



**Cynulliad Cenedlaethol Cymru
The National Assembly for Wales**

**Pwyllgor Deddfwriaeth Rhif 1
Legislation Committee No. 1**

**Dydd Iau, 5 Chwefror 2009
Thursday, 5 February 2009**

Cynnwys
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Proposed Playing Fields (Community Involvement in Disposal Decisions) (Wales)
Measure: Stage 1, Evidence Session 3

Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynndi yn y pwyllgor. Yn ogystal,
cynhwysir cyfieithiad Saesneg o gyfraniadau yn y Gymraeg.

These proceedings are reported in the language in which they were spoken in the committee.
In addition, an English translation of Welsh speeches is included.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Peter Black	Democratiaid Rhyddfrydol Cymru (yn dirprwyo ar ran Eleanor Burnham) Welsh Liberal Democrats (substitute for Eleanor Burnham)
Rosemary Butler	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Janice Gregory	Llafur (yn dirprwyo ar ran Ann Jones) Labour (substitute for Ann Jones)
Huw Lewis	Llafur Labour
Nick Ramsay	Ceidwadwyr Cymreig Welsh Conservatives

Eraill yn bresennol
Others in attendance

Brian Gibbons	Aelod Cynulliad, Llafur (y Gweinidog dros Gyfiawnder Cymdeithasol a Llywodraeth Leol) Assembly Member, Labour (the Minister for Social Justice and Local Government)
Steve Phipps	Adran Polisi Llywodraeth Leol, Llywodraeth Cynulliad Cymru Local Government Policy Division, Welsh Assembly Government
Jeff Spear	Is-Adran Cynllunio, Llywodraeth Cynulliad Cymru Planning Division, Welsh Assembly Government

Swyddogion Gwasanaeth Seneddol y Cynulliad yn bresennol
Assembly Parliamentary Service officials in attendance

Claire Griffiths	Dirprwy Glerc Deputy Clerk
Gwyn Griffiths	Cynghorydd Cyfreithiol Legal Adviser
Liz Wilkinson	Clerc Clerk
Graham Winter	Gwasanaeth Ymchwil yr Aelodau Members' Research Service

Dechreuodd y cyfarfod am 1.30 p.m.
The meeting began at 1.30 p.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

- [1] **Rosemary Butler:** Welcome to this meeting of Legislation Committee No. 1.
- [2] I have received apologies from Ann Jones, Janet Ryder and Eleanor Burnham. Peter Black and Janice Gregory will be substituting, and so I welcome them to the meeting. This afternoon, we are pleased to have our experts, Gwyn Griffiths and Graham Winter, with us, along with our clerks. We are also very pleased to welcome the Minister.
- [3] I remind everyone to switch off all mobile phones or electronic equipment, because

they affect the sound system. We have instantaneous translation available, and if you find it difficult to hear, the headphones can help you with the amplification of the sound.

1.31 p.m.

**Mesur Arfaethedig Caeau Chwarae (Ymgysylltiad Cymunedau â
Phenderfyniadau Gwaredu)(Cymru): Cyfnod 1, Sesiwn Dystiolaeth 3
Proposed Playing Fields (Community Involvement in Disposal Decisions)
(Wales) Measure: Stage 1, Evidence Session 3**

[4] **Rosemary Butler:** I welcome the Minister and his team. Before we start to ask you questions, would you like to make a brief statement, Minister?

[5] **The Minister for Social Justice and Local Government (Brian Gibbons):** Thank you, Chair, but I am happy to go straight to questions.

[6] **Rosemary Butler:** The purpose of this meeting is to question the Minister on Dai Lloyd's Proposed Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure. I will ask the first question. In your written evidence, Minister, you outline existing safeguards aimed at protecting playing fields. However, you state that:

[7] 'The Assembly Government accepts that there is scope to strengthen certain of these arrangements and is already doing so in some respects.'

[8] Can you expand on the work being undertaken by the Assembly Government to protect playing fields?

[9] **Brian Gibbons:** The current safeguards are outlined in the paper that we submitted. In addition to that, technical advice note 16 advice has been published this week. I do not know whether you have had it, but I think that that also helps. We hope to bring forward some regulations before the summer in relation to the size of areas, which will be reported to the sports council, from the present 0.4 ha down to 0.2 ha. Again, in a more general sense—and I do not want to oversell it—'Planning Policy Wales' is being updated to take into account some general developments that have taken place since the original document was published. Again, there will be some review of what is in 'Planning Policy Wales', not just in terms of content but to make it more user-friendly.

[10] **Rosemary Butler:** Was technical advice note 16 published this morning, or was it the consultation?

[11] **Brian Gibbons:** It was published on Tuesday, 3 February.

[12] **Rosemary Butler:** When does it come into force?

[13] **Brian Gibbons:** It is current now.

[14] **Rosemary Butler:** Fine. Thank you very much. Huw Lewis is next.

[15] **Huw Lewis:** Good afternoon, Minister. Could you clarify whether any of the work being undertaken by the Assembly Government, as you say in your submission, to strengthen arrangements—and you have now talked about TAN 16—is aimed specifically at providing safeguards before local authorities dispose of playing fields?

