

National Assembly for Wales  
Environment and Sustainability Committee  
PB 34  
Planning (Wales) Bill  
Response from Home Builders Federation



THE HOME BUILDERS FEDERATION  
WALES

National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

MH

14/11/14

Dear Sir/Madam,

**Response to: The Environment and Sustainability Committee inquiry  
into the general principles of the Planning (Wales) Bill**

The Home Builders Federation Wales (HBF Wales) represents its members who are all involved in the delivery of homes across the whole of Wales.

We welcome the opportunity to provide written evidence to the Environment and Sustainability Committee on the general principles of the Planning (Wales) Bill. I would also confirm that I have already separately accepted an invitation to give oral evidence to the Assembly.

We supported the evidence based approach taken by the Minister and the general thrust and spirit of the proposals set out in the Positive Planning consultation exercise and the earlier draft Bill. We were pleased that many of those provisions were carried through into the Bill. We strongly believe there is a need to embed a new proactive and confident culture within planning in Wales, to boost economic prosperity and to create better places for our communities to live in through the delivery of more homes. Planners, politicians, consultees, developers, and the general public, all have a role to play in achieving this.

If you require further assistance, have any queries or require clarification of any points made, please contact HBF Wales on 07770752884 or e-mail [mark.harris@hbf.co.uk](mailto:mark.harris@hbf.co.uk).

Yours sincerely,



In summary HBF support the overall thrust of the changes proposed in the new Planning (Wales) Bill and see them as a positive step forward to achieving a fair, enabling and resilient planning system, which will allow our members to deliver the much needed housing that Wales requires.

**The general principles of the Planning (Wales) Bill including the need for legislation in the following areas:**

***The requirement to produce a national land use plan, to be known as the National Development Framework;***

We are heartened to see the consultation document recognise the significant shortcomings of the Wales Spatial Plan. We are also encouraged by the fact that the NDF will be a completely different document in nature and focus, and will have the benefit of development plan status.

We believe the NDF will be a positive addition to the planning process in Wales. It will deal with issues that are 'nationally important' and as such, we expect housing issues to play a significant role in its make-up, particularly the inclusion of clear guidance and direction on the need to ensure we increase the supply of homes built in Wales each year. As such, it is considered appropriate that the Plan should include a National Housing Target which would help focus the minds on the need for more housing now and in the future.

We recommend that the NDF has genuine engagement and public scrutiny in its preparation and then it is reviewed every three years rather than the five suggested.

We would also recommend that the NDF deal specifically with local authorities that fail to achieve a 5 year land supply by setting out clear guidelines on the implications of not maintaining a 5 year land supply, particularly when there is an adopted LDP or SDP in place. We believe failure to demonstrate a 5 year land supply should be conferred additional weight in the decision making process and that the NDF should include specific provisions to address this.

***The creation of Strategic Development Plans to tackle larger-than-local cross-boundary issues;***

We wholeheartedly agree with the creation of Strategic Development Plans. We believe such a system in Wales is long overdue and, if done correctly, would bridge a significant gap that currently exists between national and local policy in areas that would benefit from a cross-boundary approach to planning matters such as housing provision. We also agree with the proposal to set up a Strategic Development Plan Panel, however, we believe it will be necessary to ensure that the lead authority cannot sway decisions on the panel, by holding a majority vote.

We also agree that it is appropriate to identify an area to be designated a Strategic Planning Area, given that we believe it would not be appropriate to simply follow administrative boundaries to identify Strategic Planning Areas, particularly in South East Wales. However, to ensure the most appropriate area is selected, we believe the process of identifying a Strategic Planning Area should be subject to thorough and robust public consultation.

In terms of the Strategic Development Plan Panel, given that house building issues will be a major consideration for Strategic Development Plans, we believe the Panel should include a representative from the house building industry. The HBF would be willing to help identify suitable persons as appropriate.

In terms of the SDP and its relationship to national guidance, we again believe it should be in strict conformity, rather than in 'general conformity' with the NDF. Further in terms of hierarchy the SDP sits above the LDP so it should not be led by the LDP. It is suggested that there should be a requirement to review LDPs which fall under a SDP within a certain time period to bring them in line with the SDP and also to remove the policies covered by the SDP, to create what is described as a 'light touch' LDP.

