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## Consultation – summary of responses

# Secondary legislation for development management

Date of issue: January 2016

## Overview

This document outlines a summary of the responses to the consultation which seeks your views on the detail to be provided in subordinate legislation supporting development management provisions contained in the Planning (Wales) Bill, including:

- Invalid applications: notices and appeals
- Decision notices
- Notification of development
- Appeals under section 217 of the Town and Country Planning Act 1990

It also summarises responses sought on proposed changes to post-submission amendments, applications made under section 73 of the Town and Country Planning Act 1990 and the detailed aspects of pre-application fees.

The consultation was held 19 June 2015 – 11 September 2015.

## **This summary report is published in electronic form only.**

Electronic copies of all consultation responses to this consultation can be found on the Welsh Government website.

<http://gov.wales/consultations/planning/planforsusconsultation>

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## **1. Introduction**

A consultation exercise on secondary legislation for development management was launched on 19 June 2015 and was open for responses for 12 weeks until 11 September 2015.

This was the first of two consultation papers seeking stakeholders' views on proposed amendments to subordinate legislation related to the development management system. This consultation sought views on proposed amendments to subordinate legislation, intended to implement the Positive Planning proposals, using powers available under the Town and Country Planning Act 1990.

## **2. What was the consultation about?**

The consultation sought views on the Welsh Government's proposed subordinate legislation to implement the following sections of the Planning (Wales) Act 2015 (the Act):

- Non-Validation Appeals (s.29)
- Decision Notices (s.33)
- Notifications (s.34)
- Consultations etc. in Respect of Certain Applications for Approval (s.37)
- s.217 Appeals (s.48)
- Statutory pre-application fees (s.18)

Opinions were also sought in respect of amending existing subordinate legislation to:

- mitigate the effect that post-submission amendments have on the efficient processing of planning applications for major development
- simplify the process of making applications that fall within section 73 of the Town and Country Planning Act 1990 (TCPA).

## **3. Why are we proposing change?**

In December 2013 the Welsh Government published its proposals to modernise the planning system in Wales. The consultation paper 'Positive Planning' identified the need for culture change, a change in attitude away from regulating development towards encouraging and supporting development. A number of changes to the development management system were proposed to improve transparency, accessibility, timeliness and democratic accountability. Some changes are being delivered through the Planning (Wales) Act 2015 while others are being taken forward using existing powers.

## **4. What are the main changes we are proposing?**

### Invalid Applications: Notices and Appeals

Section 29 of the Planning (Wales) Act ('the Act') 2015 introduces a mechanism for appealing against an LPA's decision not to validate an application for planning permission. Amendments were made to section 29 during its passage through the Assembly, so that it also allows appeals against decisions not to validate an application for any consent, agreement or approval required by condition or limitation subject to which planning permission has been granted.

Section 29 provides for:

- the giving of a notice by a LPA that an application is not valid
- the appeal by the applicant against the notice and the information that is to accompany an appeal.
- the determination of that appeal by Welsh Ministers

### Decision Notices

Section 33 of the Act requires that decision notices must specify the plans and documents in accordance with which the development is to be carried out. Planning permission will be deemed to be granted subject to a condition that the development must be carried out in accordance with the plans and documents specified in the decision notice. It also requires decision notices to be updated and a revised version issued where Reserved Matters are approved or conditions discharged.

Section 33 enables provisions to be made in an Order as to the form of decision notices; the manner in which decision notices are to be given; the particulars to be contained in decision notices, and details to be contained in revised decision notices. The consultation paper identifies that in addition to the existing content required in a decision notice, a revised decision notice should include the date that the consent was given, or the conditions changed, and the relevant application number. This will allow interested individuals to quickly identify what conditions remain to be approved, what information remains to be submitted and where changes have been made to the original permission over time.

### Notification of Development

Section 34 of the Act requires developers to notify LPAs of the date a development is to begin and details of the planning permission. It also requires developers to display a notice of the decision to grant planning permission at or near to the place of development at all times when it is under construction.

### Consultations etc. in Respect of Certain Applications for Approval

Section 37 of the Act places a duty on statutory consultees to provide a substantive response to discretionary consultation by LPAs within a set time. It also requires consultees to report on their performance in relation to these duties. These duties are consistent with those imposed under section 54 of the Town and Country Planning Act for statutory consultation, commenced on 22 June 2015 and those for front loading major planning applications.

The consultation paper sought opinion in respect of the time after which an LPA can make a decision on the application which will be prescribed in secondary legislation. It proposed 21 days to be consistent with other proposed consultation periods and to allow consultees sufficient time to respond.

The consultation paper also sought views on not extending the consultation period under Article 15 of the DMPO (Urgent Crown Development) to 21 days from the 14 days. It is not currently proposed to extend the period because of the urgent nature of the development referred to.

#### Appeal Against a Notice Issued in Respect of Land Adversely Affecting Amenity (Unightly Land)

Section 48 of the Act amends s.217 of the Town and Country Planning Act 1990 (TCPA). The changes transfer responsibility for determining appeals against notices, issued under section 215 in respect of land adversely affecting amenity, to the Welsh Ministers from the Magistrates' Court.

Section 48 also makes provision for regulations to be made prescribing the appeal procedure and for the information to be provided for the purposes of the appeal. It is intended that regulations will specify the type of information to be submitted.

The consultation paper proposed that the existing enforcement appeal regulations are amended to include appeals under S.217 so that the appeal process is as consistent as possible with other enforcement appeal mechanisms. It also proposed that LPAs are given 4 weeks to submit their appeal statement to Welsh Ministers.

#### Post Submission Amendments

The consultation paper proposed that amendments to major applications will be limited to those which are minor in nature. This proposal is made on the basis that for major applications, all issues should have been resolved before the application is submitted and will encourage early engagement by the developer as well as speed up the determination process. Where an LPA agrees to permit a post-submission amendment, it is proposed to allow them a further four weeks to determine the application.

It is also proposed to impose a fee upon the developer to make such amendments to allow LPAs to re-coup the costs of considering them. The fee

proposed is equal to the current cost of making an amendment to a planning application which has been approved as the process will be similar.

### Applications that fall within Section 73 of the TCPA 1990

In the consultation on the Act, 'Positive Planning' it was stated that we support the use of section 73 of the TCPA 1990 (applications to vary / remove planning conditions) as a mechanism for amendments, including minor material amendments, to existing permissions.

The consultation sought opinion on proposals to make the system more proportionate in terms of the information that must be submitted by applicants and the consultation carried out to the changes that can be made under section 73.

### Pre-application Fees

'Positive Planning', the Welsh Government's consultation paper on reforming the planning system in Wales, outlined a number of proposals designed to promote "frontloading" in the Development Management system.

The Act introduced new pre-application processes that will be key to the delivery of effective frontloading. Section 18 of the Act introduced a provision to place a statutory duty on LPAs to provide a pre-application service, when requested by prospective applicants. As part of the statutory service, LPAs would be required to provide a written response to a pre-application enquiry, submitted on a standard form with the correct fee, within a given timeframe. Only enquiries that are submitted on the pre-application enquiry form will be able to access the pre-application service.

## **5. Next Steps**

This Consultation Summary Report is published alongside the making and laying of:

The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2016

The Town and Country Planning (Pre-Application Services) (Wales) Regulations 2016 ("the Pre-Application Services Regulations")

The Town and Country Planning (Validation Appeals) (Written Representations Procedure) (Wales) Regulations 2016

The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) (Amendment) Regulations 2016

These put into effect the proposals (except S215 appeals) set out in the consultation.

## 6. Detail of responses

All responses have been considered fully in preparing the subordinate legislation listed above.

The consultation was circulated to the core stakeholder's consultation list held by the Planning Directorate of the Welsh Government. These stakeholders include all local planning authorities in Wales, together with relevant public bodies, businesses, special interest groups, professional bodies and other interest groups. The consultation document was also made publically available on the Welsh Government's website.

In total, 39 consultation responses were received. There were 8 responses from the businesses sector, 17 from local planning authorities, 4 from government agencies, 5 from professional bodies / interest groups, 2 from the voluntary sector and 3 from other groups and individuals. Annex A includes a list of all respondents. Copies of the individual consultation responses are available on request.

A total of 22 questions were asked, that were divided into specific topic areas as follows;

Question	Topic
Q1-5	Invalid Applications: Notices and Appeals
Q6-7	Decision Notices
Q8	Notification of Development
Q9-10	Consultations etc. in Respect of Certain Applications for Approval
Q11-12	Appeal Against a Notice Issued in Respect of Land Adversely Affecting Amenity (Unightly Land)
Q13-14	Post Submission Amendments
Q15-18	Applications that fall within Section 73 of the TCPA 1990
Q19-21	Pre-application Fees
Q22	available for further comments should respondents wish to provide additional observations or expand upon their previous answers

This consultation summary report details the responses to the consultation exercise, the Welsh Government's response and the next steps.

