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Llywodraeth Cymru  
Welsh Government

Welsh Government

Consultation – summary of response

Appeals, costs and standard daily amounts

March 2017

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.  
This document is also available in Welsh.

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## **Annexes**

- A. List of respondents by category

## 1. Introduction

- 1.1 The “Appeals, Costs and Standard Daily Amounts” consultation document was launched on 10 August 2016 and was open for responses until 4 November 2016. A total of 16 specific questions were set out in the consultation document, with a standard form provided for ease of response. Comments were also made outside of the standard questions.
- 1.2 This document details a summary of responses to the consultation, the Welsh Government’s response and the next steps. It is separated into two further sections.
- 1.3 Section 2 provides an overall statistical summary of the consultation and provides details of how the consultation was conducted.
- 1.4 Section 3 provides a summary of all responses received. This includes:
- A summary of the key findings under each consultation question;
  - A statistical analysis of the views expressed on each consultation question, where statistics could be extracted;
  - A summary and analysis of the key themes generated for each question;
  - The Welsh Government’s response to that analysis; and
  - An explanation of what the Welsh Government will do following the response to each question.
- 1.5 In analysing and summarising the response to this consultation, this report will not address the following:
- **Comments which revisit the principles set out in the Planning (Wales) Act 2015:** Comments on this aspect were sought in the ‘Positive Planning’ consultation paper on the draft Planning Bill for Wales. The Act has been subject to scrutiny and has been passed by the National Assembly for Wales;
  - **Clarifications sought to matters of detail:** It is the intention that, when in force, the amended appeals and costs processes will be supplemented by guidance. That guidance will seek to clarify matters of detail raised in this consultation paper;
  - **Comments on individual cases or decisions before or made by the Welsh Ministers:** Given the statutory role of the Welsh Ministers in the planning process it is not possible for them, or anyone else within the

Welsh Government, to comment on a decision to which they are party. To do so could prejudice the position of the Welsh Government.

- **Matters outside the scope of the consultation:** Where comments have been made that are relevant to this consultation but were made in relation to matters outside of the scope of the question, efforts have been made to summarise under the correct question. However, comments outside of the remit of this consultation will not be addressed. Those matters include subject areas which are outside the realms of Town and Country Planning as well as policy matters which are outside the competence of the Welsh Ministers; and
- **Comments which incorrectly interpret the proposed policy and existing legislation:** Responses have been received which request changes to policy which, in fact, either reflect the intentions set out in the consultation paper or reflect existing legislation which is to be unchanged.

## 2. Responses

- 2.1 On 10 August 2016 over 200 stakeholders, including individuals and organisations were notified by email of the publication of the consultation. These were drawn from the core consultation list held by the Planning Directorate of the Welsh Government. This included all local planning authorities (“LPAs”) in Wales, public bodies, special interest groups and other groups. The consultation was made available on the Welsh Government’s consultation website. A presentation on the subject of the paper was also given at the Planning Inspectorate annual stakeholder conference held in the Principality Stadium, Cardiff on 16 September.
- 2.2 The consultation generated 23 responses and we are grateful to all those who responded. All the consultation responses have been read and considered as part of this analysis.
- 2.3 A consultation form was provided as an annex to the consultation document and separately on the Welsh Government’s consultation website. Respondents were asked to assign themselves to one of six broad respondent categories. Table 1 below shows the breakdown of respondents.

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

- 2.4 Consultation questions 1 - 16 posed policy specific questions. The questions required one of the following responses; ‘yes’, ‘yes (subject to further comment)’ or ‘no’. A statistical overview of the responses, showing the nature of the responses to questions is presented as part of the analysis to each question in section 3 of this document. Where respondents did not specify a particular answer, these were considered and recorded as ‘don’t know’.

**Table 2: Consultation Questions**

<b>Q1</b>	Do you agree with our procedural proposals regarding full statements of case to be submitted with an appeal in most circumstances? If not, why not?
<b>Q2</b>	Do you agree with the definition of ‘full statement of case’ in paragraph 2.10 ( <i>of the consultation paper</i> )? If not, why not?
<b>Q3</b>	Do you agree with our proposals to enable the Welsh Ministers (or PINS) to determine the procedure for and make decisions on appeals against notices requiring the proper maintenance of land? If not, why not?
<b>Q4</b>	Do you agree with our proposals relating to changes to initial procedure and submission of core documents by parties? If not, why not?
<b>Q5</b>	Do you agree with our proposals regarding Statements of Common Ground? If not, why not?
<b>Q6</b>	Do you agree with our proposals for the mixed-mode examination of appeals and call-ins? If not, why not?
<b>Q7</b>	Do you agree that further representations requested by the Inspector as part of the examination of an appeal or call-in should be subject to a word-limit of 3,000 words per topic? If not, why not?
<b>Q8</b>	Do you agree with the circumstances in which an application may be varied in the case of an appeal? If not, why not?
<b>Q9</b>	Do you agree with the circumstances in which new information may be introduced during an appeal or call-in? If not, why not?
<b>Q10</b>	Do you agree with our proposals to introduce a 6 month time limit for certificate of lawfulness appeals against a decision by a LPA? If not, why not?
<b>Q11</b>	Do you agree that Welsh Ministers should be able to recover their own costs? If not, why not?
<b>Q12</b>	Do you agree with the grounds for unreasonable behaviour specified within the draft updated guidance (at Annex C)? If not, please specify alternative or additional grounds.
<b>Q13</b>	Do you agree with the process for the awards of costs set out in Appendix A of the draft updated guidance (at Annex C)? If not, why not?
<b>Q14</b>	Should any additional information be included within the draft updated guidance (at Annex C)?
<b>Q15</b>	Do you agree with the amended method for charging daily amounts for qualifying procedures and local inquiries? If not, why not?
<b>Q16</b>	Do you agree with the proposed standard daily amounts at Annex D? If not, why not?

- 2.5 A list of respondents and the categories they were assigned to can be found in Annex A of this report. Where respondents have asked for their details to be withheld, they will appear as “Anonymous” under the appropriate category. An ‘Index of Responses’ and copies of the consultation responses received will be published in their original form (with name and address details redacted, where requested) on the Welsh Government’s consultation website alongside this report.

### 3. Summary of Responses

<b>Q1</b>	Do you agree with our procedural proposals regarding full statements of case to be submitted with an appeal in most circumstances? If not, why not?
<p>A full statement of case would normally consist of the full particulars to support an appellant's arguments in favour of a particular outcome and copies of any information or documents the appellant will rely upon in evidence. Q1 relates to proposals to improve the speed at which decisions are made by Welsh Ministers, where the appellant will be required to submit their full statement of case at the point at which their notice of appeal is submitted.</p>	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	0	0	1	1	2
B	Local Authorities (including National Park Authorities)	7	2	1	1	11
C	Government Agency/Other Public Sector	2	1	0	1	4
D	Professional Bodies/Interest Groups	1	1	1	0	3
E	Voluntary Sector	0	0	0	0	0
F	Others (other groups not listed)	1	0	1	1	3
<b>Total all respondents</b>		<b>11</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>23</b>

	Yes/Yes subject to comment	No
<b>Total Respondents indicating a response</b>	<b>15</b>	<b>4</b>
<b>Overall Percentage</b>	<b>79%</b>	<b>21%</b>



### Statistical review

- 3.1 The majority of respondents agreed with the proposal to require a full statement of case at the outset. Of those respondent groups that agreed, LPAs and Professional Bodies / Interest Groups agreed most with the proposals. Respondents from Businesses / Planning Consultants generally opposed the proposals. There was a mixed response from other respondent groups.

### Key themes

- 3.2 The key themes in response to question 1 were as follows:
- General agreement and support for the proposal to require the submission of an appellant's full statement of case at the outset; and
  - Some concerns regarding the shorter timescales proposed, in particular in relation to enforcement appeals and appeals against non-determination.

### Overview

- 3.3 There was a general agreement and support for the proposals to require the submission of an appellant's full statement of case at the outset.
- 3.4 The majority agreed with the proposal and several respondents have commented it will enable LPAs to submit a more focused statement which supports the frontloading of the process. Respondents who agreed with the proposal also stated it would make it easier for LPAs and third parties to prepare a full and factual statement with the benefit of early disclosure.
- 3.5 Clarification was sought, in terms of the inquiry procedures, regarding the use of written statements of evidence. The respondent, who was supportive of the proposed change, assumed that a written statement of evidence from all parties would still be required in advance of an inquiry rather than at submission stage. Some commented the critical point would be to ensure that an appellant's statement of case is sufficiently detailed to confirm the nature of "all evidence they intend to rely on" in their written statement of evidence. The respondent also sought clarification where additional evidence can be submitted if the appeal procedure is changed to an inquiry.
- 3.6 Concerns were raised mainly by business and professional bodies that the changes proposed will put the applicant at a disadvantage and the changes will not decrease the time taken to determine an appeal. They argue that the main

issues of an appeal are clear from the start and are more often than not based on the reason(s) for refusal.

- 3.7 Some concerns were also raised with regard to the case of an appeal against non-determination. Due to the fact that the LPA's concerns/ formal view may not be known, it would be difficult to prepare a statement of case upon the submission of an appeal. With regard to appeals against non-determination or call-ins, concerns were also raised that late consultation responses would delay the ability to submit a comprehensive statement of case with an appeal against non-determination or a called in application.
- 3.8 Clarification was sought regarding the statement made at paragraph 2.25 of the consultation paper regarding the circumstances in which an extension of time within which a full statement of case may be submitted in the case of enforcement appeals may be granted.
- 3.9 Concerns were raised that third parties who may be less experienced and organised in terms of responding to an appeal may find it difficult to meet the shorter deadlines proposed.