[16] **Brian Gibbons:** Not specifically before disposal. I have read Dai's submission to the

committee; I think that it makes a useful distinction between disposal and planning. However, I do not think that they are as quite as hermetically sealed as Dai suggests. I think that there is a legitimate distinction to be made, but I do not think that anyone considering taking over a sporting pitch, particularly to change its use, would ignore that there are planning issues to be resolved down the road. If the planning process has been strengthened from the point of view of securing playing fields, while that would not directly impact on the disposal, it would be a material consideration for anyone considering purchasing the site and changing its use.

[17] **Huw Lewis:** Dr Lloyd was at pains to stress the distinction between the planning process and his proposals, so I just want to explore that a little more with you. In your written evidence, in paragraph 1.11, you state that

[18] ‘the Assembly Government has invited Planning Aid Wales to explore the most effective ways to engage stakeholders and local communities in the planning process, including sport and recreation issues.’

[19] However, will Planning Aid Wales specifically be looking at ways to engage stakeholders in local communities in disposal decisions?

[20] **Brian Gibbons:** That would not be its role, as I understand it. It is a Wales-based charity, which has been in existence for 20 or 30 years, but its focus is very much on planning issues. I do not know whether Jeff, as someone from planning, has an alternative view on that.

[21] **Mr Spear:** Planning Aid Wales is trying to improve how the planning system works by providing advice to communities about how they can best be involved in the planning system, particularly in the preparation of local development plans and in providing effective comments on planning applications when they come before councils. The sort of advice that it would be providing would just be geared towards the planning system rather than towards any land disposal decisions that the authority might be considering, but any skills that communities pick up about becoming more effectively involved in various processes could have a run-off effect on land disposal decisions. However, that is not the intention of Planning Aid Wales’s work.

[22] **Huw Lewis:** The Welsh Local Government Association strongly stated that it thinks that this proposed Measure is unnecessary. It thinks that there is a range of proposals in the planning regime that cover everything that needs to be covered. However, you have stated that there is scope to strengthen the existing arrangements. Can you expand on that difference in view?

[23] **Brian Gibbons:** We felt that the present arrangements were adequate, that is, they are probably just about sufficient. Yes, there is scope to strengthen them further, but we would not want to go so far as to say that what we currently have is totally unfit for purpose; we do not accept that. We would not bring forward legislation in this regard, because we are satisfied with the adequacy of what is in place, bearing in mind the planning changes that are contemplated. However, now that we are considering it, if the question was asked whether the current system could be improved, the answer would probably be ‘yes’, but because it is such a marginal decision, the proportionality of what is required must be taken into account. I think that because we are moving from an adequate system to a better system, there must be assurances that the proposed Measure is fit for purpose, particularly in proportionality terms.

[24] I do not know what questions you may raise later, but there are some specific issues about the proposed Measure, from a technical point of view, that we would have concerns about. In the broad terms of the principle, proportionality is a key consideration in looking at this proposed Measure, accepting that the present process, although adequate, could be improved.

[25] **Huw Lewis:** As I mentioned, Dai Lloyd was at pains to point out to us that he was not trying to amend the planning system, but it seems that, from the explanations that you have given this afternoon, what has been done through technical advice note 16 is a look at the planning decision. So, do you not think that Dai Lloyd has a point in that if he is looking at strengthening the public input into disposal decisions, there is room for his proposed Measure?

1.40 p.m.

[26] **Brian Gibbons:** As I said, the process could be strengthened, so I would accept that point in principle, but I do not know whether the particular detail of this proposed Measure is proportionate and will deliver on the intention of strengthening that. However, we can come back to that as questions arise. Clearly, disposal is different from planning, but it does not exist in isolation from planning. For example, I do not think that you can state that you can look at the possible purchaser of the land with the intention of changing its use. The proposed Measure is to protect a sporting amenity. If a purchaser bought the land for an alternative use, I cannot believe that the planning issue would not be a significant factor in deciding whether to attempt to secure that piece of land for a purpose other than sport.

[27] **Huw Lewis:** Given the current situation, and even with the new technical advice note, is it not the case that a disposal decision—and I need to get my teeth around that phrase—could be made without ever entering the planning regime and without any public input, and that it could be an executive decision made by a local authority?

[28] **Brian Gibbons:** We already know that, under the Local Government Act 1972, if a local authority intends to dispose of any open space, it must print that in a newspaper, so there is a requirement there. Any open space that would be used for sporting purposes would be classified as an open space. So, there is provision for that to be included in newspapers, and it would not go through completely on the nod. There would have to be a minimal level of public awareness on that.

[29] **Huw Lewis:** The motivation behind the proposed Measure came through strongly from Dr Dai Lloyd in our last evidence session, namely that the posting of a notice in a newspaper is inadequate at that stage of decision making. Given that you have agreed that there is a need to strengthen the public consultation element of planning procedure, why not strengthen the disposal decision stage of the procedure, too?

[30] **Brian Gibbons:** We have said that it is arguable that that process, while adequate, could be strengthened. The question is whether the proposed Measure is proportionate and fit for purpose to deliver on that objective. Both those boxes have to be ticked.

