

**P-04-472 Gwnewch y Nodyn Cyngor Technegol Mwynau yn ddeddf:
Sesiwn Dystiolaeth gyda'r Gweinidog Tai ac Adfywio**

**P-04-472 Make the MTAN law: Evidence Session with the Minister for
Housing and Regeneration**

[1] **William Powell:** Bore da, **William Powell:** Good morning,
Weinidog. Minister.

[2] Welcome also to your team. I also welcome Mike Hedges, who is acting as substitute for Joyce Watson for this section of the meeting. I also welcome colleagues from Westminster, who are joining us shortly in the public gallery. We are joined by the Right Honourable Andrew Lansley, who is the Leader of the House of Commons, and his deputy, the Right Honourable Tom Brake. We are very pleased that they are able to join us this morning for this section of the meeting.

[3] This agenda item is in respect of petition P-04-472, Make the MTAN law. Minister, I will give you the opportunity of making a short initial statement, if you would like to take that up. We are very grateful to you for joining us this morning. I know that, on a couple of previous occasions, you have been constrained by due process in terms of appearing before the committee. The situation has moved on somewhat, and we very much look forward to this important evidence session. Over to you.

[4] **The Minister for Housing and Regeneration (Carl Sargeant):** Good morning, Chair, and good morning, committee. Thank you for the opportunity to come to speak to you this morning. I start by saying that it is a very important process, as you said, Chair. We have been constrained by the process, as I am formally the decision-making body, in that some of the applications may cross my desk. In terms of today's session, I will be guarded in some of my responses in terms of no trick questions—I am sure that there will be none, Chair—and in terms of any of the detail about any specific applications that may be attributed to a site previously or in the future. I will make my contributions purely on current policy around MTAN 2. I have brought part of my senior team here in terms of planning, and they will give me advice on the process, so that we do not get caught up inadvertently with some of the decisions or questions and responses that you may get from me today.

[5] **William Powell:** Excellent. Perhaps your team would like to briefly introduce themselves for sound levels, and for the Record.

[6] **Ms Thomas:** I am Rosemary Thomas, chief planner in the Welsh Government.

[7] **Ms Smith:** I am Joanne Smith. I work for Rosemary, particularly on minerals, waste and environmental issues in the planning division.

10:30

[8] **William Powell:** Let us kick off with an initial question, Minister, to seek your views on how a consistency of approach can be achieved in considering the application of national planning guidance, particularly through the technical advice notes. It is that area of consistency of approach and fair treatment that concerns all of us, particularly in the context of the Environment and Sustainability Committee, on which a couple of members of this committee sit. That is something that we hear very much from developers, but also from communities. Could you address that initial question, please?

[9] **Carl Sargeant:** Of course, Chair; thank you. I will take that question in two parts. Broadly, the issue around consistency of approach in planning terms is something that is important to me and my department. You will see, through the new planning Bill that we are bringing forward and the associated positive planning documents, that we are looking to ensure that we get a more consistent approach across the 25 local planning authorities that we currently have in Wales. We have some evidence of variability in terms of the decision-making processes—I say ‘processes’ as opposed to ‘decisions’—and how they are delivered. It is something that I am looking at very closely to make sure that we have some consistency across planning authorities.

[10] In terms of the specific question around MTAN 2, I do not see this as being any different from any other mineral technical advice note that we have in place in terms of determination by local authorities. I believe that they are professional bodies that have the ability to observe what the technical advice notes say and put that into practice. The only thing that I would suggest is that, when we are talking about MTAN, particularly the minerals coal extraction element, the number of cases that we have, and applications, in Wales is very small. So, the ability to have consistency is there, in a smaller

field, but the experience in that process is lower because there are fewer applications.

[11] **William Powell:** Just developing that point a little, do you think that there would be merit in building up greater expertise on some of these highly complex applications, and maybe having a central team that could assist planning authorities to deliver a more consistent approach? You said there that it is an issue of capacity, but that it is also an issue of having sufficient practice in these rather more specific and technical areas. It is rather akin to what we often hear quoted in the health service, in terms of consultants and surgeons being in a position to deliver the best outcomes.

[12] **Carl Sargeant:** Let me be clear, Chair, if I was not clear in my first response: I do not think that there is an issue about determination in the skills base of this. Of course, there are issues about making sure that authorities are able to make the appropriate decisions on this, but it would be wrong for me or any other to suggest that they are incapable of doing that professionally in any of the determinations that they make.

