

REPORT OF HEAD OF DEVELOPMENT MANAGEMENT

SUBJECT:
**WELSH GOVERNMENT CONSULTATION – IMPROVING THE PLANNING
APPEAL PROCESS**

Background

The Welsh Government is committed to improving the planning appeal process, as part of its wider drive to make the development management process more responsive to users' needs. The appeal system is an integral part of the planning system and plays a significant role in ensuring the delivery of Welsh Government objectives. The current system allows for public involvement and a high standard of decision making based on principles of openness, fairness and impartiality.

It is however important to ensure the system remain efficient and as effective as possible and changes are proposed to simplify the system where there is scope and to ensure a better service is delivered. The proposals flow in the main from provisions in the Planning and Compulsory Purchase Act 2004 and the Planning Act 2008.

Purpose of this report

The purpose of this report is to seek member's endorsement for the PCNPA response to the consultation.

Main Changes to the Appeal Process

The main changes are:

1. Introduction of a fast track system for householder appeals
2. Enable the Planning Inspectorate to determine the appeal method for each case (ie written representation, hearing or inquiry) based on specific criteria
3. Extend the costs regime to written representation appeals
4. Simplify the procedure for correcting errors in appeal decisions
5. Transfer authority to Inspectors to determine appeals involving old minerals permissions
6. Change the arrangements for payment of enforcement application fees so the whole fee is payable to the LPA
7. Require Statements of Common Ground to be submitted earlier
8. Introduce a formal process for undertaking bespoke time tables for complex inquiries

The consultation document is available for members should they wish to read this in full.

Response to the Consultation

Current situation

The PCNPA deals with approximately 17 planning appeals each year and has a good success rate (this year to date 66% of appeals have been dismissed). The majority of appeals are dealt with through the Written Representation method although it is likely that a greater number will be dealt with through the 'fast track' householder system if this is adopted.

The 'fast track' system

PCNPA has been a pilot authority in the trial for the 'fast track' householder system but to date has only dealt with one appeal under this system. The system offers a much more efficient and quicker route for straight forward appeals and is supported in principle. The system is reliant on the LPA's case being made through its officer report and this Authority is robust in the content of both its delegated and committee reports which are written with regard to any possible future appeal. The Authority's statement of case is normally already presented through the officer report in written representation and hearing appeals except to add any pertinent comments in relation to the appellant's case.

There is some concern with the householder fast track system in that there is no opportunity for the LPA to respond to an appellant's grounds of appeal which is considered to be necessary to clarify points that may not have been raised previously. The system is also reliant on electronic working and at present this Authority does not have the facilities to be able to offer this to its full extent.

It is agreed that the Planning Inspectorate should agree to the appeal method for each case based on adopted criteria; however there is no criteria identified for the fast track householder system in the consultation and this will need clarifying.

Award of costs

Whilst it is also agreed that the costs regime should be extended to written representation appeals, there is some concern that this could lead to applications for costs being made without full regard for the reasons for a successful costs application which is based on unreasonable behaviour (by either applicant or LPA) rather than the merits of the scheme. It is also unclear how an LPA responds to an application for costs under the fast track system as there is no opportunity for the LPA to present any further statement of case under this regime.

There is no objection to the proposals for simplifying the procedures in relation to correcting errors in appeal decisions nor to transferring authority to Inspectors on old minerals permissions (at present these are determined by the Welsh Ministers based on a recommendation from an Inspector). The payment of the fees to LPAs on enforcement cases is also welcomed and there is no objection to the introduction of early submission of Statements of Common Ground or the introduction of processes for undertaking bespoke time tables for complex inquiries.

The Welsh Government has requested feedback on 17 questions and the questions and recommended responses are listed at Annex A.

Recommendation

That members endorse the recommendations set out in Annex A.

Background Documents

*(For further information, please contact *)*

Consultation Response Form

Improving the planning appeals process

Please submit your comments by 17 November 2011.