[31] **Huw Lewis:** Are you saying that you think that this proposed Measure is a sledgehammer to crack a nut?

[32] **Brian Gibbons:** I have concerns about the proportionality of it and how fit for purpose some of its proposals are, but you will probably tease those out as you proceed with these sessions.

[33] **Rosemary Butler:** Does anyone else have a comment on that or shall we move on and come back if necessary? I see that you do not, so we will move on to Peter Black.

[34] **Peter Black:** Section 1(2) provides a requirement that the proposed Measure should not apply when the disposal is to a local authority, registered charity or a body or association the aims of which include the promotion of sporting or recreational activities. In other words,

those are the exemptions in the provisions of the proposed Measure. What are your views on those exemptions?

[35] **Brian Gibbons:** If its purpose is to protect playing fields, I would have some concerns about that, because, as it is written, it just says, 'registered charity'. I do not know whether more is included in the explanatory memorandum or in Dai's evidence, but he makes the assumption that a registered charity would have the best interests of the community at heart. I would accept that, but having the interests of the community at heart may not be synonymous with protecting playing fields, as a registered charity may have some other objective. For example, it might secure the playing fields and then possibly build a residential home to use for training young people to get into work, which is an entirely laudable activity. So, there does not seem to be any safeguard in relation to registered charities. Equally, a body or association for the promotion of sport and recreation activities will not necessarily go on forever, and, presumably, could change its articles at some stage in the future. Therefore, I see some loopholes in delivering the precise objectives that Dai intends, particularly with the exemptions that relate to a registered charity, but perhaps to a lesser degree for bodies that are for the promotion of sporting activities, although the risk could still exist.

[36] **Peter Black:** So, do you concur with the evidence of Fields in Trust Cymru, which suggests that it may be appropriate to exempt only those registered charities the aims of which include the promotion of sporting or recreation activities?

[37] **Brian Gibbons:** Even in that instance, you would need to be sure. We know that many rugby clubs started off as association football clubs and that many clubs that started as cricket clubs now do other activities rather than cricket. So, there are some concerns there. Section 1(2)(c) would provide more assurances than section 1(2)(b), but I do not think that section 1(2)(c) would provide cast-iron assurances either.

[38] **Peter Black:** Could you envisage a provision outlining, for example, that any disposal should include a restrictive covenant on what the land could be used for in future?

[39] **Brian Gibbons:** Dai might wish to consider that, yes.

[40] **Peter Black:** Would you find that more acceptable than the current exemption?

[41] **Brian Gibbons:** In the context of trying to deliver the objective of this proposed Measure, yes. That would clearly seem to be a desirable addendum, or whatever you want to call it.

[42] **Nick Ramsay:** Good afternoon, Minister. I wish to move us on to the definitions set out in the proposed Measure and ask you a couple of questions about those. In your written evidence, you raise concerns that the proposed Measure applies equally to community and town councils. Please expand on those concerns and tell us how you think they could be addressed.

[43] **Brian Gibbons:** Some of the requirements about notifying members of the public would be fairly demanding, and one problem with the proposed Measure as it stands is that the estimates of costs are fairly broad, ranging from something in the order of a couple of thousand pounds to anything up to £50,000. I am sure that many town and community councils would just go out of business if they had to undertake an activity costing £50,000. They just would not be able to do it. I gather from Steve that the committee will meet One Voice Wales at its next evidence session. It represents town and community councils, so it will be able to comment on this, but I suspect that there is just no way that many town and community councils could afford the costs involved in this, if they turn out to be at the higher end of that range. We do not have that degree of certainty about the costs, so some town and

community councils would be very vulnerable.

[44] **Nick Ramsay:** Aside from the costs, and notwithstanding your concerns about those, do you accept in principle that the owners of playing fields, such as town and community councils, should be subject to the requirements of the proposed Measure?

[45] **Brian Gibbons:** Any principle would have to be qualified. If the outcome of the proposed Measure was the bankrupting of town and community councils across Wales, there would be no point. You cannot just say 'yes' or 'no'; you have to give a qualified answer, I am afraid.

[46] **Rosemary Butler:** Representatives of One Voice Wales are coming to give evidence later in February so we can explore that issue with them.

[47] **Nick Ramsay:** Okay. In your written evidence, you state that the rationale for the definition of a 'playing pitch', which is in section 2(e) of the proposed Measure, warrants further consideration. Can you expand on that, and do you have any concerns about the definition as drafted?

1.50 p.m.

[48] **Brian Gibbons:** Yes, there are a couple of points to make here. To my mind, there is a degree of inconsistency between section 2(e) and what Dai said when he gave evidence. Dai made reference to some of the areas that he would expect to be captured by this. He said that areas where kids have traditionally thrown down two coats and had a game of football would be protected by this. I think that he made reference to that in paragraph 75 of the transcript. However, his proposed Measure will not deliver that objective, because it has to be a delineated area. He then says specifically that it has to be marked for use. 'Marked for use' means to me that there have to be lines or other markings. I do not think that putting two coats down on a field constitutes 'marked for use'.

