Number: **WG23067**

Llywodraeth Cymru
Welsh Government

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Welsh Government

Consultation Document

Review of Planning Application Fees

Date of issue: **6 October 2014**
Action required: Responses by **16 January 2015**

Overview

The Welsh Government considers that if our vision for the development management system is to be realised we need to ensure local planning authorities have the necessary resources and use these in the most efficient and effective way.

This consultation document puts forward proposals for changes to the system of planning fees to help achieve this aim.

How to respond

The consultation paper includes a set of specific questions to which the Assembly Government would welcome your response.

The closing date for replies is **16 January 2015**.

You can reply in any of the following ways:

E-mail:

Please complete the consultation response form (at Annex 2) and send it to:

planconsultations-b@wales.gsi.gov.uk

[Please include "Planning Fees Consultation – WG23067' in the subject line.]

Post:

Please complete the consultation response form (at Annex 2) and send it to the address specified under the heading 'Contact details'.

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

The current Town and Country Planning (Fees for Applications) Regulations is available at:

www.legislation.gov.uk/wsi/2009/851/contents/made

This consultation paper is also accompanied by a draft Regulatory Impact Assessment at Annex 1, which should be read in conjunction with this paper.

Contact details

All responses should be sent by 16 January 2015 to:

Planning Fees Consultation
Development Management Branch
Planning Division
Welsh Assembly Government
Cathays Park
Cardiff
CF10 3NQ

Or by e-mail to:

planconsultations-b@wales.gsi.gov.uk

If you have any queries regarding this consultation please use the e-mail address above or phone Owen Struthers on 02920 826430

Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

1. Introduction and Overview

Introduction

1.1 The Welsh Government set out in the 'Positive Planning' consultation document that we want a planning system that enables appropriate development. It needs to support national, local and community objectives for infrastructure, new homes and development that supports business growth and jobs. To ensure the development management system helps deliver this vision we need to ensure local planning authorities (LPAs) have the necessary resources **and** that they are used in the most efficient and effective manner. To help achieve this, this consultation paper puts forward changes to fees that accompany planning applications.

1.2 This paper responds to the evidence base[1] which suggests that the quality and timeliness of the service provided by LPAs is being affected by stretched resources available to the planning services within authorities. It identified a need to undertake a review of planning application fees. In response to this work, this paper puts forward three main changes to the system of planning fees; these are:

- an increase in fee levels, as detailed in section two of this paper;
- to provide a refund of the application fee where an application remains undetermined after a period of time, as detailed in section three of this paper and,
- to extend the scope of planning fees, as detailed in section three of this paper.

1.3 The consultation paper is also accompanied by a draft partial Regulatory Impact Assessment (RIA). This identifies the costs and benefits of our proposals should they be taken forward following consultation. Should, as a result of the consultation, changes be made to the proposals, the impact of the proposals will be reassessed. This is a partial RIA and where we are uncertain of our preferred option we have not undertaken an assessment.

The basis for planning fees

Legal background

1.4 Section 303 of the Town and Country Planning Act (TCPA) 1990 enables the Welsh Ministers to prescribe fees or charges in connection with planning functions. These are currently detailed in the Town and

[1]GVA Grimley Study to Examine the Planning Application Process in Wales (2010); the IAG paper towards a Welsh Planning Act (2012); the Hyder 'Evaluation of Consenting Performance of Renewable Energy Schemes in Wales' (January 2013); the ARUP & Fortismere Associates Evaluation of the Planning Permission Process for Housing (October 2013); and direct research undertaken by Welsh Government.

Country Planning (Fees for Applications and Deemed Applications Regulations 1989 (as amended in relation to Wales) (the 'fee regulations'). It is proposed that to the extent that any of the proposals detailed in this paper are taken forward, it will be in the context of a Wales-only updated and consolidated set of regulations.

The purpose of planning fees

1.5 The Welsh Ministers consider that a LPA should be prepared to pay for activities that are purely or largely for the wider public good; such as development plans and enforcement activity. Yet planning decisions often bring private benefit to the applicant as well; a property with planning permission may be much more valuable than it would be without. The fee that accompanies a planning application is an acknowledgment of that private benefit and reflects the overall cost of handling, administering and deciding the various types of application. The level set is designed to include recovery of direct costs and an apportionment of related overheads.

