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Senedd Cymru | Welsh Parliament

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith | Climate Change, Environment, and Infrastructure Committee

Bil Seilwaith (Cymru) | Infrastructure (Wales) Bill

Ymateb gan Hannah Hickman | Evidence from Hannah Hickman

Infrastructure (Wales) Bill

Invitation to submit written evidence

Thank you for the opportunity to provide written evidence, ahead of the meeting of the Climate Change, Environment and Infrastructure Committee on the Infrastructure (Wales) Bill on the 13th September 2023.

As requested, I am providing this in the form of brief headline points, which may provide the basis for further discussion with the committee. These points focus on the relationship between consent and delivery, and draw on recent research carried out by the University of the West of England and the University of Sheffield for the National Infrastructure Planning Association, on the operation of the Planning Act 2008 in England from which there is a considerable opportunity to learn from in relation to legislative and policy intent and practice, particularly when it comes to expediting delivery. This report – published in July 2023 - is available here:

<https://www.nipa-uk.org/news/nipa-insights-iii-report>

My comments are sub-divided into four short sections: (1) the intent of the legislation; (2) the bill's explanatory memorandum; (3) specific comments on the bill; and (4) wider observations.

Intent of the legislation

The intent of the legislation, as set out in section 3.5 of the draft bill's explanatory memorandum (EM), is clear, and reflects considerable evidence on the benefits of streamlining and consolidating existing consenting systems. The comments below are focused on ensuring the intent of the legislation supports future practice. Noting several references in the EM to regulations, some of these observations will be of particular relevance to the content of subsequent regulations, as well as secondary legislation and practitioner guidance.

The Explanatory Memorandum

Section 1.1 / 3.17 / 3.18 / 3.25 refer in various ways to the laudable intent for infrastructure consents to “*contain the full range of authorisation to enable development to be implemented*”, in support of the ‘one-stop-shop’ approach.

Care should be taken to learn here from practice in England, where our research has shown that a considerable number of secondary consents and licenses are still required post-consent to enable development to proceed in construction. In England, we have called for the UK Government to undertake a review of the potential to further streamline the consent regime and minimise the delays and costs associated with post-consent requirements. The Welsh Government should undertake due diligence here, by ensuring – ahead of enactment - thorough sector by sector understanding of the extent of consents and licenses needed both for construction and operation, and the opportunities for these to be assimilated as far as practical within infrastructure consents to support delivery.

Section 3.5 of the EM refers to the overall objective and purpose of the bill, highlighting ‘certainty’ as the second basis. Significant debate and focus of research on existing practice in England has centred on achieving the right balance between certainty and flexibility.

Our research has provided evidence of increased experience and willingness in using available mechanisms for achieving flexibility within consents (e.g. envelope assessments, using options, limits of deviation etc.), and these tools being used with good effect. But despite that experience built up over 15 years of operation, there is still concern about the consistency of approach and level of support for the use of flexibility mechanisms in consents. The challenge for promoters is in the anticipation of where flexibility might be needed and the value of anticipating risk and uncertainty related to construction methodology, logistics and temporary works into the DCO process. In particular, it is felt that there is still scope for greater clarity and a more coordinated approach at examination, with the role of examination being key in exploring the balance between certainty of decision, and any necessary flexibility needed at delivery. Lack of operational guidance on this in England has created considerable delivery challenges (especially in the context of post-consent change management) and the Welsh Government would be advised to prioritise the production of focused guidance, to the benefit of promoters, communities and the examiner community.

Section 3.14 refers to the chances of success and **section 8.82** to the role of clear policy frameworks and ‘more certain policy’ in underpinning the consenting process going forwards. The Bill itself indicates that a decision must be made in

accordance with the National Development Framework for Wales, any marine plan and any 'infrastructure policy statement' for that type of development issued by Welsh ministers. The development of these policy documents will be a critical piece of this new regime. 'More certain policy' is clearly not the same as certain policy, and the Welsh Government should provide further clarity as to what exactly constitutes the decision-making framework and what policy statements are planned, to ensure efficient decision making. A key question is whether the existing policy frameworks are sufficient (and consistent) for the certainty required for the effective operation of the regime? Having clear mechanisms and timescale for regular review will also be an important element of effective operation in practice.

Impact Assessment – the EM is thorough, but there was a surprising lack of reference to The Well-being of Future Generations (Wales) Act 2015. The connectivity between these two important pieces of legislation needs to be considered.

Section 4.14 draws attention to stakeholder support for fast-track of certain types of development to ensure a proportionate approach. Significant further detail and information is needed on what this will mean in practice. Our research in England supports the need for a fast-track approach for certain schemes, in particular the potential value of a fast track approach for some linear schemes.

