



National Assembly for Wales
Environment and Sustainability Committee
PB 29
Planning (Wales) Bill
Response from RWE Group

The Committee Clerk
Environment and Sustainability Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

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Dear Sirs

General Principles of the Planning (Wales) Bill

We attach evidence for the above enquiry. This evidence is made by RWE Generation UK plc on behalf of all RWE Group companies operating in Wales. These companies consist of:

1. RWE Generation UK plc produces over 10% of the UK's electricity from our seven gas, coal and oil-fired power stations. We also manage a portfolio of gas and bio-mass fired combined heat and power plants across the UK. In Wales we own and operate Pembroke and Aberthaw power stations.
2. RWE Npower Group plc which supplies gas and energy services to over 6.5 million households.
3. RWE Innogy UK Limited (formerly RWE npower renewables), the UK subsidiary of RWE Innogy, is one of the UK's leading renewable energy developers with an operational portfolio in the UK of 750MW and a potential UK development portfolio of over 7,700 MW, including onshore/offshore wind farms and hydro plant. In Wales, this portfolio includes Gwynt y Mor offshore windfarm.

We have also had the benefit of seeing the evidence submitted to the Enquiry by Energy UK and are supportive of their tender.

RWE is looking forward to working with the Committee, the National Assembly for Wales and the Welsh government during the passage of the Bill and the preparation of any secondary legislation and guidance.

Yours faithfully

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Inquiry into the Planning (Wales) Bill

Submission on behalf of the RWE Group

Note:

In this submission the term "local natural resources management plan" is used to refer to the combination of outputs from the area-based approach specified in the 4th and subsequent bullet points in paragraph 2.42 of the Environment White Paper, "Towards the Sustainable Management of Wales' Natural Resources".

References to "the Bill" and to numbered clauses are to the Planning (Wales) Bill as introduced to the National Assembly for Wales and the corresponding clauses of this Bill, unless otherwise stated.

1. Introduction

The comments below are based on those of our comments on the *Positive Planning* consultation document (December 2013) which we submitted to the Welsh Government in February this year. Recognising that the associated secondary legislation will be (and in some cases already is) the subject of separate consultations, we have focussed in this response on points which are relevant to the content of the Bill itself and the principles behind it.

2. General Comments

RWE wholeheartedly supports the need for change to the land use planning system in Wales and the changes provided for in the Bill posed in *Positive Planning* in principle. A culture has developed around the planning system and its operation that is overly regulatory, in which both planning authorities and especially statutory consultees view most development negatively, often ignoring the benefits, and in which meeting all statutory consultee concerns often seems the top priority. Local planning authorities tend to be too reactive and too risk-averse to plan positively. In large part, this is attributable to risk of decisions being challenged by way of judicial review.

RWE cautiously support the further devolution of planning powers sought by the Welsh Government, as it would not be entirely satisfactory to have separate parallel consent regimes for infrastructure development (the Planning Act 2008 regime for Nationally Significant Infrastructure Projects (NSIPs) and the proposed Welsh arrangements for Developments of National Significance (DNS) as well as the residual Electricity Act 1989 Section 37 consent regime for certain overhead electricity lines) operating in parallel in Wales. These regimes might potentially all apply simultaneously to different parts of the same project. We do however have some reservations, including about the scope and management of the Community Infrastructure Levy (CIL) going forward. Energy and other infrastructure projects should be exempt from CIL, in line with the position in England.

We welcome the introduction of the "Development of National Significance" (DNS) category of development provided for in the Bill to cover broadly the types of development which would be NSIPs if located in England, but for which responsibility is devolved. We consider it essential that the Welsh Ministers are legally bound to determine such applications within set timescales prescribed in legislation, to ensure that decisions are not unduly delayed for reasons of political expediency and that Welsh Ministers are not subject to undue party political pressure to delay potentially unpopular planning decisions.

While we understand and support the desire to promote collaboration between LPAs and town and community councils and the involvement of the latter in the preparation and revision of LDPs, increased involvement of town and community councils should be achieved without introducing additional formal stages into the LDP preparation and adoption process and must not be allowed to further increase the time required to prepare and adopt development plans.

3. Culture Change

We have pointed out above that planning authorities have become increasingly risk-averse, especially in their processing of major applications, because of the risk of judicial review. This will inhibit the desired culture change in local planning authorities.

