WELSH GOVERNMENT

Examination Hearing Statement

Swansea Local Development Plan

Hearing Session 14

Energy, flood risk, environmental protection, minerals and waste (Policies EU 1-4 and RP 1-14)

15th March 2018
1. Welcome and introduction

2. Procedural matters

3. Renewable and low carbon energy

Policy EU 1 – Renewable/low carbon energy developments

Update: The Welsh Government has been in discussions with the LPA in respect of proposed amendments to Policy EU1 that are required to address our Deposit representations/ national policy. The Welsh Government understands that these amendments will be submitted as part of the Councils hearing statements.

As of the date of writing this statement 23/02/18 the Welsh Government has had sight of, and provided comments on a revised EU1 and reasoned justification that address all of our comments in broad terms (a-c below). It will be for the LPA to decide what criteria will be appropriate that relate to specific RE technologies.

We are aware from the amended policy that the LPA will be proposing wind and solar allocations resulting from a revised REA. The Welsh government has not yet had sight of the revised REA. Discussions with the LPA will continue prior to the hearing session. When WG has analysed the REA, we will verbally state at the hearing session whether there are any outstanding issues of national policy.

a. Notwithstanding the changes proposed by NSA107, does the policy plan positively for renewable energy and seek to maximise its potential, as sought by national policy and guidance?

b. Is the policy sufficiently clear and effective? Should it differentiate between various scales of renewable energy schemes, as per the categories established in Table 12.2 of Planning Policy Wales (PPW) and the general principles set out at paras 2.11 to 2.14 of Technical Advice Note (TAN) 8 ‘Planning for Renewable Energy’?

c. Does the LDP sufficiently reflect the evidence? In particular, should areas with potential for wind or solar energy be identified on the Proposals Map and referred to within policy EU 1?

Policy EU 2 – Renewables/low carbon energy in new development

d. Is it reasonable to require schemes of 100 homes / 1,000sqm or more to be accompanied by a renewable or low-carbon feasibility assessment? Has this requirement been justified? Has this requirement been tested in the viability evidence?

This is for the authority to respond.

e. Should a fuller explanation of the required Energy Assessment be provided at para 2.13.13?
Yes. If an energy assessment is required as part of a planning application the reasoned justification should include the necessary information to provide sufficient clarity as to what constitutes an Energy Assessment.

**Policy EU 3 – District Heating and Cooling**

f. Has the financial impact and feasibility of providing or connecting to DHC infrastructure been tested, including in the viability evidence?

This is for the authority to respond.

PPW (paragraph 12.8.8) facilitates combined heat and power systems, where feasible. Notwithstanding this, the authority will need to clarify that this requirement, as set out in the policy, is deliverable, based on financial viability assessments, particularly in the SDA’s, including the Central Area and SDAs E and G.

g. If their indicative locations are already known, should the proposed District Heating and Cooling (DHC) networks be identified on the Proposals Map?

No. This level of detail is too precise at the plan level. A more appropriate place is the principle set out in the strategic sites policy, to be supplemented at a later date by the detail in development briefs.

4. Water quality

See previous statements for Section 4.

**Policy EU 4 – Public utilities and new development; Policy RP 3 – Water**

a. Having regard to the additional submitted evidence, in view of the on-going joint agency initiative to address water quality in the Burry Inlet and Loughor Estuary, do policies EU 4 and RP 3 (in addition to other policies including SD 2) provide a satisfactory basis on which to assess proposals within the affected wastewater catchment areas?

b. Should policy RP 3 set out clearer expectations for surface water removal in the catchment areas to which the Memorandum of Understanding applies?

c. In advance of the review of Dŵr Cymru Welsh Water’s Asset Management Plan 7, does policy RP 3 and the supporting text provide sufficient assurance that any necessary capacity upgrades to treatment works would be undertaken in advance of major developments being brought forward, particularly within the Llanant Wastewater Treatment Works catchment?

d. Should policy RP 3 refer to constraints such as Source Protection Zones?

e. Is the approach to sustainable drainage systems (SUDS) at paragraphs 2.14.28 to 2.14.31 consistent with national policy/guidance and current legislation?
5. Flood risk (policy RP 4)

a. As per Technical Advice Note (TAN) 15 – Development and Flood Risk and the supporting Development Advice Maps, have allocated sites falling within Zone C been adequately justified and the consequences of a flood event robustly assessed?