<b>Q1</b>	<b>Welsh Government Response</b>
	<p>The majority of respondents agreed with the proposal to require a full statement of case at the outset, where possible.</p> <p>By requesting an appellant submit their full statement of case along with the notice of appeal, we consider this will have a positive impact upon the time taken to determine an appeal. LPAs and interested parties will have sight of the evidence an appellant wishes to rely upon, thus ensuring their own full statements of case address only those matters raised by an appellant. Without knowledge of the appellant's full statement of case, LPAs and interested parties often rehearse a defence against arguments which the appellant may not necessarily offer.</p> <p>For non-determination appeals, appellants have 6 months in which to provide notice of appeal. This is still a considerable time in which to prepare a full statement of case. Whilst in such cases the appellant may not necessarily have sight of the LPA's position on the application, this is no different to the current process.</p> <p>Some respondents sought clarification on some issues. Regarding the potential extension of time within which a full statement of case may be submitted in the case of enforcement appeals, the circumstances set out in the consultation paper refers to potentially complex enforcement</p>

appeals, whereby the proposed prescribed timeframe within which to provide a full and fair defence to the enforcement notice is not achievable. In such circumstances, appellants would be required to submit a request for an extension of time to the Planning Inspectorate and it would be for a Planning Inspector to determine whether additional time to submit a full statement of case is acceptable.

Clarification was also sought regarding the use of written statements of evidence for inquiries. It is still the intention that such statements are required by the Planning Inspectorate. These must be submitted no later than 4 weeks before the date of an inquiry, as is the situation at present.

Regarding additional evidence, all information that an appellant intends to rely upon should be included as part of the full statement of case. It is proposed to preclude new matters being raised following notice of appeal, except in the circumstances set out in the consultation paper. This does not preclude new information being submitted, provided it meets one of the prescribed circumstances.

### Next steps

- 3.10 Given the benefits to all parties and the potential to increase transparency and consistency, we intend to take forward the proposals for earlier submissions of full statements of case. Such statements shall be required alongside notice of appeal, where possible, or in the case of call-ins, within 4 weeks of the notice of reference. An appeal or call-in shall not start until the full statement of case has been received.
- 3.11 Given the potential short timeframes for enforcement and related appeals, we will provide flexibility for additional time to be granted by the Planning Inspectorate. The award of a time extension will be entirely at the discretion of the Planning Inspector and will only be granted where a case is of such complexity that further time is required to produce a full statement of case.

<b>Q2</b>	Do you agree with the definition of 'full statement of case' in paragraph 2.10 (of the consultation paper)? If not, why not?
To ensure consistency across all types of appeal affected by the proposed changes, it is proposed to define a 'full statement of case'. The consultation asked whether respondents agreed with the proposed definition.	

<b>Statistical Summary</b>						
<b>Sector</b>		<b>Yes</b>	<b>Yes (subject to further comment)</b>	<b>No</b>	<b>Don't Know</b>	<b>Total</b>
A	Businesses / Planning Consultants	0	1	1	0	2
B	Local Authorities (including National Park Authorities)	8	2	0	1	11
C	Government Agency/Other Public Sector	1	1	0	2	4
D	Professional Bodies/Interest Groups	0	3	0	0	3
E	Voluntary Sector	0	0	0	0	0
F	Others (other groups not listed)	0	1	1	1	3
<b>Total all respondents</b>		<b>9</b>	<b>8</b>	<b>2</b>	<b>4</b>	<b>23</b>

	<b>Yes/Yes subject to comment</b>	<b>No</b>
<b>Total Respondents indicating a response</b>	<b>17</b>	<b>2</b>
<b>Overall Percentage</b>	<b>89%</b>	<b>11%</b>

### Statistical review

- 3.12 The majority of respondents agreed with the definition of the full statement of case. Of those respondent groups that agreed, LPAs and Professional Bodies / Interest Groups proportionately agreed most with the proposals. Only respondents from Businesses / Planning Consultants and Others opposed the

proposals. There was no overall disagreement with the proposal from any group.

### Key themes

3.13 The Key themes in response to question 2 were as follows:

- General agreement and support for the proposals to define ‘full statement of case’; and
- Of those who agreed, some comments have been made suggesting amendments to the definition as a matter of clarity.

### Overview

3.14 The majority of respondents agreed and supported our proposals to define a ‘full statement of case’. One respondent considered the benefit to be that the full statement of case would be sufficiently detailed to enable an appeal to proceed without the need for further submissions, in most instances.

3.15 The suggestions made to the proposed definition were as follows:

- Suggestion that the definition should refer to ‘all documents’ and not ‘any documents’; and
- Suggestion that the definition should also specify the need to link case particulars with relevant national and local planning policy.

3.16 Three respondents who were in agreement with the proposal have sought confirmation that the ability to submit additional information would remain.

3.17 Some disagreement has been expressed by Businesses / Planning Consultants and others regarding the proposed definition in relation to enforcement appeals due to the timescales involved and the ability of the appellant to collate the information within this timeframe. It has been suggested by a respondent that a statement of case should require a description of the evidence (such as list of documents) but does not require that the evidence is submitted at the time the appeal is submitted.

3.18 A respondent, who agreed with the proposed definition, suggested a modification to ensure the full statement of case would make reference to documents rather than requiring their submission as suggested by the respondents in paragraph 3.17.

- 3.19 One respondent, who agreed with the proposed definition, placed emphasis on the importance of enforcing the principle that no further matters could be raised or further evidence which may undermine the original statement accepted by the Inspectorate.
- 3.20 One respondent who agreed with the proposed definition, however, suggested that clarity is required in respect of the differences between appeals heard at Inquiry and all other methods.

Q2	Welsh Government Response
	<p>It is intended to retain the definition of 'full statement of case' contained within the consultation document as it covers all the relevant information that should be included. We intend to make some modifications in respect of enforcement appeals to ensure the grounds on which an appeal is sought are addressed in the full statement of case. Regarding the suggestion the definition should specify the need to link case particulars with relevant national and local planning policy, this will be contained in guidance.</p> <p>Regarding comments that suggest the timeframes for submitting full statements are too short, particularly based on the level of detail required to prepare one, we acknowledge this is true for some enforcement and related appeals. We intend to include provision for the later submission of a full statement of case (see Welsh Government Response to Q1).</p>

### Next steps

- 3.21 We intend to retain the definition of 'full statement of case' for planning and related appeals and called-in applications. However, relating to enforcement and related appeals, we will modify the definition for precision to require the appellant and LPA to address the grounds on which an appeal is sought.

<b>Q3</b>	Do you agree with our proposals to enable the Welsh Ministers (or PINS) to determine the procedure for and make decisions on appeals against notices requiring the proper maintenance of land? If not, why not?
<p>For consistency with other types of appeal, it is proposed the procedure for appeals against notices requiring the proper maintenance of land be aligned with procedures relating to enforcement and related appeals, and the Inspector determines whether such appeals proceed by way of written representations, hearings, inquiries or a mixture of two or more of those methods. The consultation asked whether respondents agree with this proposal.</p>	

<b>Statistical Summary</b>						
<b>Sector</b>		<b>Yes</b>	<b>Yes (subject to further comment)</b>	<b>No</b>	<b>Don't Know</b>	<b>Total</b>
A	Businesses / Planning Consultants	1	0	0	1	2
B	Local Authorities (including National Park Authorities)	8	2	0	1	11
C	Government Agency/Other Public Sector	1	0	0	3	4
D	Professional Bodies/Interest Groups	2	0	0	1	3
E	Voluntary Sector	0	0	0	0	0
F	Others (other groups not listed)	0	0	1	2	3
<b>Total all respondents</b>		<b>12</b>	<b>2</b>	<b>1</b>	<b>8</b>	<b>23</b>

	<b>Yes/Yes subject to comment</b>	<b>No</b>
<b>Total Respondents indicating a response</b>	<b>14</b>	<b>1</b>
<b>Overall Percentage</b>	<b>93%</b>	<b>7%</b>

### Statistical review

3.22 The majority of respondents agreed with the proposal to enable the Welsh Ministers to determine the procedure for appeals against notices requiring the proper maintenance of land. Of those respondent groups that agreed, LPAs and Professional Bodies / Interest Groups proportionately agreed most with the proposals. Only one respondent listed as Others opposed the proposals.

### Key themes

3.23 The Key themes in response to question 2 were as follows:

- Overall agreement with the proposals to enable Welsh Ministers (or the Planning Inspectorate) to determine the procedure for and make decisions on appeals against notices requiring the proper maintenance of land; and
- This proposal will ensure consistency and understanding across all appeals and for all parties.

### Overview

3.24 Respondents who agreed with the proposal generally did not provide comments to suggest why they agreed. However, two respondents acknowledged the proposal would lead to reducing any unnecessary expense, and would ensure consistency and understanding across all appeals for all parties.

<b>Q3</b>	<b>Welsh Government Response</b>
	Section 48 of the Planning (Wales) Act 2015 transfers powers relating to appeals against notices requiring the proper maintenance of land from the Magistrates' Court to the Welsh Ministers. The Planning Inspectorate (working on behalf of the Welsh Ministers) will determine the procedure for and make decisions on these appeals.

### Next steps

3.25 It is our intention to align appeals against notices requiring the proper maintenance of land with other similar appeal types to achieve consistency and clarity for the appeal process. Accordingly, we will ensure that the Planning Inspectorate is able to determine procedure for such appeals.



<b>Q4</b>	Do you agree with our proposals relating to changes to initial procedure and submission of core documents by parties? If not, why not?
It is proposed to reduce the initial timetable for appeals and called in applications to ensure that all full statements of case and responses are received by week 6. The consultation asks whether respondents agree with this proposal.	

<b>Statistical Summary</b>						
<b>Sector</b>		<b>Yes</b>	<b>Yes (subject to further comment)</b>	<b>No</b>	<b>Don't Know</b>	<b>Total</b>
A	Businesses / Planning Consultants	0	0	1	1	2
B	Local Authorities (including National Park Authorities)	3	3	4	1	11
C	Government Agency/Other Public Sector	2	1	0	1	4
D	Professional Bodies/Interest Groups	1	0	2	0	3
E	Voluntary Sector	0	0	0	0	0
F	Others (other groups not listed)	1	0	2	0	3
<b>Total all respondents</b>		<b>7</b>	<b>4</b>	<b>9</b>	<b>3</b>	<b>23</b>

	<b>Yes/Yes subject to comment</b>	<b>No</b>
<b>Total Respondents indicating a response</b>	<b>11</b>	<b>9</b>
<b>Overall Percentage</b>	<b>55%</b>	<b>45%</b>

### Statistical review

3.26 Whilst the majority of respondents agreed with the proposal, there was a mixed response to the proposal from all respondent groups. All Government Agency / Other public Sector respondents agreed with the proposals, while all Business / Planning Consultant respondents disagreed. There was a clear split of opinion

between the respondent groups of LPAs, Professional Bodies / Interest Groups and Others.

