



The trade association
for the energy industry

**National Assembly for Wales Environment and Sustainability Committee
inquiry into the Planning (Wales) Bill**

Submission by Energy UK

Introduction

1. Energy UK is the trade association for the energy industry. We represent over 80 members made up of generators and gas and electricity suppliers of all kinds and sizes as well as other businesses operating in the energy industry. Together our members generate more than 90 per cent of the UK's total electricity output, supplying more than 26 million homes and investing more than £11 billion in 2012 in the British economy.
2. The energy industry is a major contributor to the Welsh government's economic growth, sustainability and energy policy goals. Our members will deliver the majority of low carbon and renewable energy projects needed to meet the Welsh and UK governments' renewables targets and ensure continued security of energy supplies in Wales and across the UK. The Industry estimates that £110 billion of investment are required in the UK's energy sector over the next ten years.
3. In order to deliver this level of investment, a stable, long-term legislative and policy framework is required which provides certainty, streamlined decision-making processes and clear lines of accountability. For several years Energy UK has worked in support of planning reform that will deliver a simpler, speedier, transparent and lower cost planning system that balances the urgent national need for all forms of low carbon and renewable energy infrastructure, with local communities' views and the need to protect the environment.

Overarching comments on the Planning (Wales) Bill

4. Energy UK welcomes the proposals in the *Positive Planning* consultation document (December 2013) and the now published *Planning (Wales) Bill* ('the Bill') towards simplifying the Welsh planning regime and making it clearer, more collaborative, and an 'enabler' which helps to deliver growth, jobs and infrastructure. We are therefore pleased to submit this response to the Committee's invitation to contribute to its Inquiry into the Bill.
5. Before dealing with the specific provisions in the Bill, we would like to make the following overarching observations which set the context for our detailed comments:
 - **General thrust of the proposals:** Energy UK generally supports the proposals in the Bill which have the potential to simplify and clarify the planning regime in Wales and, thus, to contribute towards attracting much needed investment.
 - **Framework nature of the Bill:** We generally support the approach that the Bill provides a framework, with further detail to be set out in secondary legislation and guidance. The aim should be to provide clarity on key principles in the Bill, but to retain some flexibility regarding the detailed implementation. We generally consider that the Bill strikes the

right balance in this respect. We would, however, welcome further clarification in relation to a number of issues, either in the Bill itself or through clear statements of intent which we understand the Welsh government intends to publish during the passage of the Bill. We would also welcome the opportunity to support the Welsh government in the development of secondary legislation.

- **Democratic accountability:** Energy UK considers that the Bill proposes an appropriate distribution of responsibilities and democratic accountability across the development hierarchy in Wales. We agree that matters which are of significance to Wales as a whole, such as the National Development Framework (NDF) and Developments of National Significance (DNSs), should be the responsibility of Welsh Ministers. We also consider that the measures in the Bill will improve and simplify local plan making and development management. Energy UK supports the concept of meaningful and proportionate consultation with local communities, and we believe that the provisions in the Bill, supported by appropriate secondary legislation and guidance, will facilitate this.
- **Policy dimension:** Energy UK strongly believes that the need for energy infrastructure should be recognised in Welsh Government policy, development plans, including in the proposed NDF and Strategic Development Plans (SDPs), the emerging Marine Plan and development management. However, we agree with the Welsh government that it would not be appropriate for the Bill to contain sector specific policy. This would be too inflexible and would confuse procedural provisions which should be in the Bill and planning policy and which should be set out separately.
- **Streamlining and efficiencies:** Whilst it is difficult to quantify the cost impact of the Bill, Energy UK considers that, on the whole, the proposals can help to streamline and simplify the planning system in Wales. It will be important that the framework character of the Bill is kept during its passage through the legislative process, and that subsequent secondary legislation and guidance ensure sufficiently detailed, clear, flexible, and proportionate implementation of the provisions.

National Development Framework

6. Energy UK welcomes the establishment of an NDF, which provides a national level framework for other development plans and development management decisions. A key role for the NDF will be to increase certainty for investment decisions e.g. through statements of need for certain types of infrastructure and the identification of DNSs, whilst remaining sufficiently flexible to allow nationally important projects that are not specified in the NDF to still be brought forward in a timely manner.
7. We consider that the Bill provides an appropriate framework for the preparation and review of the NDF. The detail can be left to secondary legislation and guidance which, among other things, should require that the NDF will need to have regard to, and align with, relevant national policy at UK and Welsh national levels, including any National Policy Statements under the Planning Act 2008; the Marine Plan; and the Welsh Infrastructure Investment Plan. Secondary legislation should also ensure that interested parties, including infrastructure providers, are involved in supporting the preparation of the NDF early in its development, and well in advance of any formal consultation.

