

# Local authority legal powers to promote sustainable energy: Case studies

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Report prepared by:

**Impetus Consulting Ltd**  
12 Abbeville Mews  
88 Clapham Park Road  
London SW4 7BX  
T: 020 7819 2430  
F: 020 7498 2603

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**Joanne Wade**

Report checked by:

E-mail:  
[info@impetusconsult.co.uk](mailto:info@impetusconsult.co.uk)

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**Bryony Mathie**

Website:  
[www.impetusconsult.co.uk](http://www.impetusconsult.co.uk)





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## **2.0 NOTTINGHAMSHIRE COUNTY COUNCIL: RENEWABLE NOTTINGHAMSHIRE UTILITIES LTD (RENU)**

### **2.1 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.

### **2.2 Description of the project**

Nottinghamshire Council is a proactive local authority within the sustainable energy field and was one of only seven local authorities in England and Wales to be awarded Beacon Status for Sustainable Energy in 2005. The Council has already reduced CO<sub>2</sub> emissions by over 25% in the last five years and has an ambitious target of becoming CO<sub>2</sub> neutral for its building stock. As one of the measures to achieve this goal, the Council, in conjunction with the Forestry Commission, the Countryside Agency and the Government Office for the East Midlands, set up the Nottinghamshire Wood Heat Partnership to stimulate the wood heat market in the county. The active part of this partnership is ReNU.

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 Wastecycle Ltd., the Nottingham Energy Partnership, Nottinghamshire Rural Community Council, Sherwood Energy Village and FBS Woodland Solutions Ltd.

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, which now has wood burning boilers in 15 of its schools with an installed capacity of 9MW, consuming over 1,000 tonnes of wood fuel with annual CO<sub>2</sub> saving of 2,500 tonnes.

### **2.3 Why was the power used?**

The well-being power enables Nottinghamshire County Council to participate in ReNU 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. The well-being power enables the council to have a stake in the company, but only up to 19%. The power to trade would allow Council to completely control the company, if they chose to use it. The Council chose not to because they believed that a wider strategic partnership would be more beneficial for the development of the company.

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 have been successful, in order to convince Members that the Council was not acting ultra vires.

## 2.4 How was the power used

Key benefits of using of the power:

- ❑ The breadth of the power is such that councils should regard it as a 'power of first resort.' This means that rather than having to search for a specific power elsewhere in statute in order to take a particular action, councils can instead look to the well-being power in the first instance. This makes the legal position much easier and much clearer for the council.
- ❑ Unless an action is specifically prohibited by the power, the council is able to take the view that it is permitted.
- ❑ 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."<sup>1</sup>

## 2.5 The power of well-being and council strategies

Having a commitment to sustainability within the local authority's community strategy or strategic plan can facilitate using the power of well-being. 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. The power can be used without such strategic commitment, however, this may make the council more cautious about using it.

At Nottinghamshire, 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.

A further sign of Nottinghamshire'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. The PSA project has now been completed and has achieved in excess of the annual 5,000 tonnes of CO<sub>2</sub> reduction target required. The development and implementation of the wood heat schemes was fundamental to the successful delivery of the PSA and gaining the performance reward grant.

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<sup>1</sup> Report of Cabinet Member for Resources, Nottinghamshire Wood Heat Project, 15 January 2003

## 2.6 The power to trade

The well-being power can also be used with other local authority powers, and the new position on charging and trading under the Local Government Act 2003 is particularly useful in terms of offering energy services to householders. The Secretary of State is able to determine the extent of use of the new trading power by category of local authority. Only those local authorities in the fair, good and excellent performance categories as judged by the Comprehensive Performance Assessment (CPA) are able to use this power to trade. It enables authorities to enter into trading agreements or arrangements with any person for the provision of goods, materials, staff, accommodation and services on a commercial basis (i.e. charges fixed at more than cost recovery), if the purpose is to promote well-being.

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.

## 2.7 Other potential uses of the power of well-being

As a power of first resort, there are numerous ways in which the power can be utilised to promote the social, economic and environmental well-being of an area. Other potential uses of the power at 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 consortium (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

## 2.8 Barriers overcome/lessons learned

Despite cited barriers to using the power of well-being to promote sustainable energy, Nottinghamshire County Council did not meet any significant problems in its implementation for the creation of ReNU. There are a number of potential reasons for this.

