

Llywodraeth Cymru
Welsh Government

www.cymru.gov.uk

Welsh Government

Consultation – summary of responses

The Use of Planning Conditions for Development Management

October 2014

Table of Contents

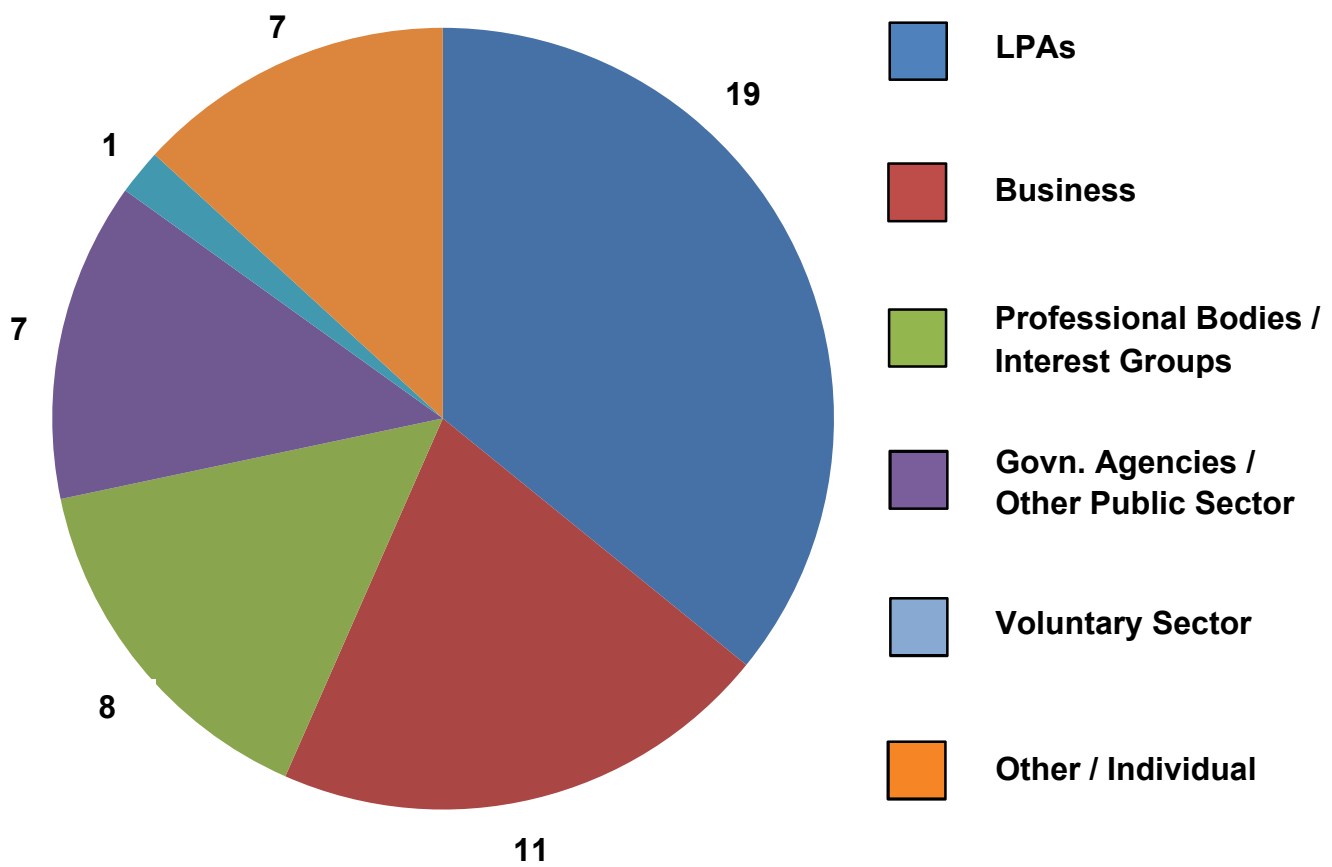
1. INTRODUCTION	1
2. RESPONSES	2
3. SUMMARY OF RESPONSES BY KEY THEME	3
Update of Circular 35/95	3
Standard Decision Notices	9
Proportionate and Flexible	13
Cooperation and Negotiation	15
Monitoring and Enforcement	17
Model Planning Conditions	19
Any other issues	26

1. Introduction

- 1.1 The “Review of Planning Conditions Circular and model conditions” consultation document was launched on 29 January 2014 and was open for responses until 25 April 2014. A total of 15 questions were set out in the consultation document, with a standardised form provided for ease of response.
- 1.2 The consultation document generated 53 responses. The following document provides a summary of responses.
- 1.3 The responses have been grouped into the following key themes:
 - Update of Circular 35/95
 - Standard Decision Notices
 - Proportionate and Flexible
 - Cooperation and Negotiation
 - Monitoring and Enforcement
 - Model Planning Conditions
 - Any other issues

2. Responses

2.1 In total, 53no. responses were received for this consultation paper. The breakdown of responses is provided in the chart below. The “Business” respondents include developers and planning consultants.



3. Summary of Responses by Key Theme

Update Circular 35/95

Consultation question:

Q.1 Do you think an updated circular on conditions is required?

