

# Ymgyrch Diogelu Cymru Wledig Campaign for the Protection of Rural Wales



Cadeirydd      Chairman      Dr Jean Rosenfeld  
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Planning for Appeals Consultation,  
Planning Division,  
Welsh Government,  
Cathays Park,  
Cardiff.  
CF10 3NQ

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Dear Sir or Madam,

## **Improving the Planning Appeal Process Response from the Campaign for the Protection of Rural Wales (CPRW)**

1.1 As Wales' foremost countryside watchdogs, CPRW welcomes the opportunity to comment on this consultation document in which we have a specific interest, as a stakeholder organisation which is frequently involved in the Planning Appeal process.

1.2 Our comments therefore consist of two aspects, first a series of generic issues relating to the scope of the consultation and thereafter our responses to the individual questions posed.

## **2. Scope of the review**

2.1 CPRW recognises, understands and welcomes the overall objectives of this consultation and supports the desire to make the Appeal process more efficient and less protracted so that it is less onerous particularly on the individual members of the public. We therefore believe that most of the proposals are relevant in this context.




2.2 We are however disappointed that the scope of the Consultation has not considered what we believe to be a major weakness and hence a deficiency of the present process, namely the lack of a Third Party right of Appeal. CPRW has long believed, as have many others, that a fair and a transparent Appeal process should include this Third Party Right of Appeal provision.

2.3 We therefore believe that this issue should be considered in this consultation and if such a process was not considered appropriate, the document should provide reasons why the Welsh Government has adopted such a position, thereby enabling those responding to the consultation to comment accordingly. We trust in the light of the following that this situation will be reviewed and rectified.

2.4 CPRW therefore believes that the issue of Third Party right of Appeal should be addressed in this consultation for the following reasons

## **2.5 The case for a Third Party Right of Appeal**

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2.5.1 CPRW has long advocated that the current arrangements for challenging planning decisions are in part democratically unfair and inadequate and disadvantage certain sectors of the public including our own organisation.

2.5.2 Increasingly communities and individuals are encouraged to take an active role in informing the land use decisions that shape their surroundings by actively engaging in the production of their Local Development Plans and by becoming more proactive in commenting upon development proposals which affect their interests. In return for this involvement their efforts are usually repaid by sounder and more informed plan led policies when they are adopted and in most instances by development decisions which accord with them.

2.5.3 However there are occasions when the determination of planning applications is not consistent with these adopted policies. It is in these circumstances that the odds are stacked against those who have invested time and effort in trying to ensure that the planning system delivers fair, objective, consistent and transparent decisions.

2.5.4 Regrettably, CPRW contends that the current planning system remains largely focussed on a dialogue between developers and Local Authorities, with community groups, concerned bodies and individuals often unable to adequately promote their point of view. Nevertheless many do rise to this challenge of overcoming inequality through sheer effort and commitment. If they succeed in convincing decision makers of the merits of their case to refuse planning permission for a development, they soon discover that the applicant has the option to challenge the decision through an appeal procedure and may still gain their permission. However if consent is granted in favour of a developer contrary to the prevailing Development Plan policies, no-one can currently appeal against the grant of such consents .

2.5.5 Inappropriate decisions can of course be challenged legally, but this can only be done through the courts and is confined to examining the process by which a decision is made. Realistically few individuals feel confident or able to take this Judicial Review route.

2.5.6 CPRW believes that these circumstances are not only unreasonable but also democratically unjust and reform of this long standing imbalance is long overdue. Strengthening the current procedures would not only remove this injustice but would also significantly raise public confidence in the Planning system.

2.5.7 CPRW therefore believes there is a strong case for introducing a **limited Third Party Right of Appeal** focussing on those types of case which give greatest grounds for concern in respect of their quality, transparency, probity and accountability of development control decisions.

