

Initial submission to Sustainability Committee

1st June 2010



WLGA • CLILC

The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales, and the three national park authorities, the three fire and rescue authorities, and four police authorities are associate members.

It seeks to provide representation to local authorities within an emerging policy framework that satisfies the key priorities of our members and delivers a broad range of services that add value to Welsh Local Government and the communities they serve.

Background

The committee have asked the WLGA to appear before the deadline for written submissions to:

- set the scene about the planning system in Wales
- how key national policies are transferred into the local landscape, including
- what we see as the main issues around planning policy and guidance,
- the role local government has in the planning system,
- the advantages and disadvantages of the current system, and
- any examples of good practice

Context

Since devolution there has been a significant period of change within the planning system in Wales. As a devolved function Welsh Ministers have rightly sought to ensure that the planning system was fit for purpose for Wales. However this period of unprecedented change and policy development does have implications. The complexity of policy now has impacts for all stakeholders in the planning system and key statutory bodies. The integration of key EU policy around the environment and waste also has had a significant impact.

The other key contextual issue is the recent significant drop in fee income across LPA's linked to the economic downturn. This is relevant because this has increased the need to make savings within the planning function over and above any anticipated cuts in the public sector. In the future this will have implications for the amount of pre-application discussions that can be entered into and consequently the quality of planning applications which come forward. It restricts the LPA's ability to explain and clarify local policy and its relationship to national policy with applicants and stakeholders. It also restricts the LPA's ability to write

new Supplementary Planning Guidance which explains National policy, as stated in the Development Plan, at a detailed local level, for example an Affordable Housing SPG would contain information on process as well as thresholds, %, tenure, design, etc. It also impacts upon any training that LPA's may wish to undertake for local stakeholders to allow them to more fully understand new policy such as Design and Access statements (DAS) and the requirements for Code level 3 plus additional energy credits.

Another key context is the recent findings of the GVA Grimley report on the Welsh Planning System. A key aspect of this report explores the relationship between national policy and local delivery in terms of economic renewal.

The key findings are:

- The planning application system needs improving but does not require structural change or significant new primary legislation
- Many of the required changes can be introduced swiftly, without the need for significant new resources
- Recommendations are then made under three headings; better understanding of impact of intervention, culture (in terms of approach and how planning officers/Members respond to challenges) and operation of the planning process.

The recommendations include:-

Understanding / Complexity

- Policy statement on economic development to be prepared (making clear how far economic development should be a consideration in determining planning applications)
- Measures to improve responsiveness to needs of business
- Clarity on scope, content and trigger points for access and design statements
- Improvements in the way guidance is issued – and a pause on further guidance whilst current programme is reviewed

Culture / Responsiveness

- Apply principles of development *management* DM (as opposed to *control* - *DC*) approach
- Review effectiveness of consultation
- Produce best practice note on DM

- Production of supplementary guide to standardise committee structures and processes

Operation / Reducing uncertainty

- A range of proposals to reduce need for planning permission (for minor changes), extension of e-planning
- Introduction of a 'central panel of expertise' with initial focus on development viability
- Production of a national validation list for planning authorities in Wales (to ensure consistency in the requirements and checks made by authorities when applications of the same scale/type are submitted and that initial checks are not simply 'tick box' exercises and involve professional staff)
- Further calls for practice notes and guidance! (on pre-app discussions and planning conditions)

Introduction

The robustness and fitness for purpose of the Welsh planning policy system was also reviewed in research commissioned by WAG in 2007 and undertaken by ECOTECH;

<http://wales.gov.uk/topics/planning/planningresearch/publishedresearch/1847052/?lang=en>
<http://wales.gov.uk/topics/planning/planningresearch/publishedresearch/1847052/?skip=1&lang=cy>

Whilst that review focussed upon the WAG role in the process it did address presentational issues which are relevant for understanding how national policy is implemented at a local level. This review found that National policy *generally* supported local development plan processes. Whilst this is undoubtedly true there are some emerging issues since the study which require further examination, especially in terms of the LDP process which is still being understood. There are also key issues in how changes in policy are reflected within the Development Management process.