2. Increasing Planning Fees

The issue

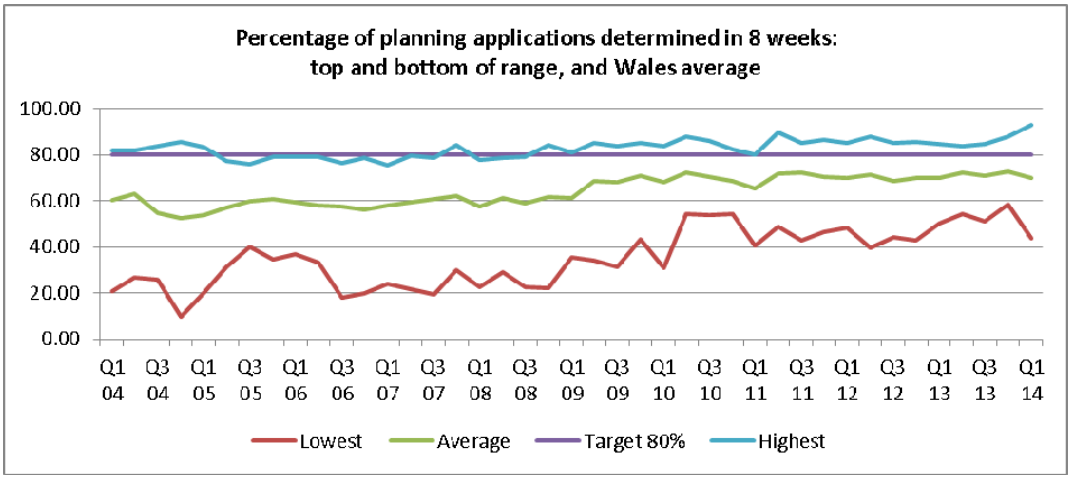
2.1 The Welsh Government stated in the 'Positive Planning' consultation paper that the definition of development management is a positive and proactive approach to shaping, considering, determining and delivering development proposals. It is considered that a key element of the LPAs role in achieving this is to issue accurate and timely decisions. Where this is not achieved applicants can experience delay, frustration and additional cost. Indeed, for the majority of applicants, the development management service is only available through the payment of a fee, and it is expected that the needs of the customer (speed and quality of service) are a priority for the LPA.

2.2 LPAs have indicated that the current level of planning fees in combination with general budget cuts has affected the service they provide. The Welsh Government recognises that the current levels of income received through the planning fee system do not currently allow LPAs to achieve full cost recovery[2] and that this can affect how services are delivered. However, the relationship between resources and service delivery is not a straightforward one, and the issue of how resourcing levels should be improved is similarly challenging. There are complex relationships between the availability of skills, the exercise of people and time management, and addressing the needs of diverse communities, including the differences in number and type of applications generated by these areas. The significant difference (up to

[2] Average cost recovery across Wales is 66 %

60%) in the level of cost recovery across Wales, shows that the internal systems of LPAs are also an important factor.

2.3 It is clear that LPAs can affect how they achieve an efficient and effective service and even with the current financial constraints, LPAs have continued to show improvements in their customer service. The graph below shows the trends for the percentage of applications determined within the statutory 8 week target.



2.4 The above graph shows the percentage of planning applications determined in 8 weeks. It shows the average Wales figure, as well as the top and bottom returns for that period. The graph clearly shows that improvements in the performance of LPAs are most dramatic for the Bottom LPA returns for each period. It is considered that further improvements in this area will have the greatest impact in driving up overall performance standards across Wales.

Our proposals

2.5 It is evident that cost recovery and the customer service provided are affected by the planning fee level, as well as how LPAs use that fee to deliver services in their area. On this basis, we consider that an increase in planning fees alone will not improve the customer service provided by the LPA. It is clear that any increase in fees should compliment sustained improvements in customer service and our proposals below are based around this concept.

Increasing planning fees

2.6 To help address the resource deficit faced by LPAs in processing and determining application, we propose a general increase in planning application fee levels. We propose an increase of 15% across all applications[3]. A copy of the proposed revised fees is contained in appendix 1 and some general examples are provided below:

[3] There are minor variations in the level of increase for the purpose of rounding.

- Example one - householder development

2.7 For example, a ‘householder development‘ (an application made by homeowners who wish to seek permission for building works in and around their house) is currently charged at £166 where the application relates to one house, and £330 where it relates to a 2 or more houses. Under the new schedule these applications would be charged at £190 and £380 respectively.

- Example two – full application for residential development of five dwellings

2.8 Under the current schedule, an application for full planning permission for a residential scheme consisting of 5 new dwellings would be charged at fee of £1,650 (£330 x 5). Under the new schedule the proposed fee is £1,900 (£380 x 5).

- Example three – outline application for industrial development of 5 hectares

2.9 Under the current schedule outline application for an industrial estate of 5 hectares would be charged as follows. Since the site exceeds 2.5 hectares, the basic fee of £8,232 is paid plus £2,100 (calculated at 25 x £84) giving a total of £10,332. Under the proposed schedule the basic fee would be £9,500, plus £2,500 (25 x £100) giving a total £12,000.

2.10 The increase in planning fee income that each LPA will experience as a result of this increase will depend on the number and type of applications they receive. However, we predict that a fee increase of 15%, if this affected all of the applications received by that LPA, could add an average of £80,000 to its income.

A commitment by local planning authorities

2.11 We have already stated that we do not consider an increase in planning fees alone will deliver our objectives and that we need to ensure LPAs use the resources in the most efficient and effective manner. The proposed increase in planning fees would be on the understanding that there is a commitment by LPAs to review their service delivery.

2.12 We are aware that some LPAs have previously looked at service delivery which identified alternative ways of working. Where this review has occurred recently, LPAs should evaluate the success that this has secured. When looking at service delivery one model is unlikely to fit all LPAs and there are many ways positive change can be achieved. For example, there are specialist consultants who can be brought in to review the way a LPA delivers its planning service, which was an approach previously undertaken by Neath Port Talbot County Borough Council.

2.13 Rhondda Cynon Taff County Borough Council used the ‘lean thinking’ process to review how the service was delivered. This is based on the

principle of getting the right things to the right place, at the right time, in the right quantities, while minimising waste and being flexible and open to change. The technique is used in many different industries and for Rhondda Cynon Taff it removed instances where planning applications were being double handled.

2.14 Some LPAs may find that a specialist team approach may provide a better solution to the workload that the authority receives. Reviewing practices outside Wales, Cornwall Council operates a dedicated fast track householder team. The householder team operates on a cost recovery model and achieves a very efficient service, with the determination target set below the statutory period at six weeks. They have also found by targeting householder applications in a very efficient manner that this has helped to free up resources for the larger schemes.

