

WG 23275



Llywodraeth Cymru  
Welsh Government

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Welsh Government

## Consultation Document

# Planning and Related Decisions of the Welsh Ministers

Date of issue: **7 November 2014**

Responses by: **30 January 2015**

## Overview

This consultation seeks your views on proposals by the Welsh Government to make changes to the way decisions on planning and related applications and appeals are dealt with, where they are referred to the Welsh Ministers, or the Planning Inspectorate acting on their behalf.

This review forms part of our wider proposals to improve national delivery of the planning system through active stewardship, which are set out in the Positive Planning consultation paper. They are designed to ensure a more proportionate, cost effective and streamlined decision-making process which meets customers' needs.

In deciding to consult on these proposed changes, we have had regard to the experience of similar changes that have already been implemented in England. However, it is important that any changes we may introduce are right for Wales and we want to hear your views on these potential changes before taking a decision on these matters.

## How to respond

The closing date for responses is 30 January 2015 and you can reply in any of the following ways:

Email:

Please complete the consultation response form at Annex 1 and send it to:

[planconsultations-g@wales.gsi.gov.uk](mailto:planconsultations-g@wales.gsi.gov.uk)

(Please include 'Planning and Related Decisions of the Welsh Ministers - WG 23275' in the subject line.)

Post:

Please complete the consultation response form at Annex 1 and send it to:

Planning and Related Decisions of the Welsh Ministers  
Consultation  
Decisions Branch  
Planning Division  
Welsh Government  
Cathays Park  
Cardiff  
CF10 3NQ

## Further information and related documents

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

Further related information can be found here:

Positive Planning – Proposals to reform the planning system in Wales

[www.wales.gov.uk/consultations/planning/draft-planning-wales-bill/?status=closed&lang=en](http://www.wales.gov.uk/consultations/planning/draft-planning-wales-bill/?status=closed&lang=en)

## Contact Details

For further information:

email: [planconsultations-g@wales.gsi.gov.uk](mailto:planconsultations-g@wales.gsi.gov.uk)

telephone: Lewis Thomas on 029 2082 3201

## 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.

## **1. Introduction**

1.1 The Welsh Government is putting forward proposals to improve the way appeals, call-ins, and other planning and related decisions made by the Welsh Ministers are handled. These proposals seek to ensure a more proportionate, cost effective and streamlined decision-making process which meets the needs of applicants and appellants, while improving the processes used by the Planning Inspectorate and the Welsh Government.

1.2 This consultation document puts forward proposals to:

- Introduce an expedited system for advertisement appeals in line with the Householder Appeal System and Commercial Appeal System, which are currently subject to a pilot scheme;
- Change how called-in applications and appeals by statutory undertakers are dealt with;
- Introduce the ability for an appeal against non-determination to be returned to the local planning authority for a decision within a prescribed timescale; and
- Transfer authority for the determination of certain appeals from the Welsh Ministers to the Planning Inspectorate.

1.3 These proposals stem, in the main, from provisions contained in the Planning and Compulsory Purchase Act 2004 and the Planning Act 2008. Many of these changes have already been implemented in England. There are powers available to apply those changes in Wales. However, it is important that any changes that we may introduce are right for Wales.

1.4 In terms of the policy on non determination of appeals, section 50 of the Planning and Compulsory Purchase Act inserts provision into the Town and Country Planning Act about dual jurisdiction. In terms of householder appeals, minor commercial appeals and control of advertisement appeals, the Town and Country Planning Act will provide the powers to bring forward the required subordinate legislation. There are also proposals which will rely on powers in the Listed Buildings Act and Hazardous Substances Act.

1.4 These proposals complement wider reforms to the planning system, which were produced as part of the Positive Planning consultation paper<sup>1</sup>.

