

Appendix 7.6 Legislation, Policy and Guidance

This appendix identifies legislation and national and local policy of relevance to cultural heritage and archaeology.

National

Legislative Framework

Parliamentary legislation for the management and protection of the Welsh historic environment is provided by the *Historic Environment (Wales) Act 2023*¹, the *Town and Country Planning Act 1990*², the *Planning (Wales) Act 2015*³ and the *Well-being of Future Generations (Wales) Act 2015*⁴. The *Historic Environment (Wales) Act 2023* brings together the principal legislation for the conservation of the historic environment in Wales. The main Acts brought together in this consolidation are; the *Historic Buildings and Ancient Monuments Act 1953*⁵, the *Ancient Monuments and Archaeological Areas Act 1979*⁶, the *Planning (Listed Buildings and Conservation Areas) Act 1990*⁷ and the *Historic Environment (Wales) Act 2016*⁸. In addition to being supplemented by relevant secondary legislation, the primary legislation is also supplemented by technical planning advice, notably *Planning Policy Wales*⁹ and *Technical Advice Note 24: The Historic Environment (TAN 24)*¹⁰.

The *Planning (Wales) Act 2015*¹¹ provides a legislative framework for the operation of the planning system and includes provision for the Welsh Ministers to prepare a national land use plan, known as Future Wales: The National Plan 2040.

The planning framework is set out in the *Town and Country Planning Act 1990*¹². In November 2024 the Act was updated to reflect the following amendment to Section 314(a):

(1) In considering whether to grant planning permission for development which affects a listed building or its setting, the Welsh Ministers or a local planning authority in Wales must have special regard to the desirability of preserving—

(a) the listed building,

(b) the setting of the building, or

(c) any features of special architectural or historic interest the building possesses.

(2) In exercising the powers conferred by sections 232, 233 and 235(1) (appropriation, disposal and development of land held for planning purposes), a relevant local authority must have regard to the desirability of preserving features of special architectural or historic interest, and in particular listed buildings.

(3) In subsection (2), “relevant local authority” means—

(a) a county council or county borough council in Wales;

(b) a National Park authority in Wales;

(c) a joint planning board constituted under section 2(1B).

(4) In this section, “listed building” means—

(a) a listed building (within the meaning given by section 76 of the Historic Environment (Wales) Act 2023) situated in Wales, or

1 Historic Environment (Wales) Act 2023. Acts of Senedd Cymru. Available at: <https://www.legislation.gov.uk/asc/2023/3/contents/enacted> [Accessed 05/02/2025]

2 Town and Country Planning Act 1990, c.8. London: UK Government. Available at: <https://www.legislation.gov.uk/ukpga/1990/8/contents> [Accessed 05/02/2025]

3 Planning (Wales) Act 2015. National Assembly for Wales. Available at: <https://www.legislation.gov.uk/anaw/2015/4/contents> [Accessed 05/02/2025]

4 The Well-being of Future Generations (Wales) Act 2015 Available at: <https://www.gov.wales/sites/default/files/pdf-versions/2025/2/2/1740501518/well-being-future-generations-act-essentials.pdf> [Accessed 23/04/2025]

5 Historic Buildings and Ancient Monuments Act 1953. London: UK Government. Available at: <https://www.legislation.gov.uk/ukpga/Eliz2/1-2/49/contents> [Accessed 05/02/2025]

6 Ancient Monuments and Archaeological Areas Act 1979. London: UK Government. Available at: <https://www.legislation.gov.uk/ukpga/1979/46> [Accessed 05/02/2025]

7 Planning (Listed Buildings and Conservation Areas) Act 1990, c.9. London: UK Government. Available at: <http://www.legislation.gov.uk/ukpga/1990/9/contents> [Accessed 05/02/2025]

8 Historic Environment (Wales) Act 2016. National Assembly for Wales. Available at: <https://www.legislation.gov.uk/anaw/2016/4/contents> [Accessed 05/02/2025]

9 Welsh Government (2024) Planning Policy Wales Edition 12 [online]. Available at: <https://www.gov.wales/planning-policy-wales> [Accessed 05/02/2025]

10 Welsh Government (2017) Technical Advice Note 24: The Historic Environment [online]. Available at: <https://www.gov.wales/technical-advice-note-tan-24-historic-environment> [Accessed 05/02/2025]

11 Planning (Wales) Act 2015

12 Town and Country Planning Act 1990

(b) a listed building (within the meaning given by section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990) situated in England¹³.

The Well-being of Future Generations (Wales) Act 2015¹⁴ provides a legally-binding common purpose for national government, local government, local health boards and other specified public bodies. It details the ways in which specified public bodies must work together to improve the well-being of Wales. Provisions under the Act include maintaining professional standards in heritage collections and ‘Looking after our cultural heritage’.