[13] **Bethan Jenkins:** Minister, I hear what you are saying but there is ambiguity on the ground, and local authorities are making decisions on different bases. You say in your submission that

[14] 'national planning policy and technical advice notes are not prescriptive documents but are among the 'material considerations' to which a planning authority should have regard when making a decision'.

[15] Do you believe that this has created confusion among many local authorities, which believed that the MTAN was supposed to be rigorously adhered to by including it in local development plans?

[16] **Carl Sargeant:** I do not recognise the issue of ambiguity. As I have tried to outline, Chair, I believe that all planning authorities are asked to act professionally in their determinations. I have not received information about any such cases; perhaps you would like to offer some evidence of where you think a determination has been made incorrectly or by a different method other than as prescribed by MTAN or the planning process.

[17] **Bethan Jenkins:** In the Court of Appeal ruling on the extension to Margam opencast mine issued in October 2001, Lord Justice Pill said that he was somewhat disturbed by the approach adopted on behalf of the Ministers.

He went on to say that the impact of the 500m buffer zone in MTAN 2 and development plans presented problems for planning authorities and planning inspectors, and provided them with a dilemma. He said that that was exacerbated by evidence on behalf of the Ministers before the court, and he stated that MTAN 2 is not a source of relevant national policy. He also said that further guidance would have been useful.

[18] So, in spite of that ruling, your submission appeared to be asserting the same point or certainly one that is very similar.

[19] **Carl Sargeant:** I do not have anything to offer on that question, Chair.

[20] **William Powell:** Minister, we respect that—

[21] **Carl Sargeant:** It was case specific, Chair, and I hope that you understand the process.

[22] **Bethan Jenkins:** The problem is that it creates a precedent for the ambiguity that exists within the system in relation to the MTAN, Minister, and I would have thought that you would have an opinion on that.

[23] **Carl Sargeant:** If I may, in a broader context, Chair, offer some thoughts around process, as I said earlier, I do not recognise that there is ambiguity on the determination of this. I would welcome, if the committee has evidence specific to an application, past or present, that would suggest that a planning authority is acting inappropriately in its determination of any application that is presented before it, that it shares it with me.

[24] **William Powell:** Thanks for restating that, Minister. Russell George has some issues to raise that relate to the—

[25] **Russell George:** They follow on from your questions, Chair. May I ask, Minister, what recourse is there within the planning system to deal with planning decisions by local authorities that are contrary or even consistently contrary to national planning guidance?

[26] **Carl Sargeant:** While the questioning is related to MTAN2, I do not see MTAN2 as being any different from the process that is delivered by the planning system across Wales. I think that we can attribute that question to the broader issue of planning. I believe that the determination of applications is best placed at a local level, and that is why we have planning authorities

across Wales. Indeed, I know that members of this committee also have involvement in that process at a local level. Determination is important there. Subject to that process, whether an application is successful or otherwise, there is a planning process through the appeals system in order to test that mechanism. What I do not wish to do is be the arbiter of or to police a system that is actually a devolved function of local planning authorities. Again, we are looking closely at the system in terms of performance and how that performance operates, but I do not have any knowledge that a planning authority operating in Wales is breaching any conditions that are applied and given to it as a planning authority. It would be wrong for anybody to suggest otherwise without evidence.

[27] **Ms Thomas:** Just to pick up and add to what the Minister has said, one of the mechanisms that we use to do exactly what you said, that is, to monitor how things are going, is, from time to time, to commission research to assess whether policies have been effectively delivered across Wales, and we have done that recently with the renewable energy consenting process and with the housing consenting process. That is the mechanism that we have for identifying whether things are appropriately interpreted and delivered by local authorities and other statutory agencies.

[28] **Russell George:** May I ask what is meant by the Welsh Government's intention to reduce

[29] 'reliance on national planning policy where more appropriate tools are available'?

[30] That is stated in 'Positive Planning'. Could you just expand on that?

