

Local authority legal powers to promote sustainable energy

A report funded by the
Pilkington Energy Efficiency Trust
By Impetus Consulting Limited



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1.0 EXECUTIVE SUMMARY

This project aimed to uncover examples of local authorities using the power of well-being to support sustainable energy activities, and to develop case studies and guidance for local authority energy officers, based on the experience of those already using the power.

An initial on-line survey of energy officers demonstrated that the level of use of the power was very low, as was awareness of the power itself and its potential usefulness for sustainable energy initiatives.

Desk research and interviews with officers in active authorities resulted in five case studies:

- The development of an energy services company by Fenland District Council;
- The provision of grants to support renewable energy investment by Braintree District Council;
- Participation in the UK Emissions Trading Scheme by Kirklees Metropolitan Borough Council;
- The development of an energy services company offering renewable energy supply by Nottinghamshire County Council, and
- The incorporation of renewable energy measures into a revolving loan scheme by the London Borough of Lewisham.

These case studies, together with a brief introduction to the power of well-being and the power to trade, will be disseminated to local authority energy officers.

The authorities that provided our case studies have one thing in common: a history of commitment to and activity in the sustainable energy area. There are many more than five local authorities that have a commitment to sustainable energy, and we hope that the briefing and case studies will be of use to officers in these authorities. It is likely however that a lack of commitment to sustainable energy in other authorities will remain a barrier to action.

There are broader issues relating to perceptions of the role of a local authority – either as a service provider or as a community leader – that will impact on the overall levels of use of the well-being power. Our case study authorities generally viewed themselves as more risk taking and innovative than local authorities in general and in at least one case had for many years supported the argument that the local authority should be a community leader rather than simply a service provider. Any more detailed investigation of this issue was outside the scope of the present project.

The inability of officers to make a business case for a new initiative that is likely to gain senior approval, remains a barrier to progress in many authorities. Innovative projects using relatively novel mechanisms, such as well-being and the power to trade, are likely to require more developed skills in this area than more straightforward activities.

The case studies from this work will help to demonstrate to officers the community benefits of sustainable energy that they can use to support their argument for use of the power of well-being.

However, there remains a need for skills in presenting a business case for activity, so that local authority legal and financial officers are convinced that the activity will meet best value requirements. This project cannot fill the skills gap that exists here; the information needed by officers is both too local, in that it depends on local circumstances and on the local approach to delivering best value, and too general, in that it is probably an issue throughout local authorities that are trying to move to a community leadership role.

2.0 INTRODUCTION

2.1 Background

The Local Government Act 2000 introduced a new power for local authorities to promote the 'environmental, economic and social well-being' of their communities. This 'well-being' power forms part of the government's wider approach to the modernisation of local government, and could be a significant resource for authorities to use in order to improve services. It is intended to encourage councils to look beyond their immediate service delivery responsibilities to the wider well-being of their areas.

As part of the follow-up to the World Summit on Sustainable Development in 2002, UK government ministers pointed to this power being a radical and, as yet, untapped means for local government to promote sustainable development. In December 2003, the Local Government Association published a report, 'Powering up: making the most of the power of well-being', which describes how local authorities in England can make use of this power.

Local authorities have historically been hampered by a lack of legal powers when trying to promote energy efficiency but although the document does stress that sustainable energy projects should be made easier by the power of well-being, little guidance and no case studies were provided on how this might be pursued. The LGA report states that:

"Information about the well-being power and its potential needs to be disseminated to all parts of the authority. Although the power has been available for councils to use since 2000, the perception remains that not enough staff and councillors know and feel confident about the potential of the new power."

2.2 Aims and objectives

This project was initiated to investigate how local authorities have used the well-being power to encourage the development of new energy efficiency initiatives and to understand how any legal or financial barriers encountered had been overcome.

The original project aim was to produce a toolkit that would help local authority energy and legal officers use the power in the future.

2.3 Changes to the project scope

The project deliverables changed throughout the lifetime of this project for a number of reasons:

- The on-line survey revealed that far fewer local authorities than anticipated had used the power of well-being to promote sustainable energy;
- The proportion of local authorities that were aware of the power and of its scope in relation to sustainable energy was much lower than expected, and
- In the follow up to the on-line survey it became evident that those that had successfully used the power of well-being were already proactive in the sustainable energy field and had therefore not encountered many legal or financial barriers.

For these reasons it became evident that the number of case studies originally proposed was unrealistic and that producing a toolkit would be problematic.

In communication with the steering group and the Pilkington Energy Efficiency Trust it was decided that the number of case study local authorities would be reduced and that these would feature local authorities that had successfully used the power of well-being. It was decided that the case studies would be useful to other local authorities in demonstrating the range of schemes facilitated by the power and highlighting any pertinent lessons.

As a toolkit was no longer the best vehicle for the dissemination of this project a workshop was designed that would enable the results of the project to be shared and help to increase the awareness of the power of well-being.

The project has taken far longer than originally anticipated. This has largely resulted from difficulties in securing time for meetings with, and feedback from, the case study authorities. This doesn't reflect a lack of willingness to help on the part of the officers involved, it seems to have been more a combination of a heavy workload for them and perhaps doubts as to whether they were actually doing anything innovative enough to warrant investigation.

2.4 Structure of the report

The next section of the report sets out the method used to uncover information during the project. Section 4 details the results, including a series of case studies on the use of the well-being power. The report concludes with a discussion of the main findings.

3.0 METHODOLOGY

3.1 Literature/desk review

We undertook an initial review of the literature on well being and related legal powers. Feedback from the steering group and barrister Damien Welfare, contributed to this research. As the project progressed we periodically returned to the review to ensure that any additional publications were incorporated.

3.2 Setting up a steering group

The first phase of the project involved forming a small steering group to support the early stages of the project's development. Potential members were phoned to gauge their interest and this was followed up with an introductory letter (a copy can be found in appendix 1). The steering group consisted of:

- Tyrone Holmes, Defra
- Sarah Hendel-Blackford, Local Government Association
- Catriona Reeby, Energy Saving Trust
- Allan Jones, London Climate Change Agency
- Don Lack, Leicester City Council.

Communication with the steering group was via email and the group were asked to comment at a number of key stages of the project:

- On the proposed methodology, particularly the on-line survey design;
- The criteria for the selection of case study local authorities, and
- Finalising the choice of case study local authorities.

All the steering group's comments were incorporated into the project structure and suggestions were followed up.

During the project period, three of the five steering group members left their posts and due to the changing structure of the project and the expanded time frame that was encountered, the steering group ceased to operate. This was not perceived to be a problem as the elements most requiring input had occurred by this point. In addition, because the outputs of the project also changed, the opportunity for steering group impact became limited.

3.3 On-line survey

3.3.1 Developing the on-line survey

Phase two involved developing an on-line survey. This was done using a web-based software programme called Survey Monkey (www.surveymonkey.com). The on-line format was chosen to make it very easy for users to complete and return, encouraging a higher response rate than a postal questionnaire, and incurring fewer expenses.

Content of the on-line survey

The purpose of the on-line survey was to understand whether local authority officers were using the power of well-being to promote sustainable energy and, if they were, to find out what types of schemes it had enabled. The survey was designed to elicit brief responses that could be used to identify potential case study authorities and highlight questions for further discussion. Recipients were asked about their:

- Awareness of power of well-being
- Use of the power of well-being
- Power of well-being and partnership activity
- Barriers to using the power of well-being
- Other powers to promote energy efficiency
- Contact details for follow-up activities

The full on-line survey is in appendix 2.

Email recipients

The survey was distributed to 384 local authority members of the HECA network in England and 25 in Wales via the HECA Secretariat and the HECA Regional Chairs. An email was sent introducing the project and including a weblink to the on-line survey, see figure 1. A follow-up email was sent to maximise the number of responses received.

Figure 1: Email introducing on-line survey

Survey on the legal powers to promote sustainable energy schemes

Impetus Consulting is currently undertaking a project funded by the Pilkington Energy Efficiency Trust on the legal powers available to promote sustainable energy schemes.

Please spare 5 minutes to complete a survey to help compile an overview of current activity in local authorities and to contribute to the development of a toolkit, which will be made available to local authority officers. This toolkit will help officers tackle potential barriers to using legal powers and will include good practice case studies to demonstrate different approaches.