Strategic Development Plans

8. Energy UK agrees with the need for a planning system that can span local authority boundaries and tackle larger than local issues effectively, including strategic infrastructure needs, taking into account the benefits for society as a whole, now and in the future. We agree that SDPs can be an appropriate tool to achieve this in areas where there is a clear need to address issues at a strategic level. The creation of larger units of local planning authorities (as proposed in the Williams Report) may in time reduce the need for SDPs in certain areas.
9. We also welcome the scrutiny of SDPs by an Inspector to enable them to be tested against Welsh and UK-wide government policy. The requirement to prepare Annual Monitoring Schedules is also supported e.g. to indicate progress towards meeting national policy. Associated secondary legislation should ensure that strategic infrastructure is explicitly recognised as an issue to be covered by SDPs. Where SDPs are developed, consideration should be given to the interaction with the Marine Plan.

Developments of National Significance

10. Energy UK supports the principle of establishing a clear development hierarchy in Wales that allows different types of projects to be dealt with in a proportionate way and at the appropriate level, depending on their significance and impacts. As part of this, we support the introduction of Developments of National Significance (DNSs) as a new category of development.
11. In our view, the Bill generally provides an appropriate framework for designating and processing DNSs. Further clarity would be welcome in respect of certain aspects of the DNS provisions, al. Much of this could be dealt with in secondary legislation and guidance. Where necessary, we outline below any changes or additions to the Bill that we feel are necessary. The majority of the points raised below are matters for secondary legislation and guidance, but the Welsh government could usefully provide appropriate reassurance on these matters in the expected statements of intent or elsewhere during the passage of the Bill.
12. **Types of development classed as DNS:** We agree that the types of development that are classed as DNS, and any associated thresholds, should be defined in secondary legislation. This will allow a sufficient degree of flexibility to review the types and / or thresholds as appropriate. Further to our response to the *Positive Planning* document consultation, Energy UK would welcome a commitment from the Welsh government that in putting in place secondary legislation it will ensure that:
 - The definitions should not be changed too frequently in order to provide sufficient certainty to developers, local authorities, statutory consultees and communities;
 - Development that currently benefits from permitted development rights (e.g. certain pipeline projects) should not be classed as a DNS; and
 - Development associated with Nationally Significant Infrastructure Projects under the Planning Act 2008 could be classed as a DNS.
13. **Prescribed timescales:** Energy UK strongly recommends there be a clearly prescribed maximum timescale for the overall DNS process from application acceptance to decision. This should include maximum durations for the acceptance, examination, reporting / recommendation and decision-making periods. These timescales should be proportionate to the size and complexity of the project and, where applicable, should mirror or better those

under the Planning Act 2008. Energy UK considers that this could be left to secondary legislation, but we would welcome a clear commitment from the Welsh government in this regard in the expected statements of intent or elsewhere during the passage of the Bill.

14. **Secondary consents:** Energy UK supports the proposal to allow secondary consents to be decided by Welsh Ministers alongside the main DNS consent. The objective should be to enable a 'one-stop-shop' approach where all necessary consents, licences and permits can be obtained in a co-ordinated manner. As recognised in *Positive Planning*, we strongly support the view that use of this power should be optional, in that it should be for the project promoter to decide whether they wish to seek the necessary consents simultaneously or separately.
15. **Compulsory land rights:** As part of the 'one-stop-shop' approach, the provisions regarding DNSs should also include the power to deal with the compulsory acquisition of land or an interest in land where these are necessary to implement a DNS. It is our understanding that the Welsh government intends to enable this by drawing on the proposed sections 62F and 62H of the Town and Country Planning Act 1990 ('the TCPA') (see clause 18 of the Bill), in conjunction with s226 of that Act. Energy UK would welcome a clear commitment from the Welsh government to this effect during the passage of the Bill.
16. **Rights of entry:** We suggest that the provisions regarding DNSs should enable applicants to apply to Welsh Ministers for rights of entry onto land (e.g. for the purpose of environmental surveys) where these are necessary to prepare an application, but where access cannot be agreed voluntarily or under existing legislation (e.g. Electricity Act 1989). Similar provisions already exist under the Planning Act 2008. Energy UK would welcome clarification from the Welsh government that such powers will be available, and clarity on how this will be achieved.
17. **Local Impact Reports:** Energy UK is supportive of the proposal to require local planning authorities to submit Local Impact Reports (LIRs). Experience with LIRs under the Planning Act 2008 shows that, whilst they are intended to be 'technical' assessments, in practice there can often be a high degree of overlap and duplication between a local authority's LIR and its formal representations. At a practical level it will be very difficult to separate the 'technical' view of an authority from its 'formal position'. Whilst no changes to the Bill are required in this respect, Energy UK would welcome a commitment from the Welsh government that secondary legislation or guidance will encourage local authorities to provide a single response that combines the LIR and its formal position. This would help to avoid unnecessary duplication and also limit the resource implications for local authorities, and those needing or wishing to review their response.
18. **Variation of an application:** Energy UK welcomes that the Bill enables Welsh Ministers to make provision regarding the variation of DNS applications once they have been submitted to Welsh Ministers. The *Positive Planning* document proposed a limit of one round of 'minor amendments' to an application, together with discretionary further public consultation. As explained in more detail in our response to the *Positive Planning* consultation, Energy UK considers that the process and requirements for making changes to applications should be more flexible than outlined in *Positive Planning* e.g. regarding the scale of permitted changes. Whilst no changes to the Bill are required in this respect, Energy UK would welcome a clear commitment from the Welsh Government that further consideration will be given to this during the preparation of secondary legislation and / or guidance.

