

# Development management under the Planning (Wales) Act 2015

**Heather Sargent**

**2 November 2015**



# Introduction

## Explanatory Memorandum to the Act:

“...the legislative framework which supports the development management system is essentially sound but the system as a whole is under strain...”

“Central to improving the planning application process is a change in practice from **development control** to **development management**, moving away from a regulatory culture that can hinder development to a service delivery approach that enables.”

## The Act's five key objectives:

## Introduction

1. “A modernised framework for the delivery of planning services”: **introduction of powers to allow planning applications to be made directly to Welsh Ministers (“WM”) in limited circumstances**
2. “Strengthening the plan led approach”
3. “Improved resilience”
4. “Frontloading and improving the development management system”: **introduction of statutory pre-application procedure for defined categories of planning permission**
5. “Enabling effective enforcement and appeals”: **changes to enforcement procedures to secure prompt, meaningful action against breaches of planning control; increase the transparency and efficiency of the appeal system**

# Introduction

## Development management proposals:

- Pre-Application Procedure
  - Requirement to carry out pre-application consultation
  - Requirement to provide pre-application service
- Applications to Welsh Ministers
  - Developments of National Significance (“DNS”)
  - Option to make application to Welsh Ministers
- Welsh Language
- Decision Notices and Notification of Development
- Statutory Consultees...

## Introduction

- Planning Committees and Delegation
- Joint Planning Boards and National Park Authorities
- Enforcement
- Appeals
- Town and Village Greens

# **Part 4 of the Act: Pre-Application Procedure**

# Pre-Application Procedure

**“Frontloading”**: developer engages with community, LPA and other stakeholders (including statutory consultees) **prior to submission** of the planning application

Aims:

- Applicant: smooth the passage of the application, improve the chances of obtaining permission, avoid abortive work
- LPA: make the task of dealing with the application easier
- Statutory consultees and communities: opportunity to influence what is proposed

# Pre-Application Procedure (I): Consultation



# Pre-Application Procedure (I): Consultation



S.17 of the Act

Introduction of s.61Z TCPA 1990

- Specified descriptions of development
- **Applicant** must *“publicise the proposed application in such manner as the applicant reasonably considers likely to bring it to the attention of a majority of the persons who own or occupy premises in the vicinity of the land”*
- Must also consult each “specified person”

Amendment to s.62 TCPA 1990: “pre-application consultation report”

# **Pre-Application Procedure (II): Pre-Application Service**

# Pre-Application Procedure (II): Service



S. 18 of the Act

Introduction of s.61Z1 TCPA 1990

- WM may by regulations make provision re. pre-application services by LPAs or WM
- Aim: set a minimum national standard; allow developer and LPA to discuss project before submission

# **Part 5 of the Act: Applications to Welsh Ministers**

## Applications to WM



2015 Act provides for WM to receive and determine planning applications in two circumstances:

- (i) Developments of National Significance (“**DNS**”)
- (ii) Power of intervention (at the applicant’s election) where LPA is “poorly performing”

# Applications to Welsh Ministers (I): DNS

# Applications to WM (I): DNS



S.19 of the Act

Introduction of s.62D TCPA 1990. “Nationally significant development application” is to be made to WM instead of LPA

NSDA = application for PP for the development of land in Wales which is development of “national significance”

- Outline PP excluded: s.62D(5) TCPA 1990

“National significance” = WM criteria or specified by National Development Framework for Wales

# Applications to WM (I): DNS

## DNS procedure:

- Pre-application notification (s.21 of the Act; s.62E TCPA 1990) and consultation
- LPA(s) prepare and submit “local impact report” to WM (s.21 of the Act, s.62I TCPA 1990)
- PINS processes the application (written representations / hearing) and reports to WM
- WM determine the application: 36 weeks from acceptance of application (s.22 of the Act; s.62L TCPA 1990)
- Post-determination procedures (including discharge of planning conditions) handled by LPAs



## Applications to WM (I): DNS

No right of appeal: s.284 TCPA 1990 amended to provide for statutory challenge (para. 15 of Sch. 4 to the Act)

**Secondary consents:** s.20 of the Act and ss. 62F, 62G, 62H TCPA 1990

- WM may determine an application for “secondary consent” which is “connected to” an application in respect of a DNS
- “Connected to” defined in s.62F(6) TCPA 1990
- Again, provision for statutory challenge made by amendment of s.284 TCPA 1990

