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Llywodraeth Cymru
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Consultation Document

The Use of Planning Conditions for Development Management

Date of issue: **29 January 2014**
Responses by **25 April 2014**

Overview

Detailed guidance on the imposition of conditions is set out in Circular 35/95. That advice is now over 15 years old and it contains references to legislation which has been revised or replaced.

A number of recommendations have been made in the 'Study to Examine the Planning Application Process' and by the Independent Advisory Group with regard to the application and use of planning conditions. This consultation proposes to replace circular 35/95, and provide contemporary guidance with regard to the effective implementation of planning conditions, as well as provide an updated list of model conditions to promote best practice in the use of conditions in Wales.

How to respond

The consultation paper includes a set of specific questions to which the Welsh Government would welcome your views.

The closing date for replies is **25 April 2014**.

You can reply in any of the following ways:

E-mail:

Please complete the consultation response form (at Annex 2) and send it to: planconsultations-b@wales.gsi.gov.uk

(Please include 'Conditions Consultation - WG19178' in the subject line)

Post:

Please complete the consultation response form (at Annex 2) and send it to the address provided under the 'Contact Details' section.

Further information and related documents

Large print, Braille and alternate language versions of this document are available on request.

The proposed guidance is contained in Annex 1 (Draft Circular: The Use of Planning Conditions in Development Management)

The suggested model conditions are contained in Appendix A of the draft circular.

Circular 35/95 (The Use of Conditions in Planning Permissions), which this consultation document proposes to replace with the draft circular (Annex 1) is available at:

<http://wales.gov.uk/topics/planning/policy/circulars/welshofficecirculars/circular3595>

Contact details

All responses should be sent by **25 April 2014** to:

Conditions Consultation
Development Management Branch
Planning Division
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Email: planconsultations-b@wales.gsi.gov.uk

(Please include 'Conditions Consultation - WG19178' in the subject line)

If you have any queries regarding this consultation, please use the e-mail address above, or phone Owain Williams on 029 2082 1715

Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

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. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have

withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

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Annex 1 – Draft Circular – Use of Planning Conditions in Development Management

Annex 2 – Consultation Response Form

Annex 3 – List of Bodies / Organisations informed of the Consultation

Section 1

1.0 Introduction and Overview

Purpose of this document

- 1.1 Guidance on the imposition of conditions is already set out in Circular 35/95¹, however, that advice is now nearly 18 years old and contains references to legislation which has been revised or replaced. In some cases, the advice contained within the circular has been superseded by later guidance in Technical Advice Notes (TANs) and circulars.
- 1.2 The attached draft circular therefore intends to provide contemporary guidance with regard to the effective implementation of planning conditions, as well as an updated list of model conditions to promote best practice in Wales, whilst retaining the elements of Circular 35/95 which remain relevant. However, much of the information contained in Circular 35/95 remains useful and so has been retained where that is the case.
- 1.3 This consultation paper is the Welsh Government's response to recent recommendations made in the Study to Examine the Planning Application Process in Wales and the report by the Independent Advisory Group² with regard to the application and use of planning conditions. This consultation proposes to issue a new circular, to replace Circular 35/95.

Evidence for Change

*Study to Examine the Planning Application Process in Wales*³

- 1.4 This 2010 study, undertaken by GVA Grimley, identified some concerns, and subsequently made recommendations, relating to planning conditions (Recommendation 16). It identified the views of practitioners that an increasing number of onerous conditions are being attached to decision notices by local planning authorities resulting in delays whilst LPA's maintained that some conditions don't go far enough or are not enforced appropriately.
- 1.5 The study concluded that the reported issues were due to: the inadequacy of pre-application discussions; a lack of time available to resolve problems (due to the pressure on authorities to make quick

¹ Link to Circular 35/95:

<http://wales.gov.uk/topics/planning/policy/circulars/welshofficecirculars/circular3595>

² Towards a Welsh Planning Act: Ensuring the Planning System Delivers:

<http://wales.gov.uk/topics/planning/planningresearch/publishedresearch/towardsawelshplanningact>

³ Link to Study:

<http://wales.gov.uk/topics/planning/planningresearch/planningapproach/papers/planningapproachstudy>

decisions), and, the desire of applicants to leave matters of detail until after the principle has been agreed. This pointed to the need for improved contemporary guidance on the scope and content of planning conditions in Wales.

- 1.6 It was recommended that particular attention should be paid to better standardisation of planning conditions and that clear guidance on the use of planning conditions should be issued providing specific advice on:

Recommendation 16 of Study to Examine the Planning Application Process in Wales

- a) the better categorisation of conditions;
- b) a more proportionate approach to the pre-commencement stage and pre-commencement of prior notification conditions;
- c) the inclusion of conditions that allow more flexibility to planning permissions;
- d) the involvement of statutory consultees and other groups in the drafting of conditions and approval of information submitted to discharge them;
- e) the use of the term “unless otherwise agreed with the planning authority” (and the limits or extension of such an approach where the condition has been requested by a third party);
- f) the connection possible between conditions and obligations;
- g) guidance on the link between effective monitoring and enforcement and the content (and scope) of planning conditions;
- h) the introduction of timescales for the discharge of conditions; and
- i) the scope to discuss conditions at the pre-application and validation stages so that applicants are aware of the likely requirements (and can make or adjust submissions accordingly)

- 1.7 This consultation will take forward the majority of the above recommendations, with the exception of 16 (f), which will be considered in a later consultation paper, and 16 (h) for which provision already exists under Article 23 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012.

