From the Welsh Valleys to the Hutt Valley, NZ: A study of differences in approach and perspective

When I first arrived in New Zealand (NZ) in 2010, I had expected some differences from the planning system I was familiar with in Wales, United Kingdom. However, it was not until I started working here, that I learnt just how different the approaches taken by the two countries are. That despite the British origins of NZ and that both planning systems largely share the same goals and values, the Resource Management Act 1991 at face value has little in common with the Town and Country Planning Act (England and Wales) 1991.

I was motivated to write this article discussing the two approaches from my own experience of difficulties initially encountered when taking on a comparable role of a Senior Planning Officer (Resource Consents[i]). I was not just facing a difference in legislation, administrative process and terminology, but a difference in perspective which was less obvious and took longer to grasp. Rather than thinking that one system was better than another, I could recognise advantages and disadvantages in both.

Resource consents are heavily influenced by their local context and this article describes a typical approach taken to how an application for a house within an urban area would be treated by each Council during the same time frame (2010), to allow an easier comparison.

The two local planning authorities where I worked in Wales and New Zealand shared some similarities. They are both situated between 15 to 30 minutes' drive north of their respective capital cities of Cardiff and Wellington. The origins of present day townships stem from a similar point in time. Both contain rivers and streams which pass through the valley(s) and are bordered by steep hills. The local District Plans[ii] in both Councils had been adopted around 2003, and were considered far from cutting edge[iii]. I also note that both Councils recognised two official languages, English and Welsh in Wales and English and Maori in New Zealand[iv].

However, the local environment also markedly differed in other respects. Housing within the administration area of Rhondda Cynon Taf County Borough Council (henceforth called RCT) was heavily influenced by the coal mining industry, which lead to rapid population growth in the nineteenth century. Housing is characterised by high to medium density[v], two-storey, terrace housing built in long rows between the mid nineteenth to early twentieth century. Older residential areas exhibit little diversity of house types, with the overwhelming majority constructed in pennant stone with timber sash windows, slate roofing and steep pitch roofs. The majority of housing had no vehicular access and no on-site parking, leading to the heavy congestion of roads by parked cars. A typical residential area is shown in Photograph A.

In contrast, housing within the administration area of Upper Hutt City Council (henceforth called UH) is characterised by a low density suburban style of development, exhibiting a wide diversity of single storey and two-storey house types. Housing predominantly dates from the mid to late twentieth century, with some modern estates. A significant proportion of housing is constructed in timber and has a low roof pitch. The area contains numerous examples of tandem-style development, where one house sits behind another. The majority of housing makes provision for cars to park on-site. A typical residential area is shown in Photograph B.

Is Resource Consent Needed?

All new housing in Wales requires resource consent[vi]. Resource consent in Wales is required for a far wider range of activities than in New Zealand, which is reflected in larger planning departments and a higher number of applications received. In 200XX, RCT determined X applications, whilst UH determined Y%.

(check population differences).

Using a scale of 1 to 5, to describe differences in the impact of development on its surroundings, whereby 1 is no change and 5 is severe impact, I am of the view that on average, Wales requires development reaching a level of 2 to obtain consent, compared to 3.5 for New Zealand.

Nevertheless, I note that the subdivision of land into multiple land parcels requires resource consent in New Zealand, but is strictly a legal process in Wales with no government involvement. However, the subdivision of land in Wales creates no development rights or entitlements. As a result, should a land parcel be subdivided, there is no guarantee that any development on the land would subsequently be permitted by the local Council.

Unlike Wales, NZ has no nationwide system which sets out what type of development requires consent and discretion as to when consent is required is left to the local Council. Within UH the majority of housing does not require resource consent. Resource consent is not required for housing up to 8m in height and setback between 3 to 6m from the front property boundary, subject to compliance with other provisions in the District Plan.

If a house requires resource consent in UH, it is because a rule restricting development in the District Plan has been breached. Consequently, the need for resource consent indicates that the impacts of the proposed development may be significant. In contrast, in Wales were the need for resource consent for new housing is universal, the need for consent provides no indication of what the possible impacts of the development may be.

What type of consent is required?

