Number: WG28856

Welsh Government

Consultation Document

Appeals, costs and standard daily amounts

Date of issue: 10 August 2016
Responses by: 4 November 2016

Overview

The 'Positive Planning' and 'Planning and Regulated Decisions of the Welsh Ministers' consultation papers set out our intention to make changes to the way appeals and references to the Welsh Ministers are dealt with. The majority of those changes have been enacted through various regulations and orders. Since the closure of those consultations, the Planning (Wales) Act received Royal Assent in July 2015. The Act contains provisions which improve how appeals and references to the Welsh Ministers are dealt with, and requires subordinate legislation (such as regulations and orders) to be made to support those provisions. This consultation paper seeks views on the detailed content of that subordinate legislation.

This consultation paper also consults on changes to standard daily amounts charged by the Planning Inspectorate on behalf of the Welsh Ministers and on draft updated guidance on awards of costs for certain proceedings.

How to respond

The closing date for responses is **4 November 2016** and you can reply in each of the following ways.

Email: Please complete the consultation response form at Annex E and send it to:

planconsultations-g@wales.gsi.gov.uk

Please include 'Appeals, costs and standard daily amounts consultation – WG28856' in the subject line.

Post: Please complete the consultation response form at Annex E and send it to:

Appeals, costs and standard daily amounts consultation
Decisions Branch
Planning Directorate
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Further information and related documents

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

Positive Planning – Proposals to reform the planning system in Wales:

www.wales.gov.uk/consultations/planning/draft-planning-wales-bill/?status=closed&lang=en

Planning and related decisions of the Welsh Ministers:

http://gov.wales/consultations/planning/planning-and-related-decisions-of-the-welsh-ministers/?lang=en

Planning (Wales) Act 2015:

http://www.legislation.gov.uk/anaw/2015/4/contents/enacted

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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.

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Annexes

Glossary of Terms

Appellant	Appellant or applicant
Call-in	An application which is referred to the Welsh Ministers for determination
CAS	Commercial Appeals System
CPO	Compulsory Purchase Order
DCO	Development Consent Order
DNS	Developments of National Significance
EIA	Environmental Impact Assessment
HAS	Householder Appeals System
IAG	The Independent Advisory Group
LPA	Local Planning Authority
PINS	The Planning Inspectorate
SoCG	Statement of Common Ground
The 1990 Act	The Town and Country Planning Act 1990
The 2015 Act	The Planning (Wales) Act 2015
The Hazardous Substances Act	The Planning (Hazardous Substances) Act 1990
The Listed Buildings Act	The Planning (Listed Buildings and Conservation Areas) Act 1990

1. Introduction and Background

Preface

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

1.2 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 the PINS Wales on behalf of the Welsh Ministers, with the majority of cases decided by an Inspector. A very small number of cases are recovered for decision by the Welsh Ministers (approximately 1%). PINS also carry out the examination of Local Development Plans.

1.3 The current arrangements allow public involvement and a high standard of decision-making based on the principles of openness, fairness and impartiality. This role in making certain planning decisions is vital to ensure that the Welsh Government's objectives, to deliver appropriate development where it is needed and to foster attractive, sustainable communities, are met.

Recent changes to legislation

1.4 In December 2013, the Welsh Government published the 'Positive Planning'[1] consultation paper, which contained a series of proposals for reforms to the planning system in Wales. The paper proposed changes to the appeals system, supplemented by proposals contained in the later 'Planning and Related Decisions of the Welsh Ministers'[2] consultation.

1.5 Since the publication of 'Positive Planning', the Welsh Government has made the following improvements to the appeals system:

[1] Welsh Government: 'Positive Planning: Proposals to reform the planning system in Wales' (4 December 2013).
[2] Welsh Government: 'Planning and Related Decisions of the Welsh Ministers' (7 November 2014).

Improvement	When and How
Enable the Welsh Ministers or an appointed person to determine the method by which an appeal is to be conducted.	Changes were introduced through the following subordinate legislation, which came into force on 12 November 2014: • The Town and Country Planning (Determination of Procedure) (Wales) Order 2014; • The Town and Country Planning (Determination of Procedure) (Prescribed Period) (Wales) Regulations 2014; • The Planning (Listed Buildings and Conservation Areas) (Determination of Procedure) (Prescribed Period) (Wales) Regulations 2014; and • The Planning (Hazardous Substances) (Determination of Procedure) (Prescribed Period) (Wales) 2014.
Allow applications to be referred back to the Local Planning Authority in the case of appeals against non-determination of applications, within a specified time period.	Changes were introduced through the following subordinate legislation: • The Planning and Compulsory Purchase Act 2004 (Commencement No.14 and Saving) Order 2015, which commenced Section 50 of that Act on 22June 2015. • Article 9 of The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2015, which came into force on 22 June 2015.
Removal of time limit restricting the right of appeal on the grounds of non-determination	Changes were introduced through Article 8 of The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2015, which came into force on 22 June 2015.
Introduction of an expedited process for determining householder and commercial appeals (“HAS” and “CAS”)	Changes were introduced through The Town and Country Planning (Referrals and Applications) (Written Representations Procedure) (Wales) Regulations 2015, which came into force on 22 June 2015.
Expediting the appeal procedure for specialist appeals	The changes were introduced through the following subordinate legislation: • The Town and Country Planning (Power to Override Easements and Applications by Statutory Undertakers) (Wales) Order 2015, which came into force on 14 October 2015. • The Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Wales) Regulations 2015, which came into force on 16 December 2015

1.6 In order to complete the proposals contained in 'Positive Planning' insofar as they relate to appeals and call-ins, changes were required to primary legislation. These changes were introduced in the 2015 Act. The Act contains a number of enabling powers relating to planning and enforcement appeals. Those are specified below:

Section of the 2015 Act	What it does
Section 47 – No variation of application after service of appeal against planning decision etc.	This section deals with appeals against refusals or failures to take decisions in relation to planning applications, certificate of lawfulness applications, and applications for listed buildings and hazardous substances consents. The effect of this section is that an application may not be varied following service of notice of appeal, except in such circumstances as may be prescribed. If circumstances are prescribed, it must provide for a varied application to be subject to such further consultation as the Welsh Ministers consider appropriate.
Section 48 – Appeal against notice in respect of land adversely affecting amenity.	This section transfers responsibility for determining appeals against notices served for land adversely affecting amenity from the Magistrates' Courts to the Welsh Ministers. The section also allows the Welsh Ministers to make provision for the procedures to make such an appeal and the information to be provided.
Section 49 – Costs on applications, appeals and references.	This section consolidates costs provisions relating to planning applications, appeals or references under the 1990 Act whether they are considered by way of written representations, hearing or inquiry. The section allows the Welsh Ministers to recover the entire administrative costs they incur, including general staff costs and overheads and to prescribe a standard daily amount. It also enables them to make orders regarding the costs of the parties to the proceedings and the persons by whom the costs are to be paid.
Sections 50 – Procedure for certain proceedings.	This section allows the Welsh Ministers to make regulations setting out the procedures for planning appeals, call-ins and other determinations, whether they proceed by way of written representations, hearing or inquiry. Procedure rules for the latter two methods were previously made by the Lord Chancellor. This section also allows the Welsh Ministers to make regulations which prevent new matters being raised at an appeal which could have been raised during the application stage.
Section 51 and Schedule 5 – Costs and procedure on appeals etc: further amendments	This section and Schedule make further amendments relating to costs and the procedure for certain proceedings.

1.7 The existing system for appeals and called in applications is generally well regarded. However, there is pressure from professionals and developers seeking swifter decisions to improve the system to provide necessary sustainable development and stimulate economic growth. Communities and the public seek a system that provides greater participation, fairness and transparency.

1.8 The proposals contained in this consultation paper are intended to:

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

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

1.10 The subsequent sections of this consultation paper make proposals in relation to the following:

Appeal and call-in procedures

1.11 This paper introduces measures which reduce the time taken to determine an appeal or call-in. The proposals include the requirement for a full statement of case to be submitted from the outset, to require the submission of responses by local planning authorities ("LPAs") and third parties at an earlier stage, to alter how an examination is undertaken, and will prescribe how an appellant may make changes to an appeal. We also propose to make changes to how Statements of Common Ground are handled and to the time limit for appeals relating to certificates of lawfulness.

Costs

1.12 Allied with our proposed changes relating to examination, we will be extending the costs regime to appeals, call-ins and applications made directly to the Welsh Ministers which are determined by way of written representations. We also propose to publish updated guidance, which will assist Planning Inspectors to initiate awards of costs, in addition to the established ability for applicants or appellants to make costs applications. We also propose to enable the recovery of costs incurred by the Welsh Ministers, where wasted and unnecessary cost to the public purse is incurred.

Standard daily amounts for certain proceedings

1.13 Currently, LPAs are charged a standard daily amount by PINS (on behalf of the Welsh Ministers) for certain proceedings including the examination of local development plans and inquiries relating to Compulsory Purchase Order ("CPO"). This daily amount incorporates Planning Inspector time as well as general staff costs, which include overheads, administrative time and time spent by planning officers. These rates were set in 2012. This consultation paper proposes an update to the standard daily amounts to align them with current costs. It is also proposed that PINS charges general staff costs separately from Planning Inspector time to more accurately reflect the variable time taken by officers when dealing with examinations and inquiries.

2. Appeal and Call-in procedures

Overview

2.1 The response received to the Positive Planning consultation paper clearly indicated support from all sectors for our proposals to amend and speed up the process relating to appeals and call-ins. The response also indicated that PINS is still considered to be the most appropriate body to undertake the processing and decision-making functions for the majority of appeals, including making decisions relating to procedure under which an appeal will be examined.

2.2 The policy proposals (below) set out our intentions to make changes to the appeal and call-in processes. They apply to the following types of appeals and applications, which at present are subject to different timescales, processes and requirements. These have been grouped into three categories:

"Planning and related appeals"

(a) Appeals against planning decisions or the failure to take such decisions, with the exception of HAS and CAS appeals[3];
(b) Appeals against listed building consent and conservation area consent decisions or the failure to take such decisions[4];
(c) Appeals against hazardous substances consent decisions or the failure to take such decisions[5]; and
(d) Appeals against refusal or failure to give a decision on applications for certificates of lawful use or development[6].

"Enforcement and related appeals"

(e) Appeals against planning enforcement notices[7];
(f) Appeals against listed building or conservation area enforcement notices[8];
(g) Appeals against hazardous substances contravention notices[9]
(h) Appeals against the enforcement of duties as to replacement of trees[10]; and
(i) Appeals against notices requiring the proper maintenance of land[11].

[3] S.78 of the Town and Country Planning Act 1990.
[4] S.20 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
[5] S.21 of the Planning (Hazardous Substances) Act 1990.
[6] S.195 of the Town and Country Planning Act 1990.
[7] S.174 of the Town and Country Planning Act 1990.
[8] S.39 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
[9] S.25 of the Planning (Hazardous Substances) Act 1990.
[10] S.208 of the Town and Country Planning Act 1990.
[11] S.217 of the Town and Country Planning Act 1990.

"Call-ins" (References to the Welsh Ministers)

(j) Planning applications which are referred to the Welsh Ministers[12];
(k) Listed building consent and conservation area consent applications which are referred to the Welsh Ministers[13]; and
(l) Hazardous substances consent applications which are referred to the Welsh Ministers[14].

2.3 Our proposed changes include the simplification of initial processes for the above proceedings; improving the accessibility of our legislation by reducing the number of procedure rules and regulations from 11 statutory instruments to 1; speeding up the process through allowing Inspectors to undertake quicker examinations of an appeal or call-in in the same way as they may for DNS applications; and to place restrictions on when amendments or new information can be submitted to ensure that the appeal is based on the information that was before the LPA in the first instance. A flow diagram of the proposed process is set out in ***Annex A***.

2.4 This consultation paper will contain references to a "starting date" of an appeal and call-in. This is the date of the written notice to the appellant and the LPA, confirming that all documents required to enable an appeal or call-in to be entertained have been received. The timetable for an appeal or call-in is measured from this date.

