Environmental risk and liability outlook 2018
A sustainable Wales: better choices for a better future

Sustainable development as the central organising principle of public bodies in Wales:

2. Planning (Wales) Act 2015
3. Environment (Wales) Act 2016
Sustainable development

“The process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the well-being goals”

Well-being of Future Generations Act
The well-being goals & the ways of working

1. A ? Wales
2. A ? Wales
3. A ? Wales
4. A more ? Wales
5. A Wales of ? ?
7. A ? ? Wales

46 national indicators
Environment (Wales) Act 2016

- May 2016: Parts in force:
  - 1 – Sustainable Management of Natural Resources
  - 2 – Climate Change
  - 5 – Fisheries for shellfish

- April 2017: Part 6 – Marine licensing

- Parts not in force:
  - 3 - Charges for carrier bags
  - 4 – Collection and disposal of waste collection
“Improve resource use efficiency, for example through waste management (the treatment and recycling or recovery of waste materials such as sewage sludge on land) and land-use planning (reducing ‘land take’ by encouraging brownfield development and contaminated sites remediation);”

“..an integrated approach to managing our urban systems, we will not be able to fully understand, value and therefore optimise the benefits that green infrastructure ... provides.
The 3 priorities:

• Delivering nature-based solutions - working more effectively with nature to tackle our big challenges

• Increasing renewable energy and resource efficiency – and setting out a clear pathway for investment in these areas

• Taking a place-based approach – to respond to local needs and opportunities.

National Infrastructure Commission for Wales
Area statements
Impact upon enforcement
Development Framework

- National Development Framework
- Call for Evidence and Projects
- Identification of Regional Areas
- Issues, Options and the Preferred Option - Consultation in April 2018
- Strategic Development Plans
- Local Development Plans
  - Area statements
  - Local well-being plans
  - Waste strategy for Wales
  - Local transport plans
Pre-application Community Consultation: Best Practice Guidance for Developers

Applies to “major developments”: Art.2 Town and Country Planning (Development Management Procedure) (Wales) Order 2012

- Housing developments of 10 or more dwellings or where the site area is of 0.5 ha or more (if no. of dwellings is not known)
- Floor space exceeds 1,000 sqm
- Mining
- Waste development
- Development on a site of 1 ha+
Statutory pre-application consultation requirements (s.61Z TCPA 1990)

- Making draft planning application documents available to view
- Notifying the right consultees of the consultation
- 28-day consultation period and
- Pre-Application Consultation Report
Adding value to pre-application consultation

“Developers need to understand the local community to engage appropriately and effectively”

“The developer should not hide away from the community and hope the application will go unnoticed. This approach runs the risk of a higher number of community responses (and objections) to the LPA after the application has been submitted, leading to delays during the determination period and reducing the likelihood of planning success.”
Adding value to pre-application consultation

- Making the process clear
- Awareness raising
- Website
- Social media and press attention
- Engaging materials & site notice
- Digital tools
- Listening and responding
- Late responses
- Importance of evidence in PAC Report
- Compliance checklist (Annex 1)
- Specialist consultees (Annex 2)
Status of site

- Prior planning permission
- Prior use
- Hazards
- Rights of others
- Physical changes to site
- Changing planning environment
- Changing regulatory requirements
- Enforcement policy
Planning permission

1950 Grant of permission
1966 Notification of cessation of works
1967 Completion of site restoration
1978 Enquiry of need for permission

“There is no principle in the planning law that a valid permission capable of being implemented according to its terms can be abandoned.”

Lord Scarman in *Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment* [1985] AC 132
Existing, established and temporary uses

- *Hartley v Minister of Housing and Local Government* [1970] 1 QB 413
- *Avon Estates Ltd v Welsh Ministers* [2011] EWCA Civ 553
Hazards, risks and control measures

- Physical features incl. asbestos
- The rights of others including rights of way

- Liabilities
  - as occupier to civil claims
  - as employer/manager or as developer of site under health and safety legislation
  - as operator/controller under environmental legislation
Regulatory update

- Conservation of Habitats and Species Regulations 2017 (SI 2017/1012)
- Town and Village Greens
  - Consultation issued: 23 October 2017
  - Responses: 2 February 2018
Regulatory change and Green Brexit

Future of Prevention, Precaution and Polluter Pays

“We will deliver a Green Brexit, where environmental standards are not only maintained but enhanced.”
Michael Gove 12.11.17

- Increasing of domestic regulation
- New supervisory environmental body
- New national policy statement
EU Withdrawal Bill

- Retention of “EU derived domestic legislation” on or after “exit day”
- s108A Government of Wales 2006: “it is incompatible with the Convention rights or with EU law.”
- Amendments
Case law update

- *Trustees of the Barker Mill Estates v Test Valley Borough Council and Secretary of State* [2016] EWHC 3028 (Admin) per Holgate J

Thank you

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