

# Appeals

## Explanatory Memorandum to:

- 1. The Planning (Hazardous Substances) (Determination of Procedure) (Wales) Order 2017;**
- 2. The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) (Amendment) Regulations 2017;**
- 3. The Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017;**
- 4. The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2017;**
- 5. The Planning (Listed Buildings and Conservation Areas) (Wales) (Amendment) Regulations 2017;**
- 6. The Planning (Hazardous Substances) (Wales) (Amendment) Regulations 2017;**
- 7. The Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2017;**
- 8. The Town and Country Planning (Trees) (Amendment) (Wales) Regulations 2017; and**
- 9. The Town and Country Planning (Control of Advertisements) (Amendment) (Wales) Regulations 2017.**

This Explanatory Memorandum has been prepared by the Department for Environment and Rural Affairs and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

## **Cabinet Secretary's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of:

1. The Planning (Hazardous Substances) (Determination of Procedure) (Wales) Order 2017;
2. The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) (Amendment) Regulations 2017;
3. The Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017;
4. The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2017;
5. The Planning (Listed Buildings and Conservation Areas) (Wales) (Amendment) Regulations 2017;
6. The Planning (Hazardous Substances) (Wales) (Amendment) Regulations 2017;
7. The Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2017;
8. The Town and Country Planning (Trees) (Amendment) (Wales) Regulations 2017; and
9. The Town and Country Planning (Control of Advertisements) (Amendment) (Wales) Regulations 2017.

I am satisfied the benefits justify the likely costs.

Lesley Griffiths AM  
Cabinet Secretary for Environment and Rural Affairs  
10 March 2017

# Part 1 – Explanatory Memorandum

## 1. Description

- 1.1 The Planning Inspectorate (“PINS”) is a publically funded joint executive agency of the Department for Communities and Local Government and the Welsh Government. Planning appeals and applications which are referred for determination by the Welsh Ministers (“call-ins”) are administered by PINS Wales on behalf of the Welsh Ministers, with the majority of cases decided by a Planning Inspector. A very small number of cases are recovered for decision by the Welsh Ministers.
- 1.2 The current arrangements for appeals and call-ins allow public involvement and a high standard of decision making, based on the principles of openness, fairness and impartiality. However, evidence has suggested reforms to the appeal and call-in process in Wales are required.
- 1.3 The ‘Positive Planning’ consultation paper (December 2013) contained a series of proposed reforms to the appeal system, the detail which supplements those proposals is contained in the later ‘Appeals, Costs and Standard Daily Amounts’ (August 2016) consultation paper.
- 1.4 In response, the nine statutory instruments subject to this Explanatory Memorandum make provision, which largely reflect the proposals consulted upon, to enable the Welsh Ministers to (amongst other things):
  - Align the process and procedure for planning appeals, enforcement appeals and call-ins;
  - Require the submission of documents and information earlier in the appeal and call-in process than at present;
  - Determine the procedure for examination of an appeal or call-in by using one of the written representations, hearing or public inquiry procedure, or a combination of up to all three;
  - Restrict the instances in which new matters can be raised, and prescribe the circumstances in which an application can be varied, following notification of an appeal; and
  - Remove the statutory requirement for Statements of Common Ground to be submitted.

## 2. Matters of Special Interest to the Constitutional and Legislative Affairs Committee

- 2.1 The Explanatory Memorandum covers nine separate statutory instruments; two subject to the affirmative procedure and seven which are subject to the negative procedure. The below statutory instruments are to be produced and the relevant procedures are specified below:

Subordinate Legislation	Procedure
The Planning (Hazardous Substances) (Determination of Procedure) (Wales) Order 2017	Affirmative
The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) (Amendment) Regulations 2017	Affirmative
The Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017	Negative
The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2017	Negative
The Planning (Listed Buildings and Conservation Areas) (Wales) (Amendment) Regulations 2017	Negative
The Planning (Hazardous Substances) (Wales) (Amendment) Regulations 2017	Negative
The Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2017	Negative
The Town and Country Planning (Trees) (Wales) (Amendment) Regulations 2017	Negative
The Town and Country Planning (Control of Advertisements) (Wales) (Amendment) Regulations 2017	Negative

2.2 These statutory instruments apply to the following types of appeals and applications, which at present, are subject to different timescales, processes and requirements:

### Planning and related appeals

- (a) Appeals against planning decisions or the failure to take such decisions, including advertisement consent decisions<sup>1</sup>;
- (b) Appeals against listed building consent and conservation area consent decisions or failure to take such decisions;
- (c) Appeals against hazardous substances consent decisions or the failure to take such decisions;
- (d) Appeals against refusal or failure to give a decision on applications for certificates of lawful use or development; and
- (f) Appeals against decisions or the failure to take such decisions for consent under tree preservation orders.

### Enforcement and related appeals

- (g) Appeals against planning enforcement notices;
- (h) Appeals against listed building or conservation area enforcement notices;
- (i) Appeals against hazardous substances contravention notices;
- (j) Appeals against the enforcement of duties as to replacement of trees;
- (k) Appeals against notices requiring the proper maintenance of land; and
- (l) Appeals against advertisement discontinuance notices.

### Called-in applications (References to the Welsh Ministers)

- (m) Planning applications which are referred to the Welsh Ministers;
- (n) Listed building consent and conservation area consent applications which are referred to the Welsh Ministers; and
- (o) Hazardous substances consent applications which are referred to the Welsh Ministers.

2.3 Together, the statutory instruments will simplify and speed up the initial processes for the above proceedings and improve the accessibility of our legislation. This will be aided by significantly reducing the number of statutory instruments which relate to the procedure for appeals and called in applications from 12 to 1.

2.4 All of the above statutory instruments are reliant on each other and are interlinked through various references. It would not be possible to interpret the individual impacts of each statutory instrument in isolation without explaining the wider legislative context. Thus, a composite Explanatory Memorandum has been prepared to describe these statutory instruments.

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<sup>1</sup> Some appeals against planning decisions and advertisement consent decisions currently follow an expedited appeal process entitled the Householder Appeal System and the Commercial Appeal System ("HAS and CAS"). Whilst the subordinate legislation which is subject to this Explanatory Memorandum contains amendments which relate to HAS and CAS for the purposes of consolidation, the current HAS and CAS process is preserved and this Explanatory Memorandum does not contain any new policy proposals relating to HAS and CAS.

### **3 Legislative Background**

#### The Planning (Hazardous Substances) (Determination of Procedure) (Wales) Order 2017

- 3.1 This Order is made in exercise of the powers conferred on the Welsh Ministers by section 21B(8) of the Planning (Hazardous Substances) Act 1990 (“the PHSA”).
- 3.2 Section 21B of the PHSA requires the Welsh Ministers to make a determination as to the procedure by which certain proceedings should be considered (one of either written representations, hearing or local inquiry, or a combination of these procedures). Section 21B(8) of the PHSA gives the Welsh Ministers the power by order to amend subsection (7) to add proceedings under the PHSA to the list of proceedings to which section 21B applies.

#### The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) (Amendment) Regulations 2017

- 3.3 These regulations are made in exercise of the powers conferred on the Welsh Ministers by section 303 of the Town and Country Planning Act 1990 (“the Planning Act”).
- 3.4 Under section 303 of the Planning Act the Welsh Ministers may by regulations make provision for the payment of a fee to the local planning authority in respect of any application for planning permission deemed to be made under section 177(5) of the Planning Act. Regulations under this section may contain incidental, supplementary and consequential provision.

#### The Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017

- 3.5 These regulations are made in exercise of the powers conferred on the Welsh Ministers by:
- Sections 217, 319B and 323A of the Planning Act;
  - Section 88E of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the Listed Buildings Act”); and
  - Section 21B of the PHSA.
- 3.6 Section 48 of the Planning (Wales) Act 2015 (“the 2015 Act”) amends section 217 of the Planning Act (appeal against a notice requiring the maintenance of land). The effect of the amendment is to transfer responsibility for determining appeals against notices served under section 215 of the Planning Act from the Magistrates’ Courts to the Welsh Ministers. The Welsh Ministers may make provision for the procedures to make such an appeal and the information to be provided.

- 3.7 Section 319B of the Planning Act, 88E of the Listed Buildings Act and 21B of the PHSA require the Welsh Ministers to make a determination as to the procedure by which an appeal or call in must be considered. The determination must be made within a prescribed period.
- 3.8 Section 50 of the 2015 Act inserts section 323A into the Planning Act. Section 323A allows the Welsh Ministers to make regulations setting out the procedure for planning determinations whether they proceed by way of written representations, hearing or inquiry.

The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2017

- 3.9 This Order is made in exercise of the powers conferred on the Secretary of State by sections 62, 78, 195 and 333 of the Planning Act which are now exercisable by the Welsh Ministers.
- 3.10 Section 62 of the Planning Act enables a development order to make provision regarding the form and manner of applications for planning permission made to local planning authorities.
- 3.11 Section 78 of the Planning Act provides a right to appeal against planning decisions or failure to take such decisions. This section enables the Welsh Ministers to prescribe information which must accompany a notice of appeal. Section 47 of the 2015 Act amends section 78 of the Planning Act. The effect of the amendment is an application may not be varied following service of notice of appeal except in such circumstances as may be prescribed by development order. If circumstances are prescribed, the order must provide for a varied application to be subject to such further consultation as the Welsh Ministers consider appropriate.
- 3.12 Section 195 of the Planning Act provides a right of appeal following refusal, or the failure to give a decision, following an application for a certificate of lawful use or development. This section enables the Welsh Ministers to prescribe the time and manner in which a notice of appeal must be served and any information which must accompany the notice. Section 47 of the 2015 Act amends section 195 of the Planning Act. The effect of the amendment is the same as the effect of the amendment to section 78 of the Planning Act made by section 47 of the 2015 Act.

The Planning (Listed Buildings and Conservation Areas) (Wales) (Amendment) Regulations 2017

- 3.13 These regulations are made in exercise of the powers conferred on the Secretary of State by sections 20 and 93 of the Listed Buildings Act (which are now exercisable by the Welsh Ministers) and conferred on the Welsh Ministers by section 21 of the Listed Buildings Act and by section 323A of the Planning Act.

- 3.14 Section 20 of the Listed Buildings Act provides a right of appeal against listed building consent and conservation area consent decisions or failure to take such decisions.
- 3.15 Section 21 of the Listed Buildings Act provides the Welsh Ministers with power to prescribe information to accompany a notice of appeal. Section 47 of the 2015 Act amends section 21 of the Listed Buildings Act. The effect of the amendment is the same as the effect of the amendment to section 78 of the Planning Act made by section 47 of the 2015 Act.

The Planning (Hazardous Substances) (Wales) (Amendment) Regulations 2017

- 3.16 These regulations are made in the exercise of the powers conferred on the Secretary of State by sections 25 and 40 of the PHSA (which are now exercisable by the Welsh Ministers) and on the Welsh Ministers by section 21 of the PHSA and by section 323A of the Planning Act.
- 3.17 Section 21 of the PHSA provides a right of appeal against decisions or the failure to take decisions in relation to hazardous substances. This section enables the Welsh Ministers to prescribe information which must accompany a notice of appeal. Section 47 of the 2015 Act amends section 21 of the PHSA. The effect of the amendment is the same as the amendment to section 78 of the Planning Act made by section 47 of the 2015 Act.
- 3.18 Sections 25 of the PHSA enables the Welsh Ministers to make regulations in relation to hazardous substances contravention notices. Such regulations may provide for appeals to the Welsh Ministers against such notices, the procedure for such appeals and for the application to such appeals, subject to such modifications as the regulations may specify, of certain provisions of the Planning Act including section 174.

The Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2017

- 3.19 These regulations are made in exercise of the powers conferred on the Secretary of State by sections 173, 174 and 175 of the Planning Act and sections 39 and 40 of the Listed Buildings Act (which are now exercisable by the Welsh Ministers) and the powers conferred on the Welsh Ministers by sections 208 and 217 of the Planning Act.
- 3.20 Section 173 of the Planning Act provides for the content and effect of an enforcement notice under section 172 of the Act. It gives the Welsh Ministers power to prescribe additional matters to be specified in an enforcement notice and to make regulations requiring every copy of an enforcement notice served under section 172 of the Planning Act to be accompanied by an explanatory note giving prescribed information as to the right of appeal under section 174 of the Act.



- 3.21 Section 174 of the Planning Act and section 39 of the Listed Buildings Act provide for appeals to be made against enforcement notices and require any person who makes an appeal to submit any prescribed information and to specify their grounds of appeal within a prescribed timescale.
- 3.22 Section 175 of the Planning Act and section 40 of the Listed Buildings Act enable the Welsh Ministers to prescribe, by regulations, the procedure to be followed upon appeal under section 174 of the Planning Act and section 39 of the Listed Buildings Act respectively.
- 3.23 Section 208 of the Planning Act provides a right of appeal following the service of a notice under section 207 of the Act (Tree Replacement Notice). This section provides a notice of appeal must be accompanied by such information as may be prescribed by the Welsh Ministers.

#### The Town and Country Planning (Trees) (Amendment) (Wales) Regulations 2017

- 3.24 These regulations are made in exercise of the powers conferred on the Secretary of State by sections 199 and 333 of the Planning Act which are now exercisable by the Welsh Ministers.
- 3.25 Section 199 of the Planning Act provides the Welsh Ministers with powers to make provision as to the form of tree preservation orders. Section 198(3) of the Planning Act provides a tree preservation order may make provision applying, in relation to any consent under the order, and to applications for such consent, certain provisions of the Planning Act including sections 78 and 79, subject to such adaptations and modifications as may be specified in the order.

#### The Town and Country Planning (Control of Advertisements) (Amendment) (Wales) Regulations 2017

- 3.26 These regulations are made in exercise of the powers conferred on the Secretary of State by sections 220 and 333 of the Planning Act which are now exercisable by the Welsh Ministers.
- 3.27 Section 220 of the Planning Act enables the Welsh Ministers to make provision, by regulations, for restricting or regulating the display of advertisements so far as appears to them to be expedient in the interests of amenity or public safety. Such regulations may provide for the application of certain provisions of the Planning Act including sections 78 and 79, subject to such adaptations and modifications as may be specified in the regulations.

#### Transfer of functions

- 3.28 The functions conferred on the Secretary of State by sections 62, 78, 173, 174, 175, 195, 199, 220 and 333 of the Planning Act, sections 20, 39, 40 and 93 of the Listed Buildings Act and sections 25 and 40 of the PHSA, so far as exercisable in relation to Wales, were transferred to the National Assembly for

Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999. Those functions were transferred to the Welsh Ministers by section 162 of, and paragraphs 30 and 32 of Schedule 11 to, the Government of Wales Act 2006.

#### **4 Purpose and intended effect of the legislation**

4.1 The appeal and call-in system in Wales is generally well regarded, however, evidence<sup>2</sup> suggests appellants and applicants would like faster decisions to facilitate development and stimulate economic growth, whilst the wider public require an appeal system which provides greater fairness, transparency and is less confrontational.

4.2 The general purpose of the legislation is to:

- Ensure a more proportionate, cost effective and streamlined process, which meets the needs of all parties involved;
- Increase the speed of decisions, thereby promoting growth and providing greater certainty for developers and communities; and
- Increase transparency through better communication and exchange of information among all parties to promote public participation and public confidence in the appeal and call-in process.

4.3 The reforms to the appeal and call-in system in Wales can be categorised into five categories, with each one considered in turn:

- Reducing timescales for submission of documents and initial procedure;
- Statements of Common Ground;
- Examination;
- Making alterations to an appeal and raising new matters; and
- Certificates of lawfulness.

##### Reducing timescales for submission of documents and initial procedure

4.4 Currently, the timescales for submission of key documents and information, determination of procedure undertaken by PINS and timescales for providing comments, are different for each type of appeal and call-in (see paragraph 2.2 for definitions).

4.5 The purpose of the legislation is to reduce the time in which appeals are determined and to ensure consistency for all parties involved in the appeal and call-in process through requiring documents to be submitted at the same time for all appeal types. The effect of this legislation is the revocation of 13 statutory instruments, the replacement of 12 statutory instruments with one set of procedure regulations, the alignment of the initial procedure for all

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<sup>2</sup> 'Positive Planning – Proposals to reform the planning system in Wales (consultation document: 04 December 2013 – 26 February 2014 <https://consultations.gov.wales/sites/default/files/consultation-documents/140212positive-planning-proposals-to-reform-planning-en.pdf>

appeal types and a reduction in the overall time it takes to determine an appeal or called in application. Below, the specifics of this legislation are addressed:

*Submission of full statement of case*

- 4.6 The current timing of the submission of full statements of case raises issues of fairness. LPAs and other interested parties must submit their full case at the same time as an appellant and are therefore, not aware of what evidence and information an appellant will seek to rely on in making their own cases.
- 4.7 The purpose of the legislation is to require appellants to submit their full statement of case along with their notification of appeal. This will allow LPAs and other interested parties to see what evidence and information an appellant will rely upon for their appeal or call-in, enabling them to focus their own full statements of case on only those matters. The effect of this legislation is the overall time of the appeal process will be reduced and ensuring any unnecessary matters are omitted from proceedings.
- 4.8 In the interests of fairness and for more complex enforcement appeals, full statements of case may be submitted up to 7 days after notification of appeal, or within a longer period, provided such longer period is agreed in writing by the Welsh Ministers prior to the deadline for making the appeal.

*Changes to deemed fees*

- 4.9 Where a fee is payable for a deemed application and is not submitted with a notice of appeal, the Welsh Ministers shall send notice in writing to the appellant specifying the required fee and when it must be paid. However, this notice is not sent to the LPA to whom the fee is paid and the LPA is not required to inform the Welsh Ministers when such a fee is paid. The purpose of the legislation is to address this gap in formalising the requirement for the LPA and Welsh Ministers to communicate the requirement and payment of fees to each other.
- 4.10 The effect of the legislation is notice in writing which requires a fee to be paid is sent to the relevant LPA at the same time as the appellant and the relevant LPA must notify the Welsh Ministers when the fee has been paid or if the appellant has not paid the fee within the time specified in the notice. The effect will also be the smoother running of the appeal, and as a policy decision, the appeal will not start until the fee has been paid. Such a measure will avoid abortive work being undertaken in relation to an appeal.

*Determination of procedure for Hazardous Substances Contravention Notice appeals*

- 4.11 Currently the Welsh Ministers must make a determination as to the procedure which an appeal or called in application is dealt with. This can be a local inquiry, a hearing or written representations, or any combination of those three. However, there is an anomaly in Hazardous Substances Contravention

Notice appeals not being part of the list of proceedings for which the procedure may be determined. The purpose of the legislation is to address this anomaly and to enable consistency with other appeal types.

- 4.12 The effect of the legislation is Hazardous Substances Contravention Notice appeals is added to the list of proceedings which an Inspector may determine procedure.

*Date of determination of procedure*

- 4.13 PINS must determine the examination procedure for appeals and call-ins within 7 working days of the 'relevant date'. As there are currently three sets of prescribed period regulations which define the 'relevant date' differently, this raises issues of consistency. Our legislation also contains proposals consequential on the 'mixed-mode' examination of appeals (paragraph 4.14). The purpose of the legislation is to address the outlined inconsistency and to ensure the timing and how procedure is determined is workable.
- 4.14 The effect of our legislation is the 'relevant date' within which the procedure for an appeal must be determined is aligned with the start date for the appeal in all circumstances. This improves the consistency of the appeal process.
- 4.15 The period within which the determination of procedure must occur is changed from 7 working days to 6 weeks. The purpose of this is when procedure is determined, it would be logical for the Welsh Ministers to set out which matters are to be discussed at a hearing or inquiry. This would enable participants in the process sufficient time to prepare for oral proceedings. However, on a practical level, it would be very difficult for Welsh Ministers to determine those matters within 7 working days (as currently specified in existing legislation). Retaining the 7 day period would be unproductive and would increase the potential for changes in procedure during an appeal or call-in to occur. This would ultimately result in a more confusing appeal system for the public and participants. Thus, the effect of the legislation is the Welsh Ministers will have more time to determine procedure. This will have no impact on the overall timescale for an appeal.

*Submission of documents and final comments*

- 4.16 Currently, LPAs are required to notify interested parties of an impending appeal and also submit an appeal questionnaire to the Welsh Ministers by week 2. Appellants, LPAs and interested parties all have the opportunity to submit a full statement of case at week 6 and they, along with the appellant, may make final comments on each others' full statements of case at week 9. The timeframes prescribed for these tasks to be completed are more than adequate.
- 4.17 The purpose of the legislation is to reduce the timeframes associated with carrying out these functions so they remain fair and reasonable, whilst assisting in reduced timeframes for determining an appeal or call-in. The effect of the legislation is the appeal questionnaire will be submitted before

the end of week 1, the LPA and interested parties' full statements of case are to be submitted before the end of week 4 and final comments are due before week 6. This will result in a more timely appeal process.

#### Statements of Common Ground ("SoCG")

- 4.18 The intended purpose of the legislation is to remove the burden on the appeal process, where areas of common ground cannot be agreed between parties, leading to delays rather than speedy resolutions.
- 4.19 A SoCG is currently required to be submitted for appeals and call-ins which follow the inquiry procedure. Although they provide a benefit by setting out matters agreed between parties which need not be revisited during the examination of an appeal or call-in, evidence suggests the difficulties often experienced in achieving agreement between parties on certain matters, which can place a burden on the process. Furthermore, SoCG could also be useful for appeals and call-ins which follow the written representations and hearing procedures, which are not currently prescribed for.
- 4.20 Introducing a requirement for the submission of a SoCG for all appeals and call-ins which follow the written representations and hearing procedures will place further burden on all parties. Thus, the legislation will remove the requirement for a SoCG to be submitted for all appeals and call-ins. The effect of the legislation is the requirement for SoCG will no longer delay the appeals process and will remove pressure from parties to come to agreement where one clearly cannot be made.
- 4.21 However, as SoCG can be a useful tool in reducing the time spent on an appeal or call-in, we will encourage their submission for all procedure types, where agreements can be reached between parties.