Our policy proposals

Form and content of an appeal and full statements of case

2.5 To improve the speed at which decisions are made by the Welsh Ministers on appeal or through the call-in process, the applicant/appellant (both will herein be referred to as the "appellant", for brevity) will be required to submit documents at an earlier stage. At present, the appellant is not required to set out their full case until 6 weeks after the starting date of the appeal or call-in. A full statement of case would normally consist of the full particulars to support their arguments (including policy arguments) in favour of a particular outcome. It would also contain copies of any information or documents that the appellant will rely upon in evidence.

2.6 The current timing of the submission of a full statement of case raises issues of fairness. The LPA and other interested parties must submit their full case at the same time as the appellant and will not be aware of the appellant's full case when making their own submissions on the appeal or call-in. The LPA may provide a response to the appellant's statement of case 3 weeks after the deadline for the submission of full statements of case; however, there is no statutory right or ability for

[12] S.77 of the Town and Country Planning Act 1990.
[13] S.12 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
[14] S.20 of the Planning (Hazardous Substances) Act 1990.

other interested parties to provide a response to both the appellant and LPA's statement of case by way of closing comments for proceedings dealt with by way of written representations and hearings. This highlights issues of consistency across procedures.

2.7 In cases where the appellant raises significant matters in their full statement of case, a further exchange of representations is sometimes necessary to ensure that the process is procedurally fair. However, this can introduce repetition and significant delay to the process, particularly if a change of procedure, or an adjournment, is considered necessary to most effectively address these matters.

2.8 It is proposed that the process for determining an appeal or call-in will not start until the appellant has submitted their full statement of case. On most occasions, we will require that a full statement of case be submitted at the outset.

2.9 Such a proposal would have benefits to LPAs and interested parties in allowing them to produce their own statements of case in the full knowledge of all matters of dispute raised by the appellant, and to make an informed response to those matters in a timely manner. This approach would increase the transparency of the appeal and call-in process, particularly for interested parties. Through the earlier submission of appeal documents, the time taken to decide an appeal or call-in would decrease significantly, which benefits all parties. Furthermore, the early submission of statements would aid PINS in determining the most appropriate procedure for an appeal or call-in.

2.10 To ensure consistency, we propose to define a 'full statement of case' as:

> *"a written statement which contains full particulars of the case and all the matters which a person proposes to raise and copies of any documents, materials and evidence they intend to rely on in evidence".*

2.11 As the primary legislation which governs call-ins and each category of appeal varies, we have clarified below our proposals relating to the submission of full statements of case for each application or appeal type.

Planning and related appeals

2.12 Planning and related appeals are the most common appeal type. For most appeals in this category, as part of their notice of appeal, appellants are required to submit the appeal form, the application made to the LPA (including all plans, drawings, documents and correspondence sent to the LPA in connection with the application) and the decision letter of the LPA.

2.13 In addition to the above documents, we propose that appellants will be required to submit a full statement of case at the point at which their notice of appeal is submitted.

2.14 Where appeals relate to a specific planning or related decision, prospective appellants will have 6 months within which to submit a notice of appeal. We consider this to be sufficient time for an applicant to decide whether they wish to appeal, and to compile a full statement of case for submission with their appeal where they decide to do so.

2.15 In the case of non-determination appeals, we have recently removed the maximum statutory period within which a prospective appellant may appeal against the failure of a LPA to take a decision[15]. Any applicant who wishes to make an appeal in such circumstances will have an unlimited amount of time to compile a full statement of case to supplement their appeal.

Enforcement and related appeals

2.16 Enforcement appeals must be submitted prior to the effective date of an enforcement (or hazardous substances contravention) notice. The minimum prescribed period between the date of service of the enforcement notice and the effective date is 28 days, though may be longer should the LPA specify a different period.

2.17 Appeals against a notice must be brought on specific grounds as defined within primary legislation. For an appeal to be entertained, a statement specifying the grounds on which the appeal is being brought; and stating the facts on which the appellant proposes to rely in support of each of those grounds, must be submitted. For planning enforcement and listed building enforcement appeals, it is currently only necessary to briefly state the facts on which the appeal is being made.

2.18 To align enforcement and related appeals with planning and related appeals in respect of requiring a full statement of case from the outset, we propose to amend the definition of the statement to align with that proposed in this consultation paper (see section 2.10).

2.19 There are, however, two existing anomalies. At present, primary legislation[16] allows the option of submitting this statement within a prescribed period for planning enforcement, listed building enforcement and hazardous substances contravention appeals, where it is not submitted with the notice of appeal. This period is currently set as 14 days from the date of a notice from the Welsh Ministers requiring this information to be submitted[17] and can delay the start of an appeal.

[15] Article 8 of the Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2015.
[16] S.174(4) of the Town and Country Planning Act 1990 and s.39(4) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
[17] Regulation 5 of the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003.

2.20 There are also issues relating to enforcement appeals proceeding on the ground that consent ought to be granted on that land in respect of the breach or contravention (ground (a) appeals[18]). Such appeals constitute a deemed planning application requiring the payment of a fee to the LPA. Currently, there is no definitive requirement to pay the relevant fee upon notice of appeal. This may also cause further delay or abortive work where it is found that the fee is not paid, where the appeal is made under ground (a) in conjunction with other grounds.

2.21 Given the shorter period within which an appeal can be made and the potential consequences of an unsuccessful appeal, it could be considered unfair to apply the requirement to submit a full statement of case at the outset for all enforcement and related appeals, especially given that individual enforcement cases can be particularly complex.

2.22 Enforcement action is at the discretion of the LPA. Given that an enforcement notice should only be served by a LPA where it is expedient to do so, it will be expected that LPAs have explored, in discussion with the owner or occupier of the land what steps, if any, could be taken to reduce any adverse effects on public amenity to an acceptable level. There are other tools at the LPA's disposal, including Planning Contravention Notices, Stop Notices and Enforcement Warning Notices, which warn the prospective appellant of any impending enforcement action. In the majority of cases, it should not come as a surprise to the prospective appellant when an enforcement notice is served[19]. It would also be reasonable to assume that consideration of an appeal, and the matters to be raised within it by the prospective appellant had taken place before the notice is served. The same principle applies to Hazardous Substances Authorities when considering the use of Hazardous Substances Contravention Notices. However, it is acknowledged that some notices can be issued with little prior notice.

2.23 Taking into account the tools available to the LPA in warning prospective appellants of enforcement action, and to retain consistency with other appeals, we consider it reasonable to reduce, and where possible, remove the 14 day additional period within which a full statement of case may be submitted. We propose that appellants must submit a full statement of case at the outset for enforcement and related appeals, with the exceptions set out in paragraph 2.25.

2.24 There is an existing anomaly relating to appeals against planning enforcement notices and appeals against listed building or conservation area enforcement notices and hazardous substances contravention notices[20] (see paragraph 2.19). For such appeals there remains a requirement in primary legislation that a statement in writing

[18] S.174(2)(a) of the Town and Country Planning Act 1990 (and as applied to the Planning (Hazardous Substances) Act 1990.
[19] Technical Advice Note 9 – Enforcement of Planning Control.
[20] S.174 of the Town and Country Planning Act 1990 and S.39 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

must be submitted when giving the notice of appeal or within a prescribed time period. We propose that, in such cases, that if a full statement of case is not included with the appeal, the appellant must send it to the Welsh Ministers within 7 days of the notice of appeal. There is no such requirement to prescribe an additional period for appeals against tree replacement notices and appeals against notices requiring the proper maintenance of land[21].

2.25 In the interests of fairness and for more complex enforcement appeals, we will propose that the Welsh Ministers will have discretion to accept a full statement of case within a longer period of time in certain circumstances. A statement of case submitted later than the notice of appeal (in the case of appeals against tree replacement notices and notices requiring the proper maintenance of land), or the prescribed 7 day period, (in the case of appeals against planning enforcement notices, appeals against listed building or conservation area enforcement notices and appeals against hazardous substances contravention notices) will only be accepted where a request has been made in writing to PINS and written authorisation containing an extended time period has been issued by them, prior to the deadline for appeal. Where a full statement of case is not submitted with the notice of appeal or within the prescribed 7 day period, and no request for an extension of time is made before the deadline for submission of the appeal, it shall not be treated as an appeal and the person loses their right of appeal.

2.26 In relation to enforcement appeals which attract a fee (ground (a) appeals), it is also proposed that an enforcement appeal will not start until the fee is paid to the LPA in full. We consider that these changes will enable enforcement appeals to proceed efficiently with the full required information provided at the outset.

Call-ins

2.27 Call-in is generally only considered appropriate where an application raises planning issues of more than local importance[22]. Called in applications follow the same procedure as that for appeals in that they are examined independently by a Planning Inspector. However, the process for call-in is initiated in a different way. Rather than being initiated by an appellant, the Welsh Ministers will issue a call-in direction to the LPA informing them of the decision to refer the application to the Welsh Ministers. The direction is copied to PINS and it invites the LPA/Hazardous Substances Authority to submit a copy of the full application file whilst highlighting the duty of the authority to notify the applicant of the call-in, including a statement of the reasons for the call-in as required by legislation.

[21] S.208 of the Town and Country Planning Act 1990 and S.217 of the Town and Country Planning Act 1990.
[22] Chapter 3.12 of Planning Policy Wales (Edition 8: January 2016).

2.28 PINS begin processing the call-in as soon as the direction is received and they contact the LPA to request receipt of all documentation relating to the application to which the call-in is subject where this is not already provided by the LPA. Receipt of this information typically takes 2-4 weeks. Following this, PINS issue a letter to the applicant and the LPA containing the start date for the call-in, and the timetable will follow that of a planning appeal. The applicant and LPA will have the opportunity to provide a statement in relation to the application within 6 weeks of the start date.

2.29 For transparency, consistency and the reasons outlined in sections 2.5-2.25, it is proposed that the full statement of case is submitted before the start date of a call-in.

2.30 It is proposed that, following the issuing of a call-in notice of referral, the start date for that call-in will be within 4 weeks of the date of that notice, confirming that the application has been called in. During this period, the applicant will have the opportunity to submit a full statement of case, prior to the start date. We consider this to be a suitable period, given that applicants would not normally have such an opportunity. We will also require the LPA to submit all documentation relating to the application to PINS within that 4 week period.

2.31 Whereas an appeal may be deemed as invalid without a full statement of case, this is not the case for call-ins. Thus, the processing and examination of the call-in may continue should the applicant not submit a full statement of case. This is to ensure that the process continues and to prevent any delays caused by the applicant. However, as incentive, it would be in the applicant's best interests to submit a full statement of case.

Consultation questions:

Q1: Do you agree with our procedural proposals regarding full statements of case to be submitted with an appeal in most circumstances? If not, why not?

Q2: Do you agree with the definition of 'full statement of case' in paragraph 2.10? If not, why not?

<u>Initial procedure and submission of core documents by parties</u>

2.32 Allied with our proposals to require the submission of a full statement of case at the outset, it is proposed to make changes to the initial procedure for all appeals and call-ins. It is our intention to align the procedures for all appeals and call-ins to make the process clearer for all parties. To achieve this and to increase accessibility to our legislation, we propose that all procedures will be contained in a single consolidated set of regulations. These changes are intended to reduce the time taken to determine an appeal or call-in.

Determination of procedure

2.33 For the majority of appeal types and call-ins, PINS must determine the examination procedure by which the appeal or application will progress within 7 working days of the 'relevant date'[23]. Currently, three sets of prescribed period regulations[24] define the relevant date for each type of proceeding. The 'relevant date' is the date on which all necessary information to entertain an appeal or call-in is received.