	Yes	Yes W/C	No	N/A
Business / Consultant	9	2	0	0
Gov. Agency / Other Public Sector	5	1	0	1
LPA	13	6	0	0
Other / Individual	3	1	0	3
Prof'l Body / Interest Group	6	1	0	1
Voluntary Sector	0	1	0	0
TOTAL:	36	12	0	5
Percentage:	68%	23%	0%	9%

- 3.1 Of those who responded to the question, every respondent agreed that an updated circular on planning conditions is required.
- 3.2 Overall, it was felt that an updated circular is long overdue as the existing circular is now 19 years old and although parts of it still remain relevant, the circular should reflect current practice and guidance and be consistent with wider legislative reforms and challenges facing the built environment in Wales. This will help provide greater clarity. It was also suggested by one business / consultant that LPAs can sometimes dodge their duty to consult or enter into discussions by simply listing many conditions.
- 3.3 Respondents stated that although the updated circular was a positive step forward, it should be reviewed on a regular basis to ensure it is kept up to date with legislation, guidance and best practice. One professional body and an LPA suggested this should be carried out on a 5- year basis.
- 3.4 A voluntary sector organisation asked for model conditions to encourage community growing spaces as part of new housing and employment development schemes. Similarly, a government agency felt that land contamination issues should be addressed in greater detail.

Response

It is recognised that although certain parts of Circular 35/95 remain relevant, it does require updating to reflect changes to legislation and any advice contained in the Circular that has been superseded by guidance in Technical Advice Notes. It is the Welsh Government's intention to retain those parts of the original Circular which continue to remain relevant, but update the remainder of the document.

Guidance on the imposition of conditions outlined in the Circular is now over 18 years old and it is accepted that a more regular review would be beneficial.

There are more appropriate means of securing community growing spaces rather than through planning conditions. If considered necessary, the design and location of these spaces should be discussed at an earlier stage. This request goes beyond the scope of planning conditions and is not specific in relation to the formulation of conditions. This response reflects the Welsh Government's view on community growing spaces throughout the remainder of this summary of responses document.

Consultation question:

Q.2 Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular?

	Yes	Yes W/C	No	N/A
Business / Consultant	5	5	1	0
Gov. Agency / Other Public Sector	5	0	1	1
LPA	15	3	1	0
Other / Individual	3	1	0	3
Prof'l Body / Interest Group	6	0	0	2
Voluntary Sector	0	1	0	0
TOTAL:	34	10	3	6
Percentage:	64%	19%	6%	11%

- 3.5 Overall, respondents felt that any information from the original Circular which still remains relevant should be included in the updated Circular, except for where case law in recent years has provided additional and clearer guidance on the application and wording of conditions. A business / consultant also commented that the 6 tests should also be kept as they are still relevant to contemporary issues. Furthermore, a voluntary sector organisation stressed that the model conditions need to inform LPAs of the need for encouraging community growing spaces as part of new housing and employment development schemes.
- 3.6 There were, however, some minor concerns – both general and specific, to the use of planning conditions. One business / consultant felt that the conditions circular has failed, which is evidenced by very simple sites having over, for example, 25 planning conditions. Similarly, it was suggested that model conditions 56-59 in the old circular are brief and don't sufficiently reflect the significant changes taken place over the past few years.

Response

All information from the original Circular which continues to remain relevant will be retained within the revised Circular. Furthermore, the six tests associated with planning conditions will also be retained.

One of the overarching aims of the revised Circular is to reduce the number of conditions attached to planning permissions by front-loading the system to ensure that any aspect of a development that could be conditioned, is discussed and agreed upon during the earlier stages of the application process.

Consultation question:

Q.3 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)?**

	Yes	Yes W/C	No	N/A
Business / Consultant	8	3	0	0
Gov. Agency / Other Public Sector	3	2	0	2
LPA	11	7	0	1
Other / Individual	2	2	0	3
Prof'l Body / Interest Group	2	4	0	2
Voluntary Sector	1	0	0	0
TOTAL:	27	18	0	8
Percentage:	51%	34%	0%	15%

- 3.7 Of those who responded to the question, every respondent agreed that the six tests are well established, still relevant and should be retained. However, a number of respondents from various sectors agreed that the 'reasonableness' test could be open to interpretation and could be more focused with the inclusion of advice or guidance. Furthermore, an LPA commented that although advice on duplication of controls under other legislation is already established, this could be made more explicit by changing the title of the first test, or by making it a test in itself.
- 3.8 A business / consultant suggested that the CIL compliance tests currently used in England should be incorporated into the assessment of planning conditions in Wales.
- 3.9 A voluntary sector organisation asked for model conditions about community growing spaces as part of new housing and employment development schemes.
- 3.10 It was also suggested that guidance on breach of conditions in relation to archaeological work should be introduced.

Response

The Welsh Government intends to retain each of the six tests which were established in the original Circular as they continue to remain relevant and serve their intended purpose.

Examples have been provided in the Circular that help clarify and provide focus on the six tests. Therefore, further guidance is not considered necessary.

The Community Infrastructure Levy (CIL) compliance tests currently used in England already fall within with the six tests for the validity of planning conditions in Wales and therefore, no further action is required.

There is no intention of introducing further guidance on breach of conditions in relation to archaeological works as a specific topic area.

Consultation question:

Q.4 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?

	Yes	Yes W/C	No	N/A
Business / Consultant	1	0	7	3
Gov. Agency / Other Public Sector	0	0	1	6
LPA	0	7	9	3
Other / Individual	0	1	3	3
Prof'l Body / Interest Group	3	1	2	2
Voluntary Sector	0	0	0	1
TOTAL:	4	9	22	18
Percentage:	7%	17%	42%	34%

3.11 Responses indicated that the draft Circular generally contained all relevant case law, although a small number of respondents felt that additions were required. These included:

- Pre-commencement conditions, which have advanced since the case law specified in the draft Circular.
- Land contamination conditions
- Grampian conditions

3.12 Comments were also received highlighting the need for further clarification and guidance on certain issues. For example, clarifying the difference between condition precedent and Grampian conditions. Similarly, one respondent suggested guidance as to condition precedent and also further clarification on what is meant by 'heart of permission' (within the 'enforceability' test section).