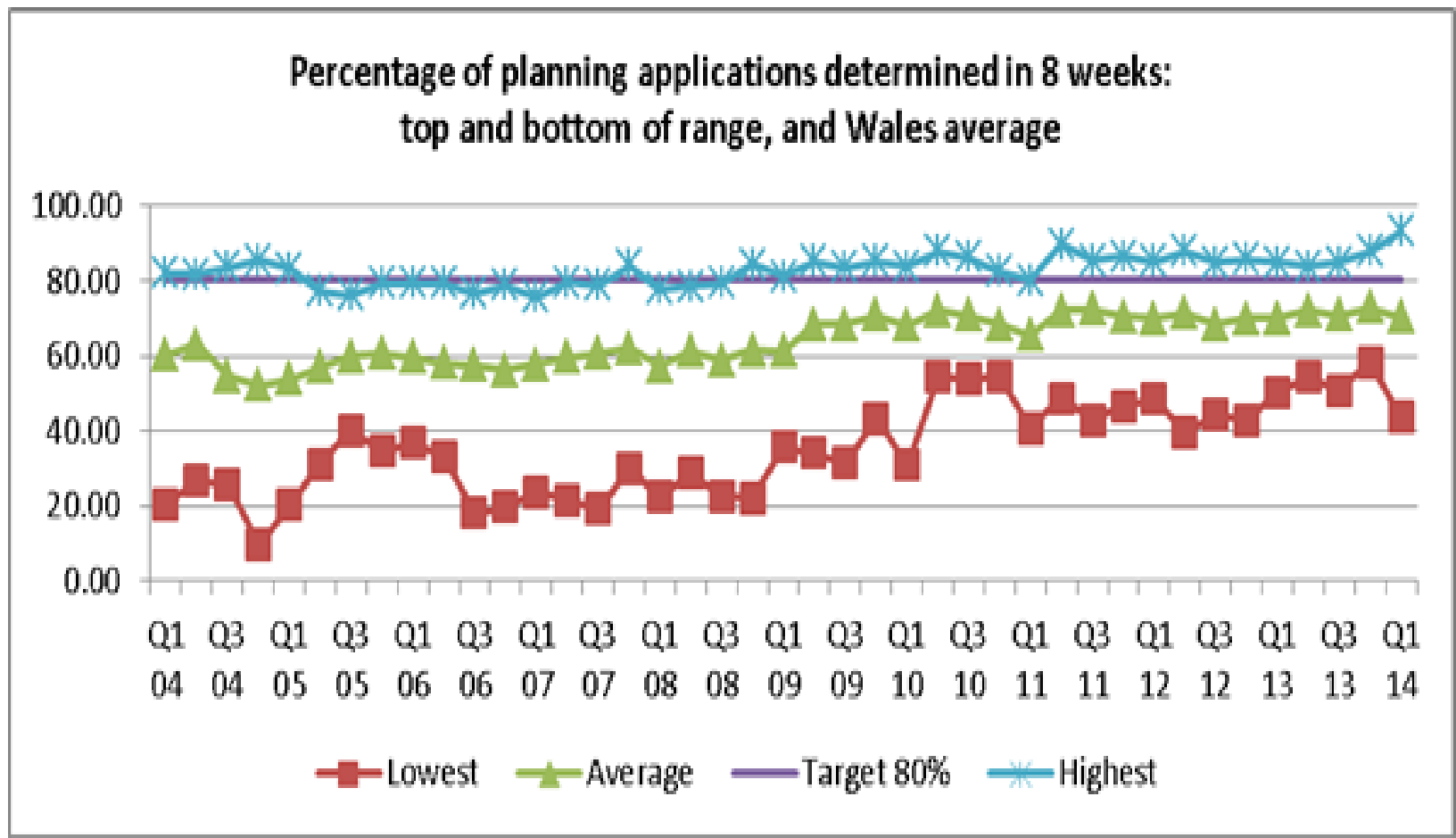
# Applications to WM (I): DNS

## Onshore wind:

- Queen's Speech: UK Government proposes to remove onshore wind from the NSIP regime (proposal supported in the Wales Bill)
- Wales Bill: responsibility for electricity generating projects of up to 350 MW devolved
- Likely outcome?
  - < 25 MW: LPA
  - 25 – 350 MW: WM
  - > 350 MW: Westminster

**Applications to Welsh Ministers (II):  
Optional application where LPA  
designated by WM as “poorly  
performing”**

# Applications to WM (II): “poorly performing” LPAs



# Applications to WM (II): “poorly performing” LPAs



S.23 of the Act, inserting ss. 62M, 62N and 62O into the TCPA 1990

If:

- LPA designated by WM (s.62M(2))
- Development is of a description prescribed by WM (s.62M(4))

Then:

- Application may be made to WM instead of LPA, if applicant so chooses (s.62M(1))

# Applications to WM (II): “poorly performing” LPAs



“Major development” likely to be prescribed: see Town and Country Planning (Development Management Procedure) (Wales) Order 2012, art. 2(1): development on land of 1 ha or more; buildings with floor space of 1000 sq m or more; housing development of 10 houses or more / on a site of 0.5 ha or more; mining and mineral working

“Poorly performing”: speed of determination and/or frequency with which determinations are overturned on appeal