Q1a	Do you agree with the proposed 15% increase in fees?
Q1b	If not, what do you consider to be a more appropriate change, if any?

Monitoring and addressing unacceptable customer service

2.15 In the 'Positive Planning' consultation document we proposed a LPA annual performance report. This proposal has since been developed in conjunction with LPAs and looks at a range of LPA performance measures, including the speed and quality of planning decisions that they make. The need for this system of monitoring was identified in the IAG report, where the group considered that this would help create a culture of self improvement and help drive up performance standards across Wales. It was also intended to help us monitor the level of impact the changes have on the system.

2.16 As well as a need to more formally monitor LPA performance, the IAG group identified a need for a system of measures to ensure LPAs adopt the improved way of working, including introducing a system of penalties to help address poor performance. The group identified that penalising LPAs based on the performance of their planning function could play a role in encouraging them to improve. This idea is supported by the Arup et al report[4] that suggested a range of carrots and sticks could be used to incentivise and penalise LPAs. Two options identified in the report were to remove the ability of a LPA to determine a planning application and setting a levy on the fee for planning applications.

2.17 Performance of the LPA is a priority for the Welsh Government, especially where the LPA has not delivered a service to its customers.

[4] Arup, the Cardiff School of City and Regional Planning and Liz Mills Associates "A New Approach to Managing Development in Wales" (September 2012)

We propose two measures that would reflect the fact that service delivery has failed; these are:

- optional direct applications; and,
- refund of the application fee after a certain time period.

Optional direct applications

2.18 We believe that where there are clear and consistent failures in LPA customer service, it has failed in its role as a planning authority. We have put forward in the Planning (Wales) Bill, currently before the National Assembly for Wales, powers that will provide the Welsh Ministers with the ability to take direct action where an LPA is deemed poorly performing.

2.19 Where an LPA is designated by the Welsh Ministers as poorly performing, applicants will have the option to choose whether to make an application for major development to the Welsh Ministers, rather than the LPA. This will provide developers with an alternative service to enable their applications to be determined in a correct and timely manner.

2.20 For LPAs to be subject to these 'special measures' they will be seen as poorly performing against the indicators set out within its annual performance report. The indicators are likely to focus on the efficiency and quality of determining applications, which could include being assessed on the basis of the speed within which applications are determined and the extent to which such decisions are overturned at appeal. Appropriate thresholds for designation, and the time period in which they are monitored, are currently under consideration by the Welsh Government. Proposals on optional direct applications will be the subject of a separate consultation.

Refund of the application fee

2.21 Welsh Government considers that it is unreasonable for a LPA to go beyond certain time periods before providing a decision on a planning application. To encourage swifter decisions we propose to introduce changes based on recommendations contained within the Arup and Fortismere Associates report[5], that, where a planning application remains undecided after a set period of time, the application fee is refunded. As well as encouraging swifter decisions, this measure will ensure that; where the LPA have not provided an acceptable service, the financial burden on the applicant is reduced.

2.22 Planning applications can vary in their complexity and in setting the target that 80% of applications should determined within the statutory 8 (16 for applications subject to Environmental Impact Assessment) week period, it is recognised some will exceed this time. Although an

[5] Evaluation of the planning permission process for housing (October 2013)

application may exceed the determination period, we believe that there is a time after which it is considered unreasonable for the LPA to have failed to come to a decision. In considering an appropriate time period for a refund, it is recognised that the determination of an application can be delayed for genuine reasons; the need to undertake surveys, because the application raises complex matters, or the applicant has submitted revisions to the original scheme. These can require a LPA to undertake further consultation on the application and in considering the new information, and any comments made by consultees, adds further delay to the system. However, even with these additional delays we consider that the LPA should have made a decision on a 'householder' application within 16 weeks and within 24 weeks for all others. After this time we propose that the LPA will be required to refund the application fee.

2.23 Pre-application discussions will be important to ensure that applications come before the LPA containing the necessary information for their determination and should alleviate the need to amend schemes. We have produced a guidance note[6] to advise applicants and local planning authorities on how to make the most of pre-application discussions. In a separate consultation document we set out proposals to formalise this process for certain applications. For complicated applications, the Welsh Government encourages the use of planning performance agreements, where a bespoke timetable to determine the application is agreed between the authority and the applicant. Similarly, applicants and authorities may enter into post-submission agreements to extend the time period for determination to cover unforeseen situations. In these circumstances, a refund would only be payable 16 or 24 weeks after the agreed extension date.

2.24 We have set the time limit for a refund to account for general delays in the system; including those that are outside of the applicant's and LPAs control. However there is a danger that an applicant would try to deliberately delay the determination of an application in order to obtain a refund or LPAs may determine applications to avoid having to refund applicants. We place equal weight on both parties being timely, responsible and reasonable in the development management process.

2.25 LPAs have the power to ask for additional information if it is necessary to determine an application, but may also choose to determine applications without this evidence being provided by the applicant. This is not a means to prevent a refund and LPAs must be confident that the information requested is necessary for the determination of the application and if the application is refused, that their rational would stand up at appeal. Similarly, applicants should not cause delay to trigger a refund and requests for additional information may be accompanied by an extension of time request if necessary. This should prevent the unnecessary refusal of applications, and where this does

[6] http://wales.gov.uk/topics/planning/policy/guidanceandleaflets/preappguide/?lang=en

occur the recovery of costs at appeal may be considered by both parties.

