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The Proposals for the Reform of Land Use Planning in Wales

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Introduction

The Government of Wales Act 1998 heralded the beginning of revolutionary change in the political and legal landscape of Wales.¹ Land use planning has been a ‘transferred function’ of the new government in Wales since its inception and it was predicted that devolution would provide the opportunity to make significant changes to the planning framework; even within the confines of its secondary law making powers.² The introduction of the Planning and Compulsory Purchase Act 2004 also provided the opportunity to introduce ‘Wales only’ provisions in primary legislation to shape the development system in Wales. The Government of Wales Act 2006 paved the way for a referendum in 2011, which bestowed primary law making powers on the National Assembly for Wales (NAW);³ and NAW now proposes to create a suite of legislation on planning and environmental protection.⁴ To this end the Welsh Government has produced a White Paper and Draft Planning (Wales) Bill for consultation.⁵ These proposals will lay the foundations for a truly distinctive approach to planning in Wales from that in England.

The paper begins by setting out the historical context of planning in Wales before and after devolution. The next section provides detailed consideration of the wider programme of legislative reform for environmental protection and discusses the substantial evidence base for the proposals on planning reform. The paper then provides an outline of the White Paper according to the key themes around which this is framed: supporting culture change; active stewardship; improving

*With thanks to Professor Mark Stallworthy and Professor Mike Purdue for their comments on earlier drafts of this work. However, I take full responsibility for the opinions expressed in this article and any errors made.

¹ From the outset devolution was described as a ‘process not an event’ and has proven to be evolutionary. See further R. Rawlings *Delineating Wales: Constitutional, Legal and Administrative Aspects of National Devolution* (UWP, 2002).

² Shellens T. and Bosworth J., “How the Welsh Assembly will affect Planning” (1999) *Journal of Planning and Environmental Law* 219-224. The powers of NAW were initially transferred by transfer of functions orders under section 22 Government of Wales Act 1998, designated under legislation made since the Assembly’s inception, or designated by orders under section 2(2) of the European Communities Act 1972.

³ The ‘yes’ vote in the referendum was 63.5% (*Results of the National Assembly for Wales Referendum 2011* (NAW, 2011)). Despite the introduction of primary law making powers for NAW, devolution in Wales still follows a ‘referred powers’ model in contrast to the Scottish Parliament which can currently exercise any power other than those retained by the UK Government.

⁴ This includes legislation on Future Generations, Natural Resource Management and Heritage, which is discussed in detail below.

⁵ *Positive Planning: Proposals to Reform the Planning System in Wales* (Welsh Government, 2013) and Draft Planning (Wales) Bill 2013.

collaboration; and, improving local delivery. In light of the ambitious nature of the reforms, this paper focuses on the most salient issues relating to: the purpose and culture of planning; planning governance; development planning and management; and, participation. This provides the framework for the final section which offers an analysis of the measures presented.

The Evolution of a Distinctive Approach to Planning in Wales

Planning was the subject of administrative devolution on the creation of the Welsh Office, in 1964; but this had little impact on the distinctiveness of land use planning in Wales for many years.⁶ However, the introduction of policy guidance in planning, in the late 1980s, had an important impact on the practice of planning. By the mid-1990s, the Welsh Office had begun to introduce its own planning policy that adopted a very different approach to that in England with a Planning Policy Framework (PPF) supplemented by a number of Technical Advice Notes (TANs). In addition, the reorganisation of local government in Wales, in 1996, altered the approach to development planning as the distinction between County and District councils was removed to create 22 unitary authorities:⁷

“Thus, by the eve of devolution and in a typically British accidental fashion, Wales already had a planning system that, in terms of the way that plans were formulated and policies laid down, looked nationally distinctive and provided a platform for Wales to develop its own planning policies.”⁸

Devolution in Wales, even within the confines of NAW’s secondary legislative powers, was predicted to have a significant impact on land use planning, in light of the wide powers provided by the framework of primary legislation.⁹ Indeed, there have been nine amendments to the General Permitted Development Order specific to Wales and it now has a separate Development Management Procedure Order.¹⁰ Of particular significance during this period in the life NAW, was the way in which ‘Wales only’ provisions in primary legislation were used to shape planning law. The Planning and Compulsory Purchase Act 2004 introduced a new Wales Spatial Plan

⁶ Williams H. and Jarman M., “Planning Policies and Development Plans in Wales – Change and Co-existence” (2007) *Journal of Planning and Environmental Law* 985-1001.

⁷ Local Government (Wales) Act 1994.

⁸ See n.6 above, p.988.

⁹ See n.2 above.

¹⁰ Of particular note, were the changes to secondary legislation on planning for telecommunications in 2002. See further “Welsh Subordinate Legislation on Town and Country Planning Law” (2002) *Journal of Planning Law* 1340-1341. However, as in England, less attention has been paid to the Use Classes Order in Wales. The Use Classes Order has been amended only once by Welsh legislation to ensure that where a building or other land is situated in Wales, class B8 (storage or distribution) does not include use of that building or land for the storage of, or as a distribution centre for, radioactive material or radioactive waste. Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2002/1875. A review of the order is however, promised in the Planning White Paper.

and separate system for local development planning in Wales.¹¹ More recently, a distinctive approach has been created by the rejection of new measures introduced in England, i.e., the system of neighbourhood planning under the Localism Act 2011 and the provisions in the Growth and Infrastructure Act 2013 relating to both the 'special measures' system for failing local planning authorities and the power to submit some applications for business and commercial related development to be considered under the procedure in the Planning Act 2008.¹²

Background to the Proposals for Planning Reform in Wales

The White Paper and Draft Planning (Wales) Bill were published for consultation in December 2013.¹³ These documents form part of an ambitious programme to reform the legal framework for the "development and planning of Wales's natural environment and energy resources."¹⁴ A wide range of environmental issues have been 'transferred functions' of NAW since its inception and the first Environmental Strategy for Wales was published in 2006.¹⁵ Under the original Government of Wales Act 1998 the Assembly was also given a constitutional duty to "make a scheme setting out how it proposes, in the exercise of its functions, to promote sustainable development."¹⁶ The Assembly's constitutional duty with regard to sustainable development will now be taken further by the introduction of new legislation aimed to ensure that this becomes the central organising principle of government in Wales.¹⁷

The Well-being of Future Generations (Wales) Bill, published on 7th July 2014, is the first of three pieces of legislation relating to environmental protection to be

¹¹ See further n.6 above.

¹² Ss116-121 Localism Act 2011. Of the community rights introduced under the Act only the community right to buy assets of community value applies in Wales (Sections 87 – 108 Localism Act) 2011. See also Growth and Infrastructure Act 2013 ss1 and 26 respectively.

¹³ See n.5 above.

¹⁴ This is a reference to the remit of NAW's scrutiny committee on the Environment and Sustainability.

¹⁵ NAW has responsibilities for: air quality and climate change; biodiversity and nature conservation; contaminated land; countryside protection; control of genetically modified organisms; flood protection; food safety; industrial pollution control; noise; public nuisances; radioactivity; water industry regulation; water quality including marine pollution; waste management and litter. The Environment Strategy for Wales is currently being reviewed in the light of the Natural Resources Management Programme referred to below (*Environment Strategy for Wales* (Welsh Government, 2006)). Since 2006, NAW has also created the following strategies on specific environmental issues: *The Climate Change Strategy for Wales* (Welsh Government, 2010); *Towards Zero Waste* (Welsh Government, 2010); *Woodlands for Wales* (Welsh Government, 2011).

