Number: **WG13037**

Llywodraeth Cymru
Welsh Government

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Consultation Document

Improving the Planning Appeal Process

Date of issue: **17 August 2011**
Action required: Responses by **17 November 2011**

Overview

This consultation document puts forward proposals for various changes to the planning appeals system in Wales. The changes are designed to make the appeal process more proportionate, cost effective and responsive to customers' needs.

The main changes on which the views are sought are:

- introducing a quicker, simpler system for householder appeals
- the appeal method for each case to be decided on the basis of published indicative criteria
- extending the costs regime to written representation planning appeals
- introducing a simple procedure for correcting errors in appeal decisions
- changing the current arrangements for payment of enforcement application fees
- requiring that Statements of Common Ground are submitted earlier in the appeals process
- introducing a formal process and guidance for undertaking bespoke time tables for complex inquiries

In deciding to consult over these proposed changes we have had regard to changes which have already been implemented in England in some of these areas, and whose impact thus can be judged. However, it is important that any changes we may introduce are right for Wales. We therefore want to hear your views on these potential changes before taking a decision on these matters.

How to respond

The closing date for replies is 17 November 2011. You can reply in any of the following ways:

Email

Please compete the consultation form (Annex A) and send it to: Planconsultations-a@wales.gsi.gov.uk
[Please include 'Appeals Consultation' in the subject line]

Post

Please complete the consultation form (Annex A) and send to the address below.

Further information and related documents

Large print, Braille and alternate language versions of this document are available on request.

Contact Details

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Data Protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account.

However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information. The Welsh Government is the data controller for all personal data relating to your consultation response.

WG13037

What is the consultation about?

1. The Welsh Government is committed to improving the planning appeal process, as part of its wider drive to make the development management process more responsive to users' needs. This consultation document puts forward proposals to:

    - Introduce a fast track system for householder appeals
    - Enable the Planning Inspectorate, on behalf of the Welsh Ministers, to determine the appeal method for each case, based on Ministerially approved and published indicative criteria
    - Extend the costs regime to written representation planning appeals
    - Simplify the procedure for correcting error(s) in appeal decisions
    - Transfer authority to inspectors to determine appeals involving old minerals permissions
    - Change the current arrangements for payment of enforcement application fees when enforcement appeals are lodged so that the entire fee is paid to the local planning authority
    - Require that Statements of Common Ground are submitted earlier in the appeals process
    - Introduce a formal process and guidance for undertaking bespoke time tables for complex inquiries

2. These proposals flow, in the main, from provisions in the Planning and Compulsory Purchase Act 2004 and the Planning Act 2008.

Why are changes necessary?

3. The appeal process is an integral part of the planning system. It plays a significant role in ensuring that the Welsh Government's objectives to deliver development where it is needed and foster attractive, sustainable places where people want to live are met. The Planning Inspectorate administers the appeals system in England and Wales and is a publicly funded joint executive agency of the Department for Communities and Local Government and the Welsh Government. As part of its role it administers the appeals system in Wales on behalf of the Welsh Government. The current arrangement allows public involvement and a high standard of decision making based on principles of openness, fairness and impartiality.

4. The current appeals system is widely acknowledged to deliver a high quality service. Surveys consistently show that the majority of appellants are satisfied with the way their appeal is handled. The Planning Inspectorate's customer satisfaction survey for 2009 showed that 74% of respondents were satisfied with the way that the appeals system was operating; a similar figure was obtained in 2008. In 2010-11 the Planning Inspectorate issued 1,026 decisions in Wales. Of these, 99.22% were free from any substantive error concerning the robustness of the decision.

5. However, it is important that the appeals system is kept under scrutiny, to ensure that its operation is as efficient and effective as possible. It is important for each appeal to be dealt with by the most appropriate process in the light of the circumstances of that appeal. Changes to the system can help it to deliver a better service to those who use it, by simplifying processes where there is scope to do so. This can bring about savings in costs and time to all involved and help to ensure that appeal procedures are proportionate to the needs of appeals of differing levels of complexity.

Fast track householder appeals

6. About 27% of the 900 or so planning appeals decided in Wales in 2009-10 concerned small-scale proposals for "householder development"[1]. Most householder appeals (about 90%) proceed via written representations and for the majority of appellants it will be their first and possibly only experience of a planning appeal. These are the least complex cases and rarely raise wider questions of policy. Yet they are dealt with under the same rules, timescales and procedures as larger and potentially more controversial schemes. We consider that this is disproportionate in its impact on appellants and all those involved in the appeals process. An expedited householder appeal written representations process, comprising a swift and independent review of the local planning authority's decision, would benefit householders by simplifying and speeding up their appeals. It would reduce the time, work and cost to all in processing these appeals, whilst not compromising full and fair consideration of the issues, primarily by ensuring that the information from the parties needed to make a properly informed decision is supplied at the outset.