[49] There is also the perverse situation that, if someone had concerns about a certain piece of open land, for whatever reason, all they would need to do is draw out a football pitch on it and you would have a marked place that is a football pitch and has to come under these requirements. So, there are concerns about the definition that need to be clarified internally but also to ensure consistency with the oral evidence that you have had.

[50] **Nick Ramsay:** Moving on to the requirement for an impact statement, section 3(1) places a duty on a local authority to prepare an impact statement identifying the nature of the proposed disposal. In your evidence, you have suggested that assessing the impact on communities of reduced provision for sport and recreation is best done through what I think you call a 'strategic planning mechanism'. Could you elaborate on what you mean by that?

[51] **Brian Gibbons:** We have some concerns about the impact assessment, because we do not know what it would look like in this particular context. However, virtually every impact assessment that I have ever seen has been a pretty substantial and detailed document and difficult for anyone except those who are very knowledgeable or very committed to work through. So, there are concerns about the impact assessment in the first place.

[52] I look to Jeff to tell me whether what I am about to say is legally correct. A lay person's view might be that the onus is always on preserving the rights to the sports fields, amenities and so on. The balance of judgment will always be in favour of retaining that. Through the local development plans and any other local plans, local authorities will be expected under 'Planning Policy Wales' to indicate what the sporting provision is and to try to match it against the needs of the local community. The balance of assumption will be in

favour of preserving those amenities, unless changes take place that further enhance the amenity value. So, in strategic terms, the Assembly Government and, I am sure, local authorities as they develop their local development plan using 'Planning Policy Wales' have to place a high premium on identifying and protecting sporting amenities. Jeff, would you like to add anything?

[53] **Mr Spear:** As you said, Minister, 'Planning Policy Wales' provides the framework within which all local development plans must be prepared in Wales and also acts as a material consideration for planning decisions taken both by local planning authorities and by the Assembly Government. That policy has consistently sought to protect playing fields and open spaces from development.

[54] There is a presumption against their use unless there are specific circumstances that show that an area no longer has need for that particular piece of land or that the development of a part of that land would provide a much greater benefit than not developing it. The principle of not developing open space and playing fields has been taken forward in technical advice note 16. TAN 16 does not provide any new policy; it seeks to amplify what has been set out in 'Planning Policy Wales' and to provide more detailed guidance for use by the authorities that are now preparing local development plans.

[55] **Nick Ramsay:** I hear what you are saying about the local development plan. We took evidence from the Sports Council for Wales at the last committee session and one concern that it expressed was that, while a strategic plan assesses the impact of the loss of recreational land on the local authority area as a whole, the sports council was concerned that the plan did not necessarily take account of the impact of the loss on the immediate community. It felt that an impact statement would better address the concerns of the local area and the people specifically affected. I know that you have partially answered this question in your last response, but could you give us your thoughts on what the sports council has said?

[56] **Brian Gibbons:** I understand that at least half a dozen local authorities, if not more—there are certainly half a dozen, but there may be even more by now, because the information that we have is a couple of years old—will have an open-space assessment, which is suggested in the TAN, so that their local planning will be more informed. I do not know what precise level of detail those open-space assessments go into. I do not know whether Jeff has any knowledge on that. I am just speculating, but I guess that a specific impact assessment might give more information than an open-space assessment. However, the question must be whether the task of gathering that extra information, with the need for it to be disseminated and so on, would make it a proportionate response to the particular challenge that we are trying to address.

[57] **Mr Spear:** TAN 16 advises authorities to provide open-space assessments, but it does not require them to do so. A technical advice note cannot require authorities to undertake any particular action; that would require legislation. The TAN advises authorities to prepare open-space assessments on a common basis with regard to a common classification of types of open space. Many authorities have already carried out assessments over the years, but they have quite often done so in terms of their own requirements, and the TAN suggests a common basis for clarifying which areas are for sport and recreation and which areas are open spaces. It not only covers playing fields, but areas of water, open countryside on the fringes of urban areas and country parks. There is a whole range of spaces in there that we are suggesting that authorities might want to refer to when carrying out their open-space assessments.

[58] As the Minister said, some authorities have carried out these assessments, but there are others that have not or will not be able to. When we consulted on TAN 16 a few years ago, one of the responses was that some authorities felt that the assessments would be unnecessarily onerous and that they did not have the resources or the expertise to carry out

comprehensive open-space assessments. We are anxious for local development plans to be prepared as quickly as possible across Wales and we are also concerned that the time that it would take to prepare open-space assessments would delay those plans. It would be unrealistic to expect plans to be put on hold for the length of time that is required to prepare those assessments and then to incorporate the information that they provide.

2.00 p.m.

[59] In those circumstances, we have suggested that authorities should use any information that they have to hand that is reasonably reliable as an input for their local development plans. That does not mean that, in future, they should not return to the idea of preparing open space assessments, but, to get the initial plans up and running, we suggest they use what they have. If they have an open-space assessment or can prepare one with a reasonable outlay of resources, that is fine.

[60] The other thing is that the open-space assessments are not designed to consider the impact of a particular disposal decision on the local community. There is no way of making those into something that will consider the health and wellbeing of the community. They are not intended for that; they are intended as a standardised input for local development plan preparation.

