



F.A.O. Dr Virginia Hawkins,  
Committee Clerk

Mr Mike German AM,  
Chair,  
Sustainability Committee,  
National Assembly for Wales,  
Cardiff Bay,  
CARDIFF  
CF99 1NA

10<sup>th</sup> June 2010

Dear Mr German,

#### **SUSTAINABILITY COMMITTEE INQUIRY INTO PLANNING IN WALES**

You have invited written evidence to be submitted to your Committee's inquiry into development planning in Wales.

These comments are from Dŵr Cymru Welsh Water, the statutory water and sewerage undertaker that supplies over three million people living and working in Wales and some adjoining areas of England. We are owned by Glas Cymru, a single purpose, not-for-profit company with no shareholders.

#### **Our involvement in land use planning**

As Dŵr Cymru is responsible for providing water and sewerage services for new developments within our supply area, we take a keen interest in development control. We try to work closely with local planning authorities (LPAs). For example, we are a special consultation body in the Local Development Plan (LDP) process and we actively try to assist each LPA with their policies, including influencing site location and the deliverability of their LDPs.

Water supply and drainage are material considerations in development control. As we own and operate the public water supply and sewer networks in our area, we are best placed to advise on the performance of these assets. Dŵr Cymru makes representations on some 30,000 individual planning consultations each year.

Despite this, water and sewerage companies still do **not** have statutory consultee status for planning applications. We were grateful to the Sustainability Committee for recommending (in its July 2009 report on the then Flood and Water management Bill) that "*the Welsh Assembly Government include water companies operating in Wales as statutory consultees in planning applications*". We have

followed this up with discussions with Welsh Assembly Government officials who seem keen to find a positive way forward but, as yet, nothing definite has emerged.

### **Relationship between the law governing water industry and land use planning**

The main piece of legislation governing water companies is the Water Industry Act 1991 (as amended). The Act, however, affords water companies few effective powers to protect their own assets from the impact of development. Water companies are therefore heavily reliant on LPAs using their powers in legislation such as the Town and Country Planning Act 1990 (as amended) and Building Act Building Regulations Approved Document H to ensure that our water infrastructure, and the interests of customers served by this infrastructure, is protected. A Supreme Court Judgement of December 2009 – *Dŵr Cymru cyf v. Barratt Homes Ltd* – has provided clarity that it is the LPA, rather than the sewerage undertaker, that can effectively control connections with the public sewerage network.

Dŵr Cymru wants to support sustainable economic development in Wales and we will continue to work with developers to achieve this goal. At the same time, we believe that due consideration must be given to maintaining service standards for our customers, as well as minimising the incidence of sewage flooding at customers' premises and the impact on the environment from pollution that can be caused by overloaded sewerage systems. Given the powers available to LPAs, Dŵr Cymru would like them to be more mindful of the need to guard against their decisions leading to unintended consequences if the result is that our sewers become overwhelmed.

### **Question 1: How are key Welsh government policy objectives reflected in national and local planning policies/guidance and local planning decisions? Do you think this approach is successful?**

As the Committee may be aware, on 8<sup>th</sup> June Jane Davidson launched a new edition of Planning Policy Wales (PPW). In the limited time available before the 11<sup>th</sup> June deadline for the submission of evidence to your Committee we have not been able to study the new PPW in detail, although we welcome the new focus being placed on climate change and sustainable solutions.

Land use planning is a process which involves engagement with both statutory and non-statutory bodies and so provides an opportunity for the wider community to make representations prior to a determination being made. In this way, good planning can build public confidence, help to deliver high quality investment and promote sustainable development. It can also contribute to the Welsh Assembly Government's objective of increasing citizen engagement, referred to in its "One Wales" agenda.

LPAs can, through their development control functions, help to deliver – or can frustrate – a wide variety of Welsh Assembly Government policies and objectives, including on water quality and resources and minimising pollution of the environment. As it is probably unrealistic to expect LPAs to be able to weigh such a wide variety of competing factors, it is vital that the Assembly Government issues appropriate guidance and that LPAs heed that guidance.

