The provisions in the Local Acts did not apply to British Coal, nor did they apply to the successor companies for a period of ten years; a period which has now expired.*<sup>103</sup>

- 5.53 The provisions will not apply to permissions granted after other legislation makes provision for securing bonds or guarantees.
- 5.54 We consider that the Planning Bill should either make these powers generally available in Wales or remove them.
- 5.55 The principle of a provision allowing the imposition of bonding or guarantee requirements, where there is risk of default in carrying out restoration or aftercare conditions, appears to us to be a useful one with application to minerals developments generally and developments involving contaminated land. We consider the Welsh Government should consult on this matter.
- 5.56 Also related to the provision of security is s.106(12) of the Town and Country Planning Act 1990, which provides for Regulations for the charging on the land of -
- any sum or sums required to be paid under a planning obligation; and
  - any expenses recoverable by a local planning authority in enforcing a planning obligation.
- 5.57 Regulations have never been made. However, this appears to us to be a potentially useful provision to give local planning authorities confidence to enforce planning obligations. We therefore propose that the consultation on planning conditions requiring bonds or guarantees to be provided also covers the retention and implementation of section 106(12).

[See next page for Recommendations 87-89]

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<sup>103</sup> Minerals Technical Advice Note 2: Coal, paras 65-66

**Recommendations 87 - 89**

- 87. The Welsh Government gives priority to updating guidance on planning conditions, including model conditions reflecting current best practice**
- 88. The Planning Bill contains express power to attach a planning condition that makes the commencement of development conditional on the execution of a planning obligation, provided the terms of the obligation are either contained in a draft planning obligation, or are otherwise expressed in sufficiently precise and enforceable terms that are available at the date the decision to grant permission is taken.**
- 89. The Welsh Government consults on the future of local Act powers to impose bonds or other financial guarantees for the restoration of coal sites in the event of default by the developer. The consultation should consider:**
- a. Making the powers of general application and available to all local planning authorities in Wales.**
  - b. Extending the powers to impose site restoration conditions generally so that, for example, other mineral developments or the treatment of contaminated land are also covered.**
  - c. The retention and implementation of the regulation making powers under S.106(12) of the Town and Country Planning Act 1990 in relation to the charging of land to secure planning obligations.**

## Parallel Permitting

- 5.58 A case was made out in several responses to the CfE<sup>104</sup> for consents required under other legislation to proceed in parallel with applications for planning permission. The Penfold Review<sup>105</sup> in England covered this subject in detail and we have noted its recommendations. In general, we consider that the Planning Bill should enable an applicant to initiate ancillary procedures necessary to enable a development to proceed in parallel with their planning application, unless there are sound practical considerations as to why this should not be the case. We have made some specific recommendations to facilitate parallel consenting in relation to highways matters. In addition, we think that the general drafting approach in the Planning Bill should be to permit parallel procedures unless there are good reasons for putting the planning permission in place first.
- 5.59 We have looked at the draft guidance recently issued by the Environment Agency<sup>106</sup> on planning permission and permitting decisions. This gives positive encouragement for parallel consenting where this would assist both the planning and consenting processes and enable a quicker outcome overall. Our only concern would be that the Agency adheres to its area of expertise and responsibility and does not stray into considering the planning merits of a scheme generally. There was some criticism in the responses to the CfE of statutory consultees taking a more general view of the merits of a scheme than was required by their statutory remit. But otherwise this recent guidance appears sensible and generally helpful.

### **Recommendation 90**

**The Planning Bill ensures that wherever provision is made for any ancillary permitting application necessary to enable a planning permission to be implemented it is open to an applicant to make that permitting application and have it considered in parallel with the planning application, unless there are sound planning or practical reasons why this should not be the case.**

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<sup>104</sup> See Environment Agency (No 38), SEWEF (No 56), ALGE (no 70)

<sup>105</sup> *Review of non- planning consents*, Adrian Penfold: Final Report July 2010

<sup>106</sup> Environment Agency Wales *Guidelines for developments requiring planning permission and environmental permits* Working draft, May 2012

## Highways and Planning

5.60 Part 10 of the Town and Country Planning Act 1990 deals with the implications of a grant of planning permission on highways. There are provisions for:

- The Ministers to order the stopping up or diverting of highways for schemes for which planning permission has been granted.
- Local authorities to stop up or divert rights of way affected by a development for which planning permission has been given.

5.61 There is a procedure for such orders to be applied for in anticipation of the grant of permission, but such applications can only be made where a local authority or statutory undertaker is one of the applicants for planning permission. The private sector applicant can only do this if an application is called in or is subject to appeal.

5.62 The need to deal with highway closure or diversion issues after the grant of planning permission is a frequent cause of delay and frustration to developers and we consider that a greater measure of parallel consenting could be achieved.

5.63 It appears to us that a number of improvements could be made which make the handling of ancillary highways issues more efficient. Our recommendations set out on the following page are similar to those made in England by the Penfold Review of Non-Planning Consents which reported to the Department for Business Innovation and Skills in 2010<sup>107</sup>.

[See next page for Recommendations 91 (a)-(f)]

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<sup>107</sup> Review of non- planning consents, Adrian Penfold: Final Report July 2010

### **Recommendation 91**

**With regard to the planning aspects of highway development:**

- a. Applications for the stopping up of highways, other than those for which the Welsh Ministers are the highways authority (motorways and trunk roads), should be made to the local highway authority at the same time as a planning application is made to the authority as local planning authority, enabling the application to be processed and determined in parallel with the planning application.**
- b. If the planning application is granted and there are no objections to the stopping up or diversion Order or any such objections are resolved then the local authority should be able to make the Order as it currently does with affected rights of way.**
- c. If objections to the highways Order from statutory undertakers or the owners and occupiers of adjacent properties or others who have a legitimate interest in the Order remain unresolved, notwithstanding the grant of planning permission, then the application should be referred to the Welsh Ministers for determination by PINS as at present.**
- d. If planning permission is refused and appealed, or called-in then the highways application could be considered as part of the same appeal process.**
- e. If a planning application affects a trunk road or motorway then an applicant should be able to make an application to the Welsh Ministers at the same time as the planning application is submitted and a co-ordinated decision taken by the Ministers once the planning application has been determined.**
- f. The Welsh Government consults on the delegation of processing of Orders affecting motorways and trunk roads from Welsh Ministers to the agent local highway authorities.**

## CHAPTER 6: LEGAL & OTHER ISSUES

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6.1 In this chapter we consider a number of other issues, not yet addressed, some of which have arisen through the evidence and our discussions and some that we wish to draw attention to so that the opportunity presented by a Welsh Planning Bill is not missed. We deal first with enforcement; this did not figure large in the evidence but it is an important topic in its own right. Then we deal with issues around the commencement of development and the duration of planning permission, followed by the period allowed for implementation. We end with a submission on compulsory purchase from the Compulsory Purchase Association.

### Enforcement

6.2 The responses to the Call for Evidence did not produce a significant body of comment on enforcement. Furthermore, we note that the Welsh Government proposes a separate review of enforcement. Nevertheless, the enforcement process is a very important element in maintaining public confidence in the planning system. We therefore offer a number of observations based upon the experience of members of the Group by way of a contribution to further focussed consideration of the enforcement process.

6.3 The ability to obtain a planning permission where an enforcement notice is served (using ground (a) of the grounds for appealing against a notice and/or by paying a fee for the deemed planning application) causes confusion in the eyes of the public and uninformed appellants. Concerns are also expressed by LPAs and the public when separate applications are submitted for development that is subject of an enforcement notice, since it is seen as a ploy by the appellant to delay effective action against unauthorised development. Options that have been used to address these issues are:

- i. To remove the ability to appeal on ground (a) or make a deemed planning application.
- ii. To enable an authority to decline to accept a retrospective planning application for a matter that is the subject of an existing enforcement notice.<sup>108</sup>

6.4 While option (i) makes a clear distinction between the enforcement and planning application processes, there seems little benefit in a requirement to make a separate application. The simplest and most efficient solution would seem to be for ground (a) of the enforcement appeal to be retained, but with this being the only route for a planning permission to be granted, removing the confusing reference to a 'deemed planning application'. This could be coupled with the ability for the LPA to decline a separate planning application (option (ii) above), preventing spurious delays to necessary enforcement action. A further option meriting exploration is the ability for a LPA to serve a notice requiring an application to be submitted, thus enabling conditions to be attached to a permission to control unauthorised development. This was introduced in Scotland by Section 33A of the Town and Country Planning (Scotland) Act 1997.

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<sup>108</sup> Option (i) is used in Scotland; option (ii) was introduced in England by S123 of the Localism Act.

- 6.5 We have recommended the introduction of a duty to notify the start and the completion of development to the LPA and to display on site a copy of the permission (Recommendation 82). This will aid enforcement by improving the information held by LPAs and through enabling neighbours to be more aware of the terms of the permission that has been issued and thus better able to report suspected breaches.
- 6.6 We note that Scottish planning enforcement includes the power for local planning authorities to serve fixed penalty notices for enforcement offences. We think that this is an option that merits further consideration in Wales.
- 6.7 The Localism Act 2011 s.125 has given local planning authorities a useful power to provide “letters of assurance” with regard to the exercise of the power to prosecute for non-compliance. Letters would be given to persons with an interest in land which is the subject of enforcement proceedings and who are thus required to be served with an enforcement notice, but whose interest in the land does not entitle them to comply with the terms of the notice. Consideration should be given to introducing such a power in Welsh legislation.
- 6.8 Enforcement notices which have come into effect remain in force notwithstanding that their terms have been complied with. The continued presence of the details of the Notice on the Planning Registers can be an impediment to subsequent disposals of a property and establishing evidence that a Notice has been complied with can be difficult. This may leave an owner with no option but to apply for a certificate of Lawful Use or Development, with consequent expense and delay. We think that local planning authorities should have the ability, either themselves or on the application of a person interested in the property, to cancel Enforcement Notices that have been fully complied with or to record this on the planning register. Consideration should also be given to enabling a potential purchaser or successor in title to a person served with an enforcement notice to obtain a statement from the LPA as to what action remains to be done to comply with an enforcement notice, in cases where there is doubt as to whether a Notice has been complied with.
- 6.9 The introduction of special retrospective powers of enforcement in respect of development that has been concealed, as has been done in England, should in our view be treated with caution.<sup>109</sup> The Law Society has warned that the solution to a small number of well publicised cases risks having unintended consequences for property transactions due to the lack of a clear distinction between deliberate concealment and unintentional breaches of planning control of which the local planning authority was unaware. This provision has already resulted in insurance products beginning to appear on the market and imposing additional costs on property transfers generally. We think that the specific problem of deliberately concealed development has been fully dealt with by the Supreme Court in its decision in *Secretary of State for Communities and Local Government and another v Welwyn Hatfield Council [2011] UKSC 15*. There is therefore no necessity to introduce in Wales special powers in respect of ‘concealed’ development.

