



Llywodraeth Cymru
Welsh Government

www.cymru.gov.uk

Welsh Government

Consultation – summary of response

Planning and Related Decisions of the Welsh Ministers

May 2015

Table of Contents

1. INTRODUCTION	1
2. RESPONSES	2
3. KEY THEMES	5
4. SUMMARY OF RESPONSES	8

ANNEX A - LIST OF RESPONDENTS BY CATEGORY

ANNEX B - STATISTICAL OVERVIEW OF ALL RESPONSES

1. Introduction

- 1.1 The “Planning and Related Decisions of the Welsh Ministers” consultation document was launched on 7 November 2014 and was open for responses until 30 January 2015. A total of 10 questions were set out in the consultation document, with a standard form provided for ease of response.
- 1.2 This document details a summary of responses to the consultation, the Welsh Government’s response and the next steps.

2. Responses

- 2.1 On 7 November 2014 over 200 stakeholders were notified by email of the publication of the consultation. These were drawn from the core consultation list held by the Planning Directorate of the Welsh Government. This included all local planning authorities in Wales, public bodies, special interest groups and other groups. Other interest groups with specialist knowledge of the subject area were also notified of the consultation. The consultation was made available on the Welsh Government's consultation website and a press release was issued. A list of the consultees notified of the consultation was also published on the Welsh Government's consultation website.
- 2.2 The consultation generated 29 responses and we thank all those who responded to the consultation.
- 2.3 A consultation form was provided as an annex to the consultation document and separately on the Welsh Government's consultation website. Respondents were asked to assign themselves to one of seven broad respondent categories. Table 1 below shows the breakdown of respondents.

Category	Number	% of total
Businesses / Planning Consultants	8	28
Local Authorities (including National Park Authorities)	7	24
Government Agency/Other Public Sector	3	10
Professional Bodies/Interest Groups	4	14
Voluntary Sector	2	7

Others (other groups not listed)	5	17
Total	29	

2.4 Consultation questions 1 - 3 and 5 - 9 posed policy specific questions; with questions 4 and 10 inviting any additional comments from respondents (see Table 2 below). A statistical overview of the responses, showing the nature of the responses to questions 1 - 3 and 5 - 9 where a 'Yes', 'Yes (subject to further comment)', or 'No' response was sought, is presented in Annex B. Where respondents did not complete the consultation form, but in the view of Welsh Government officials their comments related to a specific consultation question, these were considered and recorded as 'Don't Know'.

Table 2: Consultation Questions	
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?
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?
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?
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?
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?

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?
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?
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?

2.5 A full list of all respondents and the categories they were assigned to can be found in Annex A. An 'Index of Responses' and copies of the consultation responses received will be published in their original form on the Welsh Government's consultation website alongside this report

3. Key Themes

3.1 A summary of the key findings under each consultation question is set out below. Section 4 provides a detailed summary and analysis of the key themes generated for each question followed by the Welsh Government's response.

Question 1. 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?

3.2 Key themes in response to question 1 were as follows:

- Comprehensive agreement to the principle of advertisement appeals following the Commercial Appeals Service.
- Reassurances are required that the expedited appeal process will not lower the quality of decisions and that full consideration is given to advertisements in special locations (Article 1(5) land).

Question 2. 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?

3.3 Key themes in response to question 2 were as follows:

- It is inconsistent in the Welsh context of a devolved planning system that currently called in applications and appeals by statutory undertakers, by default, fall to be determined jointly by the appropriate UK Secretary of State and the Welsh Ministers.

- Support the default position for determination of called in applications and appeals by statutory undertakers to be dealt with by Welsh Ministers as this will reduce expense for statutory undertakers when applying for planning permission.
- Clarity will be required on the circumstances in which a direction for joint determination would be made.

Question 3. 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.

3.4 Key themes in response to question 3 were as follows:

- Overall agreement to the principle of allowing a period of dual jurisdiction for the determination of non-determination appeals.
- A range of views suggesting that the 4 week proposed timescale should be altered to accommodate committee cycles and s.106 agreements.
- Clarification required over when the period of dual jurisdiction starts.

Question 4. Is there any other comment you wish to make in relation to these changes to appeals against non-determination?

3.5 Key themes in response to question 4 were as follows:

- Overall support for removing the end date within which a non-determination appeal can be made.
- Points were raised regarding potentially wasted expenditure incurred by local planning authorities in entertaining failed negotiations with applicants and the potential for this provision to be used as a threat by applicants to make local planning authorities determine applications quicker.

Question 5. 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?

Question 6. 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?

Question 7. 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?

Question 8. 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?

Question 9. 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?

Question 10. 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?

