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Welsh Government

Consultation – summary of response

Changes to listed building consent applications

Applications for listed building consent by local authorities

October 2020

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

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1. Introduction

- 1.1 The 'Changes to listed building consent applications – Applications for listed building consent by local authorities' consultation document was launched on 9 March 2020 and was open for responses until 8 June 2020. A total of 5 specific questions were set out in the consultation document, with a standard form provided for ease of response. Comments were also made outside of the standard questions.
- 1.2 This document details a summary of responses to the consultation, the Welsh Government's response and the next steps. It is separated into two further sections.
- 1.3 Section 2 provides an overall statistical summary of the consultation and provides details of how the consultation was conducted.
- 1.4 Section 3 provides a summary of all responses received. This includes:
 - A summary of the key findings under each consultation question;
 - A statistical analysis of the views expressed on each consultation question, where statistics could be extracted;
 - A summary and analysis of the key themes generated for each question;
 - The Welsh Government's response to that analysis; and
 - An explanation of what the Welsh Government will do following the response to each question.
- 1.5 In analysing and summarising the response to this consultation, this report will not address the following:
 - **Clarifications sought to matters of detail:** It is the intention that, when in force, the new processes will be supplemented by guidance. That guidance will seek to clarify matters of detail raised in this consultation paper;
 - **Comments on individual cases or decisions before or made by the Welsh Ministers:** Given the statutory role of the Welsh Ministers in the planning process it is not possible for them, or anyone else within the Welsh Government, to comment on a decision to which they are, or may be party. To do so could prejudice the position of the Welsh Government;
 - **Matters outside the scope of the consultation:** Where comments have been made that are relevant to this consultation but were made in relation to matters outside of the scope of the question, efforts have been made to summarise under the correct question. However, comments outside of the remit of this consultation will not be addressed; and

- **Comments which incorrectly interpret the proposed policy and existing legislation:** Responses have been received which request changes to policy which, in fact, either reflect the intentions set out in the consultation paper or reflect existing legislation which is to be unchanged.

2. Responses

- 2.1 On 9 March 2020 over 200 stakeholders, including individuals and organisations, were notified by email of the publication of the consultation paper. These were drawn from the core consultation list held by the Planning Directorate of the Welsh Government as well as Cadw's core consultation list. This included all local authorities in Wales, public bodies, special interest groups and other groups. The consultation was made available on the Welsh Government's consultation website.
- 2.2 The consultation generated 44 responses and we are grateful to all those who responded. All the consultation responses have been read and considered as part of this analysis.
- 2.3 A consultation form was provided as an annex to the consultation document and separately on the Welsh Government's consultation website. Respondents were asked to assign themselves to one of six broad respondent categories. Table 1 below shows the breakdown of respondents.

Table 1 – Breakdown of Respondents		
Category	Number	% of total
Business / Planning Consultants	6	14%
Local Authorities (including National Park Authorities)	14	32%
Government Agency / Other Public Sector	5	11%
Professional Bodies / Interest Groups	4	9%
Voluntary Sector	10	23%
Others (other groups not listed)	5	11%
Total	44	

- 2.4 Consultation questions 1 and 2 posed policy specific questions. The questions required one of the following responses; ‘yes’, ‘yes (subject to further comment)’ or ‘no’. Consultation question 3 sought qualitative responses in relation to the current processes and procedures for determining applications relating to Listed Building Consent. Consultation questions 4 and 5 related specifically to the potential impact (either positive or negative) the proposals may have on the Welsh language.
- 2.5 A statistical overview of the responses, showing the nature of the responses to questions is presented as part of the analysis to each question in section 3 of this document. Where respondents did not specify a particular answer, these were considered and recorded as ‘don’t know’.

Table 2: Consultation Questions

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?
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?
Q3	Do you have any comments to make in relation to the proposals outlined in this consultation paper?
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. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?
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 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.

- 2.6 A list of respondents and the categories they were assigned to can be found in Annex A of this report. Where respondents have asked for their details to be withheld, they will appear as “Anonymous” under the appropriate category, with the exception of private individuals, all of whom will appear as “Anonymous” in order to comply with the General Data Protection Regulations.

