

Consultation Relating to the Proposed New Local
Development Plan System; on:

- i) Draft commencement & Transitional Provisions
Order Explanatory Note, and
ii) Draft Regulations

14th March 2005

Response by
Friends of the Earth Cymru

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Friends of the Earth Cymru

Friends of the Earth Cymru inspires solutions to environmental problems which make life better for people.

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- is dependent upon individuals for over 90% of its income

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Introduction

Friends of the Earth Cymru believes that the planning system in Wales should be founded on the highest standards of community participation to ensure that the system empowers all sections of society to help shape a sustainable future. These standards should be based on the Aarhus model¹ of participation – access to information, access to participation and access to justice.

Carwyn Jones, Minister for Environment Planning and Countryside outlined his commitment to participation in the planning system in a cabinet written statement² in November 2004:

“The new proposal for **community involvement in Local Development Plans represents a key element of our planning reforms** and links to our commitment to participation as part of sustainable development. The key principles that underpin this process include:

- Creating the conditions for early involvement and feedback at a stage when people can recognise a chance to influence the plan;
- Encouraging the commitment of all participants to an open and honest debate on realistic development alternatives in the search for a consensus; and
- Recognising the need to adopt approaches for engaging the community including business, which seek the views of those not normally involved.”

He also stated that he wanted to:

“Ensure that **sustainable development is integral** to Local Development Plan preparation and development control;”

Setting standards

Many individuals and communities feel sidelined by a planning process that can be difficult to understand and to influence. The financial costs of obtaining information, the lack of time to comment, complex procedures, incomprehensible “planner speak”, and the negative attitude to objectors are cited as some of the reasons for this. The Local Development Plan (LDP) Pathfinder Study on Community Involvement Strategies picks up upon the current failure by Local Planning Authorities to involve the community in forming policy³, leading to a defensive approach in subsequent consultation.

In addition, as presented in these consultation documents, one of the key issues raised by consultation bodies in response to “Delivering Better Development Plans for Wales” is that the regulations should provide a baseline of what the Community Involvement Scheme (CIS) should cover. The Local Development Plan (LDP) Pathfinder Study on Community Involvement Strategies also supports the idea of including in the CIS several “main principles”. These would only be applied across the board if included in regulations.

The reality of participation in the planning process in Wales and the need to have a shared understanding of what a community involvement scheme should look like point to the need to include in the regulations a description of the principles of participation.

¹ <http://www.unece.org/env/pp/> Aarhus Convention: UNECE Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters. Adopted on the 25th June 1998.

² Cabinet Written Statement: Planning Delivering for Wales, Carwyn Jones, Minister for Environment, Planning and Countryside, 23 November 2004.

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Participation or Consultation?

Public participation is a vital way of achieving sustainable development and should be one of the key priorities in implementing planning reform in Wales.

We are extremely disappointed that the draft regulations do not provide an effective and coherent framework for such participation. The regulations set out in the consultation document do no more than specify the very minimum standards of consultation with existing statutory and non-statutory bodies. It is, for example, profoundly disingenuous to title the section 'pre-Deposit public participation' and then to go on to describe regulations 15, 16 and 17 which set out only formal procedures for advertising and dealing with representations. These are minimal consultation arrangements and have nothing to do with the more empowering notion of participation which requires the active engagement of communities.

It is deeply disappointing that the Welsh Assembly Government has not chosen to use the powers under section 77 (e) of the Act to set exemplary standards.

Insiders Only?

The regulations send a strong message that it is acceptable to deal only with those statutory and non-statutory consultation bodies who are often already extensively engaged in the planning process. This is illustrated in regulation 5 which makes no mention of the need to promote the engagement of the wider community in the preparation of the Community Involvement Scheme. This model would not comply with the Aarhus principles.

Nor are the 'principles of the participation strategy' of regulation 6 (b) interpreted in Part 1, General. This demonstrates an unwillingness to generate a shared understanding of participation.

The planning reform agenda must reach out to all sections of the community particularly those with little knowledge of planning and without the benefit of membership of influential local and national groups. This means making clear regulations that require both extensive consultation and encourage the active participation of all sections of the community. The draft regulations only require Local Authorities to engage with specific statutory and non-statutory bodies. Our amendments seek to broaden those requirements so that Local Authorities have a wider duty to engage local people and organisations with an interest in the development of the area.

The scope and coherence of Community Involvement Schemes

Section 63 (1) makes clear that Local Development Plans must be prepared in accordance with the Community Involvement Scheme. This gives the Community Involvement Scheme a legally binding function in the preparation process but this is not reflected with any clarity in the regulations. While regulations 14 to 17 deal with participation and consultation issues they do not make any reference to the importance of compliance with the Community Involvement Scheme which must include both such prescribed standards and any other standards which the Local Planning Authority has agreed with the community are appropriate. We strongly support regulation 22 and particularly clause (c) (vii) which provides power to the Welsh Assembly Government to require a justification of any deviation from the Community Involvement Scheme.

