

Number: WG40035



Llywodraeth Cymru
Welsh Government

Welsh Government

Consultation Document

Changes to listed building consent applications

Applications for listed building consent by local authorities

Date of issue: 9 March 2020

Action required: Responses by 8 June 2020

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.

This document is also available in Welsh.

Overview

Where listed building consent is required, applications for consent are typically sent to and determined by the relevant local planning authority.

However, where the applicant is the same local authority who would also be the determining authority, these applications are required to be submitted to the Welsh Ministers for determination.

This consultation aims to seek the views of stakeholders for transferring powers to local authorities, so they are able to determine their own applications for listed building consent which relate to the alteration or extension of a listed building.

How to respond

The closing date for responses is 8 June 2020 and you can respond in any of the following ways:

Email: Please complete the consultation response form and send it to:

planconsultations-b@gov.wales

Please include 'Changes to listed building consent applications–WG40035' in the subject line.

Post: Please complete the consultation response form and send it to:

Changes to listed building consent applications
Planning Directorate
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Further information and related documents

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

Contact details For further information:

Email: planconsultations-b@gov.wales

Tel: Owain Williams on 0300 025 1715

Data protection How the views and information you give us will be used

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing. You should also be aware of our responsibilities under Freedom of Information legislation. If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights:

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability

- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer:
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

e-mail: Data.ProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745 or 0303 123 1113

Website: <https://ico.org.uk/>

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CONSULTATION PAPER

Applications for Listed Building Consent made by local planning authorities

1. Introduction and Background

Preface

- 1.1 The Welsh Government is committed to conserving and protecting the historic environment, which is central to the culture and character of Wales and helps contribute to a sense of place and identity. The historic environment comprises various designated assets, including listed buildings, conservation areas, historic assets of special local interest, historic parks and gardens, townscapes, historic landscapes, world heritage sites, scheduled monuments and archaeological remains.
- 1.2 The proposals set out in this consultation paper relate only to applications for the alteration or extension of listed buildings. Listed buildings are those buildings which are of special architectural or historic interest, and are included on a statutory list maintained by the Welsh Ministers¹. Listed buildings are categorised into three grades, in order of importance; Grades I, II* and II (unstarred).
- 1.3 Works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest require Listed Building Consent (“LBC”)². This is to ensure the continued protection, preservation and enhancement of these historic assets in line with Welsh Government policy³. Although LBCs are usually determined by the relevant LPA, there are circumstances in which the Welsh Ministers must determine such applications and issue the consent.

Current position

Applications determined by LPAs

- 1.4 Applications for LBC are typically made to and determined by the LPA⁴. However, where they intend to grant consent for an LBC, the LPA is required to notify the Welsh Ministers of their intention to do so⁵. Following notification, the Welsh Ministers may call in the application for their own determination or allow the LPA to proceed to determine it. Call-in may occur where the application raises issues of more than local importance.

¹ [S.1 Planning \(Listed Buildings and Conservation Areas\) Act 1990.](#)

² [S.7 Planning \(Listed Buildings and Conservation Areas\) Act 1990.](#)

³ [Planning Policy Wales \(Edition 10\) December 2018](#) and [Technical Advice Note 24: The Historic Environment \(May 2017\).](#)

⁴ [S.10 Planning \(Listed Buildings and Conservation Areas\) Act 1990.](#)

⁵ [S.13 Planning \(Listed Buildings and Conservation Areas\) Act 1990.](#)

- 1.5 The duty to notify does not apply in the case of an application for LBC to carry out works affecting only the interior of a Grade II (unstarred) listed building⁶. The Welsh Ministers have also directed certain LPAs do not need to notify their intention to grant LBC for alterations or extensions to grade II listed buildings.

Applications determined by the Welsh Ministers

- 1.6 Where the LPA is the applicant, all LBC applications for the demolition, alteration or extension of listed buildings must be made to and determined by the Welsh Ministers⁷. There are no exceptions to this requirement.