¹⁶ S121 Government of Wales Act 1998 now s79 Government of Wales Act 2006. The scheme and any revisions must be published and a copy laid before the Assembly. There is also a duty to publish a report at the end of the financial year as to how the proposals set out in the sustainable development scheme have been implemented. This must also be laid before the Assembly. The latest scheme is *One Wales: One Planet – the Sustainable Development Scheme for Wales* (Welsh Government, 2009).

¹⁷ Well-being of Future Generations (Wales) Bill 2014.

introduced by the Assembly.¹⁸ It introduces new well-being goals for the pursuit of the common aim of public bodies and requires them to set well-being objectives to contribute to these goals, in accordance with the principle of sustainable development.¹⁹ It also establishes a Future Generations Commissioner to monitor and report on their progress.²⁰ The Welsh Government has also issued a Green Paper – *Sustaining a Living Wales* – setting out its aims to provide an area-based approach to natural resource management in Wales.²¹ Subsequently, a new environmental protection agency, Natural Resources Wales, was formed from an amalgamation of the Environment Agency Wales, Countryside Council for Wales and the Forestry Commission Wales.²² This body came into operation on 1st April 2013 and will be largely responsible for implementing the proposals for the reform of environmental law in Wales. The legislative changes necessary to support the new approach to environmental management have been set out in a White Paper.²³ The aim is to define integrated natural resource management; ensure that these principles will be applied in the exercise of the functions of NRW; and allow for experimental powers to be used to test innovative approaches.²⁴ Finally, the Heritage White Paper provides a new focus on protecting Wales historic landscapes and towns and promoting public access to them.²⁵

The Draft Planning (Wales) Bill is based on substantial evidence from a number of sources. Numerous studies have been carried out into different elements of the planning system, by both Welsh Government and external organisations. There have also been a number of more substantive reports that have proven particularly influential in the development of the new legislation.²⁶ First, are two inquiries by Environment and Sustainability Committee of NAW on the need for a distinctive land use planning system in Wales and energy policy and planning.²⁷ Secondly, a study

¹⁸ Ibid. This legislation is based on a White Paper previously issued for consultation - *Sustainable Wales: Better Choices for a Better Future* (Welsh Government, 2012). See further “Think before you act: the Sustainable Development White Paper in Wales” (2013) *Journal of Environmental Law* 25(1), 137-144.

¹⁹ See n. 17 above, Part 2.

²⁰ Ibid., Part 3.

²¹ *Sustaining a Living Wales: A Green Paper on a new approach to natural resource management in Wales* (Welsh Government, 2012).

²² See further <http://naturalresourceswales.gov.uk>.

²³ *Towards the Sustainable Management of Wales’ Natural Resources* (Welsh Government, 2013).

²⁴ Ibid.

²⁵ *Historic Environment Strategy for Wales*, (Welsh Government, 2012).

²⁶ ECOTEC, *Evaluation of the Processes used to Develop National Planning Policy in Wales* (Welsh Government, 2007); *Planning for Sustainable Economic Renewal: Research Report to Welsh Government* (Welsh Government, 2011); *Delivery of Planning Services in Statutory Designated Landscapes in Wales* (Welsh Government, 2012); Fortismer Associates and ARUP, *Study into the Operation of Planning Committees in Wales* (RTPI Cymru, 2013); ARUP and Fortismer Associates, *Research into the Review of the Planning Enforcement System in Wales* (Welsh Government, 2013); and Fortismer Associates and ARUP, *Evaluation of the Planning Permission Process for Housing* (Welsh Government, 2013). Available at <http://wales.gov.uk/topics/planning/planningresearch/publishedresearch/?lang=en>.

²⁷ National Assembly for Wales, Sustainability Committee, *Inquiry into Planning in Wales* (Welsh Government, 2011) and National Assembly for Wales, Environment and Sustainability Committee,

was commissioned to consider “radical and innovative approaches to the way development is managed within the plan-led system”- *A New Approach to Managing Development in Wales*;²⁸ and, thirdly, a report was commissioned to consider *Public Attitudes to Planning in Wales*.²⁹ Finally, a comprehensive review was carried out by an independent advisory committee to provide a detailed account of the measures necessary to improve and adapt the planning system in Wales – *Towards a Welsh Planning Act* (the IAG report).³⁰ This included 97 recommendations on issues from the purpose of planning and the role of Welsh Government to structures for development planning and community engagement.³¹ There were also recommendations on detailed procedural issues relating for example, to conditions and enforcement.³² This report formed the basic framework for the proposals included in the White Paper.

The White Paper and Draft Planning (Wales) Bill: An outline³³

The proposals in the White Paper are grouped around the following themes: “supporting culture change to ensure that planning is a positive activity that supports appropriate development; active stewardship by the Welsh Government; improving collaboration between local authorities; and improving local delivery by reinforcing a plan led approach and promoting efficient development management procedures; and enhancing engagement with citizens.”³⁴ The White Paper is accompanied by a detailed Draft Bill to which reference will also be made.

Supporting Culture Change

The aim of the planning reforms in Wales is to create a system that will enable “appropriate development that supports national, local and community objectives...”³⁵ This will require a culture change in planning which will be promoted by new measures to:

- Ensure local planning authorities have an up to date Local Development Plan in place.

Inquiry into Energy Policy and Planning (Welsh Government, 2012). The role of the Assembly's Committees is to “examine legislation and hold the Welsh Government to account by scrutinising expenditure, administration and policy matters encompassing.” They may therefore carry out detailed inquiries into issues within their remit. See further <http://www.senedd.assemblywales.org>.

²⁸ *A New Approach to Managing Development in Wales* (Welsh Government/ARUP/Cardiff School of City and Regional Planning/ Liz Mills Associates, 2012).

²⁹ *Public Attitudes to Towards the Planning System in Wales* (Welsh Government/Beaufort Research, 2012).

³⁰ *Towards a Welsh Planning Act: Ensuring the Planning System Delivers: Report to the Welsh Government by the Independent Advisory Group* (IAG, 2012).

³¹ *Ibid.*

³² *Ibid.*

³³ See n. 5 above.

³⁴ *Ibid.*, p.11.

³⁵ *Ibid.*, Foreword.

- Provide a new Planning Competency Framework
- Introduce a Planning Advisory and Improvement Service
- Provide a renewed focus on managing the use and development of land (recognising the limits of the land use planning system).

Active Stewardship

The Welsh Government has historically only intervened in the local planning process on an ‘exceptional’ basis but:

“Since devolution, there has been a growing expectation from stakeholders and the public that this passive approach should change and that Welsh Government should play a more active role in the direct delivery of planning services...”³⁶

This will focus on ensuring the implementation of national policies and addressing delays in LDP preparation and decisions on important planning applications.³⁷

National Planning Policy

A national focus in land use planning will be provided by the introduction of a National Development Framework (NDF) to set out land use priorities in Wales over a minimum of 20 years and include key locations for change and infrastructure investment (to be integrated with the Wales Infrastructure Investment Plan).³⁸ The new approach aims to provide a clear steer on land use development in Wales which was considered lacking in a ‘spatial planning’ approach’. Thus, the NDF will replace the Wales Spatial Plan.³⁹ The White Paper also suggests that the approach to planning policy in PPW is sound, but that more may be done to improve local implementation. Therefore, the intention is to keep PPW under review; reassess the number and scope of TANs; and preparing a core set of national development management policies for LDPs.

A New Development Hierarchy

A new development management hierarchy will be introduced as follows:

- Developments of National Significance
- Major Development

³⁶ Ibid., p.17.

³⁷ Citing the particular examples of affordable housing and energy. Ibid.,

³⁸ Ibid., p.19.