As stated in our representation for hearing session 1, the Council must ensure that in order to comply with national policy, no highly vulnerable development (including access and egress issues) is allocated in zone C2. The Council’s additional paper on flood risk identifies there are sites in C2; they should also be deleted from the plan.

- H1.14 – Land adjacent to Heol Las Birchgrove
- H1.25 – Land to south of Highfield / Loughor Road

There are also issues regarding proposals to accommodate Travelling Show People on a site at Railway Terrace, Gorseinon which appears subject to C2 flood risk in its entirety, with no prospect of the DAM maps changing in the near future. The proposal is contrary to TAN15. This raises questions on the appropriateness of the site’s inclusion in the plan? What is the Council’s strategy for finding a suitable alternative site to deal with the immediate need identified, if this proposal were to be considered inappropriate?

In respect of sites allocated in C1, while the principle of development may be appropriate the authority need to demonstrate these sites are deliverable, in line with any mitigation measures required by TAN 15.

b. Paragraph 10.5 of TAN 15 indicates that where site allocations fall within flood zones, the Proposals Map should identify the extent of Zone C. However, given that flood zones are regularly reviewed, is the inclusion of the C1 and C2 flood zones on the Constraints Map a pragmatic and acceptable alternative?

Yes. As discussed in Hearing Session 2, it was agreed that the authority would show the flood zones on the constraints map so they could be update when required.

c. Having regard to paragraph 10.7 of TAN 15, does the LDP and Appendix 3 adequately articulate the policy requirements pertaining to each affected site allocation?

This is a matter for the LPA.

d. As indicated in paragraph 2.14.35, should areas at risk from surface water flooding be shown on the Constraints Map?

This is a matter for the LPA.

6. Human and environmental health
Policy RP 1 – Safeguarding public health and natural resources; Policy RP 6 – Land instability

a. Paragraph 2.14.1 refers to assessing risks where proposals are ‘near to’ hazardous installations. Should this be quantified?

Clarity on what constitutes “near to” would be advantageous to assist proposals in addressing this matter.

b. Should hazardous installations, major unstable land areas and landfill sites be identified on the Constraints Map, as indicated in paragraphs 2.14.6 and 2.14.44? Would proposed changes via NSA109 address this?

As these matters are referred to in the reasoned justification as being identified on the Constraints Map they should be shown spatially.

Policy RP 2 – Air, noise or light pollution

c. Has the plan as a whole been informed by proportionate evidence of the impacts of existing and forecast air pollution on human health and the environment, particularly in areas with existing air quality issues?

This is for the LPA to answer.

d. The Swansea Air Quality Action Plan Progress Report 2016 [RD23] notes that the annual mean objective for nitrogen dioxide of 40 μg/m3 continues to be exceeded at several locations within the designated Air Quality Management Area (AQMA). In combination with other policies, including policy RP 1, does policy RP 2 provide sufficient basis for tackling issues of poor air quality within the designated AQMA and elsewhere?

This is for the LPA to answer.

e. Paragraph 2.14.11 implies a stricter approach to assessing proposals in AQMAs or potential AQMAs. Should this be incorporated within the policy?

The reasoned justification currently reads as policy. The policy should be amended if this is the intention of the LPA.

f. Does the policy as a whole provide a clear and effective basis on which to assess the effects of (or on) the separate considerations of:

This is for the LPA to answer.

i. Noise-generating uses (particularly in or near to Quiet Areas);

ii. Noise-sensitive uses (particularly in or near to Noise Action Planning Priority Areas);

iii. Light pollution
7. Waste

Policy RP 7 – Sustainable waste management

a. The amount of land required for waste management infrastructure over the plan period is estimated at around 35 ha.

i. Does this estimate remain up-to-date?

Advances in technology and the introduction of new legislation, policies and practices make it difficult to ascribe a value to an ‘average facility’ and the general approach in the Collections, Infrastructure and Markets (CIM) Sector Plan is to move away from land-take based calculations to express the need for waste management facilities based on future capacity in tonnes.

The published south west Wales region Waste Planning Monitoring Report (WPMR, 2016) identifies that the regions waste arisings are broadly in line with targets set out in the national strategy Towards Zero Waste (TZW). Whilst the WPMR does not identify demand for new residual waste treatment facilities in Swansea at this time, any potential future demand should be considered alongside upcoming WPMRs.