2.34 As our proposals (detailed at section 2.8) require appellants and applicants to submit their full statement of case before the starting date of an appeal or call-in, the existing definitions of 'relevant date' contained in the three sets of regulations are all different. It is proposed to align the 'relevant date' in relation to enforcement and related appeals and called in applications, for consistency. This is proposed as the date on which the full information required to entertain that appeal or call-in together with any fee required to be paid is received. We consider that such a change will allow for the examination process for all appeals or call-ins to be brought into line. For simplicity, we also propose to incorporate the three prescribed period regulations into a single consolidated set of regulations which address the examination of appeals and call-ins.

2.35 New powers contained in the 2015 Act transfers responsibility for determining appeals against notices requiring the proper maintenance of land[25] from the Magistrates' Courts to the Welsh Ministers[26].

2.36 For consistency with other types of appeal, it is proposed that the procedure for appeals against notices requiring the proper maintenance of land be aligned with procedures relating to enforcement and related appeals, and that the Inspector determines whether such appeals proceed by way of written representations, hearings, inquiries or a mixture of two or more of those methods.

LPA appeal questionnaire and notification of interested parties

2.37 Once a valid appeal or call-in notification has been received by PINS, they will inform the appellant and LPA in writing of the appeal start date, and will effectively set out the timetable of the procedure that it will follow. In the case of appeals only, there will also be a request for the LPA to submit a complete questionnaire. LPAs must also give notice to interested parties (all appeals and call-ins) and must provide a copy of the relevant enforcement notice (enforcement and related appeals only). In practical terms, confirmation of these actions are a requirement in the questionnaire.

[23] S.319B of the Town and Country Planning Act 1990
[24] The Town and Country Planning (Determination of Procedure) (Prescribed Period) (Wales) Regulations 2015; The Planning (Listed Buildings and Conservation Areas) (Determination of Procedure) (Prescribed Period) (Wales) Regulations 2014; and The Planning (Hazardous Substances) (Determination of Procedure) (Prescribed Period) (Wales) Regulations 2014.
[25] S.217 of the Town and Country Planning Act 1990.
[26] S.48 of the Planning (Wales) Act 2015.

2.38 The appeal questionnaire is a checklist, completed by the LPA, which verifies the status of the appeal site and its surroundings and requires the submission of relevant background documents which would be helpful in the determination of the appeal. The checklist has the purpose of aiding PINS to appoint the correct Inspector, by understanding particular issues relevant to the appeal, while also supporting any future decisions on procedure.

2.39 Currently, the LPA provides a completed questionnaire within 2 weeks of notification of the starting date of the appeal. For HAS and CAS appeals, this is 5 working days. Within the 2 week timeframe, the LPA must also inform interested parties of the appeal or call-in.

2.40 LPAs routinely complete the questionnaire and inform interested parties well inside the two week timeframe, and evidence suggests that the more stringent deadlines set out through the HAS and CAS process are being met. This is largely due to increased efficiency through electronic working.

2.41 To decrease the time taken to determine an appeal, it would be logical to shorten the timeframe for LPAs to undertake these administrative tasks to achieve parity with the HAS and CAS process. We propose that the LPA submits a completed questionnaire and informs interested parties within 5 working days of the starting date.

LPA and interested parties representations

2.42 At present, representations from the LPA, interested parties and the appellant are required within 6 weeks of the starting date of the appeal. Those representations include a full statement of case from the appellant and the LPA, and comments from interested parties in response to the appellant's initial appeal documents (the appeal form and its accompanying documents, including any grounds of appeal). Our proposals regarding statements of case (See sections 2.5 – 2.25) will not require the appellant to submit a statement of case at this stage. Thus submissions may be made by the LPA and interested parties alone.

2.43 To support the goal of speeding up the appeal and call-in process through the earlier submission of core documents, it is proposed to bring forward the date by which representations on the appeal are received from the LPA and interested parties by 2 weeks. It is proposed that those representations are submitted within 4 weeks of the starting date of the appeal.

2.44 We consider that a shorter period is justified given that upon receipt of the notice of appeal the appellant's full case will be known and published online by PINS and well in advance of the time limit for submitting comments. Furthermore, we anticipate that the LPA's full statement and representations from interested parties will be more

focussed and, as a result less time-consuming to produce, given that it will be in response to the statement of case submitted by the appellant.

2.45 These proposals will improve the fairness of the appeal and call-in process, particularly in relation to interested parties, who do not, at present, have the opportunity to provide a formal response to the appellant's full statement of case in all cases.

Final comments

2.46 Currently, appellants and the LPA may submit final comments in response to statements of case within 9 weeks of the starting date of an appeal or call-in (3 weeks following the submission of statements of case by all parties). As the LPA and interested parties will have already responded to the appellant's full statement of case when submitting their own statement, there will be no requirement for them to provide comments on the appellant's statement at this stage. However, the parties may have raised matters in their statements that the appellant, LPA and other interested parties may wish to respond to.

2.47 It is proposed that all parties (including the appellant) will be given a final opportunity to respond to matters raised by the LPA and interested parties in their statements of case. As these final comments are intended to be focussed and in response to matters raised in the LPA and interested parties' statements, it is proposed these comments are submitted within 6 weeks of the starting date of the appeal (2 weeks following the deadline for receipt of statements of case by the LPA and interested parties' representations). This is one week less than the equivalent stage, at present.

Consultation questions:

Q3: Do you agree with our proposals to enable the Welsh Ministers (or PINS) to determine the procedure for and make decisions on appeals against notices requiring the proper maintenance of land? If not, why not?

Q4: Do you agree with our proposals relating to changes to initial procedure and submission of core documents by parties? If not, why not?

Statements of common ground ("SoCG")

2.48 Written statements prepared jointly by the appellant and any interested party that contain agreed factual information about the application can aid the efficient determination of an appeal or called in application. The benefit of such statements is that they set out matters agreed between parties and need not be revisited during the examination of an appeal or call-in. This can be beneficial in ensuring that an examination is

focussed on matters of dispute, enabling decisions to be made in a timely manner.

2.49 It is acknowledged that the production of a SoCG can place significant pressure on LPAs, statutory consultees and the applicant. We have received evidence from users which highlight the difficulty in achieving agreement between parties on such matters, in some cases. The requirement to submit a SoCG where one cannot be achieved places burden on the process rather than ensuring a speedy resolution.

2.50 Currently, a SoCG is required to be submitted for appeals and call-ins where the inquiry procedure is used, and it is required to be agreed 4 weeks before the notified inquiry date. However, where a SoCG is offered following the deadline, it would often be accepted, as they can be useful to the Inspector.

2.51 In the Positive Planning consultation paper, we initially proposed that SoCG were to be submitted when an appeal is made, and where a hearing or inquiry is requested. The response, although largely positive, expressed concerns that the submission of appeals may be delayed while seeking to agree a draft SoCG. It is also noted that there may unnecessarily be a SoCG where the Inspector determines that the appeal be determined by way of written representations, and there are added complications relating to the timing and requirement of SoCG relating to enforcement appeals. Prescribing a requirement for early agreement of a SoCG may mean that parties rush to produce something of little value.

2.52 In the light of the comments received, we have reviewed whether SoCG should be provided in all circumstances. The overarching principle of the appeal and call-in proposals is to align how these proceedings are examined to ensure consistency. Similar to DNS procedures, we will not be seeking to place a statutory requirement or deadline on SoCG for the purposes of appeals and called in applications although we will encourage their submission where it is possible to reach agreement between parties. We will also encourage the submission of a SoCG for proceedings dealt with by way of written representations as well as oral procedures, given that a SoCG can fulfil a useful function, regardless of the procedure used. Where SoCG may be considered appropriate, we will encourage appellants, LPAs and third parties to actively seek resolution to disputed issues prior to the submission of an appeal or as soon as possible after the making of a call-in direction.

2.53 It is our intention to produce guidance ON SoCG. This guidance, similar to that produced for DNS[27], will specify that, where a SoCG is initiated by any party, that a draft should be submitted prior to the starting date of proceedings to inform the determination of procedure for examination. Later statements may be submitted where helpful to

[27] Developments of National Significance: Procedural Guidance; Appendix 6 – Statements of Common Ground.

the examining Inspector, or requested by them. We consider this approach strikes the right balance given the individual circumstances of each appeal or called in application.

Consultation question:

Q5: Do you agree with our proposals regarding Statements of Common Ground? If not, why not?

Examination

2.54 We received encouraging responses to our proposals in the Positive Planning consultation paper which addressed the examination of appeals and call-ins. There was overall support for our proposals which enable PINS to determine the process for handling an appeal or call-in. The ability for PINS to determine the most appropriate method of how an appeal or call-in is examined has since been enacted[28].

2.55 Building on those proposals, we now propose a number of changes to ensure that appeals and call-ins of all types can be examined in a similar way.

Mixed mode examination

2.56 In terms of time and expense, the written representations method is both the quickest, and the least expensive, procedure for determining an appeal or called in application. A hearing usually will last for up to 1 day, whilst public inquiries can last several days and are the most time-consuming and costly method. At present, for most appeal types, PINS must determine the procedure for an appeal or call-in within 7 working days of receipt of notice of appeal or notice of referral, and that appeal or call-in may only proceed through one of those methods.

2.57 An efficient process should ensure that every application or appeal is determined by the most appropriate and proportionate method and in a timely manner, whilst ensuring quality of decision-making.

2.58 Our procedures for DNS[29] enable a mixture of procedures to be used when examining an application. Where it is possible, examination will proceed by way of written representations although specific issues, because of their complexity or controversy, may require examination through a hearing or more formal inquiry procedure. The use of an inquiry is limited only to where the issues dictate that this procedure is appropriate and necessary. The ability to use multiple procedures offers greater flexibility in enabling the procedure to be tailored by the Inspector to the individual application and the information needed to determine it. The use of this method across all proceedings will ensure consistency in the way that applications, call-ins and appeals are examined by the Welsh Ministers.

[28] The Town and Country Planning (Determination of Procedure) (Wales) Order 2014.
[29] The Developments of National Significance (Wales) Regulations 2016.

2.59 We propose that the examination method will be tailored to the specific requirements of the appeal or called in application. Decisions on the examination method will continue to be made by PINS and in line with published criteria (see ***Annex B***), and may be altered at any point where issues come to light requiring more detailed examination.

2.60 It is proposed to adopt a similar examination procedure to that for DNS by way of a single set of appeal and call-in procedure regulations. A new set of procedures, based on the approach outlined above, would enable the flexibility to transfer between different procedures for examination, allowing the most appropriate procedure to be used for each issue according to its complexity. It is the intention that the written representations procedure will be the default procedure for all appeals or called in applications.

Appointment of assessors

2.61 An assessor may be appointed by an Inspector to provide him or her with expertise or aid on a particular matter and to sit with the Inspector during oral examination on that particular matter. Following appointment, the Assessor must provide a report to the Inspector on the matters on which they were appointed to advise. At present, an Assessor may only be appointed in the case of an appeal or call-in which proceeds by way of an inquiry. Such a facility would also be of use to an Inspector where the appeal or call-in is dealt with by way of a hearing.

2.62 It is proposed to allow for the appointment of an Assessor for proceedings dealt with by way of a hearing, as well as an inquiry.

Additional representations requested by PINS

2.63 Our proposals afford the Inspector flexibility to examine certain specified matters orally. However, he or she may decide that while a certain matter does not merit examination by way of hearing or inquiry, further written information or representations may be useful to clarify the matter.

2.64 Following the initial process of submitting statements of case and the appellant's final comments (see section 2.46 – 2.47), we propose to give Inspectors the discretionary ability to require the submission of further evidence on certain issues or matters by any participant in the appeal or call-in. This submission of further evidence will be solely at the request of the Inspector and will not be required in all cases. This power would typically be used to avoid the need for a hearing or inquiry into a certain matter where it can be clarified simply by way of a written representation.

2.65 We also propose that any further submissions made for this purpose will be subject to a word limit. We consider this appropriate as the

information requested will be specific and focussed on one issue. Furthermore, the LPA, appellant and interested parties will have already submitted their full statement of case as part of their submissions. The word limit would apply to each issue for which the Inspector invites evidence. We consider that, similar to the process of examination of a DNS, a word limit of 3,000 words strikes the right balance. Where representations are submitted containing text beyond that word limit, the Inspector may require that a shortened representation be resubmitted. The Inspector may instead of, or in supplement to, those written statements ask specific written questions to the parties, where considered necessary and appropriate.