Q2a	Do you agree that introducing a refund will improve LPA performance?
Q2b	If you do not agree, what other options are available?
Q3a	Do you agree with the proposed time period of 16 and 24 weeks?
Q3b	If you do not agree, what do you consider to be an appropriate time?

3. Other Changes to Planning Application Fees

3.1 We have set out our vision for linking performance to planning application fees. This section of the consultation paper looks at other, more technical changes to the planning fee system. These changes include introducing new charges, as well as minor technical amendments that alter the current fee arrangements. A variety of measures are proposed; for some areas we have identified our preferred option and in others consultation responses will inform the way forward. This section looks at the following areas:

- fees for the discharge of planning conditions;
- the introduction of a fee for confirmation that a condition has been discharged;
- a standard charge for drafting Section 106 agreements;
- deemed planning application fees;
- facilitating broadband rollout;
- amendments to the 'free go';
- a separate fee category for renewable energy/low carbon applications; and,
- the division of planning fees for cross authority applications.

Discharge of planning conditions

3.2 The ARUP and Fortismere report that looked at the planning permission process for housing, identified that the planning system should be seen as distinct stages. Each stage would constitute a self-contained structure whereby an applicant / agent would prepare a submission for the LPA, pay a fee and receive a service regulated by a target timescale. These stages are:
The initial phase: that is based around pre-application discussions but includes engagement with statutory consultees, members, the local community etc.

The determination phase: that is the submission and determination of a single, defined development proposal.
The post decision phase: that runs from the issue of the decision notice through to implementation.

3.3 In taking forward proposals for the 'initial phase' we are seeking to formalise the work undertaken pre-application. Our proposals for this are contained the consultation paper 'Frontloading the planning system' and include a set of options for charging for a pre-application service provided by the LPA. The 'determination phase', is already accompanied by a fee and is subject to a statutory time period. However the proposals set out earlier in section two of this consultation paper will help deliver the aims of a swift and efficient process. This section looks at the 'post decision phase' and the introduction of a fee for the discharge of conditions.

3.4 Planning conditions are requirements set out in a planning permission that may require information for approval by the LPA, or control and limit the operation of the development in some way. Conditions can enhance the quality of development and enable many development proposals to proceed where it would otherwise have been necessary to refuse planning permission. This post decision approval of further information has been identified as a significant barrier to the timely delivery of schemes and a drain on LPA resources. It is estimated that 15% of officer time[7] is spent dealing with this post decision workload.

3.5 Although the process of discharging conditions is widely considered to be covered by mainstream application fees, research[8] indicates that in practice this is rarely the case as the 'discharge' of conditions can occur considerably later after handling of the original application. To address this issue, studies by Hyder and Arup & Fortismere Associates[9] both recommend the introduction of a fee for the discharge of planning conditions.

Our proposals

3.6 In response to the report recommendations we intend to introduce a fee to accompany the discharge of planning conditions that fall under article 23 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012. We consider the introduction of a fee will assist in paying for the processing, consultation and determination costs incurred by the LPA. A charge is also seen as providing confidence that the work will be undertaken in a timely manner by the LPA.

[7] GVA Grimley Study to Examine the Planning Application Process in Wales (2010)
[8] ARUP, Planning Costs and Fees (2007)
[9] Hyder 'Evaluation of Consenting Performance of Renewable Energy Schemes in Wales' (January 2013), and ARUP & Fortismere Associates Evaluation of the Planning Permission Process for Housing (October 2013)

3.7 We propose that a fee would be required for each request to discharge a condition or group of conditions. This follows the approach used for applications that fall within Section 73 of the TCPA (applications to vary or remove conditions), which allows a single or multiple conditions to be submitted for review under one application. This approach is also seen to incentivise applicants to group conditions and contribute to a more efficient approach in their processing and determination. This approach would also provide flexibility to the developer to submit information individually, if they choose. This would also remove the potential for LPAs to add conditions to a planning permission to achieve greater revenue.

3.8 The level of fee should be proportionate to the level of work undertaken, and it is recognised this can vary with each application. We consider that conditions attached to householder developments are significantly fewer in number and less resource intensive than those associated with local and major applications. Therefore we propose fees of:

- £25 for householder; and,
- £83 for all other applications.

3.9 We also propose the fee to accompany this application should be refunded if the LPA has failed to come to a decision within a certain time period (details our proposals for the refund of the application fee are covered in paragraphs 2.20 to 2.24). We propose that the time limit should be set 16 weeks but seek your views as to whether this is appropriate.

Q4a	Do you agree with the proposed fee levels to accompany the discharge of planning conditions?
Q4b	If you do not agree, what do you think constitutes an appropriate amount?
Q5	Do you agree with our proposed time period of 16 weeks after which the fee to accompany a discharge of condition would be refunded?

The introduction of a fee for confirming that a condition has been discharged

3.10 The IAG report identified that the form of a planning permission has remained unaltered over the years, despite the fact that the number and complexity of conditions has expanded significantly. The group stated that this results in difficulty in identifying the complete content of the planning permission, including where conditions have been ‘discharged’ on permission.