Section 4.19 draws attention to stakeholder views on the importance of detail regarding 'minor' variations and fast-tracking non-contentious variations. The EM also refers to one of the challenges of the existing DNS process as being limited flexibility for changes (para 3.25). Here, it is critical that post-consent change management is considered very carefully in the detailed review of the bill and in subsequent regulations. Critically, consideration of change management needs to span both consent and post-consent. The post-consent change management process has been a significant challenge in the operation of the NSIP system in England. Our research has shown that there are still significant disincentives in applying for changes because of the delay, resources, time and uncertainty involved. This is particularly an issue for changes that are not fundamentally necessary for project completion, but would achieve additional social, economic, and environmental benefits or allow for technological innovation. Our research showed nearly 50% of practitioners

highlighting potentially beneficial post-consent changes which were not pursued because of the time, complexity, expense and delay in seeking post-consent changes. Promoters were concerned about the lack of a prescribed timescale for decisions on post consent changes (whether material or non-material) and wanted scope for a more pragmatic approach to change where changes can demonstrate compliance with agreed outcomes. A key part of this is about ensuring proportion in relation to environmental assessment and change management.

Section 10.2 refers to the benefits of an evaluation project within 5 years of the implementation. This proposal should be a firm commitment, with details prescribed as to how and who will undertake this review.

Specific comments on the bill

Defining significance. Nowhere in either the legislation or the EM is a definition of 'significant' provided. For the purposes of understanding the thresholds applied and communicating these, this would be of merit. For example, it is noted that some thresholds relate to scale of operation, some to capacity, and some to measures of length etc. Are there any thresholds that might relate to, for example, third party impact, or significance in relation to impact for the service it is delivering?

This issue of significance perhaps relates to the connectivity between this draft legislation and the Final Report of the Expert Review Panel (of the Cross Party Group on the Active Travel Act Review of the Active Travel (Wales) Act 2013) which calls for much greater ambition in the arena of Active Travel. One issue that hold backs active travel schemes is an ambivalence to using compulsory purchase powers to buy land that will be needed to make the space for such schemes. Bringing planning for active travel to a central level, particularly if being directed in some ways by Transport for Wales, could have the advantage of helping create more ambition and expedite decision making in the ways the Infrastructure Bill envisions. This may appear tangential to some of the existing prescribed reasons for centralising decision making on major infrastructure but this legislation could provide an effective means of 'unlocking' more active travel schemes than may otherwise be the case, if appropriate thresholds and criteria are applied. For example, the legal definition of a highway includes cycle tracks and footpaths. With the potential scale of infrastructure (and safety

improvements) being smaller, the lower bound limit of 1km (7 (2) (c)) will, in effect, keep planning decisions for active travel local rather than at the national level.

Part 1 - energy storage schemes do not appear to be defined (with the exception of liquid gas storage). Energy storage is going to become more important, so this may be an omission.

Section 124 - see comment above on clarity and certainty of policy framework.

60 (1) states that “*An infrastructure consent order may impose requirements relating to the development for which consent is granted*”. Ensuring the effective operation of the post-consent requirements process is a very important area of operational practice. Here, the sufficient resourcing of local authorities and statutory bodies potentially responsible for discharging requirements is paramount. Whilst our research has seen significant effort by both local authorities and statutory bodies (SBs) to support the timely discharge of requirements in England (and some recent organizational restructuring of SBs to support that), significant delay has been caused at delivery by insufficiency of resource, and SBs in particular have been challenged by some of the unrealistic timescales for discharge set in consents (see also section 4 below). Planning Performance Agreements and cost recovery mechanisms are increasingly being used to support local authority and statutory body input with agreed outcomes, but further support is often needed and practice is very variable in the use of these mechanisms.

Section 81 - removing consent requirements and deeming consent - see section above on post-consent licenses and consents.

Sections 87 / 88 - power to change and procedure for change - see section above on the post-consent change management.

Wider observations

Our research has shown that there is a careful balance to be struck between the quest for speed of consent and its potential consequences for future delivery. There is considerable evidence in England from both promoters and SBs that time both during the consenting process and at delivery is necessary to support innovation. Key here is that the quest for faster and simpler

examination – one of the objectives of this legislation – must not inadvertently cause delays at the delivery stage by leaving key elements for later resolution (in requirements or the need for further consents), or problems in relation to the constructability of key elements of the DCO, resulting in requirements for change. **Post-consent due diligence must be applied in the consideration of this draft legislation.**

Our research in England has shown that key to effective delivery of infrastructure is the people involved, their knowledge and understanding of the infrastructure consenting process and delivery challenges and cultures of working. In particular, early contractor involvement and effective project management pre-through to post- consent, are paramount. Here, the Welsh Government should consider carefully the professional skills required for effective delivery of the new system, and work closely with professional and other relevant bodies. This means action to build capacity and understanding which extends beyond the planning profession and focuses on bringing professions together, particularly drawing together construction, engineering, project management, lawyers, planners, designers, environmental disciplines and programme managers

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