#### Examination

- 4.22 At present, all appeals and call-ins are determined by one of three procedures (written representations, hearing or inquiry). A Planning Inspector (working on behalf of the Welsh Ministers) will determine which procedure is most suitable for each appeal or call-in, depending upon the complexity of the case (paragraph 4.9).
- 4.23 Written representations is both the quickest and least expensive procedure. A hearing will usually last one day and an inquiry several days, making it the most time consuming and costly procedure.
- 4.24 Where the Planning Inspector determines the majority of issues for an appeal or call-in could be determined by way of written representations, but certain issues are more complex and require a hearing or an inquiry, then the entire appeal must be examined by way of a hearing or inquiry. This is neither time, nor cost effective.

- 4.25 The purpose of the legislation is to allow a combination of these procedures to be used (where appropriate) whereby examination proceeds by way of written representations in the first instance, with specific issues, because of their complexity or controversy, being examined by way of a hearing or inquiry.
- 4.26 The effect of the legislation is a more flexible and efficient examination process will be in place, which helps reduce the overall time taken to determine an appeal or call-in, as well as reducing costs for all participants. Examination procedures can also be tailored on a case-by-case basis, which ensures all appeals and call-ins will be determined by the most appropriate and proportionate method.

#### Making changes to an appeal and raising new matters

- 4.27 At present, an application may be altered after notification of an appeal has been submitted, and new matters may be raised relating to the appeal which weren't before the LPA. However, appellants may only do so where the proposed changes or new matters are accepted by a Planning Inspector, who has discretion over whether any such actions should be permitted. This is perceived to undermine LPAs, who often claim any change or new information would have altered the basis of their decision. Communities can often feel confused and excluded from the appeal process new matters are raised or alterations occur.
- 4.28 The Planning (Wales) Act 2015 includes a provision which prevents an application being varied following notice of appeal except in such circumstances as may be prescribed. The purpose of this legislation is first, to prescribe the circumstances in which an application for planning permission can be varied following service of the notice of appeal, ensuring any revisions to applications are considered by the relevant LPA in the first instance, rather than through the appeal route. Secondly, it provides a person who makes an appeal may not raise any matter which was not before the local planning authority when the decision appealed against was made (except under specific circumstances).
- 4.29 The effect of the legislation is enhanced transparency of the appeal system. The legislation will improve the fairness of the planning process as the same or similar application will be considered on appeal as was before the LPA in the first instance. There would also be fewer burdens on the appeal system as revised applications could be approved by LPAs. This may result in improved working relationships between applicants and LPAs.

#### Certificates of lawfulness

- 4.30 Unlike appeals which relate to a planning decision where notification of an appeal must be submitted within 6 months, certificate of lawfulness appeals are not subject to a statutory time limit and can be made at any time following a local planning authority's decision. There is also currently no statutory requirement for what information and documentation needs to be included upon submission of an appeal for certificates of lawfulness.

4.31 The purpose of the legislation is to improve clarity and consistency across the appeal system by ensuring the timescale within which an appeal can be submitted is aligned. The legislation introduces the same 6 month deadline for notification of appeal against a LPA's decision where they concern certificate of lawfulness appeals. The legislation makes consequential provision which prescribes the information and documentation required alongside notification of appeal. The effect of the legislation is improved consistency with similar appeal types.

## **5 Consultation**

5.1 The proposed reforms to the appeal system in Wales were first consulted on in December 2013 as part of the 'Positive Planning' consultation paper containing the draft Planning (Wales) Bill.

5.2 The 'Positive Planning' consultation paper recommended a number of high-level proposals, which included:

- (a) measures to reduce the time taken to determine an appeal (i.e. the earlier submission of a full statement of case);
- (b) the notion of mixed-mode examination;
- (c) the complete restriction on changes to an application once an appeal has been submitted; and
- (d) removing the right to appear before a Planning Inspector.

5.3 The proposals put forward in the consultation paper were well received by respondents, with the majority agreeing with the proposals to reform the appeal system.

5.4 The 'Appeals, costs and standard daily amounts' consultation paper was launched on 10 August 2016 and was open for responses until 4 November 2016. The consultation added further detail to the proposals contained in the 'Positive Planning' consultation paper and set out detailed proposals for reforms to the appeal system in Wales.

5.5 In considering those stakeholders most likely to be impacted by the proposals (both individuals and organisations), a list was drawn up which included all LPAs in Wales, public bodies and special interest groups. Consultees were asked to assign themselves to one of six broad categories indicated in the table below, which shows the breakdown of responses by category. The consultation generated 23 responses.

5.6 Some of the main concerns expressed in the consultation related to the shortened period within which the LPA must submit the appeal questionnaire (reduced from 2 weeks to 5 working days), due to the associated difficulty in reaching the deadline. Businesses and Professional Bodies were concerned with word limited representations, where asked for by the Welsh Ministers.

5.7 To remedy these concerns, flexibility has been added to the appeals regulations including the encouragement of more electronic working, the ability for the Welsh Ministers to extend timescales or word limits where they consider necessary and the time in which a determination of procedure may be made has been extended to take into account the potential for mixed mode examination.

5.8 A common theme of the consultation was the requirement for further guidance, particularly in relation to the determination of procedure, the restricted ability to introduce new matters during an appeal and setting out the amendments. Guidance to supplement the appeals process will be published by the Planning Inspectorate when the amended provisions come into force.

5.9 A summary of the consultation and government response will be published alongside this Explanatory Memorandum and Regulatory Impact Assessment and can be found here:

<https://ymgyngoriadau.llyw.cymru/ymgyngoriadau/apeliadau-costau-symiau-dyddiol-safonol>

<https://consultations.gov.wales/consultations/appeals-costs-and-standard-daily-amounts>

5.10 Overall, there was clear support for the proposals, with each of the 12 specific questions receiving positive responses (either “Yes” or “Yes, subject to comment”), with 100% of respondents agreeing with proposals relating to:

- Mixed-mode examinations for appeals and call-ins;
- Further representations being subject to a word limit; and
- A 6 month time limit for notification of an appeal for certificates of lawfulness decisions.



<b>Table 1 – Breakdown of respondents</b>		
<b>Category</b>	<b>Number</b>	<b>% of total</b>
Businesses / Planning Consultants	2	9%
Local Authorities (including National Park Authorities)	11	48%
Government Agency / Other Public Sector	4	17%
Professional Bodies / Interest Groups	3	13%
Voluntary Sector	0	0%
Others (other groups not listed)	3	13%
<b>TOTAL</b>	<b>23</b>	

## Part 2 – Regulatory Impact Assessment

### Reduce timescales for submission of documents and initial procedure

6.1 Two options have been considered:

- Option 1 – Do nothing. Retain the existing timescales for the submission of documents relating to an appeal or called in application.
- Option 2 – Reduce timescales for submission of documents, determination of procedure and submission of comments to improve the speed of the appeal process.

**Option 1 – Do nothing. Retain the existing timescales for the submission of documents relating to an appeal or called in application.**

#### **Description**

6.2 The existing appeal and call-in process in Wales is generally considered fit for purpose, however, it is acknowledged the procedure and timeframes for the submission of documents, determination of procedure and submission of comments raises certain issues regarding timing, transparency, fairness and consistency.

#### Full statement of case

6.3 Currently, appellants and applicants are not required to submit their full statement of case (which normally consists of the full particulars to support their arguments) until 6 weeks after the starting date of an appeal or called in application (defined as the date the Planning Inspectorate send notice to an appellant and LPA a valid appeal or reference has been received). LPAs and other third parties must also submit their own full statements of case at the same time as the appellant, without first seeing the appellants. LPAs may provide a response to the appellant's statement of case 3 weeks after the deadline for the submission of the full statement of case, however, there are no statutory rights for third parties to provide responses to both the appellant's and LPA's statement of case.

#### Determination of procedure

6.4 For the majority of appeal types and call-ins, the Planning Inspectorate must determine the examination procedure by which the appeal or application will progress (written representations, hearing or inquiry) within 7 working days of the 'relevant date', which is prescribed in legislation. The 'relevant date' is effectively the date on which all necessary information required to entertain an appeal (or referral) is received. There are three sets of prescribed period regulations which define the relevant date for each type of proceeding, which are all different.

## Appeal questionnaire and notification of third parties

- 6.5 In the case of appeals, LPAs are required to submit an appeal questionnaire to the Welsh Ministers within 2 weeks of notification of the starting date of an appeal (in the case of HAS and CAS, this is 5 working days). Within the 2 week timeframe, LPAs are also required to inform third parties of an appeal or call-in.

## Final comments

- 6.6 Appellants and LPAs may submit final comments in response to each other's full statements of case within 9 weeks of the starting date of an appeal or called in application, which is 3 weeks following the submission of full statements of case by all parties. The parties involved in an appeal or called in application may have raised matters in their statements which an appellant or LPA may wish to respond to.
- 6.7 This option will retain the initial process for an appeal or called in application.

## **Costs**

### Welsh Government

- 6.8 It is estimated the time spent by administrative staff within the Planning Inspectorate validating appeals and sending notice of appeal to all parties involved is 1 hour. Based on the average hourly salary of administrative staff being £37.00<sup>3</sup>, this equates to a cost of £37.00 per case.
- 6.9 Furthermore, the time spent by a Planning Inspector determining the procedure an appeal must follow is estimated to be 2 hours. Based on the average hourly salary of a Planning Inspector of £70.00<sup>4</sup>, this equates to a cost of £140.00 per case.
- 6.10 Considering the total average number of appeals received per year (an average of 726<sup>5</sup>), the total cost to the Planning Inspectorate is calculated as £128,500 per year.

### Local Planning Authorities

- 6.11 LPAs will be required to spend time preparing their statements of full case, notifying third parties of an appeal, responding to an appellant's full statement of case and in where an application is called in, send all documentation related to an application across to the Welsh Ministers.

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<sup>3</sup> Planning (Wales) Bill EMRIA (April 2015) – paragraph 7.1100

<http://www.assembly.wales/laid%20documents/pri-ld9940-em-r/pri-ld9940-em-r-e.pdf>

<sup>4</sup> Data received from the Planning Inspectorate (December 2016)

<sup>5</sup> Data received from the Planning Inspectorate (December 2016)

- 6.12 It's not possible to calculate an accurate cost to LPAs as the time taken to undertake these tasks can vary significantly, depending upon the complexity of an appeal. However, it is estimated the average time taken to undertake these tasks by a Senior Planning Officer would be 7 hours and taking into account the average hourly salary of a Senior Planning Officer at £28.69<sup>6</sup> and the average total number of appeals received per year being 726, this equates to a total cost to LPAs of approximately £145,200 per annum.

### Development Industry

- 6.13 The cost to developers of undertaking the work required for the initial procedure (i.e. submission of a full statement of case and providing comments on other parties' full statements of case) is comparable to the work undertaken to participate in the written representation procedure. It is estimated the cost to developers participating in an appeal or call-in which follows the written representation procedure is £600.
- 6.14 Although this figure takes account of whole appeal or call-in process for written representations, it is reasonable to assume it would remain at £600, given developers will be required to undertake the same level of work as is already prescribed and, at present, are not required to undertake further work beyond the submission of final comments at week 9.
- 6.15 Based on an average of 726 appeals per year, the total annual cost to developers is £435,600.

### Third Parties

- 6.16 Similar to LPAs, the time taken for third parties to interact with the appeal process can vary significantly, depending upon the complexity of the case. Furthermore, different third parties operate on a different cost basis, while some are volunteers. As such, it is not possible to attach a monetary figure to third party costs. However, it is reasonable to assume the level of input by third parties will be less than LPAs as there are no administrative tasks to be undertaken.