We support the enabling role of the planning system, and the principle that it should take into account the views and needs of the communities affected by it, while steering appropriate developments to the right locations and making decisions on development proposals in the wider public interest. However, it is essential that the planning process is plan-led to provide certainty to developers, and based on published policy. Up to date Local Development Plans are fundamental to achieving this, and to efficient development management.

4. Interaction with the Proposed Environment (Wales) Bill and Integrated Natural Resources Management

- 4.1 RWE considers that it is essential to the successful future operation of both the reformed land use planning system provided for in the Bill and the natural resources management arrangements proposed in the Environment White Paper, that the two regimes are much more closely co-ordinated than currently appears to be proposed. In its response to *Towards the Sustainable Management of Wales' Natural Resources*, RWE made a similar point.

It is essential that the two regimes “march in step” and especially that;

- (1) At a Wales-wide level the setting of national natural resources policy and the associated outcomes and priority actions is co-ordinated both with the periodic review of *Planning Policy Wales* (to ensure consistency) and with the preparation and periodic review of the proposed *National Development Framework*; and
- (2) At local level the development and review of the proposed NRW area-based approach and local natural resources management plans is synchronised and integrated with the preparation and review of Local Development Plans by local planning authorities.

We believe that some additional legal provisions are required to ensure that the land use planning and natural resources management processes work satisfactorily together. While these would most aptly be included in a consolidated Town and Country Planning (Wales) Act in the longer term, but given the Planning Bill is preceding the Environment Bill, the necessary provisions will have to be made initially by the latter.

It is also essential that all parts of the Natural Resources Wales (NRW) organisation fully accept the proposed new natural resources management system and take a balanced approach with social, economic and wider environmental as well as ecological considerations driving NRW's participation in development plan preparation and its role as a statutory consultee in development management. NRW needs to provide internally consistent, co-ordinated inputs to the plan preparation process and, as a statutory consultee, similarly consistent co-ordinated responses to developers and local planning authorities on individual development proposals. NRW also needs to develop a balanced approach to the application of the Habitats Directive.

4.2 Natural Resource Management Planning and Local Development Plans (LDPs)

Local natural resources management plans (the preparation of which would be led by NRW under the Environment White Paper proposals) should have substantial weight in decisions on planning applications, but in case of conflict with a current Local Development Plan the latter should prevail. Conflict should not normally arise once the proposed arrangements have settled down, except where plans are out of date. Statutory provision to these effects should be made in due course. In the longer term the relevant parts of local natural resources management plans should in practice become embedded in Local Development Plans, and the practical need for such provisions may fall away over time.

4.3 Natural Resource Management Planning and Development Management

In its response to the Environment Bill White Paper, RWE drew attention to the importance to the success of integrated natural resources management of NRW participating constructively in, *inter alia*, the development management process. If local natural resources management plans and LDPs are properly aligned (see previous item) then conflicts between NRW's agenda and developments which conform to the Development Plan should not arise.

4.4 Natural Resource Management Planning and Statutory Assessments

The requirements for statutory assessments for major projects (whether NSIPs, (Welsh) Developments of National Significance or Major Developments for the purposes of land use planning) which link with the natural resources management planning regime proposed in the Environment White Paper, should be discussed with developers at an early stage via a planned consultative process, which ensures and facilitates active participation by all relevant stakeholders. This should include Habitats Regulations assessments. Statutory provision should be made for this process in planning legislation in due course.

5. National Development Framework

- 5.1 We strongly support the general principle of a *National Development Framework* for Wales, which would be a Development Plan for the purposes of the land use planning system, and serve to co-ordinate the location of development and (Welsh) national infrastructure provision priorities. The NDF should make appropriate provision for the location of major industrial developments including energy infrastructure, notwithstanding that the location of new nuclear power stations and other policies relating to energy infrastructure are currently the subject of National Policy Statements (NPS) issued by the Secretary of State for Energy and Climate Change. The presence of major generating stations at locations such as Aberthaw and Pembroke is of national significance in a Welsh context and therefore locations for future energy infrastructure of this nature should be identified in the NDF.