The requirement for 35 hectares of land for waste management facilities as identified in the Regional Waste Plan (RWP) 1st Review can continue to be used to inform local authority thinking, if appropriate, when considered against past take-up rates for waste management facilities. The land take figure can provide a valuable spatial basis for implementing the broad principles of the CIM Sector Plan and ‘Areas of Search’ exercise undertaken as part of the development of the RWP to assess an appropriate level of future provision and its broad location.

ii. The 2017 Review of Swansea LDP Growth Strategy and Evidence Base [EB011] identifies a positive requirement for industrial land of 8 hectares. Has sufficient account been taken of the additional need for waste infrastructure as part of this assessment?

This is for the LPA to answer.

b. Paragraph 2.14.48 of the LDP refers to the baling plant site at Swansea Enterprise Park being a Preferred Area for a waste management facility. Should this be shown on the Proposals Map as proposed via NSA121? Have any other Preferred Areas been omitted?

Yes. The baling plant site at Swansea Enterprise Park is a preferred area for waste management facilities and should be shown on the Proposals Map (NSA 121) along with the other Preferred Area on the former tip site at Felindre.

c. Paragraph 2.14.49 of the LDP refers to the Felindre site as having potential for a Combined Heat and Power Facility. Should this be stated within the policy itself?
Yes.

Policy RP 8 – Landfill

d. Are the criteria for assessing new proposals for landfill sites consistent with Technical Advice Note 21 – Waste?

This is for the LPA to answer.

e. As there appears to be adequate landfill capacity during the plan period, is the policy necessary?

This is unclear. The WPMR (2016) identifies the predicted remaining landfill capacity for south west Wales at 15 years (paragraph 8.4), which is well above the triggers set out in TAN 21. The Council should explain the rationale for Policy RP8 in line with the requirements of TAN 21 and findings in the WPMR.

Policy RP 10 – Disposal of inert waste on agricultural land

f. Should the requirement for a Land Classification Survey in paragraph 2.14.61 be included in the policy?

This is for the LPA to answer.

8. Minerals

Policy RP 11 – Minerals development

a. Are criteria (i) and (ii) reasonable, and are they consistent with national policy?

Yes, we have no objection to either criterion.

b. PPW paragraph 14.3.2 indicates that minerals development may be acceptable in Areas of Outstanding Natural Beauty (AONBs) in exceptional circumstances. Is the prohibition on mineral developments in the Gower AONB justified by evidence?

National policy states that minerals development should not take place in AONBs, save in exceptional circumstances (PPW, 14.3.2). PPW sets out a list of tests to assess whether a proposal is appropriate. The authority should demonstrate the evidence it has to prohibit mineral development in the Gower AONB, which at present is contrary to national policy.
c. The presumption against unconventional oil and gas operations (including coal bed methane and exploratory boreholes) is not consistent with current national policy. Given that Petroleum Exploration and Development Licences have been granted for two areas (214 and 215), what evidence is there of an absence of workable resources within the County to justify this element of the policy?

Policy RP 11 explicitly states the Council will not support the development of land based unconventional oil or gas exploration. This does not comply with current national policy (PPW, edition 9) which states that “Development plans should indicate those areas where oil and gas operations are likely to be acceptable in principle subject to development management criteria being met in a particular case, as well as those areas where operations are unlikely to be acceptable.” (PPW, paragraph 14.7.13). Policy RP 11 should therefore enable the extraction of Coal Bed Methane, to ensure compliance with national policy and the position in the adjoining Neath Port Talbot LDP (policy M4, paragraph 5.3.79).

In February 2015, the Welsh Government issued a Notification Direction (The Town and Country Planning (Notification) (Unconventional Oil and Gas) (Wales) Direction 2015) which required all development proposals for unconventional oil and gas proposals for coalbed methane, shale gas and underground coal gasification to be referred to Welsh Ministers for consideration should the planning authority be minded to approve the application.

PPW Edition 10 was issued for public consultation on 12 February 2018 until 18 May 2018. Planning policy relating to coal and onshore oil and gas is proposed to be amended to restrict extraction and states that planning permission should not be granted. PPW Edition 10 is not currently national policy and could be subject to change as a result of the comments received during the consultation period. However, if PPW Edition 10 is published within the examination period, any potential change in policy should be reflected in the DLP, if considered appropriate to be adopted.

d. As Health Impact Assessments are required only for coal extraction should paragraph 2.14.73 be amended to reflect this?