[61] The Minister referred to the work being done in authorities. That work is done by all the departments co-operating on planning, needs and input, but often, any assessments that have been made have been prepared by leisure departments or by sport and recreation departments, depending on how the authorities are organised. Planning would make an input to those assessments, but open space is often dealt with corporately, because it is usually on a corporate basis that decisions are taken to buy and sell recreation land and to manage it.

[62] **Peter Black:** I am trying to dispel my confusion about the evidence. As I understand it, the local development plan effectively zones land for future use and decides how that land will be used, whereas a planning application will deal with the change of use for land within the strategic framework. Is it the LDP that sets that strategic framework to do that?

[63] **Mr Spear:** The local development plan will set out the strategic vision for the area and a series of strategic policies, but it will also contain more detailed policies for particular land uses. It may allocate land for specific uses, such as sport and recreation, but—

[64] **Peter Black:** It says, ‘This land is open space; this land is for housing; this land is for industrial use’ and so on.

[65] **Mr Spear:** It can allocate land, but if land is not allocated, general policies can be used to allow the authority to respond to the changing circumstances by identifying land for particular purposes.

[66] The other point to make is that, while they should take account of local development plans in reaching planning decisions, there will always be circumstances in which authorities choose to depart from those plans because of material considerations. The system makes provision for that with what are called ‘departure applications’.

[67] **Peter Black:** To clarify, with regard to TAN 16 and the requirement to conduct an open-space assessment, will that only apply where, under a local development plan, the intention is to change the use of land that is currently open space to something else, or would it apply to every instance where land is designated in the LDP as open space?

[68] **Mr Spear:** The open-space assessment would look at the stock of existent open

spaces in an area—

[69] **Peter Black:** Are they authority-wide assessments?

[70] **Mr Spear:** It would look at local needs and needs within the area and then consider the sorts of provision that would be needed, after which it would draft planning policies that could allow that to happen, either by trying to retain existing spaces and facilities or by providing for new spaces and facilities.

[71] **Peter Black:** As it is an authority-wide assessment, would it not be appropriate to apply it in the case of the disposal of an individual piece of land?

[72] **Mr Spear:** No, it is an input for the—

[73] **Peter Black:** Right, that has clarified the matter, thank you.

[74] **Janice Gregory:** To a certain extent, my first two questions have been answered, but I would like to return to the issue of the revised TAN. To a certain extent, I suppose that there was some disappointment that a local authority will be advised to undertake this open-space assessment given its importance to that particular area. However, they would not be required to do an assessment—they would only be advised. I do not want you to expand further—it is just a comment—because your answer was very detailed.

[75] Moving on to the issue of locality, which is defined in section 3(3), I am given to understand that when Dr Lloyd gave evidence to the committee, he explained that the definition of locality provided for in the section that I have just mentioned is tailor-made to address the specific need of the proposed Measure. How satisfied are you that the definition is sufficiently clear to enable local authorities to easily identify the areas to which the term refers?

[76] **Brian Gibbons:** If the proposed Measure was to go forward, although it is for Dai to decide, the definition is not clear, in my view.

[77] **Janice Gregory:** Thank you. I also understand that the committee has heard evidence from the Sports Council for Wales that it would be almost impossible for local authorities to meet the section 3(1)(c)(ii) requirement, namely to identify as part of impact statement, the impact on

[78] ‘the health and well-being of residents’.

[79] Minister, what are your views on this, and what do you consider are the practical and financial implications of meeting this requirement for each type of authority provided for in section 2(b)?

[80] **Brian Gibbons:** I have not looked at every health, social care and wellbeing plan in Wales, but, of the ones with which I am familiar, there is a varying level of detail and specificity. There are also general statements in the plans. Particular areas could be specifically identified so that, if there was an area of high disadvantage, you would expect a good health, social care and wellbeing plan to give more detail about the needs of that particularly disadvantaged community in terms of health. Sometimes they may, and sometimes they may not, but in a good plan it would be no surprise, if there are areas with very poor health, to see extra attention being given to that. Extra attention might also be given to the needs of ethnic minority communities and so forth. So, it is impossible to generalise, but some plans would have detailed information.

[81] **Janice Gregory:** Do you agree with Dr Lloyd's suggestion that local authority health and wellbeing strategies, which should be in place, should have done the work on identifying these particular areas? For the record, if the strategies are correct and in place, will the strategies assist in meeting the requirement of section 3(1)(c)(ii)?

[82] **Brian Gibbons:** Yes, they would inform the process, but to varying degrees. Some would be quite useful and some would be at a relatively high level. A bit like the open-space assessment, it is obviously useful contextual information, but perhaps it is not tight enough for a particular locality.

[83] **Huw Lewis:** Minister, I want to return to the issue of consultation with the public and the issue of disposal. In your written evidence, you said that you supported the proposal to strengthen the existing arrangements, namely the two week notification in a local newspaper. However, from one of your earlier answers, I got the impression that you were content that, at that stage—

2.10 p.m.