The survey can be downloaded here:

<http://www.surveymonkey.com/s.asp?u=60427886753>

If you have questions, please contact Bryony Mathie at Impetus Consulting on 020 7924 9988 or email Bryony@impetusconsult.co.uk.

Analysing responses

The on-line service offered by Survey Monkey provided tools to collate and analyse the responses to the on-line survey. See section 4.2 for a breakdown of this analysis.

3.4 Selecting case study local authorities

3.4.1 Selection criteria

We originally aimed to identify from the on-line survey:

- 5-10 local authorities that are making use of the power of well-being to promote energy efficiency, and
- 5-10 local authorities that are facing substantial legal barriers to implementing the power to promote energy efficiency.

A number of factors were considered when identifying local authorities with the potential to provide case study material:

- Type of project the power of well-being had enabled;
- What/if barriers had been overcome and how, and
- Geographical location/spread.

Desk research and telephone conversations were carried out with the key contact from each potential local authority to illicit how exactly the power was used.

In our original proposal we intended to conduct eight case studies; six with authorities that had used the power of well being and two that had experienced barriers to the use of the power and not managed to overcome these.

Due to the difficulties encountered, as explained in section 2.3, only five local authorities were finally selected to act as case studies, all of whom had successfully used the power.

3.5 Case study interviews

Interviews were held with the five local authorities selected as case studies:

- Nottinghamshire County Council
- Kirklees Metropolitan Borough Council

- Fenland District Council
- London Borough of Lewisham
- Braintree District Council

Each of these local authorities had used the power of well-being successfully to enable sustainable energy activities.

Interviews were held with the energy manager/project manager of each scheme, and the legal and financial officers involved were also invited to attend.

The interviews focused on issues of corporate commitment to the use of well being, exactly why well being was used, and how legal or financial barriers had been overcome. The interview framework was tailored for each case study, taking into consideration the types of scheme, the information already obtained and the roles of the interview attendees. The generic questions asked are outlined below:

Questions for energy officer

- Why was the power of well-being used?
- How was the power used?
- Would they use it again for the same type of scheme?
- Would they use it for other types of scheme?

Questions for legal/finance officer

- Were there any legal/financial issues that worried them about the scheme that the use of well-being eliminated?
- Were there any legal/financial issues that the use of well-being in this scheme created – if so, how were they overcome?
- More generally, what do they think about the council's use of the well-being power – what can they use it for, what can't they?
- Do they think it is a useful power? Does it add much to what the local authority might get involved in?
- How do they see it linking to the community strategy? How does it link to other powers?

Following each interview, notes from the meeting were compiled to form a brief case study of the scheme. The aim of the case study was to:

- Provide an overview of the scheme;
- Explain why and how the power of well-being was used;
- Determine the integration between the use of the power and other local authority strategies/programmes;
- Illustrate how any barriers were overcome and show the lessons learned, and
- Demonstrate any other uses of the power of well-being.

The purpose of the case studies is to provide a resource for other local authority officers that demonstrates how the power of well-being can be used and the range of schemes/projects that can be facilitated.

3.6 Dissemination

3.6.1 Workshop with local authority officers

Workshop structure

We arranged to present our findings to a scheduled meeting of the Eastern Region Home Energy Officers Network (HEON). Following the presentation we conducted a short workshop on the usefulness and replicability of the findings and gave participants the opportunity to discuss any other local examples of the use of the power.

4.0 FINDINGS

4.1 Literature review

The literature surrounding the power of well-being divides into work specifically relating to the use of the power (and the related power to trade) and that addressing the broader issue of developing a community leadership role for local authorities. The review here focused on the first of these two: broader issues are outside the scope of this work, and are the subject of a much larger scale, ongoing investigation being carried out on behalf of ODPM¹.

Although the lack of activity by local authorities using the power to support sustainable energy has delayed the completion of this project, a recent revisit to the literature suggests that little has progressed in the interim and therefore that the results of the work remain relevant and useful.

4.1.1 The power of well-being

Purpose

The idea for this project was initially stimulated by a combination of conversations with individual local authority officers keen to use the power of well-being to support sustainable energy projects and the publication by the LGA of 'Powering Up'².

The LGA report was intended to introduce the power of well-being to local authorities and demonstrate ways in which it could be used. It describes the power as 'a significant resource and freedom for authorities to use in order to improve public service, **and to look beyond their immediate service delivery responsibilities to the wider economic, social and environmental well-being of their areas.**' It is this latter aspect of the power that is the main interest for officers looking to implement sustainable energy projects.

ODPM published guidance for local authorities on the power of well-being in June 2003³. The guidance explains the role of the power within the overall local government modernisation agenda, and how it is intended to contribute to the government's goal of delivery of public services 'in ways that:

- Are responsive to the concerns and needs of local communities;
- Improve continuously, especially in areas where there has been a pattern of under-performance;
- Are co-ordinated in ways which minimise duplication, maximise effectiveness, and present a concerted response to the causes of complex problems such as social exclusion and neighbourhood renewal, and
- Suit the needs of the consumer or citizen (rather than the convenience of the provider).'

It goes on to acknowledge the stifling of innovation in local authorities caused by concerns over the scope of their powers, and the limitation this has placed on councils' contribution to the improvement of their communities' quality of life.

The guidance then states that 'the Government's purpose in introducing the well-being power is to reverse that traditionally cautious approach, and to encourage innovation and closer joint working between local authorities and their partners to improve communities' quality of life.'

Scope

The scope for use of the power is defined by ODPM in a series of questions that local authorities should ask themselves:

¹ ODPM, 2005, Formative evaluation of the take-up and implementation of the well being power, 2003-2006.

² LGA, December 2003, 'Powering Up: making the most of the power of well being'

³ ODPM, June 2003, 'Guidance for local authorities: power to promote or improve economic, social or environmental well-being'

- Is the proposed action likely to promote or improve the well-being in our area?
- Is the primary purpose of the action to raise money?
- Is it explicitly prohibited on the face of other legislation?
- Are there any explicit limitations and restrictions on the face of other legislation?

If the answer to the first question is 'yes' and to the second and third 'no', then the council can proceed with the action, subject to any limitations/restrictions identified by the final question.

The use of the power is further defined by requirements to have regard to the ODPM guidance and to the local authority's community strategy⁴. The new function that the power confers on local authorities (i.e. improving community well-being) is, as the guidance states, subject to the general duty of best value.

Actions justified by the power do not have to cover all a local authority's constituents. They can provide benefit to all or part of the authority's area, and to all or any person(s) resident or present in the authority's area.

Limitations

As stated above, the well-being power does not allow local authorities to undertake any activities that are specifically prohibited by other legislation. The ODPM guidance notes that the government recognises the possibility of unnecessary statutory constraints on the exercise of the power, and details a number of mechanisms through which authorities can request government action to remove these.

It also should not be used to raise money (e.g. the power cannot be used as a justification for a new local tax, even if the money raised would be used to improve local well-being). However, if an authority uses the power for a different purpose and incidentally receives income as a result this would not be considered 'raising money'. The example given in the guidance relates to giving financial assistance to a struggling business, becoming a shareholder and, at some point in the future, receiving a return on the initial investment in the form of dividends. This distinction between raising money and receiving income as a result of investment in a business could be important for distributed generation and/or energy services schemes.

The introduction of the well-being power itself did not affect local authorities' powers to trade⁵, but the guidance mentioned government plans to consult on widening these powers. The resulting trading order is discussed in more detail below. The guidance also states that a company set up by a local authority, using its well-being powers, is not subject to any restrictions on trading.

As the LGA report emphasises, well-being is a power of first resort (i.e. there has to be a good reason not to use it rather than a good reason to use it). Therefore it should perhaps simplify the process of gaining legal department consent for initiatives. However, as the report's summary of the scope of the power illustrates:

'there is a need to use the power reasonably, to have regard to the community strategy and fiduciary duty to council tax payers and to make a check that there is no prohibition, restriction or limitation in other legislation that will act on the council's ability to act.'

It may be that the burden on the legal department is not greatly reduced by the power, and finance departments may actually be confronted with a wider range of issues than previously.

⁴ The Guidance further states that although a local authority would have to think very carefully before using the power in a way which ran counter to the aims of the community strategy, there is no requirement for each and every use of the power to be referenced in the strategy.