### Key themes

3.27 The key themes in response to question 4 were as follows:

- Overall agreement with the proposed timeframes for the submission of core documents and changes to the initial procedure, although the split between those who agreed and those who disagreed was particularly close;
- Concerns with inflexible timeframes which could put an unreasonable burden on LPA staff resources, which are already stretched; and
- The need to consider timeframes for those cases which are deemed to be particularly complex.

### Overview

3.28 Respondents who agreed with the proposal generally did not provide comments to suggest why they agreed. However, one respondent acknowledged that requiring appellants to submit their full statement of case at the outset justifies the reduction in time for the submission of other core documents and representations for other parties involved in the appeal or call-in process.

3.29 Two respondents, although in agreement with the proposal, raised slight concerns there is no flexibility for the Planning Inspectorate to alter the timeframe for submissions from interested parties to reflect the complexity of a case.

3.30 Similarly, another respondent, although in agreement with the proposals, suggested that shorter timescales could place added pressure to the Planning Inspectorate as this may cause them to spend additional time chasing documents from parties.

3.31 The majority of LPAs disagreed with the proposals and particularly opposed compressing the initial timetable for appeals and called in applications. The main reasons for which were:

- The proposed timeframe is too short and places an unreasonable burden on LPAs, which have existing staff resource issues;

- Five working days in which to submit a completed questionnaire and inform interested parties of an appeal only works for householder appeals, as they are generally simple and involve fewer documents. For other, more complex appeals, it is considered far too short;
- Requiring information earlier would likely lead to poorer quality appeals; and
- Retaining the existing timeframes would not have a significant impact on the overall time scale of an appeal.

3.32 A further concern was also raised in relation to interested parties, as it was noted that under the proposals, interested parties would have 4 weeks to submit their comments. However, if LPAs were required to notify interested parties of an appeal within 5 working days, this could lead them to only have a little over 3 weeks to submit comments, if LPAs carry out their notification requirements at the latest possible opportunity. This could place more pressure on interested parties, particularly in instances where they must call upon specialist or legal advice in making their comments.

Q4	Welsh Government Response
	<p>We acknowledge the complexity of appeals can vary significantly on a case-by-case basis, however, we consider that our proposal to require the appellant’s full statement of case at the outset will assist greatly in reducing the time required by LPAs and interested parties to submit their comments and representations. The intention of the proposals is their full statement of case will be a direct response to the appellant’s case, rather than rehearsing arguments already contained in the LPA committee or delegated report. Thus, the full statement of case would be a more focussed document and less time-consuming to produce.</p> <p>While some comments reflected the view interested parties may have only 3 weeks to submit their comments should the LPA send notice to interested parties at the end of the 5 working days, we consider a shorter timescale is justified. Together with the notion that a full statement of case would be more focussed than at present, the appellant’s full statement of case will have been published online well in advance of the time limit for submitting comments.</p> <p>Regarding the concerns raised in relation to the 5 working day period in which LPAs must provide a completed questionnaire for appeals and notify any interested parties of an appeal or a call-in, evidence indicates LPAs routinely complete and submit questionnaires and inform interested</p>

parties within the current 5 working day period for householder and commercial appeals. Although staff resources at LPAs remains an issue in meeting statutory deadlines, the Planning Inspectorate is working with LPAs to develop improved electronic working methods which will aid the speedier submission of a completed questionnaire. Provision will be included in the amended procedure regulations to allow this. Accordingly, we consider 5 working days to complete and send a questionnaire, as well as notifying interested parties of an appeal or call-in is reasonable.

Two respondents suggested the Planning Inspectorate should have the power to alter timescales for interested parties for more complex appeals. To ensure an element of flexibility, we intend to give Inspectors the power to extend any timeframes set out in the regulations.

We are confident compressing the initial timetable for appeals will benefit all parties involved, reducing the time and costs involved in the appeal process and ultimately, leading to better quality decisions.

### Next steps

- 3.33 It is the intention to proceed with the proposals to compress the initial timetable for appeals and called-in applications, as set out in the consultation paper. To help LPAs meet shortened deadlines relating to the appeal questionnaire, it is proposed to introduce strengthened provisions relating to electronic working, allowing the LPA to submit a series of links to information on their website rather than requiring them to copy information to the Planning Inspectorate.
- 3.34 To accommodate complex cases, flexibility will be added to the amended procedure regulations allowing the Inspector to extend any timeframe set out in writing (including deadlines for questionnaires and representations).

<b>Q5</b>	Do you agree with our proposals regarding Statements of Common Ground? If not, why not?
The consultation paper sets out proposals which remove the statutory requirement to submit a Statement of Common Ground (“SoCG”) for hearings and inquiries. In its place, the Welsh Ministers will encourage the submission of a SoCG for all proceedings and to produce guidance on the production and timing of them. The consultation asked whether respondents agree with the proposal.	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	2	0	0	0	2
B	Local Authorities (including National Park Authorities)	7	2	1	1	11
C	Government Agency/Other Public Sector	1	1	0	2	4
D	Professional Bodies/Interest Groups	1	2	0	0	3
E	Voluntary Sector	0	0	0	0	0
F	Others (other groups not listed)	1	2	0	0	3
<b>Total all respondents</b>		<b>12</b>	<b>7</b>	<b>1</b>	<b>3</b>	<b>23</b>

	Yes/Yes subject to comment	No
<b>Total Respondents indicating a response</b>	<b>19</b>	<b>1</b>
<b>Overall Percentage</b>	<b>95%</b>	<b>5%</b>

### Statistical review

- 3.35 A clear majority of respondents agreed with the proposals relating to SoCG. The majority of respondents also agreed without further comment or caveats. One LPA respondent disagreed with the proposals.

### Key themes

- 3.36 The key themes in response to question 5 were as follows:
- Overall support for the proposals, though some respondents did not see any purpose in SoCG during the written representations procedure;
  - A number of suggestions were made regarding what to include in guidance; and
  - Alternative proposals were suggested in retaining SoCG as a statutory requirement, though only where this is indicated by the appellant or LPA in the appeal documentation.

### Overview

- 3.37 There was overall support for our proposals in relation to SoCG. Of those who supported, it was commented by one LPA that removal of SoCG as a statutory requirement will assist in speeding up the appeal process. One LPA also commented that SoCG is of limited use and is often used to re-state already understood points of difference contained in the decision notice. Another LPA commented that they support the use of SoCG in all proceedings.
- 3.38 One Government Agency / Other Public Sector respondent welcomed the intention to produce guidance in relation to SoCG. As part of the guidance, various suggestions were received as to the content of SoCG, including timing, a standard template and addressing the role of consultees and third parties in the process.
- 3.39 Some respondents stated, while agreeing with the proposals, SoCG should still be encouraged at any stage of an appeal. One Government Agency / Other Public Sector respondent, on the other hand, stated that such statements should be initiated by Inspectors at the start of proceedings. This is said to require production of SoCG only where considered feasible.
- 3.40 One LPA respondent also commented that there is a need to make it clear who is taking the lead in relation to SoCG. One Professional Body / Interest Group

and one LPA stated appellants and LPAs should indicate in their appeal documentation whether there is the intention to submit a SoCG.

- 3.41 One LPA disagreed with the proposal stating that SoCG is unnecessary in the case of written representations procedures and is likely to cause delay to decisions. Another LPA commented the approach is contrary to the general aspiration to simplify the appeal process and is an added burden on LPAs.

<b>Q5</b>	<b>Welsh Government Response</b>
	<p>As the response indicated an overall support for the proposal, we will continue with our intention to remove the statutory requirement for SoCG from the appeals and call-in procedure rules. Whilst comments stated that SoCG was unnecessary for appeals proceeding by way of written representations, we must emphasise it will not be a statutory requirement.</p> <p>A number of suggestions were raised as to what to include within guidance as well as amendments to the appeal forms. We will review these issues with the Planning Inspectorate to ensure appropriate guidance and forms are available for the appeal process as a whole.</p> <p>As a general principle, we encourage all parties to seek common ground and areas of agreement during an appeal or call-in, and this does not apply to LPAs and appellants / applicants alone.</p>

### Next steps

- 3.42 It is the intention to work with the Planning Inspectorate to produce guidance in relation to SoCG. The guidance will seek to ensure the early submission of SoCG where one is agreed to be submitted between parties. It is also intended not to include statutory requirements for SoCG within the new appeals procedure regulations.

<b>Q6</b>	Do you agree with our proposals for the mixed-mode examination of appeals and call-ins? If not, why not?
<p>Rather than appeals being examined entirely by way of written representations, hearings or inquiries, it is proposed to enable the Inspector to decide an appeal by way of combined proceedings, where appropriate. For example, an appeal may be examined partially by way of written representations and partially by way of hearing or inquiry, to address particular topics. The consultation asks whether respondents agree with these proposals.</p>	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	2	0	0	0	2
B	Local Authorities (including National Park Authorities)	6	4	0	1	11
C	Government Agency/Other Public Sector	1	1	0	2	4
D	Professional Bodies/Interest Groups	2	1	0	0	3
E	Voluntary Sector	0	0	0	0	0
F	Others (other groups not listed)	0	2	0	1	3
<b>Total all respondents</b>		<b>11</b>	<b>8</b>	<b>0</b>	<b>4</b>	<b>23</b>

	Yes/Yes subject to comment	No
<b>Total Respondents indicating a response</b>	<b>19</b>	<b>0</b>
<b>Overall Percentage</b>	<b>100%</b>	<b>0%</b>



### Statistical review

3.43 All respondents agreed with the proposals for mixed-mode examination for appeals and called in applications. Of those respondents, a number of LPAs and Other respondents agreed subject to comments being made.

### Key themes

3.44 The key themes in response to question 6 were as follows:

- An overall supportive response to the proposals in that they promote flexibility and reduce expenditure;
- Some queries were raised as to the involvement of parties in the determination of procedure; and
- A suggested time limit for the determination of procedure was suggested.

