



PLANNING COMMITTEE – 12 OCTOBER 2016

SUBJECT: WELSH GOVERNMENT CONSULTATION APPEALS, COSTS AND STANDARD DAILY AMOUNTS

REPORT BY: CORPORATE DIRECTOR - COMMUNITY SERVICES

1. PURPOSE OF REPORT

1.1 Welsh Government (WG) is currently running a consultation about changes to appeals, costs and standard daily amounts. The proposals are summarised below and answers are suggested to the questions asked by WG.

2. SUMMARY

2.1 The proposals contained in this consultation paper are intended to:

- Ensure a more proportionate, cost effective and streamlined process which meets the needs of all parties;
- Increase the speed of decisions, thereby promoting growth and providing greater certainty for developers and communities;
- Increase transparency through better communication and exchange of information among all parties to promote public participation and public confidence in the appeal process; and
- Increase fairness for all involved through ensuring good behaviour among all parties.

The paper can be read in full in the consultation section at Welsh Government's website.

2.2 The paper introduces measures which reduce the time taken to determine an appeal or call-in. The proposals include the requirement for a full statement of case to be submitted from the outset, to require the submission of responses by local planning authorities (LPAs) and third parties at an earlier stage, to alter how an examination is undertaken, and will prescribe how an appellant may make changes to an appeal. It is also proposed to make changes to how statements of common ground are handled, and to the time limit for appeals relating to certificates of lawfulness.

2.3 Allied to the proposed changes relating to examination, the costs regime will be extended to appeals, call-ins and applications made directly to the Welsh Ministers which are determined by way of written representations. It is also proposed to publish updated guidance, which will assist Planning Inspectors to initiate awards of costs, in addition to the established ability for applicants or appellants to make costs applications. It is also proposed to enable the recovery of costs incurred by the Welsh Ministers, where wasted and unnecessary cost to the public purse is incurred.

2.4 Currently, LPAs are charged a standard daily amount by PINS (on behalf of the Welsh Ministers) for certain proceedings including the examination of local development plans and inquiries relating to Compulsory Purchase Orders (CPOs). This daily amount incorporates Planning Inspector time as well as general staff costs, which include overheads, administrative time and time spent by planning officers. These rates were set in 2012. This

consultation paper proposes an update to the standard daily amounts to align them with current costs. It is also proposed that PINS charges general staff costs separately from Planning Inspector time to more accurately reflect the variable time taken by officers when dealing with examinations and inquiries.

3. LINKS TO STRATEGY

- 3.1 The report takes account of the adopted Caerphilly County Borough Local Development Plan up 2021.

4. THE REPORT

- 4.1 The main changes to the appeal and call-in procedures are set out as bullet points below, followed by the questions and answers
- Appellants will submit their full statements of case at the start of the appeal process
 - The definition of a full statement of case is: *a written statement which contains full particulars of the case and all the matters which a person proposes to raise and copies of any documents, materials and evidence they intend to rely on in evidence.*

Q1: Do you agree with our procedural proposals regarding full statements of case to be submitted with an appeal in most circumstances? If not, why not?

Answer: Yes

Q2: Do you agree with the definition of 'full statement of case' in paragraph 2.10? If not, why not?

Answer: Yes

- Section 215 appeals will be determined by PINS rather than the magistrates.
- In view of the submission of the appellant's statement at the start of the process it is proposed to reduce the response times for the various parties, including the submission of the questionnaire and documents by the LPA within 5 days of the start date of the appeal instead of two weeks.

Q3: Do you agree with our proposals to enable the Welsh Ministers (or PINS) to determine the procedure for and make decisions on appeals against notices requiring the proper maintenance of land? If not, why not?

Answer: Yes

Q4: Do you agree with our proposals relating to changes to initial procedure and submission of core documents by parties? If not, why not?

Answer: The timescale for the submission by the LPA of the questionnaire and documents is too short. It may work at present for householder appeals, but that is because they are simple and involve few documents. It would place an unreasonable burden on LPAs to have to produce the appropriate documentation for major appeals within 5 days.

- Currently, a Statement of Common Ground is required to be submitted for appeals and call-ins where the inquiry procedure is used, and it is required to be agreed 4 weeks before the notified inquiry date. It is now intended to only encourage the submission of a statement where it is possible to reach agreement between the parties.

Q5: Do you agree with our proposals regarding Statements of Common Ground? If not, why not?