⁵ As defined in the Local Government (Goods and Services) Act 1970

Possible uses of the power

The ODPM guidance discusses the uses of the power specified in the legislation, whilst stressing that these are not intended to form an exhaustive list, but rather to illustrate the types of activity that a local authority may wish to consider. These are:

- Incurring expenditure and giving financial assistance to people;
- Entering into arrangements or agreements with any person or organisation or co-operating with, facilitating or co-ordinating the activities of any person or organisation;
- Exercising on behalf of any person or organisation any functions of that person or organisation;
- Providing staff, goods, services or accommodation to any person or organisation, and
- Forming companies and other corporate bodies.

The guidance also points out that the legislation includes the power for a local authority to take action outside its own geographical area if the action is likely to improve well-being within the local authority's area. This can be important for joint working between several local authorities and also between local authorities and health authorities (whose respective areas are often not coterminous).

An IDeA commissioned paper by Damien Welfare and Paul Stookes⁶ outlined some of the possible uses of the power to support actions on various aspects of sustainable development. These included the potential to charge for fuel efficiency improvements to housing and the development of energy services companies (using the power to trade as well as well-being).

4.1.2 The power to trade

The inability of local authorities to trade with other organisations/individuals outside a tightly defined group of other public sector organisations was seen as one of the main limitations to the use of the power of well-being: local authorities simply did not have the money to engage in a wider range of activities. The Local Government Act 2003 introduced wider powers to trade, in part, to remedy this situation.

Charging for discretionary services

The Act introduced a general power for best value authorities⁷ to charge for discretionary services. It permits any authority to charge for any discretionary service it provides. Any services (including those delivered under the well being power) not defined as a duty of the local authority are considered discretionary and therefore can be charged for.

The charge can be levied at different rates for different customers. The only constraint is that the overall amount of money raised by the charges must not exceed the overall cost of delivering the service.

Trading in function related activities through a company

The Act also introduced a general power for local authorities with a Comprehensive Performance Assessment (CPA) rating of fair, good or excellent to trade in the provision of goods and/or services. The trading must be carried out through a company, which may be set up specifically for the delivery of the service or may exist already.

Anything delivered using the power of well being is considered to be a 'function' of the local authority and therefore trading is possible. The issue here is that, should a local authority lose its qualifying CPA rating, it has to stop trading (following a two year period during which it may regain the appropriate rating and hence continue with its trading activity). There are a number of mechanisms local authorities can use to ensure their ability to withdraw from contractual arrangements associated with the trading activity. However, ODPM guidance on the power recommends that local

⁶ Welfare D and Stookes P, undated, Making the most of the power of well-being for sustainable development. Transforming innovation into action.

⁷ This term covers local authorities and a defined group of other public authorities, e.g. police and fire authorities

authorities with a 'fair' rating should consider carefully the potential for their rating to drop before they employ the power to trade.

4.1.3 Use of the power to date

The LGA publication included a small number of case studies that demonstrated the use of the power to develop a public-private partnership to address pockets of severe deprivation, to establish an employment agency, to promote safe sunbathing, to acquire and demolish houses on a problem estate and re-house remaining occupants, to provide rural post-office services, and to construct and run a new waste-transfer station. Other than this, there seems to be nothing that describes actual use of the power (as opposed to potential opportunities for its use).

The baseline report for the ODPM work⁸ provides a more general overview of use of the power up until the time of writing (2005). The team found that use of the well being power as a power of first resort was mainly occurring in larger authorities. A more prevalent way of using the power seemed to be a reliance on other specific powers in the first instance and then a use of the well being power to plug the gaps. Some authorities were using the power occasionally as a comfort blanket.

4.1.4 Barriers to use of the power: ODPM research

The ODPM sponsored research into take-up and implementation of the power is partly a response to a perceived danger amongst central stakeholders that the well being power may not make a major contribution to achieving the aims of the local government modernisation agenda.

The baseline report noted very varied levels of awareness, understanding and perceptions about well-being amongst local authority councillors. Whether this restricts use in certain authorities is not at this point clear.

For some officers, the time and resources that would be required for activities making use of the power were simply not available.

A key message from local government participants in the baseline data gathering was that central government seemed to have an ambiguous attitude towards the role of local government and that this would have to be overcome if well-being was to be used to its full potential. Equally important may be the local interpretation of the community leadership role of a local authority.

Respondents also highlighted the significance attached to achieving central government priorities: presumably this suggests that if issues requiring the use of well being are not seen as a priority, then there will be no push to use the power.

4.2 Analysis of the on-line survey

4.2.1 Overview

77 responses were received from the on-line survey. This represents a response rate of 18%, demonstrating interest in the power of well-being by local authority officers.

From the survey only 42% of respondents stated that they were aware of the power of well-being and of this proportion, less than half (43%) had actually used it. Of all the respondents with awareness of the power, only 6% had experienced any barriers i.e. legal or financial, to using it to promote sustainable energy projects. It is worth noting that from the responses it was also evident that some officers had

⁸ ODPM, 2005, Formative evaluation of the take-up and implementation of the well being power, 2003-2006. A baseline report for ODPM from the School of Public Policy, University of Birmingham and the Cities Research Centre, University of the West of England.

misinterpreted what the power is and although they answered positively, had not actually used the legal power⁹.

Those respondents that were unaware of the power of well-being (55%) were asked what would enable them to make use of the power in the future. 70% stated that they needed further guidance from central government; 67% stated that the dissemination of local authority good practice would be useful, and 21% stated other factors such as more resources and supporting legislation.

Further analysis of the results underwent a number of stages as outlined below.

4.2.2 Stage one

The first stage of the analysis of the on-line survey involved discriminating between those local authorities that stated they had used the power of well-being to promote sustainable energy activities and those that had not. From those that had not it was then key to establish which had tried to use the power but had faced insurmountable problems. The table below provides the stage one breakdown of survey respondents.

| Local authorities that have used the power of well-being to promote sustainable energy activities | Local authorities that have faced considerable barriers in using the power of well-being |
|--|---|
| Wychavon District Council | Eastbourne Borough Council |
| Fenland District Council | Energy Projects Plus |
| LB Redbridge | Crawley Borough Council |
| Braintree District Council | Crewe and Nantwich Borough Council |
| Blackpool Council | South Shropshire District Council |
| London Borough of Lambeth | Carrick Housing Ltd |
| London Borough of Lewisham | Sefton Council |
| Carrick District Council | West Sussex County Council |
| Hinckley and Bosworth Borough Council | Test Valley Borough Council |
| Nottinghamshire County Council | Monmouthshire County Council |
| Kirklees Metropolitan Borough Council | Ceredigion County Council |
| Solihull Metropolitan Borough Council | |

Local authorities that faced barriers

Those local authorities that responded to the original survey stating that they had faced barriers to using the power of well-being, mentioned the following as reasons why the power was not used:

- Lack of political commitment ('most officers and elected members are unaware of the implications and do not realise its enabling scope');
- The power was either not necessary or not appropriate for the work they wanted to do;
- They themselves lacked understanding of the power ('not clear how to use it'/ 'it appears too complex', and
- Other limiting factors ('no spare funds'/ 'work using the power was unsuccessful for reasons unrelated to the use of the power itself').

A few additional comments on the barriers were offered by respondents:

- 'This legislation encourages local authorities to be innovative and imaginative - this is hardly the modus operandi of most Councils';
- 'Such use of the power appears not to rank highly on the corporate or community agenda';
- 'The power is too vague and too tied up in strategic plans which are not credible';
- 'It was deemed that the powers were not strong enough compared to other existing legislation', and
- 'There is insufficient information on how it can impact in energy'.

⁹ For example there was confusion between the legal power of well-being (as created in the Local Government Act 2000) and the local authority duty to have regard to community well-being (i.e. within the community planning process).

Stage one of the analyses led to the identification of sufficient potential case study authorities for us to be confident of achieving the numbers originally proposed.