### Overview

3.45 There was a largely positive response to our proposal for mixed-mode examination of appeals and call-ins.

3.46 Of those who agreed, two LPAs commented the proposal would enable the Planning Inspectorate to focus on the matters of dispute, reduce expenditure and time taken to determine appeals. One Business / Planning Consultant respondent agreed the proposal would enable greater flexibility and stated the approach has worked well under the Planning Act 2008.

3.47 Some respondents agreed subject to comments. One LPA commented mixed mode examination should only be used in exceptional circumstances. Another LPA commented the procedure chosen should be consistent with the complexity of the case and should be transparent.

3.48 Some negative comments were received. One LPA commented the proposal may cause further confusion to interested parties and would likely prolong the appeal process. One other LPA, while supporting the principle, considers there is sufficient scope in the current hearings and inquiries procedures to distinguish between oral and written proceedings. Furthermore, the LPA commented the amended process may increase administration costs for all and that mixed-mode examination lends itself to nationally significant development, rather than appeals or called in applications.

- 3.49 Some suggestions were made to alter the proposal. One Government Agency / Other Public Sector asked that any changes in proceedings or timescales are clearly explained to interested parties. One Other respondent and one LPA asked for the appellant and/or LPA to be involved in the determination of procedure. One Other respondent and one Professional Body / Interest Group commented there should be a time limit on changing the examination method of the appeal to enable parties to react. One LPA asked for example scenarios to be issued where mixed-mode examination could be adopted.
- 3.50 Some further points of clarification were asked as part of the consultation. One LPA commented that Annex B of the consultation paper does not align with the proposals set out in the paper, particularly in relation to costs.

Q6	Welsh Government Response
	<p>The principle of allowing the Welsh Ministers to determine the procedure for appeals and called in applications was set out in the Positive Planning Consultation Paper. S.319B of the Town and Country Planning Act 1990 (as well as requisite legislation relating to Listed Buildings and Hazardous Substances) has given the Welsh Ministers the ability to determine procedure since 2014.</p> <p>The proposals set out in the consultation paper relate to the ability to determine an appeal or called in application be examined by way of combined proceedings. There was a positive response to these proposals on the basis they are intended to reduce unnecessary time and expenditure in relation to appeals and called in applications.</p> <p>Some suggestions were made, in addition to the proposals, which have merit. Those include retaining the ability for the appellant and LPA to state their preference for procedure, the need for transparency through publishing appropriate criteria to support the determination of procedure, and the introduction of a time limit by which procedure must be determined. We intend to adopt these suggestions.</p> <p>Specifically addressing the period within which procedure must be determined, we have resolved that 6 weeks from the starting date would be most appropriate to determine whether further proceedings are required, in addition to written representations.</p> <p>When procedure is determined, it would be logical for the Welsh Ministers to set out which matters are to be discussed at a hearing or inquiry. This would enable participants in the process sufficient time to prepare for oral proceedings. However, on a practical level, it would be very difficult for Welsh Ministers to determine those matters within 7 working days (as</p>

currently specified in existing legislation) of the notice of appeal as they would not have sight of the LPA's and interested parties' full statements of case. They would only have sight of the decision (or resolution) made by the LPA and the appellant's full statement of case.

Retaining the 7 day period would be unproductive and would have potential to make changes in procedure during an appeal or call-in more likely as a result, as matters which require a hearing or inquiry may be raised by LPAs and interested parties in their full statements of case. This would ultimately result in a more confusing appeal system for the public and participants.

The earliest the Welsh Ministers would be able to determine the procedure with certainty would be following receipt of all full statements of case. In light of this, it is proposed the determination of procedure must occur within 6 weeks of the starting date (2 weeks following the deadline for receipt of the appellant's and interested parties' full statement of case). This is similar to the process for determination of procedure adopted in the Developments of National Significance Regulations 2016, which also occurs 2 weeks following receipt of full statements of case.

In practice, this determination of procedure may occur significantly earlier where it is clear to the Welsh Ministers that the appeal would be determined entirely by way of written representations, hearing or inquiry.

Relating to costs, one comment was received which stated the criteria set out for the determination of procedure contained with the consultation paper did not align with the proposals. The consultation paper was clear the criteria are the current criteria for determining procedure, which is to be reviewed. Specific reference is presently made to allowing a hearing or inquiry where the appellant intends to apply for costs. It is intended to clarify appellants will no longer be able ask for oral proceedings on this basis.

### Next steps

- 3.51 It is the intention to take forward the proposals as set out in the consultation paper and to publish consolidated regulations which enable the mixed-mode examination of appeals. Within those regulations, it is the intention to set a time limit of within 6 weeks of the starting date in which the Welsh Ministers must decide whether further proceedings, in addition to written representations, is required.

- 3.52 In line with our proposals to alter guidance relating to costs, it is the intention to revise the existing published criteria for determining the procedure for appeals and called in applications to ensure that a claim for costs is no reason to require oral proceedings. Appellants may apply for costs through written proceedings.
- 3.53 Currently, the appeal form and questionnaire require the LPA and appellant to state their preference of proceeding. It is not the intention to alter this ability and the views of the appellant and LPA remain important in determining the procedure for appeals.

<b>Q7</b>	Do you agree that further representations requested by the Inspector as part of the examination of an appeal or call-in should be subject to a word-limit of 3,000 words per topic? If not, why not?
The consultation contained a proposal which allows Inspectors to ask for additional word-limited representations during the course of an appeal or call-in to seek clarity on particular issues and reduce the need to hold a hearing or inquiry on that particular topic. The consultation asked whether a 3,000 word limit to such representations would be appropriate.	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	0	1	0	1	2
B	Local Authorities (including National Park Authorities)	4	6	0	1	11
C	Government Agency/Other Public Sector	1	1	0	2	4
D	Professional Bodies/Interest Groups	1	2	0	0	3
E	Voluntary Sector	0	0	0	0	0
F	Others (other groups not listed)	1	1	0	1	3
<b>Total all respondents</b>		<b>7</b>	<b>11</b>	<b>0</b>	<b>5</b>	<b>23</b>

	Yes/Yes subject to comment	No
<b>Total Respondents indicating a response</b>	<b>18</b>	<b>0</b>
<b>Overall Percentage</b>	<b>100%</b>	<b>0%</b>

### Statistical review

- 3.54 All respondents agreed with the proposal for further word-limited representations to be made during an appeal or call in. Of those, the majority of LPAs and Professional Bodies / Interest Groups agreed subject to further comment.

### Key themes

- 3.55 The key themes in response to question 7 were as follows:
- General agreement to the principle of word-limited representations;
  - Concerns that a word limit may hinder the proper explanation of technical or complex issues; and
  - A number of calls for flexibility to the word limit.

### Overview

- 3.56 There was considerable agreement to the proposal to introduce word-limited representations. The majority of that support came from LPAs.
- 3.57 Of those who supported the proposals, one Business / Planning Consultant commented that the proposal may avoid the requirement for a hearing or inquiry on certain issues and would encourage an efficient and proportionate use of time and resources. One LPA commented that a word-limit would help ensure more focussed representations.
- 3.58 There was also agreement to the proposal, subject to some caveats. One LPA commented the requirement for additional representations should not affect the decision date of the appeal. One LPA also supported the proposal provided there is adequate and fair opportunity to cover all issues. One LPA questioned whether the proposal simplified the process. Another commented that the word limit should be issued as a guideline rather than a requirement.
- 3.59 As a variation of the proposals, one Government Agency / Other Public Sector and one LPA suggested summaries should be provided where an appellant demonstrates the need to significantly exceed the word limit. One Business / Planning Consultant respondent, two Professional Body / Interest Group and two LPAs agreed with the requirement for flexibility where particularly complex or technical issues arise.

- 3.60 Clarity was sought from one Government Agency / Other Public Sector respondent as to whether the proposed 3,000 word limit would exclude technical appendices.

<b>Q7</b>	<b>Welsh Government Response</b>
<p>There was overall support for the proposal to enable a Planning Inspector to require additional word-limit representations relating to a particular matter.</p> <p>From the representations, there was a recurring request for flexibility and to allow extended representations in the case of complex and technical issues. We do not disagree with this proposal. However, to help ensure that additional submissions remain focussed, we consider the word limit should be at the discretion of the Inspector. Where the Inspector requires representations longer than 3,000 words per topic, we will require such representations to be accompanied by a summary, as requested by some respondents to the consultation.</p> <p>The issue of technical appendices was raised within the consultation. The intention of word-limited representations is to ensure focussed responses are received. We consider technical appendices should contribute towards the word-count for additional representations.</p>	

#### Next steps

- 3.61 It is the intention to make provision in the new appeal and call-in regulations which enable Planning Inspectors to request further representations from participants in the appeal and call-in process and for those representations to be limited to 3,000 words per topic. Planning Inspectors are to be given discretion to request longer representations along with a summary. It is the intention to produce guidance which sets out the form and scope of such submissions.

<b>Q8</b>	Do you agree with the circumstances in which an application may be varied in the case of an appeal? If not, why not?
The consultation proposed to preclude any amendments to an application after appeal has been made. An application may only be amended where it is as a result of a drawing or drafting error, and does not affect the substance of the application. The consultation sought views on this approach.	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	1	0	1	0	2
B	Local Authorities (including National Park Authorities)	5	4	1	1	11
C	Government Agency/Other Public Sector	1	2	0	1	4
D	Professional Bodies/Interest Groups	1	1	1	0	3
E	Voluntary Sector	0	0	0	0	0
F	Others (other groups not listed)	0	2	0	1	3
<b>Total all respondents</b>		<b>8</b>	<b>9</b>	<b>3</b>	<b>3</b>	<b>23</b>

	Yes/Yes subject to comment	No
<b>Total Respondents indicating a response</b>	<b>17</b>	<b>3</b>
<b>Overall Percentage</b>	<b>85%</b>	<b>15%</b>

### Statistical review

3.62 The majority of respondents agreed with the circumstances in which an application can be varied at appeal. Of those respondent groups which agreed, LPAs and Government Agency / Other Public Sector Groups proportionately



agreed most with the proposals. There was a mixed response from the Businesses / Planning Consultants and Professional Bodies / Interest Group respondent groups.