A summary of the responses to the questions can be seen below. A statistical overview of all responses is available in Annex B.

## 7. Summary of the Key Themes / Issues

From the analysis of the consultation responses the following key themes / issues have been derived:



#### Invalid Applications: Notices and Appeals

- Overall support for the criteria proposed for non validation notices and general support for the proposed submission times for appeal and subsequent determination by Welsh Ministers.

#### Decision Notices

- Overall support from respondents with regard to the proposed revisions to decision notices and requirement to keep the most recent copy on the planning register.

#### Notification of Development

- Comments from a cross section of respondents concerning the size of decision notice, proposals for its contents and the enforcement where decision notices are not displayed.

#### Consultations etc. in Respect of Certain Applications for Approval

- Overall support for the proposal for the proposed time limits for statutory consultees to respond where LPAs make a discretionary request for comments.

#### Appeal Against a Notice Issued in Respect of Land Adversely Affecting Amenity (Unightly Land)

- Overall support to align the format of section 217 appeals with existing enforcement appeals including 4 weeks for the LPA to prepare their appeal statement.

#### Post Submission Amendments

- General support for the proposed new extended 4 week time limit and cost for post submission amendments.

#### Applications that fall within Section 73 of the TCPA 1990

- General support for the proposed Section 73 validation, consultation, notification requirements and fees for minor material amendments.

#### Pre-application Fees

- Overall support for the proposed 21 day pre application response times and general support for the fee schedule.

Many topics were subject to further comments or suggestions from respondents and these have been addressed directly in the following section.

### **8. Statistical Breakdown and Overview of the Responses to Each Question**

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

## **Invalid Applications: Notices and Appeals**

### **Question 1:**

**Do you agree that a notice that an application is not valid should include criteria a) to f)?**

<b>Question 1</b>	<b>Businesses</b>	<b>LPA</b>	<b>Public Bodies</b>	<b>Professional Bodies / Interest Groups</b>	<b>Voluntary Groups</b>	<b>Other</b>	<b>Total</b>	<b>%</b>
Yes	4	9	2	2	0	2	19	55.9
Yes with further comment	4	7	0	3	1	0	15	44.1
No	0	1	0	0	0	0	1	2.9

### **Statistical Review**

87.1% of respondents agreed with the proposed criteria for non-validation notices set out in the consultation paper. Just under half of these had comments to make on the proposals and were spread out amongst most categories of respondent. 1 LPA opposed the proposed criteria outright.

### **Overview**

Many respondents from across all categories highlighted a typographical error in the proposed list of criteria for non-validation notices.

Some respondents from both LPA and Business requested that informal notifications regarding non-validation be retained.

Different business respondents asked for further clarification of matters appertaining to the appeals process. These include; whether the LPA must allocate a reference number to a non-validated application, when the start date begins, and what the time limit is for the LPA to issue a non-validation notice.

Some LPAs and one professional body commented that the notice is overly bureaucratic. It could be simplified by removing the requirement to the relevant legislation and that a standard paragraph is used to advise applicants of their right of appeal.

### **Welsh Government Response**

Welsh Government acknowledges that there was a typographical error in the published consultation paper with regard to proposed criteria a-f. As many respondents pointed out criteria c) and d) should be combined into a single criteria c). The criteria have been corrected and should be read as;

*A notice issued pursuant to section 62ZA TCPA as inserted by section 29 of the Act (that an application is not valid) should:*

- a) include the allocated application number and description of the application to which the notice relates;*
- b) identify the requirement under section 62 of the TCPA and the Development Management Procedure (Wales) (Amendment) Order 2016 under which an application for planning permission is invalid;*
- c) in the case of an application for consent, agreement or approval required by a condition or limitation subject to which a planning permission has been granted, identify reasons why it does not comply with these requirements;*
- d) provide a brief description how the applicant can comply with the requirements; and*
- e) be accompanied by an explanatory note explaining the appeal process.*

Welsh Government acknowledges the important role of informal discussions between applicants and LPAs in resolving validation issues in a timely manner. For example issues of a minor nature such as missing details or reference number from plans could be dealt with informally. The LPA should only consider the non-validation notice route where differences in what material should be submitted cannot be resolved informally.

Contrary to claims from the two LPAs and professional body the process is not intended to be overly bureaucratic. In the first instance it is considered that disagreements at validation should be dealt with informally. Should resolution not be found then the LPA should carefully consider whether to issue a non-validation notice. Although no time limit has been applied to this process, LPAs will need to issue the notice in a timely manner so as to ensure that an application can be processed within the statutory deadline should an appeal be upheld.

The new statutory requirements for pre-application services and consultation should ensure valid applications are submitted from the outset. Pre application advice should provide applicants with the level of detail required for validation purposes.

## **Question 2:**

**Is there any additional information you think should accompany a notice of non-validation? If so, why is this information necessary?**

## **Overview**

Additional requirements that were suggested to be included within a notice of non-validation included:

- Legal authority or matters that could inform the question of validity
- Contact details of the relevant consultee
- Contact details of the applicant
- Contact details of the case officer
- Reference to any pre-application discussions
- Date that the application was received by the LPA and the date of the notice issued.
- Method of delivery (e.g. post, email, planning portal)
- Reference to how and when a fee will be refunded
- Information required under a local list (Circular 002/2012).
- Additional area for comments
- Information provided by a statutory consultee
- Time period in which to comply with the notice

### Welsh Government Response

It is considered that many of the items suggested above could be included by the LPA on a discretionary basis as required by the individual application. Criteria d) provides a degree of flexibility where LPAs validation requirements and other issues that could inform the question of validity could be presented.

A model template and guidance on the form and content of the non-validation notice will be provided by Welsh Government in its Development Management Manual.

### Question 3:

**Do you agree that a period of 14 days for the applicant to submit their appeal is sufficient time given the desired quick turn around of appeals against notice of non-validation?**

Question 3	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	7	5	1	3	0	0	16	48.5
Yes with further comment	1	5	1	1	0	1	9	27.3
No	0	7	0	1	0	0	8	24.2

### Statistical Review

Over three quarters of respondents agreed with the proposed 14 day period for the applicant to submit an appeal. LPAs comprised the vast majority of the respondents that opposed the timescale.

## Overview

All businesses agreed with the proposed 14 day period for an applicant to appeal. However, one highlighted that this could even be a tight timescale depending on the mode of delivery, holidays and leave etc.

The main theme of responses from LPAs was that the 14 days was too long. A few LPAs stated that 5 days would be sufficient enough, but the majority proposed 7-10 days as being appropriate to prevent delays in the system.

One business and one professional body requested guidance on the appeals process.

## Welsh Government Response

Following the consultation further consideration has been given to LPA comments regarding a reduction in the 14 day applicant appeal period. However, on balance Welsh Government believe the 14 day timescale to be a fair period for an applicant to consider their options. This incorporates a degree of flexibility to allow for meetings with clients, preparation of statements, possibly being on annual leave, and delivery of the appeal against the non-validation notice to Welsh Ministers.

As identified previously practice guidance will be produced in conjunction with this legislation. This will include clarification of when the time period starts for the various methods of delivery. Applicants will be encouraged to submit appeals electronically to expedite the process.

## Question 4:

**Do you agree that the Welsh Ministers should be required to determine appeals within 21 days of the start of the appeal period?**

Question 4	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	4	4	2	2	0	1	13	39.4
Yes with further comment	2	4	0	1	0	0	7	21.2
No	2	9	0	2	0	0	13	39.4

## Statistical Review

Over 60% of respondents agreed with the proposed 21 day non-validation appeal determination period for Welsh Ministers. This was made up of a cross section of business, LPA and professional body interests.

A similar cross section is reflected in those who opposed the proposal. The majority of LPAs opposed the proposal with over half saying no to the 21 day period.

## **Overview**

Those who opposed the proposal commented that they considered the 21 day determination period was too long. There was concern that following an LPA producing an invalidation notice, the 14 day consideration period afforded to the applicant and the 21 day appeal determination period then there would potentially only be a 3-4 week period remaining to determine the application (which would need to include the statutory public consultation period).

The majority of LPAs suggested that a determination of 7-14 days would be more realistic in allowing them to determine applications within the statutory 8 week period. One LPA suggested that validation should occur from the date of the appeal decision as opposed to validating from the date of the original submission, as the proposed approach may result in LPAs accepting poorer quality information. A few businesses and two professional bodies endorsed this view highlighting the importance of high quality decision making in the process.

2 LPA and 1 business respondent enquired what the sanction would be if Welsh Ministers fail to determine and appeal within 21 days.

## **Welsh Government Response**

Following the consultation further consideration has been given to LPA and business comments regarding a reduction in the 21 day non-validation appeal determination period. However, on balance Welsh Government believe that to provide a fair and balanced appeals process Welsh Ministers should have up to 21 days to make a determination, especially where major applications subject to EIA may result in a significant volume of material to be assessed.

