

Planning and the Welsh Language

Cynllunio a'r Iaith Gymraeg

Gwion Lewis

2 November 2015 – 2 Tachwedd 2015

Aims of talk

- Provide an overview of relevant law, policy and guidance relating to planning and the Welsh language
- Assess the significance of the 2015 (Wales) Act confirming that impact on the Welsh language is a material planning consideration

Welsh/Cymraeg: Basic facts

- 19% of Wales' 3 million population speak Welsh fluently
- Substantial variations in proportions of Welsh speakers in different communities (varying from 6% to above 85%)
- Estimate: some 1,200 and 2,200 fluent Welsh speakers move out of Wales each year



Context: The 2015 Act

- Section 31, Planning (Wales) Act 2015
- Amends section 70, TCPA 1990, in Wales to bring “*any considerations relating to the Welsh language, so far as material to the application*” within list of mandatory considerations (inc. dev plan) when determining a planning application
- Makes clear that impact on Welsh language can be material planning consideration

Legislative background

- Late amendment during Stage 3 of the Bill
- Proposed by Lib Dem AM, William Powell, supported by:
 - Carl Sargeant AM (Labour, Minister for Natural Resources)
 - Llyr Gruffydd AM (Plaid Cymru)
 - Russell George AM (Conservative)



Legislative background (2)

- Main alternative proposal:
 - EIA-style Welsh language impact assessment (“WLIA”)
 - Regulations to specify classes of “WLIA-development” & process
 - Duty on LPA to screen for “significant impact” on Welsh language
 - Empowering Welsh Language Commissioner to review “adequacy and effectiveness” of WLIAAs

- Welsh Language (Wales) Measure 2011
 - Recognized official status of Welsh (and English)
 - First set of “standards” include “policy-making standards”
 - “Policy-making standards” require organizations to consider effect of their policy decisions on ability to Welsh
 - High-level
 - Increasing concern about complexity

Other legislation: Welsh and planning

- Well-Being of Future Generations (Wales) Act 2015
- Royal Assent on 29 April 2015
- Sets high-level, long term well-being “goals”
- One goal: “Wales of vibrant culture and thriving Welsh language” (s. 4, not yet in force)
- Description of that goal: “A society that promotes and protects culture, heritage and the Welsh language...”

National planning policy & guidance

- Wales Spatial Plan (2008 update);
- Planning Policy Wales (PPW) (7th ed., 2014)
- Technical Advice Note (Wales) 20 (October 2013)
- Technical Advice Note (Wales) 20 – Practice Guidance (June 2014)



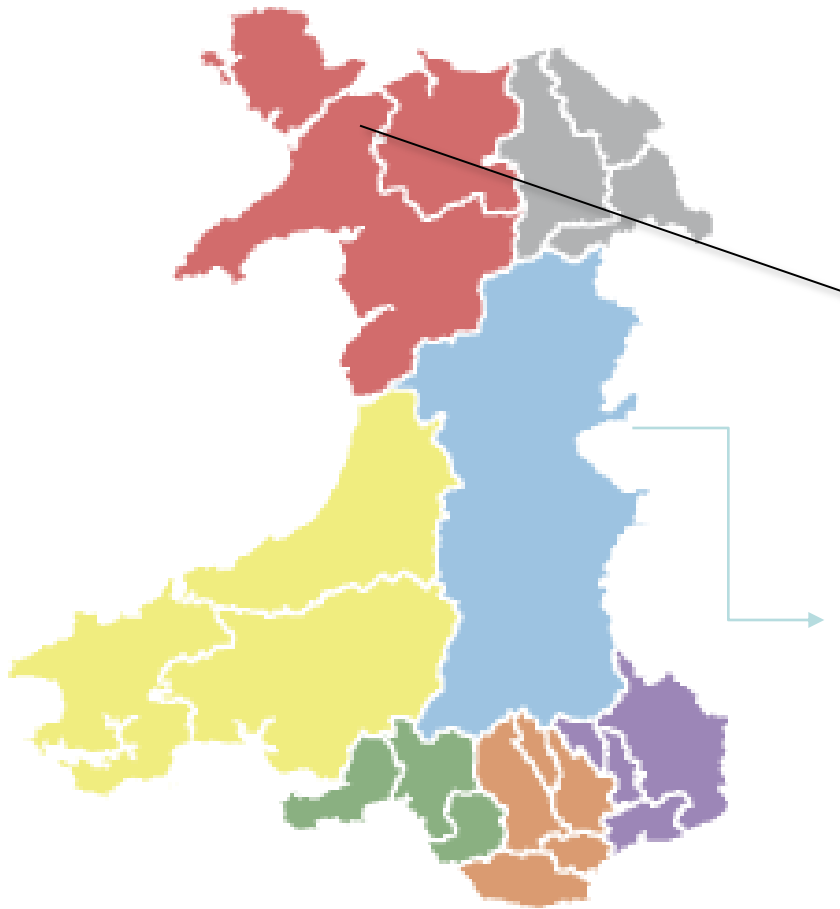
Llywodraeth Cymru
Welsh Assembly Government