³⁹ Criticism of the WSP dates back to NAW Committee’s inquiry of 2011 (n. 27 above), and was reiterated in the IAG report (n.30 above). See n.121 below for further discussion.

- Local Development
- Permitted Development

- Developments of National Significance (DNS)

Projects will be specified as DNS in either national policy statements (such as the Transport Plan, Natural Resources Policy or the NDF); or in Regulations. Appendix B includes a proposed list of nationally significant infrastructure projects that will provide a means of identifying projects not included elsewhere. These reflect the categories and thresholds in the Planning Act 2008 and includes applications for energy infrastructure of 25MW-49MW.⁴⁰ DNS applications will be dealt with by Welsh Ministers and the developer may also apply for associated consents.⁴¹ A DNS applications will be subject to pre-application consultation. The applicant must publicise the proposal in such a manner as is reasonable “to bring the proposed application to the attention of a majority of the persons who own or occupy premises in the vicinity of the land...”⁴² Further details may be provided by development order and must ensure that the applicant provides a report of the consultation process.⁴³ The White Paper state that detailed arrangements for consultation on the final application will be included in the notification of the application to interested parties, but this provision is not included on the face of the Bill and will need to be included in regulations.⁴⁴ The LPA will be required to produce a Local Impact Report which the Welsh Ministers have a duty to have regard to.⁴⁵ The application will be examined by a process determined by Welsh Ministers, but the regulations must include the possibility of a local inquiry, hearing or determination on the basis of written representations.⁴⁶ There will be no route of appeal against the decision of Welsh Ministers on these developments.⁴⁷ Post-determination local authorities will retain responsibility for enforcement of the planning permission and issues relating to the removal or variation of conditions.⁴⁸

- Major Development

The definition of ‘major development’ is taken from the Development Management Procedure Order for Wales where it is used to categorise the requirements for publication and particulars of evidence for planning applications.⁴⁹ Decisions on this

⁴⁰ For harbour facilities it includes anything below the thresholds in the Planning Act 2008. See n.5 above, Appendix B.

⁴¹ In relation to, for example, electricity sub-stations, common land consents, listed building or scheduled ancient monument consent and hazardous substances. Ibid., p.32.

⁴² Clause 14 Draft Planning (Wales) Bill 2013.

⁴³ Ibid.

⁴⁴ See n. 5 above, p.32. The Bill provides for a notification process for planning applications but it is not clear how this relates to consultation on applications (clause 16 Draft Planning (Wales) Bill 2013).

⁴⁵ Clause 17 Draft Planning (Wales) Bill 2013.

⁴⁶ Ibid., s20.

⁴⁷ Ibid., s16.

⁴⁸ See n.5 above, pp.33-34.

⁴⁹ Regulation 2 Town and Country Planning (Development Management Procedure) (Wales) Order 2012/801. The equivalent provision in England is s13 Town and Country Planning (Development Management Procedure) (Wales) Order 2010 no. 2184.

type of development will continue to be dealt with by the LPA, but within the framework of the NDF; new Strategic Development Plans (SPDs); and LDPs.⁵⁰ Such applications will also be subject to pre-application consultation but will otherwise be treated as local development.⁵¹

- Local Development

Most planning applications will continue to be dealt with as local development, but the Welsh Government wants to see “a smarter, risk based approach to be applied to local developments” with over 90% of applications expected to be designated to planning officers.⁵² This will be ensured by a national scheme of delegation.⁵³

Planning Appeals

This section of the White Paper concludes by considering planning appeals. There is no suggestion to create a separate Planning Inspectorate for Wales as at present. However, with the aim of speeding up decision making and ensuring greater transparency a number of procedural changes are proposed. This includes proposals to remove the right of the LPA and appellant to appear before an Inspector and make PINS responsible for determining the method of examination of an appeal.⁵⁴ The costs regime will also be extended to appeals by way of written representation; but, new fees will be charged in appeals cases. Finally, a right of third party appeal was rejected on the basis that improvements in: community engagement; accountability of Planning Committee Members; and the use of Welsh Government call-in powers, should negate the need for any such process.⁵⁵

Improving Collaboration

The Welsh Government is keen to ensure that local authorities will collaborate in planning. The White Paper refers to the existing powers in the Town and Country Planning Act 1990 to create Joint Planning Boards and encourages LPAs to create such boards on a voluntary basis - although not ruling out compulsion in future.⁵⁶ These powers will also be extended to provide for Joint Planning Boards with National Park Authorities (NPAs); although views are later sought as to whether

⁵⁰ Seen.5 above, p.28

⁵¹ Ibid., pp. 27-28.

⁵² Ibid., p. 29.

⁵³ Ibid.

⁵⁴ Ibid., p.37. The other proposals are far less controversial: a number of changes will be introduced that relate to the requirements for and timing of the relevant paperwork; to introduce rules to ensure that no new measures can be considered in an appeal so that applications for revision of planning permissions are dealt with by the LPA and not through the appeals procedure; and to extend the Householder Appeal System will to some small scale commercial applications (pp.37-38).

⁵⁵ Ibid., pp. 41-42.

⁵⁶ Ibid., pp. 45.

National Park Authorities should be abolished.⁵⁷ These boards would be served by a single planning department and have sole responsibility for all planning functions.⁵⁸ The White Paper also proposes to introduce a power for Welsh Government to require local authorities to create joint Local Development Plans (LDPs). This power was included in the Planning and Compulsory Purchase Act 2004; but only Gwynedd and Anglesey County Councils have chosen to do so. Therefore, an element of compulsion is now considered necessary.

Strategic planning, above the local level, is also considered particularly important in Wales:

“Increased personal mobility, technological advances, higher aspirations and the globalisation of business have resulted in a more mobile workforce and flexible housing markets...We need a planning system that can span local authority boundaries and tackle larger than local issues, reflecting how people live their lives today and in the future...”⁵⁹

Therefore, pursuant to a report of the *City Regions Taskforce* and another on *Planning for Economic Renewal*, the White Paper proposes to create a further tier of Strategic Development Plans (SDPs).⁶⁰ The focus for these will be the areas identified in the City Regions Taskforce’s report i.e., Cardiff, Swansea and the A55 corridor.⁶¹ The proposals in the White Paper are not to set the precise physical boundaries for Strategic Development Plans (SPDs) but that:

“A nominated local authority will work collaboratively with other local authorities within the area of focus to identify the boundary of the plan area based on robust evidence which must be submitted for approval by Welsh Ministers...”⁶²

The issues to be covered in SPDs will be specified in the NDF but should include: housing provision and employment land, strategic allocations, gypsy and traveller provision, identifying of cross boundary infrastructure, assessment changing and collection of CIL, waste facilities and mineral requirements and SEA opportunities.⁶³ The preferred option for the governance of SPDs is a ‘Panel’ two thirds of which will be made up of representatives from the relevant local authorities (the numbers of

⁵⁷ Ibid., pp.46-47.

⁵⁸ Ibid. p.45.

⁵⁹ Ibid., p.47.

⁶⁰ Roger Tym and Partners *Planning for Sustainable Economic Renewal: Research Report to Welsh Government* (Welsh Government, 2011) and *City Regions Final Report* (Welsh Government, 2012).

⁶¹ *City Regions Report*, ibid.

⁶² See n. 5 above, p. 48.

⁶³ Ibid., p. 49.

which will reflect their populations) whilst one third will be economic, social and environmental partners.⁶⁴

Improving Local Delivery⁶⁵

A number of measures are proposed with the aim of ensuring more effective delivery of LDPs and the efficient operation of the development management service.