Future Wales: The National Plan 2040

Future Wales: The National Plan 2024 constitutes the highest tier of the development plan against which the Proposed Development will be determined. It sets out a strategy for addressing key national priorities through the planning system, including achieving decarbonisation, climate-resilience and achieving net zero.

Relevant policies in the Plan include: Policy 17: which states that the Welsh Government strongly supports the principle of developing renewable and low carbon energy from all technologies and at all scales to meet future energy needs and to combat the climate emergency.

The Proposed Development is partially located within a Pre-Assessed Area for Wind Energy, where there is a presumption in favour of large-scale wind energy development, subject to the criteria in Policy 18. The Welsh Government has already determined (through modelling) that the landscape is capable of accommodating wind development in these areas in an acceptable way (an assessment based on 250m tip heights). Applicants are required to demonstrate the net benefits a scheme will bring in terms of social, economic, environmental and cultural improvements to local communities and the visual impact of new grid infrastructure is required to be minimised. Policy 18: which states that DNS applications for renewable and low carbon energy projects will be permitted subject to a range of detailed criteria. The Policy states:

‘Proposals for renewable and low carbon energy projects (including repowering) qualifying as Developments of National Significance will be permitted subject to policy 17 and the following criteria:

1. outside of the Pre-Assessed Areas for wind developments and everywhere for all other technologies, the proposal does not have an unacceptable adverse impact on the surrounding landscape (particularly on the setting of National Parks and Areas of Outstanding Natural Beauty.....

....6. there are no unacceptable adverse impacts on statutorily protected built heritage assets....

....The cumulative impacts of existing and consented renewable energy schemes should also be considered¹⁵.

Planning Policy Wales

National Planning Policy is provided in *Planning Policy Wales Edition 12 (PPW 12)*¹⁶. PPW 12 sets out the Government’s planning policies for Wales and how these should be applied and is supplemented by guidance contained in *TAN 24: The Historic Environment*. It provides a framework within which locally-prepared plans for development can be produced and assessed. Chapter 6 of PPW 12 is concerned with ‘Conserving and Enhancing the Historic Environment and its Assets’. It identifies heritage assets as “*central to Wales’s culture and its character*”¹⁷ and that “*it is important that the planning system looks to protect, conserve and enhance the significance of heritage assets*”¹⁸. PPW 12 also notes that:

‘The planning system must take into account the Welsh Government’s objectives to protect, conserve, promote and enhance the historic environment as a resource for the general well-being of present and future generations. The historic environment is a finite, non-renewable and shared resource and a vital and integral part of the historical and cultural identity of Wales. It contributes to economic vitality and culture, civic pride, local distinctiveness and the quality of Welsh life. The historic environment can only be maintained as a resource for future generations if the individual historic assets are protected and conserved’¹⁹.

PPW 12 section 5.9.21 notes that “*Prior to an application being submitted, developers for renewable and low carbon energy developments should, wherever possible, consider how to avoid, or otherwise minimise, adverse impacts through careful consideration of location, scale, design and other measures*”²⁰.

¹³ Ibid., section 314a

¹⁴ Welsh Government (2015)

¹⁵ Ibid., page 95

¹⁶ Welsh Government (2024)

¹⁷ Ibid., 129: para 6.1.1

¹⁸ Ibid., 130: para 6.1.7

¹⁹ Ibid., 130: para 6.1.5

²⁰ Ibid., 100: para 5.9.21

Paragraph 6.1.6 of PPW 12 notes that:

The Welsh Government’s specific objectives for the historic environment seek to:

protect the Outstanding Universal Value of the World Heritage Sites;

conserve archaeological remains, both for their own sake and for their role in education, leisure and the economy;

safeguard the character of historic buildings and manage change so that their special architectural and historic interest is preserved;

preserve or enhance the character or appearance of conservation areas, whilst the same time helping them remain vibrant and prosperous;

preserve the special interest of sites on the register of historic parks and gardens; and

*protect areas on the register of historic landscapes in Wales*²¹.

With regard to designated heritage assets, PPW 12 states that there should be a general presumption in favour of the preservation or enhancement of designated assets including Listed Buildings²², Conservation Areas²³, Historic Parks and Gardens²⁴, and Historic Landscapes²⁵.

With regard to archaeological remains, PPW 12 states that:

*The conservation of archaeological remains and their settings is a material consideration in determining planning applications, whether those remains are a scheduled monument or not*²⁶.

*Where nationally important archaeological remains and their settings are likely to be affected by proposed development, there should be a presumption in favour of their physical protection in situ. It will only be in exceptional circumstances that planning permission will be granted if development would result in direct adverse impact on a scheduled monument (or an archaeological site shown to be of national importance) or has a demonstrably and unacceptably damaging effect upon its setting*²⁷.