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<sup>109</sup> See Localism Act 2011, s.124

## **Recommendations 92 - 93**

**92. The Welsh Government consults on the following:**

- a. ground (a) of the grounds of appeal becoming the only route to obtain planning permission for development subject of an enforcement notice, eliminating the ‘deemed planning application’; a power for LPAs to decline retrospective applications for development subject of an enforcement notice; and a power for LPAs to serve a notice requiring submission of a planning application for unauthorised development.**
- b. The introduction of a power to deal with enforcement offences by means of a fixed penalty notice.**
- c. The introduction of a “letter of assurance” procedure regarding the planning authority’s intentions in relation to prosecution of parties served with an enforcement notice due to their interest in the land but who are not in a position due to the nature of their interest to secure compliance.**
- d. Provision for LPAs to enter on the planning register that an enforcement notice has been complied with to the satisfaction of the local planning authority.**
- e. Provision for the cancellation of Enforcement Notices that have been complied with and can be regarded as spent.**
- f. Provision for a party not served with an enforcement notice and who is a potential purchaser of land or a successor in title to apply to the local planning authority for confirmation of any steps that remain to be taken to comply with an enforcement notice.**

**93. While the Welsh Ministers may wish to consult on the issue, we do not recommend the adoption in Wales of the Planning Enforcement Order procedure to deal with concealed breaches of planning control.**

## **Commencement of Planning Permission**

6.10 We think that the Planning Bill is an opportunity to review a number of issues relating to:

- a) What constitutes a commencement of development?
- b) How long should planning permission last without development being started?

6.11 At present the acts that amount to a commencement of development are those which come within the definition of “material operations” which are defined in section 56(4) of the Town and Country Planning Act 1990 as:

*(a) any work of construction in the course of the erection of a building;*

*(aa) any work of demolition of a building;*

*(b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;*

*(c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b);*

*(d) any operation in the course of laying out or constructing a road or part of a road;*

*(e) any change in the use of any land which constitutes material development.*

6.12 In some cases the operations necessary to amount to commencement of development and thus secure the benefit permanently of the planning permission are slight; the cutting of a trench or minimal works to create a site access is sufficient.

6.13 The Courts have ruled that the commencement of development is an objective test and have rejected arguments that there should also be an underlying intent to proceed with the development rather than simply preventing a planning permission from running out of time. The Courts have also held that while the works needed to constitute a commencement of development need not be extensive, they must still be more than de minimis.<sup>110</sup>

6.14 Notwithstanding the requirement that works should be more than de minimis it is the case that relatively minor works are sufficient to fix a planning permission and the requirements relating to the digging of trenches or the laying out of access can be quite easily complied with at relatively little expense.

6.15 Nevertheless, the potential loss of amenity as well as the uncertainty that an uncompleted scheme can cause to neighbours are important issues that merit further examination. The options appear to us to be:

a) To introduce a statutory requirement for a more substantial start to be required, especially the requirements relating to the laying of foundations and roads.

b) To examine the procedure for requiring the completion of a development and the circumstances in which the permission for an uncompleted development can end.

6.16 As regards option (a), we recognise that the introduction of a requirement that a material operation is also substantial involves a degree of uncertainty. Nevertheless, in view of the potential benefits we consider this option merits further consideration with a view to introducing a test that requires the

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<sup>110</sup> See *Riordan v. South Bucks DC* (2001)

commitment of resources that make it more likely that development, once commenced, will be completed.

- 6.17 With regard to option (b) we would draw attention to the recommendations of the study on Completion Notices published in 2001 by the Department of City and Regional Planning, Cardiff University (CPLAN) and Buchanan Partnership for DCLG.<sup>111</sup> This confirmed that completion notices are an essential part of the planning system and made recommendations for simplifying their use, notably the removal of the requirement for notices to be confirmed by the Ministers before coming into force and replaced by a right of appeal
- 6.18 Our recommendations on this topic should also be considered alongside our recommendations for enhanced publicity for the start and completion of development (Recommendation 82).

#### **Recommendation 94**

**With regard to Commencement provisions:**

- a. The Welsh Government consults on the introduction of a revised definition of the “material operations” considered sufficient to commence a planning permission, with the intention of introducing a test that requires a level of commitment of resources that make it more likely that development, once commenced, will be completed.**
- b. The Welsh Government considers simplifying the procedure for serving Completion Notices, taking into account the recommendations of the 2001 CPLAN/Buchanan Partnership study.**

#### **Duration of Planning Permission**

- 6.19 The duration of planning permission now differs significantly between Wales and England. In England the default duration has been reduced to three years for full planning permission and, in the case of outline permission, three years for the approval of reserved matters and a further two years to implement permission. In Wales, the default duration remains at five years for full planning permission and for outline permission there is three years for obtaining the approval of reserved matters with development to be started within five years of the permission or, if later, two years from the final approval of reserved matters. In Scotland the position is similar to that in England.
- 6.20 Although this was not an issue raised in the responses to the Call for Evidence, in view of this quite fundamental difference between Wales and its neighbours we considered it necessary to investigate and debate the issue.

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<sup>111</sup> <http://www.communities.gov.uk/documents/planningandbuilding/pdf/157692.pdf>

6.21 The key argument in favour of reducing the duration to 3 years advanced by some of the group is the pace of change in terms of planning policy, particularly in respect of the environment. Permissions granted 5 years previously may be significantly out of line with planning policy when they come up for renewal. It was pointed out that since 2007 we have had:

- several updates and a re-issue of PPW
- a new TAN 5 and a refresh of TAN 8
- amendments to the EIA Regulations
- several adopted LDPs and UDPs
- the Natural Environment and Rural Communities Act
- amendments to the Wildlife and Countryside Act 1981
- new arrangements for flood risk and Coastal Zone planning
- an update of the Wales Spatial Plan

6.22 Others advanced the contrary view that a reduction below 5 years would impact upon the delivery of new development for the following reasons:

- in the current weak property market a planning consent with a short life of just 3 years could not obtain the necessary development finance
- the uncertainty of costs at renewal would deter any commitment to 'up front' investment
- if existing and emerging industries are to have the modern floorspace they require, developers need certainty to make the significant investment in time and money to bring sites forward
- the IAG was set up to secure delivery and one of the criteria the Group is working to is certainty

6.23 Another view was that the key principle relating to the duration of a permission is that it should be appropriate to the type of development. Thus for smaller developments a duration of three years would be appropriate whereas for larger, phased, developments the duration should be longer. Periods specified for securing the approval of reserved matters could be on a phase by phase basis within the overall framework of the permission.

6.24 We have been unable to reach an agreed view on this issue. We note that in England special provision has been made for permissions to be extended beyond 3 years in response to the economic climate. In the light of the arguments regarding the impact of a reduction on delivery, **the majority were of the view that there should be no change to the current duration of planning permissions in Wales.** It is for the Welsh Government to decide whether they wish to carry out a consultation on this issue.

#### **Recommendation 95**

**The Welsh Government considers whether to consult on a reduction in the duration of a planning permission.**

## **Extending the Time for Implementing Planning Permission**

- 6.25 There may be circumstances where it is desirable to extend the duration of planning permission to take account of unforeseen eventualities, including adverse market conditions that may prevent schemes being funded. Complex schemes nowadays frequently require the discharge of numerous pre-commencement conditions which are both time consuming and costly and involve the funding of additional design work. The considerable investment of money and time that the permission represents should not lightly be written off if there is a reasonable prospect of a scheme proceeding when market conditions improve.
- 6.26 It is possible in Wales to apply for an extension to the time limit for commencing a development, or for applying for the discharge of reserved matters, through an application to develop without complying with the condition under s.73 of the Town and Country Planning act 1990. The ability to do this was removed in England under the Planning and Compulsory Purchase Act 2004, section 51(3). In line with our view that there should be greater flexibility in the planning system in Wales, we think that the option to extend the duration of permission should be retained.
- 6.27 However, the extension of planning permission raises distinct issues so we consider that there should be a separate application procedure for an extension of time with the decision related to the consideration of the reasons why it has not been possible to implement the permission during the time originally allowed. This could include a change in market conditions and we have noted in this regard the steps that were taken in England to keep planning permissions alive until economic conditions improved.<sup>112</sup>

### **Recommendation 96**

**The Planning Bill contains a separate procedure for extending the time for implementing planning permission based upon consideration of the circumstances that prevented the permission from being implemented during the time period originally allowed.**

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<sup>112</sup> Department of Communities and Local Government: *Greater Flexibility for Planning Permissions – Guidance* 2009

## Planning and Compulsory Purchase

- 6.28 It is frequently overlooked that the Town and Country Planning Act 1990 is a code containing powers to both control and bring about development. This reflects one of the main policies behind the 1947 Act, which was to facilitate the post war reconstruction of our towns and cities
- 6.29 Part IX of the Town and Country Planning Act 1990 contains the powers of local planning authorities to carry out the compulsory acquisition and appropriation of land for planning purposes.
- 6.30 This is an important section because it contains the LPA's "positive planning" powers to make land available for purposes that promote economic, social and environmental well-being. This part of the Act is a largely self-contained code and also deals with consequential issues such as overriding rights and easements.
- 6.31 We have had representations from the Compulsory Purchase Association (CPA), suggesting that all the CPO powers which fall under the Welsh Ministers are consolidated into a single Welsh CPO Powers Act or that the regeneration powers should be consolidated into a Regeneration Powers Act.
- 6.32 The use of powers of compulsory acquisition under the 1990 Act or their availability has been an important tool in assembling sites to realise development proposals for the regeneration of our town and cities. A relatively recent example is the CPO promoted by Newport City Council to facilitate the redevelopment of John Frost Square.
- 6.33 The CPA drew our attention to recent judicial pronouncements on compulsory purchase, such as that of Lord Nicholls in *Waters v. Welsh Development Agency* ; "...[C]ompulsory purchase is an essential tool in modern democratic society. It facilitates planned and orderly development. Hand in hand with the power to acquire land without the owner's consent is an obligation to pay full and fair compensation... Unhappily the law in this country on this important subject is fraught with complexity and obscurity".
- 6.34 The Law Commission published proposals for a modernised compulsory purchase code between 2003 and 2004<sup>113</sup>. However, the UK Government declined to find legislative time, declaring it "...more important to maintain a stable legislative framework providing certainty for acquiring authorities and for those whose properties need to be acquired".<sup>114</sup>
- 6.35 The law of compulsory purchase and compensation is closely linked to the wider system of land law, which is not a devolved function and there is thus a

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<sup>113</sup> See Towards a Compulsory Purchase Code: (1) Compensation, Law Com. No.286 (2003); and Towards a Compulsory Purchase Code: (2) Procedure, Law Com. No.291 (2004)

<sup>114</sup> See written statement by Yvette Cooper M.P., Minister of State for Housing and Planning, December 15, 2005.

strong argument that the law in Wales on compulsory purchase should remain the same as in England. However, since 2004 there have been piecemeal changes which have yet to be applied in Wales with the result that gaps are opening up between the law in Wales and England, with potentially unpredictable consequences:

- i. Section 226 of the Town and Country Planning Act 1990 was amended in England and Wales by the Planning and Compulsory Purchase Act 2004 by making the powers of compulsory purchase for development and planning exercisable where the local authority think that it will contribute to achieving economic, social or environmental well-being. Much of the detail of compulsory purchase procedure is set out in circular guidance. The relevant English circular was reissued in 2006<sup>115</sup>. However, although the Welsh Government also consulted on a new circular in 2006<sup>116</sup> as part of its “Planning for Wales” strategy it has never been issued and both acquiring authorities and Inspectors in Wales are turning to the guidance in the English circular when orders under s.226 are promoted.
- ii. The important ancillary power in s.237 of the Town and Country Planning Act 1990 to override covenants and rights affecting property where land has been acquired using, or under threat of, compulsory purchase powers, was amended by the Planning Act 2008 to clarify the scope of the powers to override covenants restricting the use of land that had arisen due to a court decision. The amendment came into force in England shortly after the 2008 Act was enacted. The Welsh Government was given the power to apply the amendment in Wales.<sup>117</sup> However, a Welsh consultation did not take place until late 2010 and the amendment has not been applied in Wales. This means there is a technical but significant difference affecting disposals of development sites in Wales that have been acquired by compulsory purchase.