[84] **Brian Gibbons:** No, you could say that the two weeks' notice is adequate if it is in a paper that circulates in the area, although I suppose that you could put it in a paper that only has a circulation of 20 people. In that sense, there is an opportunity for the public to be made aware that an open space is going to be disposed of. As a minimum, it is adequate. Could it be strengthened above that minimum? Yes, it probably could.

[85] **Huw Lewis:** That has cleared that up for me. My understanding is that you are suggesting that the strengthening would consist of local authorities having to consult relevant statutorily prescribed consultees. Is that the case?

[86] **Brian Gibbons:** Yes.

[87] **Huw Lewis:** I assume that that is what the TAN now suggests. Is that right?

[88] **Brian Gibbons:** No, I do not think so. Our view in discussing the proposed Measure with Dai was that many of his objectives could be addressed by drawing up a list of statutory consultees, and that that, in many respects, would cover all the main players—no pun intended—in this particular area, so that nothing would slip through under the carpet, which is obviously Dai's concern. You could probably ask who looks at official notices that appear in a newspaper for two weeks.

[89] **Huw Lewis:** How would you suggest, from a WAG perspective, that you would do that? Would you set about amending the 1972 Act? How would you get this list of statutory consultees into the mix?

[90] **Brian Gibbons:** That would be an option.

[91] **Mr Phipps:** That would be an option, even though the Assembly Government has no plans to do that at the moment. However, Dr Lloyd's proposed Measure might provide an opportunity to address that situation.

[92] **Brian Gibbons:** Dai's proposed Measure could provide an opportunity, as Steve said, to do that. The context in which we made that observation was of Dai's proposed Measure; it was not in the context of some plan for us to look at this proactively.

[93] **Huw Lewis:** You also mentioned that you see practical difficulties in seeking to identify such a list and to maintain it as an up-to-date, living document that reflects a good

consultation process. Can you expand a little on that? Is that not the kind of thing that local authorities would do quite often?

[94] **Brian Gibbons:** The statutory bodies would include Fields in Trust Cymru and other such organisations, which would make it easy. I am searching for the wording, but I think that I am right to say that it says that other third sector organisations would be included in the list. That would be problematic. I think that Dai has provided a list at the back. Barnardo's and Age Concern were included in one draft of that list and not in another. In deciding which third sector organisations should be statutory consultees—Fields in Trust Cymru and some big organisations would be relatively easy—moving down the list to smaller organisations would mean problems as regards consultation. The list could be massively long, and you might miss someone out, or organisations might merge and change their names, as happens regularly. Some organisations are much easier to consult than others, and the more third sector organisations you involve, the more problematic it becomes.

[95] **Huw Lewis:** You are saying therefore, from a WAG perspective, that there is a discussion to be had about some kind of list of statutory consultees. Is the sticking point, perhaps, section 4(1)(b), which states:

[96] 'such other persons or bodies as appear to the authority to represent the interests of persons likely to make use of the playing field, and in particular the interests of children and young persons who do so and of their parents'?

[97] **Brian Gibbons:** There would have to be flexibility at a local level to allow that to happen. In other words, rather than being included in the Schedule, perhaps there should be something to the effect that the local authority, given its local knowledge and the need to pay due diligence to its duties and responsibilities, should be given the discretion to decide rather than having a prescribed list in the Schedule. It is obviously easy enough in relation to the Sports Council for Wales, Fields in Trust Cymru, the Open Spaces Society, Play Wales, but why is the British Heart Foundation included as opposed to the British Asthma Society? If it is not included, why is that the case?

[98] **Huw Lewis:** I take your point on that. The proposed Measure goes a lot further, does it not? It essentially discusses a door-to-door consultation, does it not? What is your view on that? Are you saying again that there is a proportionality argument?

[99] **Brian Gibbons:** Yes. If the Schedule just dealt with national statutory organisations and perhaps one or two organisations like Fields in Trust Cymru, I think that that would be fine. There should be greater discretion for local authorities to define who the key relevant stakeholders are in the third sector in their own communities, and we should not be prescribing that.

[100] Moving on to the consultation with every electorate and electoral ward, we have concerns about that. Do you want me to elaborate?

[101] **Huw Lewis:** If the Chair will allow you to do so.

[102] **Rosemary Butler:** If you want to do it here or later, that is fine.

[103] **Brian Gibbons:** In a one-member ward there may be 1,000 households. That is a fair number of envelopes to send out, but there are hundreds of three-member wards, therefore that will be more onerous. In the questions that you put to Dai when he was here, you suggested that, conceivably, five or six wards could be involved in this mailing. There are 98 electoral wards in Wales with three or more members. In questioning Dai, I think that you mentioned that three, four or five wards could potentially be caught up in this. Having said so,

there is a degree of uncertainty because, again, if you look at the proposed Measure, you will see that it discusses canvassing the opinion of every household in the ward where the playing field is situated, or any ward with which the sports field shares a common boundary. You might have a sports field that is 10 yards inside a particular ward and the main users are from the adjacent ward. There is a lack of clarity. According to Dai's answer to you, even though it is not quite consistent with the proposed Measure, potentially, there could be tens of thousands of letters going out as part of a consultation process. Although Dai showed some flexibility in his response to the committee, these tens of thousands of letters, in the worst-case scenario, could be carrying a bilingual version of an impact statement, and we do not know how big that would be. Most of the impact statements that we see run to tens of pages, so you will have a pretty substantial bilingual document potentially going to tens of thousands of homes as part of this exercise.