3.13 One Business / Consultant also responded that from their experience, permissions granted at appeal tend to have fewer conditions than those determined by an LPA.

Response

Welsh Government lawyers have commented that all relevant case law has been identified in the revised Circular and that additions are not required. Where necessary, amendments have been made to the case law examples used within the Circular to ensure they are legally correct, such as Grampian conditions.

Consultation question:

Q.5 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?

	Yes	Yes W/C	No	N/A
Business / Consultant	2	3	4	2
Gov. Agency / Other Public Sector	4	0	0	3
LPA	4	11	3	1
Other / Individual	0	2	2	3
Prof'l Body / Interest Group	1	2	2	3
Voluntary Sector	0	1	0	0
TOTAL:	11	19	11	12
Percentage:	21%	36%	21%	22%

3.14 A mix of responses were received to the consultation question, although over half of respondents felt that new topic areas would be required in chapter 5 of the Circular and / or certain areas should be expanded upon. A more detailed breakdown of responses can be found below.

Amendments / clarification / guidance

3.15 A variety of comments were received that suggested various paragraphs within chapter 5 of the draft Circular required amendments or clarification. These included:

- Decision notices should be displayed on site until a development is complete and should include a list of approved drawings.
- A potential conflict in approach as the Welsh Government's 'Positive Planning' consultation paper suggested that Planning Policy Wales and Minerals guidance should be consolidated, whereas this consultation paper suggests separate minerals conditions in the Mineral Technical Advice Notes.
- Nature conservation being consistent with Planning Policy Wales and Technical Advice Note 5 (Nature Conservation and Planning) and should also be expanded to include reference to protected species.
- Further clarity on time limits and Section 73 applications, particularly in relation to prospective consent.
- Amendments to archaeology and scheduled ancient monuments
- Drainage systems

- Examples of how an LPA may contravene its duties under the Equality Act in regard to Occupancy and Personal Permission.
- Removal of information relating to Design and Access Statements, but only if they are removed (the 'Positive Planning' consultation paper included a question regarding the potential removal of mandatory Design and Access Statements)

3.16 It was also suggested that further guidance would be required for various areas outlined in the draft Circular:

- The types of conditions that would be pertinent to hybrid applications for permission
- Broadcast transmissions and other forms of electronic communications development
- Decentralised energy supply

New topics

3.17 Further to amendments and clarification on various topics contained within the draft Circular, a number of respondents also suggested new topics they felt should be included within the Circular. These included:

- A condition to restrict the ability of occupiers of new developments from applying for parking permits where there is existing pressure on parking.
- A new topic for caravans to include use, occupancy times and registers.
- Open space.
- Land stability, structural integrity and contamination matters.
- Lighting issues.
- The phasing or partial discharge of conditions (primarily for larger developments).
- Community growing spaces.
- A new topic relating to drainage – protection zones and private sewerage arrangements

Response

Amendments / clarification / guidance

The Welsh Government's proposals to change Decision Notices were outlined in the 'Positive Planning' consultation document for the Wales Planning Bill and will be considered once responses have been analysed.

Work is ongoing to consolidate Planning Policy Wales and Minerals Planning Policy Wales; however, the Minerals Technical Advice Notes will be retained to support the policy framework. The revised Circular will be amended accordingly in the future.

Regarding Nature Conservation, it is not for the Circular to emphasise the importance of ecological enhancements and protection into developments. Therefore, no action is required.

Information and detail in the draft Circular regarding time limits and Section 73 applications is considered adequate and therefore, no further action is required.

Comments in relation to archaeology, scheduled ancient monuments and drainage issues have been taken into consideration and where necessary, amendments have been made.

In relation to occupancy and personal permission, all public bodies have an 'Equality Duty' and must think about treating people from different groups fairly and equally. Regulation 8 of the Equality Act 2010 requires an authority to make arrangements in order to assess the likely impact of proposed policies and practices. Where negative effects are identified, the means by which they can be mitigated must be considered. Planning conditions are a means of doing this. Examples may be the need for housing in the countryside in order to enable an individual to operate a rural enterprise in the area, or the need for a site for accommodation for a gypsy and traveller community.

The future of Design and Access Statements remains unclear. The Welsh Government's 'Positive Planning' consultation document asked whether the mandatory requirement for Design and Access Statements should be removed. Responses to the consultation are currently being considered.

It is not proposed to introduce further guidance on the topic areas identified by respondents as the Circular contains sufficient examples and information in relation to these topics.

New Topics

Introducing a new topic to the Circular restricting the ability of occupiers of new developments from applying for parking permits where there is existing pressure on parking is not possible as it does not comply with the six tests that planning conditions must meet.

The Welsh Government are of the opinion that topics relating to caravan use and land stability have been adequately addressed in the Circular and therefore, no further amendments are required.

In regards to open space issues, it is not for planning conditions to secure open space during the planning application stage. Parameters set for design and legal agreements can secure open space provision. The Welsh Government do, however, recognise that there are issues with setting EIA parameters at the Outline Planning Application stage and this will be looked in during the review of EIA guidance.