Roles and Remits

The Assembly is charged with the responsibility of delivering planning policy and strategic direction to be filtered down to LPAs for implementation at the operational level. The planning related policies and documents that are published by the Assembly vary from the

strategically led, such as the Environment Strategy for Wales, to documents directed at the functions of LPAs – Planning Policy Wales - and guidance for developing LDPs.

The Welsh Assembly's aims for the operation of its planning function are to:

- be open, fair and transparent;
- inspire public and business confidence;
- deliver improved quality and speed;
- integrate with other plans, processes and actions; and
- meet the Welsh Assembly objectives set in the Plan for Wales.

It is local government's role to help deliver on these objectives.

Planning policy framework

Planning policy is delivered in Wales through a series of interlinked documents, which provide guidance on the full spectrum of topics which affect the planning system in Wales. The Barker review of the land use planning system in England in 2005 found much merit in the Welsh system which allowed a holistic approach to policy which was precluded by the English more 'modular' approach. Conversely Barker also found that this might make the system more unwieldy to update as it needs to be all reviewed. The one example of this is the Climate Change MIPPS which updated elements of PPW throughout and consequently became difficult to follow.

Planning policy in Wales is unique in its need to comply with the Assembly's cross-cutting themes of environmental sustainability and equal opportunities.

The key attributes of that policy framework are:

- Land use planning policy is a devolved responsibility to the Assembly. This responsibility has been further enhanced by the Government of Wales Act 2006; the Assembly can now apply for powers to make legislation using Assembly Measures.
- Since devolution national planning policy in Wales has developed its own distinctive framework.
- Planning Policy Wales (PPW) and Minerals Planning Policy Wales (MPPW) together provide national planning policy for Wales. PPW is updated through the use of Ministerial Interim Planning Policy Statements (MIPPS).

- Technical Advice Notes (TANs) and Minerals Technical Advice Notes (MTANs) are used to provide technical guidance and advice in support of policies contained in PPW and MPPW.
- Circulars and Circular Letters are used to explain particular pieces of legislation.
- The Wales Spatial Plan, whilst outside the formal land use planning framework, is an important national policy for consideration in the LDP process.
- There is a plethora of other Assembly documents, strategies, plans, etc which are also important in the LDP process from 'One Wales' to the 'Walking & Cycling Strategy for Wales'.
- Finally, there are other LDP relevant documents produced by other bodies under the requirements of Assembly policy, e.g. the two Regional Technical Statements on Aggregates, the three Regional Waste Plans, Regional Transport Plans, etc.

Given all of the above documents, it can be difficult for Councils to reconcile the 'top down' Assembly policy and guidance, which all seem to be a priority. The matter is further complicated as councils also take into account the equally relevant locally derived 'bottom up' priorities, including those from stakeholder engagement and consensus building as part of the Council's own LDP, Community Strategy or other strategies. Such decisions should be left for local decision makers who are aware of all of the competing priorities. Indeed, in producing their LDPs, each LPA is required to have regard to National policy and iteratively undertakes Sustainability Appraisal (SA) (incorporating Strategic Environmental Assessment) of the LDP to identify and consider these competing priorities by formulating the LDP against 'their' LDP and SA objectives.

PPW is generally seen as a strong document giving a good lead in setting out key planning policy issues and the method of providing technical guidance through TAN's is also generally supported. It should be noted that the complexity and depth of TAN's has increased greatly in recent years reflecting the greater range of issues which planning must seek to address and the technical nature of some of those issues. This has implications for their application and comprehension by all stakeholders.

All of these policy tools should be taken into account in the preparation of development plans and may be material to development control decisions. Therefore PPW remains the principal and authoritative source of national planning policy. Its first four chapters introduce the planning system, the principles of planning for sustainability, the plan led system, and the mechanisms for controlling development. The later chapters (Chapters 5 to 13) set out policy on all the key land-use topics.