3.11 When selling or raising finance on property buyers and mortgagees will normally want proof that any conditions attached to planning permissions have been complied with. Non-compliance with or lack of

proof of compliance with planning conditions can be a frequent cause of delays in the conveyancing process and can even result in property sales falling through. Where the LPA receive requests to confirm that conditions have been discharged on a development the LPA can experience difficulty in searching for this information. To cover costs LPAs may charge a fee for this service to cover these costs,

Our proposals

3.12 To assist in standardising the process across Wales, a set fee for the formal confirmation that the condition (or conditions) has been discharged could be introduced. Formalising the fee would provide certainty to applicants that the fee level is reflective of the cost and can help those unfamiliar with the process.

3.13 The fee to accompany a request that confirms that a condition(s) has been "discharged" would merely be confirmation that no more information needs to be submitted in connection with that condition for approval by the LPA, and is not confirmation that the development has been built in accordance with those details. If a fee were introduced, the levels would be £25 for householder; and £83 for all other applications to reflect the different level of work involved with the application types.

3.14 To fully address the issue of decision notices, we are seeking to introduce, through the Planning (Wales) Bill, provision to make the decision a 'live' document. The introduction of these proposals, where the discharge of conditions is recorded on the decision notice of the original permission, should significantly reduce the time taken in identifying and confirming conditions have been discharged. Therefore if this provision is enacted we would re-evaluate any fee to accompany a request to confirm conditions to be discharged on a planning permission.

Q6	Do you agree with the introduction of a standardised fee to accompany a confirmation that conditions have been discharged?

Planning obligations under Section 106

3.15 Agreements under Section 106 of the Town and Country Planning Act 1990 (known as planning obligations) are an essential feature of the planning system. They are a mechanism which makes a development proposal acceptable in planning terms that would not otherwise be able to be built. The purpose of the agreement is to deal with points that, as matters of law, cannot be covered by planning conditions. They are focused on site specific mitigation of the impact of development and enable a council to secure contributions to services, infrastructure and amenities in order to support and facilitate a proposed development.

3.16 The current mechanism for agreeing Section 106 obligations is seen as protracted. There is often a substantial time lag between a resolution to grant planning permission and the issue of the decision notice after the completion of the Section 106 process. There are many reasons for delay, and these can be the responsibility of both the LPA and applicant.

Our proposals

3.17 The ARUP and Fortismere report, that identified the application process as a set of distinct stages, also makes recommendations in relation to Section 106 negotiations. Although they consider that these negotiations should be interwoven into each stage of the system, its final agreement is seen as a distinct stage following the 'resolution to grant planning permission' having been made by the LPA.

3.18 They identify that this stage of the process should be accompanied by a fee and a set timescale. This fee would cover the administrative cost of the LPA legal team responsible for reviewing the agreement. In paying a fee the applicant can expect a better level of service from the local authority in return.

Q7a	Do you agree with the proposals for the introduction of a set fee to accompany the drafting of a Section 106 planning obligation?
Q7b	If you have answered yes, how should this fee be calculated? If not, what are your reasons?

Deemed planning application fees

3.19 When a person appeals an enforcement notice served by the LPA, they may appeal on the basis that planning permission ought to be granted for the activities cited in the notice (a ground (a) appeal under s.174(2) of the Town and Country Planning Act 1990).

3.20 Appealing on this ground is known as a 'deemed planning application'. As the appellant wants the planning merits to be considered through this appeal mechanism, a fee is payable. The size of the fee is double that charged for the equivalent ordinary application for planning permission. Half of the fee goes to the Planning Inspectorate and the other half to the LPA. The fee paid to the Planning Inspectorate is effectively held as a deposit which is refundable if the appeal succeeds on the 'legal' grounds.

3.21 At present it takes time and effort for the Planning Inspectorate to administer this system, and as this revenue is treated as a 'receipt', any monies that are retained through failed appeals are paid to the Treasury. This means that there is no income that would cover the costs of the Planning Inspectorate. However, the recent

commencement of Section 199 of the Planning Act 2008[10] that inserts a new Section 303 into the TCPA 1990 in relation to Wales provides greater flexibility for the Welsh Ministers in relation to this fee. They may make provision in regulations for the whole of this fee to be paid to either the LPA, the Welsh Ministers, or as is currently the position, to both the Welsh Ministers and LPA.

Our proposals

3.22 We propose that the fee to accompany a ground (a) appeal will only be paid to the LPA. It is proposed that the current arrangements, where the level of fee is double that of the equivalent planning application shall remain the same. Where the appeal fails the LPA would retain the entire double fee. We consider it is more appropriate that the fee is paid to the LPA as they are better equipped to deal with the administration of the fee.

3.23 A previous consultation[11] on enforcement concluded that there was support for the double fee to be paid to the LPA and we seek confirmation that this remains the case.

Q8	Do you agree that the fee to accompany a ground (a) appeal should only be payable to the LPA?

Facilitating broadband rollout

3.24 The Welsh Government is committed to the roll-out of broadband across Wales through commercial rollout schemes and the Superfast Cymru programme. When combined, the aim is to provide 96% of Wales with a world class fibre broadband network by 2016.

3.25 To assist in broadband rollout we set out proposed changes to permitted development rights for code operators in a recent consultation paper[12] and amending regulations will come into force later this year. To further support the rollout of broadband we are now considering ways to help let the public and businesses know where the network has been upgraded.

3.26 We are aware of existing schemes to roll out information that consist of standardised advertisements located on the 'broadband cabinets' after they have been installed. These cabinets are the small metal cabinets that are often painted green and are commonly seen in the street environment.