We agree that LDPs should be 'light touch' where there are SDPs addressing issues of strategic importance, however, clarification is required for situations where only part of a local authority is covered by an SDP. In this context, such a local authority would need major issues such as housing (for example) to be dealt with through both an SDP and also through an LDP for the area that is not subject to the SDP. Also in terms of the status of an SDP in relation to an existing LDP. If SDP have to follow existing LDP's, as is currently suggested, there may be conflict as the SDP will cover more than one LDP area and these plans may be at different stages and have different policies. We believe these issue requires further clarification.

Due to the small number of SDP's likely to be created and to help with resource issues and in order to create consistency across wales, a key theme of the new Planning Bill, the HBF would suggest the formation of a single board with a number of key members responsible for the creation of SDP's across Wales. This would then be supplemented with an agreed number of local people co-opted on in each area where a SDP is created.

Due to the small number of local authorities in North Wales some concern is raised about the effectiveness of such an approach in the area, particular if LPA's merge as currently planned.

### ***Changes to Local Development Plan procedures;***

We note that the details of this are being looked at in a separate consultation which the HBF will comment on separately.

### ***Notification of LDP withdrawal***

This is seen as a positive step in helping to speed up the preparation of LDP's, as from experience, the decision to withdraw a plan is often a political one rather than one based on planning reasons.

### ***Period for which Development Plan has effect***

Support this in principle, however would suggest that clarification is required over the suggestion that although a time expired plan will no longer be a planning consideration, that the evidence base used could still be considered when determining planning application. It is suggested that this should only be the case where the evidence base has been updated within the last 5 years of the plan otherwise evidence which is out of date could be used to determine planning applications.

### ***Welsh Ministers' power to direct preparation of Joint Local Development Plans (LDPs).***

Support.

### ***Joint Planning Boards***

Support this in principle, although we do have some concerns over the efficiency of such a process if the two Authorities who are producing a joint LDP have no political will to do so. The current planning system is often delayed by political issues and this is likely to be compounded in a situation where two LPA's who have no desire to work together are forced to.

### ***Front-loading the development management process by making provision for pre-application services;***

### ***Requirement to carry out pre-application consultation***

Support in principle, but consider that a higher threshold than that currently provided by the definition of a major application. This currently defines schemes over 10 units or 1ha as major development. There is likely to be a large amount of work associated with the pre application consultation process and associated report and this will be a resource drain on smaller to medium

size developers. Further, it is likely that public interest in schemes at the lower end of the currently proposed threshold are less likely to create sufficient local interest to warrant detailed public consultation. The current threshold essentially means there does not seem to be a distinction between (for example) a development of 11 units and one of 1000 units. Clearly the level of detail, community engagement, pre application discussion etc., required to submit an application of 1000 units would be far greater than that of 11 units. As such, we believe there needs to be a re-think of the definition of major development with the threshold increased to over 30 units or 2 ha.

It is also suggested that this should not be a requirement for sites which are allocated for housing in the adopted LDP to undergo pre-application consultation, as these will have already been publicly consulted on as part of their allocation.

We would suggest that a set of timescales need to be agreed across Wales for the delivery of such a service, to ensure that it does have the desired effect of speeding up the planning system.

### ***Requirement to provide pre-application services***

Support in principle, however the regulations should go further and set out a fee schedule for such a service so that consistency is created across Wales. Currently LPA's can set fees at any level and there is no way that a developer can challenge these, other than to not use the service. Although it is accepted that this process cannot guarantee a decision and is only an officer's opinion, much greater certainty and willingness to use the service would be achieved if some level of commitment was given to stand by the advice given. All too often in the current system the opinions given in the formal response are changed once the application is submitted. When this happens there is no way of challenging it.

There is concern that there would be a requirement to publicise pre-application advice as it is often undertaken on a confidential basis. Some enquiries with LPAs do not result in proposals being taken further forward. As such, local residents could be made aware of speculative proposals that do not materialise and then become irate for no reason which is not effective in managing the expectations of local residents, particularly those who are not familiar with the planning process. There needs to be flexibility in the system to still allow 'informal' conversations to occur between officers and developers at the very early stages of a sites consideration.

### ***Introducing a new category of development to be known as Developments of National Significance that are to be determined by Welsh Ministers;***

Support.

### ***Option to make applications direct to Welsh Ministers***

Support this proposal as we agree that it would be useful to have an 'escape route' to submit planning applications where local authorities are failing to

deliver an appropriate and timely planning service. However, it is imperative that certain conditions are met to ensure the proposed system operates effectively and achieves the desired outcomes.

