

TOWARDS A WELSH PLANNING ACT: ENSURING THE PLANNING SYSTEM DELIVERS

A Consultation Response from the Mineral Products Association
February 2012

NOTE: MPA answers are shown in bold.

SECTION A: KEY POLICY OBJECTIVES

Planning Policy Wales (PPW) sets out the planning policies of the Assembly Government. Under the title 'What the planning system is for' it says:

The planning system regulates the development and use of land in the public interest. It should reconcile the needs of development and conservation, securing economy, efficiency and amenity in the use of land, and protecting natural resources and the historic environment. A well-functioning planning system is fundamental for sustainable development.

PPW goes on to say:

The planning system must provide for an adequate and continuous supply of land, available and suitable for development to meet society's needs... [it] should be efficient, effective and simple in operation.

PPW thus indicates clearly that the purpose of the planning system is the delivery of land for development to meet society's needs in a controlled manner that meets a number of policy objectives. Key amongst these is the delivery of sustainable development as influenced and constrained by EU legislation, some UK legislation and the Government of Wales Act 2006.

Sustainable development is defined in PPW as follows:

4.1.2 Sustainable development in Wales means enhancing the economic, social and environmental well-being of people and communities, achieving a better quality of life for our own and future generations in ways which:

- promote social justice and equality of opportunity; and*
- enhance the natural and cultural environment and respect its limits - using only our fair share of the earth's resources and sustaining our cultural legacy.*

This definition is followed in PPW by the elaboration of sustainable development principles (Section 4.3) and 19 key policy objectives (Section 4.4).

Questions 1 - 5 ask if these policy objectives are still relevant and understandable:

SECTION A, QUESTIONS 1 - 5:

1a Do you agree that the primary purpose of the planning system in Wales is the delivery of land for sustainable development?

YES / NO

NO

1b If you answered NO to 1a please give your reasoning.

The planning system on its own cannot deliver land. Its purpose is to facilitate the delivery of land, which it does in combination with a range of other factors, to enable sustainable development to take place. It is of concern to the MPA that the structuring of these sustainable development questions indicates a lack of understanding of the function of the planning system and the relationship of mineral working to sustainable development.

2a If you answered YES to 1a, does PPW in paragraph 4.1.2 above define sustainable development sufficiently for the purposes of legislation?

YES / NO

NO

See the answer to 1b. The question is apparently not applicable as the MPA answer to 1a was NO. However, MPA agree that the overall objective for our members is to ensure that their operations constitute sustainable development and the definition in paragraph 4.1.2. is not acceptable for that purpose, for the following reasons:

Firstly; PPW is not applicable to minerals because of the differences between mineral working and other forms of development. This justifies a separate planning policy document (MPPW), as acknowledged in Paragraph 1.1.6 of PPW. Paragraph 4.1.2 is therefore not necessarily relevant to mineral working.

Secondly; not all development can be expected to enhance “the economic, social and environmental well-being of people”. Development normally happens because it delivers economic or social or environmental benefits but it should not be considered unsustainable because it does not deliver all three, or indeed more than one. MPPW recognises this in several places, most notably in the third bullet point of Paragraph 5 which states:

“wherever possible any mineral workings should avoid any adverse environmental or amenity impact; where this is not possible working needs to be carefully controlled and monitored so that any adverse effects on local communities and the environment are mitigated to acceptable limits.”

Assessing whether or not development is sustainable is a matter of balance. That is acknowledged in Paragraph 4.1.6 of PPW. As an example; to be considered sustainable, a development proposal that aims primarily to deliver social benefits must demonstrate that the level of those benefits outweighs any economic and/or environmental disbenefits that might result.

Thirdly; environmental considerations should not just be restricted to the “well-being of people and communities”. This is not consistent with an ecosystems approach to development management or to the many and varied elements of the environment set out in the seventh bullet point of Paragraph 4.4.2 of PPW.

Finally; the statement in Paragraph 4.1.2 is too equivocal to function as the basis for future land use planning. As written, it does not define sustainable development in Wales; it simply sets out a view on what sustainable development would mean if it were to be achieved. It contains too many terms (e.g. “well-being”, “quality of life” and “fair share”) which themselves are not defined. If the principles in 4.3 and the key policy objectives in 4.4 were carefully integrated, it should be possible to produce a functional definition of sustainable development for all forms of development. The Principles of Sustainable Mineral Development have already been defined in Paragraph 10 of MPPW.

2b If you answered NO to 2a, please explain your reasoning. If possible, provide a suitable alternative.

