

Consultation Response Form

Secondary legislation for new development management procedures

We want your views on our proposals for the detail to be provided in subordinate legislation supporting development management provisions contained in the Planning (Wales) Bill, as well as some other changes to development management legislation.

Please submit your comments by 4 September 2015.

If you have any queries on this consultation, please email: planconsultations-i@wales.gsi.gov.uk or telephone Kristian Morgan on 029 2082 3360.

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 If someone has asked for their name and address not to be published, that is an important fact we would take into account.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be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published.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.

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Secondary legislation for new development management procedures		
Date of consultation period: 12 June 2015 – 4 September 2015		
Name		
Organisation		
Address		
E-mail address		
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 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"/>

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2.0 Invalid Applications: Notices and Appeals

Q1	Do you agree that a notice that an application is not valid should include criteria a) to f)?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Comments:</p> <p>The point is to expedite the system and yet more work will be required on everybody's part in order to issue a notice. A LPA should be able to advise why an application is invalid informally rather than through a specified Notice.</p> <p>I agree that it should be clear why an application is invalid and what can be done to rectify this but it shouldn't be necessary to state which part of the legislation requires this to be done (the application will either have been submitted by a planning professional in which case they should be familiar with the legislation or if not, stating the section is somewhat irrelevant). This is an unnecessary burden.</p> <p>The letter/ email should advise the applicant of their right of appeal however but this could be a standard paragraph. The whole process is becoming too formal and bureaucratic which has been a common complaint of the system you're aiming to improve.</p> <p>It would also appear that C) and D) should be within the same bullet point as C) does not make sense on its own.</p>				

Q2	Is there any information you think should accompany a notice of non-validation? If so, why is this information necessary?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Comments:</p>				

Q3	Do you agree that a period of 14 days for the applicant to submit their appeal is sufficient time given the desired quick turn around of appeals under section 29 of the Planning (Wales) Bill (the Bill)?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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Comments:
 Given the limited nature of the appeals procedure with regards to non-validation, the applicant should be given 7 days in which to lodge an appeal providing the applicant is notified immediately via email/ telephone. There is no reason to add additional time into the procedure. A Local Planning Authority will be expected to validate within a week, therefore an appeal should also be submitted within this deadline.

Q4	Do you agree that the Welsh Ministers should be required to determine appeals within 21 days of the start of the appeal period?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Comments:
 The whole point of this provision is to expedite the process. Therefore, a determination should be made within 7 days of the submission of an appeal - not 2-3 days to acknowledge the appeal and a further 21 days to make a decision. The Inspectorate will have the appeal form specifying why an application is considered to be invalid (based on the proposed criteria) and the appeal statement why this is contested. They should therefore be able to respond more expediently than proposed.

Therefore, if an appeal is allowed, a decision could still be made within the statutory period. If the process is not quick, invalid applications would be rushed through as LPAs focus on the 8 week deadline and this could have problems further along the line for everybody involved. Therefore, with a minimum requirement for 21 day consultation, 4 weeks from submission should be the maximum length of time that is allowed to elapse.

Q5	Where an application is considered to be invalid and an appeal submitted in respect of the notice of non-validation, do you agree that	Yes	Yes (subject to	No
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	the fee should be retained by the LPA pending the outcome of that appeal?		further comment)	
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:
 Yes. Firstly, there are costs associated with refunding a fee which are incurred by the LPA. They may be incurred unnecessarily if an application is subsequently validated. Secondly, and equally as important, a valid fee is required to make an application valid. If the fee is refunded, and an application is subsequently validated, the application would be technically invalid by reason of there being no fee. The LPA would then have to chase up this fee and await its submission before an application could be progressed.

3.0 Decision Notices

Q6	Do you agree that when a decision notice is revised it should include a) the date of the approval, and, b) the relevant application reference in the updated version of the notice?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:
 The updated decision notice should be electronic for the reasons set out in response to Q7.

Q7	Do you agree that the DMPO should be updated to require LPAs to keep a copy of the most recent decision notice on the planning register?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:
 Decision Notices should not be updated in paper form on a regular basis as this is clearly a waste of resources and genuinely unsustainable. An application with 30

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conditions covering several pages may require to be updated up to 30 times as each condition is discharged. If the GDMPO is updated, it should reflect that an electronic planning register should be kept and updated as and when required. Otherwise, this will place considerable time and resources in having to keep the planning register up to date by updating historic decision notices from various periods. This will involve a significant amount of filing on a regular basis.