7. The Inspectorate has already developed and implemented a fast track system for householder appeals in England, operative since April 2009. In essence, the main features are:

- appeals have to be lodged within 13 weeks of a decision, rather than 26 weeks
- based on electronic working as far as possible
- full statement of grounds of appeal submitted when appeal is first lodged, not 6 weeks later
- local planning authority supplies all information forming the basis of its decision, including representations by interested parties, with the appeal questionnaire
- interested parties are notified that their original representations will be taken into account

[1] Householder development means those within the curtilage of residential property which require an application for planning permission and are not a change of use. **Included** in householder developments are extensions, alterations, garages, swimming pools and other incidental buildings, walls, fences, vehicular accesses, porches and satellite dishes. **Excluded** from householder developments are applications to change the number of dwellings within an existing building, appeals against non-determination and appeals against the grant of permission subject to conditions.

- all site visits by the inspector are unaccompanied, except where an inspector needs someone present to gain access; in such "access required" cases, the appellant/representative is available during a morning or afternoon time-slot solely for this purpose
- target timescale for decision is 8 weeks rather than 16 weeks

8. In England this new process has enabled over 90% of householder appeals dealt with so far to be determined within 8 weeks of being made. The Planning Inspectorate's monitoring of the new system indicates no evidence of a significant change in the proportion of appeals allowed or dismissed arising from the expedited procedure. Less than 2% of cases lodged as householder appeals in this period proved unsuited to the new process and needed to be transferred to the non-streamlined procedure. The Planning Inspectorate has received highly positive feedback from the Royal Town Planning Institute small practitioner network (representing appellants) and from local planning authorities attending regional seminars. The number of high court challenges to date is extremely low and the process is giving rise to a reduced number of complaints. The new arrangements, including the "access required" site visit arrangements do not appear to have reduced confidence that appeal decisions are being made in a fair, open and impartial manner.

9. The only significant dissatisfaction expressed has arisen from the requirement for an appellant, or representative, to be available throughout a four hour period for an access required site visit at any time during this period. Whilst such an arrangement enables the Inspector to work more efficiently we realise that having to stand by for a four hour period can be difficult. We therefore propose that in Wales this period should be reduced to two hours.

10. A trial householder appeal service in Wales is currently underway. This pilot project is being applied to the same range of developments defined above as householder development, with a default provision for the Inspectorate to transfer cases to the normal written representations procedure if, exceptionally, circumstances indicate that this is necessary. Although only 38 cases were determined via the trial householder process in 2010/11, the first results are extremely encouraging and the pilot is continuing with nearly all local planning authorities now involved. All 38 cases have been determined within 8 weeks of submission and there have been no complaints to date. The results of the pilot project will inform the decisions concerning introduction of a fast track householder service, alongside the responses to this consultation.

Q1 Do you agree in principle with the introduction of a fast track householder appeal service in Wales? If not, why not?

Q2 What do you consider to be the advantages and disadvantages, for (i) appellants, (ii) local planning authorities and (iii) the wider community, of introducing a fast track householder appeal service?

Q3 What is your opinion of the following elements of a householder appeal service operating along similar lines to the current system in England? Are there any aspects of the system which you think might be unsatisfactory – if so, why?

- **Applicant has 12 weeks from the date of the decision to lodge an appeal**
- **8 week target for appeal decision**
- **Appeal procedure conducted electronically wherever possible**
- **Local planning authority case to comprise documentation concerning handling and determination of application and submitted with appeal questionnaire**
- **Appellant case to comprise statement on submitted appeal form explaining why local planning authority's decision is contested**
- **Neighbouring occupiers' representations at application stage carried forward to appeal – notification at appeal stage only to confirm whether objections still stand**
- **Unaccompanied site visit by inspector in all cases except where access into site needs to be provided**
- **Where access provision needed, appellant/representative only present, solely to enable access**
- **Where access provision needed, notice given of time window (we advocate a 2 hour window, e.g. between 10.00am and midday) when inspector will call**
- **Inspector to decide whether he/she wishes to view site from neighbouring property in response to any request to do so**

Q4 Do you agree with the scope of the definition of householder developments set out in footnote 1 above? Are there types of householder development that you feel should be excluded, or other types included? If so, which types and why?