If you have any queries on this consultation, please email:
planconsultations-a@wales.gsi.gov.uk or telephone 029 2082 3879.

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 tick the box below. 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.

Improving the planning appeals process		
17 August 2011 - 17 November 2011		
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Type <i>(please select one from the following)</i>	Businesses	<input type="checkbox"/>
	Local Planning Authority	<input checked="" type="checkbox"/>
	Government Agency/Other Public Sector	<input 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"/>

Fast track householder appeals

Q1	Do you agree in principle with the introduction of a fast track householder appeal service in Wales? If not, why not?
Comments: Yes	

Q2	What do you consider to be the advantages and disadvantages, for (i) appellants, (ii) local planning authorities and (iii) the wider community, of introducing a fast track householder appeal service?
Comments: It is considered that the householder service is a more efficient and quicker service for all concerned and is welcomed in principle. For the appellants, it represents a similar process to the existing written representation method and enables a full statement of case to be presented with the appeal. The advantage for appellants is that there is no opportunity for the LPA to respond to the statement of case, which is considered to be a disadvantage for the LPA who may wish to respond to new issues that are presented. This is considered to be biased in favour of the appellant who has the benefit of officer	

reports to base their statement of case against.

In addition, the method excludes third parties from making any representation over and above that presented during the application stage which does disadvantage them from making further or new comments.

The process does not allow any dialogue on site, which can be useful to clarify points about plans or points of interest. The absence of a planning officer at those sites where access is required could lead to a perception of bias in favour of the appellant albeit no discussion will be allowed.

The system is also reliant on electronic working and for some LPAs the technology is not available for this to occur. The time frame for the administration side is also very restricted and it is considered that this should be increased.

What is your opinion of the following elements of a householder appeal service operating along similar lines to the current system in England? Are there any aspects of the system which you think might be unsatisfactory – if so, why?

Q3

- 12 weeks from decision to lodge appeal
- 8 week target for appeal decision
- Appeal procedure conducted electronically wherever possible
- Local planning authority case to comprise documentation concerning handling and determination of application and submitted with appeal questionnaire
- Appellant case to comprise statement on submitted appeal form explaining why local planning authority's decision is contested
- Neighbouring occupiers' representations at application stage carried forward to appeal – notification at appeal stage only to confirm whether objections still stand
- Unaccompanied site visit by inspector in all cases except where access into site needs to be provided
- Where access provision needed, appellant/representative only present, solely to enable accesser access provision needed, notice given of time window (we advocate a 2 hour window, eg between 10.00am and midday) when inspector will call
- Inspector to decide whether he/she wishes to view site from neighbouring property in response to any request to do so

Comments:

The electronic system is difficult for some LPAs to use due to limited technology and resources to provide this.

The system does not enable the LPA to respond to any points arising from the appellants statement of case and which may require clarity/explanation.

No opportunity for third parties to make further comments/add to their submissions

In cases where access required it is considered that the LPA should be able to attend in the interests of fairness and transparency

The LPA should be able to ask for the Inspector to view a site from a neighbouring property

Q4 Do you agree with the scope of the definition of householder developments set out in footnote 1 above? Are there types of householder development that you feel should be excluded, or other types included? If so, which types and why?

Comments:

It is considered that domestic renewable energy proposals should be specifically included in the list as they may not fall under any of the other categories.

Q5 Do you have comments to make in relation to any other aspect of a fast track householder service?

Comments:

The pilot scheme highlighted the difficulties for the LPA administration to be carried out in the very tight timescales required. It is considered that this should be extended.

It is also not clear how applications for costs will be dealt with under this system as the LPA has no opportunity to respond to the appellant's case. Will there be an opportunity for LPAs to respond where an application for costs is made and how will this influence the time scales involved?