3.6 Questions 5 – 9 relate to a similar theme i.e. proposed amendments to the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997. Respondents were able to give additional comments on questions 5 – 9 under question 10. Key themes in response to questions 5 -10 were as follows:

- General support for the proposed amendments i.e. that the appeals set out in questions 5 – 9 should be determined by planning inspectors subject to the Welsh Ministers retaining a general power to recover jurisdiction in exceptional cases.

3.7 An overview and statistical analysis¹ of the views expressed on consultation questions 1-3 and 5-9 (where statistics could be extracted) is contained in section 4.

¹ Where percentages have been worked out for each of the questions, they have been rounded to the nearest decimal place. As rounding has taken place, the overall percentages in each question may not add up to or may be over 100%.

4. Summary of Responses

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?
<p>The proposed amendment to the provisions outlined in consultation question 1 enables appeals against the refusal of, and conditions relating to, consents to display an advertisement to be determined as part of an expedited appeal process, similar to the Householder Appeals Service and Commercial Appeals Service.</p>	

Statistical summary

Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	5	0	0	3	8
B	Local Authorities (including National Park Authorities)	5	2	0	0	7
C	Government Agency/Other Public Sector	1	1	0	1	3
D	Professional Bodies/Interest Groups	3	0	0	1	4
E	Voluntary Sector	0	0	0	2	2
F	Others (other groups not listed)	3	1	0	1	5
Total all respondents		17	4	0	8	29
		Yes	Yes (subject to further comment)	No	Don't Know	
Overall percentage		59%	14%	0%	28%	

Statistical review

- 4.1 There is an overwhelming consensus that the stated provisions should be amended in Wales. The majority of responses who supported the proposals came from the local planning authority sector. Although 100% of the responses from the 'Government Agency/Other Public Sector' and 'Professional Bodies/Interest Groups' sectors also agreed with the proposed amendments. The 'Yes (subject to further comment)' response received from the Professional Body/Interest Group was a supportive comment.

Overview

- 4.2 There was clear support for the proposals in consultation question 1 which enables appeals against the refusal of, and conditions relating to, consents to display an advertisement to be determined as part of an expedited appeal process, similar to the Householder Appeals Service and Commercial Appeals Service.
- 4.3 Of the businesses and planning consultants who responded, comments were made expressing that the proposal would lead to more timely decisions across a broader spectrum of appeals. A comment was also received stating that proposals are welcomed to reduce the burden on local planning authorities and the Planning Inspectorate arising from the processing of minor appeals.
- 4.4 Assurances were sought from two local planning authorities that the expedited process must have due consideration for the full issues in national parks and conservation areas, which are Article 1(5) land given the impact on such sensitive locations. One other respondent also sought reassurances that the speedier appeal process would not be to the detriment of local amenity and the environment.

- 4.5 Linked with the point above, one respondent agreed with the proposals, subject to adequate staff resource being provided to service the expedited process, and that the quality of decision-making does not decrease.

1A	Welsh Government Response
	<p>It is recognised there is overwhelming support for the proposed reform. The proposal to incorporate advertisement appeals into the commercial appeal system is to be taken forward, along with the formalisation of both the householder appeal system and commercial appeal system. It is proposed that these reforms will come into force in Summer 2015.</p> <p>To address comments received during the consultation, reassurances were sought that the proposals will not be to the detriment of local visual amenity, the environment, as well as enabling sound understanding and full consideration of the issues in national parks and conservation areas.</p> <p>When considering an appeal under the expedited process, the considerations made by the Inspector will be no different to those appeals dealt with under regular appeal process. The proposals are likely to result in the reduction of strain on LPA and Planning Inspectorate staff resource rather than its proliferation, as suggested.</p> <p>No evidence has been received suggesting the deterioration in the quality of decisions under the householder and commercial appeals service trials.</p>

Next steps

- 4.6 The proposal to incorporate advertisement appeals into the commercial appeal system will be taken forward, along with the formalisation of both the householder appeal system and commercial appeal system. It is proposed that these reforms will come into force in Summer 2015.

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?

The proposed amendment to the provision outlined in consultation question 2 would allow applications and appeals by statutory undertakers to be determined solely by the Welsh Ministers, unless the Welsh Ministers or the relevant Secretary of State give direction for them to be dealt with jointly.

Statistical summary

Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	4	0	0	4	8
B	Local Authorities (including National Park Authorities)	7	0	0	0	7
C	Government Agency/Other Public Sector	2	0	0	1	3
D	Professional Bodies/Interest Groups	4	0	0	0	4
E	Voluntary Sector	1	0	0	1	2
F	Others (other groups not listed)	2	1	1	1	5
Total of all respondents		20	1	1	7	29
		Yes	Yes (subject to further comment)	No	Don't Know	
Overall percentage		69%	3%	3%	24%	

Statistical review

4.7 There is an overall consensus that the stated provision should be amended in Wales. The majority of responses to the consultation supported the proposal and the main support came from the following sectors:

- Businesses / Planning Consultants
- Local Planning Authority
- Professional Bodies/Interest Groups

4.8 Following analysis of the responses to question 2, the 'Yes (subject to further comment)' response received from the 'Others' sector was a supportive comment which meant over 70% of the respondents to the consultation were supportive of the proposed amendment.