6.36 In the interests of maintaining the coherence of the system of compulsory acquisition and compensation we recommend that the Welsh Government revises its circular on compulsory purchase and brings s.237 of the 1990 Act into line with England as soon as practicable.

6.37 With regard to the proposal of the CPA that there should be a Welsh Act which gathers together all the powers of compulsory purchase available to the Ministers and local authorities, we consider that this would be a major legislative undertaking. If it were to be carried out then we consider that it should be done as part of the broader development of a Welsh statute book and that it should be the subject of separate proposals and consultation.

6.38 However, we agree with the CPA that there is a significant overlap between the powers of compulsory purchase now exercisable by the Welsh Ministers as the

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<sup>115</sup> DCLG Circular 06/04 Compulsory Purchase and the Critchel Down Rules

<sup>116</sup> To replace Circular NAFWC 14/2004

<sup>117</sup> See section 203(2)

successors to the Welsh Development Agency and the powers available to local authorities under s.226 of the 1990 Act. Indeed the powers are used for very similar purposes. For example, while the major redevelopment of Newport City Centre referred to above is being facilitated by a s.226 compulsory purchase order, the 'St Davids 2' shopping centre development in Cardiff was facilitated by a compulsory purchase order made by the Ministers under section 22 of the Welsh Development Agency Act 1975.

- 6.39 We believe that there may be a case for a single set of compulsory purchase powers for the development and regeneration of land exercisable by Welsh Ministers and by local planning authorities and contained in a separate Development and Regeneration Powers Act.

### **Recommendation 97**

#### **With regard to CPO provisions:**

- a. The Welsh Government proceeds with the revision of its circular guidance on compulsory purchase to take account of the amendments to section 226 of the Town and Country Planning Act 1990 by the Planning and Compulsory Purchase Act 2004.**
- b. In view of the common system of land law throughout the jurisdiction of England and Wales, the law of compulsory purchase and compensation in Wales should maintain its coherence with the rules applying in England unless there are powerful reasons related to Welsh circumstances that require different provision to be made.**
- c. In order to maintain coherence the powers to override easements and other rights under s.237 of the Town and Country Planning Act 1990 should be brought in line with England through applying the powers under section 203(2) of the Planning Act 2008.**
- d. Consideration is given to bringing together the compulsory purchase powers of the former Welsh Development Agency, now vested in the Welsh Ministers, and the powers of local authorities under s.226 of the Town and Country Planning act 1990 into a single set of powers of compulsory purchase of land for development and regeneration purposes exercisable by both the Welsh Ministers and local authorities.**

## CHAPTER 7: FINANCIAL IMPLICATIONS

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- 7.1 In this chapter we consider the financial aspects of our recommendations. Our approach to finance and cost starts from recognition of the current economic situation and pressure on public spending in particular. We have been conscious of the need to avoid imposing unnecessary additional costs on the system
- 7.2 Nonetheless, whether it is a debate on the economy; the provision of houses and jobs; climate change; renewable energy; or the protection of the environment, the land use planning system features because of its central role as a delivery mechanism. Consequently, if the Welsh Government wishes to see a step change in the efficiency of the planning system and its ability to deliver, it needs to recognise that this will require some, in our view modest, investment. We believe that there are many ways to be smart in the way finance is to be provided, particularly through sharing resources. We deal with this below. It should be noted that where we do not mention a particular recommendation in this chapter it is because we regard its implementation as part of that organisation's role and therefore part of 'business as usual'.

### *Incentives*

- 7.3 We begin with a point made in a number of responses to the CfE that the Welsh Government should provide greater incentives for improved LPA performance.
- 7.4 The Welsh Government has a Planning Improvement Fund (PIF) to support delivery by LPAs, which is £1.75m for 2012/13. This year, authorities can make individual bids under 3 themes - operational improvements; improving policy capacity; and supporting technical assistance. Grant assistance is not automatic and applications have been refused recently, although this is not widely known. In our view if the Government wishes to retain such incentives it should make a clear link with individual performance as evidenced by the proposed Annual Performance Report – incentives are to reward success and improvement. Furthermore, whilst we do not believe in a blame culture, a decision to refuse a grant application and the reasons should be published by the Minister.
- 7.5 In view of the grants received by LPAs from the PIF the question to be asked, in the light of the responses, is whether the process and sums available are adequate to incentivise performance? Bearing in mind that the maximum available under the first two themes this year is in the region of £50,000 we have some doubt. Certainly the views expressed in the CfE point in that direction. However, we do not advocate an increase in the incentives. To do so in the current economic climate would be wrong and, in any event, simply providing larger grants is not the answer.
- 7.6 We have made recommendations to improve the delivery processes in earlier chapters; in terms of finance we believe the money available to the Government should be spent differently. **Instead of allocating money in response to individual applications we consider the Welsh Government should use part of the PIF to directly create structures, in particular the PAIB.** The PAIB would provide support and advice to LPAs in many forms as outlined in Chapter

4. Consultation on its role should explore fee structures and Welsh Government subsidy for services. Furthermore, the PAIB may take on some of the research and related implementation/training functions of the Welsh Government with associated budgets. We believe that this alone would bring about substantive improvements to the planning system. We turn then to our individual recommendations.
- 7.7 The **national development framework (recommendations 5-7)** would involve the Welsh Government in a cost. However, we do not regard this as additional cost since it is essentially a matter of priorities for use of staff time, rather than requiring staff recruitment. We consider this would be a natural progression of existing work on the Living Wales Programme and would be prepared in a similar manner. We have recommended an interim solution that would involve no cost. We also refer in Chapter 4 to the potential benefits to the economy. There is clear potential for cost savings through more focussed public sector investment and the release of tertiary land, which will never be developed, for other uses.
- 7.8 The proposed **regional approach to strategic planning (recommendations 8-11)** would involve set up and running costs, which would need to be shared between the Welsh Government and LPAs. The cost would depend on the number of such teams. The TAYplan Strategic Development Plan team in Scotland was given a start-up grant of £140k by the Scottish Government for offices and equipment. However, in our view it would not be necessary for separate accommodation to be found; the aim would be for the Welsh Government and individual authorities to collaborate on start-up costs, including accommodation. The annual cost of the TAYplan team, which comprises a team manager and two planners, is £60k for each of the constituent authorities. This cost could be reduced by secondments from LPAs. TAYplan members also work for LPAs in slower periods to offset LPA costs.
- 7.9 **Improving local development plans (recommendations 12-17)** include actions for both the Welsh Government and LPAs. The work for the Welsh Government is part of 'business as usual'; recommendation 36, a review of consents taken at national level, is intended to release time at national level. For the LPA, the main cost is in the pre-deposit stage, publishing consultation responses and negotiating to reduce objections. However, we believe any additional time or costs would be offset by later time savings at deposit and examination stage and the benefits to the quality of the adopted LDP. No additional funding from the Government would be warranted.
- 7.10 Our proposals for **nationally strategic infrastructure projects (recommendations 24-28)** would involve additional work for the Planning Inspectorate, which in turn would be funded by the Welsh Government. However, the fee for these applications would be paid to the Welsh Government, offsetting the total cost.
- 7.11 The changes to **call-in procedures (recommendations 29-35)** would also be business as usual for the Welsh Government. It would involve extra work for the Inspectorate to review decisions to approve contrary to officer recommendation. But we would expect the Inspectorate to take on this work without additional resource, particularly bearing in mind our proposals for the

appeal system (recommendations 44-46) which should improve efficiency and provide time savings.

- 7.12 The **Planning Advisory and Improvement Body (recommendations 37-40)** is seemingly the most significant proposal in cost terms. However, there are several options that would reduce the cost. The model we envisage is based on the Design Commission for Wales, which has a small core of full-time staff, student placements and a network of volunteers. The governing stakeholder body would be a source of expertise the body could draw on. Accommodation could be found in Welsh Government offices and some of the services it would provide could have an administrative charge. The DCfW could become a joint part of the PAIB with additional savings in terms of governance and running costs. There would also in our view be opportunities to work with the WLGA to minimise overheads. It would be possible for LPAs to release staff on secondment, both to contribute expertise and to gain experience. As we have said above, the PIF should be used to cover the overall costs in view of the benefits to the planning system and to LPAs.
- 7.13 **Town and Community Councils (recommendations 52-53)** would incur some extra costs if they were to become more involved in the planning process, particularly if they were to prepare SPG. However, becoming involved in planning should be part of the normal role of Community Councils. We are aware that PAW is preparing training packages for Community Councils with funding from the Welsh Government. Continuing this funding for PAW, with additional support from the Design Commission for Wales, would build the capacity needed for these Councils to become involved in the long term. As to SPG preparation, this would require support from LPA officers, but would in turn reduce their workload. Those Town and Community Councils wishing to take the opportunity of preparing SPG have the ability to precept to obtain the required finance.
- 7.14 We recommend the creation of **shared service teams (recommendation 54)** to provide specialist advice to LPAs on certain types of applications. Some of these could be regional whilst others could be national, as part of the PAIB. The regional model is that currently operated in North Wales for waste and minerals. This was set up without any assistance from the Welsh Government and is paid for by a mix of annual funding, daily rates and seconded staff. Similar services could be set up using this model. For the PAIB, the grants currently given from the PIF to provide technical advice would, in our view, be better spent on the creation of a centralised advice and research team, ensuring a consistent and improved service.
- 7.15 Our recommendation for **committee structures and member training (recommendations 55-57)** would impact chiefly on LPAs. However, the content, quality and delivery of training would be part of the work of the PAIB. There is already a considerable amount of training provided by bodies such as the RTPi, WLGA and DCfW, which would be closely involved with the PAIB, thus facilitating sharing of resources. Training is already provided on a regular basis by a number of LPAs and in our view this is the responsibility of all authorities and should be regarded as part of their normal role.

