

January 2018

THE LITTLE THINGS THAT 'TICKLE' US

A 'Tickling Impact Assessment'; the 'average school leaver' and.....Welsh planning law.

Just over a year ago, the email headline **'Welsh planning law in a bid to create clearer, simpler and more modern law'** arrived. It passed the test – I was interested. More significantly, who or what had awakened this old, well-versed moan/groan? Maybe a developer taking a tactical spin, or a disgruntled Local Planning Authority? No, not at all. On a much more serious level. This was the Law Commission's (LC)'s conclusion that planning law in Wales was 'unnecessarily complicated and, in places, difficult to understand'.

Did we need a consultation paper to confirm this, I wondered? Unfortunately, I'm sure that the majority of my fellow chartered planners have all yelled 'Get me out of here' from the vast complexities of the planning jungle world, at some stage. The thought tickled me.

The work of the LC follows their commission by the Welsh Government to examine the planning system in Wales. Last month (November 2017) the LC launched their consultation paper for 'Changes to the Planning System in Wales', which offers a new Planning Code by 2020 in Wales (see <https://www.lawcom.gov.uk/project/planning-law-in-wales/#planning-law-in-wales-consultation>).

Inevitably, skimming through sections of this very important and lengthy document, I succumbed. Does the length of a document make it more serious, I asked? A 'Tickling Impact Assessment' (TIA, to be modern!) took place. Naturally, we would like to share this TIA experience with our friends and clients. Our TIA considered the following debate reference (included in the LC paper):

Baroness Morgan of Ely observed: *'The laws of England and Wales—already vast—must now absorb the increasing divergence between laws that apply only to Wales and those that apply only to England. This is highly complex, so how can we be sure that the citizens will understand the law or even that solicitors, barristers and judges will apply the correct law? This is not a debating point: these are real practical risks and they are increasing'*.

The reports states that Lord Morris of Aberavon added: *'The serious issue is the consolidation of legislation already passed by the Welsh Assembly. Over the years that the Assembly has been in existence, Act after Act has been passed, particularly during the most recent period. Any practitioner, be they in Wales or in England, who has to advise a client in Wales on a matter arising in Wales concerning property, employment and so on, has to turn up a whole host of literature in order to give proper and responsible advice, otherwise he will be accused of being negligent. I hope that before it is too late the Welsh Assembly will use its powers and resources to consolidate the existing legislation and thus make it easier for practitioners and ordinary litigants'*.



The LC report then mentions *'More recently, we received a query from an architect in North Wales, who had been seeking, without success, to find out from the House of Commons Library and the Welsh Government website which sections of the Housing and Planning Act 2016 applied in Wales. Not entirely surprisingly, she had received advice that confused the concepts of "application" and "extent", or possibly she had received correct advice, but had misunderstood it; either way, she was still no further forward. She subsequently commented: 'In most cases, the name of each Part of the Housing and Planning Act 2016 states clearly "in England". In noting the limited exceptions, she concludes 'It has always seemed to me that if law is written in such a way that it can't be understood by the average school-leaver, then it is not fit for purpose, and rather undemocratic. I don't mean that it should be written by school leavers but that it should be understandable by them, with the aid of a crib sheet of definitions. It may be imagined that others have had similar, frustrating experiences'.*

On a related point. One of our issues here in RML which we think should be reviewed covers the duplication process between obtaining planning permission on sites with protected species and the separate consent process for protected species licences.

We would be pleased to hear the outcome of your 'TIA' experiences and the virtues of the 'average school leaver' given the opportunity to re-draft the law...as the saying goes 'I rest my case'.

If you have any particular areas of concerns or suggestions to make in response to the LC document we would be pleased to submit them on your behalf, then please contact me.

Blwyddyn Newydd Dda/Happy New Year

Kind regards

Shân

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P.S The Royal Town Planning Institute (RTPI) Cymru/Wales is holding a free event, also open to non-planners, on WEDNESDAY, 14 FEBRUARY 2018 at Cais (Above Porters) Station Road, Colwyn Bay on 'A New Planning Code for Wales – the Next Step'. Speakers from the Law will 'present an overview of the major proposals, and representatives from different sectors will make initial comments, to encourage responses. Numbers are limited, and registration is required to secure a place. Please contact georgina.roberts@rtpi.org.uk or telephone 029 2049 8215 to make a booking.