Purpose of consultation

- 1.7 This consultation paper seeks views on our proposals which aim to streamline the LBC process where it concerns applications made by LPAs. It sets out proposals to enable LPAs to determine certain categories of LBC applications themselves, rather than the Welsh Ministers.

2. Proposals for applications for Listed Building Consent made by local planning authorities

Current process

- 2.1 The Welsh Government Planning Directorate currently deals with a range of planning and related decisions casework. This includes Developments of National Significance applications⁸, consents to construct and operate generating stations⁹, called-in applications and associated requests to call-in¹⁰, appeals¹¹ and orders as to railways, tramways and inland waterways¹², among other things. The majority of this casework relates to developments which have wider effects beyond the locality, are of greater than local importance or where it is not practical for the LPA to determine.
- 2.2 The Welsh Government currently deals with LBCs where the LPA is the applicant¹³. The majority of applications received by the Welsh Ministers from LPAs relate to changes and alterations to listed buildings which are largely minor in nature, such as repairs to roofs, replacement materials and drainage improvements.

⁶ [The Listed Building Consent Applications \(Disapplication of duty to notify Welsh Ministers\) \(Wales\) Direction \(2017 No. 25\)](#).

⁷ [Regulation 9 Planning \(Listed Buildings and Conservation Areas\) \(Wales\) Regulations 2012](#)

⁸ [S.62D Town and Country Planning Act 1990](#).

⁹ [S.36 Electricity Act 1989](#).

¹⁰ [S.77 Town and Country Planning Act 1990, s.12 Planning \(Listed Buildings and Conservation Areas\) Act 1990, s.20 Planning \(Hazardous Substances\) Act 1990](#).

¹¹ [S.78 Town and Country Planning Act 1990, s.20 Planning \(Listed Buildings and Conservation Areas\) Act 1990, s.21 Planning \(Hazardous Substances\) Act 1990](#).

¹² [S.1 and 3 Transport and Works Act 1992](#).

¹³ [Regulation 9 Planning \(Listed Buildings and Conservation Areas\) \(Wales\) Regulations 2012](#).

- 2.3 Where an LPA submits an application for LBC to the Welsh Ministers for determination, the LPA is initially required to undertake a period of publicity by publishing details of the application in a local newspaper and as a notice on or near the proposed site for a prescribed period of time¹⁴ prior to the application being submitted. Although, this requirement does not apply to works affecting only the interior of a Grade II listed building¹⁵. LPAs are required to collate any responses received to the application for submission to the Welsh Ministers. While not a requirement, LPAs commonly undertake analysis of the responses to aid with the process of determining the application. This may assist LPAs with putting forward recommendations to their own planning committees for approval.
- 2.4 Once a valid application is submitted to the Welsh Government Planning Directorate for determination, advice will be sought from Cadw, the Welsh Government's historic environment service, and a decision will be made on behalf of the Welsh Ministers in light of the advice. Over the previous 5 years, the Welsh Government has received 142 LBC applications from LPAs and has refused only 1 of these applications.

Reasons for change

National significance

- 2.5 The majority of casework dealt with by the Welsh Government Planning Directorate is of national significance. LBC applications by LPAs for alterations or extensions to listed buildings very rarely relate to works which are controversial or will amount to the demolition of a listed building. Determining applications for LBC can occupy a significant amount of time, which may be better spent dealing with other casework which is of national significance.

Timescales

- 2.6 In most cases, an LPA will take a minimum of 8 weeks to register, consult upon, analyse and make a committee resolution regarding an LBC application in advance of submission to the Welsh Ministers. LPAs will often spend as much time on preparing a submission to the Welsh Ministers as it would take to determine the application itself. The Welsh Ministers have a 12 week target following the submission of a valid LBC application to validate, consult, analyse and make a determination. This duplication of work can result in an LBC even for minor works taking 5 months to determine. This is disproportionate when compared to the usual scale and complexity of the majority of LBC applications received.

