On 1st March 2016, a new regime for determining applications for ‘Developments of National Significance’ (DNS) came into force in Wales, where qualifying developments are determined by Welsh Ministers.

Planning applications for development below the DNS thresholds will remain the responsibility of Local Planning Authorities (LPAs), whilst developments above the DNS thresholds will fall under the Nationally Significant Infrastructure Project (NSIP) regime and will be determined by the UK Government.

To qualify as a DNS a development must either be specified in the Wales National Development Framework or meet certain thresholds, which are set out in the DNS (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016. This includes energy generation schemes of between 10MW and 50MW.

Environmental Impact Assessment (EIA) is a key issue that must be considered at the outset of the DNS process, before Welsh Ministers are even notified of the proposed DNS development. This is because the mandatory notification procedure must either include a statement confirming that an Environmental Statement (ES) will be provided, or a screening direction from Welsh Ministers confirming that EIA is not required.

Interestingly, all of the developments on the Planning Inspectorate (PINS) Wales DNS register at 17/03/17 are for energy projects and:

- 42% either do not require EIA or a negative screening request has been submitted to PINS;
- 33% either do require EIA or an ES has been submitted with the DNS application; and
- 25% have either not been progressed, are on hold, or have not reached the EIA notification stage.

Once the DNS notification – including a screening direction or a commitment to providing an ES – has been accepted the DNS application must be submitted within one year. In the interim period, the proposed development must undergo a mandatory pre-application consultation for a minimum of 6 weeks.

A benefit of the DNS process is that it allows other applications (secondary and associated consents) that are linked to the proposed development to be brought into a single DNS application to be determined by Welsh Ministers. This could include other planning applications (i.e. to allow a power generation facility to connect to the grid), listed building consents and works on common land.

Whilst it is at the discretion of the developer whether an application is submitted for secondary consent(s), Welsh Ministers are allowed to call in secondary consents if they consider them to be connected with an application for DNS and the developer has not already submitted them alongside the primary DNS application. In order to allow due consideration to be given to the secondary consent, a suspension notice may be issued.

After a DNS application has been made variations may be allowed, though it must not be a substantial change. If it is deemed a substantial change then it will not be agreed and the DNS procedure will start again.

All of the above aspects of the DNS procedure have the potential to give rise to significant additional costs in terms of time delay and financial implications for the applicant if the scope of the application and/or the details of the development for which permission is sought are changed once the DNS notification has been submitted.
Amending the scheme will require the development to be re-screened or scoped for EIA purposes. It will also need to be re-consulted on, once any amendments have been made to the technical assessments and the ES. Should this take more than one year to finalise then the DNS procedure must start again.

Similarly if the Welsh Ministers call in a secondary consent for determination as part of the DNS application this would also change the scope of the development (and therefore the nature of the development). Again, screening and scoping may need to be done again which could lead to significant delay and cost implications for the applicant.

It is an important and useful aspect of the DNS procedure that an applicant can request pre-application advice from PINS Wales at any time during the DNS process before the submission of the application, and this can cover the EIA requirements for the development. Whilst this advice comes at a cost it does provide an opportunity to minimise abortive work on the EIA and to make sure that there are no nasty call-in surprises during the determination of the DNS.

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