3. Summary of responses

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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Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Business / Planning Consultants	1	0	5	0	6
B	Local Authorities (including National Park Authorities)	4	6	3	1	14
C	Government Agency/Other Public Sector	3	0	1	1	5
D	Professional Bodies/Interest Groups	0	1	3	0	4
E	Voluntary Sector	3	2	4	1	10
F	Others (other groups not listed)	1	1	3	0	5
Total all respondents		12	10	19	3	44

	Yes/Yes subject to comment	No
Total Respondents indicating a response	22	19
Overall Percentage	50%	43%

Statistical review

- 3.1 Responses to the consultation question were mixed, with a slight majority in favour of the proposal for LPAs to determine their own applications for Listed Building Consent, where the proposal relates to an alteration or extension of a listed building.

Key themes

- 3.2 The key themes in response to question 1 were as follows:
- Responses to the consultation question were mixed, with a slight majority agreeing with the proposal;
 - Respondents sought clarification on a number of issues, including mitigation against conflicts of interest, access to appropriate conservation advice and clarity regarding partial demolition; and
 - A number of respondents considered applications for Listed Building Consent relating to the alteration or extension of a Listed Building should continue to be determined by the Welsh Ministers, where the applicant is the LPA.

Overview

- 3.3 The majority of respondents were in full agreement with the proposal, with little additional comments to make or to confirm the proposal would speed up and streamline the process and there would be the retention of safeguarding applications seeking significant alterations via the call-in procedure.
- 3.4 However, there were also respondents who agreed in principle with the proposal, but would only accept the proposal with certain caveats, which are set out below.
- 3.5 A respondent from the Voluntary Sector stated LPAs determining their own applications for Listed Building Consent should not extend to Grade I Listed Buildings. Similarly a Government Agency / Other Public Sector respondent stated the proposal should not extend to ancient monuments.
- 3.6 An LPA and a Professional Body / Interest Group both commented that although they were in favour of the proposal, LPAs would need access to appropriate conservation advice throughout the determination process. Similarly, two further LPAs stated Cadw would need to be consulted where there is uncertainty whether proposed works would constitute an alteration or demolition, as this is not currently clear when considering partial demolition, as well as being consulted on all applications which relate to a Grade I or Grade II* listed building.
- 3.7 A respondent from the 'Other' category stated any application which relates to demolition of a Listed Building, including partial demolition, needs to remain

with the Welsh Ministers as the determining authority as any demolition is still a permanent loss of part of a nationally significant structure and the Welsh Ministers must have the ability to call-in any application for Listed Building Consent, with no exceptions. This comment was also raised by an LPA.

- 3.8 Another LPA suggested a more detailed review of the current system is necessary if efficiency in the process is to be improved.
- 3.9 Of those who disagreed with the proposal, a number of respondents questioned whether LPAs would be totally impartial when determining their own applications for Listed Building Consent and how any conflicts of interest would be addressed and mitigated. These comments were received from various respondents in each of the respondent category groups.
- 3.10 Concerns were also raised around LPAs not being able to employ appropriately qualified staff to deal with conservation issues, as well as issues with lack of resources generally. A respondent from the 'Other' category similarly suggested LPAs should only be able to determine applications for Listed Building Consent if they have access to the necessary expert resources.
- 3.11 Two LPAs commented that contrary to the consultation paper, Listed Buildings are of national significance and therefore, such applications should continue to be determined by the Welsh Ministers.
- 3.12 Another LPA suggested only those LPAs who have a scheme of delegation in place with Cadw should have the ability to determine their own applications for Listed Building Consent.
- 3.13 Finally, a respondent from the Business / Planning Consultants category claimed that although LPAs can determine their own applications for planning permission, there is no evidence this policy is successful in practice and therefore, care should be taken if the same approach is carried forward for Listed Buildings.

Government response

- 3.14 We acknowledge and understand the various concerns raised by respondents to the consultation questions, particularly those concerning impartiality and conflicts of interest, as well as LPAs have access to appropriate advice as Listed Buildings are important historical and cultural structures to Wales.
- 3.15 To mitigate against potential conflicts of interest and ensure impartiality, we will seek to ensure existing legislation which lends itself to achieving these aims¹ in the context of planning permissions, is carried forward and applied to applications for Listed Building Consent, to require a functional separation of duties within the Authority.