The Welsh Assembly Government's PPW reminds LPAs of the need to factor water considerations into development control. However, our experience suggests that this is not always the case. To give a specific example, the PPW reminds LPAs that sewers should be built to an adoptable standard. Despite this, many substandard sewers have continued to be provided and the Environment

Minister has now decided that these unadopted “private” sewers should be transferred to sewerage undertakers, with the result that Dŵr Cymru customers will have to pick up higher bills for the work necessary to bring these sewers up to standard.

Hopefully LPAs will take a closer interest in the provision of adequate drainage because of the important new responsibilities for sustainable drainage systems (SUDS) that councils will assume under the Flood and Water Management Act 2010 (into which the Sustainability Committee has previously held two inquiries). It will clearly be in authorities’ interest – and ours – if they can encourage developers to take sewerage and surface water management arrangements into account at an early stage of development design. This is an important aspect of sustainable development.

Currently Wales has no areas of water stress but, as the Welsh Assembly Government acknowledged (e.g. in its “Climate Change Strategy High Level Policy Statement” consultation and in its new edition of the PPW), the drier summers predicted as part of climate change are likely to create water shortages. This will increase the importance of LPAs considering long term water availability when preparing their LDPs. Climate change is also expected to increase the severity of storm events with a consequential impact on sewer flows. It is imperative therefore, that LPAs take careful account of the available (adaptive) capacity of the sewerage system in their planning decisions.

LPAs have an important role to play in delivering the Welsh Assembly Government’s obligations arising under European environmental legislation, including water law. There is a danger that LPAs will look to other bodies, notably the Environment Agency, to take responsibility for these issues. However, development that causes sewers to become overloaded and so overflow too frequently can jeopardise Wales’ compliance with various European environmental laws, such as those on bathing waters and shellfish waters. As noted in the PPW, LPAs will also have a part to play in enabling Wales to comply with the European Water Framework Directive: for their part, LPAs will have to ensure that developments on land do not undermine the ability of our inland, coastal and ground waters to achieve good status under that Directive. In our experience, many local authorities remain unsighted as regards the impact that they can make - albeit indirectly – on the aquatic environment.

The Welsh Assembly Government’s “Strategic Position Statement on Water” published last year confirmed that *“Keeping water bills at affordable levels is a priority for the Assembly Government”*, and the Assembly encourages LPAs to be aware that the cost of providing water infrastructure for new developments can represent a major new burden for us, all of which we have to recoup through water charges to our customers.

LPAs can also facilitate policies such as the Welsh Assembly Government’s Green Jobs Strategy, “Capturing the Potential”. For example, companies involved in the green sector, which is generally regarded as a potential growth area, are likely to be attracted to buildings that incorporate best practice in sustainable design.

Your letter implies that the Committee’s inquiry will consider the role of the Infrastructure Planning Commission. The Welsh Assembly Government has said (in its statutory “Social and Environmental Guidance to Ofwat” issued in December 2008 under the Water Industry Act 1991) *“Should investigations reveal the need for major...new [water] infrastructure, in Wales any decisions on such infrastructure would be a matter for the Welsh Assembly Government as water infrastructure*

*projects in Wales are not a matter for the Infrastructure Planning Commission.” We agree with the Assembly Government that decisions about water infrastructure in Wales should be made in Wales and not by an English based body (the Committee may recall that we made a similar point in relation to the water-related major infrastructure provisions in the then Flood and Water Management Bill.). We note that the new Westminster Government has already announced plans to abolish the Commission, so its future role may have become an academic question for the purpose of this inquiry.*

**Question 2: How successful are current planning policies/guidance in helping planners to reconcile competing demands e.g. renewable energy vs landscape quality, economic growth vs climate change.**

As noted above, we recognise the difficulties that LPAs face in trying to weigh the many important – and sometimes conflicting – issues that can arise in development control. PPW supported by Technical Advice Notes (TANs) is the bible for land use development in Wales and is the principal and authoritative source of national policy. Although the 2002 PPW had been updated through the use of Ministerial Interim Planning Policy Statements, Dŵr Cymru considered that parts of the system in Wales had become out of date: we therefore welcome the consolidated version of PPW published this month, but have yet to study it closely to assess the extent to which policies have been overhauled and updated.

