

## REPORT OF THE CORPORATE DIRECTOR – COMMUNITIES

### BCBC RESPONSE TO WG CONSULTATION ON 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

#### 1. Purpose of Report

1.1 To advise Development Control Committee Members of the Council's formal response to the Welsh Government's (WG) consultation relating to Appeals, costs and standard daily amounts (Appendix 1).

1.2 The WG consultation paper makes specific proposals in relation to the following:

##### Appeal and call-in procedures

1.3 The proposed introduction of measures which reduce the time taken to determine an appeal or call-in, including 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.

##### Costs

1.4 Allied with the proposed changes relating to examination, the WG will be extending the costs regime to appeals, call-ins and applications made directly to the Welsh Ministers which are determined by way of written representations. They also propose 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. They also propose to enable the recovery of costs incurred by the Welsh Ministers, where wasted and unnecessary cost to the public purse is incurred.

##### Standard daily amounts for certain proceedings

1.5 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 Order (CPO). 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.

#### 2. Connection to Corporate Improvement Plan / Other Corporate Priorities

2.1 The planning system in Wales plays an important role in helping to support economic prosperity, promote sustainable development and address the challenges posed by climate change, whilst safeguarding our access to a quality environment. These objectives are reinforced by the Planning (Wales) Act 2015 ("the 2015 Act") which aims to ensure that the development and use of land contribute to improving the economic, social, environmental and cultural well-being of Wales, in accordance with the Well-being of Future Generations (Wales) Act 2015. Appeals and development plan examinations form an important part of the planning system.

- 2.2 The current arrangements allow public involvement and a high standard of decision-making based on the principles of openness, fairness and impartiality. This role in making certain planning decisions is vital to ensure that the Welsh Government's objectives, to deliver appropriate development where it is needed and to foster attractive, sustainable communities, are met.
- 2.3 The delivery of the County Borough's statutory planning function has links to the Council's corporate priorities in particular number 1 – supporting a successful economy.

### **3. Background**

- 3.1 In December 2013, the Welsh Government published the 'Positive Planning' consultation paper, which contained a series of proposals for reforms to the planning system in Wales. The paper proposed changes to the appeals system, supplemented by proposals contained in the later 'Planning and Related Decisions of the Welsh Ministers' consultation.
- 3.2 In order to complete the proposals contained in 'Positive Planning' insofar as they relate to appeals and call-ins, changes were required to primary legislation. These changes were introduced in the 2015 Planning (Wales) Act. The Act contains a number of enabling powers relating to planning and enforcement appeals.
- 3.3 The existing system for appeals and called in applications is generally supported. However, there is pressure from professionals and developers seeking swifter decisions to improve the system to provide necessary sustainable development and stimulate economic growth. Communities and the public seek a system that provides greater participation, fairness and transparency.
- 3.4 The WG consultation documents can be accessed by Members using this hyperlink:  
[https://consultations.gov.wales/sites/default/files/consultation\\_doc\\_files/160810-appeals-costs-and-standard-daily-amounts-appeals-cosultation-document-en.pdf](https://consultations.gov.wales/sites/default/files/consultation_doc_files/160810-appeals-costs-and-standard-daily-amounts-appeals-cosultation-document-en.pdf)

### **4. Next Steps**

- 4.1 The LPA's formal response to the Welsh Government's (WG) consultation on proposed changes to how Environmental Impact Assessment applies to Town and Country Planning was submitted to the WG before the deadline of 4<sup>th</sup> November 2016 (3<sup>rd</sup> November, 2016) under delegated powers.
- 4.2 The WG intends to publish a summary of the responses to this document.

### **5. Effect upon Policy Framework & Procedure Rules**

- 5.1 The proposals contained in the 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.
- 5.2 The consultation paper complements and sets out the detail required to support provisions contained in the 2015 Act. It also proposes necessary changes to how certain costs incurred by the Welsh Ministers are recovered.

## **6. Equality Impact Assessment.**

6.1 An Equality Impact Assessment Screening has been undertaken and the proposed recommendations are unlikely to have an impact on equality issues.

## **7. Financial Implications**

7.1 None.

## **8. Recommendation**

(1) That Members note the content of this report and the LPA's response to the WG consultation (Appendix 1).

**Mark Shephard**  
**Corporate Director Communities**

### **Contact Officer**

Mr. Rhodri Davies

Development and Building Control Manager

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### **Background documents**

**Appendix 1:** BCBCs Consultation Response to the WG

## APPENDIX 1

### Appeals, cost and standard daily amounts

Consultation Reference: WG28856

## 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](mailto: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		
<b>Name</b>	Rhodri Davies	
<b>Organisation</b>	Bridgend Conty Borough Council	
<b>Address</b>	Civic Offices Angel Street Bridgend CF31 4WB	
<b>E-mail address</b>	rhodri.davies@bridgend.gov.uk	
<b>Type</b> <i>(please select one from the following)</i>	Businesses/Planning Consultants	<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"/>

2.0 Appeal and call-in procedures

<b>Q1</b>	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 type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p>The procedural proposal will speed up the overall process and will avoid any new grounds being added to the case at a later stage, sometimes at a point where it is difficult or too late to rebut the additional grounds of appeal.</p>				

<b>Q2</b>	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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p>				

<b>Q3</b>	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 checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p>This proposal will ensure consistency and understanding across all appeals and for all parties.</p>				

**Appeals, cost and standard daily amounts**

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

<b>Q5</b>	<b>Do you agree with our proposals regarding Statements of Common Ground? If not, why not?</b>	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments: It has not been evidenced that SoCG are of any benefit to either party or the Inspector. This approach is contrary to the general aspiration to streamline/simplify the process and is an added burden on LPAs where the main points of disagreement can be understood from the reasons for refusal and the grounds of appeal.				

