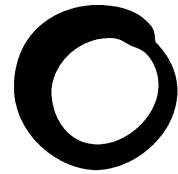


National Assembly for Wales
Consultation
"Planning: Delivering for Wales"
January 2002

Response by
Friends of the Earth Cymru
April 2002



**Friends of
the Earth
Cymru**

**Cyfeillion
y Ddaear
Cymru**

Friends of the Earth Cymru

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

Friends of the Earth Cymru:

- is dedicated to protecting the environment and promoting a sustainable future for Wales
- is part of the UK's most influential environmental campaigning organisation
- is part of the most extensive environmental network in the world, with over 60 national organisations across five continents
- supports a unique network of campaigning local groups working in communities across Wales
- is dependent upon individuals for over 90% of its income

Introduction

Friends of the Earth Cymru welcomes the opportunity to respond to the Welsh Assembly's planning reform consultation document *Planning: Delivering for Wales*. Friends of the Earth has worked in the UK on the issue of planning for over 25 years, and has a strong commitment to enabling local communities to participate in the planning process.

Friends of the Earth is also convinced that the land use planning system is a key mechanism for delivering sustainable development and has been active in promoting this objective in a variety of UK land-use policy reviews.

Summary

Friends of the Earth is committed to a planning system which is fair, transparent and democratic for all participants and enshrines the objectives of sustainable development.

We welcome the broad principles which inform the contents of the consultation document and in particular the commitment to build on the existing planning system to more effectively deliver the objectives of sustainable development.

The contents of this response have been prepared collaboratively between members of our local group network, FOE Cymru staff and UK policy advisers. Part 1 of this document provides an overview of the FOE Cymru Response and Part 2 a schedule our detailed comments on individual paragraphs in the consultation document.

Part 1. Overview of FOE Cymru response.

A. What we like about the Assembly consultation document:

- 1.1 Friends of the Earth Cymru positively welcomes the recognition of the importance of sustainable development as the key objective of the Planning System (paragraph 1). We particularly support the need to reform the planning process to achieve a "fair and transparent" system for all participants.

Development Plan Structure (paragraph 10)

- 1.2 Friends of the Earth Cymru welcomes the consultation document's support for the basic structure of the development plan framework and endorses the objective of modifying the existing system to increase efficiency and transparency. Paragraph 10 makes the critical point: *"We consider that the existing system, deriving from the 1947 Town and Country Planning Act is basically sound"*. Friends of the Earth Cymru strongly endorses the view that the defects with the current planning system result from managerial, cultural and above all resource problems rather than any basic structural flaws in the system.

Future reform of Local Plans (paragraphs 24/25)

- 1.3 Friends of the Earth Cymru endorses the option B solution for the reform of the local plan framework. We support a system of Local Development Plans (LDPs) and the recommendations for their content. We strongly support the need for such plans to be comprehensive, with detailed proposals maps which allocate all major land uses and indicate all important environmental, social and heritage considerations.
- 1.4 Friends of the Earth Cymru wishes to make clear its absolute opposition to the introduction of the proposed English LDF model summarised as option C. This model removes important civil rights from the public, ends comprehensive map based local planning and would result in administrative chaos in local authorities.

Public participation (paragraph 7)

- 1.5 We welcome the introduction of greater public participation in the Local Development Plan process and the relationship with community strategies. We place great importance on public participation in the process rather than just consultation. This important distinction, which implies a greater engagement with local communities, must be clarified in the planning legislation and policy guidance.

Councillors' training (paragraph 82)

- 1.6 We welcome the recommendation for the training of Councillors who wish to serve on Planning Committees. We are particularly concerned about the probity of elected member decisions on planning applications. The Local Government Association "Probity in planning (update)" (2002) is relevant to this issue.

Local Authority Planning Applications (paragraph 79)

- 1.7 Friends of the Earth Cymru supports the need to improve the system of dealing with those applications in which local authorities have an interest. In our view all such applications should be 'called in' and there should be general presumption in favour of dealing with these decisions at a local public inquiry. Exceptions should only be made where scale and nature of the application would make this process clearly unreasonable. We believe that such measures are vital to restore public confidence in the planning system and avoid the perception that local authorities are less than impartial in dealing with their own planning applications. We deal with the paragraph's attitude to Third Party Rights in paragraphs 4.2 - 4.3 of this paper.