### Key themes

3.63 The key themes in response to question 8 were as follows:

- A notable split between the opinions of LPAs and those of Business / Planning Consultant respondents;
- Overall agreement with the proposal, though further guidance on the scope of amendments is required;
- Comments received from many indicated the proposal is overly restrictive; and
- A number of alternative proposals were tabled.

### Overview

3.64 Whilst there was overall agreement to the principle of restricting variations to an application once it is subject to appeal, some strong arguments were made against.

3.65 Of those who agreed, one Government Agency / Other Public Sector and one LPA expressed that revisions to an application should be considered by the LPA in the first instance or through the provisions which require the submission of another application which does not attract a fee. One LPA further commented such an approach would enable the LPA to consult more effectively with the public on the amendment, give better access to information for the public, and enable the LPA to remain accountable for any subsequent decision. Two LPAs stated the proposal would discourage appellants from re-working their scheme during an appeal,

3.66 One LPA supported the proposal in stating that most post-decision amendments could have been made prior to the issue of a decision, however, it is often the applicant or appellant's desire to test changes at an appeal which prolongs the process. One other LPA commented there is usually insufficient time to properly assess amendments which arise during the appeal process.

3.67 Concern was expressed by some as to how the proposal would be implemented, in practice. One Professional Body / Interest Group considered there should be an opportunity to comment on any change made within the

circumstances. One other such body and LPA suggested the prescribed circumstances should be carefully drafted and rigorously tested for the public and users to retain confidence in the appeal system.

- 3.68 Some respondents disagreed with the proposals. One Government Agency / Other Public Sector and one Professional Body / Interest Group respondent suggested the requirement to submit a new planning application to ensure an amendment would cause further delays, which runs contrary to the appeals proposals contained in the consultation paper. One Business / Planning Consultant suggested the proposal would not enable the best possible scheme to proceed at appeal.
- 3.69 Two Business / Planning Consultant respondents and one Professional Body / Interest Group indicated the proposal removes an important aspect of flexibility from the appeal process. Those respondents considered the existing element of discretion and the 'Wheatcroft' judgement remains wholly appropriate. The proposal may result in an appeal being refused on a relatively minor point.
- 3.70 One other Business / Planning Consultant respondent commented the proposal is contrary to a 'common sense' approach, and cited an example of a twin-tracked appeal and another cited an instance of late objections to an application being given by statutory consultees. A Professional / Interest Group respondent discussed the Development Consent Order process as an example of the ability to make amendments.
- 3.71 As a criticism to the rationale set out in the consultation paper, a Business / Planning Consultant respondent queried why an applicant would deliberately withhold information until the appeal stage.
- 3.72 Alternative proposals were suggested by some. One LPA and one Professional Body / Interest Group suggested consideration should be given to wider notification and publicity in the event of changes. One Business and one Other respondent suggested amendments should be captured by Statements of Common Ground, which encourage appellants and LPAs to talk during the appeal process.
- 3.73 One Professional Body / Interest Group and one LPA suggested a variation on the theme of restricting amendments and suggested non-material amendments should be allowed. One Business / Planning Consultant respondent indicated the issue of amendments at appeal could be addressed by giving the decision-maker the power to require changes, as directed by them.
- 3.74 To implement the changes, the need to raise awareness of the change through appropriate guidance was raised by a number of respondents.

## Q8 Welsh Government Response

The principle of restricting any amendment to an appeal was set out in the Positive Planning consultation paper and there was overall agreement to this proposal. This proposal was subsequently contained in the Planning (Wales) Act 2015 at s.47. It is the clear intention to commence this provision, though the circumstances in which amendments may occur were the subject of this consultation.

Suggestions were made to enable the public to comment on any amendment to an application on appeal. Whilst consultation is actively encouraged where material changes occur to any application, the scope of amendments set out in this consultation paper simply refer to errors in drawing. Where those amendments to errors do not prejudice parties, we will not require those amendments to be consulted upon.

Insufficient evidence was produced to substantiate claims the proposal will cause further delay to the planning process. The basis of these proposals is to encourage applicants to discuss any amendments with LPAs in the first instance, thus avoiding the requirement for appeal. Where an application is refused by the LPA following amendment, the applicant will have certainty the best possible application is proceeding to appeal, should they wish to do so.

Suggestions have been made to contain amendments within SoCG. Whilst any agreement between the LPA and applicant is encouraged, we see no need for that agreement in respect of an amended scheme to arise at the appeal stage.

Suggestions were also made which restricts amendments to those which are minor or non-material and to give power to the Welsh Ministers to direct amendments. It is our view the proposals do not preclude either of these instances from occurring. S.96A of the Town and Country Planning Act 1990 establishes a process for the formal approval of minor or non-material amendments following the issue of planning permission. Successful appellants may utilise this process. The Welsh Ministers also retain the ability to allow an amendment to an approved application or appeal subject to appropriately worded pre-commencement condition. We consider this is sufficient to avoid the possibility of an appeal being quashed on a minor point.

Our evidence from Scotland suggests a provision to preclude amendments to an application upon appeal has been successful. The Scottish Government has recently appointed an independent panel to review the planning system. Their report, Empowering Planning to Deliver

Great Places, published in May 2016, did not suggest any changes are required in this regard.

### Next steps

- 3.75 It is the intention to commence s.47 of the Planning (Wales) Act 2015 and restrict the circumstances in which an amendment may occur to an application following appeal to drawing or drafting errors which do not affect the substance of the application. To supplement this proposal, it is the intention to produce clear guidance to support this change.

<b>Q9</b>	Do you agree with the circumstances in which new information may be introduced during an appeal or call-in? If not, why not?
The consultation proposed to limit new matters being raised at an appeal. New matters may only be raised where it can be proven it could not have been raised at the time the application was being considered by the LPA or where it is raised as a consequence of exceptional circumstances. Views were sought on this proposal.	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	1	0	1	0	2
B	Local Authorities (including National Park Authorities)	7	2	1	1	11
C	Government Agency/Other Public Sector	2	0	0	2	4
D	Professional Bodies/Interest Groups	1	1	1	0	3
E	Voluntary Sector	0	0	0	0	0
F	Others (other groups not listed)	0	2	0	1	3
<b>Total all respondents</b>		<b>11</b>	<b>5</b>	<b>3</b>	<b>4</b>	<b>23</b>

	Yes/Yes subject to comment	No
<b>Total Respondents indicating a response</b>	<b>16</b>	<b>3</b>
<b>Overall Percentage</b>	<b>84%</b>	<b>16%</b>

### Statistical review

3.76 The majority of respondents agreed with the circumstances in which new matters can be raised at appeal. Of those respondent groups that agreed,

LPAs and Government Agency / Other Public Sector Groups proportionately agreed most with the proposals. There was a mixed response from the Businesses / Planning Consultants and Professional Bodies / Interest Group respondent groups.

### Key themes

3.77 The key themes in response to question 9 were as follows:

- Some ambiguity was expressed over the circumstances in which new matters may be raised at appeal;
- The requirement for continued flexibility in the appeal process was advocated; and
- While agreeing with the circumstances set out, a number of respondents suggested additional circumstances in which matters may be raised on appeal.

### Overview

3.78 There was overall agreement with the proposal to restrict the raising of new matters on appeal.

3.79 Of those who agreed, one LPA advocated the need for rigid application of the criteria so as to establish clearly what is 'exceptional' or otherwise. One LPA supported the preclusion of a significantly altered evidence-base by LPAs, appellants and third parties. The raising of new matters should be challenged at the validation stage of an appeal. One Professional Body / Interest Group commented that, whilst agreeing with the circumstances, there should be opportunity for parties to comment on any new information.

3.80 One Business / Planning Consultant and one Professional / Interest Group stated that, whilst agreeing with the circumstances set out in the consultation paper, further circumstances should be added. They agree new issues may be raised where the LPA and appellant are in agreement through a Statement of Common Ground. The respondents also encourage agreements which remove 'lesser' reasons for refusal through the introduction of new information.

3.81 As a variation to the proposal, one Other respondent believes new matters may be raised as long as it does not materially alter the grounds for appeal.

3.82 A number of respondents from LPAs raised concerns regarding the ambiguity of the circumstances in which new matters may be raised. These included how

the proposed criteria for raising new issues could be implemented consistently and fairly. Careful consideration was required as to the definition of exceptional circumstances.

- 3.83 Concerns were also raised by one LPA as to how the proposals would be implemented, and whether there would be a timetable for submission of new information. Consideration of the implications for all parties is required.
- 3.84 One Business / Planning Consultant respondent commented that precluding the raising of new information, particularly environmental information, risks legal challenge, as the decision-maker is legally obliged to take into account relevant environmental information, where a project is an Environmental Impact Assessment project. One Other respondent disagreed with the preclusion of any new matters being raised.
- 3.85 Conversely, one LPA, while welcoming the proposed changes, stated that the circumstances raise concerns about the transparency and fairness of the appeal system, and expressed a preference for not allowing any exceptions.

#### **Q9 Welsh Government Response**

The principle of restricting any new matters being raised at appeal was set out in the Positive Planning consultation paper and there was overall agreement to this proposal. This proposal was subsequently contained in the Planning (Wales) Act 2015 at s.50. It is the clear intention to commence this provision, and it is the circumstances in which new matters may be raised which were subject of this consultation.

A number of comments were received regarding the need to rigidly apply the circumstances and to ensure consistency is established immediately. We support this view and will seek to produce guidance setting out how exceptional circumstances may be defined.

Addressing comments regarding the ambiguity of these proposals, we will clarify the term 'matters'. Whilst this is not defined in the Town and Country Planning Act 1990, we consider this to denote an issue or topic rather than any particular item of evidence or any document. We will seek to ensure that, where new information or documentation relates to issues considered by the LPA, we will not consider those as new matters, even though the document was not before the LPA at the time of its decision.

The above will not preclude the introduction of new environmental information or information which is material to the appeal.

Our evidence from Scotland suggests a provision to preclude

amendments to an application upon appeal has been successful. The Scottish Government has recently appointed an independent panel to review the planning system. Their report, Empowering Planning to Deliver Great Places, published in May 2016, did not suggest any changes are required in this regard.