Q5 Do you have comments to make in relation to any other aspect of a fast track householder service?

Determining the appeal method

11. Planning appeals and applications called in for determination by the Welsh Ministers are dealt with by one of three types of procedure. The written representations method is the simplest and quickest process. The parties involved submit their cases in writing, within a set timetable, and the appeal is determined on the basis of the Inspector's consideration of the submitted material and his/her inspection of the site and its surroundings. This method is appropriate for the majority of cases, which are relatively uncomplicated. In the hearing procedure, in addition to written material and the site inspection the evidence put forward by the parties is examined orally by way of a focussed discussion led by the Inspector. The hearing method is appropriate where more detailed scrutiny of the respective cases is needed. Whilst requiring more resources to operate it represents an intermediate

method between written representations and an inquiry. Inquiries are more formal proceedings, usually involving more complex cases, where the main parties are represented by advocates and the evidence of witnesses is submitted in the form of proofs which are tested under cross-examination. This procedure is the most costly and time-consuming. A hearing or inquiry may also be appropriate where there is a significant amount of public interest.

12. The current appeals system in Wales allows the principal parties to select the appeal method. However, the Inspectorate's experience indicates that the hearing method is frequently chosen for uncomplicated appeals which could just as well be determined via the written method. For example, nearly 60% of all appeals decided in 2009/10 were categorised as minor developments, yet more than a quarter of these were dealt with by hearings or inquiries. In other instances inquiries are chosen for appeals which could equally be considered at a hearing. There may be various reasons for this. However, one of the fundamental tenets of the system is that all appeals are dealt with fairly and on their merits irrespective of the appeal process used. The outcome will depend on how convincing the Welsh Ministers or the appointed inspector finds the planning arguments, not the method of their presentation.

13. We consider that the procedure used should be matched to the complexity of the case. This principle is an important element of a proportionate, customer focused and efficient appeals system. We believe that cases that do not need an oral hearing can be fairly and effectively handled by way of written representations with no loss of quality or equity to the process and decision. Similarly, cases that do not need an inquiry, with formal presentation of evidence and cross-examination of witnesses, can be fairly and effectively handled by means of a hearing. All appellants would receive the same quality of service, based on the nature and complexity of their appeal and the extent of and need for detailed evidence examination and testing.

14. In England the Planning Inspectorate has from April 2009 operated a statutory system of allocating planning appeals made under Section 78 of the Town and Country Planning Act 1990 (section 78 appeals) and enforcement appeals made under Section 174 of the Town and Country Planning Act 1990 (section 174 enforcement appeals) to the most appropriate appeal procedure. In the first year, changes from the procedure requested by the appellant were made in 1,003 section 78 appeal cases (about 6% of the total), using the Inspectorate's criteria for determining the most appropriate appeal method. About 95% of the changes were to a simpler, less costly procedure, with over 90% of these being a change to written representations. Only 57 cases involved a change to a more complex procedure, of which 43 were changes from written representations to a hearing. Where a party contests a change to the procedure proposed by the Inspectorate, the opportunity is given to provide further justification for the appeal method sought. Procedure changes proposed by the Inspectorate were contested on 165 occasions by the appellant and 94 occasions by

the local planning authority, resulting in changes not being made in 100 cases (about 10% of occasions when a change was initially proposed).

15. Overall, in view of this experience we consider that enabling the Planning Inspectorate to determine the appropriate procedure for section 78 planning appeals in Wales and applications called in by the Welsh Ministers under section 77 of the Town and Country Planning Act 1990, based on established criteria, will help to ensure that the appeal process is proportionate to the nature of each appeal and bring about substantial operational efficiencies and savings in costs and resources to all parties.

16. In Wales the Planning Inspectorate currently applies informal criteria to convert planning cases to the appeal method they consider most suitable, where the appellant does not insist on an oral hearing. The current criteria are reproduced below. They are designed to ensure that any case that is complex, controversial or would benefit from the scrutiny offered by a hearing or inquiry may be dealt with in this way.

Proposed Indicative criteria to determine whether an appeal is suitable to be decided on the basis of written representations, hearing or an inquiry.

Written representations
If your appeal meets the following criteria, the most appropriate procedure would be written representations:-
1. the grounds of appeal and issues raised can be clearly understood from the appeal documents plus a site inspection; and/or
2. the Inspector should not need to test the evidence by questioning or to clarify any other matters; and/or
3. an environmental impact assessment (EIA) is either not required or the EIA is not in dispute.