## **2. Current position**

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<sup>1</sup> Positive Planning: Proposals to reform the planning system in Wales (December 2013)  
[www.wales.gov.uk/consultations/planning/draft-planning-wales-bill/?status=closed&lang=en](http://www.wales.gov.uk/consultations/planning/draft-planning-wales-bill/?status=closed&lang=en)

- 2.1 The Planning Inspectorate is a publically funded joint executive agency of the Department for Communities and Local Government and the Welsh Government. Planning appeals, call-ins and related decisions in Wales are administered by the Welsh planning team in the Inspectorate on behalf of the Welsh Ministers, with the majority of cases decided by an Inspector. A very small number of cases are recovered for decision by the Welsh Ministers (approximately 1%).
- 2.2 The current arrangement allows public involvement and a high standard of decision making based on principles of openness, fairness and impartiality. This role in making certain planning decisions is vital to ensure that the Welsh Government's objectives to deliver appropriate development where it is needed and to foster attractive, sustainable communities are met.
- 2.3 The current system is shown to deliver a high quality of service. Customer surveys of the quality of service provided by the Inspectorate show that the majority of users of the appeals system are either satisfied or very satisfied with the way their appeal is handled. The Welsh Ministers set annual targets for the quality and speed of decisions by the Inspectorate. In 2013-14, the Planning Inspectorate issued 1039<sup>2</sup> decisions in Wales. The Planning Inspectorate met or exceeded all of its timeliness targets. The quality target of 99% of Inspectors' decisions being error free was met, with 99.52 % of decisions free of errors. The target of 90% of work being free of any administrative error was also met with 98.80% of appeals determined without any recorded administrative error.

### **3. Reason for change**

- 3.1 The existing system for appeals and called-in applications is generally well regarded. However, there is pressure from professionals and developers seeking swifter decisions to improve the system to provide necessary sustainable development and stimulate economic growth. Communities and the public seek a system that provides greater fairness and transparency.
- 3.2 Whilst the current appeal system generally works well, some aspects are sometimes criticised for being inefficient. The intention of the proposed changes contained in this consultation paper is to further improve the efficiency of the existing system.
- 3.3 The proposed changes are intended to:
- Increase the speed of decisions, thereby promoting growth and providing greater certainty to developers;
  - Remove unnecessary and outdated procedures from the determination process; and
  - Increase fairness for all involved through enabling decisions to be made at the local level, wherever possible.

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<sup>2</sup> Planning Inspectorate Wales: Customer Satisfaction Survey (2013).

## 4. Our proposals

### Expedited control of advertisement appeals

4.1 Our proposals for householder and commercial appeals were consulted upon in the Improving the Planning Appeals Process consultation paper<sup>3</sup> and the Positive Planning consultation paper<sup>4</sup>, and were well received. In those papers, it was proposed to amend secondary legislation to:

- Create a 'fast-track' householder appeals service ("HAS") for certain specified householder developments such as extensions, alterations, vehicular accesses, fences and walls; and
- Create a 'fast-track' commercial appeals service ("CAS") for minor commercial appeals, which would follow a similar procedure to the HAS, and produce similar benefits, for appeals against the refusal of and the imposition of conditions relating to a planning permission for applications which seek the change of use of commercial properties below 250sq m within use classes A1, A2 and A3.

4.2 The main components of the proposed changes were to:

- Provide an applicant 12 weeks from the date of the decision to lodge an appeal;
- Introduce an 8 week target for the appeal decision;
- Conduct the appeal process electronically wherever possible;
- Limit the local planning authority's case to documentation used in the handling and determination of the application, which is to be submitted with the appeal questionnaire;
- Limit the appellant's case to an appeal statement made alongside an appeal form explaining why the local planning authority's decision is being contested;
- Limit representations at appeal to those received at the application stage. Notification at appeal stage will be made only to confirm whether the original representations still stand; and
- Adopt a more efficient procedure for Inspector site visits, not requiring attendance by any party to the appeal, unless that is to provide access to the site.