People, Places, Futures

The Wales Spatial Plan
2008 Update



Wales Spatial Plan: North-West Wales



Vision: “A high quality natural and physical environment supporting a cultural and knowledge-based economy that will help the area to maintain and enhance its distinctive character, retain and attract back young people **and sustain the Welsh language.**”

Wales Spatial Plan: Pembrokeshire



Vision: “A network of strong communities supported by a robust, sustainable, diverse high value-adding economy underpinned by the Area’s unique environment, maritime access and internationally important energy and tourism opportunities.”

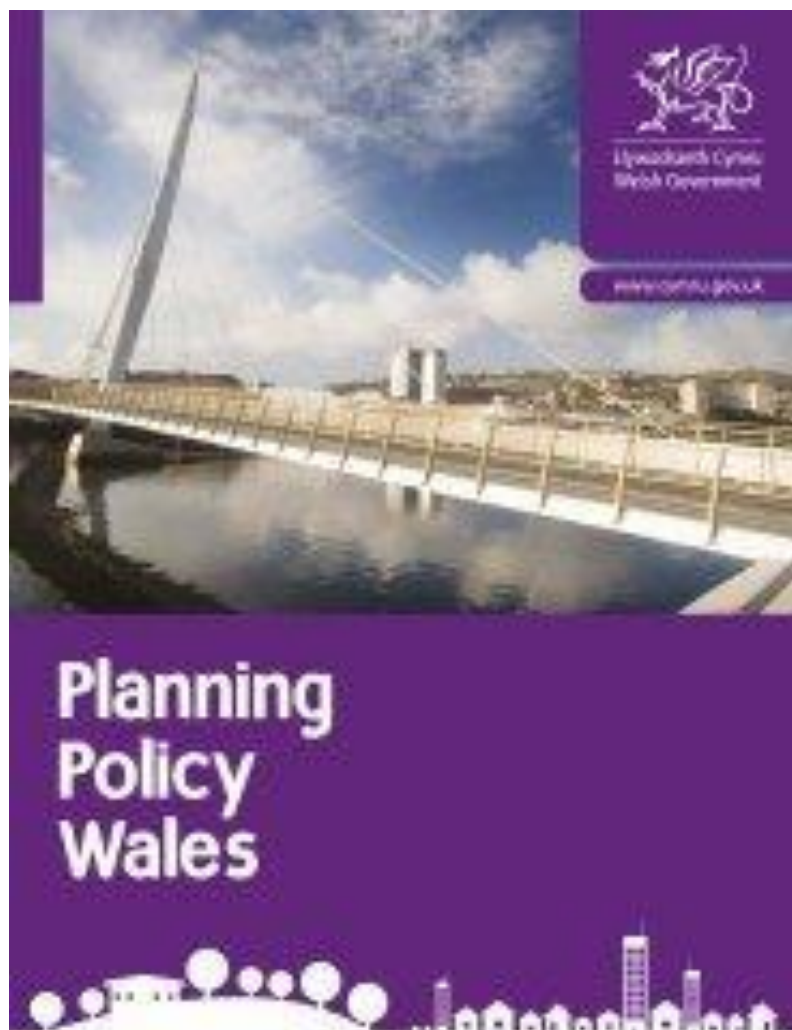
- No reference to language

Wales Spatial Plan: Pembrokeshire



18.34 Language is a special part of the culture of the area, for example the Welsh language in north Pembrokeshire and western Carmarthenshire. Maintaining a distinctive culture is dependent upon a dynamic, sustainable economy. [...]

18.35 Attracting newcomers to the Area, whether this is returning former residents or new migrants, is critical both to its economic future and to the establishment of sustainable communities. The challenge is to support newcomers to understand the communities they have become part of and how they can play their full part..."



Llywodraeth Cymru
Welsh Government

www.gov.wales

Planning Policy Wales



Edition 7
July 2012

Planning Policy Wales

- Chapter 4, Planning for **Sustainability**
- Relevant section – section 4.13
- Only 3 paragraphs of policy, amongst the most carefully drafted sections of the generally discursive PPW
- Requires some de-coding

Planning Policy Wales: Decoding 4.13



“4.13.1. The Welsh language is part of the social and cultural fabric of Wales. The Welsh Government is committed to ensuring that the Welsh language is supported and encouraged to flourish as a language of many communities all over Wales. [...]”

Planning Policy Wales: Decoding 4.13



The Welsh language is important. We want it to survive and become stronger in the parts of Wales where it is widely spoken, but we accept that there are some parts of Wales where Welsh is not widely spoken and we need to be realistic about that.

Planning Policy Wales: Decoding 4.13



“4.13.1. [...] The future well-being of the language across the whole of Wales will depend upon a wide range of factors, particularly education, demographic change, community activities and a sound economic base to maintain thriving sustainable communities. The land use planning system should also take account of the needs and interests of the Welsh language and in so doing can contribute to its well-being.”