- 7.16 The introduction of **pre-application procedures (recommendation 60)** involves additional costs for applicants to involve communities in consultations on proposed development prior to the submission of a planning application. However, the benefits of these discussions should be realised through greater understanding and acceptance by communities and committees and therefore is in our view justified.
- 7.17 The introduction of a **mediation process (recommendations 62-64)** would be the responsibility of the PAIB. We envisage this as being self-financing, the costs being shared between those participating. The potential savings in costs to both the applicant and the LPA, through the avoidance at least of delay and most probably of an appeal, again justify a service that would be paid for by those using it. The PAIB would facilitate and organise the service but would not employ mediators, who would be used on a case by case basis from other sources such as its stakeholder governing body or the RICS Expert Panel.
- 7.18 We recommend as part of saving 'The 10%' an **advice team for SPZs and LDOs (recommendation 68)**. This would be best located within the PAIB and part of that body's costs.
- 7.19 The last of our recommendations to have a cost implication is the **Annual Performance Report (recommendations 69-71)** to be prepared by all LPAs, and possibly by other bodies such as statutory undertakers. We consider this report to be integral to the culture of self-improvement and transparency for the local community that we believe is necessary. It will be used as a basis for deciding entitlement to any incentives that the Welsh Government wishes to provide for performance and delivery. It should in our view, therefore, be regarded as part of an LPAs normal responsibility to produce such a report. We envisage a 'whole Government' approach to ensuring the delivery of planning and therefore the provision of incentives can be tied into existing and proposed Government expenditure across a number of departments, thereby providing a cost effective basis for delivery.

## CHAPTER 8: QUICK WINS

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- 8.1 We recognise that the Planning Bill and its Commencement will take time that some say is not available if the planning system is to stimulate economic growth in the present.
- 8.2 We have identified some measures that could be implemented sooner rather than later. Some require minimal input; others may take some new financing in the short term.
- 8.3 The speed of delivery of our recommendations relies partly on the political will, resources and leadership to drive through change at all levels.
- 8.4 At the national level, we consider that the status of the Wales Spatial Plan and the newer national plans should be the subject of a Ministerial statement to clarify their status for development planning (**Recommendation 7**). There is also a case for over-arching strategies in a number of areas, including the provision of strategic employment sites, which will allow Wales to maximise economic impact by making the most effective use of limited public and private sector resources.
- 8.5 We believe that the government could establish an organisation such as the recommended Planning Advisory and Improvement Body (PAIB) by April 2013. Such a Body would be an important driver for change and the culture of improvement. Though legislation may alter its eventual structure, it requires no legislation to establish the principles in an interim organisation. The need to establish and disseminate best practice at a national level, particularly in areas such as site viability, is pressing. (**Recommendations 37-40**).
- 8.6 We consider that PINS could initiate work with others on a Communications Strategy to be implemented this financial year or next year at the latest. (**Recommendation 43**)
- 8.7 At Regional level, the government should encourage groups like SEWSPG to prepare informal documents that cover strategic and cross boundary matters in complex areas. These should be based on national forecasts where available and should be transparent, inclusive and democratic in process. If there is a move towards economic planning on a City Region basis, strategic land use documents should be aligned with these areas. The Welsh Government may wish to consider whether to appoint an Inspector or independent group to scrutinise these documents (**Recommendation 11**).
- 8.8 At the same time, the Government should be consulting on a regional approach in line with **Recommendation 8** of this report.
- 8.9 The government should also consider our non-statutory recommendations on SPG and LDPs when issuing a response to their consultation on the Refinement of the LDP (**Recommendations 12, 13, 18-20**). This could include an improved role for Town and Community Councils (**Recommendation 52-53**).

- 8.10 A review of national consents should be done at the same time as work is done on the programmed review of the General Permitted Development Order (**Recommendation 36**).
- 8.11 The government should commission the independent review of Planning Committee operation, including responsibility for plan-making and the piloting of participation of Councillors in pre-application discussions. The production of a model code of conduct could be included in this work (**Recommendations 55, 57 and 61**).
- 8.12 The government should start consulting on the contents of an Annual Improvement Report by local planning authorities, including the collection of information on decisions made contrary to officer recommendation. This could combine with the further work on Strategic Monitoring Indicators by the Welsh Government, keeping in mind the recommended overriding purpose of the system (**Recommendations 1 and 69**).
- 8.13 A Welsh Government advice team working with the relevant Business and Enterprise officials on SPZs and LDOs could be identified quickly with secondments to Welsh Government by WLGA and POSW or through other government divisions, using consultants and best practice gained from the work of PAS in England (**Recommendation 68**). This team could also advise LPAS on the use of Compulsory Purchase Orders.
- 8.14 The GVA Grimley programme, the current Welsh Government consultancy work by Arup and our recommendations on removing 'The10%' and Streamlining should be combined to form a comprehensive set of changes to the development management process. This set of changes should be prioritised and funded to make a difference to the timeliness and effectiveness of the system as soon as possible. Reference may be needed to other Bills such as Housing and Heritage and the review of Building Regulations.

## **CHAPTER 9: A REFORMED WELSH PLANNING SYSTEM**

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- 9.1 We consider that a Planning Bill should be explicit about the overarching purpose of planning in the 21st century to focus everyone in the same direction. The principles that guided us to reach the Recommendations outlined above address matters of subsidiarity. This means that planning functions are carried out at the level closest to the impacts of those functions and thus should create the most effective conditions for delivery.
- 9.2 The current system gives local planning authorities the main responsibility for delivering planning services, which we consider appropriate. In general, we have tried to identify changes that do not add unduly to bureaucracy but make delivery at local level more effective and measure local performance more rigorously.
- 9.3 In this closing section we describe the future Welsh planning system that we anticipate will flow from the application of the principles we identified at the outset of this report and the recommendations we make to give them effect. We have referred earlier to the nature of the planning system as an instrument of delivery with application across several Ministerial portfolios. If the changes and improvements we envisage are to be achieved, it will require coordinated action across the Welsh Government.

### ***OVERVIEW***

- 9.4 The system we propose will be recognisable as an evolution of the planning system put in place in 1947 that has adapted to meet the needs of greater complexity, the need for development to be sustainable, and the particular requirements of Wales.
- 9.5 Planning law will set an overarching purpose of planning in the 21st century based on the use of land for sustainable development. This will provide a common focus for all participants and guide decision making when there are gaps in plans or policies.
- 9.6 Democratically elected local planning authorities remain at the heart of the delivery of planning.
- 9.7 As a small country, Wales will retain only two tiers of planning at national and at unitary authority level. Nonetheless, the national level is enhanced to allow nationally significant projects and planning goals to be achieved.
- 9.8 The national and unitary level is supplemented by arrangements at regional and community level to address the weaknesses of the present system we have identified.

### ***NATIONAL ROLES AND RESPONSIBILITIES***

- 9.9 There will be greater potential for intervention by the Welsh Government if national policy requirements or performance standards are not being met,

through the provision in planning legislation of effective and transparent reserve powers.

- 9.10 Nevertheless, the primary role of the Welsh Government will be focussed on creating the conditions that enable LPAs to improve the manner in which they deliver planning services locally. It will aim for a consistently high standard of planning services throughout Wales that commands public confidence, but does not shy away from taking difficult decisions.
- 9.11 The Planning Advisory and Improvement Body will be the key instrument in achieving and maintaining improved and consistent planning services. Using the data it gathers on the performance of the system, the reports it will be receiving from LPAs, and its work in identifying both good practice and areas of weakness, it will play a crucial role in driving up delivery and fostering the positive culture that is expected.
- 9.12 The Welsh Government will recognise planning as a function that is important to the implementation of many national policies and planning performance incentives. Penalties will be considered by all government departments and integrated by Welsh Ministers into the general approach to local government performance.
- 9.13 There will be greater recognition at national level of the spatial implications of national policies and a succinct National Development Framework provides this dimension. The Framework will have been subject to a proportionate scrutiny and democratically accountable process at national level. Reviewed and, in due course, replacement LDPs will be consistent with the National Framework. In the early years an interim document, promulgated by the Welsh Ministers, will draw on current and emerging national plans.
- 9.14 The importance of the role and influence of national statutory consultees, especially after the establishment of the SB, will be recognised by making them a formal part of the planning system, with positive statutory duties to contribute to the effective operation of the system
- 9.15 Decisions on nationally significant infrastructure are taken at national level. The Welsh Ministers, accountable to the National Assembly, will be responsible for taking decisions on national infrastructure developments that relate to devolved functions. This will be through a process operated by the Planning Inspectorate. This process also:
  - a. Makes the Welsh Ministers responsible for taking decisions for ancillary developments related to non-devolved infrastructure schemes, such as major energy generation projects, ensuring more co-ordinated decision making at Welsh and UK levels.
  - b. Recognises and makes resources available, through the fees payable to LPAs in recognition of their role as key consultees and enforcing bodies for nationally significant infrastructure approvals.
- 9.16 The Planning Inspectorate continues to enjoy a high reputation for the standards of its work. It will be undertaking new roles and will operate through a range of written and focussed oral procedures. Its Inspectors will be playing

a greater role in case managing the appeals and applications that come to them.

- 9.17 The Inspectorate remains a joint agency, but its character as a body serving the devolved planning system in Wales will be emphasised.

### **REGIONAL**

- 9.18 The system will recognise that not all planning matters can be dealt with at either a national or a local level and that there is a category of cross boundary and strategic considerations for which there is a regional dimension. It will ensure these are addressed and that the sometimes difficult decisions are made on the distribution of development, and are not deferred.
- 9.19 The strategic dimension will operate only in those parts of Wales where conditions require it, particularly in city regions. The outcomes of the strategic process will inform both LDPs and the National Development Framework.
- 9.20 The normal condition for strategic cross boundary planning will be collaborative and consensual, involving both LPAs and the Welsh Government. However, the Welsh Government will have powers to require and, if necessary, to intervene to ensure a strategic approach is taken to key issues and that key decisions are made in a timely manner.
- 9.21 The strategic approach will operate so as to maintain a coherent and current national coverage of LDPs.

### **LOCAL ROLES AND RESPONSIBILITIES**

- 9.22 There will be more community and business engagement in the planning process.
- 9.23 The LDP system will have been refined by introducing greater feedback and more timely review of evolving plans, so there will be a greater sense of engagement. Both business interest groups and the community will better understand what has been taken on board, and what changes they may wish to pursue further.
- 9.24 LDP preparation will have proceeded across all authorities to achieve full coverage across Wales and the refined process is being introduced gradually as plans are reviewed and replaced.
- 9.25 Planning decisions will be taken by planning committees or officers operating to largely common procedural rules and delegation arrangements across Wales.
- 9.26 Members and officers will be subject to training obligations to improve decision making and they will carry out their roles under National Planning Codes of Conduct.
- 9.27 While there are no third party rights of appeal, planning legislation will recognise for the first time a role for alternative dispute resolution methods to resolve conflicts both at application and appeal stages. The trained members of Planning Committees will also be equipped to exploit the potential of pre-

application consultations and engagement techniques, such as hearing-style committee meetings, to achieve solutions.