4.3 The HAS has been operating as a pilot scheme since 2010 and the CAS pilot was introduced recently in 2013. The figures in **Table 1** show that the HAS pilot has been highly successful in reducing the average determination period for such appeals, almost consistently meeting the 8 week target date for decision. This is made particularly clear when compared against all other written representation appeals:

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<sup>3</sup> Improving the Planning Appeal Procedure (August 2011)

<sup>4</sup> Positive Planning: Reforms to the planning system in Wales (December 2013); p.38.

**Table 1: The performance of the HAS compared to other written representations appeals**

		2010/11	2011/12	2012/13	2013/14
<b>Average time to determine (weeks)</b>	<i>Other written representations appeals</i>	14.8	14.1	15.02	15.49
	<i>HAS</i>	7.48	7.63	7.68	7.66
<i>HAS appeals determined within 8 weeks</i>		100%	96%	100%	95%

- 4.4 It is the Welsh Government’s intention to take forward the above proposals, building on the success of the pilot schemes for both householder and commercial appeals, and improving the speed and consistency of the service.
- 4.5 Further to the improvements gained in speed and efficiency as a result of the householder and commercial appeals pilot, it is proposed to include advertisement consent appeals within the commercial appeals service. This would introduce an expedited system for advertisement appeals in line with that proposed under the HAS and CAS detailed in paragraph 4.1 above.
- 4.6 The vast majority of advertisement appeals already proceed via the written representations procedure and they represent the most straightforward cases, which rarely raise wider questions of policy. The only considerations are the impact of the proposal on amenity and public safety. It is considered that the current way of determining advertisement appeals is disproportionate in its impact on appellants and all those involved in the appeals process, in terms of time taken to reach a decision.
- 4.7 Including advertisement appeals within the definition of ‘minor commercial appeals’ will:
- Increase the speed of such appeal decisions,
  - Provide greater certainty to developers;
  - Ensure that the most proportionate method of examination is used; and
  - Increase fairness for all involved.
- 4.8 It is our opinion that advertisement consents would benefit from being included within the expedited appeal procedure with householder appeals and minor commercial appeals and should be subject to the same procedure changes.
- Q1: Do you agree that appeals against the refusal of, and conditions relating to, consents to display an advertisement should be incorporated within an expedited appeal system as part of the Commercial Appeals Service (CAS)? If not, why not?**

## Called in applications and appeals by statutory undertakers

- 4.9 The majority of development by statutory undertakers is classified as permitted development, however there are circumstances where statutory undertakers must submit their proposals to the local planning authority for approval. Development for which statutory undertakers are able to exercise permitted development rights is contained at Part 17 of the Town and Country Planning (General Permitted Development) Order 1995.
- 4.10 Where an application for works by a statutory undertaker is called in for determination by the Welsh Ministers or a decision by a local planning authority is appealed against by a statutory undertaker under 78 of the Town and Country Planning Act 1990 (“the 1990 Act”), section 266 of the 1990 Act requires the case to be dealt with jointly by the Welsh Ministers and the appropriate Minister.
- 4.11 Under sections 265 and 266 of the 1990 Act, the appropriate Minister is defined as:
- The Secretary of State for Transport:  
*In the case of applications or appeals by statutory undertakers carrying on an undertaking to any railway, light railway, tramway, road transport, dock, harbour, pier or lighthouse undertaking, the Civil Aviation Authority, a person who holds a licence under Chapter 1 of Part 1 of the Transport Act 2000, or a relevant airport operator (within the meaning of Part 5 of the Airports Act 1986);*
  - The Secretary of State for Trade and Industry:  
*In the case of applications and appeals by statutory undertakers carrying on an undertaking for the supply of hydraulic power, a universal postal service provider, a gas transporter or holder of a holder of a licence under section 6 of the Electricity Act 1989;*
  - The Secretary of State for the Environment, Food and Rural Affairs:  
*In the case of applications and appeals by the Natural Resources Body for Wales;*
  - The Welsh Ministers:  
*In the case of applications and appeals by a water or sewerage undertaker;*
  - The Secretary of State for Communities and Local Government:  
*In the case of applications and appeals by other statutory undertakers;*