4.2.3 Stage two

Stage two of the analyses involved desk research and telephone conversations with the key contact from each potential local authority to elicit how exactly the power was used. This further investigation with each respondent reduced the numbers, largely due to misunderstanding by respondents of what the well being power actually is (a number stated they had used the power but further investigation led to the realisation that in fact they hadn't). The table below summarises the results and the comments made at this stage.

| Local authority | How the power was used | Comments |
|---------------------------------------|---|---|
| Fenland District Council | Power of well-being was instrumental for setting up the fenESS energy services scheme in 2001. The local EEAC acts as the managing agent whilst the local authority receives the profits, enabling a person to be employed to facilitate delivery. | This has potential to act as a good case study (although case studies on fenESS already exist on the Practical help website). However, the council no longer employs the legal officers involved and an external solicitor played a prominent role. |
| London Borough of Lambeth | Lambeth have an affinity deal with Scottish Power and HelpCo. However, the power was only used to circumvent Data Protection issues and to provide client details. | The power of well-being was only used to address Data Protection barriers and, whilst important, this is unlikely to make a good case study. In addition, all the officers involved when the scheme was set up have since left. |
| Kirklees Metropolitan Borough Council | The Emissions trading scheme used well-being powers to trade and to provide legal justification. | Potentially an interesting case study (although a case study on the ETS already exists on the Practical help website). |
| Wychavon District Council | Following discussions it was determined that the power had not actually been used in the two energy efficiency schemes described in the initial survey response. | The power not used, case study not appropriate. |
| Braintree District Council | Power used for project that started in April 05, which offers £1000 grant for solar water heating. The scheme is currently low key and operated through a local contractor but hoping to roll it out shortly and extend it to other low carbon techs e.g. micro wind/GSHP. Other legal power that has helped is Regulatory Reform Order that removed some of the prescriptive barriers (grants previously could only be given to certain people i.e. on income support/means tested). | Potentially a good case study although the project has had low take-up to date. |
| Nottinghamshire County Council | Set up Renewable Nottinghamshire Utilities, a not for profit company | Potentially an interesting case study but the |

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| | to encourage the development of bio-energy in the region. The scheme would have been possible without the power of well-being and would probably not have faced many barriers, as the council is proactive in terms of sustainable energy. The well-being power did mean that counsel approval was not needed, meaning a cost saving for the council was achieved and officers now feel more comfortable pursuing slightly more innovative projects. | power was not instrumental to the scheme. |
| London Borough of Redbridge | Loans-for-All scheme as administered by the Greater London Energy Efficiency Network (GLEEN). The scheme provides interest free loans for energy efficiency measures for Redbridge residents. | At this stage the key contact and GLEEN are unsure whether the power was actually used in the final implementation of the project. Case study is considered inappropriate. |
| Carrick District Council | Partner in the Cornwall Home Health scheme and encouraging the take-up of heat pumps in the private sector. Following conversations it was determined that the power of well-being was not used in this instance. | Case study inappropriate. |
| Hinckley and Bosworth Borough Council | With further information it was determined that the power of well-being was not used in the energy efficiency schemes described in the original survey response. | Case study inappropriate. |
| Blackpool Council | With further information it was determined that the power of well-being was not used to finance energy efficiency measures as stated in the original survey response. | Case study inappropriate. |
| London Borough of Lewisham | Power facilitated the extension of a HECAction scheme to include loans for renewable technologies and transport. Intending to use prudential borrowing in the near future. | Potential to act as a case study. |

4.2.4 Stage four

We identified five case study local authorities authorities that had used the power. Although it would have been preferable to have a range to choose from, the five we identified covered: the use of loans and grants; energy services, setting up a renewable energy company and involvement in the UK Emission Trading Scheme.

The final case studies selected were:

- Nottinghamshire County Council
- Fenland District Council
- Kirklees Metropolitan Borough Council
- London Borough of Lewisham
- Braintree District Council

4.3 Interviews/case studies

4.3.1 Fenland District Council: FenESS – Fenland Energy Services Scheme

The interview was held with: Bruce Pittingale, Energy Conservation Manager and John Davis, HEON Secretariat.

Introduction

FenESS is an energy services scheme combining energy supply with the provision of measures concerned with efficient use.

FenESS was originally designed to help Fenland District Council meet its HECA targets and assist in the achievement of its affordable warmth strategy. FenESS now offers a range of benefits to registered social landlords and public and private sector landlords, whilst helping energy conservation authorities to achieve their environmental targets.

FenESS became operational in September 2000 but Fenland District Council was already proactive in the field of energy efficiency and had become aware of the tension for resources and finance. The energy efficiency team was keen to find an alternative and sustainable source of funding for energy efficiency activities.

Background

In 2000 Fenland won feasibility funding from the Energy Saving Trust Energy Services Programme for investigating the establishment of an energy services scheme. The idea at this stage was to combine Energy Efficiency Commitment funding with an affinity deal and, through the 4000 Council owned properties, generate income that could be re-directed into energy efficiency activities.

However, in the process of the feasibility study Fenland received legal opinion that the local authority could not in fact set up an energy services scheme, as this would be *ultra vires*. The legal opinion at Fenland confirmed that local authorities were not able to trade as an entity, therefore Fenland were unable to build an external company where the excesses could be utilised for the public good. It was possible to build a company with shareholders in which the Council could retain a 19% interest, but this was thought to be unacceptable.

Undeterred, Fenland sought to find another way of establishing the scheme, which it believed would deliver considerable benefits to the local community and significant carbon savings. Funding from the Energy Services Grant Scheme was utilised to establish the legal position definitely. Whilst the scheme was thought to be *ultra vires*, the case was taken to barrister Andrew Arden who brought to the authority's attention that the problem was that the proposed energy services scheme was a form of trading and it was the power to trade that was prohibited. The opinion of Counsel was that whilst a District Council was prohibited from carrying out this work, it was fine for someone else to carry out the work on behalf of the Council with financial and physical help from the Council. This was the basis for the use of the well-being power.

Post 2003 the power to trade was given to authorities that had received a CPA rating of Fair or above. Fenland's rating was Fair but the Council was not willing to use the power, probably because of the risk of losing it should its rating decrease at all.

Why was the power used?

The power of well-being was instrumental in getting the FenESS scheme off the ground. With the Local Government Act 2000 it became possible for local authorities to assist with trading and the power of well-being enabled the council to provide grants: with the power there was no opposition from Counsel. The opinion of Andrew Arden, paid for with the initial Energy Saving Trust grant, was used to demonstrate this to the council.

How was the power used?

In order to justify use of the power of well-being, Counsel required that the authority demonstrate the community benefits of the energy services scheme. The energy efficiency team did this in a number of ways in their final proposal:

- Fenland proposed that Peterborough Environment City Trust (PECT), an independent charitable trust, act as the energy services manager of the FenESS scheme. The Council were nervous of utilising a private company as a partner as they would need to be profit making and that profit could be utilised to support the business in other areas, whereas a charity would be able to reinvest the excesses back into a grant scheme. Also PECT were already a trusted partner through the Anglia West Energy Efficiency Advice Centre, which they also ran;
- The 2001 tender for an energy supplier for the scheme had a strong focus on social responsibility rather than costs and included factors such as: the number of customers cut-off in the past few years and the number of people put onto meters to help recover costs. The different factors were weighted for social importance and this process helped to demonstrate the contribution to social well-being;
- The Council ran a number of focus groups with the private sector, the community and tenants in order to maximise the benefits of the scheme. This consultation supported the usage of the well-being power, and
- One of the benefits established was the creation of a job in the local area, as coordinator of the FenESS scheme.

Description of the project

The objectives of FenESS are:

- To establish a self sufficient delivery mechanism for a range of energy efficiency improvements to domestic properties in the District;
- To achieve affordable warmth for householders, building on the Pensioners Energy Plan and Affordable Warmth Index pilot schemes already carried out;
- To offer a better deal for the District's consumers in the competitive energy supply market;
- To generate an income for investment in further initiatives, and
- The establishment of a heating insurance service as a means of generating further income, as well as assisting in the maintenance and efficient operation of appliances.

The initial landlord was Fenland District Council who still owned their own homes. This has now been expanded to three other registered social landlords (RSLs). Finally, the scheme has been expanded to include customers of the Norwich & Peterborough Building Society who offer the system as a way to change suppliers for their own private customers, whether they are owner occupiers or private tenants.

The scheme is available to all tenants and residents and the income generated by the scheme is placed in funds to be used by each partner organisation in a way that supports activities furthering environmental gain. The overall scheme is not geared to negotiating price discounts on fuel supplies nor does it aim to provide the lowest price energy supplies, but the prices must be competitive or the supplier would not be selected.