## **Benefits**

### Welsh Government

- 6.17 There are some negative impacts on the Planning Inspectorate as the initial procedure for appeals is unnecessarily long and much of the time is redundant. The timescales set are inflexible for each proceeding, yet there is some inconsistency between the timescale for planning and related appeals,

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<sup>6</sup> Planning (Wales) Bill Methodology Paper (April 2015) – paragraph 16.3  
<http://gov.wales/docs/desh/publications/150512updated-methodology-paper-en.pdf>

enforcement and related appeals and called in applications. In terms of positive impacts, the process, as set out enables the Planning Inspectorate to receive the documentation required to determine an appeal or called in application.

### Local Planning Authorities

- 6.18 Currently, the LPA is required to submit their full statement to the Planning Inspectorate without first seeing the appellant's full statement of case. This can raise issues of fairness as the LPA would not have a clear indication of the specific issues an appellant wishes to raise in relation to an appeal. While the LPA may provide a response to an appellant's full statement of case 3 weeks following the submission of their own full statement of case, the LPA may have undertaken unnecessary work in providing a defence to matters which the appellant does not intend to raise. This is not time or resource effective.
- 6.19 As a benefit, the prescribed timeframes provide ample time for the LPA to submit documents and information relating to an appeal or called in application. However, this extended time creates further uncertainty as to the outcome of an appeal against their decision or notice.

### Development Industry

- 6.20 As a benefit, developers are given ample time within which to submit their full statement of case (6 weeks from the starting date). However, similar to the LPA and third parties, this extended time may increase uncertainty of decisions.

### Third Parties

- 6.21 Similar to LPAs, third parties are required to submit their full statement of case at week 6 (at the same time as the appellant has submitted theirs). Third parties are at a disadvantage as they are unaware of what evidence an appellant will rely upon for their appeal. Unlike LPAs, there is no statutory right or ability for third parties to provide a response to the appellant's (and the LPA's) statement of case by way of closing comments for proceedings dealt with by way of written representations and hearings. Without this ability to respond to the appellant's full statement of case, third parties are severely compromised.
- 6.22 As a benefit, the prescribed timeframes provide ample time for third parties to submit their full statement of case. However, this extended time creates further uncertainty as to the outcome of an appeal.

## **Option 2 – Reduce timescales for submission of documents, determination of procedure and submission of comments to improve the speed of the appeal process.**

### **Description**

- 6.23 This option proposes a number of key changes to the existing appeal system to ensure it can be consistent, fair, less time consuming and more transparent.
- 6.24 It is proposed to align the processes and procedures for appeals and called in applications by reducing existing timeframes for undertaking various duties such as the submission of documents and comments, and notification of third parties.

### Submission of a full statement of case

- 6.25 For planning and related appeals and enforcement and related appeals, it is proposed an appellant's full statement of case must be submitted with notice of appeal at the outset. However, as there are certain anomalies for enforcement and related appeals, it is considered necessary, in certain circumstances, a full statement of case can be submitted later than the notice of appeal, which would be within a prescribed 7 day period or any such longer period as agreed by the Welsh Ministers. For called in applications, a full statement of case must be submitted within a 4 week period following the date of an LPAs notice of referral to the Welsh Ministers. An appeal or call-in will not start until a full statement of case has been received.

### Determination of procedure

- 6.26 This option proposes to align, where possible, the determination of procedure. Whereas currently, the determination of procedure is aligned to a 'relevant date' which currently differs between appeals, it is proposed to align the 'relevant date' in relation to enforcement and related appeals and called in applications, for consistency.

### Appeal questionnaire and notification of third parties

- 6.27 In order to help decrease the time taken to determine an appeal, this option proposes to shorten the timeframe in which LPAs can submit their appeal questionnaire to achieve parity with the HAS and CAS process. It is proposed LPAs submit a completed questionnaire and inform third parties within 5 working days of the starting date.

### Final comments

- 6.28 This option seeks to allow all parties a final opportunity to respond to matters raised by an LPA or third party in their full statement of case. As these final comments are intended to be focussed and in response to matters raised within LPAs' and third parties' full statements of case, it is proposed these

comments are submitted within 6 weeks of the starting date of an appeal (2 weeks following the deadline for receipt of statements of case by an LPA and third parties' representations). This is one week less than the equivalent stage, at present and third parties are also given opportunity to comment.

## **Costs**

### Welsh Government

6.29 As this option only seeks to reduce and align the initial timeframes for all cases, for consistency, the amount of work required to undertake the various tasks during the initial stages of an appeal or call-in will remain the same. The reduction of certain time limits and the requirement for the appellant to submit the full statement of case from the outset will not require further staff resource. Accordingly, there are no additional costs to the Welsh Government.

### Local Planning Authorities

6.30 There will be no additional costs attached to LPAs as the amount of work they currently undertake relating to an appeal or called in application will remain the same, as they must produce a questionnaire, notify third parties, provide a full statement of case and can prepare a response to third parties' full statement of case. It is difficult to predict, at this stage, the impact of the requirement for an appellant to submit a full statement of case from the outset on the resource required to produce the LPA's full statement of case. Whilst it is anticipated the LPA's full statement of case will purely be a response to the appellant's full statement of case, and would be less resource intensive, this is ultimately not a requirement. Thus, we assume the LPA will allocate similar resource to their full statement of case as they would under option 1.

### Development Industry

6.31 This option provides no additional costs for developers. Under this option, appellants will still be required to produce a full statement of case and are able to respond to other parties' full statements of case. It is anticipated the same level of work will be undertaken for an appeal or call-in to option 1, albeit in a shorter time period.

### Third Parties

6.32 There will be the additional ability for third parties to respond to the appellant and LPA's full statement of case. However, as explained in option 1, there is an associated difficulty in predicting the costs of third parties.

## **Benefits**

### Welsh Government

- 6.33 This option provides benefits to the Planning Inspectorate in addressing timing and fairness issues related to an appeal and call-in processes.
- 6.34 Aligning the processes and procedures for appeals and call-ins and requiring documents to be submitted earlier than at present, will result in a greater level of consistency across appeal types and contribute towards a timelier and more cost effective appeal system.

### Local Planning Authorities

- 6.35 One way in which LPAs will benefit, will be the ability for them to view an appellant's full statement of case prior to them submitting their own. This will result in more focussed and concise statements and will avoid the requirement at present to anticipate what an appellant will seek to rely upon during appeal proceedings in order to prepare their response. This is more transparent, time-intensive and fair than the procedure set out in option 1.
- 6.36 This option may have a negative impact on LPAs with less time given to produce a full statement of case, questionnaire and response to other statements of case. Whilst the perception is this option will decrease time within which to produce information to the Planning Inspectorate, it is intended, in seeing the appellant's full statement of case at the outset, the LPA's statement will be more focussed. Given the increase in electronic working, LPAs are already producing questionnaires speedily. This option will increase certainty with decisions being made on appeal or call-in in a timelier manner.

### Development Industry

- 6.37 Although developers will be required to submit their full statement of case sooner, significant time is allowed for appellants to put forward their case to the Welsh Ministers. Compressing the overall initial timeframe for appeals and call-ins will ultimately lead to increased certainty for developers and ensure appeals or call-ins are determined efficiently.

### Third Parties

- 6.38 Similar to LPAs, third parties will benefit from an appellant or applicant submitting their full statement of case with their notification of appeal or following notice of referral. This will result in a more focussed response. Third parties will also be given the opportunity to submit a response to the full statement of case of both the appellant or applicant and LPA. This will



increase transparency and fairness in the process. With the reduction in time limits, there will be more certainty in decision-making.

### Justification for two options

- 6.39 A third option could potentially exist, which may see either an even greater reduction in the timeframes for the submission of documents, determination of procedure etc. than in option 2, or a slight increase than in option 2.
- 6.40 However, any further reduction in time than is already proposed is considered wholly unreasonable and unfair on all parties involved in the appeal and call-in process, particularly enforcement appeals where certain timeframes are already deemed very short. Similarly, any timeframes proposed which are longer than those identified in option 2 would run contrary to the objective of speeding up the appeal process. Hence, the costs and benefits of this option have not been assessed.

### Summary and preferred option

- 6.41 It is clear the timeframes for the existing appeal process, which includes the submission of key documents and determination of procedure, are not consistent, unfair on certain parties and do not encourage certainty. There are prescribed periods between the submission of various documents which are unnecessarily long and could easily be shortened without impacting upon the time required for parties to prepare their documentation relating to an appeal. Furthermore, aligning all the appeal types would help increase consistency and clarity for all parties involved in the appeal process. Option 2 is therefore the preferred option.

*Table 6.1: Total costs for the preferred option: Option 2*

	Existing Costs	Additional Cost / Saving from legislation	Comments
Welsh Government	£128,500	N/A	Cost neutral
LPA's	£145,200	N/A	Cost neutral
Development Industry	£435,600	N/A	Cost neutral
Third Parties	Not known	Not known	-

## **Statements of Common Ground (“SoCG”)**

6.42 Two options have been considered:

- Option 1 – Do nothing. Retain the requirement for a SoCG to be submitted for the inquiry procedure only, which must be agreed 4 weeks before the notified inquiry date.
- Option 2 – Remove the statutory requirement for SoCG, but encourage their submission through guidance for all procedures (written representations, hearings and public inquiries) alongside notice of appeal, where one is initiated by any party.

**Option 1 – Do nothing. Retain the requirement for a SoCG to be submitted for the inquiry procedure only, which must be agreed 4 weeks before the notified inquiry date.**

### **Description**

6.43 SoCG are written statements prepared jointly by the appellant and any third party which contain agreed factual information about an appeal or application. These can aid the efficient determination of an appeal or called in application. The benefit of these statements are they set out matters agreed between parties and need not be revisited during the examination of an appeal or called in application. This can be beneficial in ensuring an examination is focussed on matters of dispute, enabling decisions to be made in a timely manner.

6.44 This option retains the status quo whereby SoCG are only required to be submitted for appeals and called in applications where the inquiry procedure is used and is required to be agreed 4 weeks before the notified inquiry date.

### **Costs**

#### **Welsh Government**

6.45 There are no costs to the Welsh Government as SoCG are documents which are prepared jointly between the appellant and any third party. However, a SoCG, on occasion, may lessen the need for an inquiry to discuss a certain topic, ultimately leading to less time being spent examining an appeal or called in application.

#### **Local Planning Authorities**

6.46 There is no data available relating to SoCG, however, based on the work involved in preparing one, it is estimated LPAs spend 7 hours preparing a statement of common ground with an appellant or applicant. When

considering the average hourly salary of a senior planning officer (who would likely prepare the LPAs contribution) being £28.69, this equates to an estimated cost of £200 per appeal or call-in.

- 6.47 With an average of 13 inquiries held each year, this equates to an approximate annual cost to LPAs of £2,600.

### Development Industry

- 6.48 Although it is not possible to attach a monetary value to the time taken for a developer to prepare SoCG, this option requires the submission of one where the inquiry procedure is used. It is however assumed the appellant will spend the same amount of time on a SoCG as the LPA as such a document is worked on jointly. Accordingly, 7 hours are spent on SoCG per inquiry. An average of 13 inquiries are held each year. If conflict and disagreement arises between the appellant and third parties and an agreement on common ground cannot be reached, this only seeks to prolong the appeal process and cause additional cost to the appellant.