Hearing
If the criteria for written representations are not met because questions need to be asked, for example where any of the following apply:-
 the status of the appellant is at issue, eg Gypsy/Traveller;
 the need for the proposal is at issue eg agricultural worker's dwelling; Gypsy/Traveller site;
 the personal circumstances of the appellant are at issue, eg; people with disabilities or other special needs;
the most appropriate procedure would be a hearing if:-
1. there is no need for evidence to be tested by formal cross-examination; and
2. the issues are straightforward (and do not require legal or other submissions to be made) and you should be able to present your own case (although you can choose to be represented if you wish); and
3. your case and that of the LPA and interested persons is unlikely to take more than one day to be heard.

Inquiry
If the criteria for written representations and hearings are not met because the evidence needs to be tested and/or questions need to be asked, as above, the most appropriate procedure would be a local inquiry if:-
1. the issues are complex and likely to need evidence to be given by expert witnesses; and/or
2. you are likely to need to be represented by an advocate, such as a lawyer or other professional expert because material facts and/or matters of expert opinion

are in dispute and formal cross-examination of witnesses is required; and/or

3. legal submissions may need to be made.

NOTE: Where proposals are controversial and have generated significant local interest, they may not be suitable for the written representation procedure. We consider that the local planning authority is in the best position to indicate that a hearing or inquiry may be required in such circumstances.

17. Based on recent monitoring of the present informal arrangement in Wales, the Planning Inspectorate estimates that changes to the appeal method in section 78 cases would be made in about 5% of appeals (around 45 instances each year if appeals continue at their current level). The vast majority of changes would be from a more costly procedure to a simpler and quicker procedure, reducing the resource needed to operate the appeals system in Wales.

18. As changes to the most appropriate appeal method are agreed to by the parties in the majority of cases under the present informal arrangement in Wales, the effect in practice of a change to a formal system of procedure determination by the Inspectorate would be relatively minor. However, it would bring further consistency, proportionality and efficiency to the system as a whole. As in England at present, we propose that parties contesting a proposal by the Planning Inspectorate to change the appeal procedure would have an opportunity to provide further justification for their preferred appeal method before the Inspectorate's final decision on the procedure to be followed.

19. Section 174 enforcement appeals are also scrutinised at present to try and ensure that each proceeds via the appropriate appeal method. The Planning Inspectorate has again been enabled since April 2009 to determine the correct procedure for such appeals in England. The right procedure in enforcement cases is frequently dictated by the grounds of appeal and whether evidence as to matters of fact needs to be subject to cross examination under oath.

20. Of 2822 enforcement appeals lodged in England in 2009/10, some 300 (11%) were the subject of a change to the appeal method sought by the appellant. Roughly half of these were changed from written representations to an inquiry, and almost 15% from a hearing to an inquiry. However, fewer than 12% of changes were contested by the appellant.

21. We believe it important, in the interests of the operation of an appeal system that secures the appropriate appeal procedure for each case with maximum efficiency, that the power be introduced in Wales for the Planning Inspectorate to determine the appeal method for section 174 enforcement appeals on the basis of published indicative criteria.

22. The Planning Inspectorate also deals with appeals against the following:

- Listed building consents under Section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (section 20 appeals);
- Listed building enforcement notices under Section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (section 39 appeals);
- Established use certificates under Section 195 of the Town and Country Planning Act 1990 (section 195 appeals);
- Tree preservation orders under Section 208 against a notice made under Section 207 (1) of the Town and Country Planning Act 1990 (section 208 appeals);
- Hazardous substances under Section 21 of the Planning (Hazardous Substances) Act 1990 (section 21 appeals); and

- also listed building consent applications called in for determination by the Welsh Ministers under Section 12 of the Planning (Listed Building and Conservations Areas) Act 1990 (section 12 listed building consent applications).

23. At present the choice of procedure to determine these appeals, as with section 78 planning appeals, section 77 planning applications and section 174 enforcement appeals, is selected by the principal parties. For the reasons given above, we consider that we may also wish to adopt a formal system of procedure determination for the appeals listed in paragraph 22 above and section 12 listed building consent applications

24. We propose that the Planning Inspectorate, acting on behalf of the Welsh Ministers, should be able to apply Ministerially approved and published criteria to determine the most appropriate appeal method. Disagreement over the procedure method in any particular case would be for discussion at that stage with the Inspectorate in the light of the criteria. We believe that this approach would accord with the principles of an open, fair and impartial appeals system, ensuring that all appellants receive the same level of service and none would be disadvantaged as a result. It would enable all appeals to be decided by the most appropriate and proportionate appeal method and assist in speeding up the appeals process. In the event of legal challenge, the Planning Inspectorate would have to demonstrate that it had acted reasonably in applying the criteria. We are proposing to continue to use the criteria currently used informally by the Inspectorate, but are seeking views on the criteria as part of this consultation.