2.20 p.m.

[104] The other thing that worries me about that, apart from the cost, is the view of council tax payers who live some distance from the sport amenity and who might not regularly use it, or who may not even be aware of it, and what their attitude would be to this big envelope coming through the letterbox unsolicited. They might ask themselves whether the council has nothing better to spend their money on. There are three-member wards in my constituency, in which the communities are pretty discreet, and what goes on in one end of a community is of no concern to those at the other end. For example, Afan Lido Football Club, which is in the Welsh league, is owned by the local authority, but if there was a move to dispose of that property, how far would you have to consult on that? Would you have to consult all of the football league clubs, including, for instance, people from Rhyl or wherever in north Wales who come to games at the club? There are questions about the proportionality and the practicality of what is being suggested.

[105] **Peter Black:** I was thinking about Swansea council's disposal of the Vetch fields, which were for the use of the whole of Swansea at one stage.

[106] Going back to the list of third sector consultees, is there potential for a judicial review of a council's decision because, for example, someone had been missed off the list? However, if it were specified in the proposed Measure, would it be less challengeable?

[107] **Brian Gibbons:** I understand your point, but, if someone was missed off the list, the authority's defence would be that it had showed due diligence in ensuring that everyone that it thought should be consulted was consulted. If, for example, the Sunday league pub team from the Dog and Duck was not consulted because it had only been established three or six months earlier, would a judge expect the local authority to be aware of that, even if that team was using a sports field? I think that the way that it is drafted, using the word 'reasonable' and by putting the onus on the local authority's good judgment, is the way forward, and it will provide protection.

[108] **Peter Black:** Going back again to your assessment of the consultation provisions in the proposed Measure, particularly the requirement to consult all households in the locality, I accept your view that that could be very costly. In terms of the sort of consultation that you believe should be included in the proposed Measure, what do you consider to be a reasonable cost, or how would you assess a reasonable cost, for that consultation?

[109] **Brian Gibbons:** The first thing to say is that this would be an uncoded pressure for local authorities. Our view is that if we decide that the statutory authorities should consult the relevant stakeholders and organisations that they know are involved in the use of those facilities, and possibly the people in the immediate locality of the sporting field—and I know that you will ask me what I mean by that—then that would be reasonable and proportionate,

and I think that we have stated that in the paper. As Dai said in his evidence, we have to trust local authorities to define the locality. I think that he made that appeal in his submission. We have to trust them to make a reasonable judgment as to the definition of 'local population'.

[110] **Peter Black:** In your paper, you refer to notifying households within a reasonable distance of the consultation and providing a copy of the impact statement on request. As you anticipated, could you say how you define 'a reasonable distance'?

[111] **Brian Gibbons:** We have given that some considerable thought. It would be foolish to think that we could come up with a one-Wales definition of 'a reasonable distance'. So, among the options, we will have to return to that, depending on progress with the proposed Measure. However, this might be something for regulations in which local authorities would be given discretion to try to define 'local', because, for example, in a town, a location that is more than a mile away would not necessarily be considered local, but in the Valleys or out in a rural area, a mile would be a normal travelling distance. So to be unduly prescriptive in the proposed Measure might not be the best way to go. If the proposed Measure were to proceed, this area would need further work.

[112] **Peter Black:** You might want to leave that to—*[Inaudible.]*

[113] **Brian Gibbons:** Personally I think that that might be the way to go, but if Dai were prepared to look at this, we would have further discussions and I am sure that there would be further consultation to try to progress in that regard.

[114] **Peter Black:** On the impact assessment, I understand that Dai has accepted that there may be a cost involved in this and has suggested that a proposed amendment might be to send a summary of the impact assessment to persons identified in section 4(1). Would that be an acceptable compromise?

[115] **Brian Gibbons:** Yes, but it depends how long that summary would be; we need to consider that. Clearly, the cost of developing the impact assessment will not be insubstantial. Therefore, further work may need to be done to define 'impact assessment'. We have already heard that the open-space assessment may not be totally fit for purpose. An all-singing-and-all-dancing impact assessment, such as we see with an environmental impact assessment, may be over the top. There could be a more proportionate and balanced assessment that distilled the proposal. You might not need to do a full impact assessment as we understand it. Do you want to add to that, Steve?

[116] **Mr Phipps:** No, I do not think so.

[117] **Peter Black:** Moving on, section 5 of the proposed Measure requires an authority to consider any representations that it receives during the consultation period before making a decision on the disposal of a playing field. However, no detail is included on the extent to which the authority undertakes this consideration. What arrangements are currently in place for the consideration by local authorities of representations or objections made in respect of proposed disposals under sections 123 and 127 of the Local Government Act 1972? Is that a similar process?