No further action is required for lighting issues as domestic external lighting does not require planning permission and the location of lighting which would need planning permission is normally assessed during the application stage. Furthermore, luminance is controlled by Environmental Health legislation in terms of human impact.

The benefits of phasing or partial discharging of conditions have been identified and conditions can be adapted to suit these needs and requirements.

Drainage protection zones and private sewerage arrangements are not planning matters and any model conditions included relating to these issues would not comply with the 6 tests conditions must meet. Therefore, the Welsh Government will not be including additional conditions.

Standard Decision Notices

Consultation question:

Q.6 Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative

	Yes	Yes W/C	No	N/A
Business / Consultant	7	3	1	0
Gov. Agency / Other Public Sector	4	1	0	2
LPA	4	12	2	1
Other / Individual	3	1	0	3
Prof'l Body / Interest Group	2	2	1	3
Voluntary Sector	1	0	0	0
TOTAL:	21	19	4	9
Percentage:	39%	36%	8%	17%

- 3.18 Responses to this consultation question demonstrate significant positivity towards the proposed structure of decisions notices.
- 3.19 Respondents noted that it would encourage greater consistency, be less confusing by not having conditions listed by subject areas and would be beneficial for conditions associated with works that occur during certain times of the year i.e. EPS licence for bats. It was also noted that the proposed structure should improve clarity on the timetable for discharging conditions. An LPA also commented that this method would benefit all parties involved by being clearer and easier to understand.
- 3.20 Although responses were generally positive, there were some minor concerns raised on how the proposal may work in practice. For example, a number of respondents stated that it was unclear how this decision notice would sit with regard to the proposal of having 'live' decision notices, as set out in the 'Positive Planning' consultation paper. An LPA also commented that the only difficulty would be that some conditions do not neatly fit into a category.
- 3.21 Suggested improvements were also outlined by a number of respondents, which included:
- Decision Notices should be updated and re-issued when a Section 73 application is granted.
 - Consideration should be given to a further breakdown of conditions into sections for ease of use and to aid LPAs with discharging conditions.
 - Conditions should be grouped for larger scale schemes.

- Decision Notices should be displayed on site (with reference to approved plans and drawings) until the development is complete.
- A section should be included which gives greater reference to phasing conditions

Response

Comments regarding decision notices have been considered and taken into account and the section of the Circular that relates to decision notices has been amended to make it clearer. This will help reduce confusion in relation to how decision notices will be structured.

Consultation question:

Q.7 Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition?

	Yes	Yes W/C	No	N/A
Business / Consultant	8	3	0	0
Gov. Agency / Other Public Sector	3	1	1	2
LPA	4	13	1	1
Other / Individual	3	1	0	3
Prof'l Body / Interest Group	3	2	0	3
Voluntary Sector	1	0	0	0
TOTAL:	22	20	2	9
Percentage:	42%	38%	3%	17%

3.22 The vast majority of respondents were in agreement with this provision, with only 3% indicating they don't support it. Reasons for not supporting this included one LPA commenting that fundamental changes to drawings should require a fresh submission with an appropriate consultation fee. Also, some minor concerns were raised that the proposal may encourage variation of development, so a clear indication of what is considered 'minor development' is needed. Furthermore, a Government Agency did not support as they were unsure why this provision would be necessary as the granting of consent should relate to all plans and drawings submitted with an application.

3.23 However, many respondents stated that such a condition would be essential for monitoring and enforcement purposes, as well as providing more clarity, certainty and flexibility. One Business / Consultant felt this provision is of paramount importance and a list of approved drawings / plans should be displayed on site for the duration of a project. In addition, an LPA stated that it would be particularly important, where approved plans provide details of protected species mitigation. It was suggested that the provision would be required in cases where plans / drawings have been superseded and amended a number of times.

3.24 Although generally in agreement with the principle of the provision, certain respondents did put forward conditional comments. These included:

- That only approved plans should be included in the condition. Illustrative plans, while relevant to a decision, would not normally comprise an approved plan. However, an additional comment suggested that the provision in a condition should in fact apply to the full suite of documents and drawings submitted as part of an application, for example, a Design and Access Statement.
- In agreement, provided an amendment to the Section 73 procedure is introduced at the same time as currently, applicants would have to make a

Section 73 application for even the most minor of amendments, which does not meet the aspirations of the Welsh Government to make the planning system less of a barrier.

- Some flexibility needs to be built into the wording, which does not currently appear in model condition 6 (Plan Specification).

Response

The Wales Planning Bill specifies that planning permission will be deemed to be granted subject to the condition that development must be carried out in accordance with the plans and documents specified in the decision notice. Therefore, while this proposal is pursued through the Bill, no further action is required.

Proportionate and Flexible

Consultation question:

Q.8 Do you agree with the approach taken towards the term ‘unless otherwise agreed by the Local Planning Authority’ discussed in paragraph 3.36 of the draft circular?