Overview

4.9 Overall, there was clear support for the amended provision so that the default position in Wales for the determination of called in applications and appeals by statutory undertakers is that they are dealt with solely by the Welsh Ministers, unless a direction is issued stating a joint decision will be made by both the Welsh Ministers and the relevant Secretary of State.

4.10 One respondent stated that it is particularly anomalous that appeals by Natural Resources Wales (NRW) should be subject to determination jointly with the Secretary of State for Environment, Food and Rural Affairs, given that the Department for Environment, Food, and Rural Affairs (DEFRA) does not have direct responsibility for any Welsh internal matters and NRW is a Welsh Government sponsored public body.

4.11 Other respondents stated that the present arrangements for joint determination provide a clear process which aligns with planning and constitutional processes and responsibilities which brings clarity and predictability. They also commented that if the arrangements for joint determination were to be changed as proposed, there would be need for clarity about the circumstances in which a direction for joint determination would be made.

4.12 It was suggested that such a direction policy should clarify that, on the following occasions, a joint determination could occur:

(a) where applications/appeals by statutory undertakers have a cross border dimension in terms of their geographic location or functional benefit or where the application affects a non-devolved jurisdiction (e.g. energy policy);

(b) to ensure there is no conflict of interest, applications/appeals by statutory undertakers where the Welsh Government has had involvement i.e. through funding parts of the proposal/ feasibility etc. or where Welsh Government/ the Welsh Minister own or have an interest in the land.

4.13 In terms of applications/appeals by statutory undertakers which affect a non-devolved jurisdiction, for example energy projects as outline above, the Welsh Ministers have no powers to determine these types of applications either jointly or solely, and currently it is the sole responsibility of the UK Government. This issue was not in the scope of this consultation as it is established elsewhere.

4.14 A request was also received for clarity on how the Planning (Wales) Bill will deal with joint determination for Development of National Significance (DNS) applications by statutory undertakers and how the current proposals for DNS sit within the constitutional arrangements for joint determination. Furthermore, that the DNS provisions, including responsibilities and thresholds, will need to be consistent with the clear Parliamentary intent that joint jurisdiction should remain appropriate in relevant cases.

The request has been noted by the Welsh Government however this issue was not in the scope of this consultation as it is established elsewhere.

4.15 One respondent stated that more should be dealt with at a local level. By their nature called in applications and appeals by statutory undertakers are required to be determined at a national level and cannot be determined by a local planning authority. This is particularly relevant for appeals as section 266 of the Town and Country Planning Act 1990 relates to appeals where a decision has been taken on a planning application made by statutory undertakers. This decision will have been taken at the local level by the local planning authority. For an application by a statutory undertaker to be called in for a decision by the Welsh Ministers would mean the planning issues associated with it would be of more than local importance and it would have to be determined at the national level. The question of how called in applications and appeals by statutory undertakers should be determined was not in the scope of this consultation as it is established elsewhere.

4.16 One respondent also commented on the delays and cost of joint determination of called in applications and appeals by statutory undertakers. The respondent highlighted that if statutory undertakers were to propose more realistic proposals at the outset rather than the cheapest option, and take on board the advice of statutory consultees/local planning authorities, it would probably result in achieving planning permission more speedily and avoid the need for costly appeals. That would result in significant cost and resource savings for all concerned. This comment was noted by the Welsh Government however this issue was not in the scope of this consultation as it is established elsewhere.

2A Welsh Government Response

It is recognised there is overwhelming support for the proposed amendment and no revisions to the proposed amendments are required.

The comments requesting clarification on the circumstances when a joint determination of a called in application or appeal by statutory undertaker could occur have been noted.

The principal of allowing for the sole determination of called in applications or appeals by statutory undertakers by the Secretary of State in England, and not jointly, is already established through the provision at section 195 of the Planning Act 2008. It can be argued that the present arrangements for joint determination are unclear given that joint determination still has to occur in Wales but not in England.

It would be unjust for this not to happen in Wales given the existence of the power at section 203 of the Planning Act 2008 which allows the Welsh Ministers to apply section 195 of the Planning Act 2008 and that the responses to the consultation were in favour of the application of this provision in Wales.

Next steps

- 4.17 A draft Order will now be prepared to apply in Wales section 195 of the Planning Act 2008 which will amend section 266(1) of the Town and Country Planning Act 1990.
- 4.18 A draft of the Order will be laid before National Assembly for Wales in Summer 2015, for approval.