There are three types of resource consent available for a dwelling in Wales. These are outline, reserved matters and full consent. An outline application is where only partial details of a dwelling are provided, such as approximate location and a range of height, width and length measurements. Reserved matter applications cover any outstanding matters not previously included in an approved outline consent, such as details of access and parking, landscaping, internal layout and external appearance. Full applications as the name suggests include full details of the proposed dwelling and are the most common type of application submitted. All full and outline applications for a dwelling would be treated as a 'discretionary activity', whilst a reserved matter application would be treated as a 'restricted discretionary activity'.

RCT did have additional requirements for developments not considered to comply with planning policy, which are referred to as 'departure applications'. However, such a classification is rare for a proposed dwelling in an urban area. No land within the Council district was zoned, although the map accompanying the district plan illustrated the extent of urban areas, industrial estates, town centres and conservation areas.

In NZ, the District Plan determines the level of discretion that planning officers have, for each type of development within each zone. The level of discretion varies widely from 'permitted activities' where no consent is required, 'controlled activities' where consent is essentially guaranteed, 'restricted discretion' where the Council's discretion is restricted to issues identified in the District Plan, 'full discretion' of all relevant matters and no discretion to decide on an application, should it be a 'prohibited activity'. A house which requires RC in UH would typically fall under the category of a 'discretionary activity'.

What type of information needs to be included in a Resource Consent?

Welsh planning legislation prescribes a minimum level of information for a resource consent to be validated or registered. By late 2010, a full planning application for a dwelling required:

- A location plan showing the application site and surrounding area;
- Application fee (set nationally);
- Design and Access Statement;
- Outline as to how the proposed dwelling intends to achieve a minimum level of energy efficiency;
- Site plan, Floor Plan(s) and Elevations; and
- A signed form identifying the land owner of the application site.

Depending on its specific location within RCT, additional information may also be required such as cross-sections, topographic survey, tree survey, bat survey, habitat survey, flood study, details of retaining structures, shadowing diagrams and plans illustrating vehicle manoeuvrability.

Section 88 of the Resource Management Act 1991 (RMA) outlines the requirements for resource consents in New Zealand and is less specific than its Welsh counterpart. A resource consent for a dwelling in UH typically required the following:

- Site plan, Floor Plan(s) and Elevations;
- Land Ownership Certificate, Deposit Survey Plan and any applicable Consent Notices
- Application fee (set by the Local Council); and
- Assessment of Environmental Effects.

The Welsh requirement for a design and assessment statement (DAS) significantly varies from the NZ requirement for an Assessment of Environmental Effects (AEE) in the following respects:

1. A DAS requires an assessment of the character and appearance of the site and surrounding area and an explanation as to why a particular design has been chosen. An AEE does not need to provide the reasoning behind a design approach.
2. A DAS can be considered to be complete, even if it contains biased or insufficient information to back up claims made. An AEE is expected to provide an unbiased and complete assessment of effects.
3. An AEE typically assesses the additional effects of a proposed development, above the level that would not require consent or where resource consent would be guaranteed as a controlled activity (that is, the permitted baseline). A DAS looks at the impacts of a proposal compared to the existing situation.

Whether the Resource Consent needs to be notified?

In Wales, all resource consents require some form of public notification and can range from the direct notification of neighbouring properties to public advertisement in a local paper. The typical approach adopted by RCT for a house was direct notification of nearest neighbours (including those facing the site) and the local Councillor, in addition to the use of site notices. The universal need for notification in Wales, provides no indication as to whether the impacts of a proposal are acceptable or not.

In Wales, any member of the public can comment on resource consents, regardless of how the application had been notified. Objections were received to the vast majority of applications for new dwellings in RCT, frequently on the grounds that they would increase traffic and parking congestion.

In NZ, Section 95 of the RMA identifies a test for whether resource consents have more than a 'minor' effect on the environment and whether there are persons, which are affected to at least a 'minor' degree. These tests determine whether a resource consent requires public and limited notification respectively. The decision to notify in NZ therefore provides a signal that the proposed development may have potentially unacceptable impacts. At UH approximately 5% of resource consents are the subject of limited notification, 1% are publicly notified, with the vast majority 94% requiring no notification.

Should affected persons be identified, the need for the Council to notify them of the application can be avoided through the use of affected parties consent. An equivalent type of consent does not exist in Wales.