	Yes	Yes W/C	No	N/A
Business / Consultant	4	3	4	0
Gov. Agency / Other Public Sector	2	4	0	1
LPA	3	7	9	0
Other / Individual	1	1	2	3
Prof'l Body / Interest Group	3	1	0	4
Voluntary Sector	1	0	0	0
TOTAL:	14	16	15	8
Percentage:	27%	30%	28%	15%

- 3.25 There were mixed responses received to this consultation question, although over half of respondents agreed with the approach taken in the draft Circular.
- 3.26 A number of LPAs were in agreement, commenting that it would provide consistency, make conditions more precise and provides flexibility to make adaptations in an acceptable manner as required, particularly as the use of vague and ambiguous language regarding conditions can present a barrier to development. One LPA stated that the proposal would remove uncertainty and reasonable expectations from developers as to what can be achieved, while another commented that it would be too onerous to require a Section 73 application for very minor changes. Furthermore, it was suggested that this could be useful in ecology and land contamination related planning conditions as it enables the LPA to retain control whilst allowing the applicant some flexibility.
- 3.27 Some Government Agencies / Other Public Sector respondents also commented in favour of the proposal indicating that the use of such terminology is outdated and imprecise.
- 3.28 A number of respondents also put forward some suggested improvements, which included amending the text to read ‘*approved in writing*’ rather than ‘*agreed*’, as it is too vague. A Government Agency also suggested further guidance to ensure conditions, where appropriate, reflect the potential for changing circumstances and a Business / Consultant commented that the Planning Advisory Improvement Service (PAIS) could mediate and advise both LPAs and applicants where disputes arise of where a condition needs more clarity.

3.29 Although numerous LPAs agreed with the proposal, there were also LPAs in disagreement, indicating that it's not always possible to anticipate all eventualities when a permission is granted or whether conditions are needed to resolve matters at the point of granting permission. Furthermore, it was argued that case officers should be able to use their own judgement for minor material changes and have to go down the route of Section 73 applications, which can be bureaucratic.

It was also argued that without allowing some flexibility, there would be a danger that applicants would prefer to see more conditions set which require subsequent approval, thus allowing further submissions of alternative details, as opposed to Section 73 applications.

3.30 A number of Business / Consultant responses commented that the proposal would not be appropriate where a change to a development have been allowed when already consulted and approved and that if the planning process is implemented correctly, the phrase outlined in the consultation question would be superfluous.

3.31 Similarly, with changes to non and minor material amendments proposed, it was queried whether the need for these tailpieces were required.

Response:

The Welsh Government do not encourage the use of tailpieces for conditions, as not only do they leave LPAs open to challenge, they can render conditions invalid as they may not comply with the six tests.

Cooperation and Negotiation

Consultation question:

Q.9 Do you agree that local planning authorities should provide applicants with advance notice of conditions before an application is due to be determined?

	Yes	Yes W/C	No	N/A
Business / Consultant	5	4	2	0
Gov. Agency / Other Public Sector	1	2	2	2
LPA	1	7	10	1
Other / Individual	1	3	0	3
Prof'l Body / Interest Group	3	1	1	3
Voluntary Sector	1	0	0	0
TOTAL:	12	17	15	9
Percentage:	23%	32%	28%	17%

- 3.32 Overall, there was a mix of responses to this proposal, although just over half of respondents agreed with the notion of advance notice of conditions for applicants.
- 3.33 The majority of responses were in favour of the proposal, indicating that it would be particularly beneficial to applicants who will have the opportunity to be fully conversant with the obligations they accept via planning conditions and can make provision for time and cost implications. Furthermore, a Business / Consultant stated that this will also enable applicants to gather together all the relevant information needed to discharge pre-commencement conditions whilst waiting for a decision notice to be issued. Some LPAs also highlighted that this already happens, at a discretionary level, and works well. It was also felt that this process shouldn't delay the decision making process as LPAs should agree the wording of any conditions with statutory consultees (where applicable) prior to a decision.
- 3.34 However, those who responded positively to the consultation question did submit further comments, which included:
- This provision should only be made available for major or complex applications
 - Although good practice, it may not always be practicable or possible and could put undue pressure on LPAs to meet determination targets
 - It should not be a formal or statutory requirement

- Applicants should have the opportunity of submitting their own draft conditions
 - The process should involve statutory consultees
 - It could lead to extended time periods for decisions, although a Professional Body / Interest Group suggested that applicants should be offered the opportunity to comment on conditions. If taken up, the determination period should be put on hold until resolved.
- 3.35 The main opposition towards this proposal stems from the decision making process. With LPA targets in place to determine planning applications, LPAs felt that this proposal would delay decisions and put increasing pressure on diminishing resources, as well as indicating that it was not clear at what stage of the process this proposal is envisaged to take place. It was also suggested by a Government Agency that applicants are made aware of the tight deadlines LPAs face for determination periods at a time when resources are being cut and that they should not expect advance notice of conditions in these circumstances.
- 3.36 Respondents also felt that the sharing of draft conditions before a decision is made could be onerous and confusing and one LPA stated that it would not be necessary from a land contamination point of view. It was also commented that this may give the impression a developer / applicant would have undue influence in the statutory process and could take the view that conditions are open for negotiation, which may be seen as prejudicing other third parties.
- 3.37 Generally, consideration should be given to these issues being discussed at the pre-application stage as applicants should not be able to dictate what conditions they are prepared to accept.

Response

The Welsh Government does not wish to put the onus on Local Planning Authorities to inform applicants of conditions. Instead, communication between parties will be encouraged and for the Local Planning Authority to share any concerns so to resolve these matters before conditions are attached. This should not delay a decision, but allow applicants to gather information to either remove the need for a particular condition or to satisfy a condition quickly.

The Wales Planning Bill also proposes greater emphasis on front-loading the system and pre-application discussions, which should include planning conditions as a topic area.

Monitoring and Enforcement

Consultation question:

Q.10 Should guidance be provided in the Circular in relation to any other conditions related matter?

