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FSB Wales

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Planning  
(Wales) Bill

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7<sup>th</sup> November 2014

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## **Planning (Wales) Bill**

### **FSB Wales**

FSB Wales welcomes the opportunity to present its views to the Environment and Sustainability Committee on the general principles of the Welsh Government's Planning (Wales) Bill. FSB Wales is the authoritative voice of businesses in Wales. With 10,000 members, a Welsh Policy Unit, two regional committees and twelve branch committees; FSB Wales is in constant contact with business at a grassroots level. It undertakes regular online surveys of its members as well as a biennial membership survey on a wide range of issues and concerns facing small business.

### **Executive Summary**

In response to the consultation FSB Wales makes the following headline observations:

We would call on the committee to examine why the following have been omitted from the Bill:

- A proper assessment of the impact of the Bill on micro, small and medium-sized businesses
- Any mention in the explanatory memorandum of the Planning Advisory and Improvement Service (PAIS)
- Further consideration of Permitted Development Orders for change of use - the biggest reason for SMEs engaging with the planning system
- A requirement for planning authorities to submit an Annual Performance Report outside of Strategic Development Plans
- Any reference to the role of National Parks in the planning process. FSB Wales is of the opinion that planning powers should be removed from Wales' National Parks and returned to local planning authorities

In reference to provisions found in the Bill as currently drafted we suggest:

- The Welsh Government should articulate a vision for developments in Wales and clearly set out what will be considered a Development of National Significance
- The committee should examine the governance arrangements for the proposed Strategic Development Panels to prevent a lack of accountability and to ensure the views of SMEs are represented
- The proposals to front-load the development plan process and for Ministers to be able to direct local authorities to produce a joint LDPs, where appropriate, are to be welcomed
- Proposals around community engagement in the LDP process should include an emphasis on engaging with the local business community
- Pre-application advice remains a key area of concern to FSB members and we call for the call for the implementation of recommendations of our 2008 report Small Businesses and the Planning System in Wales. We believe charges for pre-application advice should only be levied where an application proceeds
- The proposal to remove the requirement for mandatory design and access statements is welcome
- A move to ensure the role of statutory consultees is defined more appropriately in legislation is appropriate
- Proposed reform of planning committees and the delegation process is to be welcomed.



- Additional enforcement powers for planning authorities need to be accompanied by oversight from PAIS to ensure their use is fit, proper and proportionate
- Changes to the planning appeals process are welcome, and we would like to see the creation of a Commercial Appeal Service.

## **Introduction**

FSB Wales warmly welcomes the introduction of the Welsh Government Planning (Wales) Bill to the National Assembly for Wales. FSB Wales has taken part in numerous work streams in anticipation of the Bill that helped form a part of the evidence base. Our response to the Committee's inquiry is split into two sections. Firstly, our response considers issues that are not considered in the Bill. Secondly, we discuss the proposals included in the Bill and their likely impact on Wales' micro, small and medium sized businesses.

This is the first opportunity for a Wales specific Bill in relation to the planning system, following legislative devolution confirmed in the 2011 referendum. This provides a fantastic opportunity to streamline the planning system to make it easier for development opportunities to be managed positively to fruition. As such, FSB Wales largely agrees with the need and general principles of the Bill as introduced to the National Assembly for Wales.

## **Omissions from the Bill**

There are a number of issues that are mentioned in the previous Positive Planning consultation document that have not been included in the Bill as laid in the National Assembly for Wales<sup>1</sup>. While FSB Wales recognises that the reason for this is that some policies do not require primary legislation to be implemented, we have focused here on issue that we believe pertain to the legislation. We would call upon the committee to explore why these issues have been omitted from the Bill, despite their inclusion in the Positive Planning consultation.

## **Impact Assessment and SMEs**

FSB Wales welcomes the detailed impact assessment that accompanies the Bill. However, we are concerned that there is little attention paid to the impact on micro, small and medium sized businesses. Rather, businesses are categorised as 'developers'. This makes the assumption that the nature and type of planning applications are homogenous and the impact is therefore the same. FSB Wales believes this isn't the case. For instance, the vast majority of planning applications submitted by FSB members relate to relatively small issues such as change of use, extensions, minor physical improvements and signage issues (see Figure 1). Therefore, assessing the impact of pre-application advice fees, for example, could potentially mask the nature and resultant workload of a wide range of application sizes. This could lead to SMEs potentially shouldering a higher burden of the impact, with fees being a substantially larger proportion of expected returns from any development proposals.