### Third parties

- 6.49 Because SoCG are sometimes prepared between the appellant and third parties, there is likely to be input from various third parties, resulting in a cost. However, as appeals and called in applications vary significantly in their complexity, the level of input from third parties and the number of third parties preparing a SoCG will differ from one appeal to the next. It is therefore not possible to quantify this as a monetary cost.

## **Benefits**

### Welsh Government

- 6.50 As SoCG set out those matters agreed between parties and need not be revisited during an inquiry, they are a useful tool which helps focus an examination and ultimately, reduces the total time of an inquiry.
- 6.51 However, there is no requirement for a SoCG to be submitted for appeals or called in applications determined by the written representations or hearings procedures. SoCG could be as equally useful in such circumstances.

### Local Planning Authorities

- 6.52 SoCG provide an opportunity for LPAs (as an interested party) to agree certain issues with an appellant so they are not required to be discussed or disputed during proceedings. This helps reduce the total time of an inquiry.

- 6.53 However, it is acknowledged the production of SoCG can place significant pressure on LPAs, particularly where there are little or no areas of agreement between parties on certain issues. Where statutory requirements dictate one must be submitted (as is the case for appeals determined by way of an inquiry), a SoCG can be counterproductive to speeding up the time of an inquiry and can result in the production of a document which is of little use to the Inspector and parties to an appeal or call-in.

#### Development Industry

- 6.54 Similar to LPAs, SoCG can be a useful tool for appellants, but only where agreements can be made on certain issues before the start of an inquiry. If agreements cannot be reached, then SoCG can become a hindrance, rather than a benefit to the process. A disproportionate amount of time can be spent by the appellant seeking agreement to issues where there is little scope for agreement from the LPA or third parties.

#### Third parties

- 6.55 Similar to LPAs, SoCG can be a useful tool for third parties, but only where agreements can be made on certain issues before the start of an inquiry. If agreements cannot be reached, then SoCG can become a hindrance, rather than a benefit to the process.

**Option 2 - Remove the statutory requirement for SoCG, but encourage their submission through guidance for all procedures (written representations, hearings and public inquiries) alongside notice of appeal, where one is initiated by any party.**

#### **Description**

- 6.56 This option proposes to remove the statutory requirement for the submission of SoCG as they can place significant pressure on LPAs, statutory consultees and the appellant, particularly where a requirement to submit a SoCG exists, but cannot be achieved because of disagreements. This places a burden on the appeal process rather than ensuring a speedy resolution.
- 6.57 However, it is acknowledged SoCG can a useful tool in the appeal process and should be encouraged to be submitted with a notice of appeal. This option proposes to set out in guidance, which will apply to all proceedings (written representations, hearings and inquiries) SoCG should be encouraged in all cases where parties are able to narrow down the areas of disagreement.

## **Costs**

### Welsh Government

- 6.58 As SoCG is a document produced jointly between the LPA (and third parties, in some cases) and the appellant, the Welsh Government do not contribute resource towards their production.
- 6.59 It is estimated the time taken to produce guidance for SoCG would be 2 days for a Higher Executive Officer to write guidance and 0.5 days of time spent by the Director for the Planning Inspectorate for Wales to proof read the guidance. Based on the average daily salary of a Higher Executive Officer (who would undertake the work) being £144<sup>7</sup> (including overheads), and the daily salary of the Director for Wales being £634 (including overheads), this results in an estimated one-off cost to the Welsh Government of £605.

### Local Planning Authorities

- 6.60 As SoCG would only be recommended to be submitted via guidance and not as a statutory obligation, it is anticipated the number submitted for inquiries would be reduced, based on circumstances where the appellant and third parties are not able to reach agreements.
- 6.61 It is estimated there will be a reduction of 50% and based on the costs identified in paragraph 6.47, this would result in a reduction of £1,300. However, as SoCG will also be encouraged for the written representations and hearings procedures, it is estimated the 50% reduction identified in paragraph 6.60 will be cancelled out by those submitting a SoCG for an appeal or called in application which proceeds by way of written representations and/or a hearing.
- 6.62 This option is cost-neutral for LPAs.

### Development Industry

- 6.63 Similar to 'third parties', it is not possible to attach a monetary figure to the costs for appellants to submit a SoCG.
- 6.64 However, it is estimated an appellant will spend the same amount of time on a SoCG as the LPA as such a document is worked on jointly. Option 1 stated 7 hours are spent by each party per SoCG. Option 2 will result in 13 SoCG being produced. Accordingly, 91 hours will be spent on SoCG by appellants and therefore, the costs for developers will be similar to Option 1.

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<sup>7</sup> See calculations

## Third Parties

6.65 As SoCG are prepared between the appellant and third parties, there is likely to be input from various third parties, resulting in a cost to them. However, as appeals and called in applications vary significantly in their complexity, the level of input from third parties and the number of third parties preparing a SoCG will differ from one appeal to the next. It is therefore not possible to quantify this as a monetary cost, however, as the number of SoCG are estimated to be the same or similar to Option 1, it is expected costs to third parties will remain broadly similar.

## **Benefits**

### Welsh Government

6.66 As the submission of SoCG can aid in narrowing the issues which are disputed during an appeal or call-in, this option will provide greater benefit to the Planning Inspectorate by increasing cooperation during appeals and called in applications which are dealt with by way of written representations or hearing.

### Local Planning Authorities

6.67 By removing the statutory requirement for the submission of a SoCG, LPAs will be under less pressure to agree to one in instances where agreements cannot be reached with the appellant. The LPA will benefit through being able to specify areas of common ground where appeals or called in applications are dealt with by way of written representations and hearings. Where the LPA voluntarily participates in a SoCG, working relationships between them and the appellant or applicant (as the case may be) will be improved.

### Development Industry

6.68 Appellants or applicants would be under no statutory obligation to submit a SoCG for an appeal or call-in dealt with by way of inquiry. Thus, where it is clear no agreement can be reached with the LPA or a third party, little time and effort would be expended. However, where the appellant or applicant voluntarily participates in a SoCG, working relationships between them and the LPA or third party will be improved. The appellant or applicant may also benefit through narrowing the areas of disagreement for proceedings other than inquiries. This may aid in the speedier passage to an appeal or call-in decision.

## Third Parties

6.69 Similar to LPAs, the removal of the statutory requirement for the submission of a SoCG for inquiries will likely benefit third parties in circumstances where agreements on certain issues cannot be reached, thus less time is spent negotiating with the appellant or applicant. However, as SoCG will continue to be advocated through guidance because of their usefulness in certain circumstances, third parties will retain the ability to contribute towards them where they are considered necessary, useful and productive.

### **Justification for two options**

6.70 A potential third option exists which would place a statutory requirement for the submission of a SoCG for all appeal procedures and not just inquiries. However, this would only seek to exacerbate the existing issues surrounding the statutory submission for a SoCG where agreements cannot be reached between appellants and third parties.

6.71 This potential third option would place even greater pressure on appellants and third parties and therefore, the only viable options would be to 'do nothing', or remove the statutory requirement for a SoCG to be submitted.

### **Summary and preferred option**

6.72 Placing a statutory requirement for SoCG to be submitted can cause undue pressure on appellants and third parties, particularly where an agreement on common ground cannot be reached.

6.73 Similarly, although SoCG are useful tools in focusing an examination, their usefulness is restricted by only requiring them for inquiries.

6.74 Option 2 is the preferred option because it removes the requirement to submit SoCG in circumstances where agreements cannot be reached and are thus not productive, as well as not being time or cost effective. However, Option 2 still advocates the use of SoCG and their submission will continue to be encouraged for all written and oral proceedings where SoCG can undertake the function of narrowing the issues of disagreement.

Table 6.2: Total costs for the preferred option: Option 2

	Existing Costs	Additional Cost / Saving from legislation	Comments
Welsh Government	Not known	Not known*	N/A
LPAs	£2,600	£0	Cost-neutral
Development Industry	Not known	Not known	N/A
Third Parties	Not known	Not known	N/A

\*There are one-off costs to the Welsh Government of £605



## **Examination**

6.75 Two options have been considered:

- Option 1 – Do nothing. Appeals and called in applications continue to be determined by a single procedure (either by way of written representations, hearing or inquiry).
- Option 2 – Make provision for appeals and called in applications to be examined by combined proceedings, with presumption in favour of written representations, and enabling specific issues to be examined by way of hearing or public inquiry (which ever is appropriate and only if required).

**Option 1 – Do nothing. Appeals and called in applications continue to be determined by a single procedure (either by way of written representations, hearing or inquiry).**

### **Description**

6.76 At present, for most appeal types, the Planning Inspectorate (working on behalf of the Welsh Ministers) must determine the procedure for an appeal or called in application within 7 working days of receipt of notice of appeal or notice of referral and the entire appeal or called in application shall proceed through one of following methods:

- Written representations;
- Hearing; or
- Inquiry.

6.77 The written representations method is both the quickest and least expensive procedure, while a hearing will usually last for up to one day and an inquiry can last several days, making it the most time-consuming and costly method.

6.78 Where the Planning Inspectorate decides the majority of issues for an appeal or call-in could be determined by way of written representations, but certain issues would benefit from a hearing or an inquiry, then the entire appeal is examined by way of a hearing or inquiry.

### **Costs**

#### **Welsh Government**

6.79 For the majority of appeal types and call-ins, the Planning Inspectorate must determine the examination procedure by which the appeal or application will progress. This will either be by written representations, a hearing or an inquiry.

- 6.80 It costs the Planning Inspectorate, on average, £1,582 per appeal to process and determine appeals using the written representations procedure; £5,096 using the hearing procedure; and £14,517<sup>8</sup> using the local inquiry procedure.
- 6.81 On average, there are 607 appeals each year dealt with by way of written representations, 106 by hearings and 13 by inquiries. This equates to an annual cost to the Welsh Government of approximately £1,689,000.

### Local Planning Authorities

- 6.82 It costs an LPA an average of £1,742<sup>9</sup> to participate in an appeal. However, this figure represents an average cost when considering all appeal procedures (written representations, hearings and inquiries). There is no data available relating to the cost per procedure. Thus, it is assumed it costs the LPA approximately £1,264,700 per annum to participate in the appeals process.

### Development Industry

- 6.83 It is estimated on average, it costs a developer £600 to participate in the written representations procedure; the hearing procedure £1,200; and the local inquiry procedure £4,800<sup>10</sup>.
- 6.84 Based on an average of 607 appeals dealt with by way of written representations, 106 by hearing and 13 by inquiry, there is a total estimated cost to developers of £553,800 per annum.

### Third Parties

- 6.85 There are no direct costs associated to third parties, however, they can submit comments on appeals and appear at hearings and inquiries, if invited to do so. Furthermore, different third parties operate on a different cost basis, while some are volunteers or are members of the public. As such, it is not possible to place a monetary value to these costs.