*In cases involving less significant archaeological remains, planning authorities will need to weigh the relative importance of the archaeological remains and their settings against other factors, including the need for the proposed development*²⁸.

*Where archaeological remains are known to exist or there is a potential for them to survive, an application should be accompanied by sufficient information, through desk-based assessment and/or field evaluation, to allow a full understanding of the impact of the proposal on the significance of the remains. The needs of archaeology and development may be reconciled, and potential conflict very much reduced, through early discussion and assessment*²⁹.

*On occasions, unforeseen archaeological remains may still be discovered during the course of a development. A written scheme of investigation should consider how to react to such circumstances or it can be covered through an appropriate condition for a watching brief. Where remains discovered are deemed to be of national importance, the Welsh Ministers have the power to schedule the site and in such circumstances scheduled monument consent must be required before works can continue*³⁰.

Where a heritage asset is to be lost, either in part or in whole, as a result of development, the local planning authority

*“...must be satisfied that the developer has secured appropriate and satisfactory provision for their recording and investigation, followed by the analysis and publication of the results and the deposition of the resulting archive in an approved repository”*³¹.

Technical Advice Note (TAN) 24: The Historic Environment

The Welsh Government published Technical Advice Note (TAN) 24: The Historic Environment in May 2017 with purpose of supplementing PPW and to “provide guidance on how the planning system considers the historic environment during development plan preparation and decision making on planning and Listed Building applications”³².

21 Ibid., 130: para 6.1.6
22 Ibid., paras 6.1.10 to 6.1.13
23 Ibid., paras 6.1.14 to 6.1.17
24 Ibid., paras 6.1.18 and 6.1.19
25 Ibid., paras 6.1.20 and 6.1.21
26 Ibid., 132: para 6.1.23
27 Ibid., 132: para 6.1.24
28 Ibid., 132: para 6.1.25
29 Ibid., 133: para 6.1.26
30 Ibid., 133: para 6.1.27
31 Ibid.
32 Welsh Government (2017), 5

TAN 24 notes that the historic environment is defined as “*all aspects of the environment resulting from the interaction between people and places through time, including all surviving physical remains of past human activity, whether visible, buried or submerged, and deliberately planted or managed*”³³ and that a historic asset is defined as “*an identifiable component of the historic environment. It may consist or be a combination of an archaeological site, a historic building or area, historic park and garden or a parcel of historic landscape. Nationally important historic assets will normally be designated*”³⁴.

TAN 24 requires assessments to consider “the potential impacts of a development proposal on the significance of any historic asset/assets and to assist in decision making where the historic environment is affected by the planning process”³⁵. These assessments should make reference to the Conservation Principles for the Sustainable Management of the Historic Environment which were published in 2011 and include the following six principles:

1. *Historic assets will be managed to sustain their values;*
2. *Understanding the significance of historic assets is vital;*
3. *The historic environment is a shared resource;*
4. *Everyone will be able to participate in sustaining the historic environment;*
5. *Decisions about change must be reasonable, transparent, and consistent; and*
6. *Documenting and learning from decisions is essential*³⁶.

These principles should be applied to ensure that change to the historic environment is managed sustainably and to ensure that any changes proposed have taken account of the significance of heritage assets that may be affected and how any such changes may affect that significance.

TAN 24 further notes that “*The public benefit of taking action to reduce carbon emissions, or to adapt to the impact of climate change, should be weighed against any harm to the significance of historic assets*”³⁷ and that “*The local planning authority must take into account relevant policies and material considerations, and will need to weigh the significance of the remains against the benefits of and need for the proposed development*”³⁸.

Guidance from ClfA³⁹ and The Association of Local Government Archaeological Officers (ALGAO)⁴⁰ have also noted the need for public benefit or public engagement in archaeology.

Cadw Guidance

Cadw is the historic environment service for the Welsh Government. They have a wide-ranging role in the care and promotion of the Welsh historic environment. They provide statutory advice on planning applications.

Cadw’s best practice guidance series ‘*Managing Change*’ currently contains 15 guidance documents focused on a variety of topics from specific asset types to best practice in impact assessment⁴¹. The most relevant in the context of this assessment are:

- Caring for Historic Landscapes in Wales;
- Historic Environment Record in Wales: Compilation and Use;
- Managing Change to Listed Buildings in Wales;
- Managing Change to Registered Parks and Gardens in Wales;
- Managing Historic Character in Wales;
- Managing Setting of Historic Assets in Wales;
- Heritage Impact Assessment in Wales;
- Managing Conservation Areas in Wales;
- Managing Scheduled Monuments in Wales;
- Understanding Listing in Wales; and
- Understanding Scheduling in Wales.