FSB Wales therefore urges the Committee to examine this issue further to clarify the impact on SMEs. In particular, the Committee should ascertain whether the assumptions made in the impact

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<sup>1</sup> Welsh Government 2013. *Positive Planning: Proposals to reform the planning system in Wales*. WG20088



assessment are reasonable and proportionate to firms of varying sizes. The need for an improved impact assessment process was highlighted as a priority in our recent report, *Better Regulation for Wales*<sup>2</sup>.

### **Planning Advisory and Improvement Service**

FSB Wales welcomes the Welsh Government's proposals for a Planning Advisory and Improvement Service (PAIS). The Independent Advisory Group on Planning (IAG) identified the need for development to be better managed by planning officers and FSB Wales agrees with this assessment. The PAIS should also work to ensure that planning officers have knowledge and understanding of the day-to-day constraints of small firms and how this could potentially impact on the planning application process.

There is no mention of the proposed Planning Advisory and Improvement Service in the explanatory memorandum. This suggests that the body will not be underpinned on a statutory basis. As such, FSB Wales believes it is important that the Welsh Government's current task and finish group on the formation of a PAIS engages widely with SMEs. This should reflect and consider the Committee's previous recommendation that PAIS should be independent of Welsh Government.

### **Review of PDO for Change of Use**

The publication of the Planning (Wales) Bill was accompanied by a large number of consultations on specific secondary legislation that could have a bearing on the planning reform agenda. In this respect, FSB Wales is disappointed not to see further consideration of Permitted Development Orders for change of use via a review of the use class order, as was suggested in the Positive Planning consultation<sup>3</sup>. FSB Wales data (see figure 1) shows that this is a primary area of use for SMEs using the planning system. As such, FSB Wales believes this issue should be examined in conjunction with wider planning reforms.

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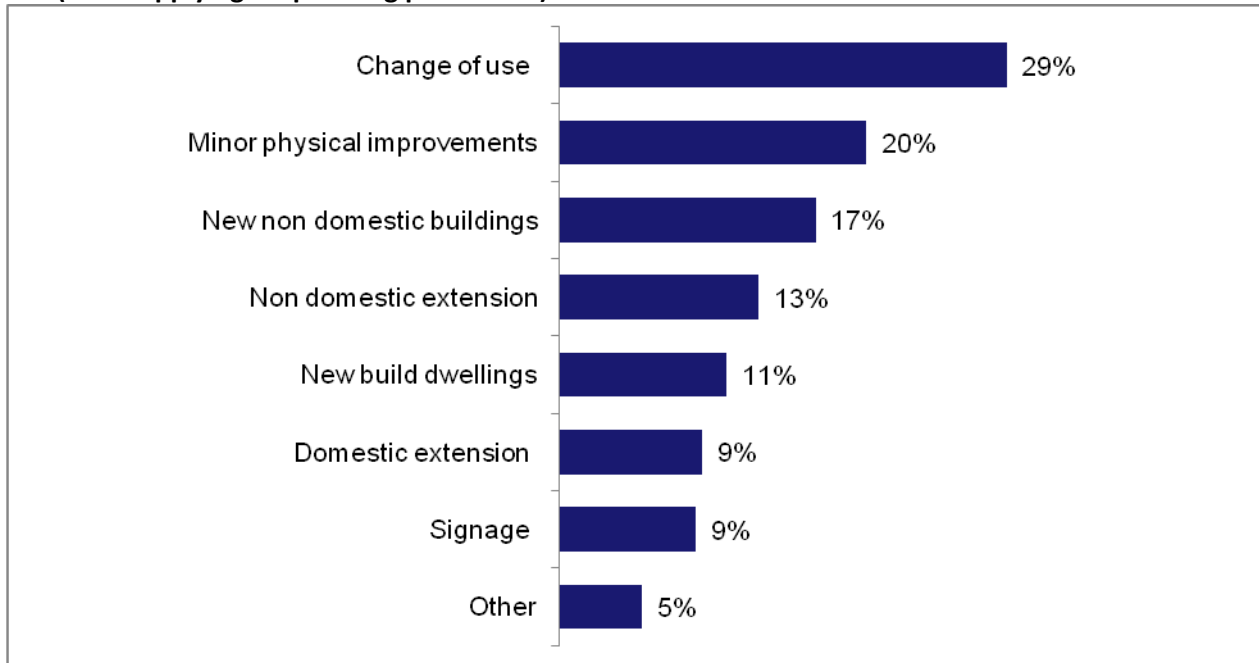
<sup>2</sup> FSB Wales. 2014. *Better Regulation for Wales* [Online]. Available at: <http://www.fsb.org.uk/wales/publications>