Annual Performance Reporting and Direct Planning Applications to Welsh Ministers

A new performance framework will include key indicators on the following: plan making; decision taking; efficiency; quality; engagement; and enforcement.⁶⁶ There will be a significant element of self-improvement in the process of Annual Performance Reporting (APR), but as a last resort penalties may be imposed including the power for Welsh Ministers to take “direct action where there are clear and persistent failures in LPA performance”.⁶⁷ This will reflect the “special measures” regime in England and similarly apply only to ‘major development’.⁶⁸ The detail will be provided in regulations, but the White Paper states that the criteria for poor performance will be drawn from the indicators for local planning service and will therefore, be wider than those used in England.⁶⁹

Improving the Local Development Plan Process

The IAG report concluded that there was nothing fundamentally wrong with the process introduced under the Planning and Compulsory Purchase Act 2004.⁷⁰ Therefore, only a few minor changes are suggested (in addition to those outlined above to ensure a collaborative approach): prior notification of LDP withdrawal and

⁶⁴ Ibid. The alternatives suggested are either to allow LPAs to jointly produce an SPD that requires all of their agreement or to create a completely separate body to carry out this function.

⁶⁵ In addition to the measures outlined here, this section also includes proposals with regard to the decision notice, notification of development and arrangements post application; enforcement (the proposals for which are based on the following report - ARUP and Fortismere Associates, *Research into the Review of the Planning Enforcement System in Wales* (Welsh Government, 2013); Information requirements for development applications (and an appeals process with regard to decisions as to whether an application is valid); removal of mandatory design and access statements; and fees and resources. See further Ibid., pp.79-87 and 98-99.

⁶⁶ The headline measures will be:

- An adopted LDP being in place which is regularly monitored;
- An adequate supply of housing land;
- Delivery of a timely and quality development management service
- Customer confidence in the planning service
- An efficient and effective service that delivers value for money. See further n.5 pp. 57-60.

⁶⁷ Ibid.

⁶⁸ S1 Growth and Infrastructure Act 2013. Now found in s62A Town and Country Planning Act.

⁶⁹ Ibid., pp. 57-60. In England the only criteria are the speed with which major applications are dealt with and the extent to which decisions are overturned on appeal. *Improving Planning Performance Criteria for Designation* (DCLG, 2014).

⁷⁰ See n. 30 above.

introducing an end date for LDPs. Further measures will be introduced, as suggested in the IAG report, by refining current regulations and improving guidance.⁷¹

National Guidance on Development Management

In order to facilitate a culture change to ensure a positive approach to development planning a new definition is to be included in national guidance as follows:

“Development management is a positive and proactive approach to shaping, considering, determining and delivering development proposals. It is led by the local planning authority, working collaboratively with those proposing developments and other stakeholders. It is undertaken in the spirit of partnership and inclusiveness, and supports the delivery of key priorities and outcomes.”⁷²

The guidance will also establish the following core principles for the system: transparency, accessibility, timeliness and democratic accountability; and ‘pillars for performance’ based on speed, quality and customer care.⁷³

A New Approach to Applications in Conformity With the Development Plan

The White Paper states that under the current system “a simple or compliant application, which is in conformity with an adopted development plan can receive excessive treatment and result in unnecessary duplication and costs.”⁷⁴ Therefore, it is proposed that:

“Where the plan has established the principles that a certain form of development is acceptable, this should not be debated again at planning application stage. Instead discussions should focus on detailed design matters to ensure that a quality development is granted planning consent.”⁷⁵

This will be achieved by either:

- Introducing a new type of planning consent for applications that accord with the adopted development plan, or
- Delegating decisions on all planning applications in accordance with the development plan to officers.⁷⁶

⁷¹ See n. 5 above, p. 61.

⁷² Ibid., p.67.

⁷³ Ibid., p.68.

⁷⁴ Ibid., p.69

⁷⁵ Ibid.

⁷⁶ Ibid.

Participation in Development Planning and Management

There are a number of proposals on improving participation in local development:

- LPAs are to have a legal duty to provide pre-application advice to prospective applicants when requested and may introduce a charging regime for such advice.⁷⁷
- In addition to the usual methods of community engagement on LDPs, Town and Community Councils are to work with local people to produce 'Place Plans' that will be given the status of Supplementary Planning Guidance (SPG).⁷⁸
- The arrangements for the publicity of planning applications will be reviewed. In particular, views are sought as to whether the requirement to advertise certain applications in the local newspaper be dropped.⁷⁹
- Statutory consultees are to be given a legal duty to provide a substantive response to consultation requests in a set period; and to report on their performance to Welsh Ministers. When a response is provided at the pre-application stage limitations will also be placed on the type of new issues that can be raised later in the process.⁸⁰
- To introduce new measures to tackle applications for registration of land as a village green that are intended to deliberately frustrate the planning process. Where land is subject to planning such applications will be prohibited and landowners will be able to submit declarations to the commons registration authority to render all use of the land inconsistent with its registration.⁸¹

Planning Committees, Delegation and the Role of Members

Finally, evidence is outlined regarding significant differences between local authorities in: the size of planning committees; the number of applications dealt with by officers; and, the level of knowledge of local authority members.⁸² It therefore suggests the introduction of a National Planning Committee protocol; and

⁷⁷ Ibid., p.71.

⁷⁸ The current proposal originates in the IAG report (para 4.149). This report also considered the devolution of decision making on minor applications to these councils and the introduction of third party appeals but rejected both ideas. (paras 4.147 and 3.64). See n. 30 above.

⁷⁹ See n.5 above, p.76.

⁸⁰ Ibid., p.77.

⁸¹ Ibid., p.86-87.

⁸² Ibid., p. 79.

a national programme of Member training linked to the Planning Competency Framework.⁸³ The intention is also to include provision in the final Planning Bill to amend local government legislation to create a national scheme of delegation of planning matters to planning officers; and to prescribe the size (between 11 and 21 members), make-up and procedures within which LPA committees should operate.⁸⁴

Analysis

The Purpose and Culture of Planning

The White Paper refers to the need for the planning system in Wales to promote “an improved quality of life, a higher standard of living and an enhanced environment.”⁸⁵ However, there is no detailed discussion as to how this objective relates to the promotion of sustainable development as the primary aim of the planning system in Wales;⁸⁶ which, as in England, is clearly set out in planning policy.⁸⁷ One of the key recommendations of the IAG report was that this should be reflected in a new statutory purpose for the planning system as follows:

“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.”⁸⁸

As outlined above, the need to promote sustainable development forms part of the constitutional framework of Wales’ devolved government and the Well-being (Future Generations) Wales Bill aims to ensure its legal status as the central organising principle of government in Wales.⁸⁹ Thus, it is sadly surprising that the recommendations of the IAG report have not been pursued.

⁸³ Ibid., p.80.

⁸⁴ Ibid., p.80.

⁸⁵ Ibid., p.11.

⁸⁶ On the contribution of planning to sustainable development see further Stallworthy M., *Sustainability, Land Use and the Environment: A Legal Analysis* (Routledge, 2002).

⁸⁷ i.e., Wales Spatial Plan and Planning Policy Wales. It should be noted however, that there are clearly differences in the interpretation of this aim in this policy guidance and the National Planning Policy Framework in England. The importance of the contribution of land use planning is also clearly stated in the Welsh Government’s scheme for sustainable development, *One Wales, One Planet*.

⁸⁸ See n. 30 above p.11. It was also suggested that this general purpose might be linked to another provision providing the Welsh Ministers with a power to issue guidance to planning authorities on the application of the purpose in exercising or performing their powers or duties (p.13). Instead clause 60 of the Draft Bill states that the purpose of the NDF is to “set out such of the policies of the Welsh ministers in relation to development and use of land in Wales as the Welsh Ministers consider appropriate.”