Scottish and Southern Gas and Electricity fund Energy Efficiency Commitment (EEC) schemes and were selected through a best value tender process. EEC money is used to provide partial funding for cavity wall and loft insulation to all properties applying and in some cases this is 100% funding. Via the FenESS scheme they also supply fuel to all RSL housing stock that has become void.

Some of the scheme's main benefits for landlords and tenants are:

- It creates a fund that can be used to assist local authorities and RSLs achieve affordable warmth for householders as well as environmental improvements;
- It provides the landlord with energy supplies from a known supplier at contract rates to carry out maintenance and testing of electrical, gas and heating systems – the landlord does not have to purchase energy at 'deemed contract' prices;

- It builds up a database of gas and electricity supply identification numbers for the landlord for future reference, which will make changing energy supplies easier;
- It can form one component of a local authority's affordable warmth strategy for all householders in their area – tenants and owner-occupiers;
- It supplies a range of information leaflets for all tenants and councils to help them with all issues regarding their fuel supplies;
- It identifies and enables the solution of supplier discrepancies or other problems before tenants move in – e.g. denial from shipper that the supply exists, vandalised meter installation;
- It ensures that incoming tenants do not take on responsibility for debts incurred by the previous tenant;
- It helps the incoming tenant to obtain gas and electricity supplies available when they move in;
- It enables tenants to purchase gas and electricity at competitive rates within a best value package, without having to make a detailed investigation of energy companies;
- It provides tenants with access to subsidised energy efficient products from the energy supplier;
- It provides a negotiation route for energy supplies for special cases which would be extremely difficult for individual customers e.g. credit supplies for young householders, and
- It provides free independent energy advice to all householders.

The power of well-being and council strategies

Climate change is a strategic priority at Fenland District Council and the energy efficiency team have had their remit broadened to include climate change. This provides them with more scope for intervention and enables them to promote sustainable energy within wider regeneration policies and projects.

The Council's Energy Conservation Manager is also Chair of the Local Strategic Partnership Environment group. The Local Strategic Partnership is a powerful guide to the local Council in the provision of services for the residents of the District. It is important for the environment sector to be strongly represented within this organisation and the support of the environment sector helped to provide further evidence of the importance for the Council to look for innovative solutions to provide funding for energy efficiency into the future.

Other uses of the power of well-being

Prior to the FenESS scheme the local authority was averse to using the power of well-being because the power is so broad and because of the perceived risk of being found *ultra vires*. The development of FenESS therefore required external legal opinion to be sought and after considerable work to demonstrate the benefits to well-being that the scheme would bring, Counsel advised that the scheme was legal.

Now that a precedent has been set for using the power of well-being, the Council is more supportive of its use for further sustainable energy projects, and indeed for projects occurring elsewhere within the council's remit. There is however, still concern that its use may contravene another Act elsewhere and despite the claim in the Local Government Act 2000 that the power should be used as a power of first resort, the climate change team feel that in reality it is used as a power of last resort.

Despite this, the benefits that the use of the power can bring are encouraging its further use. The power was used to establish the Council's energy tax credit scheme, ETCETERA. Under the scheme anyone who has carried out energy efficiency work in their home in the past year can apply to have their home rated. After the survey, the householder gets feedback on the energy efficiency standard of their home (no rating, bronze, silver, gold). Council tax credits are awarded as follows: £100 for gold, £50 for silver and £25 for bronze. The well-being power is the enablement facility, and the survey, which includes information on how to improve the rating through energy efficiency measures, provides the community benefit.

The latest use of the power has been the establishment of a 'finders fee' in the housing department. Those that are homeless or are about to become homeless, register with the Council to become eligible for the 'finders fee' scheme. The private rented sector team offer £1500 grants to landlords to improve the property before the tenant moves in. The landlords guarantee that those that are on the Council listing have first refusal on the improved property and do not need to provide a deposit. The improved standard of housing results in a significant enhancement in the quality of life for the tenant, and helps tenants that could not afford to provide a deposit to move into private rented accommodation. Without the power of well-being, it would be highly improbable that the Council would give £1500 of public funding to a private individual to upgrade a property and offer it to those that are vulnerable.

How were any barriers overcome/lessons learned

The legal barriers that Fenland District Council faced in establishing FenESS related initially to the fact that the power of well-being was not in place. After the Local Government Act 2000 had received royal assent, the lack of precedent in using the power and the broad nature of its potential implementation, also presented problems for the Council in the form of perceived risk.

To overcome the legal opposition to setting up FenESS an external barrister was employed at considerable cost (in the region of £27,000). This was possible due to the Energy Saving Trust grant funding. This problem should not occur again due to the increased familiarity with the power within local authority legal teams and the experience of both Fenland and other local authorities in establishing a precedent.

In order to justify the use of the power of well-being, the business plan for the development of FenESS went into considerable detail to demonstrate the range of social, environmental and economic benefits the scheme would bring to the local community.

In recognition of the success of the scheme, in 2002 The National Home Improvement Council awarded a Certificate of Merit to the FenESS scheme in the category Best Public/Private Partnership in the UK.

Use of the power at Fenland has also helped to set the precedent for other RSLs in the region. Peterborough City Council, Huntingdon Homes Partnership and Axiom Housing have joined Fenland, agreements have been reached with other authorities and there are further enquiries in hand.

4.3.2 Braintree District Council: renewable energy grants scheme

The interview was held with Peter Chisnall, Environmental Services Manager

Introduction

The Braintree District Council renewable energy grants scheme provides £1000 for residents to install solar hot water systems.

Why was the power used?

The Council is not traditionally risk averse and senior staff and the Chief Executive in particular are very supportive of sustainable energy and keen to achieve positive kudos/publicity in this area. Core values of the local authority embedded within the Community Strategy include aspiring to be a 'clean, green council'. Sustainable energy fits with this and the Council wants to achieve a CPA Excellent rating. Sustainability is also included in new criteria for CPA so the Chief Executive is particularly keen to pursue this.

Braintree has been running the Council Tax Cavity Wall scheme since November 2004 and has offered discounted insulation schemes since 1997. The energy tax credit scheme has a target of 500 participants per year and the only criteria for the scheme is that the houses must be in the private sector, i.e. owner occupied or private rented tenant. So far there has been little promotion needed and there is only a small team to process the scheme so the Council was wary of excess demand in the early project stages. A £100 discount is offered to householders (£50 from British Gas; £50 from

Council). If the Council was not able to operate these schemes themselves, all they would be able to do is signpost householders onto other schemes e.g. directly to energy company EEC schemes.

Traditional local authority grant schemes can be very rigid and the public need financial incentives to invest in renewable energy. The power of well-being provided the legal power to justify the scheme, particularly as there are no statutory duties for renewable energy.

Peter Chisnall, Environmental Services Manager at Braintree, first became aware of the power of well-being at the HECA conference in 1999.

Description of the scheme

Since the scheme was publicised in the Council newsletter, the Council has been receiving an average of five enquiries a week, around 20% of which translate into installations (approximately one a week). The Council has built up a list of contractors to meet the demands of the scheme and the three currently used are Clear Skies accredited.

The cessation of Clear Skies funding has slowed the momentum of the scheme but the Council is continuing to offer their grant, whilst waiting for the new Low Carbon Buildings Programme. The Council is relying on this funding to offset extra costs that have developed since the scheme's inception. These are a result of:

- Planning issues – following discussion a formal agreement has been reached that any installation on a listed building or in a conservation area must have planning permission. This adds about £130 to the cost of installation and this has to be paid up front and borne by the householder, even if the job does not subsequently receive permission, and
- Every solar thermal job has to comply with Building Regulations. The reason for this is that the hot water cylinder is a controlled item under Part L on the Regulations and it must be replaced with one of the correct standard. Not only that but the controls on the primary heating circuit e.g. for an existing gas boiler and system, must also be upgraded to Part L standards. The Building Regulations Approval can be in the form of a building Notice. A negotiated fee for this is £109, plus the possibility of extra costs to bring their system up to Part L standards, again to be borne by the householder.

Council view of the benefits of using the power

Although the Council could undertake activities without the power, there would be the risk at the very least upsetting the private sector or other bodies because of the Council's influence in the market, and at the most attracting litigation. The power provides "another string to our bow" and an added comfort factor when developing and operating schemes. Although the Council has a good budget for housing stock renovation, the power gives scope to do more innovative work.