2.5.8 In recognising that these circumstances should be limited, we accept that it is important to ensure that

- Planning Authorities are not undermined by indiscriminately opening their decisions to further review without good cause
- Delays to development or an increase in financial risk to investors does not occur without good cause
- The Planning Inspectorate is not suddenly overburdened with a flood of case work

2.5.9 **Notwithstanding this, we advocate that a limited Third Party Right of Appeal should be introduced under the following circumstances**

- When a development is approved contrary to the provisions of an adopted Development Plan
- When the application is one in which the local Authority has an interest.
- If an application is Major Development or one requiring an Environmental Impact Assessment.
- When the original Officer recommendation was to refuse the application.

2.5.10 **Within these the limited circumstances, we contend there should be:**

- No restriction on the scope for the Grounds of appeal.
- Parity of choice (written representations or oral hearings) between developers and third parties.
- A flat fee levied on those lodging an appeal.
- A strict time limit of 28 days for the appeal to be lodged once the approval decision notice has been issued by the relevant Planning Authority
- Realistic targets established for the arbitration of such appeals.

2.5.11 **In order to avoid abuse of this Right we further believe that**

- This Right should be limited to those who have formally registered a prior objection to an application.
- That the relevant Minister should be able to intervene to prevent anyone merely seeking to delay development proposals, to gain commercial advantage, or secure benefits from a developer in return for the withdrawal of an appeal.

2.5.12 Given this context and the provisions described above, CPRW therefore believes that there is both strong justification for and no practical reason why this Welsh Government cannot introduce a Third Party Right of Appeal as a fundamental and democratic dimension of the planning system in Wales. **We commend this**

**course of action and request that it is taken fully into account in this current review of the Appeal process.**

3. With respect to the remaining questions posed in the consultation document, CPRW offers the following comments.

**Q1 Do you agree in principle with the introduction of a fast track householder appeal service in Wales?**

3.1 CPRW supports this proposal, but maintains that adequate provision should be made to ensure that there is an inbuilt early notification procedure which ensures that any Third Party interests which have responded to the original application, are given due notice of the procedures and time scales involved, to enable them to participate fully and in a timely manner, in this revised procedure.

**Q2 What do you consider to be the advantages and disadvantages of introducing a fast track householder appeal service?**

3.2 Given the provision and caveats outlined above, CPRW believes that the system will be less cumbersome and reduce unnecessary delays in determining contentious issues.

3.3 CPRW is wary however that the appropriate mechanisms must be put in place to notify the various interested Third parties promptly and in a manner which allows them adequate time to engage in the process in a meaningful way, should they so wish.

3.4 We also believe that Local Authorities must be far more open in making information available as to the nature of their decisions and grounds of the appeal by communicating this information as of course to all those who have submitted representations to any application which is then the subject of an appeal. At the moment the practice of notifying Third parties of decisions varies considerable from Authority to Authority across Wales.

3.5 Those with an interest in an appeal should not we contend be disadvantaged in terms of notifications or access to information, if the time scales for the process are to be telescoped as suggested.

**Q3 What is your opinion of the following elements of a householder appeal service**

3.6 Subject to the above, CPRW supports the elements outlined in this question

**Q4 Do you agree with the scope of the definition of householder developments**

**Q5 Do you have comments to make in relation to any other aspect of a fast track householder service?**

3.7 CPRW supports the definition of household development but suggests that further clarification is needed in respect of any householder development which relates to either a Listed building or Structure or its setting and any development which is situated in or affects the setting a Conservation Area or SAM.

**Q6 Do you agree with the Planning Inspectorate, on behalf of the Welsh Ministers, being able to determine the appeal method?**

**Q7 Do you agree with the current informally used indicative criteria should form the basis of the Ministerially approved indicative criteria?**

3.8 CPRW believes that the process of a Planning Inspector determining which is an appropriate mechanism for an appeal is sound. We would add however that this is subject to greater clarification being provided in any new process and guidance as to what is meant in Paragraph 11 by the term “**public interest**” in the statement... “*A hearing or inquiry may also be appropriate where there is a significant amount of public interest.*”

3.9 We would again highlight the fact that the extent and nature of any Third party representations should be a key factor in this assessment process. We believe that where Third party representations are soundly based and robustly presented, these parties should be given the opportunity to comment as to the appropriate means by which appeals should be determined.

