



## Planning Guide - Call-in of planning applications

The process of taking responsibility for a decision on a planning application away from a local planning authority (LPA) is known as "call-in"<sup>1</sup>. The majority of planning applications are determined by LPAs; however since 1999, the National Assembly for Wales has had the reserve power to instruct a planning authority in Wales to refer to it a particular application in order for a decision on the application to be made by a special committee of the Assembly, known as the Planning Decision Committee. From May 2007, as a result of the *Government of Wales Act 2006*<sup>2</sup>, the power to "call-in" and determine the most important/ controversial planning applications in Wales has transferred to Welsh Ministers.

### What is the power to call-in planning applications?

Section 77 of the *Town and Country Planning Act 1990*<sup>3</sup> (TCPA 1990) confers on Welsh Ministers a power to "call-in" for determination a planning application made to LPAs in Wales:

- (1) The National Assembly for Wales<sup>3</sup> may give directions requiring applications for planning permission, or for the approval of any LPA required under a development order, to be referred to itself instead of being dealt with by local planning authorities.
- (2) A direction under this section—
  - (a) may be given either to a particular local planning authority or to local planning authorities generally; and
  - (b) may relate either to a particular application or to applications of a class specified in the direction.
- (3) Any application in respect of which a direction under this section has effect shall be referred to the Assembly<sup>3</sup> accordingly.

If it determines to exercise the power under section 77 of the TCPA 1990, the appropriate Welsh Minister must do so before the LPA has determined the application.

The fact that an application is called in does not result in an automatic refusal of planning permission. In a recent case, the High Court stated in respect of the function of the call-in procedure, that-

"A decision to call in an application is not a decision to refuse an application. All that will happen as a consequence of this decision will be that the merits of the Claimant's application for planning permission will be scrutinised before an independent inspector at a public inquiry and then decided at the highest level in the planning system"<sup>4</sup>

### Can anyone ask for a planning application to be called-in?

The decision to call in an application is a matter for the Minister for Environment, Sustainability and Housing.

<sup>1</sup> Welsh Assembly Government, *National Assembly for Wales Development Control*, <http://new.wales.gov.uk/topics/planning/Planprocdec/Callinappeals/?lang=en>

<sup>2</sup> The *Government of Wales Act 2006*, <http://www.lexisnexis.com/uk/legal/search>

<sup>3</sup> *Town and Country Planning Act 1990*, <http://www.lexisnexis.com/uk/legal/results/docview>

<sup>4</sup> *R (on the application of Hadfield) v. Secretary of State for Transport, Local Government and the Regions* [2002] EWHC 1266 (Admin), per Sullivan J.



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Applicants, as well as third parties to a planning application can ask the Assembly Government to exercise its statutory power to call-in an application, before it has been decided, by writing to the Planning Division:

Planning Division  
Welsh Assembly Government  
Cathays Park  
CF99 1NA

The Minister is not obliged to call-in an application simply because a request has been made: the power conferred by section 77 of the TCPA 1990 is discretionary in nature.

Depending on the circumstances of the case, ministerial discretion as to whether or not an application should be called-in may also be subject to judicial review (eg procedural impropriety, manifest unreasonableness or irrationality in the decision-making process).

### **In what circumstances will an application be called-in?**

Ordinarily, Welsh Ministers will only “call-in” applications where it considers that substantive planning issues of more than local importance exist. Regarding the circumstances in which Welsh Ministers will consider calling-in an application, section 4.12 of *Planning Policy Wales*<sup>5</sup> provides:

"4.12.1 Development proposals are generally best determined locally by planning authorities that know their area, its needs and sensitivities. The Assembly<sup>6</sup> does not interfere with local planning authorities' jurisdiction unless it is necessary to do so. The Assembly's<sup>5</sup> powers to call in planning applications are used selectively. Each case is looked at individually. Call in is generally only considered where an application raises planning issues of more than local importance which could include, for example, issues that:

- are in conflict with national planning policies;
- could have wide effects beyond their immediate locality;
- may give rise to substantial controversy beyond the immediate locality;
- are likely significantly to affect sites of scientific, nature conservation or historic interest or areas of landscape importance;
- raise issues of national security; or
- raise novel planning issues".

LPAs are required to notify the Assembly Government of all applications that, if permission were to be granted, would significantly depart from policies set out in the development plan for the area (known as 'departure applications'). LPAs are also required to notify the Assembly Government of planning applications for major shopping developments<sup>7</sup>.