The Welsh Government fully supports the need for high quality decision making. However the validation process is not about gold plating, and LPA's are fully entitled to request additional or updated information whilst a planning application is being considered in order to ensure that the high quality decision can be made.

## **Question 5:**

**Where an application is considered to be invalid and an appeal submitted in respect of a notice of non-validation, do you agree that the fee should be retained by the LPA pending the outcome of that appeal?**

Question 5	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	4	13	1	4	0	0	22	71.0
Yes with further comment	3	3	0	0	0	0	6	19.4
No	1	1	0	1	0	0	3	9.6

### Statistical Review

The vast majority of respondents agreed with the proposal that the application fee be retained by the LPA pending the outcome of a non-validation appeal. Fewer than 10% of respondents disagreed comprising one business, one LPA and one professional body.

### Overview

One LPA opposed the proposal to hold onto the fee claiming that the long holding of fees pending the uncertainty of whether there will be an appeal made (14 days) and the uncertain outcomes of appeals (a further 21 days minimum) poses real issues for the technical support team of the Service area (and potentially applicants themselves) and the ongoing tracking of fee payments and methods of payment (and therefore methods of refunding).

The professional body clarified their position against the proposal by clarifying that the LPA should indeed hold the fee but not cash it. The business respondent provided no evidence as to their opposition to the proposal.

### Welsh Government Response

More than 90% of respondents supported the proposal with those who opposed providing limited evidence to counter the rationale that the LPA retain the fee pending a non-validation appeal. Accordingly, it is considered that in the interest of saving LPAs refund costs and time chasing up the return of fees where further information is submitted if an appeal is dismissed, the LPA will retain the fee pending the appeal process.

### Decision Notices

#### Question 6:

**Do you agree that when a decision notice is revised it should include**

- a) the date of the approval; and**
- b) the relevant application reference in the updated version of the notice?**

Question 6	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	2	3	2	2	2	2	13	35.1
Yes with further comment	6	11	0	3	0	1	21	56.8
No	0	3	0	0	0	0	3	8.1

## Statistical Review

Over 90 % of respondents agreed with the proposal to update decision notices with criteria a) and b) above. Only three LPAs opposed the proposal.

## Overview

One business and two LPA respondents highlighted the potential for confusion with regard to S.73 applications. For some developments (particularly multi-phase developments) there can be multiple permissions implemented governing different parts of the application. Clarification was requested as to how planning conditions are linked to between original applications and S.73 to ensure understanding over which is implemented.

Another business respondent continued this theme by stating that each decision notice should include a status log noting what permission revisions originated from and summarising briefly the effect of the amended/deleted condition.

A number of LPAs, two businesses and two professional bodies mentioned the resource burden on LPAs in issuing hard sets of revised decision notices. Electronic notices were endorsed as a way around this especially if plans/documents are referenced/numbered on the notice.

Some LPAs raised concerns that the proposal could lead to multiple decision notices for the same development that would be confusing for stakeholders. LPAs also suggested clearly identifying the date of the new decision notice to make all parties clear of the difference to the original permission. Enquiries were made as to whether the applicants name change to a new agents name when submitting revisions.

## Welsh Government Response

With regards to S73 applications, these are treated as a completely new permission, and will have their own application number. A developer is therefore able to decide whether to be bound by the original permission, or the one revised under S73, and can choose which they wish to implement. Therefore where an LPA has determined that the matters being applied for under a S73 application are acceptable it is expected that they will re-issue a decision notice with the reference number of the S73 application on it, and



copy across all the relevant conditions (which they consider necessary) from the original decision notice. Where some conditions have been approved then the LPA will need to decide whether to copy across these conditions together with any reference number and date of approval, or list any additional plans, drawings, or reports that were submitted to approve such conditions and require that development is built in accordance with these details.

When a developer applies to have outstanding conditions approved they will need to identify which consent those details relate to, and in some cases may indicate more than one permission (where they remain extant).

When a developer is in a position, and wishes to, commence development they will be required to notify the LPA of the date that development will commence, and which permission (including the reference number) they will be implementing.

A copy of a revised decision notice will only need to be provided to the applicant. It is anticipated that as more applications are submitted electronically the provision of decision notices will also tend to become electronic, and email notification can be sent to applicants with an appropriate PDF attachment of the revised notice, or alternatively that a revised notice has been published on the LPA's website. Therefore whilst it is acknowledged that there may be a resource burden on LPA's in the short term, it is anticipated that this will not be a significant issue in the long term.

The purpose of this provision is to ensure that the original decision notice is updated to reference when conditions are approved, and not that separate decision notices are issued in respect of individual applications to approve conditions. Therefore whilst for tracking and auditing purposes an application for the approval of reserved matters, or the approval of a condition may be allocated its own unique reference number by the LPA when the LPA has decided (in accordance with its scheme of delegation, and based upon an appropriate report) that those matters should be approved they will issue a revised decision notice. This will refer to the unique reference number and the date that the matters were approved. Therefore this process, if followed correctly, will not result in multiple decision notices, however there may be versions of the same decision notice. If an LPA chooses to publish a copy of the decision notice on their website, then they are able to ensure that this is updated when necessary to reflect the latest version.

The DMPWO will be amended to provide that a revised decision notice will include the following details:

- the reference number
- the date and effect of the decision
- the name of the body that made the decision
- the revision number

In respect of queries regarding amending applicant's details on the decision notice it should be considered that planning consent usually runs with the

land, and therefore the applicant in this regard is immaterial. However where an LPA considers that it is necessary to update such details then nothing in law precludes them from doing so.

### Question 7:

**Do you agree that the DMPO should be updated to require LPAs to keep a copy of the most recent decision notice on the planning register?**

Question 7	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	5	7	2	3	0	3	20	58.8
Yes with further comment	2	7	0	2	0	0	11	32.4
No	1	2	0	0	0	0	3	8.8

### Statistical Review

Above 90% of respondents agreed with the proposal to keep the most recent copy of the decision notice on the planning register.

### Overview

The majority of LPAs and two professional bodies that supported the proposal highlighted the need to use an electronic register for the proposal to be sustainable with regard to resources.

Two businesses and one LPA respondent raised the issue of S.73 and the need to retain all permissions as developers can choose not to implement S.73 consents. Clarity was requested as to how the 'live' notice is allocated.

Some LPAs asked whether this proposal would be applied retrospectively.

### Welsh Government Response

The issues around S73 applications have been responded to in response to question 6.

Article 29 of the DMPWO 2012 already makes provision for a register to be in electronic form, and therefore it is considered that nothing precludes LPA's from providing electronic planning registers.

It is not clear what is meant by "retrospectively" as this could be in respect of retrospective planning applications, or to historic planning consents dating back over a number of years.

In respect of retrospective planning applications it is expected that once a decision notice is issued it will be treated in the same manner as if the development had not commenced. Therefore if there are conditions that need to be approved then once these details have been agreed a revised decision notice should be issued.

In relation to retrospective (historic) planning consents it is proposed to introduce a savings and transition provision into the subordinate legislation, which clarifies that the requirement for revised decision notices does not apply to a planning permission granted before the Order comes into force.

## **Notification of Development**

### **Question 8:**

**Are there any other requirements which you think should be made of the developer in respect of the form, content or display of a notification of development?**

<b>Question 8</b>	<b>Businesses</b>	<b>LPA</b>	<b>Public Bodies</b>	<b>Professional Bodies / Interest Groups</b>	<b>Voluntary Groups</b>	<b>Other</b>	<b>Total</b>	<b>%</b>
Yes	0	0	0	0	1	0	1	<b>3</b>
Yes with further comment	3	10	1	3	0	0	17	<b>57</b>
No	5	6	0	1	0	0	12	<b>40</b>

## **Statistical Review**

Responses to the consultation question highlight that two thirds of respondents felt that additional or alternative requirements should be made regarding the duty to display a notification of development.

## **Overview**

### **The size of the notice to be displayed**

There were concerns raised over the practicalities of how decision notices will be displayed, particularly if they are large documents, which would be common for major developments. It was suggested by a number of respondents, including businesses, local planning authorities and professional bodies that the decision notice to be displayed should be no longer than two pages and contain only relevant information, such as the application number, a description of the development and the date the decision was made.

One LPA commented that a maximum size of the display board should also be stated to avoid developers taking advantage to promote their

developments. However, another LPA stated that because of the potential large size of decision notices and associated plans, it may be the case that structures needed to support this display may need planning permission or advertisement consent in their own right.

A business commented on live decision notices and if they are to be live, this could increase the size of already large decision notices which may cause issues for the developer. It was suggested live decision notices are available electronically and then the site notice can then only display relevant information.