**Q8 Do you agree in principle that the costs regime should be extended to apply to planning appeals dealt with via the written method? If not, why not?**

**Q9 The advantages or disadvantages to the appeals system and its users that you see from such a change?**

3.10 Whilst CPRW doesn't disagree with this proposition, we would not favour circumstances which unfairly disadvantage because they are frightened or unclear as to what the costs of pursuing a written appeal might be.

3.11 Similarly we feel that care will be required in imposing such costs unless there is an equivalent process for individuals to recover their costs in the event that they are being forced to challenge what is deemed by the Inspector to be an unsound original decision on the part of the relevant Planning Authority.

**Q10 Do you agree with the change proposed to the correction of errors process?**

3.12 CPRW supports this proposal.

**Q11 Determination of old mining permissions?**

3.13 CPRW supports this proposal.

**Q12 Double fees on deemed applications in enforcement cases**

3.14 CPRW welcomes and strongly supports this proposal and believes that planning fees for enforcement appeals should be set at a level which acts a strong deterrent for those who consciously try to circumvent or abuse the planning application procedure.

3.15 We likewise strongly support any move to provide further funds for the enforcement role of Local Planning Authorities being strengthened. We believe resourcing this aspect of their work is a particular weakness and often viewed by the public as the Achilles Heel of the current planning system in Wales because of the huge variation in standards of enforcement which current exist across LPAs.

**Q13 Do you agree that a bespoke timetable is required?**

**Q14 Do you agree, that formal guidance should be published on the operation of bespoke timetables?**

**Q15 Should the bespoke timetable process in Wales operate along similar lines to the current process in England?**

**Q16 Other comments relating to a formal bespoke timetable process?**

3.16 CPRW supports these proposals and the approaches being suggested. We believe these will enable the bespoke timetable process to work fairly, openly and smoothly.

**Q17 Statements of common ground**

3.17 CPRW supports this proposal and believes that the present process of statements of Common Ground not being available early enough in the process can put Third parties at a disadvantage and result in them wasting time considering issues which may not subsequently become the subject of an Inquiry.

3.18 CPRW further believes that is important that Third parties should have early access to these statements of Common Ground as there may be instances where there are issues which they believe remain contentious but which the main parties may have agreed should not be taken into consideration in any subsequent Inquiry process. In these circumstances, Third parties should have the right to be notified of and an option to challenge any statement of Common ground by presenting to the Inspector their justification as to why any statement of Common ground might be flawed. To be able to do this the main parties must produce this statement of Common ground as early in the Inquiry process as is reasonably possible and be required to notify any relevant interested parties of its production by a given date in the Inquiry timetable.

**Q18: Other related issues**

3.20 Please refer to our previous comments at the beginning of this representation regarding Third party rights of Appeal.

**4. Conclusion**

4.1 Whilst CPRW welcomes the range of issues addressed in this draft consultation document we believe that there are a number of key matters which have been overlooked and should be included in the manner we propose. We trust that our comments will prove helpful in this respect.

4.2 CPRW confirms that its views can be made available to other parties if so required. Likewise should there be any matters which require further clarification, CPRW will gladly do so upon your request.

4.3 In the meantime, I would be grateful for an acknowledgement of your receipt of these comments and in due course welcome sight of the responses made during this consultation.

Thanking you in anticipation

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Peter A Ogden', with a long horizontal flourish extending to the right.

Peter Ogden  
Director

Cc Ms Rosemary Thomas  
Head Planning Division Welsh Assembly Government  
Cathays Park  
Cardiff