⁸⁹ See n.18 above.

As the title of the White Paper suggests, the main aim of the reforms is to create a 'positive approach' to planning.⁹⁰ This is considered to require a 'culture change' in planning to ensure a more proactive approach to development in Wales. According to the report on *Public Attitudes to Planning in Wales*, it is the view of the public that the planning system is currently centred on land use 'control' rather than facilitating development;⁹¹ and the need to adopt a more 'positive approach' to planning was also pivotal to the recommendations of the report on a *New Approach to Managing Development in Wales*.⁹² It must not however, be forgotten that planning is, quintessentially, a regulatory regime that restricts land use in the public interest. Regulation certainly has a positive effect, for example, in protecting the environment; and is an essential means of balancing economic, social and environmental concerns to promote sustainable development. In doing so it provides a framework for addressing the inevitable conflicts that arise in planning for land use. On the other hand, the regulatory regime should not be "complex, bureaucratic and reactive" and should always operate in a "fair and open way".⁹³ Measures to improve efficiency are not necessarily problematic and national guidance in this respect can be useful; reflecting the approach used in the wider context of regulation.⁹⁴ It is important however, that these reforms do not result, in practice, in a presumption in favour of development.

Planning Governance

The role of Welsh Government in planning will be more clearly defined as a result of the measures in the White Paper.⁹⁵ The new category of DNS will be important in asserting the role of Welsh Government in land use planning and provide greater clarity for developers. It will also go some way to meet the reported lack of public understanding of the role of Welsh Government in planning.⁹⁶ In practice however, it is envisaged that the new category of DNS will cover the types of projects currently heard anyway today by Welsh Ministers through the call-in procedure or on appeal from a refusal of permission by the LPA.⁹⁷ Nevertheless, the definition of DNS will be broader than that adopted in England where the regime under the Planning Act 2008 governs decision making only on nationally significant infrastructure or certain commercial and business development proposals accepted by the SS.⁹⁸ In Wales, DNS will be defined according to thresholds that reflect those in the Planning Act

⁹⁰ See n.5 above .

⁹¹ See n. 29 above.

⁹² See n. 28 above.

⁹³ See n. 5 above, p. 11.

⁹⁴ See further *Statutory Code of Practice for Regulators* (Department for Business Enterprise and Regulatory Reform, 2007).

⁹⁵ With the notable exception of powers provided to the Welsh Government in the 'Wales only' provisions of the Planning and Compulsory Purchase Act 2004, to date, the role of Welsh Government in planning has largely been defined by the transfer of the functions of the SS in England.

⁹⁶ See n. 29 above.

⁹⁷ See n. 5 above, p. 28.

⁹⁸ Planning Act 2008 and s26 Growth and Infrastructure Act 2013.

2008, but will also include developments referred to in national policy statements.⁹⁹ The categorisation of projects in national policy statements will provide more certainty for developers in Wales over the applications procedure in England for commercial and business development proposals. However, these differences between England and Wales will undoubtedly cause confusion for developers operating in both countries.

Despite the broad definition of DNS, infrastructure planning will be central to the system of national development.¹⁰⁰ This has proved particularly contentious because, although many of the decisions on nationally significant infrastructure under the Planning Act 2008 are taken by NAW, there are important exceptions. These are generating stations of 50MW+, overhead power lines and port development.¹⁰¹ Thus, although the Welsh Government has set an ambitious target for energy generation from renewable sources, it does not have the power to decide planning applications on larger wind development.¹⁰² A recent report of the Commission on Devolution in Wales, has reiterated calls for the Welsh Government to be granted the power to consent to generating stations under 350MW; a view which was whole heartedly supported by Wales' First Minister.¹⁰³ Nevertheless, attempts by NAW to gain decision making powers over energy infrastructure continue to be rejected by the UK Government. The threshold for energy infrastructure will, therefore, be set at 25 - 49MW.¹⁰⁴ This threshold should be developed on the basis of experience in dealing with such projects in Wales, but given that it is half of the UK threshold the suspicion is that it has been identified on that basis.

'Major development' will also be a new category in Wales which will be dealt with by local authorities. 'Major development' is described as "large-scale development where the potential benefits and impacts are significant".¹⁰⁵ This is very similar to the definition in current policy on applications to be 'called in' by the Welsh

⁹⁹ See n. 40 above.

¹⁰⁰ The IAG report, for example, highlighted the need for the NDF to be streamlined with the Wales Infrastructure Plan. See further n. 30 above.

¹⁰¹ Planning Act 2008.

¹⁰² The target is to create 22.5 GW of installed capacity from renewable sources by 2025. See further Energy Policy Statement *A Low Carbon Revolution* (Welsh Government, 2010).

¹⁰³ *Empowerment and Responsibility, Legislative Powers to Strengthen Wales* (Commission for Devolution in Wales, 2014), p.84. The report also recommended the devolution of decision making on port development below the NSIP threshold (Recommendation 12, p.73). The view of the Welsh First Minister can be found at <http://wales.gov.uk/newsroom/firstminister/2014/140303silk2/?lang=en>.

¹⁰⁴ See n. 5 above, Appendix B. The White Paper also highlighted the importance of following up on other measures proposed by the Environment and Sustainability Committee's Inquiry into Energy Policy to provide a more effective system of dealing with energy development (see n.27 above). This was followed by an independent review of performance on renewable energy schemes in Wales which concluded that the Welsh Government should set up a 'Strategic Energy Consents' unit to deal with such applications, and introduce new measures to streamline decision making and engage with the public on these schemes. (*Evaluation of Consenting Performance of Renewable Energy Schemes in Wales* (Hyder, 2013).

¹⁰⁵ See n.5 above, p.28.

Government.¹⁰⁶ However, further definition is provided with reference to the categories adopted to distinguish publicity requirements for different types of development.¹⁰⁷ This definition of ‘major development’ first appeared in the General Development Procedure Order 1995, but has taken on much greater significance in the planning system.¹⁰⁸ The new arrangements in Wales may see some projects previously considered by Welsh Ministers under the call-in procedure now heard by LPAs as major development. The new system will provide greater clarity for developers than current use of the ‘call-in’ procedure. However, the transfer of power to the local level, particularly to some of Wales’ smallest local councils, appears to be at odds with the need for strategic vision on such applications. Nevertheless, decisions on ‘major development’ will need to be taken in line with the new SDPs as well as the NDF and LDPs; and measures to encourage local authority collaboration in development management will also be relevant.¹⁰⁹ In addition, developers will be able to make an application to the Welsh Government to decide cases of ‘major development’ where a local authority is considered to have demonstrated ‘poor performance’ in planning;¹¹⁰ but, these criteria are based on efficiency measures not the ability to take a strategic view on such applications.¹¹¹

‘Local development’ will continue to form the majority of applications to be heard by LPA’s. Local governance in Wales is controversial given the large number of local authorities for a country of just over 3 million people. The current framework of 22 unitary authorities was created by a process of ‘competitive bidding’ between existing county and district councils.¹¹² Thus, this was not based on a considered approach to the most appropriate number of councils in Wales. The Welsh Government has, so far, rejected further full scale reorganisation in favour of a collaborative approach to service provision, including planning services.¹¹³ However, a recent report of the Commission for Public Service and Governance has concluded that local government in Wales should now be reorganised by merging existing local

¹⁰⁶ S77 Town and Country Planning Act 1990 and *Calling-in Planning Applications* (Welsh Government, 2013).

¹⁰⁷ See n. 49 above.

¹⁰⁸ Article 8(7) General Development Procedure Order 1995 SI no 419.