Our proposals

[10] The Planning Act 2008 (Commencement No.2) (Wales) Order 2014.
[11] Improving the Appeals Process (August 2011)
[12] http://wales.gov.uk/consultations/planning/permitted-development-for-broadband-roll-out/?status=closed&lang=en

3.27 The current fee regulations state that the fee to accompany an application shall be paid for the 'site' at which the advertisement shall be displayed. Where the application deals with advertisements to be displayed on more than one site, the fee is the aggregate of the fees for each site. However, the regulations make provision for advertisements on certain elements of street furniture, such as litter bins and parking meters; the whole of a specified area is considered a single site. This means that an application covering multiple sites is only charged a single fee, instead of a fee based on the aggregate for each site.

3.28 We are currently considering if advertisements on broadband cabinets in a specified area, then the whole of that specified area should be treated as a single site for the purposes of attracting a single fee; we seek your views on this proposal.

Q9a	Do you agree that advertisements on broadband cabinets in a specified area should be treated as a single site for the purposes of charging a fee?
Q9b	If you have answered no, please explain why.

Amendments to the 'free go'

3.29 The current fee regulations provide that following withdrawal, refusal, non-determination or approval of a reserved matters application, the applicant is entitled to submit a revised application without paying a fee. This is known as a 'free go' and provides flexibility for applicants. The 'free go' is often used to address concerns made by the LPA, and applicants can provide an alternative scheme that may be considered more acceptable. There are certain limitations that apply to the 'free go' arrangements, they:

- must be made by, or on behalf of the original applicant;
- be for the same character or description of development on the same site, or part of that site; and,
- must be made within a certain time limit.

Our proposals

3.30 We believe that the 'free go' still provides many benefits to the planning system as it provides flexibility. For example, applicants may withdraw a reserved matters applications to prepare additional information or importantly, following refusal,or where the LPA has failed to make a decision on an application, it provides the applicant an alternative route to an appeal.

3.31 However, where the original reserved matters application has been approved, we are considering if it is appropriate to allow the applicant the opportunity of a 'free go'. In this situation, the LPA has determined that the details submitted were acceptable. Therefore should the

applicant want to make amendments to the scheme, it may be more appropriate to apply for the change through an application that falls within section 73 of the TCPA 1990. Section 73 provides for the determination of applications to develop land without compliance with condition(s) previously attached. This allows changes to be made to the approved scheme and these applications can be less complex and may not require all the information to be resubmitted to the LPA for consideration.

Q10a	Should the applicant be entitled to a free go following approval of a reserved matters application?
Q10b	If you have answered no, please explain why

Create a separate fee category for energy generation projects

3.32 An energy generation project is any project where part of its primary function is the generation of electrical power. This can be from fossil fuel systems to renewable and low carbon energy development. LPAs have responsibility for determining planning applications for energy projects under 50MW. Energy generation projects are often large scale applications and the 2013 Hyder report states:

'The cost of the planning service is clearly significant for renewable and low carbon renewable applications and raises questions on the level of fee income for these applications and whether this adequately reflects the resource and time commitments of LPAs.'

3.33 At present energy generation projects often fall within Schedule 1, part II, Section 5, Plant and Machinery, of the fee regulations. Section 5 covers a wide variety of applications, many outside energy generation. This schedule does not generate sufficient income to the LPA to allow them to efficiently determine the energy generation applications, however simply increasing fee levels for Section 5, plant and machinery would unfairly impact on those other applications that are covered by the section. It is therefore appropriate to review the inclusion of energy generation projects in this category.

3.34 Energy generation projects can be split into a number of different categories, and any revision should seek to take account of their different characteristics. It is considered that site area is appropriate for the majority of developments; however wind turbines, due to the nature of the development, may require alternative methods of calculating fees. To review the current situation the Welsh Government has collected a range of data, including the size of the application area, the number of turbines, the output generated and the fee paid. This shows that the current regime is inconsistent in the amount of income received by a LPA, compared with applications with a similar scale of impact.

Our proposals

3.35 Having considered the different characteristics of energy generation projects we believe that wind turbines warrant a separate section with the fee regulations. Other energy generation projects are still suited to the current method of charging, based on the area of the development. The larger the development, the larger the fee. However, with wind turbines, the small geographical area of the application site does not lend itself to this model; planning application fees remain low compared with the work required to determine the application.

3.36 There are a number of wind turbine characteristics that could potentially be used to calculate a more proportionate fee. Options that look to provide thresholds for this fee are explored below.

Output of turbines

3.37 The use of 'output' could be considered a fairer and more proportionate approach to fee calculation, as the higher the turbine output, the greater the likely impacts that need to be assessed. This would warrant a higher planning application fee. However, the output of a wind turbine is dependent on numerous factors, such as the location, height, wind speed and terrain and these factors can lead to a difference between potential, and the actual, generated output of a scheme.

3.38 Using predicted energy outputs is likely to complicate the validation of applications as the LPA and applicant may disagree about the potential output of a scheme. Using the maximum output is an alternative, but will not reflect the actual energy generated by a scheme. This method would enable greater alignment between the application fee and the impacts of the development.

Number of turbines

3.39 The number of turbines would appear to offer a simpler approach, and as the number of turbines increases, the likely impact of the development will also increase, leading to increased determination costs. However, if the fee was only calculated on the number of turbines in an application, the fee would not take account of different development sizes, for example a 15M high turbine would be charged the same fee as a 50M high turbine. The likely impacts of a wind farm on an area, and the consequential costs to the LPA to assess that impact, are likely to be different depending on the height of the turbine. Number of turbines alone would therefore not appear to offer a practical solution to calculating application fees.