- 4.12 The effect of the above definitions is that applications in Wales by water or sewerage undertakers that are either called in or appealed, are determined solely by the Welsh Ministers. All other statutory undertakers' applications (including the Natural Resources Body for Wales) in Wales that are either called in or appealed are determined jointly by the Welsh Ministers and the appropriate UK Minister. This can cause significant delay to the process and increase the cost to a statutory undertaker of applying for planning permission.
- 4.13 Section 195 of the Planning Act 2008 makes changes to the 1990 Act which disapplies the requirement for applications by statutory undertakers that are either called in or appealed to be determined by the Welsh Ministers and the appropriate Minister acting jointly. Instead, a joint determination shall only occur where the Secretary of State or the appropriate Minister gives a direction to have that effect in relation to the relevant called in application or appeal. Section 203 of the Planning Act 2008 gives the Welsh Ministers power to apply Section 195 of that Act.
- 4.14 This amendment is being proposed so that the default position for called in applications and appeals by statutory undertakers will be that they are dealt with solely by the Welsh Ministers unless otherwise directed. The intended effect of this is to:
- reduce the overall time that it takes for these cases to be determined, and the delay to development and additional cost that this can cause;
  - remove the duplication in the decision-making process for these cases;
  - improve the efficiency and effectiveness of the decision-making process; and
  - provide for more certainty in the decision making process where there is only one decision maker.
- 4.15 The proposal aims to limit the proposals decided jointly to those called in applications and appeals that require a joint decision. Our proposal provides for the Welsh Ministers or the Secretary of State to be able to make a direction under section 266(1) of the 1990 Act to enable that to happen in such circumstances.

**Q2: Do you agree that the Welsh Ministers should apply section 195 of the Planning Act 2008 in Wales (which amends section 266(1) of the Town and Country Planning Act 1990) so that the default position for the determination of called in applications and appeals by statutory undertakers is that they are dealt with solely by the Welsh Ministers, unless the Welsh Ministers or the relevant Secretary of State gives direction for them to be dealt with jointly?**



## Non-determination appeals

- 4.16 Our proposals for appeals against non-determination of planning applications by local planning authorities were consulted upon in the Positive Planning consultation paper<sup>5</sup>. In the consultation it was proposed to amend secondary legislation to:
- a) Allow non-determination appeals to be submitted any time following the ending of the statutory period for determination up to the point of determination of the application, thus removing the current 6 month maximum time limit; and
  - b) Enable local planning authorities to determine an application which is subject to a non-determination appeal within a prescribed timescale set out in legislation following the submission of an appeal.
- 4.17 An overall positive response was received to the above proposals, particularly from business respondents. The proposals were considered to be beneficial in cases where local planning authorities consent a project as it negates the need for the appeal process to continue, and removes rigidity from the non-determination appeal process. Much clarification was sought from respondents about how an appeal proceeds following the refusal of an application. This is explained at paragraph **4.20**.
- 4.18 In the light of the consultation responses received, it is the Welsh Government's intention to take forward the above proposals. This will give applicants who would currently lose their ability to appeal, where an extension of time to determine the application is not agreed with the local planning authority, the right to do so; and will prevent applications from going through the full appeal procedure despite the local planning authority having come to a view after the submission of the appeal that it would have granted permission. These changes are to apply to both planning and listed building appeals.
- 4.19 This consultation paper is seeking views on the length of the prescribed period referred to in paragraph **4.16(b)** above. The purpose of the prescribed period is to allow a short period of dual jurisdiction between the Welsh Ministers and the local planning authority where an appeal has been lodged against non-determination of a planning or listed building consent application after the 8 week period for determination has finished. It will allow an additional period of time in which the local planning authority retains the power to issue its decision despite an appeal having been lodged. In such cases, the appeal will progress through the usual appeal procedures, unless and until a decision on the application by the local planning authority is made.