	Yes	Yes W/C	No	N/A
Business / Consultant	4	4	1	2
Gov. Agency / Other Public Sector	1	2	2	2
LPA	5	10	3	1
Other / Individual	0	1	3	3
Prof'l Body / Interest Group	1	2	1	4
Voluntary Sector	0	1	0	0
TOTAL:	11	20	10	12
Percentage:	21%	38%	19%	22%

3.38 Respondents suggested guidance should be provided on a number of specific topics within the Circular. These included:

- Drainage issues and managing flood risk
- Mining risk and assessments
- Electronic communications development
- Archaeological and other environmental statements and assessments
- Highways
- Consideration for reasons for refusal, breach of conditions and reasons for conditions

3.39 One respondent also suggested that it may be useful to include specific examples of conditions which should not be imposed so as to avoid duplication with other statutory controls i.e. highways or drainage.

3.40 Including the specific topics identified above, respondents also suggested additional general guidance or information in relation to planning conditions. For example, a number of respondents felt that more information is required on the role of statutory consultees in the drafting and discharging of conditions.

3.41 Additional topics respondents included within their comments included:

- The need to reiterate the need to minimise the number of conditions and ensure there are sufficient procedures for the effective and efficient discharging of conditions.
- Model conditions need to inform LPAs of the need for encouraging community growing spaces as part of new housing and employment development schemes.

- Reference should be made to the fact an applicant can appeal against any conditions that have been imposed rather than going through the process of making a Section 73 application.
- There should be a clear objective for LPAs to obtain all the necessary information from the applicant / developer up front so as to avoid the necessity for conditions in the first instance.

3.42 Similarly, many respondents felt that the Circular has been written for an LPA audience with little to say on the role of the applicant in the process and should be amended to reflect this.

Response:

Information and advice on archaeological and other environmental statements and assessments have been expanded upon to provide greater clarity, although further guidance for the topic areas outlined from the consultation responses is not considered to be required.

Regarding examples of duplication of control, the Circular already highlights examples where conditions should not be imposed where the matter can be adequately addressed through another regime i.e. drainage or Building Regulations.

Model Planning Conditions

Consultation question:

Q.11 Does Appendix A of the draft Circular contain sufficient examples of model conditions?

	Yes	Yes W/C	No	N/A
Business / Consultant	5	3	1	2
Gov. Agency / Other Public Sector	2	2	1	2
LPA	5	10	4	0
Other / Individual	2	0	2	3
Prof'l Body / Interest Group	1	2	2	3
Voluntary Sector	0	1	0	0
TOTAL:	15	18	10	10
Percentage:	28%	34%	19%	19%

3.43 Overall, it has been generally accepted that Appendix A of the draft Circular contains sufficient examples of model conditions. However, certain respondents did suggest additional examples for specific topic areas would be beneficial.

3.44 LPAs were most vocal in suggesting topic areas which would benefit from additional examples of model conditions. These included:

- Retrospective planning permission
- Biodiversity
- Lighting
- Renewable energy projects
- Design and Access Statements
- Open space provision
- Phasing development

One LPA also commented that it should be recognised that model conditions cannot cover every eventuality and should only be used as guidance.

3.45 Government Agencies / Other Public Sector respondents also suggested additional examples, which included micro-siting for wind turbines, unstable land and archaeological remains.

3.46 Business / Consultant respondents commented that the renewable energy conditions in the draft Circular should include renewable heat and the sustainable buildings conditions must recognise the requirements of new Building Regulations Part L2A. Furthermore, one Business / Consultant suggested that developers should be required to inform the LPA when each condition is fulfilled, whilst another felt that a Grampian condition should be

introduced to secure mitigation works required when new development causes physical interference to existing telecommunication sites and networks.

3.47 A respondent from the voluntary sector commented that the model conditions need to inform LPAs of the need for encouraging community growing spaces as part of new housing and employment development schemes.

3.48 Additional examples for surface water / drainage issues and preventing entry into the public sewerage system were also topic areas where additional examples would be beneficial.

Response:

It is not possible for the revised Circular to cover all eventualities, although it is possible for the model conditions to be tailored to particular scenarios.

However, where considered necessary, additions have been made to the model conditions to take account of the comments received from respondents.

Consultation question:

Q.12 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.

	Yes	Yes W/C	No	N/A
Business / Consultant	0	5	5	1
Gov. Agency / Other Public Sector	4	2	0	1
LPA	5	11	2	1
Other / Individual	0	4	3	0
Prof'l Body / Interest Group	2	3	3	0
Voluntary Sector	0	1	0	0
TOTAL:	11	26	13	3
Percentage:	21%	49%	25%	5%

3.49 A significant number of respondents commented that certain conditions should be reworded in some form. In total, 63 of the draft model conditions were recommended to be improved. Of these 63 conditions, the following represent those which generated the most responses:

- Condition 11 (Access – disabled)

The condition should request details of the agreed disabled access element before development is carried out, as well as including deeded rights of way and generally reworded to remove any ambiguity.

- Condition 20 (Affordable Housing)

Several respondents commented that this condition appears contradictory to paragraph 5.41 of the draft Circular which states that conditions should not be used to control matters such as tenure, price or ownership.

- Condition 24 (Archaeology – archaeological investigation)

It was felt that this condition needed additions to make it more robust, as well as to reflect the multi-staged nature of most archaeological works. It was also suggested reference should be made to a plan for clarity and enforceability.

- Condition 26 (Boundary Treatment)

The condition should reference 'height' and it was also suggested that where there are disputes i.e. deeded rights of way, planning permission should be refused until disputes are remedied.