It has also increased staff efficiency because only one legal power has to be identified to validate a scheme and there are fewer pressures on already limited legal time. The legal team is always supportive and give maximum advice to promote sustainable energy. Peter uses case studies to justify work and demonstrate how other councils have done things. Peter now uses well-being terminology in most financial bids/project proposals.

The power of well-being and other council strategies

Braintree does not have social services resources to draw upon but the well-being power, in conjunction with Local Strategic Partnership in Essex, has been good in encouraging partnership working in the region. The LSP has been instrumental in getting a climate change strategy for Essex off the ground. The Council is now looking at making a declaration, one step on from Nottingham Declaration.

Future use of the power of well-being for sustainable energy schemes

The power can not be used for training or promotional purposes as it is harder to demonstrate the well-being benefits. Therefore, future use of the power is likely to be for the promotion of practical/physical measures. One plan is to use it to back a

scheme that will see the installation of Windsave turbines on Council buildings. The Council does not anticipate using the power of well-being beyond renewable energy schemes.

4.3.3 Kirklees Metropolitan Borough Council: Kirklees Emissions Trading Scheme

The interview was held with Bill Edrich, Environment Programme Manager and Charles Lukoczki from Legal Services.

Introduction

Kirklees Metropolitan Borough Council has been proactive in the sustainable energy field for many years. The Council signed up to the Friends of the Earth Climate Resolution, which set the Council the challenging target of a 30% reduction in carbon dioxide emissions on 1990 levels by 2005, exceeding the target set by the Government (to reduce emissions by 20% relative to the 1990 level by 2010). The Council also responded to the Government's target of 10% of electricity generation coming from renewable sources by 2010, by developing its own Renewable Energy Strategy with targets and action plans to increase the amount of renewable energy used and generated locally.

When the UK Emissions Trading Scheme (ETS) was announced, Kirklees was therefore interested in participating. Trading on the stock market is not normally a day-to-day activity that councils undertake. Initially the concept of emissions trading, the potential risk and the powers for the Council to trade were difficult for Members and corporate management to accept, but in the end the Council did decide to take part. Kirklees is still the only local authority currently participating in the UK ETS, which began in March 2002.

Why was the power used?

An appropriate power needed to be identified in order for Kirklees to join the ETS. According to the legal department, Kirklees could potentially have proceeded using section 111 of the Local Government Act 1972. However, prior to the power of well-being, environmental powers were quite prescriptive for local authorities and this made it harder to legitimise more innovative work. In this respect section two of the power of well-being was much better legislation to use for justification.

An integral element of the scheme is the ability to trade, which by its inherent nature is a fast and flexible mechanism. It was therefore imperative that officers had delegated powers (under the power to trade) up to a prescribed limit, to carry out this element of the scheme.

As previously mentioned, the Council's opinion was that it had the powers to enter into the scheme, however, it was still vulnerable to being found *ultra vires* through the trading aspects of it. To prevent this happening, a strict internal structure is in place. In short, only the Energy & Water Co-ordinator has been given the delegated authority to trade. Prior to trading, the Co-ordinator must seek permission from the Internal Audit Manager and Senior Legal Officer. If this is forthcoming then the trade is carried out and reported retrospectively to elected members.

Good communication between the Council legal and energy teams from an early stage has been critical for addressing the potential risk of emissions trading leaving the council *ultra vires*.

Description of the project

Emissions trading works on the principle that emissions reductions can occur where costs are lowest. An ETS takes a group of emissions sources and sets a limit or 'cap' on the amount of emissions that will be allowed in total from those sources. Allowances are allocated to each source to cover the amount of emissions that are expected to be produced, minus whatever percentage a government sees as necessary for the attainment of its policy goals. At the end of a specified period the Government or another regulator will demand to see allowances equal to the amount of emissions that an organisation released over that time.

Organisations will be free to trade allowances and the balance between supply and demand will determine the allowance price. For example, if one organisation produced less emissions than had been allocated to it, that organisation would be free to sell its spare allowances to other organisations that had produced more emissions than the number of allowances allocated to them. The market price of an allowance acts as the limit beyond which an organisation would not consider it economical to reduce its emissions, because buying an allowance would be cheaper than installing emissions reduction technology. This means that an incentive is introduced for organisations that can reduce emissions cheaply to do so and ensures that those for which there are less cost-effective options can buy allowances from the market.

At Kirklees the relevant Heads of Service from the Council's legal, strategic finance, EPM (Estates, Property and Markets) and environment teams were involved in drawing up reports to be put to members, including a risk assessment for the scheme. In addition, the aim was to target all the buildings in the ownership of the following:

- Building services
- Community development service
- Cultural services
- Economic development service
- Environment service
- Estates, property and markets service
- Highways service
- Transport service.

The UK ETS offered an opportunity for the Council to secure additional funding over the next few years to reduce the amount of CO₂ emissions from its corporate operations. In return, it has signed up to a legally binding reduction of 1,000 tCO₂e for part of its municipal buildings by December 2006; representing a 12% reduction.

The power of well-being and council strategies

There is a clear link between the ETS and Kirklees Community Strategy. It specifically corresponds with the theme 'Making Kirklees cleaner and more attractive', which includes a target under section 6F for reducing greenhouse gas emissions by 30% on 1990 levels.

Other potential uses of the power of well-being

Kirklees has used the power of well-being many times before and the legal justification for any project is included in the report to Cabinet. The legal department at Kirklees is very focused on finding suitable powers to enable the local authority to undertake schemes and in this regard has found the power of well-being extremely useful. Good communication between the legal and energy teams has therefore been key. Other projects include:

- Provision of loans for private sector households, and
- A potential project regarding contraction and convergence and stabilising local authorities emissions up to 2050. This would involve a twinning arrangement with Ickley, which would require use of power of well-being.

4.3.4 Nottinghamshire County Council: Renewable Nottinghamshire Utilities Ltd (ReNU)

The interview was held with Alan Allsop, Principal Energy Management Officer, Councillor John Stocks, Cabinet Member for Resources and Jeff Alvey, Commercial Head at Legal Services.

Introduction

Renewable Nottinghamshire Utilities Ltd (ReNU) is a private company limited by guarantee and set up as a social enterprise (i.e. it is non-profit distributing). The company arose as a result of the Nottinghamshire County Council Wood Heat Project, with the aid of the East Midlands Development Agency. The power of well-being provided the legitimising power for this project. One of the formal objectives of the company is, 'to develop the physical and commercial infrastructure necessary to encourage the wood heat industry into the East Midlands'. In this way the project

fulfils the power's requirements to contribute to the social, economic and environmental well-being of the community.

Nottinghamshire County Council was already committed to sustainable energy, having been proactive in the field for many years. Corporate commitment to the issue is included within the Council's strategic plan. The support and commitment at all levels, from Chief Executive down, facilitates innovative working and has enabled the Council to be more risk taking. A recent example of Nottingham's corporate commitment to sustainable energy is that the Council coordinated the bid for a Nottinghamshire Local Public Service Agreement (PSA) with stretched targets including a £1.5 million carbon dioxide reduction bid. This PSA is in partnership with all the seven district councils and Nottinghamshire Police and was the first in the UK on carbon reduction.

Councillors in Nottinghamshire are paid to work full-time with the Council, which is not the case in all councils. This gives them more time to develop an understanding of changes in legislation and may have helped in early use of the well-being power. In addition, the legal services department is very committed to finding ways to enable officers to implement new schemes, and are keen to use the power when appropriate.

Why was the power used?

The well-being power enables Nottinghamshire County Council to participate in the energy services company and enables it to nominate one Director. It also enables the Council to maintain a strategic role in the development of the environmental and renewable energy economy in the County with a standard limited liability of £1.

Nottinghamshire County Council are of the opinion that whilst ReNU could have been set up without the power of well-being in place, the power provided the legitimising power for the project to go ahead without objection. The power removed the element of risk to the Council and the potential of future challenge. This would have been particularly important if the Council had not already had a corporate commitment to sustainable energy and if the Council had been more risk averse with regards to innovative approaches to carbon reduction.