What are the fee costs?

Fees in Wales are set nationally and there is no scope for cost recovery, should the application fee not cover the full cost incurred by the Council in processing the application. Fees rise in proportion to the scale of the application, for example the fee for an application for 10 houses, is 10 times the fee for a single house.

A fee exemption is provided in Wales for the resubmissions of applications which were lodged within the past 12 months.

Fees in NZ are set by local Councils with Councils having the ability to seek full cost recovery, should processing costs exceed the initial lodgement fee. An additional fee is charged for notification and for applications referred to Planning Hearing. In 2010, the application fee for a single dwelling in Wales was $360, compared to XXXX for a non-notified application in UH.

HOW ARE RESOURCE CONSENTS ASSESSED

What planning policies are relevant?

Whilst resource consents are assessed in both Wales and NZ in accordance with national, regional and local planning policy, it needs to be taken into account that planning policies widely differs between the two countries. There is a wide body of national planning policy and accompanying guidance notes in Wales, that are applicable to urban areas and which seek to control new housing. Likewise, regional planning policy is also applicable to low-scale urban development.

In contrast, I did not come across any example in UH were national or regional planning policy was considered relevant. Examples of issues covered by planning policy that was applicable to RCT but not UH are listed below:

- A general presumption against new residential development in the countryside (the concept of rural residential development in Wales does not exist);
- A requirement for all development regardless of scale to represent good design;
- Requirement for a diversity of house types for larger housing schemes;
- Maximum car parking standards;
- Requirement to reach a minimum density of housing of 30 dwellings per hectare or alternatively outline why a higher density of housing could not be achieved;
- Requirement to achieve a minimum level of energy efficiency;
- Requirement of larger housing schemes to provide 'affordable' housing (i.e. housing managed by housing associations and not available for private sale);
- A discouragement of 'tandem-style housing';
- Use of 'green wedges' and other green spaces to separate urban settlements;
- Requirement for flood impact assessments to accompany applications in identified flood risk areas; and
- Need to screen some types of applications, as to whether an 'Environmental Impact Statement' is required.

Local District Plans in NZ contain a number of prescriptive standards which identify general rules for development and create a 'permitted baseline', which is often used to judge applications against. These prescriptive standards do not vary from case to case. For example, a dwelling with a height of up to 8m is acceptable in all cases, subject to compliance with other rules in the plan such as site coverage, setback from boundaries and height control plane.

Local District Plans in Wales use a different approach and contain few, if any, prescriptive standards. In RCT, no planning policies identified the scale of development that would be acceptable and there was no concept of a 'permitted baseline'.

What is meant by the word 'minor'?

A judgement as to whether a proposal has a 'minor' or 'more than minor' impact in NZ is crucial for both the decision to notify and the outcome of the application. However, I found it frustrating that I found no clear guidance as to what this term meant. Rather what is meant by the word 'minor' can vary from person to person and from country to country. My own opinion is that the word minor is used in a different sense in Wales. Impacts here were rarely described as minor, but rather as acceptable.

I am of the view that should the level of impacts from a proposal be put on scale from 1 to 5, where 1 was no impact and 5 was severe impact, that the word minor in Wales would be assigned to 1.5 to 2. Acceptable impacts in Wales were often considered to have more than a minor effect, because the word minor is used to refer to very small impacts. However, using the same scale, the word minor is more likely to be fall in NZ around 3.5.

The word ‘minor’ was a more difficult concept to grasp, because of the definition of ‘major development’ I was familiar with in England and Wales. Here ‘major development’ is defined as more than 10 units of housing or 1,000 sqm of commercial floorspace and must be the subject of public notification. The concept that a multi-storey office block or hotel could receive resource consent as a controlled activity, without the need for any notification and which is considered to have less than a minor impact, is completely foreign to planning practice throughout Britain. Whilst the same proposal may be approved, its impacts are likely to be described as significant but acceptable.

What assessment criteria apply?

The principle assessment criteria for resource consents in Wales is qualitative, rather than the quantitative approach adopted by NZ. Whilst both countries look at visual impacts on the surrounding area and impacts on adjacent properties, the way in which a judgement is made about these impacts significantly differ.