¹ Regulation 10 of the Town and Country Planning General Regulations 1992

- 3.16 Furthermore, we will also ensure legislation currently prescribed in the Planning (Listed Buildings and Conservation Areas) Act 1990 is retained, which will mean there will be a statutory requirement for an LPA to notify the Welsh Ministers in circumstances where they would be minded to grant Listed Building Consent. The Welsh Ministers would then make a determination whether to call-in the application for their own determination or not on a case-by-case basis. We believe this enables a consistent approach for all alterations and extensions, while allowing sufficient protection in the case of Grade I and II* listed buildings, as mentioned by two respondents.
- 3.17 In terms of partial demolition, this will fall within the realms of an 'alteration' to a Listed Building, unless a significant portion of the building is to be demolished, in line with the Shimizu judgement² and therefore, as part of this proposal, consider it appropriate for LPAs to determine their own applications for Listed Building Consent which includes partial demolition.
- 3.18 In addressing the point raised to only allow those LPAs with a scheme of delegation in place to determine applications for Listed Building Consent, the scheme of delegation is in place for a different purpose and to not require such LPAs to notify the Welsh Ministers should they decide to approve certain classes of Listed Building Consent. This proposal is intended not to impact on those notification requirements and delegations. However, it will be open to those LPAs with delegation to apply to extend the arrangements to include their own applications for listed building consent.
- 3.19 One response highlighted the lack of evidence that LPAs determining their own applications for planning permission is working properly; however, the Welsh Government has not received evidence to the contrary either through the notification and call-in process for such major schemes. We see no reason why LPAs should not also be able to determine their own applications which related to Listed Building Consent, because of this precedent. Furthermore, we will still require LPAs to refer any application for Listed Building Consent they are minded to grant consent for, to the Welsh Ministers, who will then make a decision whether they consider it appropriate to call-in the application for their own determination.

Next steps

- 3.20 It is proposed to progress with our proposals to allow LPAs to determine applications for Listed Building Consent where they are the applicant and where the application relates only to the alteration or extension of a Listed Building.
- 3.21 Further consideration will be given to the issuance of guidance to LPAs prior to the commencement of these proposals, to help ensure a consistent determination process across Wales.

² Shimizu (U.K.) Ltd. v. Westminster City Council (February 1997)

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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Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Business / Planning Consultants	4	1	1	0	6
B	Local Authorities (including National Park Authorities)	10	3	1	0	14
C	Government Agency/Other Public Sector	4	0	0	1	5
D	Professional Bodies/Interest Groups	4	0	0	0	4
E	Voluntary Sector	6	2	1	1	10
F	Others (other groups not listed)	5	0	0	0	5
Total all respondents		33	6	3	2	44

	Yes/Yes subject to comment	No
Total Respondents indicating a response	39	3
Overall Percentage	89%	7%

Statistical review

3.22 Of those respondents who answered either 'Yes', 'Yes (subject to further comment)' or 'No' to the consultation question, a significant majority agreed with the proposal for the Welsh Ministers to continue determining LPA applications for Listed Building Consent, relating to the demolition of a listed building, with less than 10% disagreeing. Two respondents submitted their response as 'Don't know'.

Key themes

3.23 The key themes in response to question 2 were as follows:

- The vast majority of respondents were in agreement with the proposal;
- The proposal would ensure the contentious issue of demolition listed buildings remain to be determined by the Welsh Ministers;
- Applications for the demolition of a listed building could be determined by an independent third party. This could be the Welsh Ministers or if not, potentially an interest group or public panel.

Overview

3.24 LPAs were most vocal in their support for the proposal, highlighting various reasons why it would be appropriate for the Welsh Ministers to continue determining applications for Listed Building Consent, where the proposal relates to the demolition of a listed building. These included:

- The number of applications submitted for the demolition of a listed building are very few and would allow the Welsh Minister to be focused on the most significant proposals to listed buildings;
- Demolition of listed buildings is always of national significance and applications should be determined by the Welsh Ministers;
- Demolition remains far from straightforward despite the Shimizu case and would therefore be more appropriate for the Welsh Ministers to determine;
- The proposal would enable the scrutiny of the potential loss of a building in a regional / national context, rather than being influenced by local considerations alone; and
- It would remove any conflict of interest.

3.25 Additional responses received by those who agreed with the proposal reflected the comments provided by LPAs, in particular, the need for independent scrutiny due to the potential for such applications to be contentious, subject to high levels of public interest and being of a sensitive nature. These comments were received from those in all respondent categories, with the exception of the Professional Bodies/Interest Groups category.