Towards a Welsh Planning Act: Ensuring the Planning System Delivers

- 1.8 In September 2012 the IAG was published their report and made three specific recommendations were made with regards to planning conditions:

Recommendations of IAG with regard to planning conditions

87. The Welsh Government gives priority to updating guidance on planning conditions, including model conditions reflecting current best practice;

88. The Planning Bill contains express power to attach a planning condition that makes the commencement of development conditional on the execution of a planning obligation, and
89. The Welsh Government consults on the future of local Act powers to impose bonds or other financial guarantees for the restoration of coal sites in the event of default by the developer.

1.9 This consultation paper intends to take forward recommendation 87. It is not proposed to take forward recommendations 88 and 89 at this time.

What We Want To Achieve

- 1.10 In light of the above recommendations, the attached proposed circular aims to:
- update the information contained in Circular 35/95;
 - standardise decision notices in Wales;
 - encourage proportionate and flexible use of conditions;
 - encourage cooperation and negotiation in the formulation of planning conditions;
 - encourage consideration of the monitoring and enforcement implications of a condition, and
 - provide a list of contemporary model planning conditions.

2.0 Proposed Changes

Update Circular 35/95

- 2.1 Much of the information contained in Circular 35/95 remains useful and relevant, although is outdated in some instances. It is intended to retain the useful information from Circular 35/95, including much of the information with regards to the six tests, which are still considered to be best practice. Additional information has been included within the proposed circular to tackle contemporary issues with regards to planning conditions. References to legislation, guidance and case law have been updated where necessary.
- 2.2 The structure of the circular has also been re-arranged to make it more logical. Chapters have been introduced, with a chapter on drafting, agreeing and discharging conditions (Chapter 4.0) logically following on from a chapter on the six tests (Chapter 3.0). Chapter 5.0 discusses the regulation of different types of development through conditions. Much of the detail of this chapter has been obtained from Circular

35/95 although new sections have also been included on: advertisements; contaminated land; drainage; fume extraction; Grampian conditions; Gypsy travellers; hours of operation; rural enterprise dwellings; One Planet development; Renewable Energy, and, sustainable building.

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| Q1 | Do you think an updated circular on conditions is required? |
| Q2 | Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular? |
| Q3 | Do you consider: i) that all six tests are still relevant today and should be retained? ii) that there are additional tests that could be used (demonstrate with case law if possible)? |
| Q4 | Do you consider that any significant pieces of recent case law have been overlooked, which would provide better examples than those used, to support the text? |
| Q5 | Are there any topic areas in Chapter 5.0 which should be expanded on, or, are there any new topic areas you consider should be included? |

Standard Decision Notices

- 2.3 Through identifying an appropriate means of categorising conditions it is hoped to standardise decision notices throughout Wales for a more consistent approach and to reduce confusion for those seeking to develop in more than one LPA area.
- 2.4 Chapter 4.0 of the proposed circular advises that conditions should appear on a decision notice in the order they are to be discharged as a matter of best practice. The time limit condition will appear first followed by, a condition identifying relevant plans, the pre-commencement conditions, pre-occupation conditions and finally regulatory conditions. It is also recommended that a condition is included specifying the approved plans and drawings to which the decision relates is included on all decision notices as a matter of best practice.
- 2.5 Structuring decision notices in this manner by all LPAs in Wales will provide consistency for developers and make it easier for applicants to understand what is required of them at what point.
- 2.6 The alternative is that conditions are structured in terms of related subject, which can cause confusion with regards to what conditions need to be discharged at what point, potentially increasing the risk of a breach of condition occurring.

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| Q6 | Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative. |
| Q7 | Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition? |

Proportionate and Flexible

- 2.7 Conditions should only be imposed where absolutely necessary to enable a development to proceed. The proposed circular emphasises that planning authorities need to be satisfied that the condition being imposed tackles the harm it is intended to offset or mitigate. If it does not, then its needs to be asked why the condition is being added in the first place since superfluous conditions result in unnecessary costs for developers and their monitoring would not be an effective use of officer time.
- 2.8 In addition, planning authorities need to ensure conditions are flexible. They should consider how they can assist the developer in commencing with the development, prevent delay and allow manoeuvrability within a condition. Phasing, for example, can allow a developer to commence, or even complete, on one part of a site whilst information is being put together to comply with a condition in relation to another part of the site.
- 2.9 The draft circular advises that although the term '*unless otherwise agreed by the Local Planning Authority*' and similar 'tail pieces' are too vague and should not be used.

