



# PINS NOTE 33/2015r1

To: All Inspectors, Planning Procedure staff - England.

Relevancy: Planning appeals, called-in applications involving Wind Turbines in England.

Date of Issue: 22 October 2015

Currency: review on 22 April 2016

Last update: 23 February 2016 – Paragraph 7 redrafted to refer to the updated Advice Note 01/14, which sets out the legal requirements of pre-application consultation and additional Advice Note 10/15 on how to handle cases where there is a dispute over validity, primarily aimed at casework staff.

## PRE-APPLICATION CONSULTATION UNDER S61W OF THE 1990 ACT AND THE DMPO 2015 – WIND TURBINES

### Action

1. Both Inspectors and procedure teams need to be aware of the provisions of s61W of the 1990 Act and related provisions brought in by amendments to the DMPO 2010, now superseded by the DMPO 2015 in relation to pre-consultation requirements for wind turbine proposals in England<sup>1</sup>. We have had a few planning appeals recently, where the issue of validity has arisen, through alleged non-compliance with the requirements. After consideration of the evidence on the files, most of these cases have been found to be invalid and have been turned away.
2. Of the cases turned away in the last few months most (if not all) were where the application was accepted by the LPA and since found that the pre-application consultation was not carried out at the appropriate time, consultation documents were not submitted or lacked sufficient detail about the consultation or the consultation was not adequately carried out. Particular care needs to be taken to ascertain that in the consultation statement the applicant has

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<sup>1</sup> There are no equivalent provisions in the DMPO Wales 2012, SI 2012/801 (w.110).

provided particulars of consultation responses received and of how the applicant took account of them.

3. The DMPO prescribes that a relevant application for planning permission must be accompanied by particulars of various aspects of the pre-application consultation. The pre-application documents (or the absence of them) will need to be checked at an early stage following receipt of an appeal, in order to assess whether or not the application was a valid one, regardless of whether or not any third party raises it as an issue. Failure to do so may result in wasted time and costs for all parties, including the Inspectorate.

## Background

4. Under s61W of the 1990 Act and the requirements of Articles 3 and 4 of Part 2 of the DMPO 2015<sup>2</sup>, which came into effect from 15 April 2015; this superseded Part 1A, Article 3A & 3B of DMPO 2010, which applied from 17 Dec 2013<sup>3</sup> until 14 April 2015; there are pre-application procedures that must be carried out for developments involving Wind Turbines that fulfil certain criteria<sup>4</sup>, before an application can be considered valid, as detailed below:

- i) Article 3 requires the prospective applicant to carry out pre-application consultation – the prospective applicant should have complied with the requirements of s61W of the 1990 Act<sup>5</sup>, under these provisions they must:

*2) publicise the proposed application in such manner as the person reasonably considers is likely to bring the proposed application to the attention of a majority of the persons who live at, or otherwise occupy, premises in the vicinity of the land.*

*(3) consult each specified person about the proposed application.*

*(4) Publicity under subsection (2) must—*

*(a) set out how the person ("P") may be contacted by persons wishing to comment on, or collaborate with P on the design of, the proposed development, and*

*(b) give such information about the proposed timetable for the consultation as is sufficient*

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<sup>2</sup> The Town and Country Planning (Development Management Procedure) (England) Order 2015 SI 2015/595.

<sup>3</sup> Under the provisions of [Article 2 of SI 2013/2932](#). [Article 3](#) of the Order amends [SI 2013/2140](#) to insert the equivalent provisions into s62A for applications directly to the SoS.

<sup>4</sup> Article 3(1)(a) - the development involves the installation of more than 2 turbines; or (b) - the hub height of any turbine exceeds 15 metres.

<sup>5</sup> Town and Country Planning Act 1990 (c.8)

*to ensure that persons wishing to comment on the proposed development may do so in good time.*

*(5) In subsection (3) "specified person" means a person specified in, or of a description specified in, a development order.*

- ii) Under the requirements of Article 4 an application must be accompanied by evidence of how the applicant complied with provisions under s61W, together with any responses and how they have taken account of those responses.

It follows that particulars of a pre-application consultation must form part of the necessary supporting information required to be submitted with planning applications under the DMPO. Failure to have undertaken pre-application consultation and to provide such information (where applicable) would invalidate the planning application. Under Article 37(3)(b) of the DMPO all documents and correspondence that formed part of the application should be submitted with an appeal, therefore an application that is found to be invalid for want of such pre-application consultation documents should be turned away on appeal. To assess compliance with Article 4, the extent of detail included concerning the consultation, the responses to the consultation and how the responses have been taken account of in the submitted application also needs to be considered.

5. The provisions do not apply if the proposed application is an application under section 73 (determination of applications to develop land without compliance with conditions previously attached); section 293A (urgent crown development), or cases under Article 20 of the DMPO (renewal of previous grant of permission).
6. The Planning Practice Guidance for Renewable and Low Carbon Energy sets out the requirements of the DMPO in paragraphs [025 – 031](#). The guidance highlights questions that should be considered when undertaking compulsory pre-applications consultation with the local community:
  - Who is responsible for conducting the consultation?
  - What must an applicant do when undertaking a consultation?
  - How can an applicant establish who needs to be consulted?
  - Will compulsory pre-application consultation apply to applications determined by the SoS?
  - What role can the LPA play in the consultation process?

- What happens if an applicant does not comply with the requirements?

At paragraph 031 the guidance states that if the requirements have not been met and an application has been submitted, the LPA cannot validate it until the applicant complies.

7. Advice Note 01/14 was issued to casework staff in February 2014 and updated in December 2015 – this advice note sets out the particulars of the pre-application consultation requirements. A further note was issued in December 2015, Advice Note 10/15 - this sets out how procedure staff should deal with cases where there is a dispute on validity, Annex 1 of the note is an example letter which can be used where it appears the requirements have not been met, asking for confirmation that the provisions have been complied with.

8. Please contact XXXX if you have any queries relating to validity of appeals.

PINS Knowledge Centre