¹⁰⁹ See n. 50 and 56 above.

¹¹⁰ See n 66 above.

¹¹¹ Ibid.

¹¹² Boyne G. and Law J. “Bidding for unitary status: An evaluation of the contest in Wales” (1993) *Local Government Studies* 19(4), pp. 537-557.

¹¹³ This approach was first outlined in a report *Beyond Boundaries Citizen Centred Local Services for Wales* (Welsh Government, 2006). The Local Government (Wales) Measure 2009 subsequently included a statutory duty for local authority collaboration. However, following another report in 2011, further actions were considered necessary in developing this approach (*Local Regional, National: What Services are Delivered Best Where?* (Welsh Government, 2011). Subsequently, the Local Government Wales Measure 2011 included powers for Welsh Ministers to amalgamate two or three local authority areas and issue statutory guidance on collaboration. For further details on these developments see National Assembly for Wales Research Paper *Public Services Reform: Timeline of Local Government Developments* (Welsh Government, 2013).

authorities to create just 12.¹¹⁴ In the absence of such wholesale reorganisation of local government the White Paper makes suggestions for further collaboration on both development planning and management.¹¹⁵ Joint working on development planning should be eminently practicable and merging development management functions may be desirable, particularly for strategic decision making on major development. However, the latter will undoubtedly encounter many practical barriers, particularly where this is not reflected in the wider framework of local government in Wales. An additional recommendation in a recent report on local service provision, to provide some specialist planning services at the national level, was not taken forward in the White Paper.¹¹⁶

The role of the National Park Authorities (NPAs) in Wales is also a matter of concern with respect to local land use planning. Wales' three National Parks are particularly significant to the landscape given that they cover 19.9% of land.¹¹⁷ The suggestion in the White Paper that NPAs may be abolished has gained strong support from interested parties, such as local councils and the Farmers Union in Wales, who believe these bodies have unnecessarily hindered business and economic development.¹¹⁸ However, NPA's may equally be viewed as organisations that provide special care and attention to Wales' most treasured landscapes. As an alternative to the wholesale abolition of NPA's, a previous study suggested a number of changes to their organisation and management.¹¹⁹ Most significantly, the Commission on Devolution has recommended that a single authority for planning in national parks be created, which would also retain a distinctive approach to planning in these areas.¹²⁰

Development Planning and Management

The White Paper continues to support the idea of national planning for Wales as initiated by the Wales Spatial Plan (WSP). The WSP was clearly successful in

¹¹⁴ See n. 103 above. This conclusion was based on evidence that "small organisations, and in particular small local authorities, face much greater degrees of risk to their governance and service delivery, which will eventually affect their performance" (p.36) and creating a "compelling need for change in local government structures and responsibilities to address and minimise these problems of scale." (p. 28). See further the impact of this on planning law below.

¹¹⁵ See n. 56 above.

¹¹⁶ Such as, minerals, ecology, managing the historic environment and building control. This recommendation was made by a review of the appropriate level of service delivery in Wales see n. 113 above, p.33.

¹¹⁷ The three National Parks in Wales are the Brecon Beacons, Pembrokeshire Coast and Snowdonia. National parks cover just 9.3% of land in England and 7.2% in Scotland <http://www.nationalparks.gov.uk/learningabout/whatisanationalpark/factsandfigures>.

¹¹⁸ For example from the leaders of Powys, Gwynedd and Pembrokeshire councils. "Abolish Welsh national park authorities say council" *BBC News* 2nd July 2013 <http://www.bbc.co.uk/news/uk-wales-23141348> and the Farmers Union in Wales "National Parks should Lose Powers, Farmers Say" *BBC News* 25th April 2014. <http://www.bbc.co.uk/news/uk-wales-27151183>.

¹¹⁹ Report on Delivery of Planning Services in Statutory Designated Landscapes in Wales see n. 26 above.

¹²⁰ See n. 103 above, paragraph 2.60.

asserting the importance of a national perspective on planning in a devolved nation. However, the approach in the WSP faced criticism prior to the White Paper on the grounds that it did not include identification of specific spatial allocations for development.¹²¹ The White Paper promises an approach focusing on the development and use of land and the Draft Bill states simply that “the Framework must set out such policies ... in relation to the development of use of land in Wales as the Welsh Ministers consider appropriate”.¹²² However, consideration of broader policy considerations in a process of spatial planning is, arguably, a useful mechanism in providing a ‘joined up’ response to the challenges of sustainable development.¹²³ However, as is the case with NPPs under the Planning Act 2008, Welsh Ministers will have a duty to carry out a sustainability appraisal of the NDF.¹²⁴

Strategic Development Plans (SPDs) provide a form of regional planning only recently rejected in England.¹²⁵ It is based on a City Regions approach, the rationale for which is to increase the contribution of these areas to the economy in Wales (which is currently less than equivalent cities in the UK); and “to ensure city region hinterlands benefit from the growth of their cities and have a voice in cross boundary development”.¹²⁶ This is clearly an important concern for a country that reportedly has the slowest economic growth rate in the UK.¹²⁷ A similar system operates in Scotland where the experience is generally considered to be positive.¹²⁸

Nevertheless, it is questionable whether the case has been made for a regional tier of planning in the Welsh context. Certainly the recommendation in the report on *Planning for Sustainable Economic Renewal* was that a higher tier of planning could be created at *either* national or the level of City Regions.¹²⁹ The alternative would be for more collaborative working between local authorities in these areas – a subject on which the White Paper includes a number of recommendations. The governance and planning of City Regions will also necessarily be impacted by any proposals to

¹²¹ The IAG report suggested the new NDF should provide such specific allocations based on the Wales Infrastructure Plan and within the constraints proposed by the new Natural Resources Management Plan (see n. 30 above). A review of WSP was also called for in an earlier report by the National Assembly for Wales, Sustainability Committee and repeated in the inquiry on energy policy and planning in 2012 (see n. 27 above). Spatial planning processes have received similar academic criticism. See for example, the work of Allmendinger P and Haughton G discussed in ‘Revisiting... Spatial Planning Devolution, and new planning spaces’ *Environment and Planning C: Government and Policy* (2013) 31 953-957.

¹²² Clause 2 Draft Planning (Wales) Bill 2013.

¹²³ See for example, the work of Allmendinger P and Haughton G, n. 121 above.

¹²⁴ Clause 2 Draft Planning (Wales) Bill 2013. They will also, of course, be subject to the duty under s39 Planning and Compulsory Purchase Act 2004 to carry out their functions with the objective of contributing to sustainable development.

¹²⁵ This was removed by the Localism Act 2011.

¹²⁶ See n.60 above, Recommendation 6, p.46.

¹²⁷ “Wales Economy has the Slowest Growth Rate” *BBC News* 10th October 2013 <http://www.bbc.co.uk>

¹²⁸ This was the conclusion of a recent report on their effectiveness although it was also noted that there was a need to make improvements in collaborative leadership and governance and effective scrutiny and engagement. Kevin Murray Associates, *Review of Strategic Development Plans in Scotland* (Scottish Government, 2014). The City Regions in Scotland are in the areas of Aberdeen, Dundee, Edinburgh and Glasgow.

¹²⁹ See n.60 above, para 4.101.

merge local authorities as recommended by the Commission on Devolution. In these circumstances, the introduction of SPDs may be considered pre-emptive, but given the protracted discussions regarding local government reform in Wales it is perhaps not surprising that action has been considered necessary at this stage.