Height of turbines

3.40 The height of the turbine also affects the impact of the development; as the turbine height increases from a 'domestic' scale development, to a commercial operation, the greater the workload placed on a LPA to determine the application.

3.41 Using height to calculate the application fee would not take account of the ancillary development, such as ground works, turbine bases, etc, associated with the application. One option to overcome this issue would be to incorporate all ancillary development within the unit cost for each turbine.

3.42 The height of the turbine may be a point of negotiation between the developer and LPA. Therefore an applicant may feel aggrieved if height was used to determine the planning fee and the LPA sought to have this lowered after it had been submitted. However, in this situation the applicant would of course retain the right of appeal.

Area

3.43 The above alternatives attempt to address the issues associated with using area to calculate the planning application fee. However, each alternative raises different issues. If any of these measures were combined with site area, the original shortfalls with the latter may be overcome. The fee schedule could therefore be set at a per 0.1 hectare value for wind turbine development of a certain size (such as the height or output of a scheme).

3.44 While not included in appendix one, the schedule below shows an example of how these fees could operate if a combined approach were used:

i. where the potential output does not exceed 2.5 MW, £330 for each 0.1 hectare of the site area ,

ii. where the potential output exceeds 2.5MW but does not exceed 5 MW, £400 for each 0.1 hectare of the site area,

iii. where the potential output exceeds 5MW but does not exceed 10 MW, £450 for each 0.1 hectare of the site area,

iv. where the potential output exceeds 10MW, £500 for each 0.1 hectare of the site area, subject to a maximum in total of £287,500.

Q11a	Do you agree that applications for renewable energy development should have a separate fee schedule to Section 5, Plant and Machinery?
Q11b	Do you agree that wind turbines should also have a separate system of fee calculation?
Q11c	What factors, or combination of factors, should be taken into account when is calculating the fee for wind turbines?

Allow the division of planning fees for cross authority applications

3.45 A planning application may straddle the boundaries of two or more LPAs. As a LPA cannot grant planning permission for a development within the administrative area of another authority, it is necessary for each LPA to receive an application, identifying on the plans which part of the site is relevant to each.

3.46 The fee regulations state that the planning fee to accompany the application is payable solely to the authority that contains the largest part of the whole application site. The fees for each application should be calculated separately and then added together. The applicant pays this amount, or, if it is less, an amount equal to 150% of the fee that they would have been paid if they had only to make one application that covers the entire site.

3.47 Determination of cross boundary applications by each LPA separately may lead to problems over its processing and determination; including duplication in terms of publicity, notification and consultation requirements, as well as leading to conflicting decisions or the establishment of different conditions and obligations on any permission granted.

3.48 Local government legislation makes provision with respect to the functions and procedures of local authorities, including arrangements that facilitate the determination of cross boundary applications. These procedures can lead to a reduction in the workload of the LPA that receives the smaller part of the application site. However, a complex application may still require substantial work on behalf of the authority with the smaller area of the application. Yet the LPA that does not receive the application fee, must provide this service without receiving an income to cover the associated time and resource costs.

Our proposals

3.49 We consider that cross boundary applications should provide a fee to both authorities calculated at the standard rate for the application that is submitted within their area. This would mean that the applicant would pay the fee to each LPA for the development that is within their administrative boundary calculated at the normal rate. This will mean that should each LPA choose to determine the application within their area, they will receive the necessary income to cover their costs.

Where a LPA chooses to make alternative arrangements for the determination of the application, it will be for the LPAs to agree the transfer of all or part of the fee as required.

Q12a	Do you agree that fees for cross-boundary planning applications should be addressed, with all constituent LPAs receiving fee income?
Q12b	If you have answered yes, how should this matter be addressed?

General questions

3.50 A draft partial RIA has been prepared (at Annex 1) that identifies the impacts on stakeholders if these proposals were taken forward following the consultation. Should, as a result of the consultation, changes be made to the proposals, the impact of the proposals will be reassessed and the RIA revised.

Q13	Do you have any comments to make about the draft partial Regulatory Impact Assessment at Annex 1?

Q14	We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

Appendix 1 : Draft Fee Schedule

Wales	
Category of Development	**Proposed fee payable**
I. Operations 1. The erection of dwellinghouses (other than development within category 6 below).	(a) where the application is for outline planning permission and – (i) the site area does not exceed 2.5 hectares, **£380** for each 0.1 hectare of the site area, (ii) the site area exceeds 2.5 hectares, **£9,500** and an additional **£100** for each 0.1 hectare in excess of 2.5 hectares, subject to a maximum total of **£143,750**; (b) in other cases – (i) where the number of dwellinghouses to be created by the development is 50 or fewer, **£380** for each dwellinghouse, (ii) where the number of dwellinghouses to be created by the development exceeds 50, **£19,000** and an additional **£100** for each dwellinghouse in excess of 50 dwellinghouses, subject to a maximum in total of **£287,500**.
2. The erection of buildings (other than buildings in categories 1, 3 4, 5 or 7).	(a) Where the application is for outline planning permission and – (i) the site area does not exceed 2.5 hectares, **£380** for each 0.1 hectare of the site area, (ii) the site area exceeds 2.5 hectares, **£9,500** and an additional **£100** for each 0.1 hectare in excess of 2.5 hectares, subject to a maximum in total of **£143,750**; (b) in other cases – (i) where no floor space is to be created by the development or where the area of gross floor space to be created by the development does not exceed 40 square metres, **£190**, (ii) where the area of the gross floor space to be created by the development exceeds 40 square metres but does not exceed 75 square metres, **£380**, (iii) where the area of gross floor space to be created by the development exceeds 75 square metres, **£380** for each 75 square metres (or part thereof), subject to a maximum in total of **£287,500**.