In this respect, if the Welsh Government is to act as a pseudo planning authority to determine planning applications in place of poorly performing local authorities, it is essential that agreed standards of service are set out from the outset. Currently, when planning applications are called-in or recovered, our members state that the experience is far from acceptable. For instance, our members report that there are no fixed timescales for dealing with call-in or recovered applications and significant delays have been reported before a decision is provided. This situation is clearly unacceptable and we believe it is important to ensure that this level of uncertainty is not prevalent in a system which aims to speed up the decision-making process of planning applications. As such, if the Welsh Government is to potentially become responsible for dealing with a significant number of planning applications, the relevant WG department should be subject to the same performance and monitoring targets as the local authority planning department it aims to replace.

Allied to the issue above, we are also concerned with the potential resources that might be available within the Welsh Government to deal with planning applications in an efficient and timely manner.

In light of the above, in order for this process to operate efficiently and effectively, we believe it is imperative that robust key performance targets and indicators are put in place from the outset. If applicants are to submit applications to the Welsh Government, they need to be clear about the level of service they can expect, they need to have clear understanding of the timescales for determination and they also need to fully understand the options available to them should any of the timescales or performance targets be breached.

### ***Streamlining the development management system;***

Section 26: Power of local planning authority to require information with application.

We support the introduction of limits on local planning authorities' power to require information to accompany planning applications and that information requests must be reasonable, and relevant. We also suggest that any request should be 'proportionate', particularly in the context of the theme of reducing the documentation required to be submitted with planning applications and the "enabling" culture change that is being promoted.

Section 36: Stopping up or diversion of public paths where application for planning permission made.

We support the proposed change which will allow the process leading to the stopping up or diversion of public paths to start before planning permission has been granted.

## ***Planning Committees and Delegation***

We support this and believe the principles of delegating decisions to planning officers should be consistent across Wales.

We believe that where a proposed development is development-plan compliant, the need for it to be deferred to committee should be negated. Provided the development plan is robust and with flexible policies, planning applications on allocated sites should not need the extra scrutiny of a planning committee. In our view, given that the principle of housing development as a land use has already been 'approved' by the council and its elected members, a discussion over the technical detail of the application should be all that is required.

We support the recommendations of the recent RTPI report and note that the details of this are being looked at in the Planning Committee and Delegation consultation paper which the HBF will comment on separately.

## ***Decision Notices***

We support the standardisation of decision notices across Wales and the requirement for a condition tying the permission to the listed plans, documents and drawings.

In principle the idea of a single decision notice which gives you the current position on a site with regard to the discharge of planning conditions and any amendments to the scheme is seen as positive. However we do not consider the concept of a 'live consent' is necessarily the best way to achieve this. The requirement to keep a decision notice up to date will cause a lot of additional work at a time when resources are becoming more stretched in LPA's. Most LPA's register discharge of conditions as planning applications anyway so a separate decision notice is produced, it may be simpler to attached/link these decision notices to the original decision notice.

## ***Notification of Development***

We support this, however it is suggested that a single sided abbreviated version of the decision notice is produced for display on site consisting of an overview of information such as the developers name the application description, the application reference and information on where the plans/documents can be viewed (i.e. the web or at Council offices). This would avoid the need to display what might be a very lengthy document.

## ***Statutory Consultees***

We welcome a requirement for statutory consultees to respond within a specified timescale and welcome that this is also proposed for pre-application enquiries. However, we believe the list of statutory consultees should be expanded to include major organisations that can have a significant impact on housing delivery. In this respect, our members often report that utilities companies such as Welsh Water can cause major delays to the delivery of new homes, as well as major delay to the timely consideration of planning

applications. Local authorities will rarely take action on a planning application in advance of any comments from organisations like Welsh Water and therefore, we believe organisations like this should be made Statutory Consultees, in order to ensure not only that they make appropriate comments in a timely manner, but also to ensure they are fully included in the consultation procedures by local authorities.

There is no mention of what happens if the consultees do not respond in time. For example, can the statutory consultee respond by saying that they require a further two weeks to comment or is it that once the timescale for response is reached and no response is made then it is taken that the statutory consultee has no objection? Also with regard to reporting performance to WG if there is no clear penalty for underperformance there is no incentive to perform. The reporting also needs to be on a regular basis (quarterly) rather than yearly, otherwise any consultees who are failing to perform will have potentially done so for over a year.

