

# Report

## Cabinet Member for Regeneration and Investment

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### Part 1

Date: 29 November 2016

Item No:

**Subject** **Welsh Government – Consultation on Appeals, Costs and Standard Daily Amounts (WG28856)**

**Purpose** The respond to a Welsh Government consultation paper seeking views on the proposed changes to appeals and costs regulations.

**Author** Principal Planning Officer (East Team)

**Ward** All

**Summary** Planning in Wales is a function delegated to the Welsh Government and the Welsh Government is committed to streamlining the planning process through the re-evaluation of processes and procedures. Key Changes Proposed to the Appeal System are:

- Earlier submission of appellants' statements of case
- Reducing the time available for the Council to prepare its appeal statement
- The early provision of Statements of Common Ground
- Guidance on how an appeal proposal may be revised
- Time Limits for Lawful Development Certificate Appeals
- Extension of the costs regime to cover appeals dealt with by written representations
- The Inspectorate to be allowed to seek its costs
- Increase in the fees charged by the Inspectorate for certain roles it performs (Examination of Local Development Plans and Compulsory Purchase Orders).
- Changes to speed up the 'call-in' procedure.

**Proposal** **To agree the Council's response to the consultation, as outlined in the Report.**

**Action by** Head of Regeneration, Investment and Housing

**Timetable** Immediate

This report was prepared after consultation with:

- Head of Finance (Chief Finance Officer)
- Head of Law and Regulations (Monitoring Officer)
- Head of Regeneration, Investment and Housing

**Signed**

## 1. Background

- 1.1 The Welsh government is committed to streamlining the planning process and has undertaken a series of changes in recent years to expedite that process. Key changes have been:
- LPAs required to give pre-application advice when asked (Planning Wales Act 2016)
  - Mandatory pre-application consultation for major planning applications (Wales Planning Act 2016)
  - Introduction of fees to deal with the submission of material changes to applications during the application process (Planning Wales Act 2016)
  - Changes to appeal submissions (Wales Planning Act 2016)
- 1.2 The aim is to ensure applications are 'front loaded' and key issues identified at an early stage.
- 1.3 Previous changes have been made to speed up the appeals system, including:
- The Inspectorate being able to impose the format of an appeal
  - LPA's given additional time to determine an application that has been appealed on the grounds of non-determination
  - Introduction of Householder Appeals System
  - Introduction of Commercial Appeals System

## 2. Scope of the Consultation & the Council's Response

- 2.1 Key Changes Proposed to the Appeal System are:
- Earlier submission of appellants' statements of case
  - Reducing the time available for the Council to prepare its appeal statement
  - The early provision of Statements of Common Ground
  - Guidance on how an appeal proposal may be revised
  - Time Limits for Lawful Development Certificate Appeals
  - Extension of the costs regime to cover appeals dealt with by written representations
  - The Inspectorate to be allowed to seek its costs
  - Increase in the fees charged by the Inspectorate for certain roles it performs (Examination of Local Development Plans and Compulsory Purchase Orders).
  - Changes to speed up the 'call-in' procedure.
- 2.2 The consultation document contains a number of questions which are outlined below with the suggested response beneath: In terms of the consultation questions the Council has responded as follows:
1. Appellant to submit Full Statements of Case with an appeal  
The Council agrees with this since appellants have a 6 month window in which to submit their appeal - this is sufficient time to prepare a full case and there should be no legitimate reason for further delay.
  2. A Full Statement of Case is defined as: *"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"*.  
The Council agrees this is a suitable definition.
  3. Do you agree the Inspectorate should determine the format of appeals and determine appeals against Hazardous Substances Contravention Notices and Section 215 (unsightly land) Notice appeals.

The Council agrees this is appropriate. This will ensure that the most suitable appeal method is used.

4. Do you agree with changes in appeal procedure and submission of core documents i.e. standard procedure rules?

- 5 days to complete questionnaire and inform interested parties
- 4 weeks to submit statements of case / make representations
- 6 weeks to make final comments

The Council has concerns over this since in effect it would allow appellants 6 months to make their case but only 6 weeks for the Council to answer it.

5. Provision of Statements of Common Ground to be encouraged (not mandatory) for all appeal formats.

The Council agrees with this proposal since it may focus on issues of dispute and reduce expenditure of time and money.

6. Do you agree with a 'mixed mode' examination of appeals to allow appeals to proceed by a mixture of Inquiry / Hearing / Written Representations as necessary?

The Council agrees with this proposed change allowing the Inspectorate to examine appeals by the most appropriate and cost effective method.

7. Should representations be limited to 3000 words?

The Council broadly agrees but by their nature the topics to be heard are likely to be complex or contested (or both). The word limit will focus people's minds. Summaries should be provided where an appeal party shows that it is necessary to significantly exceed the word limit (and the Inspector accepts this is so) or else we will see 'creep' in the size of submitted documents.

- 8 Do you agree with the circumstances when appeal submissions can be amended?

- & Changes to an appeal submission (proposals and supporting evidence) will only be allowed

- 9 where it can be shown the matter could not have been dealt with prior to refusal or 'exceptional' circumstances have arisen post-refusal.

The Council agrees to this change subject to rigid application of the proposed tests.