[31] **Carl Sargeant:** 'Positive Planning' is a consultation document, and the consultation closes on 26 February, I believe, Chair. What we are trying to do is to get views from interested parties, professional bodies and other interested agencies, about what tools they think are the most appropriate to make a determination. For clarity, what I have tried to explain in the launch of the draft Bill and 'Positive Planning' is that that is a structured approach to change in the planning system. It is not a policy development change in terms of that; they are very separate, and I do not intend to put policy into structure position. I think that what we have to be able to do is to make sure, and I suppose that this relates to your very first question, Chair, and is not specific to MTAN2, but about the general principles of planning, that, wherever you are in Wales, there should be a consistent approach and an

understanding that you are given a fair determination based upon the planning policy that is in place in Wales. At the moment, with 25 planning authorities, that is variable in terms of how that operates in terms of the timeline and other activities. What I am trying to do is to get a consistent approach to the delivery of policy, which is consistent wherever you are in Wales—it is just the way that it is implemented.

[32] **William Powell:** Minister, if I may just pick up on that last answer, to what extent do you feel that the schemes of delegation to planning officers are a valuable tool in achieving consistency, as opposed to major applications being considered by a designated planning committee, mainly of locally elected members, although, obviously, in the three national park authorities, you also have those appointed members, who play an important role?

[33] **Carl Sargeant:** Two points. On the issue around delegation, we did some research around that, and I will ask Rosemary to pick up the points on the research in just one second. If I may make a broader point, again, Chair, the difficulty with democracy is giving people a choice in terms of determination. The worst thing about planning systems is politics, wherever you are, and that is not party specific. However, it is a problem, and that is something that we are also trying to look at in terms of scoping. We have some planning authorities that are made up of the planning committees, which have every member of the council on, as a planning decision process. How they get agreement through that is interesting. However, there are some that have a more structured approach, and we are looking, within the planning Bill, to give some consistency around decision-making processes so that it is fair for the authority, as a planning authority, and for the people who are making applications, so that they know exactly what the system will be, ensuring that you will get fairness wherever you are in terms of that determination. That does not detract from the fact that the policy is the policy, and that should be applied wherever you are, whatever the situation that currently exists within the local planning authority.

[34] I will ask Rosemary to expand on determination.

[35] **Ms Thomas:** The Minister is referring to research that we asked the Royal Town Planning Institute to commission on our behalf. That was really interesting, and very revealing. There are 25 local planning authorities in Wales, and there are 25 different ways of organising your scheme of delegations, your committee arrangements, site visits, and the whole panoply

of things that relate to planning. As the Minister said, through the planning (Wales) Bill, we will be tackling some of that.

[36] However, in terms of the issue of delegation, I think that we are proposing that we have a national scheme of delegations, so that we do eliminate some of the vagaries of the current system. We certainly encourage local authorities to have high levels of delegation. The vast majority of applications are of a local scale—small-scale applications—and those are quite appropriate for professional officers to deal with. Where you are into the level at which applications should be referred to the committee, that is where there is a range of different approaches in Wales, and we think that there should be a more consistent approach. So, we will see what we get back in terms of the consultation responses, and that will be an area where we will be taking action in future.

[37] **William Powell:** That is very helpful. Thanks. Bethan Jenkins is next.

[38] **Bethan Jenkins:** I just wondered whether we could see that research, because I think that it would be useful for those who are living in areas where open-cast mining is a scar on their lives to be able to understand who makes the decision and when. In many instances, when it is a council officer deciding on it, they feel that they are even more removed from the process democratically. I know that you will not speak about certain instances, but we have an instance in East Pit, in Cwmllynfell, where 14 months have gone by without planning consent, and they are still continuing to open cast, and that is unacceptable. So, I think that we need to have a consistent approach across Wales, so that we can fully understand what people's rights are in the planning process.

[39] **Carl Sargeant:** I listened carefully to the Member's questioning. On the determination, the research is available on the Welsh Government website, but we will give that some further thought, in making sure that you have a web link or something posted to committee, if that is helpful. I agree with the Member that determination is important, and transparency around that process and understanding that for the citizen is an important process, which we need to make sure is effective in terms of communicating that to the broader public.

[40] **William Powell:** I believe that you have some questions on the LDP process, Mike. As a former leader of Swansea council, I know that you have seen that from a number of different angles.

[41] **Mike Hedges:** Yes. Do you consider the LDP process to be well understood and accessible to communities and the general public? May I also just pick up a point that was made about delegation? I have called in planning applications twice, as a local councillor, because the planners said, 'This is not in keeping with the area.' When we have gone on the site visit, we have seen that exactly what was in the application has been done to the house next door. So, will you also accept that there are dangers in delegation, because planners seem to work from maps rather than from the street scene?

