

## **Explanatory Memorandum to the Planning (Listed Buildings and Conservation Areas) (Wales) (Amendment) Regulations 2021.**

This Explanatory Memorandum has been prepared by the Planning Directorate and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Planning (Listed Buildings and Conservation Areas) (Wales) (Amendment) Regulations 2021. I am satisfied the benefits justify the likely costs.

**Julie James**  
**Minister for Climate Change**

**16 July 2021**

## **PART 1 – Explanatory Memorandum**

### **1. Description**

- 1.1 The Planning (Listed Buildings and Conservation Areas) (Wales) (Amendment) Regulations 2021 (“the 2021 Regulations”) remove the requirement for Local Planning Authorities (“LPA”) to submit applications for Listed Building Consent (“LBC”) to the Welsh Ministers for determination where they are the applicant. The change applies to any LBC application which relates to the alteration or extension of a listed building.
- 1.2 Any LBC application for the demolition of a listed building where the LPA are the applicant will still be required to be submitted to, and determined by, the Welsh Ministers.
- 1.3 To mitigate any potential conflicts of interest or issues concerning impartiality of LPAs determining their own LBC applications, the 2021 Regulations includes provision to the effect that where an LPA is to determine an application for LBC which relates to the alteration or extension of a listed building in their area, any committee, sub-committee or officer involved in the management of the building to which the application relates, cannot determine the application.

### **2. Matters of Special Interest to the Legislation, Justice and Constitution Committee**

- 2.1 None.

### **3. Legislative Background**

- 3.1 Section 7(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the 1990 Act”) provides that subject to the subsequent provisions of that Act, no person shall execute or cause to be executed any works for the demolition, alteration or extension of a listed building in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised by section 8.
- 3.2 Section 8(1) of the 1990 Act provides that works for the alteration or extension of a listed building are authorised if written consent for the execution of those works has been granted by the LPA or the Welsh Ministers, and the works are executed in accordance with the terms of that consent and any conditions attached to it. Consent under section 8(1) (and also section 8(2) and (3)) is referred to as “listed building consent”.
- 3.3 Section 82(2) of the 1990 Act provides that various provisions of that Act (as set out in section 82(3)) apply to applications made by LPAs relating to the execution of works for the demolition, alteration or extension of listed

buildings, subject to such exceptions and modifications as may be prescribed in regulations by the Welsh Ministers.

- 3.4 The power in section 82(2) has previously been exercised by the Welsh Ministers in the Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012 (“2012 Regulations”). Regulation 9 of the 2012 Regulations has the effect of modifying the provision in section 8(1) of the 1990 Act that either the LPA or the Welsh Ministers can grant listed building consent, to instead providing that an application for consent must only be made to the Welsh Ministers where an LPA requires listed building consent relating to the execution of works for the demolition, alteration or extension of a listed building in their area.

#### **4. Purpose and intended effect of the provisions**

##### Policy rationale

- 4.1 The general purpose of the legislation is to:
- Increase and improve decisions made at the local level where LPAs benefit from greater local knowledge to effectively assess any potential impacts of proposed works to listed buildings;
  - Improve timescales for determination. LPAs currently have a statutory target to determine LBC applications within 8 weeks. Applications by LPAs currently follow a typical process whereby the LPA will take approximately 8 weeks to register, consult upon, analyse and make a committee resolution for an LBC application in advance of submission to the Welsh Ministers. The Welsh Ministers then have a 12 week target to make a determination. This is considered disproportionate when compared to the usual scale and complexity of the majority of LBC applications; and
  - Align the determination of LBC applications more closely with planning applications as LPAs currently have the authority to determine their own planning applications for development, which often relate to major schemes.

##### Effect of legislation

- 4.2 Regulation 9(2) of the 2012 Regulations requires applications made by LPAs for LBC within their area to be made to the Welsh Ministers to determine. This applies to the demolition, alteration or extension of a listed building. However, prior to submitting an application for LBC to the Welsh Ministers, the LPA must undertake certain publicity and notification of the intended works by virtue of Regulation 9(4).
- 4.3 The effect of the legislation is that LPAs would now determine their own LBC applications in accordance with the procedures set out in the 1990 Act and

2012 Regulations (as amended by the 2021 Regulations), but only for those applications which relate to the alteration or extension of a listed building.

