

Consultation Response Form

Appeals, costs and standard daily amounts

We want your views on our proposals for improvements to how appeals and references to the Welsh Ministers are dealt with, providing updated guidance on awards of costs and changes to standard daily amounts charged by the Planning Inspectorate for certain proceedings.

Please submit your comments by 4 November 2016.

If you have any queries on this consultation, please email:

planconsultations-g@wales.gsi.gov.uk or telephone Lewis Thomas (029 2082 3201) or Owain Williams (029 2082 1715).

Data Protection

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

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. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Appeals, cost and standard daily amounts

Consultation Reference: WG28856

Appeals, costs and standard daily amounts		
Date of consultation period: 10 August 2016 – 4 November 2016		
Name	Rhian Jardine Head of Sustainable Communities	
Organisation	Natural Resources Wales	
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E-mail address	KSP.Planning@cyfoethnaturiolcymru.gov.uk	
Type <i>(please select one from the following)</i>	Businesses/Planning Consultants	<input type="checkbox"/>
	Local Planning Authority	<input type="checkbox"/>
	Government Agency/Other Public Sector	<input checked="" type="checkbox"/>
	Professional Bodies/Interest Groups	<input type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	<input type="checkbox"/>
	Other (other groups not listed above) or individual	<input type="checkbox"/>

2.0 Appeal and call-in procedures

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?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:
NRW supports the proposal for full statements of case to be submitted with an appeal in most circumstances. We consider this allows for the frontloading of the process, and would allow statements of case from interested parties to be produced in the full knowledge of all matters raised by the appellant.

Q2	Do you agree with the definition of ‘full statement of case’ in paragraph 2.10? If not, why not?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:
NRW agrees with the definition of ‘full statement of case’ in paragraph 2.10: “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”. While we note from comments made in paragraph 2.5 that the statement will include policy arguments, for the purpose of clarity, the definition should also specify the need to link case particulars with relevant national and local planning policy.

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 hazardous substances contravention notices and appeals against notices requiring the proper maintenance of land? If not, why not?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:
NRW has no comments on this matter.

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Q4	Do you agree with our proposals relating to changes to initial procedure and submission of core documents by parties? If not, why not?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:

NRW agrees with the adoption of a clear procedure for submitting core documents by parties, which would allow for focused representations at the outset.

We recognise the need to take on board positive planning reforms and a need for the planning appeal process to speed up. However, we would have concerns where there is no flexibility for the Planning Inspector to alter the timescales for submissions from interested parties to reflect the complexity of the case.

The changes propose that representations are submitted within 4 weeks of the starting date of an appeal (paragraphs 2.42-2.45) and detailed final comments to be submitted within 6 weeks (paragraphs 2.46 and 2.47). However, from our experience of dealing with large-scale cases there may be occasions where despite best endeavours, longer-time periods may be required to appropriately consider complex and technical information. We therefore believe that it would be prudent to include clauses enabling Planning Inspectors the discretion to allow, where appropriate, negotiated timescales for submission of representations.

Q5	Do you agree with our proposals regarding Statements of Common Ground? If not, why not?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:

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We welcome the intention to produce guidance for Statements for Common Ground (SoCG) and we would be pleased to offer our comments, informed by our experience to date, on the preparation of this guidance.

We support proposals set out in paragraphs 2.56-2.60 and the criteria in Annex B for mixed mode examination, which would allow a Planning Inspector to tailor the procedure necessary to case requirements and alter the method of examination at any point in time should this be required. We would ask, however, that due notification of a change in proceedings, including changes in the type of information to be submitted and any changes in timescales are clearly explained to interested parties, including statutory consultees.

We agree that SoCG may be appropriate in appeals and called-in planning applications. We recognise that SoCG can help inform the appeal procedure. However, given the concerns highlighted in the consultation document, we agree that their preparation, whilst encouraged, should not be a statutory requirement and agree that SOCG should not be subject to a statutory deadline. Where a SOCG is to be agreed after the commencement of proceedings, we would propose that such a statement is initiated by a Planning Inspector where parties have indicated those areas to be agreed. The intention of our proposal is to ensure that parties are only asked to prepare statements where common ground is considered feasible, to prevent the preparation of unnecessary statements and to prevent unnecessary pressure being placed on a party to agree common ground where they are not in a position to do so.

Q6	Do you agree with our proposals for the mixed-mode examination of appeals and call-ins? If not, why not?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:

We support proposals set out in paragraphs 2.56-2.60 and the criteria in Annex B for mixed mode examination, which would allow a Planning Inspector to tailor the procedure necessary to case requirements and alter the method of examination at any point in time should this be required. We would ask, however, that due notification of a change in proceedings, including changes in the type of information to be submitted and any changes in timescales are clearly explained to interested parties, including statutory consultees.