10:45

[42] **Carl Sargeant:** There were two questions. I will take the latter on delegation first. Of course there are risks involved in what is determined by a professional planner in an office-based situation to the local member. That is why we have local members, so that we have the facility to ask for a call-in process, because, generally, they would know and understand the people and the area better. There is a professional context that all planners operate in and I would again urge you, if you are suggesting that that is not happening in terms of a particular planner or system, to let me know about that in more detail. That would be important for me.

[43] In terms of the LDP process, engagement is always difficult, is it not? People tend to engage when there is a direct effect on them, most of the time. The only time when anybody is interested in planning is when there is a direct impact, and then everybody becomes a professional planner in their own right. If I had a magic wand in order to get engagement on planning, there are many other things that I would use that for too in terms of community engagement. I think it is a challenge, but I think that, on balance, local authorities do have a process where there is community engagement. However, as I said, trying to get people excited about planning is a challenge.

[44] **William Powell:** Bethan Jenkins is next.

[45] **Bethan Jenkins:** I must be an anorak then. [*Laughter.*] I have the questions on exceptional circumstances. I remember, when Jane Davidson was passing this through the Assembly initially, that we had a debate about the exceptional circumstances and the potential loopholes that these would allow for. I am sure that you would disagree with my thinking that it would be a loophole, but I do think that.

[46] In your submission, I thought that it was interesting that you said that:

[47] 'An exception is not about allowing unacceptable impacts on communities as any impact must always be acceptable.'

[48] Does that mean that you think that the impact on communities from sites given permission to come within the 500m buffer zone is in fact acceptable? Is that what you are saying in that particular sentence?

[49] **Carl Sargeant:** Well, I do not believe that you can take a single issue on a planning application as read. You have to take it as a part of a process. Planning, as you fully understand, is site specific, and it varies with every application. There are many factors that apply to an application, including exceptions, which may give or detract from the ability to have a positive planning approval process. However, it would be wrong of me to suggest that just one single issue around an exception was the only factor in determining whether it is acceptable or not.

[50] **Bethan Jenkins:** Do you think that the exceptions within paragraph 49 of the MTAN are detailed enough? What we find is that, once an open-cast mine has started, the company will put in for an extension and could use that criterion for enhancing their works. I am just curious as to whether you think that it is strong enough, because we have had this MTAN for a few years now, and whether there would be a need to review any of the exceptions at any given time or whether you are happy with the current situation.

[51] **Carl Sargeant:** I think the Member poses a fair point in terms of what our policies do or do not say across the whole raft of technical advice notes and MTANs. We constantly review our MTANs to ensure that we believe that they are most appropriate for the delivery of the policy through advice. I would like to put this into context in terms of open cast and mineral applications. Since 2009, we have had approximately 100,000 planning applications submitted to planning authorities. In terms of open cast, we have had fewer than half a dozen. So, this, in context, is small—high impact, I accept—but a smaller number.

[52] Do I think that MTAN 2 is the appropriate tool and gives the right advice for determination? Yes, I do. Is it prohibitive for me to say that I am not constantly looking at MTAN 2 and all of the others? No, because we are constantly reviewing to see whether there are other circumstances that may

give us a different policy outcome to benefit our communities. At the moment, I am not conducting a review of MTAN 2.

[53] **William Powell:** Minister, to round off, the positive planning consultation that is currently under way, which you said ends on 26 February, proposes that ‘Minerals Planning Policy Wales’ and the overall ‘Planning Policy Wales’ should be merged. Do you feel that that could potentially have an impact on the buffer-zone approach and that it will be of merit? Secondly, how frequently do you believe that technical advice notes need to be revisited and refreshed in the light of emerging evidence and other circumstances for them to remain valid?

[54] **Carl Sargeant:** As regards the first point about the merger of the two documents—‘Minerals Planning Policy Wales’ and ‘Planning Policy Wales’—it is my intention to do that. Will that have an effect on buffer zones? No. That is not the reason why I am doing that. It is just to make a document that is easier to read and more relevant today in terms of planning policy. As regards your second point—sorry, what was it?

[55] **William Powell:** It was on how frequently the technical advice notes should be revisited.