Participation to be limited to those invited

2.66 As it is our intention to rationalise the use of hearings and inquiries with more focussed topic-based sessions, it is unlikely that all parties would be required to attend each session. For example, a representor who made representations regarding the impact of a development on landscape would not necessarily be required where an inquiry addresses noise issues.

2.67 To address this, it is proposed that parties will participate in hearings or inquiries by invitation of the Inspector only. The LPA and appellant; however, will be invited as a matter of course to all proceedings. This will enable the Inspector to focus on the issues that they need to explore further and minimise discussion of those issues where sufficient written information has already been provided on which to form conclusions. The Inspector will have discretion to permit other parties at any time during the examination period to participate in the hearing and/or inquiry who had not previously been specifically invited to attend.

2.68 We do not wish to remove the ability for anybody to attend or observe hearings or inquiries, and these will remain open to members of the public. However, only those persons specifically permitted to participate by the Inspector will be able to do so.

Consultation questions:

Q6: Do you agree with our proposals for the mixed-mode examination of appeals and call-ins? If not, why not?

Q7: Do you agree that further representations requested by the Inspector as part of the examination of an appeal or call-in should be subject to a word-limit of 3,000 words per topic? If not, why not?

Making changes to an appeal

2.69 These proposals, which restrict the making of changes to appeals, apply to planning and related appeals (see section 2.2, appeals (a)-(d)).

2.70 At present, an application may be altered after notification of an appeal to the Welsh Ministers. Appellants may only do so where the changes are accepted by an Inspector. An Inspector has discretion to accept changes to an application subject to the rules of natural justice and the requirement that those who are entitled to comment have the opportunity to do so. This ability to accept amendments is determined by caselaw demonstrated in the 'Wheatcroft' judgement[30].

2.71 LPAs frequently object to changes to the original application and the submission of new information after an appeal has been made on the grounds that the change or new information would have altered the basis of their decision. Furthermore, communities are often confused and feel excluded from the appeal process when such changes occur after the LPA has taken its decision. The transparency, fairness and accessibility of the appeal system suffer in such circumstances.

2.72 To enhance the transparency of the appeals process, it is proposed to introduce the principle that PINS deal with an application in the form it was considered by the LPA. The changes outlined below are intended to improve the fairness of the planning process, and increase public confidence.

New matters to be considered at appeal

2.73 Precluding new information at appeal that should have been before the LPA when it made its decision would 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. Such a change will also allow the performance of LPA's decision-making though appeal success rates to be reflected more fairly and accurately.

2.74 It is proposed to preclude new matters being raised following the notice of appeal, except under specific circumstances. Those circumstances are:

- It can be demonstrated that the matter could not have been raised at the time the application was being considered by the LPA, and could only have been raised following the notice of appeal; or

- It can be demonstrated that the matter being raised following the notice of appeal was a consequence of exceptional circumstances.

[30] Bernard Wheatcroft Ltd vs SSE [JPL, 1982, P.37].

2.75 The above restriction will not affect any requirement or entitlement to have regard to the provisions of the development plan or any other material consideration[31].

Changes to an application upon appeal against a decision

2.76 To ensure that the community has the opportunity to be fully involved in the decision-making process, revisions to applications should be considered by the LPA in the first instance, rather than through the appeal route.

2.77 The 2015 Act makes changes which preclude the making of a change to an application once notice of appeal has been submitted, except in prescribed circumstances[32]. We propose that changes may only be made where it is required as a result of a drawing or drafting error, and does not affect the substance of the application.

2.78 Such a measure would also place fewer burdens on the appeal system as revised applications could be approved by the LPA. Furthermore, good working relationships will be encouraged between applicants and LPAs to achieve improvement of a scheme, rather than requiring the submission of an appeal to the Welsh Ministers.

Q8: Do you agree with the circumstances in which an application may be varied in the case of an appeal? If not, why not?

Q9: Do you agree with the circumstances in which new information may be introduced during an appeal or call-in? If not, why not?

Certificates of lawfulness

2.79 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 the LPA where a person wishes to ascertain whether an existing or proposed use or operations on land is lawful, and that use or operations meets certain criteria[33]. There is a right of appeal against a decision of the LPA in relation to a certificate. Typically, where an appeal relates to a planning decision, that appeal must be made within 6 months. Certificate of lawfulness appeals are not subject to a statutory time-limit and can be made at any time following the LPA's decision (or failure to take a decision).

2.80 Given that 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. Introducing a time limit for

[31] S.38 of the Planning and Compulsory Purchase Act 2004.
[32] S.47 of the Planning (Wales) Act 2015.
[33] S.191-192 of the Town and Country Planning Act 1990.

certificate of lawfulness appeals will ensure consistency across similar appeal types.

2.81 It is therefore proposed to introduce a time limit of 6 months from the date of the LPA's decision, where the appeal relates to a certificate of lawfulness. It is not proposed to introduce a time limit in the case of appeals relating to the failure to take decisions by LPAs, as is the case for other planning and related appeals.

Q10: Do you agree with our proposals to introduce a 6 month time limit for certificate of lawfulness appeals against a decision by a LPA? If not, why not?

3. Costs

Overview

3.1 In planning appeals and other proceedings, all parties involved generally meet their own costs. However, in certain circumstances, where it is deemed that one party has behaved unreasonably, either directly or indirectly, and this has caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. Where unreasonable behaviour occurs by either party, and the proceedings are prolonged or needlessly initiated, this can be at the expense of the Welsh Ministers.

3.2 Our proposals within the Positive Planning consultation paper asked whether fees should be introduced to cover the costs of the Welsh Ministers (including PINS) when administering appeals. Respondents opposed the introduction of fees for appeals, although to take account of wasted costs by all parties, the making of the costs process fairer was widely supported.

Reasons for change

3.3 Guidance on the award of costs is currently set out in Welsh Office Circular 23/93[34] *(Awards of Costs incurred in Planning and Other (including Compulsory Purchase Order) Proceedings)* ("the Circular"). The guidance and advice contained in the Circular is now 23 years old and includes information which has been revised or replaced.

3.4 Since the publication of the Circular, a number of legislative and policy changes have occurred and are proposed to reform the appeals process. These include:

- the commencement of new costs provisions in the 2015 Act[35];
- the introduction of the DNS process (and proposals for other applications to be made directly to the Welsh Ministers);
- the ability to apply for an award of costs where appeals are considered on the basis of written representations;
- the ability of the Welsh Ministers to recover their own costs in some proceedings; and
- the intention to enable Planning Inspectors to initiate an award of costs, where unreasonable behaviour has occurred and an application for costs has not been forthcoming.

Our policy proposals

3.5 To ensure that advice and guidance for awards of costs remains relevant, up to date and reflects recent reforms to the planning system

[34] http://gov.wales/topics/planning/policy/circulars/welshofficecirculars/circular2393/?lang=en
[35] S.49 (costs on applications, appeals and references) and S.51 (costs on procedure on appeals etc: further amendments) of the Planning (Wales) Act 2015.

in Wales, it is our intention to revoke the existing Circular and provide updated guidance for the award of costs.

3.6 Draft updated guidance is contained at ***Annex C***. Our proposed changes to the existing Circular are detailed below:

Direct applications to the Welsh Ministers

3.7 The existing Circular relating to the award of costs makes reference to planning, enforcement and related appeals, as well as called in applications.

3.8 The Planning (Wales) Act 2015 established a new category of development known as DNS, which requires applications for certain categories of development to be made directly to the Welsh Ministers. It also established a principle for optional direct applications in the case of poorly performing authorities, which allow applicants the option to submit applications directly to the Welsh Ministers for determination, if the LPA is categorised as poorly performing. The proceedings used to determine such applications are similar to those for appeals and called in applications.

3.9 The draft updated guidance contains updates which clarify that applications made directly to the Welsh Ministers are subject to the costs regime and allow costs to be awarded for any proceedings undertaken which relate to this type of development, if unreasonable behaviour is deemed to have occurred and that behaviour has resulted in wasted and unnecessary expense.

Inclusion of written representations

3.10 Currently, costs can only be claimed for planning appeals and called in applications where a hearing or inquiry is held (with the exception of enforcement appeals). However, there is potential for unreasonable behaviour to occur in proceedings dealt with by way of written representations, such as missing or delaying key deadlines for representations, withholding important information and raising new matters at a late stage. There is no opportunity for parties to recover their costs in these circumstances.

3.11 In 2014, the Welsh Government introduced provisions which require PINS to determine the method by which an appeal or call-in proceeds. This has also been extended to the DNS regime. This change effectively removed the right for an appellant or applicant to appear before an Inspector. As there is currently no ability to make a claim for costs in written representations cases, this could be perceived to be unfair.

3.12 In practice, PINS has used its discretion to alter procedure where it is considered likely that the matter of costs may arise, or where the appellant or applicant has indicated that they are likely to claim costs.

Whilst this solution increases the fairness of the process, it is only intended to be a temporary measure.

3.13 In the interests of fairness and equality, our updated guidance allows costs to be awarded to parties in the case of proceedings dealt with by way of written representations, if unreasonable behaviour is deemed to have taken place and that behaviour has resulted in wasted and unnecessary expense.

Welsh Ministers recovering their costs

3.14 Where unreasonable behaviour occurs during an appeal, application or reference the Welsh Ministers may decide to award costs to one or more parties. The costs regime; however, does not extend to the Welsh Ministers at present.

3.15 We consider it important that the Welsh Ministers (including PINS) are able to recover their costs, in order to deter frivolous and spurious appeals from being submitted and to recover the wasted and unnecessary cost to the public purse in the case of all proceedings. .

3.16 We propose that the Welsh Ministers (including PINS) will be able to recover their costs, either in full or in part, where unreasonable behaviour has occurred that has led to unnecessary or wasted expense to the public purse. This provides a further incentive for parties to demonstrate good behaviour throughout the process. Examples could include, where one party has been actively delaying the process, non-attendance or cancellation at organised events, or where a local planning authority has refused an application without adequate justification.

Process for awarding costs

3.17 Currently, if one party is considered by another to have behaved unreasonably during proceedings, the other party can initiate an award of costs by way of the submission of an application to the Planning Inspector overseeing the hearing or inquiry, or the Welsh Ministers, who will conclude whether an award of costs is appropriate or not. Typically, the application would occur at the end of the hearing or inquiry, or following decision. We consider that many applications made at this late stage could have been made earlier.

3.18 As it is proposed that costs may be awarded for proceedings examined by way of written representations, there would be no opportunity to apply for costs at a hearing or inquiry. Accordingly, we propose to make some alterations to how awards of costs may be applied for and to unify the procedure for all proceedings.

3.19 Appendix A of the draft updated guidance sets out the process for making applications for costs. Where a person who is participating in

proceedings intends to apply for an award of costs, the following principles will apply:

(a) All parties must apply for costs at the earliest opportunity. In practice, this will be at the point where the full statement of case is submitted. For applicants or appellants, this will be upon notice of appeal or within 4 weeks of notice of referral. For local planning authorities or third parties, this will be within 4 weeks of the starting date of proceedings;

(b) The ability to make a response to an award of costs applications will align with the deadlines for the initial procedure [see paragraphs 2.32 - 2.37]. For example, if an appellant or applicant makes an application for an award of costs, the party or parties must submit their comments within 4 weeks of the starting date of proceedings. Where an application is made by the local planning authority or third party, the opportunity to respond will be at the 6 week stage;

(c) Following receipt of the application for costs and representations in response, the Planning Inspector may either proceed to a decision on costs or ask for further responses within a timeframe specified by them until sufficient information has been received to determine the application for costs;

(d) Where unreasonable behaviour occurs during proceedings, an application for costs must be made as soon as possible. Such applications should be made during proceedings and must contain a statement expressing why the application for costs could not have been submitted at an earlier stage. The same principle applies to proceedings dealt with by way of hearing or inquiry, where an application for costs is made orally or where an application is made following withdrawal of the application or appeal. The Inspector or Welsh Ministers may choose not to entertain an application for costs where no good reason is provided.