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<sup>5</sup> Positive Planning: Reforms to the planning system in Wales (December 2013); p.38.

- 4.20 It is proposed that, where the local planning authority refuses permission within this additional period, the appeal against non-determination will become an appeal against refusal. If the local planning authority grants permission, the appellant may withdraw the appeal or proceed with the appeal on revised grounds (for example, an appeal against conditions which may have been imposed).
- 4.21 The prescribed period should provide sufficient time for the local planning authority and applicant/appellant to continue meaningful dialogue to allow for an agreement to be reached where appropriate. However, that timescale must not be so lengthy as to encourage prolonged negotiations that could potentially result in wasted expenditure by the Planning Inspectorate in administering an appeal, which is eventually withdrawn.
- 4.22 A single prescribed period is proposed, applying to appeals and applications which are called in as the most appropriate method of implementing this proposal. In our view a single period is easily understood and applied in all cases, with limited scope for misunderstanding or procedural error to occur.
- 4.23 It is suggested that a prescribed period of 4 weeks strikes the correct balance.

**Q3: Do you agree with the 4 week timescale proposed for the dual-jurisdiction of non-determination appeals? If not, please suggest alternative timescales with your reasons.**

**Q4: Is there any other comment you wish to make in relation to these changes to appeals against non-determination?**

#### Changes to the prescribed classes regulations

- 4.24 Appeals against the decision on a planning application by a local planning authority are normally dealt with and determined by the Planning Inspectorate. However, there are a number of classes of appeal which, whilst they are dealt with by the Planning Inspectorate, are reserved for final determination by the Welsh Ministers. These appeal classes are contained in the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997/420 (“the Prescribed Classes Regulations”). Some of those appeal types are described at paragraphs **4.30 – 4.38**.
- 4.25 The requirement for those appeals to be determined by the Welsh Ministers rather than by an Inspector can add up to an additional 12 weeks to the appeal process. This is to allow sufficient time for the Welsh Ministers to consider the conclusions and recommendations of the Inspector and issue their decision. This is inconsistent with other planning appeal types, which are normally determined by the Planning Inspectorate on behalf of the Welsh Ministers.

- 4.26 It is proposed to make changes to the Prescribed Classes Regulations, transferring the authority to determine certain appeals from the Welsh Ministers to the Planning Inspectorate.
- 4.27 The removal of this requirement will simplify the appeal process in removing a significant step. It will also enable decisions to be made in a timelier and more consistent manner, improving the efficiency and proportionality of the appeals system.
- 4.28 The Welsh Ministers will, however, retain the power to recover jurisdiction over an appeal from the Inspectorate should they consider it appropriate, in line with other planning related appeals.
- 4.29 It is proposed to make the following changes:

*Listed Building Consent and Listed Building Enforcement Appeals*

- 4.30 Listed buildings are classified into three grades; Grade I, Grade II\* and Grade II. In summary, Grade I buildings are of exceptional, usually national, interest, Grade II\* buildings are particularly important and are of more than special interest, and Grade II buildings are of special interest, which warrant every effort being made to preserve them<sup>6</sup>.
- 4.31 Appeals under Section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against the decision of a local planning authority on a listed building consent application and listed building enforcement notice appeals under Section 39 of that Act are administered by the Planning Inspectorate. In most cases, decisions on appeals in relation to Grade II listed building appeals are also made by the Planning Inspectorate. Appeals in relation to Grade I and Grade II\* listed buildings are, however, a class of appeal reserved for determination by the Welsh Ministers<sup>7</sup>, based on a recommendation from a planning inspector.
- 4.32 It is proposed to use powers contained at Paragraph 1(1) of Schedule 3 to the Planning (Listed Buildings and Conservation Areas) Act 1990 to remove the requirement for Grade I and II\* listed building consent and Grade I and II\* listed building enforcement appeals to be reserved for determination by the Welsh Ministers and to allow decisions to be made by a planning inspector for these classes of listed building.