Answer: Yes

- It is proposed that the appeal examination method will be tailored to the specific requirements of the appeal or called in application. Decisions on the examination method will continue to be made by PINS and in line with published criteria, and may be altered at any point where issues come to light requiring more detailed examination. Parties will participate in hearings or inquiries by invitation of the Inspector only.

Q6: Do you agree with our proposals for the mixed-mode examination of appeals and call-ins? If not, why not?

Answer: Yes

Q7: Do you agree that further representations requested by the Inspector as part of the examination of an appeal or call-in should be subject to a word-limit of 3,000 words per topic? If not, why not?

Answer: Yes

- It is proposed to preclude new matters being raised following the notice of appeal, except under specific circumstances. Those circumstances are:
 - It can be demonstrated that the matter could not have been raised at the time the application was being considered by the LPA, and could only have been raised following the notice of appeal; or
 - It can be demonstrated that the matter being raised following the notice of appeal was a consequence of exceptional circumstances.

Q8: Do you agree with the circumstances in which an application may be varied in the case of an appeal? If not, why not?

Answer: Yes, but careful consideration will have to be given to the meaning of 'exceptional circumstances'.

Q9: Do you agree with the circumstances in which new information may be introduced during an appeal or call-in? If not, why not?

Answer: Yes.

- At present, there is no time limit on making an appeal against the refusal of a certificate of lawful existing or proposed development. It is proposed to introduce a six month limit.

Q10: Do you agree with our proposals to introduce a 6 month time limit for certificate of lawfulness appeals against a decision by a LPA? If not, why not?

Answer: Yes

4.2 Costs arrangements will be changed in the following manner.

- The costs regime will be extended to the process of determining developments of national significance, and appeals determined by written representations.
- Welsh Ministers (including PINS) will be able to recover their costs, either in full or in part, where unreasonable behaviour has occurred that has led to unnecessary or wasted expense to the public purse.
- Claims for costs should be made early in the process.
- Inspectors will be able to initiate an award of costs where they think one of the parties has behaved unreasonably.

Q11: Do you agree that Welsh Ministers should be able to recover their own costs? If not, why not?

Answer: Yes

Q12: Do you agree with the grounds for unreasonable behaviour specified within the draft updated guidance? If not, please specify alternative or additional grounds.

Answer: Yes

Q13: Do you agree with the process for the awards of costs set out the draft updated guidance? If not, why not?

Answer: Yes

Q14: Should any additional information be included within the draft updated guidance?

Answer: No

4.3 It is also proposed to amend the procedure for the collection of standard daily amounts charged by Welsh Ministers and PINS for procedures such as LDP examinations. At present the standard daily amounts for qualifying procedures and local inquiries are inclusive of Planning Inspector time, planning officer time and other administrative staff time. The most recent change to the prescribed standard daily amounts charged by PINS came into force in April 2012. Those amounts are, £742 per day for local inquiries; and £679 per day for other qualifying procedures.

4.4 It is proposed to:

- Update the standard daily amounts charged by PINS in relation to qualifying procedures and local inquiries to reflect current costs;
- Alter how those daily amounts are charged to ensure that Planning Inspector time and general staff costs (including planning officer time and administrative staff time) can be charged separately and accurately;
- Apply those standard daily amounts to all relevant proceedings so that the same rates are charged across the piece; and
- Prescribe and publish future changes to those standard daily amounts for future financial years.

Q15: Do you agree with the amended method for charging daily amounts for qualifying procedures and local inquiries? If not, why not?

Answer: Yes, there is nothing wrong in principle with making explicit the charge incurred by officers other than the inspector

Q16: Do you agree with the proposed standard daily amounts? If not, why not?

Answer: No, not without a clear indication of how the new costs will differ from the old costs. The suggested new daily costs would be:

	Planning Inspector	Director	Sub-group Leader	Planning Officer	Administrative Staff
March 2018	£508	£635	£558	£312	£283

It is not clear what impact these hourly costs would have on the total cost for an inquiry or other procedure.

5. EQUALITIES IMPLICATIONS

5.1 There would be no equalities implications in respect of this recommended response.

6. FINANCIAL IMPLICATIONS

6.1 None.

7. PERSONNEL IMPLICATIONS

7.1 None.

8. CONSULTATIONS

8.1 None.

9. RECOMMENDATIONS

9.1 That Officers reply to the questions set out in the consultation on the basis of the comments above, and any additional comments from Members.

10. REASONS FOR THE RECOMMENDATIONS

10.1 As set out in the report above.

11. STATUTORY POWER

11.1 The Town and Country Planning Act 1990 and related acts and statutes.

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Background Papers: Consultation from Welsh Government