

Wales Planning Conference 2011

Workshop Report:

The Localism Bill in Wales: The legal perspective

Workshop Facilitators: Graham Walters and Dr Mair Coombes Davies, Civitas Law

The Localism Bill was introduced to Parliament on the 13th December 2010 and on the 18th May 2011 the Bill was approved and completed its progress through the House of Commons. It then proceeded to the House of Lords. The Localism Bill is expected to be brought into law by 2011/12, a more precise time frame is not yet known, due to on-going discussions and subsequent amendments. The intention of the bill is to devolve power from central government. Power will then be held by individuals, communities and councils. Whether this will be realised in practice is not yet known and is still a matter for debate.

The seminar 'The Localism Bill in Wales: the legal perspective' led by Civitas Law aimed to clarify the territorial extent of the Bill and in particular what elements in particular apply to Wales. The planning context was first outlined by Graham Walters, Barrister and Head of the Public, Regulatory Planning group, followed by the latest developments and legal implications of the Localism Bill and the Community Infrastructure Levy (CIL) in Wales presented by Dr Mair Coombes Davies, Head of Civitas Dispute Resolution Division.

At the outset of the seminar the divergence in law and policy between England and Wales was highlighted. The territorial extent of the Bill is considered unclear; there are different implementation methods and commencement dates between the two countries and different policy instruments in the form of National Guidance and Technical Advice Notes. What is required is integration and acceptance of the Bill by those who are required to abide by it, and clarification, as devolution can cause difficulty in consistency between countries as headline court cases that are decided in England may not apply to Wales.

The changes in legislative competence of The National Assembly for Wales was then considered, as pre-referendum there was no power to draft primary legislation, unless specific legislative competence was granted, as introduced in the Draft Bill. This allowed the Assembly to pass Assembly Measures in relation to certain aspects of development management in Wales, the development plan system in Wales and the Wales Spatial Plan. The position has now changed due to the referendum in Wales and is guided by schedule 7 of the Government of Wales Act 2006, which gives general powers in relation to Town and Country Planning, including listed buildings and conservation areas; caravan sites; mineral workings; urban developments; new towns and protection of visual amenity.

Wales can expect a reduction in uncertainty and delays in the application process. What is required for improvement is, for planning decisions to be made at an appropriate level and for the local planning authorities to be more responsive. This can be achieved by an increased use of shared resources and expertise through better cross-boundary working. Those parts concerned with planning affecting Wales are chapter 2, clauses 99-100 Community Infrastructure Levy, Chapter 6 clauses 112-114, 117-123 Nationally Significant Infrastructure Projects and Chapter 7 clauses 124-125 Other Planning Matters.

The latest developments on the Community Infrastructure Levy to emerge from the Localism Bill's progress through parliament is that a charging authority will have greater control over setting their charging levels as limits are placed on the binding nature of independent examiners' recommendations on the Community Infrastructure Levy. The effect of this clause is to change the relationship between the charging authority and the examiner. The charging authority is no longer required to submit a declaration to the examiner - the examiner must now consider if the charging authority has complied with the requirements within part 11 of the 2008 Planning Act and the Community Infrastructure Levy Regulations 2010. If a failure to comply with the drafting requirements are identified the charging authority can only approve the charging schedule having regard to the examiners recommendations and reasons. Clause 100 clarifies the position that a Community Infrastructure Levy may be spent on the on-going costs of providing infrastructure.

One of the latest and most unexpected developments under chapter 7 of the Bill('Planning Application Material Considerations') is the introduction of clause 124 'Applications for Planning Permission: local finance considerations' which amends section 70(2) of the Town and Country Planning Act 1990 which set out the matters to which regard has to be had when determining a planning application, namely, the development plan for the area and any other material considerations. The radical clause 124(2)(B), however, only applies to England It adds a new material consideration to which a local authority is to have regard in determining applications for planning permission - 'any local finance considerations, as far as material to the application'. It is argued by both the RTPI and the RIBA President that this clause is against a fundamental principle of planning that planning decisions should be distanced from financial gain.

The practical, legal implications of the planning application considerations identified were that they may lead to an appeal first to The Planning Inspectorate and then possibly to the courts by way of judicial review. Similarly, the practical, legal implications of the Community Infrastructure Levy are that appeals may also ultimately lead to judicial review by the courts. An appeal can be made against all aspects of the Community Infrastructure Levy from the levy collection authority's calculation of the amount due; through to any enforcement actions it may take, with two exceptions (where an appeal system does not exist and exceptional circumstances relief).

Although the Department for Communities and Local Government has published a simplified guide to The Localism Bill, designed for people who have conflicting ideas on the provisions of the bill, further clarification is required, at a level which can be understood easily by all sectors concerned and affected by the Bill and its provisions. At present the RTPI is keeping all members informed on the bill's progress in England with RTPI Cymru providing supplementary guidance on how the Localism Bill will affect Wales.

This report was produced by Elen Jenkins, a student at Cardiff University

This paper is a report of proceedings of the workshop and does not necessarily reflect the views of the author, their employer or that of any individual attending the workshop, including the facilitators, or the RTPI.