I EXPECT LOWEST PRICE AND HIGHEST QUALITY

'A Cabinet Office spokesperson says it expects highly competitive bids and the highest standards from its potential suppliers.'

Quoted by the BBC on 9th January 2018

Well this comment from the Cabinet office just 'did it for me' at the end of a trying week in January 2018 when the demise of Carillion was all of the news. No wonder we are getting a poor service from the government when their contractors are chosen primarily on price.

Of course initial price is easily measured but cost is a different matter and so is quality.

I learned my project management when we earned scale fees based on Model forms of contract which Thatcher the milk snatcher got rid of – remember those days when price was not an issue at the design stage only a reputation for providing a good service and an enlightened approach.

I know that to put the clock back is not possible or even sensible but combining price and quality is fraught with difficulties and passing-off risk is too, especially if they cannot be identified. Engineering out risks was what design teams used to do before expecting someone else to price the work. This is the inherent problem with design and build and yet we all recognise that having contractor involvement at the design stage can be extremely beneficial

Martin Davis knows the industry well and considers the market to be dysfunctional and in dire need of reform. (The Times, 22nd January 2018).

We need a new approach but for a start the public sector could think how they can focus on quality and learn from their experience and rely on this in making judgements. Unfortunately that means when things do go wrong the public servants can be held responsible if there are no mitigating circumstances. But hey, in civil engineering there are often unknowns that do cause problems, and this is where a realistic risk assessment can remove many potential difficulties. Producing a realistic risk assessment is where experience is invaluable, but human nature being what it is the likelihood is that you will not get the benefit of past experience if you have ground down your design team down to a highly 'competitive price'. Team building is important even if you are in a contractual situation it should not be a confrontational one.

The engineering professions problem is that so many engineers are prepared to undercut another one on price which devalues all engineering. Thankfully not all work that is of interest lies in the public sector.

Kind regards

Ivor

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LOOKING FORWARD TO 2018

We are moving on.

Our world changed quite a bit in 2017. For a start we became much, much busier. We also appointed three very experienced professionals, Shan a Senior Town Planner, Jamie a Principal Ecologist and Sion a Senior Environmental Manager. These appointments are part of our reaction to the increasing complexity involved in gaining approvals for projects promoted by either private or public sector clients.

At present I can look forward to a 2018 that is already filled with confirmed work and while I am writing this, in the final week of January, we are seeing our overall work load for the year ahead increasing. . So we are having to grasp and grapple with the next most welcome problem which is how to meet the likelihood of even more commissions being awarded in say the next 6 months. If past experience is worth thinking about then more commissions are very likely to be won by us in 2018. After all the world is still turning despite Brexit and many other disturbing influences such as a very large company disappearing.

Jamie's experience in dealing with environmental issues is proving to be invaluable; Shan is cutting through oblique and obtuse planning procedures; and Sion is keeping our constructor friends free of any environmental disasters.

What is clear is that in the UK we need more effort being put into improving infrastructure and that this will then lead to increased activity in civil engineering and construction in general. The announcement about the government's new Industrial Strategy is a start. You will have seen the

earlier newsletters about a tsunami of work coming at us and the importance of connectivity in tackling 'patchy prosperity.' Whilst I have always been an optimist I think that I am justified in looking ahead in a positive light and it has been reported that as a country we are more upbeat than we were one year ago. But you know business news varies from one day to the next from being positive to negative. I often wish a plague on financial journalists.

I hope that for everyone's sake there now is a recognition that productivity in the UK must improve and infrastructure is a necessary prerequisite for that to happen. I have written about the British disease of poor connectivity that can only be addressed by better transport and telecommunication systems.

I would like to see our staff numbers at RML grow on two further counts. Ivor has mentioned in a recent newsletter how the amount of information that we have to manage on even the most straightforward of projects has grown exponentially in recent years. In order to cope with this we must increase the depths of our technical teams so that our management remains 'strong and stable' and capable of handling this increasing amount of information. Secondly but no less important I will be very happy if we can recruit people who we can train-up as future team leaders.

We are keeping up too. David keeps up-grading our IT system. He assembles all of our desktops to meet our specific needs. Apart from Ivor and me everyone else now uses at least two screens. For some time now our machines have been water-cooled for quieter running and to extend their working lives, not only that, they are illuminated on the inside and look pretty! Ivor has been provided with an extra-large keyboard with yellow keys and black figuring because his eyesight is getting worse.

Kind regards

Idris

Chief ranter and problem solver

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