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.

The proposal, outlined in consultation question 3, would 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. Views were sought on what that prescribed timescale would be.

Statistical summary

Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	4	2	2	0	8
B	Local Authorities (including National Park Authorities)	2	2	3	0	7
C	Government Agency/Other Public Sector	2	0	0	1	3
D	Professional Bodies/Interest Groups	2	0	2	0	4
E	Voluntary Sector	1	0	0	1	2
F	Others (other groups not listed)	1	1	1	2	5
Total all respondents		12	5	8	4	29
		Yes	Yes (subject to further comment)	No	Don't Know	
Overall percentage		41%	17%	28%	14%	

Statistical review

4.19 There is an overall consensus in support of the stated proposal in Wales, with 57% either agreeing with the 4 week proposal, or agreeing subject to further comment. Of those who supported the proposal, the majority were from businesses / planning consultants. Of the 29% who disagreed with the proposal, 38% were local planning authorities with the remainder being made up of business / planning consultants, professional bodies, interest groups and others. 14% had no opinion.

Overview

4.20 Whilst the majority of respondents supported the stated proposal, a number of comments were made in relation to the appropriateness of the proposed timescale.

4.21 Those who supported the proposed 4 week period of dual jurisdiction considered the timeframe appropriate as it fits in with planning committee cycles. One respondent representing business / planning consultants also stated that any longer period introduces delay and negates the objective of terminating an appeal process in a timely manner, and delivers an appropriate balance enabling constructive dialogue between developers and local planning authorities.

4.22 One other representative of that sector supported the proposal stating that timely decision-making is vital for confidence in the Welsh economy, and supported the consistent approach to all non-determination appeals.

4.23 However, a number of local planning authorities and professional interest groups raised concerns that the 4 week period was not a sufficient time within which a committee cycle could be held and for meaningful discussions to be held between applicants and local planning authorities. This is owing to the frequency of such committee meetings and the lead-in times required to

produce the relevant officer reports. Suggested amendments to the prescribed period ranged from 6 weeks to 8 weeks.

- 4.24 Reduced staff resource issues within local planning authorities was cited by one respondent as a reason that meaningful discussions may not be held within 4 weeks.
- 4.25 One respondent had argued that where local planning authorities cannot accommodate the proposal within the committee cycle, internal procedures should allow for a 'special' planning committee and Member site visit to be called, if appropriate.
- 4.26 Concern was also raised by two respondents regarding section 106 agreements. Those respondents felt that there would be difficulties in resolving any permission which is subject to section 106 agreement within the specified timescale of 4 weeks. Those respondents would lend support to a provision which would require that those appeals are held in abeyance where both the local planning authority and applicant agree in writing.
- 4.27 One respondent representing professional bodies / interest groups raised concern that the provision would result in appeals which turn out to be unnecessary. The Welsh Ministers have no evidence to suggest that this would be the case.
- 4.28 Clarification has been sought from 3 respondents over when the proposed prescribed period will commence. This is addressed in the Government's response.

3A Welsh Government Response

Following the outcome of consultation, it is still considered that a 4 week period strikes the correct balance as local planning authorities must also share the responsibility for speeding up decision-making. Where applications merit presentation to committee, local planning authorities may achieve speedier decisions through the arrangement of special committees. It is also noted that the majority of decisions by local planning authorities are delegated to officers. The majority of respondents agree that a prescribed period of 4 weeks within which an appeal against non-determination may be determined by the local planning authority is appropriate.

Extending the period to 6 weeks or above would lead to excessive abortive work for the Planning Inspectorate, appellants and third parties. In making an appeal, it is expected that a local planning authority will have held an application for a significant period of time and will not have agreed a time extension with the applicant.

Some respondents suggested a provision to hold appeals in abeyance with the written agreement of both the local planning authority and applicant. This could be used in such instances where a section 106 agreement is required. It is our view that such a provision would add further confusion to the process and undermine the objective of speeding up decision-making. A single prescribed period would also ensure consistency across the board, as stated in the consultation paper. In circumstances where s.106 agreement is required, it is encouraged that applicants and local planning authorities begin discussions at the earliest possible stage.

It is the Welsh Government's intention to commence section 50 of the Planning and Compulsory Purchase Act 2004 to enable a period of dual-jurisdiction for appeals against non-determination of planning and listed building consent applications.