- 9.28 There will be mechanisms to require Planning Committees to reflect before taking decisions to grant planning permission against the advice of their officers. The powers of Ministers to call-in applications will be more transparent. Potentially more applications may be called in and a more flexible approach to determining those applications will be available to Ministers.
- 9.29 Where LPAs operate executive arrangements, the Cabinet Member with responsibility for planning and the Planning Committee will collaborate on LDP preparation. Planning Committees will have a greater sense of ownership of the LDP when they come to make planning decisions.
- 9.30 Supplementary Planning Guidance (SPG) will have a more formal place in the system and may, in some cases, where a consistent national policy approach or methodology is required, have to be notified to the Welsh Ministers. SPG will also have to follow a consistent, regulated procedure for its adoption.
- 9.31 The skills of planning officers in dealing with larger and more complex applications or involving specialist knowledge are being shared between authorities and there are regional specialist teams throughout Wales.
- 9.32 Planning legislation will have updated many of the detailed mechanisms of the system such as planning obligations; the procedures for ancillary approvals; planning conditions; the amendment of planning permissions; and enforcement, to make the system smoother in operation. The planning system will be better able to deal with the demands placed on it, for example as an instrument to deliver affordable housing and ever more complex forms of development.
- 9.33 Those Town and Community Councils with the capacity to do so will have an enhanced role in the planning system. They will be encouraged to engage with the LDP system and to take advantage of opportunities to make their own "Place Plans" as SPG, providing a community focus for implementing LDP policies and for directing CIL funds to their communities. The PAIB will be working with stakeholders like One Voice Wales to increase the local Community Council's capacity to work in this way. Community Councils will also be making sure their communities are aware of important planning applications and helping them engage with the development management process.
- 9.34 There are many detailed recommendations in this report. As a package we believe they are deliverable, and will lead to the necessary improvement of the planning system in Wales.

**Independent Advisory Group**

**June 2012**

# LIST OF RECOMMENDATIONS

## The Purpose of Planning

1. A statutory purpose for planning along the following lines is included in a future Planning Bill:

*“The purpose of the town and country planning system is the regulation and management of the development and use of land in a way that contributes to the achievement of sustainable development.”*

2. The Welsh Government includes the statement above of the core purpose of planning in a future revision of PPW.
3. That the general statement as described above is linked to another provision about the Ministerial role.

*“The Welsh Ministers may issue guidance to planning authorities on the application of the purpose in exercising or performing their powers or duties and a planning authority shall have regard to any such guidance so issued.”*

## Third Party Rights of Appeal

4. We recommend that third party rights of appeal are not introduced in Wales, but that a number of initiatives are taken forward, as outlined in Chapter 4, to ensure full participation by the public in planning decisions and plan making.

## A National Development Framework

5. The Welsh Government aligns the work on the Living Wales Programme with the Wales Infrastructure Investment Plan and the land-use planning system, to inform the preparation of a national development framework to provide a spatial framework for land-use planning.
6. The Planning Bill contains powers to enable the Welsh Ministers to prepare a national development framework, which should be adopted by a procedure that includes independent scrutiny of the framework in draft prior to scrutiny and debate by the National Assembly.
7. The Welsh Government should, as an interim measure, identify the status of national documents such as the Wales Infrastructure Investment Plan and the Natural Resource Management Plan with

respect to the land use planning system, setting out those national priorities that have a spatial dimension so as to clarify their place in the formation of informal regional land use strategies and LDPs.

#### **Development Plans: A Regional Approach**

- 8. The Planning Bill provides a statutory framework to enable the introduction of strategic planning.**
- 9. The Welsh Government consults on the areas where strategic planning is required and the details of a statutory framework for plan making to ensure it is fit for purpose for use in Wales**
- 10. The Welsh Government puts in place a national support structure to ensure delivery of the proposed regional strategic planning arrangements.**
- 11. The Welsh Government encourages voluntary strategic planning arrangements in advance of any legislative changes, using the tools available across all Government departments to ensure such work is democratic, consistent, accountable, transparent and inclusive.**

#### **Improving Local Development Plans**

- 12. The Welsh Government reviews and replaces the soundness tests.**
- 13. The Welsh Government takes steps to ensure its advice and comments on LDPs in preparation are publicised by each local planning authority.**
- 14. The Local Development Plan Regulations are amended to require the LPA to publish its responses to representations received at pre-deposit stage on the preferred strategy, including whether and how those representations affect the deposit plan. The amended regulations should require the LPA to enter into negotiation to minimise objections and specify the issues to be covered in the LPA's response including: the Welsh Government's representations; candidate sites; changes recommended by the SA/SEA process and, as appropriate, reasons why those changes are not to be implemented.**
- 15. The Welsh Government investigates the feasibility of amending the Local Development Plan Regulations to introduce a power enabling the Welsh Ministers to require an independent review at any stage of plan preparation.**

16. The Planning Bill includes the power for the appointed Inspectors to find a plan sound in part and to include in their report a specification of the work required to make the plan sound and a timetable for that work with reserve powers of intervention by the Welsh Ministers where that timetable is not met.
17. The Planning Bill includes provision for an LPA to apply to the Welsh Ministers for consent to carry out a partial review of their adopted LDP and the Welsh Ministers consider what powers are appropriate where a review is not carried out in accordance with the Regulations.

#### **Increasing Use of Supplementary Planning Guidance**

18. To improve and deepen community and third party engagement before the application stage is reached, the Welsh Government should issue revised policy guidance placing more emphasis on the potential value of SPG to the planning process and the importance of its relationship with LDP policy.
19. Scrutiny of emerging LDPs by the Welsh Government should include full consideration and comment on SPG proposals both at an early stage (Delivery Agreement) and in the LDP deposit document.
20. At Examination, Inspectors should consider the scope and timetable of SPG production and their reports should incorporate recommendations on the merits of the proposed SPG, identifying any further SPG deemed necessary to implement the LDP proposals and approving the timetable for its production.
21. The Welsh Government should consult on regulations covering the procedures for the production of all SPG including: developer and third party engagement; SEA and HRA processes if deemed necessary; local scrutiny processes prior to adoption; and the publication of a statement of compliance.
22. The Welsh Government should have the power to direct the preparation of nationally important SPG by all LPAs; such nationally important SPG should be sent to the Welsh Government for consideration within 28 days; no response in that time would be deemed approval.
23. The Welsh Government should identify and issue advice on a minimal call in process for SPG where certain defined conditions are met; these

could include that the SPG is: proceeding contrary to regulations; affects issues of national significance; is considered to include policy matters that should be part of the LDP; is considered to be in conflict with the LDP.

#### **Decisions on National Infrastructure Projects**

24. The Planning Bill makes provision for nationally significant infrastructure schemes in Wales (other than those which are not devolved) to be determined by the Welsh Ministers and that a model based upon national planning policies approved by the National Assembly and the development consent process under the Planning Act 2008 should be considered.
25. The approval of ancillary development related to nationally significant infrastructure projects not devolved to the Welsh Ministers (i.e. energy generation over 50 Mw and port development) is brought within a Welsh infrastructure planning process.
26. National infrastructure planning policies, approved by the National Assembly as part of the national development framework, are prepared to provide the basis for national infrastructure planning decisions.
27. The national infrastructure process is administered through the Welsh Directorate of the Planning Inspectorate on behalf of the Welsh Ministers.
28. Provision is made in relation to nationally significant infrastructure projects determined by the Welsh Ministers for the fee structure to recognise the resource implications for local planning authorities in their role as principal consultees in relation to such applications and in relation to the discharge of conditions and in the enforcement of development consents once granted.

#### **Improving the Call-in Procedure**

29. The Planning Bill contains a power allowing the Minister to determine the procedure to be used to determine applications that are called-in, including use of the written procedure and targeted hearings.
30. A short period, such as 7 days, is allowed for comment if the Minister is minded to call-in an application. The Minister should send a “minded to call-in” letter setting out the reasons why call-in is considered appropriate, to the applicant, the local planning authority and, if

appropriate, the party making the call-in request and any other party (a national consultee, for example) for whom the reasons for call-in are especially relevant.

31. The Planning Bill contains a requirement that the Minister sets out the reasons for accepting and rejecting call-in requests.
32. The Welsh Government requires all LPAs to supply details on a regular quarterly basis of all decisions made contrary to officer recommendation, including both refusals and approvals.
33. The Welsh Government amends its notification direction to require LPAs to notify it of all applications it is minded to approve contrary to officer recommendation. The Welsh Government should then arrange for a review of the authority's decision by an Inspector and the authority should be precluded from issuing a permission until it has received and has considered the Inspector's report.
34. The Ministers' powers to direct notification of applications include powers to respond to trends emerging from the monitoring of applications approved or refused against officers' recommendations. This should include powers to direct individual authorities to refer specific types of application to the Ministers.
35. There is a statutory maximum time limit of 9 months for the consideration and determination of called-in applications.

#### **Applications & Orders Dealt with by Ministers**

36. The Welsh Government carries out a review in conjunction with the WLGA and LPAs of all types of applications, Orders and Directions decided or confirmed by Ministers with a view to establishing the feasibility of transferring to LPAs responsibility for dealing with those with local implications.

#### **A Planning Advisory and Improvement Body for Wales**

37. A Planning Advisory and Improvement Body (PAIB) is established by the Welsh Government, led by a Chief Executive and supported by a governing board.
38. The PAIB should be responsible for:
  - a. identifying and disseminating good local planning authority practice

- b. gathering and publicising data on the performance of the planning system
  - c. promoting and developing the use of mediation in the planning system
  - d. identifying training requirements for Members and officers and working with stakeholders ensuring quality and consistency in the provision of training
  - e. keeping the effectiveness of the planning system under review and making recommendations for reform and adaptation to changing circumstances and demands
39. Local planning authorities should be under a statutory duty to co-operate with the PAIB in both in its advisory and data collection role.
40. The PAIB should work closely with stakeholders such as the Welsh Local Government Association, the Planning Officers' Society Wales, the Royal Town Planning Institute Wales, the DCfW and Planning Aid Wales particularly in developing good practice, training and mediation.

#### **A Planning Inspectorate for Wales?**

41. The Inspectorate continues to provide a combined service in England and Wales.
42. A protocol is agreed between the Welsh Government and the Inspectorate for the provision of a dedicated service for all its functions in Wales reflecting the recommendations in this report.
43. The Inspectorate undertakes a communications project with the public in consultation with the Welsh Government and other stakeholders such as PAW, DCfW, One Voice Wales and the WLGA.