33 Ibid., 6

34 Ibid.

35 Ibid., 7

36 Cadw (2011) Conservation Principles for the sustainable management of the historic environment in Wales [online]. Available at: https://cadw.gov.wales/sites/default/files/2019-05/Conservation_Principles%20for%20the%20sustainable%20managment%20of%20the%20historic%20environment%20of%20Wales.pdf [Accessed 05/02/2025]

37 Welsh Government (2017), 7: para 1.9

38 Ibid., 17: para 4.10

39 ClfA (2021a) Professional Practice Paper: Delivering Public Benefit [online]. Available at: https://www.archaeologists.net/sites/default/files/Delivering_public_benefit.pdf [Accessed 05/02/2025]

40 Mann, B. (2023) Delivery of Public Benefit and Social Value Guidance for Archaeology and the Planning Process [online]. Available at: <https://www.archaeologists.net/sites/default/files/ALGAO%20Delivery%20of%20Public%20Benefit%20and%20Social%20Value%20Guidance%20v1-3.pdf> [Accessed 05/02/2025]

41 Cadw (2019) Cadw’s recent best-practice guidance [online]. Available at: https://cadw.gov.wales/sites/default/files/2019-11/Cadw_s%20recent%20best-practice%20guidance%20-%202019-11-12.pdf [Accessed 09/04/2025]

Cadw's setting guidance defines setting as “*the surroundings in which it is understood, experienced and appreciated, embracing present and past relationships to the surrounding landscape*”⁴². The guidance sets out a four-stage approach to assessing the potential for impacts upon the setting of heritage assets:

- Stage 1: Identify the historic assets that might be affected by a proposed change or development.
- Stage 2: Define and analyse the settings to understand how they contribute to the significance of the historic assets and, in particular, the ways in which the assets are understood, appreciated and experienced.
- Stage 3: Evaluate the potential impact of a proposed change or development on that significance.
- Stage 4: If necessary, consider options to mitigate or improve the potential impact of a proposed change or development on that significance⁴³.

Whilst not part of the Managing Change series, Cadw's *Conservation Principles for the Sustainable Management of the Historic Environment in Wales*⁴⁴ is also relevant. Conservation Principles defines an historic asset as “*An identifiable component of the historic environment. It may consist or be a combination of an archaeological site, an historic building, or a parcel of historic landscape.*” This definition has been applied to the term ‘heritage asset’ as used throughout this Chapter.

Conservation Principles sets out six principles, as noted above, which should be applied to ensure that change to the historic environment is managed sustainably and to ensure that any changes proposed have taken account of the significance of heritage assets that may be affected and how any such changes may affect that significance.

Local Planning Policy

The Proposed Development Site lies primarily within the administrative area of the Wrexham County Borough Council. By Order of the High Court of Justice, dated 19 May 2025, Wrexham Council's decision on the 20 December 2023 to adopt the Local Development Plan (LDP) has been quashed. The LDP is no longer part of the development plan for Wrexham and is now un-adopted.

The development plan for Wrexham now comprises Future Wales: the national plan 2040 as outlined above and the Wrexham Unitary Development Plan 1996-2011, adopted 2005.

The topic specific policies relevant to this chapter are Policy, EC7, EC 8 and EC11 which state:

Policy EC7 -Conservation Areas

‘Within, and in close proximity to, conservation areas, the priority will be to preserve and/ or enhance those buildings, structures, streets, trees, open spaces, archeological remains, views, and other elements which contribute to the unique character of the area. New buildings and alterations or additions to existing buildings in conservation areas, whether listed as of special architectural or historic interest or not, must reflect the design and character of the area as a whole and the form, scale, detailing and materials of existing buildings.’

Policy EC 9 Listed Buildings of Special Architectural or Historic Interest

‘Alterations or additions to, and development or redevelopment within the curtilage of, buildings or structures listed as of special architectural or historic interest must respect the setting and character of the listed buildings or structures.’

Policy EC11 - Archaeology

‘Development which would adversely affect the site or setting of a Scheduled Ancient Monument or archeological site of national significance will not be permitted. Development that directly affects non-scheduled sites of archeological importance will only be permitted if an archeological investigation has been carried out to determine the nature, extent and significance of the remains, and this investigation indicates that in-situ preservation is not justified, and a programme of excavation and recording has been agreed. Development will also be carefully controlled to ensure that the setting of non-scheduled sites of archeological importance is not harmed where appropriate.’⁴⁵

⁴² Cadw (2017) Managing Setting of Historic Assets in Wales [online]. Available at: <https://cadw.gov.wales/sites/default/files/2019-05/Setting%20of%20Historic%20Assets%20in%20Wales%20EN.pdf> [Accessed 05/02/2025], 2

⁴³ Ibid., 5-6

⁴⁴ Cadw (2011)

⁴⁵ Wrexham Unitary Development Plan 1996-2011. Adopted February 2005 <https://www.wrexham.gov.uk/sites/default/files/2023-04/udp-statement.pdf>