Resources for Planning Service and Advocacy (paragraphs 84/85 and 77)

- 1.8 We welcome the tone of *Planning: Delivering for Wales* guidance on these issues but are concerned that there is no firm commitment to increase funding to local authorities for providing a progressive planning service. We note the result of the Arup Economics research study into the funding of local authorities (*Resourcing Local Planning Authorities*, DTLR, 2002) which identified the very serious relative reduction in funding for the planning service over the last 10 years. Without substantial investment it will prove extremely difficult to deliver an efficient and socially inclusive planning system. We also feel that planning aid is a vital public service and we wish to see a much firmer commitment to a well funded, independent, national planning advocacy service.

Community Strategies (paragraph 25)

- 1.9 Friends of the Earth Cymru broadly welcomes the new role for community strategies in informing Local Development Plan policy. While such strategies may prove an effective tool of community engagement we do have reservations that local strategic partnerships which will prepare such policies are not democratically accountable and offer no formal rights for individuals to be involved in the preparation of strategy.

Independent Scrutiny of Local Authority LDPs (paragraph 33)

- 1.10 We are concerned that option C "of hearing in public" may result in the investigation of local plan policy only being open only to the invited. We note that in the English Structure plan system of examinations in public local authorities control the list of invitees. The status of the output of the informal process outlined in option C is also uncertain.
- 1.11 While there are significant problems with the existing public inquiry model these could be resolved by a more imaginative management, more efficient working practices and by an effective planning advocacy service. We, therefore, **support a modification of option B** which would guarantee both the rights of individuals and communities and ensure that the results of the inquiry were perceived to be meaningful.

Neighbour notification (paragraph 75) and Access for all (paragraph 76)

- 1.12 We welcome the contents of these paragraphs which go some way to addressing the wide range of procedural barriers which can deter public participation.

B. We are concerned about the following matters in the consultation document

Officer delegation (paragraph 58)

- 2.1 Friends of the Earth Cymru is concerned that the interests of politicians and local people are not prejudiced by increased delegation to planning officers on grounds of efficiency of the planning process. The proposal to increase the number of delegated decisions will remove a significant number of planning decisions from open public scrutiny. This will increase the perception of the planning process as closed and unresponsive to community needs. The criteria for delegation should be clearly defined and restricted to those minor householder applications for which no representations by the public or elected members have been made.

Planning Resources - Staffing (paragraph 85)

- 2.2 We are concerned that the planning service will remain under resourced in Wales, by no increase in funding to local authorities (see comments at paragraph 1.8).

Major Infrastructure Projects (paragraph 96)

- 2.3 We are concerned that the National Assembly for Wales will not be permitted to determine major infrastructure projects within its area of jurisdiction. We would welcome clarification on this issue and will respond in detail to any further consultation. It is important to stress that while the Assembly is clearly a robust democratic forum for debate on the principles of a new infrastructure there should be no attempt to remove individual and community rights to debate and challenge the precise location of projects at a local public inquiry. We note that the proposals suggested in England are likely to breach important aspects of EU legislation because of the proposed separation in the decision-making process between the general principles of a specific project from its detailed environmental impacts and proposed mitigation measures. We enclose a copy of a legal opinion which explores these issues in more detail (Annex 1). We would be grateful if you would treat this opinion as confidential.

Legislation (paragraph 91)

- 2.4 We would, in principle, support attempts by the Assembly to promote a Wales Planning Bill in Parliament.

C. We do not like the following paragraphs in the consultation document

Business Planning Zones (paragraph 30)

- 3.1 Friends of the Earth has strong reservations about the development of Business Planning Zones. Simplified Planning Zones already exist and have not proved popular or effective. (There is a considerable weight of research which highlights the shortcomings of the SPZ model. In particular Blackhall 1994 and Allmendinger 1996.) We are concerned at the scale of these sites and the removal of democratic accountability and rights of scrutiny over industrial developments inside these zones. The designation of these zones may also remove the ability of a local authority to

control important issues such as car parking standards and other policy requirements which contribute to sustainable development. Enough scope already exists inside the planning system to designate sites for industrial and commercial development inside the plan led system. It is important to note that there is little evidence that planning control is a major factor in deterring inward investment. The limited success which some claim for Enterprise Zones was largely the result of fiscal incentives not primarily planning de-regulation. Like some members of the RTPI we feel the concept of business planning zones (BPZs) is totally unjustified as it is based on the "failed" 1980's policy of simplified planning zones.

Planning Policy Wales and Technical Advice Notes (paragraphs 13/14)

- 3.2 We feel that public interest and community groups should have greater participation in the preparation of Planning Policy Wales and Technical Advice Notes (TANs). The preparation of Housing Land Availability Studies under TAN 2, is particularly undemocratic.