The Planning Policy Wales Companion Guide published by WAG in 2006 sets out how the policy framework should relate to the development of the LDP; albeit it is now 4 years old and needs updating as a result of subsequent Assembly policy. However, the Companion Guide gives some insight into how national policies relate to local issues.

<http://wales.gov.uk/topics/planning/policy/developplans/Companionguide?lang=en>

<http://wales.gov.uk/topics/planning/policy/developplans/Companionguide?skip=1&lang=cy>

In terms of policies it highlights those that local planning authorities have some discretion to apply or the ability to elaborate national policy in a positive way. This may involve identifying spatial boundaries and/or producing topic-based policy tailored to local circumstances.

Five main types of national policy statements have been identified and categorised. These are statements which:

- constitute national development control policy;
- inform the plan preparation process;
- need local spatial expression;
- need local spatial expression and a policy in support; or
- need to be reflected in local topic-based policy.

Policy statements on some subjects may fall into more than one of these categories. For example, locating retail and other services in existing centres is a national development control policy but it may also need local spatial expression. Occasionally the particular policy classification depends upon the nature of the proposal. For example, cluster development could be promoted through a site-specific proposal needing local expression and a policy in support, or through a more generic approach in local topic-based policy.

Engagement and Communication within Policy

The ECOTECH report had clear recommendations regarding greater communication and engagement around policy development nationally. WAG officials have made great efforts to engage Heads of Planning in raising awareness about what was happening in policy development and the likely timescales. Chief Planning Officers greatly value these meetings. The Minister also meets on a regular basis with the political leads on planning within local government (next meeting on 30th June) to articulate key policy issues and to discuss broader concerns, issues and opportunities.

However there could still be greater clarity about which aspect of the policy framework are to be reviewed, how the research programme underpins this and a greater debate about what the priority areas for review are. This is difficult given the political necessity to respond quickly to issues which emerge such as the economic downturn but should remain a key aspiration so that all stakeholders understand the likely areas of change and contribute to that change.

This greater engagement and communication would go some way to engaging all stakeholders in this process. However it is a function of the planning regime in Wales that there are few national 'players' and most stakeholders operate on a regional or single authority basis; whether this is local agents or small scale builders. It is at this level that people struggle to keep up with the changing regime; be it building to Code level three or submitting appropriate Design and Access statements.

Key Issues around planning policy and guidance

The complexity of the Welsh Planning system has increased greatly since devolution. Much of the change has sought to deliver key policy objectives of the Assembly government such as sustainability and climate change as well as transposing key EU directives. These changes are welcome but this increased complexity has caused problems for all stakeholders within the planning system.

The WAG Planning policy guidance and the Technical Advice Notes have not been updated to reflect the fact that we are working within a new planning system leading to some uncertainty in terms of those areas that need to be covered in LDPs. The Companion Guide, which is now four years old, goes some way to try to clarify the position but is not in reality proving to be as helpful as we would have liked. These issues need to be addressed as a matter of urgency.

It is not sufficient for WAG to merely republish planning policy and guidance and change the reference to UDPs to LDPs as they are significantly different types of plan. Notably the LDP should not repeat national guidance, be as brief as possible and not be over detailed. However Inspectors currently examining several LDPs in South Wales are all asking the LPAs to reference, in detail, where they are relying on national policy in their LDP.

There is an unrealistic expectation that the LDP can be amended to have regard to all new evidence throughout the process, which takes over four years from beginning to end. The

reality is that the LDP has to be prepared on the information available at the time of preparation. New evidence in the form of new EU, UK or Assembly guidance, policy and data or from other sources is emerging continually, and if the LDP is to be adopted, the implications of later evidence, should properly, unless it can be easily assimilated into the LDP or does not cause unacceptable delay, be considered in the LDP Review process rather than by undertaking the formidable and time-consuming task of amending the plan itself each time a new piece of evidence or guidance is published. It is important to note that the plan should be sufficiently flexible to allow this to happen. There are mechanisms in place in the new system such as the need for annual monitoring and 4 year reviews which adequately address this issue.