Clarification was sought as to when the 4 week period for dual-jurisdiction commences. This is addressed at section 50 of the Planning and Compulsory Purchase Act 2004, and starts on the day on which the person appeals under section 78(2) of the Town and Country Planning Act 1990, or section 20(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Next steps

4.29 It is the intention to commence section 50 of the Planning and Compulsory Purchase Act 2004 in Wales to enable a period of dual-jurisdiction for appeals against non-determination of planning and listed building consent applications. The 4 week period for dual-jurisdiction would commence on the day on which the person appeals under section 78(2) of the Town and Country Planning Act 1990, or section 20(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Q4

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

This question invited responses from consultees which were not addressed by the question 3 posed in the consultation document in relation to the Welsh Government's proposals for non-determination appeals.

4.30 This section sets out a summary of the responses received to question 4. While this did not ask a specific question in relation to the proposed amendments to the provisions outlined in question 3, it did offer the opportunity for respondents to inform the Welsh Government of their views that were not addressed in question 3 or in the Positive Planning consultation paper (November 2013). Where in the view of the Welsh Government comments related directly to question 3, but were included under question 4, these were considered as part of the analysis to question 3.

4.31 Many of the respondents used this question to express their general views on the Welsh Government's proposals for non-determination appeals. These issues are addressed in turn.

The removal of the 6 month time limit within which a non-determination appeal can be made

4.32 A number of respondents representing local planning authorities, professional bodies / interest groups and the voluntary sector support the proposal to remove the 6 month maximum time limit within which a non-determination appeal can be made. One such respondent commented that such an approach will address situations where the right to appeal against non-determination has been unknowingly lost. The respondent notes that the inconsistent approach between local planning authorities in agreeing time extensions to applications

which are yet to be determined can cause confusion, particularly for those who are not familiar with the planning system.

4.33 One respondent representing other organisations indicated that it would be preferable to extend the 6 month time period to 12 or 24 months. The respondent points out that the Town and Country Planning (Development Management Procedure) (Wales) Order 2012, at Article 29(15), does not enable local planning authorities to dispose of applications unless the period of six months specified in article 26(2) has expired without any appeal having been made to the Welsh Ministers. The removal of that six month period will subsequently remove the ability of local planning authorities to dispose of planning applications, the subject to which the applicant has not been forthcoming with new information. This point is addressed in the Government response.

Democratic deficit

4.34 One respondent expressed concerns that the proposals would remove power away from elected members. This statement is not correct. At present, where an appeal is made against non-determination, all decision-making authority is transferred to the Welsh Ministers. Under the proposals which are subject to the consultation paper, the prescribed period give local planning authorities a final opportunity to determine an application in a democratically accountable way.

General matters relating to appeals

- 4.35 General comments were received in response to question 4, but were not within the scope of this consultation.
- 4.36 One such respondent aired particular grievances that the organisation held against the Planning Inspectorate, including issues on the timeliness of decisions. That respondent also made representations which expressed the view that an independent Planning Inspectorate for Wales is required in place of the existing model.
- 4.37 Another Government Agency / Other Public Sector respondent stated that any costs incurred as a result of the proposal shall be borne upon the applicant.
- 4.38 One local planning authority made comments that the impact of the cost on local planning authorities has not been assessed. Such an assessment is not within the remit of the commencement of a primary Act.

The comments in response to this question generally support the Welsh Government's proposals concerning non-determination appeals.

In addressing comments relating to the disposal of applications under Article 26(2) of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012, it is the intention to make a consequential amendment to Article 29(15) to remove reference to the 6 month period in relation to the disposal of an application from the planning register at Article 26(2) (where applicable). A disposal may only occur where an application has been decided by the LPA. Similar amendments are to be made addressing hazardous substances consents.

As a point of clarification, the non-determination appeal reforms are to apply to all appeal examination methods and to applications which have longer set determination timescales than 8 weeks, such as those which are subject to EIA, and will apply to hazardous substances and listed building and conservation area provisions.

Next steps

4.39 It is the intention to make changes to the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 having the effect of removing the end period within which non-determination appeals can be made for planning, listed building and conservation area and hazardous substances consent applications, as well as consequential amendments. It is proposed that these amendments be made in Summer 2015.

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?

The proposed amendment to the provisions outlined in consultation question 5 would allow classes of appeals relating to listed building consents and listed building enforcements relating to Grade I and II* listed buildings to be determined by a planning inspector.

Statistical summary

Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	6	0	0	2	8
B	Local Authorities (including National Park Authorities)	7	0	0	0	7
C	Government Agency/Other Public Sector	0	0	2	1	3
D	Professional Bodies/Interest Groups	3	0	0	1	4
E	Voluntary Sector	2	0	0	0	2
F	Others (other groups not listed)	4	0	0	1	5
Total all respondents		22	0	2	5	29
		Yes	Yes (subject to further comment)	No	Don't Know	
Overall percentage		76%	0%	7%	17%	

Statistical review

4.40 There is an overall consensus that classes of appeals relating to listed building consents and listed building enforcements relating to Grade I and II* listed buildings should be determined by a planning inspector. The majority of responses which supported the proposals came from the 'Local Planning Authority' sector (100%). Although 75% of responses from the 'Businesses / Planning Consultants' sector and 80% from the 'Others' sector also agreed with the proposed amendment.