25. Primary legislation has already been enacted in the Planning Act 2008 which would enable this proposal to be implemented in Wales.

Q6 Do you agree with the Planning Inspectorate, on behalf of the Welsh Ministers, being able to determine the appeal method for section 78

planning, advertisement, section 174 enforcement, section 20 listed building consent, section 39 listed building consent enforcement, section 195 established use certificate, section 208 tree preservation order and section 21 Hazardous substance appeals, and section 77 and section 12 applications by applying Ministerially approved and published indicative criteria? If not, why not?

Q7 Do you agree with the current informally used indicative criteria (reproduced on pages 8 & 9) that we consider should form the basis of the Ministerially approved indicative criteria? If not, which of these do you disagree with, and why? What criteria would you propose instead?

Extending the costs regime to planning appeals dealt with by the written method

26. The costs award regime seeks to increase the efficiency and discipline of the appeals system by allowing for recompense for parties who have incurred unnecessary or wasted expense during the appeal process because of unreasonable behaviour. In Wales, policy guidance on the application of this regime is contained in WO Circular 23/93 "Award of Costs Incurred in Planning and Other (Including Compulsory Purchase Order) Proceedings". At present in Wales, in respect of planning appeals, provision exists for an application for an award of costs to be made in relation to such appeals dealt with by way of a hearing or inquiry.

27. In England, consistent with the change under the Planning Act 2008 concerning determination of the most appropriate appeal procedure and the introduction of fast track householder appeals which can only be dealt with by way of written representations, the costs regime has been extended to planning appeals dealt with under the written representations procedure. This ensures a "level playing field" for costs purposes. Experience to date in England indicates that generally a responsible approach is being taken to applications for costs awards in written representations.

28. We believe it right, in the interests of fairness and equity, that any decision to enable the Planning Inspectorate, acting on behalf of the Welsh Ministers, to determine the method by which a planning appeal is heard, should be accompanied by extension of the costs regime to the written representations method. A new Welsh Government Circular relating to the extended costs regime in Wales would be required should this proposal go ahead, which would be subject to a separate consultation exercise.

29. We anticipate at this stage that the existing broad principles underpinning the costs regime would continue to apply. In planning appeals, the parties involved normally meet their own expenses. An award of costs does not follow the outcome of the appeal, and is determined separately. Costs are normally awarded when:

- a party has made a timely application for such an award
- the party against whom the award is sought has acted unreasonably and
- the unreasonable behaviour has caused the party applying for costs to incur unnecessary or wasted expense in the appeal process – either in whole or in relation to a particular element of the process.

30. The new Circular referred to above would provide the necessary guidance as to the circumstances in which an award of costs might be made in cases determined by way of written representations.

Q8 Do you agree in principle that the costs regime should be extended to apply to planning appeals dealt with via the written method? If not, why not?

Q9 What are the advantages or disadvantages to the appeals system and its users that you see from such a change?

Correcting errors in planning decisions

31. Under Part 5 of the Planning and Compulsory Purchase Act 2004 the Welsh Ministers (or the Planning Inspectorate acting on their behalf) have the power to issue a formal notice correcting an error in an appeal decision that is not part of the reasoning on which that decision is based. The errors that can be corrected under this power are those that would not change the substance of the decision and therefore no party is disadvantaged. Examples of such errors include incorrect house numbers or street names, incorrect appeal and application numbers, and obvious errors in measurements and compass points.

32. To exercise such powers at present the Minister or the Planning Inspectorate must first obtain the unconditional written consent of the appellant and the relevant landowner(s). Obtaining consent can prove difficult in practice, for example where the error is perceived to be to the appellant's advantage. Land ownership changes occurring after an appeal is submitted can also make it difficult to identify and contact the current landowners. Failure to obtain the necessary consent means that the only means of correcting the error is via a high court challenge resulting in the decision being quashed. The resulting inability to correct the decision leaves it vulnerable to challenge where one of the parties feels there may be an opportunity for a redetermination of the case in their favour.