The regulations fail to make provision for any participation strategy or standards in relation to Development Control. This is illogical and confusing since effective participation requires the Community Involvement Scheme to be a single coherent statement of engagement standards throughout the system. This would create a system which mirrors the function of the Statement of Community Involvement in England.

We note the Welsh Assembly Government has power (both in terms of regulations and guidance) to set such standards under sections 75 and 77 (e) of the Act. It also says in 63 (2) that the local authority's Community Involvement Scheme is a statement of the authority's policy as to the involvement in the exercise of the authority's functions under this Part. The Assembly also has extensive powers through the Town and Country Planning Act 1990, Amended 2000, Part III: Control over Development.

It would seem that the Assembly could, in its regulations, ensure that a single scheme for community involvement exists which covers the whole planning system including development control. Extending a Community Involvement Scheme to cover development control would make it much easier for communities to understand and be involved in the system.

Nowhere is there a stated prohibition on incorporating Development Control standards into the Community Involvement Scheme and, since Local Development Plans can set policy for Development Control, it is logical that the Community Involvement Scheme can set standards of engagement in the Development Control process.

Ultimately, since most people begin their engagement with the planning system through a planning application, it is vital that they can have ownership and understanding of the standards of participation in this process. Failure to address this now could leave the Welsh system of participation both inadequate and fragmented.

The duty to promote sustainable development

Regulation 13 makes reference to a number of the matters in addition to those specified in section 62 (5) (a) to (g) in the Planning and Compulsory Purchase Act. It is disappointing that there is no reference to section 39 of the Planning and Compulsory Purchase Act that is the duty to promote sustainable development. This is particularly pertinent given the duty placed on the National Assembly for Wales by Section 121 of the Government of Wales Act 1998. The idea of sustainable development encompasses important aspects of participation and provides the overarching context in which participation in planning should be seen. Those drawing up development plans should have their attention drawn to the legal force of this requirement in precisely the same way that their attention is drawn to section 62 in regulation 13.

Suggested Amendments

Suggested amendments appear in red text.

Amendment 1

Purpose: To broaden the duty to promote participation to the wider community.

Community Involvement Scheme Preparation

5. **(a)** *The persons who ought to be engaged in the preparation of a Community Involvement Scheme for the purpose of section 63 (3) (a) are ~~these general consultation bodies as appear to the LPA as having an~~ **and any other body or individual who has an** interest in matters relating to the development in the LPA area.*

* General consultation bodies are defined in Part 1 of the draft regulations.

Amendment 2

Purpose: To increase community participation in the LDP system.

Content of a Community Involvement scheme

6. A Community Involvement Scheme must include within it the following matters-

(a) a list of all those general and specific consultation bodies to be involved in the LDP procedure;

(b) the principles of the LDP participation strategy to be adopted by the LPA;

(c) the timing of, and the method by which-

(i) participation will occur at each stage of the LDP procedure, and

(ii) the LPA will respond to the participation process referred to in paragraph (i);

(iii) interested bodies and individuals will be given the opportunity to participate

Amendment 3

Purpose: To broaden the scope of Community Involvement Scheme to include participation standards for Development Control

Content of a Community Involvement scheme

6. A Community Involvement Scheme must include within it the following matters-

(a) a list of all those general and specific consultation bodies to be involved in the LDP procedure;

(b) the principles of the LDP participation strategy to be adopted by the LPA;

(c) the timing of, and the method by which-

(i) participation will occur at each stage of the LDP procedure, and

(ii) the LPA will respond to the participation process referred to in paragraph (i);

(d) Details of how the LPA will use those responses at each stage in developing the content of its LDP.

(e) The principles of the development control participation strategy to be adopted by the LPA.

Amendment 4

Purpose: To ensure that the Local Planning Authority complies with its own Community Involvement Scheme.

5. **(a)** The persons who ought to be engaged in the preparation of a Community Involvement Scheme for the purpose of section 63 (3) (a) are ~~these~~ general consultation bodies as appear to the LPA as having an **and any other body or individual who has an** interest in matters relating to the development in the LPA area.

(b) The local planning authority must prepare the local development plan in accordance with its own community involvement scheme as specified in section 63 (1) (a)

Amendment 5

Purpose: To ensure due regard is given to the duty to promote sustainable development.

LDP : additional matters to which regard to be had [sic]

13. (1) *the matters (additional to those specified in **section 39 and** section 62(5)(a) to (g) prescribed for the purposes of section 65(5) are -*

Amendment 6

Purpose: To ensure a shared understanding of the principles of participation.

Part 1: General

“principles of the LDP participation strategy” means the Aarhus model of participation - access to information, access to participation and access to justice

-Ends-