19. **Changes to DNS consent post-determination:** As explained in our response to *Positive Planning*, experience with major infrastructure projects shows that there may be a need to vary a consent / planning permission after it has been granted. For example, some of the detailed design of a project can only be finalised after consent has been secured, a final investment decision has been made, the procurement process has been completed and a principal contractor has been appointed to progress the detailed design. It is therefore important that there is a clear process for making and agreeing (material and non-material) changes to an existing consent with Welsh Ministers or, where appropriate, the relevant local planning authority, without having to re-run the whole application process. Neither the Bill nor the *Positive Planning* document refers to this. Energy UK would welcome clarification from the Welsh government on this matter and a clear commitment that an appropriate process will be put in place to allow non-material and material changes to a consent, either through the Bill or through secondary legislation and / or guidance.

Applications to Welsh Ministers

20. Energy UK agrees that, where an authority becomes designated as ‘poorly performing’, developers of major projects under the TCPA should be able to apply to Welsh Ministers to determine the project instead of the local planning authority if they choose. We agree that, where applications are made directly to Welsh Ministers, there should be appropriate opportunities for engaging the affected local planning authority and local communities.
21. Energy UK would like to stress the importance of developers being able to choose to obtain a determination by Ministers, rather than this being an automatic requirement when an authority is designated as ‘poorly performing’. A developer may wish for their project to remain under consideration of the local planning authority, for example, where the authority’s performance within a specific sector is good, or because the developer will still have to work with the local planning authority which will discharge compliance of planning conditions.

Pre-application consultation procedure

22. Energy UK supports mandatory pre-application consultation for DNSs and major developments that is clear, proportionate and sufficiently flexible to take account of the nature of a project and its specific circumstances. The majority of energy developers already engage in meaningful and proportionate pre-application consultation which they find invaluable in developing their proposals. In our view, the Bill provides an appropriate framework in this respect, with further detail to be set out in proportionate and sufficiently flexible secondary legislation and / or guidance.
23. We are also supportive of the proposed duty on Statutory Consultees to provide advice to applicants during the pre-application process. It will be important that such advice is provided as early as possible during the pre-application stage to ensure that issues are raised before an application is made. The Bill provides an appropriate framework and we believe that secondary legislation should prescribe timescales and quality standards in order to ensure quality and timeliness of such advice.
24. In addition, Energy UK supports the proposed duty on local planning authorities, Welsh Ministers or their appointed persons to provide pre-application advice. The *Positive Planning* document stated that such advice should not relate to the merits of a scheme. Whilst no changes to the Bill are required in this respect, we would welcome a clear commitment from

the Welsh government in the expected statements of intent or elsewhere during the passage of the Bill, that such advice should include the merits of a project, as such advice might save developers wasting time and resources, and might help to improve a project. Energy UK considers that, as currently under the Planning Act 2008, any pre-application advice should be given on a 'without prejudice' basis and it would therefore not be appropriate for such advice to be binding.

Development management

25. The Bill contains a range of provisions regarding aspects of the development management process. Energy UK supports the general thrust of many of these measures, particularly:

- The proposed limits on local planning authorities' power to require information to accompany planning applications, to ensure requests are reasonable and relevant;
- The removal of the requirement for mandatory design and access statements, as these are unnecessarily resource intensive, often of little real relevance, and do not add much to the application;
- The proposed requirement on local planning authorities to notify applicants where applications are not validated, as well as the proposed right of appeal against an authority's decision not to validate a planning application;
- The proposals to make decision notices 'live' documents which are updated as conditions are discharged, removed or altered;
- The proposal to enable the process leading to the stopping up or diversion of public paths to start before planning permission has been granted; and
- The provisions which clarify and improve the process for handling planning applications and town and village green (TVG) registration applications. Energy UK agrees that parallel processes should generally be avoided and that applications to register land as a TVG should not be possible where land has entered in to the planning system.

Conclusions

26. In summary, Energy UK generally supports the proposals in the Bill which have the potential to simplify and clarify the planning regime in Wales and, thus, to contribute towards attracting much needed investment. Within the context of our general support, we would welcome further clarification in relation to the issues outlined above. Most of these could be dealt with in secondary legislation and / or guidance, but we believe it would be helpful for the Welsh government to provide a clear statement of intent during the passage of the Bill to cover these issues.

27. Energy UK is looking forward to working with the Committee, the National Assembly for Wales and the Welsh government during the passage of the Bill and the preparation of any secondary legislation and guidance. We would be happy to provide oral evidence should the Committee find this helpful.

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