Please see the answer to 2a above. As an additional point; it seems unnecessary to search for different definitions for sustainable development in different parts of the UK, the EU or indeed globally. With England and Wales both indicating that their respective planning systems will be predicated on the achievement of sustainable development, it is logical and perhaps essential that a common definition is agreed. Such an

agreement should perhaps be the start of this review process and not a product of it.

3 Does the current national/local structure enable decisions on the social, environmental and economic aspects of sustainable development to be taken at the appropriate level for:

(a) development plans? YES / NO

NO

(b) planning applications? YES / NO

NO

4 If you answered NO to 3a and/or 3b, please explain your reasoning.

MPA have reservations about the ability of some the authorities in Wales to undertake strategic planning for minerals in their own right (see answer to 11b for reasoning).

The current structure is fine for delivering decisions on planning applications provided that adequate resources are available to deal with mineral planning applications. Currently that is not true of all authorities (see also 6b).

5 ADDITIONAL COMMENTS:

Please include below any further observations on the KEY PLANNING POLICY OBJECTIVES that should be delivered by the planning system and/or are set out in PPW, paragraph 4.4 .

The list of objectives is far too long for every identified element to be recognised as “key”.

There is no mention of minerals development, which is perhaps not surprising as PPW is not applicable to minerals. However, if the “Key Policy Objectives” in Paragraph 4.4 are to be used as a basis for the planning system, equal status should be given to the key objectives set out in Paragraph 10 of MPPW.

The MPA view is that identifying whether or not development is sustainable is a balancing judgement (see the answer to 2a). In view of that, the use of the terms “maximise” and “minimise” in this list of objectives should be carefully considered. The term “optimised” is more appropriate, as are phrases such as “controlled to acceptable levels”.

SECTION B: CRITERIA FOR EFFECTIVE DELIVERY

The First Minister has indicated that the planning system should deliver in a “transparent and accessible” fashion. Historically, emphasis has been placed on timeliness and democratic accountability in deciding planning applications. It has been suggested that the degree of certainty of decisions is also an indicator of effectiveness. The Simpson Review, “Local, Regional, National: What services are best delivered where?” also sets out some criteria for good governance.

There may be a variety of ways of measuring agreed definitions of effectiveness. For example, in terms of timeliness, PPW indicates that 80% of planning decisions should be made within 8 weeks. The time taken to adopt development plans has also been identified.

Questions 6 - 10 ask how we should define and measure effectiveness and improvements in the delivery of planning services.

SECTION B, QUESTIONS 6 - 10:

6 Using the criteria of ‘transparency’, ‘accessibility’ (how easy to understand or obtain information), ‘timeliness’ and ‘democratic accountability’, please score the DELIVERY OF PLANNING on a scale of 1 (LOW) to 10 (HIGH) for:

(a) Development plans - **6 (largely on account of timeliness - no comment to make on the other criteria)**

(b) Planning applications / development management. - **5 (As an average - but there is great variability between planning authorities, largely because of the staff resources that they are able to carry to deal with specialist minerals matters.**

7 Please provide evidence (in appendix or below) to substantiate your scores in 6a) and 6(b) above.

The MPA monitors local plan making for its members and reports on a monthly basis. The proportion of LDPs at the Deposit Stage in Wales is currently 64% whilst 75% have reached Pre-deposit stage, which gives rise to our score for question 6. The score would have been higher but for the slow progress beyond Deposit and the fact that just 20% of local authorities have an adopted up to date LDP.

8 What criteria would you use to describe the effective delivery of planning decisions and development plans?

Different criteria obviously need to apply to the delivery of development plans from those applied to planning decisions (we assume that 'planning decisions' refers principally to decisions on applications).

As far as planning decisions are concerned, MPA would suggest that time taken to deliver a decision, percentage of appeals and success rate of appeals might be appropriate.

The MPA suggest that our analysis of LDP progress in response to 7 above, provides a simple set of criteria with which to describe effective development plan delivery. We have identified two major trends which in our view detract from the system as it currently stands and need to be addressed in any reforms. These are:

- a. The identification of candidate sites following Deposit introduces long delays in the system. For example, the gap between publication of Deposit Plans and Submission in Denbighshire was 12 months, in Wrexham 14 months, in Ceredigion 10 months and in Brecon Beacons 13 months. These four plans are, according to our information, still awaiting examination (one going back to October 2010). It would make more sense for site identification to be separated from strategic policy and from development management in a similar way that many English authorities are now managing the local plans process. This would have the benefit of earlier adoption of strategy and targets, whilst the frequently onerous task of site identification proceeds on a separate path.
- b. The delays which some authorities have between plan production and programmes in their Delivery Agreements means that MPA members have little confidence in published programmes, which hardly ever keep to timetable. We suggest that in order for delivery agreements to mean anything they should be more frequently updated. It is not uncommon for such documents to be three or more years out of date. We suggest that plan programming is moved to a less bureaucratic web-based system which is continually updated (preferably monthly) so that the public knows what is going on in a timely fashion.