**Q5: Do you agree that the Planning Inspectorate should be given authority to determine listed building consent and listed building enforcement appeals in relation to Grade I and II\* listed buildings in line with current procedures for Grade II listed buildings?**

*Appeals relating to buildings subject to historic building grants*

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<sup>6</sup> Cadw: Listed Buildings in Wales – What is Listing (2005)

<sup>7</sup> Regulation 4 of the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997/420

4.33 At present, appeals relating to buildings where grants have been awarded by the Welsh Ministers under Section 3A or 4 of the Historic Buildings and Ancient Monuments Act 1953 for historic buildings, their contents and adjoining land, are administered by the Planning Inspectorate. Decisions on the appeals are reserved for determination by the Welsh Ministers. Whilst grants under Section 3A do not apply to buildings in Wales, grants under Section 4 are awarded by the Welsh Ministers.

4.34 For consistency, it is proposed to use powers at Paragraph 1 of Schedule 6 to the Town and Country Planning Act 1990 to remove the requirement for decisions on such appeals to be made by the Welsh Ministers. Instead, decisions will be made by an independent planning inspector.

**Q6: Do you agree that the Planning Inspectorate should be given authority to determine appeals for which grants have been made by the Welsh Ministers under section 3A or 4 of the Historic Buildings and Ancient Monuments Act 1953?**

*Conditions attached to minerals permissions*

4.35 Following a positive response to our consultation in 2011<sup>8</sup>, legislation has been made to enable the production of regulations for the transfer to Inspectors of the determination 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.

4.36 For consistency, it is now proposed to use powers at Paragraph 1 of Schedule 6 to the Town and Country Planning Act 1990 to transfer the responsibility to determine appeals against the determination of conditions attached to minerals permissions, made under paragraphs 11(1) of Schedule 13 and paragraph 9(1) of Schedule 14 to the Environment Act 1995 to the Planning Inspectorate.

**Q7: Do you agree that the Planning Inspectorate should be given authority to determine appeals against the determination of conditions attached to minerals permissions, made under paragraphs 11(1) of Schedule 13 and paragraph 9(1) of Schedule 14 to the Environment Act 1995?**

*Hazardous Substances appeals*

4.37 Appeals against decisions or failure to take decisions under section 21 of the Planning (Hazardous Substances) Act 1990 are currently determined by the Welsh Ministers. It is proposed to use powers contained at Paragraph 1(1) to the Schedule of the Planning (Hazardous Substances) Act 1990 to transfer the authority to determine such appeals to the Planning Inspectorate.

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<sup>8</sup> Welsh Government Consultation Document: Improving the Planning Appeal Process, 17 August 2011

**Q8: Do you agree that the Planning Inspectorate should be given authority to determine appeals against decisions or failure to take decisions under section 21 of the Planning (Hazardous Substances) Act 1990?**

*Replacement of Trees*

4.38 Under section 206(1) of the Town and Country Planning Act 1990, a landowner has a duty to replace a tree which is removed in contravention of a Tree Preservation Order (“TPO”). Section 207 of that Act allows local planning authorities to issue a Tree Replacement Notice (“TRN”) to effect the replacement of a tree. Section 208 of the Act gives people served with a TRN a right of appeal to the Welsh Ministers. At present, such appeals are determined by the Welsh Ministers. It is proposed to use powers contained at Paragraph 1 of Schedule 6 to the Town and Country Planning Act 1990 so that such appeals are determined by the Planning Inspectorate.

**Q9: Do you agree that the Planning Inspectorate should be given authority to determine appeals under section 208 of the Town and Country Planning Act 1990 against section 207 notices for the replacement of trees?**

**Q10: Are there any additional comments you wish to make in relation to these changes to the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997?**