Justifying the scheme without the power of well-being in place would have required drawing upon examples of other Councils where similar schemes had been successful, in order to convince Members that the Council was not acting *ultra vires*. For Council Members, the power has provided a comfort factor that was not there previously and it has enabled them to work in a more straightforward and potentially innovative way.

When the Nottinghamshire Wood Heat Project was proposed to the Council Cabinet, Legal Services opinion was:

"The Local Government Act 2000 provides powers for the Council to do anything it considers likely to improve the economic, social or environmental well-being of the Council's area or people within its area. Council policy in the Strategic Plan contains commitments to the environment and to sustainability and the proposals within the report seeks to build upon those aims. Membership of and participation in companies by Councils is strictly controlled. In order to avoid this company becoming a local authority controlled, influenced or regulated company under the Local Government and Housing Act 1989, the Council's membership and participation on the board of directors must not exceed 19% of the total to avoid any potential impact on the Council's capital finances."

Nottinghamshire has a CPA rating of Excellent and therefore is in a position to use the power to trade. Legal Services has briefed all departments on the capacity of the power but to date it has not been utilised. The power would allow the Council to own more than 19% of ReNU, although this would not necessarily be the preferred option and if it had been used may have curtailed the extent of partnership working that the Wood Fuel Project has worked hard to maintain. ReNU attracted a large proportion of external funding, including £1 million from the Regional Development Agency. It is questionable as to whether such a large proportion of external funding would have been secured if the Council had wholly owned the company.

Description of the project

ReNU is a form of energy services company (ESCo) and its role is to provide heat supply contracts, generate funding for expansion and support the formation of further local ESCOs in Nottinghamshire. ReNU was formally established in 2002 and began trading in 2003. The County Council has a 19% stake in ReNU and the other Directors on the Board come from a combination of public and private sector organisations. These are Wastecylce, the Nottingham Energy Partnership, Nottinghamshire Rural Community Council, Sherwood Energy Village and FBS Woodland Solutions.

The first full trading year was spent in acting largely as a fuel supply company to a relatively small number of clients. One important client is Nottinghamshire County Council itself, as it has wood burning boilers in a number of schools: Garibaldi School, Mansfield Woodhouse, Dunham-on-Trent School and Redlands School in Worksop.

The power of well-being and council strategies

Nottinghamshire County Council's Strategic Plan contains commitments to the environment and to sustainability and the Nottinghamshire Wood Heat Partnership and ReNU contribute towards achieving these aims. It was therefore straightforward to link the use of the power of well-being to pre-existing council commitments. Wherever use of the power is included in project proposals, Legal Services are able to insert the phrase, "in keeping with the Community Strategy", to add weight to the Cabinet report.

Other potential uses of the power of well-being

Other potential uses of the power being considered in Nottinghamshire include, for example:

- Renewable energy generation;
- CHP and district heating (this is more applicable to local authorities with housing responsibilities);
- Making grants to organisations;
- Providing assistance e.g. in regeneration areas/job creation;
- Through the CLASP consortium¹⁰ (in the past this has provided advice and support to other local authorities, the power enables this to be set up as a trading company and to sell expertise to the private sector as well), and
- Social services e.g. sheltered workshops.

4.3.5 London Borough of Lewisham: Lewisham Energy Loans Scheme

The interview was held with Richard Hurford, Energy Manager and Helen Grass, Principal Contract Lawyer, Legal Services.

Introduction

The London Borough of Lewisham uses the power of well-being as first resort and inserts well-being terminology into all projects/financial bids. Well-being is seen as having taken over from Section 137 powers (under Local Government Act 1972) which have been used by local councils to provide a wide range of activities and encourage action by other bodies for the benefit of their inhabitants.

How was the power used?

In 1999 Lewisham set up a scheme funded by HECAAction which delivered a revolving loan fund for energy efficiency measures.

After the Act in 2000 and the introduction of the power of well-being, Lewisham Energy Loans Scheme was altered to include renewable energy and alternative fuel vehicles, but was still only open to council employees. This extension would not have been permissible under the original HECA legislation, from which it was originally established, and so the additional powers provided by well-being were required. It is Lewisham's intention to further expand the scheme to make the loans open to the wider community. This would also require the power of well-being.

¹⁰ CLASP is the Consortium of Local Authorities Special Programme, a knowledge based organisation, which is an unincorporated association of Public Sector Authorities.

We have been unable to get confirmation of any further details relating to the use of well-being in Lewisham.

4.4 Dissemination

4.4.1 Workshop with local authority officers

A workshop was held at the Home Energy Officers Network (HEON) meeting in the Eastern region on 25 April 2006.

An initial presentation provided officers with an overview of the project and case studies and gave some background information on the power itself. A number of questions were posed to initiate discussion:

- What experience do you have with the power of well-being?
- Do you think it's a useful power?
- Well-being is about community leadership – is this the right role for local authorities to play with respect to sustainable energy?
- How can the case studies be of use to you and other energy officers?

Experience using the power

Despite the fact that two of the case study authorities are actually in the Eastern region, awareness of the power of well-being by attendees was quite low, only half of the audience having heard of it.

The only additional local authority represented that did have experience using the power was Suffolk County Council. Suffolk has used the power to set up a bulk purchase scheme for solar water heating with other local authorities in the region. Before the power, a managing agent had to be appointed to run the scheme but significant problems were experienced with poor delivery. The introduction of the power enabled the scheme to be taken in-house, resulting in huge improvements in scheme operation.

Suffolk did experience caution from the legal department and it took persistent effort to overcome this. However, the legal department has since cited the power of well-being in other project reports.

Usefulness of the power of well-being

From the discussion it emerged that many officers did not think the power of well-being would encourage non-proactive authorities to do more because the costs and level of priority associated with sustainable energy often already preclude any activity. However, it was thought that more dissemination about the power would help.

There was also concern raised over the different interpretations of the power by different local authority legal departments.

Role of the local authority as a community leader

There was a view from the group that local authorities can and should act as community leaders to promote sustainable energy but that the business case still needs to be demonstrated as simply a desire to "pursue sustainable energy" is not strong enough to get any scheme or initiative through. Involvement of the local authority is also thought to be helpful in persuading householders to participate in a scheme because it is viewed as a trusted body.

Future resources

Feedback from the group discussion highlighted that as awareness and experience of the power of well-being is generally low, further information on how the power has been used in the form of case studies would be useful. One view point was that it can be hard for a HECA officer to discuss things like legal powers with the legal department and therefore it would be helpful to have case studies that are written from a few different angles to make them relevant to different departments.

It was also thought that some degree of regional level interaction/promotion to help achieve the same legal interpretation across local authorities in the region would be beneficial.

4.4.2 Briefing note and case studies

We intend to produce from this work a short briefing note for energy officers that should help them begin discussions with their legal departments, together with a series of mini case studies that will demonstrate a range of potential uses of the power.

These will be made available on the Impetus web site and will be promoted to officers whenever possible (e.g. through listings on the Energy Saving Trust's website, through communication with HECA fora, through direct distribution to contacts in individual authorities). An outline of the briefing note and one case study is included as appendix 3.

5.0 DISCUSSION

This project proved far more challenging than expected due to the lack of potential case study material. Nonetheless we have collected material on a range of sustainable energy-related uses of the power of well-being. The activities covered are: provision of energy services (with and without renewable energy supply); support for small scale renewable energy investment (through grants and loans), and emissions trading.

Our online survey suggested that local authority officers could be split essentially into two groups: those that had used the power successfully and those that had not tried to use it. There was little suggestion that people were trying to use the power but coming up against legal barriers. Although some financial barriers were mentioned, these tended to prevent officers even considering schemes that might require the use of well-being, rather than preventing the use of the power to support proposals.

The authorities that provided our case studies have one thing in common: a history of commitment to and activity in the sustainable energy area. In addition, they seem to be more willing to take risks and, in at least one case, clearly see themselves as having a community leadership role.

When we presented the findings of the work to HECA officers from a number of local authorities in the East of England, it appeared that the level of awareness of the power was low, just as it had been almost two years previously when we began this work.

Twin barriers seem to remain in place: the more innovative approaches that the power could support tend to be more costly – at least in terms of officer time in the initial stages – and there are few authorities that give enough priority to sustainable energy for officers to have the time required; also there is a lack of certainty about the power within some legal departments (although this problem will be decreasing) which can add further to the time requirements in the initial stages of a new initiative.