<sup>3</sup> Welsh Government 2013. *Positive Planning: Proposals to reform the planning system in Wales*. WG20088 P.30



**Figure 1**

**Q27. Specifically, what type of alteration or development does your application relate to? Base: 241 (those applying for planning permission)**



### **Annual Performance Report**

The Positive Planning consultation suggested that all planning authorities would need to submit an Annual Performance Report as part of the reform programme. FSB Wales is concerned that this is only referenced in relation to Strategic Development Plans and believes the Committee should consider the form and nature of reporting mechanisms of planning authorities. The publication of an Annual Performance Report would strengthen the level of scrutiny of local planning authorities

### **National Park Planning Powers**

The current Bill makes no reference to the role of National Parks in the planning process, despite the issue being considered by the previous Positive Planning consultation. While FSB Wales recognises the Welsh Government is currently reviewing the role of statutory landscapes via an Independent Panel led by Professor Terry Marsden, there is a danger that these issues will now run in parallel and as a result the opportunity to reform National Park Planning Authorities in the present Bill will be missed.

FSB Wales recently published a qualitative study of planning in national parks that revealed a number of concerns around the ability to pursue development in the national parks<sup>4</sup>. Key concerns raised as part of this report were the quality of communication between officials and the businesses concerned, frequent requests for additional information and a perceived lack of accountability for

<sup>4</sup> FSB Wales. 2014. *Planning in National Parks [Online]*. Available at: <http://www.fsb.org.uk/policy/rpu/wales/images/fsb%20planning%20issues%20in%20welsh%20national%20parks%20report%20english%20website.pdf> (accessed 11<sup>th</sup> February 2014).



decision making. This has ultimately led a large number of applicants to use external planning advisors to deal with the burden of information required.

While the report did not draw firm conclusions on the role of national parks in relation to planning powers, FSB Wales is of the view that planning powers should be removed from national parks and returned to constituent local authorities. FSB Wales also feels there is merit in discussing the potential for one national park authority to cover all three national parks and for that authority to be a statutory consultee in the planning process. FSB Wales believes this should be considered further as part of the response to the Williams Commission review into public services. Moving toward such a model could provide greater expertise and resilience within the national parks authorities.

### **Bill Specific Provisions**

The following issues relate specifically to the proposals found in the Planning (Wales) Bill as currently drafted.

#### **National Development Framework**

One of the weaknesses of the current planning framework in Wales is the absence of a hierarchy of development plans, with the Wales Spatial Plan failing to deliver a Wales wide approach to spatial planning. The Planning (Scotland) Act 2006<sup>5</sup> addressed similar issues in Scotland and a similar process has also been undertaken in London to provide an overarching spatial plan for the region. FSB Wales therefore welcomes this approach.

The vast majority of firms in Wales will be engaged in applications relating to far smaller developments than those proposed for consideration on a regional or national basis. That said, FSB Wales hopes that by bringing together spatial planning with influential documents such as the Wales Infrastructure Investment Plan, the Welsh Government will be able to articulate a vision for developments in Wales that will provide certainty for all concerned. Furthermore, the Welsh Government should define quite clearly what sorts of applications will be defined as a Development of National Significance and as regionally important for the purpose of Strategic Development Plans.

#### **Strategic Development Plans**

As is the case with the National Development Framework, FSB Wales is supportive of Strategic Development Plans to cover economic regions. It is crucial that the emerging city regions are linked in with the SDP process. While FSB Wales members will largely be concerned with planning applications at a more localised level, FSB Wales believes the creation of a well articulated planning hierarchy would benefit decision making.

One area of concern is the governance arrangements of the proposed Strategic Development Plan Panels. One of the issues identified by small businesses who deal with National Park Planning Authorities is the lack of accountability in their governance arrangements. FSB Wales is concerned that similar issues will arise from the SDP Panels if one third of the membership is drawn on the prerogative of the Welsh Ministers. Appointments made to City Regions and Sector Panel Advisory

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<sup>5</sup> Planning (Scotland) Act 2006. [Online]. Available at: <http://www.legislation.gov.uk/asp/2006/17/part/1> (accessed 22nd February 2014).