The existence of a permitted baseline as used in NZ can dramatically alter the above type of assessment. The permitted baseline encourages comparisons of a proposed dwelling, to that which would not require consent or where consent would be guaranteed. It generally looks at the additional impact resulting from a breach of one of prescriptive standards, as compliance with these standards is deemed acceptable.

An assessment in Wales where a permitted baseline does not exist and where an acceptable scale of development is decided by case-by-case analysis, can be a tougher test to satisfy. It is not just a comparison of say a height of 9m versus 8m, but a judgement as to whether even 8m is acceptable and further still, whether the site is suitable for any dwelling. The difference between the two approaches is even more dramatic in respect to privacy provisions. At UH, a proposal was considered to provide an acceptable level of privacy, if it complied with prescriptive standards in the District Plan of a setback from the property boundary between 1.5m and 3.0m. A good argument could be put forward that a setback of 2m results in no significant difference in terms of privacy than 3m, because both would result in a loss of privacy. In contrast, in RCT a setback from the property boundary of either distance is likely to be viewed as overly intrusive and unacceptable.

The qualitative and hence more subjective method of assessing the effects of proposals is discussed in greater detail below. The assessment of visual effects, took into account to a far greater degree, the concept of good design for the proposed building itself and its compatibility with the character and appearance of the surrounding area. For example, if a house was proposed in an older residential area, it was expected:

- To have compatible building materials, such as the use of stone, render, slate and pantile;
- To have a compatible building shape, such as a similar roof pitch;
- To share design features in common, such as window shape and setback from the road;

- To share a similar layout, in relation to space surrounding the dwelling and fronting onto roads; and
- To be of similar type, such as detached, semi-detached and terraced houses.

Greater scope was available for a wider variety of housing designs in areas of less uniform appearance, such as new housing estates and steeper land sections.

Neither the RMA or the UH District Plan makes explicit mention of urban design, although it could be argued that this matter is covered by references to the maintenance and enhancement of amenity and the quality of the environment. However, such a consideration is limited by the permitted baseline. There is no provision in the District Plan which would prevent the building of an unattractive or poorly designed house, provided it complied with the permitted baseline. Even if it exceeded a prescriptive standard to a minor degree, it would be difficult to argue that this discrepancy had any significant impact on its visual appearance, compared to that which could be built 'as of right'.

Less obvious is that different countries have different views about the merits of features in their built environment. For example:

- Tandem-style development is common throughout NZ, but is generally viewed as a poor housing design layout in Wales;
- Flat-roof designs were generally viewed as unattractive and incongruous in RCT, but are far more prevalent in NZ;
- The use of corrugated or metal sheeting as building materials for a dwelling would be considered unacceptable in RCT, but its use is not uncommon in NZ; and
- The breaking up of the visual bulk of larger dwellings was encouraged in RCT, but was not generally a concern at UH.

Both countries considered impacts on neighbour amenity in terms of privacy, outlook and access to light/overshadowing. A judgement of the additional impact beyond the permitted baseline was used to make an assessment at UH, compared to a case-by-case assessment of the level of amenity enjoyed by surrounding properties and the use of British 'general rules of thumb' at RCT.

The value placed on privacy was higher in RCT than UH and lead to higher privacy requirements and restrictions on the construction of balconies and raised decks, which were often viewed as overly intrusive on neighbouring properties. Illustrations on the 'general rules of thumb' adopted by RCT are illustrated in Diagram X.

What Impact do Public Submissions have on the Decision Making Process?

The approach adopted by RCT, is that all public submissions were taken into account in the determination of applications. Should a conflict arise between the intended actions of planning officers and public submissions (such as officers wanted to approve an application and a letter of objection had been received from a local resident) the application would be referred to Planning Committee Meeting/Hearing for determination by Elected Members.

In practice, this typically resulted in officers having the ability to refuse an application for a house under delegated powers, whilst applications supported by officers needed to be referred to Planning Committee Meetings. Consequently a high proportion of applications were determined by Planning Committees. RCT held a monthly Planning Committee Meetings for each of its three planning areas with an average of X applications considered at each meeting during Y.

This approach was far from universal across the UK. With many Councils in the UK, having discretionary powers to approve planning applications in the face of local opposition, as was the case for another of my previous employers, South Cambridgeshire District Council.