- 4.4 However, LPAs would still be required to carry out publicity activity, but applications by them for the alteration or extension of a listed building in their area would now have to comply with the requirements in regulation 10.
- 4.5 The effect of the legislation will be to have LPAs determine applications for LBC where the listed building is in their area and the application relates to an alteration or extension. To ensure the historic environment is protected there remain safeguards in place. For example, safeguards exist in the current process for determining LBCs to ensure appropriate scrutiny is given to applications which are determined by LPAs. Where an LPA is minded to grant LBC, section 13 of the 1990 Act requires it first notify the Welsh Ministers, who then make a decision whether to call-in the application for their own determination under section 12, or allow the LPA to proceed with their decision. Section 15 provides that the Welsh Ministers may direct that section 13 does not apply to certain descriptions of applications for LBC. For example there is currently a general direction in place removing the requirement to notify Cadw of an application for listed building consent for works only affecting the interior of a Grade II (unstarred) listed building. The notification and call-in provisions help ensure a certain level of scrutiny of what are valuable historic assets by historic environment officials working on behalf of the Welsh Ministers, which is particularly important where LPAs do not have conservation or historic environment expertise within their authority.
- 4.7 Furthermore, section 12 of the 1990 Act provides for the Welsh Ministers with a general power to make directions requiring applications for LBC to be referred to themselves (i.e. called in), instead of being dealt with by an LPA. This can relate to either a particular application, or to applications in respect of such buildings as may be specified in a direction<sup>1</sup>.
- 4.8 The 2021 regulations also remove the right of appeal where LPAs determine their own applications for LBC and they do not apply to LBC applications for the demolition of a listed building. LBC applications for demolition will continue to be determined by the Welsh Ministers.
- 4.9 The 2021 regulations include transitional provisions to state they do not apply to any application made under regulation 9(2) of the 2012 Regulations before the coming into force date (16 August 2021) of the 2021 Regulations.

## **5. Consultation**

- 5.1 Proposals to transfer decision-making powers from the Welsh Ministers to LPAs for LBC applications which relate to the alteration or extension of a listed building were put forward in the *'Changes to listed building consent*

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<sup>1</sup> Section 12(1) and (2) of the Planning (Listed Buildings and Conservation Areas) Act 1990

*applications – Applications for listed building consent by local authorities’* consultation paper.

- 5.2 The consultation paper was published on 9 March 2020 and was open for responses until 8 June 2020. The consultation generated 44 responses.
- 5.3 In considering those stakeholders most likely to be impacted by the proposals (both individuals and organisations), a list was drawn up which included all LPAs in Wales, public bodies, businesses/planning consultants and special interest groups. Consultees were asked to assign themselves to one of six broad categories indicated in the table below which shows the breakdown of responses by category.

<b>Table 1 – Breakdown of Respondents</b>		
<b>Category</b>	<b>Number</b>	<b>% of total</b>
Business / Planning Consultants	6	14%
Local Authorities (including National Park Authorities)	14	32%
Government Agency / Other Public Sector	5	11%
Professional Bodies / Interest Groups	4	9%
Voluntary Sector	10	23%
Others (other groups not listed)	5	11%
<b>Total</b>	<b>44</b>	

- 5.4 A summary of the consultation and government response has been published on the Welsh Government website. A link to this document is provided below:
- <https://gov.wales/changes-listed-building-consent-applications>
- 5.5 To summarise the substantive consultation questions, responses were mixed in relation to the proposal for LPAs to determine their own applications for listed building consent, where the proposal relates to an extension or alteration of a listed building. However, a majority agreed with the proposal.