#### **Improving the Appeal System**

44. The Welsh Government initiates a review of the appeal system to consider the benefits that would result from adopting the principles of the procedures used in Scotland including:
- a. a more active role for Inspectors to define issues and the procedures to be used to consider each issue
  - b. the procedure and targets for appeals using the written procedure
  - c. preclusion of changes to applications after the decision by the LPA and the raising of new issues at appeal not previously raised

45. The Appeal Regulations are amended as necessary to give Planning Inspectors greater powers of case management of appeals and the ability to:
- a. Give preliminary views on the issues and merits after the exchange of Statements of Case.
  - b. Adopt a mediation role with the consent of the parties in relation to specific issues during a hearing or a public inquiry
46. The Welsh Government investigates with the Inspectorate:
- a. the feasibility of a fast track process for dealing with appeals against the LPA's failure to issue a decision in the prescribed period, based on a review of the authority's case file; and
  - b. including in the Planning Bill a power for the Inspectorate to return an appeal for determination by the LPA with the applicant's agreement.

#### **Clarifying the Role of Statutory Consultees**

47. The statutory consultees exercising the greatest influence over the planning system are considered to be part of the institutional framework of the planning system.
48. Initially, the statutory consultees who should be considered in this way are the new Single Body, the Health and Safety Executive, the Coal Authority and Cadw. The Welsh Ministers should have powers to add further bodies.
49. The Planning Bill places a duty on such statutory consultees to contribute positively to the efficient and effective functioning of the planning system.
50. The water and sewerage undertakers are made statutory consultees and placed under the duty referred to above.
51. The Welsh Government enters into a compact with all statutory undertakers setting out the overall purpose of statutory consultees in relation to the planning system as being to adopt a positive, enabling role.

#### **Enhancing the Role of Town and Community Councils**

52. The Welsh Government works with Planning Aid Wales and One Voice Wales to develop training programmes to enable Town and Community Councils to understand and become involved in the planning system

generally and in the LDP process in particular, and to give them the skills and techniques to involve their communities in the planning process.

53. The Welsh Government consults on the scope for Town and Community Councils and other broad-based community organisations to prepare Supplementary Planning Guidance in accordance with the LDP for their areas or parts of their areas for submission to and adoption by the local planning authority following the statutory preparation process we recommend.

#### **Enhancing Regional & Specialist Capabilities**

54. The Welsh Government consults on the scope for planning applications on matters such as minerals and waste; gypsy and traveller sites; and significant infrastructure projects to be processed and assessed by specialist planning teams operating on a regional basis or as part of the PAIB. The matters to be dealt with by these teams should be agreed between the Welsh Government and local planning authorities.

#### **Planning Committees, Role of Members, Delegation**

55. An independent body is commissioned to conduct a study of the operation of Planning Committees in Wales to determine whether there is a link between efficiency and effectiveness and committee size.
56. The Planning Bill contains a power for the Welsh Ministers to make regulations regarding:
- a. a national scheme of delegation of decision making powers by local planning authorities, including minimum requirements;
  - b. the size and make-up of Planning Committees;
  - c. the procedures to be used at Planning Committee meetings including speaking rights for all parties;
  - d. compulsory training for members of Planning Committees, including procedures where training requirements have not been met by individuals;
  - e. a code of conduct for members of Planning Committees and officers.
57. The Planning Bill contains a power for the Welsh Ministers to make regulations about the responsibility for statutory plan making within local planning authorities and that this power be used to ensure that LDP preparation and adoption is the joint responsibility of the executive

(through the Executive Member for planning) and the Planning Committee.

#### **Pre-application: Improving Engagement**

58. The Planning Bill contains powers for the Welsh Ministers to make regulations governing pre-application discussions with local planning authorities, including a Code of Practice drawn up with LPAs.
59. The Planning Bill contains powers enabling the Welsh Government to make regulations governing the charges for pre-application discussions and consults on whether there should be such charges and the charging structure
60. The Planning Bill contains powers for the Welsh Ministers to make regulations governing procedures for pre-application community consultations, including the definition of the types of applications to which these procedures will apply.
61. The Welsh Government initiates a pilot trialling the participation of councillors in pre-application discussion with selected authorities to develop protocols, with particular attention given to maintaining openness and transparency.

#### **Alternative Dispute Resolution: Making Space for Mediation**

62. The Welsh Government provides a statutory basis for recourse to alternative dispute resolution prior to the submission of an appeal. The organisation of such a service should rest with the PAIB.
63. In particular, local planning authorities should be able to use “minded to” resolutions to allow the opportunity for the use of alternative dispute resolution to address the issues in dispute.
64. Local planning authorities are given powers to conduct Committee hearing style meetings to examine applications and receive representations and the Welsh Ministers issue guidance on the conduct of such meetings, including the role of third parties and the need for a report of proceedings.

#### **Reducing Pressure on the System: Saving ‘The 10%’**

65. The Welsh Government undertakes a study with the aim of producing a single unified application and consent procedure including as many as possible of: planning permission; conservation area consent; listed

building consent; rights of way and public open space; and common land consent.

66. The Welsh Government investigates the feasibility of moving control of matters regarding the detailed construction of buildings, including most elements of BREEAM and the Code for Sustainable Homes, to the Building Regulations system.
67. The Welsh Government investigates further opportunities to reduce the number of planning applications by revisions to the General Permitted Development Order, including the practicality of widening the use of the notification procedure currently applying to agricultural and telecommunications development.
68. The Welsh Government sets up an advice team as soon as possible to assist LPAs to make maximum use of tools to simplify the planning process such as SPZ and LDOs. This function should pass to the PAIB if and when it is constituted.

#### **Measuring Success**

69. The Welsh Government establishes an Annual Performance Report (APR) for Local Planning Authorities in Wales.
70. The format of the APR should be consulted upon but reflect both quantitative and qualitative issues and, as far as possible, use existing data and cross refer to the LDP Annual Monitoring Report.
71. The purpose of this report should be to allow the Local Authority to consider areas for self-improvement, whilst its submission to the Welsh Government will allow for the production of Wales wide statistics and the formulation of corrective policy, where required.
72. Through a formal monitoring and compliance process, incentives are provided for good delivery and the provision for penalties for the poorest performers.

#### **STREAMLINING AND EFFICIENCY**

##### **Validation**

73. With regard to the validation of planning applications:
  - a. Section 327A of the Town and Country Planning Act 1990 is not included in the Planning Bill, which instead contains a power for Welsh Ministers to make regulations specifying requirements for validation and for the disposal or rejection of invalid applications.

- b. The operation of the 1APP Standard Application Form is monitored to identify situations where validation is still causing a blockage and action is taken to resolve such issues, including changes to the regulations made under Recommendation 73a.**
- c. Legal challenges to the decision of the local planning authority to finally validate an application are required to be made within six weeks by application for judicial review and the claimant should be required to show they suffered prejudice as a result of the error in validation.**

#### **Material & Non-Material Amendments to Planning Permission**

- 74. Section 96A of the Town and Country Planning Act 1990 should be applied to Wales at the earliest opportunity to allow local planning authorities to approve applications for non-material amendments to planning permissions by owners or occupiers or persons with a contractual interest in the development site.**
- 75. The Planning Bill contains:**
  - i. A power to make a planning application to an LPA for approval of a minor material amendment to a planning permission; and**
  - ii. A revised s.73 enabling parties likely to implement a planning application to obtain an amendment to an existing permission and not a new permission as at present.**
- 76. The minor material amendment procedure should have the following characteristics:**
  - a. It should be one whose scale and nature results in a development which is not substantially different from the one which has been approved.**
  - b. The local planning authority's duty to consult should be a duty to consult those bodies or persons appropriate to the nature of the amendment being sought.**
  - c. Where an application is made by a person who is an owner of occupier of the site or a person with a contractual interest in the land, the application if successful will result in an amendment to the planning permission referred to in the application.**

- d. Where an application is made by a third party without any interest in the site a fresh planning permission will be issued if the application is successful.

77. The Welsh Government consults on a new statutory form of planning permission that:

- a. Identifies the plans and documents that are to be read with the permission.
- b. Can be updated and reissued as reserved matters and conditions are discharged and records the plans and documents that are to be read with the discharge.

### **Notification & Publicity**

78. The notification requirements for planning applications are reviewed and additional notification proportionate to the effects of the application should be required in specified cases.

79. The developments requiring additional notification are either specified nationally in a direction from the Welsh Ministers or determined locally in accordance with guidance from the Welsh Ministers. We recommend that there is a consultation on these options.

80. The cost of significant additional notification should be met either by a further fee, payable if the local planning authority carries out the notification, or the developer should be able to undertake the notification at its own expense and provide appropriate certification to the local planning authority.

81. Town and Community Councils are given a role in providing additional publicity for planning applications.

82. Requirements should be introduced requiring persons implementing a planning permission to:

- a. Give notification to the local planning authority of the date on which development began.
- b. Post and maintain throughout the carrying out of the development at or near the development site and in a location accessible to the public a copy of the planning permission.
- c. Give notice to the local planning authority of the completion of the development.

**83. The Welsh Government consults on the enforcement of the notification requirements in Recommendation 82.**

#### **Section 106 Obligations**

**84. The Welsh Government reviews the powers under s.106 with the aim of introducing greater flexibility to make provision for matters that are connected with the development of the land which is the subject of the development, its use, or the development or use of other land that reasonably and properly relates to the development for which permission is being granted and, in particular, to allow provision to be made requiring the transfer of land.**

**85. Section 106 makes provision as to:**

- a. The due execution of s.106 agreements in a similar manner to documents executed under property legislation and the Companies Act.**
- b. Making clear the powers to specify in a S.106 agreement that the obligations do not bind specified successors in title.**
- c. The ability of the local authority as landowner to bind itself under a S.106 obligation for the purpose of ensuring that the local authority's successors are bound by the obligations.**

**86. The arrangements for the discharge or modification of planning obligations should enable a planning obligation to be modified if the extent of that obligation makes the development no longer viable.**

#### **Planning Conditions**

**87. The Welsh Government gives priority to updating guidance on planning conditions, including model conditions reflecting current best practice**

**88. The Planning Bill contains express power to attach a planning condition that makes the commencement of development conditional on the execution of a planning obligation, provided the terms of the obligation are either contained in a draft planning obligation, or are otherwise expressed in sufficiently precise and enforceable terms that are available at the date the decision to grant permission is taken.**

**89. The Welsh Government consults on the future of local Act powers to impose bonds or other financial guarantees for the restoration of coal**

sites in the event of default by the developer. The consultation should consider:

- a. Making the powers of general application and available to all local planning authorities in Wales.
- b. Extending the powers to impose site restoration conditions generally so that, for example, other mineral developments or the treatment of contaminated land are also covered.
- c. The retention and implementation of the regulation making powers under S.106(12) of the Town and Country Planning Act 1990 in relation to the charging of land to secure planning obligations.

### **Parallel Permitting**

90. The Planning Bill ensures that wherever provision is made for any ancillary permitting application necessary to enable a planning permission to be implemented it is open to an applicant to make that permitting application and have it considered in parallel with the planning application, unless there are sound planning or practical reasons why this should not be the case.