3.20 As well as making applications for costs, it is our intention that Planning Inspectors or the Welsh Ministers may also initiate an award of costs. Planning Inspectors have consistently encountered situations where no claim for costs has been made, despite one of the parties behaving unreasonably, causing unnecessary and wasted expense, and an award of costs is fully justified. The view of the Planning Inspectors is that appellants and applicants may not make claims for costs to avoid 'upsetting' a LPA, with whom they may have to work with in the future. Similarly for LPAs, there may also be a reluctance to claim costs.

3.21 We propose, in the first instance, to retain the process for an application for an award of costs to be made by a party who considers another party has behaved unreasonably (as set out in 3.19 (a)-(d) above). In addition, we also propose to grant powers to Planning Inspectors, to enable them to initiate the process of awarding costs, if they consider that unreasonable behaviour has occurred by one or

more parties and an application for costs has not been forthcoming. In such instances, an award of costs may be made to any party to the proceedings.

3.22 In practice, an award of costs initiated by an Inspector or the Welsh Ministers may occur after the final formal opportunity during proceedings that parties have to apply for costs has passed.

Consultation questions:

Q11: Do you agree that Welsh Ministers should be able to recover their own costs? If not, why not?

Q12: Do you agree with the grounds for unreasonable behaviour specified within the draft updated guidance (at Annex C)? If not, please specify alternative or additional grounds.

Q13: Do you agree with the process for the awards of costs set out in Appendix A of the draft updated guidance (at Annex C)? If not, why not?

Q14: Should any additional information be included within the draft updated guidance (at Annex C)?

4. Standard Daily Amounts of Certain Proceedings

Overview

4.1 The 1990 Act and the Housing and Planning Act 1986 provide the Welsh Ministers with powers[36][37] in relation to recovery of costs borne by them to undertake certain proceedings. Those proceedings are:

Qualifying procedures[38]

- Examinations of local development plans; and
- Inquiries in relation to the consideration of objections to simplified planning zone schemes.

Local inquiries

- Inquiries where the Welsh Ministers are authorised[39] to recover costs incurred by them, including Compulsory Purchase Orders ("CPOs")[40]; and
- Land drainage inquiries[41].

4.2 When a public examination or inquiry is held, the Welsh Ministers appoint PINS to act on their behalf. An independent Planning Inspector employed by PINS undertakes the examination or inquiry, with support of planning officers and other administrative staff. Where costs are recoverable for such proceedings, they are recovered by PINS (on behalf of the Welsh Ministers) and are charged to the LPA as a standard daily amount.

4.3 Existing legislation[42] prescribes the standard daily amounts that PINS can recover, on behalf of the Welsh Ministers. The standard daily amounts for qualifying procedures and local inquiries are inclusive of Planning Inspector time, planning officer time and other administrative staff time.

Reasons for change

4.4 The most recent change to the prescribed standard daily amounts charged by PINS came into force in April 2012. Those amounts are:

- £742 per day for local inquiries; and
- £679 per day for qualifying procedures.

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[36] Section 303A of the Town and Country Planning Act 1990.
[37] Section 42 of the Housing and Planning Act 1986.
[38] Section 303A(1A) of the Town and Country Planning Act 1990.
[39] Under or by virtue of section 250(4) of the Local Government Act 1972.
[40] Section 42(1) of the Housing and Planning Act 1986.
[41] See section 69(7) of the Land Drainage Act 1991 for the application of section 42 of the Housing and Planning Act 1986.
[42] The Local Inquiries, Qualifying Inquiries and Qualifying Procedures (Standard Daily Amount) (Wales) Regulations 2011.

4.5 The standard daily amounts identified in paragraph 4.4 comprise the daily rate of the Planning Inspector as well as general staff costs, which include a mixture of overheads, administrative and planning officer time appropriate to each proceeding.

4.6 Since publication in April 2012, the prescribed standard daily amounts have become outdated, and do not reflect the current cost to PINS for undertaking the work. The following factors have resulted in changes in cost to PINS:

- Inflation;
- An uplift in administrative costs; and
- Changes to working practices, which include the increased use of planning officers within PINS to assist Inspectors.

4.7 The basic principle in managing public money is to set a charge which recovers the full cost. This approach ensures that the Government neither profits at the expense of service users nor makes a loss for tax payers to subsidise. Where services are charged at less than full cost, there should be an agreed plan to achieve full cost recovery within a reasonable period.

4.8 The current standard daily amounts, as prescribed, are tied to the Planning Inspector's time. The functions undertaken by administrative staff and planning officers are also tied to the single daily rate. This is considered inflexible and does not reflect the varying time spent by general staff (including planning officers and administrative staff) to assist an Inspector in conducting each individual examination or inquiry.

4.9 At present, the current amount charged and the way it is charged is not compatible with the working practices of PINS, where administrative and planning officer input into examinations and inquiries is over a longer and more sustained period than Planning Inspectors. Therefore, changes are required to the method of charging to reflect these working practices.

Our policy proposals

4.10 To ensure that PINS can continue to effectively recover costs on behalf of the Welsh Ministers, it is proposed to:

- Update the standard daily amounts charged by PINS in relation to qualifying procedures and local inquiries to reflect current costs;
- Alter how those daily amounts are charged to ensure that Planning Inspector time and general staff costs (including planning officer time and administrative staff time) can be charged separately and accurately;
- Apply those standard daily amounts to all relevant proceedings so that the same rates are charged across the piece; and

- Prescribe and publish future changes to those standard daily amounts for future financial years.

4.11 The standard daily amount for Planning Inspectors appointed to undertake work in relation to qualifying procedures and local inquiries and their overhead costs, will be prescribed within regulations, which replace existing regulations[43]. It is proposed the Planning Inspector's standard daily amount (as prescribed), as well as the standard daily amounts for general staff costs (which include planning officers and administrative staff) will all be published on the PINS website, to ensure that relevant information relating to charging is in one accessible location.

4.12 Unlike at present, we intend that the same standard daily amount for Planning Inspectors will apply to both qualifying procedures and local inquiries However, the amount of staff time charged per proceeding is likely to vary. The standard daily amounts will only apply to the time spent on the tasks required to undertake the work relating to that proceeding.

4.13 The proposed standard daily amounts for Planning Inspector and general staff costs (including planning officer, administrative time and overheads) are contained at ***Annex D***. For transparency, and to future proof the charging method, it is our intention to prescribe and publish standard daily amounts for upcoming years to account for inflation (set at 1.03%). It is our intention to review these amounts again in 2019.

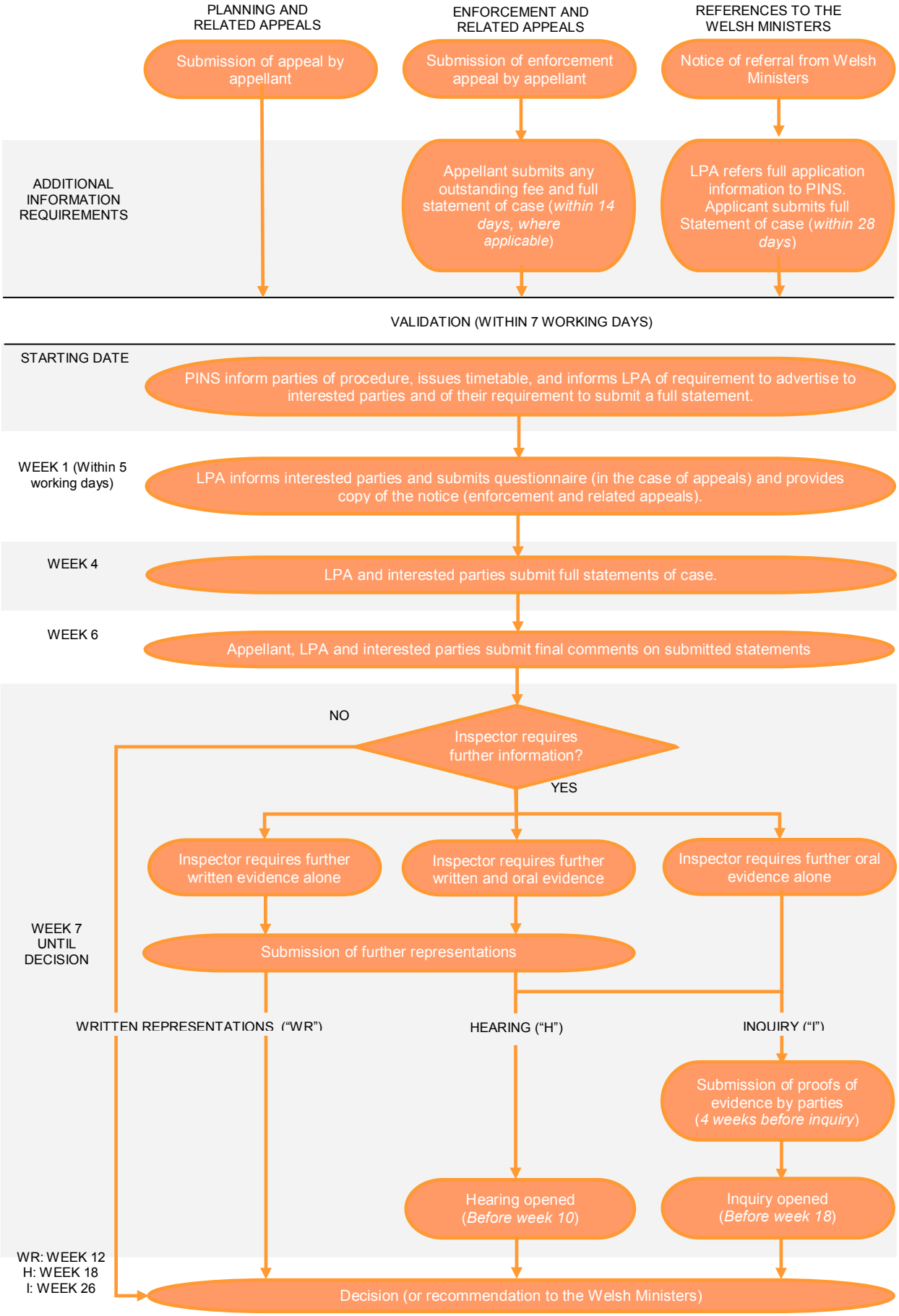
Consultation questions

Q15: Do you agree with the amended method for charging daily amounts for qualifying procedures and local inquiries? If not, why not?

Q16: Do you agree with the proposed standard daily amounts at *Annex D*? If not, why not?

[43] The Local Inquiries, Qualifying Inquiries and Qualifying Procedures (Standard Daily Amount) (Wales) Regulations 2011.

Annex A: Flow Diagram of proposed process for references and appeals.



Annex B:

Criteria for determining the procedure for planning; enforcement; listed building; conservation area consent; listed building/conservation area enforcement; lawful development certificate; tree replacement notice; hazardous substance appeals and called-in applications.

The criteria for each procedure cannot be fully prescriptive or entirely determinative; they require judgement to be applied. More than one criterion may apply.

Written representations - written representations would be appropriate if:

- the planning issues raised or, in an enforcement appeal, the grounds of appeal, can be clearly understood from the appeal documents and a site inspection (if required)[44]; or
- the issues are not complex and the Inspector is not likely to need to test the evidence by questioning or to clarify any other matters[45] ; or
- in an enforcement appeal the alleged breach, and the requirements of the notice, are clear;
- there is not an application for costs[46].