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<sup>8</sup> Planning (Wales) Bill EMRIA (April 2015) – paragraph 7.395

<http://www.assembly.wales/laid%20documents/pri-ld9940-em-r/pri-ld9940-em-r-e.pdf>

<sup>9</sup> Planning (Wales) Bill EMRIA (April 2015) – paragraph 7.400

<http://www.assembly.wales/laid%20documents/pri-ld9940-em-r/pri-ld9940-em-r-e.pdf>

<sup>10</sup> Planning (Wales) Bill EMRIA (April 2015) – paragraph 7.405

<http://www.assembly.wales/laid%20documents/pri-ld9940-em-r/pri-ld9940-em-r-e.pdf>

## **Benefits**

### Welsh Government

6.86 The current system only allows for one procedure to be undertaken for an appeal where it may not be entirely necessary. For example, where the Planning Inspectorate (working on behalf of the Welsh Ministers) decide the majority of issues relating to an appeal or call-in could be examined by way of written representations, but certain issues would benefit from a hearing or an inquiry. In such circumstances, the entire appeal would have to be examined by way of a hearing or inquiry. This efficiency of the appeal process is questioned as a result.

### Local Planning Authorities

6.87 As the current process only allows for a single examination method, LPAs may spend significant time and effort participating in a hearing or inquiry, where the majority of issues could be dealt with by way of written representations. This can be time-consuming for LPAs, when dealing with appeals against their decision.

### Development Industry

6.88 Prior to the introduction of s.319B of the TCPA, s.88E of the Listed Buildings Act and s.21B of the Hazardous Substances Act, which enabled the Welsh Ministers to determine procedure, there were at least 20 cases per year which were identified by the Planning Inspectorate as more suitable to be dealt with by way of written representations than oral proceedings. This assumes a preference of the appellant of oral proceedings being preferred. The current process requires appeals or call-ins to be dealt with through a single examination procedure, where a particular issue alone requires oral proceedings. This is of benefit to the appellant, where there is a preference for a hearing or inquiry.

### Third Parties

6.89 If invited, third parties can be heard at hearings and inquiries; however, their attendance may not be necessary if an appeal is determined by way of a hearing or an inquiry, when the majority of the appeal or call-in could have been dealt with by way of written representations. As the current process only allows for a single examination method, third parties may spend significant time and effort participating in a hearing or inquiry, where the issues specific to them could be dealt with by way of written representations. This can be time-consuming and disproportionate. However, in some instances, third parties may prefer the entire proceedings are dealt with by way of hearing or inquiry, to ensure the point can be made orally, and to reaffirm their views.

**Option 2 - Make provision for appeals and called in applications to be examined by combined proceedings, with presumption in favour of written representations and enabling specific issues to be examined by way of hearing or public inquiry (which ever is appropriate and only if required).**

**Description**

- 6.90 The complexity of an appeal or called in application can vary significantly. In determining procedure, there are instances where the Planning Inspectorate may consider the majority of an appeal or call-in could be dealt with by way of written representations, but certain issues would benefit from either a hearing or inquiry. However, there is currently no provision to allow a mixture of procedures. In these circumstances, the entire appeal or called in application would have to be determined by hearing or inquiry. This is not only time consuming, but also increases costs.
- 6.91 This option proposes where possible, examination proceeds by way of written representations, although specific issues, because of their complexity or controversy, will be examined by way of a hearing or public inquiry.

**Costs**

Welsh Government

- 6.92 Under this option, it is expected there will be a reduction in costs to the Planning Inspectorate, as there will be a reduction in appeals or call-ins dealt with entirely by way of a hearing or inquiry. As inquiries or hearings will be issue-specific, they will be shorter. Furthermore, where issues are not dealt with orally, Planning Inspectors may require further written representations or no supplemental information is required. This will decrease the time taken to deal with an appeal or call-in.
- 6.93 The number of hearings and inquiries held would remain the same because the reason for those procedures currently being used in the first instance implies at least part of an appeal or call-in requires a hearing or inquiry to deal with certain issues. However, part of an appeal may be examined differently, i.e. by way of written representations or hearing instead (inquiries only). Furthermore, the number of appeals or call-ins dealt with by written representations would not decrease, as the Planning Inspector would see no reason for such appeals to be dealt with by oral proceedings.
- 6.94 The cost of an appeal or call-in dealt with by way of written representations is £1,582. The cost of a hearing is £5,096 and an inquiry is £14,517. It is estimated there are 106 appeals dealt with by way of hearing per year and 13 dealt with by way of inquiry.
- 6.95 As a result of this option, it is estimated 1 hearing per year will be dealt with partially by way of written representations. Hearings typically last 1 day, however, some last longer than 1 day. Where a hearing is proposed to last 1

day, the Inspector is likely to examine the entire appeal or call-in through this method as all parties are present and the venue has been booked for a particular day. The Inspector would not lose time in doing so. However, it is expected the 1 hearing per year which last longer than 1 day will be partially converted to written representation appeals. It is estimated such appeals will follow 50% written representations (£1,582 per appeal) and 50% hearing (£5,096) per appeal. The average cost of this being dealt with by way of combined proceedings would be £3,339. Thus, for appeals dealt with by way of a hearing, there would be an annual saving of £1,757.

- 6.96 It is estimated the majority of appeals or call-ins which are dealt with by way of inquiry will be converted to combined proceedings, as not all matters require consideration at inquiry in most cases. To provide the cost benefit to this, a reasonable assumption has been made the average time spent for an appeal to be dealt with entirely by way of inquiry will be reduced by 40%. Of this 40%, 35% more of the proceedings on average will be dealt with by way of written representations and 5% by way of hearing. These averages assume the majority of matters will be dealt with by way of written representations, when altered, and only rarely will an Inspector elect to hold a hearing in place of an inquiry. The average cost of such proceedings would be  $\pounds((0.6 \times \pounds14,517) + (0.35 \times \pounds1,582) + (0.05 \times \pounds5,095)) = \pounds9,517$  per appeal or application. This is a saving of £5,000 per inquiry, and a total of £65,000 over 13 inquiries each year.
- 6.97 As a result of this option it is estimated there would be a total cost saving of £66,750 per annum over option 1.

### Local Planning Authorities

- 6.98 Paragraph 6.82 estimates the cost to LPAs for participating in an appeal is on average £1,742. However, this figure takes account of written representations, hearings and inquiries and is unable to be broken down further into these separate procedures.
- 6.99 Although it is not possible to fully quantify a cost saving to LPAs, based on the assumption the time spent on the more expensive procedures (inquiries and hearings) would be reduced as they would only be used for certain issues, we would expect the average cost of an appeal to be reduced under this option. This would achieve a cost saving to LPAs.

### Development Industry

- 6.100 It is anticipated the number of appeals per year will remain the same, although the way in which they are dealt with will change in line with the changes outlined in the Welsh Government's costs.
- 6.101 As it is expected one hearing per year will be dealt with 50% by way of written representations (£600 per appeal) and 50% by way of hearing (£1,200), the

cost of combined proceedings in this instance would be £900, an annual saving of £300.

6.102 Concerning inquiries, the average cost of dealing with 13 inquiries per year by combined proceedings would be  $\pounds((0.6 \times \pounds4,800) + (0.35 \times \pounds600) + (0.05 \times \pounds1,200)) = \pounds3,150$ . This is a saving of £1,650 per inquiry, and a total of £21,450 over 13 inquiries.

6.103 As a result of this option it is estimated there would be a total cost saving of £21,750 per annum over option 1.

### Third Parties

6.104 Similar to LPAs, the costs in relation to third parties will be reduced as their attendance at hearings and inquiries will likely be minimised if hearings and inquiries are reserved for only specific matters relating to an appeal. However, as the extent to which third parties (other than LPAs) are involved in hearings and inquiries can vary significantly and costs between organisations can vary (or where those costs are £0 as the time is voluntary or in the case of the public), it is not possible to present this as a monetary cost.

## **Benefits**

### Welsh Government

6.105 By allowing combined proceedings, this provides for a more flexible and efficient examination process for appeals and call-ins in Wales and also helps in reducing the overall time taken to determine an appeal or call-in. The ability to use combined proceedings enables the procedure to be tailored by a Planning Inspector to an individual appeal or application and the information required to determine it. The use of this method across all proceedings will ensure consistency in the way applications, call-ins and appeals are examined by the Welsh Ministers.

### Local Planning Authorities

6.106 LPAs can expect to benefit from a more streamlined appeal or call-in process, whereby an appeal or call-in is dealt with by the correct procedure, or mix of procedures, which is speedier, time and cost effective, as well as proportionate.

### Development Industry

6.107 Similar to the other parties involved in the appeal process, appellants and applicants will benefit from a speedier, fair and more cost effective appeal system in Wales because the procedure for determining the appeal will be

tailored to a specific application. However, appellants will lose the ability to appear before an Inspector in respect of certain matters.

### Third parties

6.108 The level of participation of third parties in the appeal process can vary significantly according to the procedure selected. However, third parties can expect to benefit from a more streamlined appeal process, whereby an appeal or call-in is dealt with by the correct procedure, or mix of procedures, which is speedier, time and cost effective, as well as proportionate.

### **Option 3 - Make provision for appeals and called in applications to be examined by written representations only.**

#### **Description**

6.109 Although generally regarded as fit for purpose, evidence suggests appellants would like speedier decisions when determining an appeal or call-in. Of the existing procedures (written representations, hearing and inquiry), written representations is both the quickest and cheapest procedure.

6.110 To ensure the quickest possible outcome for an appeal or call-in, this option proposes to only allow appeals and called in applications to be dealt with by way of written representations and remove the option for a hearing or an inquiry (or a combination of these procedures) to be held. This would help streamline the appeal process.

#### **Costs**

##### Welsh Government

6.111 Currently, the cost to the Planning Inspectorate of determining appeals each year is an average of approximately £1,689,000.

6.112 If all appeals (an average of 726 per year) are determined by way of written representations at an average cost of £1,582 per appeal, this will total £1,148,532, resulting in a cost saving of approximately £540,600 each year.

##### Local Planning Authorities

6.113 Option 1 highlighted it costs LPAs on average £1,742 to participate in an appeal. However, this took into account written representations, hearings and inquiries. Although it is not possible to break this figure down into the separate procedures, it would be reasonable to assume a cost saving, as hearings and inquiries cost, on average, significantly more than written representations.

### Development Industry

6.114 It is estimated the cost for developers to participate in the appeal process is £600 per appeal or call-in by way of written representations. With an average of 726 appeals each year, this provides a total of £435,600, resulting in an annual cost saving of approximately £118,200.

### Third Parties

6.115 Although it is not possible to place a monetary figure on the costs for third parties, it would be reasonable to assume their time and costs would be reduced by not attending and participating in hearings or inquiries.

## **Benefits**

### Welsh Government

6.116 This option provides no significant benefits as although time will be saved in determining appeals or called in applications which would have otherwise been considered either by the hearing or inquiry procedures, the level of information submitted with an appeal or call-in may not be adequate for a Planning Inspector to make an informed decision, particularly where cases are complex or controversial.

### Local Planning Authority

6.117 LPAs would benefit from a more streamlined appeal process, however, the inability to attend and participate in a hearing or inquiry where a case is particularly complex would provide significant disadvantages during determination, such as where significant information or detail which would have benefited from in-depth discussions and cross-examinations. This raises matters of fairness for the LPA as their full case cannot be properly heard in all cases.

### Development Industry

6.118 Developers will ultimately benefit from speedier decisions, increased certainty and a more streamlined process relating to appeals and call-ins than they would have under option 1.