4.0 Notification of Development

Q8	Are there any other requirements which you think should be made of the developer in respect of the form, content or display of a notification of development?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments: The applicant should also confirm that all pre-commencement conditions have been complied with and the date on which approval for each was granted. This is to ensure that they have undertaken the necessary steps and discharged the necessary conditions prior to starting on site and cannot claim they were unaware that a condition was required to be discharged prior to commencement. Not all of the burden should be on the LPA.</p>				

5.0 Consultations etc. in Respect of Certain Applications for Approval

Q9	Do you agree that LPAs shall not determine an application subject to consultation until any of the following periods have elapsed: a) a period of 21 days, b) until all statutory consultees have provided a substantive response, whichever is the sooner, or c) subject to a longer period if agreed in writing between the LPA and consultee?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p>				

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Urgent Crown development

Q10	Do you agree that earliest time that Welsh Ministers can determine an application made under s.293A of the Town and Country Planning Act 1990 (TCPA) should remain as 14 days after giving statutory consultees notice of the application, as stated in Article 15 of the DMPO?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

6.0 Appeal Against A Notice Issued in Respect of Land Adversely Affecting Amenity (Unsightly Land)

Q11	Do you agree that appeals determined by Welsh Ministers under s.217 of the TCPA should follow the same format as existing enforcement appeals?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: Provided there is a presumption towards the written reps procedure given their nature.				

Q12	Do you agree that a four week period for LPAs to write their appeal statement is reasonable? If you consider an alternative period is more appropriate for s.217 appeals, please state why.	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: Four weeks is sufficient to prepare an appeal statement if required.				

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7.0 Post Submission Amendments

Q13	Do you agree that where an amendment is submitted in relation to major development applications, LPAs should be given an additional four weeks to determine the planning application?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p>This recommendation is sensible but should also include all types of applications where amendments are provided to enable careful consideration and re-consultation to be undertaken.</p>				

Q14 i)	Do you think a fee should be charged for minor material amendments to major applications which have yet to be determined?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p>One amendment should be allowed within the application fee to enable LPAs to encourage amendments that would result in an improved layout whilst not putting off developers from submitting an amendment to a scheme due to cost. Thereafter, further amendments should be liable to fees.</p> <p>However, this approach could result in developers avoiding submitting pre-application enquiries as they could see amendments as a cheaper alternative. An approach whereby minor material amendments post submission are at the discretion of the LPA where no pre-application advice has been sought may be required.</p>				
Q14 ii)	If yes, do you agree that £190 is an appropriate fee to charge in light of the recent consultation on planning application fees?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p>				

8.0 Applications that fall within Section 73 of the TCPA 1990

Renewals

Q15 i)	Should the validation requirements for a renewal application be the same as the original application?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Comments: Not all of the information may be required as Local Planning Authorities will already have access to the information in terms of the plans etc however it would be useful if key documents/ plans were submitted for ease of reference and an application form should be mandatory. The submitted information should reflect the situation at the time of the current application i.e. updated surveys/ reports where relevant and this should be made clear in any new legislation.</p>				
Q15 ii)	Should the LPA have discretion over the consultation requirements for a renewal application?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p>				
Q15 iii)	Should the LPA have discretion over the notification requirements for a renewal application?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments: Site notices should not be mandatory for all renewal applications as suggested. Targeted consultation may be more appropriate.</p>				

Minor material amendments

Q16 i)	Should the validation requirements for a minor material amendment application be the same as the original application?	Yes	Yes (subject to further comment)	No
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		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Comments:</p> <p>Not all of the information may be required as Local Planning Authorities will already have access to the information in terms of the plans etc however it would be useful if key documents/ plans were submitted for ease of reference and an application form should be mandatory. The submitted information should reflect the situation at the time of the current application i.e. updated surveys/ reports where relevant and this should be made clear in any new legislation.</p> <p>Clarification should be provided in the form of a covering statement identifying what the amendment(s) is and why it is being sought to give consultees/ members of the public a better understanding of the proposal.</p> <p>It should also be clarified whether a minor material amendment can be submitted for a) an application that has already commenced and b) a development that has been completed.</p>				
Q16 ii)	Should the LPA have discretion over the consultation requirements for a minor material amendment application?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p>				
Q16 iii)	Should the LPA have discretion over the notification requirements for a minor material amendment application?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p>Site notices should not be mandatory for all renewal applications as suggested. Targeted consultation may be more appropriate.</p>				

Variation or removal of a condition attached to a planning permission that does not fall within the above categories (renewal and minor-material)

Q17 i)	Should the validation requirements for these applications be the same as the original	Yes	Yes	No
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	application?		(subject to further comment)	
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Comments:
 Not all of the information may be required as Local Planning Authorities will already have access to the information in terms of the plans etc however it would be useful if key documents/ plans were submitted for ease of reference and an application form should be mandatory. For example, a Design and Access Statement would not be pertinent to an application to extend/ alter opening hours where the original application required a DAS.