33. The Planning Act 2008 introduced in England the ability for the Secretary of State (or the Planning Inspectorate on his or her behalf) to make changes to correct errors without obtaining consent. It also provides power for the Welsh Government to introduce changes in Wales to do likewise if it wishes.

34. It is, in our view, in the public interest to have errors in appeal decisions corrected and, provided a request to do so is received within the relevant High Court challenge period, the Ministers (or the Planning Inspectorate acting on their behalf) should have discretion to do this. We therefore propose that changes be made to secondary legislation to enable the Ministers (or the planning Inspectorate on their behalf) to issue a Correction Notice without obtaining the consent of the appellant and landowners. The scope of such corrections, as set out above, would not change. This would greatly improve the efficiency and effectiveness of the correction of errors process.

Q10 Do you agree with the change to the correction of errors process set out above? If not, why not?

Transfer of authority to inspectors for determination of old mining permissions

35. Section 198 of the Planning Act 2008 amends Schedule 6 to the Town and Country Planning Act 1990 to enable regulations to be made for the transfer to inspectors of appeals under Schedule 2 to the Planning and Compensation Act 1991 in respect of old mining permissions for development authorised under interim development orders made between 1943 and 1948. Under current legislation appeals are currently determined by the Welsh Ministers based on a recommendation from a Planning Inspector. This process can add up to 12 weeks to the appeals process. We propose to bring the 2008 Act provisions into force in Wales, in order to allow decisions on these appeals to be taken by inspectors, in line with other similar consent regimes. This will simplify and speed up the process whereby such appeals are administered.

Q11 Do you have any views on the merits of this change?

Provision of the double fee on deemed applications in enforcement cases in its entirety to local planning authorities

36. Under the provisions of the Town and Country Planning Act 1990, where an appeal is made against an enforcement notice the appellant is deemed to have made an application for planning permission for the development the subject of the enforcement notice. As with an application for planning permission, a fee is payable in respect of the deemed application. Regulations provide, however, that the fee for the deemed application is double that for a conventional application, with half the fee going to the local planning authority and half to the Planning Inspectorate (albeit that the Inspectorate does not retain the fee, but sends it to the Treasury). The fee is not for the appeal, but a contribution to the expenses of the Planning Inspectorate and the local planning authority in dealing with the deemed planning application.

37. During the passage of the Planning Act 2008 through Parliament it was proposed that all of the double fee for the deemed application should be given to the local planning authority. In support of this it was submitted that this would increase the amount of funding available to local planning authorities for administering the planning enforcement system; there would be no increased costs to appellants as the only difference was the allocation of the fee; the Planning Inspectorate would benefit by not incurring the administrative costs of collecting fees and paying them over to the Treasury; and there would be no loss to public finances as the money paid to the Treasury would be paid to local planning authorities instead.

38. This proposal was accepted and section 199 of the Planning Act 2008 provides the power by which all of the double fee may be paid to the local planning authority. We intend to bring these provisions into force in Wales.

Q12 Is there any comment you wish to make in relation to this change?

Introducing a formal process and guidance for bespoke inquiries

39. In Wales the inquiry process is governed by the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003 (the Inquiry Procedure Rules), which set out fixed points in the inquiry process at which action must be taken and/or documents must be submitted.

40. A standardised approach, however, is not necessarily the most efficient or the most effective way to deal with appeals that require longer and more complex inquiries.

41. Since April 2009, the Planning Inspectorate in both Wales and England has used a bespoke process for planning inquiries lasting 8 days or more and all applications to be determined by the Welsh Ministers (section 77 called-in applications and 78 recovered appeals). The bespoke approach provides a more flexible and responsive process for the most complex appeals and ensures they are conducted as efficiently as possible and with discipline by all parties, making best use of all parties' resources. From 1 April 2011 the bespoke process was extended to include all planning inquiries of 6 days or more.

42. The Planning Inspectorate's intention is that bespoke timetables will generally be required for:

- All cases (including those recovered for determination by the Welsh Ministers) where, prior to the submission of the appeal the parties and the Planning Inspectorate jointly agree that the inquiry is likely to site for 6 days or more;
- Where there has been no liaison prior to the submission of an appeal and the Planning Inspectorate in consultation with the parties considers that an inquiry of 6 days or more will be required; and

- All case called in for determination by the Welsh Ministers.

43. Additionally, where an inquiry is scheduled for fewer than 6 days but the Planning Inspectorate subsequently determines that a Pre-Inquiry Meeting and/or that an Environmental Statement is required, with the agreement of the appellant and the local planning authority, we propose that the case may be transferred to a bespoke timetable. There may also, exceptionally, be other circumstances where the Planning Inspectorate will determine, in consultation with the main parties, that a bespoke timetable should be applied.