- 3.26 A respondent from the Professional Bodies / Interest Groups category also stated the Welsh Ministers should determine applications which relate to partial demolition of a listed building, but acknowledged this would be difficult to define, given partial demolition could fall within the realms of an alteration.
- 3.27 Of those who disagreed with the proposal, two respondents submitted comments. A respondent from the Voluntary Sector highlighted that if LPAs are deemed competent enough to determine their own applications for the alteration or extension of a listed building, then they should also be able to determine applications relating to the demolition of a listed building.
- 3.28 Furthermore, a respondent from the Business / Planning Consultants group commented that Ministers are easily influenced and applications for the demolition of a listed building should be determined by a third party or public panel instead.

Government response

- 3.29 Listed buildings are important to the cultural and historic fabric of Wales and any permanent removal of a listed building via demolition needs to be carefully considered against the justification for doing so. As a consequence, we agree with the majority of respondents and believe the Welsh Ministers should remain the decision-maker for applications which seek to demolish any listed building.
- 3.30 However, we will continually review this policy and should it be considered reasonable for LPAs to determine their own listed building consent applications for the demolition of a listed building, we may seek to transfer the necessary decision-making powers to LPAs. This would be subject to further consultation.

Next steps

- 3.31 No action is required as applications relating to the demolition of a listed building will continue to be submitted to and determined by, the Welsh Ministers.

Q3	Do you have any comments to make in relation to the proposals outlined in this consultation paper?
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As this question sought qualitative information, no statistical analysis is provided.

Processes and procedures

- 3.32 A number of respondents, including those from the Business / Planning Consultants, Local Authorities (including National Park Authorities), Professional Bodies / Interest Groups and the Voluntary Sector categories, commented further investigation into how to streamline the current process and make it more efficient is required, rather than simply transferring decision-making powers.
- 3.33 Furthermore, a respondent from the Voluntary Sector suggested professional accredited experts could play a role in the application process as the proposals outlined in the consultation paper will effectively place far greater demand on already stretched LPA resources.

Resource and expertise

- 3.34 Respondents from the Business / Planning Consultants, Local Authorities (including National Park Authorities) and Government Agency / Other Public Sector categories raised concerns regarding the effect the proposals outlined in the consultation paper would have on LPA resources, which are already stretched.
- 3.35 Of these respondents, three LPAs commented that if an LPA as the determining authority did not have the required level of expertise to determine applications for Listed Building Consent, then there is a risk of loss of architectural and historic quality of buildings in Wales.

Guidance

- 3.36 Three LPAs suggested guidance should be issued to help LPAs determine between what would constitute demolition, compared to an alteration or an extension because of how an application for partial demolition could fall into these categories. It was commented this would help achieve consistency across LPAs.
- 3.37 One of these LPAs also suggested guidance could set out approaches to best practice and guidelines to potentially streamline the decision making process.

Conflicts of interest

- 3.38 Similar to comments received in response to Question 1 of the consultation paper, three respondents submitted comments expressing their concerns regarding impartiality and conflicts of interest, should LPAs have the power to determine their own applications for Listed Building Consent which relate to the alteration or extension of a listed building.
- 3.39 A respondent from the 'Other' category stated the proposals outlined in the consultation paper did not include sufficient safeguards to ensure transparency and accountability in the public interest.

Other comments

- 3.40 Additional comments received in response to the consultation included:
- Applications for the demolition of a listed building should continue to be determined by the Welsh Ministers;
 - Clarification on how conditions would be discharged needs to be resolved;
 - War Memorials must continue to be maintained by LPAs;
 - The Welsh Ministers must retain the right to 'call in' applications where necessary; and
 - There are concerns public bodies may purposefully allow the condition of a listed building to deteriorate beyond repair or restoration, meaning demolition is the only option.

Government response:

- 3.41 We agree the current process for determining Listed Building Consent applications where the applicant is the LPA requires streamlining and we consider the proposal as set out in the consultation paper helps achieve this by ensuring LPAs can proceed towards a decision following the necessary publicity and consultation requirements, rather than then submitting an application to the Welsh Ministers for determination.
- 3.42 We acknowledge it is not always possible for LPAs to employ staff with expert knowledge of the historic environment, however, as discussed previously in this 'summary of responses' document, where an LPA is minded to grant Listed Building Consent for an application to which they themselves are the applicant, the Welsh Ministers must be notified, who will then consider whether the application should be called-in for determination, or if they are content for the LPA to issue the decision. In addition, LPAs are already the determining authority for Listed Building Consent applications where they are not the applicant. However, as this is a specialist field, LPAs may wish to consider opportunities for pooling conservation staff resources if they are unable to directly employ such staff.