#### Information to be included within the notice

Additional requirements that were suggested to be included within a notification included:

- Site address
- Description of the development
- Confirmation that all pre-commencement conditions have been complied with and the date each one was approved

#### Location and duration of the notification display

LPAs commented that the developer should be required to confirm where they have displayed the notice and the date it was displayed. Furthermore, it should be made clear that the notice only needs to be displayed during the operational development covered by the permission and not while any subsequent use authorised by the permission subsists.

Another LPA recommended that the developer should be expected to monitor a notice at all times and ensure that any replacement which is required is put in place immediately.

#### General comments

There were general concerns raised among certain respondents regarding the requirement for notification of development. It was felt that it was fundamentally unnecessary and creates an additional enforcement burden for LPAs if they encounter non-compliance.

Furthermore, one respondent was unsure what value this would add as those members of the public who have previously engaged in the consultation process would already be aware of the decision.

It was suggested that the requirement to give notice of commencement to LPAs should apply to all development, not just major developments and that this should also apply to nationally protected areas, such as 'Areas of Outstanding Natural Beauty' or National Parks.

### **Welsh Government Response**

Welsh Government agrees that some decision notices for major developments will be too large to be displayed, in accordance with the notification of development provisions. Therefore, we will require a separate notice to be displayed by developers throughout the construction phase of the development that will contain all the necessary information.

The site address, a description of the development and confirmation of all pre-commencement conditions being complied with will be included within the notification developers will be required to submit to their LPA to inform them of their intention to commence development.

We have included Schedule 5A and 5B within the DMPW Amendment Order 2016, which provide model templates of the notices to be submitted to an LPA, and displayed at the site.

In addition to the notification required (Schedule 5A) to be submitted to LPAs, developers will also have to submit a plan which indicates a red line around the site boundary of the land that benefits from permission, as well as the location of where the notice of decision will be displayed. This will allow LPAs to enforce against any decision notices not being displayed, or being displayed in an incorrect location. The notice of decision (Schedule 5B) will only be required to be displayed during the construction period of a proposed development.

We are not recommending notification of development requirements apply to all types of development as this process would be too onerous on LPAs at a time where staff resources are limited.

Any major development, as defined by the Town and Country Planning (Development Management Procedure) (Wales) Order 2012, would be obligated to comply with the notification of development requirements, including those major developments proposed in nationally protected areas.

### **Consultations etc. in Respect of Certain Applications for Approval**

#### **Question 9:**

**Do you agree that LPAs shall not determine an application subject to consultation until any of the following periods have elapsed?**

- a) a period of 21 days; or**
- b) until all statutory consultees have provided a substantive response, whichever is the sooner, or**
- c) subject to a longer period if agreed in writing between the LPA and consultee?**

Question 9	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	2	11	1	3	1	2	20	54.1
Yes with further comment	5	5	1	1	1	1	14	37.8
No	1	1	0	1	0	0	3	8.1

### Statistical Review

The majority of respondents supported the proposals to place statutory requirements on consultees to respond to consultations where an LPA decide to consult them in respect of certain application for approvals. 3 respondents didn't agree with the proposals.

### Overview

The majority of business respondents and one professional body supported the proposal with part c) the subject of most comments concerning the uncertainty of any agreed extension. Comments included that the application should still be determined within the statutory timescale, only one time extension being permitted and that applicants should also be informed of any extension.

Two businesses requested clarification that the right of the applicant to appeal against non-determination is preserved.

The majority of LPAs supported the proposals outright. One comment echoed by a professional body recommended reducing to 14 days the time period for non-material amendments as these have a shorter statutory deadline. One professional body took the opposing view that 21 days was too short a period for consultees to make a meaningful comments,

Clarification of the sanction on the consultee if the deadline is passed was also requested by two LPAs.

### Welsh Government Response

91.9% of all respondents agreed with the proposed criteria a) - c) set out in the consultation paper. It is the intention of Section 100A to ensure that all applications subject to the legislation are determined within the relevant statutory deadline. LPAs will need to consider this requirement in agreeing extensions with consultees beyond 21 days. Where consultees do not provide a substantive response within the agreed time frame the LPA will be free to determine the application. Statutory consultees will report to Welsh Ministers with regard to their performance in making substantive and timely responses.

The 21 day period is considered to be an adequate time period for a consultee to make a response and mirrors the existing response timeframe at the planning permission stage. It should be noted that consultation under section 100A is discretionary and the duties detailed in the legislation only take effect where an LPA requests comments from a consultee under S100A.

**Question 10:**

**Do you agree that earliest time that Welsh Ministers can determine an application made under s.293A of the Town and Country Planning Act 1990 (TCPA) should remain as 14 days after giving statutory consultees notice of the application, as stated in Article 15 of the DMPO?**

Question 10	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	3	12	1	4	0	2	20	74.1
Yes with further comment	0	1	0	0	0	0	1	3.7
No	1	4	0	0	0	1	6	22.2

**Statistical Review**

Just fewer than three quarters of respondents agreed with the proposals relation to urgent crown development. 6 respondents disagreed with the proposal to maintain the 14 day response time for statutory consultees

**Overview**

Out of the 22.2% of respondents who opposed the proposal all recommended that a longer period of 21 days should be afforded the consultee to ensure specialist advice is received.

**Welsh Government Response**

77.8% of respondents supported the proposal to maintain the 14 day time period after giving statutory consultees notice of the application, as stated in Article 15 of the DMPO. Due to the national importance of such proposals it is considered necessary to maintain the 14 day period to ensure applications are determined as a matter of urgency.

**Appeal Against a Notice Issued in Respect of Land Adversely Affecting Amenity (Unightly Land)**

**Question 11:**

**Do you agree that appeals determined by Welsh Ministers under s.217 of the TCPA should follow the same format as existing enforcement appeals?**

<b>Question 11</b>	<b>Businesses</b>	<b>LPA</b>	<b>Public Bodies</b>	<b>Professional Bodies / Interest Groups</b>	<b>Voluntary Groups</b>	<b>Other</b>	<b>Total</b>	<b>%</b>
Yes	3	13	2	4	0	1	23	85.2
Yes with further comment	0	2	0	0	0	0	2	7.4
No	0	2	0	0	0	0	2	7.4

**Statistical Review**

A comprehensive majority of respondents supported the proposal to transfer responsibility for determining appeals against notices, issued under section 215 in respect of land adversely affecting amenity, to the Welsh Ministers. Two LPAs represented the sole opposition to the proposal.

**Overview**

In agreeing with the proposal respondents across all sectors commented that this would bring consistency across the appeals process and that Welsh Ministers are better qualified to determine such cases.

One LPA disagreed with the proposal commenting that these appeals are far less complex than enforcement appeals and do not warrant a formal approach to determination. The other LPA to object provided no evidence to justify their position.

**Welsh Government Response**

In line with the support from respondents we propose that, for consistency, the appeal procedure will be aligned with the current appeal process for enforcement appeals, whilst maintaining the existing grounds of appeal identified under section 217. This will be achieved by amending the enforcement appeal regulations later in 2016.

**Question 12:**

**Do you agree that a four week period for LPAs to write their appeal statement is reasonable? If you consider an alternative period is more appropriate for s.217 appeals, please state why.**



Question 12	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	4	8	2	3	0	0	17	60.7
Yes with further comment	0	4	0	1	0	0	5	17.9
No	0	5	0	0	0	1	6	21.4

### **Statistical Review**

The majority of respondents agreed with the proposed 4 week period for LPAs to write their section 217 appeal statements. 21.4% of respondents opposed the proposal made up primarily of LPAs and one other.

### **Overview**

The majority of respondents, including most LPAs, agreed that 4 weeks would be sufficient to meet the legislative requirements.

Out of a total of 17 LPAs that responded to the 4 week proposal only 5 objected. Comments included that this would introduce a discrepancy into the system with the existing 6 week period remaining fit for purpose.

One public (other) respondent questioned whether third parties are to be notified of the appeals by LPAs or Welsh Ministers so that their comments can be submitted. 4 weeks was not seen as sufficient if third party statements were to be submitted to LPAs, but fine if to be submitted to Welsh Ministers.

### **Welsh Government Response**

The majority of respondents recognised and supported the proposal that due to the less complicated nature of unsightly land cases, a period of four weeks is sufficient time for an LPA to prepare this statement especially when utilising the written representation procedure. Therefore it is our intention to proceed with this timescale. There is no mechanism for third party notification at present.

### **Post Submission Amendments**

#### **Question 13:**

**Do you agree that where an amendment is submitted in relation to major development applications, LPAs should be given an additional four weeks to determine the planning application?**

Question 13	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	1	5	1	2	1	1	11	29.7
Yes with further comment	4	10	1	2	1	2	20	54.1
No	3	2	0	1	0	0	6	16.2

### Statistical Review

The majority of respondents agreed with the proposal to give LPAs a further 4 weeks to determine a major application where post-submission amendments are made. 54.1% of all respondents made further comments with regard to the proposal which are addressed below. 6 respondents opposed the proposals made up of 3 businesses, 2 LPAs and one professional body.