- 5.6 Of those who disagreed with the proposal, their main concerns were issues of impartiality and potential conflicts of interest, if LPAs were to determine their own applications for listed building consent which relate to alterations or extensions. However, our view is there will be sufficient measures in place to require notification to the Welsh Ministers and potential opportunity for the Welsh Ministers to call in an application. Furthermore, LPAs determining their own applications is not without precedent as they already have such powers in relation to planning permission.
- 5.7 There was also support for the Welsh Ministers retaining decision-making responsibilities for LBC applications which relate to the demolition of a listed building.

## **Part 2 – Regulatory Impact Assessment**

### **Changes to listed building consent applications**

61. Two options have been considered:

- Option 1 – Do nothing (i.e. retain the existing process so all applications for LBC where the LPA would be the applicant, are submitted to and determined by the Welsh Ministers).
- Option 2 – Transfer decision-making powers for LBC applications relating to the alteration or extension of a listed building where the LPA is the applicant, from the Welsh Ministers to the relevant LPA.

**Option 1 – Do nothing (i.e. retain the existing process so all applications for LBC where the LPA is the applicant are submitted to and determined by the Welsh Ministers).**

#### Description

- 6.2 This option would retain the status quo. All applications for LBC where the LPA is the applicant, are required to be submitted to the Welsh Ministers for determination.
- 6.3 Generally, LPAs would be required to register, consult upon, analyse and make a committee resolution for an LBC application in advance of submitting an application to the Welsh Ministers. The Welsh Minister then have a 12 week target to make a determination and notify the LPA of their decision.

#### **Costs:**

#### Welsh Government

- 6.4 The Welsh Ministers receive approximately 31 LBC applications each year from LPAs where that LPA is also the applicant and relates to the alteration or extension of a listed building.
- 6.5 It takes on average, 3 hours for an Executive Officer (“EO”) within the Planning Directorate to undertake the administration duties relating to an application which includes filing the application and accompanying documents / information, requesting advice from Cadw officers and drafting a decision letter. Based on the average hourly salary for an EO at £22, this equates to £66 per application and £2,046 annually.
- 6.6 A Senior Executive Officer (“SEO”) for Cadw will then assess the application and accompanying documentation / information themselves, undertake a site visit if considered necessary and provide an assessment of the application and a recommendation of whether to grant LBC or not, along with any suggested conditions.

- 6.7 Although the officer time required to complete these tasks will vary on a case-by-case basis, Cadw estimate on average, 6 hours would be spent on an application. Based on the average hourly salary of an SEO being £36, this equates to £216 per application and £6,696 annually.
- 6.8 Following receipt of Cadw's assessment and recommendation, a Higher Executive Officer ("HEO") from the planning directorate will then assess the application and accompanying documents / information in addition to advice provided by Cadw officers before finalising the decision letter, including any conditions which are considered necessary. This takes on average 4 hours per application. Based on the average hourly salary for an HEO at £28, this equates to £112 per application and £3,472 annually.
- 6.9 This provides a total cost to the Welsh Government of £394 per application and approximately £12,200 annually.

### LPA

- 6.10 Prior to submitting its LBC application to the Welsh Ministers for determination, LPAs will be required to produce the application and supporting documentation, validate the application, carry out the necessary publicity and notification requirements, analyse any responses and make a committee resolution.
- 6.11 It is estimated a planning officer within an LPA would spend approximately 15 hours undertaking these tasks, with the equivalent of a senior planning officer providing specialist advice at approximately 3 hours per application.
- 6.12 Based on the average hourly salary of a local authority planning officer being £22 and the average hourly salary of a local authority senior planning officer being £27, this results in a cost of £411 per application. However, LPAs are also required to advertise applications within a newspaper circulating within the locality of their area. While this cost varies across different publications, the estimated average cost is £380 per application and therefore, the total costs to LPAs per application are £791 and £24,500 annually.

## **Benefits**

### Welsh Government

- 6.13 Although the Welsh Ministers would retain determination powers for these applications which can help ensure effective and robust decisions are made on works relating to listed buildings, there are no significant benefits to retaining the current process.
- 6.14 Applications for LBC submitted to the Welsh Ministers for determination that relate to alterations or extensions of listed buildings very rarely relate to works which are controversial or will amount to the demolition of a listed building. This means determining these applications can occupy a disproportionate



amount of officer time which may be better spent dealing with other casework which is of national significance.