[56] **Carl Sargeant:** The point that I was hoping to make in responding to Bethan Jenkins’s last question was that we constantly review how relevant our policy is. My officials advise me on whether, at a place in time, they think that there is something changing in systems, the environment or otherwise that means that we need to make amendments to our technical advice notes. We do not have a timeline on this, but they are constantly under review because we are using them on a regular basis. There is no fixed timeline noting that MTAN 2 or any other technical advice note will be reviewed at a certain time, because it may be required beforehand or maybe it would be more appropriate to do so at a later time.

[57] **Bethan Jenkins:** I appreciate what you are saying but a Minister in the UK Parliament has said that coal will not be needed in the near future. I wonder whether that is true, for a start, and whether you can say with any substance that you will just review on a regular basis, when we might know sooner than that whether we need coal for the future or whether we will be looking at alternatives. For example, I visited Aberthaw last week and they are looking at potential challenges and how they can change for the future. All I would ask of you is this: if you are looking at it in a broader, strategic

way, how can we understand what your reviews will mean to wider Government policy?

[58] **Carl Sargeant:** I will give you an example of how we would determine this, if I may. I pay tribute to the Member, who I know is a vociferous campaigner on this issue and has been very balanced in her questioning this morning in terms of not putting me in a difficult place in responding to her questions.

[59] **Bethan Jenkins:** You would just ignore me anyway.

[60] **Carl Sargeant:** Yes. [*Laughter.*] One example is that we know that coal pricing has changed significantly because of economics and what is happening in the United States. That is one factor that we consider. We also look at issues around site refurbishment: so, after the extraction, what does that mean for the ability to re-establish a site in a place that the community would find acceptable? These are things that we have to consider when the application comes forward. We believe that, through a process of consistent monitoring of technical advice notes and planning policy, we are in the right place to determine whether we need to refresh completely or whether we have to make amendments. However, that is not something that I would like to apply a timeline to in case there was an event that meant that we had to make adjustments. It would be foolish to rely on a time capsule, as opposed to being nimble enough and having the flexibility to be able to make policy changes should we wish to do so.

[61] **Bethan Jenkins:** You will know that in many areas, the bond is not sufficient to redevelop the area, and that in many areas the company will not reclaim the land. That is something that you, as Minister, have to be looking at across the board in Wales, because we know for a fact that communities are still being blighted by opencast, when they have been told that the void would be filled, but the void is still not being filled. That is something that, really, you as Minister should be looking to review in the very near future.

[62] **Carl Sargeant:** We have commissioned a report specifically on site refurbishment, and what that means in the long term for sites that are already active and others. However, it is not site-specific, Chair. I take this into consideration, subject to it being a determining factor, if I have to make a determination on an application in the future.

[63] **Bethan Jenkins:** When you say that you have commissioned a report,

what does that mean?

[64] **Carl Sargeant:** We have commissioned a report to look at the implications of bonds and other methods to refurbish sites.

[65] **Bethan Jenkins:** Will you be publicising that?

[66] **Carl Sargeant:** That will be available at some point. I cannot give the committee a timeline right now, but I will—

[67] **William Powell:** Minister, we would be very grateful if you could alert us, as a committee, to the publication date of that report, because it is highly relevant to the consideration of this petition and other related petitions.

[68] **Carl Sargeant:** Yes. Respectfully, Chair, I do not think that this will be available for your determination in this committee, but I am sure that we will be able to apply a timeline of when we think that we will get that report back, which might give you an opportunity to review it in the future.

[69] **William Powell:** I appreciate that. I have the final question; I am conscious that time is pressing this morning. Minister, have you considered strengthening the wording of the Town and Country Planning (Notification) (Wales) Direction 2012, which would specifically require local planning authorities across Wales to notify Welsh Ministers of any minerals application that they are minded to approve that falls within a designated buffer zone?

[70] **Carl Sargeant:** We believe that there is enough scope within the guidance issued to local planning authorities in order for them to make that determination, apply the actions and inform us, subject to a planning application not being in accordance with one of the provisions of the development plan. So, we already believe that that is in place.

[71] **William Powell:** Diolch yn fawr **William Powell:** Thank you for the am y sesiwn diddorol y bore yma, interesting session this morning, Weinidog. Minister.

[72] Thank you very much indeed for the candour of your answers, given that you were constrained by the considerations that you outlined at the start of the meeting. We are grateful for your time this morning.