# Applications to WM (II): “poorly performing” LPAs



Includes reserved matters applications (s.62M(4)) and  
“connected application” (s.62O)

Again, no right of appeal but statutory challenge available  
under s.284 TCPA 1990 (para. 15 of Sch. 4 to the Act)

**Part 6 of the Act:  
“Development Management etc”**



# Part 6: Development Management etc



## Decision Notices

- S.33 of the Act, inserting s.71ZA TCPA 1990
  - S.71ZA(2)&(3): decision notice *“must specify any plans or other documents in accordance with which the development to which it relates is to be carried out”*: planning permission deemed to be granted subject to a corresponding condition
    - Intention: enable developers to make minor material amendments to existing planning permission (via application under s.73 TCPA 1990) rather than having to submit an entirely new application
  - Decision notices become “live” documents: LPA must provide revised version following discharge of conditions, removal/alteration of conditions, etc. (s.71ZA(4)-(6))

# Part 6: Development Management etc



## Notification of development

- S.34 of the Act, inserting s.71ZB TCPA 1990
  - Before beginning any development, LPA must be given notice of the date on which the development is to begin, together with details of the relevant planning permission
    - Intention: “*greater clarity, transparency and certainty*” – particularly where a single development has multiple permissions. Easier to monitor compliance with pre-commencement conditions.

## Part 6: Development Management etc



**Duration of planning permission:** ss. 35 and 36 of the Act, amending ss.91 and 92 TCPA 1990:

- S.73 permissions (for development without complying with a condition) are deemed to be granted subject to a condition to the effect that the development must be begun not later than the original permission required development to be begun
- Same provision made in respect of application for approval of any reserved matter

## Part 6: Development Management etc



### **Exercise of functions of LPA relating to applications**

S.39 of the Act, inserting ss.319ZA, 319ZB, 319ZC and 319ZD into the TCPA 1990

S.319ZA: WM may make regulations requiring LPAs to delegate functions re. planning applications – and prescribing the terms of such delegation

S.319ZB: WM may make regulations prescribing the size and composition of planning committees

**Part 7 of the Act:  
“Enforcement, Appeals etc”**

## Part 7: Enforcement, Appeals etc

**Enforcement:** to resolve harm, not to punish

### “Enforcement warning notices”

S.43 of the Act, inserting s.173ZA into the TCPA 1990

- Where it appears to the LPA that there has been a breach of planning control, and there is *“a reasonable prospect that, if an application for planning permission in respect of the development were made, planning permission would be granted”*
- Description of the breach
- Warning that unless application for planning permission is made within specified period, further enforcement action may be taken

# Part 7: Enforcement, Appeals etc



## Appeals against enforcement notices

- S.44 of the Act (amending s.177 TCPA 1990): planning permission may only be granted following an appeal against an EN if the appeal is on “Ground (a)” ( = that planning permission ought to be granted)
- S.45 of the Act: amends s.78 TCPA 1990: prevents consecutive appeals in respect of unauthorised development

...

## Part 7: Enforcement, Appeals etc

- S.78(4AA): no appeal against refusal of planning permission for development, where the development has been the subject of an EN, the EN was appealed and planning permission was not granted on the appeal
- S.78(4AB): no appeal against refusal of planning permission subject to a condition, if an appeal against an EN has been brought on the ground that the condition ought to be discharged, and the condition was not discharged on the appeal



## Part 7: Enforcement, Appeals etc

And the converse situation:

- S.46 of the Act (amending s.174 TCPA 1990): no appeal against EN on the ground that planning permission ought to be granted, where the EN is issued after a decision to refuse planning permission for “related development” has been upheld on a s.78 appeal
- Similarly: no appeal against EN on the grounds that a condition ought to be discharged, if decision to grant planning permission subject to the condition has been upheld on a s.78 appeal

## Part 7: Enforcement, Appeals etc

### Miscellaneous

- S.47: a planning application may not be varied following service of notice of appeal
  - S.78 appeals; s.195 appeals; listed building appeals; hazardous substances appeals
- S.48: amends s.217 TCPA 1990: appeals against s.215 notices (re. land adversely affecting amenity) become the responsibility of the WM rather than the Magistrates' Courts

# **Part 8 of the Act: Town and Village Greens**

## Part 8: Town and Village Greens

Two key points:

- Owner may now make a statement to put an end to use of land “as of right”: s.52 of the Act applies s.15A of the Commons Act 2006 to Wales
- S.53 of the Act: no right to apply to register land as TVG after: grant of planning permission (including planning permission for operational development under local development order); grant of DCO
  - Amendment of s.15C of the 2006 Act, and new Sch. 1B



**[hsargent@landmarkchambers.co.uk](mailto:hsargent@landmarkchambers.co.uk)**

**Landmark**  
CHAMBERS