

Environment and Sustainability Committee

E&S(4)-06-11 paper 2

Inquiry into Energy Policy and Planning in Wales – Evidence from the Infrastructure Planning Commission

We are grateful to the committee for inviting us to submit evidence to its inquiry. Below we set out an introduction and factual background, the main points of our evidence, and recommendations we would like the committee to consider.

Introduction and factual background

The Infrastructure Planning Commission (IPC) was established on 1st October 2009 under the Planning Act 2008 to consider applications for development consent for nationally significant infrastructure projects. Energy projects in Wales only require development consent from the IPC if they are generating stations, above ground electric lines, underground gas storage facilities in natural porous strata, or pipelines other than gas transporter pipelines, and if they meet the relevant thresholds specified in the Act (s15-21).

In England, the IPC has powers to consent development which is associated with but not integral to the proposed development (such as highway improvements, stopping up of footpaths, grid connections, or maintenance facilities). In Wales, with one minor exception¹, it has no such powers.

The UK Government has decided to abolish the IPC, integrating its functions into the Planning Inspectorate (PINS) by setting up a new, separate national infrastructure directorate within PINS. The infrastructure planning regime will remain largely unchanged, but the power to decide applications for development consent will be transferred to the Secretary of State. These changes will take effect from April 2012 if the Localism Bill is enacted.

A key feature of the continuing infrastructure planning regime is the role of National Policy Statements (NPS). When an NPS has been formally designated by the Secretary of State, the IPC (or, after its abolition, the Secretary of State) must determine the application “in accordance with” the NPS, except in certain circumstances specified in the Planning Act including if it is determined that the adverse impact

¹ The carrying out or construction of surface works, boreholes and pipes associated with facilities for the storage of gas underground in natural porous strata (Planning Act 2008 s115).

of the development would outweigh its benefits.² Six energy NPSs were designated by the Secretary of State for Energy and Climate Change on 19th July 2011 following a vote in the House of Commons on 18th July.

The IPC is currently examining one application in Wales, for an energy-from-waste generating station at Brig y Cwm near Merthyr Tydfil, and is aware of nine other proposed developments at the pre-application stage – onshore windfarms at Clocaenog, Brechfa Forest, Nant y Moch, Mynydd y Gwynt, Dyfnant Forest, and Mynydd Mynyllod, National Grid and Scottish Power electric lines in mid Wales, and a nuclear power station at Wylfa. Other expected applications are in waters off Wales or may be visible from or otherwise affect Wales – a full and up-to-date list of projects is available at our website www.infrastructure.independent.gov.uk.

Main points

The IPC is an impartial, cross-border body. It is not our role to formulate or comment on energy policy, to promote the delivery of policy outcomes, or to further any particular position in connection with the devolution of powers. Our interest – and the only area in which we can appropriately respond to the committee – is in the effective operation of the infrastructure planning regime. In this light, the main points we wish to make in response to the committee are as follows:

Effective operation of the current system – interaction between different consenting bodies

The committee correctly identifies that a number of different public bodies have a role in consenting in relation to energy infrastructure in Wales. The timing of decisions on consents, licences and authorisations other than the development consent order may have an important impact on the examination of applications to the IPC. We advise developers to progress other such applications as far as possible at pre-application stage in the development consent process, and to submit information in support of their application to the IPC stating how close they are to obtaining any consents required under other legislation. In relation to certain consents, Government policy, as set out in National Policy Statements, is an important consideration. For example, the overarching energy NPS EN-1 directs that the IPC should not refuse consent on the basis of pollution impacts unless it has good reason to believe that any relevant necessary operational pollution control permits or licences or other consents will not subsequently be granted. Specific considerations bearing on the timing of applications and the interaction of different consents are

² Planning Act 2008 s104.

likely to arise in individual cases, and dialogue between the IPC and other consenting bodies is often appropriate.³

It is the IPC's view that, while different consenting bodies must carry out their statutory processes independently and reach their own decisions, it benefits all parties to the infrastructure planning process if the pre-application, examination, and decision stages for each related consent are planned by the applicant, in discussion with the relevant authorities. The aim is the development of a coherent timetable allowing all parties the benefit of relevant information and avoiding delay or wasted cost in concluding all aspects of the process.

Scope for improvement to the current system - associated development

Early experience of the operation of the new infrastructure planning regime in England and Wales and the statutory provisions relating to associated development give rise to complex questions. The opportunity for applicants in England to include elements of their proposed infrastructure development within their draft development consent order as associated development is being widely taken up by developers in preparing their application documents. This contributes to fulfilling the intention of single consenting, resulting in a faster and more integrated process with benefits to all parties.

The position in Wales is more complex. The current position inevitably means that some elements of a developer's proposal – such as, for example, some highway improvements linked to proposed wind farm developments – must be the subject of an application to a separate public authority, subject to a different statutory regime and under no obligation to operate within the statutory time limits by which the IPC is governed. As stated above, the IPC takes no view as to the appropriateness of the distribution of powers among different authorities, but it is in our view a matter of fact that these greater complexities of consenting infrastructure development in Wales make it more challenging for applicants to plan their consenting strategies and for members of the public and others to engage with a coherent pre-application and examination process.

Relationship between National Policy Statements and Welsh national and local planning policies

As noted above, the Planning Act 2008 gives special significance to National Policy Statements. Statements of Welsh Government policy, where relevant, will be considered by IPC Commissioners in their examination of applications. Given the significant number of

³ See IPC Advice Note 11 - Working with public bodies in the infrastructure planning process (part 1), May 2011

applications expected for onshore wind farm development in Wales, the Welsh Government policy TAN 8 will be of particular relevance. Nevertheless, Welsh Government policies do not enjoy the special status of designated National Policy Statements.

NPS EN-3 states that where a proposal is located in Wales, planning policy and advice issued by the Welsh Government relevant to renewables will provide important information to applicants, and that the IPC should have regard to these policies and expect applicants to have taken them into account when working up their proposals. Whether an application conforms to Welsh Government policies, guidance or targets will not, in itself, be an overriding reason for approving or rejecting the application.

The principles of the relationship between policies set by the UK Government and policies set by the Welsh Government are not a matter for the IPC to determine. The extent to which Commissioners will need to address specific differences between such policies in the course of the examination of applications will depend on the extent to which differences in fact exist and the extent to which they are relied on in evidence by parties to the examination and considered important and relevant by the Examining Authority.

Recommendations

We respectfully request the committee to consider making recommendations in the following areas:

- Co-operation between consenting bodies in Wales and the IPC to facilitate a coherent timetable in each case for the examination and determination of applications for all the consents, licences and authorisations needed for nationally significant infrastructure projects.
- Consideration of opportunities for further clarifying and simplifying the infrastructure planning regime in Wales with particular regard to the matter of associated development

I trust these comments are of assistance to the committee in its investigations.

Sir Michael Pitt
Chair, Infrastructure Planning Commission
Chief Executive, Planning Inspectorate