### **Highways and Planning**

91. With regard to the planning aspects of highway development:

- a. Applications for the stopping up of highways, other than those for which the Welsh Ministers are the highways authority (motorways and trunk roads), should be made to the local highway authority at the same time as a planning application is made to the authority as local planning authority, enabling the application to be processed and determined in parallel with the planning application.
- b. If the planning application is granted and there are no objections to the stopping up or diversion Order or any such objections are resolved then the local authority should be able to make the Order as it currently does with affected rights of way.
- c. If objections to the highways Order from statutory undertakers or the owners and occupiers of adjacent properties or others who have a legitimate interest in the Order remain unresolved,

notwithstanding the grant of planning permission, then the application should be referred to the Welsh Ministers for determination by PINS as at present.

- d. If planning permission is refused and appealed, or called-in then the highways application could be considered as part of the same appeal process.
- e. If a planning application affects a trunk road or motorway then an applicant should be able to make an application to the Welsh Ministers at the same time as the planning application is submitted and a co-ordinated decision taken by the Ministers once the planning application has been determined.
- f. The Welsh Government consults on the delegation of processing of Orders affecting motorways and trunk roads from Welsh Ministers to the agent local highway authorities.

## **LEGAL AND OTHER ISSUES**

### **Enforcement**

92. The Welsh Government consults on the following:

- a. Ground (a) of the grounds of appeal becoming the only route to obtain planning permission for development subject of an enforcement notice, eliminating the ‘deemed planning application’; a power for LPAs to decline retrospective applications for development subject of an enforcement notice; and a power for LPAs to serve a notice requiring submission of a planning application for unauthorised development.
- b. The introduction of a power to deal with enforcement offences by means of a fixed penalty notice.
- c. The introduction of a “letter of assurance” procedure regarding the planning authority’s intentions in relation to prosecution of parties served with an enforcement notice due to their interest in the land but who are not in a position due to the nature of their interest to secure compliance.
- d. Provision for LPAs to enter on the planning register that an enforcement notice has been complied with to the satisfaction of the local planning authority.
- e. Provision for the cancellation of Enforcement Notices that have been complied with and can be regarded as spent.

- f. **Provision for a party not served with an enforcement notice and who is a potential purchaser of land or a successor in title to apply to the local planning authority for confirmation of any steps that remain to be taken to comply with an enforcement notice.**

**93. While the Welsh Ministers may wish to consult on the issue, we do not recommend the adoption in Wales of the Planning Enforcement Order procedure to deal with concealed breaches of planning control.**

#### **Commencement of Planning Permission**

**94. With regard to Commencement provisions:**

- a. **The Welsh Government consults on the introduction of a revised definition of the “material operations” considered sufficient to commence a planning permission, with the intention of introducing a test that requires a level of commitment of resources that make it more likely that development, once commenced, will be completed.**
- b. **The Welsh Government considers simplifying the procedure for serving Completion Notices, taking into account the recommendations of the 2001 CPLAN/Buchanan Partnership study.**

#### **Duration of Planning Permission**

**95. The Welsh Government considers whether to consult on a reduction in the duration of a planning permission.**

#### **Extending the Time for Implementing Planning Permission**

**96. The Planning Bill contains a separate procedure for extending the time for implementing planning permission based upon consideration of the circumstances that prevented the permission from being implemented during the time period originally allowed.**

#### **Planning and Compulsory Purchase**

**97. With regard to CPO provisions:**

- g. **The Welsh Government proceeds with the revision of its circular guidance on compulsory purchase to take account of the**

**amendments to section 226 of the Town and Country Planning Act 1990 by the Planning and Compulsory Purchase Act 2004.**

- h. In view of the common system of land law throughout the jurisdiction of England and Wales, the law of compulsory purchase and compensation in Wales should maintain its coherence with the rules applying in England unless there are powerful reasons related to Welsh circumstances that require different provision to be made.**
- i. In order to maintain coherence the powers to override easements and other rights under s.237 of the Town and Country Planning Act 1990 should be brought in line with England through applying the powers under section 203(2) of the Planning Act 2008.**
- j. Consideration is given to bringing together the compulsory purchase powers of the former Welsh Development Agency, now vested in the Welsh Ministers, and the powers of local authorities under s.226 of the Town and Country Planning act 1990 into a single set of powers of compulsory purchase of land for development and regeneration purposes exercisable by both the Welsh Ministers and local authorities.**

## **TABLE A**

### **Evaluation of Recommendations against the following Criteria:**

Timely

Transparent

Democratic

Consistent

Certain

Inclusive

Accessible

Simple

Flexible

Responsive

Deliverable

Better Outcomes

Value for Money

Table A: Evaluation of Recommendations

		Timely	Transparent	Democratic	Consistent	Certain	Inclusive Accessible Simple	Flexible Responsive	Deliverable	Better Outcomes	VFM
Purpose	1	+	+		+	+	+		+	+	
	2	+	+		+	+	+		+	+	
	3	+	+					+	+	+	
Third Party	4	+				+					
National DF	5	+	+	+	+	+			+	+	+
	6		+	+		+			+	+	
	7	+	+		+	+		+	+		
Regional	8	+	+		+	+			+	+	+
	9	+	+	+							
	10							+		+	
	11	+	+	+						+	
LDPs	12				+		+	+	+		
	13		+			+	+		+		
	14	+	+			+	+	+	+	+	
	15	+	+					+		+	+
	16	+	+					+	+	+	+
	17										+
SPG	18	+	+			+	+		+		
	19		+		+	+			+	+	
	20		+	+	+		+				
	21		+		+	+		+			

	22		+		+			+			
	23		+		+					+	
National Infrastructure	24	+	+	+	+	+				+	+
	25	+	+	+	+		+				+
	26		+	+	+	+					
	27		+		+				+		+
	28	+		+		+				+	+
Call in	29	+	+					+	+		
	30		+				+	+	+		
	31		+	+			+		+		
	32				+			+	+	+	
	33				+			+	+	+	
	34		+		+			+	+	+	
	35	+				+				+	
National Dev Consents	36	+	+	+	+			+		+	+
PAIB	37	+					+			+	+
	38		+		+	+		+		+	
	39		+		+	+					
	40		+	+			+		+	+	
PINS	41				+	+			+		+
	42		+						+		
	43		+					+	+		
Appeals	44	+	+					+		+	+
	45	+				+	+	+			
	46	+									
Statutory	47	+	+		+	+	+		+	+	

Consultees											
	48		+	+	+	+		+	+	+	
	49	+			+	+		+	+	+	
	50		+		+	+					
	51	+	+		+			+		+	
T&C Councils	52		+	+			+	+		+	+
	53		+	+			+	+		+	
Shared Services	54	+			+			+		+	+
Local Organisation	55			+	+		+	+		+	
	56	+	+	+	+	+	+			+	+
	57		+	+						+	+
Pre App	58		+	+		+	+			+	+
	59		+		+					+	
	60		+	+			+			+	+
	61		+	+	+					+	
Alt Dispute Res'n	62	+	+		+			+		+	+
	63	+	+	+				+		+	
	64	+	+	+	+		+	+		+	
10%	65	+			+		+				
	66	+	+		+		+				
	67	+			+		+			+	+
	68	+			+	+		+	+	+	+
Measuring Success	69		+	+	+				+	+	+
	70		+	+	+		+				
	71							+	+	+	

	72							+			
Validation	73	+	+		+			+	+	+	
Amendments	74	+	+		+			+	+	+	
	75		+		+			+	+		
	76		+		+			+	+		
	77		+	+	+		+	+	+	+	
Notification	78		+	+			+	+	+	+	
	79		+	+	+					+	
	80	+	+		+				+		+
	81		+	+			+				
	82		+		+	+	+		+	+	
	83		+	+						+	
Section 106	84		+					+	+	+	
	85		+		+	+			+	+	
	86							+		+	
Conditions	87		+						+	+	
	88	+	+		+	+		+	+	+	
	89			+				+	+	+	
Parallel Permitting	90	+	+					+	+	+	
Highways and Planning	91	+	+		+			+	+	+	
Enforcement	93		+		+	+				+	
	94								+	+	
Commencement	95		+		+	+	+			+	
Duration	96		+								
Extension	97			+			+				
CPO	98			+	+	+			+		

## **TABLE B**

### **Recommendations Action Plan: What action is required to implement the recommendations?**

Planning Bill

Secondary Legislation

Policy

Best Practice

Quick Wins

Other action

**Table B: Recommendations and Action Plan**

Recommendations		Planning Bill	Secondary Legislation	Policy	Best Practice	Quick Wins	Other
<b>Purpose</b>	1	+					
	2			+			
	3	+	+				
<b>Third Party</b>	4						+
<b>National DF</b>	5			+			
	6	+					
	7			+	+	+	
<b>Regional</b>	8	+(RP)	+				
	9	+(RP)	+		+		
	10					+	+
	11				+	+	
<b>LDPs</b>	12	+		+			
	13	+(RP)	+		+		
	14	+(RP)	+				
	15	+(RP)	+				
	16	+(RP)					
	17	+(RP)	+				
<b>SPG</b>	18			+		+	
	19			+		+	
	20	+(RP)	+	+			
	21	+(RP)	+				
	22	+(RP)	+				
	23	+(RP)	+				
<b>National Infrastructure</b>	24	+	+				
	25	+					
	26			+			
	27						+
	28	+(RP)	+				+
<b>Call in</b>	29	+	+				
	30	+(RP)	+				
	31	+	+				
	32	+(RP)			+	+	
	33		+				
	34	+					
	35	+(RP)	+				
<b>National Dev Consents</b>	36	+	+		+	+	+
<b>PAIB</b>	37	+	+		+	+	
	38	+	+		+		

	39	+	+				
	40				+		
<b>PINS</b>	41						+
	42				+		
	43				+		
<b>Appeals</b>	44		+				
	45	+	+				
	46	+	+		+		
<b>Stat Consultees</b>	47	+					
	48		+				
	49	+					
	50		+				
	51				+		
<b>T&amp;C Councils</b>	52			+	+	+	
	53	+	+				
<b>Shared Services</b>	54				+		
<b>Local Organisation</b>	55				+		
	56	+	+				
	57	+	+				
<b>Pre App</b>	58	+	+				
	59	+	+				
	60	+	+				
	61	+			+	+	
<b>Alt Dispute Res'n</b>	62	+	+				
	63	+(RP)	+	+	+		
	64	+(RP)	+		+		
<b>10%</b>	65	+(RP)	+		+		
	66				+	+	
	67		+				
	68				+	+	
<b>Measuring Success</b>	69		+				
	70	+(RP)	+				
	71	+	+				
	72	+	+				
<b>Validation</b>	73	+	+			+	
<b>Amendments</b>	74		+				
	75	+	+				
	76	+	+				+
	77	+(RP)	+				
<b>Notification</b>	78		+				
	79	+(RP)	+				+

	80	+(RP)	+				+
	81	+(RP)	+				
	82	+(RP)	+				
	83	+	+	+			
<b>Section 106</b>	84	+					
	85	+					+
	86	+	+				
<b>Conditions</b>	87			+			
	88	+	+				
	89	+	+				+
<b>Parallel Permitting</b>	90	+	+				+
<b>Highways and Planning</b>	91	+	+				+
<b>Legal and Other Issues</b>	92	+					
	93			+			
	94	+					
	95	+	+				+
	96	+	+	+			
	97	+	+	+			+

Note:

**RP:** There will be two types of Bill provisions – those which make substantive provision and those which give regulation making powers, so both the Bill and the Secondary Legislation Boxes have been ticked. Where a Bill power is primarily a regulation making power we have inserted ‘RP’. In some cases the existing regulation powers may be sufficient but will need to be checked.