Planning Policy Wales: Decoding 4.13



The future of the Welsh language turns heavily on whether the Welsh economy is strong enough to keep educated and skilled Welsh-speakers in Wales. There is a limit to what the planning system can do to promote the language in the face of these changes, but it should do what it can to support it.

Planning Policy Wales: Decoding 4.13



“4.13.2 [...] All local planning authorities should consider whether they have communities where the use of the Welsh language is part of the social fabric, and where this is so it is appropriate that this be taken into account in the formulation of land use policies.”

Planning Policy Wales: Decoding 4.13



It is for local authorities, not the Welsh Government, to decide how much of a priority to give to the Welsh language in their local planning policies, but generally speaking, the more widely it is spoken, the more the Welsh Government would expect it to be a priority. If the local authority does not have a significant Welsh-speaking community, it is not required to have planning policies which seek to promote the language.

Planning Policy Wales: Decoding 4.13



“4.13.3 It should be the aim of local planning authorities to provide for the broad distribution and phasing of housing development taking into account the ability of different areas and communities to accommodate the development without eroding the position of the Welsh language. Appropriate development plan policies about the broad scale, location and phasing of new development could assist in achieving this aim. Policies relating to affordable housing could also be of benefit. However, policies should not seek to introduce any element of discrimination between individuals on the basis of their linguistic ability, and should not seek to control housing occupancy on linguistic grounds.”

Planning Policy Wales: Decoding 4.13



Local plans should seek to allocate new homes in such a way as not to make the Welsh language weaker. This could mean being robust about requiring compliance with affordable housing policy in areas where Welsh is widely spoken, so as to make homes affordable to local people. However, it would not be in the public interest (and almost certainly unlawful) to seek to create housing zones solely for Welsh-speakers.