The frontloading of the plan with evidence means that costs that are usually associated with the development control process and therefore are usually incurred by the developer have to be borne by the Council. For example the need to undertake detailed flood risk assessments on sites for inclusion within the plan. In addition much of the work for example in terms of viability assessments etc are difficult to undertake until such time as detailed site investigations have been carried out, again usually at development control stage. This is proving both costly and time consuming. These costs now have to be met by the councils in most instances to ensure that their LDP will be found to be deliverable and therefore sound.

There are other issues in the new system that should be addressed in due course. The separate consultation on the Preferred Strategy and the lack of opportunity to formally amend the Strategy in a clear and transparent way has proved problematic. There is an unrealistic expectation that the public will engage at Preferred Strategy Stage when in reality most people await the details in terms of all of the allocations and policies (i.e. Deposit Stage) across the local authority to participate. In the new system changes after Deposit are considered undesirable yet this is the first time that the public has really seen the detailed proposals for their area. There is usually pressure and also a requirement for more than a few focused changes at this post deposit stage.

Regional Issues

It is clear that for LDP's to function properly they must have due regard to the Spatial Plan and other emerging LDP's. To this end a number of authorities across Wales have been working collaboratively to ensure that issues such as population growth and housing provision are tackled in a sensible manner. It is disturbing to find that in its initial approach the Planning Inspectorate have sought to review LDP's in isolation often disregarding regional working around issues such as housing and waste; even where such regional

working is in line with WAG national policy. It is clear that the Spatial Plan process has failed in its role in providing coherent regional input into LDP's.

Local Accountability and democratic principles

A great deal of emphasis is placed upon community engagement and consensus building on the plans as they develop. This is hugely time consuming and costly to undertake but LDP's have entered into this willingly because they take their community leadership principles seriously. However local aspirations can cut across national policy objectives. This is a problem where the local authority has spent a great deal of time early in the LDP process eliciting those views and engaging with communities and does little to encourage less cynicism about the planning process.

Where LDP processes have proved problematic for authorities there are obvious implications for costs and resources for the authorities involved. This also means that many of the innovative Supplementary Planning Guidance (SPG's) that authorities were developing around sustainability and Climate Change cannot be implemented.

The fundamental issue is that until the Inquiry finds the plan sound in its entirety it cannot be relied on to make day to day planning decisions. If any aspect of the plan is found unsound and if it cannot be put right (because the needed changes have not been subject to all the appropriate processes) then the plan is likely to be found unsound.

This results in a potential time lag between WAG policy pronouncement and actual implementation on the ground where policy;

- need local spatial expression;
- need local spatial expression and a policy in support; or
- need to be reflected in local topic-based policy.

(From WAG Planning Policy Wales Companion Guide 2006)

It is critical that the planning system provides a greater level of certainty for investors and other stakeholders and the effective transposition of national policy helps afford this.

Principles of good policy implementation

- Engage with all stakeholders early in the policy development process

- Clarity about which aspects of planning policy are being reviewed and timescales involved - large gaps between consultation on TAN's and their formal adoption - this impacts upon the material weight given to these documents in decision making.
- Effective training and development both for members and officers and other stakeholders

Conclusions

It is clear that aspects of the planning policy system present challenges. These can be summarised thus:

- Complexity and range of issues covered against a backdrop of reducing capacity
- Frontloading of processes to LDP to ensure certainty but also transference of cost to LPA
- Additional 'burdens' placed upon all stakeholders in the planning system need to be recognised.
- Tension between locally expressed aspirations and national policy goals
- Test of soundness for LDP's mean that little weight can be given to emerging policies leading to a potential delay in the implementation of national policy
- PPW allows a holistic joined up policy to be set out but may make it less flexible.
- Stakeholders vary in their resource and capacity to keep up to date with national policy.
- The Minister and WAG have sought to improve engagement and communication around the planning policy system but smaller scale agents and developers patently struggle.
- There are significant resource issues for LPA's going into the future which may impact upon the ability to enter into pre-application discussions which help clarify many national and local policy issues.

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