Affected Parties consent does not exist in Wales and could not be used to avoid the notification of applications. Planning officers are obliged to consider potential impacts on existing and future occupants, regardless of whether any letters of support from adjacent properties are received. It is possible that an application could be refused on the grounds of unacceptable harm on neighbouring properties, even if the property affected is in the same ownership as the applicant or if letters of support from neighbouring residents are received.

Nevertheless the majority of applications for which local objection is raised are approved. Reports on these applications outline why the grounds of objection raised in the submissions do not form reasonable grounds for refusal and may contain suggested conditions of consent to address concerns raised.

In UH an application for a house in an urban area is unlikely to require notification and hence no opportunity for local residents to comment is likely to be provided. However, in the rare event of notification being required, persons consulted could demand that the application be heard at a Planning Hearing.

Planning Meetings in Wales varies from Planning Hearings in NZ in the following ways:

- Higher frequency of planning meetings in Wales;
- Higher number of applications referred to meetings in Wales;
- Less time spent on each application. For eg a planning meeting covering 20 items was often completed within 2 hours (check). At RCT it was not uncommon for items referred to Planning Meeting to be decided upon without any discussion of their merits.
- Applications usually decided on the night.
- In NZ each application sent to Planning Hearing is likely to receive greater attention and Hearing Panels make decisions after the meeting.

In Wales there is no scope for pre-hearing meetings or mediation, as there is in NZ. However, it is possible for the Council to arrange a meeting with the applicant/agent and/or concerned residents to discuss concerns.

Is there a right to Appeal?

In Wales, applicants have the right to appeal refusals of consent or conditions of consent imposed within six months of the decision notice, which is far in excess of the 15 day time limit available in NZ. Unlike NZ, there are no third party rights of appeal for local residents and community groups.

No additional costs are incurred by the applicant, should they appeal the decision to the Planning Inspectorate. The vast majority of appeals in Wales are dealt with by 'written representations', although provision exists for informal and formal hearings. At RCT, very few appeals were decided by formal hearings or involved the use of lawyers.

A higher proportion of applications appear to be the subject of appeal in Wales with X appeals received in YYYY. The appeal process contained no scope for mediation and should the applicant wish to amend the scheme at this point, the appeal may need to be withdrawn and resubmitted to the Council. Appeal decisions tended to be very succinct, and rarely exceeded two pages in length. Few appeals raised questions of law. Appeals were generally decided within three to four months of lodgement (check).

In NZ, the right of appeal is open to applicants and all persons who made submissions on an application. All appeals are decided through formal hearings and a lodgement fee of $500 for an appeal is required.

Key diff
NZ has a lot of flexibility about what requires consent, but lower flexibility in decision making.
UK has low flexibility as to what requires consent, but much greater discretion in decision making.

ADVANTAGES OF WELSH SYSTEM

- Greater discretion afforded to officers in the determination of applications.
- Greater scope to take into account the circumstances of each case.
- A clear separation between planning and legal framework, which places less demands on officer time. Legal covenants are not recognised as a legitimate planning consideration.
- Greater focus on good design.
- Nationwide policies and planning guidance. Councils with older District Plans can rely on provisions in nationwide guidance to support their decision making. Offers greater scope to introduce policies which may be unpopular with developers such as minimum densities and energy efficiency requirements.
- Nationwide fee system, prevents fee disputes and officers do not need to keep detailed records as to how much time is spent on each application.
- Faster and less legalistic appeal process.
- New District Plans are automatically reviewed by Planning Inspector and can not be appealed.
- Neighbours and community groups more likely to feel they have an active role in the planning decision and that the system is more 'democratic'.
- Public submissions can reveal relevant issues that may not have come to light otherwise.
- The compulsory consultation of applications allows officers greater time to reach a decision about the effects of applications.
- Applications the subject of public objection, are typically determined faster than they would in NZ.

DISADVANTAGES OF WELSH SYSTEM

- Applications are determined faster in NZ than Wales on average.
- Greater potential for local politics to affect decision making and speed of determination. For example, in RCT, it was not uncommon for decisions to be delayed in the following sequence:

- Local Councillor request application to come before Planning Committee
- Application deferred at first Planning Meeting for site visit
- Councillors defer at second Planning Meeting to seek further information or resolve to make a decision contrary to planning officer recommendation
- Application decided at third Planning Meeting.