9 Please describe how the criteria suggested in Question 8 could be measured and how information about them could be collected.

The measurement of the criteria suggested above is very simple. We suggest that Welsh Government (WG) should monitor how the system is progressing (if it does not already do so) and publish the proportion which has progressed to each statutory stage each month. The WG then needs to derive some rule of thumb about reasonable progression of plan making, which then either identifies tardy performance and seeks explanation, or imposes penalties for excessive delay. Unless there are

some centrally enforced targets, incentives and/or sanctions, we fear that delays will continue to be endemic to the system.

10 ADDITIONAL COMMENTS: Please include below any further observations about the CRITERIA for assessing EFFECTIVE delivery of the planning system.

Undoubtedly, one of the principal reasons for delay is the requirement for an adequate evidence base and the time needed to carry out various surveys in the circumstances of constraints on resources. We believe that more guidance/support needs to be given from the WG to local authorities in terms of the information requirements of local plans. This could be partially achieved by national surveys and guidance.

SECTION C: ROLES AND RESPONSIBILITIES IN PLANNING DELIVERY

The current division of roles and responsibilities in the planning system has been largely in place since 1947. There are now many more demands being placed on planning, such as EU environmental legislation, the concept of sustainable development and the Human Rights Act.

Welsh Ministers set out national planning policy and guidance, make some planning decisions, and scrutinise development plans with the power to direct changes or take over plan preparation. Welsh Government now has power to make national planning legislation.

The Planning Inspectorate currently covers both England and Wales, with a separate division for Wales, and deals at national level with planning appeals and with major infrastructure applications and also carries out development plan examinations.

Local planning authorities deliver development plans and planning decisions through various mechanisms, such as Committees and delegation to officers. Sometimes there are calls for less national involvement in planning and for decisions to be taken closer to local communities; on other occasions local councils seek more national guidance.

Some have sought a regional tier of decision making for development plans or large planning proposals and others requested more power for community councils. The Simpson Review and the recent Roger Tym study on “Planning for Sustainable Economic Renewal” consider that there is some merit in regional collaboration for some planning services.

The following questions seek views on whether the right service is provided at the right level.

SECTION C, QUESTIONS 11 - 20:

11a Is the current allocation of roles and responsibilities the best for delivering sustainable development in Wales?

YES / NO - NO

11b Please give evidence for your answer to 11a above.

We believe in the case of minerals that the current arrangements might not deliver sustainable minerals development because it is difficult to carry out strategic planning for minerals when some local authorities may only have one or two operating units within their area and where local authority boundaries bear no relationship to markets. These matters can be addressed by the Regional Aggregate Working Parties (RAWPs) in the case of aggregates but there needs to be stronger Welsh Government backing for the advice of the RAWPs for this to be effective.

Because of confidentiality restrictions it is impossible to provide information down to local authority level in all but one or two cases, as the published aggregates sales and reserves figures (and therefore allocations) by RTS testify. Only four authorities in Wales have a reasonable number of operating units and can therefore be given discrete RTS allocations: Ceredigion, Carmarthenshire, Conwy and Wrexham. In one case an already extremely low figure has to be attributed by the RTS to four authorities (i.e. 'Former Gwent Area') collectively.

There is also a chronic and severe lack of planning expertise in minerals which will only get worse. Authorities in North Wales have already subscribed to a joint service for mineral planning but arrangements for the remainder of Welsh authorities are taking longer to put into place. When considering their response to this consultation, the lack of mineral expertise available to unitary authorities in South Wales was considered by the South Wales RAWP to be a major issue.

12 Do they provide the most effective delivery through the planning system of:

(a) Development plans YES / NO - NO

(b) Planning application decisions? YES / NO - NO (see the answer to 6(b)).

13 What realignment of roles or additional levels of responsibility, if any, could improve delivery? Please provide evidence to support your views.

For the reasons set out in response to 11b, we believe that joint working between authorities, together with increased support for the advice of

the RAWPs on aggregates matters, is the only way to carry out strategic planning for minerals in Wales.

14 What changes do you consider could be made to local planning authority organisation/management structures, or to decision making responsibilities (for example delegation to planning officers in place of Committee when determining planning applications), which would improve delivery?

MPA have no comments about these matters.

15a Does the current combined Planning Inspectorate for England and Wales deliver appeal decisions and plan examinations effectively? YES / NO - **YES**

15b If you have answered YES to 15a, do you consider that there is some wider role it could play in delivery through the planning system? - **YES.**

The Inspectorate could perhaps issue guidance on a regular basis, based on issues that regularly cause delay in the examination and/or appeal process.