[118] **Mr Phipps:** There are no prescribed requirements. The requirement is for local authorities to post advertisements in the newspaper and take on board any representations received, but how they manage that internally is a matter for them in the context of a particular disposal, for example, according to the scale of the response to it.

[119] **Peter Black:** So, how would you ensure consistency between authorities in how they undertake the duty as set out in the proposed Measure in terms of considering objections? Is

there any way of doing that or, again, do you rely on their good judgment?

[120] **Brian Gibbons:** Local authorities are making much bigger decisions about much greater life-and-death matters through procedures that are not set out in detail in law and regulations. If there were a strong case to the contrary, we would have to listen to it, but it would be difficult to see why we would need to be unduly prescriptive here when we are not unduly prescriptive about other things that are even more important to people on a daily basis.

2.30 p.m.

[121] **Nick Ramsay:** It is interesting to hear what you have had to say about the possible cost of the consultation and section 5 on the consideration of representations. I wish to ask you about what you think should happen when a decision is made at the end of the process. You said in your evidence that,

[122] ‘The requirement (in section 4) to send a copy of the impact statement to the occupiers of every household in the locality is excessive’.

[123] That is in direct contrast to what Dai Lloyd told this committee. He thinks that, fundamentally, it is an important decision so it is only right that every householder has the right to know what the decision is and how it was arrived at. Those are two conflicting views. What do you think would be a more appropriate or reasonable requirement, instead of sending a decision statement to everyone involved in the consultation?

[124] **Brian Gibbons:** The principle that people have a right to know is fundamental to our democracy, and we would not suggest that people did not have that right. However, with regard to what constitutes a proportionate way of ensuring that people can exercise that right, if people take the time to respond to the consultation, they should probably be entitled to know what happened. The local authority’s website or a press release would be suitable ways of communicating that. Obviously, the local council members for the area concerned would know, so there are plenty of opportunities for people to exercise that right. Whether it is justified to be so proactive as to send notification to every single person who would be covered by the proposed consultation is a different question, and that would arguably be disproportionate. Again, it would be very demanding of town and community councils. Looking at the costings before us, we are talking about thousands of pounds, if not tens of thousands of pounds in some instances. Every effort should be made to ensure that people can exercise their right to find out, but the method must be more proportionate.

[125] **Nick Ramsay:** So you think that it might be enough to send a written response only to those people who have submitted a substantial written submission?

[126] **Brian Gibbons:** I think that that would be in keeping with the spirit of the proposed Measure.

[127] **Janice Gregory:** When Dai Lloyd gave evidence to the committee he explained that the section 7 provision was included to enable Welsh Ministers to act if a local authority had failed to follow procedural requirements. He reaffirmed that it was not the intention for Welsh Ministers to become involved in disposal decisions, or indeed in overturning those decisions. Given that section 7 as drafted would provide Welsh Ministers with the power to intervene only in those issues relating to procedure, do you consider it to be appropriate?

[128] **Brian Gibbons:** Our preferred position would be that these are local authority decisions and that the locus for making these decisions should clearly be the local, democratically elected representatives. That is the position that we would start from. Clearly, things will sometimes go wrong; we recognise that. There are at least three avenues open to

people at the moment: the local authority's complaints procedure, the ombudsman, and, ultimately, judicial review. Therefore, we would feel that to include Ministers in this would involve unnecessary duplication and, although I know what Dai is saying in the proposed Measure, it would probably lead the public to have an unreasonable expectation of what a Minister could do. I would certainly be very much against a situation similar to what happens in planning appeals, where the planning application is looked at from start to finish—not just the procedure but the actual decision. I would be totally against that and any move towards an expectation that the Minister should review the evidence and look at whether the evidence was evaluated in a perverse way, and so on. To summarise, I think that Ministers should not be involved. There are adequate alternatives. If Ministers are to be involved, reluctantly, by this proposed Measure, then it should be in relation only to the specifics of the process and certainly nothing to do with how the authority arrived at its decision once the consultation had finished.

[129] **Janice Gregory:** Thank you for that, Minister. You have made that very clear. My final question relates to the financial implications. Can you confirm that the Assembly Government will not be in a position to meet any costs associated with the implementation of the proposed Measure and, as such, local authorities would be expected to do it through their existing budgets?

[130] **Brian Gibbons:** There is no sum of money allocated for this. So, this would be an unfunded pressure, which, presumably, the authorities would have to meet from their revenue support grant.

[131] **Rosemary Butler:** I see that no-one has any other points to raise. Minister, I think that you have answered our questions very clearly. Is there anything else that you would like to add?

[132] **Brian Gibbons:** No, thank you very much.

[133] **Rosemary Butler:** Thank you very much for coming here this afternoon. The draft transcript will be available tomorrow. You will then have the opportunity to correct it before it is finalised. Thank you very much for coming.

[134] I remind Members that the next meeting will be on 12 February, when we will take evidence from the Welsh Local Government Association and the Planning Officers Society in Wales. If you can think of any organisations that we have not yet consulted that we should consult, please let the clerks know. However, there is already quite an extensive list. That brings the meeting to a close. Thank you.

*Daeth y cyfarfod i ben am 2.37 p.m.
The meeting ended at 2.37 p.m.*