

A long and winding road in Wales..

Tom Cosgrove discusses the path to the refusal of applications for onshore wind farms in Mid Wales, in the longest-running planning inquiry of its kind



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On 7 September 2015 it was announced that Amber Rudd, the new secretary of state for energy and climate change, had rejected applications for four onshore

wind farms and an overhead line connection in Powys, Mid Wales. A further proposal to upgrade an existing wind farm was approved, but proposals for a power line to link it to the national electricity grid were rejected.

The announcement came after a very long wait. On 23 October 2012, a combined public inquiry into the applications was called, pursuant to section 36 of the Electricity Act 1989, because the local authority, Powys County Council, objected to the applications.

The conjoined inquiry, which was the UK's biggest onshore wind farm public inquiry and Wales's longest-ever planning inquiry, sat for a year during 2013/14, and involved consideration of renewable

energy and planning policy, landscape, tourism, the economy, cultural heritage, and cumulative impact, among other issues.

In policy terms, there were issues in particular around the relationship between the UK government's and the Welsh government's views on green energy and planning. Of particular relevance was the Welsh government's approach of concentrating large-scale wind energy projects in a limited number of strategic search areas (SSAs).

The planning inspector's report and recommendations were submitted around seven months after the inquiry closed.

The reasons cited by the government for rejecting the projects included concerns over the wind farms' impact on the

local landscape, biodiversity, heritage, and traffic. The government agreed with many of the recommendations of the inspector, but not entirely.

Both the inspector and the energy secretary placed weight on national and Welsh policy statements, but disagreed on the resulting conclusions they reached in light of such policy. Of particular interest to Welsh authorities and developers will be the approach of the inspector to the indicative energy targets of the SSAs. He clearly regarded the fact that certain combinations of schemes would exceed those indicative energy targets to be a policy concern.

The inspector and the energy secretary also had to grapple with the potentially important knock-on effect for future



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Leigh Day is bringing a court case against Foxtons estate agents on behalf of landlords who have used Foxtons to let out their properties. The claim involves allegations that:

- Foxtons takes commissions and fees from contractors (such as for repairs, cleaning and inventory, and gas safety

Foxtons: Following industry standa

checks) without landlords' informed consent. Foxtons now admits that it takes up to a 33 per cent cut of contractors' fees;

- Foxtons takes various fees from tenants without the landlord's informed consent. For example, it appears that Foxtons charges both landlords and tenants a fee of £420, including VAT, for arranging a new tenancy agreement to be printed and signed; and
- Foxtons uses contractors who charge much more than the market rates, in breach of its duty to use reasonable care and skill, and to avoid letting its interests conflict with those of the landlord.

The claimants argue the breaches

of duty are of such seriousness that the estate agency should have to repay not just the fees it did not disclose, but also its primary agreed fees and commissions for letting and managing landlords' properties.

These kinds of practices appear to be widespread. Many other landlords, agents, and contractors allege that other agents are engaging in similar practices.

There is undoubtedly a relationship of principal and agent between landlords and their letting agents, such that letting agents owe landlords fiduciary duties, including a duty not to make any profit or income from the agency relationship without the landlord's fully informed consent, and a duty not let their interests conflict with the interests of the landlord without

the landlord's fully informed consent.

It is not unlawful to take commissions on contractors' work, provided the landlord is fully informed about the arrangement. That way the landlord can assess the extent of the conflict of interest involved and whether the profit being made is fair, and decide whether to object or consent to the arrangement.

Foxtons claims its standard contracts contain a term whereby landlords consent to the commissions. The thing is, no matter how much legal training you have, the contract simply does not contain enough information to enable a consumer landlord to give fully informed consent to the arrangement. The term simply states Foxtons may keep any

Rent control may harm, not help, tenants

Mandatory limits on housing rents might seem like the obvious solution to rising prices, but other approaches can do more to protect both landlords and tenants, says **Lisa Evans**

applications for grid infrastructure. If all the turbines before the inquiry were permitted, it would have triggered the need for a 400 kilovolt grid connection on pylons, which was also strongly objected to by Powys County Council and others, although the application for that connection was not before the inquiry.

It is unlikely, in light of the recent changes to the renewables subsidy regime, that there will be another onshore wind farm inquiry of this scope, at least until a different political climate emerges.

There is no doubt that the decision-making process took far too long. However, the inquiry did enable those concerned – for and against – to have their say and test the evidence fully. **SJ**

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commissions it happens to earn. It doesn't give any details about the size or frequency.

This is not just our interpretation of the law but an accepted industry standard. The Private Rented Sector Code of Practice, which is endorsed by all the major letting industry groups, provides: '[Letting agents] should disclose any commission [they] might receive from the contractor at the time that estimates are provided to the landlord.'

It is hoped the case will raise awareness among landlords and tenants that many agents charge such fees. The recently enacted Consumer Rights Act 2015 should hopefully go some way to improving fee transparency in the industry by requiring agents to publish a list of their fees on their websites. **SJ**

The UK's private rented sector (PRS) has more than doubled in size in the last 15 years and looks set to keep expanding. The sector accounts for around four million households – some 17 per cent of the total number of households in the UK.

Ensuring this group is adequately protected and has access to reasonably priced accommodation in appropriate locations, while protecting landlords and their rights, is a key and complex challenge facing the UK's urban hubs.

'Generation rent' has had to contend with the clampdown in mortgage lending after the financial crisis, which forced many would-be homebuyers into the rental market. This growth in the PRS was boosted by a combination of other factors, including the scrapping of rent controls, rising house prices in relation to earnings, and the proliferation of buy-to-let mortgages. In a classic example of supply and demand, the squeeze on supply in the rental market has caused rental prices to rocket, particularly in the capital.

The private rental market is cooling off slightly across the UK, with more favourable conditions in place for people looking to become homeowners. But the challenges facing this group, especially those renting in London, are considerable, with a significant dearth of available affordable property.

In this landscape, rent control can seem like the obvious solution. According to a survey conducted by the polling agency Survation, fewer than 10 per cent of British people are against mandatory legal limits on housing rents. However, it's important to remember that this is a complex, multi-faceted issue, which isn't going to be solved in a single stroke.



Future-proofing the sector is key

The rental situation in London is unique in the UK and needs to be considered in isolation. But although the situation for renters isn't as challenging in the regions, the housing supply across the UK is still continuing to fall, and future-proofing the sector to protect against the effects of rising demand and falling supply is key.

Berlin is the latest city to enforce rent controls, stipulating that landlords may not charge over 10 per cent more than the local average rent for new tenants. However, it's vital to keep in mind that our property market is different to Germany's, and while rent control may work well in Berlin, it won't necessarily work for London, or indeed the rest of the country.

In fact, a report by the London School of Economics has shown that while statutory longer-term rent-stabilised tenancies may benefit the better-off tenant, they are likely to worsen the position of poorer households looking to rent privately, harming the very people this approach is trying to help. It's important to bear these complexities in mind when considering this issue.

Rather than forcing landlords to lower rents or creating fixed caps, I would agree with the report's recommendation that creating a partnership approach, where councils positively enable longer-term tenancies with index-linked rent increases, voluntarily agreed by landlord and tenant, would create a more workable and positive situation.

This approach could be supplemented by improving transparency and contractual enforcement for landlords and tenants – empowering and protecting both parties. **SJ**



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