- Legal Services were aware of the power of well-being and its capabilities from the outset and provided advice to elected Members and departments on its utilisation.
- Nottinghamshire County Council was already committed to sustainable energy having been proactive in this field for many years and there was corporate commitment within the council's strategic plan.
- There is support and commitment to sustainable energy at all levels of seniority, from the Cabinet and Chief Executive to Officer level. This facilitates innovative working and has enabled the council to be more risk taking.

Despite the benefits of the power there are still barriers to sustainable energy schemes that it has not eliminated, in particular the EU procurement directive and the issue of green procurement and letting contracts.

## **3.0 FENLAND DISTRICT COUNCIL: FENESS – FENLAND ENERGY SERVICES SCHEME**

### **3.1 Introduction**

FenESS is an energy services scheme, which can be broadly defined as a scheme providing a complete energy service, i.e. 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 assisting energy conservation authorities to attain 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.

### **3.2 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 was 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 where the Council could retain 19%, 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 it was prohibited for a District Council to carry out this work, it was fine for someone else to carry out the work on behalf of the Council and then to help that organisation both financially and physically run the scheme, but it was unlawful for the District Council to do it themselves. This was the basis for the use of the well-being section of the local Government Act, 2000.

At this time, in preparation for the conference 'Local Authority Action for Climate Change' in Nottingham, the Department for Environment Transport and the Regions (DETR) published a discussion paper on energy efficiency and local well-being<sup>2</sup>. This paper introduced the Local Government Bill and stated that improved energy efficiency is very relevant to wider environmental, economic development and health issues. Further, the paper invited comments and ideas on how local government can contribute to the UK's climate change objectives, particularly those on energy efficiency, and in the process advance local well-being in the community.

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<sup>2</sup> Energy efficiency and local well-being: A corporate priority for local authorities: Discussion paper, DETR, May 2000

The subsequent Local Government Act brought the power of well-being to local authorities and this provided the power to establish the energy services scheme on the basis that another organisation managed the programme and the contract could demonstrate the benefits to the community that the scheme would provide.

### **3.3 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 used was that of Andrew Arden which had been paid for through the initial grant.

### **3.4 How was the power used?**

In order to use the power of well-being, Counsel required the authority to 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 Anglia West Energy Efficiency Advice Centre, an independent charitable trust, act as the energy services manager of the FenESS scheme. The Council was 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 have to reinvest the excesses back into a grant scheme;
- ❑ The 2001 tender for an energy supplier 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 appointment of Karen O'Sullivan to coordinate FenESS.

### **3.5 Description of the project**

Following the privatisation of the energy industry, neither the landlord nor the incoming tenant knew which company supplied energy to an empty property and some new tenants became responsible for debts of a previous tenant. FenESS provides a bespoke service to landlords, and private householders, to transfer the energy services of a property to a known supplier. For RSLs this ensures that incoming tenants have the security of supply for energy services when they move into a vacant property. The scheme also assists tenants and householders with enquiries regarding their energy supply or with advice on energy efficiency measures for their home. The initial landlord was Fenland District Council who still owned their own homes. This has now been expanded to three other 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 private owners or private tenants.

#### **3.5.1 Objectives of FenESS**

- ❑ 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.

- ❑ The establishment of a heating insurance service as a means of generating further income as well as assisting in the maintenance of efficient operation of appliances.

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 council housing stock that has become void.

### **3.5.2 Summary of the benefits for RSLs and tenants**

- ❑ Creates a fund that can be used to assist local authorities and RSLs achieve affordable warmth for householders as well as environmental improvements;
- ❑ Ensures that incoming tenants do not take on responsibility for debts incurred by the previous tenant;
- ❑ Helps the incoming tenant to obtain gas and electricity supplies available when they move in;
- ❑ 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;
- ❑ 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;
- ❑ Builds up a database of gas and electricity supply identification numbers for the landlord for future reference, which will make changing energy supplies easier;
- ❑ Provides tenants with access to subsidised energy efficient products from the energy supplier;
- ❑ 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;
- ❑ The scheme can form one component of a local authority's affordable warmth strategy for all householders in their area – tenants and owner-occupiers;
- ❑ Provides free independent energy advice to all householders;
- ❑ Supplies a range of information leaflets for all tenants and councils to help them with issues regarding fuel supplies, and
- ❑ 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.

## **3.6 The power of well-being and council strategies**

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

Bruce Pittingale is also Chair of the Local Strategic Partnership Environment group. Although this is not enabled by the power it does help to back up the approach taken. 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.