Dŵr Cymru participated in the recent GVA Grimley investigation into the Welsh Planning System. The report’s key findings indicated that improvements to the planning system are required. Welsh policy/guidance is lagging behind its English counterparts. Two examples where current policy/guidance is in need of review in Wales are TAN15 on Development and Flood Risk and Welsh Office Circular 13/97 on Planning Obligations (in England, PPS25 has replaced PPG25 on Development and Flood Risk, while ODPM Circular 05/05 has replaced DoE Circular 01/97 on Planning Obligations).

Dŵr Cymru would question whether the current process helps planners to reconcile competing demands and a key area that requires addressing in our opinion is that of consultation and/or notification. This is best explained by a couple of examples:

- a) TAN 8 Renewable Energy identifies eight Strategic Search Areas in the Principality, some of which include our impounding reservoirs, the source (after treatment) of drinking water supplies for our customers. The Committee will appreciate that in order to safeguard public health, we would want to ensure that appropriate mitigation measures are put in place to prevent potential contaminants from entering our reservoirs. However, as an advisory body in development control, there was no formal consultation with Dwr Cymru regarding this publication.
- b) While the Scoping Opinions prepared by consultants as part of the Environmental Impact Assessment process (setting out what potential issues an Environmental Statement might contain) often consider whether hydrology should be included, matters of public water supply and sewerage are rarely mentioned.

LDPs are meant to be more streamlined than their predecessors (the Unitary Development Plans) and should not duplicate national policy. As noted above, Dŵr Cymru plays a proactive part in the

LDP process but considers that it does not always lend itself to effective communication between the LPA and ourselves.

For example, we believe the initial stages of LDPs are too broad and so of limited value and potentially misleading, as they do not reflect the detail which normally comes at the Deposit stage. This position could be improved by some initial analysis and sifting by LPAs of Candidate Sites before a LDP is published.

In theory, LDPs should enable Dŵr Cymru to plan the provision and location of water infrastructure to meet future demand. However, we find that plans tend, for example, to be very overoptimistic about the extent of future economic development: although Dŵr Cymru is very keen to support the economic development in Wales, the Committee will appreciate that the generality of our customers should not be burdened with having to pay for infrastructure to be provided at sites where the chance of attracting industry is, at best, speculative. We would therefore like to see greater realism in the forecasts and projections underlying LDPs.

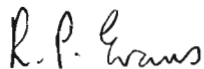
Climate change is one of the biggest challenges facing us. From a Dŵr Cymru perspective, it is not simply a matter of building ever bigger infrastructure to service new development and to cope with the increased storminess predicted as part of climate change – such an approach would be unaffordable and unsustainable and not in the interest of Wales or our customers. We all need to be thinking differently and innovatively and whilst there are good examples of water efficiency and sustainable drainage solutions available, these must be supported through legislation. The recent Flood and Water Management Act may help in this matter but Regulations are now awaited from the Welsh Ministers on how it will all fit together. (We would welcome early opportunity to contribute to the development of and/or discuss the awaited Regulations.) We particularly welcome the Minister's objective in publishing the Welsh Assembly Government's new PPW "to further embed the need to tackle climate change into the planning system".


**Question 3: Are there examples of good practice in other countries and other parts of the UK that we could learn from?**

The only example which is offered is the submission of a Drainage Impact Assessment, where required, to accompany a planning application, as is currently in being in Scotland. However, a new regime for sustainable drainage in Wales is being introduced through the Flood and Water Management Act 2010, so we must wait to see how that will work in practice.

I hope that this letter will contribute to your understanding of the issues.

Yours sincerely,



 Tim Williams  
Head of Asset Strategy  
Dŵr Cymru Welsh Water