### Overview

Out of a total of 7 business respondents, 3 raised concerns with regard to the 4 week extension to a major applications statutory deadline. Their preference was to retain the existing discretionary approach as LPAs would retain the right to refuse an application should the applicant not agree with the discretionary extension.

The rationale behind the standard 4 week rate was questioned as there is no assessment of the complexity of the post submission amendment. For example some minor amendments may require a shorter period whereas those requiring an EIA may take longer to process. One government agency expanded on this in asking how this reflects the transposition of the EIA Directive by 2017 where a minimum of 30 days consultation is applicable.

2 businesses suggested that the time extension could be negotiated with the LPA at the time of submission.

1 business made reference to statutory consultee comments being received late and forcing post submission amendments. Another business respondent suggested that the extension should only apply where the amendment requires additional consultation.

12 out of 17 LPAs questioned why the proposal only applied to major applications as some minor applications can require amendment and further consultation. This question was also raised by 2 professional bodies, 2 voluntary and one public respondent.

One Professional body expressed concerns with regard to the cumulative effect of a number of amendments and the impact this has on the overall determination period and the deadline in which to appeal against non-determination. Clarification was also requested over the return of the

planning fee following the introduction of the new fees legislation in October 2015. (Will this apply if the LPA request the amendment or only if the applicant requests it?)

2 LPAs raised the issue of how the additional 4 week period links in with existing monitoring of LPA caseload targets and reporting on performance KPIs.

### Welsh Government Response

With regard to the proposed four week time extension, 83% of respondents agreed that the additional time should be provided to LPAs to determine major applications. Some business and LPA respondents disagreed with the proposal citing the existing discretionary approach with LPAs as fit for purpose and the risk that it would discourage important amendments.

Welsh Government considers that the proposed four week extension of time will act to encourage schemes to be finalised and agreed at the pre-application stage. This will encourage quality pre application discussions between all stakeholders so that the need for post submission amendments is reduced. If this is achieved then the need for post submission amendments will actually be reduced, resulting in a faster and more efficient system.

### Question 14 (i):

**Do you think a fee should be charged for minor material amendments to major applications which have yet to be determined?**

Question 14 (i)	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	0	4	0	2	0	0	6	20.0
Yes with further comment	2	12	0	1	0	1	16	53.3
No	6	1	0	1	0	0	8	26.7

### Statistical Review

The majority of respondents agreed with the proposal to for LPAs to charge a fee to determine a major application where post-submission amendments are made. 53.3% of all respondents made further comments with regard to the proposal which are addressed below. 8 respondents opposed the proposals primarily made up of 6 businesses, with 1 LPA and one professional body concurring with the business viewpoint.

### Overview

Business respondents were generally opposed to the idea, citing the additional fees already proposed for pre-application discussions and the discharging of planning conditions. Some local planning authorities were concerned that developers would stop responding to opportunities to improve their designs and development quality would suffer.

### Welsh Government Response

Of those who responded to the consultation question regarding post submission fees, 73.3% considered that a fee should be charged by LPAs which will allow them to recover their costs. The primary goal of the fee measures is to reinforce the Welsh Government's positive planning programme and make the planning system more efficient. It is considered that the proposed fees will encourage schemes to be finalised and agreed at the pre-application stage. If this is achieved then the need for post submission amendments will be reduced, resulting in a faster and more efficient system.

### Question 14 (ii):

**If yes, do you agree that £190 is an appropriate fee to charge in light of the recent consultation on planning application fees?**

Question 14 (ii)	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	0	10	0	1	0	0	11	42.3
Yes with further comment	1	3	0	0	0	0	4	15.4
No	5	4	0	2	0	0	11	42.3

### Statistical Review

Well over half of the respondents agreed overall that £190 is an appropriate fee to charge for post-submission amendments. 42.3% of respondents opposed the figure made of 5 businesses, 4 LPAs and 2 professional bodies.

### Overview

Of those who opposed the £190 fee responses varied between opposing viewpoints that there should be no fee charged to the view that the fee was too low and more should be charged considering the resource invested into processing and determining post-submission amendments.

### Welsh Government Response

When considering the fee that should be payable, 57.7% of those who responded agreed that the standard fee of £190 was appropriate to cover LPA costs in processing post submission amendments.

### **Applications that fall within Section 73 of the TCPA 1990**

The consultation paper set out a number of questions on applications that fall within Section 73 (s.73) of the TCPA 1990. These questions and responses have been arranged into the following key themes:

- Validation requirements;
- Consultation requirements;
- Notification requirements; and,
- The fee to accompany an application that falls within s.73 submitted after refusal of an application under section 96A (s.96A) of the TCPA.

### **Validation requirements**

<b>Q15(i)</b>	<b><u>Should the validation requirements for a renewal application be the same as the original application?</u></b>
<b>Q16(i)</b>	<b><u>Should the validation requirements for a minor material amendment application be the same as the original application?</u></b>
<b>Q17(i)</b>	<b><u>Should the validation requirements for these applications be the same as the original application?</u></b>

<b>Question 15(i)</b>	<b>Businesses</b>	<b>LPA</b>	<b>Public Bodies</b>	<b>Professional Bodies / Interest Groups</b>	<b>Voluntary Groups</b>	<b>Other</b>	<b>Total</b>	<b>%</b>
Yes	1	3	0	1	0	0	5	16.1
Yes with further comment	0	7	0	1	0	0	8	25.8
No	7	7	2	1	0	1	18	58.1
<b>Question 16(i)</b>	<b>Businesses</b>	<b>LPA</b>	<b>Public Bodies</b>	<b>Professional Bodies / Interest Groups</b>	<b>Voluntary Groups</b>	<b>Other</b>	<b>Total</b>	<b>%</b>
Yes	0	1	0	1	0	0	2	6.2
Yes with further comment	0	0	0	0	0	0	0	0
No	8	16	2	2	0	2	30	93.8
<b>Question 17(i)</b>	<b>Businesses</b>	<b>LPA</b>	<b>Public Bodies</b>	<b>Professional Bodies / Interest Groups</b>	<b>Voluntary Groups</b>	<b>Other</b>	<b>Total</b>	<b>%</b>

Yes	1	2	0	1	0	0	4	12.5
Yes with further comment	0	1	0	0	0	1	2	6.3
No	7	13	2	2	0	2	26	81.2

## Statistical Review

These questions were phrased in such a way that a negative response of No provides support for the proposals. Therefore there was general support for the proposed amendment to the validation requirements, with:

- 58% (18 out of 32 who answered) of respondents supporting the proposal for renewal applications;
- 94% (30 out of 32 who answered) of respondents supporting the proposal for minor material amendments; and,
- 81% (26 out of 32 who answered) of respondents supporting the proposals for other applications that fall with section 73.

## Overview

### Renewal applications

The majority of respondents considered that the validation requirements should be proportionate to the change proposed. Therefore if there have been no changes in circumstances which would require the updating of the original materials, it should be possible to have recourse to materials already on the planning file from the earlier application.

A number of respondents considered that the LPA should be able to require the provision of updated supporting information or studies where those associated with the original application are demonstrably out of date because local circumstances have changed significantly.

Some LPAs stated that although they can ask for updated documents during the course of consideration should it believe it to be necessary, this would result in delays in the processing of such applications and prejudice performance targets.

### Minor material

The majority of respondents identified that the validation requirements should only cover those aspects of the scheme that are affected by the minor material amendment. A number also considered that the application should clearly highlight the changes proposed to avoid time being spent by LPAs and stakeholders playing 'spot the difference' and in many cases it may be beneficial to submit a supplementary statement to be read in conjunction with the documents that supported the original application.

### Other amendments

The majority of respondents identified that the validation requirements should only cover those aspects of the scheme that are affected by the minor material amendment. It was identified that what would be required would be dependent on the nature of the condition, and the reason for its imposition in the first instance.

### Welsh Government Response

There is clear support for ensuring that the validation requirements on all applications that fall within Section 73 of the TCPA1990 are proportional to the change proposed. As highlighted by a number of respondents, the requirements for validation will be dependent on the proposed change and any changes in circumstances since the original application.

It is not possible to legislate for the number of different amendments that may be applied for, and the potential changes in circumstances that may apply to each application. We consider that validation requirements are therefore a matter that should be addressed in guidance at this time.

Pre-application advice can help ensure that developers only submit the information required for the amendment. Discussions with the local planning authority will therefore be important to establish the information required.

### Consultation requirements

Q15(ii)	Should the LPA have discretion over the consultation requirements for a renewal application?
Q16(ii)	Should the LPA have discretion over the consultation requirements for a minor material amendment application?
Q17(ii)	Should the LPA have discretion over the consultation requirements for these applications?