<b>Q6</b>	<b>Do you agree with our proposals for the mixed-mode examination of appeals and call-ins? If not, why not?</b>	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: However, PINS should produce example scenarios where the mixed mode examination of appeals and call-ins could be adopted.				

**Appeals, cost and standard daily amounts**

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<b>Q7</b>	<b>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?</b>	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><b>Comments:</b>                  The word limit should be a suggested/recommended limit or guideline as, depending on the nature of the topic or request, it might not be feasible to produce a comprehensive/specialist response within that prescribed limit.</p>				

<b>Q8</b>	<b>Do you agree with the circumstances in which an application may be varied in the case of an appeal? If not, why not?</b>	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p><b>Comments:</b>                  If the specific circumstances, as listed in paragraph 2.74 of the consultation paper, occur after the determination of an application, it is considered that the applicant/appellant should re-apply for planning permission under the "free go" provisions.</p>				

<b>Q9</b>	<b>Do you agree with the circumstances in which an application may be varied in the case of an appeal? If not, why not?</b>	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



**Appeals, cost and standard daily amounts**

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Comments:  
**N.B. This question should refer to the circumstances in which "new information may be introduced during an appeal or call-in" as per the consultation document - as it stands, it repeats question 8.**

<b>Q10</b>	<b>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?</b>	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

**3.0 Costs**

<b>Q11</b>	<b>Do you agree that Welsh Ministers should be able to recover their own costs? If not, why not?</b>	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>The principle of costs recovery is generally accepted. However, which body will be responsible for determining the application for an award of costs and will there be a mechanism to challenge any award of costs?</b>				

**Appeals, cost and standard daily amounts**

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<b>Q12</b>	<b>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.</b>	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:  <b>There should be provision in the guidance to penalise the abuse of procedure selection by the appellant. Currently, appellants claim that they are considering applying for costs in order to secure a Hearing rather than the Written Representations procedure.</b></p>				

<b>Q13</b>	<b>Do you agree with the process for the awards of costs set out in Appendix A of the draft updated guidance (at Annex C)? If not, why not?</b>	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p>				

<b>Q14</b>	<b>Should any additional information be included within the draft updated guidance (at Annex C)?</b>	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Comments:</p>				

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**4.0 Standard Daily Amounts of Certain Proceedings**

<b>Q15</b>	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 checked="" type="checkbox"/>
<p>Comments:</p> <p>BCBC cannot support any extra costs to the taxpayer for carrying out statutory processes. Therefore, the daily amounts should not result in an unreasonable increase in the cost of undertaking a review of an LDP, for example.</p> <p>LPA's already pay for the Programme Officer and it is considered unreasonable and inequitable for Welsh Ministers and Inspectors to unilaterally set the terms and length of the process and then offload the costs elsewhere.</p> <p>All parties in the process need to be incentivised to make it more streamlined and efficient, both in terms of speed and costs, and the Standard Daily Amounts approach for all staff working on a particular inquiry or other qualifying procedure runs counter to this.</p> <p>Finally, the work expected of a Planning Officer, for example, in helping the Inspector with an Inquiry or other qualifying procedure should be factored in as part of his or her job description and general duties rather than being seen as a top up payment to the Welsh Government based on the time spent on a particular Inquiry or Examination.</p>				

<b>Q16</b>	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 checked="" type="checkbox"/>
<p>Comments:</p> <p>It is a good idea to clearly set out the standard daily amounts, provided that the figures do not result in an unreasonable increase in costs to be borne by the taxpayer and still promote efficiency across the service (refer to Q. 15 above).</p>				

## Appeals, cost and standard daily amounts

Consultation Reference: WG28856

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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:**

<b>Email</b>
Please complete the consultation form and send it to :  <a href="mailto:planconsultations-g@wales.gsi.gov.uk">planconsultations-g@wales.gsi.gov.uk</a>  [Please include ' <b>Appeals, costs and standard daily amounts</b> ' in the subject line]
<b>Post</b>
Please complete the consultation form and send it to:  <b>Appeals, costs and standard daily amounts consultation Decisions Branch Planning Division Welsh Government Cathays Park Cardiff CF10 3NQ</b>
<b>Additional information</b>
If you have any queries on this consultation, please  Email: <a href="mailto:planconsultations-g@wales.gsi.gov.uk">planconsultations-g@wales.gsi.gov.uk</a>  Telephone: Lewis Thomas (029 2082 3201) or Owain Williams (029 2082 1715)