Boards suggest that there is a focus on large businesses with SMEs playing a limited role in informing policy. FSB Wales is concerned that these issues could be replicated in the future, to the detriment of the SDP process, and would therefore call for a deeper examination of this issue by the Committee. By contrast, the Education Workforce Council regulations provided FSB Wales the right, on a statutory basis, to nominate a representative on behalf of the SME community.

### **Local Development Plans**

Local planning authorities have in the past been slow to deliver on local development plans. FSB Wales is therefore supportive of the Welsh Government's proposals to front-load the development plan process and reduce the number of stages involved. FSB Wales also agrees with the Welsh Government's proposals to allow Welsh Ministers to direct local authorities to produce a joint LDP where appropriate. This should be seen in the context of the Williams Commission's proposals to merge local authorities, and the potential impact of mergers on costs to customers of the planning system should be examined further by the Committee.

While FSB Wales is sympathetic towards placing an end date for all local development plans in force, FSB Wales believes it is vital that local planning authorities frequently reassess and review the content of their LDPs to ensure they are up to date. Furthermore, FSB Wales would encourage the Welsh Government to ensure that the proposals around community engagement include an emphasis on engaging with the local business community. It is essential that the business voice does not get lost in this process.

### **Pre-Application Advice**

FSB Wales commissioned an extensive research project from Cardiff University's School of City and Regional Planning in 2008 to examine the experiences of small firms and the planning system<sup>6</sup>. Unsurprisingly, pre-application advice was a key area of concern highlighted by many members in the report and the subsequent recommendations included the need to improve and formalise the pre-application advice process.

FSB Wales is of the view that many of the themes highlighted in the report around pre-application still hold true and should be implemented by the Planning (Wales) Bill. The recommendations included:

- 1) Local planning authorities to be encouraged to **review procedures for recording pre-application advice** given by officers and to explore more effective ways of communicating that advice to potential applicants. This may require a degree of formalisation of the processes of providing and recording pre-application advice.
- 2) Local planning authorities consider introducing mechanisms for being proactive in **identifying whether persons seeking pre-application advice are small businesses**, so that suitable guidance can be issued and advice given at an early stage.
- 3) Local planning authorities to aim to ensure **continuity between the officer providing pre-application advice to a small business and the allocation of the case officer** once a planning application is submitted. This may be extended to the establishment of a **dedicated small**

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<sup>6</sup> FSB Wales. 2008. *Small Businesses and the Planning System in Wales*. Cardiff. P.22.



**businesses team** comprising a small number of planning officers that are trained and briefed in the service needs of small businesses.

As currently constituted, the Planning (Wales) Bill will allow for the formalisation of pre-application advice as recommended in our research, via secondary legislation. The Bill is as follows:

*“The Welsh Ministers may by regulations make provision for and in connection with the provision of pre-application services by a local planning authority in Wales or the Welsh Ministers.”<sup>7</sup>*

While FSB Wales warmly welcomes the intention of this provision, we would request that the Committee consider whether this is the best method of securing pre-application services across Wales. In particular, it may be appropriate to specify in the primary legislation that pre-application services will be provided but that the nature and level of the services will be set out by secondary legislation. This would strengthen the provisions and ensure all LPAs and Welsh Government are providing this service.

Likewise, the following provisions relating to the keeping of records are also to be welcomed. That said, the provisions are phrased in the same way by allowing secondary legislation on the matter. FSB Wales sees this as vital to the formalisation of the pre-application process and would like to see this area strengthened to ensure records are kept, the nature of which should be specified in secondary legislation.

In terms of costs for pre-application advice, FSB Wales has previously advised against charging for advice, unless an application proceeds. That said, FSB Wales welcomes a national charging framework that would ensure consistency across local planning authority areas for pre-application advice.

### **Design and Access Statement**

In recognising the Welsh Government’s own research that suggest the current mandatory design and access statements process does not achieve stated policy objectives, FSB Wales welcomes the proposal to remove the requirement in section 62 (5) of the Town and Country Planning Act 1990 and to examine an alternative measure to promote good design and access policy.