Hearing - a hearing would be appropriate if:

- the Inspector is likely to need to test the evidence by questioning or to clarify matters but there is no need for evidence to be tested through formal questioning by an advocate or given on oath[47]; or
- the status or personal circumstances of the appellant are at issue[48]; or
- the case has generated a level of local interest such as to warrant a hearing[49]; or

[44] A small number of appeals do not require a site visit and can be dealt with on the basis of the appeal documents.
[45] Appeals involving Gypsy and travellers' sites, or agricultural workers/rural enterprise dwellings will not fall within this criterion.
[46] This does not apply to enforcement appeals
[47] For example where detailed evidence on housing land supply needs to be tested by questioning.
[48] For example, whether in Gypsy and travellers' site appeal(s) the definition in Welsh Government document 'Travelling to a Better Future' and the Gypsy and Traveller Framework for Action and Delivery Plan is met, or in agricultural / rural enterprise dwelling appeals, whether the tests set out in TAN6 are satisfied.
[49] Where the proposal has generated significant local interest a hearing or inquiry may need to be considered. In such circumstances the local planning authority should indicate which procedure it considers would be most appropriate taking account of the number of people likely to attend and participate at the event. We will take that advice into account in reaching the decision as to the appropriate procedure.

- it can reasonably be expected that the parties will be able to present their own cases (supported by professional witnesses if required) without the need for an advocate to represent them; or

- in an enforcement appeal, the grounds of appeal, the alleged breach, and the requirements of the notice, are relatively straightforward.

Note – Although appellants may be represented by advocates at a hearing, and can test the evidence by way of questioning, cross examination will not be permitted by the Inspector.

Inquiry - an inquiry would be appropriate if:

- there is a clearly explained need for the evidence to be tested through formal questioning by an advocate[50] ; or

- the issues are complex[51]; or

- the appeal has generated substantial local interest to warrant an inquiry as opposed to dealing with the case by a hearing[52]; or

- an enforcement appeal, evidence needs to be given on oath[53]; or

- in an enforcement appeal, the alleged breach, or the requirements of the notice, are unusual and particularly contentious.

Note - It is considered that the prospect of legal submissions being made is not, on its own, a reason why a case would need to be conducted by inquiry. Where a party considers that legal submissions will be required (and are considered to be complex such as to warrant being made orally), the Inspectorate requires that the matters on which submissions will be made are fully explained – including why they may require an inquiry - at the outset of the appeal or otherwise at the earliest opportunity.

[50] This does not preclude an appellant representing themselves as an advocate.
[51] For example where large amounts of highly technical data are likely to be provided in evidence.
[52] Where the proposal has generated significant local interest a hearing or inquiry may need to be considered. In such circumstances the local planning authority should indicate which procedure it considers would be most appropriate taking account of the number of people likely to attend and participate at the event. We will take that advice into account in reaching the decision as to the appropriate procedure.
[53] For example where witnesses are giving factual evidence about how long the alleged unauthorised use has been taking place.

Annex C: Draft updated guidance relating to costs

Costs

This guidance provides advice on the awards of costs incurred in planning and other proceedings (including compulsory purchase and analogous orders).

It revokes and replaces Welsh Office Circular 23/93 *(Awards of costs incurred in planning and other (including compulsory purchase order) proceedings)* and sets out advice on:

- The general principles of awards of costs;
- Behavioural requirements for all parties;
- Which processes an award of costs applies to; and
- Procedural matters.

Parties are expected to meet their own costs. An appellant or applicant is not awarded costs simply because their appeal or application succeeds and similarly, a local planning authority is not awarded their costs because their stance or decision is upheld. An award of costs may only be made where one party has behaved unreasonably and that unreasonable behaviour has led other parties to incur unnecessary or wasted expense. An award of costs requires one party to pay another party's costs (in full or in part) that have been incurred as a result of a proceeding under which a decision of the Welsh Ministers, or Planning Inspector working on their behalf, is reached. This may be a planning appeal, application or compulsory purchase order (a full list of proceedings is listed at paragraph 1.2). The proceedings may be dealt with by way of written representations, hearing or inquiry (or a mixture of any of those three methods). It will be for the Welsh Ministers or a Planning Inspector to decide whether unreasonable behaviour has occurred, and if it has, whether it has led to unnecessary or wasted expense.

Costs are awarded by way of an order, which states the broad extent of the expense the party can recover from the party against whom the award is made. A costs order will not determine the actual amount.

1 General background for an award of costs

Power to award costs

1.1 Section 322C(2) of the Town and Country Planning Act 1990 enables the Welsh Ministers to make directions as to the costs they (or those acting on their behalf, such as the Planning Inspectorate) incur, including general staff costs and overheads, in connection with an application, appeal or reference and as to the person(s) by whom the costs are paid. This applies whether matters proceed by way of written representations, hearing or inquiry (including hearings or inquiries that

do not take place). Section 322C(6) enables the Welsh Ministers to make orders as to the costs of the applicant, appellant or any other party to the application, appeal or reference and as to the person(s) by whom the costs are paid.

1.2 Section 322C(5) allows the Welsh Ministers, by regulations, to prescribe a standard daily amount for costs.

Proceedings to which costs apply

1.3 Section 322C applies to applications, appeals or references to the Welsh Ministers under the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Planning (Hazardous Substances) Act 1990 as well as to certain proceedings under the Highways Act 1980 and the Wildlife and Countryside Act 1981. As such, section 322C applies to proceedings including:

- Planning and related appeals[54];
- Enforcement and related appeals[55];
- Called in applications[56];
- Planning applications for Developments of National Significance ("DNS") and associated secondary consents[57];
- Opposed public path extinguishment and diversion orders[58];
- Appeals in connection with consents relating to Sites of Special Scientific Interest[59];
- Appeals against management notices[60]; and
- Opposed orders modifying the definitive rights of way map[61].

Section 322C does not apply to an application, appeal or reference made to the Welsh Ministers before 1 March 2016. Articles 2(b), 4, 16 and 17 of the Planning (Wales) Act 2015 (Commencement No. 3 and Transitional Provisions) Order 2016 provide detailed information regarding the commencement and transitional provisions relating to section 322C.

[54] S.78 of the Town and Country Planning Act 1990, S.20 of the Planning (Listed Buildings and Conservation Areas) Act 1990, S.21 of the Planning (Hazardous Substances) Act 1990, S.195 of the Town and Country Planning Act 1990.
[55] S.174, S.208 and S.217 of the Town and Country Planning Act 1990, S.39 of the Planning (Listed Buildings and Conservation Areas) Act 1990, S.25 of the Planning (Hazardous Substances) Act 1990.
[56] S.77 of the Town and Country Planning Act 1990, S.12 of the Planning (Listed Buildings and Conservation Areas) Act 1990, S.20 of the Planning (Hazardous Substances) Act 1990.
[57] S.62D and S.62F of the Town and Country Planning Act 1990.
[58] S.121 of the Highways Act 1980.
[59] S.28F of the Wildlife and Countryside Act 1981.
[60] S.28L of the Wildlife and Countryside Act 1981.
[61] Schedule 15 of the Wildlife and Countryside Act 1981.

Why costs are awarded

1.4 All parties involved in the proceedings listed at paragraph 1.3 are expected to behave reasonably to support an efficient and timely process. Parties must normally meet their own expenses. However, where it is deemed that one party has behaved unreasonably, either directly or indirectly, and this has caused another party to incur 'unnecessary or wasted expense' (see paragraphs 1.7 – 1.11) in the appeal or application process, they may be subject to an award of costs.

1.5 The ability for parties to be awarded costs is intended to instil a greater sense of discipline into the process and encourage reasonable behaviour amongst all parties.

1.6 The aim of the costs regime is to:

- Encourage all those involved to behave in a reasonable manner, instil a greater sense of discipline and follow good practice, in terms of timeliness and in the presentation of full and detailed evidence to support their case;

- Encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal that stand up to scrutiny on the planning merits of the case and not to add to development costs through avoidable delay; and

- Not deter people from exercising their statutory right of appeal.

Circumstances in which costs can be awarded

1.7 Costs may be awarded where a party:

- Has behaved unreasonably; and
- The reasonable behaviour has directly caused another party to incur unnecessary or wasted expense.

Meaning of 'unnecessary or wasted expense'

1.8 The appeal process is usually free, and is administered without any additional charge to the applicant or appellant. However, parties will incur expenditure through compiling the necessary statements, engaging in specialist advice and appearing at a hearing or inquiry (where applicable). Where the proceeding attracts a fee from the applicant, such as an application for DNS, the applicant may incur a similar type of expenditure. In all proceedings, failure to comply with the normal procedural requirements, including aborting the process by withdrawing without good reason, risks an award of costs on the

grounds of 'unreasonable behaviour'. However, it is recognised that where it is necessary to withdraw an application or appeal, we encourage that this is undertaken at the earliest possible stage, as later or non-withdrawal may lead to a greater award of costs.

1.9 Where a party behaves unreasonably, this may cause another party to incur additional unnecessary or wasted expense. Significant costs may be wasted, or ultimately deemed unnecessary, by parties in preparing for proceedings dealt with by way of written representations, hearing or inquiry, where any alleged unreasonable behaviour has occurred. This could be the expense of the entire appeal or application, or only for part of the process.

1.10 Examples of unnecessary or wasted expense are where an appellant withdraws their appeal entirely, or the local planning authority withdraws one or more of their original reasons for refusal, resulting in the cancellation of the inquiry or hearing into that specific issue, so that other appeal parties have wasted their preparatory work. Wasted and unnecessary expense may also be incurred over and above any fee paid for by the applicant (such as an application for DNS), for example, where essential parties fail to appear at an event or where unreasonable behaviour occurs relating to a procedural matter.

1.11 Further examples of what may be deemed 'unreasonable behaviour' can be found in paragraphs 2.3 – 2.12.

The procedure for proceedings

1.12 The manner in which proceedings can be determined is dependent upon the complexity of the planning matters to be considered. This can take the form of the following procedures:

- Written representations;
- Hearing; or
- Public inquiry;

1.13 The Welsh Ministers or a Planning Inspector working on their behalf can determine that a mixture of the above methods be used in determining proceedings. They can require some information to be supplied in written form, or that a hearing is necessary to consider more complex issues. The use of public inquiries would be limited to only those issues where this procedure is deemed appropriate and necessary, in line with published criteria.

Scope of costs

1.14 Awards for costs can cover two types of behaviour:

1.15 *Procedural* awards may be claimed for unreasonable behaviour occurring during proceedings which has caused wasted or unnecessary expense. Such an award is made where a party has disrupted or delayed the process for determining an application or appeal or reference during proceedings.

1.16 *Substantive* awards may be claimed where the unreasonable behaviour relates to issues of substance arising from the merits of the appeal or application, and this has caused wasted or unnecessary expense. In these instances, awards for costs cannot be claimed for the period during which an application is before a local planning authority (or other relevant body). However, behaviour and actions at the time can be taken into account in the consideration of whether or not costs should be awarded.

1.17 Costs may only be claimed for the period following the 'starting date' of proceedings. Typically, this is the date on which written notice to the appellant or applicant has been given by the Planning Inspectorate (acting on behalf of the Welsh Ministers) confirming that all documents required to enable the proceedings to commence have been received.

1.18 Any decision on the appeal or other listed proceeding will not be affected in any way by the fact that a separate application for costs has been made. The determination of a costs application is a separate process.

Parties who may be subject to an award of costs

1.19 Any party who has taken part in proceedings may have costs awarded to or against them. These can include local planning authorities (or other relevant body), appellants and third parties, including statutory consultees. Generally, costs either in favour or against third parties will only be made in exceptional circumstances, for example, following an adjournment due to unreasonable behaviour. Costs may also be awarded to the Welsh Ministers (including those working on their behalf) where unnecessary expense has been incurred on their part.

How costs are awarded and determining the amount payable

1.20 Welsh Ministers (or those working on their behalf) use powers, identified in paragraph 1.1, to award costs where they have found unreasonable behaviour has occurred. Any party who has taken part in proceedings may apply for costs in writing as soon as jurisdiction for the application or appeal has been handed to the Planning Inspectorate.