## **APPENDIX 1: Pen portraits of Independent Advisory Group**

### **Group Members**

John Davies MBE (Chair)

Jane Carpenter (Redrow Homes South Wales)

Andrew Farrow (Flintshire County Council)

Chris Sutton (Jones Lang LaSalle)

Lucie Taylor (Newport County Council)

Mike Webb (RSPB Cymru)

Huw Williams (Geldards LLP)

Lesley Punter (Manager)

### **John Davies MBE (Chair)**

After obtaining a degree in Applied Mathematics from Swansea University in 1967 John worked as a Systems Analyst for Rolls Royce before moving back to Wales to work for Glamorgan County Council. He changed his career when he joined Cardiff City Council and in his own time successfully sat the external examinations of the Royal Town Planning Institute, winning the George and Amy Pepler Prize in the process. John joined the Planning Inspectorate in 1990 and retired as Director for Wales in April 2011. He was awarded the MBE in the June Birthday Honours List. John now works part time as a consultant, providing training; representing clients in planning appeals, and determining appeals for the Planning Inspectorate

### **Jane Carpenter**

Jane started her planning career in 1988 with Rhondda Borough Council (then briefly Rhondda Cynon Taf) undertaking during these eight years both Development Control and Planning Policy functions. In 1996 she moved to the Home Builders Federation and spent two years representing the industry by influencing the development of planning policy at UK, Welsh and Local Government levels. Jane moved into the house building industry in 1998 (Wilcon and then Redrow Homes). She is currently Planning Director with Redrow Homes South Wales and sits on the Board with specific responsibility for strategic land and town planning.

### **Andrew Farrow**

Andrew joined Flintshire County Council as the Head of Planning in April 2009. He started his career in planning with Hertfordshire County Council before moving to Bolton Metropolitan Borough Council and then to Cheshire County Council where he went on to manage the Planning Service. He led the implementation of the new Cheshire East unitary authority and then took the Head of Planning role in Flintshire. Since joining Flintshire he has led the implementation of the shared service for minerals and waste planning across North Wales.

### **Chris Sutton**

Chris will represent CBI Wales on the Group, having been a member of the CBI Wales regional board since 2009. Chris is a chartered surveyor and head of the Cardiff office of international property consultants Jones Lang LaSalle. He advises both developers and occupiers of business space, and therefore has first hand experience of the influence of planning policy and delivery on industry and commerce.

### **Lucie Taylor**

Lucie Taylor has been working in the planning profession for 14 years. She has been a Planning Policy Liaison Officer at Newport City Council since 2007 and brings to the panel experience across all three sectors of the planning profession having worked in private sector, a local planning authority and in the voluntary sector for Planning Aid Wales. She is the current Chair of Planning Aid Wales and Immediate Past Chair of RTPi Cymru. Lucie's specialism is in community planning.

## **Mike Webb**

Mike is a member of the RTPI, and worked in local government in North Wales for 13 years, including four years as a policy planner. His first degree is in Environmental Biology, and he gained an MSc in Environmental Planning in 1998. Mike is the RSPB Cymru's senior policy planner in Wales, with responsibility for advocacy in respect of Wales-wide planning policy, practice and advice, and the delivery of the RSPB's strategic biodiversity objectives in the planning sphere.

## **Huw Williams**

Huw is a Partner and the Head of Public Law at Geldards Law Firm and also the Vice-Chairman of Geldards LLP. He has over thirty years experience in the field of planning law and related areas including the law of compulsory purchase and local government. Huw joined Edwards Geldard (the predecessor firm to Geldards LLP) in 1987 to lead the firm's advice to the Cardiff Bay Development Corporation and was involved in the promotion and implementation of the Cardiff Bay Barrage Act.

Huw has been a member of the Planning and Environment Law Committee of the Law Society of England and Wales since 2005. Between 2003 and 2011 he was also a member of the Law Society's Wales Committee. He was the founder Treasurer of Public Law Wales from 1998 to 2005 and is currently a member of the Executive Committee. Huw also serves on the Standing Committee on Legal Wales.

## **Associated Role: Lesley Punter**

Lesley will be working as IAG Manager and takes on a fixed-term position with Planning Division. She is currently Chair of Policy and Research Forum with RTPI Cymru. Between 2003 and 2007, Lesley was Head of Development Plans at Welsh Assembly Government and responsible for establishing the Local Development Plan system in Wales.

Previous roles include Head of Planning and Transport Strategy at Reading Borough Council and part of the Urban Task Force team, producing 'Towards an Urban Renaissance' in 1999.

## APPENDIX 2: CALL FOR EVIDENCE – RESPONSE FORM

### TOWARDS A WELSH PLANNING ACT: ENSURING THE PLANNING SYSTEM DELIVERS

The Call for Evidence invites views on how to deliver the planning system in Wales. Please submit your comments by 3 February 2012.

#### RESPONSE FORM

Towards a Welsh Planning Act: Ensuring the Planning System Delivers Call for Evidence		
11 November 2011 – 3 February 2012		
<b>Name</b>		
<b>Organisation</b>		
<b>Address</b>		
<b>E-mail address</b>		
<b>Type</b> <i>(please select one from the following)</i>	Businesses / Consultants	<input type="checkbox"/>
	Local Planning Authority	<input type="checkbox"/>
	Government Agency/Other Public Sector	<input type="checkbox"/>
	Professional Bodies/Interest Groups	<input type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, enterprises, religious, not for profit organisations)	<input type="checkbox"/>
	Member(s) of the public	<input type="checkbox"/>
	Other (other groups not listed above)	<input type="checkbox"/>

## SECTION A: KEY POLICY OBJECTIVES

<b>Q1a</b>	Do you agree that the primary purpose of the planning system in Wales is the delivery of land for sustainable development?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
<b>Q1b</b>	If you answered No please give your reasoning:		
<b>Q2a</b>	If you answered YES to 1a, does PPW in paragraph 4.1.2 above define sustainable development sufficiently for the purposes of legislation?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
<b>Q2b</b>	If you answered NO to 2a, please explain your reasoning. If possible, provide a suitable alternative:		
<b>Q3</b>	Does the current national/local structure enable decisions on the social, environmental and economic aspects of sustainable development to be taken at the appropriate level for:	Yes	No
	a) Development Plans	<input type="checkbox"/>	<input type="checkbox"/>
	b) Planning Applications	<input type="checkbox"/>	<input type="checkbox"/>
<b>Q4</b>	If you answered NO to 3a and/or 3b, please explain your reasoning.		
Additional comments:			

<b>Q5</b>	Additional Comments: Please include below any further observations on the <b>Key Planning Policy Objectives</b> that should be delivered by the planning system and/or are set out in PPW, paragraph 4.4
Additional comments:	

**SECTION B: CRITERIA FOR EFFECTIVE DELIVERY**

<b>Q6</b>	Using the criteria of ‘transparency’, ‘accessibility’ (how easy to understand or obtain information), ‘timeliness’ and ‘democratic accountability’, please score the DELIVERY OF PLANNING on a scale of 1 (LOW) to 10 (HIGH) for:	
<b>a</b>	<b>Development Plans</b>	
	Transparency	
	Accessibility	
	Timeliness	
	Democratic Accountability	
<b>b</b>	<b>Planning Applications / Development Management</b>	
	Transparency	
	Accessibility	
	Timeliness	
	Democratic Accountability	
<b>Q7</b>	Please provide evidence (in appendix or below) to substantiate your scores in 6a) and 6(b) above.	
Additional comments:		

<b>Q8</b>	What criteria would you use to describe the effective delivery of planning decisions and development plans?
Additional comments:	
<b>Q9</b>	Please describe how the criteria suggested in Question 8 could be measured and how information about them could be collected.
Additional comments:	
<b>Q10</b>	Additional Comments: Please include below any further observations about the <b>Criteria</b> for assessing <b>Effective</b> delivery of the planning system.
Additional comments:	

### SECTION C: ROLES AND RESPONSIBILITIES IN PLANNING DELIVERY

<b>Q11a</b>	Is the current allocation of roles and responsibilities the best for delivering sustainable development in Wales?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
<b>Q11b</b>	Please give evidence for your answer to 11a above.		

Q12	Do they provide the most effective delivery through the planning system of:	Yes	No
a	Development Plans	<input type="checkbox"/>	<input type="checkbox"/>
b	Planning Application Decisions	<input type="checkbox"/>	<input type="checkbox"/>
Additional comments:			
Q13	What realignment of roles or additional levels of responsibility, if any, could improve delivery? Please provide evidence to support your views.		
Q14	What changes do you consider could be made to local planning authority organisation/management structures, or to decision making responsibilities (for example delegation to planning officers in place of Committee when determining planning applications), which would improve delivery?		

<b>Q15a</b>	Does the current combined Planning Inspectorate for England and Wales deliver appeal decisions and plan examinations effectively?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
<b>Q15b</b>	If you have answered YES to 15a, do you consider that there is some wider role it could play in delivery through the planning system?		
Additional comments:			
<b>Q15c</b>	If you have answered NO to 15b, have you any suggestions on how it could be improved – please provide evidence.		
Additional comments:			

<b>Q16a</b>	Do you consider that the level of policy development and intervention by the Welsh Government is appropriate for effective delivery?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
<b>Q16b</b>	Please explain and give evidence for your answer to 16a:		

<b>Q17</b>	What changes to the role of statutory consultees (if any) could improve delivery? ( <i>Your view should be confined to the role of consultee as a part of the planning system and not to the role of individual organisations as that is outside the remit of this Review.</i> )

<b>Q18</b>	What aspects of the planning service and/or planning legislation could be reconsidered or more appropriately delivered by other agencies so as to simplify and focus planning's role on delivering sustainable development?

<b>Q19</b>	Please identify what would be required to deliver any of the changes you suggest to roles and responsibilities.

<b>Q20</b>	Additional Comments: Please include below any further observations about <b>Roles and Responsibilities</b> in delivering an effective planning system.
Additional comments:	

## SECTION D: QUICK WINS AND SIMPLE IMPROVEMENTS

<b>Q21</b>	Do you have any examples of barriers to effective delivery, examples of good practice or suggestions to improve delivery through the planning system that could be implemented quickly without legislation or organisational changes?

<b>Q22</b>	Please list below any people or organisations which you consider have relevant information that would assist the Independent Advisory Group in its investigation.

<b>Q23</b>	If you have any further comments not covered by your responses above, please make additional observations here
Additional comments:          	

<b>Confidentiality</b>
Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept confidential please indicate here: <input type="checkbox"/>

### How to respond

Please submit your comments by 3 February 2012

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