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| Q8 | Do you agree with the approach taken towards the term ' <i>unless otherwise agreed by the Local Planning Authority</i> ' discussed in paragraph 3.36 of the draft circular? If not, please suggest your preferred approach |
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Cooperation and Negotiation

- 2.10 The draft circular advises that, where appropriate, local planning authorities should encourage pre-application discussions involving statutory consultees and developers. By being aware of the likely requirements of various bodies at pre-application stage, applicants will have the opportunity to submit the information upfront. This can help ensure consultation responses are more meaningful, reduce the quantity of information required through conditions and thus speed up the delivery of the development.
- 2.11 Local planning authorities should also seek assistance from statutory consultees and others who offer expert advice, whether these are external bodies or internal departments, in drafting and in discharging conditions to ensure that requirements are adequately met.
- 2.12 Paragraphs 4.2 to 4.4 of the draft circular advise that advance notice of conditions can be provided to applicants before a decision is issued. For major applications it is advised that local planning authorities should provide the applicant with a draft schedule of conditions at least one week before the application is due to be determined. Local planning authorities should also look favourably on requests to view draft conditions from applicants for minor applications.

- 2.13 Advance notice of the conditions likely to be imposed may allow potential problems or conflicts to be resolved before the decision notice is issued.
- 2.14 Pre-applicant meetings with stakeholders can help identify likely issues associated with a development. Having received 'advance notice' of what information they will be expected to provide, applicants can then front load applications. This will allow consultees to provide more meaningful initial responses and reduce the need to attach conditions to the decision, making for a more effective planning process.

Q9 Do you agree that local planning authorities should provide applicants with advance notice of conditions before an application is due to be determined?

Monitoring and Enforcement

- 2.15 The circular emphasises the importance of the link between the contents of a condition and its implications in terms of monitoring and enforcement. The application of the six tests is considered vital in ensuring that a condition is enforceable. Cooperation and consultation with colleagues in relation to the contents of conditions can add a degree of validity to the conditions imposed.
- 2.16 In terms of monitoring, officers and other interested parties need to be able to assess whether the development is progressing as approved and confident that there are no outstanding matters at any given point in the development process. Therefore, conditions need to be clear about what requirements need to be fulfilled and the stage or timeframe within which they should be satisfied.

Q10 Should guidance be provided in the circular in relation to any other conditions related matter?

Model Planning Conditions

- 2.17 Appendix A of Circular 35/95 includes a list of suggested model conditions, however, many conditions listed within it are now outdated. The Planning Inspectorate host a useful live list of suggested model conditions on the Planning Portal website⁴, though at times it refers to Circulars and documents not relevant in Wales.
- 2.18 The IAG report '*Towards a Welsh Planning Act: Ensuring the Planning System Delivers*' identified that model conditions should be updated to reflect current best practice. The list of model conditions (Appendix A of the draft circular) has therefore been updated to reflect current case law and contemporary planning issues whilst applying the six tests.

⁴ Link to Planning Inspectorate's model conditions:
<http://www.planningportal.gov.uk/planning/planninginspectorate/inspector/modelconditions>

- 2.19 The list is intended to provide a reference point for Local planning authorities in drafting conditions to be used in conjunction with the proposed circular. The conditions contained in Appendix A of the draft circular should not be slavishly applied but each condition attached to a grant of planning permission should be tailored to suit a particular development context.
- 2.20 Many of the conditions contained in the new list will be familiar, either being retained or adapted from Circular 35/95, various TANs or the Planning Inspectorate’s list of suggested model conditions.
- 2.21 In many instances, conditions will have to be adapted to suit a particular development context. Some conditions included within the list will be rarely used, for example, conditions in relation to personal permissions and conditions associated with aerodromes. However, the structure of conditions like these may prove useful for officers when drafting conditions for less common types of development. Other conditions, such as those in relation to materials, are likely to be used more regularly.
- 2.22 Conditions have not been listed in the order they are to be discharged, contrary to the approach recommended for decision notices (see paragraphs 4.15 to 4.21 of the draft circular), since it is the topic that is relevant here and the point of discharge should be varied as required. The majority of conditions have therefore been listed in alphabetical order for ease of reference.
- 2.23 The inclusion of conditions associated with sustainable buildings will depend on the conclusion of the review of TAN 22 announced by the Minister for Housing and Regeneration on 17 July 2013⁵. Furthermore, any references made to permitted development rights will be updated where necessary before any final circular is published.

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| Q11 | Does Appendix A of the draft circular contain sufficient examples of model conditions? |
| Q12 | Do you consider that any of the conditions used should be reworded? If so, which conditions and why? Please suggest alternatives if you are able. |
| Q13 | Do you believe any of the conditions fail any of the six tests identified in the circular? |
| Q14 | Should any conditions be totally removed from Appendix A of the draft circular? |
| Q15 | Are there any other types of condition/topic areas which you think should be included within Appendix A of the draft circular? Please give examples. |

⁵ Link to written statement by Minister for Housing and Regeneration on 17 July 2013: <http://wales.gov.uk/about/cabinet/cabinetstatements/2013/homebuilding/;jsessionid=E0F0E53A89D55FB5E5AC61C3D32750C8>