1.21 In Written Representation cases where a party is seeking a substantive award, an application for costs must be made at the same time as the submission of their full written statement of case. Where a written application is not made at this stage, the application for costs must contain a statement which expresses why an application could not have been made at the same time as, or before, the deadline for submission of the full statement of case. For cases being determined by way of a Hearing or Inquiry, parties are encouraged to submit an application for costs when they submit their full statement of case. However, it is recognised that a party may seek an award after the evidence has been tested at the Hearing or Inquiry. The application must set out, with good reason, why the application is made later than expected, or it is likely to be rejected by the Welsh Ministers (or those working on their behalf). A later application for costs will normally be accepted where the unreasonable behaviour relates to a procedural matter which occurred during proceedings.

1.22 Most awards of costs cases are determined by Planning Inspectors. However, the Welsh Government may deal with some cases, such as those which are initiated following the withdrawal of an appeal or application or following the conclusion of the appeal or application or where the Planning Inspectorate initiate an award of costs to themselves. When determining whether to make an award, the Welsh Ministers (or Planning Inspector acting on their behalf) will take all evidence into account, alongside any extenuating circumstances.

1.23 The Planning Inspector can only address the principle of whether full or partial costs should be awarded. The final amount is settled between the parties.

1.24 When a party is awarded costs, they should send details of their costs to the other party and seek to reach an agreement on the amount. Where costs are awarded against a party and the parties cannot agree on a sum, the successful party can apply to the Senior Courts Costs Office.

1.25 The full process undertaken for awards of costs can be found in Appendix A.

Non-payment

1.26 Once the Welsh Ministers (or Planning Inspector working on their behalf) have made an award of costs, they have no further role in the proceedings. Failure to settle an award of costs is enforceable through the courts as a civil debt. Parties should seek legal advice if there is any doubt on how to proceed.

Full award of costs

1.27 A full award of costs relates to all of a party's costs, starting from the date that the applicant begins to incur expense in the application or appeal procedure. In practice, this will occur from the 'starting date' of proceedings. The starting date will be indicated in writing by the Planning Inspectorate. This may include the preparation of statements of case and supporting documentation, and the expense of making a costs application (where applicable).

Partial award of costs

1.28 Some cases do not justify a full award of costs. In these circumstances, a partial award may be made. For example, if a local planning authority refuses an application for planning permission and one reason for refusal is not properly supported, but substantial evidence has been produced in support of others. A partial award may apply where an unnecessary adjournment is caused to a hearing or inquiry into a certain subject.

2 Behaviour that may lead to an award of costs against appeal parties

'Unreasonable' behaviour

2.1 The word "unreasonable" is used in its ordinary meaning, as reflected in the High Court's judgement in the case of Manchester City Council v Secretary of Sate for the Environment and Mercury Communications Limited [1988] J.P.L. 774.

2.2 Generally, unreasonable behaviour can be identified by two categories:

- Procedural (relating to the process); and
- Substantive (relating to issues of substance arising from the merits of the appeal or application).

Examples of unreasonable behaviour

Appellants or applicants:

2.3 Appellants or applicants are required to behave reasonably in relation to procedural matters, ensuring they comply with requirements and deadlines specified by the Welsh Ministers or Planning Inspector in the determination process.

2.4 Examples of unreasonable behaviour that may lead to an award of costs include, but are not limited to:

Procedural:

- Deliberately concealing relevant evidence either during the application stage or at a subsequent appeal or call in dealt with by the Welsh Ministers;

- Failing to provide an adequate statement of case (i.e. unclear presentation of facts or arguments) that causes a hearing or inquiry to be adjourned or unnecessarily prolonged;

- Lack of co-operation with another party or parties in providing information required in support of an appeal or ground of appeal, discussing the application, appeal, or any proposed statement of common ground, or in responding to a planning contravention notice and failure to adhere to statutory deadlines;

- Introducing new grounds of appeal, evidence, or relevant information late in the proceedings where it is clear that this could have been provided earlier in the process, or at the application stage;

- Providing information or evidence that is knowingly inaccurate or untrue;

- Failing to comply with the normal procedural requirements for written representations, hearings or inquiries;

- Failing to attend (or be represented) at a site visit, hearing or inquiry, when required; and / or

- Withdrawing an appeal, without good reason, such as where there is no material change in the local planning authority's case.

Substantive:

2.5 Appellants or applicants are also at risk of an award of costs being made against them if the appeal, application or ground of appeal had no reasonable prospect of succeeding. This may occur, but is not limited to, when:

- The development to which an appeal relates is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence;

- The appeal or application follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where Welsh Ministers, or a Planning Inspector acting on their behalf, decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period;

- The applicant or appellant has, without good reason or justification, failed to adhere to advice issued by the local planning authority or the Welsh Ministers as part of pre-application services, where that advice would have caused the avoidance of an appeal or consideration of those matters by the Welsh Ministers as part of the application, or the issues being considered as part of an appeal or application being narrowed;

- In enforcement and lawful development certificate appeals, the onus of proof on matters of fact is on the appellant. Sometimes it is made plain by a recent appeal decision relating to the same, or a very similar development on the same, or substantially the same site, that development should not be allowed. The appellant is at risk of an award of costs if they persist with an appeal against an enforcement notice on the ground that planning permission ought to be granted for the development in question; and / or

- There is a lack of co-operation relating to any planning obligation.

Local Planning Authority:

2.6 Where local planning authorities, in exercising their duties, have acted in a reasonable manner, they should not be liable for an award of costs. Local planning authorities are required to behave reasonably in relation to the procedural matters of an appeal or application, ensuring they comply with the requirements and deadlines of the process. Where a local planning authority has refused, or proposed to refuse, an application for a proposal that is not in accordance with relevant development plan policy and no material considerations indicate that permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application.

2.7 Local planning authorities are not bound to adopt, or include as part of their case, the professional or technical advice given by their own officers or received from statutory consultees. However, they are expected to show that they had reasonable planning grounds for taking a decision contrary to such advice and that they are able to produce relevant evidence to support their decision. If they fail to do so, costs may be awarded against the authority.

2.8 Examples of unreasonable behaviour that may lead to an award of costs include, but are not limited to:

Procedural:

- Deliberately concealing relevant evidence either as part of its determination of a planning application or at a subsequent appeal or call in;

- Failure to determine an application within the statutory time limits, where it is clear that there was no substantive reason to justify delaying the determination of the application;

- Failing to notify the public of the relevant deadlines to submit written representations, or the date of holding a hearing or inquiry in a timely manner, where this leads to delay;

- Failing to provide an adequate statement of case (i.e. unclear presentation of facts or arguments) that causes a hearing or inquiry to be adjourned or unnecessarily prolonged;

- Lack of co-operation with another party by refusing to provide requested information or seek additional information;

- Providing information or evidence that is knowingly inaccurate or untrue;

- Refusing to co-operate in settling agreed facts, or supplying relevant information, so that the proceedings are adjourned or prolonged unnecessarily;

- Refusing or delaying in providing information requested by the Welsh Ministers or Planning Inspector, or failure to adhere to statutory deadlines;

- Introducing new / substantial evidence or relevant information late in the proceedings where it is clear that this could have been provided earlier in the process, or at the application stage;

- Failing to comply with the normal procedural requirements for written representations, hearings or inquiries;

- Failing to attend (or be represented) at a site visit, hearing or inquiry where required;

- Withdrawal of any reason for refusal, reason for issuing an enforcement notice, full withdrawal of an enforcement notice without good reason; and / or

- The introduction of a new reason, or proposed reason, for refusal, causing delay to the process.

Substantive:

2.9 Local planning authorities are also at risk of an award of costs being made against them if the appeal, application or ground of appeal if they behave unreasonably with respect to the substance of the matter under appeal or subject to a call-in or application directly to the Welsh Ministers. Examples of this include:

- Pursue unreasonable planning obligations (i.e. section 106 agreements) in connection with a granting of planning permission;

- Imposing conditions on a planning permission which are unnecessary, unreasonable, unenforceable, or irrelevant;

- Where an enforcement appeal could have been avoided due to inadequate investigation or insufficient communication on the part of the local planning authority;

- Preventing or delaying development which should be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;

- Failure to produce evidence to substantiate the impact of the proposal, each reason, or proposed reason for refusal (i.e. taking a decision contrary to professional or technical advice without reasonable planning grounds) and requiring the appellant or applicant to enter into a planning obligation which does not accord with the law or relevant policy;

- Refusing permission on a ground being capable of being dealt with by way of condition, where it is concluded that suitable conditions would enable the development to proceed;

- Acting contrary to, or not following, well-established case law;

- Refusing or objecting to particular elements of a scheme for which the Welsh Ministers or Planning Inspector has previously indicated or determined to be acceptable;

- Not determining or providing a position on similar cases in a consistent manner;

- Failing to grant or support a further permission for a scheme that is the subject of an extant or recently expired permission, where there has been no material change in circumstances;

- Refusing to approve or support reserved matters when the objections relate to issues that should have already been considered at the outline stage;

- Failing to provide adequate evidence for each reason, or proposed reason, for refusal of the application;

- Imposing a condition that does not comply with the tests set out in WGC 016/2014: The Use of Planning Conditions for Development Management;

- Where there is a lack of co-operation relating to any planning obligation; and / or

- Refusal to offer pre-application services, or to provide reasonably requested information, when a more helpful approach would likely have resulted in the avoidance of an appeal or the issues considered as part of an appeal or application being narrowed (such as the failure of an LPA to provide information such as site history and constraints where knowledge of that information may have avoided an appeal).

Interested parties (including statutory consultees):

2.10 Interested parties and statutory consultees play an important role in the planning system. Where either are party to a proceeding determined by the Welsh Ministers, or Planning Inspector acting on their behalf, they may be liable to an award of costs in their favour or against them. Accordingly, there is a clear expectation that they will behave reasonably. Awards of costs, either in favour of or against interested parties (including statutory consultees), will only be made in exceptional circumstances.

2.11 In general, interested parties and statutory consultees will not have costs awarded to, or against them where a finding of unreasonable behaviour by one of the principal parties (the appellant and local planning authority) relates to the merits of the case. However, where unreasonable behaviour relating to procedural matters occurs by way of written representations or at a hearing or inquiry and causes unnecessary expense, interested parties and statutory consultees may be awarded costs, or have costs awarded against them. For example, where an unnecessary adjournment of a hearing or inquiry is caused by unreasonable conduct. Examples of this include, but are not limited to:

Procedural:

- Deliberately concealing relevant evidence either during the planning application stage or at a subsequent appeal or call in;
- Lack of co-operation with another party or parties and refusing or delaying in providing information requested, or failure to adhere to statutory deadlines;
- Providing information or evidence that is knowingly inaccurate or untrue;
- Introducing new / substantial evidence or relevant information late in the proceedings where it is clear that this could have been provided earlier in the process, or at the application stage;
- Failing to comply with the normal procedural requirements for written representations, hearings or inquiries; and / or
- Failing to attend (or be represented) at a site visit, hearing or inquiry, when required.

Substantive:

2.12 Statutory consultees or interested parties to an appeal or application may have costs awarded against them if they behave unreasonably with respect to the substance of the matter under appeal or application.

Examples of this include, but are not limited to:

- Refusal on the basis of unsubstantiated evidence submitted by an interested party or statutory consultee;

- There is a lack of co-operation relating to any planning obligation; and /or

- Withdrawal of evidence which underpins a reason for refusal.

3 Costs in respect of compulsory purchase and analogous orders

Orders which are analogous to compulsory purchase orders

3.1 Section 322C of the Town and Country Planning Act 1990 applies to those applications, appeals or references listed below that are made to the Welsh Ministers under the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Planning (Hazardous Substances) Act 1990.

3.2 In most cases, section 322C does not apply to an application, appeal or reference made to the Welsh Ministers before 1 March 2016. Articles 2(b), 4, 16 and 17 of the Planning (Wales) Act 2015 (Commencement No. 3 and Transitional Provisions) Order 2016 provide detailed information regarding the commencement and transitional provisions relating to section 322C.