Question 15(ii)	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	2	12	1	2	0	0	17	50
Yes with further comment	4	3	1	2	0	2	12	35
No	2	2	0	0	0	1	5	14
Question 16(ii)	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	2	15	1	2	0	1	21	61.8
Yes with further	5	1	1	2	0	2	11	32.3

comment								
No	1	1	0	0	0	0	2	5.9
<b>Question 17(ii)</b>	<b>Businesses</b>	<b>LPA</b>	<b>Public Bodies</b>	<b>Professional Bodies / Interest Groups</b>	<b>Voluntary Groups</b>	<b>Other</b>	<b>Total</b>	<b>%</b>
Yes	1	16	1	2	0	1	21	61.8
Yes with further comment	6	0	1	2	0	2	11	32.3
No	1	1	0	0	0	0	2	5.9

## Statistical Review

There were high levels of support for the proposed amendment to the consultation requirements, with:

- 85% (29 out of 34 who answered) of respondents supporting the proposal for renewal applications;
- 94% (32 out of 34 who answered) of respondents supporting the proposal for minor material amendments; and,
- 94% (32 out of 34 who answered) of respondents supporting the proposals for other applications that fall with section 73.

## Overview

The key issues raised are summarised below:

### Renewal

Most businesses considered that it is appropriate for the LPA to have some control over what is an appropriate level of consultation on an application. Some considered this should only be discretion to undertake a lower level of consultation than that undertaken on the 'original' application.

LPAs were mixed in their responses: some considered that introducing discretion would introduce inconsistencies across LPAs. However a large proportion considered that, depending on changes in applications, it would be beneficial to avoid the need for any unnecessary consultations. LPAs highlighted that, notwithstanding the introduction of discretionary consultation, material factors may have changed in the intervening period that may require full re-consultation in some cases.

Some respondents considered that statutory consultees may need to be consulted as they are aware of any material change in circumstances since the original permission was granted.

### Minor material / other amendments

The responses support the principle that the scope of consultation should be appropriate to the scope of the minor material amendment itself, not the development as a whole.



Some consultees advise that where statutory consultees have commented on the original application and further information has been submitted, or the proposal affects their interests, they should be re-consulted.

### Welsh Government Response

Retaining the consultation requirements isn't considered necessary with an overall support of 91% for discretionary consultation. Retaining the system of compulsory consultation would create unnecessary additional work and cost for LPAs where it is clear that the proposed amendment will not have an impact on stakeholders.

It is recognised that consultation should be appropriate and proportionate to the nature of the amendments under consideration and by providing discretion the LPA is not restricted to whom they consult. The LPA may consider that the views of those consulted on the original application, or even additional consultees, are required to determine the application.

### Notification requirements

Q15(iii)	Should the LPA have discretion over the notification requirements for a renewal application?
Q16(iii)	Should the LPA have discretion over the notification requirements for a minor material amendment application?
Q17(iii)	Should the LPA have discretion over the notification requirements for these applications?

Question 15(iii)	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	3	10	2	1	0	1	17	51.5
Yes with further comment	3	4	0	2	0	1	10	30.3
No	2	3	0	1	0	0	6	18.2
Question 16(iii)	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	3	11	2	2	0	1	19	59.4
Yes with further comment	4	3	0	1	0	1	9	28.1
No	1	3	0	0	0	0	4	12.5

Question 17(iii)	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	3	16	2	2	0	1	24	80
Yes with further comment	3	0	0	1	0	0	4	13.3
No	1	1	0	0	0	0	2	6.7

## Statistical Review

There was support for the proposed amendment to the notification requirements, with:

- 82% (27 out of 33 who answered) of respondents supporting the proposal for renewal applications;
- 88% (28 out of 32 who answered) of respondents supporting the proposal for minor material amendments; and,
- 93% (28 out of 30 who answered) of respondents supporting the proposals for other applications that fall with section 73.

## Overview

The key issues raised are summarised below:

Renewal / Minor material / other amendments

The general responses support the principle that the scope of notification should be appropriate to the scope of the minor material amendment itself, not the development as a whole.

Some respondents considered the minimum should be site notice and notification to the Community Council (if one exists). They identified that LPAs could chose to do more, but this will ensure clarity to stakeholders and a degree of consistency in the process. Some respondents considered that a site notice is not required in certain circumstances.

A limited number of respondents considered that notification is different to consultation and that the need to consult neighbours should not be altered to provide certainty and ensure openness of the planning process in decision making and to avoid Ombudsman complaints if neighbours feel disenfranchised.

## Welsh Government Response

Retaining the existing notification requirements isn't considered necessary with an overall support of 87% for discretionary notification. Retaining the existing system would create unnecessary additional work and cost for LPAs that is disproportional to the changes that can be made under Section 73.

To provide a minimum level of notification the requirements to erect a site notice and notify the Community Council have been retained. Further, certain applications have not been affected by the proposed amendment.

**Fees for minor material amendments.**

Q18	Should the fee to accompany an application that falls within s.73 submitted after refusal of an application under s.96A of the TCPA only be that required to make up the difference in fee cost?
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Question 18	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	6	4	1	2	0	1	14	48.3
Yes with further comment	0	1	0	0	0	0	1	3.4
No	1	12	0	1	0	0	14	48.3

**Statistical Review**

Overall, 52% (15 of 29 who answered) support the introduction of a reduced fee when an application under Section 73 of the TCPA 1990 is made following the refusal of an application under Section 96A of the TCPA 1990. The following provides a summary of the comments received.

**Overview**

LPAs considered that applicants have the opportunity to seek pre-application advice before making an application which will assist them identifying the correct approach to take.

They also considered that each application should have its own fee proportionate to the work involved. They considered this necessary as when the LPA is considering a section 96A application they only consider if the amendment is non-material. If the amendment is considered to be material, the LPA will go no further in the consideration of the proposed change and refuse the application. Therefore, should the amendment be resubmitted under Section 73, the LPA will need to consider the change afresh.

Some thought that the approach could be considered reasonable the fee should reflect the work involved and therefore it may be more than just making up the difference in the fee cost, but not as much as the two fees separately. Others considered the approach would appear reasonable if the reduced fee would only be applicable in certain instances.

## Welsh Government Response

In certain circumstances pre app advice may be used to determine which route is most appropriate. However, given the potential variances, and the lack of a duty to respond to the query it is not considered a proportionate approach to deal with the situation.

Whilst it is acknowledged a LPA may not fully consider the proposed change on an application under Section 96A, once it has been considered material, the LPA will have reduced costs in such circumstances. They will have reduced costs as they will not be required to spend resources considering and writing complex decision reports and conditions on applications incorrectly made under Section 96A. The costs to determine the application may therefore be less than the income received.

Following this refusal, should a section 73 application be submitted, there is fee income retained pertaining from the previous application, and therefore with the “top up” element the fee becomes the same as if it had originally been submitted as a Section 73 application, plus the fact the LPA may have already considered the amendment to some extent, the determination of the Section 73 application should be simpler.

The reduced fee is only payable where the application meets certain criteria, these are, where the section 73 application is made within 6 months of the refusal/non-determination of the 96A application, the application relates to the same amendment and the applicant has not already benefitted from the reduced fee provision.

## Pre-application Fees

### Question 19:

**Do you agree that extensions of time should be permitted, subject to both the LPA and applicant agreeing in writing?**

Question 19	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	4	6	0	3	2	3	18	50
Yes with further comment	4	11	1	2	0	0	18	50
No	0	0	0	0	0	0	0	0

## Statistical Review

Of those who responded to the consultation question, 100% agreed that extensions of time should be permitted, subject to mutual agreement between the LPA and applicant.

## **Overview**

Although there was overwhelming agreement with the principle of offering an extension of time, LPAs raised a number of concerns.

A number of LPAs commented that the proposed 21 days is unrealistic and unworkable in practice. Extensions of time would then become the norm, undermining the credibility of the system. Similarly, it was noted that larger scale developments can be time consuming and meeting this target would be impossible, particularly if advice is required from other internal or external specialists.

It was also suggested that there should be different timescales to respond depending upon the size and scale of the development. For example, amending householder enquiries to 28 days and minor development enquiries to 32 days. An alternative suggestion put forward was that LPAs should be entitled to set a target responses date based on the type and nature of the proposed development.

Similarly, concerns were also raised in the event a written response is not provided to the applicant within the agreed timeframe. Both a business and professional body commented that with no mediation or appeals process in place, what would the consequences be in the extension of time is exceeded.

Another business commented that a maximum time period for extending needs to be allowed to ensure timely responses (i.e. a maximum of 14 days beyond the initial 21 day response). A refund option could be introduced if no response is forthcoming.