 The submitted information should reflect the situation at the time of the current application i.e. updated surveys/ reports where relevant and this should be made clear in any new legislation. Clarification should be provided in the form of a covering statement identifying what the amendment(s) is and why it is being sought to give consultees a better understanding of the proposal.

Q17 ii)	Should the LPA have discretion over the consultation requirements for these applications?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:

Q17 iii)	Should the LPA have discretion over the notification requirements for these applications?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:
 Site notices should not be mandatory for all renewal applications as suggested. Targeted consultation may be more appropriate.

Q18	Should the fee to accompany an application that falls within s.73 submitted after refusal of an application under s.96A of the TCPA only be that required to make up the difference in fee cost?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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Comments:
 The approach would appear reasonable, however a subsequent S73 would only be applicable in certain instances where a condition is attached to a NMA refusal.

In other circumstances, the applicant will already have the opportunity to submit a S73 application and an NMA submission may be seen as a cheaper alternative with nothing to lose if it is refused, adding to the burden on LPAs in terms of processing the NMA application, registering it and issuing a decision.

Therefore, the difference proposal should only be applied in circumstances where there is no condition to amend in the first instance.

A full fee should be levied against other NMA's where the applicant can submit a S73 in the first instance.

9.0 Statutory pre-application service fees

Q19	Do you agree that extensions of time should be permitted, subject to both the LPA and applicant agreeing in writing?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:
 Firstly, what is the recourse if a response is given outside of this timeframe.

Secondly, in general, a period of 28 days would be preferable as a minimum period as it would allow internal consultation on a scheme for 21 days (as per a planning application) and then give sufficient time to respond.

Q20	Do you agree with the level of proposed fees set out in Table 1? If not, what should the fee be?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Comments:
 Firstly, fees should be in line with new development thresholds for committee applications for consistency. Proposed fees as follows:

Householders - £25

Minor development relating to a small business (less than 100m2 floor space) or site less than 0.1ha (excluding redevelopment for non-business purposes) - £100

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1-9 residential dwellings (including conversion); 100m² - 999m² of commercial floor space; change of use of buildings or land between 100m²-999m², mixed use developments with a combined floor space of less than 0.5ha, telecommunications equipment and masts not being confirmation of permitted development; advertisement applications; agricultural developments - £250

10-19 residential dwellings (including conversion); 1000m² - 1999m² of commercial floor space; change of use of buildings or land between 1000m² - 1999m²; development of a site of 0.5ha - 0.99ha; mixed use developments with a combined floor space of 1000m² - 1999m² - £500

a) the winning and working of minerals or the use of land for mineral-working deposits;
 b) waste development;
 c) the provision of dwelling houses where—
 i. the number of dwelling houses to be provided is 20 or more; or
 ii. the development is to be carried out on a site having an area of 1 hectares or more and it is not known whether the development falls within subparagraph (c)(i);
 d) the provision of a building or buildings where the floor space to be created by the development is 2,000 square metres or more; or
 e) development carried out on a site having an area of 2 hectare or more - £1000

DNS - £1,500

Q21	Do you have any other comments to make regarding the statutory pre-application service?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:
 There should be standard charges for additional meetings / responses which should be half of the fee of the original response.

Q22 We have asked a number of specific questions. If you have any related queries or comments which we have not addressed, please use this space to report them.

Comments:
 The overall validation appeal process is far too lengthy. There should be a significantly quicker turnaround than currently envisaged. The LPA are requested to validate within 5 days, yet PINS get up to 3 dates to acknowledge the appeal and then 21 days to determine it.

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Whilst the legislation aims to expedite the process, it is possible it is going to have the opposite effect in terms of time taken from application submission to determination.

The threshold for large major application for pre-application fees differs from that recommended in consultation document on Planning Committees, Delegation and Joint Planning Committees for the scheme of delegation.

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-i@wales.gsi.gov.uk [Please include ‘ Secondary Legislation for DM ’ in the subject line]
Post
Please complete the consultation form and send it to: Secondary legislation for development management consultation Development Management Branch Planning Division Welsh Government Cathays Park Cardiff CF10 3 NQ
Additional information
If you have any queries on this consultation, please Email: planconsultations-i@wales.gsi.gov.uk Telephone: Kristian Morgan on 02920 823360