The governance arrangements for strategic planning may prove controversial. Allowing local authorities to agree the exact boundaries of City Regions provides them with some autonomy over this issue, but it is important that this is based on sound research to ensure that the boundary reflects economic issues rather than political wrangling of the relevant parties.¹³⁰ Thus the oversight by Welsh Ministers will be important in this context.¹³¹ The introduction of independent experts in regional planning in Wales reincarnates the debate about the role of technical experts in development planning, which were widely rehearsed in respect of the Infrastructure Planning Commission.¹³² The SDP panels will be hybrid bodies with the majority of members being local government representatives. There are therefore, no specific means of ensuring the accountability, but in reality the influence of independent experts on proceedings may outweigh their official representation.

On local development, the emphasis of the reforms is on increasing effectiveness which is used as justification for furnishing the Welsh Government with greater powers of oversight. There may well be some problems in this respect, but it is important that planning remains principally a local function.¹³³ The current system of local development planning in Wales, introduced by the Planning and Compulsory Purchase Act 2004, has been found to be generally sound, but new nationally agreed development management policies for LDPs will be introduced which may lead to excessive centralisation depending on their extent. Whether or not the new system of Annual Performance Reporting (APR) for local planning authorities will increase effectiveness depends on your view of performance management. Performance management in local government has been abandoned in England, but the Wales Programme for Improvement is still in operation.¹³⁴ It is therefore, not

¹³⁰ City Regions are intended to reflect the natural economic boundaries of Wales based on consideration of: critical mass; traffic flows; community identification; and existing structures of governance See n. 60 above, p.7 and p. 4 respectively.

¹³¹ See n. 5 above, p.48.

¹³² See n. 64 above.

¹³³ On the situation on development planning in England for example see further – M. Collins 'Development plan coverage in England 1909-2012' (2013) *Journal of Planning Law* 12 1482-1495. The importance of a local approach to planning in Wales was recognised in the recent report on local service delivery. " While there is scope for national delivery of some functions, the importance of local knowledge is not to be forgotten and should be taken advantage of where appropriate. ... mainstream planning should continue to be delivered on a local basis because of the need for accountability, public engagement, policies and priorities." See n. 113 above, p.33.

¹³⁴ The Labour Government introduced a system of performance management based on 'best value' *Modern Local Government Improving Local services through Best Value* (DETR, London, 1998). This was subject to scrutiny by the Audit Commission, but this function of the Audit Commission was abolished by the Coalition Government. Local Audit and Accountability Act 2014. For further details

surprising that the Labour administration in Wales wishes to adopt this approach in planning. This will also form the evidential basis for 'poor performance' in the 'special measures' regime in Wales. 'Poor performance' in Wales will, therefore, be judged by a broader range of indicators than in England, but it is essential that the system is fair and relevant.¹³⁵ The proposal to provide standard approaches to the structure and operation of Planning Committees is based on the findings of a report by the Royal Town and Country Planning Institute in Wales and breaks new ground in central governance of local structures for decision making.¹³⁶ Given the very significant differences in the size of local authorities in Wales the current arrangements in some local authorities are unsatisfactory; but, in light of the proposals for local government reorganisation, these draconian measures for central control may be considered premature. Finally, the seemingly innocuous provision to increase the efficiency of planning applications in accordance with the development plan. The first suggestion for effecting this change is uncontroversial, i.e., delegating these decisions to planning officers. However, the preferred option is to introduce a new type of planning consent for such applications which will restrict decision makers to detailed design matters. This is described as a "reserved matters" type application. However, the process as described has the capacity to effect a fundamental change to the discretionary approach to planning in Wales; that allows the LPA to reject any planning applications on the basis of material considerations whether or not the application is in conformity with the development plan.¹³⁷

Participation in the Planning Process in Wales

The report on *Public Attitudes Towards the Planning System in Wales* concluded that local citizen involvement in planning was limited.¹³⁸ Therefore, a number of suggestions are made throughout the White Paper to improve community engagement which are discussed here along with measures to compel statutory consultees to take part in the planning process.

The first stage in national planning is the creation of the National Development Framework (NDF). There must be some form of consultation on the NDF, but the Act simply states that the Welsh Ministers must "consult such persons as they consider appropriate about the draft".¹³⁹ Welsh Ministers must also lay before NAW a report summarising the representations they receive during the consultation and

on the Wales Improvement Programme see Wales Local Government Association
<http://www.wlga.gov.uk/wales-programme-for-improvement>.

¹³⁵ See n. 66 above.

¹³⁶ Fortismer Associates and ARUP, *Study into the Operation of Planning Committees in Wales* (RTPI Cymru, 2013);

¹³⁷ S70(2) Town and Country Planning Act 1990 and s38(6) Planning and Compulsory Purchase Act 1991.

¹³⁸ See n. 29 above.

¹³⁹ Clause 2 Draft Planning (Wales) Bill 2013.

how they have taken these into account.¹⁴⁰ In practice, as is evidenced by the experience with NPPS, much will depend on the ‘persons’ whose views are sought and the methods of consultation used. It is also difficult to ensure public understanding that the remit of the consultation process is confined to the way the policy is expressed and that they are not permitted to oppose the policy itself.

The Planning Bill includes provision for pre-application consultation on DNS in line with the procedure under the Planning Act 2008.¹⁴¹ Local authorities will also have a legal duty to produce a local impact report at this stage which is also a significant departure from the process under the Planning Act 2008. The experience under that regime has no doubt been influential in Wales. However, of the ten projects so far decided by PINs all but one have been accompanied by at least one local impact report.¹⁴² A significant problem is the difference in the quality of such reports, but this will not be addressed by a statutory duty to make a response. At the application stage the procedure for the examination of the application will differ from that under the Planning Act 2008 as follows:

- The examination of the application will follow the same format as the current system for appeals, i.e., by written representation hearing or local inquiry.
- Examination by way of written representation will be the presumption and there is no mention of a right to appear at an oral hearing for interested parties.
- There is no mention of changing the procedure at the local inquiry to adopt an inquisitorial approach.¹⁴³
- There is no mention of a new statutory timetable for this development; although the existing inquiry rules on appeals in Wales state that where this is to last for more than 8 days the inspector must prepare a timetable.¹⁴⁴

The omission of a right for interested parties to appear at an oral hearing presents a very radical change to the way planning applications for significant developments are dealt with. This has been central to provisions for participation in the planning of larger development for many years.¹⁴⁵ The new category of major development will

¹⁴⁰ Ibid.

¹⁴¹ Clause 14 Draft Planning (Wales) Bill 2013.

¹⁴² <http://infrastructure.planningportal.gov.uk/projects/wales>.

¹⁴³ Although Clause 20 Draft Planning (Wales) Bill 2013 gives Welsh Ministers a general power to make rules regulating the procedure to be followed in connection with an examination of a proposal. Under the existing rules on inquiries in planning appeal in Wales the inspector has responsibility for determining the procedure to be followed and for identifying the main issues. The LPA provides evidence first and the developer has the final right of reply. Anyone entitled to take part has a right to call evidence and the LPA, applicant and statutory parties have a right to cross examine others. Article 15 Town and Country Planning (Inquiries Procedure) (Wales) Regulations 2003/1266. Any rights can be refused if the Inspector considers they are irrelevant or repetitious but those issues may then be raised in writing.

¹⁴⁴ Article 8 Town and Country Planning (Inquiries Procedure) (Wales) Regulations 2003/1266.