Overview

4.41 There was clear support for the proposed amendment to the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997 to allow classes of appeals relating to listed building consents and listed building enforcements relating to Grade I and II* listed buildings to be determined by a planning inspector

4.42 Respondents were able to give additional comments on the proposed amendment under question 10 and those comments have been analysed under the sections 4.55 – 4.60 of this report.

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?

The proposed amendment to the provisions outlined in consultation question 6 would allow classes of 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 to be determined by a planning inspector.

Statistical summary

Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	5	0	0	3	8
B	Local Authorities (including National Park Authorities)	7	0	0	0	7
C	Government Agency/Other Public Sector	2	0	0	1	3
D	Professional Bodies/Interest Groups	3	0	0	1	4
E	Voluntary Sector	2	0	0	0	2
F	Others (other groups not listed)	4	0	0	1	5
Total all respondents		23	0	0	6	29
		Yes	Yes (subject to further comment)	No	Don't Know	
Overall percentage		79%	0%	0%	21%	

Statistical review

4.43 There is an overall consensus that classes of 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 should be determined by a planning inspector. The majority of responses who supported the proposals came from the 'Local Planning Authority' sector (100%). Although 80% of responses from the 'Others' sector also agreed with the proposed amendment.

Overview

4.44 There was clear support for the proposed amendment to the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997 to allow classes of 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 to be determined by a planning inspector

4.45 Respondents were able to give additional comments on the proposed amendment under question 10 and those comments have been analysed under the relevant section of this report.

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?

The proposed amendment to the provisions outlined in consultation question 7 would allow classes of 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 be determined by a planning inspector.

Statistical summary

Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	4	1	0	3	8
B	Local Authorities (including National Park Authorities)	7	0	0	0	7
C	Government Agency/Other Public Sector	2	0	0	1	3
D	Professional Bodies/Interest Groups	3	0	0	1	4
E	Voluntary Sector	1	0	0	1	2
F	Others (other groups not listed)	4	0	0	1	5
Total all respondents		21	1	0	7	29
		Yes	Yes (subject to further comment)	No	Don't Know	
Overall percentage		72%	3%	0%	24%	

Statistical review

4.46 There is an overall consensus that classes of 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 should be determined by a planning inspector. The majority of responses which supported the proposals came from the 'Local Planning Authority' sector (100%). Although 80% of responses from the 'Others' sector also agreed with the proposed amendment.

Overview

4.47 There was clear support for the proposed amendment to the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997 to allow classes of 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 be determined by a planning inspector

4.48 Respondents were able to give additional comments on the proposed amendment under question 10 and those comments have been analysed under the relevant section of this report.

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?

The proposed amendment to the provisions outlined in consultation question 8 would allow classes of appeals against decisions or failure to take decisions under section 21 of the Planning (Hazardous Substances) Act 1990 to be determined by a planning inspector.

Statistical summary

Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	5	0	0	3	8
B	Local Authorities (including National Park Authorities)	7	0	0	0	7
C	Government Agency/Other Public Sector	2	0	0	1	3
D	Professional Bodies/Interest Groups	3	0	0	1	4
E	Voluntary Sector	1	0	0	1	2
F	Others (other groups not listed)	4	0	0	1	5
Total all respondents		22	0	0	7	29
		Yes	Yes (subject to further comment)	No	Don't Know	
Overall percentage		76%	0%	0%	24%	

Statistical review

4.49 There is an overall consensus that classes of appeals against decisions or failure to take decisions under section 21 of the Planning (Hazardous Substances) Act 1990 should be determined by a planning inspector. The majority of responses which supported the proposals came from the 'Local Planning Authority' sector (100%). Although 80% of responses from the 'Others' sector also agreed with the proposed amendment.

Overview

4.50 There was clear support for the proposed amendment to the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997 to allow classes of appeals against decisions or failure to take decisions under section 21 of the Planning (Hazardous Substances) Act 1990 to be determined by a planning inspector.

4.51 Respondents were able to give additional comments on the proposed amendment under question 10 and those comments have been analysed under the relevant section of this report.

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?

The proposed amendment to the provisions outlined in consultation question 9 would allow classes of appeals under section 208 of the Town and Country Planning Act 1990 against section 207 notices for the replacement of trees to be determined by a planning inspector.