## LPAs

- 6.15 There are no identifiable benefits to LPAs. Prior to submitting an application to the Welsh Ministers for determination, LPAs are under a duty to register, consult upon, analyse and make a committee resolution for each application, which on average takes approximately 8 weeks. The Welsh Ministers then have a 12 week target following submission of an application to make a determination. The duplication of work undertaken by LPAs and the Welsh Ministers means applications for LBC, even minor works, can take approximately 5 months to determine which is considered disproportionate based on the scale and complexity of the majority of applications.

### **Option 2 – Transfer decision-making powers for LBC applications relating to the alteration or extension of a listed building where the LPA is the applicant, from the Welsh Ministers to the relevant LPA.**

#### Description

- 6.16 This option would see a transfer of decision-making powers so LPAs could determine their own applications for LBC where the application relates to the alteration or extension of a listed building.
- 6.17 LPAs would no longer be required to submit every application for LBC made by them to the Welsh Ministers to determine. However, where the LPA would be minded to grant LBC for an application, there would still remain the requirement to notify the Welsh Ministers of this. The Welsh Ministers would then decide whether to allow the LPA to grant consent, or to call in the application for their own determination, although this notification requirement may be dis-applied in certain circumstances by a direction issued by the Welsh Ministers<sup>2</sup>.
- 6.18 This option does not apply to applications for LBC which relate to the demolition of a listed building. These applications would continue to be determined by the Welsh Ministers with no exceptions.

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<sup>2</sup> Some LPAs are excluded from the requirement to notify the Welsh Ministers through delegated authority under the direction of the Welsh Ministers (if such a direction has been given under section 15 of the 1990 Act) which would allow LPAs to determine their own LBC applications without the requirement to notify the Welsh Ministers if they are minded to grant consent. This delegated authority extends to a number of LPAs whose conservation service meets minimum requirements and relates only to Grade II Listed Buildings.

## **Costs:**

### Welsh Government

- 6.19 Although this option would see the transfer of decision-making powers from the Welsh Ministers to LPAs, there would be still some costs associated to the Welsh Government.
- 6.20 Where the Welsh Ministers are notified by the LPA of their intention to grant LBC the Welsh Ministers would then assess the application and either allow the LPA to grant consent, or call the application in for their own determination.
- 6.21 On average, 31 LBC applications for the alteration or extension of a Listed Building are made by LPAs each year. As a percentage, the Welsh Ministers approve approximately 98% of LBC applications received from LPAs.
- 6.22 On this basis, it is estimated 30 applications per year will be submitted to the Welsh Ministers because the relevant LPA is minded to grant LBC. We estimate an SEO spending approximately 2 hours assessing an application and making a decision on whether the LPA can grant consent, or if the application should be called in for determination by the Welsh Ministers. Based on the average hourly salary of an SEO being £36, this equates to £72 per application and £2,160 per annum.
- 6.23 Furthermore, there may be circumstances where an LPA is minded to grant LBC, notify the Welsh Ministers of its intention to do so and the Welsh Ministers then call in an application for their own determination.
- 6.24 However, the Welsh Ministers have only called-in 1 application for LBC in the past 5 years, which equates to an average of 0.2 applications per year, from approximately 1,000 LBC applications submitted across Wales. This equates to 1 application being called-in over a 5 year period from approximately 5,000 LBC applications in total.
- 6.25 On the basis of LPAs determining an additional 31 applications per year in addition to the other 1,000 LBC applications being submitted, the total figure for called-in applications will be negligible. It is therefore estimated the Welsh Ministers are unlikely to call in any new applications per year.
- 6.26 Therefore, the total cost of this option to the Welsh Ministers is estimated to be approximately £3,200 per year. This represents a cost-saving of approximately £9,000 per annum relative to the baseline, with the staff resources available for another purpose.