Technical Advice Note 20



Planning and the Welsh Language

October 2013

- Sets out how LPAs should deal with the Welsh language when plan-making or deciding applications
- Section 62(6) of PCPA 2004 requires LPAs to carry out appraisal into sustainability (“**SA**”) of LDP
- Purpose of SA report = assess economic, environmental **& social** effects of LDP policies
- Where LPA’s ‘Single integrated plan’ identifies protection and/or enhancement of Welsh as priority for area, this should be reflected in SA

Technical Advice Note 20

- If evidence shows detrimental impact on Welsh “*given the single integrated plan priority*, mitigation measures should be identified in the LPD or the strategy should be amended”
- If Welsh not a priority in single plan, LDP should refer to evidence (or lack thereof) for not containing policies related to Welsh
- Provision of “Welsh language infrastructure” may be included on a CIL charging schedule

- Section on decision-making out-of-date since 2015 Act obtained Royal Assent.
- Caution: para. 4.1.2:
 - *“4.1.2 In determining individual planning applications and appeals where the needs and interests of the Welsh language may be a material consideration decisions must, as with all other planning applications, be based on planning grounds only and be reasonable. Adopted development plan policies are planning grounds, including those which have taken the needs and interests of the Welsh language into account. Planning applications should not be subject to Welsh language impact assessment, as this would duplicate LDP site selection processes where LDP objectives indicated the need for such an assessment.”*

- Published June 2014; already out-of-date
- Welsh language a matter for plan-making
- Suggests 5-stage process when considering Welsh language as part of LDP process:
 - Establish baseline (drawing on Single Integrated Plan)
 - Analyse the data – set objectives for Welsh language
 - Assess LDP against SA objectives for Welsh (if any)
 - Identify any mitigation measures required
 - Monitoring LDP and keeping evidence up to date

Supplementary local guidance

- *'Planning and the Welsh Language'* (SPG, Ynys Môn/Anglesey)
- *'Planning and the Welsh Language'* (SPG, Gwynedd)
- *'Welsh Language and Culture'* (SPG, Conwy)
- *'Community and the Welsh Language'* (SPG, Ceredigion)

Other relevant guidance

- *‘Planning and the Welsh Language: The Way Ahead’* (Dec 2005)
- Completed by consortium of:
 - LPAs
 - Welsh Language Board (as it then was)
 - Home Builders Federation
 - Welsh Government
- Does not state planning policy view of *any* of these views

Other relevant guidance (2)

- Seeks to provide best practice guidance, including methodology for undertaking LIAs, *including for decision-taking* where policy requires demonstrable harm to be shown (see Appendix C)
- Produced because of “difficulty” applying relevant PPW policy and TAN 20
- Appx C methodology largely followed in LIA for Wylfa Newydd Project, subject to some changes agreed with WLB given scale of project
- Extent of LIA required matter of judgment

Conclusions

- Well-established that impact on Welsh language material consideration for plan-making
- 2015 Act confirms that material consideration for decision-making also
- Symbolic rather than substantive?
- Of most significance for plans that are silent or out-of-date re Welsh language

Conclusions (2)

- Statutory Welsh LIA process rejected
- Environmental v social sustainability
- Neighbourhood planning in England led to rebalancing
- Informal practice of LIA since *'The Way Ahead'* 2005 guidance
- Extent of LIA expected by LPAs depends on:
 - whether Welsh language policy in LDP;
 - complexity of project;
 - extent to which Welsh is spoken in LPA;

Conclusions (3)

- Degree of scrutiny by officers of LIAs, where requested, varies significantly
- Scant evidence that members scrutinize quality of LIAs outside Gwynedd and Ceredigion
- All of main policy and guidance (PPW, TAN 20, TAN 20 Practice Guidance) requires updating
- Sense: allow new law to be tested in applications & appeal decisions
- Extent of local discretion in tension with duty of Welsh Ministers under s. 78(1) of GOWA 2006 to adopt all-Wales strategy for Welsh language

glewis@landmarkchambers.co.uk