### Next steps

- 3.86 It is proposed to implement the proposals as set out in the consultation paper. From the responses, it is clear further guidance is required to support these proposals which set out examples of how the exceptions or circumstances would apply. The responses did not set out any circumstances which would support the raising of new matters, though it will be clarified in guidance that new information may be raised where it is in relation to an existing matter.



<b>Q10</b>	Do you agree with our proposals to introduce a 6 month time limit for certificate of lawfulness appeals against a decision by a LPA? If not, why not?
Appeals against certificates of lawfulness are not subject to a statutory time limit within which to appeal. It is proposed to introduce a time limit of 6 months from the date of the LPA's decision. The consultation paper seeks agreement to this proposal.	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	1	0	0	1	2
B	Local Authorities (including National Park Authorities)	9	1	0	1	11
C	Government Agency/Other Public Sector	2	0	0	2	4
D	Professional Bodies/Interest Groups	2	0	0	1	3
E	Voluntary Sector	0	0	0	0	0
F	Others (other groups not listed)	2	0	0	1	3
<b>Total all respondents</b>		<b>16</b>	<b>1</b>	<b>0</b>	<b>6</b>	<b>23</b>

	Yes/Yes subject to comment	No
<b>Total Respondents indicating a response</b>	<b>17</b>	<b>0</b>
<b>Overall Percentage</b>	<b>100%</b>	<b>0%</b>

### Statistical review

3.87 All respondents agreed with the proposal to introduce a 6 month time limit for certificate of lawfulness appeals.

### Key themes

3.88 The key themes in response to question 10 were as follows:

- Unanimous support for the proposal; and
- The time limit would ensure consistency with other appeal types.

### Overview

3.89 There was unanimous support for the proposal to introduce a period within which an appeal concerning a decision relating to a certificate of lawfulness can be made.

3.90 6 months is seen as an appropriate period by the majority of respondents. One respondent from Government Agency / Other Public Sector commented that the proposal will ensure consistency with other types of planning appeals. A time period of 3 months was suggested by one LPA, as such applications deal with matters of lawfulness rather than merit.

3.91 One LPA supported the proposal as certificates of lawfulness provide a snapshot in time. It would not be rational to allow excessive time to be accumulated between a decision and any appeal.

<b>Q10</b>	<b>Welsh Government Response</b>
	There is overall support for the proposal to introduce a 6 month time limit where certificate of lawfulness appeals are concerned. For consistency with other appeal types, 6 months is considered a reasonable and appropriate period within which to collect sufficient evidence.

### Next steps

3.92 It is the intention to make an amendment to the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 which introduces a 6 month period within which an appeal may be made where it concerns a decision relating to a certificate of lawfulness.

<b>Q11</b>	Do you agree that Welsh Ministers should be able to recover their own costs? If not, why not?
While legislation allows them to, the Welsh Ministers do not pursue their own costs where unreasonable behaviour occurs during proceedings, which causes unnecessary cost to them. It is proposed the Welsh Ministers use their powers to enable them to recover their own costs. The consultation asks whether respondents agree with this proposal.	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	1	0	0	1	2
B	Local Authorities (including National Park Authorities)	4	4	2	1	11
C	Government Agency/Other Public Sector	2	1	0	1	4
D	Professional Bodies/Interest Groups	2	1	0	0	3
E	Voluntary Sector	0	0	0	0	0
F	Others (other groups not listed)	2	0	0	1	3
<b>Total all respondents</b>		<b>11</b>	<b>6</b>	<b>2</b>	<b>4</b>	<b>23</b>

	Yes/Yes subject to comment	No
<b>Total Respondents indicating a response</b>	<b>17</b>	<b>2</b>
<b>Overall Percentage</b>	<b>89%</b>	<b>11%</b>

### Statistical review

3.93 All respondent groups agreed that the Welsh Ministers should be able to recover their own costs. Of those, there were only 2 respondents that disagreed with the proposals, both of which were LPAs.

### Key themes

3.94 The key themes in response to question 11 were as follows:

- Clear support for the proposal;
- Any costs must be reasonable and justified; and
- More detail required to explain the proposed procedure for cost recovery.

### Overview

3.95 The majority of respondents supported the proposal. Comments were received, from those supporting the proposal, questioning how placing costs on LPAs would recover wasted and unnecessary expense to the public purse. It was suggested such costs should only be awarded where there is unreasonable behaviour or in exceptional circumstances. Costs should not necessarily be awarded to the Welsh Ministers automatically following an award of costs to an appellant, or LPA. One respondent felt the proposal may prevent applications being refused without adequate justification.

3.96 Other respondents, again those supporting the proposal, requested more information on how the process for cost recovery will operate, which body will be responsible for determining the application and whether there would be an opportunity for parties to respond or challenge the decision. The need for a clear, transparent and consistent system was expressed.

3.97 Two respondents, both LPAs, considered the Welsh Ministers should not be able to recover costs. One of these respondents stated Welsh Ministers are already publicly funded to carry out this function. The other questioned whether there was evidence to support a change to the existing regime. The respondent also expressed concerns about the need to ensure objectivity and secure public confidence as the public may not distinguish between the awarding bodies (Welsh Government Planning Directorate and the Planning Inspectorate Wales). The same respondent suggested the introduction of a fee, similar to the application fee, if the Welsh Government is actually concerned about cost recovery rather than the stated reason of deterring unreasonable behaviour.

## Q11 Welsh Government Response

There was overall support for the proposal allowing the Welsh Ministers to recover their own costs in relation to an appeal. This reflects support for the principle of our proposals as originally consulted upon in the Positive Planning consultation paper.

Respondents requested further information on how the process for cost recovery will operate. We intend to set out the detail relating to the process in the Annexe to the amended costs guidance.

Comments were received regarding the scope of cost awards to the Welsh Ministers. It is our intention to make it clear that costs will not be recovered automatically by the Welsh Ministers where there is an award of costs to either the appellant or LPA. Where unreasonable behaviour has occurred which has caused wasted and unnecessary costs to an appellant or the LPA, it does not necessarily mean that such costs would be incurred by the Welsh Ministers in all cases.

One respondent suggested fees should be charged for appeals. The response to the Positive Planning consultation paper was clear in that there is no support at present for fees for appeals. However, we will continue to review this position.

### Next steps

- 3.98 It is intended to proceed with updated guidance which sets out the process for awarding costs and will allow the Welsh Ministers to recover their own costs where unreasonable behaviour has occurred which causes them to incur wasted and unnecessary expense.
- 3.99 We will also continue to review the appropriateness of fees in relation to appeals. Should fees for appeals be proposed, the circumstances and fees associated with them will be the subject of further consultation.

<b>Q12</b>	Do you agree with the grounds for unreasonable behaviour specified within the draft updated guidance (at Annex C)? If not, please specify alternative or additional grounds.
The draft updated guidance on costs specifies a number of grounds which may constitute unreasonable behaviour. The consultation asks whether respondents agree with the list of grounds.	

Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	2	0	0	0	2
B	Local Authorities (including National Park Authorities)	5	4	1	1	11
C	Government Agency/Other Public Sector	1	0	0	3	4
D	Professional Bodies/Interest Groups	2	1	0	0	3
E	Voluntary Sector	0	0	0	0	0
F	Others (other groups not listed)	2	0	0	1	3
<b>Total all respondents</b>		<b>12</b>	<b>5</b>	<b>1</b>	<b>5</b>	<b>23</b>

	Yes/Yes subject to comment	No
<b>Total Respondents indicating a response</b>	<b>17</b>	<b>1</b>
<b>Overall Percentage</b>	<b>94%</b>	<b>6%</b>

### Statistical review

3.100 All respondent groups agreed with the grounds specified in the draft guidance. Of those, there was only 1 LPA respondent which disagreed with the proposals.

## Key themes

3.101 The key themes in response to question 11 were as follows:

- Clear support for the proposal; and
- Some detailed comments and concerns regarding the examples of unreasonable behaviour

## Overview

3.102 The majority of respondents supported the proposal. Some respondents included detailed comments to supplement their support. One respondent suggested refusal to cooperate and delays in providing information should be considered unreasonable behaviour by appellants as well as LPAs. Another expressed concern that the examples of unreasonable behaviour were too prescriptive and asked whether an appeal procedure would be in place to challenge costs decisions. One respondent, in relation to paragraph 2.5 of Annex C, considered “..no reasonable prospect of succeeding” should be a self-contained ground for costs and not a requirement to be met before a substantive award of costs can be considered.

3.103 A number of respondents who supported the proposal felt some of the proposed grounds should not comprise “unreasonable behaviour”:

- “Not determining or providing a position on a similar case in a consistent manner” should only be considered unreasonable behaviour when there has been no material change in circumstance;
- “Introducing new grounds of appeal, evidence or relevant information late in the proceedings...” should be removed as an example of unreasonable behaviour as such behaviour would be prevented by the consultation paper’s proposal to require the Planning Inspectorate to deal with the application in the form it was considered by the LPA;
- “Preventing or delaying development which should be permitted...”. - whether development should be permitted is a matter for the decision maker;
- “Failing to determine an application within statutory time limits, where it is clear that there was no substantive reason to justify delaying the determination of the application” or “where an enforcement appeal could have been avoided due to inadequate investigation or insufficient

communication on the part of the local planning authority". LPAs do not purposely 'delay' applications, and it is considered that this ground could be counter-productive in actually encouraging appeals;

- "...requiring the appellant or applicant to enter into a planning obligation which does not accord with the law or relevant policy" should not in itself be a ground for unreasonable behaviour, provided the LPA has sought to justify the reasons for making such a request (even if they are unsuccessful in convincing an Inspector); and
- "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" is not considered in itself to constitute unreasonable behaviour. Only in blatant cases where an LPA has refused to impose such a condition on request, without reason, should it be a ground for costs.

3.104 Assurance is sought from a Government Agency / Other Public Sector that when their advice changes due to information which could not have been obtained at an earlier stage, or in response to change in the application, this would not be considered unreasonable behaviour.

3.105 A respondent notes, in paragraph 2.9, there is a duplication of reference to the conditions 'tests' in bullet points 2 and 13.