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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?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p>We seek further clarity on whether the proposed 3000 word limit per topic for further submissions includes or excludes technical appendices in addition to the main text.</p> <p>In cases where significant technical detail is required, it is often useful to provide a non-technical summary to explain the main findings. A 3000 word limit may also limit the matters that can be raised, and the level of detail provided.</p> <p>It is our view that where persons are involved in an appeal, they should be encouraged to prepare statements, which are concise and a 3000 word limit should be used as a guide rather than a rigid maximum. Alternatively, it may be prudent to include clauses to provide Planning Inspectors with the discretion to allow a negotiated change in word limit of submissions. In our role as a statutory consultee, we would welcome an opportunity to work with Welsh Government to develop guidance on this matter.</p>				

Q8	Do you agree with the circumstances in which an application may be varied in the case of an appeal? If not, why not?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p>We agree with the principle that the Planning Inspectorate (PINS) should deal with an application in the form it was considered by a Local Planning Authority (LPA). We would agree that revisions to an application should be considered by the LPA in the first instance (paragraph 2.76) and changes to an application are precluded once a notice of appeal has been submitted and can only be made in</p>				

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prescribed circumstances (paragraph 2.77). In raising awareness, we would suggest that guidance is made available to an applicant and appellant, which clearly explains the need to agree changes at the planning application stage and before submitting an appeal.

Q9	Do you agree with the circumstances in which an application may be varied in the case of an appeal? If not, why not?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Comments: We agree with the specific or exceptional circumstances (described in paragraph 2.74), which allow new information to be raised following notice of appeal, which is at the discretion of the Planning Inspector.</p>				

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?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Comments: We agree with the introduction of a six month time limit from the date of a planning decision for appeals to be made. We note that it is not proposed to introduce a time limit in the case of appeals relating to the failure of a LPA to determine a planning application. We are supportive of those changes, which will aim to ensure consistency with other types of planning appeals.</p>				

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3.0 Costs

Q11	Do you agree that Welsh Ministers should be able to recover their own costs? If not, why not?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p>We agree with the introduction of a six month time limit from the date of a planning decision for appeals to be made. We note that it is not proposed to introduce a time limit in the case of appeals relating to the failure of a LPA to determine a planning application. We are supportive of those changes, which will aim to ensure consistency with other types of planning appeals.</p>				

Q12	Do you agree with the grounds for unreasonable behaviour specified within the draft updated guidance (at Annex C)? If not, please specify alternative or additional grounds.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p>NRW has no comments on this matter.</p>				

Q13	Do you agree with the process for the awards of costs set out in Appendix A of the draft	Yes	Yes	No
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	updated guidance (at Annex C)? If not, why not?		(subject to further comment)	
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p>We agree with the process for the awards of costs, which is explained in Appendix A of the draft updated guidance (at Annex C). It would be helpful to have a flowchart to show the process to be followed, similar to the flow diagram shown in Annex A.</p> <p>In reference to comments made in Appendix A2, the appeal form allows an opportunity for the appellant to submit an application for an award of costs. It would be helpful to clarify whether the same form would be used during proceedings and/or following the withdrawal of an appeal; and for other persons taking part in the appeal proceedings.</p>				

Q14	Should any additional information be included within the draft updated guidance (at Annex C)?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p>NRW has no comments on this matter.</p>				

4.0 Standard Daily Amounts of Certain Proceedings

Q15	Do you agree with the amended method for charging daily amounts for local inquiries and qualifying procedures? If not, why not?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p>NRW has no comments on this matter.</p>				

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Q16	Do you agree with the proposed standard daily amounts at Annex D? If not, why not?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: NRW has no comments on this matter.				

I do not want my name/or address published with my response (please tick)

How to Respond

Please submit your comments in any of the following ways:

Email
Please complete the consultation form and send it to : planconsultations-g@wales.qsi.gov.uk [Please include ' Appeals, costs and standard daily amounts ' in the subject line]
Post
Please complete the consultation form and send it to: Appeals, costs and standard daily amounts consultation Decisions Branch Planning Division Welsh Government Cathays Park Cardiff CF10 3NQ
Additional information
If you have any queries on this consultation, please

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Email: planconsultations-g@wales.gsi.gov.uk

Telephone: Lewis Thomas (029 2082 3201) or Owain Williams (029 2082 1715)