Determining the appeal method

Q6 Do you agree with the Planning Inspectorate, on behalf of the Welsh Ministers, being able to determine the appeal method for section 78 planning, advertisement, section 174 enforcement, section 20 listed building consent, section 39 listed building consent enforcement, section 195 established use certificate, section 208 tree preservation order and section 21 Hazardous

substance appeals, and section 77 and section 12 applications by applying Ministerially approved and published indicative criteria? If not, why not?

Comments:
Agreed

Q7

Do you agree with the current informally used indicative criteria (shown at paragraphs 8 and 9 of the consultation paper) that we consider should form the basis of the Ministerially approved indicative criteria? If not, which of these do you disagree with, and why? What criteria would you propose instead?

Comments:
Agreed with the proviso that criteria for applications qualifying under the householder fast track system be included.

Extending the costs regime to planning appeals dealt with by the written method

Q8

Do you agree in principle that the costs regime should be extended to apply to planning appeals dealt with via the written method? If not, why not?

Comments:
Agreed

Q9

What are the advantages or disadvantages to the appeals system and its users that you see from such a change?

Comments:

Advantages - The introduction of the costs regime to the written method will reduce the number of hearings which are held to be able to make an application for costs, resulting in further time and resources for all concerned.

Disadvantages - The written method enables appeals to be lodged without a professional agent and there is concern that applications for costs will be made without full knowledge of the grounds for such applications. It is envisaged that applications will be made on the grounds that the wrong decision was made rather than on the grounds of unreasonable behaviour within the defined terms of the Circular advice. It is suggested that clear guidance be provided to appellants on this aspect.

See question 5 response on how will the LPA respond to an application for costs.

It is recommended that the costs regime should not be applied to written representation appeals until the proposed Circular is published.

Correcting errors in planning decisions

Q10 Do you agree with the change to the correction of errors process (at paragraphs 31 to 34 of the consultation paper)? If not, why not?

Comments:

Yes but subject to discussion with the parties concerned

Transfer of authority to inspectors for determination of old mining permissions

Q11 Do you have any views on the merits of this change?

Comments:

It is considered that this would assist in unnecessary challenges but should be through agreement with all the parties concerned.

Provision of the double fee on deemed applications in enforcement cases in its entirety to local planning authorities

Q12 Is there any comment you wish to make in relation to this change?

Comments:

This is welcomed.

Introducing a formal process and guidance for bespoke inquiries

Q13 Do you agree with the Planning Inspectorate's view of when a bespoke timetable will be required? If not, why not?

Comments:

Agreed

Q14 Do you agree, in principal, that formal guidance should be published on the operation of bespoke timetables? If not, why not?

Comments:

Agreed

Q15 What is your opinion of the bespoke timetable process in Wales operating along similar lines to the current process in England? Are there any aspects of the

	process which you think might be unsatisfactory – if so, why?
Comments: No objection to the approach	

Q16	Do you have comments to make in relation to any other aspect of a formal bespoke timetable process?
Comments: No	

Requiring statements of common ground to be submitted earlier in the inquiry process

Q17	Is there any comment you wish to make in relation to this change?
Comments: It is agreed that this is a more sensible approach enabling these grounds to be agreed prior to the preparation of the proof of evidence.	

Q18	We have asked a number of specific questions. If you have any related issues on points which we have not specifically addressed, please use the space below:
Comments: None	

I do not want my name/or address published with my response (please tick) <input type="checkbox"/>
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How to Respond

Please submit your comments by 17 November 2011, in any of the following ways:

E-mail
Please complete the consultation form and send it to : planconsultations-a@wales.gsi.gov.uk [Please include 'Improving the planning appeals process - WG13037' in the subject line]
Post
Please complete the consultation form and send it to: Planning Appeals System Consultation Planning Division Welsh Government Cathays Park Cardiff CF10 3 NQ
Additional information
If you have any queries on this consultation, please Email: planconsultations-a@wales.gsi.gov.uk Telephone: 029 2082 3879