15c If you have answered NO to 15b, have you any suggestions on how it could be improved - please provide evidence.

Not applicable

16a Do you consider that the level of policy development and intervention by the Welsh Government is appropriate for effective delivery?

YES / NO - NO

16b Please explain and give evidence for your answer to 16a.

As set out in response to questions 9 and 10, MPA believe that more guidance needs to be given to local authorities on the quantity and type of information provided for evidence bases in local plans, on the information required to be submitted with planning applications, particularly with regard to the need for more balanced and reasonable scoping of submissions where EIA is required and in the monitoring/enforcement of local plan delivery.

Recent experience of intervention by Welsh Government using call-in powers indicates that they do not have the resources to carry out that role effectively.

17 What changes to the role of statutory consultees (if any) could improve delivery? (Your view should be confined to the role of consultee as a part of the planning system and not to the role of individual organisations as that is outside the remit of this Review.)

We are concerned that there is not the same degree of accountability with statutory consultees as there is with local authorities, whose powers are circumscribed / monitored by central government.

The individual agencies do not give proper scrutiny to applications and their responses can seem to be driven by the vagaries of individual officers' opinions / enthusiasms. We often find that such consultees produce formulaic responses to planning applications, from which it is obvious that they have not read the entire submission. Consequently, our members may be asked for information that they have already provided or which is irrelevant. Often an onerous amount of extra information is requested that is not relevant to the application in question and to a degree that is inconsistent with practice in other parts of the UK.

This in turn exacerbates the major problem of delay in consultee responses. It is common practice for additional information not to be requested until ten months or more after an application is submitted, adding considerably to the cost of providing it.

Consultees who are regulators often fail to use the opportunity provided by consultation to avoid duplication of control on development.

We therefore seek greater consistency in approach from consultees, which is timely, reasoned, proportionate and reasonable in all other respects.

18 What aspects of the planning service and/or planning legislation could be reconsidered or more appropriately delivered by other agencies so as to simplify and focus planning's role on delivering sustainable development?

The experiences of MPA members of parts of their licence to operate in England being delivered by other agencies outside the planning system are not good. The planning system is set up to regulate land use on the basis of balancing interests, under democratic control. The 'tick box' approach to permitting does not allow all interests to be properly considered and allows no professional discretion to be applied to suit individual cases. Judgements on what does and does not constitute sustainable development will require balancing decisions to be made. Therefore MPA would support a move to include more regulatory functions under the overall planning "umbrella" and not less. The primacy of planning permissions as the principal component of the licence to operate mineral extraction sites should be restored.

The MPA is particularly concerned that in Wales without the checks and balances provided by the democratic process, the merger of the EA, CCW and the Forestry Commission could result in the regulatory system becoming unreasonably biased towards those interests that the new merged body represents.

19 Please identify what would be required to deliver any of the changes you suggest to roles and responsibilities.

The planning system ought to be empowered to deal with the major part of the permitting processes necessary to facilitate mineral working. Regulation of mine waste as required by the Mine Waste Directive should be delivered through the planning system. Local Plans should address any matters of policy in respect of the additional powers that are needed.

20 **ADDITIONAL COMMENTS:** Please include below any further observations about **ROLES AND RESPONSIBILITIES** in delivering an effective planning system.

No further comment

SECTION D: QUICK WINS AND SIMPLE IMPROVEMENTS

21 Do you have any examples of barriers to effective delivery, examples of good practice or suggestions to improve delivery through the planning system that could be implemented quickly without legislation or organisational changes?

Our proposals for closer monitoring and target setting for local plan production could be implemented without much ado as could our suggestions for more accountability in statutory consultees.

Please also see our response to question 11b.

The establishment of the North Wales Minerals and Waste Planning Service is an example of good practice that should be repeated in South Wales. This has been implemented quickly and efficiently within the current local authority structure, so should not require organisational change to achieve.

22 Please list below any people or organisations which you consider have relevant information that would assist the Independent Advisory Group in its investigation.

The Mineral Products Association. The Independent Advisory Group should also consider adding a mineral planning specialist to their number.

23 FURTHER ADDITIONAL COMMENTS: If you have any further comments not covered by your responses above, please make additional observations here.

Wales is predominately rural in character and primary industries such as mineral extraction continue to make a significant contribution both to local economies and to the sustainability of rural communities. The country is blessed with a number of significant and varied mineral resources. The challenge for the planning system in Wales is to facilitate the development of that resource in such a way that it continues to make a vital contribution to sustainability. Key to this is a planning system that is straightforward to work with and which gives clarity and consistency in policy and decision making.