- Condition 27 (Contaminated Land – investigation)

This condition was considered too prescriptive and required a clear definition of what is meant by ‘ecological systems’ as well as replacing references to documents with up to date versions.

- Conditions 39, 40 and 41 (Drainage – sustainable drainage systems)

The conditions need to reinforce the need for developers to explore all alternatives for the disposal of surface water and also gives the impression that SuDS can be retrofitted into a scheme like traditional drainage, which may not be the case. They could also be made more flexible to reflect the multi-phase nature of many developments. A number of respondents also commented that ‘urban’ has been omitted from ‘SuDS’ some time ago and does not appear in legislation – therefore, should be removed.

Response:

It is not possible for the revised Circular to cover all eventualities, although it is possible for the model conditions to be tailored to particular scenarios.

However, where considered necessary, amendments have been made to the model conditions to take account of the comments received from respondents.

Consultation question:

Q.13 Do you believe any of the conditions fail any of the six tests identified in the circular?

	Yes	Yes W/C	No	N/A
Business / Consultant	2	2	7	0
Gov. Agency / Other Public Sector	1	0	2	4
LPA	5	4	6	4
Other / Individual	0	0	4	3
Prof'l Body / Interest Group	0	2	3	3
Voluntary Sector	0	1	0	0
TOTAL:	8	9	22	14
Percentage:	15%	17%	42%	26%

3.50 Although the majority of respondents considered that the model conditions outlined in the draft Circular meet the six tests, the following conditions have been identified as those potentially failing one or more of the six tests:

- Condition 7 (Access Outline) – if considered important at the outline stage, then it should be considered then.
- Condition 20 (Affordable Housing) – refers to tenure and may not be appropriately controlled by a condition
- Condition 22 (Archaeology – watching brief) – fails the tests of precision, reasonableness and enforceability.
- Conditions 23 and 24 (Archaeology – watching brief) and (Archaeology – archaeological investigation) – vague in terms of what constitutes ‘reasonable access’ and is unenforceable.
- Condition 38 (Drainage) conflicts with Paragraph 3.6 of the draft Circular which discusses duplication of control.

3.51 All the remaining model conditions were considered to meet the six tests.

Response:

Condition 7: This condition informs the applicant, where details have not been provided at outline, that only access from a certain road will be acceptable so that this can be reflected into the reserved matters application. The Circular advises where certain aspects of the development are crucial to the decision, local planning authorities will wish to consider imposing relevant conditions when outline permission is granted. This condition is an example of that.

Condition 20: The condition does not seek to control tenure or ownership or price. It asks that the developer submit details of housing type, tenure and location of proposed affordable housing.

Condition 22: The condition has been amended to clarify that the archaeologist should be professionally qualified. No further changes are required as the condition is considered to be precise, reasonable and enforceable.

Conditions 23 and 24: Condition 23 has been deleted. Condition 24 has been reworded.

Condition 38: There is no conflict where the condition is used to secure planning objectives and so this has not been changed.

Consultation question:

Q.14 Should any conditions be totally removed from Appendix A of the draft Circular?

	Yes	Yes W/C	No	N/A
Business / Consultant	2	2	7	0
Gov. Agency / Other Public Sector	2	2	1	2
LPA	2	4	9	4
Other / Individual	0	0	4	3
Prof'l Body / Interest Group	0	2	3	3
Voluntary Sector	0	0	1	0
TOTAL:	6	10	25	12
Percentage:	11%	19%	47%	23%

3.52 Generally, respondents felt that the conditions outlined in the draft Circular were adequate, although comments were received to suggest that certain conditions should be removed due to being outdated, contradictory to other advice / guidance or by not achieving their intended goals. The list of model conditions respondents felt should be totally removed are detailed below:

- Condition 23 (Archaeology) is considered outdated and no longer appropriate or reasonable under modern planning procedures. This condition can also cause confusion.
- Conditions 30, 31 and 32 (Contaminated Land) – case law states that LPAs should request as much information beforehand prior to determination and therefore, these conditions should not be required.
- Condition 45 (Garage / Parking Spaces) does not seem necessary and the removal of permitted development rights may be a more appropriate approach.
- Condition 73 (Listed Building) creates uncertainty over the burden of responsibility.
- Condition 112 (Renewable Energy) appears to contradict earlier advice in the draft Circular regarding controlling advertisements.
- Condition 120 (Sustainable Buildings) adds nothing to the requirement of Condition 121 as both require the agreed BREEAM level to be achieved.
- Conditions 122, 123 and 124 (Sustainable Buildings) may not be needed if this is now a Building Regulations issue, as it currently is in England.

- Condition 133 (Wildlife Protection) gives the impression matters concerning protected species can be dealt with under condition. The use of this condition should be clearly stated.

Response:

Where considered appropriate, the Welsh Government has removed those model conditions which were suggested for removal by respondents.

Any Other Issues

Consultation question:

Q.15 We have asked a number of specific questions throughout this consultation. If you have any related queries or comments which we have not specifically addressed, please use this space to report them.

3.53 Guidance

A Business / Consultant suggested that current guidance relating to the validation process should recommend it's undertaken by planning officers rather than administration staff. Furthermore, comments were received that outlined further guidance on the following topics would be beneficial:

- Section 73 applications
- Discussing potential conditions with statutory consultees
- What should be dealt with under Section 106 agreements

3.54 Sections:

Respondents referenced particular sections of the draft Circular which were felt to require amending and also that there were concerns over the high number of conditions in general.