3. The erection, on land used for the purpose of agriculture, of buildings to be used for agricultural purposes (other than Buildings in category 4).	(a) Where the application is for outline planning permission and – (i) the site area does not exceed 2.5 hectares, **£380** for each 0.1 hectare of the site area, (ii) the area exceeds 2.5 hectares, **£9,500** and an additional **£100** for each additional 0.1 hectare in excess of 2.5 hectares, subject to a maximum in total of **£143,750**; b) in other cases – (i) where no floor space is to be created by the development or where the area of gross floor space to be created by the development does not exceed 465 square metres, **£70**, (ii) where the area of gross floor space to be created by the development exceeds 465 square metres but does not exceed 540 square metres, **£380**, (iii) where the area of gross floor space to be created by the development exceeds 540 square metres **£380** and an additional **£380** for each 75 square metres (or part thereof) in excess of 540 square metres, subject to a maximum in total of **£287,500**.
4. The erection of glasshouses on land used for the purpose of agriculture.	(a) where the gross floor space to be created by the development does not exceed 465 square metres, **£70**; (b) where the gross floor space to be created by the development exceeds 465 square metres, **£2,150**.
5. The erection, alteration or replacement of plant or machinery.	(a) where the site area does not exceed 5 hectares, **£385** for each 0.1 hectare of the site area; (b) where the site area exceeds 5 hectares, **£19,000** and an additional **£100** for each 0.1 hectare in excess of 5 hectares, subject to a maximum in total of **£287,500**.
6. The enlargement, improvement or other alteration of existing dwellinghouses.	(a) where the application relates to one dwellinghouse, **£190**; (b) where the application relates to 2 or more dwellinghouses, **£380**.
7. (a) the carrying out of operations (including the erection of a building) within the curtilage of an existing dwellinghouse, for purposes ancillary to the enjoyment of the dwellinghouse as such, or the erection or construction of gates, fences, walls or other means of enclosure along a boundary	**£190**

of the curtilage of an existing dwellinghouse;	
7 (b) the construction of car parks, service roads and other means of access on land used for the purposes of a single undertaking, where the development is required for a purpose incidental to the existing use of the land.	**£190**
8. The carrying out of any operations connected with exploratory drilling for oil or natural gas.	(a) where the site area does not exceed 7.5 hectares, **£380** for each 0.1 hectares of the site area; (b) where the site area exceeds 7.5 hectares, **£28,600** and an additional £84 for each 0.1 hectare in excess of 7.5 hectares, subject to a maximum in total of **£287,500**
9. The carrying out of any operations not coming within any of the above categories.	(a) in the case of operations for the winning and working of minerals – (i) where the site area does not exceed 15 hectares, **£190** for each 0.1 hectare of the site area, (ii) where the site area exceeds 15 hectares, **£28,600** and an additional **£100** for each 0.1 hectare in excess of 15 hectares, subject to a maximum in total of **£74,800**; (b) in any other case, **£190** for each 0.1 hectare of the site area, subject to a maximum of **£287,500**.
II. Uses of land 10. The change of use of a building to use as one or more separate dwellinghouses.	(a) Where the change of use is from a previous use as a single dwellinghouse to use as two or more single dwellinghouses – (i) where the change of use is to use as 50 or fewer dwellinghouses, **£380** for each additional dwellinghouse. (ii) where the change of use is to use as more than 50 dwellinghouses, **£19,000** and an additional **£100** for each dwellinghouse in excess of 50 dwellinghouses, subject to a maximum in total of **£287,500** (b) in all other cases – (i) where the change of use is to use as 50 or fewer dwellinghouses, **£380** for each dwellinghouse, (ii) where the change of use is to use as more than 50 dwelling houses, **£18,000** and an additional **£100** for each dwellinghouse in excess of 50 dwellinghouses, subject to a maximum in total of **£287,500**.

11. The use of and for the disposal of refuse or waste materials or for the deposit of material remaining after minerals have been extracted from land, or for the storage of minerals in the open.	(a) Where the area does not exceed 15 hectares, **£190** for each 0.1 hectare of the site area; (b) where the site area exceeds 15 hectares **£28,500** and an additional **£100** for each 0.1 hectare in excess of 15 hectares, subject to a maximum in total of **£74,800**.
12. The making of a material change in the use of a building or land (other than a material change of use coming within any of the above categories.	**£380**

Schedule II

1. Advertisements displayed on business premises, on the forecourt of business premises or on other land within the curtilage of business premises, wholly with reference to all or any of the following matters – (a) the nature of the business or other activity carried on the premises; (b) the goods sold or the services provided on the premises; or (c) the name and qualifications of the person carrying on such business or activity or supplying such goods or services.	**£100**
2. Advertisements for the purpose of directing members of the public to, or otherwise drawing attention to the existence of, business premises which are in the same locality as the site on which the advertisement is to be displayed but which are not visible from that site.	**£100**
3. All other advertisements.	**£380**