- As a result of the greater involvement of Elected Councillors in decided applications, there is a higher potential for conflict between Elected Councillors and planning officers. No of overturns of Council officer recommendations XXXX.

- Greater conflict in objectives of planning system regarding customer service and meeting performance targets. At RCT, I often faced a choice between refusing an application and meeting a performance target or negotiating with an applicant to achieve a better design but failing to meet the performance target. I am of the view that a greater focus over time on meeting performance targets has led to higher numbers of refusals of consent and lower customer service.

- Very little opportunity to stop the clock for performance targets once an application has been registered. It can not be stopped for further information or for negotiation with the applicant, even if the applicant is agreeable to this.

- Higher number of public submissions received which are prejudicial, trivial, vexatious or cover matters outside the scope of applications.

- Higher number of planning conditions used which leads to additional enforcement requirements.

- Works without resource consent in Wales are unauthorised, rather than illegal as in NZ. This limits the ability of Council's to take legal action in enforcement cases.

- The planning system in Wales is more complex and as a result, the preparation of applications for new housing is likely to require professional assistance. There is also considerable confusion amongst the general public as to how the planning system works.

- Lack of clear guidance as to what development would be acceptable, in the absence of a permitted baseline and quantitative limits. Many Council's are seeking to address this situation through supplementary planning guidance.

- The greater ease and lower costs of submitting appeals, encourages a higher number of appeals to be submitted.

- The Local District Plan once adopted can not be amended. Rather the plan must be replaced, which is a timely process.

- The system requires consent for low-scale proposals, which may have little impact on their surroundings.

- The ability to quickly determine applications is often slowed down by incomplete and poorly conceptualised applications. Checking the completeness of applications for some applications can be very time consuming.

ADVANTAGES OF NZ SYSTEM

- More streamlined for non-notified consents. Faster decision making. Less development requires consent.
- Explicit provision made for mediation and negotiation.
- Ability to stop the clock and meet performance targets if Council officers request further information or seek to negotiate with applicants.
- Clear development criteria in planning policy. Permitted baseline establishes a guideline as to what would be acceptable.
- Less ability for applications to be delayed by frivolous or vexatious neighbour objections. Submissions are restricted to cases which officers consider there may be genuine planning grounds for concern.
- Greater discretion available to Councils to put in place the policies considered appropriate for their area.
- Ability to amend District Plans in response to changing situations.
- Ability to seek cost recovery.
- Use of affected owners consent, allows greater scope for applicants to address neighbour concerns and prevents cases where neighbours have no objections to applications from slowing down the decision process.

DISADVANTAGES OF NZ SYSTEM

- Less attention given to urban design.
- How well the system works in urban areas is heavily dependent on the local District Plan and the ability of prescriptive standards and the permitted baseline to protect the amenities of areas.
- Less flexibility for officers to take into account the circumstances of the case.
- Widespread confusion about how the system works amongst the general public.
- The assessment of applications in regards to criteria in s95 of the RMA Act regarding notification and s104 of the RMA Act regarding decision making results in some duplication.
- The cost and time implications for applicants regarding notifications, leads to greater pressure put on planning officers not to require notification.
- The RMA puts higher time pressures on officers.
- System could encourage applicants to choose an awkward design which complies with prescriptive standards, over a better design which does not comply, in order to avoid the need for consent.
- The ability to quickly determine applications is often slowed down by incomplete and poorly conceptualised applications. Checking the completeness of applications for some applications can be very time consuming.

[i] The section of the Council dealing with the equivalent of resource consents (planning applications) in the UK is called Development Control.

[ii] The UK equivalent of the District Plan is the Local Environmental Plan.

[iii] By the time I left RCT, a new draft District Plan had been prepared and was going through a process of consultation and review.
[iv] Local, regional and national planning policies in Wales are required to be provided in both official languages.
[v] I have used the UK definitions of density, whereby a density of less than 30 dwellings per hectare is considered low-density.
[vi] In Wales, the term planning permission would be used instead of resource consent.