3.106 Only one respondent did not agree with the proposed grounds for unreasonable behaviour set out in the consultation paper. Specific concerns expressed by the respondent are:

- Planning fees are refunded after 16 weeks so any determination after this time period is potentially unreasonable, rather than at 8 weeks;
- If an Inspector removes a condition on appeal the implication is this is a matter for which costs may be automatically awarded, this point should be reconsidered;
- Each application should be considered on its own merits. Because of this principle, "Preventing or delaying development which should be permitted..." and "Not determining or providing a position on similar cases in a consistent manner" are a "nonsense" as grounds for unreasonable behaviour; and



- “Lack of co-operation relating to any planning obligation” as an reasonable behaviour needs clarification as, by statute, LPAs do not need to negotiate on a Legal Agreement for a period of 5 years.

## **Q12 Welsh Government Response**

A number of respondents suggested that some of the listed grounds for unreasonable behaviour should not merit an award of costs in all cases. We agree with this comment and we emphasise that the examples of unreasonable behaviour must meet a secondary criterion in that ‘wasted or unnecessary expense’ must have occurred to merit an award of costs.

When deciding an award of costs, the Welsh Ministers are aware that circumstances differ in each case. To that end, an award of costs would not be made in all instances where an example of unreasonable behaviour has occurred. The intention of the examples is to provide greater clarity to appellants, applicants and LPAs in defining the typical circumstances in which costs may be awarded.

Comments were received which required the amendment or removal of certain examples of unreasonable behaviour. We have reviewed each of those comments and will make some amendments to the examples for precision and clarity to all parties, particularly where they concern comments made by statutory consultees and cases where a second and similar application has been made to that refused on appeal previously. It is not intended to remove any of the examples of unreasonable behaviour in their entirety.

A number of comments were received in response to this consultation outside of this question requiring a mechanism to prevent appellants claiming they are considering applying for costs to secure examination through oral proceedings. The amended guidance and ability for Inspectors to determine procedure is intended to remove this ability. Costs may be awarded for appeals and applications dealt with by way of written representations.

### Next steps

3.107 Following the comments received, it is the intention to proceed with the examples specified in the draft guidance. Some of the examples will be amended for the sake of precision and clarity. Furthermore, the published guidance will place further emphasis on the requirement for unreasonable behaviour to occur as well as wasted and unnecessary expense to merit an award of costs.

<b>Q13</b>	Do you agree with the process for the awards of costs set out in Appendix A of the draft updated guidance (at Annex C)? If not, why not?					
Appendix A of the draft updated guidance for costs sets out a process for the award of costs, requiring applicants to apply for costs at the earliest possible stage. The consultation asks whether respondents agree with the process.						
<b>Statistical Summary</b>						
<b>Sector</b>		<b>Yes</b>	<b>Yes (subject to further comment)</b>	<b>No</b>	<b>Don't Know</b>	<b>Total</b>
A	Businesses / Planning Consultants	2	0	0	0	2
B	Local Authorities (including National Park Authorities)	5	3	2	1	11
C	Government Agency/Other Public Sector	1	1	0	2	4
D	Professional Bodies/Interest Groups	1	1	0	1	3
E	Voluntary Sector	0	0	0	0	0
F	Others (other groups not listed)	2	0	0	1	3
<b>Total all respondents</b>		<b>11</b>	<b>5</b>	<b>2</b>	<b>5</b>	<b>23</b>

	<b>Yes/Yes subject to comment</b>	<b>No</b>
<b>Total Respondents indicating a response</b>	<b>17</b>	<b>2</b>
<b>Overall Percentage</b>	<b>89%</b>	<b>11%</b>

### Statistical review

3.108 All respondent groups overall agreed with the process for the award of costs, as set out. Of those, there were only 2 respondents that disagreed with the proposals, both of which were LPAs.

## Key themes

3.109 The key themes in response to question 13 were as follows:

- Clear support for the proposal; and
- More detail requested about the process for awarding costs.

## Overview

3.110 There was overall support for the proposal. Some respondents, who supported the proposal, made detailed comments. A couple of respondents considered appellants should submit a costs application with the statement of case and the opportunity to make an application for costs at hearing or inquiry should only be permitted in exceptional circumstances. Assurance is sought from a one Government Agency / Other Public Sector respondent that when their advice changes due to information which could not have been obtained at an earlier stage, or in response to change in the application, this would not be considered unreasonable behaviour.

3.111 Some respondents requested more detail about the process for awarding costs, including the role of the Inspector and other parties. A flowchart was suggested as a means of guiding stakeholders through the process.

3.112 One LPA respondent sought clarification on the process for awards of costs where they concern applications by the Planning Inspectorate. That respondent also asked whether awards of costs to them would make awards against LPAs less likely.

3.113 Two respondents, both LPAs, did not agree with the proposed procedure for the award of costs. One of these LPAs considered the process to be too prescriptive and felt more discretion should be provided to the Inspector. The LPA queried whether there will be an appeal procedure for costs decisions, particularly borderline cases.

3.114 The other LPA expressed concern that public confidence will be undermined as Planning Inspectorate Wales and Welsh Government Planning Directorate will be viewed as a single body, and Planning Directorate, due to a lack of experience in dealing with costs applications, will be too reliant on the Inspector's judgement in relation to costs. Based on the LPA's experience, LPAs and appellants are treated differently by Inspectors in terms of costs awards, LPAs must be treated fairly in the system, and must be able to confidently refuse planning permission and receive costs, where justified.

### **Q13 Welsh Government Response**

The majority of respondents agreed with the proposed process and it is the intention to incorporate this into the published guidance. However, some comments were received regarding the clarity of the process, particularly where they concern awards of costs to the Planning Inspectorate. To alleviate these concerns, it is intended to clarify the process within the published guidance and to include a simplified table which addresses the process for awards of costs.

Whilst one respondent stated the process was too prescriptive, the criticism of the existing regime is there is no clear process set out. The guidance seeks to remedy this concern.

One respondent sought assurances that awards of costs to the Planning Inspectorate would not result in less awards being made to the LPA. In response, it is not the intention for this to occur and awards of costs are made to each party on their individual merits where they satisfy criteria and will be based on the unnecessary or wasted costs actually incurred by each party, as set out in the guidance.

One respondent asked whether there is an appeal process to costs cases. It is not the intention to alter existing provisions in the Town and Country Planning Act 1990 to add a further appeal mechanism. Where a party is aggrieved by a costs order, this may be challenged statutorily through the courts.

#### Next steps

- 3.115 It is the intention to incorporate the process as set out in the consultation paper into the published guidance. For clarity and precision, further information will be added in relation to awards of costs to the Planning Inspectorate and a table will be added setting out the process for awards of costs.

<b>Q14</b>	Should any additional information be included within the draft updated guidance (at Annex C)?
The consultation broadly asks whether any supplemental information should be contained in the updated costs circular for publication.	

<b>Statistical Summary</b>						
<b>Sector</b>		<b>Yes</b>	<b>Yes (subject to further comment)</b>	<b>No</b>	<b>Don't Know</b>	<b>Total</b>
A	Businesses / Planning Consultants	0	0	1	1	2
B	Local Authorities (including National Park Authorities)	2	0	8	1	11
C	Government Agency/Other Public Sector	1	0	0	3	4
D	Professional Bodies/Interest Groups	1	0	1	1	3
E	Voluntary Sector	0	0	0	0	0
F	Others (other groups not listed)	0	0	2	1	3
<b>Total all respondents</b>		<b>4</b>	<b>0</b>	<b>12</b>	<b>7</b>	<b>23</b>

	<b>Yes/Yes subject to comment</b>	<b>No</b>
<b>Total Respondents indicating a response</b>	<b>4</b>	<b>12</b>
<b>Overall Percentage</b>	<b>25%</b>	<b>75%</b>

### Statistical review

3.116 The majority of respondents agreed that no further information should be contained in the amended costs guidance. Of those, Businesses / Planning Consultants and Others agreed entirely that no further information was required. There was an even split of opinion between Professional Bodies / Interest Groups. The majority of LPAs agreed that no further information

should be contained, while all Government Agency / Other Public Sector respondents felt that the draft amended guidance should contain further information.

### Key themes

3.117 The key theme in response to question 14 is as follows:

- General agreement there is no requirement for additional information.

### Overview

3.118 The majority of respondents considered there was no requirement for additional information to be included in the draft guidance. However, the following comments were made:

- The guidance should clarify whether the costs procedure also applies to appeals against conditions attached to planning permissions; and
- Simplified and more user friendly guidance would be welcome.

<b>Q14</b>	<b>Welsh Government Response</b>
	Minor comments were received in relation to additional information to be included in the amended costs guidance. We consider the Welsh Government response relating to questions 12 and 13 of the consultation addresses these comments.

### Next steps

3.119 It is the intention to take forward the circumstances and process set out in the draft costs guidance, subject to the Welsh Government response as set out in questions 12 and 13 of this document.

<b>Q15</b>	Do you agree with the amended method for charging daily amounts for qualifying procedures and local inquiries? If not, why not?
At present, the standard daily amounts for qualifying procedures are charged as block daily rate. The consultation proposes to 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. The consultation asks whether respondents agree with this proposal and why.	

<b>Statistical Summary</b>						
<b>Sector</b>		<b>Yes</b>	<b>Yes (subject to further comment)</b>	<b>No</b>	<b>Don't Know</b>	<b>Total</b>
A	Businesses / Planning Consultants	1	0	0	1	2
B	Local Authorities (including National Park Authorities)	6	2	2	1	11
C	Government Agency/Other Public Sector	0	0	0	4	4
D	Professional Bodies/Interest Groups	1	1	0	1	3
E	Voluntary Sector	0	0	0	0	0
F	Others (other groups not listed)	2	0	0	1	3
<b>Total all respondents</b>		<b>10</b>	<b>3</b>	<b>2</b>	<b>8</b>	<b>23</b>

	<b>Yes/Yes subject to comment</b>	<b>No</b>
<b>Total Respondents indicating a response</b>	<b>13</b>	<b>2</b>
<b>Overall Percentage</b>	<b>87%</b>	<b>13%</b>

Statistical review

3.120 The majority of respondents agreed with the amended method for charging daily amounts for qualifying procedures and local inquiries. All groups unanimously agreed with the proposals, with the exception of LPAs, who agreed with the proposals in majority.