¹⁴ [Regulation 9\(4\) Planning \(Listed Buildings and Conservation Areas\) \(Wales\) Regulations 2012.](#)

¹⁵ [Regulation 9\(5\) Planning \(Listed Buildings and Conservation Areas\) \(Wales\) Regulations 2012.](#)

Existing precedent

- 2.7 LPAs currently have the authority to determine their own planning applications for development which often relate to major schemes. Where LPAs determine their own applications, the Welsh Ministers retain powers to call in the proposal for their own determination.

Our proposals

Alterations and extensions to listed buildings

- 2.8 To address the issues outlined in paragraphs 2.5 – 2.7, we propose to remove the requirement for LBC applications made by LPAs for the alteration or extension of listed buildings to be made to and determined by the Welsh Ministers. LPAs would, therefore, determine their own LBC applications for the alteration or extension of listed buildings. Such determinations would otherwise be subject to the same procedures as a private application for LBC. The requirement for the LPA to notify the Welsh Ministers¹⁶ where it intends to grant LBC will continue to apply¹⁷ (subject to any delegated authority which dis-applies the requirement to notify being given to the LPA). As a consequence, the Welsh Ministers will retain the power¹⁸ and opportunity to call in an application where it meets the relevant criteria¹⁹.
- 2.9 In proposing this amendment, we do not consider there would be a substantial difference in the time currently spent by LPAs in consulting upon, preparing and analysing an LBC application for submission to the Welsh Ministers and the time required to determine their own. Furthermore, as LBC applications by LPAs would be subject to notification requirements, the Welsh Ministers would, if necessary and appropriate, be able to call in an application for their determination.
- 2.10 The proposals would eliminate up to twelve weeks from the determination of LPA applications for LBCs providing substantial benefits in terms of timeliness of decisions and improved administrative efficiency.

Demolition of listed buildings

- 2.11 Listed buildings are those of special architectural or historic interest and are a finite resource. Where such a building is demolished in its entirety, this architectural or historic interest will be lost. Since listed buildings are of national significance, it is deemed appropriate for the Welsh Ministers to retain control over the authorisation of the demolition of listed buildings by LPAs at this time. Consequently, the changes outlined above are not

¹⁶ [S.13 Planning \(Listed Buildings and Conservation Areas\) Act 1990.](#)

¹⁷ [The Listed Building Consent Applications \(Disapplication of duty to notify Welsh Ministers\) \(Wales\) Direction \(2017 No. 25\).](#)

¹⁸ [S.12 Planning \(Listed Buildings and Conservation Areas\) Act 1990.](#)

¹⁹ [Paragraph 1.35 Planning Policy Wales \(Edition 10\) December 2018.](#)

proposed for LBC applications made by LPAs for the demolition²⁰ of listed buildings. All such applications should still be made to the Welsh Ministers.

2.12 No changes are proposed in relation to the demolition of unlisted buildings in conservation areas at this time. While this is the case, we will continue to review the position relating to the demolition of listed buildings and unlisted buildings in conservation areas until any future reform of the historic environment acts²¹ is initiated.

Q1	Do you agree LPAs should determine their own applications for Listed Building Consent, where the proposal relates to an extension or alteration? If not, why not?
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Q2	Do you agree applications by LPAs for the demolition of a listed building, should continue to be determined by the Welsh Ministers? If not, why not?
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Q3	Do you have any other comments to make in relation to the proposals outlined in this consultation paper?
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Q4	We would like to know your views on the effects of requiring LPAs to determine their own applications for the alteration or extension of a listed building would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.
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What effects do you think there would be? How could positive effects be increase, or negative effects be mitigated?

²⁰ Follows Shimizu (UK) Limited v Westminster City Council (1997) which adjudged works which involve the demolition of only part of a listed building, falling short of the destruction of the whole listed building, will be works for alteration of the listed building and not constitute demolition.

²¹ [Planning \(Listed Buildings and Conservation Areas\) Act 1990](#) and [Ancient Monuments and Archaeological Areas Act 1979](#).

Q5

Please also explain how you believe the proposal of requiring LPAs to determine their own applications for the alteration or extension of a listed building could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language?