## LPA

- 6.27 Costs to LPAs will be broadly similar to those identified in Option 1 as they will still be required to produce the application and supporting documentation, carry out the necessary publicity and notification requirements, analyse any responses and make a committee resolution. However, they would also be required to produce decision letters to indicate whether consent is to be granted or refused.
- 6.28 It is estimated a senior planning officer would spend approximately 4 hours assessing an application and writing a decision letter. Based on the average hourly salary of a senior planning officer being £27, this equates to approximately £108 per application. Based on 31 applications per year, this provides a total additional cost of £3,348 for this option.
- 6.29 Including the £24,500 outlined in paragraph 6.12, this means the total costs to LPAs per year is approximately £27,800.

## **Benefits**

### Welsh Government

- 6.30 The main benefit of this option to the Welsh Government is the ability to focus resource on casework which is of national significance, particularly as the majority of LBC applications for alterations and extensions to listed buildings are often minor in nature and very rarely relate to works which are controversial.
- 6.31 Another benefit to the Welsh Government is the safeguards currently in place to ensure decisions would not be detrimental to the protection of historic buildings will apply to applications made by the LPA and determined by the LPA. For example, where an LPA is minded to grant LBC, in the majority of cases section 13 of the 1990 Act requires it first notify the Welsh Ministers, who then make a decision whether to call-in the application for their own determination, or allow the LPA to proceed with their decision, subject to exceptions set out by direction. This helps ensure a certain level of scrutiny of what are valuable historic assets by historic environment officials working on behalf of the Welsh Ministers, which is particularly important where LPAs do not have conservation or historic environment expertise within their authority.
- 6.32 Furthermore, section 12 of the 1990 Act provides for the Welsh Ministers to make directions requiring applications for LBC to be referred to themselves (i.e. called in), instead of being dealt with by an LPA. This can relate to either a particular application, or to applications in respect of such buildings as may be specified.

## LPA:

- 6.33 This option would benefit LPAs by significantly reducing the timescales for determination of LBC applications for the alteration or extension of a listed building by approximately 3-4 months.
- 6.34 It also brings further decision-making powers back to the local level where LPAs benefit from increased and substantial local knowledge.

### **Justification for two options**

- 6.35 Applications for LBC which relate to the alteration or extension of a listed building are determined by either the Welsh Ministers or the LPA.
- 6.36 Therefore, we consider there to be only two viable options, which would be to retain the existing process whereby all applications for LBC relating to the alteration or extension of a listed building where the determining LPA is also the applicant, must be made to the Welsh Ministers, or, to transfer these decision-making powers to LPAs, enabling them to determine their own applications for LBC, but only where the application relates to the alteration or extension of a listed building.

*Table 1: Total costs for the preferred option: Option 2*

	<b>Existing Costs</b>	<b>Additional Cost / Saving</b>
Welsh Government	£12,200	-£9,000
LPAs	£24,500	£3,200

### **Summary and preferred option**

- 6.37 The current process for determining LBC applications which relate to the alteration or extension of a listed building where the LPA would be both the determining authority and the applicant provide little benefit to either the Welsh Ministers or LPAs.
- 6.38 LPAs will often spend as much time on preparing a submission to the Welsh Ministers as it would take to determine the application itself. The Welsh Ministers then have a 12 week target to validate, consult, analyse and make a determination and this duplication of work between LPAs and the Welsh Ministers can result in an LBC even for minor works taking 5 months to determine.

- 6.39 This is considered significantly disproportionate as the majority of LBC applications for an alteration or extension to a listed building are generally not contentious and minor in nature. It is considered that there are sufficient safeguards in place to ensure the protection of the historic environment in cases where an application could be contentious or amount to significant extension/alteration.
- 6.40 Option 2 is therefore the preferred option as it will significantly help reduce timeframes for decisions, bring further decision-making powers back to the local level and ensure the Welsh Ministers can focus more time and resource on developments which are nationally significant.

### **Competition Assessment**

- 6.41 The Regulations are not expected to have any impact on the level of competition in Wales or the competitiveness of Welsh firms.