One LPA commented that the 'Occupancy and Personal Permission' section was not clear on what evidence and legal advice the comments outlined in the draft Circular were made. Another LPA felt the 'Planning obligations and Community Infrastructure Levy' section appeared to be weighted in favour of developers.

As the planning system should not duplicate existing statutory controls, a comment was received stating that sewerage and water supply issues should only be considered in limited circumstances.

It was also noted that the 'over-precise' conditions section shouldn't contain specific percentage values as these can vary from case to case.

3.55 New / amended conditions:

A number of comments were received which sought to both amend existing conditions outlined in the draft Circular and introduce new model conditions.

The suggested amendments received from the consultation responses included:

- Greater consideration given to renewable energy systems

- Further clarity on a number of specific terms used throughout the model conditions
- Amending archaeological and historic environment conditions so that they are up to date
- Pre-commencement conditions should be discouraged
- The phrase 'in the interests of amenity' is too vague and should be replaced
- The wording within the 'Enforceable' test within the draft Circular should be worded more clearly

As well as amendments, it was suggested that two new model conditions are introduced within the draft Circular. A Professional Body / Interest Group felt a condition relating to the Welsh language should be introduced as no consideration is given to Technical Advice Note 20 (Planning and the Welsh Language) throughout the draft Circular. Furthermore, a Voluntary organisation stated that the model conditions need to inform LPAs of the need for encouraging community growing spaces as part of new housing and employment development schemes.

One respondent also commented that further discussion is required on the relationship between the drainage conditions proposed in the circular and the requirements of Section 42 in the Flood and Water Management Act 2010.

3.56 Processes:

Respondents commented on the process of discharging of conditions with one Business / Consultant suggesting that the process needs consideration for improvement. Furthermore, an LPA felt that discharging of conditions on major / large scale schemes should warrant a fee to LPAs.

It was also suggested that when deciding upon implementing conditions, discussions should be held with statutory consultees and other third parties. However, although LPAs felt this was a good idea in principle, consultees and third parties may have difficulty in understanding the complexity of the legal requirements, as well as potential challenges when seeking to include conditions that are recommended by consultees.

Another LPA noted that the submission of as many details as possible from a developer / applicant would be welcomed, but it was felt that developers may be reluctant to do this and are unlikely to submit details where they can be requested by conditions.

In preparing conditions on a decision notice, a Business / Consultant noted that they felt case officers tend to write conditions and then their reasons – a process

which should be changed. Additionally, an LPA suggested that all conditions should be accompanied by reasons.

3.57 Other:

One LPA felt that the use of numerous conditions should be taken in context. For example, if the applicant doesn't submit enough information. Furthermore, it was agreed that conditions for minerals remains best placed to be addressed in the relevant Minerals Technical Advice Notes.

Responses indicated that clarification is required on the future of Design and Access Statements, given that the 'Positive Planning' consultation documents included a question that sought to remove the mandatory requirement for them.

Comments were received that suggested Deeded Rights of Way should be afforded the same status as public rights of way and where affected, should be considered at committee, not delegated powers. Deeded rights of way with vehicular access should be conditioned.

LPAs also await the release of planning application fees consultation from the Welsh Government.

Response:

Guidance:

Additional guidance on various topics is not considered necessary to accompany the Circular as the level of detail required is deemed to have been included.

Sections:

In relation to occupancy and personal permission, all public bodies have an 'Equality Duty' and must think about treating people from different groups fairly and equally. Regulation 8 of the Equality Act 2010 requires an authority to make arrangements in order to assess the likely impact of proposed policies and practices. Where negative effects are identified, the means by which they can be mitigated must be considered. Planning conditions are a means of doing this. Examples may be the need for housing in the countryside in order to enable an individual to operate a rural enterprise in the area, or the need for a site for accommodation for a gypsy and traveller community.

Examples have been included within the Circular, as well as reference made, that states how the planning system should not duplicate existing statutory controls.

The 'over precise' conditions section has been amended to take account of comments received to the consultation.

New / amended conditions:

It is not possible for the model conditions included within the Circular to cover every eventuality, however, where considered necessary and appropriate, some conditions have been removed from the appendix and furthermore, new additions have also been made on certain topic areas.

Conditions about the Welsh language are a policy issue rather than a topic area covered by conditions and should ultimately be considered early on in the application process. However, the flexibility afforded to the model conditions does make allowance for the Welsh language to be considered within conditions.

Processes:

There is a statutory duty for certain consultees (statutory consultees) to be consulted on applications for planning permission, including conditions.... The Wales Planning Bill proposes to place greater emphasis on pre-application discussions and front loading the application process to ensure that as much information can be submitted and agreed with the LPA at the earliest possible stage. This will help prevent delays in the determination process of applications.

In relation to providing reasons for attaching conditions, Article 24 of The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 specifies that only LPAs are required to provide reasons for conditions. The Welsh Government will, however, consider how Welsh Ministers may provide reasons for conditions in the same manner as LPAs.

Other:

The Welsh Governments 'Positive Planning' consultation document asked whether the mandatory requirement for Design and Access Statements should be removed. Further consultation will be undertaken before a decision is made.

Deeded Rights of Way are private interests and Planning Policy Wales makes it clear that the planning system does not exist to protect the private interests of one person against the activities of another. Therefore, conditions cannot be included in relation to Deeded Rights of Way.

The Welsh Governments consultation paper in relation to planning application fees will be published later this year.