¹⁴⁵ This includes the right to be heard at a public inquiry on ‘called in’ development under s77 Town and Country Planning Act 1990 and the provisions on public inquiries included in separate legislation

also be subject to pre-application consultation, but will not involve a right to an oral hearing; whilst these rights will be removed in planning appeals. Together these proposals present an important challenge to the existing system for participation in planning and will be highly controversial. However, where a public inquiry does take place individuals will experience a more traditional form of oral hearing rather than the more restrictive approach adopted at the Examination in Public under the Planning Act 2008. The White Paper also proposes to review the arrangements for the publicity of major development in the local newspaper. The publicity of these more significant proposals is clearly very important and, although the form of planning notices is currently quite inaccessible, local newspapers are an alternative means of engaging with the local community. As the White Paper recognises, the ability to advertise proposals on the LPA internet pages is probably not sufficient to replace this requirement.

SPDs will be subject to a process of consultation which will follow the current arrangements for LDPs, and do include a right for interested parties to appear at an oral hearing. The White Paper emphasises the importance of consultation with ‘investors’ from the public and private sector;¹⁴⁶ but it will also be important to encourage a wide range of actors and the general public to respond to the consultation.¹⁴⁷ No significant changes are proposed with respect to the procedure for participation on LDPs. However, a new attempt to engage local communities in local development planning will be made by giving ‘Place Plans’ created by Town and Community Councils the status of Supplementary Planning Guidance.¹⁴⁸ ‘Place Plans’ are not a new concept as Wales has “... a rich history of non-statutory ‘bottom-up’ plans in Wales which includes town and village plans and design statements.”¹⁴⁹ The proposal is therefore, to build on the existing work of Town and Community Councils in this regard, but provide such plans with a formal status in relation to the LDP. The proposals on ‘Place Plans’ form part of wider measures to reinvigorate Town and Community Councils in Wales and will help to reinforce their existing role in land use planning.¹⁵⁰ A gap in community engagement in local

on major developments including the Pipelines Act 1962; Harbours Act 1964; Gas Act 1965; Electricity Act 1989; Highways Act 1980; and, the Transport and Works Act 1992.

¹⁴⁶“Ensuring change is financially achievable and investors are prepared to support the plan is essential.” See n. 5 above, p.50.

¹⁴⁷ Clause 5 Draft Planning (Wales) Bill 2013 states that ss 63-68, 68A(1) 69-71, 73 and 75-77 of the PCPA 2004 will apply to the SDP as they do to LDPs. See further n. 5 above, p. 50.

¹⁴⁸ See n. 5 above, p.66. The suggestion is that these plans could ensure that development reflects local distinctiveness and/or be used to identify priorities for investment in community infrastructure and ensure that the best use is made of CIL funds.

¹⁴⁹ Ibid., p.66.

¹⁵⁰ Contributing local knowledge to the planning process is an important function of these councils in Wales and they long been a statutory consultee on planning applications. However, a study, in 2003, recommended that they should be involved in all stages of the planning process and the Local Government (Wales) Measure 2011 subsequently included provision to ensure their part in Local Development Planning. Nevertheless, a more recent report highlighted the fact that planning can also be the most contentious area in relations between the local authority and community and town councils where opinions differ. See further Research Study into the Role, Functions and Future Potential of Community and Town Councils in Wales (University of Wales, Aberystwyth, 2003) and

planning in Wales was highlighted by the rejection of neighbourhood planning. The current approach was informed by this process, but does not adopt it entirely because it was considered overly bureaucratic.¹⁵¹ The neighbourhood planning process has encountered some difficulties but it is not clear whether the approach in Wales will be any more successful.¹⁵² Many people are unfamiliar with their Town and Community Council; and some communities in Wales are without representation, despite measures introduced to make it easier for these to be set up.¹⁵³ Many of the communities that are unrepresented are in urban areas, including 62 of the 100 most deprived communities in Wales.¹⁵⁴ In addition, there are significant differences between the size, setting and budget activities of these councils which form a barrier to the introduction of measures affecting the whole sector.¹⁵⁵ Ultimately, although there are some examples of very good practice in creating 'Place Plans'; there is no comprehensive evidence as to the extent of this activity.¹⁵⁶

On local development, there is a proposal to remove the right to register a Town and Village Green in an area subject to planning. This is referred to as an attempt to undermine the planning process, but it could equally be seen as action to assert community rights over green space. This highlights the perennial problem in development: that, whilst government and planners alike are keen to engage communities in the development planning process, which is clearly the earliest and most effective opportunity for participation, local people themselves are rarely motivated to take part until they acknowledge a threat to their individual or community interest in a particular proposal for development.¹⁵⁷ Finally, statutory consultees will be given a duty to respond to requests for their response within a certain time period. A recent study of the planning application process in Wales,

Woods M., *Developing a Comprehensive Understanding of Community and Town Councils in Wales: Evidence Review for the Welsh Government* (Institute of Geography, History and Politics, WISERD, Aberystwyth University, 2013).

¹⁵¹"We prefer a simpler approach that retains maximum flexibility and can be varied to suit the aspirations and capabilities of different communities." IAG report, para 4.153 see n. 30 above. It has been noted that these plans are also considered a key element of Wales' strategy for sustainable development by the Sustainable Futures Commissioner and Cynnal Cymru. It is suggested that they should operate within a framework of regional and national plans. Cynnal Cymru (2013) Notes on Meeting on the Sustainable Development Role of Community and Town Councils, 31 January 2013.

¹⁵² M. Collins 'Development plan coverage in England 1909-2012' (2013) *Journal of Planning Law* 12 1482-1495.

¹⁵³ In England, many urban areas are 'unparished' but in Wales the whole country was divided into communities in the 1970s and 1980s. Yet there are still 110 communities in Wales without representation. This problem was highlighted in the study in 2003 and changes were subsequently introduced in the Local Government Wales Measure 2011 but have not resulted in a net increase in these councils. However, there is still a much higher percentage of the population of Wales covered by Community and Town Councils than that covered by Parish Councils in England (70% as opposed to 37%). See 2013 report n.150 above, p.31.

¹⁵⁴ Ibid., p.30. Figures are taken from the Wales Multiple Deprivation Index 2011.

¹⁵⁵ Ibid., p.11.

¹⁵⁶ Ibid, p.122.

¹⁵⁷ See further Rydin Y., *The Purpose of Planning: Creating Sustainable Towns and Cities* (The Policy Press, 2011)

highlighted the need for greater effectiveness in the process of consultation with statutory consultees.¹⁵⁸ The views of statutory bodies are important in development decisions, but these organisations struggle to respond to the number of requests for information that they receive.¹⁵⁹ The quality of the information provided by statutory consultees is also problematic. Compulsion will not however, necessarily provide the best means of improving the system.

Conclusions

The Draft Planning (Wales) Bill is set to create significant distinctions between the land use planning systems in England and Wales. These changes form part of a very ambitious programme of law reform for environmental protection in Wales. They have been pushed through in a relatively short period of time, but the Planning Bill is based on a significant body of research from within NAW/Welsh Government and by independent sources. Nevertheless, it may have been wise to adopt a more incremental approach given the number of very significant reforms presented in the White Paper. It should also be noted that the changes that will be introduced by the Planning Bill will be implemented by amending the Town and Country Planning Act 1990. This is becoming an increasingly unwieldy piece of legislation. The Law Commission is currently considering including Welsh Planning Law as part of their 12th programme of law reform;¹⁶⁰ and it may not be long before we see a Welsh Planning Act.

¹⁵⁸ *Study to Examine the Planning Application Process in Wales* (Welsh Government, 2010)

¹⁵⁹ This problem was also highlighted in a recent review of national infrastructure planning under the Planning Act 2008. *Reviewing the Nationally Significant Infrastructure Planning Regime* (DCLG, 2014).

¹⁶⁰ <http://lawcommission.justice.gov.uk/docs/welsh-planning-law.pdf>.