## **Welsh Government Response**

A written response time of 21 days is deemed an appropriate amount when striking a balance between different development types. We recognise that a statutory pre-application service will encounter a wide variety of developments, from householder to complex major developments. Based on this, we will allow extensions of time to be permitted, if required, subject to written confirmation of this between the LPA and developer. This will allow a measure of flexibility to the process.

We do not intend to introduce refunds should an LPA issue a written response to a developer either after the 21 day period, or, if agreed, after an extension of time has been granted. However, we will require LPAs to report on their performance in dealing with pre-application service enquiries, including response times and should deadlines continually be missed, then we can consider using this as an indicator for poorly performing LPAs.

## Question 20:

Do you agree with the level of proposed fees set out in Table 1? If not, what should the fee be?

Question 20	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
Yes	4	2	0	0	0	0	6	21
Yes with further comment	3	4	0	2	0	0	9	33
No	1	11	0	1	0	0	13	46

### Statistical Review

Responses to the consultation question were generally mixed, although a slight majority (54%) were content with the fee levels proposed in the consultation document.

### Overview

#### Fee levels

Generally, LPAs commented that the fee levels are, on a whole, too low and wholly inadequate. One LPA suggested that pre-application fee levels should be in line with the new development thresholds for planning committee applications for consistency.

A number of suggested alternative fee levels were put forward by LPAs, which included £48 for householder development, £180 and £250 for minor development and a sliding scale starting at £600 for major developments. It was also commented that it is unclear whether the fees are inclusive of VAT or not.

Businesses were more accepting of the proposed fee levels, with one respondent commenting they had no concern with the pre-application fees, providing the level of the service provided and a timely response is worth the fee paid. Another business suggested that an additional fee schedule should be produced for additional pre-application services, such as meetings, as this would provide even greater consistency across LPAs.

However, one business felt that the fee levels were too low and wouldn't cover the LPA administration costs and that it would be more appropriate to charge for pre-application advice than for the submission of planning applications themselves.

#### Thresholds

Respondents also suggested alternative development thresholds to those proposed within the consultation paper.

One business felt that based on the number of dwellings, minor development should constitute 1-15 dwellings, major, 16-30 dwellings and large major, 31+ dwellings.

An LPA commented that the thresholds should be broken down further, each with their own fee. Based on the number of dwellings, it was suggested that thresholds should exist for between 1-4 dwellings, 5-9 dwellings, 10-15 dwellings and 16-24 dwellings.

### **Welsh Government Response**

We have considered the comments regarding the pre-application fee schedule and have concluded that they should be increase in fee levels for all development thresholds, with the exception of householder, which was generally considered to be adequate. This is based on both existing pre-application service fee levels and the estimated time taken to provide responses against the average planning officer salary.

We do not consider amendments to the fee thresholds necessary as they are based on the existing development threshold for major development as defined by the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 and an analysis of existing LPA pre-application development thresholds.

### **Question 21:**

**Do you have any other comments to make regarding the statutory pre-application service?**

#### **Overview**

##### *Timescales*

There were contrasting opinions regarding the 21 day response time for LPAs. One business felt that it was reasonable, although in practice, it may need to be more of a generic 'steer' within a shorter timescale and then more detailed advice on detailed proposals within a longer timescale. Alternatively, a LPA commented that this was not enough time and if an extension of time cannot be agreed, advice could be limited.

Another LPA felt that the timescales proposed would be far too short for DNS and suggested these be extended to 3 months, with the ability for further extension, subject to a written agreement between the LPA and applicant / developer.

### Fees

A number of respondents felt that it would be necessary to have regular reviews of the fee schedule, to ensure the system is working effectively and that the fees continue to offer cost recovery for LPAs.

One LPA was concerned that the cost of providing advice will vary between LPAs and that there is no evidence to justify the proposed fee levels. Similarly, another LPA commented that there should be standard charges for additional meetings / written responses, which should be half the fee of the original response.

A business suggested that it may be more appropriate to charge for a pre-application service, than for the full planning applications themselves.

### Preparing responses

A Voluntary Organisation claimed that greater clarity is required to provide opportunities for individuals and third parties to discuss the details of prospective planning applications with LPAs, as this will improve transparency.

Further comments were generally positive, with emphasis placed on early consultation with various internal / external stakeholders (highways, drainage, historic environment, design considerations etc.) as they often raise issues late on in the process.

### General comments

A number of general comments were also received by respondents, which included:

- It was not clear from the consultation what exactly will be provided via the statutory service. It would also be meaningless if LPAs do not stand by their advice they provide.
- A statutory pre-application service appears to be overly prescriptive when required to provide national requirements with regard to the details required by LPAs. This should be at the LPAs own discretion.
- Any pre-application advice that has been paid for must become a material consideration when determining a planning application.
- Community Infrastructure Levy obligations should also be included within advice provided to householder developments.
- Elevation drawings should not be limited to householder development proposals as they could be as equally important for various other proposals.



- LPAs should also advertise any pre-application services offered by other consultees.

## **Welsh Government Response**

A written response time of 21 days is deemed an appropriate amount when striking a balance between different development types. We recognise that a statutory pre-application service will encounter a wide variety of developments, from householder to complex major developments. Based on this, we will allow extensions of time to be permitted, if required, when subject to written confirmation of this between the LPA and developer. This will allow a measure of flexibility to the process.

We are committed to increasing the fee levels for each development threshold, with the exception of householder development, for the statutory pre-application service. However, we are not seeking to introduce standardised fees for any additional pre-application services as these can be undertaken on a discretionary basis by LPAs. We expect LPAs to charge for these discretionary services on a cost-recovery basis, in line with section 93 of the Local Government Act 2003.

We are not intending on removing fees for the submission of planning applications where pre-application services have been accessed and paid for. The pre-application service is not a compulsory requirement for the submission of a planning application and therefore, is only provided when an applicant requests it. Furthermore, pre-application services are intended to give the applicant the best possible opportunity of their application being granted planning permission at the first attempt and it may be in their interests to seek pre-application advice.

Any pre-application advice, including any views of the case officer, provided to an applicant by an LPA should be made without prejudice to the formal determination of any subsequent planning application. Therefore, it cannot be considered a material consideration.

Community Infrastructure Levy (CIL) obligations are not chargeable for a range of householder improvements, however, LPAs can include information relating to CIL if they feel it's necessary.

The requirements for applicants will include the submission of plans / drawings for all development thresholds. These may include elevation drawings; however, for large scale developments that seek outline planning permission, elevation drawings may not be applicable.

LPAs will not be required to advertise pre-application services offered by other stakeholders.

## **General Comments**

**Question 22:**

Comments in relation to the specific topic areas have been considered as part of the analysis of the questions above.

## Annex A - Full List of Respondents by Category

Total number of responses: 39

<b>Category</b>	<b>Number</b>	<b>% of Total</b>
Business / Consultant	8	20.5
LPA	17	43.6
Government Agency / Other Public Sector	4	10.3
Professional Body / Interest Group	5	12.8
Voluntary Sector	2	5.1
Other (other groups not listed)	3	7.7
<b>Total</b>	<b>39</b>	

### **Businesses / Planning Consultants**

- 01 – Blake Morgan
- 11 – National Grid Plc
- 13 – Redrow Homes South Wales
- 20 – RWE Generation UK plc
- 25 – Persimmon Homes West Wales
- 28 – Stride Treglown
- 35 – Persimmon Homes East Wales
- 37 – Dwr Cymru / Welsh Water

### **Local Planning Authority**

- 02 – Merthyr Tydfil County Borough Council
- 03 – City & County of Swansea
- 05 – Neath Port Talbot County Borough Council
- 06 – Newport City Council (Private)
- 10 – Vale of Glamorgan Council
- 12 – BBNP (on behalf of the three Welsh National Parks)
- 16 – Gwynedd Council
- 17 – Caerphilly County Borough Council
- 19 – Torfaen County Borough Council
- 21 – Wrexham County Borough Council
- 22 – Bridgend Country Borough Council
- 24 – Flintshire County Council
- 27 – Cardiff Council (Private)
- 30 – Carmarthenshire County Council
- 31 – Rhondda Cynon Taf CBC
- 32 – Conwy County Borough Council
- 38 – Monmouthshire County Council

### **Government Agency / Other Public Sector**

- 04 – Ministry of Defence

- 07 – Health and Safety Executive
- 26 – Design Commission for Wales
- 33 – Natural Resources Wales

### **Professional Bodies / Interest Groups**

- 14 – Chartered Institute for Archaeologists (CIfA)
- 15 – Royal Town Planning Institute Cymru
- 18 – Home Builders Federation
- 36 – Institute of Historic Building Conservation
- 39 – POSW

### **Voluntary Sector**

- 09 – Campaign for the Protection of Rural Wales
- 34 – RSPB Cymru

### **Other or Individual**

- 08 – Glandŵr Cymru - the Canal & River Trust in Wales
- 23 – Anon
- 29 – The Theatres Trust

## Annex B – Statistical Overview of all Responses

The table below provides an overview of all responses to the questionnaire. It is based on the tables in the section on Statistical Breakdown and Overview of the Responses to Each Question and gives a strategic outline of the overall responses to the consultation and their relative support for the questions posed.