The Minister may also “recover”, for her own determination, planning appeals made under section 78 of the TCPA 1990. *Planning Policy Wales*<sup>8</sup> states in paragraph 4.11.2:

"The Assembly has powers to recover planning appeals from the Inspectorate and determine them itself. Those powers are used in cases involving:

- residential development of more than 150 houses or on more than 6 hectares of land;
- retail developments of over 10,000 square metres;
- major proposals for the winning and working of minerals;

<sup>5</sup> Welsh Assembly Government, March 2002, *Planning Policy Wales*, <http://new.wales.gov.uk/docrepos/40382/4038231121/403821/403821/403828/planningpolicy-e.pdf?lang=en>

<sup>6</sup> Welsh Ministers from May 2007

<sup>7</sup> Welsh Office Circular 61/93, *Town and Country Planning (Shopping Development) (England and Wales) No. 2 Direction 1993*, [http://www.communities.gov.uk/pub/274/Circular1593TownandCountryPlanningShoppingDevelopmentEnglandandWalesNo2Directio3\\_id1163274.pdf](http://www.communities.gov.uk/pub/274/Circular1593TownandCountryPlanningShoppingDevelopmentEnglandandWalesNo2Directio3_id1163274.pdf)

<sup>8</sup> *ibid*



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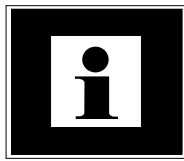
- proposals for major developments which could have wide effects beyond their immediate locality;
- proposals giving rise to substantial controversy beyond the immediate locality;
- proposals which raise novel planning issues;
- proposals which raise significant legal difficulties;
- proposals to which a Central Government Department has objected; or
- cases that can only be decided in conjunction with a case over which an Inspector has no jurisdiction".

### What is the procedure when an application is called in?

The "call-in" procedure involves a planning inspector, appointed by Welsh Ministers, holding a public local inquiry before submitting a full written report to the appropriate Welsh Minister. Public local inquiries held under section 77 of the TCPA 1990 must comply with *The Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003*<sup>9</sup>, which prescribe the procedure for the inquiry. For more information on the public local inquiry, see Planning Quick Guide 52: Planning Appeals- Further Information.

Officials of the Welsh Assembly Government then consider the Inspector's report, and the Minister makes a decision on the application. The decision of the Minister is final<sup>10</sup>. Prior to May 2007 these decisions were made by a Planning Decision Committee elected by the National Assembly for Wales for that particular purpose.

Depending on the circumstances of the case, the Minister's decision may be subject to judicial review in appropriate cases (eg procedural impropriety, manifest unreasonableness or irrationality in the decision-making process).



#### Further Information:

The statutory provisions cited above may be subject to subsequent amendment; the consolidated text of those provisions can be obtained from Butterworths' *LexisNexis* service:

[http://assembly/presidingoffic/mrs/resources/electronic/qlinks\\_lexisnexis.htm](http://assembly/presidingoffic/mrs/resources/electronic/qlinks_lexisnexis.htm)

Planning Inspectorate Wales (PINS) has published *A Guide to Called In Planning Applications*: [http://www.planning-inspectorate.gov.uk/cymru/wal/appeals/advert\\_appeals/called\\_in\\_appeals\\_guide\\_e.htm](http://www.planning-inspectorate.gov.uk/cymru/wal/appeals/advert_appeals/called_in_appeals_guide_e.htm)

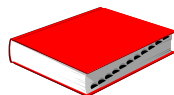
The Welsh Assembly Government has published comprehensive guidance on the revised procedure for determining planning appeals and called-in applications under Circular 07/2003, *Planning (And Analogous) Appeals and Call-in Procedures*. This guide has not yet been updated to reflect the changes introduced as a result of the *Government of Wales Act 2006*.

Circular 07/2003 is available in printed form from the Members' Library; alternatively, an electronic version can be obtained from the Planning Inspectorate: [http://www.planning-inspectorate.gov.uk/cymru/wal/appeals/planning\\_appeals/documents/NAFWC07-03-e.pdf](http://www.planning-inspectorate.gov.uk/cymru/wal/appeals/planning_appeals/documents/NAFWC07-03-e.pdf)



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<sup>9</sup> *The Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003*, SI 2003/1266, <http://www.lexisnexis.com/uk/legal/results/pubTreeViewDoc.do?nodeld=TAAFABRAAP&pubTreeWidth=566>

<sup>10</sup> *Town and Country Planning Act 1990*, section 77(7).