National policy requires a Health Impact Assessment to accompany any application for opencast coal working (PPW, paragraph 14.8.5). For clarity, we would support the amendment to paragraph 2.14.73 so that national policy is appropriately reflected. This remains the policy stance in PPW edition 10.

Policy RP 12 – Mineral safeguarding

e. Paragraph 11.7 of the Minerals Topic Paper [EB035] concludes that the LDP allocations, whilst sterilising some 288 hectares of the safeguarded minerals resource, outweigh the need to protect that resource. There is little evidence that prior extraction on these sites is possible within the expected timescales. Consequently should the identified mineral safeguarding areas be reduced to exclude allocated sites and Appendix 3 amended accordingly?
National policy states that the potential for extraction of mineral resources prior to undertaking other forms of development must be considered (PPW, paragraph 14.2.1). The LPA need to demonstrate how prior extraction as required under criterion 1 and 2 (Policy RP12) has been considered. If it is not feasible then it is considered appropriate to exclude the allocated sites from minerals safeguarding areas.

**Policy RP 13 – Surface coal operations**

f. Is the general restriction on surface coal operations within 500 metres of a settlement consistent with Minerals Technical Advice Note 2 – Coal? Would the changes proposed via NSA110 address this?

Yes. National policy in MTAN 2 states that “In defining these areas where coal working will not be acceptable, MPAs should take into account that coal working will generally not be acceptable within 500m of settlements, or within International and National Designations of environmental and cultural importance.” (paragraph 29).

We are content that NSA 110 would provide ‘exceptional circumstances’ to be considered in line with national policy, which is cross referenced in the reasoned justification (paragraph 2.14.80).

The authority should clarify the extent of the coal safeguarding areas on the proposals map. National policy requires the LDP to safeguard primary and secondary coal resources on the proposals map, excluding international and national designations of environmental and cultural importance and settlements. (MTAN 2, paragraph 37). It would appear that the authority has only safeguarded coal resources within the areas where coal working may be acceptable (therefore not within 500m of settlements). The areas where surface coal operations would not be acceptable is under Policy RP13, which is separate and should not be confused with, or amend safeguarding areas under Policy RP12, Safeguarding Minerals.

Notwithstanding this, PPW edition 10 states “The safeguarding of primary coal resources should be undertaken as a precautionary measure in development plans for the sole purpose of preserving options for the long term energy security of the UK. Planning authorities should not need to indicate areas where coal operations would not be acceptable.” (paragraph 4.163). As stated in response to question 8C, whilst it would be premature to adopt this policy position, if it were to become national policy during the examination period this position should be reflected in the plan, if considered to be adopted.

**Policy RP 14 – Mineral buffer zones**

g. Has the mineral buffer zone been adjusted to exclude existing settlements?

The mineral buffer zone around the single permitted quarry at Barland Quarry, Bishopston does not appear to exclude the neighbouring settlements of Kittle and Bishopston. National policy states “Within the buffer zone there should be no new mineral extraction or new sensitive development, except where the site of the new development in relation to the mineral operation would be located within or on the far
side of an existing built up area which already encroaches into the buffer zone”. (14.4.1). The application of buffer zones within settlement boundaries creates contradictory policy statements within the plan, as there is a presumption in favour of development within settlement boundaries (policy PS1) and the application of buffer zones within settlement boundaries sets a presumption against development. This needs to be rectified through alignment of the mineral buffer zone and the settlement boundary, i.e. land within the settlement boundary should be excluded from the buffer zone.

The criterion numbering in Policy RP14 appears unnecessary and confusing and the authority should consider its merits. We also note that the reference on the proposals map is to ‘RP15’ which the authority should amend to RP14.

9. Any other matters

a. Would criterion (v) of policy EU 5 apply to all forms of telecoms infrastructure, regardless of scale? If so, is this justified?

Criteria v would apply to all forms of telecoms infrastructure. The LPA need to consider if this is appropriate.

b. Does the LDP include an effective framework for monitoring the implementation of policies (including waste arisings and the use of minerals), with clear triggers for an expedited plan revision, if necessary?

The Welsh Government has committed to work with the authority to discuss the monitoring framework.