Consultation question	Agree; Agree with further comment; Disagree	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
1. Do you agree that a notice that an application is not valid should include criteria a) to f)?	Yes	4	9	2	2	0	2	19	54.3
	Yes with further comment	4	7	0	3	1	0	15	42.8
	No	0	1	0	0	0	0	1	2.9
2. Is there any information you think should accompany a notice of non-validation? If so, why is this information necessary?	Yes	3	4	1	1	0	1	10	33.3
	Yes with further comment	1	5	0	1	0	0	7	23.3
	No	4	7	0	2	0	0	13	43.4
3. Do you agree that a period of 14 days for the applicant to submit their appeal is sufficient time given the desired quick turn around of appeals under section 29 of the Planning (Wales) Bill (the Bill)?	Yes	7	5	1	3	0	0	16	48.5
	Yes with further comment	1	5	1	1	0	1	9	27.3
	No	0	7	0	1	0	0	8	24.2

Consultation question	Agree; Agree with further comment; Disagree	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
4. Do you agree that the Welsh Ministers should be required to determine appeals within 21 days of the start of the appeal period?	Yes	4	4	2	2	0	1	13	39.4
	Yes with further comment	2	4	0	1	0	0	7	21.2
	No	2	9	0	2	0	0	13	39.4
5. Where an application is considered to be invalid and an appeal submitted in respect of the notice of non-validation, do you agree that the fee should be retained by the LPA pending the outcome of that appeal?	Yes	4	13	1	4	0	0	22	71
	Yes with further comment	3	3	0	0	0	0	6	19.5
	No	1	1	0	1	0	0	3	9.5
6. Do you agree that when a decision notice is revised it should include a) the date of the approval, and, b) the relevant application reference in the updated version of the notice?	Yes	2	3	2	2	2	2	13	35.1
	Yes with further comment	6	11	0	3	0	1	21	56.8
	No	0	3	0	0	0	0	3	8.1
7. Do you agree that the DMPO should be updated to require LPAs to keep a copy of the most recent decision notice on the planning register?	Yes	5	7	2	3	0	3	20	58.8
	Yes with further comment	2	7	0	2	0	0	11	32.4
	No	1	2	0	0	0	0	3	8.8

Consultation question	Agree; Agree with further comment; Disagree	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
8. Are there any other requirements which you think should be made of the developer in respect of the form, content or display of a notification of development?	Yes	0	0	0	0	1	0	1	3
	Yes with further comment	3	10	1	3	0	0	17	57
	No	5	6	0	1	0	0	12	40
9. Do you agree that LPAs shall not determine an application subject to consultation until any of the following periods have elapsed: a) a period of 21 days, b) until all statutory consultees have provided a substantive response, whichever is the sooner, or c) subject to a longer period if agreed in writing between the LPA and consultee?	Yes	2	11	1	3	1	2	20	54.1
	Yes with further comment	5	5	1	1	1	1	14	37.8
	No	1	1	0	1	0	0	3	8.1
10. Do you agree that earliest time that Welsh Ministers can determine an application made under s.293A of the Town and Country Planning Act 1990 (TCPA) should remain as 14 days after giving statutory consultees notice of the application, as stated in Article 15 of the DMPO?	Yes	3	12	1	4	0	2	20	74.1
	Yes with further comment	0	1	0	0	0	0	1	3.7
	No	1	4	0	0	0	1	6	22.2

Consultation question	Agree; Agree with further comment; Disagree	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
11. Do you agree that appeals determined by Welsh Ministers under s.217 of the TCPA should follow the same format as existing enforcement appeals?	Yes	3	13	2	4	0	1	23	85.2
	Yes with further comment	0	2	0	0	0	0	2	7.4
	No	0	2	0	0	0	0	2	7.4
12. Do you agree that a four week period for LPAs to write their appeal statement is reasonable? If you consider an alternative period is more appropriate for s.217 appeals, please state why.	Yes	4	8	2	3	0	0	17	60.7
	Yes with further comment	0	4	0	1	0	0	5	17.9
	No	0	5	0	0	0	1	6	21.4
13. Do you agree that where an amendment is submitted in relation to major development applications, LPAs should be given an additional four weeks to determine the planning application?	Yes	1	5	1	2	1	1	11	29.7
	Yes with further comment	4	10	1	2	1	2	20	54.1
	No	3	2	0	1	0	0	6	16.2
14 (i). Do you think a fee should be charged for minor material amendments to major applications which have yet to be determined?	Yes	0	4	0	2	0	0	6	20.0
	Yes with further comment	2	12	0	1	0	1	16	53.3
	No	6	1	0	1	0	0	8	26.7



Consultation question	Agree; Agree with further comment; Disagree	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
14 (ii). If yes, do you agree that £190 is an appropriate fee to charge in light of the recent consultation on planning application fees?	Yes	0	10	0	1	0	0	11	42.3
	Yes with further comment	1	3	0	0	0	0	4	15.4
	No	5	4	0	2	0	0	11	42.3
15 (i). Should the validation requirements for a renewal application be the same as the original application?	Yes	1	3	0	1	0	0	5	16.1
	Yes with further comment	0	7	0	1	0	0	8	25.8
	No	7	7	2	1	0	1	18	58.1
15 (ii). Should the LPA have discretion over the consultation requirements for a renewal application?	Yes	2	12	1	2	0	0	17	50
	Yes with further comment	4	3	1	2	0	2	12	35
	No	2	2	0	0	0	1	5	14
15 (iii). Should the LPA have discretion over the notification requirements for a renewal application?	Yes	3	10	2	1	0	1	17	51.5
	Yes with further comment	3	4	0	2	0	1	10	30.3
	No	2	3	0	1	0	0	6	18.2

Consultation question	Agree; Agree with further comment; Disagree	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
16 (i). Should the validation requirements for a minor material amendment application be the same as the original application?	Yes	0	1	0	1	0	0	2	6.2
	Yes with further comment	0	0	0	0	0	0	0	0
	No	8	16	2	2	0	2	30	93.8
16 (ii). Should the LPA have discretion over the consultation requirements for a minor material amendment application?	Yes	2	15	1	2	0	1	21	61.8
	Yes with further comment	5	1	1	2	0	2	11	32.3
	No	1	1	0	0	0	0	2	5.9
16 (iii). Should the LPA have discretion over the notification requirements for a minor material amendment application?	Yes	3	11	2	2	0	1	19	59.4
	Yes with further comment	4	3	0	1	0	1	9	28.1
	No	1	3	0	0	0	0	4	12.5
17 (i). Should the validation requirements for these applications be the same as the original application?	Yes	1	2	0	1	0	0	4	12.5
	Yes with further comment	0	1	0	0	0	1	2	6.3
	No	7	13	2	2	0	2	26	81.2

Consultation question	Agree; Agree with further comment; Disagree	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
17 (ii). Should the LPA have discretion over the consultation requirements for these applications?	Yes	1	16	1	2	0	1	21	61.8
	Yes with further comment	6	0	1	2	0	2	11	32.3
	No	1	1	0	0	0	0	2	5.9
17 (iii). Should the LPA have discretion over the notification requirements for these applications?	Yes	3	16	2	2	0	1	24	80
	Yes with further comment	3	0	0	1	0	0	4	13.3
	No	1	1	0	0	0	0	2	6.7
18. Should the fee to accompany an application that falls within s.73 submitted after refusal of an application under s.96A of the TCPA only be that required to make up the difference in fee cost?	Yes	6	4	1	2	0	1	14	48.3
	Yes with further comment	0	1	0	0	0	0	1	3.4
	No	1	12	0	1	0	0	14	48.3
19. Do you agree that extensions of time should be permitted, subject to both the LPA and applicant agreeing in writing?	Yes	4	6	0	3	2	3	18	50
	Yes with further comment	4	1	1	2	0	0	18	50
	No	0	0	0	0	0	0	0	0

Consultation question	Agree; Agree with further comment; Disagree	Businesses	LPA	Public Bodies	Professional Bodies / Interest Groups	Voluntary Groups	Other	Total	%
20. Do you agree with the level of proposed fees set out in Table 1? If not, what should the fee be?	Yes	4	2	0	0	0	0	6	21
	Yes with further comment	3	4	0	2	0	0	9	33
	No	1	11	0	1	0	0	13	46
21. Do you have any other comments to make regarding the statutory pre-application service?	Yes	1	8	1	2	1	0	13	43
	Yes with further comment	5	3	0	0	0	0	8	27
	No	2	5	1	1	0	0	9	30