44. Bespoke timetables in Wales are currently determined by means of agreement between the appellant, local planning authority and the Planning Inspectorate with the involvement of other parties who have a statutory right to appear. There is, however, no formal guidance in Wales to advise those involved in the process on how a bespoke timetable should be determined and followed. The result of this has been the development of slightly different bespoke practices for section 77 and 78 cases and cases requiring an Environmental Statement.

45. In England the Planning Inspectorate has recently published a good practice advice note (no.5), which provides formal advice on how the use of bespoke timetables for section 77 and 78 cases are intended to operate. The Advice Note lays out a formal process of determining bespoke timetables, the main features of the process are:

    - The timetable is agreed between the appellant, local planning authority and the planning inspectorate with the involvement of other parties who have a statutory role (including “Rule 6” parties i.e. a person who is entitled to speak at an inquiry and cross-examine witnesses), where they are known at the time.
    - The parties present a draft bespoke timetable to the Planning Inspectorate on submission of the appeal.
    - The parties discuss the draft timetable with the Planning Inspectorate in advance of its submission.
    - The main parties seek to involve other parties likely to be significantly involved in the inquiry process in any pre-appeal discussion on programming.
    - If a party gains Rule 6 status after the start of the appeal process, the main parties consult that party on the proposed timetable unless it has already been agreed by that stage.
    - An agreed timetable is not, normally, varied in light of any party being subsequently granted Rule 6 status.
    - In setting a bespoke timetable, all documents required by the Inquiries Procedure Rules must be provided and in the same sequence.
    - Once the timetable has been agreed and fixed it is maintained unless exceptional circumstances can be demonstrated.
    - Where, exceptionally, a party wishes to vary an element of the timetable, it should first seek to obtain the agreement of the

other main party or parties (including Rule 6 parties) before proposing the variation to the Planning Inspectorate.

- In considering a request to vary an agreed timetable the planning inspectorate need to be satisfied that (i) no other parties interests would be unreasonably prejudiced by the variation sought, and (ii) it would not result in a need to rearrange the inquiry, the date of which has already been confirmed.
- Where any party fails to adhere to any part of the agreed timetable the planning inspectorate will review whether or not the timetable should be varied.
- The planning inspectorate will retain the right to amend the timetable in the event of any other material change in circumstances occurring during the process. Wherever possible the planning inspectorate will seek to agree any amendment with the parties.
- In the event that a variation cannot be agreed by all parties, the planning inspectorate will impose what it considers to be a reasonable timetable taking into account the views of all parties.
- Failure to adhere to any stage of a bespoke timetable may be considered to amount to unreasonable behaviour depending on the particular circumstances of the case. Where this has caused another party unnecessary or wasted expenditure it could result in a claim for costs against the offending party being upheld.
- In cases where it has not been possible for parties to liaise in advance of the submission of an appeal, the planning inspectorate will advise the parties by letter whether the case will be conducted as an inquiry and on a bespoke basis. In determining this the planning inspectorate will have regard to, amongst other matters, the appellants' advice about the anticipated number of witnesses to be called.
- In the event that the parties are unable to agree a timetable, the Planning Inspectorate will impose a programme taking into account, as far as is practicable, the respective positions of the parties and the particular circumstances of the case.

46. We consider that bespoke timetables provide a more proportionate approach to larger inquiries than the standard timetable in the rules and that a more formal process will allow parties to focus on what they need to do at the outset and should generally help reduce delays and overruns.

47. We, therefore, propose reviewing the bespoke process in Wales and preparing formal guidance, along the same lines as the process being undertaken in England, on the operation of bespoke timetables.

Q13 Do you agree with the Planning Inspectorate's view of when a bespoke timetable will be required? If not, why not?

Q14 Do you agree, in principal, that formal guidance should be published on the operation of bespoke timetables? If not, why not?

Q15 What is your opinion of the bespoke timetable process in Wales operating along similar lines to the current process in England? Are there any aspects of the process which you think might be unsatisfactory – if so, why?

Q16 Do you have comments to make in relation to any other aspect of a formal bespoke timetable process?

Requiring statements of common ground to be submitted earlier in the inquiry process

48. Rule 14 of the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003 requires the local planning authority and applicant/appellant to prepare an agreed statement of common ground and submit it to the Planning Inspectorate, on behalf of the Welsh Ministers, not less than 4 weeks before the date fixed for holding the inquiry. This four week deadline is the same for the submission of written proofs of evidence.