Planning Policy Guidance - Simplified Guidance (paragraph 13)

- 3.3 The consultation document proposes to replace Planning Guidance (Wales) with a new simplified document. Friends of the Earth is not, in principle, opposed to the effective and concise explanation of policy. However, some issues such as biodiversity involve considerable detail in terms of obligations under national, European and international agreements. The simplification of PGW inevitably places much greater importance on the detailed guidance provided in TANs and by circulars.

Delegation to local planning authorities (listed buildings Cadw powers) (paragraph 49)

- 3.4 We are concerned at the implications of delegating Cadw powers to local planning authorities. Some local planning authorities see listing of buildings as a barrier to their development plans and do not possess adequate specialist expertise to reach robust judgement on sensitive heritage issues.

Delivery contracts (paragraphs 51 and 52)

- 3.5 We are concerned about the implications of these paragraphs and the role of the WLGA and business organisations in preparing a process that could be prejudicial to the public interest. We would emphasise that sound decision making is better than rapid decision making.

Certificate to Master Plan Large Developments (paragraph 56)

- 3.6 We are unhappy that the provisions of this paragraph would weaken recognised planning controls over development in these situations. It is important that the community has a right to challenge the issue of such certificates and the rights of the public to comment on the approval of such certificates should be clarified. We prefer the development brief approach, as indicated by the former DTLR guidelines for consensus building when large developments are proposed.

Permitted Development Rights (PDR) (paragraph 64)

- 3.7 We are concerned that the proposal to introduce Local Development Orders to amend Permitted Development Rights, could create unacceptable complexity to the planning control process and set dangerous precedents at local level. It is important to keep the process simple and transparent; it should be understandable to all interested parties. We recommend that PDR remain as a single standard for the whole of Wales.

Other Matters

- 4.1 While Friends of the Earth Cymru broadly welcomes the consultation document we do believe that there are a number of significant issues which have not been properly addressed. We wish to see in the amended planning process for Wales the following items:

Third Party Rights of Appeal.

- 4.2 The UK Government in its Green Paper for changing the planning process has decided to dismiss the principle of third party rights of appeal. This is a most significant decision in relation to access to justice in the planning process. It restricts the ability of the community to actively participate in local decision-making and prevents communities and the public from challenging bad decisions. It leaves interested parties without an opportunity to effectively challenge either the need or the merits of a development proposal. This is compounded by the fact that the judicial system is expensive, time consuming and limited to challenging the unlawfulness on the part of a local planning authority.
- 4.3 Friends of the Earth Cymru is disappointed that the Assembly consultation does not properly address the issue of Third Party Rights. Such a right would have addressed the most basic inequality in the planning system and its introduction in qualified form is administratively possible, legally practical and morally right. In fact, introducing such a right could be a defining signal of the Welsh Assembly's commitment to increased public participation and fairness in the planning system. Instead, the Assembly Government has indicated that it sees no need to reform a system which affords more rights to the rich (the developers) than to the poor (neighbours of development). The joint research 'Third Party Rights in Planning' sets out the powerful administrative and legal case for a right of redress in the development control process. A copy of this research is enclosed as Annex 2.

Independent Environmental Impact Assessments (EIAs)

- 4.4 Controls over development will be improved if an Environmental Impact Assessment, when required, is undertaken by an independent scrutineer and not the developer.

Access to Information - Copying Charges

- 4.5 Clear advice should be given on "reasonable" photocopying charges to be paid by the public and community groups where they wish to retain planning documentation. In principle we believe that basic information on the planning register should be free to the public. We also believe that there are significant opportunities to provide free information on the World Wide Web.

Wales Spatial Plan

- 4.6 We feel regard should be given to paragraph 10.80 (page 160) of the Twenty-third Report by the Royal Commission on Environmental Pollution entitled *Environmental Planning* (Cm 5459). The Royal Commission urges the National Assembly for Wales to publish the promised national spatial framework for consultation at an early date, and also recommends that the Assembly take the initiative, in conjunction with the relevant local authorities, in preparing integrated spatial strategies for regions within Wales.
- 4.7 We wish to see a statutory based Wales Spatial Plan. (Please refer to our submission to your consultation last Autumn on the issues to be addressed and process to be followed).

Conclusion

- 5.0 While broadly welcoming the Assembly's distinctive approach to changing the planning system in Wales we are concerned Wales should not miss this opportunity to create a system that is genuinely fair, democratic and sustainable. Taking the steps laid out in this response would, in our view, take us a long way to meeting that goal.

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