### **Statutory Consultees**

FSB Wales has encountered several examples from members where statutory consultees have delayed the planning process by providing information outside the designated period. This can often be frustrating, particularly for planning applications that require significant amounts of resources. Therefore, FSB Wales welcomes the Welsh Government proposals to ensure the role of statutory consultees is defined more appropriately in legislation and ensuring that they are able to respond in the necessary timeframe. We would also like to know what provisions will be put in place if statutory consultees still consistently fail to respond within the prescribed period.

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<sup>7</sup> Planning (Wales) Bill, as introduced. [http://www.assembly.wales/laid%20documents/pri-ld9940%20-%20planning%20\(wales\)%20bill/pri-ld9940-e.pdf](http://www.assembly.wales/laid%20documents/pri-ld9940%20-%20planning%20(wales)%20bill/pri-ld9940-e.pdf) P.18





### **Delegation at planning committees**

FSB Wales welcomes the Welsh Government's proposed reform of planning committees and the delegation process to planning officers. Assuming that the remaining 10 per cent of applications would be determined by the Planning Committee of each LPA, FSB Wales would like to see greater transparency for applications dealt with in this way. For instance, committee members should have to declare an interest where relevant and the voting record for any decision should be published for wider public scrutiny.

### **Enforcement**

As with many other regulatory functions, FSB Wales members frequently report poor practice in terms of enforcement. This often leads to a level of inconsistency between how regulations are applied and subjectivity from officers has damaged perceptions of the enforcement process in the past. FSB Wales believes that any additional enforcement powers gained by planning authorities need to be accompanied by work from the PAIS to ensure that their use is fit, proper, and proportionate.

Local planning authorities should be open and transparent about the enforcement process and justify why enforcement measures have been taken. There should be a direct line of accountability to those that ultimately make the decision to apply enforcement measures and this should be included as an issue for consideration in an annual performance report.

### **Planning appeals process**

FSB Wales broadly welcomes the changes suggested to the planning appeals process. In particular, the ability of appellants to recover costs from the written appeal process is to be welcomed. The Positive Planning consultation suggested an expedited process would be created via a Commercial Appeal Service, on a similar basis to the already established Householder Appeals Service. FSB Wales welcomes this development.

### **Conclusion**

FSB Wales hopes that the National Assembly for Wales will take the specific needs of small businesses into consideration throughout the Planning (Wales) Bill as it progresses and ensure that relevant links are made to other major pieces of planned legislation.



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### **The Federation of Small Businesses Wales**

The FSB Wales is non-profit making and non-party political. The Federation of Small Businesses is the UK's largest campaigning pressure group promoting and protecting the interests of the self-employed and owners of small firms. Formed in 1974, it now has 200,000 members across 33 regions and 194 branches. FSB Wales currently has around 10,000 members, a Welsh Policy Unit, two regional committees and twelve branch committees meaning FSB Wales is in constant contact with small businesses at a grassroots level in Wales.

### **Lobbying**

From the Press and Parliamentary Affairs Office in Cardiff, FSB Wales campaigns with AMs, MPs and MEPs in Cardiff Bay, Westminster and Brussels in order to promote our members' interests. FSB Wales also works closely with local, regional and national media outlets to highlight our members' concerns. Development Managers work alongside members in our regions to further FSB Wales influence at a regional level. More widely, the FSB has Press and Parliamentary Offices in Westminster, Glasgow, Belfast and Brussels to lobby the respective Governments.

### **Member Benefits**

In addition, Member Services is committed to delivering a wide range of high quality, good value business services to members of the FSB. These services will be subject to continuing review and will represent a positive enhancement to the benefit of membership of the Leading Business organisation in the UK.

### **Vision**

A community that recognises, values and adequately rewards the endeavours of those who are self employed and small business owners within the UK.

The Federation of Small Businesses is the trading name of the National Federation of Self Employed and Small Businesses Limited. Our registered office is Sir Frank Whittle Way, Blackpool Business Park, Blackpool, Lancashire, FY4 2FE. Our company number is 1263540 and our Data Protection Act registration number is Z7356876. We are a non-profit making organisation and we have registered with the Information Commissioner on a voluntary basis.

### **Associate Companies**

We have three active subsidiary companies, FSB (Member Services) Limited (company number 02875304 and Data Protection Act registration number Z7356601), FSB Publications Limited (company number 01222258 and Data Protection Act registration number Z7315310) and FSB Recruitment Limited. (company number 07836252 and Data Protection Act registration number Z3131666).