6.119 However, in particularly complex or controversial cases, the written representation procedure may not provide the most suitable method for determination and significant information or detail which would have benefited from in-depth discussions and cross-examinations may be lost. This raises matters of fairness for the developer as their full case cannot be properly heard in all cases.



## Third Parties

6.120 Similar to other stakeholders, this option provides benefits to third parties, as they would be subject to speedier decisions and increased certainty. However, they would lose the opportunity to attend and participate in hearings or inquiries, so they have been invited to do so and would lose the opportunity to be able to present their full case. This may raise issues of fairness.

### **Summary and preferred option:**

6.121 It is clear the benefits of allowing an appeal to be determined by a single procedure are limited. Although some appeals can and are dealt with solely by way of written representations (the quickest and cheapest method), where an appeal is more complex or controversial, it is often the case only certain issues require greater level of consideration. In such instances, the whole appeal or call-in must be dealt with by way of hearing and inquiry. This is both more timely and costly to all parties involved.

6.122 Option 3, although both the cheapest and quickest option, also lacks benefits for all stakeholders, particularly when complex or controversial cases are being determined. Although often time consuming and costly, hearings and inquiries to provide an opportunity for detailed discussions and cross-examinations when considering certain issues and these opportunities would be lost.

6.123 Based on this, option 2 is the preferred option as it provides more flexibility and proportionality in respect of the way in which an appeal or call-in is examined and is also more time and cost effective than option 1.

*Table 6.3: Total costs for the preferred option: Option 2*

	<b>Existing Costs</b>	<b>Additional Cost / Saving from legislation</b>	<b>Comments</b>
Welsh Government	£1,689,000	-£66,750	Cost saving
LPAs	£1,264,700	£0	Cost neutral
Development Industry	£553,800	-£21,750	Cost saving
Third Parties	N/A	N/A	N/A

## **Making changes to an appeal and raising new matters**

6.124 Three options have been considered:

- Option 1 – Do nothing. Allow an application to be altered after notification of an appeal to the Welsh Ministers in all circumstances and allow new matters to be raised at appeal, subject to Planning Inspector agreement.
- Option 2 – The Welsh Ministers refuse all changes to an application, once an appeal has been made to them, except where a change results from an error which does not materially affect an application. This option also precludes new matters being raised at appeal except where a new matter is raised as a consequence of exceptional circumstances or where it can be proven the matter could not have been raised at the time the application was being considered by the LPA. This applies to planning and related appeals alone.
- Option 3 – No alterations can be made or new matters can be raised in relation to an application after notice of appeal is submitted in any circumstances. This applies to planning and related appeals alone.

**Option 1 – Do nothing. Allow an application to be altered, once an appeal has been made to the Welsh Ministers, in all circumstances and allow new matters to be raised at appeal, subject to Planning Inspector agreement.**

### **Description**

6.125 An application may be altered after notification of an appeal to the Welsh Ministers or any new matter may be raised, subject to a change or new matter being accepted by the Planning Inspector. Planning Inspectors have discretion to accept alterations or new matters, subject to the rules of natural justice and the requirement for those who are entitled to comment have the opportunity to do so.

6.126 LPAs have the opportunity to object to changes to an original application or to new matters being raised after an appeal has been made on the grounds the alteration or new matter would likely have altered the basis of their decision.

6.127 This option seeks to retain the status quo by allowing alterations to an application or new matters to be raised after notification of appeal has been submitted, at the discretion of the Planning Inspector.

## **Costs**

### Welsh Government

- 6.128 As any proposed alterations or new matters being raised after notification of an appeal must be agreed by a Planning Inspector, there is a cost attributed to the Welsh Government.
- 6.129 It is estimated it would take no longer than 1 hour for a Planning Inspector to determine whether they will accept a new matter or alteration, coupled with an average salary of administrative staff at the Planning Inspectorate of £37.00 per hour.
- 6.129 It is estimated 726 appeals are submitted on average per year. For the purposes of this assessment it is assumed a new matter is raised or an amendment is made to each appeal. Therefore, it is estimated the total cost is approximately £26,850 on average, per year.

### Local Planning Authorities

- 6.130 The current cost for LPAs of dealing with new matters or amendments to proposed schemes at appeal is not recorded. Consideration of and comment on such amendments carry a resource cost for authorities, however, it is not possible to attach a cost to this.

### Development Industry

- 6.131 The cost to developers can vary significantly depending upon the scale and extent of the proposed new matter or alteration. Minor or very small changes to an appeal will not generate a cost, however, where larger scale changes or new matters are proposed, there may be additional costs.
- 6.132 Based on an estimated hourly rate of £37.52<sup>11</sup> for a planning agent and the estimated time taken to enact any changes or alterations to an application being 1.5 hours, this would equate to £56.00 per application.
- 6.133 Of the 726 appeals being subject to changes or alterations, it is estimated 80% would have been submitted by an agent on behalf of an appellant. This is a total annual cost of approximately £32,480.

### Third Parties

- 6.134 Although there are no financial costs associated with third parties, they can often feel confused and excluded from the appeal process where alterations

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<sup>11</sup> Planning (Wales) Bill EMRIA Methodology Paper (April 2015) – paragraph 15.2  
<http://gov.wales/docs/desh/publications/150512updated-methodology-paper-en.pdf>

have taken place or new matters been raised. Furthermore, the wider impact of submitting alterations or changes to a proposed scheme may cause delay to the appeal process.

## **Benefits**

### Welsh Government

6.135 Although new matters can be raised or changes to an application can be made after notification of an appeal, this can only occur where the Planning Inspector agrees to them. This benefits the Planning Inspectorate as they are under no obligation to accept any new matters or alterations. However, where amendments are made or new matters are raised, this can delay the examination of the appeal and subsequent decision.

### Local Planning Authorities

6.136 There are no identifiable benefits to LPAs as where a decision is made by an LPA, it is based on the plans which were refused at the time. New matters being raised or amendments to schemes following the submission of an appeal may undermine any previous considerations and negotiations they have undertaken prior to an appeal being submitted. Should the new matter be raised or amendment be made prior to the decision of the LPA, this would circumvent the need for appeal.

### Development Industry

6.137 Developers benefit from being able to make alterations to an application or raise new matters following notification of an appeal as such actions could significantly alter the outcome of the appeal decision in their favour, rather than having to submit a revised application to the LPA.

### Third Parties

6.138 Some new matters or alterations at appeal can address concerns raised by third parties. However, such parties can often become confused and feel excluded from the appeal process when changes occur after an LPA has taken its decision. This decreases confidence in the appeal process.

**Option 2 – The Welsh Ministers refuse all changes to an application, once an appeal has been made to them, except where a change results from an error which does not materially affect an application. This option also precludes new matters being raised at appeal except where a new matter is raised as a consequence of exceptional circumstances or where it can be proven the matter could not have been raised at the time the application was being considered by the LPA. This applies to planning and related appeals alone.**

### **Description**

6.139 This option proposes to introduce the principle the Welsh Ministers deal with an application in the form it was considered by the LPA, subject to some exceptions. This is intended to enhance transparency, improve fairness in the planning process and increase public confidence.

6.140 It is proposed to preclude new matters being raised following a notice of appeal, except in specific circumstances, which are:

- It can be proven the matter(s) could not have been raised at the time the application was being considered by a LPA and could only have been raised following the notice of appeal; and
- It can be proven the matter being raised following the notice of appeal was a consequence of exceptional circumstances.

6.141 It is also proposed to preclude changes from being made to an application following notice of appeal, except where a change does not materially alter the application. Such an example would be where a drafting error has occurred.

### **Costs**

#### Welsh Government

6.142 Costs to the Welsh Government will be significantly reduced as new matters being raised or alterations to an application can only be made in specific circumstances. It is estimated the number of changes or alterations put forward by appellants will reduce by 90%, resulting in a cost of £2,700<sup>12</sup> per annum. This is a saving of approximately £24,300 per annum compared to option 1.

#### Local Planning Authorities

6.143 The cost for LPAs of dealing with new matters or amendments to proposed schemes at appeal is not recorded. Consideration of and comment on such amendments carry a resource cost for authorities, although, it is not possible

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<sup>12</sup> See calculations

to attach a cost to this. However, because it is anticipated there will be a reduction in the number of applications which can be altered or be subject to new matters being raised following notification of appeal, there is likely to be a cost saving to LPAs.

### Development Industry

6.144 There will be a reduction in costs to developers due to the anticipated reduction in the number of applications which can be altered or be subject to new matters being raised following notification of appeal.

6.145 If there is an estimated 90% reduction in the number of alterations and new matters submitted, this would mean 56 appeals would be submitted by an agent on behalf of an appellant. This results in a total cost of £3,136, which is an annual saving of approximately £29,350.

### Third Parties

6.146 There are no additional costs associated with third parties.

## **Benefits**

### Welsh Government

6.147 Although the Planning Inspectorate retains the same powers to determine whether a new matter or alteration to an application is accepted following notification of appeal, it is anticipated this option will reduce the overall number of new matters or alterations submitted for an application which is the subject of an appeal. This will reduce the workload of the Planning Inspectorate. Furthermore, there will be a clear regulatory framework as to what amendments or new matters may be accepted by the Planning Inspectorate. This increases the transparency of the appeal process.

### Local Planning Authorities

6.148 Limiting new information at appeal which should have been before an LPA when it made its decision will help eradicate the practice of withholding certain information until the point of appeal and will encourage more productive discussions between the LPA and applicant before an appeal is initiated. While the workload of LPAs is likely to be increased during the application process, the limited ability of appellants to make changes on appeal may reduce the amount of appeals against decisions, freeing up resources to deal with other planning related matters. This option will not undermine decisions made by the LPA.

### Development Industry

6.149 Although developers will not be able to raise new matters or make alterations to an appeal in all circumstances, this option still gives them limited ability to do so, where required. However, it may be a preference of the appellant to make changes on appeal. As a result, developers will lose some flexibility to overcome objections upon appeal.

### Third Parties

6.150 There will be increased transparency in the appeals process as third parties would have full knowledge of the circumstances in which a new matter can be raised or an amendment can be made. While this option would prevent certain objections from being overcome during the appeal process, applicants will be more inclined to discuss how an objection can be overcome during the application process by way of an amendment to a scheme, providing a beneficial outcome to all and improving working relationships between parties. The scheme which is decided upon by the Planning Inspectorate is still likely to be the scheme which was considered by the local planning authority, which increases transparency.

**Option 3 – No new matters can be raised and no alterations can be made to an application after notice of appeal is submitted in any circumstances. This applies to planning and related appeals alone.**

### **Description**

6.151 This option proposes appellants may not make any alterations to their application, or raise new matters, once notice of appeal is submitted. This removes the potential for delay to the appeal process by ensuring the scheme submitted at the start of an appeal is the same one which is considered by a Planning Inspector. Under this option, if the reasons for refusal can be overcome through variation to a proposed scheme or the raising of a new matter or information, these will need to be dealt with at the local level rather than through the appeal process.

### **Costs**

#### Welsh Government

6.152 Option 1 estimated a total cost of approximately £26,850 to the Planning Inspectorate in having to deal with an average of 726 appeals per year, with new matters being raised or amendments being made to each one. As this option proposes to remove the ability to raise new matters or make alterations to an application in their entirety once notice of appeal has been submitted, this will result in a cost saving of approximately £26,850 per annum.