49. In practice, however, the Planning Inspectorate has found that many parties fail to submit a statement of common ground. This appears to be because it is required at the same time as the proofs of evidence and, therefore, the work undertaken in reaching an agreed statement of common ground cannot inform the proofs of evidence.

50. We propose that the statement of common ground be required six weeks after the start of the appeal. By requiring the statement of common ground earlier in the appeal process we believe it will help focus the parties involved on the issues that need to be dealt with at the inquiry, which in turn should help save time and money for all concerned and potentially shorten the length of the inquiry. This proposal has already been successfully implemented in England.

Q17 Are there any comments you wish to make in relation to this change?

Improving the Planning Appeal Process

Consultation Response Form

Your name:

Organisation (if applicable):

Email / telephone number:

Your address:

Fast track householder appeals

Q1 Do you agree in principle with the introduction of a fast track householder appeal service in Wales? If not, why not?

Q2 What do you consider to be the advantages and disadvantages, for (i) appellants, (ii) local planning authorities and (iii) the wider community, of introducing a fast track householder appeal service?

Q3 What is your opinion of the following elements of a householder appeal service operating along similar lines to the current system in England? Are there any aspects of the system which you think might be unsatisfactory – if so, why?

- **12 weeks from decision to lodge appeal**

- **8 week target for appeal decision**

- **Appeal procedure conducted electronically wherever possible**

- **Local planning authority case to comprise documentation concerning handling and determination of application and submitted with appeal questionnaire**

- **Appellant case to comprise statement on submitted appeal form explaining why local planning authority's decision is contested**

- **Neighbouring occupiers' representations at application stage carried forward to appeal – notification at appeal stage only to confirm whether objections still stand**

- **Unaccompanied site visit by inspector in all cases except where access into site needs to be provided**

- **Where access provision needed, appellant/representative only present, solely to enable accessere access provision needed, notice given of time window (we advocate a 2 hour window, eg between 10.00am and midday) when inspector will call**

- **Inspector to decide whether he/she wishes to view site from neighbouring property in response to any request to do so**

Q4 Do you agree with the scope of the definition of householder developments set out in footnote 1 above? Are there types of householder development that you feel should be excluded, or other types included? If so, which types and why?

Q5 Do you have comments to make in relation to any other aspect of a fast track householder service?

Determining the appeal method

Q6 Do you agree with the Planning Inspectorate, on behalf of the Welsh Ministers, being able to determine the appeal method for section 78 planning, advertisement, section 174 enforcement, section 20 listed building consent, section 39 listed building consent enforcement, section 195 established use certificate, section 208 tree preservation order and section 21 Hazardous substance appeals, and section 77 and section 12 applications by applying Ministerially approved and published indicative criteria? If not, why not?

Q7 Do you agree with the current informally used indicative criteria (reproduced above) that we consider should form the basis of the Ministerially approved indicative criteria? If not, which of these do you disagree with, and why? What criteria would you propose instead?

Extending the costs regime to planning appeals dealt with by the written method

Q8 Do you agree in principle that the costs regime should be extended to apply to planning appeals dealt with via the written method? If not, why not?

Q9 What are the advantages or disadvantages to the appeals system and its users that you see from such a change?

Correcting errors in planning decisions

Q10 Do you agree with the change to the correction of errors process set out above? If not, why not?

Transfer of authority to inspectors for determination of old mining permissions

Q11 Do you have any views on the merits of this change?

Provision of the double fee on deemed applications in enforcement cases in its entirety to local planning authorities

Q12 Is there any comment you wish to make in relation to this change?

Introducing a formal process and guidance for bespoke inquiries

Q13 Do you agree with the Planning Inspectorate's view of when a bespoke timetable will be required? If not, why not?

Q14 Do you agree, in principal, that formal guidance should be published on the operation of bespoke timetables? If not, why not?

Q15 What is your opinion of the bespoke timetable process in Wales operating along similar lines to the current process in England? Are they any aspects of the process which you think might be unsatisfactory – if so, why?

Q16 Do you have comments to make in relation to any other aspect of a formal bespoke timetable process?

Requiring statements of common ground to be submitted earlier in the inquiry process

Q17 Is there any comment you wish to make in relation to this change?

Question 18: We have asked a number of specific questions. If you have any related issues on points which we have not specifically addressed, please use the space below:

Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept confidential, please tick here: ☐