### **3.7 Other uses of the power of well-being**

Prior to the FenESS scheme the local authority was adverse 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 granted consent.

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 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.

### **3.8 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. Although this grant funding is no longer available, this problem should not occur again due to the familiarity by Counsel of the power 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 benefits the scheme would bring to the local community, in terms of social, environmental and economic benefits.

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, whilst agreements have been reached with other authorities and there are further enquiries in hand.

## **4.0 KIRKLEES METROPOLITAN BOROUGH COUNCIL : KIRKLEES EMISSIONS TRADING SCHEME**

### **4.1 Introduction**

Kirklees Metropolitan Borough Council has been proactive in the sustainable energy field, in 1996 signing up to the Friends of the Earth Climate Resolution. This set the council the challenging target of a 30 per cent reduction in carbon dioxide emissions on 1990 levels by 2005, exceeding the target set by the Government (to reduce emissions by 20 per cent relative to the 1990 level by 2010). The Council also responded to the Government's target of 10 per cent 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. Kirklees is still the only local authority currently participating in the UK ETS, which began in March 2002.

### **4.2 Description of the project**

#### **4.2.1 Summary of emissions trading**

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 their 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, such as a risk assessment for the scheme. In addition, it was proposed 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, and
- 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 CO<sub>2</sub> emissions from its corporate operations. In return, it has signed up to a legally binding reduction of 1,000 tCO<sub>2</sub>e for part of its municipal buildings by December 2006; representing a 12 per cent reduction.

### **4.3 Why was the power used?**

An appropriate power needed to be identified in order for Kirklees to join the ETS and the legal department wanted to ensure that the power of well-being, once it had been identified, was not being abused (there was initial concern regarding contingent liability if the power had been misinterpreted).

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 2 of the power of well-being was much better legislation to use for justification. Although section 2 could be used, it currently states that all existing legislation should be reviewed prior to its use. This requires very experienced local government lawyers and could be a limiting factor to those authorities that outsource legal work to external lawyers.

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.

### **4.4 The power to trade**

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, 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.

### **4.5 The power of well-being and council strategies**

There is a clear link between the ETS and Kirklees Community Strategy, as required by section 2. It specifically corresponds with the theme 'Making Kirklees cleaner and more attractive' (p23), which includes a target under section 6F for reducing greenhouse gas emissions by 30% on 1990 levels<sup>3</sup>.

### **4.6 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:

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

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<sup>3</sup> Kirklees Vision 2012:  
<http://www.kirkleespartnership.org/publications/communitystrategy/communitystrategy.pdf>

#### **4.7 Barriers overcome/lessons learned**

- Key lesson learnt is that 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.

## **5.0 BRAINTREE DISTRICT COUNCIL: RENEWABLE ENERGY GRANTS SCHEME**

### **5.1 Description of the scheme**

The Braintree District Council renewable energy grants scheme provides £1000 for residents to install solar hot water systems. The scheme uses a local Clear Skies accredited installer and is trying to find another to meet high levels of demand. 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.

### **5.2 Overcoming barriers**

The cessation of Clear Skies funding has slowed the momentum of the scheme but the Council is continuing to offer their grant, in preparation 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.
- ❑ 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 of 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, again to be borne by the householder plus the possibility of extra costs to bring their system up to Part L standards.

### **5.3 Why was the power used?**

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.

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 council wants to achieve a CPA Excellent rating. Sustainability is also part of new criteria for CPA so the Chief Executive is particularly keen to pursue this.

Evidence of this commitment is the Council Tax Cavity Wall that Braintree has been running scheme since November 2004 and discounted insulation schemes on offer 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. £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.

#### **5.4 Benefits of using the power**

The well-being power gives the Council authority to do things that without it, it could be accused of acting ultra vires, e.g. outside of its legal powers. Although the Council could undertake activities without the power, there would be the risk at the very least upsetting 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. The power has 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. Peter can ask them if he's unsure of legal status for work e.g. Credit Union for Warm Front top-up. Legal team 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 Council does not anticipate using the power of well-being beyond renewable energy schemes.

#### **5.5 The power of well-being and other council services**

Braintree doesn't have social services resources to draw upon, unlike Southend (unitary authority), but 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.

#### **5.6 Future use of the power of well-being**

The power can not be used for training or promotional purposes as it is harder to demonstrate the well-being benefits and 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.