

Consultation reference: WG40035

Annex B - Consultation Response Form

Changes to listed building consent applications

We are seeking your views on our proposed changes to listed building consent applications.

Please submit your comments by 8 June 2020.

If you have any queries on this consultation, please email: Planconsultations-b@gov.wales or telephone Owain Williams on 0300 025 1715.

Data Protection

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

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

You should also be aware of our responsibilities under Freedom of Information legislation. If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights:

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

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For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer:
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

e-mail: Data.ProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745 or 0303 123 1113

Website: <https://ico.org.uk/>

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Changes to listed building consent applications		
Date of consultation period: 9 March 2019 to 8 June 2020		
Name	Fiona Newton	
Organisation	Institute of Historic Building Conservation	
Address	IHBC Business Office, Jubilee House, High Street, Tisbury SP3 6HA	
E-mail address	consultations@ihbc.org.uk	
Type <i>(please select one from the following)</i>	Businesses/ Consultants	<input type="checkbox"/>
	Local Planning Authority	<input type="checkbox"/>
	Government Agency/Other Public Sector	<input type="checkbox"/>
	Professional Bodies/Interest Groups	<input checked="" type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	<input type="checkbox"/>
	Other (other groups not listed above) or individual	<input type="checkbox"/>

Consultation Questions

Q1	Do you agree LPAs should determine their own applications for Listed Building Consent, where the proposal relates to an extension or alteration? If not, why not?	Yes	Yes (subject to comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p>For most applications (as long as the proposed decision-making is to be made with input from an appropriately qualified conservation professional within the LPA or acting on behalf of the LPA), this change may be cautiously welcomed. However IHBC wish to emphasise a proviso that LPA's need to have and continue to have access to appropriate conservation advice in both the preparation of such applications and in their consideration through the consenting process, the latter through the retention of internal conservation advice.</p> <p>It is important to ensure that interested parties in the Local Authorities are not able to exercise inappropriate influence on decision making. Delegation has been applied for and awarded to a handful of LPA's in Wales due to the commitment of resources and the useful "backstop" Cadw provides. IHBC notes in relation to delegation in Wales, where certain LPA's can already determine simpler LBC applications (non LA) without further reference, the delegation relates to a named officer not the Council and comes with a number of important caveats which protect the Officer from influence.</p>				

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We would therefore support delegation of responsibility to allow local authorities to determine LBCs for alterations or extensions where they are the applicant only and where that authority already has delegation to determine other LBCs. We believe it would be prudent to restrict this to Grade II buildings. We suggest that there cannot be so many Council LBC applications as to make retention of control of Grade II* and Grade I too much of a burden.

The issue of the breadth of this proposed alteration needs to clarify the split between LPA as the determining body and the Council as applicant slightly further. It is important to be clearer about the definition of LPA's to ensure that appropriate scrutiny is applied when applications are submitted which relate to council land. The document just refers to applications made by a LPA and does not specifically say that these are for buildings owned by the local authority. This is important as any application where the LPA is effectively at risk of giving itself permission to do what it wants to do needs to be determined impartially. Whether or not they are the owner, if it is their scheme then the LBC needs to be determined by a conservation officer who is at the right level in the Council to be allowed to be professional and impartial.

Some Council's standing orders require all applications where the Council is either the applicant, the landowner (someone else is applying on it's land) or where the Council is funding (grant or other support) the application is subject to full planning committee scrutiny and the public transparency that will accord, rather than through delegation. IHBC suggests that some similar level of scrutiny may need to be adopted for this proposed change.

One potential loophole, which should be addressed is where the LPA is the owner but is not the applicant, which makes any conflict of interest less obvious. where the council is owner and LPA.. The fact that only one LBC application has been refused in Wales can not be taken as evidence that LPA can make a balanced decision when there are obvious conflicts of interest. Unreasonable pressure can be and is brought to bear on planners and conservation staff to approve projects that the council wants to do, instead of there being an entirely transparent process of dispassionate comment and balanced judgements being taken.

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Q2	Do you agree applications by LPAs for the demolition of a listed building should continue to be determined by the Welsh Ministers? If not, why not?	Yes	Yes (subject to comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p>We believe that referral of an application should be retained by Welsh Ministers for major works to historic buildings. This would include complete demolition but it is important to consider inclusion of referrals for partial demolition, removal of staircases and other major features or substantial extension. However major works short of demolition may be hard to define (for example the Shimizu decision found that partial demolition is alteration and not demolition). This could lead to confusion concerning whether or not an application should be referred. IHBC believes that the important requirement is to have clarity about the process and a proper framework for decision-making. We have concerns that the idea of referring certain works like demolition or changes to the interiors of II* buildings will not work well without clarifying guidance. The responsible professional decision maker, at whatever level that may be, will want to have engaged with the full case history of the building, considering and consenting other options, and not just the final stage where it is too late for any other option to be explored. A decision made either by the LPA or by Welsh Government should always be made with input from an appropriately qualified conservation professional.</p>				

Q3	Do you have any other comments to make in relation to the proposals outlined in this consultation paper?	Yes	Yes (subject to comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p>The issue of how conditions are discharged needs to be resolved.</p> <p>In terms of effectiveness, the proposals should help speed up decision making. The additional issue not covered in the consultation stems from discharging conditions, which again are not the responsibility of the LPA to resolve but for WG. However, WG Planning Division do not handle these but Cadw. So any discharge details are submitted to Cadw, who then consider but still requiring WG to issue the discharge note. Hopefully, this proposal would largely also remove this delaying issue.</p> <p>The interior of Grade II listed buildings is already less-than-well-served; the bar for statutory consultation is already somewhat blurry because the 2015 Direction for Handling Heritage Applications says that ‘a proposal to demolish any principal internal element of the structure including any staircase, load-bearing wall, floor structure or roof structure is treated as a proposal for the demolition of a substantial part of the interior’, and that is already usually interpreted as meaning, restricted to those examples, whereas the meaning</p>				

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clearly allows for other things to qualify. The concept of significance supports this interpretation - 'principal' can't simply be judged on size or load-bearing capacity.

Q4

We would like to know your views on the effects that changes to listed building consent applications would have on the Welsh language, specifically, on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Comments:

It is important that proposals for historic buildings are considered by qualified conservation professionals regardless of the language in which they are made. It is important that the same details are provided whatever language the application is made in. IHBC do not have evidence of the number of applications which are likely to be made in either language or on the capacity of Welsh conservation professionals who would be making decisions on applications concerning heritage assets. We cannot therefore make a constructive comment on this question.

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Q5	<p>Please also explain how you believe the proposed policy for changes to listed building consent applications could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.</p>
<p>Comments: Many Authorities, especially those with a pro active Welsh language policy, already accept applications in Welsh. For example in Anglesey where 70% of inhabitants use Welsh as their first language Listed Building Consents are accepted in English or Welsh in either language and dealt with in the submitted language.</p>	

<input checked="" type="checkbox"/> I am happy for my name/or address to be published with my response (please tick)
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How to Respond

Please submit your comments in any of the following ways:

Email
Please complete the consultation form and send it to : Planconsultations-b@gov.wales Please include 'Changes to listed building consent applications – WG40035' in the subject line.
Post
Please complete the consultation form and send it to: Changes to listed building consent applications Planning Directorate Welsh Assembly Government Cathays Park Cardiff CF10 3NQ
Additional information
If you have any queries on this consultation, please: email: planconsultations-b@gov.wales ; or telephone: Owain Williams on 03000 25 1715