### Local Planning Authorities

6.153 Similar to the Welsh Government, LPAs could expect to see a cost saving if the ability to raise new matters or make alterations is completely removed. However, it is not possible to attach a cost to this. It is anticipated applicants would engage more with LPAs to overcome objections to a proposed development. This may result in LPAs spending more time considering new matters or amendments and negotiating with developers, however, as these circumstances would vary significantly on a case by case basis, it is not possible to calculate the additional costs of undertaking these tasks.

### Development Industry

6.154 If no new matters or alterations were permitted to an application once notice of appeal had been submitted, there would be a cost reduction of £32,480 per annum. However, the cost may be shifted to account for negotiations with the LPA to raise new matters or submit alterations. It is not possible to attach a cost to this.

### Third Parties

6.155 This option removes any costs for third parties which they are currently subject to during the appeal stage. However, there may be an additional cost to third parties during the application stage due to applicants continuing negotiations with LPAs. This may generate further consultations with third parties. It is not, however, possible to attach a cost to the time spent undertaking these tasks.

## **Benefits**

### Welsh Government

6.156 This option will generate time savings for the Planning Inspectorate, as resources currently used to administer the submission of new matters or alterations could be used more effectively elsewhere in the appeal process.

### Local Planning Authorities

6.157 Prohibiting amendments or new matters being raised at the appeal stage will ensure appellants pursue changes to their proposed schemes with LPAs instead, retaining decision-making at a local level and encouraging better working relationships with appellants.

6.158 Furthermore, appeals will be based on the same scheme put before an LPA, increasing transparency in the system and consistency of information upon which the decision would be based.



## Development Industry

- 6.159 The appeal process will be more efficient and transparent, achieving speedier decisions due to the removal of delays associated with administering the submission of amendments. By encouraging continued negotiations with LPAs, appellants (or applicant at this stage) may resolve objections to a scheme and working relationships with LPAs may improve.
- 6.160 Conversely, appellants may encounter circumstances whereby an amendment is required at the appeal stage to make their proposed development acceptable or to overcome a minor issue in drafting. This could add some frustration to appellants through the delay of consent in having to submit an entirely new application for their LPA to consider.

## Third Parties

- 6.161 Third parties will benefit from increased consideration of proposed developments at a local level. Decision-making on an amended scheme will be made within the community, ensuring planning is seen to be fair and transparent by those affected by the impact of proposed development.
- 6.162 However, it is acknowledged an amendment or new matter being raised at an appeal may resolve issues which make a development acceptable to both an applicant and the wider community. This option would rule out such a possibility.

## **Summary and preferred option**

- 6.163 Although any proposed new matters or alterations must be agreed by the Planning Inspectorate, this ability granted to appellants is generally perceived to be wholly unfair by LPAs and other third parties, particularly where such new matters or alterations would have affected the LPAs decision if the information had been given to them during the determination process. It also undermines the transparency of the planning system and appeal process.
- 6.164 Removing the ability to raise any new matters or make any alterations removes costs for the Planning Inspectorate and encourages more negotiation between appellants and LPAs. However, a beneficial outcome for all parties resulting from having to submit an amended application cannot be achieved.
- 6.165 Restricting the submission of new matters or alterations to an application rather than not allowing any would overcome the issues associated with the current circumstances. Defining a clear and consistent set of circumstances would lead to greater transparency in the appeal process and could enable an objection to be overcome which may benefit all parties. It is not entirely prohibitive and would give clarity over the situations in which amendments can be undertaken. The preferred option is Option 2.

Table 6.4: Total costs for the preferred option: Option 2

	Existing Costs	Additional Cost / Saving from legislation	Comments
Welsh Government	£26,850	-£24,300	Annual saving
LPAs	Not known	Not known	N/A
Development Industry	£32,480	-£29,350	Annual saving
Third Parties	Not known	Not known	N/A

## **Certificates of lawfulness**

6.166 Two options have been considered:

- Option 1 – Do nothing. No statutory time limit for the submission of appeals relating to certificates of lawfulness.
- Option 2 – Introduce a statutory time limit of 6 months from the date of a Local Planning Authority's decision for an appeal to be made relating to certificates of lawfulness.

### **Option 1 – Do nothing. Retain no statutory time limits for the submission of appeals relating to certificates of lawfulness**

#### **Description**

6.167 An application for a certificate of lawful use or development, or certificate of lawfulness of proposed use or development ("certificates of lawfulness") may be made to an LPA where a person wishes to ascertain whether an existing or proposed use or operations on land is lawful and the use or operations meet certain criteria.

6.168 There is a right of appeal for certificates of lawfulness, however, where an appeal relates to a planning decision, these typically must be made within 6 months. Certificate of lawfulness appeals are not subject to statutory time limits and can be made at any time.

6.169 This option seeks to retain the status quo for appeals against the refusal or non-determination of an application for a certificate of lawfulness.

#### **Costs**

##### **Welsh Government**

6.170 The Planning Inspectorate receives on average 10 appeals for certificates of lawfulness per year. Of these appeals, 5 are determined by way of written representations, 2 through hearings and 3 through inquiries<sup>13</sup>.

6.171 It costs the Planning Inspectorate, on average, £1,582 per appeal to process and determine appeals using the written representations procedure; £5,096 using the hearing procedure; and £14,517 using the local inquiry procedure. This is a total cost of approximately £61,660 per annum.

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<sup>13</sup> Data received from the Planning Inspectorate (December 2016)

### Local Planning Authorities

6.172 It costs an LPA an average of £1,742 to participate in an appeal. However, this figure represents an average cost when considering all appeal procedures (written representations, hearings and inquiries) and no data is available which estimates the cost of the LPA per procedure. Thus, the total cost to the LPA is £17,420 per annum.

### Development Industry

6.173 It is estimated on average, the written representations procedure costs £600 for a developer to participate in the proceedings; the hearing procedure £1,200; and the local inquiry procedure £4,800.

6.174 Based on the figures identified in paragraph 6.173, this provides for a total annual cost to developers of £19,800.

### Third Parties

6.175 Third parties have the right to comment on an appeal, however, it is not possible to attach a cost for the time spent doing so.

## **Benefits**

### Welsh Government

6.176 There are no identifiable benefits to the Welsh Government.

### Local Planning Authorities

6.177 As an appeal against a certificate of lawfulness can be submitted at any point following refusal, an appeal which was submitted a considerable time following a decision may come as a surprise to the LPA. The LPA will be required to respond to information which may be out of date and may not provide an adequate response should the case officer have left the LPA.

### Third Parties

6.178 There are no identifiable benefits to third parties.

### Development Industry

6.179 Under this option, appellants benefit from not having to submit an appeal within a prescribed deadline against refusal or non-determination of a

certificate of lawfulness. This affords the developer considerable flexibility as to when notice of such an appeal is submitted.

## **Option 2 – Introduce a statutory time limit of 6 months from the date of a local planning authority’s decision for an appeal to be made relating to certificates of lawfulness**

### **Description**

- 6.180 If an appellant wishes to submit notice of appeal against refusal for a certificate of lawfulness they would have to do so within 6 months of the decision. This will not apply to appeals against non-determination, which will not be subject to a statutory time limit.
- 6.181 Given an appeal will consider the lawfulness of the development on the date the application was made and is not concerned with the planning merits of the case, there is no logical reason for certificate of lawfulness appeals to have a longer period in which to appeal than other planning and related appeals.
- 6.182 To improve clarity and consistency across the appeal system in Wales, certain information and documentation should also be submitted by the appellant along with their notice of appeal:
- The appellant’s full statement of case;
  - A copy of the application submitted to the LPA which is the basis for the appeal;
  - All plans, drawings and documents submitted to the LPA as part of the application;
  - Any other correspondence with the LPA relating to the application; and
  - A copy of the decision notice (unless the appeal is against non-determination).

### **Costs**

#### Welsh Government

- 6.183 As this option only seeks to introduce a statutory time limit for an appeal to be made for a certificate of lawfulness, the annual cost to the Welsh Government will remain at £61,660. There is no anticipated reduction in the number of appeals received for an application for certificates of lawfulness as the introduction of a statutory time limit is not considered to be an obstacle to submitting an appeal.

#### Local Planning Authorities

- 6.184 Similar to the Welsh Government, there will be no additional costs associated to LPAs as this option only seeks to introduce a statutory time limit, not to

amend the procedure for submitting an appeal against a certificate of lawfulness. Thus, the average annual cost to LPAs will remain as £17,420.

#### Development Industry

6.185 Although this option seeks to introduce a statutory time limit for the submission of notification of an appeal for certificates of lawfulness, this time limit is in line with similar, often more complex appeals. Therefore, it is not anticipated the number of appeals submitted will be reduced and there will be no additional costs to developers. Annual costs for developers will remain as £19,800.

#### Third Parties

6.186 There are no additional costs associated to third parties.

### **Benefits**

#### Welsh Government

6.187 This option increases certainty and improves consistency for the Welsh Government by aligning appeals for certificates of lawfulness with similar appeal types. This ensures a simplified and consistent appeal process.

#### Local Planning Authorities

6.188 LPAs will retain the right to comment on an appeal for a certificate of lawfulness. There will be no requirement for the LPA to deal with an appeal relating to a decision made by them which was made in excess of 6 months prior to notice of appeal. This will ensure LPAs may deal with appeals relating to more familiar issues. A time limit for such appeals will increase certainty for the LPA for speedier decisions.

#### Development Industry

6.189 Developers will lose the flexibility to submit a certificate of lawfulness appeal within any time limit. However, there will be increased certainty for developers as appeal decisions will be made sooner.

#### Third Parties

6.190 Third parties will retain the right to comment on an appeal for a certificate of lawfulness. A time limit for such appeals will increase certainty for communities and consultees through speedier decisions.

## Justification for two options

6.191 The overall aim for the appeal reforms is to increase consistency and fairness across the appeal system in Wales.

6.192 The only third option which may be considered is to reduce the time period within which a person may appeal against a certificate of lawfulness to 8 weeks, in line with expedited appeal processes such as HAS and CAS. This is not considered expedient at present, as certificate of lawfulness appeals require the appellant to produce an evidence base. In instances where sizable evidence is to be amassed, it would be difficult for the appellant to achieve the 8 week timeframe. Thus, it may not be fair on the appellant to require this evidence to be presented in a significantly shorter period of time.

## Summary and preferred option

6.193 The ability for appellants to provide notification of appeal for a certificate of lawfulness application at any time is considered inconsistent and unfair when compared to other appeal types which are subject to statutory timescales, including those which are often more complex than an application for a certificate of lawfulness.

6.194 In order to create an appeal system in Wales which is consistent, fair and transparent, option 2 provides the most suitable way forward in achieving this aim. Option 2 is the preferred option.

Table 6.5: Total costs for the preferred option: Option 2

	Existing Costs	Additional Cost / Saving from legislation	Comments
Welsh Government	£61,660	£0	Cost-neutral
LPAs	£17,420	£0	Cost-neutral
Development Industry	£19,800	£0	Cost-neutral
Third Parties	Not known	Not known	N/A

## 7 The Competition Filter Test

The competition filter test	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	No
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector characterised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No