Statistical summary

Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	6	0	0	2	8
B	Local Authorities (including National Park Authorities)	7	0	0	0	7
C	Government Agency/Other Public Sector	2	0	0	1	3
D	Professional Bodies/Interest Groups	3	0	0	1	4
E	Voluntary Sector	1	0	0	1	2
F	Others (other groups not listed)	4	0	0	1	5
Total all respondents		23	0	0	6	29
		Yes	Yes (subject to further comment)	No	Don't Know	
Overall percentage		79%	0%	0%	21%	

Statistical review

4.52 There is an overall consensus that classes of appeals under section 208 of the Town and Country Planning Act 1990 against section 207 notices for the replacement of trees should be determined by a planning inspector. The majority of responses which supported the proposals came from the 'Local Planning Authority' sector (100%). Although 75% of responses from the 'Businesses / Planning Consultants' sector and 80% of responses from the 'Others' sector also agreed with the proposed amendment.

Overview

4.53 There was clear support for the proposed amendment to the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997 to allow classes of appeals under section 208 of the Town and Country Planning Act 1990 against section 207 notices for the replacement of trees to be determined by a planning inspector

4.54 Respondents were able to give additional comments on the proposed amendment under question 10 and those comments have been analysed under the relevant section of this report.

Q10

Are there any additional comments you wish to make in relation to these changes [set out in consultation questions 5 – 9] to the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997?

This question allowed comments to be made on the proposed amendments to the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997 set out in consultation questions 5 – 9.

4.55 This section sets out a summary of the responses received to question 10. Although question 10 did not ask a specific question in relation to the proposed amendments to the provisions outlined in questions 5-9, it did provide respondents with the opportunity to inform the Welsh Government of additional comments on the proposed amendments to the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997.

4.56 A number of comments were received stating that the determination of possible appeals by Inspectors, and consequent earlier decisions, was in principle welcomed.

4.57 Many of the respondents used question 10 to express their general views on decisions of the Welsh Ministers. These included:

- The length of time taken for decisions by the Welsh Ministers to be dealt often varies and substantial delays can be caused;
- There is a need for statutory timetables for the issuing of decisions by the Welsh Ministers, in particular on called applications/recovered appeals/commons registration applications, as the current scenario has significant financial and legal implications for businesses subject to these decisions;
- Cost of appeals should be born by the applicant; and

- The call-in procedures should be more transparent and should include a timetable which gives a firm indication as to when a decision is likely to be issued.

4.58 Whilst the issues in paragraph 4.56 above have been noted, they were not within the scope of this consultation as they are established elsewhere.

10A	Welsh Government Response
<p>It is recognised there is overwhelming support for the proposed amendments to the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997 as set out in questions 5 – 9 of the consultation. No revisions to the suggested amendments are proposed.</p> <p>The general comments raised on decisions of the Welsh Ministers have been noted by the Welsh Government however they fall outside the scope of this consultation.</p>	

Next steps

4.59 Changes to the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997 in Wales will take the form of a new set of regulations which will be prepared to provide Planning Inspectors with the authority to determine the classes of appeals set out in consultation questions 5 -9.

4.60 The new set of regulations specific to Wales will be drafted, made by the Welsh Ministers, and then laid before the National Assembly in Summer 2015.

ANNEX A - LIST OF RESPONDENTS BY CATEGORY

A1.1 The table below indicates the categories to which respondents assigned themselves to in completing the consultation form. For data protection purposes the name and address details for those respondents who did not wish to be identified have been removed from the index below and from the published consultation responses.

Business / Planning Consultants		Gov. Agency/Other Public Sector	
001	Wynne Jones (Planning Consultant)	005	Abergele Town Council
003	Redrow	018	Lisvane Community Council
014	RWE Generation UK plc	021	Health and Safety Executive
015	Sainsbury's Supermarkets Ltd (SSL)	Others	
020	National Grid plc	002	Glamorgan Gwent Archaeological Trust
022	Vattenfall UK	004	N Perrott
026	Taylor Wimpey UK Limited	009	Mochdre with Penstrowed Community Council
028	RES Ltd	011	Andrew Ferguson
Local Planning Authorities		024	Anonymous
006	Merthyr Tydfil CBC	Voluntary Sector	
008	National Parks Wales	010	Civic Trust for Wales
012	Torfaen County Borough Council	027	Community Housing Cymru Group
013	Caerphilly County Borough Council		
017	Ceredigion County Council		
019	Bridgend County Borough Council		
023	Denbighshire County Council		
Professional Bodies/Interest Groups			
007	Institution of Civil Engineers Wales Cymru		
016	The Law Society		
025	RTPI Cymru		
029	Home Builders Federation		

ANNEX B - STATISTICAL OVERVIEW OF ALL RESPONSES

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?						
Response	Businesses / Planning Consultants	Local Planning Authority	Government Agency/Other Public Sector	Professional Bodies /Interest Groups	Voluntary Sector	Others	Total	Overall %²
Yes	5	5	1	3	0	3	17	59
Yes (F/C)	0	2	1	0	0	1	4	14
No	0	0	0	0	0	0	0	0
DK	3	0	1	1	2	1	8	28
	8	7	3	4	2	5	29	

² Where percentages have been worked out for each of the questions, they have been rounded to the nearest decimal place. As rounding has taken place, the overall percentages in each question may not add up to or may be over 100%.