### ***Design and Access Statements***

We support this and completely agree with the research which shows that Design and Access Statements have not been effective in achieving the desired policy outcomes.

We note that the details of this are being looked at in consultation on Design in the Planning Process which the HBF will comment on separately.

### ***Changes to enforcement and appeal procedures;***

#### ***Planning appeals***

We support the proposal for a right of appeal against the decision of an LPA not to register a planning application, using a streamlined appeal procedure administered by the Planning Inspectorate (Section 28).

We disagree with the proposal to not allow any alterations to an appeal once it is submitted. The ability to submit amendments after an appeal has been submitted is a crucial part of the process. More often than not, such amendments can be the result of deliberation and agreement between all parties involved in the appeal process and can therefore remove the need for protracted debate through the process thereby potentially saving a significant amount of inquiry time, or even negating the need for a hearing or public inquiry completely.

The same concerns apply to the proposal that an appeal must be determined on the basis of the matters before the LPA when it made its decision, except where new information could not have been raised earlier or was not raised because of exceptional circumstances.

It is considered that the existing situation in which an Inspector has the discretion to accept changes to the application and the submission of new information, subject to the rules of natural justice and the requirement that



those who are entitled to comment have the opportunity to do so, is appropriate and should be retained.

We support the proposal to allow the recovery of costs incurred by the Welsh Ministers or appointed persons in cases where appeals proceed by written representations and giving the Welsh Ministers the ability to recover their own costs in cases where a party or parties behave unreasonably.

***Changes in relation to applications to register town and village greens.***

We support this, as it is seen as a positive step which will stop the process of TVG applications being used to delay development.

**Any potential barriers to the implementation of these provisions and whether the Bill takes account of them.**

It is understood that the changes proposed by the Bill are likely to come into effect in late 2015 early 2016, just at a time when the ongoing resource issues and other changes such as LPA Planning Department merger could be starting to take real effect. We would request that consideration is given to some form of interim support for LPA's to ensure that the proposed changes are implemented quickly and efficiently in order that the development industry can benefit from them rather than suffer delays while new systems are put in place.

**The Committee's pre-legislative scrutiny of the Draft Planning (Wales) Bill and the extent to which the revised Bill takes account of the Committee's recommendations.**

We consider that this process has worked well and allowed a range of stakeholders to engage in the process.

**Whether there are any unintended consequences arising from the Bill.**

As stated above the HBF are concerned at resource issues in Local Planning Authorities which are only likely to get worst over the next few years for various reasons. Although once the changes are in place there may be an overall resource saving, in the shorter term the various changes necessary to implement the Bill and associated legislation, will be a considerable strain on what are already stretched resources. The potential short term impact on developers will be the slowing down of the time it takes to determine planning applications which in turn will affect the number of houses delivered.

**The financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum, the Regulatory Impact Assessment, which estimates the costs and benefits of implementation of the Bill).**

Pre-application community consultation (Part 3, Section 15)

The HBF consider that the costs associated with the preferred option have been significantly underestimated. The cost appears to have been calculated only taking account of the preparation of the report, which is only a small part

of the process. It is suggested that the cost would be considerably more when the time taken to prepare for the consultation, and the actual time spent on the consultation event are taken into account. It is also not always true to say that smaller application will result in less work, often the smaller applications are the most sensitive and result in the most local interest.

The HBF are not suggesting that these higher cost be a reason not to carry our pre-application consultation, but instead, that the threshold which triggers the requirement for such pre- application public consultation be raised to 30 units or 2ha as this will reduce the financial impact on the smaller to medium size developer.

**The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum, which contains a table summarising the powers for Welsh Ministers to make subordinate legislation).**

No comment.

**The measurability of outcomes from the Bill, i.e. what arrangements are in place to measure and demonstrate the fulfilment of the Welsh Government's intended outcomes from making this law.**

We consider that appropriate targets and associated non-performance penalties, have long been missing in the planning system in Wales. Although we are supportive of most of the measures which the new Bill proposes we are concerned that some do not go far enough. Clearly the threat of a Council being determined to be 'failing' is a big one but we question how badly they will have to fail before this happens. It is suggested that a national standard of targets against which LPA's have to report should be established and these should be backed up by guidance on how this data should be recorded/reported. A league table should then be produced quarterly and instead of looking to punish poorly performing Councils consideration given to rewarding the LPA's who perform well.