10. Do you agree with a 6 month time limit to lodge a Lawful Development Certificate Appeal?

The Council agrees with this proposed change. Appellants should be able to find suitable evidence within 6 months and should not be prejudiced. A longer period would not be suitable since LDC decisions are snapshots in time and allowing significant time to pass between a decision and an appeal is not rational.

11. Should the Welsh Ministers be allowed to recover their costs?

The Council disagrees. The Welsh Government will be seen as financially benefitting from its own decisions. This will undermine public confidence. If cost recovery is an issue then the Inspectorate should levy a submission fee. The Council considers there is no evidence that the current costs regime is working inadequately to deter unreasonable behaviour.

12. Do you agree with the identified grounds for unreasonable behaviour?

The Council does not agree with the following suggested grounds:

- Failure to determine an application within the statutory time limits
- The imposition of conditions that are not circular compliant
- Preventing or delaying development that should have been approved
- Not determining or providing a position on similar cases in a consistent manner;
- Where there is a lack of co-operation relating to any planning obligation – primarily because S106B of the Town & Country Planning Act 1990 is clear that an LPA need not enter any negotiation over a S106 agreement for a period of 5 years unless it agrees otherwise.

13. Do you agree with the outlined process for the award of costs?  
The Council does not agree that Inspector's may unilaterally award costs where neither party has made a claim particularly where the Inspectorate / Welsh Government would be a beneficiary of such an award. It is vital that PINS and the Welsh Ministers are not seen as self-serving if public confidence in the planning system is to be retained. Oversight of Inspector initiated awards by Welsh Government is unlikely to be seen as sufficient separation by the public.
14. Should the draft guidance for costs awards contain any additional information?  
The Council considers no additional information should be included beyond further clarification to its objections at question 12.
15. Do you agree with the methodology for charging for Inspector time at local inquiries into Compulsory Purchase Orders & Land Drainage and other qualifying procedures (Local Development Plans & Simplified Planning Zones).  
The Council agrees that the Inspectorate should be able to recover its costs, including administration costs and that those costs should be transparent to users. However it should also be recognised that additional charging places increased burden on Council budgets.
16. Do you agree with the proposed daily charging regime?  
In general terms the Council agrees. The proposed costs seem reasonable overall but are difficult to reconcile against the Schedule to the Developments of National Significance (Fees) (Wales) Regulations 2016 even allowing for the 'roll-up' of costs in the Regulations. However direct comparison is difficult since costs are amalgamated in the Schedule but broken down in the consultation paper. Given the overall aim of full cost recovery and the close timings of the changes these two different cost regimes should be fully reconcilable.

### 3. Risks:

Risk	Impact of Risk if it occurs* (H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
Council does not respond to consultation	L	L	Risk is low. Council has reported consultation response at Cabinet Member briefing.	Development Services Manager

### 4. Links to Council Policies and Priorities

- 4.1. This proposal meets two of the aims of Newport City Council's Corporate Plan 2009-2011, namely
- To make our City a better place to live for all our citizens, and
  - To be good at what we do.
- 4.2. It also falls under and meets all four of the objectives [listed below] from the One Newport Community Strategy:
1. To have a better quality of life,
  2. To be a prosperous and thriving City,
  3. To have vibrant and safe communities,
  4. Better public services.

## **5. Options available**

- 5.1 To confirm the content of the Council's consultation response in relation to the Welsh Government's Consultation on Appeals, costs and standard daily amounts.
- 5.2 Not to approve the content of the Council's consultation response in relation to the Welsh Government's Consultation on Appeals, costs and standard daily amounts.

## **6. Preferred Options and Why**

- 6.1 To confirm the content of the Council's consultation response in relation to the Welsh Government's Consultation on Appeals, costs and standard daily amounts.

## **7. Comments of Head of Law and Regulation – Monitoring Officer**

- 7.1 There are no specific legal issues arising from the report at the present time as the Welsh Government are simply seeking comments in response to its consultation on proposed changes to the current planning appeal procedures and costs regime. For the most part, the proposed changes to the appeals procedures are supported, insofar as they are intended to streamline the current process and ensure that appeals are dealt with in the most efficient manner. However, there are points of concern that need to be highlighted in the Council's response regarding time limits for responding to Statements of Case and the proposals for the award of costs, both on grounds of unreasonable behaviour and the recovery of the Inspectorates' own costs.

## **8. Comments of Head of Finance and Scrutiny – Chief Finance Officer**

- 8.1 The purpose of this report is to respond to the Welsh Government consultation seeking proposed changes to appeals and cost regulations. Some of the suggested changes could have an adverse financial impact on the Council's budgets such as point 11 where Welsh Government would be permitted to award themselves costs and point 13 where the proposal is that the inspector may award costs even though neither party had made a claim. Any costs payable would have an adverse pressure on Council budgets.

## **9. Staffing Implications: Comments of Head of People and Business Change**

- 9.1 The consultation is generally technical and as such the Planning Officers are best placed to respond to the proposals. There are no staffing implications as a result of the proposal.

## **10. Comments of Cabinet Member**

- 10.1 Cabinet Member has been briefed.

## **11. Scrutiny Committees**

- 11.1 Not applicable.

## **12. Equalities Impact Assessment**

- 12.1

## **13. Children and Families (Wales) Measure**

- 13.1 N/A

## **14. Comments from Non Executive Members**

None received

## **15. Background Papers**

Appendix A – Council's response to the consultation questions.



Planning Appeals  
Consultation - Respor

Dated: 29 November 2016