#### Key themes

3.122 The key themes in response to question 15 were as follows:

- A general agreement that Inspector time should be charged separately from planning officer time;
- Some queries regarding the fairness and amount of fee to be charged; and
- Any rises to standard daily rates should be opposed.

#### Overview

3.123 As this proposal largely impacts directly on them, LPAs have provided the majority of substantive comments relating to this question.

3.124 A number of respondents agreed with the principle Inspector time and Planning Officer time is charged separately. The advantages cited were the standard daily amounts may be charged accurately, consistently and the proposal still allows for other matters to be charged for (for which a standard daily amount does not apply). It was, however, commented by one LPA that charging for Planning Officer time should not be seen as a top-up payment, in addition to the existing standard daily amounts for Inspectors.

3.125 Respondents agreed to the scope of charging, which captures local inquiries and qualifying procedures (which are Local Development Plan (“LDP”) examinations, in the main).

3.126 LPAs and professional bodies agreed with the principle subject to there being itemised invoices for individual cases containing how the standard amounts have been applied. Two LPAs agreed the costs should be reasonable and fairly related to the proceeding in question.

3.127 Concerning the nature of any additional costs, two LPAs commented they cannot support any additional costs to LPAs for carrying out statutory processes. It was commented LPAs already pay significant sums for Programme Officers, where LDP examinations are concerned.



- 3.128 The fairness of the method of charging for LDPs was criticised by one LPA. It was commented that the Welsh Ministers unilaterally set the terms and length of the process and charge for that term. The ability to extend the scope of charging runs counter to the aspiration of a more efficient examination process.
- 3.129 One comment was received citing the difference between the proposed charging method for qualifying proceedings and the fees for Developments of National Significance.

Q15	Welsh Government Response
	<p>The responses indicate an overall support for the proposed method of charging for local inquiries and qualifying procedures. The main concern relating to the proposed charging model centred on the uncertainty and variability of costs. To remedy this, it is the intention to itemise charging within invoices issued by the Welsh Ministers, to ensure LPAs are aware of the amount of time charged at each level of staff. The consultation paper is clear that Planning Officer time is currently charged within the Inspector daily rate. The proposal is simply to separate Planning Officer time from that daily rate to ensure that time can be charged separately and accurately, and not to charge for the same service twice.</p> <p>It has been noted a difference has been cited between the current charging method for Developments of National Significance (“DNS”) and the proposed standard daily amounts. The reason for that difference is that DNS is an application process which operates differently. There are standardised administration tasks within that process which may be charged as a fixed fee, whereas the only variable charge relates to the examination and consideration of the DNS application. Each LDP examination is tailored to the complexity of the plan and requires the input of significantly more stakeholders. Hence, the proposed charging method within the consultation paper is considered most appropriate in this instance.</p>

### Next steps

- 3.130 It is the intention to pursue the method for charging consulted upon. In accordance with the comments received, we will ensure that all invoices relating to the qualifying procedures and local inquiries will be itemised, for transparency.

<b>Q16</b>	Do you agree with the proposed standard daily amounts at Annex D? If not, why not?					
Annex D set out proposed standard daily amounts for Planning Inspector time and general staff costs for qualifying proceedings up until 2019. This question asks whether respondents are content with the proposed amounts and asks for reasons why.						
Statistical Summary						
Sector		Yes	Yes (subject to further comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	1	0	0	1	2
B	Local Authorities (including National Park Authorities)	5	3	2	1	11
C	Government Agency/Other Public Sector	0	0	0	4	4
D	Professional Bodies/Interest Groups	2	0	0	1	3
E	Voluntary Sector	0	0	0	0	0
F	Others (other groups not listed)	2	0	0	1	3
<b>Total all respondents</b>		<b>10</b>	<b>3</b>	<b>2</b>	<b>8</b>	<b>23</b>

	Yes/Yes subject to comment	No
<b>Total Respondents indicating a response</b>	<b>13</b>	<b>2</b>
<b>Overall Percentage</b>	<b>87%</b>	<b>13%</b>

### Statistical review

3.131 The majority of respondents agreed with the amended standard daily amounts for qualifying procedures and local inquiries. All groups unanimously agreed with the proposals, with the exception of LPAs.

## Key themes

3.132 The key themes in response to question 16 were as follows:

- An overall support for the proposed fees, provided they are for cost recovery alone; and
- The proposed amounts appear to be consistent with current amounts charged.

## Overview

3.133 As this proposal largely impacts directly on LPAs, they have provided all substantive comments relating to this question.

3.134 Some comments by LPAs agreed to the proposed costs subject to some caveats. In these instances, LPAs agreed, provided that:

- The charging method was on the basis of cost recovery alone;
- The proposed costs do not result in a significant increase in costs borne by the taxpayer; and
- The proposals promote efficiency across the service.

3.135 Overall, it was commented that the proposed amounts appear to be consistent with current standard daily amounts charged. The proposal to charge for officer time separately from Inspector time was greeted with positivity from respondents.

3.136 Where there was disagreement with the proposed costs, LPAs commented that any increase should be borne by the Welsh Government rather than LPAs.

3.137 The consultation was criticised by one respondent in that there was no clear indication of how the new costs will differ from the old costs, and thus, the impacts are not clear.

**Q16 Welsh Government Response**

Our proposals reaffirm the principles of managing public finance to achieve full cost-recovery. Consultees have acknowledged there is a cost associated with administering and examining qualifying procedures and public inquiries, although we disagree the cost should be borne by the Welsh Ministers. It is not the intention to profit from the standard daily amounts, as this is contrary to public finance principles.

**Next steps**

- 3.138 Given the overall support for the standard daily amounts charged, we will seek to establish these amounts in a statutory instrument. This will be supported by a clear table of charges, similar to that shown in Annex D of the consultation paper.

N/Q	Further comments
Where respondents made comments which could not be captured and considered by the consultation under Q1-Q16, they have been placed here.	

### Overview

3.139 Some respondents provided additional comments to highlight specific issues or matters for which further clarification was sought. These are addressed by theme below:

#### *The principle of the proposed changes*

3.140 One comment was received from Businesses / Planning Consultants stating the proposed changes to improve the speed of the process will be at the detriment of the correct decision, thereby not promoting fairness. It was commented the proposals were not the step change required to promote growth, and would result in an insignificant reduction of time over the current process.

#### *Statutory deadlines for the Welsh Ministers*

3.141 One comment from Businesses / Planning Consultants and one comment from Professional Bodies / Interest Groups asked for a statutory period of 8 weeks within which the Welsh Ministers must make a decision, following the recommendation of an Inspector (in the case of recovered appeals, and call-ins).

#### *Consultees*

3.142 Some respondents put forward suggestions for bodies to be included as statutory and non-statutory consultees.

#### *Validation of appeals*

3.143 One comment from Businesses / Planning Consultants and one comment from Professional Bodies / Interest Groups supported the notion of a statutory 7 day validation requirement. At present, there is currently an undefined timescale to this, which has significant impact in terms of 'providing certainty for developers'.

#### *Alternative dispute resolution*

3.144 One Other respondent suggested the use of Alternative Dispute Resolution at both Planning Application and Appeal stages. The respondent commented

such a method may assist in preventing unnecessary planning appeals and could speed up the delivery of development.

## **N/Q Welsh Government Response**

### *The principle of the proposed changes*

This comment is acknowledged. The proposed changes to the appeals process are intended to increase fairness and certainty for all parties, and promote growth. The Welsh Government continually reviews how the planning system can be improved. Further comments regarding how improvements can be made which support these aims would be welcomed.

### *Statutory deadlines for the Welsh Ministers*

No evidence has been received to substantiate the proposal for a statutory period within which the Welsh Ministers must make a decision, following recovery. The Welsh Ministers currently have a 12 week target within which to make decisions. Data from 2014/15 and 2015/16 suggests the Welsh Ministers reach their 12 week target on over 90% of decisions issued by them. The performance of the Welsh Ministers in delivering decisions are published by the Welsh Ministers along with LPA Performance.

### *Consultees*

Additions to the list of statutory consultees at Schedule 4 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 is not within the scope of this consultation.

### *Validation of appeals*

We have received little negative evidence to date over the performance of the Planning Inspectorate in validating appeals. A statutory validation period would be considered unproductive as any challenge to non-validation would be made to the courts. This would significantly lengthen the time taken to determine an appeal.

### *Alternative dispute resolution*

Alternative dispute resolution was considered by the Independent Advisory Group in their review into the planning system in Wales. Following their recommendation, it was concluded it would be difficult to incorporate a flexible dispute resolution procedure, where an appeal is often the result of a fundamental disagreements over the merits of a development.

Through the consultation paper, we have introduced provisions which preclude variations, amendments or the introduction of new issues or information to appeals once submitted. We consider these provisions will encourage LPAs and applicants to discuss any concerns or improvements to individual proposals, which will improve working relationships between those parties.

## ANNEX A – LIST OF RESPONDENTS BY CATEGORY

A1.1 The table below indicates the categories to which respondents assigned themselves in completing the consultation form. For data protection purposes the name and address details for those respondents who did not wish to be identified have been removed from the index below and from the published consultation responses:

<b>Businesses / Planning Consultants</b>		<b>Local Planning Authority</b>	
016	Redrow Homes	002	Merthyr Tydfil CBC
017	Innogy Renewables UK Ltd	003	National Parks Wales
<b>Government Agency / Other Public Sector</b>		004	Gwynedd CC
001	The Coal Authority	005	Caerphilly CBC
006	The Health and Safety Executive	007	Newport CBC
008	Natural Resources Wales	011	Anonymous
019	Penarth Town Council	014	Anonymous
<b>Professional Bodies / Interest Groups</b>		015	Bridgend CBC
012	RTPI Cymru	018	Vale of Glamorgan C
020	The Law Society	022	Flintshire CC
021	Home Builders Federation	023	Neath Port Talbot CBC
<b>Other</b>		<b>Voluntary Sector</b>	
009	CLA Cymru		None
010	The Canal and River Trust in Wales		
013	Persimmon Homes		