In order to support the delivery of Welsh national natural resources policy outcomes and priority actions, it is vital that there is consistency between the proposed national natural resources policy proposed in the Environment White Paper, *Planning Policy Wales* and the proposed NDF, and the revision cycles for these documents should be synchronised to facilitate this.

5.2 Area and Location Specific Policies

We support the proposal to include area and location-specific policies currently in *Planning Policy Wales* and Technical Advice Notes (TANs) in the NDF going forward, leaving PPW and TANs as generic policy documents only. In particular, Strategic Search Areas for onshore wind power currently included in TAN 8 relate to projects of national significance and should be “copied and pasted” across to the NDF. Any other national policy shifts relating to renewable energy (e.g. any shift to a criteria based approach for onshore wind power development) should be included in the NDF so they have the status of Development Plan policies.

5.3 Application of NDF

Application of NDF and any future revision of the NDF there needs to be clarity as to how much weight the draft NDF has at different stages of its preparation. LPAs should not delay development management decisions awaiting finalisation of a draft NDF.

Although not mentioned in the consultation document, the NDF would also provide an element of consistency and co-ordination across local authority boundaries, especially as far as transport infrastructure is concerned, which should simplify co-ordination of LDPs for adjacent local authority areas in this respect.

5.4 Responsibility of Energy Infrastructure

In our particular situation as a developer and operator of large scale electricity generating installations (including wind farms) we are concerned that the value of the co-ordinating function of the NDF could be lost because (unless responsibility for consents for energy infrastructure is devolved to Wales in the future) decisions on major electricity generating stations and certain other major energy infrastructure will still be taken by the Secretary of State for Energy and Climate Change on the advice of the relevant Examining Authority, on the basis of the NPS for energy developments. We strongly urge the Welsh Government to try to come to an arrangement with DECC such that the content of the NDF which has a bearing on the siting of major energy infrastructure would have equivalent status to NPS for the purpose of determining Development Consent Order applications in respect of major energy development in Wales. It would appear possible to achieve this via designation by the Secretary of State of the relevant content of the NDF as a National Policy Statement on the location of major energy infrastructure in Wales, as long as the provisions of that element of the NDF could be agreed with the Secretary of State.

6. DNS, Major Development and Environmental Impact Assessment (EIA)

We would suggest that:

- (1) All developments included in Annex I to the current EIA Directive (i.e. those for which EIA is mandatory in every case) should be treated as Developments of National Significance unless they are NSIPs, although it is probable that most such developments will be either NSIPs or DNS in any case as a result of being caught by other thresholds or by provisions in the NDF; and
- (2) Any development included in Annex II to the EIA Directive which is not a Nationally Significant Infrastructure Project (NSIP) within the meaning of the Planning Act 2008 or a DNS, but which requires EIA as a result of a voluntary decision by the applicant, a direction by the Welsh Ministers or the adoption of a screening opinion to that effect by the LPA, should be treated as Major Development. By definition EIA

developments have significant impacts and therefore the proposed “front-loading” consultation provisions for Major Development should apply.

To facilitate efficient operation of the proposed DNS and Major Development procedures in cases subject to EIA it should be made clear in secondary legislation that any consultation required for DNS or Major Development may be combined with consultations undertaken for other purposes connected with the proposed development (whether statutorily required or not) as long as all the other relevant requirements are met.

As far as legally possible the procedures and timescales prescribed in the Development Management Procedure Order for DNS and Major Development and the Planning EIA Regulations (especially as to publicity, consultation requirements and timescales) should be consistent.

7. Pre-application Notification and Consultation for DNS

We support these requirements in principle. The Welsh Government, LPAs and statutory consultees should be legally bound to provide substantive comments or to confirm that they have no comments within a specified period from receiving the consultation material. Holding responses asking for additional time should not be acceptable, as long as the applicant has complied with the statutory information requirements for pre-application notification and consultation.

We are concerned that the scope of pre-application consultation should itself be proportionate to the scale and potential impacts of the development. Lessons learned about the practical operation of pre-application consultation procedures from the early operation of the NSIP regime (including in England) should be taken into account in setting the consultation requirements for DNS applications.