- 3.43 In relation to guidance, further consideration will be given to this prior to the coming into force of these proposals.
- 3.44 Our response to how potential conflicts of interest and impartiality can be addressed and mitigated against is contained in paragraph 3.15.
- 3.45 In response to other comments received, we agree applications for the demolition of Listed Buildings should continue to be determined by the Welsh Ministers, although we will continually review this policy position to determine whether it would be more appropriate for LPAs to determine their own applications for Listed Building Consent which relate to demolition.
- 3.46 Any conditions attached to a decision granting Listed Building Consent will need to be discharged by the determining body. For example, if the LPA grant Listed Building Consent with conditions attached and the Welsh Ministers do not consider it necessary for the application to be called-in for their own determination, the relevant LPA will be responsible for discharging the conditions. Similarly, if the Welsh Ministers issue a decision, they will typically be responsible for discharging any conditions.
- 3.47 To ensure Listed Buildings are not purposefully allowed to deteriorate beyond repair, the Planning (Listed Buildings and Conservation Areas) Act 1990 contains a number of provisions enabling LPAs or the Welsh Ministers, among other things, to serve notice on the owner of a Listed Building to secure the proper preservation of it.

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. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?
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Overview

- 3.48 The majority of respondents did not respond to the consultation question. Of those who responded, a significant number failed to see the connection or relevance to listed buildings.
- 3.49 Responses were received from a respondent in the Business / Planning Consultants category and the Voluntary Sector category, stating all applications should be made available in Welsh and English.
- 3.50 A Government Agency / Other Public Sector respondent also commented that if a building façade has some original signage in Welsh, this should not be compromised by the proposals set out in the consultation paper.
- 3.51 Finally, one LPA raised concerns regarding consistency across Wales if LPAs develop their own policies in their Local Development Plan relating to the protection of the Welsh language.

Government response

- 3.52 Application forms, legislation, policy and guidance is readily available in both Welsh and English and applicants may decide the language of their application and can expect the same level of service in whichever language they choose.
- 3.53 Listed Buildings are those buildings considered to be of special historical and / or architectural significance, and the desirability of preserving the character and setting are the main considerations required by law. However, the Welsh language is a material consideration in other statutory regimes, such as the planning application process.

Next steps

- 3.54 None required.

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 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.
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Overview

- 3.55 Similar to question 4 of the consultation paper, the majority of respondents did not provide any comments in relation to this question.
- 3.56 Of those who responded, similar responses were received to what was provided in question 4, in that all forms, letters etc. should be available bilingually.
- 3.57 One Business / Planning Consultant also commented such applications should continue being assessed by the Welsh Ministers as many LPAs have non-Welsh and non-Welsh speaking employees who may not value the history of Wales or have knowledge of a building's importance in the same way as a Welsh or Welsh-speaking employee.

Government response

- 3.58 Applications forms, legislation, policy and guidance is readily available in both Welsh and English and applicants may decide the language of their application and the applicant can expect the same level of service in whichever language they choose.
- 3.59 We do not consider the heritage or the ability of employees to speak Welsh fundamental in determining or understanding the historical or architectural significance of a listed building.

Next steps

- 3.60 None required.

ANNEX A – LIST OF RESPONDENTS BY CATEGORY

Business / Planning Consultant	LPA
Anonymous	Snowdonia National Park Authority
Anonymous	Newport City Council
Anonymous	Anonymous
Anonymous	Anonymous
GAP Architectural & Engineering Design Services	Pembrokeshire Coast National Park Authority
Snail Trail Handweavers	Caerphilly County Borough Council
	Pembrokeshire County Council
Government Agency / Other Public Sector	Isle of Anglesey County Council
Anonymous	Anonymous
North and Mid Wales Association of Local Councils	Mid and West Wales Conservation Officers Group
Overton Community Council	Anonymous
Theatres Trust	Monmouthshire County Council
Anonymous	Gwynedd Council
	Carmarthenshire County Council
Voluntary Sector	
Anonymous	Professional Bodies / Interest Groups
Anonymous	Anonymous
Anonymous	Anonymous
Anonymous	Institute of Historic Building Conservation
Anonymous	Anonymous
Anonymous	
Anonymous	Other
Anonymous	Glamorgan Gwent Archaeological Trust
Historic Houses	Anonymous
Campaign for the Protection of Rural Wales	Anonymous
	Anonymous
	Anonymous