There is a further barrier that was touched upon by the officers in the East of England. Even with local authority commitment to sustainable energy, officers need to be able to make the case for individual schemes. Energy offices will not necessarily be skilled and/or practised in demonstrating that innovative approaches provide the community benefits to justify the use of the well-being power, or in making a business case that demonstrates compliance with best value. The versions of the case studies that we disseminate to local authorities will be written to highlight the community benefits of the schemes. Providing assistance with developing a business case for a scheme is outside the scope of this work, as it would depend so heavily on the local situation and the approach to best value taken by a particular authority.

Although the energy officers to whom we were speaking were supportive of the idea that local authorities have a community leadership role in the sustainable energy field, it is not clear whether senior officers and councillors share this view. Beyond this, it is not clear how fast local authorities are progressing in general along the path from defined service providers to community leaders. The results of the ODPM research, due at the end of the year, should provide some insights into the present situation.

5.1 Value of this work

At the outset, the aim of this work was to develop a toolkit that local authority officers could use to support their work on sustainable energy by enabling them to make use of the power of well-being and the related power to trade. Early in the project it became clear that it would not be possible to define a set a legal and financial barriers to use of the power, which could then be dealt with in the toolkit. Instead we have developed a set of case studies simply showing how officers have used the power to support a number of sustainable energy schemes.

From our recent discussions with HECA officers, it seems that these case studies will be welcomed, together with a simple explanation of the power for the seemingly large

number of officers who are as yet unaware of it. These resources should help a number of authorities that are prioritising sustainable energy to try some new approaches. However, they will do little to overcome more fundamental barriers in local authorities that do not prioritise sustainable energy and/or do not see themselves as having a community leadership role.

Therefore, we propose to send the executive summary of this report to key contacts in Defra, DTI and ODPM (making the full report available should they request it), in addition to disseminating the case study information as proposed in 4.4.2.

APPENDIX 1: STEERING GROUP INTRODUCTORY LETTER

Name
Job title
Company
Address1
Address 2
Town
County
Postcode

Date

Steering Committee: Local authority powers to promote energy efficiency

Dear Name

Thank you for agreeing to participate in the project 'Local authority powers to promote energy efficiency' as a member of the Steering Committee. Your contribution will be highly valued and we hope that you also find this project interesting and useful.

The Pilkington Energy Efficiency Trust have awarded a grant to Impetus Consulting to support this project, the aim of which is to develop a toolkit to help local authority energy, legal and financial officers overcome the perceived legal barriers to implementing energy efficiency projects.

The Local Government Act in 2000 introduced a new duty for local authorities to promote the "environmental, economic and social well-being" of their communities, however, UK government ministers have identified that this 'well-being' power is still an un-tapped means for local government to promote sustainable development. In December 2003, the Local Government Association published a report, 'Powering up: making the most of the power of well-being', which describes how local authorities can make use of this power. Although the report includes a number of case studies demonstrating the innovative use of the power of well-being, none of these relate to energy efficiency, despite the fact that energy efficiency projects should be facilitated by this power.

In order to encourage the development of new energy efficiency initiatives, this project will involve extensive research and the development of a toolkit, which will act as a companion guide to the LGA report. The project consists of a number of key phases:

1. Research to establish the current literature regarding local authority legal powers and barriers with respect to energy efficiency projects.
2. An on-line survey examining current barriers faced by local authority officers and the use of the power of well-being and other legislation to promote energy efficiency. Through analysis of the survey a number of case study authorities will be selected, including both those making use of legal powers and those facing legal barriers.
3. Interviews with the case study authorities' energy, legal and financial officers and the development of a series of case studies. Discussion regarding the barriers experienced, the use of the power of well-being, opportunities for working in partnership with legal departments and the issues surrounding corporate commitment.
4. Production and dissemination of the toolkit.

We will ask you to be actively involved in the stages of the project detailed below:

| | | |
|---------|---|--------------------|
| Phase 2 | Comment on the proposed project methodology, particularly the survey design | Start January 2005 |
| | Provide comment on the proposed case studies selected | Mid March 2005 |
| Phase 4 | Comment on the draft toolkit | Start August 2005 |

Please note that this involvement will be via email and telephone. In addition, please find attached the initial list of relevant literature that we have identified. If you know of any other key publications that we should review, please could you email details to us. Thank you.

The toolkit will allow both those who are new to the area and those that are experienced but facing new challenges, to access information in order to increase the number and range of energy efficiency projects undertaken by councils throughout the country.

If you have any questions at any point during the project, please don't hesitate to get in touch with either Joanne Wade or myself. We look forward to working with you over the coming months.

Yours sincerely

BRYONY MATHIE
Senior Project Officer
Bryony@impetusconsult.co.uk

APPENDIX 2: ON-LINE SURVEY

Local authority legal powers to promote energy efficiency

We would be very grateful if you could spend 5 minutes completing this survey to help in the development of a toolkit that will help local authority energy officers overcome the perceived legal barriers to implementing energy efficiency projects.

The responses from this survey will be used to produce an overview of current activity and identify and select case study authorities.

If you experience any problems or have any queries please contact:

Bryony Mathie

Impetus Consulting Ltd

T: 020 7924 9988

E: Bryony@impetusconsult.co.uk

Awareness of the power of well-being

1. The Local Government Act 2000 introduced a new duty for local authorities to promote the 'environmental, economic and social well-being' of their communities. This 'well-being' power is a significant resource for authorities to use in order to improve services. Are you aware of this power and how it can be used?

- Yes
- No

2. Have you or members of your team attended events to raise awareness of the power of well-being or intend to in the future?

- Yes already have
- No but plan to in the future
- No and have no plans to
- Other (please specify)

3. Has the local authority appointed a key person for well-being or is there a champion Elected Member promoting the power?

- Please give details:

Use of the power of well-being

4. Have you or your council used the power of well-being to develop energy efficiency or sustainable energy projects?

- Yes
- No

5. If yes, how has the power of well-being been used?

- Incurring expenditure
- Giving financial assistance
- Entering into arrangements or agreements
- Cooperating with, facilitating or coordinating any activities
- Exercising functions on behalf of any persons
- Providing staff, goods and services or accommodation to any person
- Prudential borrowing (power to charge and trade)
- Other (please specify)

6. Please give brief details of the scheme(s):

The power of well-being and partnership activity

7. Did the power of well-being help to establish or develop either partnership between the council and external organisations or facilitate internal agreements?

- Yes
- No
- Used other powers (please specify)

8. Please give brief details of any internal or external partnership activity that has been facilitated using the power of well-being:

Barriers to using the power of well-being

9. Did you meet any barriers to using the power of well-being? e.g. legal/legislative/finance department objections

- Yes
- No

10. Please give brief details:

Overcoming the barriers

11. Were the barriers overcome? If so how?

Other powers to promote energy efficiency

12. Have you or your council made use of the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 to offer loans for energy efficiency?

- Yes
- No

13. Have you or your council used any other specific legislation to promote the development of energy efficiency projects? e.g. Credit Unions, Investor Save. Please give brief details:

Thank you

Thank you very much for completing the survey, your time and responses are much appreciated.

If you are ready to submit the survey, please complete the contact details below and then click 'done'. If you would like to change any of your answers, please just click the 'previous' button below.

If you have questions or queries please contact Bryony Mathie, T: 020 7924 9988 or E: Bryony@impetusconsult.co.uk.

- Name (first and last name)
- Telephone
- Email address
- Organisation name
- Job title

APPENDIX 3: BRIEFING NOTE AND CASE STUDY OUTLINE

Briefing note

Introduction: what the note is about – i.e. the power of well-being and how it can be used to help with sustainable energy activities.

The power of well-being: a simple description of the power, how it can be used, and its limitations.

The power to trade: a simple description of the power, how it can be used, and its limitations.

Examples of how the power has been used to support sustainable energy activities: links to the case studies (at the moment these will be those included in this report; we intend to add further case studies in the future if this becomes appropriate).

Case study

Description of the scheme: a basic introduction to the aims and shape of the scheme.

Community well-being benefits of the scheme: to demonstrate why use of the power was justifiable and enable others to justify similar schemes.

Why the well-being power was used: explanation of how the power helped.

Format

Both the briefing note and the case studies will be written to appeal to senior officers and elected members.