In particular:

- (1) Having regard to the large geographical extent of some Welsh local authority areas (most notably Powys), there should **not** be an automatic requirement to consult all neighbouring planning authorities. This should only apply if the proposed development is within a certain distance of the neighbouring authority’s area. For most types of DNS 10 km would be a reasonable distance for this purpose, but this may need to be increased for some specific categories of development.
- (2) If at any stage of the consultation process a statutory consultee states in writing to the applicant or the Welsh Ministers that it has no comments and does not require to be consulted further about the development, then the applicant and the Welsh Ministers should not need to engage any further with that consultee.

Consultation requirements should extend to neighbouring areas of England where the development is close to the English border. This applies to local planning and highway authorities and other statutory bodies. Any statutory provisions as to consultation should provide for equivalent bodies in England to be consulted where appropriate.

From past experience it may not be feasible to determine at the notification stage whether a Habitats Regulations Assessment will be required, whereas it should be clear at the outset whether the project is a Schedule 1 or Schedule 2 project for EIA.

There should be a statutory duty on NRW as well as the relevant LPA(s) to provide pre-application advice on request in respect of proposed DNS, covering:-

- (1) matters within NRW's remit which should be addressed as part of the application;
and
- (2) the other environmental bodies (including NGOs where appropriate) which should be consulted by the applicant.

There are many detailed issues to be resolved at a later stage about how the pre-application procedure will operate, which will need to be addressed in secondary legislation. These include the scope or otherwise for prospective developers to have early stage discussions with Welsh Government/PINS Wales on a confidential basis before committing to the formal DNS application process beginning with formal notification of the intended application to the Welsh Ministers.

8. Interaction with the Planning Act 2008 regime for NSIPs

For the longer term we consider that the continued co-existence in Wales of the current consent regime for NSIPs, the residual Electricity Act 1989 consent regime (primarily for overhead lines under S.37) and the proposed (Welsh) planning application procedure for Developments of National Significance would not be entirely satisfactory. The disadvantages of having two parallel regimes could however be mitigated by a combination of:-

- (1) Extending the proposed provisions allowing application to the Welsh Ministers for connected consents in respect of DNS to cover similar consents in respect of NSIPs and development directly associated with NSIPs (which in England could be included in the scope of a Development Consent Order, as described below; and
- (2) Appropriate use of the Welsh Ministers' call-in powers; and
- (3) Co-ordinating the examination of related applications across the NSIP and Welsh planning regimes.

While certain energy and other projects in Wales remain subject to the (UK) NSIP procedure and the consent function for them is not devolved to Wales, the provision allowing connected applications to be submitted to the Welsh Ministers instead of to the LPA, NRW etc. should also extend to applications connected to an application for an NSIP wholly or partly in Wales, or which is itself in England but involves directly associated development in Wales. This would enable the Welsh Ministers to appoint the Examining Authority for that NSIP to examine also any connected applications relating to devolved matters in Wales. This in turn would allow a common examination process covering the complete project, and enable the Examining Authority to make a coherent set of recommendations to both the Secretary of State and the Welsh Ministers as to the determination of the applications relating to the NSIP which fall within their respective areas of responsibility. This arrangement would not be ideal but would mitigate the effects of the separation of the NSIP and Welsh planning procedures and should reduce the vulnerability of the fragmented overall consent process to legal challenge. However it should not be mandatory for a developer to make application for connected consents (in respect of a DNS or an NSIP) to the Welsh Ministers.

Additionally, consents under Water Resources Act 1991 S.109 in respect of main rivers and associated flood defences, the equivalent provisions of the Land Drainage Act 1991 in respect of other watercourses, and equivalent provisions in any local by-laws, which would normally fall to be determined by NRW, should also be included in the connected applications which could be submitted to the Welsh Ministers.

9 Planning in National Parks

The principle behind the present arrangements is that National Parks serve a national and, in the case of those in Wales, a UK-wide function, and the membership of National Park authorities and the planning arrangements for the National Parks reflect this.

On the other hand, National Park boundaries are inevitably inconsistent with river catchments, local authority boundaries and transport routes, and this can create co-ordination issues in some areas.

The responsibilities for planning in National Parks are not altered by the Bill as introduced but we are aware that the removal of planning powers from National Park authorities in Wales has been suggested. On balance we do not think that a case has been made for changing the current responsibilities fundamentally, especially where there are several local authorities parts of whose areas are within a single National Park, as in the Brecon Beacons.