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?

Response	Businesses / Planning Consultants	Local Planning Authority	Government Agency/Other Public Sector	Professional Bodies /Interest Groups	Voluntary Sector	Others	Total	Overall % ³
Yes	4	7	2	4	1	2	20	69
Yes (F/C)	0	0	0	0	0	1	1	3
No	0	0	0	0	0	1	1	3
DK	4	0	1	0	1	1	7	24
	8	7	3	4	2	5	29	

³ Where percentages have been worked out for each of the questions, they have been rounded to the nearest decimal place. As rounding has taken place, the overall percentages in each question may not add up to or may be over 100%.

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.

Response	Businesses / Planning Consultants	Local Planning Authority	Government Agency/Other Public Sector	Professional Bodies /Interest Groups	Voluntary Sector	Others	Total	Overall % ⁴
Yes	4	2	2	2	1	1	12	41
Yes (F/C)	2	2	0	0	0	1	5	17
No	2	3	0	2	0	1	8	28
DK	0	0	1	0	1	2	4	14
	8	7	3	4	2	5	29	

⁴ Where percentages have been worked out for each of the questions, they have been rounded to the nearest decimal place. As rounding has taken place, the overall percentages in each question may not add up to or may be over 100%.

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?

Response	Businesses / Planning Consultants	Local Planning Authority	Government Agency/Other Public Sector	Professional Bodies /Interest Groups	Voluntary Sector	Others	Total	Overall % ⁵
Yes	6	7	0	3	2	4	22	76
Yes (F/C)	0	0	0	0	0	0	0	0
No	0	0	2	0	0	0	2	7
DK	2	0	1	1	0	1	5	17
	8	7	3	4	2	5	29	

⁵ Where percentages have been worked out for each of the questions, they have been rounded to the nearest decimal place. As rounding has taken place, the overall percentages in each question may not add up to or may be over 100%.

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?

Response	Businesses / Planning Consultants	Local Planning Authority	Government Agency/Other Public Sector	Professional Bodies /Interest Groups	Voluntary Sector	Others	Total	Overall % ⁶
Yes	5	7	2	3	2	4	23	79
Yes (F/C)	0	0	0	0	0	0	0	0
No	0	0	0	0	0	0	0	0
DK	3	0	1	1	0	1	6	21
	8	7	3	4	2	5	29	

⁶ Where percentages have been worked out for each of the questions, they have been rounded to the nearest decimal place. As rounding has taken place, the overall percentages in each question may not add up to or may be over 100%.

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?

Response	Businesses / Planning Consultants	Local Planning Authority	Government Agency/Other Public Sector	Professional Bodies /Interest Groups	Voluntary Sector	Others	Total	Overall % ⁷
Yes	4	7	2	3	1	4	21	72
Yes (F/C)	1	0	0	0	0	0	1	3
No	0	0	0	0	0	0	0	0
DK	3	0	1	1	1	1	7	24
	8	7	3	4	2	5	29	

⁷ Where percentages have been worked out for each of the questions, they have been rounded to the nearest decimal place. As rounding has taken place, the overall percentages in each question may not add up to or may be over 100%.

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?

Response	Businesses / Planning Consultants	Local Planning Authority	Government Agency/Other Public Sector	Professional Bodies /Interest Groups	Voluntary Sector	Others	Total	Overall % ⁸
Yes	5	7	2	3	1	4	22	76
Yes (F/C)	0	0	0	0	0	0	0	0
No	0	0	0	0	0	0	0	0
DK	3	0	1	1	1	1	7	24
	8	7	3	4	2	5	29	

⁸ Where percentages have been worked out for each of the questions, they have been rounded to the nearest decimal place. As rounding has taken place, the overall percentages in each question may not add up to or may be over 100%.

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?

Response	Businesses / Planning Consultants	Local Planning Authority	Government Agency/Other Public Sector	Professional Bodies /Interest Groups	Voluntary Sector	Others	Total	Overall % ⁹
Yes	6	7	2	3	1	4	23	79
Yes (F/C)	0	0	0	0	0	0	0	0
No	0	0	0	0	0	0	0	0
DK	2	0	1	1	1	1	6	21
	8	7	3	4	2	5	29	

⁹ Where percentages have been worked out for each of the questions, they have been rounded to the nearest decimal place. As rounding has taken place, the overall percentages in each question may not add up to or may be over 100%.



Digital ISBN 978 1 4734 2917 8

© Crown Copyright 2015

WG 24260