3.3 In general, an order or proposal will be considered to be analogous to a compulsory purchase order if its making, or confirmation, takes away from the objector some right or interest in land for which the statute gives them a right to compensation.

3.4 Orders analogous to compulsory purchase orders are:

- Orders to revoke or modify:
    a. Planning permission[62];
    b. Listed building consent[63];
    c. Hazardous substances consent[64];
    d. Continuation of a hazardous substances consent on change of control land[65]; or
    e. Express consent for advertisements[66];

- Discontinuance of use or alteration or removal of buildings or works orders[67]:
    a. Requiring discontinuance of a use of land (including the winning and working of minerals), or imposing conditions on the continuance of a use of land;
    b. Requiring the removal or alteration of buildings or works;
    c. Requiring the removal or alteration of plant or machinery used for winning or working of minerals;
    d. Prohibiting the resumption of winning or working of minerals; or
    e. Requiring steps to be taken for the protection of the environment, after suspension of winning and working of minerals; and

[62] S.97 and s.98 of the Town and Country Planning Act 1990.
[63] S.23 and S.24 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
[64] S.14 and S.15 of the Planning (Hazardous Substances) Act 1990.
[65] S.17(1) of the Planning (Hazardous Substances) Act 1990.
[66] Regulation 16 of the Town and Country Planning (Control of Advertisements) Regulations 1992
[67] S.102, S.103 and Schedule 9 of the Town and Country Planning Act 1990.

- Petition relating to compulsory acquisition of land on behalf of town or community councils[68].

Award of costs for compulsory purchase and analogous orders

3.5 There is a distinction between cases where appellants take the initiative, such as in applying for planning permission or undertaking development allegedly without planning permission and cases where objectors are defending their rights or protecting their interests. Compulsory purchase and analogous orders seek to take away a party's rights or interest in land.

3.6 If a statutory objector to a compulsory purchase and analogous orders is successful, an award of costs will be made in their favour, unless there are exceptional reasons for not doing so. The award will be made by the Welsh Ministers to the objector (or claimant) against the authority which made the order. An award against the authority, in these circumstances, will not imply unreasonable behaviour by them.

3.7 Where an order for the award of costs is made on the grounds of success, all of the following conditions must apply:

(a) The claimant must have made a formal objection to the order;

(b) The claimant must have either:

- Attended (or been represented) at an inquiry or hearing, where one has been held; or

- Submitted a written representation which was considered as part of the written procedure, where the written procedure was used and the claimant was not given an opportunity to appear;

(c) The claimant must have been a statutory objector; and

(d) The claimant must have had an objection sustained by the Welsh Ministers' (or confirming authority's) refusal to confirm the order or by its decision to exclude the whole or part of the claimant's property from the order.

Procedure for awards of costs for compulsory purchase and analogous orders

3.8 There is no requirement for a claimant to make an application for costs at an inquiry or hearing. The Welsh Ministers (or confirming authority) will notify all parties concerned in writing and invite them to submit an

[68] S.125 of the Local Government Act 1972, as substituted by S.43 of the Housing and Planning Act 1986.

application for an award of costs on the basis of their successful objection. When a party is awarded costs, they should send details of their costs to the other party and seek to reach an agreement on the amount. Where costs are awarded against a party and the parties cannot agree on a sum, the successful party can apply to the Senior Courts Costs Office.

Unreasonable behaviour

3.9 There are some circumstances where an award of costs may be made to an unsuccessful objector, or to the local authority that made the order, as a result of unreasonable behaviour by any party (which includes interested parties). These circumstances are likely to relate to procedural matters, for example, failing to submit grounds of objection or serve a statement of case, or where actions result in unnecessary expense, such as the prolonging of proceedings unnecessarily.

3.10 Where an unsuccessful objector considers that another party has behaved unreasonably, they may apply for costs on this ground by submitting an application for costs. However, Planning Inspectors may also initiate an award of costs where they consider that unreasonable behaviour has occurred and an application has not been made. The Planning Inspector will provide a recommendation to the Welsh Ministers (or the confirming authority) for a decision on whether to award costs. The procedure for awards of costs for an unsuccessful objector follows the process identified in Appendix A.

3.11 An award of costs cannot be made both on grounds of success and unreasonable behaviour. However, an award to a successful objector may be reduced if they have acted unreasonably and caused unnecessary expense in the proceedings, for example, where their conduct leads to an adjournment which ought not to have been necessary.

Partly successful objectors

3.12 Where a statutory objector is partly successful in opposing a compulsory purchase order, they will generally be entitled to a partial award of costs. For example, where a compulsory purchase order is confirmed, but excludes part of the objector's land.

Circumstances where a compulsory purchase or analogous order is linked to another application

3.13 In some circumstances, joint inquiries are held into two or more proposals, only one of which is a compulsory purchase (or analogous) order; for example, an application for planning permission and an order for the compulsory acquisition of land included in the application.

Where an objector, who also makes representations about a related application, and is successful in objecting to the compulsory purchase order (and satisfies the criteria at (a)-(d) of paragraph 3.5 of this guidance), the objector will be entitled to an award in respect of the compulsory purchase or analogous order.

3.14 An objector is not precluded from being awarded for the costs relating to the other matter on the grounds that the authority has acted unreasonably.

Appendix A

Procedure for awarding costs for appeals, call-ins and applications to the Welsh Ministers

General procedure

A1 Where they intend to do so, all parties must apply for an award of costs at the earliest opportunity. This applies to all proceedings dealt with by way of written representations, hearings, inquiries or a mixture of any of these methods.

A2 In the case of appeals, the appeal form provides an opportunity for appellants to submit an application for an award of costs where a substantive award is sought. In the event of a substantive award being sought in the case of a call-in, that application for costs should be submitted alongside the applicant's full statement of case (where one has been compiled), or prior to the starting date of the call-in.

A3 Where a local planning authority or third party intends to apply for costs, they should do so in writing either prior to or at the point of submission of their full statement of case at the 4 week stage.

A4 The application for costs will contain a statement which clearly explains why they considered that unreasonable behaviour has occurred and how this has caused unnecessary expense, taking into account this guidance.

A5 Parties subject to an application for costs against them will be given an opportunity to respond to that application. There is an opportunity for the local planning authority or other parties to respond to the appeal or call-in 4 weeks from the starting date. Where an application for costs is made by the applicant or appellant, representations in response to the application must be received on or before the deadline for representations at 4 weeks. Where an application is made by the local planning authority or other parties, the 6 week stage provides the same opportunity for parties who are subject to an application for costs against them to respond.

A6 Following receipt of these representations, the Planning Inspector, on behalf of the Welsh Ministers, will either decide that no further representations are required or that further responses are submitted from parties within a timeframe specified by the Inspector, until the Inspector has sufficient information to determine the application for costs. Once a decision on the appeal or call-in is issued, the Planning Inspector will also issue a separate report determining the award of costs application.

A7 Although early submission of an application for an award of costs is desirable, it is recognised that circumstances may dictate that a party

may seek an award after evidence has been tested at a hearing or inquiry. Where such an application is made, the applicant for costs must give good reason for not applying in accordance with the deadlines specified in paragraph A5.

Applications arising from unreasonable behaviour during proceedings

A8 Whilst all parties are encouraged to submit any application for costs at the earliest possible stage in proceedings, there may be occasions where unreasonable behaviour occurs during the examination and determination process of the appeal, call-in or direct application to the Welsh Ministers (such as DNS). Such applications would be made on procedural grounds. In such instances, an application for an award of costs will be considered.

A9 An appeal or application may follow one or more of the three different procedures.

Written representations

A10 For proceedings dealt with by way of written representations alone, an application for costs on procedural grounds should be made as soon as possible after the alleged unreasonable behaviour has occurred. The written application must contain a statement which expresses why an application could not have been made at the same time as, or before, the deadline for submission of the full statement of case. The Planning Inspectorate may choose not to entertain an application for costs where no good reason is provided.

Hearings and Inquiries

A11 For proceedings which are fully or partly dealt with by way of hearing or inquiry, it is also an expectation that an application for costs is made at the earliest possible opportunity and in writing. This would aid in expediting proceedings. However, the Planning Inspector will provide a final opportunity for parties to apply for costs orally or in writing prior to the closure of the hearing or inquiry. If an oral application is allowed, the Inspector will afford the parties to which an application for costs has been made against the opportunity to respond orally, though in some circumstances they may do so in writing within a period specified by the Inspector.

A12 Following receipt of these representations, the Planning Inspector will either decide that no further representations are required or that further responses are submitted from parties within a timeframe specified by them (usually 2 weeks), until the Inspector has sufficient information to determine the application for costs. Once a decision on the appeal or call-in is issued, the Planning Inspector will also issue a separate report with a recommendation on whether an award of costs should be granted.

Initiation by Inspectors

A13 There may be occasions where no party has made an application for costs, though the Inspector has witnessed clear unreasonable behaviour, which in their view merits an award of costs to parties or to the Inspectorate, as a result of wasted expenditure. In such instances, the Planning Inspector, on behalf of the Welsh Ministers, will initiate an award of costs. An initiation in this way may occur after the final formal opportunity during proceedings that parties have to apply for costs has passed. This will typically be following the closure of a hearing or inquiry or where all deadlines for representations have passed in cases dealt with by way of written representations alone.

A14 It is acknowledged that the initiation of the award of costs process by a Planning Inspector may suggest a pre-determination of the award to other parties, especially given that an award of costs may be made in favour of the Planning Inspectorate. To ensure transparency, such awards are to be made by the Welsh Government, which is independent of the process and the subject of the costs claim.

A15 Where such an initiation is made, the award of costs will be dealt with by the Welsh Government in the manner outlined in paragraphs A16 - A19 below.

Procedure following withdrawal of appeal or application

A16 There are certain behaviours and circumstances which may cause an application for costs to arise following the withdrawal of an appeal, call-in or direct application. At this point, the Planning Inspectorate will no longer have jurisdiction over that proceeding. In such circumstances, an award of costs application will be dealt with by the Welsh Government. The Welsh Government will also determine awards of costs initiated by the Planning Inspectorate, including those which are for their own costs.

A17 Where an application for costs is made by the appellant or applicant, this must be submitted no later than 4 weeks from the date of the notice of withdrawal of the appeal or application. The written application must contain a statement which expresses why an application could not have been made during the appeal or application. If an application for costs is received after this 4 week period, the applicant must demonstrate good reason for not applying sooner.

A18 Following the receipt of an application or an initiation of an award, the Welsh Government will invite representations from the party / parties from whom costs are sought. Parties will typically be afforded 2 weeks to respond to applications or initiations for an award of costs.

A19 Following receipt of these representations, the Welsh Government will either decide that no further representations are required or that further responses are submitted from parties within a specified timeframe, until

the Welsh Government has sufficient information to determine the application for costs. A decision on the award will normally be made within 12 weeks of the receipt of all required representations. The award will be issued to the claimant and a copy sent to those parties which are subject to the award of costs against them.

Who to apply to

Applications for costs during proceedings

The Planning Inspectorate
Cathays Park 2
Cardiff
CF10 3NQ

wales@pins.gsi.gov.uk

Applications for costs following the withdrawal of proceedings

Decisions Branch – Planning Directorate
The Welsh Government
Cathays Park 2
Cardiff
CF10 3NQ

Planning.directorate@wales.gsi.gov.uk

Annex D: List of standard daily amounts for certain proceedings

The below standard daily amounts apply to:

- Local inquiries (including CPOs[69]); and
- Qualifying procedures (including local development plan examinations[70]).

		Staff level (including overheads)				
		Planning Inspector	*Director*	*Sub-group Leader*	*Planning Officer*	*Administrative Staff*
Period	*CIF to 31 March 2018*	£508	£635	£558	£312	£283
	1 April 2018 – 31 March 2019	£513	£641	£563	£315	£285
	1 April 2019 onwards	£518	£647	£568	£318	£287

[69] Section 42 of the Housing and Planning Act 1986.
[70] Section 303A(5) of the Town and Country Planning Act 1990.